

FEDERAL LAW EVALUATION AND RESPONSE

2011 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This bill authorizes the Constitutional Defense Council to evaluate and respond to federal law.

Highlighted Provisions:

- This bill:
 - ▶ defines terms;

- 29 ▶ creates a Federalism Subcommittee within the Constitutional Defense Council to:
- 30 • evaluate federal law;
- 31 • report to an interim committee;
- 32 • mail a copy of legislation and the journal to government officers; and
- 33 • recommend that the governor call a special session of the Legislature to respond
- 34 to federal law;
- 35 ▶ authorizes the Federalism Subcommittee chair to:
- 36 • respond to federal law according to an established procedure; and
- 37 • correspond with other states about federal law and coordinate responses to
- 38 federal law;
- 39 ▶ establishes standards by which the Federalism Subcommittee shall evaluate federal
- 40 law;
- 41 ▶ authorizes the Constitutional Defense Council to discuss challenging certain federal
- 42 court rulings;
- 43 ▶ authorizes the Constitutional Defense Council chair to approve certain claims for
- 44 payments;
- 45 ▶ requires the Public Lands Policy Coordinating Office to:
- 46 • provide staff assistance to the Constitutional Defense Council and the
- 47 Federalism Subcommittee; and
- 48 • prepare a constitutional defense plan;
- 49 ▶ reduces the distribution from the Land Exchange Distribution Account to the
- 50 Permanent Community Impact Board;
- 51 ▶ increases the distribution from the Land Exchange Distribution Account to the
- 52 Constitutional Defense Restricted Account; and
- 53 ▶ makes technical changes.

54 Money Appropriated in this Bill:

55 This bill appropriates:

- 56 ▶ to the Constitutional Defense Restricted Account as an ongoing appropriation:

- 57 • from the Land Exchange Distribution Account, \$600,000;
- 58 ▸ to the Constitutional Defense Council as an ongoing appropriation:
- 59 • from the Constitutional Defense Restricted Account, \$250,000, subject to intent
- 60 language stating that the appropriation is to be used to execute a plan regarding
- 61 council and Federalism Subcommittee duties and at least \$144,000 be used to
- 62 evaluate and respond to federal law;
- 63 ▸ to the Civil Division of the Office of the Attorney General as an ongoing
- 64 appropriation:
- 65 • from the Constitutional Defense Restricted Account, \$350,000, subject to intent
- 66 language stating that the appropriation is to be used to hire attorneys and staff to
- 67 advise and provide services;
- 68 ▸ to Department of Administrative Services as an ongoing appropriation:
- 69 • from General Fund Restricted - Land Exchange Distribution Account,
- 70 (\$600,000); and
- 71 ▸ to Department of Community and Culture - Community Development Capital
- 72 Budget as an ongoing appropriation:
- 73 • from the Permanent Community Impact Fund, (\$600,000).

Other Special Clauses:

75 This bill provides revisor instructions.

76 This bill coordinates with H.B. 51, School and Institutional Trust Lands, by merging
77 technical and substantive amendments.

Utah Code Sections Affected:

79 AMENDS:

80 **53C-3-203**, as last amended by Laws of Utah 2010, Chapters 79 and 262

81 **63C-4-101**, as last amended by Laws of Utah 2010, Chapter 286

82 **63C-4-102**, as last amended by Laws of Utah 2010, Chapter 262

83 **63C-4-103**, as last amended by Laws of Utah 2010, Chapter 262

84 **63C-4-104**, as last amended by Laws of Utah 2009, Chapter 121

85 **63I-1-253**, as last amended by Laws of Utah 2010, Chapters 79, 160, and 319

86 **63J-4-603**, as last amended by Laws of Utah 2009, Chapters 121 and 262

87 ENACTS:

88 **63C-4-106**, Utah Code Annotated 1953

89 **63C-4-107**, Utah Code Annotated 1953

90 **63C-4-108**, Utah Code Annotated 1953

91 **Utah Code Sections Affected by Coordination Clause:**

92 **53C-3-203**, as last amended by Laws of Utah 2010, Chapters 79 and 262



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

95 Section 1. Section **53C-3-203** is amended to read:

96 **53C-3-203. Land Exchange Distribution Account.**

97 (1) As used in this section, "account" means the Land Exchange Distribution Account
98 created in Subsection (2)(a).

99 (2) (a) There is created within the General Fund a restricted account known as the Land
100 Exchange Distribution Account.

101 (b) The account shall consist of revenue deposited in the account as required by
102 Section 53C-3-202.

103 (3) (a) The state treasurer shall invest money in the account according to Title 51,
104 Chapter 7, State Money Management Act.

105 (b) The Division of Finance shall deposit interest or other earnings derived from
106 investment of account money into the General Fund.

107 (4) The Legislature shall annually appropriate from the account in the following order:

108 (a) \$1,000,000 to the Constitutional Defense Restricted Account[;] created in Section
109 63C-4-103[; ~~to be used in accordance with Subsection 63C-4-103(6) for;~~]; and

110 ~~[(i) fiscal year 2010-11;]~~

111 ~~[(ii) fiscal year 2011-12; and]~~

112 ~~[(iii) fiscal year 2012-13; and]~~

113 (b) from the deposits to the account remaining after the appropriation in Subsection
114 (4)(a), the following amounts:

115 (i) 55% of the deposits to counties in amounts proportionate to the amounts of mineral
116 revenue generated from the acquired land, exchanged land, acquired mineral interests, or
117 exchanged mineral interests located in each county, to be used to mitigate the impacts caused
118 by mineral development;

119 (ii) 25% of the deposits to counties in amounts proportionate to the total surface and
120 mineral acreage within each county that was conveyed to the United States under the agreement
121 or an exchange, to be used to mitigate the loss of mineral development opportunities resulting
122 from the agreement or exchange;

123 (iii) 1.68% of the deposits to the State Board of Education, to be used for education
124 research and experimentation in the use of staff and facilities designed to improve the quality
125 of education in Utah;

126 (iv) 1.66% of the deposits to the Geological Survey, to be used for natural resources
127 development in the state;

128 (v) 1.66% of the deposits to the Water Research Laboratory at Utah State University, to
129 be used for water development in the state; ~~[and]~~

130 (vi) ~~[7.5%]~~ 11% of the deposits to the Constitutional Defense Restricted Account
131 created in Section 63C-4-103[-];

132 ~~[(5) Beginning with fiscal year 2009-10, the Legislature shall annually appropriate]~~

133 ~~(vii)~~ (vii) 1% of the deposits ~~[remaining in the account after the appropriation is made in~~
134 ~~accordance with Subsection (4)(a)]~~ to the Geological Survey, to be used for test wells, other
135 hydrologic studies, and air quality monitoring in the West Desert[-]; and

136 ~~[(6)]~~ (viii) ~~[Beginning with fiscal year 2009-10, the Legislature shall annually~~
137 ~~appropriate 6.5%]~~ 3% of the deposits ~~[remaining in the account after the appropriation is made~~
138 ~~in Subsection (4)(a)]~~ to the Permanent Community Impact Fund created in Section 9-4-303, to
139 be used for grants to political subdivisions of the state to mitigate the impacts resulting from
140 the development or use of school and institutional trust lands.

141 Section 2. Section **63C-4-101** is amended to read:

142 **63C-4-101. Creation of Constitutional Defense Council and Federalism**
143 **Subcommittee -- Membership -- Vacancies -- Meetings -- Staff -- Reports -- Per diem,**
144 **travel expenses, and funding.**

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

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

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

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

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

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

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

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

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

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

160 (ix) the executive director of the Department of Natural Resources, who may not vote;

161 (x) the commissioner of the Department of Agriculture and Food, who may not vote;

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

164 (xii) two elected county commissioners, county council members, or county executives
165 from different counties appointed by the Utah Association of Counties, who may not vote.

166 (b) The council vice chairs shall conduct a council meeting in the absence of the chair.

167 (c) If both the governor and the lieutenant governor are absent from a meeting of the
168 council, the governor may designate a person to attend the meeting solely for the purpose of

169 casting a vote on any matter on the governor's behalf.

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

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

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

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

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

179 (d) (i) The [~~Constitutional Defense Council~~] council shall require that any entity that
180 receives money from the Constitutional Defense Restricted Account provide financial reports
181 and litigation reports to the council.

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

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

188 (5) (a) The Office of the Attorney General shall advise:

189 (i) the [defense] council[-]; and

190 (ii) the Federalism Subcommittee.

191 (b) The Public Lands Policy Coordinating Office shall provide staff assistance for
192 meetings of the council and Federalism Subcommittee.

193 (6) A member may not receive compensation or benefits for the member's service, but
194 may receive per diem and travel expenses in accordance with:

195 (a) Section 63A-3-106;

196 (b) Section 63A-3-107; and

197 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
198 63A-3-107.

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

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

203 (8) (a) There is created a Federalism Subcommittee of the council.

204 (b) The subcommittee shall consist of members listed in Subsections (2)(a)(i) through
205 (vi).

206 (c) (i) The governor or the lieutenant governor shall serve as chair of the
207 subcommittee.

208 (ii) The council vice chair shall conduct a subcommittee meeting in the absence of the
209 chair.

210 Section 3. Section **63C-4-102** is amended to read:

211 **63C-4-102. Duties.**

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

214 (a) the constitutionality of [~~unfunded~~] federal mandates;

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

218 (c) legal and policy issues surrounding state and local government rights under R.S.
219 2477;

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

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

223 (i) federal court rulings that:

224 (A) hinder the management of the state's prison system and place undue financial

225 hardship on the state's taxpayers;

226 (B) impact a power or a right reserved to the state or its citizens by the United States

227 Constitution, Amendment IX or X; or

228 (C) expand or grant a power to the United States government beyond the limited,

229 enumerated powers granted by the United States Constitution;

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

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

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

233 the prosperity of their inhabitants;

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

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

236 industries;

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

238 local air quality standards and penalties; and

239 (vi) other issues that are relevant to this Subsection (1).

240 (2) The council shall:

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

242 policy coordinator concerning coordination of:

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

244 (ii) other public lands issues;

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

246 63C-4-104; and

247 (c) review, at least quarterly:

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

249 and

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

251 concerning its activities.

252 (3) The council chair may require the attorney general or a designee to provide

253 testimony on potential legal actions that would enhance the state's sovereignty or authority on
254 issues affecting Utah and the well-being of its citizens.

255 (4) The council chair may direct the attorney general to initiate and prosecute any
256 action that the council determines will further its purposes, including an action described in
257 Section 67-5-29.

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

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

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

265 (6) The council chair [~~shall~~] may, only with the concurrence of the council, review and
266 approve all claims for payments for:

267 (a) legal services that are submitted to the council; [~~and~~]

268 (b) an action filed in accordance with Section 67-5-29[-]; and

269 (c) costs related to a constitutional defense plan approved in accordance with Section
270 63C-4-104 that are submitted by:

271 (i) the Public Lands Policy Coordinating Office;

272 (ii) the School and Institutional Trust Lands Administration; or

273 (iii) the Office of the Attorney General.

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

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

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

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

288 (ii) Council members or local government officials shall submit recommendations to
289 the governor or the governor's designee no later than 10 calendar days after receiving the
290 documents under Subsection (8)(a).

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

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

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

297 **63C-4-103. Creation of Constitutional Defense Restricted Account -- Sources of**
298 **funds -- Uses of funds -- Reports.**

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

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

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

303 (b) voluntary contributions;

304 (c) money received by the [~~Constitutional Defense Council] council from other state
305 agencies; and~~

306 (d) appropriations made by the Legislature.

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

308 [~~(4) The account balance may not exceed \$5,000,000.]~~

309 ~~[(5) Subject to Subsection (6), the]~~

310 (4) The Legislature may annually appropriate money from the Constitutional Defense
311 Restricted Account to one or more of the following:

312 (a) the ~~[Constitutional Defense Council to carry out its duties in Section 63C-4-102]~~
313 council for the council's or Federalism Subcommittee's duties established in this chapter;

314 (b) the Public Lands Policy Coordinating Office to carry out its duties in Section
315 63J-4-603;

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

319 (d) a county or association of counties to assist counties, consistent with the purposes
320 of the council, in pursuing issues affecting the counties; or

321 (e) the Office of the Attorney General, to be used only ~~[for]~~:

322 (i) for public lands counsel and assistance and litigation to the state or local
323 governments including asserting, defending, or litigating state and local government rights
324 under R.S. 2477 in accordance with a plan developed and approved as provided in Section
325 63C-4-104; ~~[or]~~

326 (ii) for an action filed in accordance with Section 67-5-29[-]; or

327 (iii) to advise the council and Federalism Subcommittee.

328 ~~[(6) Money appropriated to the Constitutional Defense Restricted Account in~~
329 ~~accordance with Subsection 53C-3-203(4)(a), if appropriated by the Legislature, may only be~~
330 ~~expended by the agency to which it was appropriated to pay:]~~

331 ~~[(a) the costs of an action filed in accordance with Section 67-5-29; and]~~

332 ~~[(b) expenses associated with an action described in Subsection (6)(a).]~~

333 ~~[(7)]~~ (5) (a) The ~~[Constitutional Defense Council]~~ council shall require that any entity
334 that receives money from the Constitutional Defense Restricted Account provide financial
335 reports and litigation reports to the council.

336 (b) Nothing in this Subsection ~~[(7)]~~ (5) prohibits the council from closing a meeting

337 under Title 52, Chapter 4, Open and Public Meetings Act, or prohibits the council from
338 complying with Title 63G, Chapter 2, Government Records Access and Management Act.

339 Section 5. Section **63C-4-104** is amended to read:

340 **63C-4-104. Plans for R.S. 2477 rights and Constitutional defense -- Contents.**

341 (1) As used in this section[;]:

342 (a) "Constitutional defense plan" means a plan that outlines actions and expenditures to
343 fulfill the council's and Federalism Subcommittee's duties established by this chapter.

344 (b) "R.S. 2477 plan" means a guiding document that:

345 [~~(a)~~] (i) is developed jointly by the Utah Association of Counties and the state;

346 [~~(b)~~] (ii) is approved by the Constitutional Defense Council; and

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

350 (2) The Constitutional Defense Council may approve a R.S. 2477 plan if the R.S. 2477
351 plan:

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

354 (b) allows a county to formally agree to participate in the R.S. 2477 plan by adopting a
355 resolution;

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

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

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

364 (ii) if the county and the state continue to disagree, the county, the governor, and the

365 Utah Association of Counties shall present their recommendations to the Constitutional
366 Defense Council for a final decision about the strategy or expenditure in question; and

367 (iii) the county may pursue a strategy or make an expenditure contrary to the final
368 decision of the Constitutional Defense Council only if the county does not claim resources
369 provided to fund the R.S. 2477 plan.

370 (3) The Constitutional Defense Council shall ensure that the R.S. 2477 plan contains:

371 (a) provisions identifying which expenditure types require approval of the R.S. 2477
372 plan committee and which expenditure types may be made without the R.S. 2477 plan
373 committee approval;

374 (b) provisions requiring that financial statements be provided to members of the R.S.
375 2477 plan committee and members of the Constitutional Defense Council, and the frequency
376 with which those financial statements must be provided; and

377 (c) provisions identifying those decisions or types of decisions that may be made by the
378 R.S. 2477 plan committee and those decisions or types of decisions that must be referred to the
379 Constitutional Defense Council for decision.

380 (4) (a) The Public Lands Policy Coordinating Office, in consultation with the Office of
381 the Attorney General and the School and Institutional Trust Lands, shall prepare and submit a
382 constitutional defense plan to the Constitutional Defense Council for the council's approval.

383 (b) The constitutional defense plan shall contain proposed action and expenditure for:

384 (i) the council's or the subcommittee's duties established by this chapter; or

385 (ii) an action filed in accordance with Section 67-5-29.

386 [~~4~~] (5) The Constitutional Defense Council shall:

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

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

391 (c) jointly, with the Public Lands Policy Coordinating Office, present a R.S. 2477 plan
392 approved under this section, with any updates, to:

393 (i) the Legislature's Natural Resources, Agriculture, and Environment Interim
394 Committee by July 1 of each calendar year, after providing the R.S. 2477 plan to the committee
395 at least seven days before the presentation; and

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

398 Section 6. Section **63C-4-106** is enacted to read:

399 **63C-4-106. Evaluation of federal law and policy -- Response.**

400 (1) As used in this chapter:

401 (a) "Federal governmental entity" means:

402 (i) the President of the United States;

403 (ii) the United States Congress;

404 (iii) a United States agency; or

405 (iv) an employee or official appointed by the President of the United States.

406 (b) "Federal law" means:

407 (i) an executive order by the President of the United States;

408 (ii) a statute passed by the United States Congress;

409 (iii) a regulation adopted by a United States agency; or

410 (iv) a policy statement, guidance, or action by:

411 (A) a United States agency; or

412 (B) an employee or official appointed by the President of the United States.

413 (c) "United States agency" means a department, agency, authority, commission,

414 council, board, office, bureau, or other administrative unit of the executive branch of the

415 United States government.

416 (2) In accordance with Section 63C-4-107, the Federalism Subcommittee shall evaluate
417 a federal law submitted to the Federalism Subcommittee by a council member.

418 (3) The Federalism Subcommittee may request information regarding a federal law
419 under evaluation from a United States Senator or Representative elected from the state.

420 (4) If the Federalism Subcommittee finds that a federal law is not authorized by the

421 United States Constitution or violates the principle of federalism as described in Subsection
422 63C-4-107(2), the Federalism Subcommittee chair may:

423 (a) request from a United States Senator or Representative elected from the state:

424 (i) information about the federal law; or

425 (ii) assistance in communicating with a federal governmental entity regarding the
426 federal law;

427 (b) (i) give written notice of the evaluation required by Subsection (2) to the federal
428 governmental entity responsible for adopting or administering the federal law; and

429 (ii) request a response by a specific date to the evaluation from the federal
430 governmental entity; and

431 (c) request a meeting, conducted in person or by electronic means, with the federal
432 governmental entity and a council member, a representative from another state, or a United
433 States Senator or Representative elected from the state to discuss the evaluation of federal law
434 and any possible remedy.

435 (5) The Federalism Subcommittee may recommend to the governor that the governor
436 call a special session of the Legislature to give the Legislature an opportunity to respond to the
437 subcommittee's evaluation of a federal law.

438 (6) The Federalism Subcommittee chair may coordinate the evaluation of and response
439 to federal law with another state as provided in Section 63G-4-108.

440 (7) The Federalism Subcommittee shall submit a report by electronic mail that
441 summarizes action taken in accordance with this section to the Government Operations Interim
442 Committee on May 20 and October 20 of each year.

443 Section 7. Section **63C-4-107** is enacted to read:

444 **63C-4-107. Standard for evaluation of federal law.**

445 (1) The Federalism Subcommittee shall evaluate whether a federal law submitted under
446 Subsection 63C-4-106(2) is authorized by:

447 (a) United States Constitution, Article I, Section 2, to provide for the decennial census;

448 (b) United States Constitution, Article I, Section 4, to override state laws regulating the

449 times, places, and manner of congressional elections, other than the place of senatorial
450 elections;
451 (c) United States Constitution, Article I, Section 7, to veto bills, orders, and resolutions
452 by Congress;
453 (d) United States Constitution, Article I, Section 8, to:
454 (i) lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for
455 the common defense and general welfare of the United States, but all duties, imposts, and
456 excises shall be uniform throughout the United States;
457 (ii) borrow money on the credit of the United States;
458 (iii) regulate commerce with foreign nations, among the several states, and with the
459 Indian tribes;
460 (iv) establish a uniform rule of naturalization and uniform laws on the subject of
461 bankruptcies throughout the United States;
462 (v) coin money, regulate the value of coin money and of foreign coin, and fix the
463 standard of weights and measures;
464 (vi) provide for the punishment of counterfeiting the securities and current coin of the
465 United States;
466 (vii) establish post offices and post roads;
467 (viii) promote the progress of science and useful arts, by securing for limited times to
468 authors and inventors the exclusive right to their respective writings and discoveries;
469 (ix) constitute tribunals inferior to the supreme court;
470 (x) define and punish piracies and felonies committed on the high seas and offences
471 against the law of nations;
472 (xi) declare war, grant letters of marque and reprisal, and make rules concerning
473 captures on land and water;
474 (xii) raise and support armies, but no appropriation of money to that use shall be for a
475 longer term than two years;
476 (xiii) provide and maintain a navy;

477 (xiv) make rules for the government and regulation of the land and naval forces;

478 (xv) provide for calling forth the militia to execute the laws of the union, suppress
479 insurrections, and repel invasions;

480 (xvi) provide for organizing, arming, and disciplining the militia, and for governing the
481 part of the militia that may be employed in the service of the United States, reserving to the
482 states respectively, the appointment of the officers and the authority of training the militia
483 according to the discipline prescribed by Congress;

484 (xvii) exercise exclusive legislation in all cases whatsoever, over such district, which
485 may not exceed 10 miles square, as may, by cession of particular states and the acceptance of
486 Congress, become the seat of the government of the United States, and to exercise like
487 authority over all places purchased by the consent of the legislature of the state in which the
488 place shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful
489 buildings; or

490 (xviii) make all laws which shall be necessary and proper for carrying into execution
491 the powers listed in this section, and all other powers vested by the United States Constitution
492 in the government of the United States, or in any department or officer of the United States;

493 (e) United States Constitution, Article I, Section 9, to authorize a federal officer to
494 receive benefits from a foreign nation;

495 (f) United States Constitution, Article I, Section 10, to fix the pay of members of
496 Congress and of federal officers;

497 (g) United States Constitution, Article II, Section 1, to:

498 (i) set the time for choosing electors; or

499 (ii) establish who succeeded to the presidency after the vice president;

500 (h) United States Constitution, Article II, Section 2, to:

501 (i) serve as Commander-in-Chief of the armed forces;

502 (ii) require the written opinions of executive officers;

503 (iii) grant reprieves and pardons;

504 (iv) make vacancy appointments;

- 505 (v) make treaties, subject to the advice and consent of the United States Senate;
- 506 (vi) appoint foreign affairs officers subject to the advice and consent of the United
- 507 States Senate;
- 508 (vii) appoint domestic affairs officers subject either to the advice and consent of the
- 509 United States Senate or pursuant to law;
- 510 (viii) appoint judges subject to the advice and consent of the United States Senate; or
- 511 (xiv) authorize the president to fill designated inferior offices without senatorial
- 512 consent;
- 513 (i) United States Constitution, Article II, Section 3, to:
- 514 (i) receive representatives of foreign powers;
- 515 (ii) execute the laws;
- 516 (iii) commission United States officers;
- 517 (iv) give Congress information;
- 518 (v) make recommendations to Congress;
- 519 (vi) convene Congress on extraordinary occasions; or
- 520 (vii) adjourn Congress if it cannot agree on a time;
- 521 (j) United States Constitution, Article III, Section 1, to:
- 522 (i) create exceptions to the supreme court's appellate jurisdiction;
- 523 (ii) fix the jurisdiction of federal courts inferior to the supreme court; or
- 524 (iii) declare the punishment for treason;
- 525 (k) United States Constitution, Article IV, Section 1, to establish the rules by which the
- 526 records and judgments of states are proved in other states;
- 527 (l) United States Constitution, Article IV, Section 3, to:
- 528 (i) manage federal property;
- 529 (ii) dispose of federal property;
- 530 (iii) govern the federal territories; or
- 531 (iv) consent to admission of new states or the combination of existing states;
- 532 (m) United States Constitution, Article IV, Section 4, to defend states from invasion.

533 insurrection, and non-republican forms of government;

534 (n) United States Constitution, Article V, Section 1, to propose constitutional
535 amendments;

536 (o) United States Constitution, Article VI, Section 1, to prescribe the oath for federal
537 officers;

538 (p) United States Constitution, Amendment XIII, to abolish slavery;

539 (q) United States Constitution, Amendment XIV, to guard people from certain state
540 abuses;

541 (r) United States Constitution, Amendment XVI, to impose taxes on income from any
542 source without having to apportion the total dollar amount of tax collected from each state
543 according to each state's population in relation to the total national population;

544 (s) United States Constitution, Amendment XX, to revise the manner of presidential
545 succession;

546 (t) United States Constitution, Amendment XV, XIX, XXIII, or XXIV, to extend and
547 protect the right to vote; or

548 (u) United States Constitution, Amendment XVII, to grant a pay raise to a sitting
549 Congress.

550 (2) The Federalism Subcommittee shall evaluate whether a federal law submitted under
551 Subsection 63C-4-106(2) violates the principle of federalism by:

552 (a) affecting the distribution of power and responsibility among the state and national
553 government;

554 (b) limiting the policymaking discretion of the state;

555 (c) impacting a power or a right reserved to the state or its citizens by the United States
556 Constitution, Amendment IX or X; and

557 (d) impacting the sovereignty rights and interest of the state or a political subdivision to
558 provide for the health, safety, and welfare and promote the prosperity of the state's or political
559 subdivision's inhabitants.

560 (3) In the evaluation of a federal law, the Federalism Subcommittee:

- 561 (a) shall rely on:
- 562 (i) the text of the United States Constitution, as amended;
- 563 (ii) the meaning of the text of the United States Constitution, as amended, at the time
- 564 of its drafting and ratification; and
- 565 (iii) a primary source document that is:
- 566 (A) directly relevant to the drafting, adoption, ratification, or initial implementation of
- 567 the United States Constitution, as amended; or
- 568 (B) created by a person directly involved in the drafting, adoption, ratification, or
- 569 initial implementation of the United States Constitution, as amended;
- 570 (b) may rely on other relevant sources, including federal court decisions; and
- 571 (c) is not bound by a holding by a federal court.

572 Section 8. Section **63C-4-108** is enacted to read:

573 **63C-4-108. Communication with other states and governmental entities.**

574 (1) The Federalism Subcommittee chair may correspond with the presiding officer of

575 the legislative branch of another state or an entity of another state that has powers and duties

576 that are similar to the Federalism Subcommittee to discuss and coordinate the evaluation of and

577 response to federal law as provided in Section 63C-4-106.

578 (2) The Federalism Subcommittee shall send a copy of this bill and the pages of the

579 House and Senate Journal that pertain to this bill to:

- 580 (a) the governor of each state;
- 581 (b) the presiding officer, the majority leader, and the minority leader of each house, if
- 582 applicable, of each state legislature;
- 583 (c) each United States Senator or Representative elected from this state;
- 584 (d) the Chief Justice of the United States Supreme Court;
- 585 (e) the President of the United States; and
- 586 (f) the presiding officer, the majority leader, and the minority leader of each house of
- 587 the United States Congress.

588 Section 9. Section **63I-1-253** is amended to read:

589 **63I-1-253. Repeal dates, Titles 53, 53A, and 53B.**

590 The following provisions are repealed on the following dates:

591 (1) Section 53-3-232, Conditional licenses, is repealed July 1, 2015.

592 (2) Title 53A, Chapter 1a, Part 6, Public Education Job Enhancement Program is
593 repealed July 1, 2020.

594 (3) Title 53A, Chapter 1a, Part 9, Voluntary Extended-day Kindergarten Program, is
595 repealed July 1, 2011.

596 (4) Section 53A-2-118.3 is repealed December 31, 2016.

597 (5) The State Instructional Materials Commission, created in Section 53A-14-101, is
598 repealed July 1, 2011.

599 (6) Subsections 53A-16-107(3) and (4) are repealed December 31, 2016.

600 (7) Section 53A-16-107.1 is repealed December 31, 2016.

601 (8) Section 53A-17a-163, Performance-based Compensation Pilot Program is repealed
602 July 1, 2011.

603 (9) Subsection 53C-3-203~~(5)~~(4)(b)(vii), which provides for the distribution of money
604 from the Land Exchange Distribution Account to the Geological Survey for test wells, other
605 hydrologic studies, and air quality monitoring in the West Desert, is repealed July 1, 2020.

606 Section 10. Section **63J-4-603** is amended to read:

607 **63J-4-603. Powers and duties of coordinator and office.**

608 (1) The coordinator and the office shall:

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

612 (b) provide staff assistance to the Constitutional Defense Council created under Section
613 63C-4-101 for meetings of the council and Federalism Subcommittee;

614 (c) (i) prepare and submit a constitutional defense plan under Section 63C-4-104; and

615 (ii) execute any action assigned in a constitutional defense plan;

616 ~~[(b)]~~ (d) under the direction of the state planning coordinator, assist in fulfilling the

617 state planning coordinator's duties outlined in Section 63J-4-401 as those duties relate to the
618 development of public lands policies by:

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

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

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

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

627 (A) prepare coordinated public lands policies;

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

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

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

632 (v) providing other information or services related to public lands policies as requested
633 by the state planning coordinator;

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

636 (i) state agencies;

637 (ii) political subdivisions;

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

639 (iv) the Resource Development Coordinating Committee created under Section
640 63J-4-501;

641 (v) School and Institutional Trust Lands Administration created under Section
642 53C-1-201;

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

645 (vii) the Constitutional Defense Council created under Section 63C-4-101;
646 ~~[(f)]~~ (f) perform the duties established in Title 9, Chapter 8, Part 3, Antiquities, and
647 Title 9, Chapter 8, Part 4, Historic Sites;
648 ~~[(e)]~~ (g) consistent with other statutory duties, encourage agencies to responsibly
649 preserve archaeological resources;
650 ~~[(f)]~~ (h) maintain information concerning grants made under Subsection (1)~~[(h)]~~(j), if
651 available;
652 ~~[(g)]~~ (i) report annually, or more often if necessary or requested, concerning the office's
653 activities and expenditures to:
654 (i) the Constitutional Defense Council; and
655 (ii) the Legislature's Natural Resources, Agriculture, and Environment Interim
656 Committee jointly with the Constitutional Defense Council;
657 ~~[(h)]~~ (j) make grants of up to 16% of the office's total annual appropriations from the
658 Constitutional Defense Restricted Account to a county or statewide association of counties to
659 be used by the county or association of counties for public lands matters if the coordinator,
660 with the advice of the Constitutional Defense Council, determines that the action provides a
661 state benefit;
662 ~~[(i)]~~ (k) provide staff services to the Snake Valley Aquifer Advisory Council created in
663 Section 63C-12-103; and
664 ~~[(j)]~~ (l) coordinate and direct the Snake Valley Aquifer Research Team created in
665 Section 63C-12-107.
666 (2) The coordinator and office shall comply with Subsection 63C-4-102(8) before
667 submitting a comment to a federal agency, if the governor would be subject to Subsection
668 63C-4-102(8) if the governor were submitting the material.
669 (3) The office may enter into a contract or other agreement with another state agency to
670 provide information and services related to:
671 (a) the duties authorized by Title 72, Chapter 3, Highway Jurisdiction and
672 Classification Act;

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

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

676 Section 11. **Appropriation.**

677 Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the
 678 following sums of money are appropriated from resources not otherwise appropriated out of the
 679 funds or accounts indicated for the fiscal year beginning July 1, 2011 and ending June 30,
 680 2012. These are additions to amounts previously appropriated for fiscal year 2012.

681 Item 1 To General Fund Restricted - Constitutional Defense Restricted Account

682 From General Fund Restricted - Land Exchange Distribution \$600,000
 683 Account

684 Schedule of Programs:

685 Constitutional Defense Restricted Account \$600,000

686 Item 2 To Governor's Office

687 From General Fund Restricted - Constitutional Defense \$250,000

688 Schedule of Programs:

689 Constitutional Defense Council \$250,000

690 The Legislature intends that the Constitutional Defense Council use this appropriation
 691 to execute a plan regarding council and Federalism Subcommittee duties and use at least
 692 \$144,000 of the appropriation to evaluate and respond to federal law.

693 Item 3 To Office of Attorney General

694 From General Fund Restricted - Constitutional Defense \$350,000

695 Schedule of Programs:

696 Civil \$350,000

697 The Legislature intends that the Office of Attorney General use this appropriation to
 698 hire attorneys and staff to advise and provide services as provided by Subsection
 699 63C-4-103(4)(e).

700 Item 4 To Department of Administrative Services - Finance - Mandated

701 From General Fund Restricted - Land Exchange Distribution Account (\$600,000)

702 Schedule of Programs:

703 Land Exchange Distribution (\$600,000)

704 Item 5 To Department of Community and Culture - Community Development Capital Budget

705 From Permanent Community Impact Fund (\$600,000)

706 Schedule of Programs:

707 Permanent Community Impact Board (\$600,000)

708 Section 12. **Revisor instructions.**

709 It is the intent of the Legislature that, in preparing the Utah Code database for
710 publication, the Office of Legislative Research and General Counsel shall replace the
711 references in Subsection 63C-4-108(2) from "this bill" to the bill's designated chapter number
712 in the Laws of Utah.

713 Section 13. **Coordinating H.B. 76 with H.B. 51 -- Merging technical and**
714 **substantive amendments.**

715 If this H.B. 76 and H.B. 51, School and Institutional Trust Lands, both pass, it is the
716 intent of the Legislature that the Office of Legislative Research and General Counsel, in
717 preparing the Utah Code database for publication:

718 (1) merge the changes from both bills to modify Subsection 53C-3-203(4)(b)(viii) to
719 read:

720 "[(6)] (viii) [Beginning with fiscal year 2009-10, the Legislature shall annually
721 appropriate 6.5%] 3% of the deposits [remaining in the account after the appropriation is made
722 in Subsection (4)(a)] to the Permanent Community Impact Fund created in Section 9-4-303, to
723 be used for grants to political subdivisions of the state to mitigate the impacts resulting from
724 the development or use of school and institutional trust lands."; and

725 (2) add a newly enacted Subsection 53C-3-203(5) to read:

726 "(5) The administration shall make recommendations to the Permanent Community
727 Impact Fund Board for its consideration when awarding the grants described in Subsection
728 (4)(b)(viii)."

