

CONSTITUTIONAL DEFENSE COUNCIL AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: Dennis H. Iverson**

AN ACT RELATING TO THE CONSTITUTIONAL DEFENSE COUNCIL; APPROPRIATING MONIES FROM THE MINERAL LEASE ACCOUNT TO THE COUNCIL; MODIFYING COUNCIL MEMBERSHIP; MODIFYING COUNCIL MEETING REQUIREMENTS; MODIFYING COUNCIL DUTIES; CREATING THE CONSTITUTIONAL DEFENSE RESTRICTED ACCOUNT; AND MAKING TECHNICAL CORRECTIONS.

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

AMENDS:

**59-21-2**, as last amended by Chapter 258, Laws of Utah 1998

**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

**67-5-1**, as last amended by Chapter 198, Laws of Utah 1996

ENACTS:

**63C-4-103**, Utah Code Annotated 1953

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

Section 1. Section **59-21-2** is amended to read:

**59-21-2. Mineral Bonus Account -- Allocation of monies from Mineral Lease Account.**

(1) (a) The Mineral Bonus Account is created within the General Fund.

(b) All bonus money received by the state under Subsection 59-21-1(3) shall be deposited in this account.

(c) The Legislature shall appropriate from the Mineral Bonus Account in accordance with Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. Sec. 191.

(d) The state treasurer shall:

(i) invest the money in the Mineral Bonus Account by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act; and

(ii) deposit all interest or other earnings derived from the account into the Mineral Bonus Account.

(2) The Legislature shall make appropriations from the Mineral Lease Account as provided in this Subsection (2).

(a) ~~[In]~~ (i) Except as provided in Subsection (2)(a)(ii) and (2)(a)(iii), in addition to the appropriation under Subsection (2)(b)(ii), the Legislature shall appropriate 32.5% of all deposits made to the Mineral Lease Account to the Permanent Community Impact Fund established by Section 9-4-303.

(ii) Except as provided in Subsection (2)(a)(iii), the Legislature shall:

(A) for the fiscal year beginning on July 1, 1999, and ending on June 30, 2000, appropriate 3% of all deposits made to the Permanent Community Impact Fund as provided in Subsection (2)(a)(i) to the Constitutional Defense Restricted Account created in Section 63C-4-103; and

(B) for fiscal years beginning on or after July 1, 2000, appropriate 1% of all deposits made to the Permanent Community Impact Fund as provided in Subsection (2)(a)(i) to the Constitutional Defense Restricted Account created in Section 63C-4-103.

(iii) If the appropriation required by Subsection (2)(a)(ii) would cause the balance of the Constitutional Defense Restricted Account to exceed \$1 million, the Legislature shall reduce the appropriation required by Subsection (2)(a)(ii) so that the appropriation will cause the balance of the Constitutional Defense Restricted Account to be \$1 million.

(b) (i) Except as provided in Subsection (2)(b)(ii), the Legislature shall appropriate 33.5% of all deposits made to the Mineral Lease Account to the Board of Regents for allocation to the state's institutions of higher education.

(ii) (A) For the fiscal year beginning on July 1, 1996, and ending on June 30, 1997, the Legislature shall appropriate 20% of the mineral lease funds that would otherwise be appropriated to the Board of Regents under Subsection (2)(b)(i) to the Permanent Community Impact Fund.

(B) For the fiscal year beginning on July 1, 1997, and ending on June 30, 1998, the Legislature shall appropriate 40% of the mineral lease funds that would otherwise be appropriated to the Board of Regents under Subsection (2)(b)(i) to the Permanent Community Impact Fund.

(C) For fiscal years beginning on or after July 1, 1998, the Legislature shall annually appropriate as follows an additional 20% of the funds that would otherwise be appropriated to the Board of Regents under Subsection (2)(b)(i) until the Legislature appropriates 100% of the funds that would otherwise be appropriated to the Board of Regents:

(I) the Legislature shall make an appropriation to the Department of Transportation as provided in Subsection (2)(f)(ii);

(II) the Legislature shall make an appropriation to the Department of Community and Economic Development as provided in Subsection (2)(g);

(III) the Legislature shall make the appropriations provided for in Subsection (2)(h); and

(IV) the Legislature shall, after making the appropriations under Subsections (2)(b)(ii)[~~(B)~~](C)(I) through (III), appropriate the remainder of the funds that would otherwise be appropriated to the Board of Regents to the Permanent Community Impact Fund.

(D) For fiscal years beginning on or after July 1, 1996, the Legislature shall appropriate an equivalent amount from the General Fund to the Board of Regents to replace the mineral lease monies the Board of Regents would have otherwise received under Subsection (2)(b)(i).

(c) The Legislature shall appropriate 2.25% of all deposits made to the Mineral Lease Account to the State Board of Education, to be used for education research and experimentation in the use of staff and facilities designed to improve the quality of education in Utah.

(d) The Legislature shall appropriate 2.25% of all deposits made to the Mineral Lease Account to the Utah Geological Survey, to be used for activities carried on by the survey having as a purpose the development and exploitation of natural resources in the state.

(e) The Legislature shall appropriate 2.25% of all deposits made to the Mineral Lease Account to the Water Research Laboratory at Utah State University, to be used for activities carried on by the laboratory having as a purpose the development and exploitation of water resources in the state.

(f) The Legislature shall appropriate the following percentages of all deposits made to the Mineral Lease Account to the Department of Transportation, to be distributed as follows for the purpose of constructing, repairing, and maintaining roads, or for other purposes authorized by statute:

(i) the Legislature shall annually appropriate to the Department of Transportation 25% of all deposits made to the Mineral Lease Account to be distributed to special service districts within counties; and

(ii) in addition to the appropriation under Subsection (2)(f)(i), the Legislature shall make the following appropriations from mineral lease funds that would be appropriated to the Board of Regents under Subsection (2)(b)(i) except for the appropriations provided in Subsection (2)(b)(ii)(C):

(A) for the fiscal year beginning on July 1, 1998, and ending on June 30, 1999, the Legislature shall appropriate 5% of all deposits made to the Mineral Lease Account to the Department of Transportation to be distributed to special service districts within counties;

(B) for the fiscal year beginning on July 1, 1999, and ending on June 30, 2000, the Legislature shall appropriate 10% of all deposits made to the Mineral Lease Account to the Department of Transportation to be distributed to special service districts within counties; and

(C) for fiscal years beginning on or after July 1, 2000, the Legislature shall appropriate 15% of all deposits made to the Mineral Lease Account to the Department of Transportation to be distributed to special service districts within counties.

(g) (i) The Legislature shall appropriate the following percentages of all deposits made to the Mineral Lease Account to the Department of Community and Economic Development to be distributed as follows for the purpose of constructing, repairing, and maintaining roads, or for other purposes authorized by statute:

(A) for the fiscal year beginning on July 1, 1998, and ending on June 30, 1999, the Legislature shall appropriate 2.5% of all deposits made to the Mineral Lease Account to the Department of Community and Economic Development to be distributed to special service districts within counties:

(I) of the third, fourth, fifth, or sixth class;

(II) in which 4.5% or less of the mineral lease moneys within the state are generated; and

(III) that are significantly socially or economically impacted by the development of minerals under the Mineral Lands Leasing Act, 30 U.S.C. Sec. 191, as a result of either the transportation of hydrocarbons, including solid hydrocarbons as defined in Section 59-5-101, within the county, the

employment in hydrocarbon extraction, including the extraction of solid hydrocarbons as defined in Section 59-5-101, of persons residing within the county, or both; and

(B) for fiscal years beginning on or after July 1, 1999, the Legislature shall appropriate 5% of all deposits made to the Mineral Lease Account to the Department of Community and Economic Development to be distributed to special service districts within counties meeting the requirements of Subsections (2)(g)(i)(A)(I) through (III).

