

1 **CONSTITUTIONAL DEFENSE COUNCIL**

2 **AMENDMENTS**

3 2000 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Dennis H. Iverson**

6 AN ACT RELATING TO STATE BOARDS AND COMMISSIONS; MODIFYING  
7 MEMBERSHIP ON THE CONSTITUTIONAL DEFENSE COUNCIL; CLARIFYING MEETING  
8 REQUIREMENTS AND THE POWERS OF THE CHAIR AND THE MEMBERS; AND  
9 MAKING TECHNICAL CORRECTIONS.

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

11 AMENDS:

12 **63C-4-101**, as last amended by Chapter 371, Laws of Utah 1999

13 **63C-4-102**, as last amended by Chapter 371, Laws of Utah 1999

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

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

16 **63C-4-101. Creation of Constitutional Defense Council.**

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

18 (2) The defense council shall consist of the following [~~nine~~] **h** [~~ten~~] **ELEVEN** **h** members:

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

20 (b) the president of the Senate or his designee;

21 (c) the speaker of the House or his designee;

22 (d) the minority leader of the Senate or his designee;

23 (e) the minority leader of the House or his designee;

24 (f) two citizen members appointed by the governor; and

25 (g) [~~two~~] **h** [~~three~~] **FOUR** **h** elected county commissioners, county council members, or

25a county

26 executives from different counties who are selected by the Utah Association of Counties.

27 (3) (a) Except as required by Subsection (3)(b), the two citizen members shall serve a

28 four-year term beginning July 1, 1994.

29 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time  
30 of appointment or reappointment, adjust the length of terms to ensure that the terms of council  
31 members are staggered so that one citizen member of the council is appointed every two years.

32 (c) A citizen member is eligible for reappointment.

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

35 (5) (a) The defense council shall meet ~~h [at] h [times at the call of the chair] h [least once per~~  
36 ~~month] QUARTERLY OR MORE FREQUENTLY AS NEEDED h .~~

37 (b) The governor or any h [five] SIX h members of the council may call a meeting of the  
37a council.

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

40 (d) If h [five] SIX h members of the council call a meeting of the council, they may set the  
40a agenda  
41 for the meeting.

42 ~~[(b)] (e)~~ A majority of the membership on the defense council is required for a quorum to  
43 conduct council business. A majority vote of the quorum is required for any action taken by the  
44 defense council.

45 (6) The Office of the Attorney General shall provide staff to the defense council.

46 (7) (a) (i) Members who are not government employees shall receive no compensation or  
47 benefits for their services, but may receive per diem and expenses incurred in the performance of  
48 the member's official duties at the rates established by the Division of Finance under Sections  
49 63A-3-106 and 63A-3-107.

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

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

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

57 (c) (i) Local government members who do not receive salary, per diem, or expenses from  
58 the entity that they represent for their service may receive per diem and expenses incurred in the

59 performance of their official duties at the rates established by the Division of Finance under  
60 Sections 63A-3-106 and 63A-3-107.

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

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

65 (8) (a) The council shall be funded from the Constitutional Defense Restricted Account  
66 created in Section 63C-4-103.

67 (b) Monies appropriated for or received by the council may be expended by the governor  
68 ~~[in consultation with]~~ only with the concurrence of the council.

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

70 **63C-4-102. Duties.**

71 (1) The Constitutional Defense Council ~~[is an advisory council to]~~ shall advise the  
72 governor and ~~[to]~~ the Legislature ~~[on]~~ about the following ~~[types of]~~ issues:

73 (a) the constitutionality of unfunded federal mandates;

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

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

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

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

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

84 (ii) federal laws or regulations that reduce or negate water rights or the rights of owners  
85 of private property, or the rights and interest of state and local governments, including sovereignty  
86 interests and the power to provide for the health, safety, and welfare, and promote the prosperity  
87 of their inhabitants;

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

89 (iv) federal intervention that would damage the state's mining, timber, and ranching

90 industries;

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

93 (vi) other ~~[activities]~~ issues that are ~~[consistent with the purpose of the council]~~ relevant  
94 to Subsections (1)(a) through (e).

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

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

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

102 (ii) The council chair may, ~~[in consultation with]~~ only with the concurrence of the council,  
103 direct any council attorney in any manner considered appropriate by the attorney general to best  
104 serve the purposes of the council.

105 (b) (i) The council may meet with the attorney general annually and compile a list of  
106 attorneys, including attorneys in private practice, considered to be qualified to represent the council  
107 under this section.

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

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

111 (5) The council chair shall, only with the concurrence of the council, review and approve  
112 all claims for payments for legal services that are submitted to the council.

113 (6) Within five business days' notice, the council chair may order the attorney general or,  
114 only with the concurrence of the council, order an attorney employed by the council to cease work  
115 to be charged to the fund.

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

**Legislative Review Note**  
**as of 1-17-00 11:01 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**