

**MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Eighty-first Session
February 8, 2021**

The Senate Committee on Government Affairs was called to order by Chair Marilyn Dondero Loop at 3:31 p.m. on Monday, February 8, 2021, Online. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Marilyn Dondero Loop, Chair
Senator James Ohrenschall, Vice Chair
Senator Dina Neal
Senator Pete Goicoechea
Senator Ira Hansen

STAFF MEMBERS PRESENT:

Alysa Keller, Policy Analyst
Heidi Chlarson, Counsel
Janae Johnson, Committee Secretary

OTHERS PRESENT:

Dave Fogerson, Chief, Division of Emergency Management, Department of Safety
Greg Lovato, Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources
Steven Cohen
Kyle George, First Assistant Attorney General, Office of the Attorney General
Jessica Adair, Chief of Staff, Office of the Attorney General

CHAIR DONDERO LOOP:

I will open the hearing with Senate Bill (S.B.) 14.

SENATE BILL 14: Revises provisions relating to certain emergency response plans and assessments. (BDR 36-280)

DAVE FOGERSON (Chief, Division of Emergency Management, Department of Public Safety):

I am here to present S.B. 14. The bill draft cleans up some issues with the language in statute. It allows the Division to update how we provide a copy of the written guide developed for an emergency response plan. The new proposals are posted to the Division's website, and we mail only upon requests instead of mailing out to all government entities. This will streamline the operations and eliminate waste.

The second change is to have the Division work with the Public Utilities Commission, Division of Environmental Protection and the Office of Energy. The group leaders will compile a list of each utility and provider for new electric resources required to submit an assessment and an emergency response to the Division. The definition for utility is a bit odd, and collaborating with these three groups has generated ideas on how to better support the entities.

We have met with these partners prior to the introduction of S.B. 14 to discuss how to improve the intended outcome. This change is necessary to ensure companies submit plans under the language for utilities. Companies must submit an emergency plan even if there is no infrastructure to Nevada. Collaborating with the partners, we have developed an effective list to meet the intent for the infrastructure.

GREG LOVATO (Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources):

I support S.B. 14.

STEVEN COHEN:

Please take in consideration for persons who are disabled during the pandemic. I am neutral to S.B. 14.

CHAIR DONDERO LOOP:

I will close the hearing on S.B. 14 and open the hearing on S.B. 37.

SENATE BILL 37: Revises certain provisions relating to the process by which a district attorney may request assistance in criminal cases from the Office of the Attorney General. (BDR 18-411)

KYLE GEORGE (First Assistant Attorney General, Office of the Attorney General):
I am here to present S.B. 37 as referenced from my testimony ([Exhibit B](#)).

SENATOR NEAL:

I looked up the history of the statute mentioned in S.B. 37 from 2011, *Nevada Revised Statutes* (NRS) 228.130, and it deals with conflict of interest. How have conflicts been handled with county commissions from 2011 until now? What were the issues to come up in 2020 that need to be changed?

MR. GEORGE:

Historically, the district attorneys' offices have dealt with this limitation on structure. They would call another district attorney's (DA) office. For example, when I was a prosecutor for Mineral County, we would call Churchill County to see if it had resources available to help. This ad hoc process avoids the county commission or public discussion.

In the past couple of years, we have had two cases. In one case, a county commissioner's grandson in a rural county was accused of a crime. The DA believed because of the nature of the county commission, it would not be appropriate for the DA to prosecute the case. The DA wanted to refer the case to the Office of the Attorney General (AG), but the normal procedure is to go through the county commission. The county commission's rulings would specify the county commissioner's grandchild.

SENATOR NEAL:

There will not be a reimbursement associated with the bill. What was the constitutional provision that allows this nuisance to occur? If there is no reimbursement associated and it can bypass the commission, what is the constitutional rule?

MR. GEORGE:

This is statutory and not constitutional. Under statute, the process outlines going to the county commission before bringing the matter to the AG's Office. The legislative body has the power to change this process to bypass this situation. There are constitutional considerations to the county commission's duty to manage the budget of the county. The mechanisms were constructed to not impact the county's budget.

SENATOR NEAL:

I knew it was statutory. I could not find the historical intent on the budget, and there was public interest associated with the commission. From your example of the grandson of a commissioner, what about the other commissioners wanting more detail? They would want to know what is going on and how it works. There is a knowledge issue for the commissioners trying to understand what is going on in their body.

