

ATTORNEY GENERAL FISCAL AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Sophia M. DiCaro

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill enacts and modifies provisions related to funding of the Office of the Attorney General.

Highlighted Provisions:

This bill:

- ▶ provides that the Office of the Attorney General may operate as an internal service fund agency for legal services that the office provides to state agencies;
- ▶ establishes a rate committee; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63J-2-102, as renumbered and amended by Laws of Utah 2008, Chapter 382

67-5-1, as last amended by Laws of Utah 2013, Chapters 101 and 237

67-5-4, as enacted by Laws of Utah 1973, Chapter 186

ENACTS:

67-5-34, Utah Code Annotated 1953



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

Section 1. Section **63J-2-102** is amended to read:

63J-2-102. Definitions.

As used in this chapter:

(1) (a) "Agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(b) "Agency" does not include the legislative branch, the board of regents, the Utah Higher Education Assistance Authority, the board of trustees of each higher education institution, each higher education institution and its associated branches, centers, divisions, institutes, foundations, hospitals, colleges, schools, or departments, a public education entity, or an independent agency.

(2) (a) "Dedicated credits revenues" means revenues from collections by an agency that are deposited directly into an account for expenditure on a separate line item and program.

(b) "Dedicated credits" does not mean:

(i) federal revenues and the related pass through or the related state match paid by one agency to another;

(ii) revenues that are not deposited in governmental funds; or

(iii) revenues from any contracts~~;~~ and.

~~[(iv) revenues received by the Attorney General's Office from billings for professional services.]~~

(3) "Fees" means revenue collected by an agency for performing a service or providing a function that the agency deposits or accounts for as dedicated credits or fixed collections.

(4) (a) "Fixed collections revenues" means revenue from collections:

(i) fixed by law or by the appropriation act at a specific amount; and

(ii) required by law to be deposited into a separate line item and program.

(b) "Fixed collections" does not mean:

(i) federal revenues and the related pass through or the related state match paid by one agency to another;

(ii) revenues that are not deposited in governmental funds;

59 (iii) revenues from any contracts; and
60 (iv) revenues received by the Attorney General's Office from billings for professional
61 services.

62 (5) (a) "Governmental fund" means funds used to account for the acquisition, use, and
63 balances of expendable financial resources and related liabilities using a measurement focus
64 that emphasizes the flow of financial resources.

65 (b) "Governmental fund" does not include internal service funds, enterprise funds,
66 capital projects funds, debt service funds, or trust and agency funds as established in Section
67 [51-5-4](#).

68 (6) "Independent agency" means the Utah State Retirement Office, the Utah Housing
69 Corporation, and the Workers' Compensation Fund.

70 (7) "Program" means the function or service provided by an agency for which the
71 agency collects fees.

72 (8) "Revenue types" means the categories established by the Division of Finance under
73 the authority of this chapter that classify revenue according to the purpose for which it is
74 collected.

75 Section 2. Section [67-5-1](#) is amended to read:

76 **67-5-1. General duties.**

77 The attorney general shall:

78 (1) perform all duties in a manner consistent with the attorney-client relationship under
79 Section [67-5-17](#);

80 (2) except as provided in Sections [10-3-928](#) and [17-18a-403](#), attend the Supreme Court
81 and the Court of Appeals of this state, and all courts of the United States, and prosecute or
82 defend all causes to which the state or any officer, board, or commission of the state in an
83 official capacity is a party, and take charge, as attorney, of all civil legal matters in which the
84 state is interested;

85 (3) after judgment on any cause referred to in Subsection (2), direct the issuance of
86 process as necessary to execute the judgment;

87 (4) account for, and pay over to the proper officer, all money that comes into the
88 attorney general's possession that belongs to the state;

89 (5) keep a file of all cases in which the attorney general is required to appear, including

90 any documents and papers showing the court in which the cases have been instituted and tried,
91 and whether they are civil or criminal, and:

92 (a) if civil, the nature of the demand, the stage of proceedings, and, when prosecuted to
93 judgment, a memorandum of the judgment and of any process issued if satisfied, and if not
94 satisfied, documentation of the return of the sheriff;

95 (b) if criminal, the nature of the crime, the mode of prosecution, the stage of
96 proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the
97 execution, if the sentence has been executed, and, if not executed, the reason for the delay or
98 prevention; and

99 (c) deliver this information to the attorney general's successor in office;

100 (6) exercise supervisory powers over the district and county attorneys of the state in all
101 matters pertaining to the duties of their offices, and from time to time require of them reports of
102 the condition of public business entrusted to their charge;

103 (7) give the attorney general's opinion in writing and without fee to the Legislature or
104 either house and to any state officer, board, or commission, and to any county attorney or
105 district attorney, when required, upon any question of law relating to their respective offices;

106 (8) when required by the public service or directed by the governor, assist any county,
107 district, or city attorney in the discharge of [his] county, district, or city attorney's duties;

108 (9) purchase in the name of the state, under the direction of the state Board of
109 Examiners, any property offered for sale under execution issued upon judgments in favor of or
110 for the use of the state, and enter satisfaction in whole or in part of the judgments as the
111 consideration of the purchases;

112 (10) when the property of a judgment debtor in any judgment mentioned in Subsection
113 (9) has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance
114 taking precedence of the judgment in favor of the state, redeem the property, under the
115 direction of the state Board of Examiners, from the prior judgment, lien, or encumbrance, and
116 pay all money necessary for the redemption, upon the order of the state Board of Examiners,
117 out of any money appropriated for these purposes;

