

## ASSEMBLY BILL NO. 513—COMMITTEE ON WAYS AND MEANS

MAY 15, 2017

## Referred to Committee on Ways and Means

SUMMARY—Revises provisions governing legal counsel for certain state agencies that regulate gaming. (BDR 41-1223)

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 gaming; revising provisions governing legal counsel for certain state agencies that regulate gaming; creating the position of General Counsel for such state agencies; revising the role of the Office of the Attorney General as legal counsel and adviser for such state agencies; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Under existing law, unless there is an explicit constitutional mandate or  
2 limitation, the Legislature may enact statutes prescribing the powers and duties that  
3 state officers of the Executive Branch shall or shall not exercise or perform.  
4 (*Galloway v. Truesdell*, 83 Nev. 13, 20 (1967)) Under the Nevada Constitution, the  
5 Attorney General is a state officer of the Executive Branch, but the Attorney  
6 General is not given any explicit constitutional powers or duties. (Nev. Const. Art.  
7 5, §§ 19, 22) Because the Nevada Constitution does not explicitly give the Attorney  
8 General any constitutional powers or duties, the Nevada Supreme Court has  
9 determined that “[t]he powers and duties of the attorney general, therefore, are to be  
10 found only in legislative enactment. They are not found anywhere in the  
11 Constitution of our State.” (*Ryan v. Eighth Jud. Dist. Ct.*, 88 Nev. 638, 642 (1972))  
12 Consequently, in the absence of an explicit constitutional mandate or limitation, the  
13 Legislature may enact statutes prescribing the powers and duties that the Attorney  
14 General shall or shall not exercise or perform.

15 Under the Nevada Gaming Control Act, the Attorney General serves as the  
16 legal counsel and adviser for the Nevada Gaming Commission and the Nevada  
17 Gaming Control Board and represents the Commission and Board in any actions or  
18 proceedings. (NRS 463.0199) This bill creates the position of General Counsel for  
19 the Commission and Board and revises the role of the Attorney General with regard  
20 to the Commission and Board.



\* A B 5 1 3 \*

21 **Section 7** of this bill establishes qualifications, requirements and limitations for  
22 the General Counsel and his or her deputies. **Section 8** of this bill sets forth the  
23 powers and duties of the General Counsel and his or her deputies and, with certain  
24 exceptions, provides that the General Counsel and his or her deputies serve as the  
25 legal counsel and advisers for the Commission and Board and represent the  
26 Commission and Board in any actions or proceedings.

27 **Section 9** of this bill provides that with the approval of the Commission or  
28 Board, the General Counsel may request the Attorney General or may employ  
29 outside legal counsel to provide legal counsel, advice and representation to the  
30 Commission or Board with regard to particular matters. If such a request is made,  
31 **section 9** also provides that the Attorney General must comply with the request and  
32 provide the necessary legal counsel, advice and representation with regard to those  
33 particular matters. Additionally, **section 9** provides for the substitution of the  
34 General Counsel if he or she is disqualified or prohibited by law or rule from acting  
35 on a particular matter or is otherwise unable to act on a particular matter.

36 Under existing law, the Attorney General must provide for the defense of state  
37 agencies, officers and employees if they are sued in tort actions and other actions  
38 brought under the State's limited waiver of sovereign immunity. (Nev. Const. Art.  
39 4, § 22; NRS 41.0305-41.039) **Section 10** of this bill provides that nothing in this  
40 bill alters, abrogates or affects the duty of the Attorney General to provide for the  
41 defense of the Commission and Board and their officers and employees if such  
42 actions are brought against them.

43 **Sections 2-4, 11-18 and 20** of this bill make conforming changes to account for  
44 the newly created position of the General Counsel and for the revised role of the  
45 Attorney General with regard to the Commission and Board.

46 Finally, **section 19** of this bill requires the Attorney General to cooperate with  
47 the Commission and Board to ensure that the provisions of this bill are carried out  
48 in an orderly, diligent, thorough, professional, responsible and expeditious manner.

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

1 **Section 1.** 1. The Legislature hereby finds that:

2 (a) The gaming industry is vitally important to the economy of  
3 this State and the general welfare of the inhabitants.

4 (b) As declared in NRS 463.0129 of the Nevada Gaming  
5 Control Act, it is the public policy of this State to ensure that  
6 gaming is conducted honestly, competitively and free of criminal  
7 and corruptive elements because:

8 (1) The continued growth and success of the gaming industry  
9 is dependent upon public confidence and trust that licensed gaming  
10 is conducted honestly and competitively and that licensed gaming is  
11 free from criminal and corruptive elements; and

12 (2) Public confidence and trust can only be maintained by  
13 strict regulation of all persons, locations, practices, associations and  
14 activities related to the operation of licensed gaming.

15 (c) Because the gaming industry is so vitally important to the  
16 economy of this State and produces such significant revenues for  
17 this State and its local governments, the fiscal well-being of Nevada



1 is placed in jeopardy when there is even the slightest appearance,  
2 hint or suggestion of improper influence, favoritism or impropriety  
3 among the public officers charged with ensuring that gaming is  
4 conducted honestly, competitively and free of criminal and  
5 corruptive elements.

6 2. The Legislature hereby declares that to preserve and protect  
7 the honesty and integrity of gaming and to promote and secure the  
8 fiscal well-being of Nevada, there is a legitimate and compelling  
9 need to create the position of General Counsel for the Nevada  
10 Gaming Control Board and the Nevada Gaming Commission in  
11 order to:

12 (a) Ensure that the Nevada Gaming Control Board and the  
13 Nevada Gaming Commission are provided, under all circumstances,  
14 with objective, disinterested and unbiased legal counsel, advice and  
15 representation that will not be shaped or molded to reflect particular  
16 interests, viewpoints or outcomes; and

17 (b) Through such objective, disinterested and unbiased legal  
18 counsel, advice and representation, guard against even the slightest  
19 appearance, hint or suggestion of improper influence, favoritism or  
20 impropriety among the public officers charged with ensuring that  
21 gaming is conducted honestly, competitively and free of criminal  
22 and corruptive elements.

23 **Sec. 2.** Chapter 462 of NRS is hereby amended by adding  
24 thereto a new section to read as follows:

25 *“General Counsel” has the meaning ascribed to it in section 6*  
26 *of this act.*

27 **Sec. 3.** NRS 462.035 is hereby amended to read as follows:

28 462.035 As used in this chapter, unless the context otherwise  
29 requires, the words and terms defined in NRS 462.045 to 462.125,  
30 inclusive, *and section 2 of this act* have the meanings ascribed to  
31 them in those sections.

32 **Sec. 4.** NRS 462.330 is hereby amended to read as follows:

33 462.330 1. All money and property offered for sale or  
34 distribution in violation of any of the provisions of this chapter are  
35 forfeited to the State, and may be recovered by :

36 (a) *A civil complaint filed by the General Counsel in the name*  
37 *of the Commission; or*

38 (b) *A criminal complaint or* information filed ~~for by an action~~  
39 ~~brought~~ by the Attorney General , or by any district attorney, in the  
40 name of the State.

41 2. Upon the filing of the information or complaint, the clerk of  
42 the court, or if the suit is in a Justice Court, the justice, must issue an  
43 attachment against the property mentioned in the complaint or  
44 information, which attachment has the same force and effect against



1 such property and is issued in the same manner as attachments from  
2 the district courts in civil cases.

3 **Sec. 5.** Chapter 463 of NRS is hereby amended by adding  
4 thereto the provisions set forth as sections 6 to 10, inclusive, of this  
5 act.

6 **Sec. 6. 1.** *“General Counsel” means the General Counsel*  
7 *appointed pursuant to section 7 of this act.*

8 *2. With regard to the powers and duties assigned to the*  
9 *General Counsel pursuant to the provisions of this chapter or any*  
10 *other provisions of law, the term “General Counsel” includes his*  
11 *or her deputies if they are authorized by the Commission, the*  
12 *Board or the General Counsel to exercise or perform any powers*  
13 *or duties on behalf of the Commission, the Board or the General*  
14 *Counsel.*

15 **Sec. 7. 1.** *The position of General Counsel for the Nevada*  
16 *Gaming Control Board and the Nevada Gaming Commission is*  
17 *hereby created.*

18 *2. The General Counsel and his or her deputies:*

19 *(a) Must be appointed by the Board with the approval of the*  
20 *Commission.*

21 *(b) May be removed by the Board with the concurrence of the*  
22 *Commission.*

23 *(c) Are entitled to annual salaries in the amounts specified by*  
24 *the Commission within the limits of legislative appropriations or*  
25 *authorizations.*

26 *3. The General Counsel and his or her deputies must be:*

27 *(a) Attorneys who are licensed to practice law in this State;*  
28 *and*

29 *(b) Knowledgeable or have training or experience in gaming*  
30 *law, administrative procedure, governmental administration and*  
31 *investigations.*

32 *4. The General Counsel and his or her deputies must not be:*

33 *(a) A member of any political convention; or*

34 *(b) A member of any committee of any political party or*  
35 *engage in any party activities.*

36 *5. The General Counsel and his or her deputies must not be*  
37 *pecuniarily interested in any business or organization holding a*  
38 *gaming license under this chapter or doing business with any*  
39 *person or organization licensed under this chapter.*

40 *6. Before exercising or performing any powers or duties, the*  
41 *General Counsel and his or her deputies shall subscribe to the*  
42 *constitutional oath of office and, in addition, swear that they are*  
43 *not pecuniarily interested in any business or organization holding*  
44 *a gaming license or doing business with any such person or*



1 organization. The oath of office must be filed in the Office of the  
2 Secretary of State.

