

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 347 (Delegate Ruth, *et al.*)
Health and Government Operations

Attorney General – Climate Change Actions – Authorization

This bill expresses that, for the protection of the health and safety of the State’s citizens and environment, it is the General Assembly’s intent that a publicly traded entity with a market capitalization greater than \$1.0 billion and its subsidiaries be held accountable for any tortious or otherwise unlawful conduct on the part of the entity or subsidiary that has contributed to climate change, as specified. To that end, the bill explicitly authorizes the Attorney General to investigate, commence, and prosecute or defend any civil or criminal suit or action that holds accountable a publicly traded entity with a market capitalization greater than \$1.0 billion or its subsidiaries for any tortious or otherwise unlawful conduct on the part of the entity or subsidiary that has contributed to climate change through fraud, deception, or any other mechanism, action, inaction, or practice. The bill also authorizes the Attorney General to hire outside counsel (on a contingency fee basis) to assist with an action brought under the bill if the Attorney General determines that it would be in the State’s best interest.

Fiscal Summary

State Effect: To the extent significant investigation and litigation are undertaken pursuant to the bill’s authority, State expenditures likely increase, as discussed below. Revenues are not directly affected.

Local Effect: The bill does not directly affect local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Current Law: The Attorney General is an elected official who serves a four-year term of office. Pursuant to the State Constitution, the Attorney General has enumerated responsibilities, including investigating, commencing, and prosecuting or defending any civil or criminal suit or action, as specified, which the General Assembly, by law or joint resolution, or the Governor, directs to be investigated, commenced, and prosecuted or defended. The Attorney General does not, however, have general authority to prosecute crimes in the absence of specific statutory authority or an executive order. The Attorney General also has and must perform any other duties and possess any other powers as the General Assembly prescribes by law. For example, the Attorney General is specifically authorized under § 6-106.1 of the State Government Article to investigate, commence, and prosecute or defend any civil or criminal suit or action that is based on the federal government's action or inaction that threatens the public interest and welfare of the residents of the State with respect to protecting the natural resources and environment of the State.

The Secretary of the Environment must carry out and enforce the provisions of the Environment Article of the Annotated Code of Maryland (to which the bill's provisions are added). The Attorney General is the legal adviser of and must represent and otherwise perform all of the legal work for each officer and unit of the State government, unless a law expressly provides for a general counsel as the legal adviser and representative of the officer or unit.

State Expenditures: To the extent the bill results in significant investigations and litigation, State (general and/or special fund) expenditures likely increase by an indeterminate amount. It is unclear to what extent any potential investigations and litigation under the bill will be handled by Attorney General staff within the Maryland Department of the Environment (MDE) in comparison with attorneys within the Office of the Attorney General (OAG) and may depend on the nature of each legal action pursued.

MDE indicates generally that a significant increase in litigation may require additional legal staff within the department. OAG estimates that the office needs to hire one additional assistant attorney general and one paralegal, with an associated increase in general fund expenditures of at least \$260,000 on an annual basis. However, OAG did not provide additional details regarding how it derived its estimate, including the extent to which providing these permanent staffing resources within OAG may mitigate the need to hire outside counsel or utilize legal staff within MDE. While acknowledging that additional State expenditures are likely incurred if the State exercises its authority under the bill, the Department of Legislative Services, without additional information and experience under the bill, is unable to independently verify the staffing estimate submitted by OAG.

Small Business Effect: To the extent that the Attorney General hires a law firm that qualifies as a small business to provide outside counsel on a contingency fee basis (as authorized by the bill), the bill may have a meaningful effect.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 363 of 2022 and HB 1078 of 2021.

Designated Cross File: None.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland Department of the Environment; Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2023
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