

## HB0076S01 compared with HB0076

~~deleted text~~ shows text that was in HB0076 but was deleted in HB0076S01.

inserted text shows text that was not in HB0076 but was inserted into HB0076S01.

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**Representative Ken Ivory proposes the following substitute bill:**

### FEDERAL LAW EVALUATION AND RESPONSE

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ken Ivory**

Senate Sponsor: Wayne L. Niederhauser

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#### LONG TITLE

##### General Description:

This bill authorizes the Constitutional Defense Council to evaluate and respond to federal law.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Constitutional Defense Council to:
  - evaluate and respond to federal law;
  - report to legislators and an interim committee; and
  - mail a copy of legislation and the journal to government officers;
- ▶ authorizes the Constitutional Defense Council to:
  - discuss challenging certain federal court rulings;

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- correspond with other states about federal law and coordinate responses to federal law; and
- recommend that the governor call a special session of the Legislature to respond to federal law;
- ▶ establishes standards by which the Constitutional Defense Council shall evaluate federal law; ~~{and}~~
- ▶ establishes a procedure by which the Constitutional Defense Council may respond to a federal law ~~{~~

~~{~~

- ▶ creates a Federalism Subcommittee within the Constitutional Defense Council;
- ▶ requires the Public Lands Policy Coordinating Office to provide staff assistance to the Constitutional Defense Council and the Federalism Subcommittee;
- ▶ repeals the distribution from the Land Exchange Distribution Account to the Permanent Community Impact Board;
- ▶ increases the distribution from the Land Exchange Distribution Account to the Constitutional Defense Restricted Account; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

~~{None}~~ This bill appropriates:

- ▶ to the Constitutional Defense Restricted Account as an ongoing appropriation:
  - from the Land Exchange Distribution Account, \$1,124,000;
- ▶ to the Constitutional Defense Council as an ongoing appropriation:
  - from the Constitutional Defense Restricted Account, \$144,000, subject to intent language stating that the appropriation is to be used to evaluate and respond to federal law;
- ▶ to the Civil Division of the Office of the Attorney General as an ongoing appropriation:
  - from the Constitutional Defense Restricted Account, \$486,000, subject to intent language stating that the appropriation is to be used to hire three attorneys and one paralegal or legal secretary to advise and work for the Public Lands Policy Coordinating Office and the Constitutional Defense Council;

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- ▶ to the Public Lands Policy Coordinating Office as an ongoing appropriation:
  - from the Constitutional Defense Restricted Account, \$494,000, subject to intent language stating that the appropriation is to be used to hire two persons to assist in preparing cases for trial, field staff, litigation expenses, and factual and legal studies;
- ▶ to the Permanent Community Impact Fund as an ongoing appropriation:
  - from the Mineral Bonus Account, \$1,124,000; and
- ▶ to the Permanent Community Impact Board as an ongoing appropriation:
  - from the Permanent Community Impact Fund, \$1,124,000, subject to intent language stating that the appropriation is to be used for grants to political subdivisions to mitigate the impacts resulting from the development of minerals on federal land.

### Other Special Clauses:

This bill provides revisor instructions.

### Utah Code Sections Affected:

#### AMENDS:

9-4-303, as last amended by Laws of Utah 2007, Chapter 303

9-4-307, as last amended by Laws of Utah 2008, Chapter 382

53C-3-203, as last amended by Laws of Utah 2010, Chapters 79 and 262

63C-4-101, as last amended by Laws of Utah 2010, Chapter 286

63C-4-102, as last amended by Laws of Utah 2010, Chapter 262

63C-4-103, as last amended by Laws of Utah 2010, Chapter 262

63J-4-603, as last amended by Laws of Utah 2009, Chapters 121 and 262

#### ENACTS:

63C-4-106, Utah Code Annotated 1953

63C-4-107, Utah Code Annotated 1953

63C-4-108, Utah Code Annotated 1953

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

Section 1. Section 9-4-303 is amended to read:

**9-4-303. Impact fund -- Deposits and contents -- Use of fund money.**

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(1) There is created an enterprise fund entitled the "Permanent Community Impact Fund."

(2) The fund consists of:

(a) all amounts appropriated to the impact fund under Section 59-21-2;

(b) bonus payments deposited to the impact fund pursuant to Subsection 59-21-1(2);

~~[(c) all amounts appropriated to the impact fund under Section 53C-3-203;]~~

~~[(d)]~~ [(c)] all amounts received for the repayment of loans made by the impact board under this chapter; and

~~[(e)]~~ [(d)] all other money appropriated or otherwise made available to the impact fund by the Legislature.

(3) The state treasurer shall:

(a) invest the money in the impact fund by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act; and

(b) deposit all interest or other earnings derived from those investments into the impact fund.

(4) The amounts in the impact fund available for loans, grants, administrative costs, or other purposes of this part shall be limited to that which the Legislature appropriates for these purposes.

(5) Federal mineral lease revenue received by the state under the Leasing Act that is deposited into the impact fund shall be used:

(a) in a manner consistent with:

(i) the Leasing Act; and

(ii) this part; and

(b) for loans, grants, or both to state agencies or subdivisions that are socially or economically impacted by the leasing of minerals under the Leasing Act.

~~[(6) The money described in Subsection (2)(c) shall be used for grants to political subdivisions of the state to mitigate the impacts resulting from the development or use of school and institutional trust lands.]~~

Section 2. Section 9-4-307 is amended to read:

**9-4-307. Impact fund administered by impact board -- Eligibility for assistance -- Review by board -- Administration costs -- Annual report.**

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(1) (a) The impact board shall:

(i) administer the impact fund in a manner that will keep a portion of the impact fund revolving;

(ii) determine provisions for repayment of loans; and

(iii) establish criteria for determining eligibility for assistance under this part.

(b) ~~(i)~~ Criteria for awarding loans or grants made from funds described in Subsection 9-4-303(5) shall be consistent with Subsection 9-4-303(5).

~~(ii) Criteria for awarding grants made from funds described in Subsection 9-4-303(2)(c) shall be consistent with Subsection 9-4-303(6).~~

(c) In order to receive assistance under this part, subdivisions and interlocal agencies shall submit formal applications containing the information that the impact board requires.

(2) In determining eligibility for loans and grants under this part, the impact board shall consider the following:

(a) the subdivision's or interlocal agency's current mineral lease production;

(b) the feasibility of the actual development of a resource that may impact the subdivision or interlocal agency directly or indirectly;

(c) current taxes being paid by the subdivision's or interlocal agency's residents;

(d) the borrowing capacity of the subdivision or interlocal agency, its ability and willingness to sell bonds or other securities in the open market, and its current and authorized indebtedness;

(e) all possible additional sources of state and local revenue, including utility user charges;

(f) the availability of federal assistance funds;

(g) probable growth of population due to actual or prospective natural resource development in an area;

(h) existing public facilities and services;

(i) the extent of the expected direct or indirect impact upon public facilities and services of the actual or prospective natural resource development in an area; and

(j) the extent of industry participation in an impact alleviation plan, either as specified in Title 63M, Chapter 5, Resource Development, or otherwise.

(3) The impact board may not fund any education project that could otherwise have

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reasonably been funded by a school district through a program of annual budgeting, capital budgeting, bonded indebtedness, or special assessments.

(4) The impact board may restructure all or part of the agency's or subdivision's liability to repay loans for extenuating circumstances.

(5) The impact board shall:

(a) review the proposed uses of the impact fund for loans or grants before approving them and may condition its approval on whatever assurances that the impact board considers to be necessary to ensure that the proceeds of the loan or grant will be used in accordance with the Leasing Act and this part; and

(b) ensure that each loan specifies the terms for repayment and is evidenced by general obligation, special assessment, or revenue bonds, notes, or other obligations of the appropriate subdivision or interlocal agency issued to the impact board under whatever authority for the issuance of those bonds, notes, or obligations exists at the time of the loan.

