

Chapter 16 State Sovereignty

63G-16-101 Principles of state sovereignty -- Presumption of state subject matter jurisdiction -- Resolution of jurisdictional conflicts.

- (1) As used in this section:
 - (a) "Commission" means the Federalism Commission created in Section 63C-4a-302.
 - (b) "Federal proprietary interest lands" means federally controlled lands in which the federal government holds only a proprietary interest:
 - (i) as an ordinary landowner with no governing or legislative jurisdiction; and
 - (ii) as described in:
 - (A) the Report to the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas within the States, Parts 1 and 2, published in April 1956; and
 - (B) the Inventory Report on Jurisdictional Status of Federal Areas within States, prepared by the General Services Administration in June 1962.
 - (c) "Legislative jurisdiction" means the authority of a government to create, enforce, and carry out laws within a jurisdiction.
 - (d) "State entity" means:
 - (i) any department, agency, board, commission, or other instrumentality of the state; or
 - (ii) a political subdivision of the state.
- (2) Pursuant to the Ninth and Tenth Amendments of the United States Constitution, Utah solemnly affirms the state's sovereignty and fully and unconditionally reserves and asserts all rights and powers, directly and indirectly related to those rights and powers.
- (3) The affirmation, reservation, and assertion of state sovereignty under Subsection (2) includes rights and claims of set-off by the state for any amounts the state claims to have been inequitably or unlawfully caused or imposed by the federal government.
- (4) The federal government is a government of limited jurisdiction and power.
- (5)
 - (a) The state has general governing authority under the state's inherent police power jurisdiction over all governing matters within the state affecting public welfare, safety, health, and morality, as recognized under the Tenth Amendment to the United States Constitution.
 - (b) The state affirms that the state has never ceded legislative jurisdiction over federal proprietary interest lands, which account for approximately 35 million acres in Utah, or 96% of federally controlled lands in the state.
 - (c) The subject areas within the state's police powers jurisdiction over federal proprietary interest lands include, without limitation:
 - (i) natural resources;
 - (ii) water resources and water rights;
 - (iii) agriculture;
 - (iv) health, safety, and welfare;
 - (v) land health, access, and productivity;
 - (vi) zoning and planning;
 - (vii) enforcement of state law;
 - (viii) education; and
 - (ix) energy resources.
 - (d) In asserting the state's inherent police power, a state entity shall:
 - (i) identify federally controlled lands that are federal proprietary interest lands; and

- (ii) presume that all federally controlled lands are federal proprietary interest lands unless the federal government can demonstrate, through specific constitutional enumeration or cession of legislative jurisdiction by the state, that the federal government has constitutional or legislative jurisdiction over the lands.
- (6) The federalism canon, as prescribed by the United States Supreme Court, requires courts to presume that federal law does not preempt state law because of the sovereignty the states enjoy under the United States Constitution, as amended.
- (7) The balance of governing jurisdiction and power protects the diversity of the states and ensures the self-governing voice of the people.
- (8)
 - (a) Jurisdiction over all governing subject matters arising within the state is presumed to reside with the state except as otherwise enumerated in the United States Constitution, as amended.
 - (b) The presumption of state jurisdiction under this Subsection (8) may only be overcome if the federal government demonstrates that jurisdiction over the subject matter in question is specifically enumerated to the federal government under the United States Constitution, as amended.
 - (c) If a conflict arises whereby the federal government asserts jurisdiction over subject matters not enumerated under the United States Constitution, as amended, the federal government bears the burden of establishing federal jurisdiction over the subject matter through coordination with the state.

Amended by Chapter 381, 2026 General Session

Part 2 Utah Constitutional Sovereignty Act

63G-16-201 Definitions.

As used in this part:

- (1) "Board of education" means:
 - (a) a local school board described in Title 53G, Chapter 4, School Districts;
 - (b) the State Board of Education;
 - (c) the State Charter School Board created under Section 53G-5-201; or
 - (d) a charter school governing board described in Title 53G, Chapter 5, Charter Schools.
- (2) "Federal agency" means a department, agency, authority, commission, council, board, office, bureau, or other administrative unit of the executive branch of the United States government.
- (3)
 - (a) "Federal directive" means:
 - (i) a statute passed by the United States Congress;
 - (ii) an executive order by the president of the United States;
 - (iii) a rule or regulation adopted by a federal agency; or
 - (iv) an order or action by:
 - (A) a federal agency; or
 - (B) an employee or official appointed by the president of the United States.
 - (b) "Federal directive" does not include any order by the federal government calling the Utah National Guard into the service of the United States.
- (4)
 - (a) "Government officer" means:

- (i) an individual elected to a position in state or local government, when acting in the capacity of the state or local government position;
 - (ii) an individual elected to a board of education, when acting in the capacity of a member of a board of education;
 - (iii) an individual appointed to fill a vacancy in a position described in Subsection (4)(a)(i) or (ii), when acting in the capacity of the position;
 - (iv) an individual appointed to or employed in a full-time position by state government, local government, or a board of education, when acting in the capacity of the individual's appointment or employment; or
 - (v) an individual employed by:
 - (A) an institution of higher education listed in Section 53H-1-102; or
 - (B) a school district as defined in Section 53G-11-501.
 - (b) "Government officer" does not include a member or employee of the legislative branch of state government.
- (5) "Local government" means:
- (a) a county, city, town, or metro township;
 - (b) a special district governed by Title 17B, Limited Purpose Local Government Entities - Special Districts;
 - (c) a special service district governed by Title 17D, Chapter 1, Special Service District Act;
 - (d) a community reinvestment agency governed by Title 17C, Limited Purpose Local Government Entities - Community Reinvestment Agency Act;
 - (e) a conservation district governed by Title 17D, Chapter 3, Conservation District Act;
 - (f) a redevelopment agency; or
 - (g) an interlocal entity or a joint cooperative undertaking governed by Title 11, Chapter 13, Interlocal Cooperation Act.

Amended by Chapter 9, 2025 Special Session 1

63G-16-202 Legislation invoking state sovereignty -- Requirements -- Amendment or repeal -- Effect of inaction -- Relation to other law.

- (1) The Legislature may, by passing legislation in accordance with this section, prohibit a government officer from enforcing or assisting in the enforcement of a federal directive within the state if the Legislature determines the federal directive violates the principles of state sovereignty.
- (2) For purposes of this section, a federal directive violates the principles of state sovereignty if the federal directive restricts or infringes upon:
 - (a) a power or a right reserved to the state by the Tenth Amendment to the United States Constitution; or
 - (b) the state's rights or interests to provide for the health, safety, and welfare and promote the prosperity of the state's inhabitants.
- (3) The Office of Legislative Research and General Counsel may not open a request for legislation under this section unless:
 - (a) the request is approved by the speaker of the House of Representatives and the president of the Senate; or
 - (b) while the Legislature is convened and conducting business on the floor, identical motions to approve the request are made in each chamber of the Legislature and both motions are approved by a two-thirds majority of the members present in each chamber.

- (4) The Legislature shall consult with and consider any recommendations provided by the attorney general concerning the potential impact that legislation under Subsection (1) may have on current or anticipated litigation.
- (5) Upon the numbering of legislation under Subsection (1), the Legislature shall provide notice of the legislation to the representatives of tribal governments listed in Subsection 9-9-104.5(2)(b).
- (6) Legislation under Subsection (1) shall:
 - (a) identify the federal directive the Legislature has determined violates the principles of state sovereignty in accordance with Subsection (2);
 - (b) include the information or findings upon which the Legislature has made the determination in Subsection (6)(a);
 - (c) specify the government officers to which the legislation applies;
 - (d) explain the effect that the legislation will have on the applicability of the federal directive within the state, including a description of any activities or forms of assistance that a government officer specified in Subsection (6)(c) is prohibited from conducting in connection with the enforcement of the federal directive; and
 - (e) describe any other requirements for a government officer specified in Subsection (6)(c) to comply with the legislation.
- (7) After legislation under Subsection (1) is passed, the legislation may be amended or repealed only by legislation opened in accordance with Subsection (3).
- (8) The inaction of the Legislature in determining that a federal directive violates the principles of state sovereignty by passing legislation under this section:
 - (a) does not imply or create a presumption that the federal directive is lawful under the United States Constitution; and
 - (b) has no effect on the attorney general's authority to pursue any appropriate legal action to challenge the federal directive on the basis of state sovereignty.
- (9) This section supersedes any conflicting provisions of Utah law.

Amended by Chapter 355, 2025 General Session

Part 3 Federal Guidance Letters

63G-16-301 Definitions.

