

Representative Ken Ivory proposes the following substitute bill:

PRESUMPTION OF STATE JURISDICTION AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: _____

LONG TITLE

General Description:

This bill affirms state sovereignty and establishes a presumption of state jurisdiction.

Highlighted Provisions:

This bill:

- ▶ establishes that jurisdiction over subject matters not enumerated to the federal government in the United States Constitution remains with the state of Utah;
- ▶ provides that any presumption against state jurisdiction is overcome only by a federal demonstration of specific constitutional authorization;
- ▶ places the burden on the federal government in disputes over non-enumerated jurisdiction;
- ▶ provides that the Federalism Commission will coordinate with federal agencies when issues about jurisdiction over federal lands arise;
- ▶ establishes a presumption that federal government has a proprietary interest over federal lands in the state; and
- ▶ requires the Federalism Commission to provide time to hear from governmental entities regarding jurisdictional disputes over federal lands.

Money Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **63G-16-101**, as enacted by Laws of Utah 2012, Chapter 38

31 ENACTS:

32 **63G-16-102**, Utah Code Annotated 1953



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

35 Section 1. Section **63G-16-101** is amended to read:

36 **63G-16-101. State sovereignty and rights of set-off.**

37 (1) Pursuant to the Ninth and Tenth Amendments of the Constitution of the United
38 States of America, the state of Utah does solemnly affirm its state sovereignty and fully and
39 unconditionally reserves and asserts all rights and powers, directly and indirectly related to
40 those rights and powers.

41 (2) (a) The state has inherent jurisdiction and authority under the state's traditional
42 police powers to enact legislation and regulations in subject areas affecting public welfare,
43 safety, health, and morality, as recognized under the Tenth Amendment to the United States
44 Constitution.

45 (b) The subject areas within the state's police powers jurisdiction described in
46 Subsection (1) include:

- 47 (i) natural resources;
- 48 (ii) water resources and water rights;
- 49 (iii) agriculture;
- 50 (iv) education; and
- 51 (v) energy resources.

52 (3) Except as otherwise enumerated in the Constitution of the United States, as
53 amended, jurisdiction over all subject matters is presumed to reside with the state of Utah.

54 (4) The presumption of state jurisdiction under Subsection (3) may only be overcome if
55 the federal government demonstrates that jurisdiction over the subject matter in question is
56 specifically enumerated to the federal government under the Constitution of the United States,

57 as amended.

58 (5) If a conflict arises between the state and federal government over jurisdiction not
59 enumerated under the Constitution of the United States, as amended, the burden is on the
60 federal government to establish constitutional authorization over the subject matter.

61 (6) This affirmation, reservation, and assertion includes rights and claims of set-off by
62 the state of Utah for any amounts it claims to have been inequitably or unlawfully caused or
63 imposed by the federal government.

64 (7) The provisions of this section may not be interpreted to limit or restrict the state's
65 authority to exercise rights under the Ninth, Tenth, or any other Amendment to the Constitution
66 of the United States.

67 Section 2. Section **63G-16-102** is enacted to read:

68 **63G-16-102. Jurisdiction over federal land.**

69 (1) As used in this section:

70 (a) "Commission" means the Federalism Commission created in Section [63C-4a-302](#).

71 (b) "Concurrent jurisdiction" means jurisdiction ceded to the United States by the
72 Legislature to be shared jointly between the state and federal government, where both the state
73 and federal government have the right to exercise authority concurrently over the same subject
74 matter and within the same territory.

75 (c) "Exclusive federal jurisdiction" means sole or complete federal jurisdiction, to the
76 exclusion of state jurisdiction, over land or an enclave ceded to the federal government by the
77 state pursuant to the United States Constitution, Article I, Section 8, Clause 17.

78 (d) "Federal land" means any land owned or controlled by the United States within the
79 exterior boundaries of the state.

80 (e) "Governmental entity" means any entity, office, or officer of the state or political
81 subdivision of the state that has responsibility for or jurisdiction over specified interests or
82 concerns relating to federal land within the state.

83 (f) "Partial jurisdiction" means jurisdiction ceded to the United States by the
84 Legislature over particular subject matter, while jurisdiction otherwise remains in the state.

85 (g) "Proprietary interest" means the federal government retains rights only as a
86 landowner with respect to the land, where the exercise of governmental power over the land by
87 the state is not suspended, displaced, curtailed or otherwise subject to federal oversight.

88 (2) Federal land within the state is presumed to be under proprietorial interest, allowing
89 exercise of state authority while reserving the federal right to execute delegated constitutional
90 functions, unless the federal government demonstrates that jurisdiction over the federal land is:

91 (a) exclusive federal jurisdiction;

92 (b) concurrent jurisdiction; or

93 (c) partial jurisdiction.

94 (3) (a) The commission shall:

95 (i) provide time during at least one commission meeting in each year and as necessary
96 to hear from governmental entities regarding jurisdictional disputes over federal land within the
97 state;

98 (ii) under direction from the speaker of the House of Representatives and the president
99 of the Senate, conduct coordination hearings regarding any jurisdictional discrepancies between
100 federal agencies and governmental entities as may be appropriate.

101 (b) The commission shall notify the Legislative Management Committee of any dispute
102 or coordination hearing before the commission under Subsection (3)(a).

103 Section 3. **Effective date.**

104 This bill takes effect on May 1, 2024.