(6) The impact board shall allocate from the impact fund to the department those funds that are appropriated by the Legislature for the administration of the impact fund, but this amount may not exceed 2% of the annual receipts to the impact fund.

(7) The department shall make an annual report to the Legislature concerning the number and type of loans and grants made as well as a list of subdivisions and interlocal agencies that received this assistance.

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

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

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

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

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

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

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

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

(a) \$1,000,000 to the Constitutional Defense Restricted Account, created in 63C-4-103, to be used in accordance with Subsection 63C-4-103~~(6)~~(5) for:

- (i) fiscal year 2010-11;
- (ii) fiscal year 2011-12; and
- (iii) fiscal year 2012-13; and

(b) from the deposits to the account remaining after the appropriation in Subsection (4)(a), the following amounts:

(i) 55% of the deposits to counties in amounts proportionate to the amounts of mineral revenue generated from the acquired land, exchanged land, acquired mineral interests, or exchanged mineral interests located in each county, to be used to mitigate the impacts caused by mineral development;

(ii) 25% of the deposits to counties in amounts proportionate to the total surface and mineral acreage within each county that was conveyed to the United States under the agreement or an exchange, to be used to mitigate the loss of mineral development opportunities resulting from the agreement or exchange;

(iii) 1.68% of the deposits to the State Board of Education, to be used for education research and experimentation in the use of staff and facilities designed to improve the quality of education in Utah;

(iv) 1.66% of the deposits to the Geological Survey, to be used for natural resources development in the state;

(v) 1.66% of the deposits to the Water Research Laboratory at Utah State University, to be used for water development in the state; ~~and~~

(vi) ~~7.5%~~14% of the deposits to the Constitutional Defense Restricted Account created in Section 63C-4-103~~;~~ ~~and~~

~~(5) Beginning with fiscal year 2009-10, the Legislature shall annually appropriate~~

~~(vii) 1% of the deposits remaining in the account after the appropriation is made in accordance with Subsection (4)(a)~~ (vii) 1% of the deposits ~~remaining in the account after the appropriation is made in accordance with Subsection (4)(a)~~ to the Geological Survey, to be used for test wells, other hydrologic studies, and air quality monitoring in the West Desert.

~~(6) Beginning with fiscal year 2009-10, the Legislature shall annually appropriate 6.5% of the deposits remaining in the account after the appropriation is made in Subsection (4)(a) to~~

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~~the Permanent Community Impact Fund created in Section 9-4-303, to be used for grants to political subdivisions of the state to mitigate the impacts resulting from the development or use of school and institutional trust lands.]~~

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

#### **63C-4-101. Creation of Constitutional Defense Council -- Membership --**

#### **Vacancies -- Reports -- Per diem, travel expenses, and funding.**

- (1) There is created the Constitutional Defense Council.
- (2) (a) The ~~[defense]~~ council shall consist of the following members:
  - (i) the governor or the lieutenant governor, who shall serve as chair of the council;
  - (ii) the president of the Senate or the president of the Senate's designee who shall serve as vice chair of the council;
  - (iii) the speaker of the House or the speaker of the House's designee who shall serve as vice chair of the council;
  - (iv) the minority leader of the Senate or the minority leader of the Senate's designee;
  - (v) the minority leader of the House or the minority leader of the House's designee;
  - (vi) the attorney general or the attorney general's designee, who shall be one of the attorney general's appointees, not a current career service employee;
  - (vii) the director of the School and Institutional Trust Lands Administration;
  - (viii) four elected county commissioners, county council members, or county executives from different counties who are selected by the Utah Association of Counties, at least one of whom shall be from a county of the first or second class;
  - (ix) the executive director of the Department of Natural Resources, who may not vote;
  - (x) the commissioner of the Department of Agriculture and Food, who may not vote;
  - (xi) the director of the Governor's Office of Economic Development, who may not vote; and
  - (xii) two elected county commissioners, county council members, or county executives from different counties appointed by the Utah Association of Counties, who may not vote.
- (b) The council vice chairs shall conduct a council meeting in the absence of the chair.
- (c) If both the governor and the lieutenant governor are absent from a meeting of the council, the governor may designate a person to attend the meeting solely for the purpose of casting a vote on any matter on the governor's behalf.

