

Part 2 Constitutional Defense Council

63C-4a-201 Title.

This part is known as "Constitutional Defense Council."

Enacted by Chapter 101, 2013 General Session

63C-4a-202 Creation of Constitutional Defense Council -- Membership -- Vacancies -- Meetings -- Staff -- Reports -- Per diem, travel expenses, and funding.

(1) There is created the Constitutional Defense Council.

- (2)
- (a) The 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) another member of the House, appointed by the speaker of the House;
 - (v) the minority leader of the Senate or the minority leader of the Senate's designee;
 - (vi) the minority leader of the House or the minority leader of the House's designee;
 - (vii) 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;
 - (viii) the director of the School and Institutional Trust Lands Administration;
 - (ix) 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;
 - (x) the executive director of the Department of Natural Resources, who may not vote;
 - (xi) the commissioner of the Department of Agriculture and Food, who may not vote;
 - (xii) the director of the Governor's Office of Economic Development, who may not vote; and
 - (xiii) 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.
- (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 council shall meet at least monthly or more frequently as needed.
 - (ii) The 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 council shall require that any entity, other than the commission, that receives money from the Constitutional Defense Restricted Account provide financial reports and litigation reports to the 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 council is required for a quorum to conduct council business. A majority vote of the quorum is required for any action taken by the council.
- (5)
 - (a) The Office of the Attorney General shall advise the council.
 - (b) The Public Lands Policy Coordinating Office shall provide staff assistance for meetings of the council.
- (6)
 - (a) A member of the council who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:
 - (i) Section 63A-3-106;
 - (ii) Section 63A-3-107; and
 - (iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.
 - (b) Compensation and expenses of a member of the council who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.
- (7) Money appropriated for or received by the council may be expended by the governor in consultation with the council.

Amended by Chapter 387, 2014 General Session

63C-4a-203 Duties of Constitutional Defense Council.

- (1) The Constitutional Defense Council shall assist the governor and the Legislature on the following types of issues:
 - (a) the constitutionality of federal mandates;
 - (b) when making recommendations to challenge the federal mandates and regulations described in Subsections (1)(f)(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;
 - (e) a disagreement with another state regarding the use or ownership of water; and
 - (f) 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 or a right reserved to the state or its citizens 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 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, or 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-4a-403;
 - (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) study, formulate, and recommend appropriate legal strategies and arguments to further the policy described in Section 63C-4a-103.
- (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 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 may, only with the concurrence of the council, review and approve all claims for payments for:
- (a) legal services that are submitted to the council;
 - (b) an action filed in accordance with Section 67-5-29; and
 - (c) costs related to a constitutional defense plan approved in accordance with Section 63C-4a-403 that are submitted by:
 - (i) the Public Lands Policy Coordinating Office;
 - (ii) the School and Institutional Trust Lands Administration; or
 - (iii) the Office of the Attorney General.
- (7)
- (a) The council chair may, with the concurrence of the council, order the attorney general or an attorney employed by the council to cease work that may be charged to the fund.
 - (b) The attorney general or other attorney subject to the order shall comply with the order no later than five business days after the day on which the order is given.
- (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) A council member or local government official who receives the documents described in Subsection (8)(a) may make recommendations to the governor or the governor's designee concerning changes to the documents before the documents are submitted to the federal land management agency.
 - (ii) A council member or local government official shall submit recommendations to the governor or the governor's designee no later than 10 calendar days after the day on which the council member or local government official receives the documents described in Subsection (8)(a).
- (c) Documents transmitted or received under this Subsection (8) are drafts and are protected records under Subsection 63G-2-305(22).
- (9) The council shall submit a report on December 1 of each year to each legislator by electronic mail that summarizes the council's activities.

Renumbered and Amended by Chapter 101, 2013 General Session
Amended by Chapter 445, 2013 General Session