

**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;
- ▶ creates a Federalism Subcommittee within the Constitutional Defense Council to:
  - evaluate federal law;
  - report to an interim committee;
  - mail a copy of legislation and the journal to government officers; and
  - recommend that the governor call a special session of the Legislature to respond to federal law;
- ▶ authorizes the Federalism Subcommittee chair to:
  - respond to federal law according to an established procedure; and
  - correspond with other states about federal law and coordinate responses to federal law;
- ▶ establishes standards by which the Federalism Subcommittee shall evaluate federal law;



- 26 ▶ authorizes the Constitutional Defense Council to discuss challenging certain federal
- 27 court rulings;
- 28 ▶ authorizes the Constitutional Defense Council chair to approve certain claims for
- 29 payments;
- 30 ▶ requires the Public Lands Policy Coordinating Office to:
- 31 • provide staff assistance to the Constitutional Defense Council and the
- 32 Federalism Subcommittee; and
- 33 • prepare a constitutional defense plan;
- 34 ▶ reduces the distribution from the Land Exchange Distribution Account to the
- 35 Permanent Community Impact Board;
- 36 ▶ increases the distribution from the Land Exchange Distribution Account to the
- 37 Constitutional Defense Restricted Account; and
- 38 ▶ makes technical changes.

39 **Money Appropriated in this Bill:**

40 This bill appropriates:

- 41 ▶ to the Constitutional Defense Restricted Account as an ongoing appropriation:
- 42 • from the Land Exchange Distribution Account, \$600,000;
- 43 ▶ to the Constitutional Defense Council as an ongoing appropriation:
- 44 • from the Constitutional Defense Restricted Account, \$250,000, subject to intent
- 45 language stating that the appropriation is to be used to execute a plan regarding
- 46 council and Federalism Subcommittee duties and at least \$144,000 be used to
- 47 evaluate and respond to federal law;
- 48 ▶ to the Civil Division of the Office of the Attorney General as an ongoing
- 49 appropriation:
- 50 • from the Constitutional Defense Restricted Account, \$350,000, subject to intent
- 51 language stating that the appropriation is to be used to hire attorneys and staff to
- 52 advise and provide services.
- 53 ▶ to Permanent Community Impact Fund as an ongoing appropriation:
- 54 • from General Fund Restricted - Land Exchange Distribution Account,
- 55 (\$600,000); and
- 56 ▶ to Department of Community and Culture - Community Development Capital

57 Budget as an ongoing appropriation:

- 58 • from the Permanent Community Impact Fund, (\$600,000).

59 **Other Special Clauses:**

60 This bill provides revisor instructions.

61 **Utah Code Sections Affected:**

62 AMENDS:

63 **53C-3-203**, as last amended by Laws of Utah 2010, Chapters 79 and 262

64 **63C-4-101**, as last amended by Laws of Utah 2010, Chapter 286

65 **63C-4-102**, as last amended by Laws of Utah 2010, Chapter 262

66 **63C-4-103**, as last amended by Laws of Utah 2010, Chapter 262

67 **63C-4-104**, as last amended by Laws of Utah 2009, Chapter 121

68 **63I-1-253**, as last amended by Laws of Utah 2010, Chapters 79, 160, and 319

69 **63J-4-603**, as last amended by Laws of Utah 2009, Chapters 121 and 262

70 ENACTS:

71 **63C-4-106**, Utah Code Annotated 1953

72 **63C-4-107**, Utah Code Annotated 1953

73 **63C-4-108**, Utah Code Annotated 1953



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

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

77 **53C-3-203. Land Exchange Distribution Account.**

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

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

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

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

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

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

89 (a) \$1,000,000 to the Constitutional Defense Restricted Account[;] created in Section

90 63C-4-103[; to be used in accordance with Subsection 63C-4-103(6) for:]; and

91 [~~(i) fiscal year 2010-11;~~]

92 [~~(ii) fiscal year 2011-12; and~~]

93 [~~(iii) fiscal year 2012-13; and~~]

94 (b) from the deposits to the account remaining after the appropriation in Subsection

95 (4)(a), the following amounts:

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

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

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

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

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

111 (vi) [~~7.5%~~] 11% of the deposits to the Constitutional Defense Restricted Account  
112 created in Section 63C-4-103[;];

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

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

117 [~~(6) (viii) [Beginning with fiscal year 2009-10, the Legislature shall annually~~  
118 ~~appropriate 6.5%~~] 3% of the deposits [~~remaining in the account after the appropriation is made~~

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

122 Section 2. Section **63C-4-101** is amended to read:

123 **63C-4-101. Creation of Constitutional Defense Council -- Membership --**  
 124 **Vacancies -- Reports -- Per diem, travel expenses, and funding.**

125 (1) There is created the Constitutional Defense Council.