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(3) 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.

(4) (a) (i) Except as provided in Subsection (4)(a)(ii), the [defense] council shall meet at least monthly or more frequently as needed.

(ii) The [defense] council need not meet monthly if the chair, after polling the members, determines that a majority of the members do not wish to meet.

(b) The governor or any 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.

(d) (i) The ~~[Constitutional Defense Council]~~ council shall require that any entity that receives money from the Constitutional Defense Restricted Account provide financial reports and litigation reports to the ~~{Council}~~ council.

(ii) Nothing in this Subsection (4)(d) prohibits the council from closing a meeting under Title 52, Chapter 4, Open and Public Meetings Act, or prohibits the council from complying with Title 63G, Chapter 2, Government Records Access and Management Act.

(e) A majority of the voting 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.

(5) (a) The Office of the Attorney General shall advise ~~{ the defense council. }~~;

(i) the [defense] council[-]; and

(ii) the federalism subcommittee.

(b) The Public Lands Policy Coordinating Office shall provide staff assistance for meetings of the council and federalism subcommittee.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

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

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

(8) (a) There is created a federalism subcommittee of the council.

(b) (i) The subcommittee shall consist of members listed in Subsections (2)(a)(i) through (vi).

(ii) (A) The governor or the lieutenant governor shall serve as chair of the subcommittee.

(B) The council vice chair shall conduct a council meeting in the absence of the chair.

(c) The subcommittee shall assist the council in the evaluation of federal law as required by Subsection 63C-4-106(2).

Section ~~{1}~~5. Section **63C-4-102** is amended to read:

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

(1) The Constitutional Defense Council is a council to assist the governor and 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;

(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:

(A) hinder the management of the state's prison system and place undue financial hardship on the state's taxpayers;

(B) impact a power reserved to the state by the United States Constitution, Amendment IX or X; or

(C) expand or grant a power to the United States government beyond the limited, enumerated powers granted by the United States Constitution;

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

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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 issues that are relevant to this Subsection (1).

(2) The council shall:

(a) provide advice to the governor, state planning coordinator, and the public lands policy coordinator concerning coordination of:

(i) state and local government rights under R.S. 2477; and

(ii) other public lands issues;

(b) approve a plan for R.S. 2477 rights developed in accordance with Section 63C-4-104; ~~and~~

(c) review, at least quarterly:

(i) financial statements concerning implementation of the plan for R.S. 2477 rights;

and

(ii) financial and other reports from the Public Lands Policy Coordinating Office concerning its activities~~[-]; and~~

(d) evaluate and respond to federal law as provided in Section 63C-4-106.

(3) 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.

(4) The council chair may direct the attorney general to initiate and prosecute any action that the council determines will further its purposes, including an action described in Section 67-5-29.

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

(b) The council chair may, in consultation with the council, direct any council attorney

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in any manner considered appropriate by the attorney general to best serve the purposes of the council.

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

(6) The council chair shall, only with the concurrence of the council, review and approve all claims for payments for:

- (a) legal services that are submitted to the council; and
- (b) an action filed in accordance with Section 67-5-29.

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

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

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

(b) (i) Council members or local government officials receiving the documents may make recommendations to the governor or the governor's designee concerning changes to the documents before they are submitted to the federal land management agency.

(ii) Council members or local government officials shall submit recommendations to the governor or the governor's designee no later than 10 calendar days after receiving the documents under Subsection (8)(a).

(c) Documents transmitted or received under this Subsection (8) are drafts and are protected records pursuant to Subsection 63G-2-305(22).

