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**PUBLIC LANDS POLICY COORDINATION**

**AMENDMENTS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael E. Noel**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill eliminates the Public Lands Policy Coordinating Council and makes changes concerning the Constitutional Defense Council and other entities concerning public lands matters.

**Highlighted Provisions:**

This bill:

- ▶ addresses membership of the Constitutional Defense Council;
- ▶ addresses the council's duties;
- ▶ provides that the Public Lands Policy Coordinating Office assist the Office of the Attorney General in providing staff support to the Constitutional Defense Council;
- ▶ addresses the development and updating of a plan for R.S. 2477 rights;
- ▶ provides for grants to counties for public lands issues with a statewide benefit;
- ▶ requires the Public Lands Policy Coordinating Office to report to and assist the Constitutional Defense Council in carrying out the Constitutional Defense Council's duties;
- ▶ addresses the state planning coordinator's duties;
- ▶ makes certain documents protected records under Title 63G, Chapter 2, Government Records Access and Management Act;
- ▶ allows the Public Lands Policy Coordinating Office to enter into contracts with



28 other state agencies for services; and  
29       ▶ makes technical changes.

30 **Monies Appropriated in this Bill:**

31       None

32 **Other Special Clauses:**

33       None

34 **Utah Code Sections Affected:**

35 AMENDS:

- 36       **63C-4-101**, as last amended by Laws of Utah 2008, Chapter 382
- 37       **63C-4-102**, as last amended by Laws of Utah 2008, Chapter 382
- 38       **63C-4-103**, as last amended by Laws of Utah 2008, Chapter 382
- 39       **63C-4-104**, as last amended by Laws of Utah 2004, Chapter 345
- 40       **63G-2-305**, as last amended by Laws of Utah 2008, Chapters 3, 87, 95, 101, 111, 161,
- 41 196, 248, 352 and renumbered and amended by Laws of Utah 2008, Chapter 382
- 42       **63J-4-401**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 43       **63J-4-503**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 44       **63J-4-601**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 45       **63J-4-603**, as last amended by Laws of Utah 2008, Chapter 381 and renumbered and
- 46 amended by Laws of Utah 2008, Chapter 382

47 REPEALS:

- 48       **63J-4-604**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 49       **63J-4-605**, as renumbered and amended by Laws of Utah 2008, Chapter 382



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

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

53       **63C-4-101. Creation of Constitutional Defense Council -- Membership --**  
54 **Vacancies -- Reports -- Per diem and funding.**

- 55       (1) There is created the Constitutional Defense Council.
- 56       (2) (a) The defense council shall consist of the following 11 members:
- 57       (i) the governor or the lieutenant governor, who shall serve as [~~chair~~] co-chair of the
- 58 council;

59 (ii) the president of the Senate or the president of the Senate's designee who shall serve  
60 as co-chair of the council every other month;

61 (iii) the speaker of the House or the speaker of the House's designee who shall serve as  
62 co-chair of the council every other month;

63 (iv) the minority leader of the Senate or the minority leader of the Senate's designee;

64 (v) the minority leader of the House or the minority leader of the House's designee;

65 (vi) the attorney general or the attorney general's designee, who shall be one of the  
66 attorney general's appointees, not a current career service employee;

67 (vii) one citizen member appointed by the governor; and

68 (viii) four elected county commissioners, county council members, or county  
69 executives from different counties who are selected by the Utah Association of Counties.

70 (b) The council [~~shall select a vice-chair from its members~~] co-chairs shall rotate the  
71 responsibility for conducting the meeting.

72 (3) When a vacancy occurs in the membership for any reason, the replacement shall be  
73 appointed for the unexpired term in the same manner as the original appointment.

74 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), the defense council shall meet at  
75 least monthly or more frequently as needed.

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

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

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

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

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

87 (e) A majority of the membership on the defense council is required for a quorum to  
88 conduct council business. A majority vote of the quorum is required for any action taken by  
89 the defense council.

90 (5) The Office of the Attorney General shall [~~provide staff to~~] advise the defense  
91 council.

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

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

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

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

104 (c) Legislators on the committee shall receive compensation and expenses as provided  
105 by law and legislative rule.

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

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

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

111 **63C-4-102. Duties.**

112 (1) The Constitutional Defense Council is a council to assist the governor and the  
113 Legislature on the following types of issues:

114 (a) the constitutionality of unfunded federal mandates;

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

118 (c) legal and policy issues surrounding state and local government rights under R.S.  
119 2477;

120 (d) legal issues relating to the rights of the School and Institutional Trust Lands

121 Administration and its beneficiaries; and

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

123 (i) federal court rulings that hinder the management of the state's prison system and

124 place undue financial hardship on the state's taxpayers;

125 (ii) federal laws or regulations that reduce or negate water rights or the rights of owners

126 of private property, or the rights and interest of state and local governments, including

127 sovereignty interests and the power to provide for the health, safety, and welfare, and promote

128 the prosperity of their inhabitants;

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

130 (iv) federal intervention that would damage the state's mining, timber, and ranching

131 industries;

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

133 local air quality standards and penalties; and

134 (vi) other issues that are relevant to ~~[Subsections]~~ this Subsection (1)~~[(a) through (e)]~~.

135 (2) The council shall:

136 (a) provide advice to the governor, state planning coordinator, and the public lands

137 policy coordinator concerning:

138 (i) state and local government rights under R.S. 2477; and

139 (ii) other public lands issues;

140 (b) coordinate state and local government efforts related to:

141 (i) state and local government rights under R.S. 2477; and

142 (ii) other public lands issues;

143 (c) provide oversight, coordination, and reporting of state and local efforts related to

144 state and local government rights under R.S. 2477;

145 (d) approve a plan for R.S. 2477 rights developed in accordance with Section

146 63C-4-104; and

147 (e) review, at least quarterly:

148 (i) financial statements concerning the plan for R.S. 2477 rights; and

149 (ii) financial and other reports from the Public Lands Policy Coordinating Office.

150 ~~[(2)]~~ (3) The council chair may require the attorney general or a designee to provide

151 testimony on potential legal actions that would enhance the state's sovereignty or authority on

152 issues affecting Utah and the well-being of its citizens.

153 ~~[(3)]~~ (4) The council chair may direct the attorney general to initiate and prosecute any  
154 action that the council determines will further its purposes.

155 ~~[(4)]~~ (5) (a) Subject to the provisions of this section, the council may select and employ  
156 attorneys to implement the purposes and duties of the council.

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

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

162 ~~[(5)]~~ (6) The council chair shall, only with the concurrence of the council, review and  
163 approve all claims for payments for legal services that are submitted to the council.

164 ~~[(6)]~~ (7) Within five business days' notice, the council chair may, with the concurrence  
165 of the council, order the attorney general or an attorney employed by the council to cease work  
166 to be charged to the fund.

167 ~~[(7)]~~ (8) (a) At least ~~[20 calendar]~~ ten business days before the state submits  
168 ~~[comments on the draft environmental impact statement or environmental assessment for a~~  
169 ~~proposed land management plan of]~~ any comment or other material as part of a process  
170 governed by the National Environmental Policy Act, 42 U.S.C. 4321, or another public lands or  
171 natural resources matter, to any federal [land management] or state agency, or a shorter time  
172 that is reasonable under the circumstances, the governor shall make those documents available  
173 to:

174 (i) members of the council; and

175 (ii) any county executive, county council member, or county commissioner of a county  
176 ~~[that is covered by the management plan and that has established formal cooperating agency~~  
177 ~~status with the relevant federal land management agency regarding the proposed plan]~~ affected  
178 by the matter.

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

182 (ii) Council members or local government officials shall submit recommendations to

183 the governor or the governor's designee no later than ~~[ten calendar days]~~ the date that is  
 184 halfway between the day the county or other official receives the materials and the day on  
 185 which the state is to submit the materials after receiving the documents under Subsection ~~[(7)]~~  
 186 (8)(a).

187 (c) Documents transmitted or received under this Subsection ~~[(7)]~~ (8) are drafts and are  
 188 protected records pursuant to Subsection 63G-2-305(22).

189 ~~[(8)]~~ (9) The council shall submit a report on December 1 of each year to the speaker of  
 190 the House of Representatives and the president of the Senate that summarizes the council's  
 191 activities.

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

193 **63C-4-103. Creation of Constitutional Defense Restricted Account -- Sources of**  
 194 **funds -- Uses of funds -- Reports.**

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

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

198 (a) monies deposited to the account as required by Section 53C-3-203;

199 (b) voluntary contributions;

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

201 and

202 (d) appropriations made by the Legislature.

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

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

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

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

208 (b) the Public Lands Policy Coordinating Office to carry out its duties in Section  
 209 63J-4-603;

210 ~~[(c) the Public Lands Policy Coordinating Council to carry out its duties in Section~~  
 211 ~~63J-4-605;]~~

212 ~~[(d)]~~ (c) the Office of the Governor, to be used only for the purpose of asserting,  
 213 defending, or litigating state and local government rights under R.S. 2477, in accordance with a

214 plan developed and approved as provided in Section 63C-4-104;

215 ~~[(e)]~~ (d) a county or association of counties to assist counties, consistent with the  
216 purposes of the council, in pursuing issues affecting the counties; or

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

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

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

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

228 **63C-4-104. Plan for R.S. 2477 rights -- Contents.**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

262 (4) The Constitutional Defense Council shall:

263 (a) review expenditures, at least quarterly, made to further a plan approved under this  
264 section;

265 (b) approve an update to a plan under this section at least annually, or more often, if  
266 necessary; and

267 (c) present a plan approved under this section, with any updates, to:

268 (i) the Legislature's Natural Resources, Agriculture, and Environment Interim  
269 Committee by July 1 of each calendar year after providing the plan to the committee at least  
270 seven days before the presentation; and

271 (ii) the president of the Senate and the speaker of the House of Representatives, which  
272 may be by mail.

273 Section 5. Section **63G-2-305** is amended to read:

274 **63G-2-305. Protected records.**

275 The following records are protected if properly classified by a governmental entity:

276 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret  
277 has provided the governmental entity with the information specified in Section 63G-2-309;

278 (2) commercial information or nonindividual financial information obtained from a  
279 person if:

280 (a) disclosure of the information could reasonably be expected to result in unfair  
281 competitive injury to the person submitting the information or would impair the ability of the  
282 governmental entity to obtain necessary information in the future;

283 (b) the person submitting the information has a greater interest in prohibiting access  
284 than the public in obtaining access; and

285 (c) the person submitting the information has provided the governmental entity with  
286 the information specified in Section 63G-2-309;

287 (3) commercial or financial information acquired or prepared by a governmental entity  
288 to the extent that disclosure would lead to financial speculations in currencies, securities, or  
289 commodities that will interfere with a planned transaction by the governmental entity or cause  
290 substantial financial injury to the governmental entity or state economy;

291 (4) records the disclosure of which could cause commercial injury to, or confer a  
292 competitive advantage upon a potential or actual competitor of, a commercial project entity as  
293 defined in Subsection 11-13-103(4);

294 (5) test questions and answers to be used in future license, certification, registration,  
295 employment, or academic examinations;

296 (6) records the disclosure of which would impair governmental procurement  
297 proceedings or give an unfair advantage to any person proposing to enter into a contract or  
298 agreement with a governmental entity, except, subject to ~~[Subsection]~~ Subsections (1) and (2),  
299 that this Subsection (6) does not restrict the right of a person to have access to, once the  
300 contract or grant has been awarded, a bid, proposal, or application submitted to or by a  
301 governmental entity in response to:

302 (a) a request for bids;

303 (b) a request for proposals;

304 (c) a grant; or

305 (d) other similar document;

306 (7) records that would identify real property or the appraisal or estimated value of real

307 or personal property, including intellectual property, under consideration for public acquisition  
308 before any rights to the property are acquired unless:

309 (a) public interest in obtaining access to the information outweighs the governmental  
310 entity's need to acquire the property on the best terms possible;

311 (b) the information has already been disclosed to persons not employed by or under a  
312 duty of confidentiality to the entity;

313 (c) in the case of records that would identify property, potential sellers of the described  
314 property have already learned of the governmental entity's plans to acquire the property;

315 (d) in the case of records that would identify the appraisal or estimated value of  
316 property, the potential sellers have already learned of the governmental entity's estimated value  
317 of the property; or

318 (e) the property under consideration for public acquisition is a single family residence  
319 and the governmental entity seeking to acquire the property has initiated negotiations to acquire  
320 the property as required under Section 78B-6-505;

321 (8) records prepared in contemplation of sale, exchange, lease, rental, or other  
322 compensated transaction of real or personal property including intellectual property, which, if  
323 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value  
324 of the subject property, unless:

325 (a) the public interest in access outweighs the interests in restricting access, including  
326 the governmental entity's interest in maximizing the financial benefit of the transaction; or

327 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of  
328 the value of the subject property have already been disclosed to persons not employed by or  
329 under a duty of confidentiality to the entity;

330 (9) records created or maintained for civil, criminal, or administrative enforcement  
331 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if  
332 release of the records:

333 (a) reasonably could be expected to interfere with investigations undertaken for  
334 enforcement, discipline, licensing, certification, or registration purposes;

335 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement  
336 proceedings;

337 (c) would create a danger of depriving a person of a right to a fair trial or impartial

338 hearing;

339 (d) reasonably could be expected to disclose the identity of a source who is not  
340 generally known outside of government and, in the case of a record compiled in the course of  
341 an investigation, disclose information furnished by a source not generally known outside of  
342 government if disclosure would compromise the source; or

343 (e) reasonably could be expected to disclose investigative or audit techniques,  
344 procedures, policies, or orders not generally known outside of government if disclosure would  
345 interfere with enforcement or audit efforts;

346 (10) records the disclosure of which would jeopardize the life or safety of an  
347 individual;

348 (11) records the disclosure of which would jeopardize the security of governmental  
349 property, governmental programs, or governmental recordkeeping systems from damage, theft,  
350 or other appropriation or use contrary to law or public policy;

351 (12) records that, if disclosed, would jeopardize the security or safety of a correctional  
352 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere  
353 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

354 (13) records that, if disclosed, would reveal recommendations made to the Board of  
355 Pardons and Parole by an employee of or contractor for the Department of Corrections, the  
356 Board of Pardons and Parole, or the Department of Human Services that are based on the  
357 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's  
358 jurisdiction;

359 (14) records and audit workpapers that identify audit, collection, and operational  
360 procedures and methods used by the State Tax Commission, if disclosure would interfere with  
361 audits or collections;

362 (15) records of a governmental audit agency relating to an ongoing or planned audit  
363 until the final audit is released;

364 (16) records prepared by or on behalf of a governmental entity solely in anticipation of  
365 litigation that are not available under the rules of discovery;

366 (17) records disclosing an attorney's work product, including the mental impressions or  
367 legal theories of an attorney or other representative of a governmental entity concerning  
368 litigation;

369 (18) records of communications between a governmental entity and an attorney  
370 representing, retained, or employed by the governmental entity if the communications would be  
371 privileged as provided in Section 78B-1-137;

