

SB0209S01 compared with SB0209

~~{deleted text}~~ shows text that was in SB0209 but was deleted in SB0209S01.

inserted text shows text that was not in SB0209 but was inserted into SB0209S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

Senator J. Stuart Adams proposes the following substitute bill:

**RETENTION OF OUTSIDE COUNSEL, EXPERT
WITNESSES, AND LITIGATION SUPPORT SERVICES ~~BY~~
~~THE ATTORNEY GENERAL'S OFFICE~~**

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: _____

LONG TITLE

General Description:

This bill ~~{enacts provisions relating to the retention}~~ requires the attorney general's office to make rules to establish disclosure, transparency, accountability, and reporting in relation to the procurement of outside counsel, expert witnesses, and other litigation support services ~~{by the attorney general's office}~~.

Highlighted Provisions:

This bill:

~~{~~ → defines terms;

→ establishes requirements relating to procurement by the attorney general's office of

SB0209S01 compared with SB0209

- ~~outside counsel, an expert witness, or litigation support services;~~
- ~~— establishes limitations and requirements on the ability of the attorney general's office to enter into a contingent fee contract with outside counsel;~~
- ~~— establishes requirements for the protection, retention, and disclosure of contracts and other information relating to contracts described in this bill; and~~
- ‡ ▶ requires the attorney general's office to ~~{produce an annual report on the use of contingent fee contracts for}~~ make rules regarding public disclosure, transparency, accountability, and reporting in relation to the procurement of outside counsel, expert witnesses, and other litigation support services; and
 - ▶ describes requirements for the rules described in the preceding paragraph.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

67-5-30, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 67-5-30 is enacted to read:

~~67-5-30. { Retention} Rulemaking authority regarding the procurement of outside counsel, expert witnesses, and {litigation support services == Contingent fee agreements ==~~

~~Report on contingent fee agreements.~~

~~— (1) As used in this section:~~

~~— (a) "Expert witness" means a person whose knowledge, skill, experience, training, or education in a scientific, technical, or other specialized area would enable the person to give testimony under Rule 702 of the Utah Rules of Evidence.~~

~~— (b) "Litigation support services" means services that the attorney general determines are needed for the purpose of fulfilling the duties imposed on the attorney general by the Utah Constitution or the Utah Code.~~

~~— (c) "Outside counsel" means an attorney, group of attorneys, or a law firm, that~~

SB0209S01 compared with SB0209

~~are not employees of the attorney general's office.~~

~~—— (d) "Procurement process" means an invitation for bids, a request for proposals, obtaining quotes, or another procurement process.~~

~~—— (2) The attorney general's office may use a request for proposals or any other type of procurement process, or an exception to using a procurement process that is permitted under Title 63G, Chapter 6, Utah Procurement Code, to retain outside counsel, an expert witness, or }other litigation support services.†~~

~~—— (3) The attorney general's office may not enter into a contingent fee contract with outside counsel, unless, subject to Subsection (4), before entering into the contract, the attorney general's office makes a written determination to enter into a contingent fee contract, that includes:~~

~~—— (a) a finding:~~

~~—— (i) that the contingent fee contract is cost-effective and in the public interest;~~

~~—— (ii) regarding whether the attorney general's office has the financial and legal resources to handle the matter without entering into a contingent fee contract;~~

~~—— (iii) regarding the time and labor that would be required if the attorney general's office were to handle the matter internally;~~

~~—— (iv) regarding the novelty, complexity, and difficulty of the matter; and~~

~~—— (v) regarding the requisite skills and skill level required to handle the matter;~~

~~—— (b) a description of the geographic location where the outside attorney's services will be provided; and~~

~~—— (c) a description of the outside attorney's qualifications to handle the matter.~~

~~—— (4) The attorney general's office may not enter into a contingent fee contract using a sole source procurement.~~

~~—— (5) (a) Within five days after the day on which the attorney general's office enters into a contingent fee contract, the attorney general's office shall post on the attorney general's office website a copy of the contract and the determination described in Subsection (3).~~

~~—— (b) A contract and determination posted under Subsection (5)(a) shall remain posted until the later of:~~

~~—— (i) the day on which the contract, and any extensions of the contract, come to an~~

SB0209S01 compared with SB0209

~~end; or~~

~~—— (ii) the period described in Subsection (5)(d).~~

~~—— (c)~~

~~(1) The attorney general's office shall, within 15 days after the day on which the payment is made, post on~~ make rules to establish public disclosure,

transparency, accountability, and reporting in relation to the procurement of outside counsel, expert witnesses, and other litigation support services.

