

1 **LEGISLATIVE INVESTIGATIVE COMMITTEE**

2 **AMENDMENTS**

3 2013 FIRST SPECIAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Brad L. Dee**

6 Senate Sponsor: J. Stuart Adams

7
8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions of Title 36, Legislature, and Title 77, Chapter 22b, Grants
11 of Immunity, to address matters relating to legislative investigative committees.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ describes the circumstances under which a special investigative committee may
16 hold a closed meeting;
- 17 ▶ designates certain records received by, or generated by or for, a special investigative
18 committee as protected records until the special investigative committee concludes
19 its business or determines to remove the protected records classification;
- 20 ▶ grants authority to a chair of a special investigative committee to issue subpoenas;
- 21 ▶ grants a legislative body, a legislative office, an issuer, or a legislative staff member
22 designated by an issuer the authority to administer an oath or affirmation and take
23 evidence, including testimony;
- 24 ▶ modifies the authority of legislative general counsel to grant use and derivative use
25 immunity; and
- 26 ▶ makes technical changes.

27 **Money Appropriated in this Bill:**



28 None

29 **Other Special Clauses:**

30 This bill provides an immediate effective date.

31 This bill provides retrospective operation.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **36-12-9**, as last amended by Laws of Utah 1985, Chapter 47

35 **36-14-1**, as enacted by Laws of Utah 1989, Chapter 174

36 **36-14-2**, as enacted by Laws of Utah 1989, Chapter 174

37 **36-14-3**, as enacted by Laws of Utah 1989, Chapter 174

38 **36-14-5**, as last amended by Laws of Utah 2008, Chapter 3

39 **77-22b-1**, as last amended by Laws of Utah 2013, Chapter 237



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

42 Section 1. Section **36-12-9** is amended to read:

43 **36-12-9. Legislative committees -- Minutes of meetings -- Official policies --**
44 **Closed meetings -- Private records.**

45 (1) "Special investigative committee" means a committee or subcommittee created or
46 designated by rule or resolution of the House, the Senate, or the Legislature to investigate a
47 matter specified in the rule or resolution.

48 ~~(1)~~ (2) The House, Senate, and Legislative Management Committees, the
49 subcommittees of the Legislative Management Committee, and each interim committee shall
50 keep complete minutes of their meetings.

51 ~~(2)~~ (3) The official policies of the House, Senate and Legislative Management
52 Committees made pursuant to their duties as assigned by law shall be written and available to
53 all members of the Legislature.

54 (4) Notwithstanding Subsection 52-4-204(2) or 52-4-205(1), a special investigative
55 committee may hold a closed meeting if a majority of the members present vote to close the
56 meeting for the purpose of:

57 (a) seeking or obtaining legal advice;

58 (b) discussing matters of strategy relating to an investigation, if discussing the matters

59 in public would interfere with the effectiveness of the investigation; or

60 (c) questioning a witness, if questioning the witness in public would interfere with a
61 criminal investigation.

62 (5) The following records received by, or generated by or for, a special investigative
63 committee are protected records, for purposes of Title 63G, Chapter 2, Government Records
64 Access and Management Act, until the special investigative committee concludes its business
65 or determines to remove the protected record classification described in this Subsection (5):

66 (a) records of a witness interview;

67 (b) records containing the mental impressions of special investigative committee
68 members or staff to the special investigative committee;

69 (c) records containing information on investigative strategy; and

70 (d) records, the disclosure of which would interfere with the effectiveness of the
71 investigation.

72 Section 2. Section **36-14-1** is amended to read:

73 **36-14-1. Definitions.**

74 As used in this chapter:

75 (1) "Issuer" means a person authorized to issue a subpoena by this chapter.

76 (2) "Legislative body" means:

77 (a) the Legislature[;];

78 (b) the House or Senate; or

79 (c) any committee or subcommittee of the Legislature, the House [of Representatives,
80 and], or the Senate.

81 (3) "Legislative office" means the Office of Legislative Research and General Counsel,
82 Office of the Legislative Fiscal Analyst, and the Office of the Legislative Auditor General.

83 (4) "Legislative staff member" means an employee or independent contractor of a
84 legislative office.

85 ~~[(4)]~~ (5) "Legislative subpoena" means a subpoena issued by an issuer on behalf of a
86 legislative body or legislative office and includes:

87 (a) a subpoena requiring a person to appear and testify ~~[before some legislative body or~~
88 ~~office]~~ at a time and place designated in the subpoena;

89 (b) a subpoena requiring a person to:

90 (i) appear and testify [~~before some legislative body or legislative office~~] at a time and
91 place designated in the subpoena; and

92 (ii) produce accounts, books, papers, documents, [~~or other~~] electronically stored
93 information, or tangible things designated in the subpoena; and

94 (c) a subpoena requiring a person to produce accounts, books, papers, documents, [~~or~~
95 ~~other~~] electronically stored information, or tangible things designated in the subpoena at a time
96 and place designated in the subpoena.

97 (6) "Special investigative committee" is as defined in Subsection 36-12-9(1).

98 Section 3. Section **36-14-2** is amended to read:

99 **36-14-2. Issuers.**

100 (1) Any of the following persons is an issuer, who may issue legislative subpoenas by
101 following the procedures set forth in this chapter:

102 [~~(1)~~] (a) the speaker of the House of Representatives;

103 [~~(2)~~] (b) the president of the Senate;

104 [~~(3)~~] (c) a [~~chairman~~] chair of any legislative standing committee;

105 [~~(4)~~] (d) a [~~chairman~~] chair of any legislative interim committee;

106 [~~(5)~~] (e) a [~~chairman~~] chair of any special committee established by the Legislative
107 Management Committee, the speaker of the House, or the president of the Senate;

108 [~~(6)~~] (f) [~~the chairman~~] a chair of any subcommittee of the Legislative Management
109 Committee;

110 (g) a chair of a special investigative committee;

111 [~~(7)~~] (h) [~~the chairman~~] a chair of a Senate or House Ethics Committee;

112 [~~(8)~~] (i) the director of the Office of Legislative Research and General Counsel;

113 [~~(9)~~] (j) the legislative auditor general;

114 [~~(10)~~] (k) the director of the Office of Legislative Fiscal Analyst; and

115 [~~(11)~~] (l) the legislative general counsel.

116 (2) A legislative body, a legislative office, an issuer, or a legislative staff member
117 designated by an issuer may:

118 (a) administer an oath or affirmation; and

119 (b) take evidence, including testimony.

120 Section 4. Section **36-14-3** is amended to read:

121 **36-14-3. Contents.**

122 Each legislative subpoena shall include:

123 (1) the name of the legislative body or office on whose behalf the subpoena is issued;

124 (2) the signature of the issuer;

125 (3) a command to the person or entity to whom the subpoena is addressed to:

126 (a) appear and testify at the time and place set forth in the subpoena;

127 (b) appear and testify [~~before some legislative body or office~~] at the time and place128 designated in the subpoena and produce accounts, books, papers, documents, [~~or other~~]129 electronically stored information, or tangible things designated in the subpoena; or130 (c) produce accounts, books, papers, documents, [~~or other~~] electronically stored131 information, or tangible things designated in the subpoena at the time and place designated in

132 the subpoena.

133 Section 5. Section **36-14-5** is amended to read:134 **36-14-5. Legislative subpoenas -- Enforcement.**

135 (1) If any person disobeys or fails to comply with a legislative subpoena, or if a person

136 appears [~~before a legislative body~~] pursuant to a subpoena and refuses to testify to a matter137 upon which [~~he~~] the person may be lawfully interrogated, that person is in contempt of the

138 Legislature.

139 (2) (a) When the subject of a legislative subpoena disobeys or fails to comply with the

140 legislative subpoena, or if a person appears [~~before a legislative body~~] pursuant to a subpoena

141 and refuses to testify to a matter upon which the person may be lawfully interrogated, the issuer

142 may:

143 (i) file a motion for an order to compel obedience to the subpoena with the district

144 court;

145 (ii) file, with the district court, a motion for an order to show cause why the penalties

146 established in Title 78B, Chapter 6, Part 3, Contempt, should not be imposed upon the person

147 named in the subpoena for contempt of the Legislature; or

148 (iii) pursue other remedies against persons in contempt of the Legislature.

149 (b) (i) Upon receipt of a motion under this subsection, the court shall expedite the

150 hearing and decision on the motion.

151 (ii) A court may:

152 (A) order the person named in the subpoena to comply with the subpoena; and
153 (B) impose any penalties authorized by Title 78B, Chapter 6, Part 3, Contempt, upon
154 the person named in the subpoena for contempt of the Legislature.

155 (3) (a) If a legislative subpoena requires the production of accounts, books, papers,
156 documents, [~~or other~~] electronically stored information, or tangible things, the person or entity
157 to whom it is directed may petition a district court to quash or modify the subpoena at or before
158 the time specified in the subpoena for compliance.

