

Chapter 4a Constitutional and Federalism Defense Act

Part 1 General Provisions

63C-4a-101 Title.

- (1) This chapter is known as the "Constitutional and Federalism Defense Act."
- (2) This part is known as "General Provisions."

Enacted by Chapter 101, 2013 General Session

63C-4a-102 Definitions.

As used in this chapter:

- (1) "Account" means the Constitutional Defense Restricted Account, created in Section 63C-4a-402.
- (2) "Commission" means the Commission on Federalism, created in Section 63C-4a-302.
- (3) "Constitutional defense plan" means a plan that outlines actions and expenditures to fulfill the duties of the commission and the council.
- (4) "Council" means the Constitutional Defense Council, created in Section 63C-4a-202.
- (5) "Federal governmental entity" means:
 - (a) the president of the United States;
 - (b) the United States Congress;
 - (c) a United States agency; or
 - (d) an employee or official appointed by the president of the United States.
- (6) "Federal law" means:
 - (a) an executive order by the president of the United States;
 - (b) a statute passed by the United States Congress;
 - (c) a regulation adopted by a United States agency; or
 - (d) a policy statement, order, guidance, or action by:
 - (i) a United States agency; or
 - (ii) an employee or official appointed by the president of the United States.
- (7) "R.S. 2477" means Revised Statute 2477, codified as 43 U.S.C. Section 932.
- (8) "R.S. 2477 plan" means a guiding document that:
 - (a) is developed jointly by the Utah Association of Counties and the state;
 - (b) is approved by the council; and
 - (c) presents the broad framework of a proposed working relationship between the state and participating counties collectively for the purpose of asserting, defending, or litigating state and local government rights under R.S. 2477.
- (9) "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.

Enacted by Chapter 101, 2013 General Session

63C-4a-103 Policy for public lands within the state.

It is the policy of the state to claim and preserve by lawful means the rights of the state and its citizens to determine and affect the disposition and use of federal lands within the state as those rights are granted by the United States Constitution, the Utah Enabling Act, and other applicable law.

Renumbered and Amended by Chapter 101, 2013 General Session

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

Part 3

Commission on Federalism

63C-4a-301 Title.

This part is known as "Commission on Federalism."

Enacted by Chapter 101, 2013 General Session

63C-4a-302 Creation of Commission on Federalism -- Membership meetings -- Staff -- Expenses.

- (1) There is created the Commission on Federalism, comprised of the following seven members:
- (a) the president of the Senate or the president of the Senate's designee who shall serve as cochair of the commission;
 - (b) another member of the Senate, appointed by the president of the Senate;

- (c) the speaker of the House or the speaker of the House's designee who shall serve as cochair of the commission;
 - (d) two other members of the House, appointed by the speaker of the House;
 - (e) the minority leader of the Senate or the minority leader of the Senate's designee; and
 - (f) the minority leader of the House or the minority leader of the House's designee.
- (2)
- (a) A majority of the members of the commission constitute a quorum of the commission.
 - (b) Action by a majority of the members of a quorum constitutes action by the commission.
- (3) The commission shall meet six times each year, unless additional meetings are approved by the Legislative Management Committee.
- (4) The Office of Legislative Research and General Counsel shall provide staff support to the commission.
- (5) Compensation and expenses of a member of the commission who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.
- (6) Nothing in this section prohibits the commission from closing a meeting under Title 52, Chapter 4, Open and Public Meetings Act, or prohibits the commission from complying with Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 387, 2014 General Session

63C-4a-303 Duties of Commission on Federalism.

- (1) In accordance with Section 63C-4a-304, the commission may evaluate a federal law:
- (a) as agreed by a majority of the commission; or
 - (b) submitted to the commission by a council member.
- (2) The commission may request information regarding a federal law under evaluation from a United States senator or representative elected from the state.
- (3) If the commission finds that a federal law is not authorized by the United States Constitution or violates the principle of federalism as described in Subsection 63C-4a-304(2), a commission cochair 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 an evaluation made under Subsection (1) 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, 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.
- (4) The commission 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 commission's evaluation of a federal law.
- (5) A commission cochair may coordinate the evaluation of and response to federal law with another state as provided in Section 63C-4a-305.
- (6) On May 20 and October 20 of each year, the commission shall submit a report by electronic mail to the Legislative Management Committee and the Government Operations Interim Committee that summarizes:

- (a) action taken by the commission in accordance with this section; and
- (b) action taken by, or communication received from, any of the following in response to a request or inquiry made, or other action taken, by the commission:
 - (i) a United States senator or representative elected from the state;
 - (ii) a representative of another state; or
 - (iii) a federal entity, official, or employee.
- (7) The commission shall keep a current list on the Legislature's website of:
 - (a) a federal law that the commission evaluates under Subsection (1);
 - (b) an action taken by a cochair of the commission under Subsection (3);
 - (c) any coordination undertaken with another state under Section 63C-4a-305; and
 - (d) any response received from a federal government entity that was requested under Subsection (3).
- (8) The commission shall develop curriculum for a seminar on the principles of federalism. The curriculum shall be available to the general public and include:
 - (a) fundamental principles of federalism;
 - (b) the sovereignty, supremacy, and jurisdiction of the individual states, including their police powers;
 - (c) the history and practical implementation of the Tenth Amendment to the United States Constitution;
 - (d) the authority and limits on the authority of the federal government as found in the United States Constitution;
 - (e) the relationship between the state and federal governments;
 - (f) methods of evaluating a federal law in the context of the principles of federalism;
 - (g) how and when challenges should be made to a federal law or regulation on the basis of federalism;
 - (h) the separate and independent powers of the state that serve as a check on the federal government;
 - (i) first amendment rights and freedoms contained therein; and
 - (j) any other issues relating to federalism the commission considers necessary.
- (9) The commission may apply for and receive grants, and receive private donations to assist in funding the creation, enhancement, and dissemination of the curriculum.

Amended by Chapter 221, 2014 General Session

63C-4a-304 Standard for evaluation of federal law.

- (1) The commission shall evaluate whether a federal law evaluated under Section 63C-4a-303 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;
- (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;
- (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
 - (ix) 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
 - (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 commission shall evaluate whether a federal law evaluated under Section 63C-4a-303 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 or a right reserved to the state or its citizens by the United States Constitution, Amendment IX or X; or
 - (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 commission:

(a) shall rely on:

- (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 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

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

Renumbered and Amended by Chapter 101, 2013 General Session

63C-4a-305 Communication with other states and governmental entities.

A commission cochair 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 commission to discuss and coordinate the evaluation of and response to federal law as provided in Section 63C-4a-303.

Renumbered and Amended by Chapter 101, 2013 General Session

63C-4a-306 Course on federalism required.

(1) This section shall apply to:

- (a) all political subdivisions of the state;
- (b) all agencies of the state;
- (c) the Attorney General's office; and
- (d) the Office of Legislative Research and General Counsel.

(2) Beginning January 1, 2015, an employing entity listed in Subsection (1) shall appoint at least one designee to which all questions and inquiries regarding federalism shall be directed. The designee shall be required to attend a seminar on the principles of federalism developed pursuant to Subsection 63C-4a-303(8) at least once in every two-year period.

(3) The designee may complete the requirements of this section by attending a seminar in person or online.

Enacted by Chapter 221, 2014 General Session

**Part 4
Miscellaneous Provisions**

63C-4a-401 Title.

This part is known as "Miscellaneous Provisions."

