

Effective 5/14/2019

**Part 3
Federalism Commission**

63C-4a-301 Title.

This part is known as " Federalism Commission."

Amended by Chapter 246, 2019 General Session

63C-4a-302 Creation of Federalism Commission -- Membership -- Meetings -- Staff -- Expenses.

- (1) There is created the Federalism Commission, comprised of the following nine members:
 - (a) the president of the Senate or the president of the Senate's designee who shall serve as cochair of the commission;
 - (b) two other members of the Senate, appointed by the president of the Senate;
 - (c) the speaker of the House or the speaker of the House's designee who shall serve as cochair of the commission;
 - (d) three other members of the House, appointed by the speaker of the House;
 - (e) the minority leader of the Senate or the minority leader of the Senate's designee; and
 - (f) the minority leader of the House or the minority leader of the House's designee.
- (2)
 - (a) A majority of the members of the commission constitute a quorum of the commission.
 - (b) Action by a majority of the members of a quorum constitutes action by the commission.
- (3) The commission may meet up to nine times each year, unless additional meetings are approved by the Legislative Management Committee.
- (4) The Office of Legislative Research and General Counsel shall provide staff support to the commission.
- (5) Compensation and expenses of a member of the commission who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.
- (6) Nothing in this section prohibits the commission from closing a meeting under Title 52, Chapter 4, Open and Public Meetings Act, or prohibits the commission from complying with Title 63G, Chapter 2, Government Records Access and Management Act.
- (7) The commission may, in the commission's discretion, elect to succeed to the position of any of the following under a contract that any of the following are party to, subject to applicable contractual provisions:
 - (a) the Commission on Federalism;
 - (b) the Commission for the Stewardship of Public Lands; and
 - (c) the Federal Funds Commission.

Amended by Chapter 246, 2019 General Session

63C-4a-303 Federalism Commission to evaluate federal law -- Curriculum on federalism.

- (1)
 - (a) In accordance with Section 63C-4a-304, the commission may evaluate a federal law:
 - (i) as agreed by a majority of the commission;
 - (ii) submitted to the commission by a council member; or
 - (iii) reported to the commission in accordance with Subsection (1)(b).

- (b)
 - (i) To assist the commission in the evaluation of federal law as required in this section and Section 63C-4a-304, the commission may contract with a third party that is a Utah institution of higher education to monitor federal law for possible implications on the principles of federalism.
 - (ii) A third party contracted to monitor federal law as described in Subsection (1)(b)(i) shall:
 - (A) monitor federal law for possible implications on the principles of federalism and state sovereignty; and
 - (B) report to the commission any law or action by the federal government that may implicate the principles of federalism or state sovereignty.
- (c)
 - (i) As used in this Subsection (1)(c), "interim committee" means the same as that term is defined in Section 36-12-1.
 - (ii) The commission shall provide an annual report to each interim committee concerning any law or action by the federal government that implicates the principles of federalism or state sovereignty.
 - (iii) The commission may notify the appropriate interim committee of any law or action by the federal government that implicates the principles of federalism or state sovereignty.
- (2) The commission may request information regarding a federal law under evaluation from a United States senator or representative elected from the state.
- (3) If the commission finds that a federal law is not authorized by the United States Constitution or violates the principle of federalism as described in Subsection 63C-4a-304(2), a commission cochair or the commission may:
 - (a) request from a United States senator or representative elected from the state:
 - (i) information about the federal law; or
 - (ii) assistance in communicating with a federal governmental entity regarding the federal law;
 - (b)
 - (i) give written notice of an evaluation made under Subsection (1) to the federal governmental entity responsible for adopting or administering the federal law; and
 - (ii) request a response by a specific date to the evaluation from the federal governmental entity;
 - (c) request a meeting, conducted in person or by electronic means, with the federal governmental entity, a representative from another state, or a United States Senator or Representative elected from the state to discuss the evaluation of federal law and any possible remedy; or
 - (d) give written notice of an evaluation and the conclusions of the commission to any other relevant entity.
- (4) The commission may recommend to the governor that the governor call a special session of the Legislature to give the Legislature an opportunity to respond to the commission's evaluation of a federal law.
- (5) A commission cochair may coordinate the evaluation of and response to federal law with another state as provided in Section 63C-4a-305.
- (6) The commission shall keep a current list on the Legislature's website of:
 - (a) a federal law that the commission evaluates under Subsection (1);
 - (b) an action taken by a cochair of the commission or the commission under Subsection (3);
 - (c) any coordination undertaken with another state under Section 63C-4a-305; and
 - (d) any response received from a federal government entity that was requested under Subsection (3).
- (7)
 - (a) The commission shall develop curriculum for a seminar on the principles of federalism.

