

**CONSTITUTIONAL DEFENSE COUNCIL
AMENDMENTS**

2002 GENERAL SESSION
STATE OF UTAH

Sponsor: Stephen H. Urquhart

This act modifies the State Commissions and Councils Act to include the attorney general as a member of the Constitutional Defense Council. The act also redefines certain duties of the council.

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

AMENDS:

63C-4-101, as last amended by Chapter 279, Laws of Utah 2000

63C-4-102, as last amended by Chapter 279, Laws of Utah 2000

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.

(1) There is created the Constitutional Defense Council.

(2) The defense council shall consist of the following ~~[+]~~ 12 members:

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

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

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

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

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

(f) the attorney general ~~h~~ OR HIS DESIGNEE ~~h~~ :

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

~~[(g)]~~ (h) four 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 (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 at least quarterly or more frequently as needed.

36 (b) The governor or any six members of the council may call a meeting of the council.

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

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

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

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

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

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

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

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

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

59 service.

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

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

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

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

67 **63C-4-102. Duties.**

68 (1) The Constitutional Defense Council is an advisory council to the governor and the
69 Legislature on the following types of issues:

70 (a) the constitutionality of unfunded federal mandates;

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

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

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

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

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

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

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

85 (iv) federal intervention that would damage the state's mining, timber, and ranching
86 industries;

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

89 (vi) other issues that are relevant to Subsections (1)(a) through (e).

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

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

95 (4) (a) ~~[(†)]~~ Subject to the provisions of this section, the council may select and employ
96 attorneys to implement the purposes and duties of the council.

97 ~~[(†)]~~ (b) The council chair may, in consultation with the council, direct any council
98 attorney in any manner considered appropriate by the attorney general to best serve the purposes
99 of the council.

100 ~~[(b) (i) The council may meet with the attorney general annually and compile a list of~~
101 ~~attorneys, including attorneys in private practice, considered to be qualified to represent the council~~
102 ~~under this section.]~~

103 ~~[(ii) The council may employ attorneys from that list.]~~

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

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

108 (6) Within five business days' notice, the council chair may ~~[order the attorney general or]~~,
109 ~~[only]~~ with the concurrence of the council, order the attorney general or an attorney employed by
110 the council to cease work to be charged to the fund.

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

Legislative Review Note
as of 1-15-02 5:24 PM

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

Office of Legislative Research and General Counsel