

Assembly Bill No. 496—Committee on
Legislative Operations and Elections

CHAPTER.....

AN ACT relating to the Legislative Department of the State Government; revising and clarifying provisions relating to the Legislative Department of the State Government; clarifying provisions relating to legislative studies and investigations; clarifying provisions relating to the work produced by and matters entrusted to the Legislative Counsel Bureau; clarifying the statutory codification of the constitutional doctrines of separation of powers and legislative privilege and immunity; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the Legislative Commission has been given certain powers and duties regarding the operation of legislative studies and investigations assigned to it by a concurrent resolution of the Legislature. Existing law also imposes certain requirements and restrictions on the staff of the Legislative Counsel Bureau regarding such studies and investigations. (NRS 218E.205) **Section 1** of this bill clarifies this existing law to state that it applies when legislative studies and investigations are assigned by either a statute or a concurrent resolution.

Under existing law, the officers and employees of the Legislative Counsel Bureau are prohibited from disclosing the nature or content of any matter entrusted to the Legislative Counsel Bureau unless the person entrusting the matter to the Legislative Counsel Bureau requests or consents to the disclosure. Existing law also protects the work product of the officers and employees of the Legislative Counsel Bureau and generally prohibits its disclosure with limited exceptions. (NRS 218F.150) **Section 2** of this bill clarifies this existing law to state that it applies to any such matter or work in any form, including, without limitation, in any oral, written, audio, visual, digital or electronic form, and that any such matter or work includes, without limitation, any communications, information, answers, advice, opinions, recommendations, drafts, documents, records, questions, inquiries or requests in any such form.

Under existing case law, the constitutional doctrines of separation of powers and legislative privilege and immunity protect State Legislators from having to defend themselves, from being held liable and from being questioned or sanctioned in administrative or judicial proceedings for speech, debate, deliberation and other actions taken or performed within the sphere of legitimate legislative activity. (*Bogan v. Scott-Harris*, 523 U.S. 44, 54 (1998) (“Absolute legislative immunity attaches to all actions taken “in the sphere of legitimate legislative activity.” (quoting *Tenney v. Brandhove*, 341 U.S. 367, 376 (1951))); *Guinn v. Legislature (Guinn II)*, 119 Nev. 460, 472 (2003) (“Under the separation of powers doctrine, individual legislators cannot, nor should they, be subject to fines or other penalties for voting in a particular way.”); *Steiner v. Superior Court*, 58 Cal. Rptr. 2d 668, 678 n.20 (Cal. Ct. App. 1996) (“The California separation of powers provision, however, provides a sufficient ground to protect legislators from punitive action that unduly impinges on their function.”); Luther S. Cushing, *Elements of the Law & Practice of Legislative Assemblies* §§ 601-603 (1856); 1 Joseph Story, *Commentaries on the Constitution of the United States* § 866 (5th ed. 1905);

Thomas M. Cooley, *A Treatise on Constitutional Limitations* 929 (8th ed. 1927)) These constitutional doctrines include, without limitation, a testimonial privilege and an evidentiary privilege which protect State Legislators from having to testify or disclose documents in administrative or judicial proceedings when such acts would intrude upon, interfere with or pry into the legislative process. (*Gravel v. United States*, 408 U.S. 606, 613-22 (1972); *United States v. Rayburn House Office Bldg.*, 497 F.3d 654, 659-60 (D.C. Cir. 2007)) In addition to protecting State Legislators, these constitutional doctrines also protect any other person who takes or performs any actions within the sphere of legitimate legislative activity that would be protected if taken or performed by a State Legislator. (*Gravel v. United States*, 408 U.S. 606, 613-22 (1972); *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 507-11 (1975))

