

REFERENCE TITLE: department of environmental quality; counsel

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SB 1391

Introduced by
Senator Kerr

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)

1 Be it enacted by the Legislature of the State of Arizona:

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

4 41-192. Powers and duties of attorney general; restrictions
5 on state agencies as to legal counsel; exceptions;
6 compromise and settlement monies

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

10 1. Be the legal advisor of the departments of this state and render
11 such legal services as the departments require.

12 2. Establish administrative and operational policies and procedures
13 within ~~his~~ THE ATTORNEY GENERAL'S department.

14 3. Approve long-range plans for developing departmental programs
15 therein, and coordinate the legal services required by other departments
16 of this state or other state agencies.

17 4. Represent school districts and governing boards of school
18 districts in any lawsuit involving a conflict of interest with other
19 county offices.

20 5. Represent political subdivisions, school districts and
21 municipalities in suits to enforce state or federal statutes pertaining to
22 antitrust, restraint of trade or price-fixing activities or conspiracies,
23 if the attorney general notifies in writing the political subdivisions,
24 school districts and municipalities of the attorney general's intention to
25 bring any such action on their behalf. At any time within thirty days
26 after the notification, a political subdivision, school district or
27 municipality, by formal resolution of its governing body, may withdraw the
28 authority of the attorney general to bring the intended action on its
29 behalf.

30 6. In any action brought by the attorney general pursuant to state
31 or federal statutes pertaining to antitrust, restraint of trade, or
32 price-fixing activities or conspiracies for the recovery of damages by
33 this state or any of its political subdivisions, school districts or
34 municipalities, in addition to the attorney general's other powers and
35 authority, the attorney general on behalf of this state may enter into
36 contracts relating to the investigation and prosecution of such action
37 with any other party plaintiff who has brought a similar action for the
38 recovery of damages and with whom the attorney general finds it
39 advantageous to act jointly or to share common expenses or to cooperate in
40 any manner relative to such action. In any such action, notwithstanding
41 any other laws to the contrary, the attorney general may undertake, among
42 other things, to render legal services as special counsel or to obtain the
43 legal services of special counsel from any department or agency of the
44 United States, of this state or any other state or any department or
45 agency thereof or any county, city, public corporation or public district

1 in this state or in any other state that has brought or intends to bring a
2 similar action for the recovery of damages or its duly authorized legal
3 representatives in such action.

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

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

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

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

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

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

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

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

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

41 D. Notwithstanding any law to the contrary, except as provided in
42 subsections E and F of this section, no state agency other than the
43 attorney general shall employ legal counsel or make an expenditure or
44 incur an indebtedness for legal services, but the following are exempt
45 from this section:

- 1 1. The director of water resources.
- 2 2. The residential utility consumer office.
- 3 3. The industrial commission **OF ARIZONA**.
- 4 4. The Arizona board of regents.
- 5 5. The auditor general.
- 6 6. The corporation commissioners and the corporation commission
- 7 other than the securities division.
- 8 7. The office of the governor.
- 9 8. The constitutional defense council.
- 10 9. The office of the state treasurer.
- 11 10. The Arizona commerce authority.
- 12 11. The water infrastructure finance authority of Arizona.
- 13 **12. THE DEPARTMENT OF ENVIRONMENTAL QUALITY.**

14 E. If the attorney general determines that ~~he~~ **THE ATTORNEY GENERAL**
15 is disqualified from providing judicial or quasi-judicial legal
16 representation or legal services on behalf of any state agency in relation
17 to any matter, the attorney general shall give written notification to the
18 state agency affected. If the agency has received written notification
19 from the attorney general that the attorney general is disqualified from
20 providing judicial or quasi-judicial legal representation or legal
21 services in relation to any particular matter, the state agency is
22 authorized to make expenditures and incur indebtedness to employ attorneys
23 to provide the representation or services.

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

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

41 H. Appropriations made pursuant to subsection G of this section
42 shall not be subject to lapsing provisions otherwise provided by law.
43 Services for departments or agencies to which this subsection and
44 subsection F of this section are applicable shall be performed by special
45 or regular assistants to the attorney general.

1 I. Notwithstanding section 35-148, monies received by the attorney
2 general from charges to state agencies and political subdivisions for
3 legal services relating to interagency service agreements shall be
4 deposited, pursuant to sections 35-146 and 35-147, in an attorney general
5 agency services fund. Monies in the fund are subject to legislative
6 appropriation and are exempt from the provisions of section 35-190
7 relating to lapsing of appropriations.

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

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

28 49-103. Department employees; legal counsel

29 A. The director, subject to title 41, chapter 4, article 4 and, as
30 applicable, articles 5 and 6, shall employ, determine the conditions of
31 employment and specify the duties of administrative, secretarial and
32 clerical employees as ~~he~~ THE DIRECTOR deems necessary.

33 B. The attorney general ~~shall be~~ MAY SERVE AS the legal advisor of
34 the department and ~~shall give~~ MAY PROVIDE legal services as the department
35 requires. Compensation for personnel assigned by the attorney general to
36 perform such services shall be a charge against appropriations to the
37 department. The attorney general shall prosecute and defend in the name
38 of this state all actions necessary to carry out ~~the provisions of~~ this
39 title AS REQUESTED BY THE DIRECTOR.

40 C. THE DIRECTOR MAY EMPLOY ATTORNEYS TO REPRESENT THE DEPARTMENT.