

AMENDED IN SENATE JULY 15, 2010
AMENDED IN SENATE JUNE 16, 2010
AMENDED IN SENATE SEPTEMBER 4, 2009
AMENDED IN SENATE AUGUST 26, 2009
AMENDED IN SENATE JUNE 30, 2009
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, and to amend Section 1341.6 of the Health and Safety Code, relating to legal services.

LEGISLATIVE COUNSEL'S DIGEST

AB 471, as amended, Nava. ~~Legal Services.~~ *services.*

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

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. The bill would make other conforming changes.

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,
5 after first having obtained the written consent of the Attorney
6 General.

7 (b) It is the intent of the Legislature that overall efficiency and
8 economy in state government be enhanced by employment of the
9 Attorney General as counsel for the representation of state agencies
10 and employees ~~in judicial or other proceedings~~.

11 The Legislature finds that it is in the best interests of the people
12 of the State of California that the Attorney General be provided
13 with the resources needed to develop and maintain the Attorney
14 General’s capability to provide competent legal representation of
15 state agencies and employees ~~in any judicial or other proceeding~~.

16 (c) Except with respect to employment by the state officers and
17 agencies specified by title or name in Section 11041 or when
18 specifically waived, exempted, or excepted by statute other than
19 Section 11041, the express written consent of the Attorney General
20 is required prior to employment of outside counsel for
21 representation of any state agency or employee *in any judicial or*
22 *other proceeding, or advice or opinion matter*.

23 SEC. 2. Section 11042 of the Government Code is amended
24 to read:

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

1 SEC. 3. Section 11042.1 is added to the Government Code, to
2 read:

3 11042.1. Nothing in this article prohibits a state agency,
4 commissioner, or officer from obtaining legal services from the
5 Attorney General that are unrelated to a judicial or other
6 proceeding.

7 SEC. 4. Section 11042.2 is added to the Government Code, to
8 read:

9 11042.2. When a state agency, commissioner, or officer
10 employs in-house or outside counsel in a judicial or other
11 proceeding, the Attorney General may intervene or appear as
12 amicus curiae to the extent permitted by the court ~~or agency~~.

13 SEC. 5. Section 11042.3 is added to the Government Code, to
14 read:

15 11042.3. In determining whether to give consent to a state
16 agency, commissioner, or officer to employ in-house counsel or
17 outside counsel in a judicial or other proceeding, and the extent
18 of this consent, the Attorney General may consider public policy,
19 potential conflicts of interest, the availability of subject matter
20 expertise and staffing within the Office of the Attorney General,
21 the availability of subject matter expertise and staffing among
22 in-house counsel, and other relevant factors.

23 SEC. 6. Section 11046 is added to the Government Code, to
24 read:

25 11046. For purposes of this article and unless otherwise
26 specifically stated, the following definitions shall apply:

27 (a) “In-house counsel” means a licensed attorney employed in
28 state service by a state agency, commissioner, or officer, other
29 than a licensed attorney employed in state service in the Office of
30 the Attorney General.

31 (b) “Judicial or other proceeding” means litigation in a civil
32 court, an administrative adjudicatory proceeding in which an
33 agency is represented by an attorney, including any related
34 alternative dispute resolution proceeding. ~~“Judicial or other
35 proceeding” also includes advice or opinions relating to bonds.~~
36 Administrative adjudicatory proceedings before the State Personnel
37 Board, the Department of Personnel Administration, or the
38 Unemployment Insurance Appeals Board are exempt from this
39 definition.

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

3 SEC. 7. Section 1341.6 of the Health and Safety Code is
4 amended to read:

5 1341.6. (a) The Attorney General shall render to the director
6 opinions upon all questions of law, relating to the construction or
7 interpretation of any law under the director’s jurisdiction or arising
8 in the administration thereof, that may be submitted to the Attorney
9 General by the director and upon the director’s request shall act
10 as the attorney for the director in actions and proceedings brought
11 by or against the director under or pursuant to any provision of
12 any law under the director’s jurisdiction.

13 (b) Sections 11042, 11042.1, 11042.2, 11042.3, and 11043 of
14 the Government Code do not apply to the Director of the
15 Department of Managed Health Care or to the Department of
16 Managed Health Care.