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GOVERNMENT CODE - GOV

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980] (Title 2 enacted by Stats. 1943, Ch. 134.)

DIVISION 3. EXECUTIVE DEPARTMENT [11000 - 15990.3] (Division 3 added by Stats. 1945, Ch. 111.)

PART 1. STATE DEPARTMENTS AND AGENCIES [11000 - 11898] (Part 1 added by Stats. 1945, Ch. 111.)

CHAPTER 1. State Agencies [11000 - 11148.5] (Chapter 1 added by Stats. 1945, Ch. 111.)

ARTICLE 4. Legal Services [11040 - 11045] (Article 4 added by Stats. 1945, Ch. 111.)

11040. (a) It is the intent of the Legislature that overall fiscal efficiency and economy in state government be enhanced by employment of the Attorney General as counsel for the representation of state agencies and employees in judicial and administrative adjudicative proceedings.

The Legislature finds that it is in the best interests of the people of the State of California that the Attorney General be provided with the fiscal resources needed to develop and maintain the Attorney General's capability to provide competent legal representation of state agencies and employees in any judicial or administrative adjudicative proceeding.

(b) As used in this article:

(1) "In-house counsel" means an attorney authorized to practice law in the State of California who is a state employee, including an excluded or exempt employee, other than an employee of the Office of the Attorney General.

(2) "Outside counsel" means an attorney authorized to practice law in the State of California who is not a state employee, including an excluded or exempt employee.

(c) Except with respect to employment by the state officers and agencies specified by title or name in Section 11041, when employing outside counsel for purposes described in subdivision (e) of Section 11043, or when specifically waived by statute other than Section 11041, a state agency shall obtain the written consent of the Attorney General before doing either of the following:

(1) Employing in-house counsel to represent a state agency or employee in any judicial or administrative adjudicative proceeding.

(2) Contracting with outside counsel.

(d) Except as limited by paragraph (1) of subdivision (c), a state agency may employ in-house counsel for any purpose. This subdivision shall apply retroactively to the employment of any in-house counsel by any state agency before the operative date of the act adding this subdivision.

(e) This article does not prohibit a state agency from requesting legal representation or legal services from the Attorney General for any purpose.

(f) Consistent with subdivision (d), and except as may conflict with contrary authorization by statute, a state agency may employ in-house counsel for advice or other legal work related to bonds or other evidences of indebtedness, but shall engage the Attorney General, alone or with other counsel as may be authorized by statute, for the purpose of delivering any approving legal opinion on bonds or other evidences of indebtedness and advice related to the approving legal opinion. The Attorney General may waive the requirement under this subdivision.

(Amended by Stats. 2025, Ch. 20, Sec. 21. (AB 137) Effective June 30, 2025.)

11041. (a) Section 11042 does not apply to the office of the Governor, the Regents of the University of California, the Trustees of the California State University, Legal Division of the Department of Transportation, Division of Labor Standards Enforcement of the Department of Industrial Relations, Workers' Compensation Appeals Board, Public Utilities Commission, State Compensation Insurance Fund, Legislative Counsel Bureau, Inheritance Tax Department, Secretary of State, State Lands Commission, Alcoholic Beverage Control Appeals Board (except when the board affirms the decision of the Department of Alcoholic Beverage Control),

Department of Cannabis Control (except in proceedings in state or federal court), State Department of Education, Department of Financial Protection and Innovation, and Treasurer with respect to bonds, nor to any other state agency which, by law enacted after Chapter 213 of the Statutes of 1933, is authorized to employ legal counsel.

(b) The Trustees of the California State University shall pay the cost of employing legal counsel from their existing resources.

(Amended by Stats. 2025, Ch. 20, Sec. 22. (AB 137) Effective June 30, 2025.)

11042. (a) For purposes of promoting fiscal efficiency and economy, no state agency shall employ any in-house counsel to act on behalf of the state agency or its employees in any judicial or administrative adjudicative proceeding in which the agency is interested, or is a party as a result of office or official duties, or contract with outside counsel for any purpose, unless the agency has first obtained the written consent of the Attorney General pursuant to Section 11040.

