

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Seventy-Eighth Session
June 1, 2015**

The Committee on Legislative Operations and Elections was called to order by Chair Lynn D. Stewart at 8:39 a.m. on Monday, June 1, 2015, in Room 3142 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 Lynn D. Stewart, Chair
Assemblywoman Shelly M. Shelton, Vice Chair
Assemblyman Elliot T. Anderson
Assemblyman James Ohrenschall
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

Assemblywoman Michele Fiore (excused)
Assemblyman John Moore (excused)
Assemblyman Harvey J. Munford (excused)

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Carol Stonefield, Committee Policy Analyst
Kevin Powers, Committee Counsel
Patricia Hartman, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

None

Chair Stewart:

[Roll was taken. Committee protocol was reviewed.] We will hear two bills today, beginning with Assembly Bill 495.

**Assembly Bill 495: Makes various changes relating to bill draft requests.
(BDR 17-1283)**

Kevin Powers, Committee Counsel:

Ordinarily the Legal Division of the Legislative Counsel Bureau (LCB) is not authorized to support or oppose legislation as we are a nonpartisan legal agency. However, *Nevada Revised Statutes* (NRS) 218F.150 authorizes LCB to request bill draft measures that deal with issues regarding the Legislature and the legislative process. The two bills I am presenting today, Assembly Bill 495 and Assembly Bill 496 both deal with the legislative process and issues relating to the Legislature.

Turning first to A.B. 495, this bill is dealing with bill draft requests (BDR). In particular, under existing law there are several provisions in NRS Chapter 218D that deal with BDRs and how many each legislator may request and the certain timelines for the BDRs. The statutes now provide that a deadline is set for BDRs, but there is a subsequent deadline for when the details of the BDR must be submitted to LCB. This bill removes that second deadline so that when a legislator submits a BDR, he must also submit the details with the request. If he does not submit the details, his request will not be placed on the BDR list and will not be given a bill draft number. According to LCB, that number will not be assigned until the Legal Division receives sufficient details to allow complete drafting of the request. The objective is that when the request for a BDR is submitted by a legislator, he must submit enough details to allow drafting of that measure; otherwise, that measure will not be given a number and/or placed on the BDR list.

Chair Stewart:

So this puts a little more responsibility on us, the legislators, to be more thoughtful about our requests, and have more detail, not just some broad general statement. Is that correct?

Kevin Powers:

That is correct. The idea is to have as many bills prepared and drafted at the beginning of session as possible. Obviously, if we do not have enough details to complete the drafting of the measure, that measure is not going to be ready for introduction at the beginning of session.

Assemblyman Elliot T. Anderson:

I am questioning how this new requirement would interact with the actual deadlines themselves. If we did not have the full details in by the deadline, would that cause us to lose the BDR, or you would not list it publicly until we have the details in?

Kevin Powers:

I discussed this with Legislative Counsel, and we believe that you would not lose the number of requests you have, and you still have to submit the requests before the deadline. The request would not be given a BDR number, and would not be put on the list until the details are provided. Obviously, no work would be done on the request as well. Also, since it is not getting a number, the request would be a lower priority, so when the details do arrive, it would still have the lower priority number.

Assemblyman Thompson:

Section 2, subsection 6 discusses "sufficient detail." That is very subjective. Is a paragraph sufficient? My drafters usually find a one-page outline sufficient to get them started. I think you should get a number assigned if you have given an overview, and maybe some highlighted areas.

Kevin Powers:

I agree with that. If you provide the Legal Division with a solid concept, then it is our job, the skilled drafters, to do the necessary research and begin the drafting. What often happens is that we get an idea without the actual concrete details to begin the drafting process. During that process, if we have further questions, we will contact the legislator.

Chair Stewart:

So you want more specifics on the requests, correct?

Kevin Powers:

That is correct. Oftentimes we will get a request that says, I want to do something to change the election process. Without any details, we cannot draft anything from that. It is entirely too broad.

