

**SUMMARY ANALYSIS OF AMENDED BILL**

Author: Nava Analyst: Jahna Alvarado Bill Number: AB 471  
 Related Bills: See Prior Analyses Telephone: 845-5683 Amended Dates: June 16, and July 15, 2010  
 Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** State Agency Legal Services/Attorney General Consent For Hiring In-House Or Outside Counsel For Any Judicial Proceeding

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended \_\_\_\_\_.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED

June 11, 2009, STILL APPLIES.

OTHER – See comments below.

**SUMMARY**

This bill would broaden the Attorney General's (AG's) authority to represent state agencies, commissions, and employees.

This bill also would make changes to the Health and Safety Code. These changes do not affect the department and are not discussed in this analysis.

**SUMMARY OF AMENDMENTS**

The June 16, 2010, amendments removed provisions that would have modified the Water Code upon approval by the voters at the next statewide election, added provisions that would expand the AG's authority to represent state agencies and employees, and removed all coauthors.

The July 15, 2010, amendments removed "advice or opinions relating to bonds" from the definition of judicial or other proceeding, removed "agency" as an authority that could limit the AG's intervention in, or *amicus curiae* (friend of the court) activity with regard to any judicial or other proceeding, and modified the legislative intent language.

Board Position:	Legislative Director	Date
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As a result of the June 16 and July 15, 2010 amendments, the “State Law,” “This Bill,” and “Fiscal Impact” discussions, as provided in the department’s analysis of the bill as amended June 11, 2009, have been revised, a new “Implementation Consideration” has been identified, and the “Technical Consideration” has been resolved. The “Economic Impact” discussion from the department’s analysis as amended June 11, 2009, has been included below for convenience. The remainder of that analysis still applies.

## **PURPOSE OF THE BILL**

According to the author’s office, the purpose of the bill is to clarify existing law to ensure that the AG maintains clear authority over civil litigation in order to eliminate unnecessary conflict in the conduct of litigation on behalf of the State.

## **EFFECTIVE/OPERATIVE DATE**

If enacted on or before September 30, 2010, this bill would become effective and operative on January 1, 2011.

## **POSITION**

Pending.

## **Summary of Suggested Amendments**

Amendment language is suggested that would, consistent with existing practice, explicitly exempt hearings before the State Board of Equalization from the AG consent requirement, or, alternatively, would maintain the internal integrity of the existing exceptions to the AG consent requirement.

## **ANALYSIS**

### **STATE LAW**

Under the Government Code, existing state law generally requires the AG’s office to represent state agencies and their employees in all judicial proceedings. Alternatively, a state agency may retain legal counsel to represent it in a judicial proceeding upon receiving the AG’s consent. Existing law provides for an exception to the requirement that the AG’s office represent all state agencies in judicial proceedings for specifically named agencies and boards and for any state agency statutorily authorized to employ legal counsel.<sup>1</sup>

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<sup>1</sup> Govt. Code section 11041.

## THIS BILL

This bill would require, unless a specific exception exists in the law, that the AG represent a state agency, commissioner, or officer in any judicial or other proceeding, including administrative proceedings not specifically excluded, unless the AG provides express written consent for in-house counsel or outside legal counsel to provide representation.

This bill would codify the AG's present ability to intervene in a proceeding or appear as *amicus curiae* to the extent allowed by a court.

"In-house counsel" would be defined as a licensed attorney employed in state service by a state agency, commissioner, or officer, other than a licensed attorney employed in state service in the AG's office.

"Judicial or other proceeding" would be defined as either litigation in a civil court, or an administrative adjudicatory proceeding in which an agency is represented by an attorney, and would include alternative dispute resolution proceedings. Administrative adjudicatory proceedings before the State Personnel Board, the Department of Personnel Administration, and the Unemployment Insurance Appeals Board would be excluded from this definition.

"Outside counsel" would be defined as a licensed attorney engaged in the private practice of law.

This bill would specify a number of factors the AG may consider in determining whether to approve a request for representation by "in-house counsel" or "outside counsel."

## IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concern. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

Because this bill fails to provide an exception for existing workloads that are currently handled by an agency's in-house counsel, (i.e., FTB matters heard before the BOE), this bill could result in a large increase in requests for AG consent to utilize in-house counsel for these matters. If it is the author's intent to allow existing practice to continue, the author may wish to amend this bill. Two suggested options for amendment language are provided.

## **FISCAL IMPACT**

If this bill is amended to resolve the implementation consideration addressed in this analysis, the bill would not impact the department's costs.

## **ECONOMIC IMPACT**

### Revenue Estimate

This bill would not impact the state's income tax revenue.

## **LEGISLATIVE STAFF CONTACT**

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FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO AB 471  
AS AMENDED JULY 15, 2010

OPTION 1

AMENDMENT 1

On page 3, line 36, after "before", insert:

the State Board of Equalization,

OPTION 2

AMENDMENT 1

On page 2, after line 22, insert:

SEC. 1.1. Section 11041 of the Government Code is amended to read:

**11041.** (a) Sections ~~11042~~ 11042, 11042.3, and 11043 do not apply to 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), State Department of Education, 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.