372 (19) (a) (i) personal files of a state legislator, including personal correspondence to or  
373 from a member of the Legislature; and

374 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of  
375 legislative action or policy may not be classified as protected under this section; and

376 (b) (i) an internal communication that is part of the deliberative process in connection  
377 with the preparation of legislation between:

378 (A) members of a legislative body;

379 (B) a member of a legislative body and a member of the legislative body's staff; or

380 (C) members of a legislative body's staff; and

381 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of  
382 legislative action or policy may not be classified as protected under this section;

383 (20) (a) records in the custody or control of the Office of Legislative Research and  
384 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated  
385 legislation or contemplated course of action before the legislator has elected to support the  
386 legislation or course of action, or made the legislation or course of action public; and

387 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the  
388 Office of Legislative Research and General Counsel is a public document unless a legislator  
389 asks that the records requesting the legislation be maintained as protected records until such  
390 time as the legislator elects to make the legislation or course of action public;

391 (21) research requests from legislators to the Office of Legislative Research and  
392 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared  
393 in response to these requests;

394 (22) drafts, unless otherwise classified as public;

395 (23) records concerning a governmental entity's strategy about collective bargaining or  
396 pending litigation;

397 (24) records of investigations of loss occurrences and analyses of loss occurrences that  
398 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the  
399 Uninsured Employers' Fund, or similar divisions in other governmental entities;

400 (25) records, other than personnel evaluations, that contain a personal recommendation  
401 concerning an individual if disclosure would constitute a clearly unwarranted invasion of  
402 personal privacy, or disclosure is not in the public interest;

403 (26) records that reveal the location of historic, prehistoric, paleontological, or  
404 biological resources that if known would jeopardize the security of those resources or of  
405 valuable historic, scientific, educational, or cultural information;

406 (27) records of independent state agencies if the disclosure of the records would  
407 conflict with the fiduciary obligations of the agency;

408 (28) records of an institution within the state system of higher education defined in  
409 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,  
410 retention decisions, and promotions, which could be properly discussed in a meeting closed in  
411 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of  
412 the final decisions about tenure, appointments, retention, promotions, or those students  
413 admitted, may not be classified as protected under this section;

414 (29) records of the governor's office, including budget recommendations, legislative  
415 proposals, and policy statements, that if disclosed would reveal the governor's contemplated  
416 policies or contemplated courses of action before the governor has implemented or rejected  
417 those policies or courses of action or made them public;

418 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,  
419 revenue estimates, and fiscal notes of proposed legislation before issuance of the final  
420 recommendations in these areas;

421 (31) records provided by the United States or by a government entity outside the state  
422 that are given to the governmental entity with a requirement that they be managed as protected  
423 records if the providing entity certifies that the record would not be subject to public disclosure  
424 if retained by it;

425 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body  
426 except as provided in Section 52-4-206;

427 (33) records that would reveal the contents of settlement negotiations but not including  
428 final settlements or empirical data to the extent that they are not otherwise exempt from  
429 disclosure;

430 (34) memoranda prepared by staff and used in the decision-making process by an

431 administrative law judge, a member of the Board of Pardons and Parole, or a member of any  
432 other body charged by law with performing a quasi-judicial function;

433 (35) records that would reveal negotiations regarding assistance or incentives offered  
434 by or requested from a governmental entity for the purpose of encouraging a person to expand  
435 or locate a business in Utah, but only if disclosure would result in actual economic harm to the  
436 person or place the governmental entity at a competitive disadvantage, but this section may not  
437 be used to restrict access to a record evidencing a final contract;

438 (36) materials to which access must be limited for purposes of securing or maintaining  
439 the governmental entity's proprietary protection of intellectual property rights including patents,  
440 copyrights, and trade secrets;

441 (37) the name of a donor or a prospective donor to a governmental entity, including an  
442 institution within the state system of higher education defined in Section 53B-1-102, and other  
443 information concerning the donation that could reasonably be expected to reveal the identity of  
444 the donor, provided that:

445 (a) the donor requests anonymity in writing;

446 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be  
447 classified protected by the governmental entity under this Subsection (37); and

448 (c) except for an institution within the state system of higher education defined in  
449 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged  
450 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority  
451 over the donor, a member of the donor's immediate family, or any entity owned or controlled  
452 by the donor or the donor's immediate family;

453 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and  
454 73-18-13;

455 (39) a notification of workers' compensation insurance coverage described in Section  
456 34A-2-205;

457 (40) (a) the following records of an institution within the state system of higher  
458 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,  
459 or received by or on behalf of faculty, staff, employees, or students of the institution:

460 (i) unpublished lecture notes;

461 (ii) unpublished notes, data, and information:

462 (A) relating to research; and  
463 (B) of:  
464 (I) the institution within the state system of higher education defined in Section  
465 53B-1-102; or  
466 (II) a sponsor of sponsored research;  
467 (iii) unpublished manuscripts;  
468 (iv) creative works in process;  
469 (v) scholarly correspondence; and  
470 (vi) confidential information contained in research proposals;  
471 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public  
472 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and  
473 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;  
474 (41) (a) records in the custody or control of the Office of Legislative Auditor General  
475 that would reveal the name of a particular legislator who requests a legislative audit prior to the  
476 date that audit is completed and made public; and  
477 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the  
478 Office of the Legislative Auditor General is a public document unless the legislator asks that  
479 the records in the custody or control of the Office of Legislative Auditor General that would  
480 reveal the name of a particular legislator who requests a legislative audit be maintained as  
481 protected records until the audit is completed and made public;  
482 (42) records that provide detail as to the location of an explosive, including a map or  
483 other document that indicates the location of:  
484 (a) a production facility; or  
485 (b) a magazine;  
486 (43) information:  
487 (a) contained in the statewide database of the Division of Aging and Adult Services  
488 created by Section 62A-3-311.1; or  
489 (b) received or maintained in relation to the Identity Theft Reporting Information  
490 System (IRIS) established under Section 67-5-22;  
491 (44) information contained in the Management Information System and Licensing  
492 Information System described in Title 62A, Chapter 4a, Child and Family Services;



493 (45) information regarding National Guard operations or activities in support of the  
494 National Guard's federal mission;

495 (46) records provided by any pawn or secondhand business to a law enforcement  
496 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and  
497 Secondhand Merchandise Transaction Information Act;

498 (47) information regarding food security, risk, and vulnerability assessments performed  
499 by the Department of Agriculture and Food;

500 (48) except to the extent that the record is exempt from this chapter pursuant to Section  
501 63G-2-106, records related to an emergency plan or program prepared or maintained by the  
502 Division of Homeland Security the disclosure of which would jeopardize:

503 (a) the safety of the general public; or

504 (b) the security of:

505 (i) governmental property;

506 (ii) governmental programs; or

507 (iii) the property of a private person who provides the Division of Homeland Security  
508 information;

509 (49) records of the Department of Agriculture and Food relating to the National  
510 Animal Identification System or any other program that provides for the identification, tracing,  
511 or control of livestock diseases, including any program established under Title 4, Chapter 24,  
512 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and  
513 Quarantine;

514 (50) as provided in Section 26-39-501:

515 (a) information or records held by the Department of Health related to a complaint  
516 regarding a child care program or residential child care which the department is unable to  
517 substantiate; and

518 (b) information or records related to a complaint received by the Department of Health  
519 from an anonymous complainant regarding a child care program or residential child care;

520 (51) unless otherwise classified as public under Section 63G-2-301 and except as  
521 provided under Section 41-1a-116, an individual's home address, home telephone number, or  
522 personal mobile phone number, if:

523 (a) the individual is required to provide the information in order to comply with a law,

