

**SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION**

S.F. No. 1688

(SENATE AUTHORS: JOHNSON)

DATE
03/04/2021

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OFFICIAL STATUS
Introduction and first reading
Referred to State Government Finance and Policy and Elections

1.1 A bill for an act
1.2 relating to state government; authorizing the house of representatives, senate, or
1.3 legislature to intervene in certain matters involving the state; requiring approval
1.4 of proposed legal settlements by the Legislative Coordinating Commission;
1.5 requiring parties to a civil action to serve the legislature in certain matters; amending
1.6 Minnesota Statutes 2020, sections 3.305, by adding a subdivision; 8.01; 8.06;
1.7 555.11; proposing coding for new law in Minnesota Statutes, chapters 3; 8; 540.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. Minnesota Statutes 2020, section 3.305, is amended by adding a subdivision
1.10 to read:

1.11 Subd. 6a. Administration of legal claims. The Legislative Coordinating Commission
1.12 must establish a bicameral subcommittee of legislators to (1) advise and assist the commission
1.13 to monitor legal claims involving the state in which the legislature may be an interested
1.14 party, and (2) perform the duties provided under sections 3.7315 and 8.062.

1.15 Sec. 2. [3.7315] LEGISLATIVE RIGHT TO INTERVENE.

1.16 Pursuant to section 540.155, when a party to an action in state or federal court challenges
1.17 the constitutionality of a statute either facially or as applied, challenges a statute as violating
1.18 or preempted by federal law, or otherwise challenges the construction or validity of a statute,
1.19 as part of a claim or affirmative defense:

1.20 (1) the Committee on Rules and Legislative Administration of the house of representatives
1.21 may intervene on behalf of the house of representatives at any time in the action. The
1.22 committee may obtain legal counsel other than from the attorney general to represent the
1.23 house of representatives in any action in which the house of representatives intervenes;

2.1 (2) the Committee on Rules and Administration of the senate may intervene on behalf
 2.2 of the senate at any time in the action. The committee may obtain legal counsel other than
 2.3 from the attorney general to represent the senate in any action in which the senate intervenes;
 2.4 and

2.5 (3) the Legislative Coordinating Commission may intervene on behalf of the legislature
 2.6 at any time in the action. The Legislative Coordinating Commission may obtain legal counsel
 2.7 other than from the attorney general to represent the legislature in any action in which the
 2.8 legislature intervenes.

2.9 Sec. 3. Minnesota Statutes 2020, section 8.01, is amended to read:

2.10 **8.01 APPEARANCE.**

2.11 The attorney general shall appear for the state in all causes in the supreme and federal
 2.12 courts wherein the state is directly interested; also in all civil causes of like nature in all
 2.13 other courts of the state whenever, in the attorney general's opinion, the interests of the state
 2.14 require it, provided that the legislature may intervene in the cause at any time as permitted
 2.15 by sections 3.7315 and 540.155. Upon request of the county attorney, the attorney general
 2.16 shall appear in court in such criminal cases as the attorney general deems proper. Upon
 2.17 request of a county attorney, the attorney general may assume the duties of the county
 2.18 attorney in sexual psychopathic personality and sexually dangerous person commitment
 2.19 proceedings under chapter 253D. Whenever the governor shall so request, in writing, the
 2.20 attorney general shall prosecute any person charged with an indictable offense, and in all
 2.21 such cases may attend upon the grand jury and exercise the powers of a county attorney.

2.22 Sec. 4. Minnesota Statutes 2020, section 8.06, is amended to read:

2.23 **8.06 ATTORNEY FOR STATE OFFICERS, BOARDS, OR COMMISSIONS;**
 2.24 **EMPLOY COUNSEL.**

2.25 The attorney general shall act as the attorney for all state officers and all boards or
 2.26 commissions created by law in all matters pertaining to their official duties. The legislature
 2.27 may intervene in these matters at any time as permitted by sections 3.7315 and 540.155.
 2.28 When requested by the attorney general, it shall be the duty of any county attorney of the
 2.29 state to appear within the county and act as attorney for any such board, commission, or
 2.30 officer in any court of such county. The attorney general may, upon request in writing,
 2.31 employ, and fix the compensation of, a special attorney for any such board, commission,
 2.32 or officer when, in the attorney general's judgment, the public welfare will be promoted
 2.33 thereby. Such special attorney's fees or salary shall be paid from the appropriation made

3.1 for such board, commission, or officer. Except as herein provided, no board, commission,
3.2 or officer shall hereafter employ any attorney at the expense of the state.

