

HOUSE BILL 289

P1

(9lr1316)

ENROLLED BILL

—Judiciary/Judicial Proceedings—

Introduced by **Delegate Proctor**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

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 2008 Supplement)

12 BY repealing and reenacting, without amendments,
13 Article – State Government

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.

Italics indicate opposite chamber / conference committee amendments.



1 Section 6–105
2 Annotated Code of Maryland
3 (2004 Replacement Volume and 2008 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article – State Government
6 Section 6–106
7 Annotated Code of Maryland
8 (2004 Replacement Volume and 2008 Supplement)

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

11 **Article – State Finance and Procurement**

12 13–107.

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

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

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

19 (ii) any other approval required by law.

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

23 (i) threatened or pending litigation;

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

25 (iii) collective bargaining.

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

27 (i) a unit obtains the services of a contractor to represent the
28 State; and

29 (ii) the nature of the services to be performed requires
30 confidentiality.

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

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

8 (2) The special counsel is entitled to compensation, as set by the
9 Attorney General and approved by the Board of Public Works, under Title 12, Subtitle
10 5 of this article.

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

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

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

21 6–106.

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

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

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

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

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

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

7 **[(2)] (3)** [A] A unit of the State government may employ counsel if:

8 (i) an investigation by an investigating committee of the
9 General Assembly affects the unit;

10 (ii) the Attorney General represents both the investigating
11 committee and the unit;

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

15 (iv) the Board of Public Works approves the employment of
16 counsel by the unit[.]; ~~AND~~

17 **(4) THE OFFICE OF THE PUBLIC DEFENDER MAY EMPLOY OR BE**
18 **REPRESENTED BY A LEGAL ADVISER OR COUNSEL OTHER THAN THE ATTORNEY**
19 **GENERAL OR THE ATTORNEY GENERAL'S DESIGNEE; AND**

20 **[(3)] ~~(4)~~ (5)** [Unless] **UNLESS** otherwise agreed to by the Attorney
21 General and the County Attorney for Montgomery County, the County Attorney for
22 Montgomery County may represent the Montgomery County Department of Health
23 and Human Services in a contested case under Title 10, Subtitle 2 of this article.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2009.