

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

7

8 **LONG TITLE**

9 **General Description:**

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

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines federally managed land;
- 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 law enforcement authority beyond
19 that necessary to manage, use, and protect federally managed lands;
- 20 ▶ provides that Utah does not authorize federal law enforcement action or prosecution
21 based on Utah law;
- 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 the federal law enforcement agency may not be for
25 longer than one year;
- 26 ▶ provides that state and local law enforcement agencies may not allow federal law
27 enforcement agencies to use state or local resources without the written consent of



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

29 ▶ requires the county sheriff to review the activities of any federal law 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 officers listed in Subsection (1)(a) have
68 [statewide] law enforcement authority relating to felony offenses under the laws of this state
69 only as established by agreement under Section 53-13-106.5.

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, "federally managed land" means land managed by the
97 following federal agencies:

98 (a) Bureau of Land Management;

99 (b) United States Forest Service; and

100 (c) 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) (a) Utah does not authorize federal employees to exercise law enforcement powers
109 to enforce the laws of Utah, either on or off federally managed land.

110 (b) This Subsection (3) takes precedence over any other Utah law.

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, cite, or
123 prosecute persons in the federal criminal justice system, unless the 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) State and local government agencies may not allow any federal agency access to or
133 use of the facilities and equipment of any state or local law enforcement agency without the
134 express written consent of the head of the state or local law enforcement agency.

135 (8) State and local law enforcement agencies may not enter into agreements with
136 federal agencies granting concurrent authority to enforce federal laws and state and local laws,
137 unless the agreements are limited to a term not to exceed one year.

138 (9) (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).

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.

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

Office of Legislative Research and General Counsel

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

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.
