

SENATE BILL NO. 244—SENATOR BROWER

MARCH 11, 2015

Referred to Committee on Judiciary

SUMMARY—Establishes requirements governing a contingent fee contract for legal services provided to the State of Nevada or an officer, agency or employee of the State. (BDR 18-658)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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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 requirements applicable to a contingent fee contract for legal services entered into by the Attorney General or any other officer, agency or employee of the Executive Department of the State Government; limiting the amount of the fee that may be collected by a retained attorney or law firm pursuant to such a contract; requiring the Attorney General to prepare and submit certain reports 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. Unless the Attorney General and his or her deputies are
4 disqualified from acting in such a matter or an act of the Legislature specifically
5 authorizes the employment of other counsel, persons in the Executive Department
6 are prohibited from employing other counsel to represent the State or any agency in
7 the Executive Department. (NRS 228.110) **Sections 2-13** of this bill establish
8 certain requirements governing any contract for legal services entered into by the
9 Attorney General or any other officer, agency or employee in the Executive
10 Department, pursuant to which a private attorney or law firm is to be paid a
11 contingent fee. **Section 6** requires, as a condition of such a contract, that the
12 Governor determine: (1) that the Attorney General lacks the resources, skill or
13 expertise to provide representation in the matter that is the subject of the proposed
14 contract; and (2) that representation on a contingent fee basis is cost-effective and
15 in the public interest. **Section 6** further requires the approval of the Interim Finance
16 Committee to commit any money for the purpose of the proposed contract.



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17 If the required determination and approval are made and given, **section 7**
18 provides that the provisions of existing law applicable to state contracts for the
19 services of a person as an independent contractor are generally applicable to a
20 request for proposals, the evaluation of proposals and the award of any contingent
21 fee contract.

22 **Section 8** requires the Attorney General to retain final authority over the course
23 and conduct of the matter that is the subject of a contingent fee contract. **Section 10**
24 requires the Attorney General to post on his or her Internet website a copy of the
25 contract and the determination of the Governor required by **section 6**.

26 **Section 11** imposes certain recordkeeping requirements on any attorney or law
27 firm retained pursuant to a contingent fee contract and requires the periodic
28 submission of billing statements to the Attorney General and any other officer,
29 agency or employee represented in the matter, describing the work performed and
30 the time spent in performing it. **Section 11** also provides that the billing statements
31 and other records are public records.

32 **Section 12** limits the amount of the fee to which a retained attorney or law firm
33 is entitled under a contingent fee contract. The fee allowed varies with the amount
34 of the recovery and a cap is imposed on the total fee payable in any matter. After
35 any payment of fees is made, **section 13** requires the Attorney General to post on
36 his or her Internet website a record of the payment.

37 **Section 14** of this bill requires the Attorney General annually to prepare and
38 submit a report to the Director of the Legislative Counsel Bureau, setting forth
39 certain information about contingent fee contracts in effect during the period
40 covered by the report.

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 14, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 14, 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.** *“Contingent fee contract” or “contract” means a*
9 *contract for legal services entered into by or at the request of the*
10 *Attorney General, pursuant to which:*

11 *1. Legal services are provided by an attorney or law firm*
12 *engaged in the private practice of law to the State of Nevada or*
13 *any officer, agency or employee in the Executive Department of*
14 *the State Government; and*

15 *2. The fee of the attorney or law firm is payable, in whole or*
16 *in part, from any money recovered in the matter that is the subject*
17 *of the contract.*

18 **Sec. 4.** *“Matter” means an action or other proceeding*
19 *involving one or more claims asserted by one or more plaintiffs*
20 *and presenting common questions of law or fact.*



1 **Sec. 5.** *“Retained attorney or law firm” means an attorney or*
2 *law firm that is a party to a contingent fee contract.*

3 **Sec. 6.** *1. The Attorney General or any other officer,*
4 *agency or employee in the Executive Department of the State*
5 *Government shall not enter into a contingent fee contract unless:*

6 *(a) The Governor, in consultation with the Attorney General,*
7 *has determined in writing:*

8 *(1) That the Attorney General lacks the resources, skill or*
9 *expertise to provide representation in the matter that is the subject*
10 *of the proposed contract; and*

11 *(2) That representation pursuant to a contingent fee*
12 *contract is cost-effective and in the public interest; and*

13 *(b) The proposed contract complies with the requirements of*
14 *sections 2 to 14, inclusive, of this act.*

15 **2.** *Before entering into a contingent fee contract, the Attorney*
16 *General or other officer, agency or employee, as applicable, must*
17 *obtain approval from the Interim Finance Committee to commit*
18 *money for that purpose.*

19 **Sec. 7.** *1. If the determination and approval required by*
20 *section 6 of this act are made and given, the Attorney General*
21 *shall request the Administrator of the Purchasing Division of the*
22 *Department of Administration to advertise for proposals to provide*
23 *legal services pursuant to the proposed contingent fee contract.*

24 **2.** *Except as otherwise provided in this subsection, the*
25 *provisions of chapter 333 of NRS apply to a request for proposals,*
26 *the evaluation of proposals and the award of any contingent fee*
27 *contract. The provisions of subsections 7 and 9 of NRS 333.700*
28 *are not applicable to a proposed contingent fee contract.*