118 (11) when in the attorney general's opinion it is necessary for the collection or
119 enforcement of any judgment, institute and prosecute on behalf of the state any action or
120 proceeding necessary to set aside and annul all conveyances fraudulently made by the judgment

121 debtors, and pay the cost necessary to the prosecution, when allowed by the state Board of
122 Examiners, out of any money not otherwise appropriated;

123 (12) discharge the duties of a member of all official boards of which the attorney
124 general is or may be made a member by the Utah Constitution or by the laws of the state, and
125 other duties prescribed by law;

126 (13) institute and prosecute proper proceedings in any court of the state or of the
127 United States to restrain and enjoin corporations organized under the laws of this or any other
128 state or territory from acting illegally or in excess of their corporate powers or contrary to
129 public policy, and in proper cases forfeit their corporate franchises, dissolve the corporations,
130 and wind up their affairs;

131 (14) institute investigations for the recovery of all real or personal property that may
132 have escheated or should escheat to the state, and for that purpose, subpoena any persons
133 before any of the district courts to answer inquiries and render accounts concerning any
134 property, examine all books and papers of any corporations, and when any real or personal
135 property is discovered that should escheat to the state, institute suit in the district court of the
136 county where the property is situated for its recovery, and escheat that property to the state;

137 (15) administer the Children's Justice Center as a program to be implemented in
138 various counties pursuant to Sections 67-5b-101 through 67-5b-107;

139 (16) assist the Constitutional Defense Council as provided in Title 63C, Chapter 4a,
140 Constitutional and Federalism Defense Act;

141 (17) pursue any appropriate legal action to implement the state's public lands policy
142 established in Section 63C-4a-103;

143 (18) investigate and prosecute violations of all applicable state laws relating to fraud in
144 connection with the state Medicaid program and any other medical assistance program
145 administered by the state, including violations of Title 26, Chapter 20, Utah False Claims Act;

146 (19) investigate and prosecute complaints of abuse, neglect, or exploitation of patients
147 at:

148 (a) health care facilities that receive payments under the state Medicaid program; and

149 (b) board and care facilities, as defined in the federal Social Security Act, 42 U.S.C.
150 Sec. 1396b(q)(4)(B), regardless of the source of payment to the board and care facility; ~~and~~

151 (20) (a) report at least twice per year to the Legislative Management Committee on any

152 pending or anticipated lawsuits, other than eminent domain lawsuits, that might:

153 (i) cost the state more than \$500,000; or

154 (ii) require the state to take legally binding action that would cost more than \$500,000
155 to implement; and

156 (b) if the meeting is closed, include an estimate of the state's potential financial or other
157 legal exposure in that report[-]; and

158 (21) if the attorney general operates the Office of the Attorney General or any portion
159 of the Office of the Attorney General as an internal service fund agency in accordance with
160 Section 67-5-4, submit to the rate committee established in Section 67-5-34:

161 (a) a proposed rate and fee schedule in accordance with Subsection 67-5-34(4); and

162 (b) any other information or analysis requested by the rate committee.

163 Section 3. Section 67-5-4 is amended to read:

164 **67-5-4. Interaccount billings included in budget -- Payment of staff members.**

165 (1) The attorney general shall include in his annual budget all interaccount billings and
166 pay directly out of his funds all members of his staff, whether housed in his offices or not.

167 (2) The attorney general may operate the Office of the Attorney General or any portion
168 of the Office of the Attorney General as an internal service fund agency in accordance with
169 Section 63J-1-410 for legal services that the Office of the Attorney General provides.

170 Section 4. Section 67-5-34 is enacted to read:

171 **67-5-34. Rate committee -- Membership -- Duties.**

172 (1) (a) There is created a rate committee that consists of:

173 (i) the executive director of the Governor's Office of Management and Budget, or the
174 executive director's designee; and

175 (ii) the executive directors of six state agencies that use or are likely to use services and
176 pay rates to the Office of the Attorney General's internal service fund, appointed by the
177 governor for a two-year term, or the executive directors' designees.

178 (b) The rate committee shall elect a chair from the rate committee's members.

179 (2) Each member of the rate committee who is a state government employee and does
180 not receive salary, per diem, or expenses from the member's agency for the member's service
181 on the rate committee shall receive no compensation, benefits, per diem, or expenses for the
182 member's service on the rate committee.

183 (3) The Office of the Attorney General shall provide staff services to the rate
184 committee.

185 (4) The Office of the Attorney General shall submit to the rate committee a proposed
186 rate and fee schedule for legal services rendered by the Office of the Attorney General to an
187 agency.

188 (5) (a) The rate committee shall:

189 (i) conduct meetings in accordance with Title 52, Chapter 4, Open and Public Meetings
190 Act;

191 (ii) review the proposed rate and fee schedules and, at the rate committee's discretion,
192 approve, increase, or decrease the rate and fee schedules;

193 (iii) recommend a proposed rate and fee schedule for the internal service fund to:

194 (A) the Governor's Office of Management and Budget; and

195 (B) each legislative appropriations subcommittee that, in accordance with Section
196 63J-1-410, approves the internal service fund rates, fees, and budget; and

197 (iv) review and approve, increase or decrease an interim rate, fee, or amount when the
198 office begins a new service or introduces a new product between annual general sessions of the
199 Legislature.

200 (b) The committee may, in accordance with Subsection 63J-1-410(4), decrease a rate,
201 fee, or amount that has been approved by the Legislature.

Legislative Review Note
Office of Legislative Research and General Counsel