

FEDERAL LAW ENFORCEMENT AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael E. Noel

Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This bill modifies the Public Safety Code and the Utah Criminal Code by limiting the authority of specified federal employees to exercise law enforcement authority within Utah.

Highlighted Provisions:

This bill:

- ▶ defines the "exercise of law enforcement authority";
- ▶ modifies the definition of a "federal agency" by listing specific United States' agencies;
- ▶ amends the definition of "federal employee" to include any employee or agent of a federal agency, with the exception of special agents, marshals, and inspectors of specified federal agencies;
- ▶ expands the definition of "federal land";
- ▶ amends the prohibition on federal employees exercising law enforcement authority in any county so that it requires that the federal Secretary of the Interior must have previously achieved maximum feasible reliance on the county's law enforcement agency in enforcing federal laws regarding the lands managed by the United States Bureau of Land Management;
- ▶ provides that Utah does not recognize the authority of any United States Forest Service employee who is not a certified law enforcement officer or any Bureau of



28 Land Management employee to exercise law enforcement authority under state, local, or
 29 federally assimilated law unless:

- 30 • the offense is a violation of ~~the~~ **an enacted** ~~federal law~~ **that is not an**
 30a **assimilation of a state law** ~~and~~ **that** ~~is~~ **also** ~~consistent with the federal~~
 31 ~~constitution; or~~
- 32 • there is an emergency, and state or local officers are not reasonably available ~~and~~ ,
 32a **and the employee is acting under constitutional federal law that is not an assimilation of state**
 32b **law** ~~;~~ ;
- 33 ▶ provides that employees of the United States Bureau of Land Management may not
 34 take action regarding any state or local Utah law or federal provision that is an
 35 assimilation of Utah law unless there is an emergency and a state or local law
 36 enforcement officer is not available to take action;
- 37 ▶ provides that ~~state and~~ ~~local law enforcement agencies may enter into~~
 37a ~~agreements~~
 38 with federal agencies, but with limited, rather than concurrent, authority ~~and~~ , **and provides that**
 38a **state authorities may enter into agreements with the consent of the local county sheriff** ~~;~~ ;
 38b and
- 39 ▶ provides that if an employee of the United States Bureau of Land Management acts
 40 under an assimilated law other than as specified regarding an emergency, the officer
 41 is guilty of impersonation of a peace officer.

42 **Money Appropriated in this Bill:**

43 None

44 **Other Special Clauses:**

45 None

46 **Utah Code Sections Affected:**

47 AMENDS:

48 **53-13-106**, as last amended by Laws of Utah 2010, Chapter 411

49 **53-13-106.5**, as enacted by Laws of Utah 2010, Chapter 411

50 **76-8-512**, as last amended by Laws of Utah 1991, Chapter 210

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

53 Section 1. Section **53-13-106** is amended to read:

54 **53-13-106. Federal officers -- State law enforcement authority.**

55 (1) (a) "Federal officer" includes:

56 (i) a special agent of the Federal Bureau of Investigation;

57 (ii) a special agent of the United States Secret Service;

58 (iii) a special agent of the United States Department of Homeland Security, excluding a

59 customs inspector or detention removal officer;

60 (iv) a special agent of the Bureau of Alcohol, Tobacco and Firearms;

61 (v) a special agent of the Drug Enforcement Administration;

62 (vi) a United States marshal, deputy marshal, and special deputy United States marshal;

63 and

64 (vii) a [~~U.S.~~] United States postal inspector of the United States Postal Inspection
65 Service.

66 (b) (i) Federal officers listed in Subsection (1)(a) have statewide law enforcement
67 authority relating to felony offenses under the laws of this state. This Subsection (1)(b)(i) takes
68 precedence over Subsection (2).

69 (ii) Federal agencies and federal employees as defined in Subsection 53-13-106.5(1)
70 may exercise law enforcement authority related to felony offenses under Utah law only [~~as~~
71 ~~established by an agreement under Subsection 53-13-106.5(7)] as authorized by and in
72 accordance with Subsections 53-13-106.5(2) through (8). This Subsection (1)(b)(ii) takes
73 precedence over Subsection (2).~~

74 (c) The council may designate other federal peace officers, as necessary, if the officers:

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

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

80 (iii) maintain in-service training in accordance with the standards set forth in Section
81 53-13-103.

