

SENATE BILL NO. 34—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 16, 2022

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to legal representation in certain actions or proceedings. (BDR 3-422)

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 ~~fornitted-material~~ is material to be omitted.

AN ACT relating to legal services; authorizing the Attorney General or the chief legal officer or other authorized representative of a political subdivision of this State to provide legal representation to certain officers or employees of the State or a political subdivision thereof in certain actions or proceedings; revising provisions relating to special counsel employed by the Attorney General; revising provisions governing the legal representation of certain persons by the Attorney General; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Attorney General or the chief legal officer or other authorized representative of a political subdivision of this State to provide legal counsel to certain officers or employees of the State or a political subdivision of the State who are named as defendants in a civil action and certain other persons who are not officers or employees of the State or a political subdivision. Existing law authorizes the Attorney General, chief legal officer or other authorized representative to employ special counsel with respect to such civil actions if the Attorney General, chief legal officer or other authorized representative, as applicable, determines that it is impracticable, uneconomical or could constitute a conflict of interest for the legal service to be provided by the Attorney General, chief legal officer or other authorized representative. (NRS 41.0339)

Section 1 of this bill authorizes the Attorney General or the chief legal officer or other authorized representative of a political subdivision of the State to represent certain officers or employees of the State or a political subdivision thereof who are summoned or subpoenaed to appear in an action or proceeding in which the person is not a named defendant if: (1) the person submits a written request for



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representation; and (2) the Attorney General, chief legal officer or other authorized representative, as applicable, determines that such representation is in the best interest of the State or a political subdivision of the State. **Section 1** also authorizes the Attorney General, chief legal officer or other authorized representative to employ special counsel with respect to such actions or proceedings if the Attorney General, chief legal officer or other authorized representative, as applicable, determines that it is impracticable, uneconomical or could constitute a conflict of interest for the legal service to be provided by the Attorney General, chief legal officer or other authorized representative. **Section 2** of this bill makes a conforming change to indicate the appropriate placement of **section 1** in the Nevada Revised Statutes.

Existing law defines the term "state judicial officer" to mean a justice of the Supreme Court, senior justice, judge of a district court or senior judge. (NRS 41.03385) **Section 3.3** of this bill revises the term to include a judge or senior judge of the Court of Appeals.

Existing law requires that certain determinations relating to the employment of special counsel be made by the Attorney General prior to trial. (NRS 41.03435) **Section 3.7** of this bill removes the requirement that such determinations be made prior to trial.

In general, existing law: (1) provides that the Attorney General and his or her deputies are the legal advisers on all state matters arising in the Executive Department of the State Government; and (2) prohibits persons in the Executive Department from employing other counsel to represent the State or any agency in the Executive Department unless the Attorney General and the deputies of the Attorney General are disqualified to act in the matter. (NRS 228.110) **Section 4** of this bill authorizes a person in the Executive Department to employ counsel other than the Attorney General to represent the State or any agency in the Executive Department if the Attorney General determines that it is impracticable, uneconomical or could constitute a conflict of interest for the Attorney General or a deputy of the Attorney General to serve as the legal adviser on the matter. **Section 4** also requires compensation for such counsel to be paid out of: (1) the Reserve for Statutory Contingency Account; or (2) available federal grants or a permanent fund in the State Treasury other than the State General Fund.

Section 4.3 of this bill requires the Office of the Attorney General to submit a report, on or before July 1 of each odd-numbered year, to the Director of the Legislative Counsel Bureau for distribution to the Joint Interim Standing Committee on the Judiciary that includes, without limitation, a list of each contract for outside legal counsel entered into by the Executive Department of State Government during the immediately preceding biennium and, for each such contract, the names of the parties to the contract and the monetary amount of the contract.

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

Section 1. Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The official attorney may represent any present or former local judicial officer, state judicial officer, officer or employee of the State or a political subdivision, immune contractor or State Legislator summoned or subpoenaed to appear in an action or proceeding in which the person is not a named defendant, if:



(a) Within 7 days after the delivery or service of the summons or subpoena, the person submits a written request for representation to the official attorney, and, if the person has an administrative supervisor, his or her administrative supervisor, unless a waiver is granted pursuant to subsection 9; and

(b) The official attorney determines that such representation is in the best interest of the State or a political subdivision of the State.

2. As soon as reasonably practicable after receiving a request pursuant to subsection 1, the official attorney shall determine whether to represent the person who submitted the request and provide written notice of his or her determination to that person.

3. No fact pertaining to the arrangements or circumstances by which the State or a political subdivision or any attorney thereof represents any person or does not represent a person pursuant to this section is admissible in evidence in any action or proceeding, except in connection with an application to withdraw as the attorney of record.

