

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

**Seventy-Ninth Session
May 18, 2017**

The Committee on Legislative Operations and Elections was called to order by Chairwoman Olivia Diaz at 2:33 p.m. on Thursday, May 18, 2017, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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 www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Olivia Diaz, Chairwoman
Assemblyman Elliot T. Anderson
Assemblywoman Shannon Bilbray-Axelrod
Assemblyman Skip Daly
Assemblyman Ira Hansen
Assemblyman Richard McArthur
Assemblywoman Daniele Monroe-Moreno
Assemblyman James Ohrenschall
Assemblyman James Oscarson

COMMITTEE MEMBERS ABSENT:

Assemblyman Nelson Araujo, Vice Chair (excused)
Assemblyman John Hambrick (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Carol Stonefield, Committee Policy Analyst
Kevin Powers, Committee Counsel
Julianne King, Committee Secretary
Melissa Loomis, Committee Assistant

Minutes ID: 1173



OTHERS PRESENT:

Yvonne Nevarez-Goodson, Executive Director, Commission on Ethics
Tracy L. Chase, Commission Counsel, Commission on Ethics

Chairwoman Diaz:

[Roll was taken.] The only order of business before the Committee today is a work session. The first measure we are considering is Assembly Bill 296.

**Assembly Bill 296: Revises provisions governing the drafting of legislative measures.
(BDR 17-956)**

Carol Stonefield, Committee Policy Analyst:

Assembly Bill 296 was heard in this Committee on March 23, 2017 ([Exhibit C](#)). It was sponsored by Assemblyman Elliot T. Anderson. The bill proposes to remove the statutory limits on the number of legislative measures that may be requested by legislators and legislative committees. It also removes the statutory deadlines for submission for requests for measures by legislators and legislative committees. A statute, joint rule, or concurrent resolution governing requests for the drafting of a legislative measure may apply. There was no opposition. The sponsor of the bill has submitted a mock-up of a proposed amendment, which is behind the bill page [pages 2-5, ([Exhibit C](#))]. I believe the sponsor has comments.

Assemblyman Elliot T. Anderson:

In consultation with the members of the Committee and some other events that have happened, a number of the ideas I had as to the limits of bill draft requests (BDRs) did not work out anymore. They were not suitable. What I am proposing to do instead is simply use this bill as a vehicle to fix a problem the Legal Division of the Legislative Counsel Bureau (LCB) has had with amendments that legislators put in. The priority language that was put in last session ended up causing some problems for our staff and got our bills clogged up a bit. I am trying to fix that. If Mr. Powers has a more specific explanation, I would appreciate his input.

Chairwoman Diaz:

Some of our members received this amendment at the last minute. Can you walk us through the amendment?

Kevin Powers, Committee Counsel:

The goal of the amendment is twofold. First, the existing provisions that change the number of BDRs allotted to each legislator and would have made it done by rule instead of statute are eliminated. The existing statutes that provide the number of BDR allotments to each legislator will remain in place. They will be undisturbed after this proposed amendment.

The second thing that the proposed amendment does on pages 6 and 7 has to do with the assignment of a number to a BDR when the LCB Legal Division receives the request. Prior to last session, the procedure was that when we received the request from the legislator, it was assigned a number. The legislator needed to provide us with sufficient detail to begin the drafting of that legislative measure.

During the 2015 Session, a change was made so a number was not assigned unless every detail for the measure was included with the request. We had a separate system for BDRs that were assigned a number where we had sufficient detail and BDRs that were requested without sufficient detail. Therefore, administratively, we had to maintain two systems. This will allow us to go back to a single system. When the legislator requests the BDR, it will be assigned a number. As long as we have sufficient detail to begin drafting, it will proceed in an ordinary course, as it has in the past.

Chairwoman Diaz:

Are there any questions from the Committee? Seeing none, I will entertain a motion to amend and do pass A.B. 296.

ASSEMBLYMAN OSCARSON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 296.

ASSEMBLYWOMAN MONROE-MORENO SECONDED THE MOTION.

Is there any further discussion on the motion?

Assemblyman McArthur:

I have not had a chance to go over the amendment. It sounds like everything has been fixed. I am still going to vote no and retain my right to change my vote on the floor.

Assemblyman Ohrenschall:

I, too, received the amendment late. I am going to vote yes and reserve my right to change my vote on the floor.

Chairwoman Diaz:

Just to be clear, all members of the Assembly have that right. However, if a member changes his or her mind, it is courtesy to let the chairperson know that you are changing your mind before the vote is taken on the floor. Even if you voted something out of Committee, you still have that right. With those comments, I will call for the vote.

THE MOTION PASSED. (ASSEMBLYMAN McARTHUR VOTED NO.
ASSEMBLYMEN ARAUJO AND HAMBRICK WERE ABSENT FOR
THE VOTE.)

Assemblyman Elliot T. Anderson will carry the floor statement. We will move on to Senate Bill 84 (1st Reprint).

**Senate Bill 84 (1st Reprint): Makes various changes relating to ethics in government.
(BDR 23-250)**

Carol Stonefield, Committee Policy Analyst:

Senate Bill 84 (1st Reprint) was heard in this Committee on May 2, 2017. It was sponsored by the Senate Committee on Legislative Operations and Elections on behalf of the Commission on Ethics. It was presented by the Executive Director of the Commission ([Exhibit D](#)). Senate Bill 84 (1st Reprint) reorganizes *Nevada Revised Statutes* (NRS) Chapter 281A to separate procedures relating to the handling of advisory opinions from the ethics complaint process. Provisions relating to investigative panels are removed or repealed and review panels are created.

The bill also gives the Commission on Ethics additional remedial options. It gives the Commission jurisdiction over independent contractors who serve in positions that would ordinarily be filled by public officers or employees. It expands the provisions of the *Code of Ethical Standards* so a public officer or employee cannot engage in certain unethical conduct when such conduct benefits his or her own private interests or the interests of another person with whom the public officer or employee has a commitment in a private capacity.

The bill eliminates the filing of an annual disclosure statement as it relates to counseling or representing private persons before public agencies. Instead, certain public officers or employees must make a public disclosure on the record before any action may be taken by certain public agencies. Finally, the bill clarifies that during the cooling-off period, the public officer or employee cannot seek, negotiate, or enter into any such employment agreement, even if such an agreement does not or will not become effective until after the cooling-off period. There was no opposition. There are four conceptual amendments provided behind the bill page [pages 2 and 3, ([Exhibit D](#))]. Committee counsel has comments on them.

Kevin Powers, Committee Counsel:

Each of these proposed conceptual amendments is independent. They are not connected, so the Committee can consider them separately and determine which ones are appropriate for moving forward. The first proposed conceptual amendment deals with the provisions in the bill that will extend the Ethics Law to certain positions that are filled by independent contractors when those positions would ordinarily be held by public officers or employees. The proposal is to delay the effective date of those provisions until January 1, 2018, so the affected state and local agencies that will have these contractors subject to the Ethics Law have the ability to inform and educate those individuals as to their requirements under the Ethics Law.

The second proposal is a change with regard to procedures in ethics complaints. It would amend section 18.5 to require the Commission to adopt specific regulations regarding discovery requests and the confidentiality of their investigatory materials. In particular, it specifies the type of evidence that the Executive Director is required to disclose to the

subject of the ethics complaint before an adjudicatory hearing, such as evidence that affirmatively and substantively disproves the allegations against the subject of the ethics complaint. This is an issue that Assemblyman Anderson raised during the hearing on the bill dealing with exculpatory evidence. The point is that the Commission needs to provide guidance to those involved in the ethics complaint procedure, so they understand what evidence would be available to those subjects when they are involved in the ethics process.

On the next page [page 3, ([Exhibit D](#))] is the third proposed amendment. It deals with advisory opinions, which are different from ethics complaints. The first proposal is to amend section 3.4. The proposal deals with the confidentiality of information in the possession of the requestor. Currently, under existing law, the requestor of an advisory opinion, the advisory opinion itself, and all information and other materials in the possession of the Commission are confidential and not subject to public disclosure. This proposal would protect the materials in the possession of the requestor that relate to the advisory opinion. This is a confidential process. The idea is that someone should not be able to do an end run around that confidentiality by going after the requestor instead of the Commission. This is a protection for the requestor.

Because this is material in the possession of the requestor, this does not impose any new duty on the Commission. This is about the material that is in the possession of the requestor. If someone makes a request and asks for this material from the requestor of the advisory opinion, it would be the duty of the requestor to defend that and raise this protection. It would not be the duty of the Commission to do that. If a requestor makes a confidential advisory opinion request, the purpose of this is to protect that confidentiality, even if those materials are in the possession of the requestor.

The fourth proposed amendment is another procedure for advisory opinions. Under current law, when the Commission issues an advisory opinion, it is a final decision that is subject to judicial review under the Administrative Procedure Act (APA) in NRS 233B.130. The point of this amendment was to clarify that it is subject to judicial review under the APA, regardless of whether the proceedings would otherwise be considered a contested case. This is clarifying language; however, the existing statute is clear that the advisory opinion of the Commission is a final decision subject to judicial review. This would be clarifying language to that existing statute.

Chairwoman Diaz:

Are there any questions about the proposed amendments? Seeing none, I want to invite Ms. Nevarez-Goodson to the table, so she can confirm which of the conceptual amendments she is comfortable with. I know that there might be one that is not amenable to the bill. Could you speak to the Committee about that?

Yvonne Nevarez-Goodson, Executive Director, Commission on Ethics:

I appreciate the opportunity to respond. We appreciate committee counsel's explanation of these amendments. There is no objection to the first two conceptual amendments as described. Regarding the second proposed amendment, we would like the record to reflect

that the type of evidence that the Executive Director would turn over would be the type of evidence that was discovered during the course of an investigation. The terminology that you will see, although I understand it is not the exact language, such as "all evidence," is a little bit broader than our intent. We want to make sure that it is evidence that we discover during the course of an investigation that might be appropriate to turn over.

The Commission is comfortable with the third amendment as described by committee counsel. We have an objection with regard to the fourth proposed amendment, because we have confidential pending litigation that is before the Nevada Supreme Court that questions whether an advisory case of the Commission is a contested case and whether that party is aggrieved. In that context, we think that this amendment would define that for us. It would take away the Commission's legal arguments about whether a party actually is aggrieved and whether an advisory case is a contested case under the provisions of NRS Chapter 233B. That would be the Commission's objection regarding the fourth conceptual amendment.

Assemblyman Daly:

I do not know if you can talk about the case. If there is an advisory opinion that has been put out, and someone feels aggrieved, was the position of the Ethics Commission that they are not an aggrieved party; therefore, this is it? Alternatively, are you agreeing that they were an aggrieved party that is trying to seek judicial review, and someone is trying to block that? The way I read this language as written without the amendment is you are saying that it is a final case. You can go to NRS 233B.130 for judicial review, but the language in NRS Chapter 233B says it has to be a contested case. Unless we clarify that, you may be sending them to a place where they do not have it.

If I am an attorney, on whichever side, I am going to make the argument, because it is there, you do not get to go to judicial review because it is not a contested case or you are not aggrieved. If you are sending them there and they get judicial review, I want to make sure that they have standing to get that review. That is what this is trying to do. If you are saying that they do not have standing, because they are not aggrieved, then there is no recourse once they get that opinion. That is it, and they cannot do anything. I am trying to make sure that that is not the case.

Yvonne Nevarez-Goodson:

I appreciate the question. The answer to the initial part of your question is that advisory opinions are confidential. When we have litigation with regard to those confidential cases, they are under seal. That is why we cannot talk about the specific circumstances of that particular litigation. Generally speaking, we understand that a final decision of the Commission in an advisory opinion context with regard to present or future conduct is subject to judicial review under the provisions of NRS Chapter 233B. Once any administrative agency is under the provisions of NRS Chapter 233B, there is case law and other abilities to argue whether the provisions of NRS Chapter 233B are applicable.

In this particular litigation referred to, in order to qualify for judicial review under NRS Chapter 233B, the person has to be an aggrieved party as that term is defined in that chapter, and it has to be within the context of a contested case. In the particular litigation I am referring to in the scope and context of the facts of that case, we have argued that the party has not been aggrieved by the Commission's final decision and the advisory opinion. In the particular circumstances of that case, it was not contested under the definition set forth in NRS Chapter 233B. The concern for the Commission is that those legal arguments available to any administrative agency in the course and context of NRS Chapter 233B would somehow be taken away from the Commission. I will defer to commission counsel.

Tracy L. Chase, Commission Counsel, Commission on Ethics:

The concern is that when a case goes up on an advisory opinion, the statute under NRS Chapter 281A indicates that it is binding. If it is binding on future conduct of that requestor, they are going to have a chance at having judicial review. Then, you look at the fact pattern that may be before you. The fact pattern may be such that perhaps the matter that was before the Commission is no longer applicable, moot, or is something that has already occurred. The court should have the ability to navigate those types of issues and to determine whether there is a present, justiciable controversy or event that would be binding. It is properly determined by the court and not ahead of time before the court even has the opportunity to review the fact pattern.

That is the Commission's concern. The Commission does not want to be automatically eliminated from that type of review that the court would do on all administrative proceedings that go through the APA. We are already subject to it. We are already going up on judicial review on these advisory opinions. We look at the fact patterns to determine whether we would have a claim and vice versa under the APA on different matters.

Assemblyman Daly:

You are saying that your advisory opinion is final. It is not a contested case, but it is final. They then would have the right to judicial review. You send them to a specific place for that judicial review, which leaves the argument that it is not a contested case, so they do not have standing to have judicial review. I am just trying to make sure people have the right to get judicial review. The way I read NRS Chapter 233B is that if it was any contested case and you are the aggrieved party who is going to get the penalty, then you have automatic standing under that situation. You can argue that part of it as well.

Why include the words at all that say that this is a final determination and there is judicial review if that is not really the case? You should take that part out of it. Maybe that satisfies the concern. Just say, "I got my advisory opinion. Here it is. You can follow it or not." Then, you can decide to give them the penalty. If they do not, then you are in a contested case, and all of the provisions we are talking about would be applicable. I do not think you can have it both ways. Maybe counsel has an opinion that soothes it over, but that is just the way I am seeing it.

Kevin Powers:

I think it is important to distinguish between the ethics complaints and the advisory opinions. In the process for the ethics complaints, that could actually result in a penalty. If a penalty is imposed, it is going to be a contested case and that party would be aggrieved. In the advisory opinion context, there is no penalty that can be imposed. It is simply advice to guide that public officer or employee on their present or future conduct. What I believe the Commission is getting at is that there are going to be circumstances where, even though the Commission has rendered an advisory opinion and the public officer or employee has sought judicial review, there could be a change in circumstances that either makes the case moot or renders judicial review unnecessary, so the party is no longer aggrieved.

For example, a public officer or employee could request an advisory opinion, and the Commission could issue it. The public officer or employee could ask for judicial review, but during that period of judicial review, the public officer or employee may resign from public office or employment. In that context, the advisory opinion has no more relevance to the court, because that person is no longer a public officer or employee. It will not apply or bind to their future conduct, because they have left public service. In that case, a court should be able to say, "We do not need to go through the process of judicial review, because it is moot. Whatever we say is irrelevant, because that person is no longer a public officer or employee." If there is a penalty in the ethics complaints, it is going to be subject to judicial review. In the context of an advisory opinion, it is to keep the flexibility in the statute to allow the court to make those determinations when judicial review is no longer necessary for reasons such as mootness.

Chairwoman Diaz:

I believe Assemblyman Elliot T. Anderson wanted to speak to one of the conceptual amendments.

Assemblyman Elliot T. Anderson:

I have two things. I think some clarification in the fourth amendment could be helpful because of the judicial review language that is in the original bill. I do not have any problem saying that in terms of the procedures in an ethics complaint, the amendment regarding exculpatory evidence, although that is a criminal term, would be information that you have. I do not have a problem with that. Because that judicial review language is still in there, my question is in regard to whether an advisory opinion can create a contested case. I am assuming it is some sort of injury analysis to get standing. Is that correct? Can Mr. Powers help me with that?

Kevin Powers:

When a public officer or employee goes before the Ethics Commission and asks for that advisory opinion, they are asking the Commission to interpret a particular statutory provision and whether that provision applies to the public officer or employee. If the Commission says, "Yes. We believe this statutory provision applies to the public officer or employee,"

and the public officer or employee disagrees, the public officer or employee is aggrieved. The Commission has exercised legal authority to interpret the statute, and the public officer or employee disagrees with that interpretation. They then seek judicial review.

It has to be that sort of conflict of statutory interpretation between the Commission and the public officer or employee that leads to the injury. The injury is a statutory interpretation adverse to the public officer or employee. There is no penalty involved; it is just the Commission's advice to that public officer or employee. However, if the Commission interprets a statute in a certain way that is not detrimental to the public officer or employee, but the public officer or employee wants to seek judicial review anyway because they do not like some component of the interpretation, a court would likely find no real injury, because there is no real detriment to the public officer or employee. That is another situation where the court has the discretion to say, "Unless you actually show that this interpretation harms you in some way; you are not entitled to judicial review."

Assemblyman Elliot T. Anderson:

Based upon the discussion, it is important that is clear.

Chairwoman Diaz:

Are there any further questions from the Committee? Seeing none, I will entertain a motion. What is the Committee's pleasure?

ASSEMBLYMAN ELLIOT T. ANDERSON MOVED TO AMEND AND
DO PASS SENATE BILL 84 (1ST REPRINT) WITH THE FIRST THREE
AMENDMENTS.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

Is there any further discussion?

Assemblyman Oscarson:

Just for clarity, that would be section 0.4 (a), (b), and (d). Is that correct?

Kevin Powers:

The amendment would include on page 1, number 1 and number 2. On page 2, it would be all of number 3. There is a typo there. It should not be section 0.4; it should be section 3.4. Items 1 and 2 on the first page are in the amendment. All of item 3 is in the proposed amendment. Item number 4 on page 2 would not be included.

Assemblyman Oscarson:

Does that address the Commission's concerns?

Kevin Powers:

That is correct.

Chairwoman Diaz:

I will now call for the vote.

THE MOTION PASSED. (ASSEMBLYMAN DALY VOTED NO. ASSEMBLYMEN ARAUJO AND HAMBRICK WERE ABSENT FOR THE VOTE.)

I will assign the floor statement to Assemblyman Elliot T. Anderson. We will go ahead and consider Senate Concurrent Resolution 1.

Senate Concurrent Resolution 1 (1st Reprint): Directs the Legislative Commission to appoint a committee to conduct an interim study relating to affordable housing within the State of Nevada. (BDR R-835)

Carol Stonefield, Committee Policy Analyst:

Senate Concurrent Resolution 1 (1st Reprint) was heard in this Committee on May 4, 2017, and was presented by Senator Ratti ([Exhibit E](#)). It directs the Legislative Commission to appoint a committee to conduct an interim study relating to affordable housing in Nevada. There was no opposition, and no amendments have been offered.

Chairwoman Diaz:

Is there any discussion on Senate Concurrent Resolution 1 (1st Reprint)? Seeing none, I will entertain a motion to adopt S.C.R. 1 (R1).

ASSEMBLYMAN DALY MADE A MOTION TO ADOPT SENATE CONCURRENT RESOLUTION 1 (1ST REPRINT).

ASSEMBLYWOMAN BILBRAY-AXELROD SECONDED THE MOTION.

THE MOTION WAS ADOPTED. (ASSEMBLYMEN ARAUJO AND HAMBRICK WERE ABSENT FOR THE VOTE.)

I will assign the floor statement to Assemblyman Daly.

[Three bills, Senate Bill 144, Senate Bill 492, and Senate Joint Resolution 17 of the 78th Session, were agendized but not heard.]

Senate Bill 144 (1st Reprint): Revises provisions relating to elections. (BDR 24-300)

Senate Bill 492 (1st Reprint): Revises provisions relating to polling places. (BDR 24-450)

Senate Joint Resolution 17 of the 78th Session: Proposes to amend the Nevada Constitution to expand the rights guaranteed to victims of crime. (BDR C-952)

Are there any questions from the Committee? Seeing none, we are adjourned [at 3:03 p.m.].

RESPECTFULLY SUBMITTED:

Julianne King
Committee Secretary

APPROVED BY:

Assemblywoman Olivia Diaz, Chairwoman

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a Work Session Document for Assembly Bill 296, presented by Carol Stonefield, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit D](#) is a Work Session Document for Senate Bill 84 (1st Reprint), presented by Carol Stonefield, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit E](#) is a Work Session Document for Senate Concurrent Resolution 1 (1st Reprint), presented by Carol Stonefield, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.