126 (2) (a) The [defense] council shall consist of the following members:

127 (i) the governor or the lieutenant governor, who shall serve as chair of the council;

128 (ii) the president of the Senate or the president of the Senate's designee who shall serve  
 129 as vice chair of the council;

130 (iii) the speaker of the House or the speaker of the House's designee who shall serve as  
 131 vice chair of the council;

132 (iv) the minority leader of the Senate or the minority leader of the Senate's designee;

133 (v) the minority leader of the House or the minority leader of the House's designee;

134 (vi) the attorney general or the attorney general's designee, who shall be one of the  
 135 attorney general's appointees, not a current career service employee;

136 (vii) the director of the School and Institutional Trust Lands Administration;

137 (viii) four elected county commissioners, county council members, or county  
 138 executives from different counties who are selected by the Utah Association of Counties, at  
 139 least one of whom shall be from a county of the first or second class;

140 (ix) the executive director of the Department of Natural Resources, who may not vote;

141 (x) the commissioner of the Department of Agriculture and Food, who may not vote;

142 (xi) the director of the Governor's Office of Economic Development, who may not  
 143 vote; and

144 (xii) two elected county commissioners, county council members, or county executives  
 145 from different counties appointed by the Utah Association of Counties, who may not vote.

146 (b) The council vice chairs shall conduct a council meeting in the absence of the chair.

147 (c) If both the governor and the lieutenant governor are absent from a meeting of the  
 148 council, the governor may designate a person to attend the meeting solely for the purpose of  
 149 casting a vote on any matter on the governor's behalf.

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

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

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

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

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

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

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

165 (e) A majority of the voting membership on the [defense] council is required for a  
166 quorum to conduct council business. A majority vote of the quorum is required for any action  
167 taken by the [defense] council.

168 (5) (a) The Office of the Attorney General shall advise:

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

170 (ii) the Federalism Subcommittee.

171 (b) The Public Lands Policy Coordinating Office shall provide staff assistance for  
172 meetings of the council and Federalism Subcommittee.

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

175 (a) Section 63A-3-106;

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

177 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
178 63A-3-107.

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

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

183 (8) (a) There is created a Federalism Subcommittee of the council.

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

186 (c) (i) The governor or the lieutenant governor shall serve as chair of the  
187 subcommittee.

188 (ii) The council vice chair shall conduct a subcommittee meeting in the absence of the  
189 chair.

190 Section 3. Section **63C-4-102** is amended to read:

191 **63C-4-102. Duties.**

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

194 (a) the constitutionality of [~~unfunded~~] federal mandates;

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

198 (c) legal and policy issues surrounding state and local government rights under R.S.  
199 2477;

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

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

203 (i) federal court rulings that:

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

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

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

210 (ii) federal laws or regulations that reduce or negate water rights or the rights of owners  
211 of private property, or the rights and interest of state and local governments, including

212 sovereignty interests and the power to provide for the health, safety, and welfare, and promote  
213 the prosperity of their inhabitants;

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

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

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

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

220 (2) The council shall:

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

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

224 (ii) other public lands issues;

225 (b) approve a plan for R.S. 2477 rights developed in accordance with Section  
226 63C-4-104; and

227 (c) review, at least quarterly:

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

230 (ii) financial and other reports from the Public Lands Policy Coordinating Office  
231 concerning its activities.

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

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

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

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



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

245 (6) The council chair [~~shall~~] may, only with the concurrence of the council, review and  
246 approve all claims for payments for:

247 (a) legal services that are submitted to the council; [~~and~~]

248 (b) an action filed in accordance with Section 67-5-29[-]; and

249 (c) costs related to a constitutional defense plan approved in accordance with Section  
250 63C-4-104 that are submitted by:

251 (i) the Public Lands Policy Coordinating Office;

252 (ii) the School and Institutional Trust Lands Administration; or

253 (iii) the Office of the Attorney General.

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

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

261 (i) members of the council; and

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

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

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

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

273 (9) The council shall submit a report on December 1 of each year [~~to the speaker of the~~

274 ~~House of Representatives and the president of the Senate that summarizes the council's~~  
275 ~~activities.] by electronic mail that summarizes the council's activities to each legislator.~~

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

277 **63C-4-103. Creation of Constitutional Defense Restricted Account -- Sources of**  
278 **funds -- Uses of funds -- Reports.**

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

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

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

283 (b) voluntary contributions;

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

286 (d) appropriations made by the Legislature.

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

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

289 [(5)] (4) Subject to Subsection [(6)] (5), the Legislature may annually appropriate  
290 money from the Constitutional Defense Restricted Account to one or more of the following:

291 (a) the [~~Constitutional Defense Council to carry out its duties in Section 63C-4-102~~]  
292 council for the council's or Federalism Subcommittee's duties established in this chapter;

293 (b) the Public Lands Policy Coordinating Office to carry out its duties in Section  
294 63J-4-603;

295 (c) the Office of the Governor, to be used only for the purpose of asserting, defending,  
296 or litigating state and local government rights under R.S. 2477, in accordance with a plan  
297 developed and approved as provided in Section 63C-4-104;

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

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

301 (i) for public lands counsel and assistance and litigation to the state or local  
302 governments including asserting, defending, or litigating state and local government rights  
303 under R.S. 2477 in accordance with a plan developed and approved as provided in Section  
304 63C-4-104; [or]

305 (ii) for an action filed in accordance with Section 67-5-29[-]; or

306 (iii) to advise the council and Federalism Subcommittee.

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

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

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

312 [~~(7)~~] (5) (a) The [~~Constitutional Defense Council~~] council shall require that any entity  
313 that receives money from the Constitutional Defense Restricted Account provide financial  
314 reports and litigation reports to the council.

315 (b) Nothing in this Subsection [~~(7)~~] (5) prohibits the council from closing a meeting  
316 under Title 52, Chapter 4, Open and Public Meetings Act, or prohibits the council from  
317 complying with Title 63G, Chapter 2, Government Records Access and Management Act.

318 Section 5. Section ~~63C-4-104~~ is amended to read:

319 **63C-4-104. Plan for R.S. 2477 rights -- Contents.**

320 (1) As used in this section[;]:

321 (a) "Constitutional defense plan" means a plan that outlines actions and expenditures to  
322 fulfill the council's and Federalism Subcommittee's duties established by this chapter.

323 (b) "R.S. 2477 plan" means a guiding document that:

324 [~~(a)~~] (i) is developed jointly by the Utah Association of Counties and the state;

325 [~~(b)~~] (ii) is approved by the Constitutional Defense Council; and

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

329 (2) The Constitutional Defense Council may approve a R.S. 2477 plan if the R.S. 2477  
330 plan:

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

333 (b) allows a county to formally agree to participate in the R.S. 2477 plan by adopting a  
334 resolution;

335 (c) provides that the state and a participating county are equal partners in determining

336 litigation strategy and the expenditure of resources with respect to that county's rights under  
337 R.S. 2477; and

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

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

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

346 (iii) the county may pursue a strategy or make an expenditure contrary to the final  
347 decision of the Constitutional Defense Council only if the county does not claim resources  
348 provided to fund the R.S. 2477 plan.

349 (3) The Constitutional Defense Council shall ensure that the R.S. 2477 plan contains:

350 (a) provisions identifying which expenditure types require approval of the R.S. 2477  
351 plan committee and which expenditure types may be made without R.S. 2477 plan committee  
352 approval;

353 (b) provisions requiring that financial statements be provided to members of the R.S.  
354 2477 plan committee and members of the Constitutional Defense Council, and the frequency  
355 with which those financial statements must be provided; and

356 (c) provisions identifying those decisions or types of decisions that may be made by the  
357 R.S. 2477 plan committee and those decisions or types of decisions that must be referred to the  
358 Constitutional Defense Council for decision.

