

1 **ATTORNEY GENERAL REPORTING REQUIREMENTS**

2 2020 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd Weiler**

5 House Sponsor: Karianne Lisonbee

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies reporting requirements for the attorney general.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies a reporting requirement for the attorney general regarding lawsuits
- 13 challenging the constitutionality of state law;
- 14 ▶ requires the attorney general to submit a report regarding lawsuits and decisions
- 15 challenging the constitutionality and enforceability of state statutes; and
- 16 ▶ makes technical and conforming 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 2018, Chapter 474

24 **67-5-1**, as last amended by Laws of Utah 2019, Chapters 225 and 347

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 before the expiration of the person's term only by a
55 majority vote of both houses of the Legislature or by a two-thirds vote of the management
56 committee for such causes as inefficiency, incompetency, failure to maintain skills or adequate
57 performance levels, insubordination, misfeasance, malfeasance, or nonfeasance in office. If a

58 vacancy occurs in any of these offices after adjournment of the Legislature, the committee shall
59 appoint an individual to fill the vacancy until such time as the person is approved or rejected by
60 majority vote of the next session of the Legislature;

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

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

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

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

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

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

75 (i) the constitutionality of a state statute;

76 (ii) the validity of legislation; or

77 (iii) any action of the Legislature.

78 (c) In a federal court action that challenges the constitutionality of a state statute, the
79 validity of legislation, or any action of the Legislature, the Legislature may seek to intervene, to
80 file an amicus brief, or to present argument in accordance with federal rules of procedure.

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

84 (e) In any action in which the Legislature intervenes or participates, legislative counsel
85 and the attorney general shall function independently from each other in the representation of

86 their respective clients.

87 (f) The attorney general shall notify the legislative general counsel of a claim in
88 accordance with Subsection 67-5-1[(24)](25).

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

90 **67-5-1. General duties.**

91 The attorney general shall:

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

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

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

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

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

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

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

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

114 (6) exercise supervisory powers over the district and county attorneys of the state in all
115 matters pertaining to the duties of [~~their~~] the district and county attorneys' offices, including the
116 authority to:

117 (a) require a district or county attorney of the state to, upon request, report on the status
118 of public business entrusted to the district or county attorney's charge; or

119 (b) review investigation results de novo and file criminal charges, if warranted, in any
120 case involving a first degree felony, if:

121 (i) a law enforcement agency submits investigation results to the county or district
122 attorney of the jurisdiction where the incident occurred and the county or district attorney:

123 (A) declines to file criminal charges; or

124 (B) fails to screen the case for criminal charges within six months of the law
125 enforcement agency's submission of the investigation results; and

126 (ii) after consultation with the county or district attorney of the jurisdiction where the
127 incident occurred, the attorney general reasonably believes action by the attorney general would
128 not interfere with an ongoing investigation or prosecution by the county or district attorney of
129 the jurisdiction where the incident occurred;

130 (7) give the attorney general's opinion in writing and without fee, when required, upon
131 any question of law relating to the office of the requester:

132 (a) in accordance with Section 67-5-1.1, to the Legislature or either house;

133 (b) to any state officer, board, or commission; and

134 (c) to any county attorney or district attorney;

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

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

141 (10) when the property of a judgment debtor in any judgment mentioned in Subsection

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

187 (21) (a) submit a written report to the committees described in Subsection (21)(b) that
188 summarizes ~~[the status and progress of any lawsuits that challenge the constitutionality of state~~
189 ~~law that were pending at the time the attorney general submitted]~~ any lawsuit or decision in
190 which a court or the Office of the Attorney General has determined that a state statute is
191 unconstitutional or unenforceable since the attorney general's last report under this Subsection

192 (21), including any:

193 (i) settlements reached;

194 (ii) consent decrees entered; ~~[or]~~

195 (iii) judgments issued; ~~[and]~~

196 (iv) preliminary injunctions issued;

197 (v) temporary restraining orders issued; or

198 (vi) formal or informal policies of the Office of the Attorney General to not enforce a
199 law; and

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

202 (i) the Legislative Management Committee;

203 (ii) the Judiciary Interim Committee; and

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

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

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

209 (b) any other information or analysis requested by the rate committee;

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

212 (24) ensure that any training required under this chapter complies with Title 63G,
213 Chapter 22, State Training and Certification Requirements;

214 (25) notify the legislative general counsel in writing within three business days after
215 the day on which the attorney general is officially notified of a claim, regardless of whether the
216 claim is filed in state or federal court, that challenges:

217 (a) the constitutionality of a state statute;

218 (b) the validity of legislation; or

219 (c) any action of the Legislature; and

220 (26) (a) notwithstanding Title 63G, Chapter 6a, Utah Procurement Code, provide a
221 special advisor to the Office of the Governor and the Office of the Attorney General in matters
222 relating to Native American and tribal issues to:

223 (i) establish outreach to the tribes and affected counties and communities; and

224 (ii) foster better relations and a cooperative framework; and

225 (b) annually report to the Executive Offices and Criminal Justice Appropriations

226 Subcommittee regarding:

227 (i) the status of the work of the special advisor described in Subsection (26)(a); and

228 (ii) whether the need remains for the ongoing appropriation to fund the special advisor

229 described in Subsection (26)(a).