

1                   **CONSTITUTIONAL DEFENSE COUNCIL AMENDMENTS**

2                                   2012 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Joel K. Briscoe**

5                                   Senate Sponsor: John L. Valentine

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7                   **LONG TITLE**

8                   **General Description:**

9                   This bill amends provisions in Title 63C, Chapter 4, Constitutional Defense Council,  
10 relating to water.

11                   **Highlighted Provisions:**

12                   This bill:

- 13                   ▶ amends the duties of the Constitutional Defense Council;
- 14                   ▶ amends the purposes for which money from the Constitutional Defense Restricted  
15 Account may be used; and
- 16                   ▶ makes technical changes.

17                   **Money Appropriated in this Bill:**

18                   None

19                   **Other Special Clauses:**

20                   None

21                   **Utah Code Sections Affected:**

22                   AMENDS:

23                   **63C-4-102**, as last amended by Laws of Utah 2011, Chapter 252

24                   **63C-4-103**, as last amended by Laws of Utah 2011, Chapters 252 and 303

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

27                   Section 1. Section **63C-4-102** is amended to read:

28                   **63C-4-102. Duties.**

29                   (1) The Constitutional Defense Council is a council to assist the governor and the

30 Legislature on the following types of issues:

31 (a) the constitutionality of federal mandates;

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

35 (c) legal and policy issues surrounding state and local government rights under R.S.  
36 2477;

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

39 (e) a disagreement with another state regarding the use or ownership of water; and

40 ~~(e)~~ (f) the advisability, feasibility, estimated cost, and likelihood of success of  
41 challenging:

42 (i) federal court rulings that:

43 (A) hinder the management of the state's prison system and place undue financial  
44 hardship on the state's taxpayers;

45 (B) impact a power or a right reserved to the state or its citizens by the United States  
46 Constitution, Amendment IX or X; or

47 (C) expand or grant a power to the United States government beyond the limited,  
48 enumerated powers granted by the United States Constitution;

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

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

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

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

- 58 (vi) other issues that are relevant to this Subsection (1).
- 59 (2) The council shall:
- 60 (a) provide advice to the governor, state planning coordinator, and the public lands  
61 policy coordinator concerning coordination of:
- 62 (i) state and local government rights under R.S. 2477; and
- 63 (ii) other public lands issues;
- 64 (b) approve a plan for R.S. 2477 rights developed in accordance with Section  
65 63C-4-104; and
- 66 (c) review, at least quarterly:
- 67 (i) financial statements concerning implementation of the plan for R.S. 2477 rights;  
68 and
- 69 (ii) financial and other reports from the Public Lands Policy Coordinating Office  
70 concerning its activities.
- 71 (3) The council chair may require the attorney general or a designee to provide  
72 testimony on potential legal actions that would enhance the state's sovereignty or authority on  
73 issues affecting Utah and the well-being of its citizens.
- 74 (4) The council chair may direct the attorney general to initiate and prosecute any  
75 action that the council determines will further its purposes, including an action described in  
76 Section 67-5-29.
- 77 (5) (a) Subject to the provisions of this section, the council may select and employ  
78 attorneys to implement the purposes and duties of the council.
- 79 (b) The council chair may, in consultation with the council, direct any council attorney  
80 in any manner considered appropriate by the attorney general to best serve the purposes of the  
81 council.
- 82 (c) The attorney general shall negotiate a contract for services with any attorney  
83 selected and approved for employment under this section.
- 84 (6) The council chair may, only with the concurrence of the council, review and  
85 approve all claims for payments for:

86 (a) legal services that are submitted to the council;  
87 (b) an action filed in accordance with Section 67-5-29; and  
88 (c) costs related to a constitutional defense plan approved in accordance with Section  
89 63C-4-104 that are submitted by:

- 90 (i) the Public Lands Policy Coordinating Office;
- 91 (ii) the School and Institutional Trust Lands Administration; or
- 92 (iii) the Office of the Attorney General.

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

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

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

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

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

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

112 (9) The council shall submit a report on December 1 of each year by electronic mail  
113 that summarizes the council's activities to each legislator.

114 Section 2. Section **63C-4-103** is amended to read:

115 **63C-4-103. Creation of Constitutional Defense Restricted Account -- Sources of**  
116 **funds -- Uses of funds -- Reports.**

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

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

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

121 (b) voluntary contributions;

122 (c) money received by the council from other state agencies; and

123 (d) appropriations made by the Legislature.

124 (3) The Legislature may annually appropriate money from the Constitutional Defense  
125 Restricted Account to one or more of the following:

126 (a) the council for the council's or Federalism Subcommittee's duties established in this  
127 chapter;

128 (b) the Public Lands Policy Coordinating Office to carry out its duties in Section  
129 63J-4-603;

130 (c) the Office of the Governor, to be used only for the purpose of asserting, defending,  
131 or litigating;

132 (i) an issue arising with another state regarding the use or ownership of water; or

133 (ii) state and local government rights under R.S. 2477, in accordance with a plan  
134 developed and approved as provided in Section 63C-4-104;

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

137 (e) the Office of the Attorney General, to be used only:

138 (i) for public lands counsel and assistance and litigation to the state or local

139 governments including asserting, defending, or litigating state and local government rights  
140 under R.S. 2477 in accordance with a plan developed and approved as provided in Section

141 63C-4-104;

142 (ii) for an action filed in accordance with Section 67-5-29; [~~or~~]  
143 (iii) to advise the council and Federalism Subcommittee[;]; or  
144 (iv) for asserting, defending, or litigating an issue arising with another state regarding  
145 the use or ownership of water.

146 (4) (a) The council shall require that any entity that receives money from the  
147 Constitutional Defense Restricted Account provide financial reports and litigation reports to  
148 the council.

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