

**CONSTITUTIONAL DEFENSE COUNCIL AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Christopher N. Herrod**

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

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**LONG TITLE**

**General Description:**

This bill amends provisions relating to the Constitutional Defense Council.

**Highlighted Provisions:**

This bill:

- ▶ requires that a meeting be held on interim day;
- ▶ requires the chair to be selected by a majority of the council members;
- ▶ changes the council membership to include an additional senator and representative from the majority party;
- ▶ authorizes the council to make decisions about hiring outside counsel; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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

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



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

29 **63C-4-101. Creation of Constitutional Defense Council -- Membership --**

30 **Vacancies -- Reports -- Per diem, travel expenses, and funding.**

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

32 (2) (a) The defense council shall consist of the following members:

33 (i) the governor or the lieutenant governor [~~who shall serve as chair of the council~~];

34 (ii) the president of the Senate or the president of the Senate's designee [~~who shall~~  
35 ~~serve as vice chair of the council~~];

36 (iii) the speaker of the House or the speaker of the House's designee [~~who shall serve as~~  
37 ~~vice chair of the council~~];

38 (iv) a senator from the majority party who is appointed by the president of the Senate;

39 (v) a representative from the majority party who is appointed by the speaker of the  
40 House;

41 [~~(iv)~~] (vi) the minority leader of the Senate or the minority leader of the Senate's  
42 designee;

43 [~~(v)~~] (vii) the minority leader of the House or the minority leader of the House's  
44 designee;

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

47 [~~(vii)~~] (ix) the director of the School and Institutional Trust Lands Administration;

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

51 [~~(ix)~~] (xi) the executive director of the Department of Natural Resources, who may not  
52 vote;

53 [~~(x)~~] (xii) the commissioner of the Department of Agriculture and Food, who may not  
54 vote;

55 [~~(xi)~~] (xiii) the director of the Governor's Office of Economic Development, who may  
56 not vote; and

57 [~~(xii)~~] (xiv) two elected county commissioners, county council members, or county  
58 executives from different counties appointed by the Utah Association of Counties, who may

59 not vote.

60 (b) (i) (A) The council shall elect one voting member as the council chair and one  
61 voting member as the council vice chair by a majority of the council members present at the  
62 council's first meeting each year.

63 (B) The council chair shall preside over the council for a period of one year.

64 ~~(b)~~ (ii) The council vice ~~chairs~~ chair shall conduct a council meeting in the absence  
65 of the chair.

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

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

71 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), the defense council shall meet;  
72 (A) at least monthly or more frequently as needed[-]; and

73 (B) on the same day as an interim committee if an interim committee is assigned to  
74 meet during the month by the Legislative Management Committee under IR3-1-101.

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

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

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

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

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

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

89 (5) The Office of the Attorney General shall advise the defense council.

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

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

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

94 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
95 63A-3-107.

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

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

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

101 **63C-4-102. Duties.**

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

104 (a) the constitutionality of unfunded federal mandates;

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

108 (c) legal and policy issues surrounding state and local government rights under R.S.  
109 2477;

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

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

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

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

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

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

121 industries;

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

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

125 (2) The council shall:

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

128 (i) state and local government rights under R.S. 2477; and  
129 (ii) other public lands issues;

130 (b) approve a plan for R.S. 2477 rights developed in accordance with Section  
131 63C-4-104; and

132 (c) review, at least quarterly:

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

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

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

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

143 (5) ~~[(a) Subject to the provisions of this section, the]~~ The council may:

144 (a) select and employ attorneys to implement the purposes and duties of the council[-];

145 ~~(b) [The council chair may, in consultation with the council,]~~ direct any council  
146 attorney in any manner considered appropriate by the attorney general to best serve the  
147 purposes of the council[-]; and

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

150 (6) The council chair shall, only with the concurrence of the council, review and  
151 approve all claims for payments for:

- 152 (a) legal services that are submitted to the council; and  
153 (b) an action filed in accordance with Section 67-5-29.
- 154 (7) Within five business days' notice, the council chair may, with the concurrence of  
155 the council, order the attorney general or an attorney employed by the council to cease work to  
156 be charged to the fund.
- 157 (8) (a) At least 20 calendar days before the state submits comments on the draft  
158 environmental impact statement or environmental assessment for a proposed land management  
159 plan of any federal land management agency, the governor shall make those documents  
160 available to:
- 161 (i) members of the council; and  
162 (ii) any county executive, county council member, or county commissioner of a county  
163 that is covered by the management plan and that has established formal cooperating agency  
164 status with the relevant federal land management agency regarding the proposed plan.
- 165 (b) (i) Council members or local government officials receiving the documents may  
166 make recommendations to the governor or the governor's designee concerning changes to the  
167 documents before they are submitted to the federal land management agency.
- 168 (ii) Council members or local government officials shall submit recommendations to  
169 the governor or the governor's designee no later than 10 calendar days after receiving the  
170 documents under Subsection (8)(a).
- 171 (c) Documents transmitted or received under this Subsection (8) are drafts and are  
172 protected records pursuant to Subsection 63G-2-305(22).
- 173 (9) The council shall submit a report on December 1 of each year to the speaker of the  
174 House of Representatives and the president of the Senate that summarizes the council's  
175 activities.

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**Legislative Review Note**  
**as of 2-16-11 4:33 PM**

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

H.B. 139

SHORT TITLE: **Constitutional Defense Council Amendments**

SPONSOR: **Herrod, C.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.