

Senator Stephanie Pitcher proposes the following substitute bill:

LEGAL COSTS RECOVERY AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Pitcher

House Sponsor: Anthony E. Loubet

LONG TITLE

General Description:

This bill amends the Reimbursement of Legal Fees and Costs to Officers and Employees Act.

Highlighted Provisions:

This bill:

- ▶ provides that an officer or employee of a political subdivision may recover costs and legal fees from the state in certain criminal cases prosecuted by the attorney general;
- and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

52-6-102, as renumbered and amended by Laws of Utah 2008, Chapter 382

52-6-201, as renumbered and amended by Laws of Utah 2008, Chapter 382



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

Section 1. Section **52-6-102** is amended to read:

52-6-102. Definitions.

As used in this act:

(1) "Local attorney" means:

(a) a county attorney or district attorney, as described in Title 17, Chapter 18a, Powers and Duties of County and District Attorney; or

(b) a city attorney under Section 10-3-928.

(2) "Officer or employee" means any individual who at the time of an event giving rise to a claim under this act is or was elected or appointed to or employed by a public entity, whether or not compensated, but does not include an independent contractor.

[~~(2)~~] (3) "Public entity" means the state or any political subdivision of it or any office, department, division, board, agency, commission, council, authority, institution, hospital, school, college, university, or other instrumentality of the state or any such political subdivision.

Section 2. Section **52-6-201** is amended to read:

**52-6-201. Indictment or information against officer or employee --
Reimbursement of attorney fees and court costs incurred in defense.**

(1) [~~H~~] Except as provided in Subsection (3), and subject to Subsection (2), if a state grand jury indicts, or if an information is filed against, an officer or employee, in connection with or arising out of any act or omission of that officer or employee during the performance of the officer or employee's duties, within the scope of the officer or employee's employment, or under color of the officer or employee's authority, and that indictment or information is quashed or dismissed or results in a judgment of acquittal, unless the indictment or information is quashed or dismissed upon application or motion of the prosecuting attorney, that officer or employee [~~shall be~~] is entitled to recover reasonable attorney fees and court costs necessarily incurred in the defense of that indictment or information from the public entity, unless the officer or employee is found guilty of substantially the same misconduct that formed the basis for the indictment or information.

(2) [~~H~~] Except as provided in Subsection (3), if the officer or employee is acquitted of some of the charges or counts, or portions of the indictment or information are quashed or

dismissed, that officer or employee ~~[shall be]~~ is entitled to recover from the public entity reasonable attorney fees and court costs necessarily incurred in the defense of those charges, counts, or portions of the indictment or information that were quashed, dismissed, or resulted in a judgment of acquittal, unless the alleged misconduct covered by those charges, counts, or portions of the indictment or information that were quashed, dismissed, or resulted in a judgment of acquittal is substantially the same ~~Ŝ~~ **→ alleged** ~~←Ŝ~~ misconduct that formed the basis for charges, counts, or portions of the indictment or information of which the officer or employee was found guilty.

(3) An officer or employee entitled to recover reasonable attorney fees and court costs under Subsection (1) or (2) in connection with the officer's or employee's position within a political subdivision, is entitled to recover all fees and costs from the state rather than the political subdivision, if:

(a) after the local attorney declines to pursue an indictment, or file an information, against the officer or employee, the attorney general obtains an indictment, or files an information, against the officer or employee;

(b) the alleged misconduct forming the basis of the indictment or information against the officer or employee is substantially similar to the facts or investigation results upon which the local attorney relied in deciding not to pursue an indictment, or file an information, against the officer or employee; and

(c) the attorney general pursued the indictment, or filed the information, against the officer or employee, for a reason other than that:

(i) the local attorney requested the attorney general's involvement in the prosecution of the officer or employee due to a conflict of interest; or

(ii) the local attorney lacked the resources or subject matter expertise to initiate or proceed with the prosecution of the officer or employee.

~~[(3)]~~ (4) An officer or employee who recovers under this section shall also be entitled to recover reasonable attorney fees and costs necessarily incurred by the officer or employee in recovering the attorney fees and costs allowed under this section, including attorney fees and costs incurred on appeal.

~~[(4)]~~ (5) Notwithstanding any other provision of this section, an officer or employee may not recover for the costs incurred in defense of any charge, count, or portion of the

88 indictment or information that is quashed or dismissed upon application or motion of the
89 prosecuting attorney.