524 ordinance, rule, or order of a government entity; and

525 (b) the subject of the record has a reasonable expectation that this information will be  
526 kept confidential due to:

527 (i) the nature of the law, ordinance, rule, or order; and

528 (ii) the individual complying with the law, ordinance, rule, or order;

529 (52) the name, home address, work addresses, and telephone numbers of an individual  
530 that is engaged in, or that provides goods or services for, medical or scientific research that is:

531 (a) conducted within the state system of higher education, as defined in Section  
532 53B-1-102; and

533 (b) conducted using animals;

534 (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement  
535 Private Proposal Program, to the extent not made public by rules made under that chapter;

536 (54) information collected and a report prepared by the Judicial Performance  
537 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter  
538 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,  
539 the information or report;

540 (55) (a) records of the Utah Educational Savings Plan Trust created under Section  
541 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

542 (b) proposals submitted to the Utah Educational Savings Plan Trust; and

543 (c) contracts entered into by the Utah Educational Savings Plan Trust and the related  
544 payments; [~~and~~]

545 (56) records contained in the Management Information System created in Section  
546 62A-4a-1003[-]; and

547 (57) records provided or received by the Public Lands Policy Coordinating Office in  
548 furtherance of any contract made in accordance with Section 63J-4-603.

549 Section 6. Section **63J-4-401** is amended to read:

550 **63J-4-401. Planning duties of the planning coordinator and office.**

551 (1) The state planning coordinator shall:

552 (a) act as the governor's adviser on state, regional, metropolitan, and local  
553 governmental planning matters relating to public improvements and land use;

554 (b) counsel with the authorized representatives of the Department of Transportation,

555 the State Building Board, the Department of Health, the Department of Workforce Services,  
556 the Labor Commission, the Department of Natural Resources, the School and Institutional  
557 Trust Lands Administration, and other proper persons concerning all state planning matters;

558 (c) when designated to do so by the governor, receive funds made available to Utah by  
559 the federal government;

560 (d) receive and review plans of the various state agencies and political subdivisions  
561 relating to public improvements and programs;

562 (e) when conflicts occur between the plans and proposals of state agencies, prepare  
563 specific recommendations for the resolution of the conflicts and submit the recommendations  
564 to the governor for a decision resolving the conflict;

565 (f) when conflicts occur between the plans and proposals of a state agency and a  
566 political subdivision or between two or more political subdivisions, advise these entities of the  
567 conflict and make specific recommendations for the resolution of the conflict;

568 (g) act as the governor's planning agent in planning public improvements and land use  
569 and, in this capacity, undertake special studies and investigations;

570 (h) provide information and cooperate with the Legislature or any of its committees in  
571 conducting planning studies;

572 (i) cooperate and exchange information with federal agencies and local, metropolitan,  
573 or regional agencies as necessary to assist with federal, state, regional, metropolitan, and local  
574 programs; ~~and~~

575 (j) make recommendations to the governor that the planning coordinator considers  
576 advisable for the proper development and coordination of plans for state government and  
577 political subdivisions[-]; and

578 (k) oversee and supervise the activities and duties of the public lands policy  
579 coordinator and the Public Lands Policy Coordinating Office.

580 (2) The state planning coordinator may:

581 (a) perform regional and state planning and assist state government planning agencies  
582 in performing state planning;

583 (b) provide planning assistance to Indian tribes regarding planning for Indian  
584 reservations; and

585 (c) assist city, county, metropolitan, and regional planning agencies in performing

586 local, metropolitan, and regional planning, provided that the state planning coordinator and the  
587 state planning coordinator's agents and designees recognize and promote the plans, policies,  
588 programs, processes, and desired outcomes of each planning agency whenever possible.

589 (3) When preparing or assisting in the preparation of plans, policies, programs, or  
590 processes related to the management or use of federal lands or natural resources on federal  
591 lands in Utah, the state planning coordinator shall:

592 (a) incorporate the plans, policies, programs, processes, and desired outcomes of the  
593 counties where the federal lands or natural resources are located, to the maximum extent  
594 consistent with state and federal law, provided that this requirement shall not be interpreted to  
595 infringe upon the authority of the governor;

596 (b) identify inconsistencies or conflicts between the plans, policies, programs,  
597 processes, and desired outcomes prepared under Subsection (3)(a) and the plans, programs,  
598 processes, and desired outcomes of local government as early in the preparation process as  
599 possible, and seek resolution of the inconsistencies through meetings or other conflict  
600 resolution mechanisms involving the necessary and immediate parties to the inconsistency or  
601 conflict;

602 (c) present to the governor the nature and scope of any inconsistency or other conflict  
603 that is not resolved under the procedures in Subsection (3)(b) for the governor's decision about  
604 the position of the state concerning the inconsistency or conflict;

605 (d) develop, research, and use factual information, legal analysis, and statements of  
606 desired future condition for the state, or subregion of the state, as necessary to support the  
607 plans, policies, programs, processes, and desired outcomes of the state and the counties where  
608 the federal lands or natural resources are located;

609 (e) establish and coordinate agreements between the state and federal land management  
610 agencies, federal natural resource management agencies, and federal natural resource  
611 regulatory agencies to facilitate state and local participation in the development, revision, and  
612 implementation of land use plans, guidelines, regulations, other instructional memoranda, or  
613 similar documents proposed or promulgated for lands and natural resources administered by  
614 federal agencies; and

615 (f) work in conjunction with political subdivisions to establish agreements with federal  
616 land management agencies, federal natural resource management agencies, and federal natural

617 resource regulatory agencies to provide a process for state and local participation in the  
618 preparation of, or coordinated state and local response to, environmental impact analysis  
619 documents and similar documents prepared pursuant to law by state or federal agencies.

620 (4) The state planning coordinator shall comply with the requirements of Subsection  
621 63C-4-102~~(7)~~(8) before submitting any comments ~~[on a draft environmental impact statement~~  
622 ~~or on an environmental assessment for a proposed land management plan] or other material to~~  
623 a federal or state agency if the governor would be subject to Subsection 63C-4-102(8), if the  
624 governor were submitting the material.

625 (5) The state planning coordinator shall cooperate with and work in conjunction with  
626 appropriate state agencies and political subdivisions to develop policies, plans, programs,  
627 processes, and desired outcomes authorized by this section by coordinating the development of  
628 positions:

629 (a) through the Resource Development Coordinating Committee;

630 (b) in conjunction with local government officials concerning general local government  
631 plans;

632 (c) by soliciting public comment through the Resource Development Coordinating  
633 Committee; and

634 (d) by working with the Public Lands Policy Coordinating Office.

635 (6) The state planning coordinator shall recognize and promote the following principles  
636 when preparing any policies, plans, programs, processes, or desired outcomes relating to  
637 federal lands and natural resources on federal lands pursuant to this section:

638 (a) (i) the citizens of the state are best served by applying multiple-use and  
639 sustained-yield principles in public land use planning and management; and

640 (ii) multiple-use and sustained-yield management means that federal agencies should  
641 develop and implement management plans and make other resource-use decisions that:

642 (A) achieve and maintain in perpetuity a high-level annual or regular periodic output of  
643 mineral and various renewable resources from public lands;

644 (B) support valid existing transportation, mineral, and grazing privileges at the highest  
645 reasonably sustainable levels;

646 (C) support the specific plans, programs, processes, and policies of state agencies and  
647 local governments;

648 (D) are designed to produce and provide the desired vegetation for the watersheds,  
649 timber, food, fiber, livestock forage, and wildlife forage, and minerals that are necessary to  
650 meet present needs and future economic growth and community expansion without permanent  
651 impairment of the productivity of the land;

652 (E) meet the recreational needs and the personal and business-related transportation  
653 needs of the citizens of the state by providing access throughout the state;

654 (F) meet the recreational needs of the citizens of the state;

655 (G) meet the needs of wildlife;

656 (H) provide for the preservation of cultural resources, both historical and  
657 archaeological;

658 (I) meet the needs of economic development;

659 (J) meet the needs of community development; and

660 (K) provide for the protection of water rights;

661 (b) managing public lands for "wilderness characteristics" circumvents the statutory  
662 wilderness process and is inconsistent with the multiple-use and sustained-yield management  
663 standard that applies to all Bureau of Land Management and U.S. Forest Service lands that are  
664 not wilderness areas or wilderness study areas;

665 (c) all waters of the state are:

666 (i) owned exclusively by the state in trust for its citizens;

667 (ii) are subject to appropriation for beneficial use; and

668 (iii) are essential to the future prosperity of the state and the quality of life within the  
669 state;

670 (d) the state has the right to develop and use its entitlement to interstate rivers;

671 (e) all water rights desired by the federal government must be obtained through the  
672 state water appropriation system;

673 (f) land management and resource-use decisions which affect federal lands should give  
674 priority to and support the purposes of the compact between the state and the United States  
675 related to school and institutional trust lands;

676 (g) development of the solid, fluid, and gaseous mineral resources of the state is an  
677 important part of the economy of the state, and of local regions within the state;

678 (h) the state should foster and support industries that take advantage of the state's

679 outstanding opportunities for outdoor recreation;

680 (i) wildlife constitutes an important resource and provides recreational and economic  
681 opportunities for the state's citizens;

682 (j) proper stewardship of the land and natural resources is necessary to ensure the  
683 health of the watersheds, timber, forage, and wildlife resources to provide for a continuous  
684 supply of resources for the people of the state and the people of the local communities who  
685 depend on these resources for a sustainable economy;

686 (k) forests, rangelands, timber, and other vegetative resources:

687 (i) provide forage for livestock;

688 (ii) provide forage and habitat for wildlife;

689 (iii) provide resources for the state's timber and logging industries;

690 (iv) contribute to the state's economic stability and growth; and

691 (v) are important for a wide variety of recreational pursuits;

692 (l) management programs and initiatives that improve watersheds, forests, and increase  
693 forage for the mutual benefit of wildlife species and livestock, logging, and other agricultural  
694 industries by utilizing proven techniques and tools are vital to the state's economy and the  
695 quality of life in Utah; and

696 (m) (i) land management plans, programs, and initiatives should provide that the  
697 amount of domestic livestock forage, expressed in animal unit months, for permitted, active  
698 use as well as the wildlife forage included in that amount, be no less than the maximum  
699 number of animal unit months sustainable by range conditions in grazing allotments and  
700 districts, based on an on-the-ground and scientific analysis;

701 (ii) the state opposes the relinquishment or retirement of grazing animal unit months in  
702 favor of conservation, wildlife, and other uses;

703 (iii) (A) the state favors the best management practices that are jointly sponsored by  
704 cattlemen's, sportsmen's, and wildlife management groups such as chaining, logging, seeding,  
705 burning, and other direct soil and vegetation prescriptions that are demonstrated to restore  
706 forest and rangeland health, increase forage, and improve watersheds in grazing districts and  
707 allotments for the mutual benefit of domestic livestock and wildlife;

708 (B) when practices described in Subsection (6)(m)(iii)(A) increase a grazing  
709 allotment's forage beyond the total permitted forage use that was allocated to that allotment in

710 the last federal land use plan or allotment management plan still in existence as of January 1,  
711 2005, a reasonable and fair portion of the increase in forage beyond the previously allocated  
712 total permitted use should be allocated to wildlife as recommended by a joint, evenly balanced  
713 committee of livestock and wildlife representatives that is appointed and constituted by the  
714 governor for that purpose;

715 (C) the state favors quickly and effectively adjusting wildlife population goals and  
716 population census numbers in response to variations in the amount of available forage caused  
717 by drought or other climatic adjustments, and state agencies responsible for managing wildlife  
718 population goals and population census numbers will give due regard to both the needs of the  
719 livestock industry and the need to prevent the decline of species to a point where listing under  
720 the terms of the Endangered Species Act when making such adjustments;

721 (iv) the state opposes the transfer of grazing animal unit months to wildlife for  
722 supposed reasons of rangeland health;

723 (v) reductions in domestic livestock animal unit months must be temporary and  
724 scientifically based upon rangeland conditions;

725 (vi) policies, plans, programs, initiatives, resource management plans, and forest plans  
726 may not allow the placement of grazing animal unit months in a suspended use category unless  
727 there is a rational and scientific determination that the condition of the rangeland allotment or  
728 district in question will not sustain the animal unit months sought to be placed in suspended  
729 use;

730 (vii) any grazing animal unit months that are placed in a suspended use category should  
731 be returned to active use when range conditions improve;

732 (viii) policies, plans, programs, and initiatives related to vegetation management  
733 should recognize and uphold the preference for domestic grazing over alternate forage uses in  
734 established grazing districts while upholding management practices that optimize and expand  
735 forage for grazing and wildlife in conjunction with state wildlife management plans and  
736 programs in order to provide maximum available forage for all uses; and

737 (ix) in established grazing districts, animal unit months that have been reduced due to  
738 rangeland health concerns should be restored to livestock when rangeland conditions improve,  
739 and should not be converted to wildlife use.

740 (7) The state planning coordinator shall recognize and promote the following findings



741 in the preparation of any policies, plans, programs, processes, or desired outcomes relating to  
742 federal lands and natural resources on federal lands under this section:

743 (a) as a coholder of R.S. 2477 rights-of-way with the counties, the state supports its  
744 recognition by the federal government and the public use of R.S. 2477 rights-of-way and urges  
745 the federal government to fully recognize the rights-of-way and their use by the public as  
746 expeditiously as possible;

747 (b) it is the policy of the state to use reasonable administrative and legal measures to  
748 protect and preserve valid existing rights-of-way granted by Congress under R.S. 2477, and to  
749 support and work in conjunction with counties to redress cases where R.S. 2477 rights-of-way  
750 are not recognized or are impaired; and

751 (c) transportation and access routes to and across federal lands, including all  
752 rights-of-way vested under R.S. 2477, are vital to the state's economy and to the quality of life  
753 in the state, and must provide, at a minimum, a network of roads throughout the resource  
754 planning area that provides for:

755 (i) movement of people, goods, and services across public lands;

756 (ii) reasonable access to a broad range of resources and opportunities throughout the  
757 resource planning area, including:

758 (A) livestock operations and improvements;

759 (B) solid, fluid, and gaseous mineral operations;

760 (C) recreational opportunities and operations, including motorized and nonmotorized  
761 recreation;

762 (D) search and rescue needs;

763 (E) public safety needs; and

764 (F) access for transportation of wood products to market;

765 (iii) access to federal lands for people with disabilities and the elderly; and

766 (iv) access to state lands and school and institutional trust lands to accomplish the  
767 purposes of those lands.

