

1 INTERVENTION ~~AS A MATTER OF RIGHT~~ AMENDMENTS

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 Chief Sponsor: J. Stuart Adams

5 House Sponsor: Merrill F. Nelson

6

7 LONG TITLE

8 General Description:

9 This bill provides the circumstances as to when the Legislature may intervene in
10 litigation.

11 Highlighted Provisions:

12 This bill:

13 ▶ provides that the Legislature may intervene as a matter of right in litigation under
14 certain circumstances;

14a ~~AS A MATTER OF RIGHT~~ ▶ addresses federal cases; ~~AS A MATTER OF RIGHT~~

15 ▶ requires the attorney general to provide notice to the legislative general counsel; and

16 ▶ makes technical changes.

17 Money Appropriated in this Bill:

18 None

19 Other Special Clauses:

20 None

21 Utah Code Sections Affected:

22 AMENDS:

23 36-12-7, as last amended by Laws of Utah 2009, Chapter 107

24 67-5-1, as last amended by Laws of Utah 2017, Chapters 295 and 387

25

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

27 Section 1. Section 36-12-7 is amended to read:



28 **36-12-7. Legislative Management Committee -- Duties -- Litigation.**

29 (1) The Senate or House Management Committee shall:

30 (a) receive legislative resolutions directing studies on legislative matters and may
31 assign these studies to the appropriate interim committee of its house;32 (b) assign to interim committees of the same house, matters of legislative study not
33 specifically contained in a legislative resolution but considered significant to the welfare of the
34 state;35 (c) receive requests from interim committees of its house for matters to be included on
36 the study agenda of the requesting committee. Appropriate bases for denying a study include
37 inadequate funding to properly complete the study or duplication of the work;38 (d) establish a budget account for interim committee day as designated by Legislative
39 Management Committee and for all other legislative committees of its house and allocate to
40 that account sufficient funds to adequately provide for the work of the committee; and

41 (e) designate the time and place for periodic meetings of the interim committees.

42 (2) To maximize the use of legislators' available time, the Senate and House
43 Management Committees should attempt to schedule the committee meetings of their
44 respective houses during the same one or two-day period each month. This does not preclude
45 an interim committee from meeting at any time it determines necessary to complete its
46 business.

47 (3) The Legislative Management Committee shall:

48 (a) employ, after recommendation of the appropriate subcommittee of the Legislative
49 Management Committee, without regard to political affiliation, and subject to approval of a
50 majority vote of both houses, persons qualified for the positions of director of the Office of
51 Legislative Research and General Counsel, legislative fiscal analyst, legislative general
52 counsel, and legislative auditor general. Appointments to these positions shall be for terms of
53 six years subject to renewal under the same procedure as the original appointment. A person
54 may be removed from any of these offices [~~prior to~~] before the expiration of [~~his~~] the person's
55 term only by a majority vote of both houses of the Legislature or by a [~~2/3~~] two-thirds vote of
56 the management committee for such causes as inefficiency, incompetency, failure to maintain
57 skills or adequate performance levels, insubordination, misfeasance, malfeasance, or
58 nonfeasance in office. [~~In the event~~] If a vacancy occurs in any of these offices after

59 adjournment of the Legislature, the committee shall appoint an individual to fill the vacancy
60 until such time as the person is approved or rejected by majority vote of the next session of the
61 Legislature;

62 (b) develop policies for personnel management, compensation, and training of all
63 professional legislative staff;

64 (c) develop a policy within the limits of legislative appropriation for the authorization
65 and payment to legislators of compensation and travel expenses, including out-of-state travel;

66 (d) approve special study budget requests of the legislative directors; and

67 (e) assist the speaker-elect of the House of Representatives and the president-elect of
68 the Senate, upon selection by their majority party caucus, to organize their respective houses of
69 the Legislature and assume the direction of the operation of the Legislature in the forthcoming
70 annual general session.

71 (4) (a) The Legislature delegates to the Legislative Management Committee the
72 authority, by means of a majority vote of the committee, to direct the legislative general
73 counsel in matters involving the Legislature's participation in litigation.