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

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

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

89 (3) A federal officer working as such in the state on or before July 1, 1995, may

90 exercise state law enforcement authority without meeting the waiver requirement.

91 (4) At any time, consistent with any contract with a federal agency, a state or local law
92 enforcement authority may withdraw state law enforcement authority from any individual
93 federal officer by sending written notice to the federal agency and to the division.

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

97 Section 2. Section **53-13-106.5** is amended to read:

98 **53-13-106.5. State limitations on functions of federal law enforcement officers.**

99 (1) As used in this section:

100 (a) "Exercise law enforcement authority" means:

101 (i) to take any action on private land, state-owned land, or federally managed land, to
102 investigate, stop, serve process, search, arrest, cite, book, or incarcerate a person for a violation
103 of a federal, state, or local criminal justice system when the action is based on:

104 (A) a federal statute, regulation, or rule;

105 (B) a state or local statute, ordinance, regulation, or rule; or

106 (C) a state or local statute, ordinance, regulation, or rule that has been assimilated into
107 federal law under a federal assimilation statute; or

108 (ii) to gain access to or use the correctional or communication facilities and equipment
109 of any state or local law enforcement agency.

110 [~~(a)~~] (b) "Federal agency" means a federal agency that manages federally managed
111 land[-] or regulates activities on that land, including:

112 (i) the United States Bureau of Land Management;

113 (ii) the United States Forest Service;

114 (iii) the National Park Service;

115 (iv) the United States Fish and Wildlife Service;

116 (v) the United States Bureau of Reclamation;

117 (vi) the United States Environmental Protection Agency; and

118 (vii) the United States Army Corps of Engineers.

119 [~~(b)~~] (c) "Federal employee" means an employee [~~of:~~] or other agent of a federal
120 agency, but does not include:

- 121 (i) a special agent of the Federal Bureau of Investigation;
 122 (ii) a special agent of the United States Secret Service;
 123 (iii) a special agent of the United States Department of Homeland Security, excluding a
 124 customs inspector or detention removal officer;
 125 (iv) a special agent of the Bureau of Alcohol, Tobacco, Firearms, and Explosives;
 126 (v) a special agent of the United States Drug Enforcement Administration;
 127 (vi) a United States marshal, deputy marshal, or special deputy United States marshal;
 128 or
 129 (vii) a United States postal inspector of the United States Postal Inspection Service.
 130 ~~[(i) the Bureau of Land Management;]~~
 131 ~~[(ii) the United States Forest Service; or]~~
 132 ~~[(iii) the National Park Service.]~~
 133 ~~[(c)]~~ (d) "Federally managed land" means land managed by the following federal
 134 agencies:
 135 (i) the United States Bureau of Land Management;
 136 (ii) the United States Forest Service; ~~[and]~~
 137 (iii) the National Park Service~~[-];~~
 138 (iv) the United States Fish and Wildlife Service; and
 139 (v) the United States Bureau of Reclamation.
 140 (2) Unless otherwise provided by Utah law, federal employees performing their duties
 141 in Utah:
 142 (a) may not exercise law enforcement authority solely because the land on which they
 143 exercise the authority is federally managed; and
 144 (b) may exercise only law enforcement authority:
 145 (i) expressly granted by federal statute; and
 146 (ii) consistent with the Constitution of the United States.
 147 (3) Utah does not authorize federal employees to exercise law enforcement powers to
 148 enforce the laws of Utah, either on or off federally managed land except as authorized under
 149 this section or other provisions of state statute.
 150 (4) (a) Utah does not recognize the authority of employees or agents of the United
 151 States Department of Interior to exercise law enforcement powers in any county when the

152 exercise of the authority:

153 (i) occurs before the United States Secretary of the Interior has achieved the maximum
 154 feasible reliance upon the county's law enforcement officials in enforcing federal laws and
 155 regulations for the management, use, and protection of lands managed by the United States
 156 Bureau of Land Management, as required under 43 U.S.C. Sec. 1733(c)(2); or

157 (ii) goes beyond those powers strictly necessary for the management, use, and
 158 protection of federally managed lands, including property located on these lands, as limited by
 159 43 U.S.C. Sec. 1733(a) [~~and 1733(c)(2)~~].