359 (4) (a) The Public Lands Policy Coordinating Office, in consultation with the Office of  
360 the Attorney General and the School and Institutional Trust Lands, shall prepare and submit a  
361 constitutional defense plan to the Constitutional Defense Council for the council's approval.

362 (b) The constitutional defense plan shall contain proposed action and expenditure for:

363 (i) the council's or the subcommittee's duties established by this chapter; or

364 (ii) an action filed in accordance with Section 67-5-29.

365 [~~4~~] (5) The Constitutional Defense Council shall:

366 (a) review expenditures, at least quarterly, made to further a plan approved under this

367 section;

368 (b) approve an update to a plan under this section at least annually, or more often, if  
369 necessary; and

370 (c) jointly, with the Public Lands Policy Coordinating Office, present a R.S. 2477 plan  
371 approved under this section, with any updates, to:

372 (i) the Legislature's Natural Resources, Agriculture, and Environment Interim  
373 Committee by July 1 of each calendar year, after providing the R.S. 2477 plan to the committee  
374 at least seven days before the presentation; and

375 (ii) the president of the Senate and the speaker of the House of Representatives, which  
376 may be by mail.

377 Section 6. Section **63C-4-106** is enacted to read:

378 **63C-4-106. Evaluation of federal law and policy -- Response.**

379 (1) As used in this chapter:

380 (a) "Federal governmental entity" means:

381 (i) the President of the United States;

382 (ii) the United States Congress;

383 (iii) a United States agency; or

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

385 (b) "Federal law" means:

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

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

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

389 (iv) a policy statement, guidance, or action by:

390 (A) a United States agency; or

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

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

395 (2) In accordance with Section 63C-4-107, the Federalism Subcommittee shall evaluate  
396 a federal law submitted to the Federalism Subcommittee by a council member.

397 (3) The Federalism Subcommittee may request information regarding a federal law

398 under evaluation from a United States Senator or Representative elected from the state.

399 (4) If the Federalism Subcommittee finds that a federal law is not authorized by the  
400 United States Constitution or violates the principle of federalism as described in Subsection  
401 63C-4-107(2), the Federalism Subcommittee chair may:

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

403 (i) information about the federal law; or

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

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

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

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

414 (5) The Federalism Subcommittee may recommend to the governor that the governor  
415 call a special session of the Legislature to give the Legislature an opportunity to respond to the  
416 subcommittee's evaluation of a federal law.

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

419 (7) The Federalism Subcommittee shall submit a report by electronic mail that  
420 summarizes action taken in accordance with this section to the Government Operations Interim  
421 Committee on May 20 and October 20 of each year.

422 Section 7. Section **63C-4-107** is enacted to read:

423 **63C-4-107. Standard for evaluation of federal law.**

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

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

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

429 elections;

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

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

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

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

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

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

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

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

445 (vii) establish post offices and post roads;

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

448 (ix) constitute tribunals inferior to the supreme court;

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

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

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

455 (xiii) provide and maintain a navy;

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

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

459 (xvi) provide for organizing, arming, and disciplining the militia, and for governing the

460 part of the militia that may be employed in the service of the United States, reserving to the  
461 states respectively, the appointment of the officers and the authority of training the militia  
462 according to the discipline prescribed by Congress;

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

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

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

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

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

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

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

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

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

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

482 (iii) grant reprieves and pardons;

483 (iv) make vacancy appointments;

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

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

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

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

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



491 consent:

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

493 (i) receive representatives of foreign powers;

494 (ii) execute the laws;

495 (iii) commission United States officers;

496 (iv) give Congress information;

497 (v) make recommendations to Congress;

498 (vi) convene Congress on extraordinary occasions; or

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

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

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

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

503 (iii) declare the punishment for treason;

504 (k) United States Constitution, Article IV, Section 1, to establish the rules by which the

505 records and judgments of states are proved in other states;

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

507 (i) manage federal property;

508 (ii) dispose of federal property;

