

Amendment No. 14

Senate Amendment to Senate Bill No. 38	(BDR 18-409)
<b>Proposed by:</b> Senate Committee on Government Affairs	
<b>Amends:</b> Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

MNM/BAW



Date: 3/31/2021

S.B. No. 38—Establishes provisions governing the retention of pro bono legal assistance by the Office of the Attorney General. (BDR 18-409)





## SENATE BILL NO. 38—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 18, 2020

Referred to Committee on Government Affairs

SUMMARY—Establishes provisions governing the retention of pro bono legal assistance by the Office of the Attorney General. (BDR 18-409)

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 legal services; establishing certain provisions applicable to pro bono contracts for legal services entered into by the Attorney General or any other officer, agency or employee in the Executive Department of the State Government; requiring the Attorney General to prepare and submit an annual report concerning such contracts; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law generally provides that the Attorney General and his or her deputies are the legal advisers on matters arising in the Executive Department of the State Government and generally prohibits persons in the Executive Department from employing other counsel to represent the State or any agency in the Executive Department. (NRS 228.110) However, existing law also establishes a process to authorize the Attorney General or any other officer, agency or employee in the Executive Department to enter into a contingent fee contract for legal services pursuant to which an attorney or law firm engaged in the private practice of law may provide legal services to the State of Nevada or an officer, agency or employee in the Executive Department. (NRS 228.111-228.1118) **Section 6** of this bill additionally authorizes the Attorney General or any other officer, agency or employee in the Executive Department to enter into a pro bono contract for legal services pursuant to which an attorney or law firm engaged in the private practice of law may provide legal services to the State of Nevada or an officer, agency or employee in the Executive Department on a pro bono basis if the Attorney General determines that the provision of such legal services is necessary.

**Section 7** of this bill requires the Attorney General to retain final authority over the course and conduct of the matter that is the subject of a pro bono contract, and **section 8** of this bill requires the Attorney General to prescribe a form of addendum to a pro bono contract that sets forth the specific rights and obligations of the parties relating to the matter that is the subject of the contract. **Section 9** of this bill requires any attorney or law firm retained pursuant to a pro bono contract to prepare and maintain contemporaneous records reflecting the work performed on the matter and provides that such records as legally privileged, are public records. **Section 10** of this bill requires the Attorney General to post on his or her Internet website a copy of any fully executed pro bono contract. ~~and section 10.5 of this bill prohibits any attorney or law firm retained pursuant to a pro bono contract from entering into certain other contracts with the Attorney General~~

for the provision of legal services for a period of 1 year after the date on which the pro bono contract or any extension or renewal thereof expires or is terminated. Section 11 of this bill requires the Attorney General to prepare and submit an annual report to the Director of the Legislative Counsel Bureau that sets forth certain information about pro bono contracts in effect during the period covered by the report.

Sections 12-14 of this bill make conforming changes to indicate the appropriate placement of sections 2-11 of this bill in the Nevada Revised Statutes.

Section 15 of this bill exempts legal services provided pursuant to a pro bono contract from the procedures otherwise applicable to state agencies for the acceptance of gifts or grants of property or services. (NRS 353.335)

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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 the provisions set forth as sections 2 to 11, inclusive, of this act.

Sec. 2. *As used in sections 2 to 11, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Matter” means an action or other proceeding involving one or more claims asserted by one or more plaintiffs and presenting common questions of law or fact.*

Sec. 4. *“Pro bono contract” or “contract” means a contract for legal services entered into by or at the request of the Attorney General, pursuant to which legal services are provided on a pro bono basis by an attorney or law firm engaged in the private practice of law to the State of Nevada or any officer, agency or employee in the Executive Department of the State Government.*

Sec. 5. *“Retained attorney or law firm” means an attorney or law firm that is a party to a pro bono contract.*

Sec. 6. *The Attorney General or any other officer, agency or employee in the Executive Department of the State Government may enter into a pro bono contract regarding any matter if the Attorney General determines that the provision of pro bono legal services by an attorney or law firm engaged in the private practice of law is necessary.*

Sec. 7. *The following conditions apply to a pro bono contract during the term of the contract and any renewal or extension of the contract:*

1. *The Attorney General must retain final authority over the course and conduct of the matter that is the subject of the pro bono contract, including, without limitation:*

(a) *The authority to override any decision made by the retained attorney or law firm; and*

(b) *The sole authority to agree to any settlement or voluntary dismissal of the matter.*

2. *Subject to the authority of the Attorney General, a deputy of the Attorney General must have supervisory authority over the conduct of the matter that is the subject of the pro bono contract. The deputy shall attend any settlement conference or mediation conducted in the matter.*

3. *The pro bono contract must not limit the right of any attorney for an opposing party in the matter that is the subject of the contract to communicate directly with the Attorney General or the deputy of the Attorney General described in subsection 2.*

1        **Sec. 8.** *The Attorney General shall prescribe a form of addendum to a pro*  
2 *bono contract that must be used for every such contract. The addendum must set*  
3 *forth the specific rights and obligations of the parties relating to the matter that is*  
4 *the subject of the contract, including, without limitation, the requirements of*  
5 *sections 7, ~~and~~ 9 and 10.5 of this act.*

6        **Sec. 9.** *1. A retained attorney or law firm shall, from the beginning of the*  
7 *term of the pro bono contract until a date not less than 4 years after the date on*  
8 *which the contract expires or is terminated, prepare and maintain*  
9 *contemporaneous records reflecting the work performed on the matter by the*  
10 *retained attorney or law firm, including, without limitation, any work performed*  
11 *by a paralegal. The records must specifically describe the work performed,*  
12 *identify the person who performed the work and set forth the time spent in*  
13 *connection with the work, in increments of not more than one-tenth of an hour.*

14        *2. ~~The~~ Except as otherwise provided in subsection 3, the records described*  
15 *in subsection 1 are public records and must be open for inspection pursuant to*  
16 *NRS 239.010.*

17        *3. The provisions of subsection 2 must not be construed to authorize or*  
18 *require the disclosure of any materials that are otherwise protected as legally*  
19 *privileged.*

20        **Sec. 10.** *Not later than 5 business days after a pro bono contract is signed*  
21 *by all the parties to the contract, the Attorney General shall cause a fully*  
22 *executed copy of the contract to be posted on the Internet website of the Attorney*  
23 *General. The document must be posted on the Internet website at all times during*  
24 *the term of the contract and any extension or renewal of the contract.*

25        **Sec. 10.5.** *A retained attorney or law firm is prohibited from entering into*  
26 *any contract with the Attorney General for the provision of legal services*  
27 *pursuant to NRS 41.03435 or 228.111 to 228.1118, inclusive, and sections 2 to 11,*  
28 *inclusive, of this act, for a period of 1 year after the date on which the pro bono*  
29 *contract or any extension or renewal of the pro bono contract expires or is*  
30 *terminated.*

31        **Sec. 11.** *1. On or before February 1 of each year, the Attorney General*  
32 *shall prepare and submit a report to the Director of the Legislative Counsel*  
33 *Bureau, for transmittal to the Majority Leader of the Senate and the Speaker of*  
34 *the Assembly, describing the use of pro bono contracts by the Attorney General*  
35 *during the preceding calendar year.*

36        *2. The report required by subsection 1 must identify each pro bono contract*  
37 *in effect during the period covered by the report and, for each such contract, set*  
38 *forth:*

- 39        *(a) The name and address of the retained attorney or law firm;*  
40        *(b) The nature and present status of the matter that is the subject of the*  
41 *contract;*  
42        *(c) The name of each party to the matter;*  
43        *(d) The amount of any recovery obtained in the matter; and*  
44        *(e) The amount of any costs and expenses paid in the prosecution of the*  
45 *matter for which no recovery was obtained.*

46        **Sec. 12.** *NRS 228.110 is hereby amended to read as follows:*  
47        *228.110 1. Except as otherwise provided in NRS 228.111 to 228.1118,*  
48 *inclusive, and sections 2 to 11, inclusive, of this act or by specific statute:*

49        *(a) The Attorney General and the duly appointed deputies of the Attorney*  
50 *General shall be the legal advisers on all state matters arising in the Executive*  
51 *Department of the State Government.*

52        *(b) No officer, commissioner or appointee of the Executive Department of the*  
53 *Government of the State of Nevada shall employ any attorney at law or counselor at*

law to represent the State of Nevada within the State, or to be compensated by state funds, directly or indirectly, as an attorney acting within the State for the State of Nevada or any agency in the Executive Department thereof unless the Attorney General and the deputies of the Attorney General are disqualified to act in such matter.

2. All claims for legal services rendered in violation of this section shall be void.

**Sec. 13.** NRS 228.140 is hereby amended to read as follows:

228.140 1. Except as otherwise provided in NRS 228.111 to 228.1118, inclusive, *and sections 2 to 11, inclusive, of this act*, the Attorney General shall attend each of the terms of the Supreme Court, and there prosecute or defend, as the case may be, on the part of the State:

(a) All causes to which the State may be a party;

(b) All causes to which any officer of the State, in his or her official capacity, may be a party;

(c) All causes to which any county may be a party, other than those in which the interest of the county may be adverse to the State, or any officer of the State, acting in his or her official capacity, and

after judgment obtained in any such cause, the Attorney General shall direct such proceedings, and sue out such process as may be required to carry the same into execution.

2. The Attorney General shall:

(a) Account for and pay over to the proper officer, without delay, all moneys which may come into his or her hands belonging to the State or any county.

(b) Assist in all impeachments which may be tried before the Senate.

