

CONSTITUTIONAL DEFENSE COUNCIL AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Dennis H. Iverson

AN ACT RELATING TO THE CONSTITUTIONAL DEFENSE COUNCIL; MODIFYING COUNCIL MEMBERSHIP; MODIFYING COUNCIL MEETING REQUIREMENTS; MODIFYING COUNCIL DUTIES; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

63C-4-101, as last amended by Chapter 243, Laws of Utah 1996

63C-4-102, as last amended by Chapter 171, Laws of Utah 1995

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

Section 1. Section **63C-4-101** is amended to read:

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

Compensation -- Funding.

(1) There is created the Constitutional Defense Council.

(2) The defense council shall consist of the following [~~nine~~] seven members:

(a) the governor who shall serve as chair of the council;

~~[(b) the attorney general;]~~

~~[(c)]~~ (b) the president of the Senate or his designee;

~~[(d)]~~ (c) the speaker of the House or his designee;

~~[(e)]~~ (d) the minority leader of the Senate or his designee;

~~[(f)]~~ (e) the minority leader of the House or his designee; and

(f) two elected county commissioners from different counties who are selected by the Utah

Association of Counties.

~~[(g) three citizen members appointed by the governor.]~~

~~[(3) (a) Except as required by Subsection (b), the three citizen members shall serve a four-year term beginning July 1, 1994.]~~

~~[(b) Notwithstanding the requirements of Subsection (a), the governor shall, at the time~~

~~of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.]~~

~~[(c) A citizen member is eligible for reappointment.]~~

~~[(4)] (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.

~~[(5)] (4)~~ (a) The defense council shall meet at times at the call of the chair or any four members of the council.

(b) A majority of the membership on the defense council is required for a quorum to conduct council business. A majority vote of the quorum is required for any action taken by the defense council.

~~[(6)] (5)~~ The ~~[governor may designate staff from executive state agencies to serve as]~~ Office of the Attorney General shall provide staff to the defense council.

~~[(7) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.]~~

~~[(ii) Members may decline to receive per diem and expenses for their service.]~~

~~[(b)] (6) (a) (i)~~ State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the council at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(b) (i) Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Local government members may decline to receive per diem and expenses for their

service.

(c) Legislators on the committee shall receive compensation and expenses as provided by law and legislative rule.

~~[(8)]~~ (7) (a) The council shall be funded from the following revenue sources:

- (i) any voluntary contributions;
- (ii) monies received by the council from other state agencies; and
- (iii) appropriations made to the council by the Legislature.

(b) All funding for the council shall be nonlapsing.

(c) Monies appropriated for or received by the council may be expended only by the council.

Section 2. Section **63C-4-102** is amended to read:

63C-4-102. Duties -- Employment of attorneys -- Report.

(1) The Constitutional Defense Council shall provide advice to the governor and to the Legislature on the following types of issues:

(a) the constitutionality of unfunded federal mandates;

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

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

(d) legal issues relating to the rights of the School and Institutional Trust Lands

Administration and its beneficiaries; and

~~[(c)]~~ (e) the advisability, feasibility, estimated cost, and likelihood of success of challenging:

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

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

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

(iv) federal intervention that would damage the state's mining, timber, and ranching industries; ~~[and]~~

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

(vi) other activities that are consistent with the purpose of the council.

(2) 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.

(3) The council chair may direct the attorney general to initiate and prosecute any action that the council determines will further its purposes.

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

(ii) The council chair may direct any council attorney in any manner considered appropriate by the attorney general to best serve the purposes of the council.

~~[(5)] (b) (i)~~ The council shall meet with the attorney general annually and compile a list of no less than ten attorneys considered to be qualified to represent the council ~~[pursuant to]~~ under this section. ~~[Only those named attorneys may be employed by the council.]~~

(ii) The council may employ attorneys only from that list.

~~[(6)] (c)~~ The attorney general shall negotiate a contract for services with any attorney selected and approved for employment ~~[pursuant to]~~ under this section.

~~[(7)] (5)~~ The council chair shall review and approve all claims for payments for legal services that are submitted by the council.

~~[(8)] (6)~~ Within five business days' notice, the council chair may order the attorney general or an attorney employed by the council to cease work to be charged to the fund.

~~[(9)] (7)~~ The council shall submit a report on December 1 of each year to the speaker of the House of Representatives and the president of the Senate that summarizes the council's activities.