MR. GEORGE:

That is a good point. There are several different constitutional considerations. The DAs' Offices have their own constitutional guidelines with their own independence from the county commissions. Areas of NRS conflict with each other. Laws say it is a crime to reveal the existence of an active criminal investigation. However, we have a constraint against revealing the existence of an active criminal investigation with the need to publicize it in order to get a referral to the AG's Office. This bill removes the conflict and tension between different areas of the law.

JESSICA ADAIR (Chief of Staff, Office of the Attorney General):

I understand your intent with the concern of the public interest from voters, residents and the county commissioners. If a county commissioner has committed crimes, the residents should be aware of these crimes. By statute and constitution, if the AG's Office files charges, those charges will be public. This process has to be conducted publicly. The commissioners and anyone in the county would be aware of those charges and the resolution of that case.

SENATOR GOICOECHEA:

The way S.B. 37 reads, the AG was not going to seek reimbursement for the action. The DA can request support and would not have to inform the county commission. What would happen if you had a DA not interested in working on their cases and sends the cases to the AG's Office? It seems the AG's Office would have to provide counsel in those cases?

MS. ADAIR:

The AG's Office is busy and cannot accept cases that do not involve conflict real or perceived. The AG's Office has its own statutory and constitutional obligations with a limited team. There are certain cases in which DAs rightfully cannot prosecute. These cases are important for the AG's Office to prosecute.

Most AGs would not have the incentive to pick up the slack. All of these cases will be public if they come to a charge.

The voters would hold the DA accountable. If a DA is shipping all cases to the AG's Office, the DA would have an earful from the voters. The AG's Office had conversations with the DAs on S.B. 37. The AG's Office did not anticipate DAs sending cases they did not want to pursue. The DAs recognized some cases cannot be prosecuted and must be referred to the AG's Office.

SENATOR GOICOECHEA:

How would the county commissioners address a DA they wanted to have investigated?

MR. GEORGE:

If there was an issue with a DA, the commission could directly complain to the AG's Office. The AG's Office would have jurisdiction to investigate the DA in question. The bill provisions would not implicate the commission in any way, and the AG could proceed. The AG's Office does have direct jurisdiction to investigate those matters.

SENATOR GOICOECHEA:

The board of county commissioners would put the agenda out and let the DA know the AG's Office would investigate.

SENATOR OHRENSCHALL:

Under NRS 228.130, is the reimbursement usually waived by the AG's Office when requested to assist with a county DA? Is there any data or information on what happens under statute for reimbursement? In the example, the county commissioner's grandson who was subject and who asked for assistance from the AG, what happened on this agenda?

MS. ADAIR:

The AG's Office has not sought any reimbursement from the county under the referrals received. The cases the AG's Office has received are not complex in nature, and we are capable of handling those cases with normal resources. Perhaps the DA seeks to refer a case that goes beyond existing resources. For example, an expert witness is expensive, and the budget would not cover the expense. This is the appropriate use of the reimbursement mechanism. Under AG Aaron Ford's administration, we have not sought any reimbursement.

MR. GEORGE:

On the example case, I do not recall how it played out. The subject did do a plea bargain. I do not recall jurisdictionally if it was through the AG's Office or the DA's Office. The jurisdictional issue is resolved without the obstacles discussed.

SENATOR HANSEN:

How often does the AG's Office get these kind of calls? Are there any counties where it is a consistent problem? Do the DAs take advantage of this with severe criminal cases?

MR. GEORGE:

I am thinking it is a dozen a year. Rural counties run around five to six per year.

SENATOR HANSEN:

I assumed this was a common thing.

MR. GEORGE:

No, not often. We did get confirmation on the calls. We get ten calls a month.

CHAIR DONDERO LOOP:

To clarify, it is ten calls a month?

MR. GEORGE:

Yes, that is correct.

CHAIR DONDERO LOOP:

I will close the hearing on S.B. 37 and open the hearing on S.B. 38.

SENATE BILL 38: Establishes provisions governing the retention of pro bono legal assistance by the Office of the Attorney General. (BDR 18-409)

KYLE GEORGE (First Assistant Attorney General, Office of the Attorney General):

I am here to present S.B. 38 and will refer to my testimony ([Exhibit C](#)). I will present the proposed amendment ([Exhibit D](#)) and reference the amendment versus the original language from my testimony, [Exhibit C](#).