509 (iii) govern the federal territories; or

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

511 (m) United States Constitution, Article IV, Section 4, to defend states from invasion,

512 insurrection, and non-republican forms of government;

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

514 amendments;

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

516 officers;

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

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

519 abuses;

520 (r) United States Constitution, Amendment XVI, to impose taxes on income from any

521 source without having to apportion the total dollar amount of tax collected from each state

522 according to each state's population in relation to the total national population;

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

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

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

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

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

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

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

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

539 (3) In the evaluation of a federal law, the Federalism Subcommittee:

540 (a) shall rely on:

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

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

544 (iii) a primary source document that is:

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

547 (B) created by a person directly involved in the drafting, adoption, ratification, or  
548 initial implementation of the United States Constitution, as amended;

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

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

551 Section 8. Section **63C-4-108** is enacted to read:

552 **63C-4-108. Communication with other states.**

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

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

559 (a) the governor of each state;

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

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

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

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

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

567 Section 9. Section **63I-1-253** is amended to read:

568 **63I-1-253. Repeal dates, Titles 53, 53A, and 53B.**

569 The following provisions are repealed on the following dates:

570 (1) Section 53-3-232, Conditional licenses, is repealed July 1, 2015.

571 (2) Title 53A, Chapter 1a, Part 6, Public Education Job Enhancement Program is  
572 repealed July 1, 2020.

573 (3) Title 53A, Chapter 1a, Part 9, Voluntary Extended-day Kindergarten Program, is  
574 repealed July 1, 2011.

575 (4) Section 53A-2-118.3 is repealed December 31, 2016.

576 (5) The State Instructional Materials Commission, created in Section 53A-14-101, is  
577 repealed July 1, 2011.

578 (6) Subsections 53A-16-107(3) and (4) are repealed December 31, 2016.

579 (7) Section 53A-16-107.1 is repealed December 31, 2016.

580 (8) Section 53A-17a-163, Performance-based Compensation Pilot Program is repealed  
581 July 1, 2011.

582 (9) Subsection 53C-3-203~~(5)~~(4)(b)(vii), which provides for the distribution of money  
583 from the Land Exchange Distribution Account to the Geological Survey for test wells, other

584 hydrologic studies, and air quality monitoring in the West Desert, is repealed July 1, 2020.

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

586 **63J-4-603. Powers and duties of coordinator and office.**

587 (1) The coordinator and the office shall:

588 (a) make a report to [~~and provide staff assistance to~~] the Constitutional Defense  
589 Council created under Section 63C-4-101 concerning R.S. 2477 rights and other public lands  
590 issues under Title 63C, Chapter 4, Constitutional Defense Council;

591 (b) provide staff assistance to the Constitutional Defense Council created under Section  
592 63C-4-101 for meetings of the council and Federalism Subcommittee;

593 (c) (i) prepare and submit a constitutional defense plan under Section 63C-4-104; and

594 (ii) execute any action assigned in a constitutional defense plan;

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

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

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

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

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

606 (A) prepare coordinated public lands policies;

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

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

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

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

613 [~~(e)~~] (e) facilitate and coordinate the exchange of information, comments, and  
614 recommendations on public lands policies between and among:

- 615 (i) state agencies;
- 616 (ii) political subdivisions;
- 617 (iii) the Office of Rural Development created under Section 63M-1-1602;
- 618 (iv) the Resource Development Coordinating Committee created under Section
- 619 63J-4-501;
- 620 (v) School and Institutional Trust Lands Administration created under Section
- 621 53C-1-201;
- 622 (vi) the committee created under Section 63F-1-508 to award grants to counties to
- 623 inventory and map R.S. 2477 rights-of-way, associated structures, and other features; and
- 624 (vii) the Constitutional Defense Council created under Section 63C-4-101;
- 625 ~~(f)~~ (f) perform the duties established in Title 9, Chapter 8, Part 3, Antiquities, and
- 626 Title 9, Chapter 8, Part 4, Historic Sites;
- 627 ~~(g)~~ (g) consistent with other statutory duties, encourage agencies to responsibly
- 628 preserve archaeological resources;
- 629 ~~(h)~~ (h) maintain information concerning grants made under Subsection (1)~~(h)~~(j), if
- 630 available;
- 631 ~~(i)~~ (i) report annually, or more often if necessary or requested, concerning the office's
- 632 activities and expenditures to:
- 633 (i) the Constitutional Defense Council; and
- 634 (ii) the Legislature's Natural Resources, Agriculture, and Environment Interim
- 635 Committee jointly with the Constitutional Defense Council;
- 636 ~~(j)~~ (j) make grants of up to 16% of the office's total annual appropriations from the
- 637 Constitutional Defense Restricted Account to a county or statewide association of counties to
- 638 be used by the county or association of counties for public lands matters if the coordinator,
- 639 with the advice of the Constitutional Defense Council, determines that the action provides a
- 640 state benefit;
- 641 ~~(k)~~ (k) provide staff services to the Snake Valley Aquifer Advisory Council created in
- 642 Section 63C-12-103; and
- 643 ~~(l)~~ (l) coordinate and direct the Snake Valley Aquifer Research Team created in
- 644 Section 63C-12-107.
- 645 (2) The coordinator and office shall comply with Subsection 63C-4-102(8) before

646 submitting a comment to a federal agency, if the governor would be subject to Subsection  
647 63C-4-102(8) if the governor were submitting the material.

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

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

652 (b) legal actions concerning Title 72, Chapter 3, Highway Jurisdiction and  
653 Classification Act, or R.S. 2477 matters; or

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

655 Section 11. **Appropriation.**

656 Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the  
657 following sums of money are appropriated from resources not otherwise appropriated out of the  
658 funds or accounts indicated for the fiscal year beginning July 1, 2011 and ending June 30,  
659 2012. These are additions to amounts previously appropriated for fiscal year 2012.

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

661 From General Fund Restricted - Land Exchange Distribution \$600,000  
662 Account

663 Schedule of Programs:

664 Constitutional Defense Restricted Account \$600,000

665 Item 2 To Governor's Office

666 From General Fund Restricted - Constitutional Defense \$250,000

667 Schedule of Programs:

668 Constitutional Defense Council \$250,000

669 The Legislature intends that the Constitutional Defense Council use this appropriation  
670 to execute a plan regarding council and Federalism Subcommittee duties and use at least  
671 \$144,000 of the appropriation to evaluate and respond to federal law.

672 Item 3 To Office of Attorney General

673 From General Fund Restricted - Constitutional Defense \$350,000

674 Schedule of Programs:

675 Civil \$350,000

676 The Legislature intends that the Office of Attorney General use this appropriation to

677 hire attorneys and staff to advise and provide services as provided by Subsection  
678 63C-4-103(4)(e).

679 Item 4 To Permanent Community Impact Fund

680 From General Fund Restricted - Land Exchange Distribution Account (\$600,000)

681 Schedule of Programs:

682 Permanent Community Impact Fund (\$600,000)

683 Item 5 To Department of Community and Culture - Community Development Capital Budget

684 From Permanent Community Impact Fund (\$600,000)

685 Schedule of Programs:

686 Permanent Community Impact Board (\$600,000)

687 Section 12. **Revisor instructions.**

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

# FISCAL NOTE

H.B. 76 2nd Sub. (Gray)

SHORT TITLE: Federal Law Evaluation and Response

SPONSOR: Ivory, K.

2011 GENERAL SESSION, STATE OF UTAH

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

This bill redirects \$600,000 of Land Exchange Distribution funds from the Permanent Community Impact Fund to the Constitutional Defense Restricted Account. The bill also makes the following appropriations from the Constitutional Defense Restricted Account for FY 2012: \$250,000 to the Constitutional Defense Council and \$350,000 to the Attorney General.

### STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue	\$0	\$0	\$0
Expenditure:			
Restricted Funds	\$0	\$250,000	\$250,000
Restricted Funds	\$0	\$350,000	\$350,000
Restricted Funds	\$0	(\$600,000)	(\$600,000)
Total Expenditure	\$0	\$0	\$0
Net Impact, All Funds (Rev.-Exp.)	\$0	\$0	\$0
Net Impact, General/Education Funds	\$0	\$0	\$0

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

Enactment of this bill likely will not result in direct, measurable costs 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.