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February 20, 2024

TO: The Honorable Joseline A. Pena-Melnyk
Chair, Health and Government Operations Committee

FROM: Peter V. Berns
General Counsel, Executive Division, Office of the Attorney General

RE: House Bill 809 – Members of Boards, Committees, Commissions, Task Forces, or Workgroups – Removal or Suspension – **Support with Amendments**

The Office of the Attorney General requests the Committee to amend House Bill 809 - Members of Boards, Committees, Commissions, Task Forces, or Workgroups – Removal or Suspension, sponsored by Delegate Vogel, and then provide a favorable report.

House Bill 809 grants authority to an “individual or entity” appointed for a “fixed term to a board, committee, commission, task force, or work group created by State law” to suspend or remove a member in certain circumstances. Suspension or removal is allowed for “misconduct, incompetence, neglect of duties, or other good cause.” The Bill requires consultation with the body's chair and grants “notice and an opportunity to be heard” to the member subject to suspension or removal.

HB 809 is needed to fill a gap in current law. Maryland Constitution Article II, § 15 provides that the Governor “may remove for incompetency, or misconduct, all civil officers who received appointment from the Executive for a term of years.” However, this removal authority applies only to appointments made by the Governor and not by the Attorney General, as an independently elected official, nor by other individuals or entities (hereinafter “appointing authorities”) authorized by statutes to make appointments to boards, committees, commissions, task forces, or work groups (hereinafter “boards and commissions”).

While there is a common law rule that permits the removal of an officer by the official who made the appointment, that rule does not apply, however, when the law gives the appointee a fixed term of years. See., Letter from Kathryn M. Rowe, Assistant Attorney General, to Del. Jazz Lewis (Sept. 24, 2021); 20 *Opinions of the Attorney General* 372 (1935). The appointing authority can remove an officer appointed to a term of years only if the statute expressly provides this power. 21 *Opinions of the Attorney General* 197 (1936). This allows for a strange result, where an individual may be compromised in their ability to serve the State on a board or commission, yet there is nothing that can be done to address the situation,

HB 809 will solve this problem by providing the missing statutory authority.

The Bill is, however, in need of one amendment. As currently drafted, the appointing authority must consult with the board or commission chair before removing or suspending a member. However, such consultation should not be required if the removal or suspension is of the chair. In all cases, however, the provisions regarding notice and opportunity to be heard still apply.

For these reasons, the Office of the Attorney General urges a favorable report with amendments to House Bill 809.