

**MINUTES OF THE
SENATE COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

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

The Senate Committee on Legislative Operations and Elections was called to order by Chair Patricia Farley at 6:28 p.m. on Monday, June 1, 2015, in Room 2144 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Patricia Farley, Chair
Senator James A. Settelmeyer, Vice Chair
Senator Greg Brower
Senator Kelvin Atkinson
Senator Tick Segerblom

STAFF MEMBERS PRESENT:

Michael Stewart, Policy Analyst
Kevin C. Powers Legislative Counsel
Haley Johnson, Committee Secretary
Linda Hiller, Committee Secretary

Chair Farley:

I will open this informational meeting with Bill Draft Request (BDR) 17-1283. The contents of this BDR are included in Assembly Bill (A.B.) 495, but we are not in possession of the bill yet.

BILL DRAFT REQUEST 17-1283: Revises provisions governing the legislative process. (Later introduced as [Assembly Bill 495](#).)

ASSEMBLY BILL 495: Makes various changes relating to bill draft requests. (BDR 17-1283)

Kevin C. Powers (Legislative Counsel):

I am the Chief Litigation Counsel for the Legal Division of the Legislative Counsel Bureau (LCB). The LCB Legal Division does not ordinarily support or oppose any legislation. However, *Nevada Revised Statute* (NRS) 218F.150

allows the LCB to recommend legislation to the Legislature when that legislation involves the legislative process or other matters relating to the Legislative Branch of State government.

We are discussing two BDRs today, both still in the Assembly—A.B. 495 and A.B. 496—that deal with matters concerning the Legislative Branch of State government.

The first, BDR 17-1283, which is A.B. 495 in the Assembly, deals with the process of Legislators submitting BDRs. There are two proposed changes. The BDR submission is now a two-step process—there is a deadline for submitting the BDR and then a second deadline for submitting the complete details to allow the BDR to be drafted by the Legal Division.

This bill removes that second deadline so that when a Legislator submits a BDR, he or she is also required to submit sufficient detail to allow complete drafting of that BDR. If a Legislator is unable to submit that detail, the BDR will not be given a number or placed on the BDR list. Instead, it will be held dormant until sufficient details are submitted.

Those BDRs will then be lower in priority for drafting later in the process, thus later in the Legislative Session. It will then be more difficult to get those bills through the complete process from BDR to bill and then to the Governor's desk. We want to encourage Legislators to provide the Legal Division with sufficient detail to draft the BDR as soon as possible. The goal is to deliver as many bills to the Legislature as soon as possible once session starts in February.

The other change in the bill deals with the prefiling of legislative measures requested by non-Legislators like agencies, local governments and the Nevada Silver Haired Legislative Forum, all of which are authorized to request BDRs. Currently, the deadline is generally August 1 for the Executive Branch BDRs and September 1 for the rest of the non-legislative BDRs.

After those requests are submitted, the deadline for prefiling is December 20. This bill moves the deadline back to the third Wednesday in November, which would require those bills to be prefiled sooner to encourage more bills ready for introduction at the beginning of session. This earlier deadline in November would clear the deck of all the non-Legislator BDRs and give us more time to deal with the Legislator BDRs. Since we are encouraging Legislators to submit

the details for their BDRs as soon as possible, we can provide those bills to the Legislature sooner rather than later.

Chair Farley:

As a newbie, I can tell you it was really hard to get elected, have Christmas, become a new Legislator and get all the BDR information together. It was such a new process to me. Could something either go in a candidate's package or to the candidates before they get elected, giving them the instructions on what is expected of them after they are elected? I found it hard to meet with everyone, gather information and turn it all in before deadlines.

I can also see the other side. I do not know how you handled the influx during Session. How can we get this information to newly elected people quicker so they can jump on it right away?

Mr. Powers:

Great question and recommendation. We can work with the LCB Research Division. They are our frontline staff, working with new Legislators to get them oriented and working into the legislative process. The Legal Division could put information together that the Research Division could provide to new Legislators. Maybe Michael Stewart could elaborate on how the LCB addresses those new Legislator issues once they come into office for the first time.

Michael Stewart (Policy Analyst):

We have a robust pre-session orientation program. New Legislators come to Carson City the week after they are elected. In the training process, we let them know to get their BDR requests in as soon as possible. We would be happy to disseminate information to new and/or potentially elected candidates. Much of that data is on our Website, but we could include some "if you are elected" information also.

Chair Farley:

The session training for new Legislators is good, but it is a lot of information at once. That is on top of everything else we are adapting to as new Legislators. This is new language for us even though it is familiar to you.

Senator Settlemeyer:

I thought of an amendment a long time ago. It might be too much to ask, but what if we said that 50 percent of the BDRs had to be prefiled by Legislators? It

might be more reasonable to say that 25 percent of the BDRs would have to be prefiled or otherwise a Legislator would lose 25 percent of his or her BDR allotment. We need to make these sessions move faster in the beginning rather than have chaos at the end.

Mr. Powers:

We certainly could entertain that sort of amendment. There is now no prefiling requirement for Legislator BDRs; it is only for non-Legislator BDRs. Every Legislator has the option to prefile, but it is not required. We could draft an amendment.

Senator Settlemeyer, what kind of prefiling deadline are you considering? For the agencies, the deadline is December 20 with a proposal to move that deadline back to the third Wednesday in November. It would be best to have a different prefiling deadline for Legislator bills than for non-Legislator bills, like those from agencies. Regarding Senator Farley's concern, you would deal with new Legislators differently than incumbent Legislators.

Senator Settlemeyer:

I was looking at 25 percent of a Legislator's bills to be prefiled on the first day of session. A freshman only gets so many, but a returning Legislator gets twice as much.

Mr. Powers:

A new Assemblyperson would receive two BDR possibilities before session, and new Senators get a certain allotment as well.

Senator Settlemeyer:

I think it is 6 BDRs for freshman Legislators and 12 for returning Senators. It is half that for Assemblypersons: three and six, respectively.

Chair Farley:

I think I had ten.

Senator Settlemeyer:

Including Committee bills?

Chair Farley:

Yes, I think I had ten personal BDRs, and then I got two more.

Mr. Stewart:

The LCB Research Division Website has that information ([Exhibit C](#)). It says for newly elected Senators on or before December 10, ten BDRs are allotted. Then February 2 through February 9, there are two more allocated to each Senator. This is from NRS 218D.150. For newly elected Assemblypersons, it is five BDRs before December 10 and one following the start of session.

Senator Settlemeyer:

I was only talking about the allotment due prior to the first day of session. Obviously, you cannot prefile the ones you have not received until the first day of session. To bring Senator Brower up to speed since he came in late, I was talking about an amendment that Legislators should have to prefile 25 percent of their BDRs to be turned into bills by the first day of session. Otherwise, the Legislator would have to pick which bills he or she want to kill.

Chair Farley:

I will probably know what 50 percent of my BDRs are on the first day of session in 2017, so I think 50 percent would be a good number. If the BDRs were turned in so the Legal Division could process them, our committees would probably move faster. I think 25 percent might be low.

Senator Settlemeyer:

Getting 50 percent of five BDRs would be hard. What if we said the Assembly has to prefile two bills of their initial allotment and the Senate has to prefile four bills of their initial allotment? We could start there.

Senator Segerblom:

The problem is the Legal Division has to get them all done.

Senator Settlemeyer:

We could at least get them to that state. This change could give some incentive for people to get some of these bills done earlier, so by the first day of session, we have the ability to hear bills.

Senator Brower:

Assuming that makes sense from the bill drafter's perspective, I would support that. We need to do a better job of making it easier on staff, and this is one way to do it.

Chair Farley:

I tend to agree. Not only do you have the returning Legislators, you have the newly elected Legislators who may burden the Legal Division staff just by not knowing how the system works. Having a good portion of the BDRs done and turned in would free up staff time.

Mr. Powers:

We need to determine the total allotment for each Legislator. There is the August 1 deadline, and the December 10 deadline. If we know going in how many BDRs per Legislator have to be prefiled by a certain date, that would be more manageable.

Assemblypersons are allocated half the number of BDR requests as Senators. We could base the numbers on that. We can develop an amendment to address that issue so when these bills come over here from the Assembly, we can take that action.

Senator Settlemeyer:

I would appreciate that. I know we cannot make a motion now since we do not have the bill in front of us, but I would like to make that an amendment to help the Legal Division staff. It would be beneficial for the legislative process, too.

Mr. Powers:

After the hearing, I will work with you to get some of the details of the amendment. When the bill comes over to the Senate from the Assembly, we could have a mock-up amendment for you. Obviously, we are running low on time since this is the last day of Session.

Chair Farley:

I will close the informational hearing on BDR 17-1283 and open BDR 17-1280. The contents of this BDR are included in A.B. 496, but we are not in possession of the bill yet.

BILL DRAFT REQUEST 17-1280: Revises and clarifies provisions relating to the Legislative Department of the State Government. (Later introduced as A.B. 496.)

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

Mr. Powers:

Again, members of the LCB cannot urge or oppose legislation except in those areas where legislation deals with matters of legislative concern. That exception, under NRS 218F.150, applies to this bill. There are three primary changes proposed.

Section 1 references NRS 218E.205, which contains provisions dealing with legislative studies and investigations. The language says that when a legislative study or investigation is assigned to the Legislative Commission by a concurrent resolution, those requirements and restrictions come into play. Sometimes the Legislative Commission gets assigned studies and investigations not by concurrent resolution but by statute. This bill simply adds the reference to statute where there is already a reference to concurrent resolution. Thus, the Legislative Commission can be assigned a study by concurrent resolution or by statute, not just concurrent resolution.

Section 2 deals with NRS 218F.150. This statute deals with matters entrusted to the LCB. Any matter entrusted to the LCB may not be disclosed by officers employed by the LCB unless the person entrusting the matter authorizes disclosure. This is our confidentiality provision. The amendments clarify the confidentiality statute.

Section 2, subsection 3 deals with work produced by the Legal Division and the Fiscal Analysis Division, which are both protected from being disclosed without consent of the requestor. This also ensures that not only is the work product protected, but information provided to those two divisions is protected as well. This is part of existing law, but we want it to be as clear as possible.

Section 2, subsection 4 provides greater clarity of the confidentiality statute. It says the provisions of the confidentiality statute apply to "any matter or work in any form, including, without limitation, in any oral, written, audio, visual, digital or electronic form." The purpose of this statute is to make clear that, regardless of how the Legislator provides us with information and how we communicate back with him or her, it is protected.

Subsection 4 also clarifies some of the specific types of items protected, including, "without limitation, any communications, information, answers, advice, opinions, recommendations, drafts, documents, records, questions, inquiries or requests in any such form." All these are related to the legislative

process and entrusted to the LCB. We protect that confidentiality. We only disclose information to other members of the LCB, and we protect each Legislator's confidentiality from other Legislators.

The final change is in section 3, dealing with the legislative immunity statute, NRS 41.071. Legislative immunity and privilege started in the 1600s. It emerged through Parliament as a reaction to the English Crown, which would punish members of Parliament who voted against the Crown in ways the Crown deemed contrary to the control of the Monarchy.

During the 1688 Glorious Revolution, members of the English Parliament developed the English Bill of Rights, established in 1689 as the first statement of legislative freedom of speech, debate and deliberation. It was to protect legislators and allow them to act independently of the Crown and to make decisions without fear of reprisal from outside sources. That was passed on into the American colonies and incorporated into U.S. constitutional law, now reflected in the Speech or Debate Clause which provides for freedom of speech and debate in the U.S. Congress.

Most state constitutions have either a speech or debate clause or legislative immunity, as protected by the separation of powers clause. Nevada has that latter law, which provides protection, legislative immunity and privilege to Legislators to protect them from taking actions within the sphere of legitimate legislative activity. This means that when a State Legislator takes those core legislative actions—voting on legislation, getting information from legislative staff, formulating ideas—those actions cannot be punished or disciplined, and no inquiry can be brought against those Legislators for those actions.

I want to make clear, a Legislator who takes actions within the Legislative Branch is subject to any regulation and discipline by his or her own House. This is because the House has control, under Article 4, section 6 of the Nevada Constitution, to discipline its own members. The Legislators remain subject to discipline and control from their own House, but they remain free under legislative immunity and privilege from any interference by the other two branches of government.

Those principles were codified in NRS 41.071, but we also wanted to clarify the statute and codify some of the principles from caselaw, which has developed immunity principles over the last several hundred years.

Section 3, subsection 5 of A.B. 496 has examples—not exhaustive or exclusive; just illustrative—of some of the actions that fall within the protection of legislative immunity and privilege. They are “any actions, in any form,” as seen in paragraph (a), “taken or performed with regard to any legislative measure or other matter within the jurisdiction of the Legislature.”

When you are dealing with a legislative measure, it is protected. Other actions are also protected within the jurisdiction of the Legislature, including conceiving, formulating, investigating, etc., as listed in paragraph (a). Admittedly, it is an exhaustive list, but we aim to make the reader of the statute understand that these core activities of the Legislature are protected.

As seen in section 3, subsection 5, paragraph (b) of the bill, legislative immunity also protects “any legislative investigation, study, inquiry or information-gathering concerning any legislative measure or other matter within the jurisdiction of the Legislature.” This includes being on a committee, preparing committee reports, issuing subpoenas, impeachment proceedings, etc.

In section 3, subsection 5, paragraph (c), Legislators seeking or obtaining advice from legislative staff are also protected. Caselaw has made clear that protection of legislative immunity protects not only the Legislator, but also legislative staff performing functions that would be protected if the Legislator performed those functions. The U.S. Supreme Court has found that in a busy legislative world, a Legislator cannot do everything. This part of the bill recognizes that if the Legislator delegates a duty to staff, that staff member enjoys the same legislative immunity and protection that the Legislator would enjoy.

The main case on that issue is *Gravel v. United States*, 408 U.S. 606 (1972), a U.S. Supreme Court case where the Court extended legislative immunity protection to not only a committee but the committee’s counsel. In section 3, subsection 7, paragraph (d), this codifies the concept of legislative immunity extending to legislative staff and other employees.

Because legislative immunity privilege contains a confidentiality protection, in section 4 we created an exception to NRS 239.010, the public records act. During the 2013 Legislative Session, the Legislature passed a law listing all the statutes with an exception from the public records act. This statute, NRS 41.071, should have been included in that list but was left out by oversight, so it is being included in A.B. 496.

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Chair Farley:

I will close the hearing on BDR 17-1280. Seeing no one wanting to make public comment, I adjourn this meeting at 6:55 p.m.

RESPECTFULLY SUBMITTED:

Linda Hiller,
Committee Secretary

APPROVED BY:

Senator Patricia Farley, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	1		Attendance Roster
A.B. 395	C	2	Michael Stewart	Printout from LCB Research Division Website: "Number of Legislative Measures that May be Requested for Drafting, by Entity"