SENATE BILL 1391

AN ACT

AMENDING SECTIONS 41-192 AND 49-103; ARIZONA REVISED STATUTES; RELATING TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 41-192, Arizona Revised Statutes, is amended to read:

41-192. Powers and duties of attorney general; restrictions on state agencies as to legal counsel; exceptions; compromise and settlement monies

A. The attorney general shall have charge of and direct the department of law and shall serve as chief legal officer of the state. The attorney general shall:

1. Be the legal advisor of the departments of this state and render such legal services as the departments require.
2. Establish administrative and operational policies and procedures within his THE ATTORNEY GENERAL'S department.
3. Approve long-range plans for developing departmental programs therein, and coordinate the legal services required by other departments of this state or other state agencies.
4. Represent school districts and governing boards of school districts in any lawsuit involving a conflict of interest with other county offices.
5. Represent political subdivisions, school districts and municipalities in suits to enforce state or federal statutes pertaining to antitrust, restraint of trade or price-fixing activities or conspiracies, if the attorney general notifies in writing the political subdivisions, school districts and municipalities of the attorney general's intention to bring any such action on their behalf. At any time within thirty days after the notification, a political subdivision, school district or municipality, by formal resolution of its governing body, may withdraw the authority of the attorney general to bring the intended action on its behalf.
6. In any action brought by the attorney general pursuant to state or federal statutes pertaining to antitrust, restraint of trade, or price-fixing activities or conspiracies for the recovery of damages by this state or any of its political subdivisions, school districts or municipalities, in addition to the attorney general's other powers and authority, the attorney general on behalf of this state may enter into contracts relating to the investigation and prosecution of such action with any other party plaintiff who has brought a similar action for the recovery of damages and with whom the attorney general finds it advantageous to act jointly or to share common expenses or to cooperate in any manner relative to such action. In any such action, notwithstanding any other laws to the contrary, the attorney general may undertake, among other things, to render legal services as special counsel or to obtain the legal services of special counsel from any department or agency of the United States, of this state or any other state or any department or agency thereof or any county, city, public corporation or public district
in this state or in any other state that has brought or intends to bring a
similar action for the recovery of damages or its duly authorized legal
representatives in such action.

7. Organize the civil rights division within the department of law
and administer such division pursuant to the powers and duties provided in
chapter 9 of this title.

8. Compile, publish and distribute to all state agencies, departments, boards, commissions and councils, and to other persons and
government entities on request, at least every ten years, the Arizona
agency handbook that sets forth and explains the major state laws that
govern state agencies, including information on the laws relating to
bribery, conflicts of interest, contracting with the government, disclosure of public information, discrimination, nepotism, financial
disclosure, gifts and extra compensation, incompatible employment, political activity by employees, public access and misuse of public
resources for personal gain. A supplement to the handbook reflecting
revisions to the information contained in the handbook shall be compiled
and distributed by the attorney general as deemed necessary.

B. Except as otherwise provided by law, the attorney general may:

1. Organize the department into such bureaus, subdivisions or units
as THE ATTORNEY GENERAL deems most efficient and economical, and
consolidate or abolish them.

2. Adopt rules for the orderly conduct of the business of the
department.

3. Subject to chapter 4, article 4 of this title, employ and assign
assistant attorneys general and other employees necessary to perform the
functions of the department.

4. Compromise or settle any action or claim by or against this
state or any department, board or agency of this state. If the compromise
or settlement involves a particular department, board or agency of this
state, the compromise or settlement shall be first approved by the
department, board or agency. If no department or agency is named or
otherwise materially involved, the approval of the governor shall be first
obtained.

5. Charge reasonable fees for distributing official publications,
including attorney general legal opinions and the Arizona agency handbook.
The fees received shall be transmitted to the state treasurer for deposit
in the state general fund.

