{deleted text} shows text that was in SB0264 but was deleted in SB0264S01.

inserted text shows text that was not in SB0264 but was inserted into SB0264S01.

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 bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator J. Stuart Adams proposes the following substitute bill:

RETENTION OF OUTSIDE COUNSEL, EXPERT WITNESSES, AND LITIGATION SUPPORT SERVICES

2014 GENERAL SESSION STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: \tag{Daniel McCay}

LONG TITLE

General Description:

This bill {enacts provisions} <u>modifies a provision</u> relating to the attorney general's procurement of litigation related services.

Highlighted Provisions:

This bill:

- establishes a process through which the attorney general may procure those services;

- <u>authorizes</u>} and other litigation services;
 - requires the attorney general to waive certain provisions under specified conditions;
- enacts provisions relating to contracts the attorney general enters into for litigation
 related services; and
- establishes limits on the amount of contingency fees for outside counsel} <u>submit</u>
 proposed rules to a legislative interim committee;
 - requires review of the proposed rules by a legislative interim committee; and
 - <u>modifies the required contents of proposed rules.</u>

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

{ENACTS} AMENDS: {67-5-501, Utah Code Annotated 1953

67-5-502, Utah Code Annotated 1953

67-5-503, Utah Code Annotated 1953

67-5-504, Utah Code Annotated 1953

67-5-505, Utah Code Annotated 1953

67-5-506, Utah Code Annotated 1953

67-5-507, Utah Code Annotated 1953

67-5-508, Utah Code Annotated 1953

67-5-509, Utah Code Annotated 1953

67-5-510, Utah Code Annotated 1953

67-5-511, Utah Code Annotated 1953} 67-5-32, as enacted by Laws of Utah 2012,

Fourth Special Session, Chapter 2

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

Section 1. Section 67-5-32 is amended to read:

67-5-32. Rulemaking authority regarding the procurement of outside counsel,

expert witnesses, and other litigation support services.

- (1) <u>(a)</u> The attorney <u>[general's office] general</u> shall, <u>[on or before August 1, 2012] in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act</u>, make rules to establish public disclosure, transparency, accountability, <u>reasonable fees and limits on fees</u>, and reporting in relation to the procurement of outside counsel, expert witnesses, and other litigation support services.
- (b) On or before May 30, 2014, the attorney general shall submit to the Business and Labor Interim Committee, for its review, comment, and recommendations, the attorney general's proposed rules under Subsection (1)(a) relating to fee limits for outside counsel, including any provisions relating to exceptions to or a waiver of the fee limits.
- (c) Before September 1, 2014, the Business and Labor Interim Committee shall include the attorney general's proposed rules described in Subsection (1)(b) on a committee agenda for the purpose of allowing the committee to review, comment, and make recommendations on the proposed rules.
 - (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;
- (b) provide for the fair and equitable treatment of all potential providers of outside counsel, expert witnesses, and other litigation support services;
- (c) ensure a competitive process, to the greatest extent possible, for the procurement of outside counsel, expert witnesses, and other litigation support services;
- {(d)}(d) ensure that fees for outside counsel, whether based on an hourly rate, contingency fee, or other arrangement, are reasonable and consistent with industry standards;
- (e) ensure that contingency fee arrangements do not encourage high risk litigation that is not in the best interests of the citizens of the state;
- [td] (f) provide for oversight and control, by the attorney general's office, in relation to outside counsel [hired under a contingency], regardless of the type of fee arrangement {;
 - (e)} under which outside counsel is hired;
- (g) prohibit outside counsel from adding a party to a lawsuit or causing a new party to be served with process without the express written authorization of the attorney general's

