

CONSTITUTIONAL DEFENSE COUNCIL AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Dennis H. Iverson

AN ACT RELATING TO STATE BOARDS AND COMMISSIONS; MODIFYING MEMBERSHIP ON THE CONSTITUTIONAL DEFENSE COUNCIL; CLARIFYING MEETING REQUIREMENTS AND THE POWERS OF THE CHAIR AND THE MEMBERS; EXPANDING USES OF AVAILABLE FUNDS; PROVIDING FOR A PLAN FOR R.S. 2477 RIGHTS; MAKING TECHNICAL CORRECTIONS; AND PROVIDING A COORDINATION CLAUSE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

63C-4-101, as last amended by Chapter 371, Laws of Utah 1999

63C-4-102, as last amended by Chapter 371, Laws of Utah 1999

63C-4-103, as enacted by Chapter 371, Laws of Utah 1999

ENACTS:

63C-4-104, Utah Code Annotated 1953

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

Section 1. Section **63C-4-101** is amended to read:

63C-4-101. Creation of Constitutional Defense Council.

- (1) There is created the Constitutional Defense Council.
- (2) The defense council shall consist of the following [~~nine~~] 11 members:
 - (a) the governor who shall serve as chair of the council;
 - (b) the president of the Senate or his designee;
 - (c) the speaker of the House or his designee;
 - (d) the minority leader of the Senate or his designee;
 - (e) the minority leader of the House or his designee;
 - (f) two citizen members appointed by the governor; and
 - (g) [~~two~~] four elected county commissioners, county council members, or county

executives from different counties who are selected by the Utah Association of Counties.

(3) (a) Except as required by Subsection (3)(b), the two citizen members shall serve a four-year term beginning July 1, 1994.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that one citizen member of the council is appointed every two years.

(c) A citizen member is eligible for reappointment.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term in the same manner as the original appointment.

(5) (a) The defense council shall meet at [~~times at the call of the chair~~] least quarterly or more frequently as needed.

(b) The governor or any [five] six members of the council may call a meeting of the council.

(c) Before calling a meeting, the governor or council members shall solicit items for the agenda from other members of the council.

~~[(b)]~~ (d) A majority of the membership on the defense council is required for a quorum to conduct council business. A majority vote of the quorum is required for any action taken by the defense council.

(6) The Office of the Attorney General shall provide staff to the defense council.

(7) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the council at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and

expenses for their service.

(c) (i) Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Local government members may decline to receive per diem and expenses for their service.

(d) Legislators on the committee shall receive compensation and expenses as provided by law and legislative rule.

(8) (a) The council shall be funded from the Constitutional Defense Restricted Account created in Section 63C-4-103.

(b) Monies appropriated for or received by the council may be expended by the governor in consultation with the council.

Section 2. Section **63C-4-102** is amended to read:

63C-4-102. Duties.

(1) The Constitutional Defense Council is an advisory council to the governor and [to] the Legislature on the following types of issues:

(a) the constitutionality of unfunded federal mandates;

(b) when making recommendations to challenge the federal mandates and regulations described in Subsections (1)(e)(i) through (v), the rationale for and effectiveness of those federal mandates or regulations;

(c) legal and policy issues surrounding state and local government rights under R.S. 2477; [and]

(d) legal issues relating to the rights of the School and Institutional Trust Lands Administration and its beneficiaries; and

(e) the advisability, feasibility, estimated cost, and likelihood of success of challenging:

(i) federal court rulings that hinder the management of the state's prison system and place undue financial hardship on the state's taxpayers;

(ii) federal laws or regulations that reduce or negate water rights or the rights of owners of private property, or the rights and interest of state and local governments, including sovereignty interests and the power to provide for the health, safety, and welfare, and promote the prosperity of their inhabitants;

(iii) conflicting federal regulations or policies in land management on federal land;

(iv) federal intervention that would damage the state's mining, timber, and ranching industries;

(v) the authority of the Environmental Protection Agency and Congress to mandate local air quality standards and penalties; and

(vi) other [~~activities~~] issues that are [~~consistent with the purpose of the council~~] relevant to Subsections (1)(a) through (e).

(2) The council chair may require the attorney general or a designee to provide testimony on potential legal actions that would enhance the state's sovereignty or authority on issues affecting Utah and the well-being of its citizens.

(3) The council chair may direct the attorney general to initiate and prosecute any action that the council determines will further its purposes.

(4) (a) (i) Subject to the provisions of this section, the council may select and employ attorneys to implement the purposes and duties of the council.

(ii) The council chair may, in consultation with the council, direct any council attorney in any manner considered appropriate by the attorney general to best serve the purposes of the council.

(b) (i) The council may meet with the attorney general annually and compile a list of attorneys, including attorneys in private practice, considered to be qualified to represent the council under this section.

(ii) The council may employ attorneys from that list.

(c) The attorney general shall negotiate a contract for services with any attorney selected and approved for employment under this section.

(5) The council chair shall, only with the concurrence of the council, review and approve all claims for payments for legal services that are submitted to the council.

(6) Within five business days' notice, the council chair may order the attorney general or, only

with the concurrence of the council, order an attorney employed by the council to cease work to be charged to the fund.

(7) The council shall submit a report on December 1 of each year to the speaker of the House of Representatives and the president of the Senate that summarizes the council's activities.

Section 3. Section **63C-4-103** is amended to read:

63C-4-103. Creation of Constitutional Defense Restricted Account -- Sources of funds -- Uses of funds.

(1) There is created a restricted account within the General Fund known as the Constitutional Defense Restricted Account.

(2) The account consists of monies from the following revenue sources:

(a) monies deposited to the ~~[fund from the Mineral Bonus Account]~~ account as required by ~~[Subsection 59-21-2(2)]~~ Section 53C-3-202;

(b) voluntary contributions;

(c) monies received by the Constitutional Defense Council from other state agencies; and

(d) appropriations made by the Legislature.

(3) Funds in the account shall be nonlapsing.

~~[(4) (a) The account shall earn interest.]~~

~~[(b) All interest earned on account monies shall be deposited into the General Fund.]~~

~~[(5) (4) The account balance may not exceed [\$1 million] \$2,000,000.~~

~~[(6) (5) The Legislature may annually appropriate monies from the Constitutional Defense Restricted Account to one or more of the following:~~

~~(a) the Constitutional Defense Council to carry out its duties in Section 63C-4-102[-];~~

~~(b) the Office of the Governor for the purpose of asserting, defending, or litigating state and local government rights under R.S. 2477, in accordance with a plan developed and approved as provided in Section 63C-4-104; or~~

~~(c) a county or association of counties to assist counties, consistent with the purposes of the council, in pursuing issues affecting the counties.~~

Section 4. Section **63C-4-104** is enacted to read:

63C-4-104. Plan for R.S. 2477 rights.

(1) As used in this section, "plan" means a guiding document that:

(a) is developed jointly by the Utah Association of Counties and the state;

(b) is approved by the Constitutional Defense Council; and

(c) presents the broad framework of a proposed working relationship between the state and participating counties collectively for the purpose of asserting, defending, or litigating state and local government rights under R.S. 2477.

(2) The Constitutional Defense Council may approve a plan if the plan:

(a) provides for a good faith, cooperative effort between the state and each participating county;

(b) allows a county to formally agree to participate in the plan by adopting a resolution;

(c) provides that the state and a participating county are equal partners in determining litigation strategy and the expenditure of resources with respect to that county's rights under R.S. 2477; and

(d) provides a process for resolving any disagreement between the state and a participating county about litigation strategy or resource expenditure that includes the following requirements:

(i) the governor or the governor's designee and a representative of the Utah Association of Counties shall first attempt to resolve the disagreement;

(ii) if the county and the state continue to disagree, the county, the governor, and the Utah Association of Counties shall present their recommendations to the Constitutional Defense Council for a final decision about the strategy or expenditure in question; and

(iii) the county may pursue a strategy or make an expenditure contrary to the final decision of the Constitutional Defense Council only if the county does not claim resources provided to fund the plan.

Section 5. Coordination clause.

(1) If this bill and H.B. 207, Use of Constitutional Defense Council Restricted Account, both pass, it is the intent of the Legislature that the amendments in Section 63C-4-103 in this bill supersede the amendments to Section 63C-4-103 in H.B. 207.

(2) If this bill and S.B. 55, Mineral Lease Act Amendments, both pass, it is the intent of the Legislature that the amendments in Section 63C-4-103 in this bill supersede the amendments to Section 63C-4-103 in S.B. 55.