

PUBLIC LANDS LITIGATION

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kenneth W. Sumsion

Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill amends and enacts provisions related to actions filed by the attorney general on property possessed by the federal government and the appropriation of funds for those actions.

Highlighted Provisions:

This bill:

- ▶ appropriates money from the Land Exchange Distribution Account to the Constitutional Defense Restricted Account for legal services and just compensation for property taken;
- ▶ directs the attorney general to file certain eminent domain or quiet title actions on property possessed by the federal government;
- ▶ authorizes the attorney general to file an action to enforce a section of the Utah Enabling Act; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

This bill appropriates \$1,000,000 from the Land Exchange Distribution Account for fiscal years 2010-11, 2011-12, and 2012-13 only to the Constitutional Defense Restricted Account.

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30 **53C-3-203**, as last amended by Laws of Utah 2008, Chapter 216

31 **63C-4-102**, as last amended by Laws of Utah 2009, Chapter 121

32 **63C-4-103**, as last amended by Laws of Utah 2009, Chapter 121

33 ENACTS:

34 **67-5-29**, Utah Code Annotated 1953

35

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

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

38 **53C-3-203. Land Exchange Distribution Account.**

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

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

43 (b) The account shall consist of all revenue deposited in the account as required by
44 Subsections 53C-3-202(2)(a)(ii) and (2)(b)(ii).

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

47 (b) The Division of Finance shall deposit interest or other earnings derived from
48 investment of account monies into the General Fund.

49 (4) [~~For fiscal years beginning on or after fiscal year 2007-08, because the revenue is~~
50 ~~not derived from taxes, the~~] The Legislature shall annually appropriate from the account in the
51 following order:

52 (a) \$1,000,000 to the Constitutional Defense Restricted Account, created in
53 63C-4-103, to be used in accordance with Subsection 63C-4-103(6) for:

54 (i) fiscal year 2010-11;

55 (ii) fiscal year 2011-12; and

56 (iii) fiscal year 2012-13; and

57 (b) from the deposits to the account remaining after the appropriation in Subsection

58 (4)(a), the following amounts:

59 [(a)] (i) 55% of [all] the deposits [made to the account] to counties in amounts
60 proportionate to the amounts of mineral revenue generated from the acquired land, exchanged
61 land, acquired mineral interests, or exchanged mineral interests located in each county, to be
62 used to mitigate the impacts caused by mineral development;

63 [(b)] (ii) 25% of [all] the deposits [made to the account] to counties in amounts
64 proportionate to the total surface and mineral acreage within each county that was conveyed to
65 the United States under the agreement or an exchange, to be used to mitigate the loss of
66 mineral development opportunities resulting from the agreement or exchange;

67 [(c)] (iii) 1.68% of [all] the deposits [made to the account] to the State Board of
68 Education, to be used for education research and experimentation in the use of staff and
69 facilities designed to improve the quality of education in Utah;

70 [(d)] (iv) 1.66% of [all] the deposits [made to the account] to the Geological Survey,
71 to be used for natural resources development in the state;

72 [(e)] (v) 1.66% of [all] the deposits [made to the account] to the Water Research
73 Laboratory at Utah State University, to be used for water development in the state; and

74 [(f)] (vi) 7.5% of [all] the deposits [made to the account] to the Constitutional Defense
75 Restricted Account created in Section 63C-4-103.

76 (5) For fiscal years 2007-08 and 2008-09, the Legislature shall annually appropriate
77 [from the account] 7.5% of [all] the deposits [made to the account] remaining in the account
78 after the appropriation is made in accordance with Subsection (4)(a) to the Geological Survey,
79 to be used for test wells and other hydrologic studies in the West Desert.

80 (6) For fiscal years beginning on or after fiscal year 2009-10, the Legislature shall
81 annually appropriate [from the account] 7.5% of [all] the deposits [made to the account]
82 remaining in the account after the appropriation is made in Subsection (4)(a) to the Permanent
83 Community Impact Fund created in Section 9-4-303, to be used for grants to political
84 subdivisions of the state to mitigate the impacts resulting from the development or use of
85 school and institutional trust lands.

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

87 **63C-4-102. Duties.**

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

90 (a) the constitutionality of unfunded federal mandates;

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

94 (c) legal and policy issues surrounding state and local government rights under R.S.
95 2477;

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

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

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

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

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

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

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

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

112 (2) The council shall:

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

114 policy coordinator concerning coordination of:

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

116 (ii) other public lands issues;

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

118 63C-4-104; and

119 (c) review, at least quarterly:

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

121 and

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

123 concerning its activities.

