

LEGISLATIVE BILL 681

Approved by the Governor August 10, 2020

Introduced by Hilgers, 21.

A BILL FOR AN ACT relating to the Legislature; to amend sections 29-2011.02, 29-2011.03, and 50-408, Reissue Revised Statutes of Nebraska, and sections 50-406, 50-407, and 50-1205, Revised Statutes Cumulative Supplement, 2018; to change provisions relating to witnesses who refuse to testify or provide information, powers of the Legislative Council and committees of the Legislature, litigation related to legislative subpoenas, and enforcement of legislative subpoenas; to provide for renewal of legislative subpoenas as prescribed; to provide that certain legislative issues are not justiciable; to change provisions relating to certain witness fees; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 29-2011.02, Reissue Revised Statutes of Nebraska, is amended to read:

29-2011.02 Whenever a witness refuses, on the basis of the privilege against self-incrimination, to testify or to provide other information in a criminal proceeding or investigation before a court, a grand jury, the Auditor of Public Accounts, the Legislative Council, or a standing committee or a special legislative investigative or oversight committee of the Legislature authorized pursuant to section 50-404, the court, on motion of the county attorney, other prosecuting attorney, Auditor of Public Accounts, chairperson of the Executive Board of the Legislative Council, or chairperson of a standing or special committee of the Legislature, may order the witness to testify or to provide other information. The witness may not refuse to comply with such an order of the court on the basis of the privilege against self-incrimination, but no testimony or other information compelled under the court's order or any information directly or indirectly derived from such testimony or other information may be used against the witness in any criminal case except in a prosecution for perjury, giving a false statement, or failing to comply with the order of the court.

Sec. 2. Section 29-2011.03, Reissue Revised Statutes of Nebraska, is amended to read:

29-2011.03 The county attorney, other prosecuting attorney, Auditor of Public Accounts, or chairperson of the Executive Board of the Legislative Council or chairperson of a standing committee or a special legislative investigative or oversight committee of the Legislature authorized pursuant to section 50-404 upon an affirmative vote of a majority of the board or committee, may request an order pursuant to section 29-2011.02 when in such person's his or her judgment:

(1) The testimony or other information from such individual may be necessary to the public interest; and

(2) Such individual has refused or is likely to refuse to testify or provide other information on the basis of the privilege against self-incrimination.

Sec. 3. Section 50-406, Revised Statutes Cumulative Supplement, 2018, is amended to read:

50-406 (1) It is within the inherent power of the Legislature, including the Legislative Council and any standing committee of the Legislature, to secure needed information in order to legislate, hold hearings, and administer oaths, as the council or committee deems necessary, and to conduct investigations of matters within the subject matter jurisdiction of the council or committee. This power of inquiry is broad and indispensable.

(2) The In the discharge of any duty imposed by the Legislative Council, by statute, or by a resolution of the Legislature, the council, any committee thereof, and any standing or special committee created by statute or resolution of the Legislature may hold public hearings and may administer oaths, issue subpoenas with when the committee has received prior approval, by a majority vote, of the Executive Board of the Legislative Council to issue subpoenas in connection with the specific inquiry or investigation in question, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and cause the depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court.

(3) A standing committee of the Legislature may hold public hearings, administer oaths, and gather information. After receiving prior approval, by a majority vote, of the Executive Board of the Legislative Council, a standing committee may issue subpoenas to compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony and cause the depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court.

(4)(a) A special legislative investigative or oversight committee may hold public hearings, administer oaths, and gather information pursuant to a statute

or legislative resolution that provides for a specific legislative inquiry or investigation. In the case of a resolution, such resolution shall have first been adopted by a majority of the members of the Legislature during a legislative session or by a majority of the members of the Executive Board of the Legislative Council during the interim between legislative sessions.

(b) If authorized to issue subpoenas by statute or by a resolution described in subdivision (4)(a) of this section, a special legislative investigative or oversight committee may issue subpoenas to compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony and cause the depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court.

(c) A resolution or statute creating a special legislative investigative or oversight committee may prescribe limitations on the authority granted by this section.

(5) When authorized to issue subpoenas under this section, the The council or a the committee may require any state agency, political subdivision, or person to provide information relevant to the council's or committee's work, and the state agency, political subdivision, or person shall:

(a) Appear at a hearing on the date set in the subpoena; and

(b) Provide provide the information requested within thirty days after the request except as provided for in the a subpoena. The statute or resolution creating a committee may prescribe limitations on the authority granted by this section.

(6) Litigation to compel or quash compliance with authority exercised pursuant to this section and section 50-407 shall be advanced on the trial docket and heard and decided by the court as quickly as possible. The court shall issue its decision no later than twenty days after the filing of the application or petition or a motion to quash, whichever is filed first. Either party may appeal to the Court of Appeals within ten days after a decision is rendered.

(7) The district court of Lancaster County has jurisdiction over all litigation arising under this section and section 50-407. In all such litigation, the Executive Board of the Legislative Council executive board shall provide for legal representation for the council or committee.

Sec. 4. Section 50-407, Revised Statutes Cumulative Supplement, 2018, is amended to read:

50-407 (1) In case of disobedience on the part of any person, including a representative of a state agency or political subdivision, to comply with any subpoena issued pursuant to section 50-406 on behalf of the council or any committee thereof or in case of the refusal of any witness to testify on any matters regarding which the witness he or she may be lawfully interrogated, the Legislative Council or the standing committee or special legislative investigative or oversight committee which issued the subpoena shall, at the hearing at which the person was subpoenaed to appear, hold a vote to find the person in contempt unless the council or committee votes to find that the failure to comply or refusal to testify was not willful.

(2) If the council or committee finds a person in contempt as provided in subsection (1) of this section, the council or committee may, by application or petition to the district court of Lancaster County, request the court to or the judge thereof, on application of a member of the council, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. The application or petition shall be filed by the chairperson of the Executive Board of the Legislative Council, and in the case of a standing or special legislative investigative or oversight committee, such filing shall be joined by the chairperson of such committee.

(3) If a witness who has been subpoenaed pursuant to section 50-406 refuses to testify before the council or a committee a special committee of the Legislature authorized pursuant to section 50-404 on the basis of the privilege against self-incrimination, the chairperson of the committee may request a court order may be requested pursuant to sections 29-2011.02 and 29-2011.03. In the case of a proceeding before the Legislative Council, the request shall be filed by the chairperson of the Executive Board of the Legislative Council. In the case of a proceeding before a standing committee or special legislative investigative or oversight committee, the request shall be filed by the chairperson of such committee.

Sec. 5. (1)(a) If a member of the Legislature presents a newly constituted Legislature with a subpoena issued pursuant to section 50-406 during a previous legislative biennium and such subpoena is still pending:

(i) The Executive Board of the Legislative Council shall vote to determine whether to renew the subpoena; and

(ii) If the subpoena was issued by a standing committee, such committee shall also vote to determine whether to renew the subpoena.

(b) The vote or votes required in subdivision (1)(a) of this section shall be taken no later than ten days after the day the regular session of the Legislature commences as provided in Article III, section 10, of the Constitution of Nebraska.

(c) If a majority of the members of the Executive Board of the Legislative Council and, if applicable, of the committee, are in favor of renewing the subpoena, the subpoena is renewed and relates back to its previous issuance and such subpoena shall be considered to have been in full force and effect for such entire period.

(2) The Legislature has the constitutional authority to determine the rules of its proceedings. The question of the referencing of an investigation or inquiry is not justiciable and cannot be challenged or invalidated in a judicial proceeding.

Sec. 6. Section 50-408, Reissue Revised Statutes of Nebraska, is amended to read:

50-408 Each witness who appears before the Legislative Council, any standing committee, or any special legislative investigative or oversight committee council, or any committee thereof, by subpoena of such council or committee ~~its order,~~ other than a state officer or employee, shall receive for ~~his or her~~ attendance the fees provided for witnesses in civil cases in courts of record and mileage as provided in section 81-1176 ~~for state employees,~~ which shall be audited and paid upon the presentation of proper vouchers sworn to by such witness and approved by the secretary and chairperson of the council.

Sec. 7. Section 50-1205, Revised Statutes Cumulative Supplement, 2018, is amended to read:

50-1205 The committee shall:

(1) Adopt, by majority vote, procedures consistent with the Legislative Performance Audit Act to govern the business of the committee and the conduct of performance audits;

(2) Ensure that performance audits done by the committee are not undertaken based on or influenced by special or partisan interests;

(3) Review performance audit requests and select, by majority vote, agencies or agency programs for performance audit;

(4) Review, amend, if necessary, and approve a scope statement and an audit plan for each performance audit;

(5) Respond to inquiries regarding performance audits;

(6) Inspect or approve the inspection of the premises, or any parts thereof, of any agency or any property owned, leased, or operated by an agency as frequently as is necessary in the opinion of the committee to carry out a performance audit or preaudit inquiry;

(7) Inspect and examine, or approve the inspection and examination of, the records and documents of any agency as a part of a performance audit or preaudit inquiry;

(8) Pursuant to section 50-406, administer ~~Administer~~ oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and cause the depositions of witnesses either residing within or without the state to be taken in the manner prescribed by law for taking depositions in civil actions in the district court;

(9) Review completed performance audit reports prepared by the office, together with comments from the evaluated agency, and adopt recommendations and incorporate them into a committee report;

(10) Release the committee report to the public and distribute it electronically to the Clerk of the Legislature with or without benefit of a public hearing;

(11) Hold a public hearing, at the committee's discretion, for the purpose of receiving testimony prior to issuance of the committee report;

(12) Establish a system to ascertain and monitor an agency's implementation of the recommendations contained in the committee report and compliance with any statutory changes resulting from the recommendations;

(13) Issue an annual report each September, to be prepared by the Legislative Auditor and approved by the committee, summarizing recommendations made pursuant to reports of performance audits during the previous fiscal year and the status of implementation of those recommendations;

(14) Consult with the Legislative Auditor regarding the staffing and budgetary needs of the office and assist in presenting budget requests to the Appropriations Committee of the Legislature;

(15) Approve or reject, within the budgetary limits of the office, contracts to retain consultants to assist with performance audits requiring specialized knowledge or expertise. Requests for consultant contracts shall be approved by the Legislative Auditor and presented to the Legislative Performance Audit Committee by the Legislative Auditor. A majority vote shall be required to approve consultant contract requests. For purposes of section 50-1213, subsection (11) of section 77-2711, and subsections (10) through (13) of section 77-27,119, any consultant retained to assist with a performance audit or preaudit inquiry shall be considered an employee of the office during the course of the contract; and

(16) At its discretion, and with the agreement of the Auditor of Public Accounts, conduct joint fiscal or performance audits with the Auditor of Public Accounts. The details of any joint audit shall be agreed upon in writing by the committee and the Auditor of Public Accounts.

Sec. 8. Original sections 29-2011.02, 29-2011.03, and 50-408, Reissue Revised Statutes of Nebraska, and sections 50-406, 50-407, and 50-1205, Revised Statutes Cumulative Supplement, 2018, are repealed.