

LEGISLATIVE INVESTIGATIVE COMMITTEE AMENDMENTS

2013 FIRST SPECIAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends provisions of Title 36, Legislature, and Title 77, Chapter 22b, Grants of Immunity, to address matters relating to legislative investigative committees.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ describes the circumstances under which a special investigative committee may hold a closed meeting;
- ▶ designates certain records received by, or generated by or for, a special investigative committee as protected records until the special investigative committee concludes its business or determines to remove the protected records classification;
- ▶ grants authority to a chair of a special investigative committee to issue subpoenas;
- ▶ grants a legislative body, a legislative office, an issuer, or a legislative staff member designated by an issuer the authority to administer an oath or affirmation and take evidence, including testimony;
- ▶ modifies the authority of legislative general counsel to grant use and derivative use immunity; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

36-12-9, as last amended by Laws of Utah 1985, Chapter 47

36-14-1, as enacted by Laws of Utah 1989, Chapter 174

- 33 **36-14-2**, as enacted by Laws of Utah 1989, Chapter 174
 34 **36-14-3**, as enacted by Laws of Utah 1989, Chapter 174
 35 **36-14-5**, as last amended by Laws of Utah 2008, Chapter 3
 36 **77-22b-1**, as last amended by Laws of Utah 2013, Chapter 237

37

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

39 Section 1. Section **36-12-9** is amended to read:

40 **36-12-9. Legislative committees -- Minutes of meetings -- Official policies --**
 41 **Closed meetings -- Private records.**

42 (1) "Special investigative committee" means a committee or subcommittee created or
 43 designated by rule or resolution of the House, the Senate, or the Legislature to investigate a
 44 matter specified in the rule or resolution.

45 ~~(1)~~ (2) The House, Senate, and Legislative Management Committees, the
 46 subcommittees of the Legislative Management Committee, and each interim committee shall
 47 keep complete minutes of their meetings.

48 ~~(2)~~ (3) The official policies of the House, Senate and Legislative Management
 49 Committees made pursuant to their duties as assigned by law shall be written and available to
 50 all members of the Legislature.

51 (4) Notwithstanding Subsection 52-4-204(2) or 52-4-205(1), a special investigative
 52 committee may hold a closed meeting if a majority of the members present vote to close the
 53 meeting for the purpose of:

54 (a) seeking or obtaining legal advice;

55 (b) discussing matters of strategy relating to an investigation, if discussing the matters
 56 in public would interfere with the effectiveness of the investigation; or

57 (c) questioning a witness, if questioning the witness in public would interfere with a
 58 criminal investigation.

59 (5) The following records received by, or generated by or for, a special investigative
 60 committee are protected records, for purposes of Title 63G, Chapter 2, Government Records
 61 Access and Management Act, until the special investigative committee concludes its business
 62 or determines to remove the protected record classification described in this Subsection (5):

63 (a) records of a witness interview;

- 64 (b) records containing the mental impressions of special investigative committee
 65 members or staff to the special investigative committee;
 66 (c) records containing information on investigative strategy; and
 67 (d) records, the disclosure of which would interfere with the effectiveness of the
 68 investigation.

69 Section 2. Section **36-14-1** is amended to read:

70 **36-14-1. Definitions.**

71 As used in this chapter:

- 72 (1) "Issuer" means a person authorized to issue a subpoena by this chapter.
 73 (2) "Legislative body" means:
 74 (a) the Legislature[;];
 75 (b) the House or Senate; or
 76 (c) any committee or subcommittee of the Legislature, the House [of Representatives;
 77 and], or the Senate.
 78 (3) "Legislative office" means the Office of Legislative Research and General Counsel,
 79 Office of the Legislative Fiscal Analyst, and the Office of the Legislative Auditor General.
 80 (4) "Legislative staff member" means an employee or independent contractor of a
 81 legislative office.
 82 ~~[(4)]~~ (5) "Legislative subpoena" means a subpoena issued by an issuer on behalf of a
 83 legislative body or legislative office and includes:
 84 (a) a subpoena requiring a person to appear and testify ~~[before some legislative body or~~
 85 ~~office]~~ at a time and place designated in the subpoena;
 86 (b) a subpoena requiring a person to:
 87 (i) appear and testify ~~[before some legislative body or legislative office]~~ at a time and
 88 place designated in the subpoena; and
 89 (ii) produce accounts, books, papers, documents, ~~[or other]~~ electronically stored
 90 information, or tangible things designated in the subpoena; and
 91 (c) a subpoena requiring a person to produce accounts, books, papers, documents, ~~[or~~
 92 ~~other]~~ electronically stored information, or tangible things designated in the subpoena at a time
 93 and place designated in the subpoena.
 94 (6) "Special investigative committee" is as defined in Subsection 36-12-9(1).

95 Section 3. Section **36-14-2** is amended to read:

96 **36-14-2. Issuers.**

97 (1) Any of the following persons is an issuer, who may issue legislative subpoenas by
98 following the procedures set forth in this chapter:

99 ~~[(1)]~~ (a) the speaker of the House of Representatives;

100 ~~[(2)]~~ (b) the president of the Senate;

101 ~~[(3)]~~ (c) a ~~[chairman]~~ chair of any legislative standing committee;

102 ~~[(4)]~~ (d) a ~~[chairman]~~ chair of any legislative interim committee;

103 ~~[(5)]~~ (e) a ~~[chairman]~~ chair of any special committee established by the Legislative
104 Management Committee, the speaker of the House, or the president of the Senate;

105 ~~[(6)]~~ (f) ~~[the chairman]~~ a chair of any subcommittee of the Legislative Management
106 Committee;

107 (g) a chair of a special investigative committee;

108 ~~[(7)]~~ (h) ~~[the chairman]~~ a chair of a Senate or House Ethics Committee;

109 ~~[(8)]~~ (i) the director of the Office of Legislative Research and General Counsel;

110 ~~[(9)]~~ (j) the legislative auditor general;

111 ~~[(10)]~~ (k) the director of the Office of Legislative Fiscal Analyst; and

112 ~~[(11)]~~ (l) the legislative general counsel.

113 (2) A legislative body, a legislative office, an issuer, or a legislative staff member
114 designated by an issuer may:

115 (a) administer an oath or affirmation; and

116 (b) take evidence, including testimony.

117 Section 4. Section **36-14-3** is amended to read:

118 **36-14-3. Contents.**

119 Each legislative subpoena shall include:

120 (1) the name of the legislative body or office on whose behalf the subpoena is issued;

121 (2) the signature of the issuer;

122 (3) a command to the person or entity to whom the subpoena is addressed to:

123 (a) appear and testify at the time and place set forth in the subpoena;

124 (b) appear and testify ~~[before some legislative body or office]~~ at the time and place

125 designated in the subpoena and produce accounts, books, papers, documents, ~~[or other]~~

126 electronically stored information, or tangible things designated in the subpoena; or
127 (c) produce accounts, books, papers, documents, [~~or other~~] electronically stored
128 information, or tangible things designated in the subpoena at the time and place designated in
129 the subpoena.

130 Section 5. Section **36-14-5** is amended to read:

131 **36-14-5. Legislative subpoenas -- Enforcement.**

132 (1) If any person disobeys or fails to comply with a legislative subpoena, or if a person
133 appears [~~before a legislative body~~] pursuant to a subpoena and refuses to testify to a matter
134 upon which [~~he~~] the person may be lawfully interrogated, that person is in contempt of the
135 Legislature.

136 (2) (a) When the subject of a legislative subpoena disobeys or fails to comply with the
137 legislative subpoena, or if a person appears [~~before a legislative body~~] pursuant to a subpoena
138 and refuses to testify to a matter upon which the person may be lawfully interrogated, the issuer
139 may:

140 (i) file a motion for an order to compel obedience to the subpoena with the district
141 court;

142 (ii) file, with the district court, a motion for an order to show cause why the penalties
143 established in Title 78B, Chapter 6, Part 3, Contempt, should not be imposed upon the person
144 named in the subpoena for contempt of the Legislature; or

145 (iii) pursue other remedies against persons in contempt of the Legislature.

146 (b) (i) Upon receipt of a motion under this subsection, the court shall expedite the
147 hearing and decision on the motion.

148 (ii) A court may:

149 (A) order the person named in the subpoena to comply with the subpoena; and

150 (B) impose any penalties authorized by Title 78B, Chapter 6, Part 3, Contempt, upon
151 the person named in the subpoena for contempt of the Legislature.

152 (3) (a) If a legislative subpoena requires the production of accounts, books, papers,
153 documents, [~~or other~~] electronically stored information, or tangible things, the person or entity
154 to whom it is directed may petition a district court to quash or modify the subpoena at or before
155 the time specified in the subpoena for compliance.