(2) The rules described in Subsection (1) shall:

(a) ensure that a procurement for outside counsel is supported by a determination by the attorney general that the procurement is in the best interests of the state, in light of available resources of the attorney general's office ~~{ website information relating to any payment made on a contingent fee contract, including:~~

~~—— (i) the name of the payee;~~

~~—— (ii) the amount of the payment; and~~

~~—— (iii) a copy of the contract under which the payment is made;~~

~~—— (d) The information described in Subsection (5)(c) shall remain posted on the website until one year after the day on which the payment is made.~~

~~—— (6) Subsection (5) does not apply to a contract awarded under Subsection (7)(b).~~

~~—— (7) The attorney general may retain};~~

(b) provide for the fair and equitable treatment of all potential providers of outside counsel, ~~an }expert {witness}witnesses, {or}and other~~ litigation support services ~~{ without engaging in a procurement process, if:~~

~~—— (a) the health, safety, or welfare of the state, citizens of the state, or a state agency is, or will be, at risk and, due to time constraints or other matters, engaging in a procurement process will inhibit prevention or mitigation of the risk; or~~

~~—— (b) public disclosure of, or relating to,};~~

(c) ensure a competitive process, to the greatest extent possible, for the procurement ~~{would:~~

~~—— (i) hinder or impair legal strategies or tactics;~~

~~—— (ii) cause harm to a party or potential party to a proceeding, a third party, the state, or a state agency; or~~

SB0209S01 compared with SB0209

~~_____ (iii) compromise a need to maintain the confidentiality of a matter.~~

~~_____ (8) Before retaining of outside counsel, an expert witness witnesses, or and other litigation support services under Subsection (7), the attorney general's office shall make a written determination to retain outside counsel, an expert witness, or litigation support services without engaging in a procurement process that:~~

~~_____ (a) describes the grounds, described in Subsection (7), upon which the action is taken; and~~

~~_____ (b) states the facts upon which the determination is based.~~

~~_____ (9) When retaining outside counsel, an expert witness, or litigation support services under Subsection (7), the attorney general's office shall take measures to, if possible and to the extent practicable, ensure competition in the process of retaining outside counsel, an expert witness, or litigation support services.~~

~~_____ (10) (a) A contract described in Subsection (7)(a) and the written determination relating to the contract, described in Subsection (8), are public documents, unless the provisions of Subsection (7)(b) apply to the contract.~~

~~_____ (b) A contract described in Subsection (7)(b) and the written determination relating to the contract, described in Subsection (8), are protected documents for purposes of Title 63G, Chapter 2, Government Records Access and Management Act, and may not be released until the need for prohibiting public disclosure, described in Subsection (7)(b), has passed, at which time the attorney general's office shall post the contract, and the written determination relating to the contract, described in Subsection (8), on the attorney general's office website.~~

~~_____ (c) Documents posted on the attorney general's office website under Subsection (10)(b) shall remain on the website for at least one year after the day on which the documents are first posted.~~

~~_____ (11) The attorney general shall retain a contract described in this section, the written determination relating to the contract, described in Subsection (3) or (8), and all financial records relating to the contract, for the later of:~~

~~_____ (a) four years after the day on which the contract, and any extension of the contract, ends; or~~

~~_____ (b) four years after the day on which the contract, any extension of the contract, and the written determination are made public.~~

SB0209S01 compared with SB0209

~~—— (12) A contract awarded by the attorney general's office to outside counsel shall require that the outside counsel provide to the attorney general's office detailed time records, in increments of no greater than one-tenth of an hour, of the billable time of each attorney or paralegal who works on the matter to which the contract relates.~~

~~—— (13) Before January 31 of each year the attorney general's office shall provide a written report to the president of the Senate and the speaker of the House of Representatives relating to the award of contingent fee contracts};~~

(d) provide for oversight and control, by the attorney general's office, ~~that~~:

~~—— (a) identifies all current contingent fee contracts and all contingent fee contracts entered into during the preceding calendar year, other than a contract described in Subsection (7)(b) that has not been publicly disclosed;~~

~~—— (b) identifies all contingent fee contracts described in Subsection (7)(b) that were disclosed to the public under Subsection (10)(b) during the preceding calendar year;~~

~~—— (c) includes copies of the written determinations, described in Subsection (3) or (8), that relate to the contracts described in Subsection (13)(a) or (b);~~

~~—— (d) describes for each of the contracts identified in the report:~~

~~—— (i) the name of the} in relation to outside counsel ~~and the}~~ hired under a contingency fee arrangement;~~

(e) establish for transparency regarding the procurement of outside ~~counsel's law firm~~;

~~—— (ii) the nature and status of the representation; and~~

~~—— (iii) the parties involved in the legal matter;~~

~~—— (e) describes all amounts received by the attorney general's office during the preceding calendar year as a result of a contingent fee contract; and~~

~~—— (f) describes all contingent fees paid by the attorney general's office during the preceding calendar year.~~

~~—— (14) The attorney general's office shall post and maintain on its website, on an ongoing basis, the most recent written report described in Subsection (13).~~

SB0209S01 compared with SB0209

Legislative Review Note

~~as of 2-13-12 10:30 AM~~

~~Office of Legislative Research and General Counsel;~~ counsel, expert witnesses, and other litigation support services, subject to:

(i) Title 63G, Chapter 2, Governmental Records Access and Management Act; and

(ii) other applicable provisions of the Utah Code;

(f) establish standard contractual terms for the procurement of outside counsel, expert witnesses, and other litigation support services, subject to; and

(g) provide for the retention of records relating to the procurement of outside counsel, expert witnesses, and other litigation support services.