SENATOR NEAL:

Does this require approval from the Governor? With the insertion of pro bono, does it need approval from the State Board of Examiners? Is it still considered quasi-prosecutorial?

MS. ADAIR:

It would not need approval from the Board of Examiners, for there is no dollar amount attached to the contract. As for quasi-prosecutorial, it would not apply to prosecutorial activities or criminal prosecutions. It would strictly be pro bono legal advice.

SENATOR NEAL:

The Board of Examiners reviews things for a dollar amount. Is their relationship to the AG stronger than just a dollar amount? Is there more substance to their relationship?

MS. ADAIR:

No, I do not believe so. The Board of Examiners only approves contracts obligated by the State over a specific fiscal threshold. There is a stronger relationship, since the AG is a member of the Board of Examiners and the Office provides legal counsel to the Board of Examiners. The Board of Examiners does not typically approve any work the AG's Office performs, only contracts the AG's Office may enter into above the financial threshold.

SENATOR NEAL:

I was listing out all the projects the AG's Office does, and as for the pro bono contract, this would be more than just advice. There would not be a need for this intimate oversight if it was just advice. They do not agree to a settlement, but they are negotiating a settlement. There is no reason the AG has sole authority to agree to any settlement unless someone else is negotiating on your behalf. This is unpaid work and is a significant contract.

MS. ADAIR:

The AG would retain all decision-making authority. The Board of Examiners normally does not approve any settlements the AG's Office enters into with any party. The Board of Examiners only approves contracts the AG's Office enters into and does not maintain oversight of the Office. As for the contracts with pro bono counsel, the AG maintains an agreement with constitutional and statutory authority. The AG has the final say, and any counsel, whether pro bono, special

or contingency, does not have authorization to enter into any agreements without the explicit approval of the AG.

SENATOR HANSEN:

When do you need pro bono help? Does this only apply to individual lawyers? Does it apply to the American Civil Liberties Union (ACLU)?

MS. ADAIR:

Any person or firm that enters into a pro bono contract includes a law firm or attorney who is licensed to practice law. A policy organization is not licensed to practice law and is not eligible for this kind of work. For example, the ACLU or any organization with licensed attorneys working for it would be considered eligible for pro bono work. When it comes to federal issues or nuisance areas of the law, there are attorneys who specialize in this kind of work and are willing to assist the AG's Office.

For example, nuclear energy has specialized attorneys who assist the AG's Office under normal special counsel statutory provisions. Experts in the field would love to assist the Office and are capable to enter under a contract, but we are not able to because of the statutory provisions. The AG's Office has to have a scope of work with a beginning and an end to maintain the attorney-to-attorney confidentiality. The AG's Office cannot share privileged information that is confidential from a client with anyone outside of the Office unless there is a legal contract in place to protect the information.

SENATOR HANSEN:

Previously, the AG did not have this authority and was unable to access this in advance? Is this brand-new? How many staff attorneys are in the AG's Office?

MS. ADAIR:

There are 150 attorneys, which includes prosecutors for the State and all occupational licensing boards. It is client and casework load at the AG's Office. We are trying to get specialized attorneys to assist the Office.

SENATOR HANSEN:

Did the previous AG's Office handle this?

MS. ADAIR:

No. They did not and would not accept the help. If they did accept the help, it would be illegal.

MR. GEORGE:

The way the AG's Office is structured, the majority of the civil litigation is under me. Two deficiencies in the Office are antitrust and bankruptcy. These are not areas the AG's Office litigates, and these issues do not occur regularly enough for the attorneys to develop experience. These are laws that require a tremendous amount of expertise. If it is necessary for us to litigate anything, we are forced to pay someone through a special counsel contract or set up a contingency arrangement. When there may be experts able to give us a quick guidance to get past the stumbling block, we cannot do this at this time.

SENATOR NEAL:

Looking at section 9 in the amendment: What is public versus work product? Certain facts can be on the public record as long as they are not associated with strategy. What is left to be disclosed for inspection?

MR. GEORGE:

Legal strategy and theories are privileged; these are meant for discussions between attorneys and clients. Attorneys understand any ratifications for a legal pathway to follow. Building records are detailed and can reveal some legal contemplating. For example, a building's research on topics A, B and C might expose that we are contemplating A, B and C. The intent of the amendment will give the ability to not compel attorneys to otherwise disclose privileged information in the interest of retaining public records. We were hoping the language of the bill will not disclose the privileged information.