Enacted by Chapter 101, 2013 General Session

63C-4a-402 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 council from other state agencies; and
 - (d) appropriations made by the Legislature.
- (3) The Legislature may annually appropriate money from the Constitutional Defense Restricted Account to one or more of the following:
 - (a) the commission, to fund the commission and for the commission's duties;
 - (b) the council, to fund the council and for the council's duties;
 - (c) the Public Lands Policy Coordinating Office to carry out its duties in Section 63J-4-603;
 - (d) the Office of the Governor, to be used only for the purpose of asserting, defending, or litigating:
 - (i) an issue arising with another state regarding the use or ownership of water; or
 - (ii) state and local government rights under R.S. 2477, in accordance with a plan developed and approved as provided in Section 63C-4a-403;
 - (e) a county or association of counties to assist counties, consistent with the purposes of the council, in pursuing issues affecting the counties;
 - (f) the Office of the Attorney General, to be used only:
 - (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-4a-403;
 - (ii) for an action filed in accordance with Section 67-5-29;
 - (iii) to advise the council; or
 - (iv) for asserting, defending, or litigating an issue arising with another state regarding the use or ownership of water;
 - (g) the Office of the Attorney General or any other state or local government entity to bring an action to establish the right of a state or local government officer or employee to enter onto federal land or use a federal road or an R.S. 2477 road, in the officer's or employee's official capacity, to protect the health, safety, or welfare of a citizen of the state; or
 - (h) the Office of Legislative Research and General Counsel, to provide staff support to the commission.
- (4)
 - (a) The council shall require that any entity, other than the commission, that receives money from the account provide financial reports and litigation reports to the council.
 - (b) Nothing in this Subsection (4) prohibits the commission or the council from closing a meeting under Title 52, Chapter 4, Open and Public Meetings Act, or prohibits the commission or the council from complying with Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 378, 2016 General Session

63C-4a-403 Plans for R.S. 2477 rights and constitutional defense -- Contents.

- (1) The council may approve an R.S. 2477 plan if the R.S. 2477 plan:

- (a) provides for a good faith, cooperative effort between the state and each participating county;
 - (b) allows a county to formally agree to participate in the R.S. 2477 plan by adopting a resolution;
 - (c) provides that the state and a participating county are equal partners in determining litigation strategy and the expenditure of resources with respect to that county's rights under R.S. 2477; and
 - (d) provides a process for resolving any disagreement between the state and a participating county about litigation strategy or resource expenditure that includes the following requirements:
 - (i) the governor or the governor's designee and a representative of the Utah Association of Counties shall first attempt to resolve the disagreement;
 - (ii) if the county and the state continue to disagree, the county, the governor, and the Utah Association of Counties shall present their recommendations to the council for a final decision about the strategy or expenditure in question; and
 - (iii) the county may pursue a strategy or make an expenditure contrary to the final decision of the council only if the county does not claim resources provided to fund the R.S. 2477 plan.
- (2) The council shall ensure that the R.S. 2477 plan contains:
- (a) provisions identifying which expenditure types require approval of the R.S. 2477 plan committee and which expenditure types may be made without the R.S. 2477 plan committee approval;
 - (b) provisions requiring that financial statements be provided to members of the R.S. 2477 plan committee and members of the council, and the frequency with which those financial statements must be provided; and
 - (c) provisions identifying those decisions or types of decisions that may be made by the R.S. 2477 plan committee and those decisions or types of decisions that must be referred to the council for decision.
- (3)
- (a) The Public Lands Policy Coordinating Office, in consultation with the committee, the Office of the Attorney General and the School and Institutional Trust Lands, shall prepare and submit a constitutional defense plan to the council for the council's approval.
 - (b) The constitutional defense plan shall contain proposed action and expenditure for:
 - (i) the council's or the commission's duties; or
 - (ii) an action filed in accordance with Section 67-5-29.
- (4) The council shall:
- (a) review expenditures, at least quarterly, made to further a plan approved under this section;
 - (b) approve an update to a plan under this section at least annually, or more often, if necessary; and
 - (c) jointly, with the Public Lands Policy Coordinating Office, present a R.S. 2477 plan approved under this section, with any updates, to:
 - (i) the Legislature's Natural Resources, Agriculture, and Environment Interim Committee by July 1 of each calendar year, after providing the R.S. 2477 plan to the committee at least seven days before the presentation;
 - (ii) the commission, which may be by mail; and
 - (iii) the president of the Senate and the speaker of the House of Representatives, which may be by mail.

Renumbered and Amended by Chapter 101, 2013 General Session

