

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Eighth Session
April 13, 2015**

The Committee on Government Affairs was called to order by Chairman John Ellison at 9:02 a.m. on Monday, April 13, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman John Ellison, Chairman
Assemblyman John Moore, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Victoria A. Dooling
Assemblyman Edgar Flores
Assemblywoman Amber Joiner
Assemblyman Harvey J. Munford
Assemblywoman Dina Neal
Assemblywoman Shelly M. Shelton
Assemblyman Stephen H. Silberkraus
Assemblywoman Ellen B. Spiegel
Assemblyman Lynn D. Stewart
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

Assemblywoman Melissa Woodbury (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Michael C. Sprinkle, Assembly District No. 30



STAFF MEMBERS PRESENT:

Jered McDonald, Committee Policy Analyst
Eileen O'Grady, Committee Counsel
Erin Barlow, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Adam Mayberry, Community Relations Manager, City of Sparks
Shirle Eiting, Senior Assistant City Attorney, City of Sparks
Wes Henderson, representing Nevada League of Cities and Municipalities
Steve Weinberger, Administrator, Division of Internal Audits, Department
of Administration
Lori Hoover, Financial Manager, Division of Internal Audits, Department
of Administration
Barry Smith, Executive Director, Nevada Press Association

Chairman Ellison:

[Roll was called. Committee rules and protocol were explained.] I will open the hearing on Senate Bill 118.

**Senate Bill 118: Revises various provisions of the Charter of the City of Sparks.
(BDR S-500)**

Adam Mayberry, Community Relations Manager, City of Sparks:

Assemblyman Sprinkle presented this bill on Senator Smith's behalf in the Senate Committee on Government Affairs. We are looking forward to her recovery and appreciate Assemblyman Sprinkle representing us. Senate Bill 118 essentially provides for administrative changes to the Sparks City Charter as required by a recent ruling of the Nevada Supreme Court. In essence, we are simply making the necessary changes to the Sparks City Charter that the Supreme Court has required us to make. The proposed language in the bill is intended to provide clarity to the separation of powers between the Executive and Judicial Departments of the City of Sparks.

Assemblyman Michael C. Sprinkle, Assembly District No. 30:

I wanted to make sure you understand why I am presenting this bill. This was originally Senator Smith's bill, and I helped shepherd it through the Senate. This was a mandate that came down from a Nevada Supreme Court ruling. Key provisions for this bill include clarifying that the court staff are appointed by the court, not the city manager, and that court employees are directed by the court, not the city manager. [Continued to read from ([Exhibit C](#)).] This is

primarily a clean-up for something that has to be done anyway in the Sparks City Charter.

Assemblyman Stewart:

Does this bill allow the judges to control their own employees, make their own appointments, assign duties, and so forth? In the past, have they been doing this even though it was not in the City Charter?

Shirle Eiting, Senior Assistant City Attorney, City of Sparks:

In the past, the Human Resources Department in the City of Sparks handled the hiring, firing, and other administrative procedures for the employees of the City. At this point, the municipal court will be in charge of their employees and handle the hiring, firing, discipline, and setting salaries.

Assemblyman Stewart:

In the past, a judge could not fire a clerk? Judges did not have the authority to control their own employees in the court according to the current Charter, is that correct?

Shirle Eiting:

That is correct. The judge would have to follow the administrative rules as well as the civil service regulations of the city.

Assemblyman Stewart:

That must have been frustrating for the judge.

Assemblyman Wheeler:

I read this bill as just putting Sparks in line with the Supreme Court decision from *City of Sparks v. Sparks Municipal Court*, 129 Nev. Adv. Op. 38, 302 P.3d 1118 (2013). Am I correct?

Assemblyman Sprinkle:

That is correct. This was a ruling that came from the Supreme Court; we just put it in a charter bill.

Chairman Ellison:

Are there any more questions from the Committee? [There were none.] Is there anyone else in support of S.B. 118? [There was no one.] Is there anybody to testify in opposition? [There was no one.] Is there anyone to speak as neutral?

Wes Henderson, representing Nevada League of Cities and Municipalities:

We are neutral about S.B. 118; however, we would like to thank Senator Smith for bringing this bill forward for the City of Sparks. It has long been the League's position that this is the way charters should be amended—they should come before this body at the request of the effective governing body.

Assemblyman Wheeler:

Are you saying that all charters should be amended? Are there other charters out there that are in contravention of this Supreme Court decision, or could be?

Wes Henderson:

I was referring to the general policy position that the League has had for a long time—the way charters should be amended is when changes are brought to this body by the affected city, and not started in this body and forced down.

Assemblyman Wheeler:

So you do not want us to amend the statute for every city, just Sparks?

Wes Henderson:

I do not think the other city charters are in conflict with that Supreme Court ruling that this bill refers to.

Assemblywoman Neal:

In section 7, subsection 2 of this bill, "A Judicial Assistant serves at the will of the Administrative Judge [who appointed him or her]." I was trying to figure out who will fire that person now. He or she can still be removed without cause, but who does the firing? Initially, there was an appointment that set the structure and relationship.

Shirle Eiting:

These were always positions that the judge could appoint under the Charter. The ability to terminate that position or employee will rest with either the administrative judge or the judge who the employee is working for.

Assemblywoman Neal:

Even though they do not appoint them anymore, they can still fire them?

Shirle Eiting:

Yes. I believe administratively speaking, the administrative judge will handle the terminations. I believe that is how it will come down in the administrative rules they are adopting.

Chairman Ellison:

Would the bill sponsor like to make a closing statement?

Assemblyman Sprinkle:

I appreciate everyone's attention to this bill; it is a necessary bill to make sure we are adhering to the Supreme Court ruling.

Chairman Ellison:

It looks like it passed through the Senate Government Affairs Committee unanimously. I will close the hearing on S.B. 118 and open the hearing on Senate Bill 83 (1st Reprint).

Senate Bill 83 (1st Reprint): Designates as confidential certain information that is reported to the Division of Internal Audits of the Department of Administration. (BDR 31-288)

Steve Weinberger, Administrator, Division of Internal Audits, Department of Administration:

We are here for Senate Bill 83 (1st Reprint), which deals with a fraud hotline that we have. We put forth a bill to add language that ensured the confidentiality of the hotline caller. It was amended once, and we are very happy with the amendment.

Assemblywoman Dooling:

I am curious as to how many calls you get.

Lori Hoover, Financial Manager, Division of Internal Audits, Department of Administration:

It varies. From July 2013 when the hotline first came into effect through January 2015, we have had 90 calls overall.

Assemblyman Wheeler:

Have there been cases where the name of a person who reported fraud got out, and that person experienced retaliation?

Steve Weinberger:

No. But we have had callers voice their concerns about being confidential. It has been an issue.

Assemblyman Wheeler:

By passing this law, are you envisioning more reports of fraud being called in to your Division?

Steve Weinberger:

We cannot guarantee that we will get more calls, but we know confidentiality has been a concern for callers. We believe in this hotline, and we think there is a good reason they created it. We have had some interesting calls that we think worked out to some good resolutions. We want to do whatever we can do to help ensure peoples' trust in us. It had been mentioned to us before that people were afraid that their identity would be released.

Assemblyman Stewart:

Of these 90 calls that you have received, how many resulted in action taken? How often was the caller correct in their allegations?

Steve Weinberger:

We have not had any convictions. Our policy is to turn it over to the Office of the Attorney General if it becomes criminal. What we have seen is a lot of action taken by a department to take care of an issue. One of the most common issues that gets reported is of someone abusing their time by showing up late or not showing up at all, and not coding in their sick leave. Their coemployees get upset with that and do not feel that their immediate supervisors are acting appropriately. We go as high as we can and maybe pull records on the person's attendance. We do not have the resources to sit there and spy on employees to see if they are getting there at 8 a.m. or not. But once we gather a bunch of information and report it high enough to that department, we usually see some action taken.

Assemblyman Stewart:

So overall, it has resulted in minor actions, changes have been made internally, and nothing has gone to court or anything of that nature, is that correct?

Steve Weinberger:

That is correct.

Assemblywoman Neal:

What confused me about this bill, despite the fact that you are hosted in *Nevada Revised Statutes* (NRS) Chapter 353, is why you need to add confidentiality. Some of the statutes in section 2 of this bill are the whistleblower statutes. I thought it was naturally confidential.

Steve Weinberger:

There is the whistleblower statute, but that does not add confidentiality to this caller. When this statute was created last session, a reporter asked me if the hotline reports were all confidential. From what I understand, nothing we do is confidential unless statute specifically says it is confidential. I had to tell the

reporter that, and it got out into the news. It was a blemish on this whole program, so we decided to take action this session.

Assemblywoman Neal:

The way your program is set up, an employee can call in and say what another employee did. Are you saying that was never confidential?

Steve Weinberger:

That is correct. From what I understood, unless there is something in statute that specifically says something is confidential, everything is subject to the public record law.

Assemblywoman Neal:

I thought it was inherent in the whistleblower statute that information such as that was confidential. You have several instances of NRS Chapter 281 in section 2 of the bill. We had another bill in another committee that did not change the confidentiality but changed what the accused could do. I thought that was a natural part of the whistleblower statute.

Steve Weinberger:

From what I understand, the whistleblower hotline is a totally different statute. That statute just protects you from retaliation and does not explicitly offer confidentiality as far as this hotline is concerned.