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

166 (5) Utah does not authorize federal employees to take action based on the Utah Code,
 167 Utah Administrative Rules, or county or municipal ordinances as a basis to ~~H→~~ **stop, detain,** ~~←H~~
 167a ~~arrest H→, ←H~~ or cite
 168 persons for prosecution in the federal criminal justice system, unless the action:

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

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

171 (6) The authority of a United States Forest Service employee who is not a trained and
 172 certified law enforcement officer and the authority of any employee of the United States
 173 Bureau of Land Management to take action based on the Utah Code, Utah Administrative
 174 Rules, or county or municipal ordinances, or a federal assimilation of any of these provisions,
 175 as a basis to ~~H→~~ **stop, detain,** ~~←H~~ arrest ~~H→~~, ~~←H~~ or cite persons for prosecution in the federal
 175a criminal justice system, is not
 176 recognized, unless:

177 (a) (i) the authority for the action has been expressly granted by an enacted federal
 178 statute and not by assimilation of any state laws or ordinances; and

179 (ii) is consistent with the Constitution of the United States; or

180 (b) (i) the offense is an emergency ~~H→~~ [~~or~~] ~~and~~ ~~←H~~ poses an immediate risk of bodily
 180a injury or

181 damage to property; ~~H→~~ [~~and~~] ~~←H~~

182 (ii) a state, county, or municipal law enforcement officer is not reasonably available to

183 take action ~~H→~~ ; and

183a (iii)(A) the action is within the scope of the employee's or official's law enforcement
 183b power under a federal law that is enacted and that is not an assimilation of a state law or
 183c ordinance; and

183d (B) the authorizing federal law is consistent with the Constitution of the United States ~~←H~~ .

184 ~~[(6)]~~ (7) State and local government agencies may not allow any federal agency access
 185 to or use of the correctional and communication facilities and equipment of any state or local
 186 law enforcement agency without the express written consent of the appropriate responsible
 187 official of the state or local law enforcement agency.

188 ~~[(7)]~~ (8) ~~H→~~ ~~[State and local]~~ (a) Local ~~←H~~ law enforcement agencies may enter into
 188a agreements with
 189 federal agencies granting ~~[concurrent]~~ limited authority to specific federal employees to
 190 exercise law enforcement powers to enforce federal laws and state and local laws, provided the
 191 agreements are limited to a term not to exceed two years.

191a ~~H→~~ (b) State law enforcement agencies may, with the consent of the local county
 191b sheriff, enter into agreements as described in Subsection (8)(a), provided that the agreements
 191c may not exceed a duration of two years. ~~←H~~

192 ~~[(8)]~~ (9) ~~H→~~ ~~[(a)]~~ ~~←H~~ County sheriffs shall regularly review the duties and activities of
 192a federal
 193 agencies that have law enforcement responsibilities and that are acting within the jurisdictional
 194 area of the county to ~~[ascertain whether]~~ determine if the federal agencies are acting
 195 consistently with this section.

196 ~~H→~~ ~~[(b) County sheriffs shall annually report to the county attorney or district attorney of~~
 197 ~~their jurisdiction the results of all reviews conducted under this Subsection [(8)](9).]~~ ~~←H~~

198 Section 3. Section 76-8-512 is amended to read:

199 **76-8-512. Impersonation of officer.**

200 A person is guilty of a class B misdemeanor who:

201 (1) impersonates a public servant or a peace officer with intent to deceive another or
 202 with intent to induce another to submit to ~~[his]~~ the person's pretended official authority or to
 203 rely upon ~~[his]~~ the person's pretended official act;

204 (2) falsely states ~~[he]~~ the person is a public servant or a peace officer with intent to
 205 deceive another or to induce another to submit to ~~[his]~~ the person pretended official authority
 206 or to rely upon ~~[his]~~ the person's pretended official act; or

207 (3) displays or possesses without authority any badge, identification card, other form of
 208 identification, any restraint device, or the uniform of any state or local governmental entity, or a
 209 reasonable facsimile of any of these items, with the intent to deceive another or with the intent
 210 to induce another to submit to ~~[his]~~ the person's pretended official authority or to rely upon
 211 ~~[his]~~ the person's pretended official act[-]; or

212 (4) exercises law enforcement authority in violation of Section 53-13-106.5 and is an
 213 employee of the:

- 214 (a) United States Bureau of Land Management; or
 - 215 (b) (i) United States Forest Service; and
 - 216 (ii) is not a certified law enforcement officer.
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Legislative Review Note
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Office of Legislative Research and General Counsel