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

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

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

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

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

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

139 (a) legal services that are submitted to the council[-]; and

140 (b) an action filed in accordance with Section 67-5-29.

141 (7) Within five business days' notice, the council chair may, with the concurrence of

142 the council, order the attorney general or an attorney employed by the council to cease work to
143 be charged to the fund.

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

148 (i) members of the council; and

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

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

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

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

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

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

164 **63C-4-103. Creation of Constitutional Defense Restricted Account -- Sources of**
165 **funds -- Uses of funds -- Reports.**

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

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

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

170 (b) voluntary contributions;

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

172 and

173 (d) appropriations made by the Legislature.

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

175 (4) The account balance may not exceed [~~\$2,000,000~~] \$5,000,000.

176 (5) [~~The~~] Subject to Subsection (6), the Legislature may annually appropriate [~~monies~~]

177 money from the Constitutional Defense Restricted Account to one or more of the following:

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

179 (b) the Public Lands Policy Coordinating Office to carry out its duties in Section

180 63J-4-603;

181 (c) the Office of the Governor, to be used only for the purpose of asserting, defending,

182 or litigating state and local government rights under R.S. 2477, in accordance with a plan

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

184 (d) a county or association of counties to assist counties, consistent with the purposes

185 of the council, in pursuing issues affecting the counties; or

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

187 (i) public lands counsel and assistance and litigation to the state or local governments

188 including asserting, defending, or litigating state and local government rights under R.S. 2477

189 in accordance with a plan developed and approved as provided in Section 63C-4-104[-]; or

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

191 (6) Money appropriated to the Constitutional Defense Restricted Account in

192 accordance with Subsection 53C-3-203(4)(a), if appropriated by the Legislature, may only be

193 expended by the agency to which it was appropriated to pay:

194 (a) the costs of an action filed in accordance with Section 67-5-29; and

195 (b) expenses associated with an action described in Subsection (6)(a).

196 [~~(6)~~] (7) (a) The Constitutional Defense Council shall require that any entity that

197 receives monies from the Constitutional Defense Restricted Account provide financial reports

198 and litigation reports to the Council.

199 (b) Nothing in this Subsection [~~(6)~~] (7) prohibits the council from closing a meeting
200 under Title 52, Chapter 4, Open and Public Meetings Act, or prohibits the council from
201 complying with Title 63G, Chapter 2, Government Records Access and Management Act.

202 Section 4. Section ~~67-5-29~~ is enacted to read:

203 **67-5-29. Duty to legal actions.**

204 (1) The attorney general may file an action to enforce the Utah Enabling Act, Section
205 9.

206 (2) In accordance with Title 78B, Chapter 6, Particular Proceedings, the attorney
207 general shall file an eminent domain action or quiet title action on property possessed by the
208 federal government:

209 (a) (i) that facilitates the state's ability to manage the school and institutional trust
210 lands consistent with the state's fiduciary responsibilities towards the beneficiaries of the trust
211 lands; and

212 (ii) (A) that provides access to school and institutional trust lands; or

213 (B) that increases the profitability of the school and institutional trust lands; or

214 (b) for a public use that increases the ability of the state to generate revenue.

215 (3) The attorney general shall file, by no later than July 1, 2011, an eminent domain
216 action or quiet title action described in Subsection (2) on property possessed by the federal
217 government for:

218 (a) a highway on Spring Creek Road located in the western half of section 3, township
219 38 south, range 12 west to provide access to section 2, township 38 south, range 12 west;

220 (b) a highway off of Old Canyon Road located in the northeast quarter of the southeast
221 quarter of section 5, township 10 north, range 5 east to provide access to the southeast quarter
222 of the southeast quarter of section 32, township 11 north, range 5 east; or

223 (c) the purposes described in Subsection (2).

224 Section 5. **Appropriation.**

225 (1) There is appropriated from the General Fund Restricted - Constitutional Defense

226 Restricted Account \$1,000,000 to the Governor's Office - Constitutional Defense Council.

227 (2) The Legislature intends that the appropriation under Subsection (1) is:

228 (a) ongoing, subject to availability of funds;

229 (b) for fiscal years 2010-11, 2011-12, and 2012-13 only;

230 (c) to be used to carry out the requirements of Section 67-5-29; and

231 (d) nonlapsing.