(ii) The executive director of the Department of Community and Economic Development:

(A) shall determine whether a county meets the requirements of Subsections (2)(g)(i)(A)(I) through (III);

(B) shall distribute the appropriations under Subsection (2)(g)(i) to special service districts within counties that meet the requirements of Subsections (2)(g)(i)(A)(I) through (III) as provided in Subsection (2)(g)(iii); and

(C) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, may make rules:

(I) providing a procedure for making the distributions under Subsection (2)(g)(ii)(B) to special service districts; and

(II) defining the term "population" for purposes of Subsection (2)(g)(ii)(B).

(iii) For purposes of distributing the appropriations under Subsection (2)(g)(i) to special service districts within counties, the Department of Community and Economic Development shall:

(A) (I) allocate 50% of the appropriations equally among the counties meeting the requirements of Subsections (2)(g)(i)(A)(I) through (III); and

(II) allocate 50% of the appropriations based on the ratio that the population of each county meeting the requirements of Subsections (2)(g)(i)(A)(I) through (III) bears to the total population of all of the counties meeting the requirements of Subsections (2)(g)(i)(A)(I) through (III); and

(B) after making the allocations described in Subsection (2)(g)(iii)(A), distribute the allocated revenues to special service districts within the counties as determined by the executive director of the Department of Community and Economic Development after consulting with the county legislative bodies of the counties meeting the requirements of Subsection (2)(g)(i)(A)(I) through (III).

(h) The Legislature shall make the following appropriations from the Mineral Lease Account:

(i) an amount equal to 52 cents multiplied by the number of acres of school or institutional trust lands, lands owned by the Division of Parks and Recreation, and lands owned by the Division of Wildlife Resources that are not under an in lieu of taxes contract, to each county in which those lands are located;

(ii) to each county in which school or institutional trust lands are transferred to the federal government after December 31, 1992, an amount equal to the number of transferred acres in the county multiplied by a payment per acre equal to the difference between 52 cents per acre and the per acre payment made to that county in the most recent payment under the federal payment in lieu of taxes program, 31 U.S.C. Sec. 6901 or P.L. 97-258 as amended, unless the federal payment was equal to or exceeded the 52 cents per acre, in which case no payment shall be made for the transferred lands; and

(iii) to each county in which federal lands, which are entitlement lands under the federal in lieu of taxes program, are transferred to the school or institutional trust, an amount equal to the number of transferred acres in the county multiplied by a payment per acre equal to the difference between the most recent per acre payment made under the federal payment in lieu of taxes program and 52 cents per acre, unless the federal payment was equal to or less than 52 cents per acre, in which case no payment shall be made for the transferred land.

(i) Beginning on July 1, 2000, the Legislature shall, after making the appropriations provided for in Subsections (2)(a) through (h), appropriate the remainder of all deposits made to the Mineral Lease Account to the Permanent Community Impact Fund.

(3) (a) Until July 1, 1999, the Board of Regents may not:

(i) increase the total amount of federal mineral lease funds allocated during any fiscal year above the amount allocated during the last fiscal year more than the percentage increase in the Consumer Price Index published by the United States Department of Labor for the last calendar year; and

(ii) increase the total amount allocated more than 10% above the amount allocated during the last fiscal year.

(b) If the total amount of mineral lease funds allocated to a recipient agency or institution in any fiscal year is less than the total amount allocated for the last fiscal year, the allocation to that agency or institution for the next fiscal year shall be increased by the amount of the reduction before calculating and applying the percent limitation.

(c) (i) Higher education institutions shall expend the federal mineral lease funds apportioned to them via institutional work programs.

(ii) The Board of Regents may approve those programs only when it is satisfied that a majority of the funds will be expended for research, educational, or public service programs of benefit to subdivisions of the state that are socially or economically impacted by the development of minerals leased under the Mineral Lands Leasing Act in the planning, construction, and maintenance of public facilities, and the provision of public services.