3.3 Whenever the attorney general, the governor, and the chief justice of the supreme court
3.4 shall certify, in writing, filed in the Office of the Secretary of State, that it is necessary, in
3.5 the proper conduct of the legal business of the state, either civil or criminal, that the state
3.6 employ additional counsel, the attorney general shall thereupon be authorized to employ
3.7 such counsel and, with the governor and the chief justice, fix the additional counsel's
3.8 compensation. The governor, if in the governor's opinion the public interest requires such
3.9 action, may employ counsel to act in any action or proceeding if the attorney general is in
3.10 any way interested adversely to the state. Except as herein stated, no additional counsel
3.11 shall be employed and the legal business of the state shall be performed exclusively by the
3.12 attorney general and the attorney general's assistants.

3.13 **Sec. 5. [8.062] SETTLEMENTS ON BEHALF OF STATE.**

3.14 In an action in defense of the state involving a claim for injunctive relief or where there
3.15 is a proposed consent decree, the attorney general is prohibited from compromising or
3.16 settling the action without the approval of a legislative intervenor under section 3.7315 or,
3.17 if there is no intervenor, without first submitting a proposed plan to the Legislative
3.18 Coordinating Commission. If within 14 working days after the plan is submitted the chair
3.19 of the commission notifies the attorney general that the commission has scheduled a meeting
3.20 for the purpose of reviewing the proposed plan, the attorney general may compromise or
3.21 settle the action only with the commission's approval. The attorney general is prohibited
3.22 from submitting a proposed plan to the Legislative Coordinating Commission that concedes
3.23 the unconstitutionality or other invalidity of a statute either facially or as applied, or concedes
3.24 that a statute violates or is preempted by federal law, without approval by the chair of the
3.25 bicameral subcommittee established under section 3.305, subdivision 6a, to consider legal
3.26 claims.

3.27 **Sec. 6. [540.155] INTERVENTION BY LEGISLATURE.**

3.28 When a party to an action in state or federal court challenges the constitutionality of a
3.29 statute either facially or as applied, challenges a statute as violating or preempted by federal
3.30 law, or otherwise challenges the construction or validity of a statute, as part of a claim or
3.31 affirmative defense, the house of representatives, senate, or legislature may intervene in the
3.32 action at any time as provided in section 3.7315 as a matter of right by serving a motion
3.33 upon the parties as required by law or court rule.

4.1 Sec. 7. Minnesota Statutes 2020, section 555.11, is amended to read:

4.2 **555.11 PARTIES.**

4.3 When declaratory relief is sought, all persons shall be made parties who have or claim
4.4 any interest which would be affected by the declaration, and no declaration shall prejudice
4.5 the rights of persons not parties to the proceeding. In any proceeding which involves the
4.6 validity of a municipal ordinance or franchise, such municipality shall be made a party, and
4.7 shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be
4.8 unconstitutional, the attorney general shall also be served with a copy of the proceeding
4.9 and be entitled to be heard. If a statute is alleged to be unconstitutional, alleged to be in
4.10 violation of or preempted by federal law, or if the construction or validity of a statute is
4.11 otherwise challenged, the speaker of the house, president of the senate, and senate majority
4.12 leader must also be served with a copy of the proceeding, and the house of representatives,
4.13 senate, or legislature are entitled to be heard. If the house of representatives, senate, or
4.14 Legislative Coordinating Commission intervenes as provided under sections 3.7315 and
4.15 540.155, the house of representatives represents the house of representatives, the senate
4.16 represents the senate, and the Legislative Coordinating Commission represents the legislature.

4.17 Sec. 8. **EFFECTIVE DATE.**

4.18 This act is effective August 1, 2021, and applies to causes of action arising on or after
4.19 that date.