

Senator John L. Valentine proposes the following substitute bill:

LEGISLATIVE SUBPOENA AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill amends provisions relating to a legislative subpoena.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ describes the nature and purpose of a legislative subpoena;
- ▶ establishes a process for the subject of a legislative subpoena to challenge a legislative subpoena before a legislative review committee;
- ▶ provides that a legislative review committee has the sole and final authority to hear and rule on a challenge to a legislative subpoena;
- ▶ describes the grounds upon which the subject of a subpoena may challenge a legislative subpoena;
- ▶ describes the action that a legislative review committee may take after a hearing on a challenge to a legislative subpoena;
- ▶ establishes a process for the issuer of a legislative subpoena to file a motion with a legislative review committee to find a person in civil contempt of the Legislature and to compel obedience to the legislative subpoena;
- ▶ describes the action that a legislative review committee may take after a hearing on



26 a motion described in the preceding section;

27 ▶ provides for a legislative subpoena to be reissued as a court subpoena in order to
28 assist with enforcement of the subpoena outside of Utah;

29 ▶ establishes and describes the membership and functioning of a legislative review
30 committee;

31 ▶ provides for the civil enforcement of a legislative subpoena by a court; and

32 ▶ establishes and describes the class A misdemeanor crime of criminal contempt of
33 the Legislature.

34 **Money Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 None

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **36-14-1**, as last amended by Laws of Utah 2013, First Special Session, Chapter 1

41 ENACTS:

42 **36-14-5.3**, Utah Code Annotated 1953

43 **36-14-5.5**, Utah Code Annotated 1953

44 **36-14-7**, Utah Code Annotated 1953

45 REPEALS AND REENACTS:

46 **36-14-5**, as last amended by Laws of Utah 2013, First Special Session, Chapter 1



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

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

50 **36-14-1. Definitions.**

51 As used in this chapter:

52 (1) "Disputative motion" means:

53 (a) a motion to quash a legislative subpoena; or

54 (b) a motion for a protective order in relation to a legislative subpoena.

55 [+] (2) "Issuer" means a person authorized to issue a subpoena by this chapter.

56 [(-)] (3) "Legislative body" means:

- 57 (a) the Legislature;
- 58 (b) the House or Senate; or
- 59 (c) any committee or subcommittee of the Legislature, the House, or the Senate.
- 60 ~~[(3)]~~ (4) "Legislative office" means the Office of Legislative Research and General
- 61 Counsel, Office of the Legislative Fiscal Analyst, and the Office of the Legislative Auditor
- 62 General.
- 63 (5) "Legislative review committee" means:
- 64 (a) a committee consisting of each member of the House Management Committee if
- 65 the subpoena is issued by:
- 66 (i) the speaker of the House;
- 67 (ii) a chair of any House committee or House subcommittee; or
- 68 (iii) a person described in Subsections 36-14-2(1)(i) through (l) on behalf of the House
- 69 or on behalf of a person described in Subsection (5)(a)(i) or (ii);
- 70 (b) a committee consisting of each member of the Senate Management Committee if
- 71 the subpoena is issued by:
- 72 (i) the president of the Senate;
- 73 (ii) a chair of any Senate committee or Senate subcommittee; or
- 74 (iii) a person described in Subsections 36-14-2(1)(i) through (l) on behalf of the Senate
- 75 or on behalf of a person described in Subsection (5)(b)(i) or (ii); or
- 76 (c) a committee consisting of each member of the Legislative Management Committee
- 77 for a legislative subpoena that is not described in Subsection (5)(a) or (b).
- 78 ~~[(4)]~~ (6) "Legislative staff member" means an employee or independent contractor of a
- 79 legislative office.
- 80 ~~[(5)]~~ (7) "Legislative subpoena" means a subpoena issued by an issuer on behalf of a
- 81 legislative body or legislative office and includes:
- 82 (a) a subpoena requiring a person to appear and testify at a time and place designated in
- 83 the subpoena;
- 84 (b) a subpoena requiring a person to:
- 85 (i) appear and testify at a time and place designated in the subpoena; and
- 86 (ii) produce accounts, books, papers, documents, electronically stored information, or
- 87 tangible things designated in the subpoena; and

88 (c) a subpoena requiring a person to produce accounts, books, papers, documents,
89 electronically stored information, or tangible things designated in the subpoena at a time and
90 place designated in the subpoena.

91 ~~[(6)]~~ (8) "Special investigative committee" is as defined in Subsection 36-12-9(1).

92 Section 2. Section 36-14-5 is repealed and reenacted to read:

93 **36-14-5. Legislative subpoenas -- Challenges -- Enforcement.**

94 (1) A legislative subpoena:

95 (a) is an order issued by the legislative branch of state government, backed by the
96 power vested in the Legislature under the Utah Constitution, and backed by the authority of
97 state law, to enable the Legislature to fulfill the Legislature's constitutional and statutory duties
98 and to exercise the Legislature's constitutional and statutory power, to the fullest extent, in the
99 interests of the citizens of Utah; and

100 (b) is not a mere discovery device.

