

# HOUSE BILL 1222

P1

8lr2493

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By: **Delegates Proctor and Vallario**

Introduced and read first time: February 8, 2008

Assigned to: Judiciary

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Committee Report: Favorable

House action: Adopted

Read second time: March 18, 2008

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Attorney General – State Legal Business – Hiring Counsel**

3 FOR the purpose of making more uniform certain exceptions to certain roles of the  
4 Attorney General or a designee of the Attorney General; authorizing an officer  
5 or unit of State government to employ or be represented by certain individuals  
6 under certain circumstances; and generally relating to State legal business.

7 BY repealing and reenacting, without amendments,  
8 Article – State Finance and Procurement  
9 Section 13–107  
10 Annotated Code of Maryland  
11 (2006 Replacement Volume and 2007 Supplement)

12 BY repealing and reenacting, without amendments,  
13 Article – State Government  
14 Section 6–105  
15 Annotated Code of Maryland  
16 (2004 Replacement Volume and 2007 Supplement)

17 BY repealing and reenacting, with amendments,  
18 Article – State Government  
19 Section 6–106  
20 Annotated Code of Maryland  
21 (2004 Replacement Volume and 2007 Supplement)

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**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – State Finance and Procurement**

4 13–107.

5 (a) (1) Whenever a procurement officer determines that there is only 1  
6 available source for the subject of a procurement contract, the procurement officer may  
7 award the procurement contract without competition to that source.

8 (2) Before awarding a procurement contract to a sole source, the  
9 procurement officer shall obtain:

10 (i) the approval of the head of the unit; and

11 (ii) any other approval required by law.

12 (b) (1) Subject to paragraphs (2) and (3) of this subsection, with the prior  
13 written approval of the Attorney General, a unit may enter into a sole source contract  
14 to obtain the services of a contractor in connection with:

15 (i) threatened or pending litigation;

16 (ii) appraisal of real property for acquisition by the State; or

17 (iii) collective bargaining.

18 (2) This subsection applies only to a procurement in which:

19 (i) a unit obtains the services of a contractor to represent the  
20 State; and

21 (ii) the nature of the services to be performed requires  
22 confidentiality.

23 (3) This subsection does not apply if the unit reasonably can anticipate  
24 a continuing need for a contractor described in paragraph (1)(ii) or (iii) of this  
25 subsection.

26 (c) Not more than 30 days after the execution and approval of a procurement  
27 contract awarded under this section, a unit shall publish in eMaryland Marketplace  
28 notice of the award.

29 **Article – State Government**

30 6–105.

1           (a)   (1)   The Attorney General may employ a staff in accordance with the  
2 State budget.

3                   (2)   Staff members appointed under this subsection:

4                           (i)   are deemed special appointments within the meaning of §  
5 6–405 of the State Personnel and Pensions Article; and

6                           (ii)   serve at the pleasure of the Attorney General.

7                   (3)   (i)   Staff appointed under this subsection is entitled to  
8 compensation as provided in the State budget.

9                           (ii)   Unless the State budget provides otherwise, the salary of a  
10 Deputy Attorney General, assistant Attorney General, or special attorney appointed  
11 under this subsection is payable from the funds of the Office.

12                   (4)   Staff is entitled to reimbursement for expenses under the Standard  
13 State Travel Regulations, as provided in the State budget.

14           (b)   (1)   In addition to any other staff appointed under this section, the  
15 Attorney General, with the written approval of the Governor, may employ any  
16 assistant counsel that the Attorney General considers necessary to carry out any duty  
17 of the Office in an extraordinary or unforeseen case or in special county work.

18                   (2)   The Attorney General shall submit to the Governor a written  
19 request that:

20                           (i)   states the necessity of and each reason for the special  
21 employment; and

22                           (ii)   states the proposed compensation and its source or certifies  
23 that the Attorney General cannot ascertain in advance the proper compensation.

24                   (3)   Compensation that cannot be ascertained in advance may be  
25 agreed on or adjusted later.

26           (c)   (1)   In addition to any other staff appointed under this section, the  
27 Attorney General may employ special counsel to defend a State officer or State  
28 employee under Title 12, Subtitle 3 of this article if the Attorney General determines  
29 that representation by the Attorney General or an assistant is impracticable or  
30 uneconomical.

31                   (2)   The special counsel is entitled to compensation, as set by the  
32 Attorney General and approved by the Board of Public Works, under Title 12, Subtitle  
33 5 of this article.

1 (d) Each Deputy Attorney General, assistant Attorney General, or special  
2 attorney appointed under subsection (a) of this section shall be a practicing lawyer of  
3 the State in good standing.

4 (e) (1) The Attorney General may assign any duty that the law imposes  
5 on the Attorney General to a Deputy Attorney General, assistant Attorney General, or  
6 special attorney appointed under subsection (a) of this section or, to the extent  
7 permitted by law, a law clerk.

8 (2) The Deputy Attorney General, assistant Attorney General, special  
9 attorney, or law clerk shall perform the assigned duty, subject to the control of the  
10 Attorney General.

11 6-106.

12 (a) Except as otherwise provided [by law] **IN THIS SECTION**, the Attorney  
13 General has general charge of the legal business of the State.

14 (b) [Except as otherwise provided by law] **UNLESS A LAW EXPRESSLY**  
15 **PROVIDES FOR A GENERAL COUNSEL AS THE LEGAL ADVISER AND**  
16 **REPRESENTATIVE OF THE OFFICER OR UNIT**, the Attorney General is the legal  
17 adviser of and shall represent and otherwise perform all of the legal work for each  
18 officer and unit of the State government.

19 (c) [Except as provided in subsection (d) of this section or in any other law]  
20 **NOTWITHSTANDING ANY OTHER PROVISION OF LAW**, an officer or unit of the State  
21 government may not employ or be represented by a legal adviser or counsel other than  
22 the Attorney General or a designee of the Attorney General[.], **EXCEPT THAT:**

23 (1) (I) **AN OFFICER OR UNIT OF THE STATE GOVERNMENT MAY**  
24 **EMPLOY OR BE REPRESENTED BY A LEGAL ADVISER OR COUNSEL OTHER THAN**  
25 **THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S DESIGNEE WITH**  
26 **PRIOR APPROVAL OF THE ATTORNEY GENERAL; AND**

27 (II) **THE APPROVAL MAY BE PROVIDED UNDER § 6-105(B)**  
28 **OR (C) OF THIS SUBTITLE, § 13-107 OF THE STATE FINANCE AND**  
29 **PROCUREMENT ARTICLE, OR OTHER AUTHORITY SPECIFIED BY THE ATTORNEY**  
30 **GENERAL;**

31 [(d) (1)] (2) [A] A State institution may employ counsel to represent the  
32 institution in a habeas corpus proceeding[.];

33 [(2)] (3) [A] A unit of the State government may employ counsel if:

34 (i) an investigation by an investigating committee of the  
35 General Assembly affects the unit;

1 (ii) the Attorney General represents both the investigating  
2 committee and the unit;

3 (iii) the Attorney General gives the Board of Public Works and  
4 the unit written notice that representation by the Attorney General involves or  
5 reasonably may involve a conflict of interest; and

6 (iv) the Board of Public Works approves the employment of  
7 counsel by the unit[.]; **AND**

8 [(3)] (4) [Unless] **UNLESS** otherwise agreed to by the Attorney  
9 General and the County Attorney for Montgomery County, the County Attorney for  
10 Montgomery County may represent the Montgomery County Department of Health  
11 and Human Services in a contested case under Title 10, Subtitle 2 of this article.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 2008.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.