In Nevada, the constitutional doctrines of separation of powers and legislative privilege and immunity have been codified in statutory form in NRS 41.071, and the statute expressly and explicitly incorporates the long-standing case law interpreting and applying the constitutional doctrines of separation of powers and legislative privilege and immunity under the Speech or Debate Clause of Section 6 of Article I of the United States Constitution. To provide further assistance to the reader of the statute who may be unfamiliar with the existing case law, **section 3** of this bill amends NRS 41.071 to specify that the statute applies to any actions taken or performed within the sphere of legitimate legislative activity, whether or not the Legislature is in a regular or special session, and to describe, without limitation, some of the actions that are deemed to be taken or performed within the sphere of legitimate legislative activity. **Section 3**, however, provides that such a description is intended to be illustrative and is not intended to be exhaustive or exclusive and must not be interpreted as a limitation or restriction on the constitutional doctrines of separation of powers and legislative privilege and immunity. **Section 3** also codifies the existing case law by providing that in addition to protecting State Legislators, these constitutional doctrines also protect any other person who takes or performs any actions within the sphere of legitimate legislative activity that would be protected if taken or performed by a State Legislator.

Finally, **section 5** of this bill states that the provisions of this bill are a legislative pronouncement of already existing law and are intended to clarify rather than change such existing law. When a bill is a legislative pronouncement of already existing law or otherwise clarifies such existing law, the general rule is that the bill will be applied to any cases pending on the bill's effective date, even if those cases were commenced before that effective date. (*Valdez v. Employers Ins. Co. of Nev.*, 123 Nev. 170, 179-80 (2007); *Madera v. State Indus. Ins. Sys.*, 114 Nev. 253, 257-58 (1998); *Truckee River Gen. Elec. Co. v. Durham*, 38 Nev. 311, 316 (1915)) In accordance with this general rule, **section 5** states that this bill applies to any administrative or judicial proceedings pending or otherwise unresolved on the effective date of this bill, even if the proceedings were commenced before the effective date of this bill. **Section 6** of this bill provides that it becomes effective upon passage and approval.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~for~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 218E.205 is hereby amended to read as follows:

218E.205 1. Between regular sessions, the Legislative Commission:

(a) Shall fix the work priority of all studies and investigations assigned to it by a ***statute or*** concurrent resolution or directed by an order of the Legislative Commission, within the limits of available time, money and staff.

(b) Shall not make studies or investigations directed by a resolution of only one House or studies or investigations proposed but not approved during the preceding regular session.

2. All requests for the drafting of legislative measures to be recommended as the result of a study or investigation must be made in accordance with NRS 218D.160.

3. Except as otherwise provided by NRS 218E.210, between regular sessions, a study or investigation may not be initiated or continued by the Fiscal Analysts, the Legislative Auditor, the Legislative Counsel or the Research Director and their staffs, except studies and investigations which have been specifically authorized by a ***statute***, concurrent resolution or ~~by an~~ order of the Legislative Commission.

4. A study or investigation may not be carried over from one regular session to the next without additional authorization by a ***statute***, concurrent resolution ~~or~~ ***or order of the Legislative Commission***, except audits in progress whose carryover has been approved by the Legislative Commission.

5. Except as otherwise provided by ***a*** specific statute, the staff of the Legislative Counsel Bureau shall not serve as primary administrative or professional staff for a committee ***established by a statute, concurrent resolution or order of the Legislative Commission to conduct a study or investigation***, unless the chair of the committee is required by ***the*** statute ~~or~~ ***, concurrent*** resolution ***or order of the Legislative Commission*** to be a Legislator.

6. The Legislative Commission shall review and approve the budget and work program and any changes to the budget or work program for each study or investigation conducted by the Legislative Commission or a committee or subcommittee established by the Legislative Commission.

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7. A committee or subcommittee established to conduct a study or investigation assigned to the Legislative Commission by a *statute or* concurrent resolution or directed by an order of the Legislative Commission must, unless otherwise ordered by the Legislative Commission, meet not earlier than January 1 of the even-numbered year and not later than June 30 of that year.

Sec. 2. NRS 218F.150 is hereby amended to read as follows:

218F.150 1. The Director and other officers and employees of the Legislative Counsel Bureau shall not:

(a) Oppose or urge legislation, except as the duties of the Director, the Legislative Auditor, the Legislative Counsel, the Research Director and the Fiscal Analysts require them to make recommendations to the Legislature.

(b) Except as otherwise provided in this section, NRS 218D.130, 218D.135, 218D.250 and 353.211, disclose to any person outside the Legislative Counsel Bureau the nature or content of any matter entrusted to the Legislative Counsel Bureau, and such matter is confidential and privileged and is not subject to *discovery or* subpoena, unless the person entrusting the matter to the Legislative Counsel Bureau requests or consents to the disclosure.

2. The nature or content of any work ~~{previously done}~~ *produced* by the officers and employees of the Research Division may be disclosed if or to the extent that the disclosure does not reveal the identity of the person who requested it or include any ~~{material}~~ *matter* submitted by the requester which has not been published or publicly disclosed.

3. The nature and content of ~~{the}~~ *any* work ~~{product of}~~ *produced by* the officers and employees of the Legal Division and the Fiscal Analysis Division *and any matter entrusted to those officers and employees to produce such work* are confidential and privileged and are not subject to *discovery or* subpoena.

4. *The provisions of subsections 1, 2 and 3 apply to any matter or work in any form, including, without limitation, in any oral, written, audio, visual, digital or electronic form, and such matter or work includes, without limitation, any communications, information, answers, advice, opinions, recommendations, drafts, documents, records, questions, inquiries or requests in any such form.*

5. When a statute has been enacted or a resolution adopted, the Legislative Counsel shall upon request disclose to any person the state or other jurisdiction from whose law it appears to have been adopted.

~~15.1~~ 6. The records of the travel expenses of Legislators and officers and employees of the Legislature and the Legislative Counsel Bureau are available for public inspection at such reasonable hours and under such other conditions as the Legislative Commission prescribes.

Sec. 3. NRS 41.071 is hereby amended to read as follows:

41.071 1. The Legislature hereby finds and declares that:

(a) The Framers of the Nevada Constitution created a system of checks and balances so that the constitutional powers separately vested in the Legislative, Executive and Judicial Departments of State Government may be exercised without intrusion from the other Departments.

(b) As part of the system of checks and balances, the constitutional doctrines of separation of powers and legislative privilege and immunity facilitate the autonomy of the Legislative Department by curtailing intrusions by the Executive or Judicial Department into the sphere of legitimate legislative activities.

(c) The constitutional doctrines of separation of powers and legislative privilege and immunity protect State Legislators from having to defend themselves, from being held liable and from being questioned or sanctioned in administrative or judicial proceedings for speech, debate, deliberation and other actions performed within the sphere of legitimate legislative activity.

(d) Under the constitutional doctrines of separation of powers and legislative privilege and immunity, State Legislators must not be hindered or obstructed by executive or judicial oversight that realistically threatens to control their conduct as Legislators.

(e) Under the constitutional doctrines of separation of powers and legislative privilege and immunity, State Legislators must be free to represent the interests of their constituents with assurance that they will not later be called to task for that representation by the other branches of government.

(f) Under the constitutional doctrines of separation of powers and legislative privilege and immunity, State Legislators must not be questioned or sanctioned by the other branches of government for their actions in carrying out their core or essential legislative functions.

(g) Under the constitutional doctrines of separation of powers and legislative privilege and immunity, the only governmental entity that may question or sanction a State Legislator for any actions taken within the sphere of legitimate legislative activity is the Legislator's own House pursuant to Section 6 of Article 4 of the Nevada Constitution.

(h) Therefore, the purpose and effect of this section is to implement the constitutional doctrines of separation of powers and legislative privilege and immunity by codifying in statutory form the constitutional right of State Legislators to be protected from having to defend themselves, from being held liable and from being questioned or sanctioned in administrative or judicial proceedings for speech, debate, deliberation and other actions performed within the sphere of legitimate legislative activity.

2. For any speech or debate in either House, a State Legislator shall not be questioned in any other place.

3. In interpreting and applying the provisions of this section, the interpretation and application given to the constitutional doctrines of separation of powers and legislative privilege and immunity under the Speech or Debate Clause of Section 6 of Article I of the Constitution of the United States must be considered to be persuasive authority.

4. The rights, privileges and immunities recognized by this section are in addition to any other rights, privileges and immunities recognized by law.

5. *This section applies to any actions, in any form, taken or performed within the sphere of legitimate legislative activity, whether or not the Legislature is in a regular or special session, and such actions include, without limitation:*

(a) Any actions, in any form, taken or performed with regard to any legislative measure or other matter within the jurisdiction of the Legislature, including, without limitation, conceiving, formulating, investigating, developing, requesting, drafting, introducing, sponsoring, processing, reviewing, revising, amending, communicating, discussing, debating, negotiating, allying, caucusing, meeting, considering, supporting, advocating, approving, opposing, blocking, disapproving or voting in any form.

(b) Any actions, in any form, taken or performed with regard to any legislative investigation, study, inquiry or information-gathering concerning any legislative measure or other matter within the jurisdiction of the Legislature, including, without limitation, chairing or serving on a committee, preparing committee reports or other documents, issuing subpoenas or conducting disciplinary or impeachment proceedings.

(c) Any actions, in any form, taken or performed with regard to requesting, seeking or obtaining any form of aid, assistance, counsel or services from any officer or employee of the Legislature concerning any legislative measure or other matter within the

jurisdiction of the Legislature, including, without limitation, any communications, information, answers, advice, opinions, recommendations, drafts, documents, records, questions, inquiries or requests in any form.

6. The provisions of subsection 5:

(a) Are intended to be illustrative;

(b) Are not intended to be exhaustive or exclusive; and

(c) Must not be interpreted as a limitation or restriction on the constitutional doctrines of separation of powers and legislative privilege and immunity.

7. As used in this section ~~F-1~~:

(a) "Any form" includes, without limitation, any oral, written, audio, visual, digital or electronic form.

(b) "Legislative measure" means any existing, suggested, proposed or pending bill, resolution, law, statute, ballot question, initiative, referendum or other legislative or constitutional measure.

(c) "Legislature" means:

(1) The Legislature or either House;

(2) Any committee of either House;

(3) Any joint committee of both Houses; or

(4) Any other committee, subcommittee, commission, agency or entity created or authorized by the Legislature to perform legislative functions at the direction of the Legislature, including, without limitation, the Legislative Commission, the Legislative Counsel Bureau or any other agency or entity of the Legislative Department of State Government.

(d) "State Legislator" or "Legislator" means ~~F-1~~:

(1) Any current or former member of the Senate or Assembly of the State of Nevada ~~F-1~~; or

(2) Any other person who takes or performs any actions within the sphere of legitimate legislative activity that would be protected if taken or performed by any member of the Senate or Assembly, including, without limitation, any such actions taken or performed by any current or former officer or employee of the Legislature.

Sec. 4. NRS 239.010 is hereby amended to read as follows:

239.010 1. Except as otherwise provided in this section and NRS 1.4683, 1A.110, **41.071**, 49.095, 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413, 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270,

116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280, 119A.280, 119A.653, 119B.370, 119B.382, 120A.690, 125.130, 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057, 127.130, 127.140, 127.2817, 130.312, 159.044, 172.075, 172.245, 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179A.450, 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392, 209.3925, 209.419, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464, 217.475, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 228.270, 228.450, 228.495, 228.570, 231.069, 233.190, 237.300, 239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140, 239C.210, 239C.230, 239C.250, 239C.270, 240.007, 241.020, 241.030, 242.105, 244.264, 244.335, 250.087, 250.130, 250.140, 250.150, 268.095, 268.490, 268.910, 271A.105, 281.195, 281A.350, 281A.440, 281A.550, 284.4068, 286.110, 287.0438, 289.025, 289.080, 289.387, 293.5002, 293.503, 293.558, 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070, 338.1379, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205, 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.610, 365.138, 366.160, 368A.180, 372A.080, 378.290, 378.300, 379.008, 386.655, 387.626, 387.631, 388.5275, 388.528, 388.5315, 388.750, 391.035, 392.029, 392.147, 392.264, 392.271, 392.652, 392.850, 394.167, 394.1698, 394.447, 394.460, 394.465, 396.3295, 396.405, 396.525, 396.535, 398.403, 408.3885, 408.3886, 412.153, 416.070, 422.290, 422.305, 422A.320, 422A.350, 425.400, 427A.1236, 427A.872, 432.205, 432B.175, 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 433.534, 433A.360, 439.270, 439.840, 439B.420, 440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395, 445A.665, 445B.570, 449.209, 449.245, 449.720, 453.1545, 453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403, 463.3407, 463.790, 467.1005, 467.137, 481.063, 482.170, 482.5536, 483.340, 483.363, 483.800, 484E.070, 485.316, 503.452, 522.040, 534A.031, 561.285, 571.160, 584.655, 598.0964, 598A.110, 603.070, 603A.210, 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350, 618.341, 618.425, 622.310, 623.131, 623A.353, 624.110, 624.265, 624.327, 625.425, 625A.185, 628.418, 629.069, 630.133, 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125, 632.405, 633.283, 633.301, 633.524, 634.212, 634.214, 634A.185, 635.158, 636.107, 637.085, 637A.315, 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075,

640A.220, 640B.730, 640C.400, 640C.745, 640C.760, 640D.190, 640E.340, 641.090, 641A.191, 641B.170, 641C.760, 642.524, 643.189, 644.446, 645.180, 645.625, 645A.050, 645A.082, 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135, 645E.300, 645E.375, 645G.510, 645H.320, 645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 654.110, 656.105, 661.115, 665.130, 665.133, 669.275, 669.285, 669A.310, 671.170, 673.430, 675.380, 676A.340, 676A.370, 677.243, 679B.122, 679B.152, 679B.159, 679B.190, 679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.280, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110, 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 692A.117, 692C.190, 692C.420, 693A.480, 693A.615, 696B.550, 703.196, 704B.320, 704B.325, 706.1725, 710.159, 711.600, sections 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of chapter 391, Statutes of Nevada 2013 and unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

2. A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.

3. A governmental entity that has legal custody or control of a public book or record shall not deny a request made pursuant to subsection 1 to inspect or copy or receive a copy of a public book or record on the basis that the requested public book or record contains information that is confidential if the governmental entity can redact, delete, conceal or separate the confidential information from the information included in the public book or record that is not otherwise confidential.

4. A person may request a copy of a public record in any medium in which the public record is readily available. An officer, employee or agent of a governmental entity who has legal custody or control of a public record:

(a) Shall not refuse to provide a copy of that public record in a readily available medium because the officer, employee or agent has

already prepared or would prefer to provide the copy in a different medium.

(b) Except as otherwise provided in NRS 239.030, shall, upon request, prepare the copy of the public record and shall not require the person who has requested the copy to prepare the copy himself or herself.

Sec. 5. The amendatory provisions of this act:

1. Are a legislative pronouncement of already existing law and are intended to clarify rather than change such existing law; and

2. Apply to any administrative or judicial proceedings:

(a) Commenced on or after the effective date of this act; or

(b) Commenced before the effective date of this act if the proceedings are pending or otherwise unresolved on the effective date of this act.

Sec. 6. This act becomes effective upon passage and approval.