

CHAPTER 588

(House Bill 289)

AN ACT concerning

Attorney General – State Legal Business – Hiring Counsel

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

BY repealing and reenacting, without amendments,
Article – State Finance and Procurement
Section 13–107
Annotated Code of Maryland
(2006 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, without amendments,
Article – State Government
Section 6–105
Annotated Code of Maryland
(2004 Replacement Volume and 2008 Supplement)

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

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

Article – State Finance and Procurement

13–107.

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

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

- (i) the approval of the head of the unit; and
- (ii) any other approval required by law.

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

- (i) threatened or pending litigation;
- (ii) appraisal of real property for acquisition by the State; or
- (iii) collective bargaining.

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

- (i) a unit obtains the services of a contractor to represent the State; and
- (ii) the nature of the services to be performed requires confidentiality.

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

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

Article – State Government

6–105.

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

(2) Staff members appointed under this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6-106.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved by the Governor, May 19, 2009.