74 (b) The Legislature has an unconditional right to intervene in a \hat{S} → state ← \hat{S} court action
74a \hat{S} → [when] if ← \hat{S} a
75 party to that court action challenges:

76 (i) the constitutionality of a state statute;

77 (ii) the validity of legislation; or

78 (iii) any action of the Legislature.

78a \hat{S} → (c) **For a federal court action that challenges the constitutionality of a state statute, the**
78b **validity of legislation, or any action of the Legislature, the Legislature may seek permissive**
78c **intervention in accordance with federal rules of procedure, or the ability to file an amicus brief**
78d **in accordance with federal rules of procedure.** ← \hat{S}

79 \hat{S} → [(e)] (d) ← \hat{S} The attorney general shall notify the legislative general counsel of a claim
79a \hat{S} → [described

80 in Subsection (4)(b)] ← \hat{S} in accordance with Subsection [67-5-1](#)(24).

81 Section 2. Section **67-5-1** is amended to read:

82 **67-5-1. General duties.**

83 The attorney general shall:

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

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

90 state is interested;

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

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

95 (5) keep a file of all cases in which the attorney general is required to appear, including
96 any documents and papers showing the court in which the cases have been instituted and tried,
97 and whether they are civil or criminal, and:

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

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

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

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

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

112 (8) when required by the public service or directed by the governor, assist any county,
113 district, or city attorney in the discharge of county, district, or city attorney's duties;

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

118 (10) when the property of a judgment debtor in any judgment mentioned in Subsection
119 (9) has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance
120 taking precedence of the judgment in favor of the state, redeem the property, under the

121 direction of the state Board of Examiners, from the prior judgment, lien, or encumbrance, and
122 pay all money necessary for the redemption, upon the order of the state Board of Examiners,
123 out of any money appropriated for these purposes;

124 (11) when in the attorney general's opinion it is necessary for the collection or
125 enforcement of any judgment, institute and prosecute on behalf of the state any action or
126 proceeding necessary to set aside and annul all conveyances fraudulently made by the judgment
127 debtors, and pay the cost necessary to the prosecution, when allowed by the state Board of
128 Examiners, out of any money not otherwise appropriated;

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

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

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

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

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

147 (17) pursue any appropriate legal action to implement the state's public lands policy
148 established in Section [63C-4a-103](#);

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

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

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

155 (b) board and care facilities, as defined in the federal Social Security Act, 42 U.S.C.

156 Sec. 1396b(q)(4)(B), regardless of the source of payment to the board and care facility;

157 (20) (a) report at least twice per year to the Legislative Management Committee on any
158 pending or anticipated lawsuits, other than eminent domain lawsuits, that might:

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

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

162 (b) if the meeting is closed, include an estimate of the state's potential financial or other
163 legal exposure in that report;

164 (21) (a) submit a written report to the committees described in Subsection (21)(b) that
165 summarizes the status and progress of any lawsuits that challenge the constitutionality of state
166 law that were pending at the time the attorney general submitted the attorney general's last
167 report under this Subsection (21), including any:

168 (i) settlements reached;

169 (ii) consent decrees entered; or

170 (iii) judgments issued; and

171 (b) at least 30 days before the Legislature's May and November interim meetings,
172 submit the report described in Subsection (21)(a) to:

173 (i) the Legislative Management Committee;

174 (ii) the Judiciary Interim Committee; and

175 (iii) the Law Enforcement and Criminal Justice Interim Committee;

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

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

180 (b) any other information or analysis requested by the rate committee; [~~and~~]

181 (23) before the end of each calendar year, create an annual performance report for the
182 Office of the Attorney General and post the report on the attorney general's website[-]; and

183 (24) notify the legislative general counsel in writing within three business days after
184 the day on which the attorney general ~~is~~ **becomes aware** is officially notified ~~of a claim~~ **is**
184a **described in Subsection**
185 **36-12-7(4)(b)** , **regardless of whether the claim is filed in state or federal court, that challenges:**
185a **(i) the constitutionality of a state statute;**
185b **(ii) the validity of legislation; or**
185c **(iii) any action of the Legislature** ~~of~~ .

Legislative Review Note
Office of Legislative Research and General Counsel