(d) (i) Except as provided in Subsection (3)(d)(ii), each institution of higher education is entitled to an amount of mineral lease funds equal to the proportion of the total amount available that the average number of full-time students enrolled during the preceding year at that institution bears to the total enrollment of all institutions.

(ii) Enrollment at the University of Utah and Utah State University shall first be multiplied by 1.25 and that product shall constitute the enrollment of the University of Utah and Utah State University for the purposes of determining their proportionate allocation.

(4) The federal mineral lease funds allocated to the Water Research Laboratory at Utah State University are in addition to any other money to which Utah State University is entitled under this section.

(5) Federal mineral lease funds distributed by the Department of Transportation under Subsection (2)(f) shall be allocated to county special service districts in amounts proportionate to the amount of federal mineral lease money generated by the county in which a special service district is located.

(6) (a) Each county receiving money under Subsection (2)(h) shall give the money to a school district or other special service district within the county.

(b) Beginning in fiscal year 1994-95 and in each year thereafter, the amount per acre provided

in Subsection (2)(h)(i) shall adjust to reflect changes in the rate of inflation as measured by the Consumer Price Index.

(7) Each agency, board, institution of higher education, and political subdivision receiving money under this chapter shall provide the Legislature, through the Office of the Legislative Fiscal Analyst, with a complete accounting of the use of that money on an annual basis. This accounting shall:

(a) include actual expenditures for the prior fiscal year, budgeted expenditures for the current fiscal year, and planned expenditures for the following fiscal year; and

(b) be reviewed by the Economic Development and Human Resources Appropriation Subcommittee as part of its normal budgetary process under Title 63, Chapter 38, Budgetary Procedures Act.

(8) All monies in or appropriated to the Targeted Allocation Fund shall be transferred to the Permanent Community Impact Fund.

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

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

(1) There is created the Constitutional Defense Council.

(2) The defense council shall consist of the following nine 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]~~

~~[(g) three]~~ (f) two citizen members appointed by the governor~~[-]; and~~

(g) two elected county commissioners, county council members, or county executives from different counties who are selected by the Utah Association of Counties.

(3) (a) Except as required by Subsection (b), the ~~[three]~~ two 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]~~ one citizen member of the council is appointed every two years.

(c) A citizen member is eligible for reappointment.

(4) 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) (a) The defense council shall meet at times at the call of the chair or any five 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) 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) (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.

(c) (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.

~~[(e)]~~ (d) Legislators on the committee shall receive compensation and expenses as provided by law and legislative rule.

(8) (a) The council shall be funded from the ~~[following revenue sources:]~~ Constitutional Defense Restricted Account created in Section 63C-4-103.

~~[(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.]~~

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

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

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

(1) The Constitutional Defense Council ~~[shall provide advice]~~ is an advisory council 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 ~~[(e)]~~ (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;  
and

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

~~[(e)]~~ (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, 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.

~~[(5)]~~ (b) (i) The council ~~[shall]~~ may meet with the attorney general annually and compile a list of ~~[no less than ten]~~ attorneys, including attorneys in private practice, 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 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, only with the concurrence of the council, review and approve all claims for payments for legal services that are submitted ~~[by]~~ to the council.

~~[(8)]~~ (6) Within five business days' notice, the council chair may order the attorney general or, only with the concurrence of the council, order 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.

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

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

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

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

(a) monies deposited to the fund from the Mineral Bonus Account as required by Subsection 59-21-2(2);

(b) voluntary contributions;

(c) monies received by the Constitutional Defense Council from other state agencies; and

(d) appropriations made by the Legislature.

(3) Funds in the account shall be nonlapsing.

(4) (a) The account shall earn interest.

(b) All interest earned on account monies shall be deposited into the General Fund.

(5) The account balance may not exceed \$1 million.

(6) The Legislature may annually appropriate monies from the Constitutional Defense Restricted Account to the Constitutional Defense Council to carry out its duties in Section 63C-4-102.

