

**Representative Michael E. Noel** proposes the following substitute bill:

**CONSTITUTIONAL DEFENSE COUNCIL**

**AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Michael E. Noel**

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**LONG TITLE**

**General Description:**

This bill modifies statutes governing the Constitutional Defense Council.

**Highlighted Provisions:**

This bill:

- ▶ modifies membership on the council;
- ▶ authorizes the council to select a vice chair;
- ▶ modifies meeting requirements;
- ▶ establishes agenda requirements;
- ▶ allows expenditure of monies only with the express consent of the council;
- ▶ makes other changes strengthening the authority and powers of the council;
- ▶ requires the council to include certain provisions in the R.S. 2477 plan; and
- ▶ requires the governor to provide council members with copies of documents relating

to land use plans before submitting them to any federal land management agency.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



26 AMENDS:

27 **63C-4-101**, as last amended by Chapter 160, Laws of Utah 2002

28 **63C-4-102**, as last amended by Chapter 160, Laws of Utah 2002

29 **63C-4-103**, as last amended by Chapters 43, 279 and 299, Laws of Utah 2000

30 **63C-4-104**, as enacted by Chapter 279, Laws of Utah 2000

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

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

34 **63C-4-101. Creation of Constitutional Defense Council.**

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

36 (2) (a) The defense council shall consist of the following [~~12~~] 11 members:

37 [~~(a)~~] (i) the governor, who shall serve as chair of the council;

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

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

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

41 [~~(e)~~] (v) the minority leader of the House or his designee;

42 [~~(f)~~] (vi) the attorney general or his designee;

43 [~~(g) two~~] (vii) one citizen [~~members~~] member appointed by the governor; and

44 [~~(h)~~] (viii) four elected county commissioners, county council members, or county  
45 executives from different counties who are selected by the Utah Association of Counties.

46 (b) The council shall select a vice chair from its members.

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

49 [~~(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the~~  
50 ~~time of appointment or reappointment, adjust the length of terms to ensure that the terms of~~  
51 ~~council members are staggered so that one citizen member of the council is appointed every~~  
52 ~~two years.]~~

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

54 [~~(4)~~] (3) When a vacancy occurs in the membership for any reason, the replacement  
55 shall be appointed for the unexpired term in the same manner as the original appointment.

56 [~~(5)~~] (4) (a) (i) [~~The~~] Except as provided in Subsection (4)(a)(ii), the defense council

57 shall meet at least [~~quarterly~~] monthly or more frequently as needed.

58 (ii) The defense council need not meet monthly if the chair, after polling the members,  
59 determines that a majority of the members do not wish to meet.

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

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

63 (d) (i) The Constitutional Defense Council ~~H~~ [may] **SHALL** ~~h~~ require that any entity that  
63a receives

64 monies from the Constitutional Defense Restricted Account provide financial reports and  
65 litigation reports to the Council.

66 (ii) Nothing in this Subsection (4)(d) prohibits the council from closing a meeting  
67 under Title 52, Chapter 4, Open and Public Meetings, or prohibits the council from complying  
68 with Title 63, Chapter 2, Government Records Access and Management Act.

69 [~~(d)~~] (e) A majority of the membership on the defense council is required for a quorum  
70 to conduct council business. A majority vote of the quorum is required for any action taken by  
71 the defense council.

72 [~~(6)~~] (5) The Office of the Attorney General shall provide staff to the defense council.

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

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

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

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

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

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

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

92 [~~(8)~~] (7) (a) The council shall be funded from the Constitutional Defense Restricted  
93 Account created in Section 63C-4-103.

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

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

97 **63C-4-102. Duties.**

98 (1) The Constitutional Defense Council is [~~an advisory~~] a council to assist the governor  
99 and the Legislature on the following types of issues:

100 (a) the constitutionality of unfunded federal mandates;

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

104 (c) legal and policy issues surrounding state and local government rights under R.S.  
105 2477;

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

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

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

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

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

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

118 (v) the authority of the Environmental Protection Agency and Congress to mandate

119 local air quality standards and penalties; and

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

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

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

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

128 (b) The council chair may, in consultation with the council, direct any council attorney  
129 in any manner considered appropriate by the attorney general to best serve the purposes of the  
130 council.

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

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

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

138 ~~§ [(7) (a) At least <sup>11</sup> [14] 10 <sup>h</sup> calendar days before the state submits final draft documents~~  
138a ~~relating~~  
139 ~~to land use plans to any federal land management agency, the governor shall make those~~  
140 ~~documents available to any member of the Constitutional Defense Council <sup>h</sup> AND ANY COUNTY <sup>h</sup>~~  
140a ~~who requests them.~~

141 ~~—— (b) Members may make recommendations to the governor or the governor's designee~~  
142 ~~about changes to be made to the documents before they are submitted to the federal land~~  
143 ~~management agency.]~~

143a (7) (a) AT LEAST 20 CALENDAR DAYS BEFORE THE STATE SUBMITS COMMENTS ON THE  
143b DRAFT ENVIRONMENTAL IMPACT STATEMENT OR ENVIRONMENTAL ASSESSMENT FOR A  
143c PROPOSED LAND MANAGEMENT PLAN OF ANY FEDERAL LAND MANAGEMENT AGENCY, THE  
143d GOVERNOR SHALL MAKE THOSE DOCUMENTS AVAILABLE TO:

143e (i) MEMBERS OF THE COUNCIL; AND

143f (ii) ANY COUNTY EXECUTIVE, COUNTY COUNCIL MEMBER, OR COUNTY COMMISSIONER OF  
143g A COUNTY THAT IS COVERED BY THE MANAGEMENT PLAN AND THAT HAS ESTABLISHED FORMAL  
143h COOPERATING AGENCY STATUS WITH THE RELEVANT FEDERAL LAND MANAGEMENT AGENCY  
143i REGARDING THE PROPOSED PLAN. §

143j § (b) (i) Council MEMBERS OR LOCAL GOVERNMENT OFFICIALS RECEIVING THE DOCUMENTS  
143k MAY MAKE RECOMMENDATIONS TO THE GOVERNOR OR THE GOVERNOR'S DESIGNEE  
143l CONCERNING CHANGES TO THE DOCUMENTS BEFORE THEY ARE SUBMITTED TO THE FEDERAL  
143m LAND MANAGEMENT AGENCY.

143n (ii) COUNCIL MEMBERS OR LOCAL GOVERNMENT OFFICIALS SHALL SUBMIT  
143o RECOMMENDATIONS TO THE GOVERNOR OR THE GOVERNOR'S DESIGNEE NO LATER THAN 10  
143p CALENDAR DAYS AFTER RECEIVING THE DOCUMENTS UNDER SECTION (7) (a).

143q (c) DOCUMENTS TRANSMITTED OR RECEIVED UNDER THIS SECTION (7) ARE DRAFTS AND  
143r ARE PROTECTED RECORDS PURSUANT TO SUBSECTION 63-2-304(22). §

144 [~~7~~] (8) The council shall submit a report on December 1 of each year to the speaker of  
145 the House of Representatives and the president of the Senate that summarizes the council's  
146 activities.

147 Section 3. Section **63C-4-103** is amended to read:

148 **63C-4-103. Creation of Constitutional Defense Restricted Account -- Sources of**  
149 **funds -- Uses of funds.**

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

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

153 (a) monies deposited to the account as required by Section 53C-3-202;

154 (b) voluntary contributions;

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

156 and

157 (d) appropriations made by the Legislature.

158 (3) Funds in the account shall be nonlapsing.

159 (4) The account balance may not exceed \$2,000,000.

160 (5) The Legislature may annually appropriate monies from the Constitutional Defense  
161 Restricted Account to one or more of the following:

162 (a) the Constitutional Defense Council to carry out its duties in Section 63C-4-102;

163 (b) the Office of the Governor **§ , TO BE USED ONLY §** for the purpose of asserting,  
163a defending, or litigating state

164 and local government rights under R.S. 2477, in accordance with a plan developed and

165 approved as provided in Section 63C-4-104; **§ [or] §**

166 (c) a county or association of counties to assist counties, consistent with the purposes  
167 of the council, in pursuing issues affecting the counties **§ [-] or**

167a **(d) THE OFFICE OF THE ATTORNEY GENERAL, TO BE USED ONLY FOR PUBLIC LANDS**  
167b **COUNSEL AND ASSISTANCE AND LITIGATION TO THE STATE OR LOCAL GOVERNMENTS**  
167c **INCLUDING ASSERTING, DEFENDING, OR LITIGATING STATE AND LOCAL GOVERNMENT RIGHTS**  
167d **UNDER R.S. 2477 IN ACCORDANCE WITH A PLAN DEVELOPED AND APPROVED AS PROVIDED**  
167e **IN SECTION 63c-4-104. §**

168 (6) (a) The Constitutional Defense Council **Ĥ [may] SHALL ĥ** require that any entity that  
168a receives

169 monies from the Constitutional Defense Restricted Account provide financial reports and

170 litigation reports to the Council.

171 (b) Nothing in this Subsection (6) prohibits the council from closing a meeting under

172 Title 52, Chapter 4, Open and Public Meetings, or prohibits the council from complying with

173 Title 63, Chapter 2, Government Records Access and Management Act.

174 Section 4. Section **63C-4-104** is amended to read:

175 **63C-4-104. Plan for R.S. 2477 rights.**

176 (1) As used in this section, "plan" means a guiding document that:

177 (a) is developed jointly by the Utah Association of Counties and the state;

178 (b) is approved by the Constitutional Defense Council; and

179 (c) presents the broad framework of a proposed working relationship between the state  
180 and participating counties collectively for the purpose of asserting, defending, or litigating state

181 and local government rights under R.S. 2477.

182 (2) The Constitutional Defense Council may approve a plan if the plan:

183 (a) provides for a good faith, cooperative effort between the state and each

184 participating county;

185 (b) allows a county to formally agree to participate in the plan by adopting a resolution;

186 (c) provides that the state and a participating county are equal partners in determining

187 litigation strategy and the expenditure of resources with respect to that county's rights under

188 R.S. 2477; and

189 (d) provides a process for resolving any disagreement between the state and a

190 participating county about litigation strategy or resource expenditure that includes the

191 following requirements:

192 (i) the governor or the governor's designee and a representative of the Utah Association

193 of Counties shall first attempt to resolve the disagreement;

194 (ii) if the county and the state continue to disagree, the county, the governor, and the

195 Utah Association of Counties shall present their recommendations to the Constitutional

196 Defense Council for a final decision about the strategy or expenditure in question; and

197 (iii) the county may pursue a strategy or make an expenditure contrary to the final

198 decision of the Constitutional Defense Council only if the county does not claim resources

199 provided to fund the plan.

200 (3) The Constitutional Defense Council shall ensure that the plan contains:

201 (a) provisions identifying which expenditure types require approval of the plan

202 committee and which expenditure types may be made without plan committee approval;

203 (b) provisions requiring that financial statements be provided to members of the plan

204 committee and members of the Constitutional Defense Council, and the frequency with which

205 those financial statements must be provided; and

206 (c) provisions identifying those decisions or types of decisions that may be made by the

207 plan committee and those decisions or types of decisions that must be referred to the

208 Constitutional Defense Council for decision.