SENATOR NEAL:

What is left to be disclosed? Privileged information is broad, and for the public record. What is open for inspection under NRS 239.010?

MS. ADAIR:

An important disclosure is the charges would be zero. An important thing disclosed is the firm and the attorneys working in that relationship. Another thing disclosed is the beginning and ending of the contract to keep the AG's Office accountable to the public. Any pro bono counsel who was on a paid

contract is barred from entering into another contract within a year after the completion of the contract as a cooling-off period.

As for a general scope of work for pro bono legal advice, in order for the contract to be valid, the scope of work would need to be sufficient in detailed topics for the area of law. For example, assistance with Yucca Mountain licensing matters has lots of detail that would give the public and the Legislators sufficient information to ensure the AG's Office is held accountable.

CHAIR DONDERO LOOP:

If counsel is an expert in nuclear law and uses the pro bono option, the counsel is retained as a pro bono attorney. Then the counsel goes back and does nuclear law. Can you clarify the cooling-off period? It seems there is overlap in the law.

MS. ADAIR:

The cooling-off provision became important after we reviewed the bill and talked with stakeholders. The AG's Office wants to ensure the public can trust the AG's Office that there would not be any quid pro quo; for example, if the AG's Office received free legal advice and later gave the counsel a paid contract. The provision in S.B. 38 ensures the AG and future AGs do not engage in business incentives for giving pro bono legal advice to the Office.

Lawyers have to abide by ethical considerations for what they are working on for a particular client. Lawyers cannot engage for a fee or for free in another case that might negatively impact their clients. There are plenty of folks out there who would not be able to give the AG's Office advice because of a conflict. If an attorney wanted to offer advice, the AG's Office would like to take the attorney up on the advice. Plenty of attorneys would not have an incentive, financial or otherwise, to engage in pro bono contact with the AG's Office. If there are attorneys out there willing and able to assist the AG's Office on nuisance legal matter, the Office would like to accept their advice. The cooling-off period is to ensure there is no appearance of impropriety.

MR. COHEN:

I am neutral to S.B. 38. Is there anything in the bill for the special counsel situations that would prevent them to work for the AG's Office?

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CHAIR DONDERO LOOP:

I appreciate your thoughts, but we do not respond to testimony. I will close the hearing on S.B. 38 and open the hearing on S.B. 46.

SENATE BILL 46: Revises provisions relating to the Office of the Attorney General. (BDR 20-410)

KYLE GEORGE (First Assistant Attorney General, Office of the Attorney General):
I will present S.B. 46 with reference from my testimony ([Exhibit E](#)).

SENATOR NEAL:

My concern with S.B. 46, which is repeated in several parts, are the words "or any agency in the Executive Department of the State Government." We had a similar bill in the Assembly Government Affairs Committee in 2017, and it added judges. I brought up the AG since he was threatened by having a person jump over his gate. I believe the AG was added and no one else, but the bill died. I asked the Legislators why everyone is getting protection for threats. The Legislators are just stuck out there and do not have the same capability. Who are these "any agencies," and why is it so broad to be inclusive? When it says any person, does it include everyone?

MR. GEORGE:

We are referring to any deputy attorney general (DAG) from the Office who represents any State agency. We are not extending this to any State agency. This is limited to the DAGs in the AG's Office.

SENATOR NEAL:

Where it says any agency, it is broad catchall language.

MR. GEORGE:

It should be read as "who prosecutes or defends actions on behalf of" any agency. If you read the preparatory clause, it is limited to those who prosecute or defend for the AG's Office.

SENATOR NEAL:

Because of "or" you could see it that way instead of "and." Anytime I see "any," there is a problem on who is included. The Legislators are not considered.

MR. GEORGE:

This language was supplied to us from the Legislative Counsel Bureau. I believe the construction of "anyone who prosecutes or defends" actions with two directives for the State of Nevada or any agency in the Executive Branch is what the "or" modifies. It is simply a statutory interpretation, and we can revisit this language in a proposed amendment to make it more explicit. It would limit it to the DAGs in the AG's Office, which is the only jurisdiction we have.

