

ASSEMBLY BILL NO. 63—COMMITTEE  
ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 15, 2010

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to the duties of, and services provided by, the Office of the Attorney General. (BDR 18-203)

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

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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 the Office of the Attorney General; revising provisions governing the duties of, and services provided by, the Attorney General; revising the conditions under which certain cooperative agreements between various public agencies may be reviewed by the Attorney General; authorizing the Attorney General to designate a city attorney or district attorney to prosecute certain false claims; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

**Section 1** of this bill authorizes the Attorney General to appoint a special deputy to provide legal advice to a state agency, board or commission that has the authority to regulate an occupation or profession if the Attorney General determines that it would be impracticable or uneconomical or constitute a conflict of interest for the Attorney General or a deputy attorney general to provide that service.

Existing law authorizes a district attorney to request the personal presence of the Attorney General or the presence of a deputy attorney general or special investigator to provide assistance in the presentation of a criminal case, but limits the reimbursement for providing such assistance to traveling expenses. (NRS 228.130) **Section 2** of this bill, with respect to the provision of such assistance: (1) allows the Attorney General to charge a county for all the actual and necessary expenses incurred in providing such assistance; and (2) allows the Attorney General to appoint a special prosecutor under certain circumstances. Under existing law, the Attorney General is prohibited from receiving any fee for the performance of any



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duty required of him or her by law, but money may be paid to his or her office pursuant to law or an agreement with an agency of the State for the performance of any duty or service by his or her office. (NRS 228.150) **Section 3** of this bill eliminates that prohibition and specifically authorizes the Attorney General to charge a district attorney or city attorney for the cost of providing a legal opinion.

Existing law authorizes certain public agencies to enter into cooperative agreements with other public agencies for purposes such as the performance of certain governmental functions, the sale, exchange or lease of real property and the consolidation of governmental services. (Chapter 277 of NRS) Under existing law, if a public agency intends to enter into such a cooperative agreement for which it is reasonably foreseeable that the agency will have to expend more than \$25,000, the agreement must first be submitted to the Attorney General for a determination of whether the agreement comports with state law. (NRS 277.140) **Section 4** of this bill provides that a public agency is not required to submit such an agreement to the Attorney General, but may do so, and also provides that the Attorney General may charge the public agency for the cost of determining whether the agreement comports with state law.

Existing law requires the Attorney General to investigate alleged false claims made against an officer, employee or agent of the State, a political subdivision of the State or certain contractors, grantees or other recipients of money from the State. The Attorney General is also authorized to bring a civil action against a person liable for such a false claim, and 33 percent of any recovery under such an action must be paid into the State General Fund for use by the Attorney General in investigating and prosecuting false claims. (NRS 357.070, 357.200) **Section 7** of this bill authorizes a district attorney or city attorney to accept a designation from the Attorney General to investigate a false claim and bring a civil action against a person liable for the false claim. **Section 17** of this bill provides that, if a district attorney or city attorney acts as a designee of the Attorney General in a false claim action, the portion of any recovery that would otherwise be paid into the State General Fund for use by the Attorney General must instead be paid into the general fund of the political subdivision which employs the designee.

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

**Section 1.** Chapter 228 of NRS is hereby amended by adding thereto a new section to read as follows:

***1. If the Attorney General:***

***(a) Has been designated as the legal adviser for a regulatory body; and***

***(b) Determines at any time that it is impracticable or uneconomical or could constitute a conflict of interest for the Attorney General or a deputy attorney general to provide legal advice to the regulatory body,***

***↳ the Attorney General may appoint a special deputy to provide legal advice to the regulatory body.***

***2. Compensation for a special deputy appointed pursuant to subsection 1 must be:***

***(a) Fixed by the Attorney General, subject to the approval of the State Board of Examiners; and***



1 (b) *Paid by the regulatory body for which the special deputy is*  
2 *appointed to provide legal advice.*

3 3. *The provisions of this section do not alter, limit or*  
4 *otherwise affect the authority of the Attorney General to:*

5 (a) *Appoint a special deputy or special deputy attorney general*  
6 *for the purposes specified in NRS 228.090; or*