(9) ~~(a)~~ The council shall submit a report ~~{}~~ on December 1 of each year ~~{}~~ by electronic mail that summarizes the council's:

~~(a) activities } [to the speaker of the House of Representatives and the president of the Senate { } that summarizes the council's activities.] {on December 1 of each year; and~~

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~~(b) } by electronic mail that summarizes the council's activities to each legislator.~~

(b) The council shall submit a report by electronic mail that summarizes action taken in accordance with Section 63C-4-106 to:

~~(i) each legislator on January 20 of each year; and~~

~~(ii) } the Government Operations {and Political Subdivision} Interim Committee on May 20, August 20, and October 20 of each year.~~

Section 6. Section 63C-4-103 is amended to read:

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

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

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

(a) money deposited to the account as required by Section 53C-3-203;

(b) voluntary contributions;

(c) money received by the ~~[Constitutional Defense Council]~~ council from other state agencies; and

(d) appropriations made by the Legislature.

(3) Funds in the account shall be nonlapsing.

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

~~[(5)]~~ (4) Subject to Subsection ~~[(6)]~~ (5), the Legislature may annually appropriate money from the Constitutional Defense Restricted Account to one or more of the following:

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

(b) the Public Lands Policy Coordinating Office to carry out its duties in Section 63J-4-603;

(c) the Office of the Governor, to be used only 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;

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

(e) the Office of the Attorney General, to be used only ~~[for]~~:

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(i) for public lands counsel and assistance and litigation to the state or local governments including 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]~~

(ii) for an action filed in accordance with Section 67-5-29~~f~~.

~~(6)~~ ~~[:]~~; or

(iii) to advise the council and federalism subcommittee.

~~[(6)]~~ (5) Money appropriated to the Constitutional Defense Restricted Account in accordance with Subsection 53C-3-203(4)(a), if appropriated by the Legislature, may only be expended by the agency to which it was appropriated to pay:

(a) the costs of an action filed in accordance with Section 67-5-29; and

(b) expenses associated with an action described in Subsection ~~[(6)]~~ (5)(a).

~~[(7)]~~ (6) (a) The ~~[Constitutional Defense Council]~~ council shall require that any entity that receives money from the Constitutional Defense Restricted Account provide financial reports and litigation reports to the ~~{Council}~~ council.

(b) Nothing in this Subsection ~~[(7)]~~ (6) prohibits the council from closing a meeting under Title 52, Chapter 4, Open and Public Meetings Act, or prohibits the council from complying with Title 63G, Chapter 2, Government Records Access and Management Act.

Section ~~{2}~~ 7. Section **63C-4-106** is enacted to read:

### **63C-4-106. Evaluation of federal law and policy -- Response.**

(1) As used in this chapter:

(a) "Council" means the Constitutional Defense Council created in Section 63C-4-101.

(b) "Federal governmental entity" means:

(i) the President of the United States;

(ii) the United States Congress;

(iii) a United States agency; or

(iv) an employee or official appointed by the President of the United States.

(c) "Federal law" means:

(i) an executive order by the President of the United States;

(ii) a statute passed by the United States Congress;

(iii) a regulation adopted by a United States agency; or

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(iv) a policy statement or action by:

(A) a United States agency; or

(B) an employee or official appointed by the President of the United States.

(d) "United States agency" means a department, agency, authority, commission, council, board, office, bureau, or other administrative unit of the executive branch of the United States government.

(2) In accordance with Section 63C-4-107, the council shall evaluate a federal law submitted to the council by:

~~— (a) a state agency;~~

~~— (b) a political subdivision;~~

~~— (c) a legislative interim committee;~~

~~— (d) the Administrative Rules Review Committee;~~

~~— (e) a council member; or~~

~~— (f) a United States Senator or Representative elected from Utah.~~

(3) The council may request information regarding a federal law under evaluation from a United States Senator or Representative elected from the state.

