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February 18, 2025

TO: The Honorable Ben Barnes
Chair, Appropriations Committee

FROM: Tiffany Clark
Chief, Legislative Affairs, Office of the Attorney General

RE: House Bill 176– Labor and Employment - Occupational Safety and Health - Revisions (Davis Martinez Public Employee Safety and Health Act) - **Letter of Information**

The Office of the Attorney General (OAG) respectfully offers this letter of information to the Committee on **House Bill 176**- Labor and Employment – Occupational Safety and Health Revisions (Davis Martinez Public Employee Safety and Health Act. **House Bill 176** aims to improve workplace safety for public employees in Maryland by (1) establishing a Public Employees' Safety and Health Unit within the Division of Labor and Industry, (2) requiring the development of specific standards to prevent workplace violence for public employees, (3) holding public employers accountable for ensuring the safety of their employees, and (4) including both civil and criminal penalties for violations. While improving workplace safety for public employees is a laudable goal, the repeal of the exemption of public bodies from civil penalties and the introduction of a new enforcement framework potentially complicates the role of the OAG.

Background on House Bill 176 and Representation Issues

Under current law, public bodies are exempt from civil penalties under the Maryland Occupational Safety and Health Act (MOSH Act). *See* Md. Code. Ann. Lab & Empl. (“L&E”) §§ 5-206(d) and 5-801. **House Bill 176** removes this exemption, making public bodies, including state agencies, subject to penalties for safety violations and escalating fines for non-compliance. **House Bill 176** also grants the Assistant Commissioner for Public Employees’

Safety and Health, represented by the OAG, expanded authority to enforce these penalties against public bodies.

While the current law allows for public bodies to contest citations and be heard on appeal, it is extraordinarily rare for a public body to do this given that public bodies are presently immune from financial penalties. We would expect a deluge of appeals in the event that the Division of Labor and Industry began a more robust inspection and citation process against public bodies coupled with new financial penalties.

Consequently, under the current language of **House Bill 176**, the OAG may find itself representing both the Assistant Commissioner seeking to impose penalties and the cited public body contesting the citation or penalty. As discussed below, this would create a severe conflict of interest.

Breakdown of Attorney/Client Relationship

There is a difference between an ethical conflict and a conflict that will impair an attorney/client relationship. Both types of conflicts can undermine the legal process, but ethical conflicts have broader implications for professional integrity, while relationship conflicts directly hinder the effectiveness of legal representation. OAG acknowledges the above conflicts are ethical conflicts and could possibly be deconflicted by creating appropriate information walls. However, providing notice to impacted employees that an OAG client has violated certain provisions of law and then levying penalties against the client, are conflicts that cannot be deconflicted. By requiring the OAG to provide this notice and to levy penalties against a client, OAG is now part of the compliance effort against the client – putting a strain on the attorney/client trust relationship that cannot be avoided, no matter how many ethical walls are erected. Ethical walls can resolve conflicts of interest, but ethical walls will not restore the trust or functionality needed for a strong attorney/client relationship.

Additionally, it can be argued that **House Bill 176** puts OAG in a similar situation as with the Public Employee Labor Relations Board (PERB), however, OAG contends the two situations are very different. PERB does not levy penalties - PERB awards back pay. Back pay is awarded as a result of a violation of employment laws, meaning an employer is required to pay back wages as a *remedy*. Back pay is money that is owed to an employee, not a penalty. Under **House Bill 176**, OAG would be required to levy *penalties* against a client for noncompliance. Comparing OAG's responsibilities with regards to PERB with what OAG would have to do under this bill is like comparing apples to oranges.

The Office of the Attorney General applauds **House Bill 176** for seeking to improve workplace safety. However, we urge the Committee to carefully consider the concerns outlined above as it deliberates this critical issue.

cc: The Honorable Jared Solomon
Members of the House Appropriations Committee