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FILED

**Jane Dee Hull
Secretary of State**

CHAPTER 235

HOUSE BILL 2295

AN ACT

AMENDING SECTIONS 41-192 AND 41-401, ARIZONA REVISED STATUTES; RELATING TO THE CONSTITUTIONAL DEFENSE COUNCIL.

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-192, Arizona Revised Statutes, is amended to
3 read:

4 41-192. Powers and duties of attorney general; restrictions on
5 state agencies as to legal counsel; exceptions

6 A. The attorney general shall have charge of and direct the department
7 of law and shall serve as chief legal officer of the state. The attorney
8 general shall:

9 1. Be the legal advisor of the departments of this state and render
10 such legal services as the departments require.

11 2. Establish administrative and operational policies and procedures
12 within his department.

13 3. Approve long-range plans for developing departmental programs
14 therein, and coordinate the legal services required by other departments of
15 this state or other state agencies.

16 4. Represent school districts and governing boards of school districts
17 in any lawsuit involving a conflict of interest with other county offices.

18 5. Represent political subdivisions, school districts and
19 municipalities in suits to enforce state or federal statutes pertaining to
20 antitrust, restraint of trade or price-fixing activities or conspiracies,
21 provided that the attorney general shall notify in writing such political

1 subdivisions, school districts and municipalities of his intention to bring
2 any such action on its behalf. At any time within thirty days after such
3 notification, such political subdivisions, school districts and
4 municipalities may, by formal resolution of its governing body, withdraw the
5 authority of the attorney general to bring the intended action on its behalf.

6 6. In any action brought by the attorney general pursuant to state or
7 federal statutes pertaining to antitrust, restraint of trade, or price-fixing
8 activities or conspiracies for the recovery of damages by this state or any
9 of its political subdivisions, school districts or municipalities, in
10 addition to his other powers and authority, the attorney general on behalf
11 of this state may enter into contracts relating to the investigation and
12 prosecution of such action with any other party plaintiff who has brought a
13 similar action for the recovery of damages and with whom the attorney general
14 finds it advantageous to act jointly or to share common expenses or to
15 cooperate in any manner relative to such action. In any such action,
16 notwithstanding any other laws to the contrary, the attorney general may
17 undertake, among other things, to render legal services as special counsel
18 or to obtain the legal services of special counsel from any department or
19 agency of the United States, of this state or any other state or any
20 department or agency thereof or any county, city, public corporation or
21 public district in this state or in any other state that has brought or
22 intends to bring a similar action for the recovery of damages or their duly
23 authorized legal representatives in such action.

24 7. Organize the civil rights division within the department of law and
25 administer such division pursuant to the powers and duties provided in
26 chapter 9 of this title.

27 8. Compile, publish and distribute to all state agencies, departments,
28 boards, commissions and councils, and to other persons and government
29 entities on request, at least every ten years, the Arizona agency handbook
30 that sets forth and explains the major state laws that govern state agencies,
31 including information on the laws relating to bribery, conflicts of interest,
32 contracting with the government, disclosure of public information,
33 discrimination, nepotism, financial disclosure, gifts and extra compensation,
34 incompatible employment, political activity by employees, public access and
35 misuse of public resources for personal gain. A supplement to the handbook
36 reflecting revisions to the information contained in the handbook shall be
37 compiled and distributed by the attorney general as deemed necessary.

38 B. Except as otherwise provided by law, the attorney general may:

39 1. Organize the department into such bureaus, subdivisions or units
40 as he deems most efficient and economical, and consolidate or abolish them.

41 2. Adopt rules for the orderly conduct of the business of the
42 department.

43 3. Employ and assign assistant attorneys general and other employees
44 necessary to perform the functions of the department. Not later than October

1 31, 1984, the attorney general shall submit to the joint legislative budget
2 committee a comprehensive performance pay plan for all assistant attorneys
3 general. Notwithstanding the provisions of section 38-611, all monies
4 appropriated for salary adjustments for assistant attorneys general to become
5 effective on or after January 1, 1985 shall be allocated in accordance with
6 the performance pay plan as approved by the joint legislative budget
7 committee. If the joint legislative budget committee does not approve a
8 performance pay plan by December 31, 1984, assistant attorneys general shall
9 receive salary adjustments pursuant to section 38-611.

10 4. Compromise or settle any action or claim by or against this state
11 or any department, board or agency thereof. Where such compromise or
12 settlement involves a particular department, board or agency of this state,
13 the compromise or settlement shall be first approved by such department,
14 board or agency. Where no department or agency is named or otherwise
15 materially involved, the approval of the governor shall be first obtained.

16 5. Charge reasonable fees for distributing official publications,
17 including attorney general legal opinions and the Arizona agency handbook.
18 The fees received shall be deposited in a separate account and are available
19 for expenditure by the attorney general solely for the production of official
20 publications.

21 C. Assistants and employees in any legal division subject to a merit
22 system prior to March 6, 1953 shall remain subject thereto.

23 D. The powers and duties of a bureau, subdivision or unit shall be
24 limited to those assigned by law to the department.

25 E. Notwithstanding any law to the contrary, except as provided in
26 subsections F and G of this section, no state agency other than the attorney
27 general shall employ legal counsel or make an expenditure or incur an
28 indebtedness for legal services, but the following are exempt from this
29 section:

- 30 1. The director of water resources.
- 31 2. The residential utility consumer office.
- 32 3. The industrial commission.
- 33 4. The Arizona board of regents.
- 34 5. The auditor general.
- 35 6. The corporation commissioners and the corporation commission other
36 than the securities division.
- 37 7. The ombudsman for private property rights.
- 38 8. The office of the governor.
- 39 9. THE CONSTITUTIONAL DEFENSE COUNCIL.

40 F. If the attorney general determines that he is disqualified from
41 providing judicial or quasi-judicial legal representation or legal services
42 on behalf of any state agency in relation to any matter, the attorney general
43 shall give written notification to the state agency affected. If the agency
44 has received written notification from the attorney general that he is

1 disqualified from providing judicial or quasi-judicial legal representation
2 or legal services in relation to any particular matter, the state agency is
3 authorized to make expenditures and incur indebtedness to employ attorneys
4 to provide the representation or services.

5 G. If the attorney general and the director of the department of
6 agriculture cannot agree on the final disposition of a pesticide complaint
7 under section 3-368, if the attorney general and the director determine that
8 a conflict of interest exists as to any matter or if the attorney general and
9 the director determine that the attorney general does not have the expertise
10 or attorneys available to handle a matter, the director is authorized to make
11 expenditures and incur indebtedness to employ attorneys to provide
12 representation or services to the department with regard to that matter.

13 H. Any department or agency of this state authorized by law to
14 maintain a legal division or incur expenses for legal services from funds
15 derived from sources other than the general revenue of the state, or from any
16 special or trust fund, shall pay from such source of revenue or special or
17 trust fund into the general fund of the state, to the extent such funds are
18 available and upon a reimbursable basis for warrants drawn upon the state
19 treasurer, the amount actually expended by the department of law within
20 legislative appropriations for such legal division or legal services.

21 I. Appropriations made pursuant to subsection H of this section shall
22 not be subject to lapsing provisions otherwise provided by law. Services for
23 departments or agencies to which this subsection and subsection G of this
24 section are applicable shall be performed by special or regular assistants
25 to the attorney general.

26 J. Monies in the special fund authorized under subsection B, paragraph
27 5 of this section that at any time are in excess of fifteen thousand dollars
28 shall immediately revert to the state general fund. Monies in such fund of
29 fifteen thousand dollars or less are exempt from the lapsing provision of
30 section 35-190, except that monies in such fund at the close of the fiscal
31 year in excess of five thousand dollars shall revert to the state general
32 fund.

33 Sec. 2. Section 41-401, Arizona Revised Statutes, is amended to read:
34 41-401. Constitutional defense council; members; powers;
35 revolving fund; definitions

36 A. The constitutional defense council is established consisting of the
37 governor or his designee, a person appointed by the president of the senate,
38 ~~and~~ a person appointed by the speaker of the house of representatives, THE
39 CHAIRMAN OF THE HOUSE OF REPRESENTATIVES COMMITTEE ON STATES' RIGHTS AND
40 MANDATES OR ITS SUCCESSOR COMMITTEE AS AN ADVISORY MEMBER AND THE CHAIRMAN
41 OF THE SENATE COMMITTEE ON GOVERNMENT REFORM OR ITS SUCCESSOR COMMITTEE AS
42 AN ADVISORY MEMBER.

1 B. The purpose of the council is restoring, maintaining, and advancing
2 the state's sovereignty and authority over issues that affect this state and
3 the well-being of its citizens by taking any action it deems appropriate.

4 C. Meetings of the council may be called by any member, and decisions
5 of the council shall be made by a majority vote of the members.

6 D. The council may hold meetings or hearings regarding any of the
7 following:

8 1. Federal mandates.

9 2. Court rulings.

10 3. The authority granted to, or assumed by, the federal government.

11 4. Laws, regulations and practices of the federal government.

12 5. Any other activity deemed appropriate given the purposes of the
13 council.

14 E. The council may require the attorney general or his designee to
15 provide testimony on potential legal actions that would enhance the state's
16 sovereignty or authority on issues affecting this state and the well-being
17 of its citizens.

18 F. By majority vote, the council may ~~direct the attorney general to~~
19 initiate and ~~prosecute~~ PURSUE, INCLUDING THE UNCONDITIONAL RIGHT OF
20 INTERVENTION, IN THE NAME OF THIS STATE any action CONCERNING A LAW,
21 REGULATION, ORDER, POLICY OR DECISION OF THE UNITED STATES OR ANY AGENCY OF
22 THE UNITED STATES, INCLUDING COURT RULINGS, that the council determines will
23 further its purposes.

24 G. ~~Subject to the provisions of this section,~~ The council may select
25 and employ attorneys to implement the purposes of this chapter. The attorney
26 general may ~~direct or~~ assist any council attorney in any manner deemed
27 appropriate by the ~~attorney general to best serve the purposes of the~~
28 council. When requested by the council, agencies and departments of this
29 state, except the department of law, shall provide reasonable personnel and
30 resources to assist in any matter pursued by the council. The council shall
31 not hire permanent staff.

32 H. ~~At least annually, the council shall meet with the attorney general~~
33 ~~and compile a list of at least ten attorneys who they deem to be qualified~~
34 ~~to represent the council pursuant to this chapter. Only those attorneys who~~
35 ~~are named to this list may be employed by the council. Before being employed~~
36 ~~by the council, an attorney shall be approved by the attorney general, but~~
37 ~~that approval may not be unreasonably withheld.~~

38 I. ~~The attorney general shall negotiate a contract for services with~~
39 ~~any attorney selected and approved for employment pursuant to this section.~~

40 J. H. A constitutional defense council revolving fund is established
41 in the state treasury to be administered by the director of the department
42 of administration under the conditions and for the purposes prescribed by
43 this section. Monies in the fund are continuously appropriated and are
44 exempt from the provisions of section 35-190 relating to lapsing of

1 appropriations. Monies in the fund shall be used by the director of the
2 department of administration to pay the fees and costs of legal actions
3 initiated pursuant to subsection F or G of this section, AND OTHER EXPENSES
4 AUTHORIZED BY A MAJORITY VOTE OF THE COUNCIL, INCLUDING THE REASONABLE
5 EXPENSES OF EXPERT WITNESSES AND THE REASONABLE COST OF ANY STUDY, ANALYSIS
6 OR REPORT. The ~~attorney general~~ CHAIR OF THE COUNCIL shall ~~review and~~
7 ~~approve~~. TRANSMIT all claims APPROVED BY A MAJORITY VOTE OF THE COUNCIL TO THE
8 DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION for payment. ~~for legal services~~
9 ~~that are submitted to the director of the department of administration by the~~
10 ~~council or its attorneys.~~ MEMBERS ARE NOT ELIGIBLE TO RECEIVE COMPENSATION
11 BUT ARE ELIGIBLE TO RECEIVE REIMBURSEMENT FOR EXPENSES PURSUANT TO TITLE 38,
12 CHAPTER 4, ARTICLE 2 FROM THE CONSTITUTIONAL DEFENSE COUNCIL REVOLVING FUND.

13 ~~K.~~ I. On or before the fifteenth day of each month, the director of
14 the department of administration shall cause to be filed with the council
15 members, ~~and the attorney general~~ THE PRESIDENT OF THE SENATE, THE SPEAKER
16 OF THE HOUSE OF REPRESENTATIVES, THE JOINT LEGISLATIVE BUDGET COMMITTEE AND
17 THE GOVERNOR a full and complete account of the receipts and disbursements
18 for the constitutional defense council revolving fund for the preceding
19 month. With five business days' notice, the council may order ~~the attorney~~
20 ~~general~~ or an attorney employed by the council to cease all work to be
21 charged to the constitutional defense council revolving fund.

22 ~~L.~~ J. The constitutional defense council ~~and the department of law~~
23 ~~are~~ IS exempt from ~~title 41,~~ chapter 23 OF THIS TITLE, relating to the
24 procurement code, for matters relating to the purposes of the council.

25 ~~M.~~ K. The council shall submit a report on December 1 of each year
26 to the speaker of the house of representatives ~~and,~~ the president of the
27 senate AND THE GOVERNOR that summarizes the council's activities.

28 L. THE CONSTITUTIONAL DEFENSE COUNCIL SHALL BRIEF THE JOINT
29 LEGISLATIVE BUDGET COMMITTEE IN EXECUTIVE SESSION REGARDING CONTRACTS FOR
30 LEGAL REPRESENTATION OVER THE AMOUNT OF FIFTY THOUSAND DOLLARS. INFORMATION
31 PROVIDED IN EXECUTIVE SESSION SHALL REMAIN CONFIDENTIAL UNTIL THE CONTRACT
32 AWARD IS MADE PURSUANT TO THIS SECTION.

33 ~~N.~~ M. In this section:

34 1. "ADVISORY MEMBER" MEANS A MEMBER WHO GIVES ADVICE TO THE OTHER
35 MEMBERS OF THE COUNCIL AT MEETINGS OF THE COUNCIL BUT WHO IS NOT ELIGIBLE TO
36 VOTE, IS NOT A MEMBER OF THE COUNCIL FOR PURPOSES OF DETERMINING WHETHER A
37 QUORUM IS PRESENT AND IS NOT ELIGIBLE TO RECEIVE ANY COMPENSATION OR
38 REIMBURSEMENT OF EXPENSES BY THE COUNCIL.

39 2. "Council" means the constitutional defense council.

APPROVED BY THE GOVERNOR APRIL 20, 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 22, 1996.