156 (b) An issuer may respond to a motion to quash or modify the subpoena by pursuing

157 any remedy authorized by Subsection (2).

158 (c) If the court finds that a legislative subpoena requiring the production of accounts,
159 books, papers, documents, [~~or other~~] electronically stored information, or tangible things is
160 unreasonable or oppressive, the court may quash or modify the subpoena.

161 (4) Nothing in this section prevents an issuer from seeking an extraordinary writ to
162 remedy contempt of the Legislature.

163 (5) Any party aggrieved by a decision of a court under this section may appeal that
164 action directly to the Utah Supreme Court.

165 Section 6. Section **77-22b-1** is amended to read:

166 **77-22b-1. Immunity granted to witness.**

167 (1) (a) A witness who refuses, or is likely to refuse, on the basis of the witness's
168 privilege against self-incrimination to testify or provide evidence or information in a criminal
169 investigation, including a grand jury investigation or prosecution of a criminal case, or in aid of
170 an investigation or inquiry being conducted by a government agency or commission, or by
171 either house of the Legislature, a joint committee of the two houses, or a committee or
172 subcommittee of either house, may be compelled to testify or provide evidence or information
173 by any of the following, after being granted use immunity with regards to the compelled
174 testimony or production of evidence or information:

175 (i) the attorney general or any assistant attorney general authorized by the attorney
176 general;

177 (ii) a district attorney or any deputy district attorney authorized by a district attorney;

178 (iii) in a county not within a prosecution district, a county attorney or any deputy
179 county attorney authorized by a county attorney;

180 (iv) a special counsel for the grand jury;

181 (v) a prosecutor pro tempore appointed under the Utah Constitution, Article VIII, Sec.
182 16; or

183 (vi) legislative general counsel in the case of testimony pursuant to subpoena before;

184 (A) the Legislature [~~or any committee of the Legislature having subpoena powers.~~];

185 (B) either house of the Legislature; or

186 (C) a committee of the Legislature, including a joint committee, a committee of either
187 house, a subcommittee, or a special investigative committee.

188 (b) If any prosecutor authorized under Subsection (1)(a) intends to compel a witness to
189 testify or provide evidence or information under a grant of use immunity, the prosecutor shall
190 notify the witness by written notice. The notice shall include the information contained in
191 Subsection (2) and advise the witness that the witness may not refuse to testify or provide
192 evidence or information on the basis of the witness's privilege against self-incrimination. The
193 notice need not be in writing when the grant of use immunity occurs on the record in the course
194 of a preliminary hearing, grand jury proceeding, or trial.

195 (2) Testimony, evidence, or information compelled under Subsection (1) may not be
196 used against the witness in any criminal or quasi-criminal case, nor any information directly or
197 indirectly derived from this testimony, evidence, or information, unless the testimony,
198 evidence, or information is volunteered by the witness or is otherwise not responsive to a
199 question. Immunity does not extend to prosecution or punishment for perjury or to giving a
200 false statement in connection with any testimony.

201 (3) If a witness is granted immunity under Subsection (1) and is later prosecuted for an
202 offense that was part of the transaction or events about which the witness was compelled to
203 testify or produce evidence or information under a grant of immunity, the burden is on the
204 prosecution to show by a preponderance of the evidence that no use or derivative use was made
205 of the compelled testimony, evidence, or information in the subsequent case against the
206 witness, and to show that any proffered evidence was derived from sources totally independent
207 of the compelled testimony, evidence, or information. The remedy for not establishing that any
208 proffered evidence was derived from sources totally independent of the compelled testimony,
209 evidence, or information is suppression of that evidence only.

210 (4) Nothing in this section prohibits or limits prosecutorial authority granted in Section
211 77-22-4.5.

212 (5) A county attorney within a prosecution district shall have the authority to grant
213 immunity only as provided in Subsection 17-18a-402(3).

214 (6) For purposes of this section, "quasi-criminal" means only those proceedings that are
215 determined by a court to be so far criminal in their nature that a defendant has a constitutional
216 right against self-incrimination.

217 **Section 7. Effective date -- Retrospective operation.**

218 (1) Subject to Subsection (2), if approved by two-thirds of all the members elected to

219 each house, this bill takes effect upon approval by the governor, or the day following the
220 constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's
221 signature, or in the case of a veto, the date of veto override.

222 (2) This bill has retrospective operation to July 1, 2013.