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Position: FAV

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Baltimore and Howard Counties

Education, Health, and Environmental Affairs
Committee

Executive Nominations Committee

Joint Committee on Ending Homelessness

Chair

Joint Audit and Evaluation Committee

Joint Committee on Fair Practices and
State Personnel Oversight

Vice Chair

Baltimore County Senate Delegation

Chair

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SB 922 - Office of Legislative Audits – Acceptance and Investigation of Allegations of Fraud, Waste, and Abuse

Senator Clarence Lam - District 12

Senate Education, Health, and Environmental Affairs Committee

February 23rd, 2021

The Office of Legislative Audits (OLA)

- OLA is a unit within the Department of Legislative Services (DLS)
- OLA provides independent, objective, non-partisan audits and evaluations of state agencies and local school systems.
- Audits and evaluations conducted by OLA are performed by an exceptionally talented staff recognized for producing highly-detailed findings and recommendations.
 - These efforts assist the Maryland General Assembly in providing critical oversight and performance recommendations for State government entities.

OLA Fraud Hotline

- OLA operates a Fraud Hotline which receives allegations of waste, fraud, and abuse within State government entities.
 - These allegations can include questionable procurement practices, theft of State property, conflicts of interest, violations of State law, and misuse of state resources.
 - Allegations can be referred by phone, mail, in-person, and via the OLA website.
 - Since its launch in 2003, the Hotline has received over 400 reports on average each year.
- Depending on the nature of the allegation, OLA will perform a special audit, review the allegation during regularly scheduled fiscal compliance audits, or refer the concern to the appropriate agency for review.

Issues Addressed by SB 922

- OLA has brought to the attention of this bill's sponsors instances of state agency refusal to incorporate Fraud Hotline awareness education and materials to their staff.
- SB 922 intends to secure the cooperation of state agencies to enhance OLA's capacity to investigate waste, fraud, and abuse through the requirements that state agencies:
 - Promote awareness of the Fraud Hotline through postings displayed on agency websites and at conspicuous locations within the agency's physical campus
 - Compel the timely coordination of requests made by OLA to state agencies
 - Report instances of waste, fraud, and abuse relating to state resources and activities that are within the scope of OLA's authority and purview.

Sponsor Amendments

- A sponsor amendment has been introduced to address the unintentional granting of certain authorities to OLA that was raised in discussions with the Office of State Prosecutor and the Office of the Attorney General Criminal Division.
 - The insights provided by these entities are greatly appreciated towards the advancement of the shared goal aiming to codify OLA's authority to provide independent fraud investigations.
- As a result of this sponsor amendment, the fiscal costs associated with the original bill analysis are projected to be significantly reduced if not outright eliminated.

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SUPPORT WITH AMENDMENTS- SB922

Dear Mr. Chairman and Members of the Education, Health, and Environmental Affairs Committee:

We are writing to express the Office of the State Prosecutor's support with amendments to Senate Bill 922. The bill, as originally drafted, would allow the Office of Legislative Audits to compel documents and witnesses in ongoing criminal investigations conducted by all law enforcement and prosecutorial entities in this state. While we value the work of our wonderful and valued partner, the Office of Legislative Audits, in addressing systemic change and identifying criminal behavior, this legislation would create significant challenges in ongoing criminal investigations and undermine our efforts to hold individuals accountable for corruption. We have worked with the sponsor on the proposed amendments and they would alleviate our concerns.

We support the creation of a hotline for the Office of Legislative Audits and that the hotline be advertised in State Agencies but would want to ensure that there was no required reporting that might conflict with our investigative and prosecutorial mission.

We are committed to working with the Office of Legislative Audits to expand their fraud investigations and hope to workshop components of their original bill related to that. We outline below the concerns we have to the bill as drafted.

The Office of the State Prosecutor

The Office of the State Prosecutor is an independent agency within the Executive Branch of government. The Office is tasked with ensuring the honesty and integrity of state government and elections by conducting thorough, independent investigations, and when appropriate, employing our criminal and civil enforcement power to prosecute conduct affecting the integrity of our government institutions, officials, employees, and elections.

SB 922

The Office of Legislative Audits has an essential mission in safeguarding our statewide institutions from fraud, waste and abuse. The agency, since its creation, has been a valued partner of the Office of the State Prosecutor, Office of the Attorney General, and the citizens of Maryland in detecting illicit behavior on the part of individuals in government. However, the Office of Legislative Audits have a very different function than agencies that conduct criminal investigations, and their policies and practices reflect that. For example, the Office of Legislative Audits can compel an agency to

show documents related to agency functions even if the documents would be otherwise confidential. In a criminal investigation, individual targets have a right against self-incrimination and we cannot require them to produce documents or use documents acquired by an auditor against them. Agencies that have both audit and enforcement functions work hard to separate the audit and enforcement arms of their agencies for this very reason, such as the Internal Revenue Service or the Maryland Office of the Comptroller.

Both the criminal investigation and the audit function are essential in serving our citizens, to ensure transparency and hold agencies accountable. This legislation, however, would allow the Office of Legislative Audits to dictate which documents from a criminal investigation they can compel, undermining these unique roles and creating a situation where the criminal investigation and the legal rights of individual defendants can be compromised.

The language of this legislation identifies the auditors as the directors of a criminal investigation, despite the fact their office does not have prosecutors, criminal investigators or organic law enforcement expertise. Corruption investigations are benefitted immensely by the contributions and specialized expertise of the forensic auditors and accountants at the Office of Legislative Audits, but should not and cannot be directed by them. Our prosecutors and investigators are trained in using many investigative tools to identify and investigate criminal activity, while preserving confidentiality and the individual rights of potential defendants, requiring skills outside of those available at the Office of Legislative Audits, but found in abundance in our law enforcement, prosecutorial agencies and federal partners.

It is also important to note that our criminal investigations target both individual and multiple defendants, as well as corporate entities, and we often utilize statements by confidential informants, grand jury witnesses, immunity agreements, search warrants, bank records, medical records, and other materials that fall outside the mission scope of the Office of Legislative Audits. We also have cases with victims of crime that mandate affording individual victim services and specialized treatment, such as in cases of sexual assaults, physical abuse, and intimidation, and we have professional investigators and victim witness coordinators trained to handle these special circumstances.

Raising awareness of fraud, waste, abuse and criminal activity is an essential part of our mission. We support any effort to highlight and support the incredible work that the Office of Legislative Audits currently undertakes, and we value them as essential partners in efforts to protect the citizens of Maryland. We will continue to provide whatever materials and support that we can to the Office of Legislative Audits as soon as we can, given our professional and legal requirements, and will proactively do so when our criminal investigations are resolved and relate to their important mission.

Thank you for your attention to this matter and please feel free to follow up with Deputy State Prosecutor Sarah David, sarah.david@maryland.gov, with any questions.

Sincerely,

Charlton T. Howard

2021-02-23 SB 922 (Support with Amendment).pdf

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February 23, 2021

TO: The Honorable Paul G. Pinsky
Chair, Education, Health, and Environmental Affairs Committee

FROM: Office of the Attorney General

RE: SB 922 – Office of Legislative Audits – Acceptance and Investigation of Allegations of Fraud, Waste, and Abuse – **Support with Amendments**

We are writing to express the Office of the Attorney General's support for Senate Bill 922, provided that the bill is amended as below. The bill's original provisions, aimed at fostering a greater sharing of information regarding criminal investigations, were overly broad and could blur the lines between the functions of the Office of Legislative Audits and those of law enforcement and prosecutorial agencies.

The Office of Legislative Audits does extraordinary work in combatting fraud and they are our valued partners; however, their role is inherently distinct from that of law enforcement or prosecutors. Criminal investigators and legislative auditors are both vested with powers and responsibilities that are carefully calibrated to their specific roles and often incompatible with others. Any change in the relationship between these roles must be carefully crafted with the input of all parties to ensure that unintended consequences are minimized, a process which has not yet occurred but can proceed under the bill as amended below.

In supporting the bill as amended below, we look forward to working with the Office of Legislative Audits in the months to come to enhance our collaboration with that office in ways that safeguard the integrity of ongoing criminal investigations. We also note our support for the provisions of the bill concerning the formal establishment of a fraud hotline. Hotlines are often effective in facilitating the reporting of fraud, waste, and abuse, and are a vital tool in focusing the efforts of fraud investigators.

Amendments:

- (1) On page 1, strike beginning with “authorizing” in line 4 down through “circumstances;” in line 8;
- (2) On page 1 line 13, after “Office” insert “of Legislative Audits”;
- (3) On page 1 line 16, strike the comma and substitute “and”;
- (4) Strike beginning with the comma on page 1 line 17 down through “inquiries” on page 1 line 18 and substitute “; requiring the Office, in coordination with the Office of the Attorney General and the Office of the State Prosecutor, to evaluate and develop certain statutory and regulatory language: requiring the Office to report its findings to a certain committee of the General Assembly on or before a certain date”;
- (5) On page 1 line 27, strike “2–1223 and”;
- (6) On pages 2 through 4, strike in their entirety the lines beginning with line 20 on page 2 through line 10 on page 4, inclusive;
- (7) On page 5, in line 18, after “**ABUSE;**” insert “**AND**”;
- (8) On page 5 line 22, strike the semicolon and substitute a period;
- (9) On page 5 strike in their entirety lines 23 through 29, inclusive;
- (10) On page 5 after line 29, insert: and

“SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The Office of Legislative Audits shall, in consultation with the Office of the Attorney General and the Office of the State Prosecutor, evaluate and develop appropriate statutory or regulatory language to:

- (1) enhance the authority, duties, and powers of the Office of Legislative Audits related to investigations of acts or allegations of fraud, waste, or abuse conducted under its authority under § 2–1220 of the State Government Article;
- (2) coordinate and cooperate with appropriate prosecutorial entities to maximize the effectiveness of investigations of acts or allegations of fraud, waste, or abuse conducted by the Office of Legislative Audits; and
- (3) require State agencies to report any instance of possible criminal or unethical behavior in the obligation, expenditure, receipt, or use of State resources at the agency to the Office of Legislative Audits, unless otherwise prohibited by law.

(b) On or before December 1, 2021, the Office of Legislative Audits shall, in accordance with § 2-1257 of the State Government Article, report on the findings under subsection (a) of this section to the Joint Audit and Evaluation Committee.

(11) On page 5 line 30, strike “2.” and substitute “3.”.

cc: Members of the Education, Health, and Environmental Affairs Committee