As used in this part:

- (1) "Applicable federal agency" means the federal agency that issued a federal guidance letter.
- (2) "Commission" means the Federalism Commission created in Section 63C-4a-302.
- (3) "Education entity" means:
 - (a) the State Board of Education;
 - (b) the Utah Board of Higher Education;
 - (c) the State Charter School Board created in Section 53G-5-201;
 - (d) a local school board described in Title 53G, Chapter 4, School Districts; or
 - (e) a charter school governing board described in Title 53G, Chapter 5, Charter Schools.
- (4) "Federal agency" means a department, agency, authority, commission, council, board, office, bureau, or other administrative unit of the executive branch of the United States government.
- (5)

- (a) "Federal guidance letter" means a written statement by a federal agency, regardless of format, that:
 - (i) clarifies or provides instruction on:
 - (A) the federal agency's interpretation of a federal law; or
 - (B) the federal agency's policies for administering a federal law; and
 - (ii) is nonbinding and of general applicability.
- (b) "Federal guidance letter" does not include:
 - (i) a written communication between a federal agency and a state agency regarding a specific entity;
 - (ii) a peer-to-peer communication; or
 - (iii) a written communication between a federal agency and the State Tax Commission containing guidance related to the protection, storage, or safeguarding of confidential information.
- (6) "Federal law" means:
 - (a) a statute passed by the United States Congress; or
 - (b) a rule or regulation adopted by a federal agency.
- (7) "State agency" means:
 - (a) a department, division, board, council, committee, institution, office, bureau, or other similar administrative unit of the executive branch of state government; or
 - (b) an education entity.

Amended by Chapter 71, 2026 General Session

63G-16-302 Federal guidance letters received by state agencies -- Publication and reporting requirements -- Standards for information published on state agency website -- Authority to publish previously received letters.

- (1) A state agency shall publish and report federal guidance letters received by the state agency in accordance with this section.
- (2)
 - (a) Except as provided in Subsection (2)(b), a state agency that receives a federal guidance letter on or after July 1, 2025, shall:
 - (i) publish the federal guidance letter on:
 - (A) the state agency's public website; and
 - (B) the Utah Public Notice Website created in Section 63A-16-601; and
 - (ii) submit an electronic report to the commission containing the information specified in Subsection (2)(c).
 - (b) For a state agency that is an education entity, the requirements of Subsection (2)(a) apply to federal guidance letters received on or after May 6, 2026.
 - (c) The report described in Subsection (2)(a)(ii) shall include:
 - (i) a copy of or an electronic link to the federal guidance letter received by the state agency;
 - (ii) a brief description of:
 - (A) the purpose of the federal guidance letter;
 - (B) any fiscal or administrative impacts on the state agency resulting from the federal guidance letter, whether actualized or potential; and
 - (C) any recommendations as to whether the federal guidance letter may violate the principle of federalism as set forth in Subsection 63C-4a-304(2); and
 - (iii) any other information required by the commission.

- (d) A state agency shall comply with the requirements of Subsection (2)(a) within 15 days from the date on which the state agency receives the federal guidance letter.
- (3)
- (a) This Subsection (3) applies to a state agency that:
 - (i) publishes and reports a federal guidance letter in accordance with Subsection (2); and
 - (ii) receives a written communication from the applicable federal agency indicating that the federal guidance letter has been rescinded.
 - (b) A state agency described in Subsection (3)(a) shall:
 - (i) publish the following documents on the websites described in Subsection (2)(a)(i):
 - (A) the written communication indicating the federal guidance letter's rescission; and
 - (B) a disclaimer, linked to the federal guidance letter, notifying the public of the federal guidance letter's rescission; and
 - (ii) transmit to the commission a copy of the written communication indicating the federal guidance letter's rescission.
 - (c) A state agency shall comply with the requirements of Subsection (3)(b) within 15 days from the date on which the state agency receives the written communication indicating the federal guidance letter's rescission.
- (4) A state agency shall ensure that any information published on the state agency's public website under this section is available:
- (a) on a permanent basis;
 - (b) in a user-friendly manner; and
 - (c) via a link from the main page of the website.
- (5) A state agency may publish, on a website described in Subsection (2)(a)(i), any federal guidance letters received prior to:
- (a) July 1, 2025, for a state agency that is not an education entity; or
 - (b) May 6, 2026, for a state agency that is an education entity.

Amended by Chapter 71, 2026 General Session