

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:**

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

17 **Section 7** of this bill requires the Attorney General to retain final authority over  
18 the course and conduct of the matter that is the subject of a pro bono contract, and



19 **section 8** of this bill requires the Attorney General to prescribe a form of addendum  
20 to a pro bono contract that sets forth the specific rights and obligations of the  
21 parties relating to the matter that is the subject of the contract. **Section 9** of this bill  
22 requires any attorney or law firm retained pursuant to a pro bono contract to  
23 prepare and maintain contemporaneous records reflecting the work performed on  
24 the matter and provides that such records are public records. **Section 10** of this bill  
25 requires the Attorney General to post on his or her Internet website a copy of any  
26 fully executed pro bono contract and **section 11** of this bill requires the Attorney  
27 General to prepare and submit an annual report to the Director of the Legislative  
28 Counsel Bureau that sets forth certain information about pro bono contracts in  
29 effect during the period covered by the report.

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

32 **Section 15** of this bill exempts legal services provided pursuant to a pro bono  
33 contract from the procedures otherwise applicable to state agencies for the  
34 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:

1 **Section 1.** Chapter 228 of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 2 to 11, inclusive, of this  
3 act.

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

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

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

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

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

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



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

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

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

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

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

17       **Sec. 8. The Attorney General shall prescribe a form of**  
18 **addendum to a pro bono contract that must be used for every such**  
19 **contract. The addendum must set forth the specific rights and**  
20 **obligations of the parties relating to the matter that is the subject**  
21 **of the contract, including, without limitation, the requirements of**  
22 **sections 7 and 9 of this act.**

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

33       **2. The records described in subsection 1 are public records**  
34 **and must be open for inspection pursuant to NRS 239.010.**

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

42       **Sec. 11. 1. On or before February 1 of each year, the**  
43 **Attorney General shall prepare and submit a report to the Director**  
44 **of the Legislative Counsel Bureau, for transmittal to the Majority**  
45 **Leader of the Senate and the Speaker of the Assembly, describing**



1 *the use of pro bono contracts by the Attorney General during the*  
2 *preceding calendar year.*

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

6 (a) *The name and address of the retained attorney or law firm;*

7 (b) *The nature and present status of the matter that is the*  
8 *subject of the contract;*

9 (c) *The name of each party to the matter;*

10 (d) *The amount of any recovery obtained in the matter; and*

11 (e) *The amount of any costs and expenses paid in the*  
12 *prosecution of the matter for which no recovery was obtained.*

13 **Sec. 12.** NRS 228.110 is hereby amended to read as follows:

14 228.110 1. Except as otherwise provided in NRS 228.111 to  
15 228.1118, inclusive, *and sections 2 to 11, inclusive, of this act* or  
16 by specific statute:

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

20 (b) No officer, commissioner or appointee of the Executive  
21 Department of the Government of the State of Nevada shall employ  
22 any attorney at law or counselor at law to represent the State of  
23 Nevada within the State, or to be compensated by state funds,  
24 directly or indirectly, as an attorney acting within the State for the  
25 State of Nevada or any agency in the Executive Department thereof  
26 unless the Attorney General and the deputies of the Attorney  
27 General are disqualified to act in such matter.

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

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

31 228.140 1. Except as otherwise provided in NRS 228.111 to  
32 228.1118, inclusive, *and sections 2 to 11, inclusive, of this act*, the  
33 Attorney General shall attend each of the terms of the Supreme  
34 Court, and there prosecute or defend, as the case may be, on the part  
35 of the State:

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

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

39 (c) All causes to which any county may be a party, other than  
40 those in which the interest of the county may be adverse to the State,  
41 or any officer of the State, acting in his or her official capacity, and  
42 after judgment obtained in any such cause, the Attorney General  
43 shall direct such proceedings, and sue out such process as may be  
44 required to carry the same into execution.

45 2. The Attorney General shall:



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

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

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

7 228.170 1. Except as otherwise provided in NRS 228.111 to  
8 228.1118, inclusive, *and sections 2 to 11, inclusive, of this act,*  
9 whenever the Governor directs or when, in the opinion of the  
10 Attorney General, to protect and secure the interest of the State it is  
11 necessary that a suit be commenced or defended in any federal or  
12 state court, the Attorney General shall commence the action or make  
13 the defense.

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

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

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

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

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

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

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

27 353.335 1. Except as otherwise provided in subsections 5 and  
28 6, a state agency may accept any gift or grant of property or services  
29 from any source only if it is included in an act of the Legislature  
30 authorizing expenditures of nonappropriated money or, when it is  
31 not so included, if it is approved as provided in subsection 2.

32 2. If:

33 (a) Any proposed gift or grant is necessary because of an  
34 emergency as defined in NRS 353.263 or for the protection or  
35 preservation of life or property, the Governor shall take reasonable  
36 and proper action to accept it and shall report the action and his or  
37 her reasons for determining that immediate action was necessary to  
38 the Interim Finance Committee at its first meeting after the action is  
39 taken. Action by the Governor pursuant to this paragraph constitutes  
40 acceptance of the gift or grant, and other provisions of this chapter  
41 requiring approval before acceptance do not apply.

42 (b) The Governor determines that any proposed gift or grant  
43 would be forfeited if the State failed to accept it before the  
44 expiration of the period prescribed in paragraph (c), the Governor  
45 may declare that the proposed acceptance requires expeditious



1 action by the Interim Finance Committee. Whenever the Governor  
2 so declares, the Interim Finance Committee has 15 days after the  
3 proposal is submitted to its Secretary within which to approve or  
4 deny the acceptance. Any proposed acceptance which is not  
5 considered within the 15-day period shall be deemed approved.

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

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

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

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

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

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

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

23 5. A state agency may accept:

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

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

32 6. This section does not apply to:

33 (a) The Nevada System of Higher Education;

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

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



1       **(d)** Artifacts donated to the Department of Tourism and Cultural  
2 Affairs.

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

5       2. As used in this section, “pro bono contract” has the meaning  
6 ascribed to it in section 4 of this act.

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

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