

AMENDED IN SENATE JUNE 11, 2009

AMENDED IN ASSEMBLY MAY 6, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 471

Introduced by Assembly Member Nava

February 24, 2009

An act to amend Sections 11040 and 11042 of, and to add Sections 11042.1, 11042.2, 11042.3, and 11046 to, the Government Code, relating to legal services.

LEGISLATIVE COUNSEL'S DIGEST

AB 471, as amended, Nava. Legal services.

Existing law requires certain state entities to obtain written consent from the Attorney General before employing legal counsel in any judicial proceeding.

This bill would recast these provisions, define terms for their purposes, and state several factors the Attorney General may consider when considering consenting to a state agency, commissioner, or officer employing in-house counsel or outside counsel, as defined.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11040 of the Government Code is
- 2 amended to read:
- 3 11040. (a) This article does not affect the right of any state
- 4 agency or employee to employ counsel in any matter of the state,

1 after first having obtained the written consent of the Attorney
2 General.

3 (b) It is the intent of the Legislature that overall efficiency and
4 economy in state government be enhanced by employment of the
5 Attorney General as counsel for the representation of state agencies
6 and employees in judicial and other proceedings.

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

12 (c) Except with respect to employment by the state officers and
13 agencies specified by title or name in Section 11041 or when
14 specifically waived by statute other than Section 11041, the written
15 consent of the Attorney General is required prior to employment
16 of outside counsel for representation of any state agency or
17 ~~employee in any judicial or other proceeding.~~ *employee.*

18 SEC. 2. Section 11042 of the Government Code is amended
19 to read:

20 11042. A state agency, commissioner, or officer may employ
21 in-house legal counsel to provide legal ~~advice services~~. However,
22 *except as otherwise specifically provided in this article or another*
23 *statute*, only the Attorney General, or one of his or her assistants
24 or deputies, shall represent a state agency, commissioner, or officer
25 *in relation to* a judicial or other proceeding in which the agency,
26 commissioner, or officer is interested, or is a party as a result of
27 office or official duties, unless express written consent is given by
28 the Attorney General *to employ in-house counsel*.

29 SEC. 3. Section 11042.1 is added to the Government Code, to
30 read:

31 ~~11042.1. Nothing in this article prohibits the Attorney General~~
32 ~~from providing a state agency, commissioner, or officer, with legal~~
33 ~~advice outside the context of a judicial or other proceeding, as~~
34 ~~defined in Section 11046.~~

35 *11042.1. Nothing in this article prohibits a state agency,*
36 *commission, or officer from obtaining legal services from the*
37 *Attorney General that are unrelated to a judicial or other*
38 *proceeding.*

39 SEC. 4. Section 11042.2 is added to the Government Code, to
40 read:

1 11042.2. When the Attorney General consents to a state agency,
2 commissioner, or officer employing in-house counsel or outside
3 counsel in a judicial or other proceeding, the Attorney General
4 ~~shall retain authority to~~ may intervene in the proceeding or appear
5 as amicus curiae to the extent permitted by ~~law~~ the court.

6 SEC. 5. Section 11042.3 is added to the Government Code, to
7 read:

8 11042.3. In determining whether to give consent to a state
9 agency, commissioner, or officer to employ in-house counsel or
10 outside counsel in a judicial or other proceeding, and the extent
11 of such consent, the Attorney General may consider the factors of
12 conflicts of interest, the staffing needs of the Office of the Attorney
13 General, and the availability of subject matter expertise.

14 SEC. 6. Section 11046 is added to the Government Code, to
15 read:

16 11046. For purposes of this article and unless otherwise
17 specifically stated, the following definitions shall apply:

18 (a) “In-house counsel” means a licensed attorney employed in
19 ~~state service by a state agency and represented by State Bargaining~~
20 ~~Unit 2.~~ state service by a state agency, commissioner, or officer.

21 (b) “Judicial ~~and other proceedings~~” or other proceeding” means
22 litigation in a civil court, an administrative adjudicatory proceeding
23 governed by the Administrative Procedure Act (Chapter 4
24 (commencing with Section 11370)) or by the United States
25 Administrative Procedure Act (5 U.S.C. 551, et seq.), or an
26 arbitration proceeding. *Administrative adjudicatory proceedings*
27 *before the State Personnel Board, the Department of Personnel*
28 *Administration, or the Unemployment Insurance Appeals Board*
29 *are exempt from this definition.*

30 (c) ~~“Outside counsel” means an attorney licensed to practice~~
31 ~~law that does not otherwise meet the definition of subdivision (a).~~

32 (c) “Outside counsel” means a licensed attorney engaged in
33 the private practice of law.