

1 **RESOLUTION URGING ACTION FOR**
2 **APPARENT BREACHES OF UTAH'S**
3 **ENABLING ACT AND FEDERAL**
4 **CONSTITUTION**

5 2004 GENERAL SESSION

6 STATE OF UTAH

7 **Sponsor: Michael E. Noel**

8
9 **LONG TITLE**

10 **General Description:**

11 This joint resolution of the Legislature urges the Utah Attorney General's Office to
12 investigate apparent breaches of trust and constitutional violations.

13 **Highlighted Provisions:**

14 This resolution:

15 ▶ urges Utah's Attorney General to investigate apparent breaches of Utah's Enabling
16 Act and the United States Constitution by the United States Senate and the United
17 States House of Representatives and to report to the Legislature;

18 ▶ urges Utah's Attorney General not to necessarily adhere to legal precedents
19 established by prior court rulings, but instead be guided by Article I, Section 27 of
20 the Utah Constitution;

21 ▶ provides investigative considerations for use by the Attorney General in the conduct
22 of the investigation; and

23 ▶ urges the Utah Constitutional Defense Council to participate in the investigation.

24 **Special Clauses:**

25 None

26
27 *Be it resolved by the Legislature of the state of Utah:*



28 WHEREAS, the Utah Enabling Act is a compact between the Senate and House of
29 Representatives of the United States of America and the inhabitants of the Territory of Utah;

30 WHEREAS, the state of Utah was admitted under the Utah Enabling Act "on an equal
31 footing with the original states";

32 WHEREAS, equal footing is defined as cited in United States v. Texas, 339 U.S. 707,
33 1950, as equality of political rights and sovereignty;

34 WHEREAS, the original states declared themselves sovereign and independent
35 according to the limits of their respective territories;

36 WHEREAS, this territorial sovereignty was in no way diminished or subordinated to
37 the legislative authority of Congress under the Constitution;

38 WHEREAS, the sovereignty of a state cannot exist without a territorial domain upon
39 which it is to act as cited in Green v. Biddle, 21 U.S. 1, 1821;

40 WHEREAS, the people of the original states did reserve to themselves the right to
41 exercise sovereign municipal governance, or political rights, throughout the limits of their
42 territory;

43 WHEREAS, Sec. 3 of the Utah Enabling Act requires that until the title to the
44 unappropriated public lands lying within the limits of the state shall have been extinguished by
45 the United States, the same shall be and remain subject to the disposition of the United States;

46 WHEREAS, upon admission of the state of Utah as a member of the American
47 confederacy on an equal footing with the original states, the laws of the former territory and the
48 new state are to be in full force and effect in the state and the laws of the United States are to
49 have "the same force and effect within the said State as elsewhere within the United States";

50 WHEREAS, the United States does today assert complete legislative jurisdiction
51 without limitation over approximately 67% of the state which remains public domain;

52 WHEREAS, this legislative jurisdiction is asserted under authority of the constitutional
53 supremacy clause, thereby extinguishing every state legislative act thereon at the will of
54 Congress;

55 WHEREAS, the scope of federal governmental power over the public lands of the state
56 of Utah is demonstrated by the fact that, under current federal law, federal officers may search
57 and seize both persons and property without warrant or process upon the public domain
58 notwithstanding the constitutional safeguard against unwarranted search and seizure;

59 WHEREAS, Congress has proclaimed that, as of October 21, 1976, it is federal policy
60 that the public lands be retained in federal ownership, which denies to the schools of the state
61 of Utah that 5% of proceeds of sale to which they are entitled under Sec. 9 of the Utah
62 Enabling Act;

63 WHEREAS, the Senate and House of Representatives of the United States stand in
64 material breach of certain terms of the Utah Enabling Act with the inhabitants of the state of
65 Utah;

66 WHEREAS, since the state of Utah is denied sovereign governance upon public lands
67 within its borders, it is denied equal footing with the original states;

68 WHEREAS, since the people of the state of Utah are denied the right to form and to
69 administer a government upon that portion of territory otherwise committed to them for the
70 purposes of their state by terms of their enabling Act compact with the United States, but which
71 remains under complete federal legislative jurisdiction, the people are also denied their
72 political rights;

73 WHEREAS, since statehood is defined as "people, territory, and governance," the
74 people of the state of Utah are denied statehood upon the 67% of the state which remains
75 subject to federal territorial governance in the form of complete, unlimited, and supreme
76 federal legislative jurisdiction;

77 WHEREAS, by retaining the public lands of the state of Utah in federal ownership,
78 Congress denies its trust obligation under the Utah Enabling Act compact to maintain these
79 lands subject to disposition; and

80 WHEREAS, material breach of specific and binding terms of the Utah Enabling Act
81 compact by Congress has resulted in the violation of provisions of Article IV, Sections 3 and 4
82 of the United States Constitution:

83 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah urge
84 the Utah Attorney General to immediately commence an investigation into these apparent
85 breaches of trust and constitutional violations and that he report to the Legislature on the
86 progress of the investigation.

87 BE IT FURTHER RESOLVED that the Legislature urge the Attorney General not to
88 subscribe to the principle of stare decisis, that is to be bound by legal precedents established by
89 prior court rulings, but instead be guided by Article I, Section 27 of the Utah State

90 Constitution, which states "Frequent recurrence to fundamental principles is essential to the
91 security of individual rights and the perpetuity of free government".

92 BE IT FURTHER RESOLVED that the Legislature urge the Attorney General to
93 remain cognizant of the fact that the precedential value of cases and commentators tends to
94 increase in proportion to their proximity to the adoption of the Constitution, the Bill of Rights,
95 or any other amendments.

96 BE IT FURTHER RESOLVED that the Legislature strongly urge that the Utah
97 Constitutional Defense Council participate in this investigation.

98 BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Utah
99 Attorney General, the Utah Constitutional Defense Council, the Majority Leader of the United
100 States Senate, and the Speaker of the United States House of Representatives.

Legislative Review Note
as of 2-3-04 7:08 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HJR017

**Resolution Urging Action for Apparent Breaches of Utah's Enabling
Act and Federal Constitution**

16-Feb-04
10:34 AM

State Impact

Mailing requirements of this resolution can be handled within existing budgets. There might be some costs if the Attorney General's Office applies suggestions of the resolution.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst