

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; making a technical correction clarifying that a district judge is a “public officer” or “officer” for the purposes of the provisions pertaining to tort actions involving state officers; 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



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

Section 1.5 of this bill makes a technical correction to clarify that a district judge is included within the definition of "public officer" or "officer" for the purposes of the provisions pertaining to tort actions involving state officers.

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 a public record open for inspection pursuant to NRS 239.010, but is not admissible in evidence at trial or in any other judicial or administrative proceeding in which the State, the board, commission or similar body of the State or political subdivision of the State or the person sued as a public officer, employee, immune contractor, member of a board or commission, or Legislator is a party, except in connection with an application



1 *to withdraw as the attorney of record or in connection with an*
2 *action for legal malpractice.*

3 **Sec. 1.5.** NRS 41.0307 is hereby amended to read as follows:
4 41.0307 As used in NRS 41.0305 to 41.039, inclusive:

5 1. "Employee" includes an employee of a:

6 (a) Part-time or full-time board, commission or similar body of
7 the State or a political subdivision of the State which is created by
8 law.

9 (b) Charter school.

10 (c) University school for profoundly gifted pupils described in
11 Chapter 392A of NRS.

12 2. "Employment" includes any services performed by an
13 immune contractor.

14 3. "Immune contractor" means any natural person, professional
15 corporation or professional association which:

16 (a) Is an independent contractor with the State pursuant to NRS
17 284.173; and

18 (b) Contracts to provide medical services for the Department of
19 Corrections.

20 ➔ As used in this subsection, "professional corporation" and
21 "professional association" have the meanings ascribed to them in
22 NRS 89.020.

23 4. "Public officer" or "officer" includes:

24 (a) A member of a part-time or full-time board, commission or
25 similar body of the State or a political subdivision of the State which
26 is created by law.

27 (b) A public defender and any deputy or assistant attorney of a
28 public defender or an attorney appointed to defend a person for a
29 limited duration with limited jurisdiction.

30 (c) A district attorney and any deputy or assistant district
31 attorney or an attorney appointed to prosecute a person for a limited
32 duration with limited jurisdiction.

33 *(d) A district judge.*

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

35 41.0338 As used in NRS 41.0338 to 41.0347, inclusive, *and*
36 *section 1 of this act*, unless the context otherwise requires, "official
37 attorney" means:

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

41 2. The chief legal officer or other authorized legal
42 representative of a political subdivision, in an action which involves
43 a present or former officer or employee of that political subdivision
44 or a present or former member of a local board or commission.



1 **Sec. 3.** (Deleted by amendment.)

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