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H.B. 169
1st Sub. (Buff)

Representative Michael E. Noel proposes the following substitute bill:

PUBLIC LANDS POLICY COORDINATION AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael E. Noel

Senate Sponsor: Dennis E. Stowell

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 state 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 other state agencies for services; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63C-4-101, as last amended by Laws of Utah 2008, Chapter 382

63C-4-102, as last amended by Laws of Utah 2008, Chapter 382

63C-4-103, as last amended by Laws of Utah 2008, Chapter 382

63C-4-104, as last amended by Laws of Utah 2004, Chapter 345

63G-2-305, as last amended by Laws of Utah 2008, Chapters 3, 87, 95, 101, 111, 161, 196, 248, 352 and renumbered and amended by Laws of Utah 2008, Chapter 382

63J-4-401, as renumbered and amended by Laws of Utah 2008, Chapter 382

63J-4-503, as renumbered and amended by Laws of Utah 2008, Chapter 382

63J-4-601, as renumbered and amended by Laws of Utah 2008, Chapter 382

63J-4-603, as last amended by Laws of Utah 2008, Chapter 381 and renumbered and amended by Laws of Utah 2008, Chapter 382

REPEALS:

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

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

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

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

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

(1) There is created the Constitutional Defense Council.

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

(i) the governor or the lieutenant governor, who shall serve as chair of the council;

(ii) the president of the Senate or the president of the Senate's designee who shall serve as vice chair of the council;

(iii) the speaker of the House or the speaker of the House's designee who shall serve as vice chair of the council;

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

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

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

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

(vii) the director of the School and Institutional Trust Lands Administration;

(viii) four elected county commissioners, county council members, or county executives from different counties who are selected by the Utah Association of Counties[.], at least one of whom shall be from a county of the first or second class;

(ix) the executive director of the Department of Natural Resources Ĥ→ **, who may not vote** ←Ĥ ;

(x) the commissioner of the Department of Agriculture and Food Ĥ→ **, who may not vote** ←Ĥ ;

(xi) the director of the Governor's Office of Economic Development, who may not vote; and

(xii) two Ĥ→ **[~~members~~] elected county commissioners, county council members, or county executives from different counties** ←Ĥ appointed by the Utah Association of Counties, who may not vote.

(b) The council [~~shall select a vice-chair from its members~~] vice chairs shall conduct a council meeting in the absence of the chair.

(c) If both the governor and the lieutenant governor are absent from a meeting of the council, the governor may designate a person to attend the meeting solely for the purpose of casting a vote on any matter on the governor's behalf.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

63C-4-102. Duties.

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

(a) the constitutionality of unfunded federal mandates;

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

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

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

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

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

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

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

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

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

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

(2) The council shall:

(a) provide advice to the governor, state planning coordinator, and the public lands policy coordinator concerning coordination of:

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

(ii) other public lands issues;

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

63C-4-104; and

(c) review, at least quarterly:

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

(ii) financial and other reports from the Public Lands Policy Coordinating Office concerning its activities.

[~~(2)~~] (3) The council chair may require the attorney general or a designee to provide testimony on potential legal actions that would enhance the state's sovereignty or authority on issues affecting Utah and the well-being of its citizens.

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

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

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

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

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

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

[~~(7)~~] (8) (a) At least 20 calendar days before the state submits comments on the draft environmental impact statement or environmental assessment for a proposed land management plan of any federal land management agency, the governor shall make those documents available to:

(i) members of the council; and

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

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

(ii) Council members or local government officials shall submit recommendations to the governor or the governor's designee no later than ten calendar days after receiving the documents under Subsection **Ĥ→ [~~(7)~~] (8) ←Ĥ** (a).

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

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

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

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

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

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

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

(b) voluntary contributions;

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

(d) appropriations made by the Legislature.

(3) Funds in the account shall be nonlapsing.

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

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

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

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

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

[~~(d)~~] <u>(c)</u> the Office of the Governor, to be used only for the purpose of asserting, defending, or litigating state and local government rights under R.S. 2477, in accordance with a plan developed and approved as provided in Section 63C-4-104;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The Constitutional Defense Council shall:

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

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

(c) jointly, with the Public Lands Policy Coordinating Office, present a plan approved under this section, with any updates, to:

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

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

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

63G-2-305. Protected records.