159 (b) An issuer may respond to a motion to quash or modify the subpoena by pursuing
160 any remedy authorized by Subsection (2).

161 (c) If the court finds that a legislative subpoena requiring the production of accounts,
162 books, papers, documents, [~~or other~~] electronically stored information, or tangible things is
163 unreasonable or oppressive, the court may quash or modify the subpoena.

164 (4) Nothing in this section prevents an issuer from seeking an extraordinary writ to
165 remedy contempt of the Legislature.

166 (5) Any party aggrieved by a decision of a court under this section may appeal that
167 action directly to the Utah Supreme Court.

168 Section 6. Section **77-22b-1** is amended to read:

169 **77-22b-1. Immunity granted to witness.**

170 (1) (a) A witness who refuses, or is likely to refuse, on the basis of the witness's
171 privilege against self-incrimination to testify or provide evidence or information in a criminal
172 investigation, including a grand jury investigation or prosecution of a criminal case, or in aid of
173 an investigation or inquiry being conducted by a government agency or commission, or by
174 either house of the Legislature, a joint committee of the two houses, or a committee or
175 subcommittee of either house, may be compelled to testify or provide evidence or information
176 by any of the following, after being granted use immunity with regards to the compelled
177 testimony or production of evidence or information:

178 (i) the attorney general or any assistant attorney general authorized by the attorney
179 general;

180 (ii) a district attorney or any deputy district attorney authorized by a district attorney;

181 (iii) in a county not within a prosecution district, a county attorney or any deputy
182 county attorney authorized by a county attorney;

183 (iv) a special counsel for the grand jury;
184 (v) a prosecutor pro tempore appointed under the Utah Constitution, Article VIII, Sec.
185 16; or

186 (vi) legislative general counsel in the case of testimony pursuant to subpoena before:
187 (A) the Legislature [or any committee of the Legislature having subpoena powers];
188 (B) either house of the Legislature; or
189 (C) a committee of the Legislature, including a joint committee, a committee of either
190 house, a subcommittee, or a special investigative committee.

191 (b) If any prosecutor authorized under Subsection (1)(a) intends to compel a witness to
192 testify or provide evidence or information under a grant of use immunity, the prosecutor shall
193 notify the witness by written notice. The notice shall include the information contained in
194 Subsection (2) and advise the witness that the witness may not refuse to testify or provide
195 evidence or information on the basis of the witness's privilege against self-incrimination. The
196 notice need not be in writing when the grant of use immunity occurs on the record in the course
197 of a preliminary hearing, grand jury proceeding, or trial.

198 (2) Testimony, evidence, or information compelled under Subsection (1) may not be
199 used against the witness in any criminal or quasi-criminal case, nor any information directly or
200 indirectly derived from this testimony, evidence, or information, unless the testimony,
201 evidence, or information is volunteered by the witness or is otherwise not responsive to a
202 question. Immunity does not extend to prosecution or punishment for perjury or to giving a
203 false statement in connection with any testimony.

204 (3) If a witness is granted immunity under Subsection (1) and is later prosecuted for an
205 offense that was part of the transaction or events about which the witness was compelled to
206 testify or produce evidence or information under a grant of immunity, the burden is on the
207 prosecution to show by a preponderance of the evidence that no use or derivative use was made
208 of the compelled testimony, evidence, or information in the subsequent case against the
209 witness, and to show that any proffered evidence was derived from sources totally independent
210 of the compelled testimony, evidence, or information. The remedy for not establishing that any
211 proffered evidence was derived from sources totally independent of the compelled testimony,
212 evidence, or information is suppression of that evidence only.

213 (4) Nothing in this section prohibits or limits prosecutorial authority granted in Section

214 77-22-4.5.

215 (5) A county attorney within a prosecution district shall have the authority to grant
216 immunity only as provided in Subsection 17-18a-402(3).

217 (6) For purposes of this section, "quasi-criminal" means only those proceedings that are
218 determined by a court to be so far criminal in their nature that a defendant has a constitutional
219 right against self-incrimination.

220 **Section 7. Effective date -- Retrospective operation.**

221 (1) Subject to Subsection (2), if approved by two-thirds of all the members elected to
222 each house, this bill takes effect upon approval by the governor, or the day following the
223 constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's
224 signature, or in the case of a veto, the date of veto override.

225 (2) This bill has retrospective operation to July 1, 2013.

Legislative Review Note
as of 7-16-13 1:39 PM

Office of Legislative Research and General Counsel