29 **Sec. 8.** *The following conditions apply to a contingent fee*
30 *contract during the term of the contract and any renewal or*
31 *extension of the contract:*

32 **1.** *The Attorney General must retain final authority over the*
33 *course and conduct of the matter that is the subject of the*
34 *contingent fee contract, including, without limitation:*

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

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

39 **2.** *Subject to the authority of the Attorney General, a deputy*
40 *of the Attorney General must have supervisory authority over the*
41 *conduct of the matter that is the subject of the contingent fee*
42 *contract. The deputy shall attend any settlement conference or*
43 *mediation conducted in the matter.*

44 **3.** *The contingent fee contract must not limit the right of any*
45 *attorney for an opposing party in the matter that is the subject of*



1 *the contract to communicate directly with the Attorney General or*
2 *the deputy of the Attorney General described in subsection 2.*

3 *4. The contingent fee contract must set forth the basis on*
4 *which the fee of the retained attorney or law firm is to be*
5 *determined, consistent with the limitations of section 12 of this act.*

6 **Sec. 9.** *The Attorney General shall prescribe a form of*
7 *addendum to a contingent fee contract that must be used for every*
8 *such contract. The addendum must set forth the specific rights*
9 *and obligations of the parties relating to the matter that is the*
10 *subject of the contract, including, without limitation, the*
11 *requirements of sections 8 and 11 of this act.*

12 **Sec. 10.** *Not later than 5 business days after a contingent fee*
13 *contract is signed by all the parties to the contract, the Attorney*
14 *General shall cause fully executed copies of the contract and the*
15 *written determination of the Governor made pursuant to section 6*
16 *of this act to be posted on the Internet website of the Attorney*
17 *General. Those documents must be posted on the website at all*
18 *times during the term of the contract and any extension or*
19 *renewal of the contract.*

20 **Sec. 11.** *1. A retained attorney or law firm shall, from the*
21 *beginning of the term of the contingent fee contract until a date*
22 *not less than 4 years after the date on which the contract expires*
23 *or is terminated, maintain records of all expenses, disbursements,*
24 *charges, credits, receipts, invoices, billing statements and all other*
25 *payments made by or to the retained attorney or law firm in*
26 *connection with the matter that is the subject of the contract.*

27 *2. In addition to the records described in subsection 1, the*
28 *retained attorney or law firm shall prepare and maintain*
29 *contemporaneous records reflecting the work performed on the*
30 *matter by the retained attorney or law firm, including, without*
31 *limitation, any work performed by a paralegal. The records must*
32 *specifically describe the work performed, identify the person who*
33 *performed the work and set forth the time spent in connection with*
34 *the work, in increments of not more than one-tenth of an hour.*

35 *3. Not less frequently than quarterly during the term of a*
36 *contingent fee contract and any extension or renewal of the*
37 *contract, the retained attorney or law firm shall prepare and*
38 *submit a billing statement to the Attorney General and any other*
39 *officer, agency or employee represented by the retained attorney or*
40 *law firm. For the period covered by the statement, the billing*
41 *statement must specifically describe the work performed on the*
42 *matter by the retained attorney or law firm and set forth the time*
43 *spent in performing the work.*



1 4. *The billing statements and other records described in this*
2 *section are public records and must be open for inspection*
3 *pursuant to NRS 239.010.*

4 **Sec. 12.** *1. Except as otherwise provided in subsection 2, a*
5 *retained attorney or law firm is not entitled to a fee, exclusive of*
6 *any costs and expenses described in that subsection, of more than:*

7 *(a) Fifteen percent of that portion of any amount recovered of*
8 *less than \$10,000,000;*

9 *(b) Ten percent of that portion of any amount recovered of*
10 *\$10,000,000 or more but less than \$15,000,000;*

11 *(c) Five percent of that portion of any amount recovered of*
12 *\$15,000,000 or more but less than \$20,000,000; and*

13 *(d) Two percent of that portion of any amount recovered of*
14 *\$20,000,000 or more.*

15 2. *The total fee payable to all retained attorneys or law firms*
16 *in any matter that is the subject of a contingent fee contract must*
17 *not exceed \$10,000,000, exclusive of any costs and expenses*
18 *provided for by the contract and actually incurred by the retained*
19 *attorneys or law firms, regardless of the number of actions or*
20 *proceedings or the number of retained attorneys or law firms*
21 *involved in the matter.*

22 3. *A contingent fee:*

23 *(a) Is payable only from money that is actually received*
24 *pursuant to a judgment or settlement agreement.*

25 *(b) Must not be based on any amount attributable to a fine or*
26 *civil penalty, but may be based on an amount attributable to*
27 *punitive damages.*

28 4. *As used in this section, "amount recovered" does not*
29 *include any money paid as costs.*

30 **Sec. 13.** *Not later than 15 business days after any payment of*
31 *fees is made to a retained attorney or law firm pursuant to a*
32 *contingent fee contract, the Attorney General shall cause a record*
33 *of the payment to be posted on the Internet website of the Attorney*
34 *General. The record must remain posted on the website for a*
35 *period of not less than 1 year after the date of the payment.*

36 **Sec. 14.** *1. On or before February 1 of each year, the*
37 *Attorney General shall prepare and submit a report to the Director*
38 *of the Legislative Counsel Bureau, for transmittal to the Majority*
39 *Leader of the Senate and the Speaker of the Assembly, describing*
40 *the use of contingent fee contracts by the Attorney General during*
41 *the preceding calendar year.*

42 2. *The report required by subsection 1 must:*

43 *(a) Identify each contingent fee contract in effect during the*
44 *period covered by the report and, for each such contract, set forth:*



1 (1) *The name and address of the retained attorney or law*
2 *firm;*

3 (2) *The nature and present status of the matter that is the*
4 *subject of the contract;*

5 (3) *The name of each party to the matter;*

6 (4) *The amount of any recovery obtained in the matter;*

7 (5) *The amount of any costs and expenses paid in the*
8 *prosecution of the matter for which no recovery was obtained; and*

9 (6) *The amount of any fee paid pursuant to the contract;*
10 *and*

11 (b) *Include copies of any written determinations made by the*
12 *Governor pursuant to section 6 of this act during the period*
13 *covered by the report.*

14 **Sec. 15.** NRS 228.110 is hereby amended to read as follows:

15 228.110 1. *Except as otherwise provided in sections 2 to 14,*
16 *inclusive, of this act or 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 ~~12~~ (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 . ~~for unless an act of~~
28 ~~the Legislature specifically authorizes the employment of other~~
29 ~~attorneys or counselors at law.~~

30 ~~3~~ 2. All claims for legal services rendered in violation of this
31 section shall be void.

32 **Sec. 16.** NRS 228.140 is hereby amended to read as follows:

33 228.140 1. ~~The~~ *Except as otherwise provided in sections 2*
34 *to 14, inclusive, of this act, the* Attorney General shall attend each
35 of the terms of the Supreme Court, and there prosecute or defend, as
36 the case may be, on the part of the State:

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

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

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



1 2. The Attorney General shall:

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

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

7 **Sec. 17.** NRS 228.170 is hereby amended to read as follows:

8 228.170 1. ~~Whenever~~ *Except as otherwise provided in*
9 *sections 2 to 14, inclusive, of this act, whenever* the Governor
10 directs or when, in the opinion of the Attorney General, to protect
11 and secure the interest of the State it is necessary that a suit be
12 commenced or defended in any federal or state court, the Attorney
13 General shall commence the action or make 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. 18.** NRS 218E.405 is hereby amended to read as follows:

27 218E.405 1. Except as otherwise provided in subsection 2,
28 the Interim Finance Committee may exercise the powers conferred
29 upon it by law only when the Legislature is not in a regular or
30 special session.

31 2. During a regular or special session, the Interim Finance
32 Committee may also perform the duties imposed on it by subsection
33 5 of NRS 284.115, NRS 285.070, subsection 2 of NRS 321.335,
34 NRS 322.007, subsection 2 of NRS 323.020, NRS 323.050,
35 subsection 1 of NRS 323.100, subsection 3 of NRS 341.126, NRS
36 341.142, paragraph (f) of subsection 1 of NRS 341.145, NRS
37 353.220, 353.224, 353.2705 to 353.2771, inclusive, 353.288,
38 353.335, 353C.224, 353C.226, paragraph (b) of subsection 4 of
39 NRS 407.0762, NRS 428.375, 439.4905, 439.620, 439.630,
40 445B.830 and 538.650 ~~H~~ *and section 6 of this act.* In performing
41 those duties, the Senate Standing Committee on Finance and the
42 Assembly Standing Committee on Ways and Means may meet
43 separately and transmit the results of their respective votes to the
44 Chair of the Interim Finance Committee to determine the action of
45 the Interim Finance Committee as a whole.



1 3. The Chair of the Interim Finance Committee may appoint a
2 subcommittee consisting of six members of the Committee to
3 review and make recommendations to the Committee on matters of
4 the State Public Works Division of the Department of
5 Administration that require prior approval of the Interim Finance
6 Committee pursuant to subsection 3 of NRS 341.126, NRS 341.142
7 and paragraph (f) of subsection 1 of NRS 341.145. If the Chair
8 appoints such a subcommittee:

9 (a) The Chair shall designate one of the members of the
10 subcommittee to serve as the chair of the subcommittee;

11 (b) The subcommittee shall meet throughout the year at the
12 times and places specified by the call of the chair of the
13 subcommittee; and

14 (c) The Director or the Director's designee shall act as the
15 nonvoting recording secretary of the subcommittee.

16 **Sec. 19.** 1. This act applies only to a contingent fee contract
17 entered into on or after July 1, 2015.

18 2. As used in this section, "contingent fee contract" has the
19 meaning ascribed to it in section 3 of this act.

20 **Sec. 20.** The provisions of subsection 1 of NRS 218D.380 do
21 not apply to any provision of this act which adds or revises a
22 requirement to submit a report to the Legislature.

23 **Sec. 21.** This act becomes effective on July 1, 2015.

