

**Senator Leonard M. Blackham** proposes to substitute the following bill:

**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;

- 26 (d) the minority leader of the Senate or his designee;
- 27 (e) the minority leader of the House or his designee;
- 28 (f) two citizen members appointed by the governor; and
- 29 (g) ~~[two]~~ four elected county commissioners, county council members, or county
- 30 executives from different counties who are selected by the Utah Association of Counties.

31 (3) (a) Except as required by Subsection (3)(b), the two citizen members shall serve a

32 four-year term beginning July 1, 1994.

33 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time

34 of appointment or reappointment, adjust the length of terms to ensure that the terms of council

35 members are staggered so that one citizen member of the council is appointed every two years.

36 (c) A citizen member is eligible for reappointment.

37 (4) When a vacancy occurs in the membership for any reason, the replacement shall be

38 appointed for the unexpired term in the same manner as the original appointment.

39 (5) (a) The defense council shall meet at ~~[times at the call of the chair]~~ least quarterly or

40 more frequently as needed.

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

42 council.

43 (c) Before calling a meeting, the governor or council members shall solicit items for the

44 agenda from other members of the council.

45 ~~[(b)]~~ (d) A majority of the membership on the defense council is required for a quorum to

46 conduct council business. A majority vote of the quorum is required for any action taken by the

47 defense council.

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

49 (7) (a) (i) Members who are not government employees shall receive no compensation or

50 benefits for their services, but may receive per diem and expenses incurred in the performance of

51 the member's official duties at the rates established by the Division of Finance under Sections

52 63A-3-106 and 63A-3-107.

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

54 (b) (i) State government officer and employee members who do not receive salary, per

55 diem, or expenses from their agency for their service may receive per diem and expenses incurred

56 in the performance of their official duties from the council at the rates established by the Division

57 of Finance under Sections 63A-3-106 and 63A-3-107.

58 (ii) State government officer and employee members may decline to receive per diem and  
59 expenses for their service.

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

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

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

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

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

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

73 **63C-4-102. Duties.**

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

76 (a) the constitutionality of unfunded federal mandates;

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

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

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

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

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

87 (ii) federal laws or regulations that reduce or negate water rights or the rights of owners

88 of private property, or the rights and interest of state and local governments, including sovereignty  
89 interests and the power to provide for the health, safety, and welfare, and promote the prosperity  
90 of their inhabitants;

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

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

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

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

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

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

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

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

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

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

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

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

116 (6) Within five business days' notice, the council chair may order the attorney general or,  
117 only with the concurrence of the council, order an attorney employed by the council to cease work  
118 to be charged to the fund.

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

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

122 **63C-4-103. Creation of Constitutional Defense Restricted Account -- Sources of**  
123 **funds -- Uses of funds.**

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

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

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

129 (b) voluntary contributions;

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

131 (d) appropriations made by the Legislature.

132 (3) Funds in the account shall be nonlapsing.

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

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

135 [~~(5)~~] (4) The account balance may not exceed [~~\$1 million~~] \$2,000,000.

136 [~~(6)~~] (5) The Legislature may annually appropriate monies from the Constitutional Defense  
137 Restricted Account to one or more of the following:

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

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

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

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

145 **63C-4-104. Plan for R.S. 2477 rights.**

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

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

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

149 (c) presents the broad framework of a proposed working relationship between the state and

150 participating counties collectively for the purpose of asserting, defending, or litigating state and  
151 local government rights under R.S. 2477.

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

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

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

156 (c) provides that the state and a participating county are equal partners in determining  
157 litigation strategy and the expenditure of resources with respect to that county's rights under R.S.  
158 2477; and

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

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

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

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

169 **Section 5. Coordination clause.**

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

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