

SENATE BILL NO. 89—COMMITTEE ON JUDICIARY

FEBRUARY 13, 2007

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning legal representation of state agencies, officers and employees. (BDR 3-1)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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

AN ACT relating to legal representation; requiring the Attorney General to maintain and report certain information concerning decisions regarding legal representation in tort actions involving state agencies, officers and employees; revising certain provisions regarding the use of private legal counsel by certain state entities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the Attorney General provides legal counsel to any present or former officer or employee of the State, any immune contractor or any State Legislator in a civil action brought against that person based on any alleged act or omission relating to the person's public duty or employment if the Attorney General determines that it appears the person was acting within the course and scope of his public duty or employment and in good faith. (NRS 41.0339) The Attorney General may also employ special counsel if the Attorney General determines that it is impracticable, uneconomical or could constitute a conflict of interest to represent the person. (NRS 41.03435) Additionally, if an insurer is authorized to defend the person, the Attorney General may tender the defense to the insurer. (NRS 41.0345)

Section 1 of this bill requires the Attorney General to create a written record setting forth the basis for the determination to defend or not defend a person, the decision to employ special counsel to defend a person and the decision to tender the defense of a person to an insurer. **Section 1** also requires the Attorney General to provide a report to the Legislature concerning each matter in which special counsel is employed. **Section 1** provides that any written record or report prepared by the



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Attorney General is generally not admissible in evidence in any judicial or administrative proceeding.

Under existing law, the Attorney General is the legal adviser on all state matters arising in the Executive Department of State Government and represents all entities in the Executive Department unless the Legislature has enacted legislation specifically authorizing the employment of private legal counsel. (NRS 228.110) The Attorney General is also required to provide written legal opinions, upon request, concerning questions of law. (NRS 228.150) Section 3 of this bill provides that if a state entity employs private legal counsel and such counsel issues a legal opinion involving the interpretation of state or federal law, that legal opinion is not entitled to the same weight and deference as an opinion of the Attorney General.

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

Section 1. Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The Attorney General shall create a written record setting forth the basis for each of the following determinations and decisions as soon as practicable after making the determination or decision:

(a) The determination of whether or not to tender the defense of a person pursuant to NRS 41.03415.

(b) The decision to employ special counsel pursuant to NRS 41.03435.

(c) The decision to tender the defense to an insurer pursuant to NRS 41.0345.

2. On or before February 1 of each odd-numbered year, the Attorney General shall submit a report to the Director of the Legislative Counsel Bureau for transmittal to the Chairmen of the Assembly and Senate Standing Committees on Judiciary and any other interested Legislators. The report must include, for the period since the previous such report, if any:

(a) A summary of each matter in which special counsel was employed pursuant to NRS 41.03435 that includes, without limitation, a description of the nature and current status of the matter;

(b) A copy of the written record concerning the decision to employ special counsel for the matter; and

(c) An accounting of all money owed and all money paid during that period for the employment of special counsel for the matter.

3. Any written record or report created pursuant to this section is not admissible in evidence at trial or in any other judicial or administrative proceeding in which the person sued as a public officer, employee, immune contractor, member of a board



1 *or commission, or Legislator is a party, except in connection with*
2 *an application to withdraw as the attorney of record.*

3 **Sec. 2.** NRS 41.0338 is hereby amended to read as follows:

4 41.0338 As used in NRS 41.0338 to 41.0347, inclusive, *and*
5 *section 1 of this act*, unless the context otherwise requires, “official
6 attorney” means:

7 1. The Attorney General, in an action which involves a present
8 or former Legislator, officer or employee of this State, immune
9 contractor or member of a state board or commission.

10 2. The chief legal officer or other authorized legal
11 representative of a political subdivision, in an action which involves
12 a present or former officer or employee of that political subdivision
13 or a present or former member of a local board or commission.

14 **Sec. 3.** NRS 228.110 is hereby amended to read as follows:

15 228.110 1. The Attorney General and his duly appointed
16 deputies shall be the legal advisers on all state matters arising in the
17 Executive Department of the State Government.

18 2. No officer, commissioner or appointee of the Executive
19 Department of the Government of the State of Nevada shall employ
20 any attorney at law or counselor at law to represent the State of
21 Nevada within the State, or to be compensated by state funds,
22 directly or indirectly, as an attorney acting within the State for the
23 State of Nevada or any agency in the Executive Department thereof
24 unless the Attorney General and his deputies are disqualified to act
25 in such matter or unless an act of the Legislature specifically
26 authorizes the employment of other attorneys or counselors at law.

27 3. *A written or oral legal opinion involving an interpretation*
28 *of the state or federal constitution or any state or federal statute,*
29 *rule or regulation that is issued or provided by an attorney or*
30 *counselor at law employed pursuant to statute to represent the*
31 *Executive Department of the State Government instead of the*
32 *Attorney General and his deputies is not entitled to the same*
33 *weight and deference as a written opinion of the Attorney General.*

34 4. All claims for legal services rendered in violation of this
35 section shall be void.

