

1 **CONSTITUTIONAL AND FEDERALISM DEFENSE ACT**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ken Ivory**

5 Senate Sponsor: Mark B. Madsen

7 **LONG TITLE**

8 **General Description:**

9 This bill recodifies and amends Title 63C, Chapter 4, Constitutional Defense Council,
10 dissolves the Federalism Subcommittee, and creates the Commission on Federalism.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ recodifies Title 63C, Chapter 4, Constitutional Defense Council, and renames it the
15 Constitutional and Federalism Defense Act;
- 16 ▶ adds one member to the Constitutional Defense Council;
- 17 ▶ dissolves the Federalism Subcommittee;
- 18 ▶ amends the duties of the Constitutional Defense Council;
- 19 ▶ creates the Commission on Federalism and describes its duties, which include most
20 of the duties formerly assigned to the Federalism Subcommittee;
- 21 ▶ amends provisions relating to the Constitutional Defense Restricted Account;
- 22 ▶ subjects the provisions of this bill to sunset review before being repealed on July 1,
23 2018; and
- 24 ▶ makes technical changes.

25 **Money Appropriated in this Bill:**

26 This bill appropriates in fiscal year 2013:

- 27 ▶ to the General Fund Restricted - Constitutional Defense Restricted Account as a
28 one-time appropriation, from the General Fund, one-time, (\$79,800);
- 29 ▶ to the Governor's Office - Constitutional Defense Council as a one-time

30 appropriation, from the General Fund Restricted - Constitutional Defense, (\$79,800);
31 ▶ to the Legislature - Senate as a one-time appropriation, from the General Fund,
32 one-time, \$34,200; and
33 ▶ to the Legislature - House of Representatives as a one-time appropriation, from the
34 General Fund, one-time, \$45,600.

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

- 39 **53C-3-203**, as last amended by Laws of Utah 2012, Chapter 212
- 40 **63I-1-263 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapters 126,
- 41 206, 347, 369, and 395
- 42 **63J-4-401**, as last amended by Laws of Utah 2012, Chapter 189
- 43 **63J-4-603**, as last amended by Laws of Utah 2011, Chapter 252
- 44 **67-5-1**, as last amended by Laws of Utah 2011, Chapter 342

45 ENACTS:

- 46 **63C-4a-101**, Utah Code Annotated 1953
- 47 **63C-4a-102**, Utah Code Annotated 1953
- 48 **63C-4a-201**, Utah Code Annotated 1953
- 49 **63C-4a-301**, Utah Code Annotated 1953
- 50 **63C-4a-302**, Utah Code Annotated 1953
- 51 **63C-4a-401**, Utah Code Annotated 1953

52 RENUMBERS AND AMENDS:

- 53 **63C-4a-103**, (Renumbered from 63C-4-105, as enacted by Laws of Utah 2001, Chapter
- 54 287)
- 55 **63C-4a-202**, (Renumbered from 63C-4-101, as last amended by Laws of Utah 2011,
- 56 Chapter 252)
- 57 **63C-4a-203**, (Renumbered from 63C-4-102, as last amended by Laws of Utah 2012,

58 Chapters 324 and 377)

59 **63C-4a-303**, (Renumbered from 63C-4-106, as last amended by Laws of Utah 2012,
60 Chapter 369)

61 **63C-4a-304**, (Renumbered from 63C-4-107, as enacted by Laws of Utah 2011, Chapter
62 252)

63 **63C-4a-305**, (Renumbered from 63C-4-108, as enacted by Laws of Utah 2011, Chapter
64 252)

65 **63C-4a-402**, (Renumbered from 63C-4-103, as last amended by Laws of Utah 2012,
66 Chapter 324)

67 **63C-4a-403**, (Renumbered from 63C-4-104, as last amended by Laws of Utah 2011,
68 Chapter 252)

69 **Uncodified Material Affected:**

70 ENACTS UNCODIFIED MATERIAL



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

72 Section 1. Section **53C-3-203** is amended to read:

73 **53C-3-203. Land Exchange Distribution Account.**

74 (1) As used in this section, "account" means the Land Exchange Distribution Account
75 created in Subsection (2)(a).

76 (2) (a) There is created within the General Fund a restricted account known as the Land
77 Exchange Distribution Account.

78 (b) The account shall consist of revenue deposited in the account as required by
79 Section 53C-3-202.

80 (3) (a) The state treasurer shall invest money in the account according to Title 51,
81 Chapter 7, State Money Management Act.

82 (b) The Division of Finance shall deposit interest or other earnings derived from
83 investment of account money into the General Fund.

84 (4) The Legislature shall annually appropriate from the account in the following order:
85

310 (7) ~~(a) [Within five business days' notice, the]~~ The council chair may, with the
311 concurrence of the council, order the attorney general or an attorney employed by the council to
312 cease work ~~[to]~~ that may be charged to the fund.

313 (b) The attorney general or other attorney subject to the order shall comply with the
314 order no later than five business days after the day on which the order is given.

315 (8) (a) At least 20 calendar days before the state submits comments on the draft
316 environmental impact statement or environmental assessment for a proposed land management
317 plan of any federal land management agency, the governor shall make those documents
318 available to:

319 (i) members of the council; and

320 (ii) any county executive, county council member, or county commissioner of a county
321 that is covered by the management plan and that has established formal cooperating agency
322 status with the relevant federal land management agency regarding the proposed plan.

323 ~~(b) (i) [Council members or local government officials receiving]~~ A council member or
324 local government official who receives the documents described in Subsection (8)(a) may make
325 recommendations to the governor or the governor's designee concerning changes to the
326 documents before ~~[they]~~ the documents are submitted to the federal land management agency.

327 ~~(ii) [Council members or local government officials]~~ A council member or local
328 government official shall submit recommendations to the governor or the governor's designee
329 no later than 10 calendar days after ~~[receiving]~~ the day on which the council member or local
330 government official receives the documents ~~[under]~~ described in Subsection (8)(a).

331 (c) Documents transmitted or received under this Subsection (8) are drafts and are
332 protected records ~~[pursuant to]~~ under Subsection 63G-2-305(21).

333 (9) The council shall submit a report on December 1 of each year to each legislator by
334 electronic mail that summarizes the council's activities ~~[to each legislator]~~.

335 Section 8. Section **63C-4a-301** is enacted to read:

336 **Part 3. Commission on Federalism**

337 **63C-4a-301. Title.**

338 This part is known as "Commission on Federalism."

339 Section 9. Section **63C-4a-302** is enacted to read:

340 **63C-4a-302. Creation of Commission on Federalism -- Membership meetings --**

341 **Staff -- Expenses.**

342 (1) There is created the Commission on Federalism, comprised of the following seven
343 members:

344 (a) the president of the Senate or the president of the Senate's designee who shall serve
345 as cochair of the commission;

346 (b) another member of the Senate, appointed by the president of the Senate;

347 (c) the speaker of the House or the speaker of the House's designee who shall serve as
348 cochair of the commission;

349 (d) two other members of the House, appointed by the speaker of the House;

350 (e) the minority leader of the Senate or the minority leader of the Senate's designee;

351 and

352 (f) the minority leader of the House or the minority leader of the House's designee.

353 (2) (a) A majority of the members of the commission constitute a quorum of the
354 commission.

355 (b) Action by a majority of the members of a quorum constitutes action by the
356 commission.

357 (3) The commission shall meet six times each year, unless additional meetings are
358 approved by the Legislative Management Committee.

359 (4) The Office of Legislative Research and General Counsel shall provide staff support
360 to the commission.

361 (5) Salary and expenses of a member of the commission shall be paid in accordance
362 with Section 36-2-2 and Legislative Joint Rules, Title 5, Chapter 3, Expense and Mileage
363 Reimbursement for Authorized Legislative Meetings, Special Sessions, and Veto Override
364 Sessions.

365 (6) Nothing in this section prohibits the commission from closing a meeting under

366 Title 52, Chapter 4, Open and Public Meetings Act, or prohibits the commission from
367 complying with Title 63G, Chapter 2, Government Records Access and Management Act.

368 Section 10. Section **63C-4a-303**, which is renumbered from Section 63C-4-106 is
369 renumbered and amended to read:

370 ~~[63C-4-106].~~ **63C-4a-303. Duties of Commission on Federalism.**

371 [~~(1) As used in this chapter:~~]

372 [~~(a) "Federal governmental entity" means:~~]

373 [~~(i) the President of the United States;~~]

374 [~~(ii) the United States Congress;~~]

375 [~~(iii) a United States agency; or~~]

376 [~~(iv) an employee or official appointed by the President of the United States.]~~]

377 [~~(b) "Federal law" means:~~]

378 [~~(i) an executive order by the President of the United States;~~]

379 [~~(ii) a statute passed by the United States Congress;~~]

380 [~~(iii) a regulation adopted by a United States agency; or~~]

381 [~~(iv) a policy statement, guidance, or action by:~~]

382 [~~(A) a United States agency; or~~]

383 [~~(B) an employee or official appointed by the President of the United States.]~~]

384 [~~(c) "United States agency" means a department, agency, authority, commission,~~
385 ~~council, board, office, bureau, or other administrative unit of the executive branch of the~~
386 ~~United States government.]~~]

387 [~~(2)~~] (1) In accordance with Section [~~63C-4-107~~] 63C-4a-304, the [~~Federalism~~

388 ~~Subcommittee shall~~] commission may evaluate a federal law:

389 (a) as agreed by a majority of the commission; or

390 (b) submitted to the [~~Federalism Subcommittee~~] commission by a council member.

391 [~~(3)~~] (2) The [~~Federalism Subcommittee~~] commission may request information

392 regarding a federal law under evaluation from a United States Senator or representative elected
393 from the state.

394 ~~[(4)]~~ (3) If the ~~[Federalism Subcommittee]~~ commission finds that a federal law is not
 395 authorized by the United States Constitution or violates the principle of federalism as described
 396 in Subsection ~~[63C-4-107]~~ 63C-4a-304(2), ~~[the Federalism Subcommittee chair]~~ a commission
 397 cochair may:

398 (a) request from a United States senator or representative elected from the state:

399 (i) information about the federal law; or

400 (ii) assistance in communicating with a federal governmental entity regarding the
 401 federal law;

402 (b) (i) give written notice of ~~[the]~~ an evaluation ~~[required by]~~ made under Subsection
 403 ~~[(2)]~~ (1) to the federal governmental entity responsible for adopting or administering the
 404 federal law; and

405 (ii) request a response by a specific date to the evaluation from the federal
 406 governmental entity; and

407 (c) request a meeting, conducted in person or by electronic means, with the federal
 408 governmental entity ~~[and a council member]~~, a representative from another state, or a United
 409 States Senator or Representative elected from the state to discuss the evaluation of federal law
 410 and any possible remedy.

411 ~~[(5)]~~ (4) The ~~[Federalism Subcommittee]~~ commission may recommend to the governor
 412 that the governor call a special session of the Legislature to give the Legislature an opportunity
 413 to respond to the ~~[subcommittee's]~~ commission's evaluation of a federal law.

414 ~~[(6)]~~ (5) ~~[The Federalism Subcommittee chair]~~ A commission cochair may coordinate
 415 the evaluation of and response to federal law with another state as provided in Section
 416 ~~[63C-4-108]~~ 63C-4a-305.

417 ~~[(7)]~~ (6) ~~[The Federalism Subcommittee]~~ On May 20 and October 20 of each year, the
 418 commission shall submit a report by electronic mail ~~[that summarizes action taken in~~
 419 ~~accordance with this section]~~ to the Legislative Management Committee and the Government
 420 Operations Interim Committee ~~[on May 20 and October 20 of each year:]~~ that summarizes:

421 (a) action taken by the commission in accordance with this section; and

422 (b) action taken by, or communication received from, any of the following in response
423 to a request or inquiry made, or other action taken, by the commission:

424 (i) a United States senator or representative elected from the state;

425 (ii) a representative of another state; or

426 (iii) a federal entity, official, or employee.

427 (7) The commission shall keep a current list on the Legislature's website of:

428 (a) a federal law that the commission evaluates under Subsection (1);

429 (b) an action taken by a cochair of the commission under Subsection (3);

430 (c) any coordination undertaken with another state under Section 63C-4a-305; and

431 (d) any response received from a federal government entity that was requested under

432 Subsection (3).

433 Section 11. Section **63C-4a-304**, which is renumbered from Section 63C-4-107 is
434 renumbered and amended to read:

435 ~~[63C-4-107].~~ **63C-4a-304. Standard for evaluation of federal law.**

436 (1) The ~~[Federalism Subcommittee]~~ commission shall evaluate whether a federal law
437 ~~[submitted under Subsection 63C-4-106(2)]~~ evaluated under Section 63C-4a-303 is authorized
438 by:

439 (a) United States Constitution, Article I, Section 2, to provide for the decennial census;

