

LAW ENFORCEMENT REVISIONS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael E. Noel

Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This bill enacts provisions relating to law enforcement on public land and on land to which the federal government has obtained right or title.

Highlighted Provisions:

This bill:

► provides for the chief executive officer of a political subdivision or a county sheriff to determine whether:

• the Bureau of Land Management or the United States Department of the Interior is complying with certain provisions of federal law relating to agreements for local law enforcement to enforce federal law and regulations on public lands; or

• a federal law enforcement official is exceeding the law enforcement official's jurisdiction in relation to certain land; and

► addresses legal action to enforce the provisions of the bill.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

53-13-106.11, Utah Code Annotated 1953



28 [53-13-106.12](#), Utah Code Annotated 1953



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

31 Section 1. Section **53-13-106.11** is enacted to read:

32 **53-13-106.11. Agreement for local law enforcement to enforce federal law -- Legal**
33 **recourse to enforce.**

34 (1) As used in this section:

35 (a) "Bureau" means the Bureau of Land Management, within the department.

36 (b) "Department" means the United States Department of the Interior.

37 (2) The chief executive officer of a political subdivision or a county sheriff may, in
38 accordance with Subsection (3), determine that the bureau's failure to enter into an agreement
39 described in Subsection [53-13-106.9\(3\)](#) violates the political subdivision's rights under 43
40 U.S.C. Sec. 1733(c)(1).

41 (3) In evaluating whether a violation of 43 U.S.C. Sec. 1733(c)(1) has occurred, the
42 chief executive officer of a political subdivision or a county sheriff may consider:

43 (a) whether the bureau or the department has, by the words or actions of an employee
44 or agent of the bureau or department, effectively determined that assistance is necessary in
45 enforcing federal laws and regulations relating to public lands or the resources of public lands;

46 (b) whether the bureau or the department has:

47 (i) offered to contract with appropriate officials of the political subdivision that have
48 law enforcement authority in the political subdivision's jurisdiction; and

49 (ii) made an offer described in Subsection (3)(b)(i) with the view of achieving
50 maximum feasible reliance upon local law enforcement officials in enforcing federal laws and
51 regulations relating to public lands or the resources of public lands;

52 (c) whether the bureau or the department has negotiated on reasonable terms with local
53 officials who have authority to enter into a contract described in Subsection (3)(b);

54 (d) whether the contract described in Subsection (3)(b) authorizes the local law
55 enforcement officials and the local law enforcement official's agents to:

56 (i) carry firearms;

57 (ii) execute and serve any warrant or other process issued by a court or officer of
58 competent jurisdiction;

- 59 (iii) make arrests without a warrant or process for:
- 60 (A) a misdemeanor that a local law enforcement official or an agent of the local law
61 enforcement official has reasonable grounds to believe is being committed in the local law
62 enforcement official's or agent's presence or view; or
- 63 (B) a felony if a local law enforcement official or an agent of the local law enforcement
64 official has reasonable grounds to believe that the person to be arrested has committed or is
65 committing a felony;
- 66 (iv) search without a warrant or process any person, place, or conveyance, in
67 accordance with federal law or rule of law; and
- 68 (v) seize without a warrant or process any evidentiary item as provided by federal law;
- 69 (e) whether the bureau or department has provided law enforcement training as the
70 bureau or department determines is necessary in order to carry out the contracted
71 responsibilities; and
- 72 (f) whether the local law enforcement officials and their agents will be guaranteed,
73 under the contract, all immunities of federal law enforcement officials while exercising the
74 powers and authorities granted in the contract.
- 75 (4) If, after consulting with the attorney general, the chief executive officer of a
76 political subdivision or a county sheriff makes the determination described in Subsection (2),
77 the chief executive officer or county sheriff shall:
- 78 (a) in accordance with Subsection (5), serve notice of the determination on the bureau
79 personally or by certified mail; and
- 80 (b) provide a copy of the notice described in Subsection (4)(a) to the governor, the
81 attorney general, the state's congressional delegation, and the head of the department.
- 82 (5) The notice described in Subsection (4) shall include:
- 83 (a) a detailed explanation of the basis for determining that the bureau has violated 43
84 U.S.C. Sec. 1733(c)(1);
- 85 (b) a demand that the bureau and the department cease the violation and comply with
86 43 U.S.C. Sec. 1733(c)(1); and
- 87 (c) a specific date, no less than 30 days after the day on which the notice is served, by
88 which time the bureau and the department shall:
- 89 (i) cease the violation and comply with 43 U.S.C. Sec. 1733(c)(1); or

90 (ii) provide the chief executive officer or county sheriff described in Subsection (4)
 91 with a plan for ceasing the violation and complying with 43 U.S.C. Sec. 1733(c)(1) that is
 92 reasonably acceptable to the political subdivision.

93 (6) The chief executive officer of a political subdivision or a county sheriff may agree
 94 to a plan described in Subsection (5)(c)(ii).

95 (7) (a) If, after the notice described in Subsections (4) and (5) is served, the bureau or
 96 the department does not respond by the date described in Subsection (5)(c) or otherwise
 97 indicate that the bureau or the department is unwilling to take action to cease the violation of
 98 43 U.S.C. Sec. 1733(c)(1), the chief executive officer or county sheriff may, after consultation
 99 with the county attorney and the attorney general, pursue all available legal remedies.

100 (b) In seeking any emergency injunction for a violation of 43 U.S.C. Sec. 1733(c)(1), a
 101 chief executive officer of a political subdivision or a county sheriff shall attempt, to the extent
 102 possible, to coordinate with the state, the bureau, and the department.

103 Section 2. Section **53-13-106.12** is enacted to read:

104 **53-13-106.12. Law enforcement actions exceeding jurisdiction over proprietorial**
 105 **federal land -- Procedure for determination and legal recourse.**

106 (1) As used in this section:

107 (a) "Bureau" means the Bureau of Land Management, within the department.

108 (b) "Department" means the United States Department of the Interior.

109 ~~Ĥ→ [(c) "Proprietorial federal land" means land to which the federal government:~~

110 ~~—— (i) has acquired right or title; and~~

111 ~~—— (ii) has not obtained any of the state's authority over the land.]~~

111a **(c) "Jurisdictional authorization" means a federal law, or a rule or regulation adopted**
 111b **by the department or the bureau, that:**

111c **(i) relates to federal land administered by the bureau; and**

111d **(ii) has a logical nexus with a designated purpose of the federal land in question.** ←Ĥ

112 (2) The chief executive officer of a political subdivision or a county sheriff may, in
 113 accordance with Subsection (3), determine that action of a law enforcement official of the
 114 bureau ~~Ĥ→ [; in relation to proprietorial federal land;]~~ ←Ĥ exceeds the bureau's ~~Ĥ→ [jurisdiction]~~
 114a **jurisdictional authorization** ←Ĥ .

115 (3) In evaluating whether the action described in Subsection (2) exceeds the bureau's
 116 ~~Ĥ→ [jurisdiction in relation to proprietorial federal land]~~ **jurisdictional authorization** ←Ĥ , the
 116a chief executive officer of a political
 117 subdivision or a county sheriff may consider:

118 (a) the nature and seriousness of the action of the bureau's law enforcement official;

119 (b) the nature of the bureau's ~~jurisdiction in relation to the proprietary federal land~~

119a jurisdictional authorization ←~~H~~ ;

120 (c) the policies, plans, and positions of the political subdivision and county sheriff in

121 the affected county that are relevant to action taken by a law enforcement official of the bureau;
 122 and

123 (d) the extent and nature of any communications between the bureau, the political
 124 subdivision, and the county sheriff regarding:

125 (i) the actions of the bureau's law enforcement official; ~~H→ [or] ←H~~

126 (ii) the political subdivision's and county sheriff's policies, plans, and positions

126a ~~H→[;]~~ ; or

126b (iii) the terms and conditions of an agreement entered into and described in

126c Subsection 53-13-106.9. ←H

127 (4) If, after consulting with the ~~H→~~ **governor and the** ←H attorney general, the chief
 127a executive officer of a

128 political subdivision or a county sheriff makes the determination described in Subsection (2),
 129 the chief executive officer or county sheriff shall:

130 (a) in accordance with Subsection (5), serve notice of the determination on the bureau
 131 personally or by certified mail; and

132 (b) provide a copy of the notice described in Subsection (4)(a) to the governor, the
 133 attorney general, the state's congressional delegation, and the head of the department.

134 (5) The notice described in Subsection (4) shall include:

135 (a) a detailed explanation of the basis for determining that the actions of a law
 136 enforcement official of the bureau exceed the bureau's ~~H→~~ **[jurisdiction in relation to the**
 137 ~~proprietary federal land]~~ **jurisdictional authority** ←H ;

138 (b) a demand that the bureau and the department cease repetition of the law
 139 enforcement official's actions, and conform the official's future actions to the bureau's
 140 ~~H→~~ **[jurisdiction in relation to the affected proprietary federal land]** **jurisdictional**
 140a **authority** ←H ; and

141 (c) a specific date, no less than 30 days after the day on which the notice is served, by
 142 which time the bureau and the department shall:

143 (i) ensure that the bureau's law enforcement official keeps the law enforcement
 144 official's actions within the limits of the bureau's ~~H→~~ **[jurisdiction in relation to the affected**
 145 ~~proprietary federal land]~~ **jurisdictional authority** ←H ; or

146 (ii) provide the chief executive officer or county sheriff described in Subsection (4)
 147 with a plan for ensuring that the bureau's law enforcement official's actions will be kept within
 148 the limits of the bureau's ~~H→~~ **[jurisdiction in relation to the affected proprietary federal land]**
 148a **jurisdictional authority** ←H .

149 (6) The chief executive officer of a political subdivision or a county sheriff may agree
 150 to a plan described in Subsection (5)(c)(ii).

151 (7) (a) If, after the notice described in Subsections (4) and (5) is served, the bureau or

152 the department does not respond by the date described in Subsection (5)(c) or otherwise
 153 indicates that the bureau or department is unwilling to comply with the demands described in
 154 Subsections (5)(b) and (c), the chief executive officer or county sheriff may, after consultation
 155 with the county attorney ~~the~~ , **the governor,** ~~and~~ and the attorney general, pursue all available
 155a legal remedies.

156 (b) In seeking any emergency injunction against the actions of a law enforcement
 157 official of the bureau that exceed the bureau's ~~the~~ **[jurisdiction in relation to proprietary federal**
 158 ~~and] jurisdictional authority~~ ~~the~~ , a chief executive officer of a political subdivision or a county
 158a sheriff shall attempt, to the
 159 extent possible, to coordinate with the ~~the~~ **[state, the bureau] governor, the attorney general** ~~and~~ ,
 159a and the department.

Legislative Review Note
Office of Legislative Research and General Counsel