(4) If the council finds that a federal law is not authorized by the United States Constitution or violates the principle of federalism as described in Subsection 63C-4-107(2), the council may:

(a) request from a United States Senator or Representative elected from the state:

(i) information about the federal law; or

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

(b) (i) give written notice of the evaluation required by Subsection (2) to the federal governmental entity responsible for adopting or administering the federal law; and

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

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

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(5) The council may recommend to the governor that the governor call a special session of the Legislature to give the Legislature an opportunity to respond to the council's evaluation of a federal law.

(6) The council may coordinate the evaluation of and response to federal law with another state as provided in Section 63G-4-108.

Section ~~63~~8. Section **63C-4-107** is enacted to read:

### **63C-4-107. Standard for evaluation of federal law.**

(1) The council shall evaluate whether a federal law submitted under Subsection 63C-4-106(2) is authorized by:

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

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

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

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

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

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

(iii) regulate commerce with foreign nations, among the several states, and with the Indian tribes;

(iv) establish a uniform rule of naturalization and uniform laws on the subject of bankruptcies throughout the United States;

(v) coin money, regulate the value of coin money and of foreign coin, and fix the standard of weights and measures;

(vi) provide for the punishment of counterfeiting the securities and current coin of the United States;

(vii) establish post offices and post roads;

(viii) promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

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(ix) constitute tribunals inferior to the supreme court;

(x) define and punish piracies and felonies committed on the high seas and offences against the law of nations;

(xi) declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

(xii) raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

(xiii) provide and maintain a navy;

(xiv) make rules for the government and regulation of the land and naval forces;

(xv) provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions;

(xvi) provide for organizing, arming, and disciplining the militia, and for governing the part of the militia that may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress;

(xvii) exercise exclusive legislation in all cases whatsoever, over such district, which may not exceed 10 miles square, as may, by cession of particular states and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the place shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; or

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

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

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

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

(i) set the time for choosing electors; or

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

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

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

(ii) require the written opinions of executive officers;

(iii) grant reprieves and pardons;

(iv) make vacancy appointments;

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

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

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

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

(xiv) authorize the president to fill designated inferior offices without senatorial consent;

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

(i) receive representatives of foreign powers;

(ii) execute the laws;

(iii) commission United States officers;

(iv) give Congress information;

(v) make recommendations to Congress;

(vi) convene Congress on extraordinary occasions; or

(vii) adjourn Congress if it cannot agree on a time;

(j) United States Constitution, Article III, Section 1, to:

(i) create exceptions to the supreme court's appellate jurisdiction;

(ii) fix the jurisdiction of federal courts inferior to the supreme court; or

(iii) declare the punishment for treason;

(k) United States Constitution, Article IV, Section 1, to establish the rules by which the records and judgments of states are proved in other states;

(l) United States Constitution, Article IV, Section 3, to:

(i) manage federal property;

(ii) dispose of federal property;

(iii) govern the federal territories; or

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(iv) consent to admission of new states or the combination of existing states;

(m) United States Constitution, Article IV, Section 4, to defend states from invasion, insurrection, and non-republican forms of government;

(n) United States Constitution, Article V, Section 1, to propose constitutional amendments;

(o) United States Constitution, Article VI, Section 1, to prescribe the oath for federal officers;

(p) United States Constitution, Amendment XIII, to abolish slavery;

(q) United States Constitution, Amendment XIV, to guard people from certain state abuses;

(r) United States Constitution, Amendment XVI, to impose taxes on income from any source without having to apportion the total dollar amount of tax collected from each state according to each state's population in relation to the total national population;

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

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

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

(2) The council shall evaluate whether a federal law submitted under Subsection 63C-4-106(2) violates the principle of federalism by:

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

(b) limiting the policymaking discretion of the state;

(c) impacting a power reserved to the state by the United States Constitution, Amendment IX or X; and

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

(3) In the evaluation of a federal law, the council:

(a) shall rely on:

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- (i) the text of the United States Constitution, **as amended**;
- (ii) the meaning of the text of the United States Constitution, **as amended**, at the time of its drafting and ratification; and
- (iii) a primary source document ~~{written during or between the years of 1787 and 1801}~~ that is:
  - (A) directly relevant to the drafting, adoption, ratification, or **initial** implementation of the United States Constitution, **as amended**; or
  - (B) created by a person directly involved in the drafting, adoption, ratification, or **initial** implementation of the United States Constitution, **as amended**;
  - (b) may rely on other relevant sources, including federal court decisions; and**
  - (~~b~~)c) is not bound by a holding by a federal court.**

Section ~~{4}~~9. Section **63C-4-108** is enacted to read:

### **63C-4-108. Communication with other states.**

(1) The council may correspond with the presiding officer of the legislative branch of another state or an entity of another state that has powers and duties that are similar to the council to discuss and coordinate the evaluation of and response to federal law as provided in Section 63C-4-106.

(2) The council shall send a copy of this bill and the pages of the House and Senate Journal that pertain to this bill to:

- (a) the governor of each state;
- (b) the presiding officer, the majority leader, and the minority leader of each house, if applicable, of each state legislature;
- (c) each United States Senator or Representative elected from this state;
- (d) the Chief Justice of the United States Supreme Court;
- (e) the President of the United States; and
- (f) the presiding officer, the majority leader, and the minority leader of each house of the United States Congress.

Section 10. Section **63J-4-603** is amended to read:

### **63J-4-603. Powers and duties of coordinator and office.**

**(1) The coordinator and the office shall:**

- (a) make a report to [and provide staff assistance to] the Constitutional Defense**

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Council created under Section 63C-4-101 concerning R.S. 2477 rights and other public lands issues under Title 63C, Chapter 4, Constitutional Defense Council:

(b) provide staff assistance to the Constitutional Defense Council created under Section 63C-4-101 for meetings of the council and federalism subcommittee:

~~(b)~~ (c) under the direction of the state planning coordinator, assist in fulfilling the state planning coordinator's duties outlined in Section 63J-4-401 as those duties relate to the development of public lands policies by:

(i) developing cooperative contracts and agreements between the state, political subdivisions, and agencies of the federal government for involvement in the development of public lands policies:

(ii) producing research, documents, maps, studies, analysis, or other information that supports the state's participation in the development of public lands policy:

(iii) preparing comments to ensure that the positions of the state and political subdivisions are considered in the development of public lands policy:

(iv) partnering with state agencies and political subdivisions in an effort to:

(A) prepare coordinated public lands policies:

(B) develop consistency reviews and responses to public lands policies:

(C) develop management plans that relate to public lands policies; and

(D) develop and maintain a statewide land use plan that is based on cooperation and in conjunction with political subdivisions; and

(v) providing other information or services related to public lands policies as requested by the state planning coordinator:

~~(c)~~ (d) facilitate and coordinate the exchange of information, comments, and recommendations on public lands policies between and among:

(i) state agencies;

(ii) political subdivisions;

(iii) the Office of Rural Development created under Section 63M-1-1602;

(iv) the Resource Development Coordinating Committee created under Section 63J-4-501;

(v) School and Institutional Trust Lands Administration created under Section 53C-1-201;

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(vi) the committee created under Section 63F-1-508 to award grants to counties to inventory and map R.S. 2477 rights-of-way, associated structures, and other features; and

(vii) the Constitutional Defense Council created under Section 63C-4-101;

~~(d)~~ (e) perform the duties established in Title 9, Chapter 8, Part 3, Antiquities, and Title 9, Chapter 8, Part 4, Historic Sites;

~~(e)~~ (f) consistent with other statutory duties, encourage agencies to responsibly preserve archaeological resources;

~~(f)~~ (g) maintain information concerning grants made under Subsection (1)~~(h)~~(i), if available;

~~(g)~~ (h) report annually, or more often if necessary or requested, concerning the office's activities and expenditures to:

(i) the Constitutional Defense Council; and

(ii) the Legislature's Natural Resources, Agriculture, and Environment Interim Committee jointly with the Constitutional Defense Council;

~~(h)~~ (i) make grants of up to 16% of the office's total annual appropriations from the Constitutional Defense Restricted Account to a county or statewide association of counties to be used by the county or association of counties for public lands matters if the coordinator, with the advice of the Constitutional Defense Council, determines that the action provides a state benefit;

~~(i)~~ (j) provide staff services to the Snake Valley Aquifer Advisory Council created in Section 63C-12-103; and

~~(j)~~ (k) coordinate and direct the Snake Valley Aquifer Research Team created in Section 63C-12-107.

(2) The coordinator and office shall comply with Subsection 63C-4-102(8) before submitting a comment to a federal agency, if the governor would be subject to Subsection 63C-4-102(8) if the governor were submitting the material.

(3) The office may enter into a contract or other agreement with another state agency to provide information and services related to:

(a) the duties authorized by Title 72, Chapter 3, Highway Jurisdiction and Classification Act;

(b) legal actions concerning Title 72, Chapter 3, Highway Jurisdiction and

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Classification Act, or R.S. 2477 matters; or

(c) any other matter within the office's responsibility.

### Section 11. Appropriation.

Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the following sums of money are appropriated from resources not otherwise appropriated out of the funds or accounts indicated for the fiscal year beginning July 1, 2011 and ending June 30, 2012. These are additions to amounts previously appropriated for fiscal year 2012.

= Item 1 To General Fund Restricted - Constitutional Defense Restricted Account

= From General Fund Restricted - Land Exchange Distribution \$1,124,000  
= Account

= Schedule of Programs:

= Constitutional Defense Restricted Account \$1,124,000

= Item 2 To Governor's Office

= From General Fund Restricted - Constitutional \$144,000  
= Defense

= Schedule of Programs:

= Constitutional Defense Council \$144,000

The Legislature intends that the Constitutional Defense Council use this appropriation to evaluate and respond to federal law.

= Item 3 To Office of Attorney General

= From General Fund Restricted - Constitutional Defense \$486,000

= Schedule of Programs:

= Civil \$486,000

The Legislature intends that the Office of Attorney General use this appropriation to hire three attorneys and one paralegal or legal secretary to advise and work for the Public Lands Policy Coordinating Office and the Constitutional Defense Council.

= Item 4 To Public Lands Policy Coordinating Office

= From General Fund Restricted - Constitutional Defense \$494,000

= Schedule of Programs:

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=	<u>Public Lands Office</u>	<u>\$494,000</u>
	<u>The Legislature intends that Public Lands Policy Coordination Office use this appropriation to hire two persons to assist in preparing cases for trial, field staff, litigation expenses, and factual and legal studies.</u>	
=	<u>Item 5 To Permanent Community Impact Fund</u>	
=	<u>From General Fund Restricted - Mineral Bonus</u>	<u>\$1,124,000</u>
=	<u>Schedule of Programs:</u>	
=	<u>Permanent Community Impact Fund</u>	<u>\$1,124,000</u>
=	<u>Item 6 To Department of Community and Culture - Community Development Capital Budget</u>	
=	<u>From Permanent Community Impact Fund</u>	<u>\$1,124,000</u>
=	<u>Schedule of Programs:</u>	
=	<u>Permanent Community Impact Board</u>	<u>\$1,124,000</u>
	<u>The Legislature intends that this appropriation be used for grants to political subdivisions to mitigate the impacts resulting from the development of minerals on federal land.</u>	

Section ~~{5}~~12. **Revisor instructions.**

It is the intent of the Legislature that, in preparing the Utah Code database for publication, the Office of Legislative Research and General Counsel shall replace the references in Subsection 63C-4-108(2) from "this bill" to the bill's designated chapter number in the Laws of Utah.

†

**Legislative Review Note**

as of 1-21-11 6:48 PM

~~Office of Legislative Research and General Counsel~~