- (b) The curriculum under Subsection (7)(a) shall be available to the general public and include:
 - (i) fundamental principles of federalism;
 - (ii) the sovereignty, supremacy, and jurisdiction of the individual states, including their police powers;
 - (iii) the history and practical implementation of the Tenth Amendment to the United States Constitution;
 - (iv) the authority and limits on the authority of the federal government as found in the United States Constitution;
 - (v) the relationship between the state and federal governments;
 - (vi) methods of evaluating a federal law in the context of the principles of federalism;
 - (vii) how and when challenges should be made to a federal law or regulation on the basis of federalism;
 - (viii) the separate and independent powers of the state that serve as a check on the federal government;
 - (ix) first amendment rights and freedoms contained therein; and
 - (x) any other issues relating to federalism the commission considers necessary.
- (8) The commission may apply for and receive grants, and receive private donations to assist in funding the creation, enhancement, and dissemination of the curriculum.
- (9) The commission shall submit a report on or before November 30 of each year to the Government Operations Interim Committee and the Natural Resources, Agriculture, and Environment Interim Committee that:
 - (a) describes any action taken by the commission under Section 63C-4a-303; and
 - (b) includes any proposed legislation the commission recommends.

Amended by Chapter 71, 2023 General Session

63C-4a-304 Standard for evaluation of federal law.

- (1) The commission shall evaluate whether a federal law evaluated under Section 63C-4a-303 is authorized by:
 - (a) United States Constitution, Article I, Section 2, to provide for the decennial census;
 - (b) United States Constitution, Article I, Section 4, to override state laws regulating the times, places, and manner of congressional elections, other than the place of senatorial elections;
 - (c) United States Constitution, Article I, Section 7, to veto bills, orders, and resolutions by Congress;
 - (d) United States Constitution, Article I, Section 8, to:
 - (i) lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States, but all duties, imposts, and excises shall be uniform throughout the United States;
 - (ii) borrow money on the credit of the United States;
 - (iii) regulate commerce with foreign nations, among the several states, and with the Indian tribes;
 - (iv) establish a uniform rule of naturalization and uniform laws on the subject of bankruptcies throughout the United States;
 - (v) coin money, regulate the value of coin money and of foreign coin, and fix the standard of weights and measures;
 - (vi) provide for the punishment of counterfeiting the securities and current coin of the United States;
 - (vii) establish post offices and post roads;

- (viii) promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;
- (ix) constitute tribunals inferior to the supreme court;
- (x) define and punish piracies and felonies committed on the high seas and offences against the law of nations;
- (xi) declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;
- (xii) raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;
- (xiii) provide and maintain a navy;
- (xiv) make rules for the government and regulation of the land and naval forces;
- (xv) provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions;
- (xvi) provide for organizing, arming, and disciplining the militia, and for governing the part of the militia that may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress;
- (xvii) exercise exclusive legislation in all cases whatsoever, over such district, which may not exceed 10 miles square, as may, by cession of particular states and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the place shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; or
- (xviii) make all laws which shall be necessary and proper for carrying into execution the powers listed in this section, and all other powers vested by the United States Constitution in the government of the United States, or in any department or officer of the United States;
- (e) United States Constitution, Article I, Section 9, to authorize a federal officer to receive benefits from a foreign nation;
- (f) United States Constitution, Article I, Section 10, to fix the pay of members of Congress and of federal officers;
- (g) United States Constitution, Article II, Section 1, to:
 - (i) set the time for choosing electors; or
 - (ii) establish who succeeded to the presidency after the vice president;
- (h) United States Constitution, Article II, Section 2, to:
 - (i) serve as Commander-in-Chief of the armed forces;
 - (ii) require the written opinions of executive officers;
 - (iii) grant reprieves and pardons;
 - (iv) make vacancy appointments;
 - (v) make treaties, subject to the advice and consent of the United States Senate;
 - (vi) appoint foreign affairs officers subject to the advice and consent of the United States Senate;
 - (vii) appoint domestic affairs officers subject either to the advice and consent of the United States Senate or pursuant to law;
 - (viii) appoint judges subject to the advice and consent of the United States Senate; or
 - (ix) authorize the president to fill designated inferior offices without senatorial consent;
- (i) United States Constitution, Article II, Section 3, to:
 - (i) receive representatives of foreign powers;
 - (ii) execute the laws;

- (iii) commission United States officers;
- (iv) give Congress information;
- (v) make recommendations to Congress;
- (vi) convene Congress on extraordinary occasions; or
- (vii) adjourn Congress if it cannot agree on a time;
- (j) United States Constitution, Article III, Section 1, to:
 - (i) create exceptions to the supreme court's appellate jurisdiction;
 - (ii) fix the jurisdiction of federal courts inferior to the supreme court; or
 - (iii) declare the punishment for treason;
- (k) United States Constitution, Article IV, Section 1, to establish the rules by which the records and judgments of states are proved in other states;
- (l) United States Constitution, Article IV, Section 3, to:
 - (i) manage federal property;
 - (ii) dispose of federal property;
 - (iii) govern the federal territories; or
 - (iv) consent to admission of new states or the combination of existing states;
- (m) United States Constitution, Article IV, Section 4, to defend states from invasion, insurrection, and non-republican forms of government;
- (n) United States Constitution, Article V, Section 1, to propose constitutional amendments;
- (o) United States Constitution, Article VI, Section 1, to prescribe the oath for federal officers;
- (p) United States Constitution, Amendment XIII, to abolish slavery;
- (q) United States Constitution, Amendment XIV, to guard people from certain state abuses;
- (r) United States Constitution, Amendment XVI, to impose taxes on income from any source without having to apportion the total dollar amount of tax collected from each state according to each state's population in relation to the total national population;
- (s) United States Constitution, Amendment XX, to revise the manner of presidential succession;
- (t) United States Constitution, Amendment XV, XIX, XXIII, or XXIV, to extend and protect the right to vote; or
- (u) United States Constitution, Amendment XVII, to grant a pay raise to a sitting Congress.
- (2) The commission shall evaluate whether a federal law evaluated under Section 63C-4a-303 violates the principle of federalism by:
 - (a) affecting the distribution of power and responsibility among the state and national government;
 - (b) limiting the policymaking discretion of the state;
 - (c) impacting a power or a right reserved to the state or its citizens by the United States Constitution, Amendment IX or X; or
 - (d) impacting the sovereignty rights and interest of the state or a political subdivision to provide for the health, safety, and welfare and promote the prosperity of the state's or political subdivision's inhabitants.
- (3) In the evaluation of a federal law, the commission:
 - (a) shall rely on:
 - (i) the text of the United States Constitution, as amended;
 - (ii) the meaning of the text of the United States Constitution, as amended, at the time of its drafting and ratification; and
 - (iii) a primary source document that is:
 - (A) directly relevant to the drafting, adoption, ratification, or initial implementation of the United States Constitution, as amended; or

