

1 HOUSE BILL NO. 617

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6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CITIZEN PARTICIPATION IN FURTHERANCE
7 OF ARTICLE II, SECTION 8, OF THE MONTANA CONSTITUTION WHEN THE ATTORNEY GENERAL
8 SEEKS TO ENGAGE IN LITIGATION IN WHICH THE STATE MAY HAVE AN INTEREST; PROVIDING
9 NOTICE WHEN THE ATTORNEY GENERAL INTENDS TO ENGAGE IN LITIGATION IN WHICH THE STATE
10 MAY HAVE AN INTEREST; PROVIDING AN EXCEPTION; REQUIRING A PUBLIC HEARING AND PUBLIC
11 COMMENT ON THE ATTORNEY GENERAL'S INTENT TO ENGAGE IN LITIGATION IN WHICH THE STATE
12 MAY HAVE AN INTEREST; REQUIRING THE ATTORNEY GENERAL TAKE UNDER CONSIDERATION AND
13 RESPOND TO PUBLIC COMMENTS AFTER A PUBLIC HEARING; REQUIRING A PROJECTION OF
14 LITIGATION COSTS AND REPORTING OF ACTUAL LITIGATION COSTS; PROVIDING DEFINITIONS; AND
15 AMENDING SECTION 2-15-501, MCA."

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17 WHEREAS, Article II, section 8, of the Montana Constitution provides that the "public has the right to
18 expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of
19 the agencies prior to the final decision as may be provided by law"; and

20 WHEREAS, Article VI, section 4, of the Montana Constitution provides the Attorney General "shall have
21 the duties and powers provided by law"; and

22 WHEREAS, the Attorney General currently has broad authority to litigate matters in the name of the
23 State of Montana in which the state has an interest pursuant to section 2-15-501, MCA; and

24 WHEREAS, the public currently has no opportunity to provide input or public comment as to whether
25 the litigation furthers the interests of the State of Montana or not; and

26 WHEREAS, there are few checks on the spending of government funds to pursue the litigation and
27 ensure that it is in the interests of the State of Montana; and

28 WHEREAS, providing for public comment and public participation in executive branch decisions

1 strengthens democracy and trust in government; and

2 WHEREAS, the Montana Supreme Court has held that the Attorney General's authority may be
3 restricted or modified by the Legislature in State ex rel. Olsen v. Public Service Commission, 129 Mont. 106,
4 283 P.2d 594 (Mont. 1955).

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6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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8 **Section 1.** Section 2-15-501, MCA, is amended to read:

9 **"2-15-501. General duties.** It is the duty of the attorney general:

10 (1) to prosecute or defend all causes in the supreme court;

11 (a) in which the state or any officer of the state in the officer's official capacity is a party; or

12 (b) in which the state has an interest; subject to subsections (1)(b)(i) through (1)(b)(v).

13 (i) At least 10 business days prior to engaging in litigation in which the state may have an interest,

14 the attorney general shall produce a statement of intent to engage in litigation in the interest of the state, which

15 must be provided to the governor's office and the house and senate judiciary committees or, in the interim, the

16 law and justice interim committee, and published on the department of justice website. The statement of intent

17 must include:

18 (A) the nature and location of the proposed litigation;

19 (B) the nature of the state's interest;

20 (C) the attorney general's position on the issues; and

21 (D) an itemized projection of costs to the state for engaging in the litigation.

22 (ii) When notice of intent has been provided, the attorney general shall schedule a public hearing

23 with at least 5 business days' notice and provide an opportunity for comment from the public concerning the

24 attorney general's proposed litigation before engaging in litigation in which the state may have an interest.

25 (iii) The attorney general shall fully consider any written submissions and public comments when

26 deciding whether to proceed with litigation in the interest of the state. The attorney general's decision and a

27 statement responding to the written submissions and public comments made during the hearing must be posted

28 on the department of justice website within 5 business days of the public hearing and prior to the attorney

1 general engaging in litigation.

2 (iv) In a bona fide emergency in which time is of the essence or other circumstance that demands
3 action be taken in less than 10 days, the attorney general shall produce a statement of intent as required under
4 subsection (1)(b)(i) within 5 days of engaging in litigation in which the state may have an interest. In addition to
5 the requirements under subsections (1)(b)(i)(A) through (1)(b)(i)(D), the statement of intent must also state the
6 nature of the emergency or circumstance that justified engaging in the litigation prior to complying with the
7 notice provisions under subsection (1)(b)(i). The attorney general may only continue engaging in the litigation
8 after following the process outlined in subsection (1)(b) and fully considering any written submissions and public
9 comments.

10 (v) As used in this subsection (1)(b), the following definitions apply:

11 (A) "Attorney general" means the attorney general, any subordinates, or any agency litigation in the
12 department of justice.

13 (B) "Engaging in litigation" means filing or joining in litigation as a party, filing a brief in a pending
14 proceeding because of strong interest in the subject matter, or providing funding or personnel to support the
15 litigation.

16 (2) to represent the state in all bankruptcy proceedings in which the state's interest may be
17 affected and in other debt collection proceedings at the request of a state agency;

18 (3) after judgment in any of the causes referred to in subsections (1) and (2), to direct the issuing
19 of a process as may be necessary to carry the judgment into execution;

20 (4) to keep a permanent register of all cases prosecuted or defended by the attorney general.
21 Each case under subsection (1) must be entered into the register on commencement of the litigation and
22 updated within 30 days of the conclusion of litigation in the matter. The update at the conclusion of litigation
23 must include an itemization of costs associated with the litigation for each case, including but not limited to fees
24 and expenses for outside counsel and the number of hours expended in the matter by in-house counsel. The
25 register must be open to the inspection of the public during business hours. The attorney general shall deliver
26 the register to the attorney general's successor in office.

27 (5) to exercise supervisory powers over county attorneys in all matters pertaining to the duties of
28 their offices and from time to time require of them reports as to the condition of public business entrusted to

1 their charge. The supervisory powers granted to the attorney general by this subsection include the power to
2 order and direct county attorneys in all matters pertaining to the duties of their office. The county attorney shall,
3 when ordered or directed by the attorney general, promptly institute and diligently prosecute in the proper court
4 and in the name of the state of Montana any criminal or civil action or special proceeding.

5 (6) when required by the public service or directed by the governor, to assist the county attorney of
6 any county in the discharge of the county attorney's duties or to prosecute or defend appropriate cases in which
7 the state or any officer of the state in the officer's official capacity is a party or in which the state has an interest;

8 (7) to give an opinion in writing, without fee, to the legislature or either house of the legislature, to
9 any state officer, board, or commission, to any county attorney, to the city attorney of any city or town, or to the
10 board of county commissioners of any county of the state when required upon any question of law relating to
11 their respective offices. The attorney general shall give the opinion within 3 months following the date that it is
12 requested unless the attorney general certifies in writing to the requesting party that the question is of sufficient
13 complexity to require additional time. If an opinion issued by the attorney general conflicts with an opinion
14 issued by a city attorney, county attorney, or an attorney employed or retained by any state officer, board,
15 commission, or department, the attorney general's opinion is controlling unless overruled by a state district
16 court or the supreme court.

17 (8) to discharge the duties of a member of the board of examiners and state board of land
18 commissioners;

19 (9) to perform all other duties as required by law."

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