

**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;
  - 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.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill provides revisor instructions.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **63C-4-102**, as last amended by Laws of Utah 2010, Chapter 262

35 ENACTS:

36 **63C-4-106**, Utah Code Annotated 1953

37 **63C-4-107**, Utah Code Annotated 1953

38 **63C-4-108**, Utah Code Annotated 1953



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

41 Section 1. Section **63C-4-102** is amended to read:

42 **63C-4-102. Duties.**

43 (1) The Constitutional Defense Council is a council to assist the governor and the  
44 Legislature on the following types of issues:

- 45 (a) the constitutionality of [~~unfunded~~] federal mandates;
- 46 (b) when making recommendations to challenge the federal mandates and regulations  
47 described in Subsections (1)(e)(i) through (v), the rationale for and effectiveness of those  
48 federal mandates or regulations;

49 (c) legal and policy issues surrounding state and local government rights under R.S.  
50 2477;

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

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

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

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

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

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

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

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

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

70            (vi) other issues that are relevant to this Subsection (1).

71            (2) The council shall:

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

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

75            (ii) other public lands issues;

76            (b) approve a plan for R.S. 2477 rights developed in accordance with Section  
77 63C-4-104; ~~and~~

78            (c) review, at least quarterly:

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

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

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

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

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

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

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

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

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

99 (a) legal services that are submitted to the council; and

100 (b) an action filed in accordance with Section 67-5-29.

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

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

108 (i) members of the council; and

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

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

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

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

120 (9) The council shall submit a report [~~on December 1 of each year~~] by electronic mail

121 that summarizes the council's:

122 (a) activities to the speaker of the House of Representatives and the president of the

123 Senate [~~that summarizes the council's activities.~~] on December 1 of each year; and

124 (b) action taken in accordance with Section 63C-4-106 to:

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

126 (ii) the Government Operations and Political Subdivision Interim Committee on May

127 20, August 20, and October 20 of each year.

128 Section 2. Section **63C-4-106** is enacted to read:

129 **63C-4-106. Evaluation of federal law and policy -- Response.**

130 (1) As used in this chapter:

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

132 (b) "Federal governmental entity" means:

133 (i) the President of the United States;

134 (ii) the United States Congress;

135 (iii) a United States agency; or

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

137 (c) "Federal law" means:

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

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

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

141 (iv) a policy statement or action by:

142 (A) a United States agency; or

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

144 (d) "United States agency" means a department, agency, authority, commission,

145 council, board, office, bureau, or other administrative unit of the executive branch of the

146 United States government.

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

148 submitted to the council by:

149 (a) a state agency;

150 (b) a political subdivision;

151 (c) a legislative interim committee;

- 152 (d) the Administrative Rules Review Committee;  
153 (e) a council member; or  
154 (f) a United States Senator or Representative elected from Utah.
- 155 (3) The council may request information regarding a federal law under evaluation from  
156 a United States Senator or Representative elected from the state.
- 157 (4) If the council finds that a federal law is not authorized by the United States  
158 Constitution or violates the principle of federalism as described in Subsection 63C-4-107(2),  
159 the council may:
- 160 (a) request from a United States Senator or Representative elected from the state:  
161 (i) information about the federal law; or  
162 (ii) assistance in communicating with a federal governmental entity regarding the  
163 federal law;
- 164 (b) (i) give written notice of the evaluation required by Subsection (2) to the federal  
165 governmental entity responsible for adopting or administering the federal law; and  
166 (ii) request a response by a specific date to the evaluation from the federal  
167 governmental entity; and
- 168 (c) request a meeting, conducted in person or by electronic means, with the federal  
169 governmental entity and a council member, a representative from another state, or a United  
170 States Senator or Representative elected from the state to discuss the evaluation of federal law  
171 and any possible remedy.
- 172 (5) The council may recommend to the governor that the governor call a special  
173 session of the Legislature to give the Legislature an opportunity to respond to the council's  
174 evaluation of a federal law.
- 175 (6) The council may coordinate the evaluation of and response to federal law with  
176 another state as provided in Section 63G-4-108.
- 177 Section 3. Section **63C-4-107** is enacted to read:  
178 **63C-4-107. Standard for evaluation of federal law.**
- 179 (1) The council shall evaluate whether a federal law submitted under Subsection  
180 63C-4-106(2) is authorized by:
- 181 (a) United States Constitution, Article I, Section 2, to provide for the decennial census;  
182 (b) United States Constitution, Article I, Section 4, to override state laws regulating the

183 times, places, and manner of congressional elections, other than the place of senatorial  
184 elections;  
185 (c) United States Constitution, Article I, Section 7, to veto bills, orders, and resolutions  
186 by Congress;  
187 (d) United States Constitution, Article I, Section 8, to:  
188 (i) lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for  
189 the common defense and general welfare of the United States, but all duties, imposts, and  
190 excises shall be uniform throughout the United States;  
191 (ii) borrow money on the credit of the United States;  
192 (iii) regulate commerce with foreign nations, among the several states, and with the  
193 Indian tribes;  
194 (iv) establish a uniform rule of naturalization and uniform laws on the subject of  
195 bankruptcies throughout the United States;  
196 (v) coin money, regulate the value of coin money and of foreign coin, and fix the  
197 standard of weights and measures;  
198 (vi) provide for the punishment of counterfeiting the securities and current coin of the  
199 United States;  
200 (vii) establish post offices and post roads;  
201 (viii) promote the progress of science and useful arts, by securing for limited times to  
202 authors and inventors the exclusive right to their respective writings and discoveries;  
203 (ix) constitute tribunals inferior to the supreme court;  
204 (x) define and punish piracies and felonies committed on the high seas and offences  
205 against the law of nations;  
206 (xi) declare war, grant letters of marque and reprisal, and make rules concerning  
207 captures on land and water;  
208 (xii) raise and support armies, but no appropriation of money to that use shall be for a  
209 longer term than two years;  
210 (xiii) provide and maintain a navy;  
211 (xiv) make rules for the government and regulation of the land and naval forces;  
212 (xv) provide for calling forth the militia to execute the laws of the union, suppress  
213 insurrections, and repel invasions;

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

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

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

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

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

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

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

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

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

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

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

237 (iii) grant reprieves and pardons;

238 (iv) make vacancy appointments;

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

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

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

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

- 245 (xiv) authorize the president to fill designated inferior offices without senatorial  
246 consent;
- 247 (i) United States Constitution, Article II, Section 3, to:  
248 (i) receive representatives of foreign powers;  
249 (ii) execute the laws;  
250 (iii) commission United States officers;  
251 (iv) give Congress information;  
252 (v) make recommendations to Congress;  
253 (vi) convene Congress on extraordinary occasions; or  
254 (vii) adjourn Congress if it cannot agree on a time;  
255 (j) United States Constitution, Article III, Section 1, to:  
256 (i) create exceptions to the supreme court's appellate jurisdiction;  
257 (ii) fix the jurisdiction of federal courts inferior to the supreme court; or  
258 (iii) declare the punishment for treason;  
259 (k) United States Constitution, Article IV, Section 1, to establish the rules by which the  
260 records and judgments of states are proved in other states;
- 261 (l) United States Constitution, Article IV, Section 3, to:  
262 (i) manage federal property;  
263 (ii) dispose of federal property;  
264 (iii) govern the federal territories; or  
265 (iv) consent to admission of new states or the combination of existing states;  
266 (m) United States Constitution, Article IV, Section 4, to defend states from invasion,  
267 insurrection, and non-republican forms of government;
- 268 (n) United States Constitution, Article V, Section 1, to propose constitutional  
269 amendments;
- 270 (o) United States Constitution, Article VI, Section 1, to prescribe the oath for federal  
271 officers;
- 272 (p) United States Constitution, Amendment XIII, to abolish slavery;  
273 (q) United States Constitution, Amendment XIV, to guard people from certain state  
274 abuses;
- 275 (r) United States Constitution, Amendment XVI, to impose taxes on income from any

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

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

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

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

284 (2) The council shall evaluate whether a federal law submitted under Subsection  
285 63C-4-106(2) violates the principle of federalism by:

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

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

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

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

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

295 (a) shall rely on:

296 (i) the text of the United States Constitution;

297 (ii) the meaning of the text of the United States Constitution at the time of its drafting  
298 and ratification; and

299 (iii) a primary source document written during or between the years of 1787 and 1801  
300 that is:

301 (A) directly relevant to the drafting, adoption, ratification, or implementation of the  
302 United States Constitution; or

303 (B) created by a person directly involved in the drafting, adoption, ratification, or  
304 implementation of the United States Constitution; and

305 (b) is not bound by a holding by a federal court.

306 Section 4. Section **63C-4-108** is enacted to read:

307 **63C-4-108. Communication with other states.**

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

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

314 (a) the governor of each state;

315 (b) the presiding officer, the majority leader, and the minority leader of each house, if  
316 applicable, of each state legislature;

317 (c) each United States Senator or Representative elected from this state;

318 (d) the Chief Justice of the United States Supreme Court;

319 (e) the President of the United States; and

320 (f) the presiding officer, the majority leader, and the minority leader of each house of  
321 the United States Congress.

322 **Section 5. Revisor instructions.**

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

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**Legislative Review Note**  
**as of 1-21-11 6:48 PM**

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

H.B. 76

SHORT TITLE: **Federal Law Evaluation and Response**

SPONSOR: **Ivory, K.**

2011 GENERAL SESSION, STATE OF UTAH

## STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill will likely cost the Constitutional Defense Council \$139,900 ongoing from the General Fund for the hire of one attorney and \$3,500 one-time from the General Fund for the purchase of equipment, starting in FY 2012.

### STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue	\$0	\$0	\$0
Expenditure:			
General Fund	\$0	\$139,900	\$139,900
General Fund, One-Time	\$0	\$3,500	\$0
Total Expenditure	\$0	\$143,400	\$139,900
Net Impact, All Funds (Rev.-Exp.)	\$0	(\$143,400)	(\$139,900)
Net Impact, General/Education Funds	\$0	(\$143,400)	(\$139,900)

## LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

## DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.