- (B) created by a person directly involved in the drafting, adoption, ratification, or initial implementation of the United States Constitution, as amended;
 - (b) may rely on other relevant sources, including federal court decisions; and
 - (c) is not bound by a holding by a federal court.
- (4)
- (a) If the commission determines that a federal law is not authorized as described in this section or otherwise violates the principles of federalism, the commission may recommend appropriate action, including:
 - (i) no action;
 - (ii) correspondence with relevant federal agencies or leaders;
 - (iii) initiating or coordinating public education efforts;
 - (iv) initiating or joining multi-state coordination;
 - (v) outreach and coordination with state and local government officers and agencies;
 - (vi) outreach or coordination with the state's congressional delegation and Congress as a whole;
 - (vii) lobbying the state's congressional delegation and Congress as a whole;
 - (viii) legal challenges of the federal action;
 - (ix) enacting state laws to assert, defend, and preserve the constitutional allocation and balance of governing powers between the federal government and the state; or
 - (x) other actions within the constitutional powers of the state.
 - (b)
 - (i) The Legislative Management Committee shall include on the standing agenda for the Legislative Management Committee a report from the commission as described in Subsection (4)(b)(ii).
 - (ii) The commission:
 - (A) shall provide to the Legislative Management Committee a report with respect to federal laws that the commission determines are not authorized as described in this section or otherwise violate the principles of federalism; and
 - (B) with approval of the Legislative Management Committee, may take appropriate action.
 - (iii) If the Legislative Management Committee is not meeting within a reasonable time, the commission may:
 - (A) provide a report to the speaker of the House of Representatives and the president of the Senate with respect to federal laws that the commission determines are not authorized as described in this section or otherwise violate the principles of federalism; and
 - (B) with approval from the speaker of the House of Representatives and the president of the Senate, take appropriate action.

Amended by Chapter 320, 2022 General Session

63C-4a-305 Communication with other states and governmental entities.

A commission cochair may correspond with the presiding officer of the legislative branch of another state or an entity of another state that has powers and duties that are similar to the commission to discuss and coordinate the evaluation of and response to federal law as provided in Section 63C-4a-303.

Renumbered and Amended by Chapter 101, 2013 General Session

63C-4a-306 Course on federalism required.

- (1) This section applies to:
 - (a) all political subdivisions of the state;
 - (b) all agencies of the state;
 - (c) the Attorney General's office; and
 - (d) the Office of Legislative Research and General Counsel.
- (2) An employing entity listed in Subsection (1) shall appoint at least one designee to which all questions and inquiries regarding federalism shall be directed. The designee shall be required to attend a seminar on the principles of federalism developed pursuant to Subsection 63C-4a-303(7) at least once in every two-year period.
- (3) The designee may complete the requirements of this section by attending a seminar in person or online.

Amended by Chapter 246, 2019 General Session

63C-4a-308 Commission duties with regards to federal lands.

The commission shall:

- (1) review and make recommendations on the transfer of federally controlled public lands to the state;
- (2) review and make recommendations regarding the state's sovereign right to protect the health, safety, and welfare of its citizens as it relates to public lands, including recommendations concerning the use of funds in the account created in Section 63C-4a-404;
- (3) study and evaluate the recommendations of the public lands transfer study and economic analysis conducted by the Public Lands Policy Coordinating Office in accordance with Section 63L-11-304;
- (4) coordinate with and report on the efforts of the executive branch, the counties and political subdivisions of the state, the state congressional delegation, western governors, other states, and other stakeholders concerning the transfer of federally controlled public lands to the state including convening working groups, such as a working group composed of members of the Utah Association of Counties;
- (5) study and make recommendations regarding the appropriate designation of public lands transferred to the state, including stewardship of the land and appropriate uses of the land;
- (6) study and make recommendations regarding the use of funds received by the state from the public lands transferred to the state; and
- (7) receive reports from and make recommendations to the attorney general, the Legislature, and other stakeholders involved in litigation on behalf of the state's interest in the transfer of public lands to the state, regarding:
 - (a) preparation for potential litigation;
 - (b) selection of outside legal counsel;
 - (c) ongoing legal strategy for the transfer of public lands; and
 - (d) use of money appropriated by the Legislature for the purpose of securing the transfer of public lands to the state under Section 63C-4a-404.

Amended by Chapter 451, 2022 General Session