

HOUSE BILL 289

P1
HB 1222/08 – JUD

9lr1316
CF SB 667

By: **Delegate Proctor**

Introduced and read first time: January 29, 2009

Assigned to: Judiciary

Committee Report: Favorable

House action: Adopted

Read second time: February 26, 2009

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
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)

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 SECTION 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, 2009.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.