

Assembly Bill No. 63—Committee
on Government Affairs

CHAPTER.....

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, allows the Attorney General to appoint a special prosecutor under certain circumstances and provides different mechanisms for approving the compensation of the special prosecutor depending upon the severity of the crimes. Under existing law, the Attorney General is prohibited from receiving any fee for the performance of any 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 the prohibition against the Attorney General receiving a fee for the performance of a duty required of the Attorney General by law.

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. **Section 4** also provides that the Attorney General is not allowed to charge for that cost unless the determination is made within 30 days after the date on which the Attorney General receives the agreement.

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.

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

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

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

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

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

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

4. As used in this section, “regulatory body” has the meaning ascribed to it in NRS 622.060.

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

228.130 1. In all criminal cases where, in the judgment of the district attorney, the personal presence of the Attorney General or the presence of a deputy *attorney general* or special investigator is



required in cases mentioned in subsection 2, before making a request upon the Attorney General for such assistance the district attorney must first present his or her reasons for making the request to the board of county commissioners of his or her county and have the board adopt a resolution joining in the request to the Attorney General.

2. In all criminal cases where ~~help~~ *assistance* is requested from the Attorney General's Office, as ~~mentioned~~ *described* in subsection 1, in the presentation of criminal cases before a committing magistrate, grand jury, or district court, the board of county commissioners of the county making such request shall, upon the presentation to the board of a duly verified claim setting forth the expenses incurred, pay from the general funds of the county the actual and necessary traveling expenses of the Attorney General or his or her deputy *attorney general* or his or her special investigator from Carson City, Nevada, to the place where such proceedings are held and return therefrom, and also pay the amount of money actually expended by such person for board and lodging from the date such person leaves until the date he or she returns to Carson City.

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

4. *If the Attorney General:*

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

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

↳ the Attorney General may, with the concurrence of the board of county commissioners and the district attorney, appoint a special prosecutor to present the criminal case.

5. *Except as otherwise provided in subsection 6, compensation for a special prosecutor appointed pursuant to subsection 4 must be fixed by the Attorney General, subject to the approval of the State Board of Examiners.*

6. *For the prosecution of a category A or B felony, compensation and other terms and conditions must be agreed*



upon by the Attorney General and the district attorney of the county for which the special prosecutor is appointed to provide assistance.

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

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

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

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

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

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

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

~~{1. The agreement must}~~

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

~~{2. The agreement must}~~

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



2. The Attorney General may charge the cost of performing any determination made pursuant to subsection 1 to the public agency that submits the agreement to the Attorney General for review, but only if the determination is made within 30 days after the date on which the Attorney General receives the agreement. Any such costs must be charged in a manner that is substantially similar to the manner for charging state agencies for services, as set forth in NRS 228.113.

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

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

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

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

1. The person against whom the judgment is entered:

(a) Furnished all information known to the person concerning the act, within 30 days after becoming aware of the information, to the Attorney General ~~or~~ *or a designee of the Attorney General pursuant to NRS 357.070;* and

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

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

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

357.070 ~~The~~

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



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

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

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

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

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

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

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

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

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



shall forward a copy of the complaint to the district attorney or city attorney, as applicable.

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

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

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

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

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

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

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

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

357.110 1. Within 60 days after receiving a complaint and disclosure, the Attorney General *or a designee of the Attorney General pursuant to NRS 357.070* may intervene and proceed with the action or, for good cause shown, move the court to extend the time for his or her election whether to proceed. The motion may be 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 ~~H~~ *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 essential element of that offense in an action pursuant to this chapter based upon the same transaction as the criminal proceeding.

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

357.180 1. If the Attorney General *, a designee of the Attorney General pursuant to NRS 357.070* or a private plaintiff prevails in or settles an action pursuant to NRS 357.080, the private plaintiff is entitled to a reasonable amount for expenses that the court finds were necessarily incurred, including reasonable costs, attorney's fees and the fees of expert consultants and expert



witnesses. Those expenses must be awarded against the defendant, and may not be allowed against the State or a political subdivision.

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

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

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

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

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

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

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

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

357.220 **1.** If the action is one described in NRS 357.090, the present or former employee of the State or political subdivision is not entitled to any minimum percentage of any recovery, but the court may award him or her no more than 33 percent of the recovery if the Attorney General *or a designee of the Attorney General pursuant to NRS 357.070* intervenes in the action at the outset, or no more than 50 percent if the Attorney General *or the Attorney General's designee* does not intervene, according to the significance of his or her information, the extent of his or her contribution to the conduct of the action and the response to his or her efforts to report the false claim and gain recovery through other official channels.



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

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

