

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;
- ▶ 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:

AMENDS:

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

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

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

63C-4-104, as enacted 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 -- Membership -- Vacancies

-- Reports -- Per diem and funding.

(1) There is created the Constitutional Defense Council.

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

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

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

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

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

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

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

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

~~[(h)]~~ (viii) four elected county commissioners, county council members, or county

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

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

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

~~[(b) Notwithstanding the requirements of Subsection (3)(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 one citizen member 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) (i) ~~[The]~~ Except as provided in Subsection (4)(a)(ii), the defense council shall meet at least ~~[quarterly]~~ monthly or more frequently as needed.

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

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

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

(d) (i) The Constitutional Defense Council shall require that any entity that receives monies from the Constitutional Defense Restricted Account provide financial reports and litigation reports to the Council.

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

~~[(d)]~~ (e) 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 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)]~~ (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.

~~[(c)]~~ (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.

~~[(d)]~~ (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 Constitutional Defense Restricted Account created in Section 63C-4-103.

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

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

63C-4-102. Duties.

(1) The Constitutional Defense Council is ~~[an advisory]~~ a council to assist the governor and 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 (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

(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, or the rights and interest of state and local governments, including sovereignty interests and the power to provide for the health, safety, and welfare, and promote the prosperity of their inhabitants;

(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;

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

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

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

(b) 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.

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

(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 to the council.

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

(7) (a) At least 20 calendar days before the state submits comments on the draft environmental impact statement or environmental assessment for a proposed land management plan of any federal land management agency, the governor shall make those documents available to:

(i) members of the council; and

(ii) any county executive, county council member, or county commissioner of a county that is covered by the management plan and that has established formal cooperating agency status with the relevant federal land management agency regarding the proposed plan.

(b) (i) Council members or local government officials receiving the documents may make recommendations to the governor or the governor's designee concerning changes to the documents before they are submitted to the federal land management agency.

(ii) Council members or local government officials shall submit recommendations to the governor or the governor's designee no later than ten calendar days after receiving the documents under Subsection (7)(a).

(c) Documents transmitted or received under this Subsection (7) are drafts and are protected records pursuant to Subsection 63-2-304(22).

[~~(7)~~] (8) 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 3. Section **63C-4-103** is amended to read:

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

(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 account as required by Section 53C-3-202;
 - (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) The account balance may not exceed \$2,000,000.
- (5) The Legislature may annually appropriate monies from the Constitutional Defense

Restricted Account to one or more of the following:

- (a) the Constitutional Defense Council to carry out its duties in Section 63C-4-102;
- (b) the Office of the Governor, to be used only for the purpose of asserting, defending, or litigating state and local government rights under R.S. 2477, in accordance with a plan developed and approved as provided in Section 63C-4-104; [~~or~~]

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

(d) the Office of the Attorney General, to be used only for public lands counsel and assistance and litigation to the state or local governments including asserting, defending, or litigating state and local government rights under R.S. 2477 in accordance with a plan developed and approved as provided in Section 63C-4-104.

(6) (a) The Constitutional Defense Council shall require that any entity that receives monies from the Constitutional Defense Restricted Account provide financial reports and litigation reports to the Council.

(b) Nothing in this Subsection (6) prohibits the council from closing a meeting under Title 52, Chapter 4, Open and Public Meetings, or prohibits the council from complying with Title 63, Chapter 2, Government Records Access and Management Act.

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

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

- (1) As used in this section, "plan" means a guiding document that:
- (a) is developed jointly by the Utah Association of Counties and the state;

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

(c) presents the broad framework of a proposed working relationship between the state and participating counties collectively for the purpose of asserting, defending, or litigating state and local government rights under R.S. 2477.

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

(a) provides for a good faith, cooperative effort between the state and each participating county;

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

(c) provides that the state and a participating county are equal partners in determining litigation strategy and the expenditure of resources with respect to that county's rights under R.S. 2477; and

(d) provides a process for resolving any disagreement between the state and a participating county about litigation strategy or resource expenditure that includes the following requirements:

(i) the governor or the governor's designee and a representative of the Utah Association of Counties shall first attempt to resolve the disagreement;

(ii) if the county and the state continue to disagree, the county, the governor, and the Utah Association of Counties shall present their recommendations to the Constitutional Defense Council for a final decision about the strategy or expenditure in question; and

(iii) the county may pursue a strategy or make an expenditure contrary to the final decision of the Constitutional Defense Council only if the county does not claim resources provided to fund the plan.

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

(a) provisions identifying which expenditure types require approval of the plan committee and which expenditure types may be made without plan committee approval;

(b) provisions requiring that financial statements be provided to members of the plan committee and members of the Constitutional Defense Council, and the frequency with which those financial statements must be provided; and

(c) provisions identifying those decisions or types of decisions that may be made by the plan committee and those decisions or types of decisions that must be referred to the Constitutional Defense Council for decision.