**Sec. 14.** NRS 228.170 is hereby amended to read as follows:

228.170 1. Except as otherwise provided in NRS 228.111 to 228.1118, inclusive, *and sections 2 to 11, inclusive, of this act*, whenever the Governor directs or when, in the opinion of the Attorney General, to protect and secure the interest of the State it is necessary that a suit be commenced or defended in any federal or state court, the Attorney General shall commence the action or make the defense.

2. The Attorney General may investigate and prosecute any crime committed by a person:

(a) Confined in or committed to an institution or facility of the Department of Corrections.

(b) Acting in concert with, whether as a principal or accessory, any person confined in or committed to an institution or facility of the Department of Corrections.

(c) In violation of chapter 212 of NRS, if the crime involves:

(1) An institution or facility of the Department of Corrections; or

(2) A person confined in or committed to such an institution or facility.

**Sec. 15.** NRS 353.335 is hereby amended to read as follows:

353.335 1. Except as otherwise provided in subsections 5 and 6, a state agency may accept any gift or grant of property or services from any source only if it is included in an act of the Legislature authorizing expenditures of nonappropriated money or, when it is not so included, if it is approved as provided in subsection 2.

2. If:

(a) Any proposed gift or grant is necessary because of an emergency as defined in NRS 353.263 or for the protection or preservation of life or property, the Governor shall take reasonable and proper action to accept it and shall report the action and his or her reasons for determining that immediate action was necessary

1 to the Interim Finance Committee at its first meeting after the action is taken.  
2 Action by the Governor pursuant to this paragraph constitutes acceptance of the gift  
3 or grant, and other provisions of this chapter requiring approval before acceptance  
4 do not apply.

5 (b) The Governor determines that any proposed gift or grant would be forfeited  
6 if the State failed to accept it before the expiration of the period prescribed in  
7 paragraph (c), the Governor may declare that the proposed acceptance requires  
8 expeditious action by the Interim Finance Committee. Whenever the Governor so  
9 declares, the Interim Finance Committee has 15 days after the proposal is submitted  
10 to its Secretary within which to approve or deny the acceptance. Any proposed  
11 acceptance which is not considered within the 15-day period shall be deemed  
12 approved.

13 (c) The proposed acceptance of any gift or grant does not qualify pursuant to  
14 paragraph (a) or (b), it must be submitted to the Interim Finance Committee. The  
15 Interim Finance Committee has 45 days after the proposal is submitted to its  
16 Secretary within which to consider acceptance. Any proposed acceptance which is  
17 not considered within the 45-day period shall be deemed approved.

18 3. The Secretary shall place each request submitted to the Secretary pursuant  
19 to paragraph (b) or (c) of subsection 2 on the agenda of the next meeting of the  
20 Interim Finance Committee.

21 4. In acting upon a proposed gift or grant, the Interim Finance Committee  
22 shall consider, among other things:

23 (a) The need for the facility or service to be provided or improved;

24 (b) Any present or future commitment required of the State;

25 (c) The extent of the program proposed; and

26 (d) The condition of the national economy, and any related fiscal or monetary  
27 policies.

28 5. A state agency may accept:

29 (a) Gifts, including grants from nongovernmental sources, not exceeding  
30 \$20,000 each in value; and

31 (b) Governmental grants not exceeding \$150,000 each in value,  
32 ➤ if the gifts or grants are used for purposes which do not involve the hiring of new  
33 employees and if the agency has the specific approval of the Governor or, if the  
34 Governor delegates this power of approval to the Chief of the Budget Division of  
35 the Office of Finance, the specific approval of the Chief.

36 6. This section does not apply to:

37 (a) The Nevada System of Higher Education;

38 (b) The Department of Health and Human Services while acting as the state  
39 health planning and development agency pursuant to paragraph (d) of subsection 2  
40 of NRS 439A.081 or for donations, gifts or grants to be disbursed pursuant to NRS  
41 433.395 or 435.490; ~~for~~

42 (c) *Legal services provided on a pro bono basis by an attorney or law firm*  
43 *engaged in the private practice of law to the State of Nevada or any officer,*  
44 *agency or employee in the Executive Department of the State Government*  
45 *pursuant to a contract for legal services entered into by or at the request of the*  
46 *Attorney General in accordance with sections 2 to 11, inclusive of this act; or*

47 (d) Artifacts donated to the Department of Tourism and Cultural Affairs.

48 **Sec. 16.** 1. The amendatory provisions of this act apply only to a pro bono  
49 contract entered into on or after October 1, 2021.

50 2. As used in this section, "pro bono contract" has the meaning ascribed to it  
51 in section 4 of this act.

1       **Sec. 17.** The provisions of subsection 1 of NRS 218D.380 do not apply to  
2 any provision of this act which adds or revises a requirement to submit a report to  
3 the Legislature.