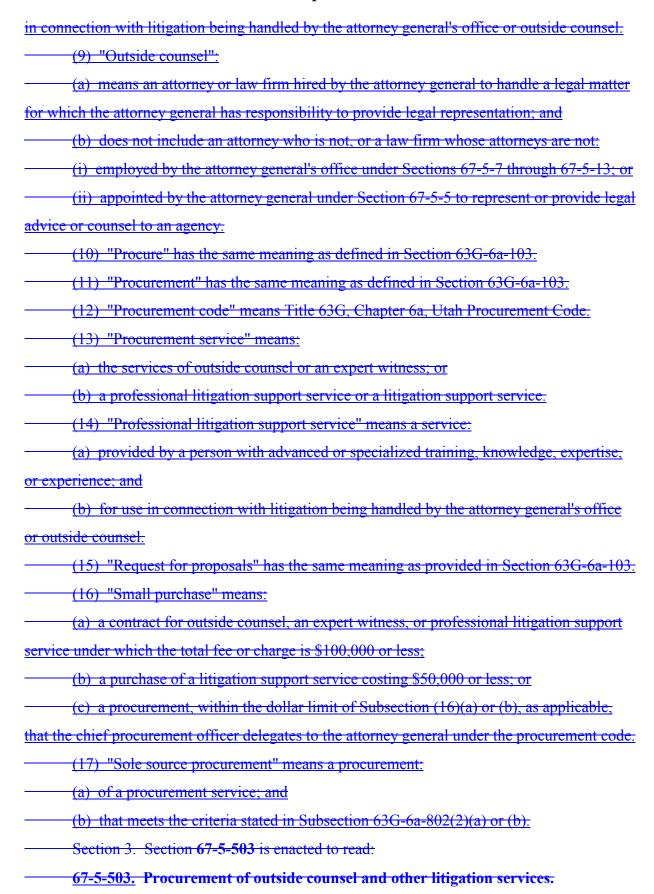
office;

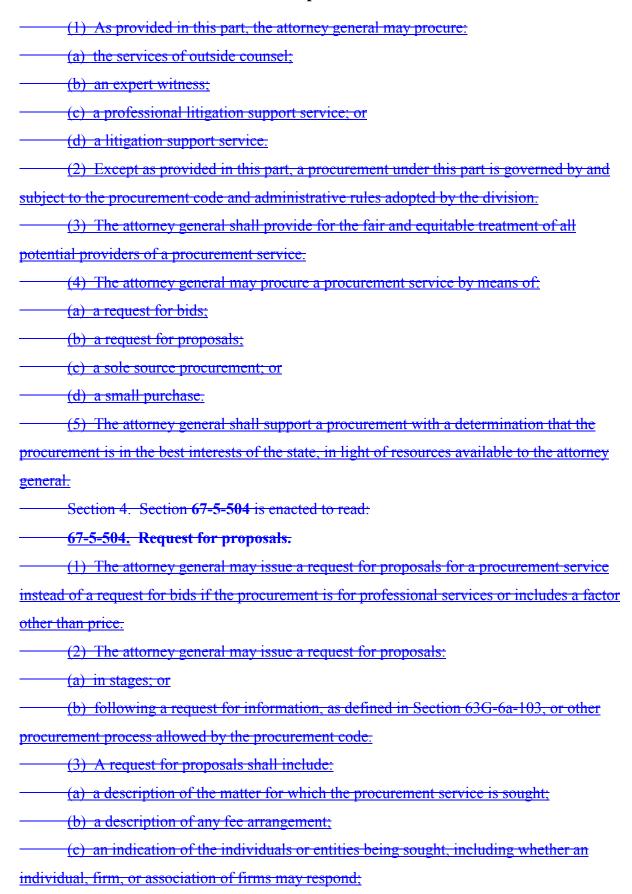
- [(e)] (h) establish for transparency regarding the procurement of outside counsel, expert witnesses, and other litigation support services, subject to:
 - (i) Title 63G, Chapter 2, Government Records Access and Management Act; and
 - (ii) other applicable provisions of law and the Utah Rules of Professional Conduct;
- [(f)] (i) establish standard contractual terms for the procurement of outside counsel, expert witnesses, and other litigation support services; and
- [(g)](j) provide for the retention of records relating to the procurement of outside counsel, expert witnesses, and other litigation support services.
- Section 1. Section 67-5-501 is enacted to read:

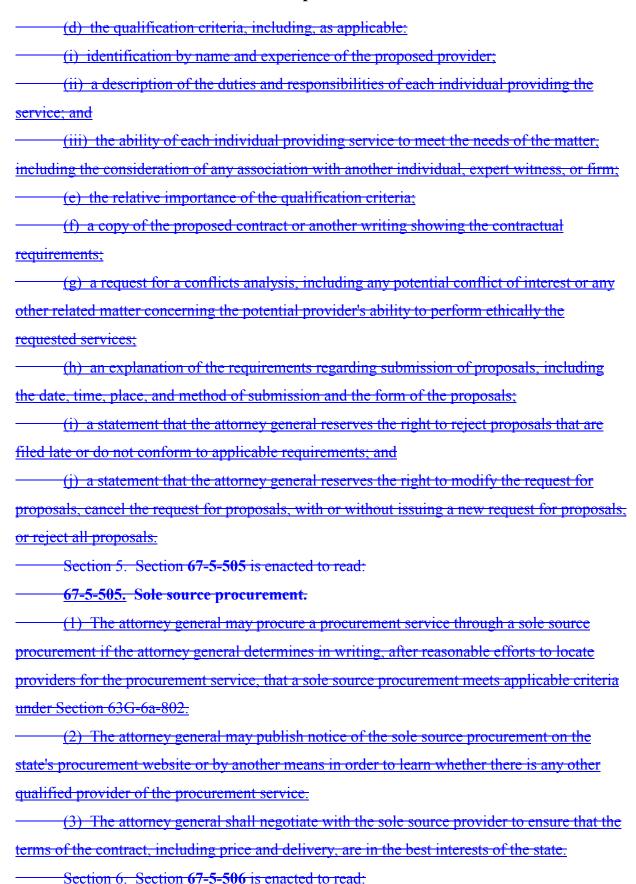
Part 5. Retention of Outside Counsel and Litigation Services

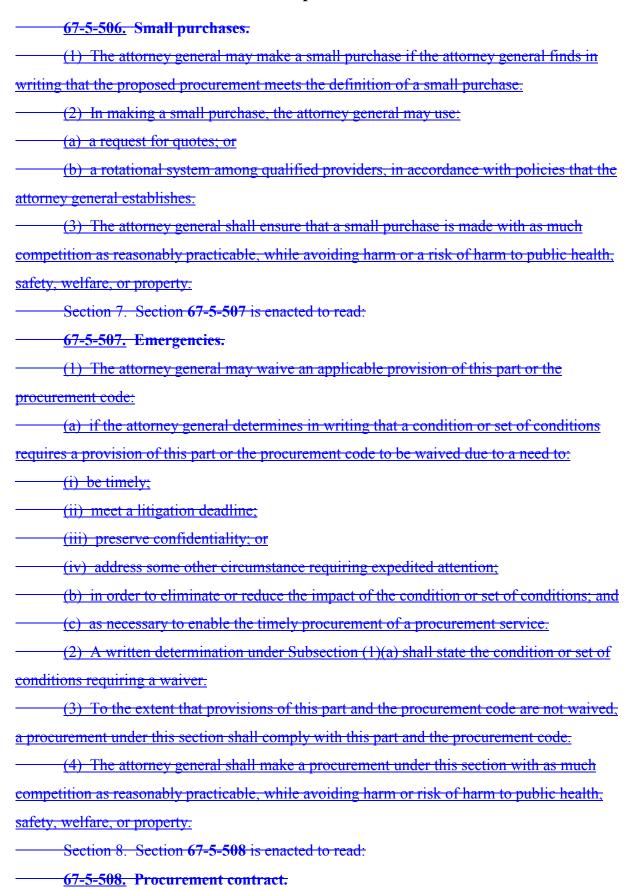
- 67-5-501. Title.
- This part is known as "Retention of Outside Counsel and Litigation Services."
- Section 2. Section 67-5-502 is enacted to read:
- 67-5-502. Definitions.
- As used in this part:
- (1) "Agency" has the same meaning as defined in Section 67-5-3.
- (2) "Attorney general" means the attorney general of the state or the attorney general's designee.
- (3) "Chief procurement officer" has the same meaning as defined in Section 63G-6a-103.
- (4) "Division" means the Division of Purchasing and General Services created in Section 63A-2-101.
- (5) "Expert witness" means an individual whose knowledge, skill, experience, training, or education in a scientific, technical, or other specialized area enables the individual to give testimony under Rule 702 of the Utah Rules of Evidence.
- (6) "Government records law" means Title 63G, Chapter 2, Government Records

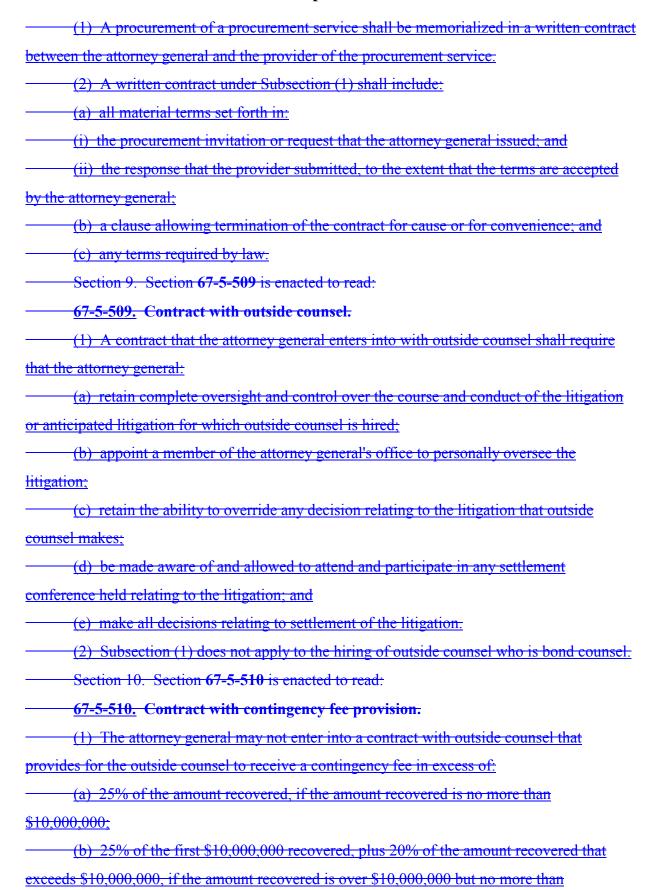
 Access and Management Act.
- (7) "Invitation for bids" means an invitation, as described in Section 63G-6a-603, by which bids for a procurement item are solicited.
 - (8) "Litigation support service" means a good, service, software, or technology for use











\$15,000,000;

(c) 25% of the first \$10,000,000 recovered, plus 20% of the next \$5,000,000 recovered, plus 15% of the amount recovered that exceeds \$15,000,000, if the amount recovered is over \$15,000,000 but no more than \$20,000,000; (d) 25% of the first \$10,000,000 recovered, plus 20% of the next \$5,000,000 recovered, plus 15% of the next \$5,000,000 recovered, plus 10% of the amount recovered that exceeds \$20,000,000, if the amount recovered is over \$20,000,000 but no more than \$25,000,000; or (e) 25% of the first \$10,000,000 recovered, plus 20% of the next \$5,000,000 recovered, plus 15% of the next \$5,000,000 recovered, plus 10% of the next \$5,000,000 recovered, plus 5% of any portion of the recovery that exceeds \$25,000,000, if the amount recovered is over \$25.000.000. (2) Except as provided by the government records law or the Rules of Professional Conduct promulgated by the Utah Supreme Court, the attorney general shall make a copy of an executed contingency fee contract with outside counsel available for public inspection in accordance with the government records law. (3) The attorney general shall make a record of any payment to outside counsel under a contract with a contingency fee provision available for public inspection in accordance with the government records law. (4) (a) Upon request of the president of the Senate or the speaker of the House of Representatives, the attorney general shall make available to the president or the speaker: (i) each contract with outside counsel that: (A) contains a contingency fee provision; and (B) was executed during the year before the request; (ii) the name of any known party to the litigation that the outside counsel is handling under the contract; (iii) the amount of any recovery in the litigation; and (iv) the amount of any contingency fee paid under the contract. (b) Notwithstanding Subsection (4)(a), the attorney general may withhold information that is private, controlled, or protected under the government records law, Rules of Professional

Conduct, or other applicable law, unless the attorney general determines that the protection

from public disclosure afforded the information under the government records law may be
adequately preserved through a confidentiality agreement or other means.
Section 11. Section 67-5-511 is enacted to read:
<u>67-5-511.</u> Procurement records.
(1) A proposal submitted to the attorney general under this part becomes property of
the attorney general and the state.
(2) (a) The attorney general shall place a proposal and any related information in a file
relating to the procurement service for which the proposal was submitted.
(b) A file under Subsection (2)(a) shall contain:
(i) if applicable, a copy of each written determination made by the attorney general
under this part or the procurement code;
(ii) a copy of all documents relating to the procurement service, including documents
indicating compliance with applicable notice requirements; and
(iii) all responses to the procurement invitation or request, including, if applicable, any
modification to the procurement invitation or request.
Legislative Review Note
as of 2-27-14 2:47 PM
Office of Legislative Research and General Counsel