101 (2) A legislative review committee has the sole authority to hear and decide a
102 disputative motion.

103 (3) (a) A person may not file with a court, and a court does not have jurisdiction to hear
104 or decide, a disputative motion or any other motion or action challenging the scope, breadth, or
105 validity of a legislative subpoena.

106 (b) Except as expressly authorized by this section, a person may not take legal action to
107 challenge or limit a legislative subpoena.

108 (c) If a person attempts to take legal action that is not expressly authorized by this
109 section to challenge or limit a legislative subpoena, the person:

110 (i) is not relieved from the duty to fully, strictly, and timely comply with the legislative
111 subpoena; and

112 (ii) is subject to the criminal penalty described in Section 36-14-7 if the person fails to
113 fully, strictly, and timely comply with the legislative subpoena.

114 (4) A person may file a disputative motion only upon the grounds that the legislative
115 subpoena seeks an item, information, or testimony that is protected under:

116 (a) the United States Constitution or the Utah Constitution; or

117 (b) a ~~§~~ **[recognized common law]** ~~§~~ privilege ~~§~~, **recognized by Utah court rules,**

117a ~~§~~ that has not been waived.

118 (5) A person who files a disputative motion shall file the disputative motion by serving

119 the disputative motion on the legislative general counsel:

120 (a) except as provided in Subsection (5)(b), before the day on which the legislative
121 subpoena requires compliance; or

122 (b) if the disputative motion relates solely to a question asked while the person subject
123 to the subpoena is in the process of testifying in response to the legislative subpoena, within
124 one business day after the day on which the question is asked.

125 (6) A legislative review committee:

126 (a) shall, upon receipt of a timely disputative motion that complies with this section,
127 schedule a hearing;

128 (b) shall give the person who filed the disputative motion described in Subsection
129 (6)(a) notice and an opportunity to be heard; and

130 (c) may conduct the hearing in the manner, and in accordance with any rules, that the
131 legislative review committee determines is appropriate.

132 (7) A legislative review committee may summarily dismiss a disputative motion that is
133 not timely filed or does not comply with the requirements of this section.

134 (8) If a person files a disputative motion, the person is not relieved from the duty to
135 fully and timely comply with all portions of the legislative subpoena that are not expressly
136 challenged in the disputative motion.

137 (9) After a hearing on a disputative motion, the legislative review committee may do
138 one or more of the following:

139 (a) quash the legislative subpoena;

140 (b) modify the legislative subpoena;

141 (c) grant a protective order in relation to all or part of the legislative subpoena;

142 (d) order the issuer to issue another subpoena; or

143 (e) order the subject of the legislative subpoena to comply with the legislative
144 subpoena or a portion of the legislative subpoena.

145 (10) If a person disobeys or fails to comply with a legislative subpoena, or appears
146 pursuant to a legislative subpoena and refuses to testify to a matter upon which the person may
147 be lawfully interrogated, the issuer may file with the legislative review committee a motion to
148 find the person in civil contempt of the Legislature and to compel obedience to the subpoena,
149 by delivering the motion to the legislative general counsel.

150 (11) A legislative review committee:
151 (a) shall, upon receipt of a motion described in Subsection (10), schedule a hearing;
152 (b) shall give the person against whom a motion described in Subsection (10) is filed
153 notice and an opportunity to be heard; and
154 (c) may conduct the hearing in the manner, and in accordance with any rules, that the
155 legislative review committee determines is appropriate.
156 (12) After a hearing on a motion described in Subsection (10), the legislative review
157 committee may do one or more of the following:
158 (a) quash the legislative subpoena;
159 (b) modify the legislative subpoena;
160 (c) grant a protective order in relation to all or part of the legislative subpoena;
161 (d) order the issuer to issue another subpoena;
162 (e) order the subject of the legislative subpoena to comply with the legislative
163 subpoena or a portion of the legislative subpoena;
164 (f) find the person in civil contempt of the Legislature and impose a civil fine on the
165 person of up to \$1,000;
166 (g) refer the matter for criminal prosecution;
167 (h) file with the district court a motion for an order to compel obedience to the
168 legislative subpoena; or
169 (i) pursue any other legal remedy, including an extraordinary writ.
170 (13) The civil fine described in Subsection (12)(f) is in addition to any other civil or
171 criminal penalty that may be imposed against the subject of the legislative subpoena.
172 (14) (a) The issuer of a legislative subpoena may, in order to enforce or increase the
173 likelihood of enforcement of a legislative subpoena outside of Utah, petition a Utah court to
174 issue the legislative subpoena as a court-issued subpoena.
175 (b) Upon receipt of a petition described in Subsection (14)(a), a Utah court may issue
176 the legislative subpoena as a court-ordered subpoena.
177 Section 3. Section **36-14-5.3** is enacted to read:
178 **36-14-5.3. Legislative review committee.**
179 (1) A majority of the total members of a legislative review committee constitutes a
180 quorum.

181 (2) A majority vote of a quorum present at a meeting of a legislative review committee
182 constitutes the action of the committee.

183 (3) (a) The speaker of the House is the chair of a legislative review committee
184 described in Subsection (5)(a).

185 (b) The president of the Senate is the chair of a legislative review committee described
186 in Subsection 36-14-1(5)(b).

187 (c) During an even-numbered year, the speaker of the House is the chair of a legislative
188 review committee described in Subsection 36-14-1(5)(c).

189 (d) During an odd-numbered year, the president of the Senate is the chair of a
190 legislative review committee described in Subsection 36-14-1(5)(c).

191 (4) (a) If there is a tie vote in a legislative review committee described in Subsection
192 36-14-1(5)(a), the speaker of the House shall break the tie.

193 (b) If there is a tie vote in a legislative review committee described in Subsection
194 36-14-1(5)(b), the president of the Senate shall break the tie.

195 (c) (i) If there is a tie vote in a legislative review committee described in Subsection
196 36-14-1(5)(c), the speaker of the House and the president of the Senate shall break the tie.

197 (ii) If the vote of the speaker of the House and the president of the Senate results in a
198 tie, the motion fails.

199 (5) (a) The decision of a legislative review committee is final and is not subject to
200 review by a court.

201 (b) Subsection (5)(a) does not prohibit a legislative review committee from seeking
202 civil enforcement of a subpoena under Section 36-14-5.5.

203 Section 4. Section 36-14-5.5 is enacted to read:

204 **36-14-5.5. Civil enforcement of legislative subpoena by a court.**

205 (1) A legislative review committee may:

206 (a) file with the district court a motion for an order to compel obedience to:

207 (i) a legislative subpoena; or

208 (ii) an order of a legislative review committee; or

209 (b) pursue any other legal remedy, including an extraordinary writ.

210 (2) Upon receipt of any action or motion described in Subsection (1), the court shall:

211 (a) grant deference to the Legislature's power, including the power to investigate, as an

212 independent branch of government; and

213 (b) expedite the hearing and decision on the action or motion.

214 (3) A court shall take immediate action to enforce a legislative subpoena or an order of
215 a legislative review committee to the full extent permitted by law and to the full extent
216 described in the legislative subpoena or the order of the legislative review committee.

217 (4) A court shall enforce a legislative subpoena or an order of a legislative review
218 committee by:

219 (a) ordering the person named in the subpoena or the order to comply with the
220 legislative subpoena or order; and

221 (b) taking the action described in Sections [78B-6-311](#) and [78B-6-312](#).

222 (5) Any penalty imposed by a court to enforce a legislative subpoena or an order of a
223 legislative review committee, including a penalty imposed under Subsection (4), is in addition
224 to any other civil or criminal penalty imposed under this chapter.

225 (6) A court that takes any action to enforce a legislative subpoena or an order of a
226 legislative review committee shall order the subject of the subpoena to pay costs and
227 reasonable attorney fees to the Legislature, including costs of and attorney fees relating to an
228 appeal described in Subsection (7).

229 (7) Any party aggrieved by a decision of a court under this section may appeal the
230 decision directly to the Utah Supreme Court.

231 Section 5. Section **36-14-7** is enacted to read:

232 **36-14-7. Criminal contempt of Legislature.**

233 (1) A person is guilty of criminal contempt of the Legislature if the person:

234 (a) disobeys or fails to comply with a legislative subpoena; or

235 (b) appears pursuant to a legislative subpoena and refuses to testify to a matter upon
236 which the person may be lawfully interrogated.

237 (2) Criminal contempt of the Legislature is a class A misdemeanor.

238 (3) A person is not guilty of a violation of Subsection (1), if:

239 (a) the person timely files a disputative motion with the legislative review committee,
240 in accordance with Section [36-14-5](#);

241 (b) the motion described in Subsection (3)(a) is based on a claim, made in good faith,
242 that the legislative subpoena seeks an item, information, or testimony that is protected under

243 the United States Constitution, the Utah Constitution, or a ~~§~~→ ~~[recognized common law]~~ ←~~§~~
243a privilege ~~§~~→ , **recognized by Utah court rules,** ←~~§~~

244 that has not been waived;

245 (c) (i) the legislative review committee has not issued a decision on the motion
246 described in Subsection (3)(a);

247 (ii) the legislative review committee grants the motion described in Subsection (3)(a),
248 provided that, if the legislative review committee grants a protective order, the person fully and
249 strictly complies with all aspects of the legislative subpoena for which the person sought a
250 protective order but for which a protective order was denied, within seven days, or a different
251 time ordered by the legislative review committee, after the day on which the legislative review
252 committee grants the protective order; or

253 (iii) the legislative review committee denies the motion described in Subsection (3)(a)
254 and the person fully complies with the subpoena within seven days, or a different time ordered
255 by the legislative review committee, after the day on which the legislative review committee
256 denies the motion; and

257 (d) the person fully, strictly, and timely provides all information, items, and testimony
258 that are responsive to the legislative subpoena and are not subject to a good faith claim
259 described in Subsections (3)(a) and (b).

260 (4) A criminal action under this section may be brought by the attorney general, the
261 Salt Lake County district attorney, or a county attorney or district attorney where the defendant
262 resides or has a business presence.