440 (b) United States Constitution, Article I, Section 4, to override state laws regulating the
441 times, places, and manner of congressional elections, other than the place of senatorial
442 elections;

443 (c) United States Constitution, Article I, Section 7, to veto bills, orders, and resolutions
444 by Congress;

445 (d) United States Constitution, Article I, Section 8, to:

446 (i) lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for
447 the common defense and general welfare of the United States, but all duties, imposts, and
448 excises shall be uniform throughout the United States;

449 (ii) borrow money on the credit of the United States;

- 450 (iii) regulate commerce with foreign nations, among the several states, and with the
451 Indian tribes;
- 452 (iv) establish a uniform rule of naturalization and uniform laws on the subject of
453 bankruptcies throughout the United States;
- 454 (v) coin money, regulate the value of coin money and of foreign coin, and fix the
455 standard of weights and measures;
- 456 (vi) provide for the punishment of counterfeiting the securities and current coin of the
457 United States;
- 458 (vii) establish post offices and post roads;
- 459 (viii) promote the progress of science and useful arts, by securing for limited times to
460 authors and inventors the exclusive right to their respective writings and discoveries;
- 461 (ix) constitute tribunals inferior to the supreme court;
- 462 (x) define and punish piracies and felonies committed on the high seas and offences
463 against the law of nations;
- 464 (xi) declare war, grant letters of marque and reprisal, and make rules concerning
465 captures on land and water;
- 466 (xii) raise and support armies, but no appropriation of money to that use shall be for a
467 longer term than two years;
- 468 (xiii) provide and maintain a navy;
- 469 (xiv) make rules for the government and regulation of the land and naval forces;
- 470 (xv) provide for calling forth the militia to execute the laws of the union, suppress
471 insurrections, and repel invasions;
- 472 (xvi) provide for organizing, arming, and disciplining the militia, and for governing the
473 part of the militia that may be employed in the service of the United States, reserving to the
474 states respectively, the appointment of the officers and the authority of training the militia
475 according to the discipline prescribed by Congress;
- 476 (xvii) exercise exclusive legislation in all cases whatsoever, over such district, which
477 may not exceed 10 miles square, as may, by cession of particular states and the acceptance of

478 Congress, become the seat of the government of the United States, and to exercise like
479 authority over all places purchased by the consent of the legislature of the state in which the
480 place shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful
481 buildings; or

482 (xviii) make all laws which shall be necessary and proper for carrying into execution
483 the powers listed in this section, and all other powers vested by the United States Constitution
484 in the government of the United States, or in any department or officer of the United States;

485 (e) United States Constitution, Article I, Section 9, to authorize a federal officer to
486 receive benefits from a foreign nation;

487 (f) United States Constitution, Article I, Section 10, to fix the pay of members of
488 Congress and of federal officers;

489 (g) United States Constitution, Article II, Section 1, to:

490 (i) set the time for choosing electors; or

491 (ii) establish who succeeded to the presidency after the vice president;

492 (h) United States Constitution, Article II, Section 2, to:

493 (i) serve as Commander-in-Chief of the armed forces;

494 (ii) require the written opinions of executive officers;

495 (iii) grant reprieves and pardons;

496 (iv) make vacancy appointments;

497 (v) make treaties, subject to the advice and consent of the United States Senate;

498 (vi) appoint foreign affairs officers subject to the advice and consent of the United
499 States Senate;

500 (vii) appoint domestic affairs officers subject either to the advice and consent of the
501 United States Senate or pursuant to law;

502 (viii) appoint judges subject to the advice and consent of the United States Senate; or

503 (ix) authorize the president to fill designated inferior offices without senatorial
504 consent;

505 (i) United States Constitution, Article II, Section 3, to:

- 506 (i) receive representatives of foreign powers;
- 507 (ii) execute the laws;
- 508 (iii) commission United States officers;
- 509 (iv) give Congress information;
- 510 (v) make recommendations to Congress;
- 511 (vi) convene Congress on extraordinary occasions; or
- 512 (vii) adjourn Congress if it cannot agree on a time;
- 513 (j) United States Constitution, Article III, Section 1, to:
- 514 (i) create exceptions to the supreme court's appellate jurisdiction;
- 515 (ii) fix the jurisdiction of federal courts inferior to the supreme court; or
- 516 (iii) declare the punishment for treason;
- 517 (k) United States Constitution, Article IV, Section 1, to establish the rules by which the
- 518 records and judgments of states are proved in other states;
- 519 (l) United States Constitution, Article IV, Section 3, to:
- 520 (i) manage federal property;
- 521 (ii) dispose of federal property;
- 522 (iii) govern the federal territories; or
- 523 (iv) consent to admission of new states or the combination of existing states;
- 524 (m) United States Constitution, Article IV, Section 4, to defend states from invasion,
- 525 insurrection, and non-republican forms of government;
- 526 (n) United States Constitution, Article V, Section 1, to propose constitutional
- 527 amendments;
- 528 (o) United States Constitution, Article VI, Section 1, to prescribe the oath for federal
- 529 officers;
- 530 (p) United States Constitution, Amendment XIII, to abolish slavery;
- 531 (q) United States Constitution, Amendment XIV, to guard people from certain state
- 532 abuses;
- 533 (r) United States Constitution, Amendment XVI, to impose taxes on income from any

534 source without having to apportion the total dollar amount of tax collected from each state
535 according to each state's population in relation to the total national population;

536 (s) United States Constitution, Amendment XX, to revise the manner of presidential
537 succession;

538 (t) United States Constitution, Amendment XV, XIX, XXIII, or XXIV, to extend and
539 protect the right to vote; or

540 (u) United States Constitution, Amendment XVII, to grant a pay raise to a sitting
541 Congress.

542 (2) The [~~Federalism Subcommittee~~] commission shall evaluate whether a federal law
543 [~~submitted under Subsection 63C-4-106(2)~~] evaluated under Section 63C-4a-303 violates the
544 principle of federalism by:

545 (a) affecting the distribution of power and responsibility among the state and national
546 government;

547 (b) limiting the policymaking discretion of the state;

548 (c) impacting a power or a right reserved to the state or its citizens by the United States
549 Constitution, Amendment IX or X; [~~and~~] or

550 (d) impacting the sovereignty rights and interest of the state or a political subdivision to
551 provide for the health, safety, and welfare and promote the prosperity of the state's or political
552 subdivision's inhabitants.

553 (3) In the evaluation of a federal law, the [~~Federalism Subcommittee~~] commission:

554 (a) shall rely on:

555 (i) the text of the United States Constitution, as amended;

556 (ii) the meaning of the text of the United States Constitution, as amended, at the time
557 of its drafting and ratification; and

558 (iii) a primary source document that is:

559 (A) directly relevant to the drafting, adoption, ratification, or initial implementation of
560 the United States Constitution, as amended; or

561 (B) created by a person directly involved in the drafting, adoption, ratification, or

562 initial implementation of the United States Constitution, as amended;

563 (b) may rely on other relevant sources, including federal court decisions; and

564 (c) is not bound by a holding by a federal court.

565 Section 12. Section **63C-4a-305**, which is renumbered from Section 63C-4-108 is
566 renumbered and amended to read:

567 ~~[63C-4-108].~~ **63C-4a-305. Communication with other states and**
568 **governmental entities.**

569 ~~[(1) The Federalism Subcommittee chair]~~ A commission cochair may correspond with
570 the presiding officer of the legislative branch of another state or an entity of another state that
571 has powers and duties that are similar to the ~~[Federalism Subcommittee]~~ commission to discuss
572 and coordinate the evaluation of and response to federal law as provided in Section
573 ~~[63C-4-106]~~ 63C-4a-303.

574 ~~[(2) The Federalism Subcommittee shall send a copy of this bill and the pages of the~~
575 ~~House and Senate Journal that pertain to Laws of Utah 2011, Chapter 252 to:]~~

576 ~~[(a) the governor of each state;]~~

577 ~~[(b) the presiding officer, the majority leader, and the minority leader of each house, if~~
578 ~~applicable, of each state legislature;]~~

579 ~~[(c) each United States Senator or Representative elected from this state;]~~

580 ~~[(d) the Chief Justice of the United States Supreme Court;]~~

581 ~~[(e) the President of the United States; and]~~

582 ~~[(f) the presiding officer, the majority leader, and the minority leader of each house of~~
583 ~~the United States Congress.]~~

584 Section 13. Section **63C-4a-401** is enacted to read:

585 **Part 4. Miscellaneous Provisions**

586 **63C-4a-401. Title.**

587 This part is known as "Miscellaneous Provisions."

588 Section 14. Section **63C-4a-402**, which is renumbered from Section 63C-4-103 is
589 renumbered and amended to read: