

**JOINT RESOLUTION ON STATE AND POLITICAL
SUBDIVISIONS JURISDICTION**

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marc K. Roberts

Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This joint resolution of the Legislature declares and asserts the jurisdictional right of the state of Utah and its political subdivisions to respond to and take action when conditions on federally managed land in the state adversely affect, or may adversely affect, the health, safety, or welfare of the people.

Highlighted Provisions:

This resolution:

▸ declares and asserts the jurisdictional right of the state of Utah and its political subdivisions to respond to and take action when conditions on federally managed land in the state adversely affect, or may adversely affect, the health, safety, or welfare of the people without the intrusion and interference of the federal government on its efforts to respond to the needs of its citizens; and

▸ urges other states to declare and assert their rights, and the rights of their political subdivisions, to respond to and take action when conditions on federally managed land in the state adversely affect, or may adversely affect, the health, safety, or welfare of the people without the intrusion and interference of the federal government on the states' efforts to respond to the needs of their citizens.

Special Clauses:

None



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Be it resolved by the Legislature of the state of Utah:

WHEREAS, in its Patient Protection and Affordable Care Act decision, released June 2012, the United States Supreme Court reaffirmed the position of the states as "separate and independent sovereigns";

WHEREAS, the court made it clear that the federal government "must show that a constitutional grant of power authorizes each of its actions";

WHEREAS, in contrast, the Supreme Court further explained that "the same does not apply to the States, because the Constitution is not the source of their power . . . The States thus can and do perform many of the vital functions of modern government . . . even though the Constitution's text does not authorize any government to do so";

WHEREAS, the Supreme Court added, "Our cases refer to this general power of governing, possessed by the States but not by the federal government, as the 'police power.' . . . Because the police power is controlled by 50 different states instead of one national sovereign, the facets of governing that touch on citizens' daily lives are normally administered by smaller governments closer to the governed. The Framers thus ensured that powers which 'in the ordinary course of affairs, concern the lives, liberties, and properties of the people' were held by governments more local and more accountable than a distant bureaucracy";

WHEREAS, the Supreme Court also highlighted a vital role of states' authority in relation to the federal government, stating, "The independent power of the States also serves as a check on the power of the Federal Government: 'By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power . . . In the typical case we look to the States to defend their prerogatives by adopting 'the simple expedient of not yielding' to federal blandishments when they do not want to embrace the federal policies as their own";

WHEREAS, the Supreme Court, concluding this line of logic, declared, "The States are separate and independent sovereigns. Sometimes they have to act like it";

WHEREAS, in 1917, the Court, in *Utah Power and Light v. United States*, held that "The power of the United States to protect its property by its own legislation from private trespass and waste does not, and cannot, imply a general police power over the vacant public lands within a State. The section in the Constitution relating to the admission of new States,

59 and the concomitant disposition of the public lands, excludes, by its express terms, any
60 construction by which the United States may claim any additional governmental or police
61 powers within the States in which such public land is situated";

62 WHEREAS, Article 1, Section 8, Clause 17, of the United States Constitution states
63 that the federal government will "exercise exclusive Legislation in all Cases whatsoever, over
64 such District (not exceeding ten Miles square) as may, by Cession of Particular States, and the
65 Acceptance of Congress, become the Seat of the Government of the United States, and to
66 exercise like Authority over all Places purchased by the Consent of the Legislature of the State
67 in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and
68 other needful Buildings";

69 WHEREAS, the domain of exclusive jurisdiction by the federal government is limited
70 to the District of Columbia and other Places purchased by the Consent of the State Legislatures
71 for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings
72 incidental to the powers expressly granted within the Constitution;

73 WHEREAS, "other needful Buildings" did not include vast acres of undeveloped land;

74 WHEREAS, although Section 3 of the Utah Enabling Act states, in part, "That the
75 people inhabiting said proposed State do agree and declare that they forever disclaim all right
76 and title to the unappropriated public lands lying within the boundaries thereof," the state of
77 Utah did not disclaim its jurisdiction;

78 WHEREAS, during the Eisenhower Administration, the United States government
79 published a report entitled "Report of the Interdepartmental Committee for the Study of
80 Jurisdiction Over Federal Areas Within the States" in which four basic areas of federal
81 jurisdiction were identified:

82 1. Exclusive Legislative Jurisdiction: This term is applied when the federal government
83 possesses, by whichever method acquired, all of the authority of the State, and in which the
84 State concerned has not reserved to itself the right to exercise any of the authority concurrently
85 with the United States except to serve civil or criminal process in the area for activities that
86 occurred outside the area;

87 2. Concurrent Legislative Jurisdiction: This term is applied in those instances wherein
88 by granting to the United States authority -- which would otherwise amount to exclusive
89 legislative jurisdiction over an area -- the State concerned has reserved to itself the right to

90 exercise, concurrently with the United States, all of the same authority;

91 3. Partial Legislative Jurisdiction: This term is applied in those instances wherein a
92 state has granted authority to the federal government to legislate over an area of the state but
93 the state has reserved to itself the right to exercise, by itself or concurrently with the United
94 States, other authority constituting more than merely the right to serve civil or criminal process
95 in the area, or the right to tax private property;

96 4. Proprietary Interest Only: This term is applied to those instances wherein the
97 federal government has acquired some right or title to an area in a state, but has not obtained
98 any measure of the State's authority over the area. In applying this definition, recognition
99 should be given to the fact that the United States, by virtue of its functions and authority under
100 various provisions of the Constitution, has many powers and immunities not possessed by
101 ordinary landholders with respect to areas in which it acquires an interest, and of the further
102 fact that all its properties and functions are held or performed in a governmental, rather than a
103 proprietary, capacity;

104 WHEREAS, the report also stated, "It scarcely needs to be said that unless there has
105 been a transfer of jurisdiction pursuant to clause 17 by a Federal acquisition of land with State
106 consent, or by cession from the State to the Federal Government, or unless the Federal
107 Government has reserved jurisdiction upon admission of the State, the Federal Government
108 possesses no legislative jurisdiction over any area within a State, such jurisdiction being for
109 exercise by the State, subject to non-interference by the State with Federal functions. . . The
110 consent requirement of Article I, Section 8, Clause 17, was intended by the framers of the
111 Constitution to preserve the State's jurisdictional integrity against federal encroachment. The
112 Federal Government cannot, by unilateral action on its part, acquire legislative jurisdiction over
113 any area within the exterior boundaries of a State";

114 WHEREAS, an Inventory Report On Jurisdictional Status of Federal Areas Within the
115 States, compiled by the United States General Services Administration, categorizes all United
116 States Forest Service (USFS) and Bureau of Land Management (BLM) land in the state of Utah
117 as #4, Proprietary Interest Only;

118 WHEREAS, the USFS and the BLM have caused a public nuisance and safety issue for
119 the people of the state of Utah and Utah's political subdivisions by not removing the condition,
120 persistently in the National Forest and BLM system lands, of imminent fire and not mitigating

121 the effects of recent fires;

122 WHEREAS, Utah's 2012 Shingle Creek Fire was human caused on USFS land;

123 WHEREAS, the fire was one-third contained by the operation of one bulldozer;

124 WHEREAS, four bulldozers were ready for use by 6 p.m. on the day of the fire, but
125 since the fire was on USFS land, only one bulldozer was allowed to operate until 10 p.m. and
126 was only allowed to operate one blade wide and to dig no deeper than two inches;

127 WHEREAS, as a result, the fire burned more than 8,000 acres, damaged and altered the
128 local watershed, created future risks of debris and mudslides, and will require costly repairs;

129 WHEREAS, Utah's 2012 Seeley Fire, which was started by lightning, eventually
130 destroyed over 48,000 acres, or 76 square miles;

131 WHEREAS, debris flow and sediment from the Seeley Fire will be a major issue in the
132 surrounding watershed for the next two to five years, impacting local municipalities, power
133 plants, local businesses, homes, roads, bridges, and farms;

134 WHEREAS, in one instance, the USFS chose to bulldoze a portion of private land,
135 claiming it was the best place to fight the wildfire;

136 WHEREAS, these are just two examples of conditions at the community level that have
137 been made worse by the federal government's mismanagement of federal lands;

138 WHEREAS, the jurisdictional right of states and their political subdivisions to mitigate
139 potential risks to the health, safety, or welfare of the state or a political subdivision should not
140 be fettered by the federal bureaucracy; and

141 WHEREAS, states should assert their rights to mitigate potential risks to the health,
142 safety, or welfare of the state or a political subdivision and not allow their authority to be
143 eroded by federal government claims of authority:

144 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah
145 declare and assert its jurisdictional right, and the right of its political subdivisions, to respond
146 to and take action when conditions on federally managed land in the state adversely affect, or
147 may adversely affect, the health, safety, or welfare of the people without the intrusion and
148 interference of the federal government on its efforts to respond to the needs of their citizens.

149 BE IT FURTHER RESOLVED that the Legislature urges the states to declare and
150 assert their jurisdictional rights, and the rights of their political subdivisions, to respond to and
151 take action when conditions on federally managed land in the states adversely affect, or may

152 adversely affect, the health, safety, or welfare of the people without the intrusion and
153 interference of the federal government on efforts to respond to the needs of their citizens.

154 BE IT FURTHER RESOLVED that a copy of this resolution be sent to the president of
155 the United States, the majority leader of the United States Senate, the Speaker of the United
156 States House of Representatives, the United States Forest Service, the commissions of each
157 county in the state of Utah, the Council of State Governments, the National Conference of State
158 Legislatures, and the members of Utah's congressional delegation.

Legislative Review Note
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Office of Legislative Research and General Counsel