

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 289
Judiciary

(Delegate Proctor)

Judicial Proceedings

Attorney General - State Legal Business - Hiring Counsel

This bill clarifies the role of the State Attorney General pertaining to representation of State government officers and units. The bill specifies that, unless a law expressly provides otherwise or the Attorney General grants prior approval for an exception, the Attorney General is the legal advisor of and must represent and otherwise perform all of the legal work for each officer and unit of the State government. The bill does not alter the current statutory exceptions and specifies that the Office of the Public Defender (OPD) may employ or be represented by a legal adviser or counsel other than the Attorney General or the Attorney General's designee.

Fiscal Summary

State Effect: The bill does not directly affect governmental operations or finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: According to statute, the Attorney General is the legal advisor of and shall represent and otherwise perform all of the legal work for each officer and unit of the State government. 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 in certain specific instances. First, a State institution may employ counsel to represent the institution in a *habeas corpus* proceeding. Second, a unit of State government may employ counsel if: (1) an investigation by an investigating

committee of the General Assembly affects the unit; (2) the Attorney General represents both the investigating committee and the unit; (3) 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 (4) the Board of Public Works approves the employment of counsel by the unit. Third, unless otherwise agreed to by the Attorney General and the County Attorney for Montgomery County, the County Attorney may represent the Montgomery County Department of Health and Human Services in a contested case under the Administrative Procedure Act.

OPD is charged with providing representation to indigent individuals in the State. The office is also required to maintain a list of private attorneys available to be appointed as attorneys for indigent individuals eligible for representation. These individuals may be compensated by the Public Defender for fees and expenses incident to representing indigent individuals, including investigation, other pretrial preparation, trial, and appeal. All fees and expenses paid to panel attorneys must be paid out of funds appropriated by the State budget. (*See* Criminal Procedure Article §§ 16-201 and 16-208.)

Background: General authority to hire attorneys is included in the statutes relating to various State agencies, but the Office of the Attorney General has long considered that these provisions do not override its constitutional and statutory authority to represent the State's officials and units in the proceedings, and that the State government officials or units are not permitted to employ or be represented by legal counsel other than the Attorney General without the Attorney General's prior approval.

A disagreement between the Office of the Attorney General and the Maryland Stadium Authority led to the inclusion of language in the 2006 and 2007 *Joint Chairmen's Report* stating that the Office of the Attorney General had the authority to review and approve or disapprove any contract hiring legal counsel, including a retainer agreement, made by the Maryland Stadium Authority. The reports detailed that in 2004, the Maryland Stadium Authority hired an attorney for \$114,740 to explore litigation against Major League Baseball regarding the introduction of the Washington Nationals Team.

Additional Information

Prior Introductions: HB 1222 of 2008 passed the House and received a hearing in the Senate Judicial Proceedings Committee but no further action was taken.

Cross File: SB 667 (Senator Raskin) - Judicial Proceedings.

Information Source(s): Office of the Attorney General, Board of Public Works, Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2009
mlm/kdm Revised - Enrolled Bill - May 15, 2009

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