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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) ~~(a)~~ The defense council shall consist of the following ~~[12]~~ ten 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; and

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

~~[(h)]~~ (vii) 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) The defense council shall meet at least ~~[quarterly]~~ monthly or more frequently as needed.

(b) The governor or any ~~[six]~~ four 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.

59 (d) Each agenda shall include:

60 (i) a financial report detailing all of the monies available to the council and how those
61 monies have been spent; and

62 (ii) a litigation report by the attorney general or his designee detailing the status,
63 schedule, timing, and outlook for each case initiated by the council or for which the council has
64 requested a report.

65 (e) Whenever the federal government takes any action that might affect Utah's ability
66 to retain primacy or to act as a sovereign state, the council chair shall place that action on the
67 council's agenda for discussion by the council.

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

71 ~~[(6)]~~ (5) The Office of the Attorney General shall provide staff to the defense council.

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

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

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

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

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

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

89 ~~[(d)]~~ (c) Legislators on the committee shall receive compensation and expenses as

90 provided by law and legislative rule.

91 ~~[(8)]~~ (7) (a) The council shall be funded from the Constitutional Defense Restricted
92 Account created in Section 63C-4-103 and from other monies appropriated to it by the
93 Legislature.

94 (b) ~~[Monies]~~ Notwithstanding Section 63-38-11, monies appropriated for or received
95 by the council may be expended by the governor ~~[in consultation]~~ only with the express, voted
96 approval of the council.

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

98 **63C-4-102. Duties.**

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

101 (a) the constitutionality of unfunded federal mandates;

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

105 (c) legal and policy issues surrounding state and local government rights under R.S.
106 2477;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

142 Section 3. Section **63C-4-104** is amended to read:

143 **63C-4-104. Plan for R.S. 2477 rights.**

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

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

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

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

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

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

152 participating county;

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

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

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

156 R.S. 2477; and

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

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

159 following requirements:

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

162 (ii) if the county and the state continue to disagree, the county, the governor, and the
163 Utah Association of Counties shall present their recommendations to the Constitutional

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

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

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

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

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

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

Legislative Review Note
as of 12-18-03 8:23 AM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0206

Constitutional Defense Council Amendments

20-Jan-04

11:01 AM

State Impact

It is estimated that provisions of this bill can be implemented with existing resources.

Individual and Business Impact

No significant fiscal impact.

Office of the Legislative Fiscal Analyst