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

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

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

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

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

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

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

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

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

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

(a) a request for bids;

(b) a request for proposals;

(c) a grant; or

(d) other similar document;

(7) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) members of a legislative body;

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

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

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

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

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

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

(22) drafts, unless otherwise classified as public;

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

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

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

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

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

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

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

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

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

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

(33) records that would reveal the contents of settlement negotiations but not including

final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

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

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

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

(a) the donor requests anonymity in writing;

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

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

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

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

(40) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,

or received by or on behalf of faculty, staff, employees, or students of the institution:

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

(I) the institution within the state system of higher education defined in Section 53B-1-102; or

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

(c) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

(a) a production facility; or

(b) a magazine;

(43) information:

(a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or

(b) received or maintained in relation to the Identity Theft Reporting Information

System (IRIS) established under Section 67-5-22;

(44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;

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

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

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

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

(a) the safety of the general public; or

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

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

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

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

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

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

(51) unless otherwise classified as public under Section 63G-2-301 and except as

provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

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

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

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

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

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

(b) conducted using animals;

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

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

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

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

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

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

(57) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract Ĥ→ **or other agreement** ←Ĥ made in accordance with Section 63J-4-603.

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

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

(1) The state planning coordinator shall:

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

(b) counsel with the authorized representatives of the Department of Transportation, the State Building Board, the Department of Health, the Department of Workforce Services, the Labor Commission, the Department of Natural Resources, the School and Institutional Trust Lands Administration, and other proper persons concerning all state planning matters;

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

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

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

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

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

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

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

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

(k) oversee and supervise the activities and duties of the public lands policy coordinator.

(2) The state planning coordinator may:

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

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

(c) assist city, county, metropolitan, and regional planning agencies in performing local, metropolitan, and regional planning, provided that the state planning coordinator and the state planning coordinator's agents and designees recognize and promote the plans, policies, programs, processes, and desired outcomes of each planning agency whenever possible.

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

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

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

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

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

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

(f) work in conjunction with political subdivisions to establish agreements with federal land management agencies, federal natural resource management agencies, and federal natural resource regulatory agencies to provide a process for state and local participation in the preparation of, or coordinated state and local response to, environmental impact analysis documents and similar documents prepared pursuant to law by state or federal agencies.

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

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

(a) through the Resource Development Coordinating Committee;

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

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

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

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

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

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

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

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

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

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

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

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

(G) meet the needs of wildlife;

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

(I) meet the needs of economic development;

(J) meet the needs of community development; and

(K) provide for the protection of water rights;

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

(c) all waters of the state are:

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

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

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

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

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

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

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

(h) the state should foster and support industries that take advantage of the state's outstanding opportunities for outdoor recreation;

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

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

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

(i) provide forage for livestock;

(ii) provide forage and habitat for wildlife;

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

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

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

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

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

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

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

(B) when practices described in Subsection (6)(m)(iii)(A) increase a grazing allotment's forage beyond the total permitted forage use that was allocated to that allotment in the last federal land use plan or allotment management plan still in existence as of January 1, 2005, a reasonable and fair portion of the increase in forage beyond the previously allocated total permitted use should be allocated to wildlife as recommended by a joint, evenly balanced committee of livestock and wildlife representatives that is appointed and constituted by the governor for that purpose;

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) livestock operations and improvements;

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

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

(D) search and rescue needs;

(E) public safety needs; and

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

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

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

(8) The state planning coordinator shall recognize and promote the following findings in the preparation of any plans, policies, programs, processes, or desired outcomes relating to

federal lands and natural resources on federal lands pursuant to this section:

(a) the state's support for the addition of a river segment to the National Wild and Scenic Rivers System, 16 U.S.C. Sec. 1271 et seq., will be withheld until:

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

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

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

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

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

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

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

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

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

(B) does not suspend or terminate any studies for inclusion in the National Wild and

Scenic River System at the eligibility phase;

(C) fully disclaims any interest in water rights for the recommended segment as a result of the adoption of the plan; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) permanently bars travel on existing roads;

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

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

(v) prohibits development of additional roads reasonably necessary to pursue traditional multiple-use activities;

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

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

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

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

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

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

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

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

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

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

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

(k) the invasion of noxious weeds and undesirable invasive plant species into the state should be reversed, their presence eliminated, and their return prevented;

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

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

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

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

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

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

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

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

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

(A) that the authorized planning agency has:

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

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

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

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

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

(II) other controlling mineral development laws; and

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

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

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

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

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

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

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

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

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

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

(o) off-highway vehicles should be used responsibly, the management of off-highway vehicles should be uniform across all jurisdictions, and laws related to the use of off-highway vehicles should be uniformly applied across all jurisdictions;

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

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

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

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

(C) economic and business needs;

(D) public safety;

(E) search and rescue;

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

(G) access to state lands; and

(H) recreational opportunities;

(q) transportation and access provisions for all other existing routes, roads, and trails across federal, state, and school trust lands within the state should be determined and identified, and agreements should be executed and implemented, as necessary to fully authorize and determine responsibility for maintenance of all routes, roads, and trails;

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

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

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

(iii) the continued viability of livestock operations and the livestock industry should be supported on the federal lands within the state by management of the lands and forage resources, by the proper optimization of animal unit months for livestock, in accordance with the multiple-use provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq., the provisions of the Taylor Grazing Act of 1934, 43 U.S.C. 315 et seq., and the provisions of the Public Rangelands Improvement Act of 1978, 43 U.S.C. 1901 et seq.;

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

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

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

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

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

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

63J-4-503. Planning coordinator responsibilities.