3 7. Except as otherwise provided in NRS 284.143, the General  
4 Counsel and his or her deputies shall devote their entire time and  
5 attention to the business of the Commission and Board and shall  
6 not pursue any other business or occupation or hold any other  
7 office of profit.

8 8. Except as otherwise provided in NRS 7.065, the General  
9 Counsel and his or her deputies shall not engage in the private  
10 practice of law.

11 **Sec. 8. 1. The General Counsel and his or her deputies**  
12 **shall exercise and perform:**

13 (a) The powers and duties assigned to them pursuant to the  
14 provisions of this chapter or any other provisions of law; and

15 (b) Such other powers and duties as may be prescribed by the  
16 Commission or Board.

17 2. Upon the request of the Commission or Board, the General  
18 Counsel and his or her deputies shall give an opinion in writing  
19 upon any question of law.

20 3. Except as otherwise provided in sections 9 and 10 of this  
21 act, the General Counsel and his or her deputies shall:

22 (a) Serve as the legal counsel and advisers for the Commission  
23 and Board and their officers and employees in their official  
24 capacities; and

25 (b) Represent the Commission and Board and their officers  
26 and employees in their official capacities in any actions or  
27 proceedings to which they are parties.

28 4. The Commission and Board and their officers and  
29 employees in their official capacities may, when carrying out the  
30 provisions of this chapter or any other provisions of law:

31 (a) Rely upon the legal advice and opinions of the General  
32 Counsel and his or her deputies; and

33 (b) If represented by the Attorney General and his or her  
34 deputies or outside legal counsel with regard to particular matters  
35 pursuant to section 9 of this act, rely upon their legal advice and  
36 opinions with regard to those particular matters.

37 **Sec. 9. 1. With the approval of the Commission or Board,**  
38 **the General Counsel may, with regard to particular matters,**  
39 **request the Attorney General and his or her deputies or employ**  
40 **outside legal counsel to:**

41 (a) Serve as the legal counsel and advisers for the Commission  
42 and Board and their officers and employees in their official  
43 capacities with regard to those particular matters; or

44 (b) Represent the Commission and Board and their officers  
45 and employees in their official capacities in any actions or



1 *proceedings to which they are parties with regard to those*  
2 *particular matters.*

3 *2. If the Attorney General and his or her deputies are*  
4 *requested to provide legal counsel, advice and representation with*  
5 *regard to particular matters pursuant to this section, the Attorney*  
6 *General and his or her deputies shall comply with the request and*  
7 *provide the necessary legal counsel, advice and representation*  
8 *with regard to those particular matters.*

9 *3. If the General Counsel is disqualified or prohibited by law*  
10 *or rule from acting on a particular matter or is otherwise unable*  
11 *to act on a particular matter, the Commission or the Board may:*

12 *(a) Authorize a deputy to act on behalf of the General Counsel*  
13 *with regard to that particular matter;*

14 *(b) Request that the Attorney General and his or her deputies*  
15 *act in the place of the General Counsel with regard to that*  
16 *particular matter; or*

17 *(c) Employ outside legal counsel with regard to that particular*  
18 *matter.*

19 *4. If outside legal counsel is employed pursuant to this*  
20 *section, the Board, with the approval of the Commission, shall fix*  
21 *the compensation to be paid to outside legal counsel within the*  
22 *limits of legislative appropriations or authorizations.*

23 **Sec. 10.** *The provisions of sections 7 to 10, inclusive, of this*  
24 *act do not alter, abrogate or affect the duty of the Attorney*  
25 *General and his or her deputies to provide for the defense of the*  
26 *Commission and Board and their officers and employees in their*  
27 *official capacities in tort actions and other actions brought against*  
28 *them pursuant to NRS 41.0305 to 41.039, inclusive.*

29 **Sec. 11.** NRS 463.013 is hereby amended to read as follows:

30 463.013 As used in this chapter, unless the context otherwise  
31 requires, the words and terms defined in NRS 463.0133 to  
32 463.01967, inclusive, *and section 6 of this act* have the meanings  
33 ascribed to them in those sections.

34 **Sec. 12.** NRS 463.141 is hereby amended to read as follows:

35 463.141 *1.* The Commission or Board ~~{shall—initiate~~  
36 ~~proceedings or actions}~~ :

37 *(a) Shall direct the General Counsel to initiate any civil or*  
38 *administrative action or proceeding* appropriate to enforce the  
39 provisions of this chapter and chapter 462 of NRS ~~{and may}~~ ; *and*

40 *(b) May direct the General Counsel to* request that a district  
41 attorney or ~~{recommend that}~~ the Attorney General prosecute any  
42 ~~{public}~~ *criminal* offense committed in violation of any provision of  
43 this chapter or of chapter 462, 463B, 464 or 466 of NRS.

44 *2.* If the Board ~~{initiates}~~ *directs the General Counsel to*  
45 *initiate* any *civil or administrative* action or proceeding or



1 ~~requests~~ *to request* the prosecution of any *criminal* offense, ~~the~~  
2 *the Board* shall immediately notify the Commission.

3 **Sec. 13.** NRS 463.341 is hereby amended to read as follows:

4 463.341 *1.* An application to a court for an order requiring  
5 the Board or the Commission to release any information declared by  
6 law to be confidential shall be made only upon motion in writing on  
7 10 days' written notice to ~~the~~ :

8 *(a) The* Board or Commission, ~~the Attorney~~ *as appropriate;*

9 *(b) The* General *Counsel*; and ~~the~~

10 *(c) All* persons who may be affected by the entry of such *an*  
11 order.

12 *2.* Copies of the motion and all papers filed in support of it  
13 shall be served with the notice by delivering a copy in person or by  
14 certified mail to the last known address of the person to be served.

15 **Sec. 14.** NRS 463.343 is hereby amended to read as follows:

16 463.343 *1.* The Board or Commission or any applicant,  
17 licensee, association of licensees, nonprofit corporation that  
18 represents licensees, person found suitable, holding company,  
19 intermediary company or publicly traded corporation which is  
20 registered with the Commission may obtain a judicial determination  
21 of any question of construction or validity arising under this chapter,  
22 chapter 462 of NRS or any regulation of the Commission by  
23 bringing an action for a declaratory judgment in the First Judicial  
24 District Court of the State of Nevada in and for Carson City, or in  
25 the district court of the district in which the plaintiff resides or does  
26 business, in accordance with the provisions of chapter 30 of NRS.

27 *2.* When an action is brought by a person other than the Board  
28 or Commission, the Commission must be made a party to the action  
29 and the ~~Attorney~~ General *Counsel* must be served with a copy of  
30 the complaint and is entitled to appear in the action.

31 *3.* Statutes and regulations reviewed pursuant to this section  
32 must be construed in a manner consistent with the declared policy of  
33 the State.

34 *4.* The filing of a complaint for judicial determination under  
35 this section does not stay enforcement of any Commission or Board  
36 action. The Board or Commission may grant a stay upon appropriate  
37 terms.

38 *5.* In any proceeding brought under this section, the district  
39 court shall not grant any injunctive relief or relief based upon any  
40 other extraordinary common-law writ to:

41 *(a)* Any applicant for licensing, finding of suitability or  
42 registration;

43 *(b)* Any person who has been ordered by the Board or  
44 Commission to submit his or her application for licensing, finding  
45 of suitability or registration;



1 (c) Any person seeking judicial review of an action of the  
2 Commission which is subject to the provisions of NRS 463.315 to  
3 463.318, inclusive; or

4 (d) Any person who is adversely affected by the appointment of  
5 a supervisor pursuant to chapter 463B of NRS.

6 **Sec. 15.** NRS 463.346 is hereby amended to read as follows:

7 463.346 1. ~~{The Attorney General, at}~~ *Upon* the direction of  
8 the Commission ~~{}~~ *or Board, the General Counsel* may institute a  
9 civil action in any district court of this State against any person  
10 subject to this chapter or chapter 462, 464 or 465 of NRS to restrain  
11 a violation of this chapter or chapter 462, 464 or 465 of NRS.

12 2. The district court shall give priority over other civil actions  
13 to an action brought pursuant to this section.

14 3. An action brought against a person pursuant to this section  
15 does not preclude a criminal action or administrative proceeding  
16 against that person.

17 **Sec. 16.** NRS 463.3465 is hereby amended to read as follows:

18 463.3465 1. If ~~{a district attorney in whose county a}~~ *any*  
19 *criminal offense is committed in* violation of this chapter or of  
20 chapter 462, 463B, 464 or 465 of NRS ~~{occurs-fails}~~ *and a district*  
21 *attorney with the authority to prosecute the offense declines* to file  
22 a complaint or information for that offense or present it to a grand  
23 jury ~~{}~~ *within 15 days after the General Counsel, upon the*  
24 *direction of* the Commission or Board ~~{so requests in writing,}~~ *,*  
25 *makes a written request to prosecute the offense,* the Commission  
26 or Board may ~~{recommend to the Attorney General that}~~ *direct the*  
27 *General Counsel to make a written request to prosecute the*  
28 *offense to* the Attorney General, *who may* file a complaint or  
29 information or present the matter to a grand jury, as the facts may  
30 warrant, and thereafter proceed as appropriate to complete the  
31 prosecution. ~~{Upon}~~ *After receiving such* a written  
32 ~~{recommendation}~~ *request* to prosecute from *the General Counsel*  
33 *upon the direction of* the Commission or Board, the Attorney  
34 General may ~~{so file}~~ *prosecute* the matter without leave of court  
35 and has exclusive charge of the prosecution.

36 2. If a district attorney declines to prosecute such ~~{a violation}~~  
37 *an offense* after receiving a written request to ~~{do so}~~ *prosecute*  
38 *from the General Counsel upon the direction of* the Commission or  
39 Board, the district attorney may respond in writing to the  
40 Commission or Board within the 15-day period specified in  
41 subsection 1 and state the reasons why the district attorney declines  
42 ~~{}~~ *to prosecute the offense.*

43 **Sec. 17.** NRS 463.389 is hereby amended to read as follows:

44 463.389 The remedies of the State for the collection and  
45 payment of license fees, taxes, penalties and interest provided for in





1 this chapter are cumulative , and any action taken by the  
2 ~~{Commission or the Attorney General}~~ *State or on behalf of the*  
3 *State pursuant to this chapter* does not constitute an election by the  
4 State to pursue any remedy to the exclusion of any other remedy for  
5 which provision is made in this chapter.

6 **Sec. 18.** NRS 228.140 is hereby amended to read as follows:

7 228.140 1. Except as otherwise provided in NRS 228.111 to  
8 228.1118, inclusive, *and sections 8 and 9 of this act*, the Attorney  
9 General shall attend each of the terms of the Supreme Court, and  
10 there prosecute or defend, as the case may be, on the part of the  
11 State:

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

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

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

21 2. The Attorney General shall:

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

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

27 **Sec. 19.** 1. The Office of the Attorney General shall  
28 cooperate with the Nevada Gaming Commission and the Nevada  
29 Gaming Control Board to ensure that the provisions of this act are  
30 carried out in an orderly, diligent, thorough, professional,  
31 responsible and expeditious manner, including, without limitation,  
32 the transfer, exchange or copying of all necessary accounts, books,  
33 files, papers, records or other types of documents in any form,  
34 including, without limitation, in any written, audio, visual, digital or  
35 electronic form, which:

36 (a) Are in the possession or under the control of the Office of  
37 the Attorney General; and

38 (b) Relate to the legal advice, counsel or representation provided  
39 by the Office of the Attorney General to the Nevada Gaming  
40 Commission or the Nevada Gaming Control Board, including,  
41 without limitation, in any civil or administrative actions or  
42 proceedings involving the Nevada Gaming Commission or the  
43 Nevada Gaming Control Board.

44 2. In addition to any other remedies or penalties provided by  
45 law, any officer or employee of the State of Nevada who knowingly



1 and willfully fails to comply with any provision of this section is  
2 guilty of malfeasance in office.

3 3. As used in this section:

4 (a) "Nevada Gaming Commission" and "Nevada Gaming  
5 Control Board" include their General Counsel, his or her deputies  
6 and all other officers and employees of the Nevada Gaming  
7 Commission and the Nevada Gaming Control Board.

8 (b) "Office of the Attorney General" includes the Attorney  
9 General, his or her deputies and all other officers and employees of  
10 the Office of the Attorney General.

11 **Sec. 20.** NRS 463.0199 is hereby repealed.

12 **Sec. 21.** This act becomes effective:

13 1. Upon passage and approval for the purpose of performing  
14 any preparatory administrative tasks that are necessary to carry out  
15 the provisions of this act; and

16 2. On July 1, 2017, for all other purposes.

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**TEXT OF REPEALED SECTION**

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**463.0199 Attorney General is legal adviser for Board and Commission.** The Attorney General and his or her deputies are the legal advisers for the Commission and the Board and shall represent the Commission and the Board in any proceeding to which either is a party.

