

1 **LAW ENFORCEMENT BY FEDERAL LAND MANAGEMENT**

2 **AGENCY**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Michael E. Noel**

6 **Senate Sponsor: Mark B. Madsen**

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**LONG TITLE**

8 **General Description:**

9 This bill modifies the Public Safety Code regarding functions of federal officers within  
10 Utah.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ defines federally managed land **H→** ;

14a ▶ **defines federal employee as a person who works for an agency that manages**  
14b **federal land;**

14c ▶ **defines federal agency as an agency that manages federal land ←H** ;

15 ▶ provides that unless specified under Utah law, federal employees may only exercise  
16 law enforcement authority authorized by federal statute and consistent with the  
17 United States Constitution;

18 ▶ provides that Utah does not recognize federal **H→ [law enforcement] agency ←H**  
18a authority beyond

19 that necessary to manage, use, and protect federally managed lands;

20 ▶ provides that Utah does not authorize federal **H→ [law] ←H** enforcement action or  
20a prosecution

21 based on Utah law **H→ S→ by federal agencies, as defined in this bill, ←S** , except as

21a **authorized by S→ [this bill] agreement with the appropriate state or local law enforcement**  
21b **agency ←S ←H** ;

22 ▶ authorizes state and local law enforcement agencies to assist in enforcing federal  
23 law on federally managed lands by authorized contract;

24 ▶ provides that agreements with **H→ [the] a ←H** federal **H→ [law enforcement] ←H**  
24a agency **S→ , as defined in this bill, ←S** may not be for

25 longer than **H→ [one year] two years ←H** ;

26 ▶ provides that state and local law enforcement agencies may not allow federal **H→ [law**  
27 **enforcement] ←H** agencies to use state or local resources without the written consent of



28 the head of the state or local law enforcement agency; ~~and~~

29       ▶ requires the county sheriff to review the activities of any federal ~~law~~

29a enforcement

30 agency within the county and report to the county attorney ~~;~~ and

31 ~~authorizes the attorney general and county and district attorneys to prosecute federal~~

32 ~~law enforcement employees for acting:~~

33 ~~• beyond the scope of federal law; or~~

34 ~~• if the federal law is not consistent with the Constitution of the United States] ~~.~~~~

35 **Monies Appropriated in this Bill:**

36       None

37 **Other Special Clauses:**

38       None

39 **Utah Code Sections Affected:**

40 **AMENDS:**

41       **53-13-102**, as renumbered and amended by Laws of Utah 1998, Chapter 282

42       **53-13-106**, as last amended by Laws of Utah 2008, Chapter 382

43 **ENACTS:**

44       **53-13-106.5**, Utah Code Annotated 1953

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

47       Section 1. Section **53-13-102** is amended to read:

48       **53-13-102. Peace officer classifications.**

49       The following officers may exercise peace officer authority only as specifically

50 authorized by law:

- 51       (1) law enforcement officers;
- 52       (2) correctional officers;
- 53       (3) special function officers; and
- 54       (4) federal officers ~~;~~ ~~as limited by Sections 53-13-106 and 53-13-106.5] ~~.~~~~

55       Section 2. Section **53-13-106** is amended to read:

56       **53-13-106. Federal officers -- State law enforcement authority.**

- 57       (1) (a) "Federal officer" includes:
- 58       (i) a special agent of the Federal Bureau of Investigation;

- 59 (ii) a special agent of the United States Secret Service;
- 60 (iii) a special agent of the United States Department of Homeland Security, excluding a  
61 customs inspector or detention removal officer;
- 62 (iv) a special agent of the Bureau of Alcohol, Tobacco and Firearms;
- 63 (v) a special agent of the Drug Enforcement Administration;
- 64 (vi) a United States marshal, deputy marshal, and special deputy United States marshal;
- 65 and
- 66 (vii) a U.S. Postal Inspector of the United States Postal Inspection Service.

67 (b) ~~§~~ **→** [~~Notwithstanding Subsection (2), federal~~] **(i) Federal** ~~←~~ **§** officers listed in  
67a Subsection (1)(a) have

68 ~~§~~ **→** [~~F~~] **statewide** [~~F~~] ~~←~~ **§** law enforcement authority relating to felony offenses under the laws of  
68a this state

69 ~~§~~ **→** [~~only as established by agreement under Section 53-13-106.5.~~] **. This Subsection (1)(b)(i) takes**  
69a **precedence over Subsection (2).**

69b **(ii) Federal agencies and federal employees as defined in Subsection 53-13-106.5(1) may**  
69c **exercise law enforcement authority related to felony offenses under Utah law only as**  
69d **established by an agreement under Subsection 53-13-106.5(7). This Subsection (1)(b)(ii) takes**  
69e **precedence over Subsection (2).** ~~←~~ **§**

70 (c) The council may designate other federal peace officers, as necessary ~~§~~ **→** [~~and as limited~~  
71 ~~by Section 53-13-106.5~~] ~~←~~ **§** , if the officers:

72 (i) are persons employed full-time by the United States government as federally  
73 recognized law enforcement officers primarily responsible for the investigation and  
74 enforcement of the federal laws;

75 (ii) have successfully completed formal law enforcement training offered by an agency  
76 of the federal government consisting of not less than 400 hours; and

77 (iii) maintain in-service training in accordance with the standards set forth in Section  
78 53-13-103.

79 (2) Except as otherwise provided under Title 63L, Chapter [8] 1, Federal Jurisdiction,  
80 and Title 77, Chapter 9, Uniform Act on Fresh Pursuit, a federal officer may exercise state law  
81 enforcement authority only if:

82 (a) the state law enforcement agencies and county sheriffs with jurisdiction enter into  
83 an agreement with the federal agency to be given authority; and

84 (b) except as provided in Subsection (3), each federal officer employed by the federal  
85 agency meets the waiver requirements set forth in Section 53-6-206.

86           (3) A federal officer working as such in the state on or before July 1, 1995, may  
87 exercise state law enforcement authority without meeting the waiver requirement.

88           (4) At any time, consistent with any contract with a federal agency, a state or local law  
89 enforcement authority may withdraw state law enforcement authority from any individual

90 federal officer by sending written notice to the federal agency and to the division.

91 (5) The authority of a federal officer under this section is limited to the jurisdiction of  
92 the authorizing state or local agency, and may be further limited by the state or local agency to  
93 enforcing specific statutes, codes, or ordinances.

94 Section 3. Section **53-13-106.5** is enacted to read:

95 **53-13-106.5. State limitations on functions of federal law enforcement officers.**

96 (1) As used in this section ~~H→~~ [~~,"federally~~] :

96a **(a) "Federal agency" means a federal agency that manages federally managed land.**

96b **(b) "Federal employee" means an employee of:**

96c **(i) the Bureau of Land Management;**

96d **(ii) the United States Forest Service; or**

96e **(iii) the National Park Service; and**

96f **(c) "Federally ~~←H~~ managed land" means land managed by the**

97 following federal agencies:

98 ~~H→~~ [~~(a)~~] **(i) ~~←H~~ Bureau of Land Management;**

99 ~~H→~~ [~~(b)~~] **(ii) ~~←H~~ United States Forest Service; and**

100 ~~H→~~ [~~(c)~~] **(iii) ~~←H~~ the National Park Service.**

101 (2) Unless otherwise provided by Utah law, federal employees performing their duties  
102 in Utah:

103 **(a) may not exercise law enforcement authority solely because the land on which they**  
104 **exercise the authority is federally managed; and**

105 **(b) may exercise only law enforcement authority:**

106 **(i) expressly granted by federal statute; and**

107 **(ii) consistent with the Constitution of the United States.**

108 **(3) ~~H→~~ [~~(a)~~] ~~←H~~ Utah does not authorize federal employees to exercise law**

108a enforcement powers

109 to enforce the laws of Utah, either on or off federally managed land ~~H→~~ [

110 ~~— (b) This Subsection (3) takes precedence over any other Utah law.] except as authorized  
110a **under this section or other provisions of state statute. ~~←H~~**~~

111 **(4) (a) Utah does not recognize the authority of employees or agents of the United**  
112 **States Department of Interior to exercise law enforcement powers beyond those powers strictly**  
113 **necessary for the management, use, and protection of federally managed lands, including**  
114 **property located on these lands, as limited by 43 U.S.C. 1733(a) and 1733(c)(2).**

115 **(b) As required by Congress in 43 U.S.C. 1733(c)(1), when the Secretary of Interior**  
116 **determines that state or local assistance is necessary in enforcing federal laws and regulations**  
117 **relating to federally managed lands or the resources on those lands, the secretary shall offer a**  
118 **contract to appropriate state or local law enforcement agencies of the state with the purpose of**  
119 **achieving maximum feasible reliance upon state or local law enforcement officials in enforcing**  
120 **the federal laws and regulations.**

121 (5) Utah does not authorize federal employees to take action based on the Utah Code,  
 122 Utah Administrative Rules, or county or municipal ordinances as a basis to arrest ~~§~~ [ ] or ~~§~~ cite  
 122a ~~§~~ ~~→~~ [ , or  
 123 ~~prosecute~~] ~~§~~ persons ~~§~~ ~~→~~ for prosecution ~~§~~ in the federal criminal justice system, unless the  
 123a action:

124 (a) has been expressly granted by federal statute; and

125 (b) is consistent with the Constitution of the United States.

126 ~~§~~ ~~→~~ [~~(6)~~ (a) ~~Utah and its political subdivisions may choose to not comply with or implement~~  
 127 ~~federal mandates which purport to require that state and local law enforcement agencies~~  
 128 ~~enforce unconstitutional federal laws and related regulations, except as specifically provided in~~  
 129 ~~Utah law and under Subsection (6)(b):~~

130 ~~— (b) This Subsection (6) does not prohibit state and local law enforcement agencies~~  
 131 ~~from entering into contracts with the Secretary of Interior pursuant to 43 U.S.C. 1733(c)(1):~~

132 [~~(7)~~ (6) ~~§~~ State and local government agencies may not allow any federal agency  
 132a access to or

133 use of the ~~§~~ ~~→~~ ~~correctional and communication~~ ~~§~~ facilities and equipment of any state or local  
 133a law enforcement agency without the

134 express written consent of the ~~§~~ ~~→~~ [head] ~~appropriate responsible official~~ ~~§~~ of the state or local  
 134a law enforcement agency.

135 ~~§~~ ~~→~~ [~~(8)~~ (7) ~~§~~ State and local law enforcement agencies may ~~§~~ ~~→~~ [not] ~~§~~ enter into  
 135a agreements with

136 federal agencies granting concurrent authority to enforce federal laws and state and local laws,

137 ~~§~~ ~~→~~ [unless] ~~provided~~ ~~§~~ the agreements are limited to a term not to exceed ~~§~~ ~~→~~ [one year] ~~two~~  
 137a ~~years~~ ~~§~~ .

138 ~~§~~ ~~→~~ [~~(9)~~ (8) ~~§~~ (a) County sheriffs shall regularly review the duties and activities of federal  
 139 agencies that have law enforcement responsibilities and that are acting within the jurisdictional  
 140 area of the county to ascertain whether the federal agencies are acting consistently with this  
 141 section.

142 (b) County sheriffs shall annually report to the county attorney or district attorney of  
 143 their jurisdiction the results of all reviews conducted under this Subsection ~~§~~ ~~→~~ [~~(9)~~ (8) ~~§~~ .

144 ~~§~~ ~~→~~ [(c) ~~The Utah Attorney General and county and district attorneys are authorized to~~  
 145 ~~prosecute federal employees under state law governing the unauthorized exercise of law~~  
 146 ~~enforcement powers when the federal employees are found to be exercising law enforcement~~  
 147 ~~powers:~~

148 ~~— (i) that exceed those authorized by federal law; and~~

149 ~~— (ii) that are not consistent with the Constitution of the United States.] ~~§~~ ~~→~~~~

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**Legislative Review Note**  
**as of 11-16-09 6:41 AM**

**Office of Legislative Research and General Counsel**

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**H.B. 146 - Law Enforcement by Federal Land Management Agency**

**Fiscal Note**

2010 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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