768 (8) The state planning coordinator shall recognize and promote the following findings  
769 in the preparation of any plans, policies, programs, processes, or desired outcomes relating to  
770 federal lands and natural resources on federal lands pursuant to this section:

771 (a) the state's support for the addition of a river segment to the National Wild and

772 Scenic Rivers System, 16 U.S.C. Sec. 1271 et seq., will be withheld until:

773 (i) it is clearly demonstrated that water is present and flowing at all times;

774 (ii) it is clearly demonstrated that the required water-related value is considered  
775 outstandingly remarkable within a region of comparison consisting of one of the three  
776 physiographic provinces in the state, and that the rationale and justification for the conclusions  
777 are disclosed;

778 (iii) it is clearly demonstrated that the inclusion of each river segment is consistent  
779 with the plans and policies of the state and the county or counties where the river segment is  
780 located as those plans and policies are developed according to Subsection (3);

781 (iv) the effects of the addition upon the local and state economies, agricultural and  
782 industrial operations and interests, outdoor recreation, water rights, water quality, water  
783 resource planning, and access to and across river corridors in both upstream and downstream  
784 directions from the proposed river segment have been evaluated in detail by the relevant federal  
785 agency;

786 (v) it is clearly demonstrated that the provisions and terms of the process for review of  
787 potential additions have been applied in a consistent manner by all federal agencies;

788 (vi) the rationale and justification for the proposed addition, including a comparison  
789 with protections offered by other management tools, is clearly analyzed within the multiple-use  
790 mandate, and the results disclosed;

791 (vii) it is clearly demonstrated that the federal agency with management authority over  
792 the river segment, and which is proposing the segment for inclusion in the National Wild and  
793 Scenic River System will not use the actual or proposed designation as a basis to impose  
794 management standards outside of the federal land management plan;

795 (viii) it is clearly demonstrated that the terms and conditions of the federal land and  
796 resource management plan containing a recommendation for inclusion in the National Wild  
797 and Scenic River System:

798 (A) evaluates all eligible river segments in the resource planning area completely and  
799 fully for suitability for inclusion in the National Wild and Scenic River System;

800 (B) does not suspend or terminate any studies for inclusion in the National Wild and  
801 Scenic River System at the eligibility phase;

802 (C) fully disclaims any interest in water rights for the recommended segment as a result

803 of the adoption of the plan; and

804 (D) fully disclaims the use of the recommendation for inclusion in the National Wild  
805 and Scenic River System as a reason or rationale for an evaluation of impacts by proposals for  
806 projects upstream, downstream, or within the recommended segment;

807 (ix) it is clearly demonstrated that the agency with management authority over the river  
808 segment commits not to use an actual or proposed designation as a basis to impose Visual  
809 Resource Management Class I or II management prescriptions that do not comply with the  
810 provisions of Subsection (8)(t); and

811 (x) it is clearly demonstrated that including the river segment and the terms and  
812 conditions for managing the river segment as part of the National Wild and Scenic River  
813 System will not prevent, reduce, impair, or otherwise interfere with:

814 (A) the state and its citizens' enjoyment of complete and exclusive water rights in and  
815 to the rivers of the state as determined by the laws of the state; or

816 (B) local, state, regional, or interstate water compacts to which the state or any county  
817 is a party;

818 (b) the conclusions of all studies related to potential additions to the National Wild and  
819 Scenic River System, 16 U.S.C. Sec. 1271 et seq., are submitted to the state for review and  
820 action by the Legislature and governor, and the results, in support of or in opposition to, are  
821 included in any planning documents or other proposals for addition and are forwarded to the  
822 United States Congress;

823 (c) the state's support for designation of an Area of Critical Environmental Concern  
824 (ACEC), as defined in 43 U.S.C. Sec. 1702, within federal land management plans will be  
825 withheld until:

826 (i) it is clearly demonstrated that the proposed area satisfies all the definitional  
827 requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. Sec.  
828 1702(a);

829 (ii) it is clearly demonstrated that the area proposed for designation as an ACEC is  
830 limited in geographic size and that the proposed management prescriptions are limited in scope  
831 to the minimum necessary to specifically protect and prevent irreparable damage to the relevant  
832 and important values identified, or limited in geographic size and management prescriptions to  
833 the minimum required to specifically protect human life or safety from natural hazards;

834 (iii) it is clearly demonstrated that the proposed area is limited only to areas that are  
835 already developed or used or to areas where no development is required;

836 (iv) it is clearly demonstrated that the proposed area contains relevant and important  
837 historic, cultural or scenic values, fish or wildlife resources, or natural processes which are  
838 unique or substantially significant on a regional basis, or contain natural hazards which  
839 significantly threaten human life or safety;

840 (v) the federal agency has analyzed regional values, resources, processes, or hazards for  
841 irreparable damage and its potential causes resulting from potential actions which are  
842 consistent with the multiple-use, sustained-yield principles, and the analysis describes the  
843 rationale for any special management attention required to protect, or prevent irreparable  
844 damage to the values, resources, processes, or hazards;

845 (vi) it is clearly demonstrated that the proposed designation is consistent with the plans  
846 and policies of the state and of the county where the proposed designation is located as those  
847 plans and policies are developed according to Subsection (3);

848 (vii) it is clearly demonstrated that the proposed ACEC designation will not be applied  
849 redundantly over existing protections provided by other state and federal laws for federal lands  
850 or resources on federal lands, and that the federal statutory requirement for special management  
851 attention for a proposed ACEC will discuss and justify any management requirements needed  
852 in addition to those specified by the other state and federal laws;

853 (viii) the difference between special management attention required for an ACEC and  
854 normal multiple-use management has been identified and justified, and that any determination  
855 of irreparable damage has been analyzed and justified for short and long-term horizons;

856 (ix) it is clearly demonstrated that the proposed designation:

857 (A) is not a substitute for a wilderness suitability recommendation;

858 (B) is not a substitute for managing areas inventoried for wilderness characteristics  
859 after 1993 under the BLM interim management plan for valid wilderness study areas; and

860 (C) it is not an excuse or justification to apply de facto wilderness management  
861 standards; and

862 (x) the conclusions of all studies are submitted to the state, as a cooperating agency, for  
863 review, and the results, in support of or in opposition to, are included in all planning  
864 documents;

865 (d) sufficient federal lands are made available for government-to-government  
866 exchanges of school and institutional trust lands and federal lands without regard for a  
867 resource-to-resource correspondence between the surface or mineral characteristics of the  
868 offered trust lands and the offered federal lands;

869 (e) federal agencies should support government-to-government exchanges of land with  
870 the state based on a fair process of valuation which meets the fiduciary obligations of both the  
871 state and federal governments toward trust lands management, and which assures that revenue  
872 authorized by federal statute to the state from mineral or timber production, present or future, is  
873 not diminished in any manner during valuation, negotiation, or implementation processes;

874 (f) agricultural and grazing lands should continue to produce the food and fiber needed  
875 by the citizens of the state and the nation, and the rural character and open landscape of rural  
876 Utah should be preserved through a healthy and active agricultural and grazing industry,  
877 consistent with private property rights and state fiduciary duties;

878 (g) the resources of the forests and rangelands of the state should be integrated as part  
879 of viable, robust, and sustainable state and local economies, and available forage should be  
880 evaluated for the full complement of herbivores the rangelands can support in a sustainable  
881 manner, and forests should contain a diversity of timber species, and disease or insect  
882 infestations in forests should be controlled using logging or other best management practices;

883 (h) the state opposes any additional evaluation of national forest service lands as  
884 "roadless" or "unroaded" beyond the forest service's second roadless area review evaluation and  
885 opposes efforts by agencies to specially manage those areas in a way that:

886 (i) closes or declassifies existing roads unless multiple side by side roads exist running  
887 to the same destination and state and local governments consent to close or declassify the extra  
888 roads;

889 (ii) permanently bars travel on existing roads;

890 (iii) excludes or diminishes traditional multiple-use activities, including grazing and  
891 proper forest harvesting;

892 (iv) interferes with the enjoyment and use of valid, existing rights, including water  
893 rights, local transportation plan rights, R.S. 2477 rights, grazing allotment rights, and mineral  
894 leasing rights; or

895 (v) prohibits development of additional roads reasonably necessary to pursue

896 traditional multiple-use activities;

897 (i) the state's support for any forest plan revision or amendment will be withheld until  
898 the appropriate plan revision or plan amendment clearly demonstrates that:

899 (i) established roads are not referred to as unclassified roads or a similar classification;

900 (ii) lands in the vicinity of established roads are managed under the multiple-use,  
901 sustained-yield management standard; and

902 (iii) no roadless or unroaded evaluations or inventories are recognized or upheld  
903 beyond those that were recognized or upheld in the forest service's second roadless area review  
904 evaluation;

905 (j) the state's support for any recommendations made under the statutory requirement to  
906 examine the wilderness option during the revision of land and resource management plans by  
907 the U.S. Forest Service will be withheld until it is clearly demonstrated that:

908 (i) the duly adopted transportation plans of the state and county or counties within the  
909 planning area are fully and completely incorporated into the baseline inventory of information  
910 from which plan provisions are derived;

911 (ii) valid state or local roads and rights-of-way are recognized and not impaired in any  
912 way by the recommendations;

913 (iii) the development of mineral resources by underground mining is not affected by  
914 the recommendations;

915 (iv) the need for additional administrative or public roads necessary for the full use of  
916 the various multiple-uses, including recreation, mineral exploration and development, forest  
917 health activities, and grazing operations is not unduly affected by the recommendations;

918 (v) analysis and full disclosure is made concerning the balance of multiple-use  
919 management in the proposed areas, and that the analysis compares the full benefit of  
920 multiple-use management to the recreational, forest health, and economic needs of the state and  
921 the counties to the benefits of the requirements of wilderness management; and

922 (vi) the conclusions of all studies related to the requirement to examine the wilderness  
923 option are submitted to the state for review and action by the Legislature and governor, and the  
924 results, in support of or in opposition to, are included in any planning documents or other  
925 proposals that are forwarded to the United States Congress;

926 (k) the invasion of noxious weeds and undesirable invasive plant species into the state

927 should be reversed, their presence eliminated, and their return prevented;

928 (l) management and resource-use decisions by federal land management and regulatory  
929 agencies concerning the vegetative resources within the state should reflect serious  
930 consideration of the proper optimization of the yield of water within the watersheds of the  
931 state;

932 (m) (i) it is the policy of the state that:

933 (A) mineral and energy production and environmental protection are not mutually  
934 exclusive;

935 (B) it is technically feasible to permit appropriate access to mineral and energy  
936 resources while preserving nonmineral and nonenergy resources;

937 (C) resource management planning should seriously consider all available mineral and  
938 energy resources;

939 (D) the development of the solid, fluid, and gaseous mineral resources of the state and  
940 the renewable resources of the state should be encouraged;

941 (E) the waste of fluid and gaseous minerals within developed areas should be  
942 prohibited; and

943 (F) requirements to mitigate or reclaim mineral development projects should be based  
944 on credible evidence of significant impacts to natural or cultural resources;

945 (ii) the state's support for mineral development provisions within federal land  
946 management plans will be withheld until the appropriate land management plan environmental  
947 impact statement clearly demonstrates:

948 (A) that the authorized planning agency has:

949 (I) considered and evaluated the mineral and energy potential in all areas of the  
950 planning area as if the areas were open to mineral development under standard lease  
951 agreements; and

952 (II) evaluated any management plan prescription for its impact on the area's baseline  
953 mineral and energy potential;

954 (B) that the development provisions do not unduly restrict access to public lands for  
955 energy exploration and development;

956 (C) that the authorized planning agency has supported any closure of additional areas  
957 to mineral leasing and development or any increase of acres subject to no surface occupancy

958 restrictions by adhering to:

959 (I) the relevant provisions of the Federal Land Policy and Management Act of 1976, 43  
960 U.S.C. Sec. 1701 et seq.;

961 (II) other controlling mineral development laws; and

962 (III) the controlling withdrawal and reporting procedures set forth in the Federal Land  
963 Policy and Management Act of 1976, 43 U.S.C. Sec. 1701 et seq.;

964 (D) that the authorized planning agency evaluated whether to repeal any moratorium  
965 that may exist on the issuance of additional mining patents and oil and gas leases;

966 (E) that the authorized planning agency analyzed all proposed mineral lease  
967 stipulations and considered adopting the least restrictive necessary to protect against damage to  
968 other significant resource values;

969 (F) that the authorized planning agency evaluated mineral lease restrictions to  
970 determine whether to waive, modify, or make exceptions to the restrictions on the basis that  
971 they are no longer necessary or effective;

972 (G) that the authorized federal agency analyzed all areas proposed for no surface  
973 occupancy restrictions, and that the analysis evaluated:

974 (I) whether directional drilling is economically feasible and ecologically necessary for  
975 each proposed no surface occupancy area;

976 (II) whether the directional drilling feasibility analysis, or analysis of other  
977 management prescriptions, demonstrates that the proposed no surface occupancy prescription,  
978 in effect, sterilizes the mineral and energy resources beneath the area; and

979 (III) whether, if the minerals are effectively sterilized, the area must be reported as  
980 withdrawn under the provisions of the Federal Land Policy and Management Act; and

981 (H) that the authorized planning agency has evaluated all directional drilling  
982 requirements in no surface occupancy areas to determine whether directional drilling is feasible  
983 from an economic, ecological, and engineering standpoint;

984 (n) motorized, human, and animal-powered outdoor recreation should be integrated  
985 into a fair and balanced allocation of resources within the historical and cultural framework of  
986 multiple-uses in rural Utah, and outdoor recreation should be supported as part of a balanced  
987 plan of state and local economic support and growth;

988 (o) off-highway vehicles should be used responsibly, the management of off-highway



989 vehicles should be uniform across all jurisdictions, and laws related to the use of off-highway  
990 vehicles should be uniformly applied across all jurisdictions;

991 (p) (i) rights-of-way granted and vested under the provisions of R.S. 2477 should be  
992 preserved and acknowledged;

993 (ii) land use management plans, programs, and initiatives should be consistent with  
994 both state and county transportation plans developed according to Subsection (3) in order to  
995 provide a network of roads throughout the planning area that provides for:

996 (A) movement of people, goods, and services across public lands;

997 (B) reasonable access to a broad range of resources and opportunities throughout the  
998 planning area, including access to livestock, water, and minerals;

999 (C) economic and business needs;

1000 (D) public safety;

1001 (E) search and rescue;

1002 (F) access for people with disabilities and the elderly;

1003 (G) access to state lands; and

1004 (H) recreational opportunities;

1005 (q) transportation and access provisions for all other existing routes, roads, and trails

1006 across federal, state, and school trust lands within the state should be determined and

1007 identified, and agreements should be executed and implemented, as necessary to fully authorize  
1008 and determine responsibility for maintenance of all routes, roads, and trails;

1009 (r) the reasonable development of new routes and trails for motorized, human, and  
1010 animal-powered recreation should be implemented;

1011 (s) (i) forests, rangelands, and watersheds, in a healthy condition, are necessary and  
1012 beneficial for wildlife, livestock grazing, and other multiple-uses;

1013 (ii) management programs and initiatives that are implemented to increase forage for  
1014 the mutual benefit of the agricultural industry, livestock operations, and wildlife species should  
1015 utilize all proven techniques and tools;

1016 (iii) the continued viability of livestock operations and the livestock industry should be  
1017 supported on the federal lands within the state by management of the lands and forage  
1018 resources, by the proper optimization of animal unit months for livestock, in accordance with  
1019 the multiple-use provisions of the Federal Land Policy and Management Act of 1976, 43

1020 U.S.C. 1701 et seq., the provisions of the Taylor Grazing Act of 1934, 43 U.S.C. 315 et seq.,  
1021 and the provisions of the Public Rangelands Improvement Act of 1978, 43 U.S.C. 1901 et seq.;

1022 (iv) provisions for predator control initiatives or programs under the direction of state  
1023 and local authorities should be implemented; and

1024 (v) resource-use and management decisions by federal land management and  
1025 regulatory agencies should support state-sponsored initiatives or programs designed to stabilize  
1026 wildlife populations that may be experiencing a scientifically demonstrated decline in those  
1027 populations; and

1028 (t) management and resource use decisions by federal land management and regulatory  
1029 agencies concerning the scenic resources of the state must balance the protection of scenery  
1030 with the full management requirements of the other authorized uses of the land under  
1031 multiple-use management, and should carefully consider using Visual Resource Management  
1032 Class I protection only for areas of inventoried Class A scenery or equivalent.

1033 (9) Nothing contained in this section may be construed to restrict or supersede the  
1034 planning powers conferred upon state departments, agencies, instrumentalities, or advisory  
1035 councils of the state or the planning powers conferred upon political subdivisions by any other  
1036 existing law.

1037 (10) Nothing in this section may be construed to affect any lands withdrawn from the  
1038 public domain for military purposes, which are administered by the United States Army, Air  
1039 Force, or Navy.

1040 Section 7. Section **63J-4-503** is amended to read:

1041 **63J-4-503. Planning coordinator responsibilities.**

1042 (1) The state planning coordinator shall:

1043 [~~(1)~~] (a) administer this part;

1044 [~~(2)~~] (b) subject to the direction and approval of the governor, take necessary action for  
1045 its implementation; and

1046 [~~(3)~~] (c) inform political subdivision representatives, in advance, of all committee  
1047 meetings.

1048 (2) The state planning coordinator may delegate the state planning coordinator's  
1049 responsibilities under this part to the Public Lands Policy Coordinating Office.

1050 Section 8. Section **63J-4-601** is amended to read:

1051 **63J-4-601. Definitions.**

1052 As used in this part:

1053 (1) "Coordinator" means the public lands policy coordinator appointed in this part.

1054 [~~(2)~~] "~~Council~~" means the ~~Public Lands Policy Coordinating Council~~ created by this1055 ~~part.~~]1056 [~~(3)~~] (2) "Office" means the Public Lands Policy Coordinating Office created by this

1057 part.

1058 [~~(4)~~] (3) "Political subdivision" means a county, municipality, local district, special  
1059 service district, school district, interlocal cooperation agreement entity, or any administrative  
1060 subunit of them.1061 [~~(5)~~] (4) "State planning coordinator" means the person appointed under Subsection  
1062 63J-4-202(1)(a)(ii).1063 Section 9. Section **63J-4-603** is amended to read:1064 **63J-4-603. Powers and duties of coordinator and office.**

1065 (1) The coordinator and the office shall:

1066 (a) report to and assist the Constitutional Defense Council created under Section  
1067 63C-4-101 in carrying out the Constitutional Defense Council's duties related to R.S. 2477  
1068 rights and other public lands issues under Title 63C, Chapter 4, Constitutional Defense  
1069 Council;1070 [~~(a)~~] (b) [~~assist~~] under the direction of the state planning coordinator, assist in fulfilling  
1071 the state planning coordinator's duties outlined in Section 63J-4-401 as those duties relate to  
1072 the development of public lands policies by:1073 (i) developing cooperative contracts and agreements between the state, political  
1074 subdivisions, and agencies of the federal government for involvement in the development of  
1075 public lands policies;1076 (ii) producing research, documents, maps, studies, analysis, or other information that  
1077 supports the state's participation in the development of public lands policy;1078 (iii) preparing comments to ensure that the positions of the state and political  
1079 subdivisions are considered in the development of public lands policy;

1080 (iv) partnering with state agencies and political subdivisions in an effort to:

1081 (A) prepare coordinated public lands policies;

1082 (B) develop consistency reviews and responses to public lands policies;  
1083 (C) develop management plans that relate to public lands policies; and  
1084 (D) develop and maintain a statewide land use plan that is based on cooperation and in  
1085 conjunction with political subdivisions; and  
1086 (v) providing other information or services related to public lands policies as requested  
1087 by the state planning coordinator; [~~and~~]  
1088 [~~(b)~~] (c) facilitate and coordinate the exchange of information, comments, and  
1089 recommendations on public lands policies between and among:  
1090 (i) state agencies;  
1091 (ii) political subdivisions;  
1092 (iii) the Office of Rural Development created under Section 63M-1-1602;  
1093 (iv) the Resource Development Coordinating Committee created under Section  
1094 63J-4-501;  
1095 (v) School and Institutional Trust Lands Administration created under Section  
1096 53C-1-201;  
1097 (vi) the committee created under Section 63F-1-508 to award grants to counties to  
1098 inventory and map R.S. 2477 rights-of-way, associated structures, and other features; and  
1099 (vii) the Constitutional Defense Council created under Section 63C-4-101;  
1100 [~~(c)~~] (d) perform the duties established in Title 9, Chapter 8, Part 3, Antiquities, and  
1101 Title 9, Chapter 8, Part 4, Historic Sites; [~~and~~]  
1102 [~~(d)~~] (e) consistent with other statutory duties, encourage agencies to responsibly  
1103 preserve archaeological resources[-];  
1104 (f) maintain information concerning grants made under Subsection (1)(h), if available;  
1105 (g) report annually, or more often if necessary or requested, concerning the office's  
1106 activities and expenditures to:  
1107 (i) the Constitutional Defense Council; and  
1108 (ii) the Legislature's Natural Resources, Agriculture, and Environment Interim  
1109 Committee; and  
1110 (h) make grants of up to 16% of the office's total annual appropriations from the  
1111 Constitutional Defense Restricted Account to a county or statewide association of counties to  
1112 be used by the county or association of counties for public lands matters if the coordinator

1113 determines that the state may benefit from the action.

1114 (2) In providing assistance to the Constitutional Defense Council and state planning  
1115 coordinator under Subsection (1)~~[(a)]~~, the coordinator and office shall ~~[take into consideration~~  
1116 ~~the: (a) findings provided under]~~ implement and follow the policies found in Subsections  
1117 63J-4-401(6) ~~[and]~~, (7)~~[-and]~~, and (8).

1118 ~~[(b) recommendations of the council.]~~

1119 (3) The coordinator and office shall comply with Subsection 63C-4-102(8) before  
1120 submitting any comment or other material to a federal or state agency if the governor would be  
1121 subject to Subsection 63G-4-102(8), if the governor were submitting the material.

1122 (4) The office may enter into a contract with another state agency to provide  
1123 information and services related to:

1124 (a) the duties authorized by Title 72, Chapter 3, Highway Jurisdiction and  
1125 Classification Act;

1126 (b) legal actions concerning Title 72, Chapter 3, Highway Jurisdiction and  
1127 Classification Act, or R.S. 2477 matters; or

1128 (c) any other matter within the office's responsibility.

1129 Section 10. **Repealer.**

1130 This bill repeals:

1131 Section **63J-4-604, Public Lands Policy Coordinating Council -- Creation --**  
1132 **Membership -- Funding.**

1133 Section **63J-4-605, Council duties.**

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Legislative Review Note  
as of 2-25-09 1:15 PM

Office of Legislative Research and General Counsel

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**H.B. 169 - Public Lands Policy Coordination Amendments**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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