(1) The state planning coordinator shall:

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

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

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

(2) The state planning coordinator may delegate the state planning coordinator's

responsibilities under this part to the Public Lands Policy Coordinating Office.

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

63J-4-601. Definitions.

As used in this part:

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

[~~(2) "Council" means the Public Lands Policy Coordinating Council created by this part.~~]

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

[~~(4)~~] (3) "Political subdivision" means a county, municipality, local district, special service district, school district, interlocal cooperation agreement entity, or any administrative subunit of them.

[~~(5)~~] (4) "State planning coordinator" means the person appointed under Subsection 63J-4-202(1)(a)(ii).

Section 9. Section **63J-4-603** is amended to read:

63J-4-603. Powers and duties of coordinator and office.

(1) The coordinator and the office shall:

(a) make a report to and provide staff assistance to the Constitutional Defense Council created under Section 63C-4-101 concerning R.S. 2477 rights and other public lands issues under Title 63C, Chapter 4, Constitutional Defense Council;

[~~(a)~~] (b) [~~assist~~] under the direction of the state planning coordinator, assist in fulfilling the state planning coordinator's duties outlined in Section 63J-4-401 as those duties relate to the development of public lands policies by:

(i) developing cooperative contracts and agreements between the state, political subdivisions, and agencies of the federal government for involvement in the development of public lands policies;

(ii) producing research, documents, maps, studies, analysis, or other information that supports the state's participation in the development of public lands policy;

(iii) preparing comments to ensure that the positions of the state and political subdivisions are considered in the development of public lands policy;

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

(A) prepare coordinated public lands policies;

(B) develop consistency reviews and responses to public lands policies;

(C) develop management plans that relate to public lands policies; and

(D) develop and maintain a statewide land use plan that is based on cooperation and in conjunction with political subdivisions; and

(v) providing other information or services related to public lands policies as requested by the state planning coordinator; [~~and~~]

[~~(b)~~] (c) facilitate and coordinate the exchange of information, comments, and recommendations on public lands policies between and among:

(i) state agencies;

(ii) political subdivisions;

(iii) the Office of Rural Development created under Section 63M-1-1602;

(iv) the Resource Development Coordinating Committee created under Section 63J-4-501;

(v) School and Institutional Trust Lands Administration created under Section 53C-1-201;

(vi) the committee created under Section 63F-1-508 to award grants to counties to inventory and map R.S. 2477 rights-of-way, associated structures, and other features; and

(vii) the Constitutional Defense Council created under Section 63C-4-101;

[~~(c)~~] (d) perform the duties established in Title 9, Chapter 8, Part 3, Antiquities, and Title 9, Chapter 8, Part 4, Historic Sites; [~~and~~]

[~~(d)~~] (e) consistent with other statutory duties, encourage agencies to responsibly preserve archaeological resources[~~.~~];

[~~(2) In providing assistance to the state planning coordinator under Subsection (1)(a), the coordinator and office shall take into consideration the:~~]

[~~(a) findings provided under Subsections 63J-4-401(6) and (7); and~~]

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

(f) maintain information concerning grants made under Subsection (1)(h), if available;

(g) report annually, or more often if necessary or requested, concerning the office's activities and expenditures to:

(i) the Constitutional Defense Council; and

(ii) the Legislature's Natural Resources, Agriculture, and Environment Interim Committee jointly with the Constitutional Defense Council; and

(h) make grants of up to 16% of the office's total annual appropriations from the Constitutional Defense Restricted Account to a county or statewide association of counties to be used by the county or association of counties for public lands matters if the coordinator, with the advice of the Constitutional Defense Council, determines that the action provides a state benefit.

(2) The coordinator and office shall comply with Subsection 63C-4-102(8) before submitting a comment to a federal agency, if the governor would be subject to Subsection 63C-4-102(8) if the governor were submitting the material.

(3) The office may enter into a contract **Ĥ→ or other agreement ←Ĥ** with another state agency to provide information and services related to:

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

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

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

Section 10. **Repealer.**

This bill repeals:

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

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

H.B. 169 1st Sub. (Buff) - Public Lands Policy Coordination Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.