Assemblyman Ohrenschall:

Would this new requirement for the details of the BDRs only be applicable to legislators or would it also be applicable to agency requests for BDRs?

Kevin Powers:

Under existing law, we already require agencies to provide all the details at the time the request is submitted. That question leads nicely into the next part of the bill, which deals with the deadline for prefiling. Currently, all of the agencies have to have their BDRs prefiled by December 20. We are moving that prefile date back to the third Wednesday in November. The goal, again, is to produce as many bills as soon as possible so they are available at the beginning of the session. The agencies already have to submit their details by the deadline, and now have an even tighter deadline when they have to approve the request and prefile it before the session.

Assemblyman Ohrenschall:

If the voters in my district are kind enough to give me the opportunity to come back here next session, and I request a bill draft that revises provisions regarding energy, I do not know if I want a bill on windmills or solar panels. It will not show up on the list or be given a number until I give you the details on which I decide, correct?

Kevin Powers:

That is correct; it will not appear until we get sufficient detail to actually begin the drafting process. The request will exist, and will be held in the Legal Division, essentially dormant, until we get the sufficient details.

Assemblyman Ohrenschall:

Regarding pushing back the deadline on the prefiling of bills, we have a record number of freshmen this session. Is that going to make it almost impossible for a freshman legislator to prefile a bill?

Kevin Powers:

That prefiling deadline is only for the agency bills, the nonlegislative requestors. From the general election until the start of session, legislators can authorize us to prefile their bills at any time. The legislators are not required to prefile their bills during that period. The only statutory deadline for prefiling is for those nonlegislative requestors.

In summary, the goal is to provide the Legislature with as many bills introduced as possible and as early in the session as possible. Obviously, with the 120-day deadline, we need to utilize that time as effectively and efficiently as possible.

Chair Stewart:

Assemblyman Trowbridge, who is appointed, brought up an issue that you clarified for us. Will you make that clear to the rest of the Committee?

Kevin Powers:

The issue that was brought up by Assemblyman Trowbridge was when a legislator is not returning, but has already submitted BDRs, and a new legislator comes in, the question is can the nonreturning legislator's BDRs be assigned to the new legislator? The statute, NRS 218D.130, subsection 5, provides that a primary requestor of a BDR who will not be returning may authorize a legislator who will be returning to become the sponsor of the nonreturning legislator's measure. The primary requestor has to authorize the new legislator to take over the BDRs. Obviously you can inform your caucuses that as the new legislators come in, if there are outstanding BDRs, you can contact the nonreturning legislator and ask him to authorize the Legal Division to have the new legislator take over those requests.

Chair Stewart:

So the primary requestor would have to call the Legal Division and make the authorization?

Kevin Powers:

That is correct. That ends my presentation on A.B. 495.

Chair Stewart:

Is there anyone here to testify in support? [There was no one.] Is anyone opposed to or neutral on the bill? Seeing no one, Mr. Powers, would you like to make a final statement?

Kevin Powers:

The Legal Division is here to serve, but we need those details to provide that service as efficiently, effectively, and diligently as possible. The goal is to get those details as soon as possible. When we get those details, we produce your bills and the legislative process runs more smoothly.

Chair Stewart:

I will close the hearing on A.B. 495 and open the hearing on Assembly Bill 496.

Assembly Bill 496: Revises and clarifies provisions relating to the Legislative Department of the State Government. (BDR 17-1280)

Kevin Powers, Committee Counsel:

Again, the Legal Division of the Legislative Counsel Bureau (LCB), as a nonpartisan legal agency, cannot urge or support legislation, although there is an exception in statute for legislation that deals with matters regarding the legislative process and those matters relating to the legislative department. That brings us to Assembly Bill 496, which revises and clarifies provisions relating to the legislative department of the state government. This bill has three distinct changes in it. First is in section 1, which is an amendment to *Nevada Revised Statutes* (NRS) 218E.205. That section contains certain requirements and restrictions regarding the Legislative Commission's oversight of studies and investigations. It also contains provisions with regard to how LCB and its staff helps the Legislative Commission conduct studies and investigations. Right now, the statute speaks of studies or investigations that are assigned to the Legislative Commission by a concurrent resolution. However, the Legislative Commission can also have a study or investigation assigned by a statute. So, what this bill does is put a reference into statute next to concurrent resolution to clarify the law, that regardless of whether it is a statute or concurrent resolution that assigns a study or investigation to the Legislative Commission, these provisions in the statute apply, even though the source is a statute instead of a concurrent resolution.

Section 2 of this bill deals with NRS 218F.150. In addition to requiring the officers and employees of LCB to not urge or oppose legislation in most circumstances, NRS 218F.150 also provides that any matter that is entrusted to LCB is confidential and cannot be disclosed unless the person who entrusted the matter to LCB authorizes the disclosure of that information. In addition, this statute contains provisions that protect the work produced by the divisions of LCB and contains a confidentiality clause that protects the work product of the officers and employees of the Legal Division and the Fiscal Analysis Division. That is existing law. There is protection of matters and trusts at LCB. Obviously, we have a duty of confidentiality to every legislator. When a legislator entrusts any matter to LCB, we maintain that confidentiality and we do not disclose those matters to any other person outside LCB without the consent or request of the legislator.

Section 2 clarifies these provisions. With regard to subsection 3, concerning the work produced by the Legal and Fiscal Analysis Divisions, this makes clear that it is not only the work that is protected, but the matters and information provided to the Legal and Fiscal Analysis Division to carry out that work. So it is clear, when a legislator provides LCB Fiscal or Legal Division with information,

that information is protected as we use it to generate the work product. The work product can be a bill or a legal opinion, and can involve any sort of analysis by the Fiscal and Legal Division.

Section 2, subsection 4 goes on to provide some examples of the extent of the protection provided by statute. In particular, it emphasizes that the statute applies to any matter of work in any form, including oral, written, audio, visual, digital, or electronic. As technology advances, LCB receives requests and other information in a variety of forms. The goal of this legislation is to clarify, regardless of how the information or request is provided to LCB, it retains its confidentiality. So, when you are providing us with complete details for your BDR, if you decide to do it in a text message or an email, the confidentiality is retained. Regardless of how you present the information to LCB, it is protected. This subsection also clarifies some of the things that would fall under the protection of the statute: it is any communications, any information, answers, advice, opinions, recommendations, drafts, documents, records, questions, inquiries, or requests. The idea is that regardless of the nature of the matter that is provided to LCB, it remains confidential and protected until the legislator authorizes its disclosure.

Assemblyman Ohrenschall:

Using another hypothetical example, someone put in a public records request wanting to know all the travel that Senator X took, that would be granted. But if someone put in a public records request asking for every request made to the Research Division or the Fiscal Analysis Division, that information is not available, correct?

Kevin Powers:

That is correct. Section 2, subsection 6 of this bill says the records of the travel expenses of legislators and employees of LCB are available for public inspection. Any request a legislator makes to any of the LCB divisions to do work, research, or investigate, also anything that LCB provides to the legislator in the matter of opinions, information, communications, requests, whether in the form of email, text message, or a written document, all of that information would be protected. The underlying policy behind that is in order for legislators to do their jobs, they need to have the freedom of candor and the freedom to investigate completely before being ready to proceed with an idea. It is that protection of confidentiality that provides for open, frank discussions between the legislator and the legislative staff. I would also like to emphasize, when one legislator talks to a staff member of LCB, that information is confidential to any other legislator as well.

Finally, the last area of the bill is section 3, which amends NRS 41.071. This deals with the constitutional doctrines of separation of powers in legislative privilege and immunity. As a historical perspective, legislative immunity and privilege was first conceived and developed by the British Parliament in the 1600s. The English Bill of Rights, in 1689, was the first time that legislative speech and debate was protected in a written codification. The reason was that the Crown used to punish legislators who would speak against the Crown or introduce legislation that the Crown thought was harmful to the control of the monarchy. That concept of legislative freedom and debate has existed since at least the 1600s.

That carried over into the American colonies and when America became its own independent nation, most state constitutions and the *U.S. Constitution* protected legislative speech, debate, and deliberation. The source in a constitution of legislative immunity and privilege is either a specific speech or debate clause or the separation of powers clause like Nevada has. Either of those constitutional clauses provides that source for legislative privilege and immunity.

What legislative privilege and immunity does is protect actions taken within the sphere of legitimate legislative activity. It provides confidentiality, but it also provides immunity against prosecution and inquiry. With the core legislative functions that legislators have, proposing legislation, investigating legislation, requesting opinions from LCB staff, all of those are core legislative functions that help the legislator carry out his primary legislative duties. All of those are protected by legislative immunity. That means that the legislator cannot be questioned by another branch of government for carrying out those legislative duties. I want to emphasize that the Legislature, through each of its houses, may inquire into what a legislator does, and under the *Nevada Constitution*, Article 4, Section 6, the power of either of the houses can be used to discipline their members, or investigate what a legislator is doing. Each house has that power to investigate its own members. All legislative immunity does is protect legislators from inquiries by the other branches of government.

With that background in mind, in 2009, the Legislature passed a statute to implement the constitutional doctrines of separation of powers and legislative privilege and immunity. That statute is codified in NRS 41.071. Part of the statute says that the case law interpreting and applying legislative immunity under the federal speech and debate clause also applies to implying and interpreting legislative immunity under the statute for Nevada legislators. It incorporates that existing case law as persuasive authority. This bill takes some of that case law and specifically codifies it in statute to provide further clarification of the scope of legislative privilege and immunity.

You can see section 3, subsection 5 provides that this section applies to any actions in any form taken or performed within the sphere of legitimate legislative activity, whether or not the Legislature is in a regular or special session. Such actions include any actions taken with regard to a legislative measure or other matter within the jurisdiction of the Legislature. So, if a legislator takes any action with regard to legislative measure or other matter within the jurisdiction of the Legislature, that is protected by legislative immunity.

As you can see, this is a nonexhaustive list that covers any concept that would involve legislative measures or other action within the jurisdiction of the Legislature, such as impeachment or discipline proceedings. The list includes any matter relating to conceiving, formulating, investigating, developing, requesting, drafting, introducing, sponsoring, processing, reviewing, revising, amending, communicating, discussing, debating, negotiating, allying, caucusing, meeting, considering, supporting, advocating, approving, opposing, blocking, disapproving, or voting on any legislative measure. Again, this is just to make clear in statute that this wide range of legislative activities is protected from inquiry by the other two branches of government. The Legislature has control in each of its two houses to discipline its own members.

As you see in section 3, subsection 5, paragraph (b), it lists some other actions that are clearly protected by legislative privilege and immunity, which includes any actions with regard to investigation, study, inquiry, or information gathering including chairing or serving on a committee, preparing committee reports, issuing subpoenas, or conducting disciplinary or impeachment proceedings. Finally, dovetailing with what we discussed earlier in regard to LCB staff performance of functions for the Legislature, section 3, subsection 5, paragraph (c) provides that legislative immunity protects any actions that are taken with regard to requesting, seeking, or obtaining any form of aid, assistance, counsel, or services from an officer or employee of the Legislature concerning any legislative measure or other matter within the jurisdiction of the Legislature. This would include if you make a request from LCB, the protection would extend to any communications, information, answers, advice, opinions, recommendations, drafts, documents, records, questions, inquiries, or request in any form. That would cover any audio, visual, oral, written, electronic, or digital form.

The purpose of this bill is to clarify existing law. This is codifying existing case law. If the issue came up and this legislation was not in place, we would still argue that under the case law, this is existing law and this bill is simply codifying that existing law.

This bill provides the reader of the statute, who is unfamiliar with the case law, a more clear elucidation of the scope of legislative immunity and privilege.

Section 5 of the bill provides that this is a legislative pronouncement of existing law, and applies to any administrative or judicial proceedings that are commenced on or after the effective date of this act; or that are commenced before the effective date of this act if the proceedings are pending or otherwise unresolved on the effective date of this act. As explained in the digest, this is a statement of existing law. When the Legislature clarifies existing law or pronounces existing law in a piece of legislation, that legislation applies to any cases pending on the effective date of the legislation.

Assemblyman Elliot T. Anderson:

Section 3, subsection 7, paragraph (d), subparagraph (2) defines a state legislator in part as, "Any other person who takes or performs any actions within the sphere of legitimate legislative activity." Will you explain who that might be?

Kevin Powers:

The case we rely on for this principle is *Gravel v. United States*, 408 U.S. 606, 613-22 (1972). That case involved a civil action against a legislative committee and the legislative committee's counsel. It was a civil action for damages saying that a report that was prepared for a congressional committee by the committee's counsel was libelous or slanderous. The argument was that by publishing that report in a committee proceeding, the committee and its counsel violated civil law by committing defamation and a civil action was brought. The U.S. Supreme Court held that civil action seeking damages against the committee and its counsel was barred by legislative immunity and privilege because preparing that committee report was an action within the sphere of legitimate legislative activity and therefore, the committee, all of the committee members, and the committee counsel were protected. The court's analysis was that in this modern society where legislators have so much work before them, they cannot complete that work, or do it effectively without staff to assist them. The U.S. Supreme Court rationalized that it was important to extend the protection of legislative immunity to staff, otherwise activity that should be protected could have gone unprotected if it was delegated to staff. This extends to other legislative employees: for example, the Chief Clerk of the Assembly and her staff, the Secretary of the Senate and her staff, the Sergeant At Arms and his staff, and any other employee of LCB. All of these individuals would be protected as long as they are carrying out actions that fall within the sphere of legitimate legislative activity.

Assemblyman Ohrenschaal:

Section 3, subsection 7, paragraph (b) discusses "legislative measure." Would that include a legislator who asks for a drafting of a personal floor amendment, but then has second thoughts and never introduces it?

Kevin Powers:

We believe this definition of legislative measure is drafted broadly to cover any of that. It does state that "legislative measure" means any existing, suggested, proposed or pending bill, resolution, law, statute, ballot question, initiative, referendum, or other legislative or constitutional measure.

Assemblyman Ohrenschaal:

Section 3, subsection 7, paragraph (d), subparagraph (1) states, "Any current or former member of the Senate or Assembly of the State of Nevada." Can you give an example of when this protection would be given to a former member? Also, in section 4, why are we adding NRS 41.071?

Kevin Powers:

We are extending the definition to provide for any current or former member of the Senate or Assembly. It applies to former members because once a legislator leaves office, that protection follows the legislator for actions that were taken while the legislator was in office. For example, when a legislator leaves office, for whatever reason, someone could bring some sort of civil action years after he has left office. What this ensures is that the protection of legislative privilege and immunity would apply to that former legislator for actions taken while he was a legislator. Another example would be if a legislator who has left office is subpoenaed to testify about legislation.

I would like to put on the record and make clear that generally courts have found that the opinions of individual legislators that are provided after the legislative session are not admissible evidence to determine the intent of a statute. The reason for that is that one individual legislator does not represent the opinion of the whole body. Statements made by individual legislators during the legislative process are part of the legislative record and can be used by courts to interpret a statute. But you cannot call a legislator after the session or after his term and have him testify on the meaning or purpose of a statute. The bill would clarify that if a legislator is subpoenaed long after the session to testify about the meaning of a statute enacted during the session, this would stop that. That testimony would also be considered irrelevant and inadmissible. That does not mean that private parties do not try to subpoena legislators for their legislative opinions. They do it regularly, and in the past we have raised legislative immunity as a defense and the courts have agreed with us.

Assemblyman Ohrenschall:

Hypothetically, Senator X sponsored a bill on solar panels and ten years go by and he writes a letter saying that the bill he sponsored was really about windmills. Would any protections extend to Senator X for writing that letter?

Kevin Powers:

First and foremost, if that letter written ten years later was tried to be used by a party in court, either to support or challenge the legislation, it would not be admissible; it would be irrelevant. Because it was an opinion of a legislator long after the legislative session, the courts do not consider that as relevant admissible evidence of legislative intent. As far as the legislator writing that letter ten years later, if the legislator wrote something defamatory, that probably would not be protected by legislative immunity because that is no longer part of the legislative process and he is acting outside of that process.

Assemblywoman Seaman:

On page 7, lines 31 through 36 state, "Any other person who takes or performs any actions." Would that include attachés or other people working in the building during the legislative session? Also, when you say that this house disciplines its own house, does that include other employees as well?

Kevin Powers:

The provision you are referring to would protect legislative attachés and the personal staff of the legislator. Any communications a legislator has with that staff regarding legislative matters would be protected by legislative immunity.

Assemblywoman Seaman:

As for the disciplinary action staying within this house, would that include all LCB staff, including legislators?

Kevin Powers:

Article 4, Section 6 of the *Nevada Constitution* provides that each house has the power to discipline its members. As a matter of maintaining the order, decorum, and operation of its own house, each house can also discipline its employees. If an LCB employee did something that was against the rules of the house, or against order or decorum, or violated statutory provision, the LCB employee would be subject to discipline. So, an employee of LCB could be subject to discipline by either house, by the Legislature as a whole, and by LCB.

Assemblywoman Seaman:

This is clarifying that language?

Kevin Powers:

That is correct.

Mr. Chairman, I forgot to follow up on Assemblyman Ohrenschall's other question, which was regarding section 4. Section 4 is an amendment to NRS 239.010, which is the Public Records Act. We are putting a reference to NRS 47.071 in there. If you recall, last session the Legislature decided in the Public Records Act to put a reference to each statutory provision that contains an exception to the Public Records Act. This was an oversight on our part. A reference to NRS 47.071 should have been put into statute last session, because legislative privilege and immunity contains a confidentiality component. It prohibits other branches of government from prying into or intruding on the legislative process and obtaining confidential information that is provided by the legislator to legislative staff and LCB staff. It also protects information that LCB staff provide to the legislator. So, NRS 47.071, which is a codification of a constitutional doctrine of legislative privilege and immunity, contains a confidentiality component which is an exception to the Public Records Act. That is why we are making a specific reference to it in section 4.

Chair Stewart:

Does that conclude your presentation?

Kevin Powers:

Thank you, Mr. Chairman, for your indulgence.

Chair Stewart:

I will entertain a motion to do pass A.B. 496.

ASSEMBLYMAN OHRENSCHALL MADE A MOTION TO DO PASS
ASSEMBLY BILL 496.

ASSEMBLYWOMAN SEAMAN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN FIORE, MOORE, AND
MUNFORD WERE ABSENT FOR THE VOTE.)

I will assign the floor statement to Assemblyman Anderson. I will entertain a motion to do pass A.B. 495.

ASSEMBLYWOMAN SEAMAN MADE A MOTION TO DO PASS
ASSEMBLY BILL 495.

ASSEMBLYMAN THOMPSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN FIORE, MOORE, AND
MUNFORD WERE ABSENT FOR THE VOTE.)

I will assign the floor statement to Assemblyman Ohrenschall. Is there any public comment? Seeing none, we are in recess until the call of the Chair [at 9:23 a.m.].

[The meeting adjourned at 11:59 p.m.]

RESPECTFULLY SUBMITTED:

Patricia Hartman
Recording Secretary

Nancy Davis
Transcribing Secretary

APPROVED BY:

Assemblyman Lynn D. Stewart, Chair

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Legislative Operations and Elections

Date: June 1, 2015

Time of Meeting: 8:39 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster