

1                                   **INSECT CONTROL ON FEDERAL LANDS**

2   2002 GENERAL SESSION

3   STATE OF UTAH

4                                   **Sponsor: Stephen H. Urquhart**

5 **This act modifies the Agriculture Code to allow the commissioner of agriculture to declare**  
6 **an insect infestation emergency on federal lands and direct emergency measures to alleviate**  
7 **the situation.**

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 AMENDS:

10           **4-35-4**, as enacted by Chapter 133, Laws of Utah 1985

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

12           Section 1. Section **4-35-4** is amended to read:

13           **4-35-4. Commissioner to declare emergency -- Powers of commissioner in emergency.**

14           (1) (a) The commissioner, with the consent of the governor, may declare that an insect  
15 infestation emergency situation exists which jeopardizes property and resources, and designate the  
16 area or areas affected.

17           (b) The area referred to in Subsection (1)(a) may include federal lands **h AFTER**

17a **NOTIFICATION OF THE APPROPRIATE FEDERAL LAND MANAGER h .**

18           (2) The commissioner is authorized, subject to the requirements of Section 4-35-5, to  
19 direct all emergency measures the commission considers necessary to alleviate the emergency  
20 condition. The commissioner shall:

21           (a) utilize equipment, supplies, facilities, personnel, and other available resources;

22           (b) enter into contracts for the acquisition, rental, or hire of equipment, services, materials,  
23 and supplies;

24           (c) accept assistance, services, and facilities offered by federal and local governmental  
25 units or private agencies; and

26           (d) accept on behalf of the state the provisions and benefits of acts of Congress designated  
27 to provide assistance.



**Legislative Review Note  
as of 1-9-02 10:03 AM**

This bill raises federal constitutional issues under the United States Supreme Court's interpretation of the Property Clause, Article IV, Section 3, Clause 2 of the United States Constitution. The Property Clause provides that Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States. The United States Supreme Court held in *Kleppe v. New Mexico*, 426 U.S. 529 (1976), that when Congress acts under the Property Clause, federal law overrides inconsistent state law under the Supremacy Clause, Article VI, Clause 2 of the United States Constitution. Occasionally, exemptions from the preemption doctrine of the Supremacy Clause have been granted by courts, if the state can convince the court that under its police power the statute was necessary to protect the health and safety of the public.

**Office of Legislative Research and General Counsel**