

## SB0171S01 compared with SB0171

~~{deleted text}~~ shows text that was in SB0171 but was deleted in SB0171S01.

Inserted text shows text that was not in SB0171 but was inserted into SB0171S01.

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Representative Merrill F. Nelson proposes the following substitute bill:

### INTERVENTION~~{AS A MATTER OF RIGHT}~~ AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: J. Stuart Adams**

House Sponsor: ~~{~~ John Knotwell

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#### LONG TITLE

##### General Description:

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

##### Highlighted Provisions:

This bill:

- ▶ provides that the Legislature may intervene as a matter of right in litigation under certain circumstances;
- ▶ addresses federal cases;
- ▶ requires the attorney general to provide notice to the legislative general counsel; and
- ▶ makes technical changes.

##### Money Appropriated in this Bill:

None

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### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

(1) The Senate or House Management Committee shall:

(a) receive legislative resolutions directing studies on legislative matters and may assign these studies to the appropriate interim committee of its house;

(b) assign to interim committees of the same house, matters of legislative study not specifically contained in a legislative resolution but considered significant to the welfare of the state;

(c) receive requests from interim committees of its house for matters to be included on the study agenda of the requesting committee. Appropriate bases for denying a study include inadequate funding to properly complete the study or duplication of the work;

(d) establish a budget account for interim committee day as designated by Legislative Management Committee and for all other legislative committees of its house and allocate to that account sufficient funds to adequately provide for the work of the committee; and

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

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

(3) The Legislative Management Committee shall:

(a) employ, after recommendation of the appropriate subcommittee of the Legislative Management Committee, without regard to political affiliation, and subject to approval of a

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majority vote of both houses, persons qualified for the positions of director of the Office of Legislative Research and General Counsel, legislative fiscal analyst, legislative general counsel, and legislative auditor general. Appointments to these positions shall be for terms of six years subject to renewal under the same procedure as the original appointment. A person may be removed from any of these offices [~~prior to~~] before the expiration of [~~his~~] the person's term only by a majority vote of both houses of the Legislature or by a [~~2/3~~] two-thirds vote of the management committee for such causes as inefficiency, incompetency, failure to maintain skills or adequate performance levels, insubordination, misfeasance, malfeasance, or nonfeasance in office. [~~In the event~~] If a vacancy occurs in any of these offices after adjournment of the Legislature, the committee shall appoint an individual to fill the vacancy until such time as the person is approved or rejected by majority vote of the next session of the Legislature;

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

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

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

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

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

(b) The Legislature has an unconditional right to intervene in a state court action ~~{when}~~ and may provide evidence or argument, written or oral, if a party to that court action challenges:

(i) the constitutionality of a state statute;

(ii) the validity of legislation; or

(iii) any action of the Legislature.

(c) In a federal court action that challenges the constitutionality of a state statute, the

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validity of legislation, or any action of the Legislature, the Legislature may seek to intervene, to file an amicus brief, or to present argument in accordance with federal rules of procedure.

(d) Intervention by the Legislature pursuant to Subsection (4)(b) or (c) does not limit the duty of the attorney general to appear and prosecute legal actions or defend state officers or employees as otherwise provided by law.

(e) In any action in which the Legislature intervenes or participates, legislative counsel shall function independently from and on equal footing with the attorney general in the representation of their respective clients.

(f) The attorney general shall notify the legislative general counsel of a claim ~~described in Subsection (4)(b)~~ in accordance with Subsection 67-5-1(24).

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

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

The attorney general shall:

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

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

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

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

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

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

(b) if criminal, the nature of the crime, the mode of prosecution, the stage of

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proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution, if the sentence has been executed, and, if not executed, the reason for the delay or prevention; and

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

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

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

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

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

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

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

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

(13) institute and prosecute proper proceedings in any court of the state or of the

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United States to restrain and enjoin corporations organized under the laws of this or any other state or territory from acting illegally or in excess of their corporate powers or contrary to public policy, and in proper cases forfeit their corporate franchises, dissolve the corporations, and wind up their affairs;

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) settlements reached;
- (ii) consent decrees entered; or
- (iii) judgments issued; and

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

- (i) the Legislative Management Committee;
- (ii) the Judiciary Interim Committee; and
- (iii) the Law Enforcement and Criminal Justice Interim Committee;

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

- (a) a proposed rate and fee schedule in accordance with Subsection 67-5-34(4); and
- (b) any other information or analysis requested by the rate committee; ~~and~~

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

(24) notify the legislative general counsel in writing within three business days after the day on which the attorney general ~~becomes aware of a claim described in Subsection 36-12-7(4)(b).~~

### Legislative Review Note

~~Office of Legislative Research and General Counsel;~~ is officially notified of a claim, regardless of whether the claim is filed in state or federal court, that challenges:

- (i) the constitutionality of a state statute;
- (ii) the validity of legislation; or

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(iii) any action of the Legislature.