MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eightieth Session
June 2, 2019

The Committee on Judiciary was called to order by Chairman Steve Yeager at 10:18 a.m. on Sunday, June 2, 2019, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4404B 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/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblywoman Lesley E. Cohen, Vice Chairwoman
Assemblywoman Shea Backus
Assemblyman Skip Daly
Assemblyman Chris Edwards
Assemblyman Ozzie Fumo
Assemblywoman Alexis Hansen
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblywoman Rochelle T. Nguyen
Assemblywoman Sarah Peters
Assemblyman Tom Roberts
Assemblywoman Jill Tolles
Assemblywoman Selena Torres
Assemblyman Howard Watts

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Ben Kieckhefer, Senate District No. 16

STAFF MEMBERS PRESENT:

Kevin C. Powers, Chief Litigation Counsel
Diane C. Thornton, Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Lucas Glanzmann, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Matthew Digesti, Vice President, Government Affairs and Strategic Initiatives, Blockchains, LLC
Jessica Adair, Chief of Staff, Office of the Attorney General
Heather D. Procter, Chief Deputy Attorney General, Post-Conviction Unit, Office of the Attorney General

Chairman Yeager:
[Roll was taken. Committee protocol was explained.] We have two bills on our agenda. I will open the hearing on Senate Bill 162 (1st Reprint).

Senate Bill 162 (1st Reprint): Revises provisions relating to electronic transactions. (BDR 59-876)

Senator Ben Kieckhefer, Senate District No. 16:
I appreciate the opportunity to present Senate Bill 162 (1st Reprint). I appreciate your scheduling it after receiving it so late last night. This is another piece of the puzzle you have seen before relating to the technology ecosystem we are trying to build in Nevada to attract innovators, technology companies, entrepreneurs, and those who are going to build economic growth from the ground up as we go forward in this state. I will walk through the provisions of the bill very quickly and then turn it over to Mr. Digesti for testimony and some anecdotal evidence of why these types of things are important.

Sections 2 through 3.5 of this bill should look somewhat familiar to you because they mirror language changes we included in Senate Bill 163, which was approved and processed by this body previously and is currently sitting on the Governor's desk. This includes an update to our definitions of blockchain to include "public blockchain." It also includes definitions of "state of the public blockchain" and "unaffiliated computers or machines."

Section 4, subsection 1 of this bill puts into statute that an individual does not relinquish any right of ownership to information or data that is transmitted over a public blockchain solely because it is put into that system. Section 4, subsection 2 clarifies, at the request of some of the local governments, that nothing in subsection 1 regarding the right of ownership relieves government agencies of their responsibilities under public records laws and other requirements to fulfill based on statute.

Section 5 is where the meat of this legislation resides. This regards government adoption. I am a firm believer in the power of government adoption of new technologies, the efficiency it can create, the marketplace it can generate for businesses looking to innovate, and the assistance it can provide to citizens as they try to interact with their government. Section 5, subsection 1 provides that government agencies "shall consider the use of equipment and software that enables the governmental agency to send, accept, process, use and rely upon electronic records and electronic signatures" as they are updating their technology. This was originally—in the first version of this bill—a mandate on government agencies to adopt new technologies that allow them to use electronic signatures and electronic records. The potential fiscal impact to those government agencies was real, and we listened. If you look at the fiscal notes on the bill, you will see some fairly serious concerns by local governments about what that might mean. We have made this a strong encouragement from the state Legislature to look at the use of these technologies on a going-forward basis.

Section 5, subsection 2 talks about the transmission of records between governmental entities. The idea is, if a government offers a certified copy as an electronic record, another governmental entity shall accept that as a certified copy. Then we have some clarifying language that if they do not have the software, they can refuse to accept it.

Section 7 of the bill provides the additional update to the existing blockchain definition that has been included in previous legislation. Then we have conforming language throughout. The bill is effective January 1, 2020, for sections 5 and 8, and October 1, 2019, for the rest.

Matthew Digesti, Vice President, Government Affairs and Strategic Initiatives, Blockchains, LLC:

We are here to testify in support of this bill. There are two things I want to highlight for you that I think will be helpful. The first is to give an anecdotal example as to why this legislation is important, because there are things happening in Nevada now that this bill will have a positive impact on. Some of you may know that the Washoe County Recorder's Office became the first recorder in the country to accept marriage certificates on public blockchain technology. That pilot began last year. They actually engaged with a local Reno startup called Titan Seal. So far, the pilot has been going very, very well. I have spoken with the Washoe County Recorder, and she said when you compare the electronic version of the marriage certificates using public blockchain versus the way they currently do things, which is a paper-driven process, she has seen anywhere between 27 and 30 percent cost savings on a per-unit basis, which is significant and quite powerful.

The issue we have seen is, when individuals in Nevada request an electronic version of their marriage certificate and they go to use that at different government agencies for proof of marriage, they have been running into some problems. Some government agencies accept it and some do not. In particular, the Nevada Department of Motor Vehicles (DMV) has received some of these marriage certificates, and it is our understanding that they have just refused to accept them because they do not know what they are; the education process has not been put into place. This bill is meant to address that.

As Senator Kieckhefer said, government could see some incredible efficiencies and cost savings with blockchain technology and with other emerging technologies. We think this bill is important to help spur that adoption, which will have a very big economic development impact. I think you will see some startups in Nevada and some established companies looking to be vendors for these services. We encourage you to pass this legislation because we think it is very important.

The second part I wanted to highlight is that in the initial version of this bill, there was a mandate to start accepting electronic records by January 1, 2020. We did speak with the recorders. Some said this could impact their budget if they needed to upgrade their software or hardware in order to accept these electronic versions. We spoke with some technologists in Nevada—Titan Seal in particular—and their solution does not require any hardware or software upgrade at all. You can go in and use this technology, and an accepting agency can verify the authenticity of the record without having to upgrade its software or its hardware, so there is no fiscal impact on them. We recognize there might be some technology solutions for which the accepting agency may have to upgrade its hardware or software, so the bill was amended to reflect that. If an accepting agency does have to go through any type of update that is going to cost money, the accepting agency has the discretion to purchase that technology and roll it out at a time which is appropriate for the agency and fits within its budget constraints. It is not a mandate on any accepting agency if there is a fiscal impact on that agency. We thought that was a good compromise and it is very important.

Assemblywoman Peters:
How do we, as a state, have the infrastructure to ensure the security of these systems? As every agency starts to adopt the public blockchain, do we have an information technology (IT) department to ensure everything is working the way it should? If there are problems, do we have a resource to go to that is centralized and has a broader understanding of how blockchains work?

Senator Kieckhefer:
You ask a critical question that needs to be asked about all of our systems right now. We have seen both successes and failures of IT infrastructure rollouts in recent years. I see it a lot from the Senate Committee on Finance side whereby we need to appropriate more money because something did not work. It is a concern I have broadly about our IT infrastructure. I think the answer to the question is that we need to get much more serious about our IT security more broadly across the state. I think this will help do that based on the security that is inherently in place within a blockchain system as compared to other types of technology solutions. I do not think I have a really good answer for you other than to say we need to work on it for everything, but the security that comes along with a blockchain system in terms of the cryptographic strength of the encryption is a step in the right direction toward solving some of those security concerns. This makes it better rather than worse.

Matthew Digesti:
You referenced public blockchain, which is a public network. Naturally, the question comes up, Well, if it is a public network, who is on the other side of that phone call if we have issues? I will go back to the example of Titan Seal. They are an Ethereum blockchain network vendor, but they are a company in the traditional sense of the word. They are a vendor that the Washoe County Recorder's Office, the Clark County Recorder's Office, and the Elko County Recorder's Office have contracted with just like any other software technology vendor. If there are issues—which my understanding is that there have not been any so far—there is a company on the other side of that telephone that the state agencies can call. They are just like any other software vendor. They have customer service, they have technical people, and they are ready and prepared to help out if there are some technical issues.

Assemblywoman Peters:
I tend to agree with you about our overall IT system. The Office of the Governor is in agreement with that as well. I look forward to seeing how we roll out the resources we already have in place to create consistency over the next few years. One of the things I really do like about adopting blockchain across the state is that there is a consistency of the system of utility, so we are not working with different systems that have different security mechanisms. There would be some consistency in how we manage our data across agencies. I really appreciate that effort.

Assemblyman Daly:
I am still learning more about blockchain. I am not opposed to the bill. My questions are more about transitions. You mentioned that they have to consider this when they are doing their upgrade. You just want to see something in the minutes that says they considered it but did not have the money or whatever.

In section 5, subsection 3, it says the originating agency is still going to be able to charge the same fee. I understand they want to keep the fee. They do not know what it is going to cost. They do not want to take a hit in their budget. Do you think there is a transition that is going to happen there? You say there is a 27 to 30 percent savings. Is there going to be a cost saving that then goes on to the people? The fee they are charging now covers their overhead for the person, the paper, the documentation, et cetera. All of that is faster and cheaper now. It should not be a revenue-making deal because it is cheaper for them to do now. They may need fewer people because it is going to be more efficient. Are you anticipating the cost to go down for people as we transition, or is it just going to be a profit center for the agencies? We need to watch for that as a Legislature.

Senator Kieckhefer:
You point out something we struggle with regularly. The idea of creating efficiency in government should, by its very nature, result in better service and cost savings to the taxpayers. That is reliant on everything remaining equal and the government officials in charge, whether that is at the state level or any local government level, deciding to pass the savings on to the consumers. Generally, for things such as a fee-funded program, it is

supposed to be tied pretty much directly to the cost of operating. Sometimes there is additional service that is tied into that fee. There are a lot of dynamics in play. I would suggest that this individual transaction example is but one example of the way this technology could be deployed to create additional savings for people. If it becomes adopted more broadly, those savings could be seen more thoroughly spread out throughout a governmental budget, and greater efficiency should, all things being equal, result in greater savings to taxpayers and consumers who are funding that government.

Assemblyman Daly:
It says they "may" charge the same amount. When we have language that says they are allowed to do this, we may need to come back and take a look at this as time goes on and these savings are accrued if they are not lowering those. The language might have been that they can only charge as much as it costs with some degree of variance.

My second question is about the marriage certificate or birth certificate. If you have to get one now, it is on a fancy piece of paper, it is a different texture, it is a different size, it has all the printing on it, it has the official stamp, and it has an imprint on the paper. I am familiar with the electronic signatures. We have to file reporting forms for my regular job. They are electronically filed and we get a personal identification number so they know it is us. When you sign that, it just comes back as your printed name in type. You said the DMV would not take these documents. How are they uniquely identifiable or uniquely numbered? Is there a way to go back and verify through a serial number or something? How are you making them verifiable by the agency? How do you make it uniquely identifiable so they know it is not a counterfeit?

Matthew Digesti:
I was trying to avoid getting technical during the hearing, but I guess we will do it. There are many different ways to do it. Blockchain has the flexibility to be developed in different ways to secure information. That is at the core of what blockchain does; it secures information in real time for all time. I will use Titan Seal as an example because they are actually doing it and they have one way that is very interesting.

Titan Seal uses the Ethereum public blockchain. When a marriage certificate is generated in their office, it is a piece of paper in electronic form and it has data in it, just like any other electronic record. That data then gets sent through an encryption algorithm. That algorithm takes that data input and spits out a 64-character string of letters and numbers, which is what we call a "hash value." This is how encryption works. It has been happening for decades. It is how we encrypt information on our phones when we send messages back and forth. This 64-character string of letters and numbers is unique to that document. It is like a fingerprint. Each document has its own unique fingerprint. Let us say I try to forge that document down the road and change one period in that document to an exclamation point for whatever reason. When it gets run through that algorithm again to check it, that 64-character string of letters and numbers would be dramatically different than what is on file at the Washoe County Recorder's Office.

Again, when it gets generated at the county recorder's office, it gets this unique fingerprint. That fingerprint is stored with the recorder in an encrypted way on the public blockchain. So the recorder has not only the document, but the unique fingerprint. When I take my electronic marriage certificate to the DMV and I have it on my cellphone, I present it to the DMV, and it has a QR [Quick Response] code on the upper right-hand corner that the DMV can scan. That essentially pings the recorder's office to ensure that document and its hash value match what the recorder's office has on file.

Chairman Yeager:
That was a good answer. It was technical but very understandable, so thank you for that. Are there any more questions? [There were none.] I will open it up for testimony in support. [There was none.] Is there anyone opposed? [There was no one.] Is there any neutral testimony? [There was none.] I will close the hearing on Senate Bill 162 (1st Reprint). I will now open the hearing on Senate Bill 3 (1st Reprint).

Senate Bill 3 (1st Reprint): Revises provisions governing postconviction petitions for a writ of habeas corpus that challenge the computation of time served in incarceration by an offender. (BDR 3-411)

Jessica Adair, Chief of Staff, Office of the Attorney General:
I am here representing the Office of the Attorney General. I am going to pass the mic off to Heather Procter.

Heather D. Procter, Chief Deputy Attorney General, Post-Conviction Unit, Office of the Attorney General:
Senate Bill 3 (1st Reprint) is a proposed change to Nevada's statute that governs inmate challenges to the computation of time credits. The computation of inmate time credits is governed by a complex statutory scheme that allows inmates to accumulate credits for various reasons, including time served, work performed at the prison, good behavior, and the completion of educational or rehabilitative programs. In calculating accrued time credits, the Nevada Department of Corrections (NDOC) must also take into account considerations such as whether the inmate has forfeited any credits due to disciplinary action, whether the credits apply to the inmate's minimum or maximum sentences, whether the inmate is serving multiple sentences, and, if so, whether the credits apply to each unexpired sentence. In short, the computation of inmate time credits is a complicated process that sometimes results in disputes between an inmate and NDOC.

When an inmate seeks to challenge the Department of Corrections' calculation of time credits, he or she may submit a written grievance at the prison institution where he or she is incarcerated. The inmate grievance system is designed to provide inmates with a formal process to address any concerns related to their confinement, including time credit computation. The inmate grievance system further allows prison administrators an opportunity to correct any errors before the inmate resorts to more costly forms of dispute resolution, such as civil litigation. However, *Nevada Revised Statutes* (NRS) 34.724, the statute that governs inmate challenges to the computation of time, does not specifically

require inmates to take advantage of the inmate grievance system before filing a civil lawsuit in state district court, and our Nevada Supreme Court has ruled that this omission means inmates are not required to present computation challenges to prison administrators before filing a lawsuit. This bill seeks to remedy this problem by clarifying that inmates must first pursue to completion the administrative remedies available to them through the prison grievance system before initiating the costly and resource-intensive process of the judicial system.

Without a requirement to exhaust administrative remedies, in 2018 alone, the Office of the Attorney General opened over 1,100 new state habeas petitions, nearly all of which addressed issues regarding calculation of time credits, which resulted in nearly 300 appeals to the Nevada Court of Appeals. This was largely due to a 2017 Nevada Supreme Court opinion addressing time calculations. However, most of those petitions could have been resolved had inmates sought administrative remedies first. Instead, the Attorney General's Office, the state district court, and the Nevada Court of Appeals have been bombarded with state habeas petitions.

Section 1 of the bill revises NRS 34.724 to require an inmate to exhaust all administrative remedies before filing a postconviction petition for writ of habeas corpus challenging the computation of time served. Section 3 amends NRS 34.810 to require the court to dismiss without prejudice such petition if the inmate fails to first exhaust all available administrative remedies. Section 4 requires the Department of Corrections to adopt regulations to establish procedures for the expedited resolution of challenges to the computation of time when the inmate is within 180 days of his projected discharge date.

In addition, under existing law, an inmate must file a state postconviction petition challenging the validity of a conviction or sentence in the county of conviction. All other petitions must be filed in the county of incarceration. That is NRS 34.738. However, sometimes NDOC incarcerates Nevada inmates in other states due to overcrowding, inmate disciplinary issues, or inmate security. As such inmates are incarcerated out of the state, existing law does not address the proper venue for petitions challenging, for instance, the computation of time credits. Section 2 of the bill addresses such circumstances and directs state inmates who are incarcerated outside of Nevada who file a postconviction petition challenging anything other than the validity of their conviction or sentence to file such petitions in Carson City. This bill promotes judicial economy while preserving the constitutional rights of inmates.

Once a defendant is convicted and sentenced, he can file a state habeas petition. There are two forms of state habeas petitions. The first is when the individual challenges the court's imposition of the conviction and sentence. Those petitions are filed in the county of conviction, and the prosecuting agency, which is generally the district attorney, will address those petitions. The second category is a challenge to time credits. Those are filed in the county of incarceration, and those are addressed by the Attorney General's Office. The reason those are filed in the county of incarceration is because the county of

incarceration—the prison—is the entity that has the records and the witnesses necessary to address those petitions.

The issue with the venue right now is that individuals who are physically incarcerated in another state do not fall anywhere within the current statute because they are not in a county of incarceration. Section 2 addresses that issue and allows those individuals to file their cases in the First Judicial District Court. I have already spoken to the First Judicial District Court. We are talking about a very small number of inmates, and they are prepared to receive that number of cases in the First Judicial District Court. In addition, there is already a law in place that if an individual files his or her petition in the wrong county, that county must forward the petition to the correct county of incarceration. So even if the individual is confused, the courts will take care of it and get it to the correct county so the correct entities can address it.

The rest of the bill really addresses the exhaustion of administrative remedies, which is very common in many civil actions. The computation of time credits is a very complex system. There are disagreements between the inmates' calculations and the Department of Corrections' calculations. When an inmate files a state habeas petition, the Attorney General's Office must go through NDOC. The Department of Corrections is the record holder; they are the ones calculating this time in order to try to address these petitions. What we are requesting is that inmates go through NDOC first through whatever administrative remedy is available, which is the grievance system. By doing so, they can get the first line of defense, allow NDOC to make any corrections necessary, and if the inmate is not happy with the resolution, they can still file a petition and challenge it in a court of law.

Chairman Yeager:
I agree with you that the computation of credits is extraordinarily complex. My understanding is that there are only two or three people in the state who really understand it. Hopefully we will fix that someday to make it easier to understand. Are there any questions from Committee members?

Assemblywoman Nguyen:
Why did we choose the First Judicial District Court to handle all of the inmates outside of Nevada and not the court where the case originated?

Heather Procter:
It was not entirely arbitrary. The Department of Corrections' primary office is located in Carson City. The Offender Management Division of NDOC, which calculates time, is located in Carson City. Going along that same reasoning of filing in the county of incarceration, we felt Carson City would make the most sense.

Assemblyman Roberts:
I have a question to help me understand the administrative remedies. What is the normal timeline for that? I bring that up because they might be filing court action because the administrative remedies are not doing what they need to do. Is there an issue with that?

Heather Procter:
First, I would like to make it very clear that we are asking for inmates to exhaust their administrative remedies; we are not trying to legislate the administrative remedies in place. The Department of Corrections has other statutes and regulations that address that. Currently, there is a grievance system in place. It is a three-step process. It takes, in total, about 160 days to go through that process. At each level of the process, the inmate speaks to three different staff members of NDOC to address his or her concerns.

By contrast, if the inmate goes through a state court proceeding, he or she will file the petition, and it takes time for the court to review it to determine if a response is necessary. The court will then order a response, which can take up to 45 to 60 days. The court then has some leeway as to when it will address that concern. As I mentioned, we had over 1,100 of these petitions filed last year. It took quite a bit of time for the courts to resolve these matters. The individual can then appeal to the Nevada Court of Appeals as well. So it can take a considerable amount of time to go through the litigation process. I would also note, with the grievance process, there are protections in place. For instance, if one of the staff from NDOC takes longer than provided in the regulations, the inmate can automatically go to the next step, so this process should not take more than 160 days for the inmate.

Jessica Adair:
Just to follow up, we recognize it is important that the process is moving quickly for inmates. That is why part of this bill includes a section for the expedited grievance process if someone is getting close to the end of their time.

Chairman Yeager:
Is there anyone in support of this bill? [There was no one.] Is there anyone opposed? [There was no one.] Is there anyone neutral? [There was no one.] I will now close the hearing on S.B. 3 (R1). Is there any public comment? [There was none.] I will be recessing until the call of the Chair. We do not have any other bills in Committee at the moment, but I suspect we may get one or two more bills this afternoon. I do not know yet when we will come back as a Committee. With that, we will stand in recess [at 10:54 a.m.] until the call of the Chair.

The Judiciary Committee is going to come back to order [at 3:28 p.m.]. At this time, I will open up the hearing on Senate Bill 554.

Senate Bill 554: Revises provisions governing application of the legislative continuance statute in certain judicial or administrative proceedings. (BDR 1-90)

Kevin C. Powers, Chief Litigation Counsel:
As you know, the Legal Division of the Legislative Counsel Bureau is a nonpartisan legal agency. We do not ordinarily support or oppose any piece of legislation, policy, or viewpoint. However, the statute does authorize the Legislative Counsel to recommend the clarification of statutes. That is why I am before you today with Senate Bill 554.

To give you some background, this is a legislative continuance statute. *Nevada Revised Statutes* (NRS) 1.310 is existing law. It provides that if a member of the Legislature or the President of the Senate, during a legislative session, is a party to a judicial or administrative proceeding or is an attorney for a party to a judicial or administrative proceeding, that gives them sufficient cause to request a continuance in that administrative or judicial proceeding. That continuance should be granted as a matter of right.

However, there are statutes such as this legislative continuance statute in other jurisdictions. In fact, the legislatures in other states have enacted these types of statutes since at least the late 1800s. More recently, though, courts in other jurisdictions have exposed these statutes to a heightened level of judicial scrutiny. They have analyzed these statutes to determine whether they provide an objecting party—one who objects to the continuance—with an opportunity to argue that the continuance should not be granted because of extraordinary or emergency circumstances.

That is the background. This bill is not intended to change the policy of the statute. However, this bill is intended to address one particular issue that has arisen due to a district court decision. In 2017, a member of the Nevada Legislature requested one of these continuances, and a state district court determined this statute is unconstitutional as written. It did not provide what we call a "constitutional safety value" that would allow an objecting party, under extraordinary circumstances, to claim the continuance would create a substantial risk of irreparable harm, and therefore the continuance should not be granted. That decision by the district court was on review before the Nevada Supreme Court. However, while that review was pending, the parties in the underlying district court case settled the case, so the appeal became moot. The Nevada Supreme Court never decided the merits of whether or not the current legislative continuance statute in NRS 1.310 is unconstitutional as written. As a result, we are left with a statute that has potential constitutional infirmities. In order to clarify the statute, the Legal Division has proposed this piece of legislation.

I will walk you through the legislation. Pages 3 and 4 are obviously the bulk of the legislation. It is a one-section piece of legislation with regard to the substantive changes. It keeps the current policy that if a member of the Legislature or the President of the Senate, during a regular or special session, is a party to any action before a court or any administrative body or is an attorney to a party who is in an action before a court or administrative body, and that person files the request for a continuance, the court or

administrative body has a duty to grant that continuance. There is a mandatory continuance involved.

However, section 1, subsection 3 of the bill provides that constitutional safety valve. It provides that the court or administrative body shall not deny the request of continuance in whole or in part unless the objecting party satisfies its burden of proving that as a result of emergency or extraordinary circumstances, the objecting party has a substantial, existing right that would be defeated or abridged if the continuance is granted and the objecting party will suffer substantial and immediate irreparable harm if the continuance is granted. That gives the objecting party the opportunity to make a showing that in those exceptional circumstances, the continuance would create harm on that party, and the court can determine the continuance, either in whole or in part, would not be appropriate.

Finally, section 1, subsection 2 provides the extent of the continuance. If the continuance is granted, it is effective for the duration of the legislative session and for an additional seven calendar days following the session. Of course, if the party requesting the continuance asks for a shorter period, the continuance could be granted for that shorter period. Finally, in section 1, subsection 2—this is existing law—the continuance should be granted without the imposition of any bond, cost, or other term.

Just to emphasize, the point of the statute is that in most cases the continuance would be a matter of right. However, in those exceptional cases, there would be an opportunity for the objecting party to prove that substantial irreparable harm would be caused by the continuance and therefore the court would have discretion in that limited circumstance to determine if the continuance should be granted or denied in whole or in part.

Chairman Yeager:
I remember running into you and Senator Pickard at the Regional Justice Center, and I think the two of you were there for this issue. You mentioned the case was appealed, but then it was settled before resolution. Was there actually an oral argument that happened in front of the Court of Appeals or the Supreme Court, or did it not get to that point?

Kevin Powers:
There was an oral argument; it did get to that point. After the oral argument, the court considered whether they should reach the merits or whether the case had become moot because of the underlying resolution. The court ultimately issued a published opinion that the case had become moot and, therefore, they did not reach the merits.

Assemblywoman Backus:
As a practitioner who was given the courtesy under this by a lot of my opposing counsels and who did not have any problems with judges, I am sad to hear there were problems for another one of my colleagues. I have a question about page 4, lines 20 through 25 with respect to the time period for the continuance. When I was looking at the intent of the original language of the statute, I took it to be the time period we are up here. So nothing happens during those 120 days. So I am trying to get to the intent of section 1, subsection 2(a)(1), which provides

the additional seven days. If I was served with some discovery before I left, would I only have the seven days when I get back to get it done? I am trying to figure out that intent.

Kevin Powers:
As you mentioned, the existing statute says the continuance or the adjournment would be for the duration of the legislative session. The idea here is that the continuance would be extended for another seven calendar days, so the day after the session, a lawyer or a party is not expected to do something. Obviously, we are going to be here past midnight on that last day of session. The idea is to create a seven-day buffer zone to allow the attorney or party to have an opportunity to move from the session back into the situation of the judicial or administrative proceeding. I think in each particular case, we would have to determine exactly what is meant by the end of the continuance. If there was a continuance of discovery, it seems to me the discovery would have to be reinstated after that seven days. I think you would have to work out for each individual case whether that discovery was due seven days after the session, or whether seven days after the session you would have the opportunity to then figure out when to schedule the completion of a deposition, request for admission, or any of those other discovery matters.

Assemblywoman Backus:
Thank you for that and thank you for putting in here to file a motion because the law was originally unclear. I just started sending out letters saying, Ha-ha, it stayed. So thank you for clarifying that aspect of the statute as well.

Assemblywoman Cohen:
Since you have been researching what is going on in other states and their laws on this, can you give us an idea of what some of the exceptional circumstances are?

Kevin Powers:
Looking at some of the case law, an example of an exceptional circumstance would be someone seeking a preliminary injunction in a First Amendment case. If someone was claiming there was a law chilling his or her First Amendment rights, and a legislator was a party to that action or an attorney representing the party, that could be a situation where the court says a continuance for the entire legislative session would deny someone the opportunity to argue whether they were subjected to some sort of prior restraint or restriction on their First Amendment rights that would raise potential extraordinary or exceptional circumstances.

Another possible example could be in a family court case. There could be custody issues. A legislator could be a party or representing a party, and those custody issues may need to be in court sooner than the end of the legislative session to address whether or not a visitation is being provided or whether or not there should be a change in custody. I would think that in family law matters, you would also have the situation of failure to pay child support, which could create potentially exceptional circumstances if the other spouse was put into dire financial strains by failing to receive that child support.

I think it is on a case-by-case basis. You would have to first establish there are emergency or exceptional circumstances, and then you would have to establish that those circumstances actually create a substantial risk of irreparable harm in order to not have the continuance granted. I am trying to think of additional examples, but it has to be something where the need is immediate and great and the harm itself could potentially be immediate and great.

Assemblywoman Cohen:
I was also wondering about the timeline we are talking about. Was there any consideration of requiring the litigant to hire the attorney legislator before the election? You can think of a scenario in which someone wants a continuance, he is not getting it, there has already been an election so we know the attorney legislator is leaving soon, and then he rushes out and hires that legislator as an attorney.

Kevin Powers:
The current statute does contemplate that to a certain degree. If you look at NRS 1.310, subsection 2, it says if the legislator is an attorney for a party, they have to have been actually employed as the party's attorney before the commencement of the session. During the session, someone could not hire an attorney and claim the benefit of the statute. However, between the election and the session they could hire that attorney, and if the proceeding continued into the legislative session, they could claim the benefit of this particular statute.

Chairman Yeager:
Is there anyone in support? [There was no one.] Is there anyone in opposition? [There was no one.] Is there anyone in neutral? [There was no one.] At this time, I will close the hearing on Senate Bill 554. Committee members, that is the only bill we have at the moment, but again, I am going to stand in recess. We may get one or two additional bills today or tomorrow. For now, we will stand in recess [at 3:41 p.m.] until the call of the Chair.

Chairman Yeager:
I will call this meeting back to order [at 8:11 p.m.]. We are here to consider one of the bills we heard earlier today. That bill is Senate Bill 554. At this time, I am looking for a motion to do pass Senate Bill 554.

> ASSEMBLYWOMAN KRASNER MOVED TO DO PASS SENATE BILL 554.
>
> ASSEMBLYMAN WATTS SECONDED THE MOTION.

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

THE MOTION PASSED UNANIMOUSLY.

I do not know if we will get any more bills tonight, but at this time, we will be in recess [at 8:12 p.m.] until the call of the Chair.

Meeting is adjourned [at 9:22 p.m.].

RESPECTFULLY SUBMITTED:

_____
Lucas Glanzmann
Committee Secretary

APPROVED BY:

_____
Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.