

**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 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



26 Utah Code Sections Affected:

27 AMENDS:

28 63C-4-101, as last amended by Chapter 160, Laws of Utah 2002

29 63C-4-102, as last amended by Chapter 160, Laws of Utah 2002

30 63C-4-103, as last amended by Chapters 43, 279 and 299, Laws of Utah 2000

31 63C-4-104, as enacted by Chapter 279, Laws of Utah 2000



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

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

35 **63C-4-101. Creation of Constitutional Defense Council.**

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

37 (2) (a) The defense council shall consist of the following [~~12~~] 13 members:

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

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

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

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

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

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

44 (vii) the director of the School and Institutional Trust Lands Administration or his  
45 designee as representative of the common school beneficiary;

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

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

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

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

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

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

57           ~~[(4)]~~ (3) When a vacancy occurs in the membership for any reason, the replacement  
58 shall be appointed for the unexpired term in the same manner as the original appointment.

59           ~~[(5)]~~ (4) (a) (i) ~~[The]~~ Except as provided in Subsection (4)(a)(ii), the defense council  
60 shall meet at least ~~[quarterly]~~ monthly or more frequently as needed.

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

63           (b) The governor or any ~~[six]~~ five members of the council may call a meeting of the  
64 council.

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

67           (d) (i) Each agenda shall include the following items:

68           (A) a financial report; and

69           (B) a litigation report.

70           (ii) The financial report presented to the council during each meeting shall detail all of  
71 the monies available to the council and how those monies have been spent, excluding monies  
72 spent on and available for litigation.

73           (iii) The attorney general or his designee shall present the litigation report at each  
74 meeting and detail the legal status, schedule, timing, outlook, and financial status for each case  
75 initiated by the council or for which the council has requested a report.

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

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

82           ~~[(4)]~~ (f) A majority of the membership on the defense council is required for a quorum  
83 to conduct council business. A majority vote of the quorum is required for any action taken by  
84 the defense council.

85           ~~[(6)]~~ (5) The Office of the Attorney General shall provide staff to the defense council.

86           ~~[(7) (a) (i) Members who are not government employees shall receive no compensation~~  
87 ~~or benefits for their services, but may receive per diem and expenses incurred in the~~

88 ~~performance of the member's official duties at the rates established by the Division of Finance~~  
89 ~~under Sections 63A-3-106 and 63A-3-107.]~~

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

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

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

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

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

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

105 ~~[(8)]~~ (7) (a) The council shall be funded from the Constitutional Defense Restricted  
106 Account created in Section 63C-4-103 and from other monies appropriated to it by the  
107 Legislature.

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

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

112 **63C-4-102. Duties.**

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

115 (a) the constitutionality of unfunded federal mandates;

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

- 119 (c) legal and policy issues surrounding state and local government rights under R.S.  
120 2477;
- 121 (d) legal issues relating to the rights of the School and Institutional Trust Lands  
122 Administration and its beneficiaries; and
- 123 (e) the advisability, feasibility, estimated cost, and likelihood of success of challenging:  
124 (i) federal court rulings that hinder the management of the state's prison system and  
125 place undue financial hardship on the state's taxpayers;
- 126 (ii) federal laws or regulations that reduce or negate water rights or the rights of owners  
127 of private property, or the rights and interest of state and local governments, including  
128 sovereignty interests and the power to provide for the health, safety, and welfare, and promote  
129 the prosperity of their inhabitants;
- 130 (iii) conflicting federal regulations or policies in land management on federal land;
- 131 (iv) federal intervention that would damage the state's mining, timber, and ranching  
132 industries;
- 133 (v) the authority of the Environmental Protection Agency and Congress to mandate  
134 local air quality standards and penalties; and
- 135 (vi) other issues that are relevant to Subsections (1)(a) through (e).
- 136 (2) The council chair may require the attorney general or a designee to provide  
137 testimony on potential legal actions that would enhance the state's sovereignty or authority on  
138 issues affecting Utah and the well-being of its citizens.
- 139 (3) The council chair may direct the attorney general to initiate and prosecute any  
140 action that the council determines will further its purposes.
- 141 (4) (a) Subject to the provisions of this section, the council may select and employ  
142 attorneys to implement the purposes and duties of the council.
- 143 (b) The council chair may, [~~in consultation~~] with the approval of the council, direct any  
144 council attorney in any manner considered appropriate by the attorney general to best serve the  
145 purposes of the council.
- 146 (c) The attorney general shall negotiate a contract for services with any attorney  
147 selected and approved for employment under this section.
- 148 (5) The council chair shall, only with the concurrence of the council, review and  
149 approve all claims for payments for legal services that are submitted to the council.

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

153 (7) (a) At least 14 calendar days before the state submits documents relating to land use  
154 plans to any federal land management agency, the governor shall ensure that each member of  
155 the Constitutional Defense Council receives a copy of the state's final draft documents for the  
156 members' review.

157 (b) Members may make recommendations to the governor or the governor's designee  
158 about changes to be made to the documents before they are submitted.

159 [~~7~~] (8) The council shall submit a report on December 1 of each year to the speaker of  
160 the House of Representatives and the president of the Senate that summarizes the council's  
161 activities.

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

163 **63C-4-103. Creation of Constitutional Defense Restricted Account -- Sources of**  
164 **funds -- Uses of funds.**

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

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

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

169 (b) voluntary contributions;

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

171 and

172 (d) appropriations made by the Legislature.

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

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

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

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

178 (b) the Office of the Governor for the purpose of asserting, defending, or litigating state  
179 and local government rights under R.S. 2477, in accordance with a plan developed and  
180 approved as provided in Section 63C-4-104; or

181 (c) a county or association of counties to assist counties, consistent with the purposes  
182 of the council, in pursuing issues affecting the counties.

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

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

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

190 **63C-4-104. Plan for R.S. 2477 rights.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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