

SJR

32

Alaska State Legislature

Chairman,
Judiciary Committee

Vice Chairman,
Transportation Committee

Member,
Resources Committee
Western Legislative Forestry Task Force



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Senator Robin L. Taylor

Sponsor Statement

Senate Joint Resolution No. 32

SJR 32 would establish a Constitutional Defense Council in the legislative branch of state government. This nine member panel would have the authority to bring actions or to intervene in actions involving questions of State or federal constitutional law.

The CDC that would be established if the voters of Alaska approve this amendment to our Constitution would similar to Constitutional Defense Councils already in existence in Utah and Arizona. The major difference is that while the Utah and Arizona councils are advisory in nature, the Alaska CDC would have the power to litigate.

Arizona established its CDC to "restore, maintain and advance state sovereignty and authority over issues that affect Arizona and the well being of its citizens by taking any legal action it deems appropriate against the federal government".

Alaska's CDC would be composed of the presiding officers of each legislative body, the governor, the attorney general and five public members. One public member is appointed by the governor and two each are appointed by the presiding officers.

SPONSOR STATEMENT

Sponsor Statement
SJR 32

Under our present system, the legislative branch cannot bring or intervene in litigation. Passage of SJR 32 and its approval by the voters would provide for a "second opinion" on controversial issues currently decided only by the governor in consultation with his or her attorney general.

SJR 32 would add a check and balance provision to our Constitution that would enable the council to act if the council and the administration disagree on the best course of action on a constitutional issue. Reasonable people can disagree. SJR 32 would enable us to see those disagreements to final resolution instead of empowering one individual with the authority to decide how to proceed.

Arizona's
Constitutional Defense Council

*It's one
very interesting
idea!*

Purpose

The purpose of the Constitutional Defense Council (CDC) is to restore, maintain, and advance state sovereignty and authority over issues that affect Arizona and the well-being of its citizens by taking any legal action it deems appropriate against the federal government.

Background

In the summer of 1993, the Clean Air Act Amendments of 1990 required the State of Arizona to implement measures to reduce air pollution. Failure to implement these measures would have resulted in the elimination of federal transportation monies and/or two for one offsets on large and small businesses. State government officials considered these federally imposed sanctions unconstitutional.

While this controversy was the impetus behind creating the CDC, several other issues also contributed to its inception. Proponents of the CDC felt the constitution gave explicit powers to the federal government and those powers not specifically granted to the federal government are delegated to the state; nationwide regulations were overly broad and did not address inherent differences between states and localities; the state was required to fund and enforce federal laws and mandates; federal judges had become too powerful and have eroded the decision making authority of elected officials.

In response to these concerns, officials created the CDC to recover state power through litigation and challenge the federal government by reaffirming state sovereignty. The legislation:

- created a council composed of the Governor or his designee, a person appointed by the president of the senate, and a person appointed by the speaker of the house,
- required the council to hold meetings regarding federal mandates, laws, regulations, or practices, court rulings, and any other activity related to the council's purpose,
- required the state Attorney General to provide services and assistance to the council,
- required state agencies and departments to provide reasonable personnel and resources to assist the council,
- allows the council to select and employ attorneys to implement the council's purpose,
- established a revolving fund for the council and appropriated \$1 million for fiscal year 1994-1995;
- required the Department of Administration to file monthly accounting reports on all expenditures;
- required the council shall to submit an annual report which summarizes all activities

Establishment of Litigation Issues

In August of 1994, members were appointed to the CDC and began their task of finding a suitable issue to challenge the federal government. To supplement their search, the council contracted with outside attorneys to conduct a comprehensive investigation of three issues; the Clean Air Act, the Clean Water Act, the constitutionality of funding special masters ordered by the courts and federal prescriptions for operations of state prisons. Each survey will examine all elements of the issues and include recommendations for appropriate action. Upon completion of the reports, the CDC must acquire consensus on an issue that two of the three members agree is of greatest importance to the state. Once that decision is made, the CDC can move forward with a more comprehensive legal strategy.

FILED

ARIZONA
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-first Legislature
Second Regular Session
1994

CHAPTER 222

HOUSE BILL 2371

AN ACT

AMENDING TITLE 41, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 2.1; MAKING AN APPROPRIATION; RELATING TO STATE CONSTITUTIONAL DEFENSE.

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

2 Section 1. Title 41, Arizona Revised Statutes, is amended by adding
3 chapter 2.1, to read:

4 CHAPTER 2.1

5 CONSTITUTIONAL DEFENSE

6 ARTICLE 1. GENERAL PROVISIONS

7 41-401. Constitutional defense council: members; powers;
8 staff; definition

9 A. THE CONSTITUTIONAL DEFENSE COUNCIL IS ESTABLISHED CONSISTING OF
10 THE GOVERNOR OR HIS DESIGNEE, A PERSON APPOINTED BY THE PRESIDENT OF THE
11 SENATE AND A PERSON APPOINTED BY THE SPEAKER OF THE HOUSE OF
12 REPRESENTATIVES.

13 B. THE PURPOSE OF THE COUNCIL IS RESTORING, MAINTAINING, AND
14 ADVANCING THE STATE'S SOVEREIGNTY AND AUTHORITY OVER ISSUES THAT AFFECT
15 THIS STATE AND THE WELL-BEING OF ITS CITIZENS BY TAKING ANY ACTION IT
16 DEEMS APPROPRIATE.

17 C. MEETINGS OF THE COUNCIL MAY BE CALLED BY ANY MEMBER, AND
18 DECISIONS OF THE COUNCIL SHALL BE MADE BY A MAJORITY VOTE OF THE MEMBERS.

19 D. THE COUNCIL MAY HOLD MEETINGS OR HEARINGS REGARDING ANY OF THE
20 FOLLOWING:

21 1. FEDERAL MANDATES.

22 2. COURT RULINGS.

23 3. THE AUTHORITY GRANTED TO, OR ASSUMED BY, THE FEDERAL GOVERNMENT.

24 4. LAWS, REGULATIONS AND PRACTICES OF THE FEDERAL GOVERNMENT.

25 5. ANY OTHER ACTIVITY DEEMED APPROPRIATE GIVEN THE PURPOSES OF THE
26 COUNCIL.

1 M. THE COUNCIL SHALL SUBMIT A REPORT ON DECEMBER 1 OF EACH YEAR TO
2 THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE
3 SENATE THAT SUMMARIZES THE COUNCIL'S ACTIVITIES.

4 N. IN THIS SECTION "COUNCIL" MEANS THE CONSTITUTIONAL DEFENSE
5 COUNCIL.

6 Sec. 2. Appropriation; purposes

7 The sum of \$1,000,000 is appropriated from the state general fund in
8 fiscal year 1994-1995 to the constitutional defense council revolving fund
9 for the purposes provided in this act.

APPROVED BY THE GOVERNOR APRIL 21, 1994

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 22, 1994

(CONSTITUTIONAL DEFENSE COUNCIL)

1994

GENERAL SESSION

H. B. No. 276

By Rob W. Bishop

AN ACT RELATING TO STATE COMMISSIONS AND COUNCILS; CREATING THE
CONSTITUTIONAL DEFENSE COUNCIL; AND EXPANDING THE DUTIES OF THE
ATTORNEY GENERAL UNDER THE DIRECTION OF THE GOVERNOR.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:

67-5-1, AS LAST AMENDED BY CHAPTER 38, LAWS OF UTAH 1991

ENACTS:

63C-1-101, UTAH CODE ANNOTATED 1953

63C-5-101, UTAH CODE ANNOTATED 1953

63C-5-102, UTAH CODE ANNOTATED 1953

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

Section 1. Section 63C-1-101, Utah Code Annotated 1953, is enacted
to read:

TITLE 63C. STATE COMMISSIONS AND COUNCILS

CHAPTER 1. GENERAL PROVISIONS

63C-1-101. Title.

This title is known as the "State Commissions and Councils Code."

Section 2. Section 63C-5-101, Utah Code Annotated 1953, is enacted
to read:

666 H. B. No. 276

02-02-94 11:22 AM 666

CHAPTER 5. CONSTITUTIONAL DEFENSE COUNCIL

63C-5-101. Creation of Constitutional Defense Council.(1) There is created the Constitutional Defense Council.(2) The defense council shall consist of the following seven members:(a) the governor who shall serve as chair of the council;(b) the attorney general;(c) the president of the Senate;(d) the speaker of the House; and(e) three citizen members appointed by the governor.(3) The three citizen members shall serve a four-year term beginning July 1, 1994. A citizen member is eligible for reappointment. If a vacancy occurs in the citizen membership, it shall be filled for the unexpired term in the same manner as the original appointment.(4) (a) The defense council shall meet at times at the call of the chair.(b) A majority of the membership on the defense council is required for a quorum to conduct council business. A majority vote of the quorum is required for any action taken by the defense council.(5) The governor may designate staff from executive state agencies to serve as staff to the defense council.(6) Except for legislative members, each defense council member shall receive per diem and travel expenses as established by the Division of Finance. Each legislative member shall receive reimbursement as provided for attendance at legislative interim committee meetings.

1 Section 3. Section 63C-5-102, Utah Code Annotated 1953, is enacted
2 to read:

3 63C-5-102. Duties.

4 The Constitutional Defense Council shall provide advice to the
5 governor and to the Legislature on the following types of issues:

6 (1) the constitutionality of unfunded federal mandates;

7 (2) the advisability, feasibility, estimated cost, and likelihood of
8 success of challenging:

9 (a) federal court rulings that hinder the management of the state's
10 prison system and place undue financial hardship on the state's
11 taxpayers;

12 (b) federal laws or regulations that reduce or negate water rights
13 or the rights of owners of private property;

14 (c) conflicting federal regulations or policies in land management
15 on federal land;

16 (d) federal intervention that would damage the state's mining,
17 timber, and ranching industries; and

18 (e) the authority of the Environmental Protection Agency and
19 Congress to mandate local air quality standards and penalties; and

20 (4) other activities that are consistent with the purpose of the
21 council.

22 Section 4. Section 67-5-1, Utah Code Annotated 1953, as last amended
23 by Chapter 38, Laws of Utah 1993, is amended to read:

24 67-5-1. General duties.

25 The attorney general shall:

1 (1) except as provided in Sections 10-3-928, 17-18-1, and 78-4-11,
2 attend the Supreme Court and the Court of Appeals of this state, and all
3 courts of the United States, and prosecute or defend all causes to which
4 the state, or any officer, board, or commission of the state in an
5 official capacity is a party; and take charge, as attorney, of all civil
6 legal matters in which the state is interested;

7 (2) when required by the governor:

8 (a) initiate legal proceedings in a court of competent jurisdiction
9 on behalf of the state, or any officer, board, commission, agency, or
10 instrumentality of the state for the purpose of opposing or challenging
11 federal laws, regulations, or court orders and their impact on or
12 applicability to the state; and

13 (b) as the budget permits, retain outside legal counsel with
14 appropriate expertise to represent the state in the legal proceedings;

15 ~~{2}~~ (3) after judgment on any cause referred to in Subsection (1),
16 direct the issuance of process as necessary to execute the judgment;

17 ~~{3}~~ (4) account for, and pay over to the proper officer, all
18 moneys which come into his possession, that belong to the state;

19 ~~{4}~~ (5) keep a file of all cases in which he is required to
20 appear, including any documents and papers showing the court in which the
21 cases have been instituted and tried, and whether they are civil or
22 criminal, and:

23 (a) if civil, the nature of the demand, the stage of proceedings,
24 and when prosecuted to judgment, a memorandum of the judgment and of any

1 process issued whether satisfied, and if not satisfied, the return of the
2 sheriff;

3 (b) if criminal, the nature of the crime, the mode of prosecution,
4 the stage of proceedings, and when prosecuted to sentence, a memorandum
5 of the sentence and of the execution, if the sentence has been executed,
6 if not executed, of the reason of the delay or prevention; and

7 (c) deliver this information to his successor in office;

8 ~~(5)~~ (6) exercise supervisory powers over the district and county
9 attorneys of the state in all matters pertaining to the duties of their
10 offices, and from time to time require of them reports of the condition
11 of public business entrusted to their charge;

12 ~~(6)~~ (7) give his opinion in writing and without fee to the
13 Legislature or either house, and to any state officer, board, or
14 commission, and to any county attorney or district attorney, when
15 required, upon any question of law relating to their respective offices:

16 ~~(7)~~ (8) when required by the public service or directed by the
17 governor, assist any district or county attorney in the discharge of his
18 duties;

19 ~~(8)~~ (9) purchase in the name of the state, under the direction of
20 the state Board of Examiners, any property offered for sale under
21 execution issued upon judgments in favor of or for the use of the state,
22 and enter satisfaction in whole or in part of the judgments as the
23 consideration of the purchases;

24 ~~(9)~~ (10) when the property of a judgment debtor in any judgment
25 mentioned in Subsection ~~(9)~~ (9) has been sold under a prior judgment.

1 or is subject to any judgment, lien, or encumbrance taking precedence of
 2 the judgment in favor of the state, redeem the property, under the
 3 direction of the state Board of Examiners, from the prior judgment, lien,
 4 or encumbrance, and pay all money necessary for the redemption, upon the
 5 order of the state Board of Examiners, out of any money appropriated for
 6 these purposes;

7 ~~[(10)]~~ (11) when in his opinion it is necessary for the collection
 8 or enforcement of any judgment, institute and prosecute on behalf of the
 9 state any action or proceeding necessary to set aside and annul all
 10 conveyances fraudulently made by the judgment debtors, and pay the cost
 11 necessary to the prosecution, when allowed by the state Board of
 12 Examiners, out of any money not otherwise appropriated;

13 ~~[(11)]~~ (12) discharge the duties of a member of all official boards
 14 of which he is or may be made a member by the Utah Constitution or by the
 15 laws of the state, and other duties prescribed by law;

16 ~~[(12)]~~ (13) institute and prosecute proper proceedings in any court
 17 of the state or of the United States, to restrain and enjoin corporations
 18 organized under the laws of this or any other state or territory from
 19 acting illegally or in excess of their corporate powers or contrary to
 20 public policy, and in proper cases forfeit their corporate franchises,
 21 dissolve the corporations, and wind up their affairs; and

22 ~~[(13)]~~ (14) institute investigations for the recovery of all real or
 23 personal property that may have escheated or should escheat to the state,
 24 and for that purpose he may cite any persons before any of the district
 25 courts to answer inquiries and render accounts concerning any property.

1 may examine all books and papers of any corporations, and when any real
2 or personal property is discovered that should escheat to the state, the
3 attorney general shall institute suit in the district court of the county
4 where the property is situated for its recovery, and escheat that
5 property to the state.

December 1, 1995

The Honorable John Greene, President
Arizona State Senate, Room 204
1700 West Washington
Phoenix, Arizona 85007

The Honorable Mark Killian, Speaker
Arizona State House, Room 223
1700 West Washington
Phoenix, Arizona 85007

Dear Messrs. Greene and Killian:

Pursuant to A.R.S. 41-401(M), the Constitutional Defense Council (CDC) shall submit an annual report by December 1 on its activities. The Council has held 15 meetings since the last annual report submission, and it has authorized intervention in several federalism issues. The following is a description of each Council meeting since the last one described in the 1994 report (the meeting of October 24, 1994).

On December 20, 1994, the CDC met and discussed their relationship with the Attorney General's Office and the concern that the two entities might be litigating the same issues. Discussion ensued concerning the Attorney General's unwillingness to rank issues by possibility of success which had been presented to the CDC members for potential litigation. They authorized Roger Ferland, attorney with the firm Streich Lang to analyze the Clean Air Act, and Mr. Charles Cooper, attorney with the firm Shaw, Pittman, Potts and Trowbridge to provide counsel on prison issues.

On February 3, 1995, the CDC met and heard a presentation by counsel Philip J. MacDonnell and Gary Stuart both with the firm of Jennings, Strouss and Salmon on potentially challenging the Violent Crime Control and Enforcement Act of 1994.

Ms. H. Leslie Hall reported that a contract for legal services had been sent to Roger Ferland and that contract information, but not the actual contract, had been sent to Mr. Charles Cooper.

On February 8, 1995, the CDC met and discussed the status of the contractual agreements with attorneys Roger Ferland and Chuck Cooper. The members specifically noted their objection to the way in which the Attorney General was asserting its control over the policy making efforts of the Council.

On February 27, 1995, the CDC met and discussed again the assertion by the Attorney General's Office that certain provisions be inserted into the contracts with private attorneys, despite CDC members' objections. The members also discussed public perception and media coverage of the CDC's work to date.

On May 1, 1995 the CDC met and heard a presentation from Roger Ferland in consultation

with Larry De Respino both from the Streich Lang law firm on the case law on unconstitutional intrusions of the federal government into state issues, and specifically EPA action to reclassify air quality over tribal land which would affect tribal and non-tribal individuals/residents differently. The members discussed a strategic memo prepared by Mr. Roger Ferland on ways to proceed against the Clean Air Act.

The members discussed in executive session with Mr. Ferland strategies to litigate clean air issues. In addition, the members received legal advice in executive session from Mr. Charles Cooper (via telephone) on prisoner litigation.

The members authorized the extension of legal services to Mr. Cooper to complete a strategic analysis and authorized a total expenditure payment of \$35,000 to include bills incurred to date. The members also authorized that CDC member Mr. Pew work with the Attorney General's office to oversee the legal services contracts.

On May 26, 1995, the CDC met and discussed payment delays to attorneys retained by the CDC. The members approved a payment policy where member W. Ralph Pew would be notified of when attorneys had submitted claims for payment, and the Attorney General's Office would apprise him of when payment is officially made.

The CDC members received a briefing from Mr. Roger Ferland on the Arizona Center for Law in the Public Interest's lawsuit against EPA which is attempting to approve the Maricopa County Nonattainment Area Plan for PM-10. The CDC authorized Streich Lang to conduct factual research on the Clean Water Act as it relates to the commerce clause issues of the Lopez case.

On June 21, 1995, the CDC met and received a briefing from Roger Ferland and Joseph Drazek with the firm of Streich Lang on federal water and waste laws and an update on air quality issues. House staff provided an update on the state law (HB 2523) recently enacted by the Legislature which prohibited payment to special masters without legislative appropriation. The members discussed with Mr. Charles Cooper the progress on challenging the federal prescription of state prison operations, especially with respect to the judicial consent decrees. The members specifically discussed the time frame for litigation and appeal.

The members authorized Streich Lang to prepare a strategic memorandum on the viability of the State's defense of its surface water quality standards against both the federal government and private interest groups.

The members also authorized that the CDC intervene in prison issues dealing with the Hook case regarding prison mail, and with the Harris case regarding housing, double bunking, and inmate programs. The members specified that their involvement in these prison issues should take care to preserve the State's interest in pending litigation and the relationship between the Attorney General's Office and the CDC as determined in the state legislation establishing the CDC.

The CDC met on July 11, 1995 and received a verbal analysis of a strategic analysis memorandum by Mr. Joe Drazek on EPA's disapproval of certain Arizona surface water quality

standards.

Mr. Ferland reported that the Yavapai Tribe's petition for redesignation of Verde Valley as a Class I area had not yet been acted on by the EPA. He also reported on the status of the States of Virginia and Missouri in challenging EPA's statutory and regulatory authority under the Clean Air Act on constitutional grounds. Mr. Ferland also described the EPA's proposed decision to change the classification of Maricopa County from a "moderate" to a "serious" PM-10 Nonattainment Area. Mr. Ferland reported that both the Arizona Department of Environmental Quality and Maricopa County had submitted written comments on the proposed redesignation. He reported that at this time, there was no basis for the CDC to take any legal action against the EPA since a final decision has not yet been made.

Mr. Bob Beckett, District Attorney for Nye County, Nevada described a federal lands lawsuit against the County of Nye served on March 8, 1995. He reported that the outcome of the lawsuit will determine one-third of the surface of the U.S. because of the large amount of federal land ownership in the states. Mr. Beckett described the time line for filing motions for summary judgement, replies and responses as well as for oral arguments.

Mr. Edward L. Presley, attorney representing the Nye County District Attorney's Office and the Individual Rights Foundation distributed written information on the Individual Rights Foundation. Mr. Presley described the historical importance of the pending lawsuit for state sovereignty and also described the specific account of the federal government's decision to sue the County of Nye. Mr. Presley and Mr. Beckett each described the manner in which the State of Arizona, through the CDC, could participate in the Nye County lawsuit and the significance of doing so because of the large amount of federal land located in Arizona.

Ms. H. Leslie Hall formally requested the CDC's assistance in fighting federal intervention in the States' electoral process regarding judicial elections in Navajo and Coconino counties in Arizona. She states that the issue in question was whether the State has a discriminatory purpose in allowing at-large county judicial elections, rather than the U.S. Department of Justice's suggestion that Arizona "carve out" a Native American district, on the basis of the Voting Rights Act. She also reported that she had had various communications with Native Americans who are elected office holders, all of whom have been in support of the State's position.

Mr. Carter Phillips, with the firm of Sidley and Austin, reported the estimated cost of determining the jurisdictional issue on the judicial election case as well as preclearance would amount to approximately \$265,000. Mr. Phillips described the break-down of this cost estimate for each legal service. Mr. Phillips also reported on the time frame involved in the case.

The members discussed the Clean Water Act, the Clean Air Act and the Navajo and Coconino counties election issue in executive session.

On August 14, 1995, the CDC met and discussed the cooperation between Arizona Department of Corrections Director Sam Lewis, the Governor, the CDC members and the Attorney General on the litigation on prison issues. Mr. Cooper reported to the members on the special

masters statute and the appointment of Judge Ezra who replaced Judge Muecke to rule on the issue in U.S. District Court. Mr. Cooper reported on the deadline of payment for the special masters' fees is August 15, 1995, despite the state law requiring legislative appropriation. Mr. Cooper predicted that the special master will file a motion to compel payment or a motion to show cause why the relevant State official should not be held in contempt for failure to pay the fees. The members continued to discuss litigation strategy including the need to inform other state officials of the status of this issue.

Mr. Drazek reported on the supplement to the strategic analysis of challenging the EPA. He further discussed his conversations with EPA staff and other parties affected by a challenge of the Clean Water Act. Mr. Drazek discussed a number of aspects relating to the State's specification of surface water quality standards, especially a "mercury standard", numeric criteria and the process for establishing such standards. Mr. Drazek further discussed the case law on challenging environmental law and regulations based on the Commerce Clause, 10th Amendment and 5th Amendment bases.

The members received a copy of the jurisdictional statement prepared by Mr. Phillips on the issue of the county judicial election issue.

The members discussed the prison issues and the Clean Water Act in executive session.

The members authorized Streich Lang to survey the field of air and water issues including the Endangered Species Act to determine if there is a way to raise a Commerce Clause challenge. The members authorized the CDC to pay Streich Lang up to \$20,000 for work performed with respect to water issues, subject to obtaining a detailed accounting of those fees. The members authorized the expenditure of an additional \$10,000 to perform the survey relative to the issues of the Commerce Clause of the first authorized motion (see above) to determine if there is a broad issue the CDC can bring against those federal regulatory efforts. The members authorized that total attorney fees regarding the federal Clean Water Act, Clean Air Act, Endangered Species Act and Commerce Clause issues be capped at \$65,000.

The members authorized Shaw Pittman, Potts and Trowbridge's attorney Mr. Chuck Cooper to proceed with the strategic plan outlined to the members on the several consent decrees and authorized \$15,000 for outstanding attorney fees incurred to date and \$50,000 to begin the litigation process in the areas specifically mentioned in the strategic plan, and to continue these efforts in coordination with the Governor's Office, the Attorney General's Office and the CDC's counsel.

At the conclusion of the meeting, Council member Mr. Kurt Davis resigned due to his involvement in a number of other professional and public policy efforts. He expressed appreciation at having served with the other members of the Council as well as his support for their efforts.

On September 18, 1995, the CDC met and it was announced that CDC member Mr. Kurt Davis had been replaced by the appointment of Mr. Jay Heiler by the Governor.

The members heard a report by Mr. Roger Ferland on his examination of the environmental

regulations and laws as specified at the previous meeting. He stated that the issue of the EPA's designation of the Verde Valley area was close to being "ripe" for legal action. Mr. Ferland also reported on his further analysis of the Lopez decision and the viability of asserting a "taking" case against the Endangered Species Act. He expressed a need to survey potential parties to determine if there is an appropriate factual scenario. Mr. Ferland also reported on the potential Clean Water Act challenge and stated that it was not a constitutional issue by nature, however it does raise significant state sovereignty issues. He stated the two particular areas under consideration by the EPA regarding this issue are the permits to be granted to an industry in Picacho, Arizona, and the City of Tucson's activities in recharging groundwater. Significant discussion ensued regarding Mr. Ferland's research and analysis on these issues, especially with regard to the constitutional implications of each. Ms. Nancy Wrona, Air Quality Division of DEQ provided technical analysis of the air quality proposed redesignation of the Verde Valley area and the impact on citizens.

Mr. Cooper participated in a discussion with Mr. Ferland and the members on the EPA regulations and potential interstate consequences

Mr. Cooper gave a short narrative report on the special master issue and reported that oral argument is scheduled for September 28, 1995 for the State of Arizona as Defendant in the case. Mr. Cooper also explained the distinctions in the Casey 1 (mental health care provided to inmates) and Casey 2 (legal access to law libraries) cases as well as the Hook case (inmate mail/Christmas packages). He stated that the special masters have billed the State over \$290,000 in fees and over \$79,000 in expenses. Mr. Cooper identified the State's concern that there was no fiscal accountability for the taxpayer funds which have been required to pay for the special masters' bills. Mr. Cooper discussed various constitutional arguments including the Eighth Amendment and the Supremacy Clause. Mr. Cooper discussed the State's legal argument in detail which is reflected in his written brief submitted to the Court.

Mr. Pat Cunningham, Environmental Enforcement Section, of the Attorney General's Office reported on the county judicial election issue. He reported on the legal filings to date and the State's argument to the U.S. Department of Justice that the election process does not violate the Voting Rights Act.

The members heard from Mr. Jeff Flake of the Goldwater Institute on the school desegregation orders, especially as they relate to charter schools and recent court orders. Mr. Flake described the impact to the taxpayer when desegregation programs are required to be funded.

Mr. Cooper also reported on court activity on school desegregation orders.

Mr. Cooper reported on the federal Child Support Recovery Act and the District Court finding that it is unconstitutional under the Commerce Clause.

The members authorized Roger Ferland to survey interested groups dealing with the same type of environmental issues to determine what factual issues and fact patterns exist which may provide a productive case on which to proceed against the Endangered Species Act. The members also authorized Shaw, Pittman, Potts and Trowbridge's intervention into the Phoenix Union High

School District desegregation litigation.

On October 6, 1995, the CDC met and received a report from Mr. Cooper on the September 28, 1995 hearing before federal Judge Ezra. He explained the constitutional arguments made by the State and the CDC, and he also reported his less-than-optimistic view of Judge Ezra's pending decision.

The members re-considered their action whereby they authorized the CDC to intervene in school desegregation orders. Because of concerns that the spirit of the law creating the CDC was to not intervene in reasonable civil rights issues, the members suspended CDC action on the issue.

The members authorized Shaw, Pittman, Potts and Trowbridge to prepare the appellate brief with fees and expenses not to exceed \$75,000. They also authorized a maximum of \$25,000 for the August and September billings.

The members believe that their efforts are consistent with public policies established by the Legislature, and that they have laid the groundwork for significant advances to reclaim Arizona's sovereignty. As of October 31, 1995, the three firms have been authorized by the CDC to spend a maximum of \$267,000 for these specific legal challenges, but \$100,362 has actually been spent to date. The members of the CDC believe that these legal challenges will be quite active in the next year and that the State stands to regain considerable authority over these specific policy areas and at the same time advancing Arizona's sovereign authority overall.