

Department of Legislative Services
 Maryland General Assembly
 2004 Session

FISCAL AND POLICY NOTE
 Revised

House Bill 124 (Delegate Mitchell) (Chairman, Joint Audit Committee)
 Judiciary Judicial Proceedings

Attorney General - Prosecution of Criminal Offenses Reported by the Office of
 Legislative Audits

This bill requires the Legislative Auditor to report an alleged criminal violation discovered during the course of an audit, review, or investigation to the Attorney General and an appropriate State’s Attorney. The bill grants to the Attorney General the powers and duties of a State’s Attorney, including the use of grand juries, to investigate and prosecute the alleged violations. The Attorney General and State’s Attorney are also required to keep the Auditor’s report confidential unless a prosecution is initiated.

Fiscal Summary

State Effect: General fund expenditures could increase by \$100,600 in FY 2005 to cover the cost of investigation and enforcement by the Office of the Attorney General. Future year expenditures reflect annualization and inflation. Revenues would not be affected.

| (in dollars) | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 |
|----------------|-------------|-------------|-------------|-------------|-------------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 100,600 | 129,900 | 137,300 | 145,100 | 153,500 |
| Net Effect | (\$100,600) | (\$129,900) | (\$137,300) | (\$145,100) | (\$153,500) |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local government expenditures could increase to cover enforcement costs of State’s Attorneys.

Small Business Effect: None.

Analysis

Current Law: The Legislative Auditor must report an apparent violation of any law on use of State funds by a unit of State government or other body audited or reviewed to the Joint Audit Committee, the Executive Director of the Department of Legislative Services, the Attorney General, and the unit or body that is the subject of the report. The Legislative Auditor must also report to the Attorney General and an appropriate State's Attorney any apparent default to the State for any money by an officer or employee subject to audit or review. The Attorney General, in turn, must report to the Legislative Auditor, the Joint Audit Committee, the unit or body, and the Executive Director of the Department of Legislative Services, what actions, if any, were taken by the Attorney General as a result of the Auditor's findings.

With limited exceptions, information that an employee of the Office of Legislative Audits obtains during an audit or review is confidential and may not be disclosed except to another Legislative Audits employee. Exceptions to the nondisclosure requirement include sharing the information with other Department of Legislative Services employees with the approval of the Executive Director, with the Joint Audit Committee if necessary to review a report by the Legislative Auditor, and with federal, State, or local officials or their auditors who provide evidence to the Legislative Auditor that they are investigating issues related to the audit or review being done by the Legislative Auditor.

The Attorney General does not have general authority to prosecute crimes in the absence of specific statutory authority or an executive order. Prosecutorial issuing authority has been granted by statute in certain instances, including enforcement and regulation under the Maryland Securities Act and the Maryland Consumer Protection Act.

State Expenditures: General fund expenditures could increase by an estimated \$100,600 in fiscal 2005, which accounts for the bill's October 1, 2004 effective date. This estimate reflects the cost of hiring one Assistant Attorney General and one administrative assistant to investigate and prosecute the apparent misuse of State funds. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

| | |
|---|------------------|
| Salaries and Fringe Benefits | \$94,300 |
| Other Operating Expenses | <u>6,300</u> |
| Total FY 2005 State Expenditures | \$100,600 |

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: Identical bills, SB 298 and HB 485, were introduced during the 2003 session. SB 298 passed in the Senate, but both bills received unfavorable reports from the House Judiciary Committee. Similar bills, SB 794 and HB 900, were introduced in the 2002 session. SB 794 received an unfavorable report from the Senate Judicial Proceedings Committee and HB 900 received an unfavorable report from the House Judiciary Committee. The bills would have granted subpoena authority to the Attorney General in cases referred by the Legislative Auditor.

Cross File: SB 5 (Senator McFadden)(Chairman, Joint Audit Committee) – Judicial Proceedings.

Information Source(s): Office of the Attorney General, Department of Legislative Services (Office of Legislative Audits)

Fiscal Note History: First Reader - January 23, 2004
mh/jr Revised - House Third Reader - March 24, 2004

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