7 (b) *Employ special counsel for the purposes specified in*  
8 *NRS 41.03435.*

9 4. *As used in this section, "regulatory body" has the meaning*  
10 *ascribed to it in NRS 622.060.*

11 **Sec. 2.** NRS 228.130 is hereby amended to read as follows:

12 228.130 1. In all criminal cases where, in the judgment of  
13 the district attorney, the personal presence of the Attorney General  
14 or the presence of a deputy *attorney general* or special investigator  
15 is required in cases mentioned in subsection 2, before making a  
16 request upon the Attorney General for such assistance the district  
17 attorney must first present his or her reasons for making the request  
18 to the board of county commissioners of his or her county and have  
19 the board adopt a resolution joining in the request to the Attorney  
20 General.

21 2. In all criminal cases where ~~help~~ *assistance* is requested  
22 from the Attorney General's Office, as ~~mentioned~~ *described* in  
23 subsection 1, in the presentation of criminal cases before a  
24 committing magistrate, grand jury, or district court ~~[-, the]~~ :

25 (a) *The Attorney General may charge the district attorney the*  
26 *cost of providing such assistance. Any such costs must be charged*  
27 *in a manner that is substantially similar to the manner for*  
28 *charging state agencies for services, as set forth in NRS 228.113.*

29 (b) *The board of county commissioners of the county making*  
30 *such request shall, upon the presentation to the board of a duly*  
31 *verified claim setting forth the expenses incurred, pay from the*  
32 *general funds of the county the actual and necessary ~~traveling~~*  
33 *expenses of the Attorney General , ~~for his or her~~ deputy *attorney**  
34 **general* or ~~his or her~~ special investigator . ~~from Carson City,~~*  
35 *~~Nevada, to the place where such proceedings are held and return~~*  
36 *~~therefrom, and also pay the amount of money actually expended by~~*  
37 *~~such person for board and lodging from the date such person leaves~~*  
38 *~~until the date he or she returns to Carson City.]~~*

39 3. This section ~~shall~~ *must* not be construed as directing or  
40 requiring the Attorney General to appear in any proceedings  
41 mentioned in subsection 2, but in acting upon any such request the  
42 Attorney General may exercise his or her discretion, and his or her  
43 judgment in such matters ~~shall be~~ *is* final.



1     **4. If the Attorney General:**

2     (a) *Is requested, pursuant to subsection 1, to provide*  
3 *assistance to a district attorney in the presentation of a criminal*  
4 *case before a committing magistrate, grand jury or district court;*  
5 *and*

6     (b) *Determines at any time before trial that it is impracticable*  
7 *or uneconomical or could constitute a conflict of interest for the*  
8 *Attorney General or a deputy attorney general to provide such*  
9 *assistance,*

10    ↳ *the Attorney General may appoint a special prosecutor to*  
11 *present the criminal case.*

12     **5. Compensation for a special prosecutor appointed pursuant**  
13 **to subsection 4 must be:**

14     (a) *Fixed by the Attorney General, subject to the approval of*  
15 *the State Board of Examiners; and*

16     (b) *Paid by the county for which the special prosecutor is*  
17 *appointed to provide assistance.*

18     **Sec. 3.** NRS 228.150 is hereby amended to read as follows:

19     228.150    1. When requested, the Attorney General shall  
20 give his or her opinion, in writing, upon any question of law, to the  
21 Governor, the Secretary of State, the State Controller, the State  
22 Treasurer, the Director of the Department of Corrections, to the  
23 head of any state department, agency, board or commission, to any  
24 district attorney and to any city attorney of any incorporated city  
25 within the State of Nevada, upon any question of law relating to  
26 their respective offices, departments, agencies, boards or  
27 commissions.

28     2. Nothing contained in subsection 1 requires the Attorney  
29 General to give his or her written opinion to any city attorney  
30 concerning questions relating to the interpretation or construction of  
31 city ordinances.

32     3. ~~{The Attorney General is not entitled to receive any fee for~~  
33 ~~the performance of any duty required of him or her by law, but~~  
34 ~~money}~~ Money may be paid to ~~{his or her office or}~~ *the Office of*  
35 *the Attorney General* pursuant to law , or *pursuant to* an agreement  
36 with an agency of the State , for the performance of any duty or  
37 service *provided* by his or her office.

38     **4. The Attorney General may charge a district attorney or city**  
39 **attorney the cost of providing a written opinion pursuant to this**  
40 **section. Any such costs must be charged in a manner that is**  
41 **substantially similar to the manner for charging state agencies for**  
42 **services, as set forth in NRS 228.113.**

43     **Sec. 4.** NRS 277.140 is hereby amended to read as follows:

44     277.140   ~~{As conditions precedent to the entry into force of~~  
45 ~~any}~~



1     **1. Any** agreement made pursuant to NRS 277.080 to 277.170,  
2 inclusive, for which it is reasonably foreseeable that a public agency  
3 will be required to expend more than \$25,000:

4     ~~**[1.—The agreement must]**~~

5     **(a) May** be submitted to the Attorney General, who shall  
6 determine whether it is in proper form and compatible with the laws  
7 of this State. The Attorney General shall set forth in detail, in  
8 writing, addressed to the governing bodies of the public agencies  
9 concerned, any specific respects in which he or she finds that the  
10 proposed agreement fails to comply with the requirements of law.  
11 Any failure by the Attorney General to disapprove an agreement  
12 submitted under the provisions of this section within 30 days after  
13 its submission shall be deemed to constitute his or her approval.

14     ~~**[2.—The agreement must]**~~

15     **(b) Must** be recorded with the county recorder of each county in  
16 which a participating political subdivision of this State is located  
17 and filed with the Secretary of State.

18     **2. The Attorney General may charge the cost of performing**  
19 **any determination made pursuant to subsection 1 to the public**  
20 **agency that submits the agreement to the Attorney General for**  
21 **review. Any such costs must be charged in a manner that is**  
22 **substantially similar to the manner for charging state agencies for**  
23 **services, as set forth in NRS 228.113.**

24     **Sec. 5.** NRS 277.150 is hereby amended to read as follows:

25     277.150 In the event that an agreement made pursuant to NRS  
26 277.080 to 277.170, inclusive, deals in whole or in part with the  
27 provision of services of facilities over which an officer or agency of  
28 this State has constitutional or statutory powers of control, the  
29 agreement ~~**[shall,]**~~ **must**, as a condition precedent to its entry into  
30 force, be submitted to the state officer or agency having such power  
31 of control for approval or disapproval as to all matters within the  
32 jurisdiction of the state officer or agency in the same manner and  
33 subject to the same requirements as govern the action of the  
34 Attorney General under NRS 277.140. This requirement of  
35 submission and approval is in addition to and not in substitution for  
36 the ~~**[requirement of]**~~ **authority for** submission and approval by the  
37 Attorney General.

38     **Sec. 6.** NRS 357.050 is hereby amended to read as follows:

39     357.050 In a civil action pursuant to this chapter, the court may  
40 give judgment for not less than twice or more than three times the  
41 amount of damages sustained, and no civil penalty, if it finds that:

42     1. The person against whom the judgment is entered:

43     (a) Furnished all information known to the person concerning  
44 the act, within 30 days after becoming aware of the information, to



1 the Attorney General ~~or~~ *or a designee of the Attorney General*  
2 *pursuant to NRS 357.070;* and

3 (b) Fully cooperated with any investigation of the act by the  
4 State or political subdivision; and

5 2. At the time the information was furnished, no criminal  
6 prosecution or civil or administrative proceeding had commenced  
7 with respect to the act and the person had no knowledge of the  
8 existence of any investigation with respect to the act.

9 **Sec. 7.** NRS 357.070 is hereby amended to read as follows:

10 357.070 ~~[The]~~

11 *1. Except as otherwise provided in subsection 2, the* Attorney  
12 General shall investigate any alleged liability pursuant to this  
13 chapter and may bring a civil action pursuant to this chapter against  
14 the person liable.

15 *2. A district attorney or city attorney may accept a*  
16 *designation from the Attorney General to investigate any alleged*  
17 *liability pursuant to this chapter and may bring a civil action*  
18 *pursuant to this chapter against the person liable.*

19 **Sec. 8.** NRS 357.080 is hereby amended to read as follows:

20 357.080 1. Except as otherwise provided in this section and  
21 NRS 357.090 and 357.100, a private plaintiff may maintain an  
22 action pursuant to this chapter on his or her own account and that of  
23 the State if money, property or services provided by the State are  
24 involved, or on his or her own account and that of a political  
25 subdivision if money, property or services provided by the political  
26 subdivision are involved, or on his or her own account and that of  
27 both the State and a political subdivision if both are involved. After  
28 such an action is commenced, it may be dismissed only with leave  
29 of the court, taking into account the public purposes of this chapter  
30 and the best interests of the parties.

31 2. If a private plaintiff brings an action pursuant to this chapter,  
32 no other person may bring another action pursuant to this chapter  
33 based on the same facts.

34 3. An action may not be maintained by a private plaintiff  
35 pursuant to this chapter:

36 (a) Against a member of the Legislature or the Judiciary, an  
37 elected officer of the Executive Department of the State  
38 Government, or a member of the governing body of a political  
39 subdivision, if the action is based upon evidence or information  
40 known to the State or political subdivision at the time the action was  
41 brought.

42 (b) If the action is based upon allegations or transactions that are  
43 the subject of a civil action or an administrative proceeding for a  
44 monetary penalty to which the State or political subdivision is  
45 already a party.



1 4. A complaint filed pursuant to this section must be placed  
2 under seal and so remain for at least 60 days or until the Attorney  
3 General *or a designee of the Attorney General pursuant to NRS*  
4 *357.070* has elected whether to intervene. No service may be made  
5 upon the defendant until the complaint is unsealed.

6 5. On the date the private plaintiff files a complaint, he or she  
7 shall send a copy of the complaint to the Attorney General by mail  
8 with return receipt requested. The private plaintiff shall send with  
9 each copy of the complaint a written disclosure of substantially all  
10 material evidence and information he or she possesses. *If a district*  
11 *attorney or city attorney has accepted a designation from the*  
12 *Attorney General pursuant to NRS 357.070, the Attorney General*  
13 *shall forward a copy of the complaint to the district attorney or city*  
14 *attorney, as applicable.*

15 6. An action pursuant to this chapter may be brought in any  
16 judicial district in this State in which the defendant can be found,  
17 resides, transacts business or in which any of the alleged fraudulent  
18 activities occurred.

19 **Sec. 9.** NRS 357.100 is hereby amended to read as follows:

20 357.100 1. No action may be maintained pursuant to this  
21 chapter that is based upon the public disclosure of allegations or  
22 transactions in a criminal, civil or administrative hearing, in an  
23 investigation, report, hearing or audit conducted by or at the request  
24 of a house of the Legislature, an auditor or the governing body of a  
25 political subdivision, or from the news media, unless the action is  
26 brought by the Attorney General, *a designee of the Attorney*  
27 *General pursuant to NRS 357.070* or an original source of the  
28 information.

29 2. As used in this section, "original source" means a person:

30 (a) Who has direct and independent knowledge of the  
31 information on which the allegations were based;

32 (b) Who voluntarily provided the information to the State or  
33 political subdivision before bringing an action based on the  
34 information; and

35 (c) Whose information provided the basis or caused the making  
36 of the investigation, hearing, audit or report that led to the public  
37 disclosure.

38 **Sec. 10.** NRS 357.110 is hereby amended to read as follows:

39 357.110 1. Within 60 days after receiving a complaint and  
40 disclosure, the Attorney General *or a designee of the Attorney*  
41 *General pursuant to NRS 357.070* may intervene and proceed with  
42 the action or, for good cause shown, move the court to extend the  
43 time for his or her election whether to proceed. The motion may be  
44 supported by affidavits or other submissions in chambers.





2. If the Attorney General *or the Attorney General's designee* elects to intervene, the complaint must be unsealed. If the Attorney General *or the Attorney General's designee* elects not to intervene, the private plaintiff may proceed and the complaint must be unsealed.

**Sec. 11.** NRS 357.120 is hereby amended to read as follows:

357.120 1. If the Attorney General *or a designee of the Attorney General pursuant to NRS 357.070* intervenes, the private plaintiff remains a party to an action pursuant to NRS 357.080.

2. The Attorney General *or the Attorney General's designee* may move to dismiss the action for good cause. The private plaintiff must be notified of the filing of the motion and is entitled to oppose it and present evidence at the hearing.

3. Except as otherwise provided in this subsection, the Attorney General *or the Attorney General's designee* may settle the action. If the Attorney General *or the Attorney General's designee* intends to settle the action, the Attorney General *or the Attorney General's designee* shall notify the private plaintiff of that fact. Upon the request of the private plaintiff, the court shall determine whether settlement of the action is consistent with the public purposes of this chapter and shall not approve the settlement of the action unless it determines that such settlement is consistent with the public purposes of this chapter.

**Sec. 12.** NRS 357.130 is hereby amended to read as follows:

357.130 1. If the Attorney General *or a designee of the Attorney General pursuant to NRS 357.070* elects not to intervene in an action pursuant to NRS 357.080, the private plaintiff has the same rights in conducting the action as the Attorney General *or the Attorney General's designee* would have had. A copy of each pleading or other paper filed in the action, and a copy of the transcript of each deposition taken, must be mailed to the Attorney General *or the Attorney General's designee* if the Attorney General *or the Attorney General's designee* so requests and pays the cost thereof.

2. Upon timely application, the Attorney General *or the Attorney General's designee* may intervene in an action in which he or she has previously declined to intervene, if the interest of the State or a political subdivision in recovery of the money or property involved is not being adequately represented by the private plaintiff.

3. If the Attorney General *or the Attorney General's designee* so intervenes, the private plaintiff retains primary responsibility for conducting the action and any recovery must be apportioned as if the Attorney General *or the Attorney General's designee* had not intervened.





**Sec. 13.** NRS 357.150 is hereby amended to read as follows:

357.150 1. The court may stay discovery by a private plaintiff for not more than 60 days if the Attorney General *or a designee of the Attorney General pursuant to NRS 357.070* shows that the proposed discovery would interfere with the investigation or prosecution of a civil or criminal matter arising out of the same facts, whether or not the Attorney General *or the Attorney General's designee* participates in the action.

2. The court may extend the stay upon a further showing that the Attorney General *or the Attorney General's designee* has pursued the civil or criminal investigation or proceeding with reasonable diligence and the proposed discovery would interfere with its continuation. Discovery may not be stayed for a total of more than 6 months over the objection of the private plaintiff, except for good cause shown by the Attorney General ~~or~~ *or the Attorney General's designee*.

3. A showing made pursuant to this section must be made in chambers.

**Sec. 14.** NRS 357.160 is hereby amended to read as follows:

357.160 Upon a showing by the Attorney General *or a designee of the Attorney General pursuant to NRS 357.070* that unrestricted participation by a private plaintiff would interfere with or unduly delay the conduct of an action, or would be repetitious, irrelevant or solely for harassment, the court may limit the participation of the private plaintiff by, among other measures, limiting:

1. The number of witnesses he or she may call;
2. The length of the testimony of the witnesses; or
3. His or her cross-examination of witnesses.

**Sec. 15.** NRS 357.170 is hereby amended to read as follows:

357.170 1. An action pursuant to this chapter may not be commenced more than 3 years after the date on which the Attorney General *or a designee of the Attorney General pursuant to NRS 357.070* discovers, or reasonably should have discovered, the fraudulent activity or more than 6 years after the fraudulent activity occurred, but in no event more than 10 years after the fraudulent activity occurred. Within those limits, an action may be based upon fraudulent activity that occurred before July 1, 2007.

2. In an action pursuant to this chapter, the standard of proof is a preponderance of the evidence. A finding of guilty or guilty but mentally ill in a criminal proceeding charging false statement or fraud, whether upon a verdict of guilty or guilty but mentally ill or a plea of guilty, guilty but mentally ill or nolo contendere, estops the person found guilty or guilty but mentally ill from denying an



1 essential element of that offense in an action pursuant to this chapter  
2 based upon the same transaction as the criminal proceeding.

3 **Sec. 16.** NRS 357.180 is hereby amended to read as follows:

4 357.180 1. If the Attorney General , *a designee of the*  
5 *Attorney General pursuant to NRS 357.070* or a private plaintiff  
6 prevails in or settles an action pursuant to NRS 357.080, the private  
7 plaintiff is entitled to a reasonable amount for expenses that the  
8 court finds were necessarily incurred, including reasonable costs,  
9 attorney's fees and the fees of expert consultants and expert  
10 witnesses. Those expenses must be awarded against the defendant,  
11 and may not be allowed against the State or a political subdivision.

12 2. If the defendant prevails in the action, the court may award  
13 the defendant reasonable expenses and attorney's fees against the  
14 party or parties who participated in the action if it finds that the  
15 action was clearly frivolous or vexatious or brought solely for  
16 harassment.

17 **Sec. 17.** NRS 357.200 is hereby amended to read as follows:

18 357.200 1. If the Attorney General initiates an action  
19 pursuant to this chapter, 33 percent of any recovery must be paid  
20 into the State General Fund to the credit of a special account, for use  
21 by the Attorney General as appropriated or authorized by the  
22 Legislature in the investigation and prosecution of false claims.

23 2. *If a designee of the Attorney General pursuant to NRS*  
24 *357.070 initiates an action pursuant to this chapter, 33 percent of*  
25 *any recovery must be paid into the general fund of the political*  
26 *subdivision that employs the Attorney General's designee.*

27 **Sec. 18.** NRS 357.210 is hereby amended to read as follows:

28 357.210 1. If the Attorney General *or a designee of the*  
29 *Attorney General pursuant to NRS 357.070* intervenes at the outset  
30 in an action pursuant to NRS 357.080, the private plaintiff is  
31 entitled, except as otherwise provided in NRS 357.220, to receive  
32 not less than 15 percent or more than 33 percent of any recovery,  
33 according to the extent of his or her contribution to the conduct of  
34 the action.

35 2. If the Attorney General *or the Attorney General's designee*  
36 does not intervene in the action at the outset, the private plaintiff is  
37 entitled, except as otherwise provided in NRS 357.220, to receive  
38 not less than 25 percent or more than 50 percent of any recovery, as  
39 the court determines to be reasonable.

40 **Sec. 19.** NRS 357.220 is hereby amended to read as follows:

41 357.220 1. If the action is one described in NRS 357.090, the  
42 present or former employee of the State or political subdivision is  
43 not entitled to any minimum percentage of any recovery, but the  
44 court may award him or her no more than 33 percent of the recovery  
45 if the Attorney General *or a designee of the Attorney General*



1 *pursuant to NRS 357.070* intervenes in the action at the outset, or  
2 no more than 50 percent if the Attorney General *or the Attorney*  
3 *General's designee* does not intervene, according to the significance  
4 of his or her information, the extent of his or her contribution to the  
5 conduct of the action and the response to his or her efforts to report  
6 the false claim and gain recovery through other official channels.

7 2. If the private plaintiff is a present or former employee of the  
8 State or a political subdivision and benefited financially from the  
9 fraudulent activity, he or she is not entitled to any minimum  
10 percentage of any recovery, but the court may award the private  
11 plaintiff no more than 33 percent of the recovery if the Attorney  
12 General *or the Attorney General's designee* intervenes in the action  
13 at the outset, or no more than 50 percent if the Attorney General *or*  
14 *the Attorney General's designee* does not intervene, according to  
15 the significance of his or her information, the extent of his or her  
16 contribution to the conduct of the action, the extent of his or her  
17 involvement in the fraudulent activity, his or her attempts to avoid  
18 or resist the activity and the other circumstances of the activity.

19 **Sec. 20.** This act becomes effective on July 1, 2011.

