



ARIZONA STATE SENATE
Fiftieth Legislature, Second Regular Session

REVISED
FACT SHEET FOR S.B. 1234

constitutional defense council

Purpose

Creates the Constitutional Defense Council, its membership and purpose, and specifies the issues to consider at its public meetings. Establishes the Constitutional Defense Council Fund, appropriates a percentage of the total annual budget from all sources appropriated to the Office of the Attorney General and stipulates the use of the fund monies.

Background

In 1994, the Legislature created the Arizona Constitutional Defense Council (Council) (Laws 1994, Chapter 222). The Council's stated purpose was to restore, maintain and advance the State's sovereignty and authority over issues that affect Arizona and the well-being of its citizens by taking any action it deemed appropriate.

As originally formed, the Council consisted of three members: the Governor or his designee, a member appointed by the President of the Senate, and a member appointed by the Speaker of the House. In 1996, however, the Legislature added two advisory members to the Council: the Chairman of the House of Representatives Committee on States' Rights and Mandates and the Chairman of the Senate Committee on Government Reform. Neither version of statute provided set terms for Council members or provisions for removal from office.

In 1996 the Attorney General filed a petition for special action asking the Arizona Supreme Court (Court) to find the newly amended Council's statute unconstitutional based on two separate theories: the separation of powers doctrine (Article III of the Arizona Constitution) and executive department authority (Article V of the Arizona Constitution). In the case entitled *State ex rel Woods v. Block*, the Court ruled that the statute was unconstitutional based on the separation of powers doctrine.

The Court ruled that because the Governor had only a single appointment among the Council's five members and that these members served at the pleasure of the appointing members, the Legislature maintained control over the makeup of the Council. The Court ruled that although the two legislative members were merely advisory and could not vote, they still had the ability to influence the Council whose activities the Court determined to be executive, not legislative in nature. The Court did not address the Article V argument raised by the Attorney General.

There is no anticipated fiscal impact to the state General Fund associated with this legislation. However, there will be an impact to the Attorney General's Office budget dependent on the amount transferred into the Constitutional Defense Council Fund.

Provisions

Constitutional Defense Council

1. Establishes the Constitutional Defense Council (Council) consisting of the following members:
 - a) the Governor or their designee, who will serve as the chairperson;
 - b) a person appointed by the Governor;
 - c) the Attorney General;
 - d) a person appointed by the President of the Senate;
 - e) a person appointed by the Speaker of the House of Representatives;
 - f) an advisory member appointed by the Present of the Senate; and
 - g) an advisory member appointed by the Speaker of the House of Representatives.
2. States the purpose of the Council is to restore, maintain and advance Arizona's sovereignty and authority to restore principles of dual sovereignty and protect individual liberty.
3. Requires the Council meetings to be held in public, and occur at least quarterly and allows any member to call for additional meetings. Stipulates a majority vote is required for discretionary decisions of the Council.
4. Stipulates the Council must hold meetings regarding any of the following:
 - a) federal preemption, mandates and conditional grants;
 - b) court rulings;
 - c) the authority granted to, or assumed by, the federal government;
 - d) laws, regulations and practices of the federal government;
 - e) regulatory primacy;
 - f) strategic litigation;
 - g) interstate compacts and other forms of cooperative action among the states;
 - h) article V of the U.S. Constitution;
 - i) the development of model legislation;
 - j) the use and management of federal lands; and
 - k) the exercise of coordination rights enjoyed by Arizona or its or political subdivisions under federal law.

Complaints Regarding Alleged Unconstitutional Actions

5. Instructs the Council to establish a process for receiving and evaluating the merits of complaints from the public regarding alleged unconstitutional actions by the federal government
6. Requires the Council to discuss and consider appropriate responses and remedies for potentially unconstitutional actions taken by the federal government based on meritorious

complaints received from the public, including the development of model legislation, the pursuit of cooperative interstate action and litigation.

7. Allows the Council to require the Attorney General and outside experts to provide testimony on potential model legislation, interstate cooperative action or legal actions which would further the Council's purpose.
8. Permits the Council to select and employ attorneys to implement its purposes and allows the Attorney General to assist in any manner deemed appropriate by the Council.
9. Stipulates state agencies and departments, except the Department of Law, must provide reasonable personnel and resources to assist in any manner pursued by the Council upon request.
10. Prohibits the Council from hiring permanent staff.

Constitutional Defense Council Fund

11. Establishes the Constitutional Defense Council Fund (Fund) and stipulates monies are continuously appropriated and are exempt from lapsing of appropriations.
12. Requires, at the beginning of each fiscal year, the Attorney General to deposit a percentage of the total annual budget from all sources appropriated to the Office of the Attorney General. The percentage is not specified in the bill.
13. Specifies the Council must use the monies to pay the fees and costs of legal actions and other expenses authorized by a majority vote of the council, including the reasonable expenses of expert witnesses and any studies, analyses or reports.
14. Instructs the Council Chairman to transmit all claims approved by a majority vote to the Director of the Department of Administration for payment.
15. Stipulates members are not eligible for compensation but are eligible to receive reimbursement for expenses.
16. Requires the Council's designated ombudsman, on or before the 15th of each month, to file the complete account of receipts and disbursements from the Fund for the previous month. The Council may order, within five business day's notice, an attorney to cease all work to be charged to the Fund.

Report; Standing to File Action

17. Specifies the Council must submit a report on December 1 of each year to the Speaker of the House of Representatives, the President of the Senate, the Governor and the Secretary of State summarizing the Council's activities.

18. Grants taxpaying residents of Arizona the legal standing in state court to file an appropriate action at law or equity to compel the Council to fulfill its statutory duties.

Miscellaneous

19. Repeals the section of law that created the Constitutional Defense Council and defined its purpose and scope (A.R.S. § 41-401).
20. Defines *advisory member* as a member who gives advice to other Council members at meetings but is not eligible to vote, does not count towards a determining quorum and is not eligible to receive compensation or reimbursement by the Council.
21. Defines *council* as the Constitutional Defense Council.
22. Becomes effective on the general effective date.

Revised

1. Adds background information.
2. Clarifies a provision.

Prepared by Senate Research
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