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

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

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

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

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

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

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

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

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

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

(i) fiscal year 2010-11;

(ii) fiscal year 2011-12; and

(iii) fiscal year 2012-13; and

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

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

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

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

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

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

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

(6) For fiscal years beginning on or after fiscal year 2009-10, the Legislature shall annually appropriate [from the account] 7.5% of [all] the deposits [made to the account] remaining in the account after the appropriation is made in Subsection (4)(a) to the Permanent Community Impact Fund created in Section 9-4-303, to be used for grants to political subdivisions of the state to mitigate the impacts resulting from the development or use of school and institutional trust lands.
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 this Subsection (1).

(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.

(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.

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

(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.

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

(a) legal services that are submitted to the council; and

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

(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.

(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 10 calendar days after receiving the documents under Subsection (8)(a).

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

(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 $5,000,000.

(5) Subject to Subsection (6), the Legislature may annually appropriate money 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 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;
(d) a county or association of counties to assist counties, consistent with the purposes of the council, in pursuing issues affecting the counties; or
(e) the Office of the Attorney General, to be used only for:
   (i) 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; or
   (ii) an action filed in accordance with Section 67-5-29.

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

(a) the costs of an action filed in accordance with Section 67-5-29; and
(b) expenses associated with an action described in Subsection (6)(a).
and litigation reports to the Council.

(b) Nothing in this Subsection [(6)] (7) 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 67-5-29 is enacted to read:

67-5-29. Duty to legal actions.

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

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

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

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

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

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

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

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

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

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

Section 5. Appropriation.

(1) There is appropriated from the General Fund Restricted - Constitutional Defense
Restricted Account $1,000,000 to the Governor's Office - Constitutional Defense Council.

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

(a) ongoing, subject to availability of funds;

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

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

(d) nonlapsing.