

Department of Legislative Services  
Maryland General Assembly  
2001 Session

FISCAL NOTE

House Bill 1082 (Delegate Vallario)  
Judiciary

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**Attorney General - Representation of State Officer or State Employee**

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This bill provides that the Office of the Attorney General must represent a State officer or State employee in an action or proceeding in any judicial or administrative forum. The State officer or State employee must meet the current law requirements for representation and be otherwise eligible for representation by the Attorney General's Office.

The bill affects cases filed or pending on or after October 1, 2001.

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**Fiscal Summary**

**State Effect:** Potential significant increase in general fund expenditures for the Office of the Attorney General as discussed below.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful to one small business, depending on the outcome of the procurement process.

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**Analysis**

**Current Law:** Except as otherwise provided, the Attorney General must appear in a civil action or special proceeding against a State officer or State employee to represent the officer or employee if: (1) the action is a State or federal court proceeding; (2) the officer or employee makes a written request for the representation; (3) the Attorney General investigates the facts on which the action or proceeding is based; (4) the Attorney General does not find the officer or employee ineligible for representation under

the provisions requiring the Attorney General to decline representation; and (5) the officer or employee enters into the required agreement for representation. The Attorney General must decline representation if, upon an investigation, the Attorney General determines that: (1) the officer or employee was not acting within the scope of his or her employment; (2) the act or omission was malicious; or (3) the act or omission was grossly negligent. The Attorney General may decline representation if the officer or employee retains other counsel or is covered by insurance that requires the carrier to provide counsel.

Subject to the above requirements, the Attorney General has sole discretion in deciding whether to represent the officer or employee.

**State Expenditures:** The bill could be interpreted to require that the Attorney General represent State employees in administrative disciplinary hearings. Because the Attorney General is also legal counsel to the units of State government, the Attorney General advises that it would: (1) have a conflict of interest and be unable to represent State employees in these hearings; and (2) be required to hire outside counsel to provide representation. The Office of Administrative Hearings estimates that there are approximately 500 such hearings annually. The Attorney General estimates that such hearings could cost \$8,000 each, on average, to hire outside counsel. Based on these assumptions, the Attorney General advises that general fund expenditures could increase by \$4.0 million.

The Department of Legislative Services (DLS) disagrees with this estimate. A preliminary investigation by the Attorney General could determine whether, in the Attorney General's opinion, the acts or omissions for which an employee is being disciplined are within the scope of employment, malicious, or grossly negligent. The number of actual representations could be significantly smaller given: (1) the mandate that the Attorney General decline representation for such employees or officers; and (2) the Attorney General's broad discretion to decline representation. Information on the number of employees who are disciplined for acts or omissions that are outside the scope of their employment, malicious, or grossly negligent is unavailable. DLS further estimates that the cost per representation could be lower if the Attorney General contracted with a single law firm to provide counsel for all administrative hearings at which counsel is required. Therefore, the actual extent of expenditures under the bill cannot be accurately estimated, but could be significant.

Representation of State employees or State officers in other judicial or administrative hearings could be handled with existing resources.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General, Office of Administrative Hearings, Department of Legislative Services

**Fiscal Note History:** First Reader – February 28, 2001  
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