

HOUSE BILL 289

P1
HB 1222/08 – JUD

9lr1316

By: **Delegate Proctor**

Introduced and read first time: January 29, 2009

Assigned to: Judiciary

A BILL ENTITLED

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
14 Section 6–105
15 Annotated Code of Maryland
16 (2004 Replacement Volume and 2008 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 2008 Supplement)

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

24 **Article – State Finance and Procurement**

25 13–107.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

7 (ii) any other approval required by law.

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

11 (i) threatened or pending litigation;

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

13 (iii) collective bargaining.

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

15 (i) a unit obtains the services of a contractor to represent the
16 State; and

17 (ii) the nature of the services to be performed requires
18 confidentiality.

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

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

25 Article – State Government

26 6–105.

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

29 (2) Staff members appointed under this subsection:

1 (i) are deemed special appointments within the meaning of §
2 6–405 of the State Personnel and Pensions Article; and

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

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

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

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

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

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

17 (i) states the necessity of and each reason for the special
18 employment; and

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

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

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

28 (2) The special counsel is entitled to compensation, as set by the
29 Attorney General and approved by the Board of Public Works, under Title 12, Subtitle
30 5 of this article.

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

34 (e) (1) The Attorney General may assign any duty that the law imposes
35 on the Attorney General to a Deputy Attorney General, assistant Attorney General, or

1 special attorney appointed under subsection (a) of this section or, to the extent
2 permitted by law, a law clerk.

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

6 6–106.

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

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

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

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

22 (II) **THE APPROVAL MAY BE PROVIDED UNDER § 6–105(B)**
23 **OR (C) OF THIS SUBTITLE, § 13–107 OF THE STATE FINANCE AND**
24 **PROCUREMENT ARTICLE, OR OTHER AUTHORITY SPECIFIED BY THE ATTORNEY**
25 **GENERAL;**

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

28 [(2)] (3) [A] A unit of the State government may employ counsel if:

29 (i) an investigation by an investigating committee of the
30 General Assembly affects the unit;

31 (ii) the Attorney General represents both the investigating
32 committee and the unit;

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

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

6 [(3)] (4) [Unless] **UNLESS** otherwise agreed to by the Attorney
7 General and the County Attorney for Montgomery County, the County Attorney for
8 Montgomery County may represent the Montgomery County Department of Health
9 and Human Services in a contested case under Title 10, Subtitle 2 of this article.

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