SENATOR OHRENSCHALL:

If this passes with this language, would this only apply to attorneys at the AG's Office or apply to investigators? Would this only apply to members of the AG's Office or someone who is retired? Would the retired person be able to seek this protection?

MS. ADAIR:

Our investigators would have their information be confidential; under NRS, any peace officer or retired peace officer is already covered. Whether they are employed by the AG's Office or any other agency, they are covered. As for a retired peace officer, the answer is yes. The way it is written, a DAG who retires or goes to work elsewhere would not be covered. The language states a current person employed by the AG's Office. This is similar in statute for folks who are social workers for the DA's Office. The AG's Office wanted to mirror this statute.

SENATOR OHRENSCHALL:

Maybe it could be expanded to folks who did not seek protection but now have left and have concerns. This might be something to think about for future sessions.

CHAIR DONDERO LOOP:

Section 5 refers to designated authorized emergency vehicles. How many emergency vehicles does the AG's Office have? There is no fiscal note; would there be a fiscal note if we equipped these vehicles with sirens or lights?

MS. ADAIR:

We have 50 authorized vehicles approved by the Legislature. We use State service vehicles. There is no fiscal impact; we are able to secure lights and sirens through other purchase funding. We do not have the statutory authorization, so before the purchases are made, we have to have statutory

authorization. The fleet service vehicles can have lights and sirens incorporated without an expensive retrofit. We are not asking to paint the vehicles to indicate they are from the AG's Office, and the lights and sirens are sufficient.

SENATOR NEAL:

The forfeiture funds could be used for sirens on the vehicles. Will this be presented as a companion piece?

MS. ADAIR:

We could use forfeiture funds or use existing funding. Lights and sirens are not expensive. We do not believe there will be a companion piece. If there is a companion work program, it would be authorization for the AG's Office to use the funding. We use forfeiture funds for bulletproof vests and other personal protective equipment (PPE) for investigators to do their jobs safely. No taxpayer dollars will be necessary. There has been no fiscal note.

CHAIR DONDERO LOOP:

I realize there is no fiscal note, and the AG's Office can use forfeiture funds. I agree this is what is done, and somewhere down the line there is no funding.

MS. ADAIR:

We are operating this way and do not have the statutory authorizations. We have not asked for any funding for that. We do have funds available for the Office for officers' safety, including training, PPE and equipment. If it comes from forfeiture funding or other funds, it depends on the budget code for investigators. The general fund is funded by assessments through various industries; there are 22 different budget accounts for the AG's Office.

We do not have the statutory authorization if there is an extremely unsafe situation. For example, someone drives behind my vehicle but the other vehicle does not have any lights or sirens and is not marked. The driver says you are under arrest, but there is no indication the person is a peace officer. I may decide to resist and say, is this a lawful arrest? I could also pull a weapon, which is worse, because I believe someone is trying to commit a crime directed at me. This scenario is unsafe for both civilians and peace officers. The important piece of S.B. 46 is getting the statutory authorization. If there are fiscal questions, I can get this information for you at a later date.

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CHAIR DONDERO LOOP:

I want to make sure you have funding before passing this policy.

MR. COHEN:

I concur with the Senator's concerns on this bill, and I am neutral to S.B. 46.

CHAIR DONDERO LOOP:

I will close the hearing on S.B. 46 and open public comment.

SENATOR HANSEN:

At the first Committee meeting, we had a presentation from the State Treasurer and a conversation on a bill that was passed in 2011. The Nevada Gaming Control Board got in contact with me. It was former Assemblyman William Horn who passed the bill that took became effect in 2013. We have raised \$72 million from the unredeemed slot machine wagering vouchers. This bill has not raised any taxes and has been averaging over \$10 million a year. The State Treasurer was not aware of this. It is nice to see a measure bring money into Nevada.

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CHAIR DONDERO LOOP:

Seeing no further business, I adjourn this meeting at 4:48 p.m.

RESPECTFULLY SUBMITTED:

Janae Johnson,
Committee Secretary

APPROVED BY:

Senator Marilyn Dondero Loop, Chair

DATE: EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
S.B. 37	B	1	Kyle George/Office of the Attorney General	Written Testimony
S.B. 38	C	1	Kyle George/Office of the Attorney General	Written Testimony
S.B. 38	D	1	Kyle George/Office of the Attorney General	Proposed Amendment
S.B. 46	E	1	Kyle George/Office of the Attorney General	Written Testimony