

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

**Seventy-Seventh Session
June 1, 2013**

The Committee on Legislative Operations and Elections was called to order by Chair James Ohrenschall at 3:20 p.m. on Saturday, June 1, 2013, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, 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 nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman James Ohrenschall, Chair
Assemblywoman Lucy Flores, Vice Chair
Assemblyman Elliot T. Anderson
Assemblyman Wesley Duncan
Assemblyman Pat Hickey
Assemblyman Andrew Martin
Assemblyman Harvey J. Munford
Assemblyman James Oscarson
Assemblyman Tyrone Thompson

COMMITTEE MEMBERS ABSENT:

Assemblywoman Marilyn K. Kirkpatrick (excused)

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Kevin Powers, Committee Counsel
Karen Pugh, Committee Secretary
Macy Young, Committee Assistant

OTHERS PRESENT:

None

Chair Ohrenschall:

[Roll was taken.] We have one bill on the agenda for today, Assembly Bill 509.

Assembly Bill 509: Revises provisions relating to the Legislative Department of the State Government. (BDR 17-570)

Kevin Powers, Committee Counsel:

In a typical scenario, you know that the Legislative Counsel Bureau staff are nonpartisan, including those in the Legal Division. We are prohibited by statute from supporting or opposing any particular piece of legislation. However, under *Nevada Revised Statute* (NRS) 218F.150, there are times when, in the performance of our duties, there is the need to urge for the passage of a statute that affects the operations of the Legislative Department of the State Government. Assembly Bill 509 is similar to other bills that the Legislative Counsel Bureau (LCB) has requested through the Legislative Commission in previous sessions. It addresses matters which occur over the interim that relate to the Legislative Department of State Government, as well as present matters for the Legislature for consideration.

Assembly Bill 509 addresses two major components of the legislative process. The first is special sessions. Prior to the 2012 general election, only the Governor had express power under the *Nevada Constitution* to convene a special session of the Nevada Legislature. However, in 2012 the voters approved a constitutional amendment that authorizes members of the Legislature, by two-thirds vote of each house and the filing of petitions with the Secretary of State, to convene a special session of the Legislature. Because in the past only the Governor had that power, these statutes were drafted to reflect that. The first part of A.B. 509 amends all statutes that make references to special session so they also refer to the power of the Legislature to convene a special session in addition to the Governor's power to do so.

The other main part of this bill is to address the Legislature's power to hold hearings, issue subpoenas and engage in other investigative powers. The primary sections of the bill that address this are sections 4 through 21. During this past session, the Select Committee on Assembly had to conduct certain investigations to carry out its functions and it issued legislative subpoenas. What we discovered at that point is that, throughout the NRS, there were a significant number of statutory provisions that dealt with legislative subpoenas, but they were inconsistently drafted and contained archaic language. The result was that when some of those legislative subpoenas were issued by the Select Committee on the Assembly, there was some confusion in the Executive Branch as to their legal force and effect. The purpose of sections 4 through 21 is to make all the provisions dealing with the issuance of legislative subpoenas and other investigative powers consistent for both session committees and interim committees. Further, it would keep those provisions in NRS Chapter 218E, which have been the legislative chapters of the statutes, and go through NRS and remove the redundant or repetitive provisions in those other provisions of NRS that contain references to the investigative and subpoena powers. Beyond sections 4 through 21 you will see references back to those initial sections, in particular sections 6 through 13, and that is the cleanup language throughout the remainder of the provisions of NRS.

Chair Ohrenschall:

Are there any questions for Mr. Powers?

Assemblyman Elliot Anderson:

Mr. Powers, I would like to direct you to section 7, subsection 2, which talks about exclusions from the committee definition. Why is it done that way?

Kevin Powers:

These first components of the bill, sections 4 through 13, and in particular section 6 through 13, only address interim committees. Sections 14 through 21 address the session committees. So there are existing provisions of NRS, which are represented through sections 14 through 21, and we are amending those to make sure that language is consistent with the interim committee language.

Chair Ohrenschall:

Are there any questions for Mr. Powers?

Assemblyman Hickey:

Did the process of the expulsion of a member of the Assembly have any bearing on the issues of the subpoena powers?

Kevin Powers:

Yes, it did. That incident motivated most of the provisions dealing with the subpoena powers. The Select Committee of the Assembly did in fact issue subpoenas, some of which were issued to the Executive Branch and local governments. We believe those subpoenas were not given the proper level of deference, respect, and legal force that they ordinarily should have. So that did motivate the drafting of this legislation to ensure that the legislative subpoenas issued by legislative bodies have the same legal force and effect as subpoenas issued by the district court. This is based on constitutional principles. Throughout history, Congress has issued legislative subpoenas, and the courts have recognized that, through the inherent investigative powers of legislative bodies, they have the power to issue subpoenas and those subpoenas have the same force and effect as subpoenas issued by the Judicial Branch.

Chair Ohrenschall:

This session we have had some new interim committees that have been created. Will these new committees have the subpoena power or will that have to be added in separately?

Kevin Powers:

That is a very astute observation and, yes, as those other bills were drafted they were being drafted under the traditional approach where we included the investigative and subpoena powers in each of the separate bills. The way this bill is drafted the definition of committee will capture all existing interim committees and any other interim committee that is created.

Chair Ohrenschall:

Are there any other questions for Mr. Powers?

Assemblyman Elliot Anderson:

At the time we introduced the bill draft request on this bill, did you also say that the bill would detail the procedure for submitting the petition for calling a special session of the Legislature? Is that in this bill?

Kevin Powers:

There are no additional procedures included in the bill as to how the Legislature will go about submitting a petition to call the special session. In our review of Article 4, Section 2A, of the *Nevada Constitution*, we see that provision of the constitution is self-executing in that it clearly provides that the Legislature, through one or more substantially similar petitions that are signed in the aggregate by the required number of members, can call the special session. If, when the Legislature finally does exercise that power, there are additional procedures that need to be added by statute, we certainly can consider them at

that time. We do not believe any additional procedures are necessary right now and the Legislature will have sufficient power under the plain language of the constitutional provision to call a special session through that procedure.

Chair Ohrenschall:

Are there any questions for Mr. Powers?

Assemblyman Thompson:

If the Legislature wanted to call a special session, I do not see anything in here that explains what must be done. Do we need a two-thirds majority?

Kevin Powers:

The actual power to call the special session is not included in this bill. It is a constitutional power and it is found in Article 4, Section 2A of the *Nevada Constitution*, which is the provision that the voters approved in this past general election in 2012. That provision provides that the members of the Legislature, by filing one or more substantially similar petitions that in the aggregate are signed by two-thirds of the members from each house, can call the special session. In the petition, the members have to identify the date on or before which the special session will be called and also the legislative business that is to be conducted at the special session. The legislative business that is stated in the petition sets forth exactly what the Legislature can do during that special session. They cannot pass legislation outside of the legislative business stated in the petition.

The reason that the constitutional provision provides for one or more petitions in the aggregate is so that you can circulate multiple copies of the petition throughout the state which must be signed by two-thirds of the members of both houses. The petitions are required to be substantially similar and state the same date that the special session will convene by and the legislative business to be conducted. Once all of those petitions are gathered, they are submitted to the Secretary of State who then will issue a notice to the Governor and members of the Legislature stating that a special session of the Legislature will be called, what the legislative business will be, and the date on or before which the special session must be held. All of this is detailed in that constitutional provision and if the Legislature ever chooses to exercise that power, we believe it is self-executing and they could follow the procedure contained in that constitutional provision.

Chair Ohrenschall:

Regarding some recurring language throughout the bill, one instance is on page 7, section 19, "NRS 218E.045 is hereby amended to read as follows: 1. If a legislative subpoena is properly issued to and served on a witness, the witness

commits contempt if the witness, without a reason recognized by law: (a) Neglects or refuses to comply with the provisions of the legislative subpoena" What would be some valid reasons to ignore a legislative subpoena?

Kevin Powers:

I believe the most prominent one is the Fifth Amendment privilege against self-incrimination. That would be a reason recognized by law for someone to refuse to testify or to answer a subpoena or produce documents. It is obviously a constitutional right so we could not hold a person in contempt for exercising a constitutional right. There are other privileges recognized by law such as the attorney/client privilege and the doctor/patient privilege. This allows those privileges to be raised in response to a legislative subpoena. Other reasons may include certain documents being declared confidential by law and there could be a possibility in that circumstance someone could raise that as a reason recognized by law to resist the legislative subpoena.

Chair Ohrenschall:

In section 27, subsection 1, "A committee shall, during the legislative interim, perform a fundamental review of the base budget of each state agency assigned to it for review." I assume that means the Interim Finance Committee (IFC), but I wonder if that could be referring to a different committee and this power to conduct investigations on these base budgets, is that something that we have had before but was not in statute or is this an expansion?

Kevin Powers:

What the bill does is go through the existing statutes and where there is an existing interim legislative committee, puts in references to the investigative powers that are set forth in section 6 through 13 in the bill. The committee we are referring to under NRS 218E.450, is a committee that the IFC can create during the interim to investigate the individual budgets of particular state agencies. This provision simply states that those committees that review the fundamental budget would have the same investigative powers as other interim committees.

Chair Ohrenschall:

Are there any other questions for Mr. Powers? [There were none.] Is there anyone else in support of Assembly Bill 509 who would like to speak? [There was no response.] Is there anyone who is in opposition to the measure who would like to be heard? [There was no response.] Is there anyone who is neutral on the bill and would like to be heard? [There was no response.] I will now close the hearing on A.B. 509. As Rule No. 57 of the Standing Rules for

the 77th Session have been suspended, we can, if it is the Committee's pleasure, move this bill today. I would accept a motion.

ASSEMBLYWOMAN FLORES MOVED TO DO PASS
ASSEMBLY BILL 509.

ASSEMBLYMAN ANDERSON SECONDED THE MOTION.

Is there any discussion on the motion? [There was none.]

THE MOTION PASSED. (ASSEMBLYWOMAN KIRKPATRICK WAS
ABSENT FOR THE VOTE.)

I will give the floor statement for this bill to Assemblyman Martin.

As that was the only agenda item we had today, I will open the meeting to public comment if there is anyone who wishes to come forward. [There was no response.] I will recess today's meeting to the call of the Chair [at 3:37 p.m.].

[This meeting was reconvened at 4:04 p.m., on Monday, June 3, 2013, and adjourned at 4:05 p.m.]

RESPECTFULLY SUBMITTED:

Karen Pugh
Committee Secretary

APPROVED BY:

Assemblyman James Ohrenschall, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Legislative Operations and Elections

Date: June 1, 2013

Time of Meeting: 3:20 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster