

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, 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



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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.

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:



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

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

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

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

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

11 4. As used in this section, "regulatory body" has the meaning
12 ascribed to it in NRS 622.060.

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

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

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

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

42 **4. If the Attorney General:**

43 (a) **Is requested, pursuant to subsection 1, to provide**
44 **assistance to a district attorney in the presentation of a criminal**



1 *case before a committing magistrate, grand jury or district court;*
2 *and*

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

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

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

14 *6. For the prosecution of a category A or B felony,*
15 *compensation and other terms and conditions must be agreed*
16 *upon by the Attorney General and the district attorney of the*
17 *county for which the special prosecutor is appointed to provide*
18 *assistance.*

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

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

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

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

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

40 277.140 ~~{As conditions precedent to the entry into force of~~
41 ~~any}~~

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

45 ~~{1. The agreement must}~~



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

10 ~~(2. —The agreement must)~~

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

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

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

23 277.150 In the event that an agreement made pursuant to NRS
24 277.080 to 277.170, inclusive, deals in whole or in part with the
25 provision of services of facilities over which an officer or agency of
26 this State has constitutional or statutory powers of control, the
27 agreement ~~(shall,)~~ *must*, as a condition precedent to its entry into
28 force, be submitted to the state officer or agency having such power
29 of control for approval or disapproval as to all matters within the
30 jurisdiction of the state officer or agency in the same manner and
31 subject to the same requirements as govern the action of the
32 Attorney General under NRS 277.140. This requirement of
33 submission and approval is in addition to and not in substitution for
34 the ~~(requirement of)~~ *authority for* submission and approval by the
35 Attorney General.

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

37 357.050 In a civil action pursuant to this chapter, the court may
38 give judgment for not less than twice or more than three times the
39 amount of damages sustained, and no civil penalty, if it finds that:

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

41 (a) *Furnished all information known to the person concerning*
42 *the act, within 30 days after becoming aware of the information, to*
43 *the Attorney General* ~~(or)~~ *or a designee of the Attorney General*
44 *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



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1 General *or a designee of the Attorney General pursuant to NRS*
2 *357.070* has elected whether to intervene. No service may be made
3 upon the defendant until the complaint is unsealed.

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

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

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

18 357.100 1. No action may be maintained pursuant to this
19 chapter that is based upon the public disclosure of allegations or
20 transactions in a criminal, civil or administrative hearing, in an
21 investigation, report, hearing or audit conducted by or at the request
22 of a house of the Legislature, an auditor or the governing body of a
23 political subdivision, or from the news media, unless the action is
24 brought by the Attorney General , *a designee of the Attorney*
25 *General pursuant to NRS 357.070* or an original source of the
26 information.

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

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

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

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

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

37 357.110 1. Within 60 days after receiving a complaint and
38 disclosure, the Attorney General *or a designee of the Attorney*
39 *General pursuant to NRS 357.070* may intervene and proceed with
40 the action or, for good cause shown, move the court to extend the
41 time for his or her election whether to proceed. The motion may be
42 supported by affidavits or other submissions in chambers.

43 2. If the Attorney General *or the Attorney General's designee*
44 elects to intervene, the complaint must be unsealed. If the Attorney
45 General *or the Attorney General's designee* elects not to intervene,



1 the private plaintiff may proceed and the complaint must be
2 unsealed.

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

4 357.120 1. If the Attorney General *or a designee of the*
5 *Attorney General pursuant to NRS 357.070* intervenes, the private
6 plaintiff remains a party to an action pursuant to NRS 357.080.

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

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

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

22 357.130 1. If the Attorney General *or a designee of the*
23 *Attorney General pursuant to NRS 357.070* elects not to intervene
24 in an action pursuant to NRS 357.080, the private plaintiff has the
25 same rights in conducting the action as the Attorney General *or the*
26 *Attorney General's designee* would have had. A copy of each
27 pleading or other paper filed in the action, and a copy of the
28 transcript of each deposition taken, must be mailed to the Attorney
29 General *or the Attorney General's designee* if the Attorney General
30 *or the Attorney General's designee* so requests and pays the cost
31 thereof.

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

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

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

43 357.150 1. The court may stay discovery by a private
44 plaintiff for not more than 60 days if the Attorney General *or a*
45 *designee of the Attorney General pursuant to NRS 357.070* shows



1 that the proposed discovery would interfere with the investigation or
2 prosecution of a civil or criminal matter arising out of the same
3 facts, whether or not the Attorney General *or the Attorney*
4 *General's designee* participates in the action.

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

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

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

16 357.160 Upon a showing by the Attorney General *or a*
17 *designee of the Attorney General pursuant to NRS 357.070* that
18 unrestricted participation by a private plaintiff would interfere with
19 or unduly delay the conduct of an action, or would be repetitious,
20 irrelevant or solely for harassment, the court may limit the
21 participation of the private plaintiff by, among other measures,
22 limiting:

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

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

27 357.170 1. An action pursuant to this chapter may not be
28 commenced more than 3 years after the date on which the Attorney
29 General *or a designee of the Attorney General pursuant to NRS*
30 *357.070* discovers, or reasonably should have discovered, the
31 fraudulent activity or more than 6 years after the fraudulent activity
32 occurred, but in no event more than 10 years after the fraudulent
33 activity occurred. Within those limits, an action may be based upon
34 fraudulent activity that occurred before July 1, 2007.

35 2. In an action pursuant to this chapter, the standard of proof is
36 a preponderance of the evidence. A finding of guilty or guilty but
37 mentally ill in a criminal proceeding charging false statement or
38 fraud, whether upon a verdict of guilty or guilty but mentally ill or a
39 plea of guilty, guilty but mentally ill or nolo contendere, estops the
40 person found guilty or guilty but mentally ill from denying an
41 essential element of that offense in an action pursuant to this chapter
42 based upon the same transaction as the criminal proceeding.

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

44 357.180 1. If the Attorney General *, a designee of the*
45 *Attorney General pursuant to NRS 357.070* or a private plaintiff



1 prevails in or settles an action pursuant to NRS 357.080, the private
2 plaintiff is entitled to a reasonable amount for expenses that the
3 court finds were necessarily incurred, including reasonable costs,
4 attorney's fees and the fees of expert consultants and expert
5 witnesses. Those expenses must be awarded against the defendant,
6 and may not be allowed against the State or a political subdivision.

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

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

13 357.200 1. If the Attorney General initiates an action
14 pursuant to this chapter, 33 percent of any recovery must be paid
15 into the State General Fund to the credit of a special account, for use
16 by the Attorney General as appropriated or authorized by the
17 Legislature in the investigation and prosecution of false claims.

18 2. *If a designee of the Attorney General pursuant to NRS*
19 *357.070 initiates an action pursuant to this chapter, 33 percent of*
20 *any recovery must be paid into the general fund of the political*
21 *subdivision that employs the Attorney General's designee.*

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

23 357.210 1. If the Attorney General *or a designee of the*
24 *Attorney General pursuant to NRS 357.070* intervenes at the outset
25 in an action pursuant to NRS 357.080, the private plaintiff is
26 entitled, except as otherwise provided in NRS 357.220, to receive
27 not less than 15 percent or more than 33 percent of any recovery,
28 according to the extent of his or her contribution to the conduct of
29 the action.

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

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

36 357.220 1. If the action is one described in NRS 357.090, the
37 present or former employee of the State or political subdivision is
38 not entitled to any minimum percentage of any recovery, but the
39 court may award him or her no more than 33 percent of the recovery
40 if the Attorney General *or a designee of the Attorney General*
41 *pursuant to NRS 357.070* intervenes in the action at the outset, or
42 no more than 50 percent if the Attorney General *or the Attorney*
43 *General's designee* does not intervene, according to the significance
44 of his or her information, the extent of his or her contribution to the



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1 conduct of the action and the response to his or her efforts to report
2 the false claim and gain recovery through other official channels.

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

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