C. The powers and duties of a bureau, subdivision or unit shall be
limited to those assigned by law to the department.

D. Notwithstanding any law to the contrary, except as provided in
subsections E and F of this section, no state agency other than the
attorney general shall employ legal counsel or make an expenditure or
incur an indebtedness for legal services, but the following are exempt
from this section:
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1. The director of water resources.
2. The residential utility consumer office.
3. The industrial commission of Arizona.
4. The Arizona board of regents.
5. The auditor general.
6. The corporation commissioners and the corporation commission other than the securities division.
7. The office of the governor.
8. The constitutional defense council.
9. The office of the state treasurer.
10. The Arizona commerce authority.
11. The water infrastructure finance authority of Arizona.
12. THE DEPARTMENT OF ENVIRONMENTAL QUALITY.

E. If the attorney general determines that the attorney general is disqualified from providing judicial or quasi-judicial legal representation or legal services on behalf of any state agency in relation to any matter, the attorney general shall give written notification to the state agency affected. If the agency has received written notification from the attorney general that the attorney general is disqualified from providing judicial or quasi-judicial legal representation or legal services in relation to any particular matter, the state agency is authorized to make expenditures and incur indebtedness to employ attorneys to provide the representation or services.

F. If the attorney general and the director of the department of agriculture cannot agree on the final disposition of a pesticide complaint under section 3-368, if the attorney general and the director determine that a conflict of interest exists as to any matter or if the attorney general and the director determine that the attorney general does not have the expertise or attorneys available to handle a matter, the director is authorized to make expenditures and incur indebtedness to employ attorneys to provide representation or services to the department with regard to that matter.

G. Any department or agency of this state authorized by law to maintain a legal division or incur expenses for legal services from funds derived from sources other than the general revenue of the state, or from any special or trust fund, shall pay from such source of revenue or special or trust fund into the general fund of the state, to the extent such funds are available and on a reimbursable basis for warrants drawn, the amount actually expended by the department of law within legislative appropriations for such legal division or legal services.

H. Appropriations made pursuant to subsection G of this section shall not be subject to lapsing provisions otherwise provided by law. Services for departments or agencies to which this subsection and subsection F of this section are applicable shall be performed by special or regular assistants to the attorney general.
I. Notwithstanding section 35-148, monies received by the attorney general from charges to state agencies and political subdivisions for legal services relating to interagency service agreements shall be deposited, pursuant to sections 35-146 and 35-147, in an attorney general agency services fund. Monies in the fund are subject to legislative appropriation and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

J. Unless otherwise provided by law, monies received for and belonging to the state and resulting from compromises and settlements entered into pursuant to subsection B of this section, excluding restitution and reimbursement to state agencies for costs or attorney fees, shall be deposited into the state treasury and credited to the state general fund pursuant to section 35-142. Monies received for and belonging to the state and resulting from a compromise or settlement are not considered custodial, private or quasi-private monies unless specifically provided by law. On or before January 15, April 15, July 15 and October 15, the attorney general shall file with the governor, with copies to the director of the department of administration, the president of the senate, the speaker of the house of representatives, the secretary of state and the staff director of the joint legislative budget committee, a full and complete account of the deposits into the state treasury made pursuant to this subsection in the previous calendar quarter. For the purposes of this subsection, "restitution" means monies intended to compensate a specific, identifiable person, including this state, for economic loss.

Sec. 2. Section 49-103, Arizona Revised Statutes, is amended to read:

49-103. Department employees; legal counsel
A. The director, subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, shall employ, determine the conditions of employment and specify the duties of administrative, secretarial and clerical employees as the director deems necessary.
B. The attorney general shall be the legal advisor of the department and shall provide legal services as the department requires. Compensation for personnel assigned by the attorney general to perform such services shall be a charge against appropriations to the department. The attorney general shall prosecute and defend in the name of this state all actions necessary to carry out the provisions of this title as requested by the director.
C. THE DIRECTOR MAY EMPLOY ATTORNEYS TO REPRESENT THE DEPARTMENT.