4. If the official attorney determines that it is impracticable, uneconomical or could constitute a conflict of interest for the official attorney to provide the legal services associated with representing a person pursuant to this section, the official attorney may employ special counsel to render such legal services. Compensation for special counsel employed by an official attorney pursuant to this subsection must be paid in accordance with the requirements prescribed by NRS 41.03435 or 41.0344, as applicable.

5. At any time after a written request is submitted pursuant to subsection 1, the person requesting representation may employ his or her own counsel to represent him or her in the action or proceeding. At that time, the State or political subdivision is excused from any duty to represent that person and is not liable for any expenses associated with the action or proceeding, including, without limitation, court costs and attorney's fees.

6. The official attorney may apply to a court to withdraw from representing a person pursuant to this section at any time after the official attorney has appeared in an action or proceeding to represent the person upon notice to the person. Such notice must include, without limitation, the reason for the requested withdrawal.

7. If a court grants a motion to withdraw brought by the official attorney pursuant to subsection 6, the State or any political subdivision has no duty to continue to represent the person who is the subject of the motion to withdraw.



8. *The provisions of this section do not abrogate or otherwise alter or affect any immunity from, or protection against, any civil action or civil liability which is provided by law to a local judicial officer, state judicial officer, officer or employee of the State or a political subdivision, immune contractor, State Legislator, member of a state board or commission or member of a local board or commission for any act or omission relating to the person's public duties or employment.*

9. *The official attorney may waive the requirement for notification prescribed by paragraph (a) of subsection 1 for good cause shown.*

10. *Nothing in this section shall be construed to require an official attorney to represent any present or former local judicial officer, state judicial officer, officer or employee of the State or a political subdivision, immune contractor or State Legislator in any action or proceeding.*

11. *As used in this section, "action or proceeding" means any action, suit, matter, cause, hearing, appeal or proceeding.*

Sec. 2. NRS 41.03375 is hereby amended to read as follows:

41.03375 As used in NRS 41.03375 to 41.03473, inclusive, *and section 1 of this act*, unless the context otherwise requires, the words and terms defined in NRS 41.03377, 41.0338 and 41.03385 have the meanings ascribed to them in those sections.

Sec. 3. (Deleted by amendment.)

Sec. 3.3. NRS 41.03385 is hereby amended to read as follows:

41.03385 "State judicial officer" means a justice *or senior justice* of the Supreme Court, ~~senior justice,~~ *judge or senior judge of the Court of Appeals or* judge *or senior judge* of a district court. ~~for senior judge.~~

Sec. 3.7. NRS 41.03435 is hereby amended to read as follows:

41.03435 The Attorney General may employ special counsel whose compensation must be fixed by the Attorney General, subject to the approval of the State Board of Examiners, if the Attorney General determines ~~at any time prior to trial~~ that it is impracticable, uneconomical or could constitute a conflict of interest for the legal service to be rendered by the Attorney General or a deputy attorney general. Compensation for special counsel must be paid out of:

1. The Reserve for Statutory Contingency Account; or

2. Available federal grants or a permanent fund in the State Treasury other than the State General Fund.

Sec. 4. NRS 228.110 is hereby amended to read as follows:

228.110 1. Except as otherwise provided in NRS 228.111 to 228.1118, inclusive, and 228.112 to 228.1127, inclusive, or by specific statute:



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

(b) No officer, commissioner or appointee of the Executive Department of the 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~~:

(1) *The Attorney General and the deputies of the Attorney General are disqualified to act in such matter ~~if~~; or*

(2) *The Attorney General determines that it is impracticable, uneconomical or could constitute a conflict of interest for the Attorney General or a deputy of the Attorney General to serve as the legal adviser in such matter.*

2. *Compensation for any attorney or counselor at law employed as special counsel by the Attorney General must be paid in accordance with the requirements prescribed by NRS 41.03435.*

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

Sec. 4.3. On or before July 1 of each odd-numbered year, the Office of the Attorney General shall submit a report to the Director of the Legislative Counsel Bureau for distribution to the Joint Interim Standing Committee on the Judiciary that includes, without limitation:

1. A list of each contract entered into pursuant to NRS 228.110, as amended by section 4 of this act during the immediately preceding biennium; and

2. For each such contract listed in the report, the names of the parties to the contract and the monetary amount of the contract.

Sec. 4.7. The provisions of subsection 1 of NRS 218D.380 do not apply to any provision of this act which adds or revises a requirement to submit a report to the Legislature.

Sec. 5. 1. This section and sections 3, 3.3 and 3.7 of this act become effective upon passage and approval.

2. Sections 1, 2, 4, 4.3 and 4.7 of this act become effective on October 1, 2023.