Section 5. Section **67-5-1** is amended to read:

**67-5-1. General duties.**

The attorney general shall:

(1) except as provided in Sections 10-3-928 and 17-18-1, attend the Supreme Court and the Court of Appeals of this state, and all courts of the United States, and prosecute or defend all causes to which the state, or any officer, board, or commission of the state in an official capacity is a party; and take charge, as attorney, of all civil legal matters in which the state is interested;

(2) when jointly agreed by the governor and the attorney general:

(a) initiate legal proceedings in a court of competent jurisdiction on behalf of the state, or any officer, board, commission, agency, or instrumentality of the state for the purpose of opposing or challenging federal laws, regulations, or court orders and their impact on or applicability to the state; and

(b) as the budget permits, retain outside legal counsel with appropriate expertise to represent the state in the legal proceedings;

(3) after judgment on any cause referred to in Subsection (1), direct the issuance of process as necessary to execute the judgment;

(4) account for, and pay over to the proper officer, all moneys which come into his possession, that belong to the state;

(5) keep a file of all cases in which he is required to appear, including any documents and papers showing the court in which the cases have been instituted and tried, and whether they are civil or criminal, and:

(a) if civil, the nature of the demand, the stage of proceedings, and when prosecuted to judgment, a memorandum of the judgment and of any process issued whether satisfied, and if not satisfied, the return of the sheriff;

(b) if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and when prosecuted to sentence, a memorandum of the sentence and of the execution, if the sentence has been executed, if not executed, of the reason of the delay or prevention; and

(c) deliver this information to his successor in office;

(6) exercise supervisory powers over the district and county attorneys of the state in all matters pertaining to the duties of their offices, and from time to time require of them reports of the condition of public business entrusted to their charge;

(7) give his opinion in writing and without fee to the Legislature or either house, and to any state officer, board, or commission, and to any county attorney or district attorney, when required, upon any question of law relating to their respective offices;

(8) when required by the public service or directed by the governor, assist any district or

county attorney in the discharge of his duties;

(9) purchase in the name of the state, under the direction of the state Board of Examiners, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and enter satisfaction in whole or in part of the judgments as the consideration of the purchases;

(10) when the property of a judgment debtor in any judgment mentioned in Subsection (9) has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, redeem the property, under the direction of the state Board of Examiners, from the prior judgment, lien, or encumbrance, and pay all money necessary for the redemption, upon the order of the state Board of Examiners, out of any money appropriated for these purposes;

(11) when in his opinion it is necessary for the collection or enforcement of any judgment, institute and prosecute on behalf of the state any action or proceeding necessary to set aside and annul all conveyances fraudulently made by the judgment debtors, and pay the cost necessary to the prosecution, when allowed by the state Board of Examiners, out of any money not otherwise appropriated;

(12) discharge the duties of a member of all official boards of which he is or may be made a member by the Utah Constitution or by the laws of the state, and other duties prescribed by law;

(13) institute and prosecute proper proceedings in any court of the state or of the United States, to restrain and enjoin corporations organized under the laws of this or any other state or territory from acting illegally or in excess of their corporate powers or contrary to public policy, and in proper cases forfeit their corporate franchises, dissolve the corporations, and wind up their affairs;

(14) institute investigations for the recovery of all real or personal property that may have escheated or should escheat to the state, and for that purpose he may cite any persons before any of the district courts to answer inquiries and render accounts concerning any property, may examine all books and papers of any corporations, and when any real or personal property is discovered that should escheat to the state, the attorney general shall institute suit in the district court of the county where the property is situated for its recovery, and escheat that property to the state;

(15) administer the Children's Justice Center as a program to be implemented in various

counties pursuant to Sections 67-5b-101 through 67-5b-107; and

(16) assist the Constitutional Defense Council as provided in [~~Section 63C-4-102~~] Title 63C, Chapter 4, Constitutional Defense Council.