Chairman Ellison:

Where does the Health Insurance Portability and Accountability Act (HIPAA) come into play here?

Steve Weinberger:

That deals with health care and, fortunately, we have never had any calls addressing any type of health issue.

Assemblyman Stewart:

If Assemblyman Carrillo calls in and says he saw Assemblyman Stewart sleeping and that Assemblyman Stewart has not been diligent in his Committee duties, the staff at the hotline take down the report and actually write Assemblyman Carrillo's name down? Is that the way it is done?

Lori Hoover:

Yes, we have what we call an intake form, and we write down the person who called and the contact information, because the way the hotline works is that you have to leave a message and we respond back to you. We need to know who it is we are talking to and any contact information.

Assemblyman Stewart:

So if Assemblyman Carrillo refused to give his name, then you would not take the report?

Lori Hoover:

Not necessarily. We will still try to substantiate it, even if he does not leave his information. Either way, we try to substantiate the allegation.

Assemblyman Stewart:

How is the caller's name kept confidential with the new law? Is it filed somewhere? How are people kept from finding it out?

Lori Hoover:

We have what we call a summary report, and when that hotline call is closed, we will then move that information to a summary report and take out any actual contact information. That summary report is what then becomes available for public record, and the information that has the contact information would be considered confidential.

Assemblyman Stewart:

At present, the caller's name would still be available sometime down the road, and if this law is passed, the names would be removed.

Lori Hoover:

That is correct.

Assemblyman Moore:

How many tips were received last year?

Lori Hoover:

For fiscal year 2014, there were 76, but for the total period of time the hotline has been open since July 2013, there have been 90.

Assemblyman Moore:

So those callers had no idea that their report was not confidential?

Lori Hoover:

No, we actually say that it is not confidential on the voicemail message they respond to.

Chairman Ellison:

The vote out of the Senate for this bill was 19 to 0. Are there any more questions from the Committee? [There were none.] Is there anyone to testify

in favor of S.B. 83 (R1)? [There was no one.] Is there anyone to testify in opposition?

Barry Smith, Executive Director, Nevada Press Association:

My opposition is on confidentiality and the closing of these reports. My interest is always in trying to keep as many exemptions off this long list of exemptions already existing for the public records law. I question the need for this, and I have not really heard a need. The whistleblower statute, NRS Chapter 281, was mentioned, and that does offer protections against retaliation for someone who reports. There have been 90 reports when it was not confidential.

As I read section 1, subsection 4, it says that "any information reported to the Division at the telephone number...including, without limitation, the identity of the person...is confidential." I am not sure what the problem is here, that we must make all these reports confidential by default. I do appreciate that this was amended in the Senate Committee on Government Affairs to require that there is a report and that the report is public record. But to say that the identity of the person and the information reported is confidential is something I do not see a need for. My interest is in trying to keep those exceptions out of NRS Chapter 239. If there is an exemption, it should be very narrow, not broadly making everything confidential.

Assemblywoman Neal:

I kept trying to figure out what bothers me about this bill. At first, I was thinking that it sounds like common sense and did not understand why we needed to bring it into law. But if you look at section 2, line 37 includes NRS 239.0113. That is the burden of proof, where the confidentiality of a public book or record is at issue. In section 1, subsection 5, paragraph (c), the exception for subsection 4 reads "The Division shall not disclose information that is confidential pursuant to section 4 except...(c) Upon the lawful order of a court of competent jurisdiction...." I am curious if we are now changing the burden of proof to disclose information. Under NRS Chapter 239, the statute that I read is the burden of proof of confidentiality. Do we typically have to go to court to get that information?

Barry Smith:

No.

Assemblywoman Neal:

I am trying to figure out why we need a commonsense piece of legislation, and I do not get it. How does it work right now for you? You call the office and ask for information. How does it work from there?

Barry Smith:

Unless it is expressly barred in statute, it is public record.

Assemblywoman Neal:

And then you can actually go through the process of proving that you do not think it is not barred through that statutory provision I read?

Barry Smith:

The burden would be on the agency to show that there is a statute. If the record is not produced, then you can go to court and make a case.

Assemblywoman Neal:

But now you have to go to court first? Is that how you are reading subsection 5 paragraph (c)? That is how I am reading it, that I have to go to court first rather than the burden of proof of confidentiality.

Barry Smith:

I tend to agree with you. This would change that burden. One of the reasons I am very cautious about this kind of sweeping exception to the public records law is that they should be drawn very narrowly for a very specific purpose, and we need to be very careful in what they do in making these exceptions.

Assemblywoman Neal:

This is a question more for the bill sponsors. I am always curious when so many statutes are included in a bill, because then I want to check each one to see what the bill would do. Now you are amending the law for this language to fit into the law.

Chairman Ellison:

Do you think this law would be redundant to what already exists in statute?

Barry Smith:

Not exactly. This bill goes far beyond what is in existing statute now in making these reports and this information confidential. What may be redundant is the purpose behind this bill. Is it that someone would find out who made this report, and then attempt to retaliate against them? That is already covered by the whistleblower statute in NRS Chapter 281. I am not sure what the concern is out there that someone would find out who reported to the hotline.

It seems entirely reasonable to me to think the opposite, that someone might want to be patted on the back for doing that, or in my case, the press might inquire who exposed the fraud. Under this statute, the answer to our inquiry would be that the information is confidential by statute.

Assemblywoman Spiegel:

I know the media takes its ability to maintain the confidentiality of its sources very seriously. Could you speak in general to why the media does that?

Barry Smith:

It is a very serious thing as a newsperson to promise someone confidentiality and stake your word on that. I think you raise a good question. Say I was doing a story on someone who exposed fraud, and I had the name and I called the person who said he would talk to me but would rather not be identified in the news story because he is afraid of what might happen. In my experience, the reporter would agree to that and get the story. If there is a very good reason to not be identified publicly, then the reporter will more than likely honor that.

Assemblywoman Spiegel:

If it is more likely that people would be willing to talk to you and expose this if their confidentiality were maintained, why should they not have that same ability by being able to report it to the administration where they work?

Barry Smith:

I think you raise an interesting possibility. Could they have the opportunity to make the case that their names should not be part of the public record? That is not what this bill does. It says that everything is confidential.

Assemblywoman Spiegel:

I see section 1, subsection 3, paragraph (b), explicitly saying that the report "Must not include the identity of the person who reported the information," but in other things it says what should be in the report. The only thing I really see stricken is the identity of the person.

Barry Smith:

It is a report which "Must include...an explanation of (1) The purpose of the review; and (2) Any resolution...."

Assemblywoman Spiegel:

But that says it is public record.

Barry Smith:

Right. Then in subsection 4, it says "Except as otherwise provided in subsections 3 and 5, any information reported to the Division at the telephone number...is confidential." There may be all kinds of information reported that is not necessarily in the report that comes out. I think there is a distinction there.

Assemblywoman Spiegel:

It does say in subsection 3, which is referenced in subsection 4, that "The report is public record..." and that the pieces of the report that are really germane to the complaint are public record. The pieces that would need to be made available to the public would still be made available, with the exception of the name of the person.

Assemblyman Wheeler:

Mr. Smith, you said that people may want to come forward. Is there anything in this bill that precludes them from coming forward? Why should they not be confidential and give you a call if they think it is important enough for the press to have it?

Barry Smith:

I agree with that. Certainly, the person who made the report could initiate the contact, that is entirely possible.

Chairman Ellison:

It used to be that you had a right to address your accuser. Would you be able to do that if this bill passed and the issue went to trial? Or would that still be maintained as confidential?

Barry Smith:

I raised this question in the Senate Committee on Government Affairs, because I likened it to making a 911 call. That is not a confidential record. There could be far more serious consequences when you file a police report. There is that common-law standard of being able to face your accuser.

I did not bring it up, but there is also the question of getting a handle on someone making the same complaint about someone over and over again. It is handled administratively and they are going to make reports on what happened, but I have a hard time understanding why that information and identity needs to be confidential by default.

Chairman Ellison:

I agree. Are there any other questions? [There were none.] Is anyone else in opposition? [There was no one.] Is there anyone to testify as neutral? [There was no one.] Would the bill sponsors like to make their final statements?

Steve Weinberger:

The only thing we are really concerned about is keeping the person's name confidential. It is correct that we do have the whistleblower statute in Nevada, but if you ever have to resort to that, it is an uncomfortable situation to go

through. I think a lot of employees would much rather avoid that, given the choice of going through all manner of hearings against your supervisor because you felt that you experienced retaliation or just keeping quiet about something. I think we would lose a few people.

Assemblywoman Neal:

I asked about subsection 5, paragraph (c). Does someone now have to get a court order to get information?

Steve Weinberger:

It is actually considered confidential by statute, so it would be easier to find exceptions to it, and that would be one of them. There was a question about facing your accuser. If this does become criminal, we would contact the Attorney General's office, and their statutes take over. It would be in their hands at that point.

Chairman Ellison:

Is there any other discussion? [There was none.] I will close the hearing on S.B. 83 (R1). Are there any public comments? [There were none.] Meeting adjourned [at 9:43 a.m.].

RESPECTFULLY SUBMITTED:

Erin Barlow
Committee Secretary

APPROVED BY:

Assemblyman John Ellison, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Government Affairs

Date: April 13, 2015

Time of Meeting: 9:02 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 118	C	Assemblyman Michael C. Sprinkle	Testimony