(b) The Attorney General may provide written consent for a state agency to employ in-house counsel to represent the agency or its employees in any judicial or administrative adjudicative proceeding in whatever manner the Attorney General deems most effective and consistent with the intent of this article. However, a state agency shall obtain written consent for the use of outside counsel for a matter or matters for which the outside counsel is to be engaged before the execution of each contract with the outside counsel for the matter or matters.

(Amended by Stats. 2025, Ch. 20, Sec. 23. (AB 137) Effective June 30, 2025.)

11043. (a) The Legislature finds and declares all of the following:

(1) The Attorney General performs separate functions in enforcing state laws, pursuant to Section 13 of Article V of the California Constitution, and serving as counsel, whenever requested, for the representation of state agencies and employees in judicial and administrative adjudicative proceedings and other matters.

(2) When a state agency requests representation by the Attorney General, the Attorney General establishes an attorney-client relationship with a state agency that is limited to the specific matter or matters for which the state agency has requested representation.

(3) It is important to uphold the divided executive branch enacted by the California Constitution.

(4) The findings provided in this subdivision are declaratory of existing law, as demonstrated in *People ex rel. Lockyer v. Superior Court* (2004) 122 Cal.App.4th 1060 and *People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305.

(b) The Attorney General has no control over any state agency's decisions or possession, custody, or control over any state agency's documents or electronically stored information for purposes of criminal or civil discovery or any other purpose.

(c) Every state agency is a separate legal entity. Unless an agency is in actual possession of the relevant documents or electronically stored information, no state agency has possession, custody, or control over any other state agency's documents or electronically stored information for purposes of criminal or civil discovery or the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1). Service of a summons, complaint, or subpoena on one state agency is not lawful service on any other state agency, unless the state agency served has been authorized to accept service on behalf of the other state agency.

(d) When the Attorney General institutes or defends an action in their independent capacity on behalf of the State of California or the people of the State of California, the Attorney General acts in the public interest of the State of California and its residents and not as the legal representative or attorney of any state entity, including entities within the executive, legislative, or judicial branches. State agencies are not parties to an action described in this subdivision, unless they are specifically named as a party, and the documents or electronically stored information of state agencies are not in the possession, custody, or control of the Attorney General.

(e) (1) Section 11042 does not apply for purposes of representation of a state agency related to civil discovery, whether sought as party or third-party discovery, in any action brought by the Attorney General in their independent capacity on behalf of the people of the State of California or the State of California.

(2) Nothing in paragraph (1) shall prohibit a state agency from requesting representation from the Attorney General in a proceeding otherwise subject to paragraph (1).

(f) It is the intent of the Legislature that this section be interpreted broadly to include any action filed by the Attorney General, whether filed in federal court or state court, to enforce state laws or defend the interests of the people of the State of California or the State of California where the Attorney General has not been requested to act as counsel for that state agency.

(Added by Stats. 2025, Ch. 20, Sec. 24. (AB 137) Effective June 30, 2025.)

11044. (a) The Legal Services Revolving Fund is hereby created in the State Treasury. The Department of Justice shall administer this fund. Moneys in the fund, upon appropriation by the Legislature, shall be used by the Attorney General for investigation and litigation activities taken on behalf of the state agencies employing the legal services of the department and for investigation and litigation activities funded through judgments or settlements.

(b) For state agencies, departments, or programs that are charged for the costs of legal services rendered by the Attorney General, the Attorney General shall charge an amount sufficient to recover the costs incurred in providing the legal services. These funds shall be deposited into the Legal Services Revolving Fund.

(c) Upon the request of the Attorney General in the form prescribed by the Controller, the Controller shall transfer the amount of the charges for services rendered from the agency's appropriation to the appropriation for the support of the Attorney General's office using the Controller's direct transfer process. Payments for these charges shall be credited to and in augmentation of the appropriation for the support of the Attorney General's office from which the cost of the services was or will be paid.

(d) A state agency that has a dispute regarding charges for legal services provided by the Attorney General shall notify the Attorney General, in writing, of the dispute and the basis for it. All disputes shall be resolved in accordance with subdivision (l) of Section 8474.1 of Chapter 8400 of the State Administrative Manual. Upon resolution of the dispute in favor of the state agency, the Attorney General shall provide a credit to the state agency for the amount of the charges in dispute.

(Amended by Stats. 2011, Ch. 10, Sec. 1. (SB 78) Effective March 24, 2011.)

11045. (a) (1) Whenever a state agency requests the consent of the Attorney General to contract with outside counsel, as required by Sections 11040 and 11042, the state agency shall within five business days of the date the request is transmitted to the Attorney General provide the designated representative of State Employees Bargaining Unit 2 with written notification of the request. The notice shall include the items enumerated in subdivision (d).

(2) All state agencies, other than the office of the Attorney General, that are not required to obtain the consent to contract with outside counsel required by paragraph (2) of subdivision (c) of Section 11040 and Section 11042, shall provide written notice of any proposed contract for outside counsel to the designated representative of State Employees Bargaining Unit 2 five business days before execution of the contract by the state agency. The notice shall include the items required by subdivision (d). In the event of an emergency that requires the immediate employment of outside counsel, the state agency shall provide the written notice no later than five business days after the contract with outside counsel is signed.

(3) Whenever the Attorney General determines the need to employ outside counsel pursuant to subdivision (b) of Section 12520, the Attorney General shall give written notice to the designated representative of State Employees Bargaining Unit 2 within 10 days of that determination. The notice shall include the items enumerated in subdivision (d).

(b) The Attorney General shall provide the designated representative of State Employees Bargaining Unit 2 with a written report, at least monthly, of all consents granted to every state agency pursuant to Section 11040.

(c) Notwithstanding the above notice requirements, whenever any state agency submits a proposed contract for outside counsel to the Department of General Services pursuant to Section 10335 of the Public Contract Code, the agency shall provide a copy of the contract to the designated representative of State Employees Bargaining Unit 2.

(d) "Written notice" within the meaning of this section shall include, but not be limited to, all of the following:

(1) A copy of the complaint or other pleadings, if any, that gave rise to the litigation or matter for which a contract is being sought, or other identifying information.

(2) The justification for the contract, pursuant to subdivision (b) of Section 19130.

(3) The nature of the legal services to be performed.

(4) The estimated hourly wage to be paid under the contract.

(5) The estimated length of the contract.

(6) The identity of the person or entity that is entering into the contract with the state.

(e) "State agency," as used in this section, means every state office, department, division, bureau, board, or commission, including the Board of Directors of the State Compensation Insurance Fund, but does not include the Regents of the University of California, the Trustees of the California State University, the Legislature, the courts, or any agency in the judicial branch of government.

(f) (1) The notice requirements of this section do not apply to contracts for expert witnesses or consultations in connection with a confidential investigation or to any confidential component of a pending or active legal action.

(2) The exemption authorized in paragraph (1) shall only apply as long as necessary to protect the confidentiality of the investigation or the confidential component of a pending or active legal action.

(3) Disclosures made pursuant to this section are deemed to be privileged communications for purposes of subdivision (c) of Section 912 of the Evidence Code, and shall not be construed to be a waiver of any privilege or exemption provided by law, including, but not limited to, the lawyer-client privilege, as described in Section 952 of the Evidence Code, or attorney work product, as described in Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure.

(g) If the provisions of this section are in conflict with the provisions of a memorandum of understanding or other written agreement reached pursuant to Section 3517 or 3517.5, the memorandum of understanding or agreement shall be controlling without further legislative action, except that if any provision of the memorandum of understanding or other agreement requires the expenditure of funds, the provisions may not become effective unless approved by the Legislature.

(Amended by Stats. 2017, Ch. 17, Sec. 11. (AB 103) Effective June 27, 2017.)