

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 450 (Senator Rosapepe)
Budget and Taxation

Protection of Marylanders' Rights Act of 2019

This bill requires the Governor to include in the State budget an appropriation for the Attorney General for each fiscal year. The appropriation must be at least equal to the appropriation for the Attorney General in the fiscal 2018 budget as passed by the General Assembly, plus the amount required by the Attorney General to administer the Maryland Defense Act of 2017 and the Financial Consumer Protection Act of 2018, and any amount the State receives from the settlement of a case in which the Attorney General represents the State. **The bill takes effect June 1, 2019.**

Fiscal Summary

State Effect: No effect in FY 2019 or 2020. Expenditures (all funds) increase significantly beginning in FY 2021 as a result of the mandated appropriation for the Attorney General. **This bill establishes a mandated appropriation beginning in FY 2021.**

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: The Attorney General acts as legal counsel to the Governor; the General Assembly; the Judiciary; and all departments, boards, and commissions (except the Maryland Commission on Civil Rights, the Public Service Commission, and the State Ethics Commission). The Office of the Attorney General (OAG) represents the State in all matters of interest to the State, including civil litigation and criminal appeals in all State and federal courts. The office also reviews legislation passed by the General Assembly

prior to consideration by the Governor. The office is currently supported by 13 divisions: Legal Counsel and Advice; Securities; Consumer Protection; Antitrust; Medicaid Fraud Control; Civil Litigation; Criminal Appeals; Criminal Investigation; Educational Affairs; Correctional Litigation; Contract Litigation; People's Insurance Counsel; and the Juvenile Justice Monitoring Unit. The office is also currently overseeing the expenditures of the Mortgage Loan Servicing Practices Settlement Fund.

Chapter 26 of 2017 (the Maryland Defense Act) authorized the Attorney General to pursue actions against the federal government when the Attorney General deems that there is a threat to the public interest or welfare of residents of the State. According to a report issued in December 2017, OAG is involved in or planning litigation on at least 20 distinct issues. The Maryland Defense Act also requires the Governor to provide \$1.0 million in the annual budget to fund five attorneys in OAG to support Maryland Defense Act activity.

Chapters 731 and 732 of 2018, the Financial Consumer Protection Act of 2018, require the Governor to include a general fund appropriation in the State budget of at least \$700,000 for OAG and at least \$300,000 for the Office of the Commissioner of Financial Regulation (OCFR), to be used for specified enforcement activities. In addition, Chapters 731 and 732 require OAG and OCFR to use their authority under a specified section of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, whenever considered appropriate, to bring civil actions or other appropriate proceedings authorized under Chapters 731 and 732.

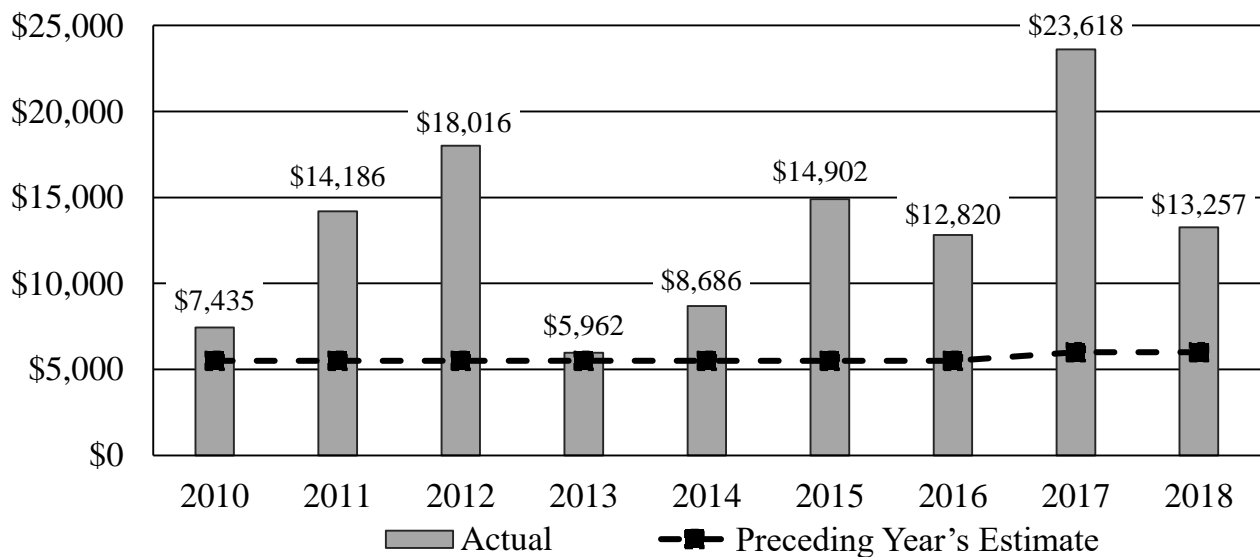
Background: The Governor's proposed fiscal 2020 budget appropriates \$41.8 million (total funds) to OAG, not including adjustments for statewide personnel actions in the Governor's allowance. The Department of Legislative Services (DLS) estimates that, despite \$6.9 million in growth between fiscal 2018 and 2020, OAG's base operations are underfunded by more than \$800,000. Budget growth is more than consumed by personnel expenditures and new agency responsibilities, and the budget shortfall likely means a significant slowdown in hiring.

The Consumer Protection Division and the Medicaid Fraud Control Unit (MFCU) handle the majority of settlements of cases in which the Attorney General represents the State.

The Consumer Protection Division of OAG assists citizens by providing mediation and arbitration service to consumers to help resolve complaints against businesses and health insurance carriers. As shown in **Exhibit 1**, OAG recovered \$13.3 million for consumers in fiscal 2018. This is down by \$10.4 million from fiscal 2017, but it is also the fourth year in a row with total recoveries in excess of \$10.0 million. Recoveries are volatile and depend upon the size and composition of the caseload, but these strong returns indicate that OAG has been successful in pursuing cases in which there had been significant harm to consumers. Additionally, restitution is sometimes paid directly to the affected consumers,

and State recoveries may be restricted to consumer protection activities within OAG. OAG has also noted that it is challenging to predict both the timing of settlements and the amounts that will be recovered. For these reasons, OAG sets a conservative goal for such recoveries of \$6.0 million per year.

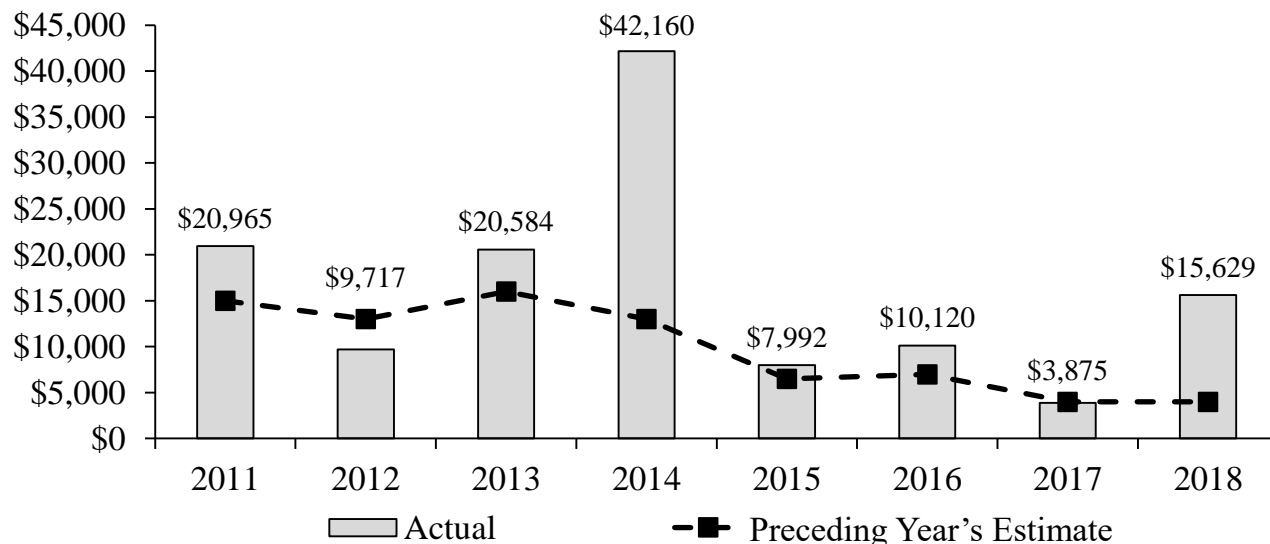
Exhibit 1
Consumer Protection Division
Consumer Recoveries
Fiscal 2010-2018
(\$ in Thousands)



Source: Department of Budget and Management

MFCU is charged with investigating and prosecuting Medicaid provider fraud as well as cases of abuse and neglect of vulnerable adults. In fiscal 2018, there were 137 new cases brought to MFCU, down from 208 in fiscal 2017. OAG has reported that this decrease is driven by a decline in allegations of Medicaid fraud rather than factors unique to the State's MFCU. As shown in **Exhibit 2**, however, collections increased to \$15.6 million in fiscal 2018 due to the resolution of large claims. Like consumer protection recoveries, MFCU recoveries are difficult to predict and depend on the nature of individual cases. In addition to financial recoveries, there were criminal charges filed in 17 cases, and civil settlements were reached in 27 cases, both increases over fiscal 2017.

Exhibit 2
Medicaid Fraud Control Unit
Fines and Collections
Fiscal 2011-2018
(\$ in Thousands)



Note: Includes State and federal collections.

Source: Department of Budget and Management

State Expenditures: The fiscal 2018 budget as passed by the General Assembly appropriated \$37,635,096 for the Attorney General. The amounts required by the Attorney General to administer the Maryland Defense Act of 2017 and the Financial Consumer Protection Act of 2018 are \$1.0 million and \$700,000, respectively. Thus, the bill requires the Governor to include in the State budget, beginning in fiscal 2021, an appropriation for the Attorney General of at least \$39,335,096 plus any amount the State receives from the settlement of a case in which the Attorney General represents the State. The Governor's proposed fiscal 2020 budget includes \$41.8 million for the Attorney General so any increase in appropriations under the bill generally stems from the amount the State receives from settlement cases. It is challenging to predict both the timing of settlements and the amounts that will be recovered. Due to the volatile nature of settlement funds, it is unknown how much the Governor must appropriate to the Attorney General, but DLS assumes expenditures (all funds) for the Attorney General increase significantly as a result of the mandated appropriation beginning in fiscal 2021.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General; Department of Budget and Management; Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2019
mm/mcr

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