

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 681**

FINAL READING

Introduced by Hilgers, 21.

Read first time January 23, 2019

Committee: Executive Board

1 A BILL FOR AN ACT relating to the Legislature; to amend sections  
2 29-2011.02, 29-2011.03, and 50-408, Reissue Revised Statutes of  
3 Nebraska, and sections 50-406, 50-407, and 50-1205, Revised Statutes  
4 Cumulative Supplement, 2018; to change provisions relating to  
5 witnesses who refuse to testify or provide information, powers of  
6 the Legislative Council and committees of the Legislature,  
7 litigation related to legislative subpoenas, and enforcement of  
8 legislative subpoenas; to provide for renewal of legislative  
9 subpoenas as prescribed; to provide that certain legislative issues  
10 are not justiciable; to change provisions relating to certain  
11 witness fees; to harmonize provisions; and to repeal the original  
12 sections.

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

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

3 29-2011.02 Whenever a witness refuses, on the basis of the privilege  
4 against self-incrimination, to testify or to provide other information in  
5 a criminal proceeding or investigation before a court, a grand jury, the  
6 Auditor of Public Accounts, the Legislative Council, or a standing  
7 committee or a special legislative investigative or oversight committee  
8 ~~of the Legislature authorized pursuant to section 50-404,~~ the court, on  
9 motion of the county attorney, other prosecuting attorney, Auditor of  
10 Public Accounts, chairperson of the Executive Board of the Legislative  
11 Council, or chairperson of a standing or special committee of the  
12 Legislature, may order the witness to testify or to provide other  
13 information. The witness may not refuse to comply with such an order of  
14 the court on the basis of the privilege against self-incrimination, but  
15 no testimony or other information compelled under the court's order or  
16 any information directly or indirectly derived from such testimony or  
17 other information may be used against the witness in any criminal case  
18 except in a prosecution for perjury, giving a false statement, or failing  
19 to comply with the order of the court.

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

22 29-2011.03 The county attorney, other prosecuting attorney, Auditor  
23 of Public Accounts, or chairperson of the Executive Board of the  
24 Legislative Council or chairperson of a standing committee or a special  
25 legislative investigative or oversight committee of the Legislature  
26 ~~authorized pursuant to section 50-404~~ upon an affirmative vote of a  
27 majority of the board or committee, may request an order pursuant to  
28 section 29-2011.02 when in such person's ~~his or her~~ judgment:

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

31 (2) Such individual has refused or is likely to refuse to testify or

1 provide other information on the basis of the privilege against self-  
2 incrimination.

3 Sec. 3. Section 50-406, Revised Statutes Cumulative Supplement,  
4 2018, is amended to read:

5 50-406 (1) It is within the inherent power of the Legislature,  
6 including the Legislative Council and any standing committee of the  
7 Legislature, to secure needed information in order to legislate, hold  
8 hearings, and administer oaths, as the council or committee deems  
9 necessary, and to conduct investigations of matters within the subject  
10 matter jurisdiction of the council or committee. This power of inquiry is  
11 broad and indispensable.

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

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

1       (4)(a) A special legislative investigative or oversight committee  
2 may hold public hearings, administer oaths, and gather information  
3 pursuant to a statute or legislative resolution that provides for a  
4 specific legislative inquiry or investigation. In the case of a  
5 resolution, such resolution shall have first been adopted by a majority  
6 of the members of the Legislature during a legislative session or by a  
7 majority of the members of the Executive Board of the Legislative Council  
8 during the interim between legislative sessions.

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

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

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

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

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

29       (6) Litigation to compel or quash compliance with authority  
30 exercised pursuant to this section and section 50-407 shall be advanced  
31 on the trial docket and heard and decided by the court as quickly as

1 possible. The court shall issue its decision no later than twenty days  
2 after the filing of the application or petition or a motion to quash,  
3 whichever is filed first. Either party may appeal to the Court of Appeals  
4 within ten days after a decision is rendered.

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

10 Sec. 4. Section 50-407, Revised Statutes Cumulative Supplement,  
11 2018, is amended to read:

12 50-407 (1) In case of disobedience on the part of any person,  
13 including a representative of a state agency or political subdivision, to  
14 comply with any subpoena issued pursuant to section 50-406 on behalf of  
15 the council or any committee thereof or in case of the refusal of any  
16 witness to testify on any matters regarding which the witness he or she  
17 may be lawfully interrogated, the Legislative Council or the standing  
18 committee or special legislative investigative or oversight committee  
19 which issued the subpoena shall, at the hearing at which the person was  
20 subpoenaed to appear, hold a vote to find the person in contempt unless  
21 the council or committee votes to find that the failure to comply or  
22 refusal to testify was not willful.

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

1 investigative or oversight committee, such filing shall be joined by the  
2 chairperson of such committee.

3 (3) If a witness who has been subpoenaed pursuant to section 50-406  
4 refuses to testify before the council or a committee a special committee  
5 of the Legislature authorized pursuant to section 50-404 on the basis of  
6 the privilege against self-incrimination, the chairperson of the  
7 committee may request a court order may be requested pursuant to sections  
8 29-2011.02 and 29-2011.03. In the case of a proceeding before the  
9 Legislative Council, the request shall be filed by the chairperson of the  
10 Executive Board of the Legislative Council. In the case of a proceeding  
11 before a standing committee or special legislative investigative or  
12 oversight committee, the request shall be filed by the chairperson of  
13 such committee.

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

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

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

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

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

31 (2) The Legislature has the constitutional authority to determine

1 the rules of its proceedings. The question of the referencing of an  
2 investigation or inquiry is not justiciable and cannot be challenged or  
3 invalidated in a judicial proceeding.

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

6 50-408 Each witness who appears before the Legislative Council, any  
7 standing committee, or any special legislative investigative or oversight  
8 committee council, or any committee thereof, by subpoena of such council  
9 or committee its order, other than a state officer or employee, shall  
10 receive for ~~his or her~~ attendance the fees provided for witnesses in  
11 civil cases in courts of record and mileage as provided in section  
12 81-1176 ~~for state employees~~, which shall be audited and paid upon the  
13 presentation of proper vouchers sworn to by such witness and approved by  
14 the secretary and chairperson of the council.

15 Sec. 7. Section 50-1205, Revised Statutes Cumulative Supplement,  
16 2018, is amended to read:

17 50-1205 The committee shall:

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

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

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

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

27 (5) Respond to inquiries regarding performance audits;

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

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

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

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

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

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

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

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

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

30 (15) Approve or reject, within the budgetary limits of the office,  
31 contracts to retain consultants to assist with performance audits



1 requiring specialized knowledge or expertise. Requests for consultant  
2 contracts shall be approved by the Legislative Auditor and presented to  
3 the Legislative Performance Audit Committee by the Legislative Auditor. A  
4 majority vote shall be required to approve consultant contract requests.  
5 For purposes of section 50-1213, subsection (11) of section 77-2711, and  
6 subsections (10) through (13) of section 77-27,119, any consultant  
7 retained to assist with a performance audit or preaudit inquiry shall be  
8 considered an employee of the office during the course of the contract;  
9 and

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

15 Sec. 8. Original sections 29-2011.02, 29-2011.03, and 50-408,  
16 Reissue Revised Statutes of Nebraska, and sections 50-406, 50-407, and  
17 50-1205, Revised Statutes Cumulative Supplement, 2018, are repealed.