

# HB0409S01 compared with HB0409

~~{deleted text}~~ shows text that was in HB0409 but was deleted in HB0409S01.

inserted text shows text that was not in HB0409 but was inserted into HB0409S01.

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Representative Ken Ivory proposes the following substitute bill:

## PRESUMPTION OF STATE JURISDICTION AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: {}Ken Ivory**

Senate Sponsor: {}\_\_\_\_\_

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### LONG TITLE

#### General Description:

This bill affirms state sovereignty and establishes a presumption of state jurisdiction.

#### Highlighted Provisions:

This bill:

- ▶ establishes that jurisdiction over subject matters not enumerated to the federal government in the United States Constitution remains with the state of Utah;
- ▶ provides that any presumption against state jurisdiction is overcome only by a federal demonstration of specific constitutional authorization;
- ▶ places the burden on the federal government in disputes over non-enumerated jurisdiction;
- ▶ provides that the Federalism Commission will coordinate with federal agencies when issues about jurisdiction over federal lands arise;

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- ▶ establishes a presumption that federal government has a proprietary interest over federal lands in the state; and
- ▶ requires the Federalism Commission to provide time to hear from governmental entities regarding jurisdictional disputes over federal lands.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**63G-16-101**, as enacted by Laws of Utah 2012, Chapter 38

ENACTS:

**63G-16-102**, Utah Code Annotated 1953

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

Section 1. Section **63G-16-101** is amended to read:

**63G-16-101. State sovereignty and rights of set-off.**

(1) Pursuant to the Ninth and Tenth Amendments of the Constitution of the United States of America, the state of Utah does solemnly affirm its state sovereignty and fully and unconditionally reserves and asserts all rights and powers, directly and indirectly related to those rights and powers.

(2) (a) The state has inherent jurisdiction and authority under the state's traditional police powers to enact legislation and regulations in subject areas affecting public welfare, safety, health, and morality, as recognized under the Tenth Amendment to the United States Constitution.

(b) The subject areas within the state's police powers jurisdiction described in

Subsection (1) include:

(i) natural resources;

(ii) water resources and water rights;

(iii) agriculture;

(iv) education; and

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(v) energy resources.

(3) Except as otherwise enumerated in the Constitution of the United States, as amended, jurisdiction over all subject matters is presumed to reside with the state of Utah.

(4) The presumption of state jurisdiction under Subsection (3) 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 Constitution of the United States, as amended.

(5) If a conflict arises between the state and federal government over jurisdiction not enumerated under the Constitution of the United States, as amended, the burden is on the federal government to establish constitutional authorization over the subject matter.

(6) This affirmation, reservation, and assertion includes rights and claims of set-off by the state of Utah for any amounts it claims to have been inequitably or unlawfully caused or imposed by the federal government.

(7) The provisions of this section may not be interpreted to limit or restrict the state's authority to exercise rights under the Ninth, Tenth, or any other Amendment to the Constitution of the United States.

Section 2. Section **63G-16-102** is enacted to read:

### **63G-16-102. Jurisdiction over federal land.**

(1) As used in this section:

(a) "Commission" means the Federalism Commission created in Section 63C-4a-302.

(b) "Concurrent jurisdiction" means jurisdiction [ceded to the United States by the Legislature to be](#) shared jointly between the state and federal government, where both the state and federal government have the right to exercise authority concurrently over the same subject matter and within the same territory.

(c) "Exclusive federal jurisdiction" means sole or complete federal jurisdiction, to the exclusion of state jurisdiction, over land or an enclave ceded to the federal government by the state [pursuant to the United States Constitution, Article I, Section 8, Clause 17.](#)

(d) "Federal land" means any land owned or controlled by the United States within the exterior boundaries of the state.

(e) "Governmental entity" means any entity, office, or officer of the state or political subdivision of the state that has responsibility for or jurisdiction over specified interests or

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concerns relating to federal land within the state.

(f) "Partial jurisdiction" means jurisdiction ceded to the United States by the Legislature over ~~{ a }~~ particular subject matter ~~{ shared concurrently between the state and federal government }~~, while jurisdiction ~~{ remains }~~ otherwise ~~{ exclusive or concurrent }~~ remains in the state.

(g) "Proprietary interest" means the federal government retains rights only as a landowner with respect to the land, where the exercise of governmental power over the land by the state is not suspended, displaced, curtailed or otherwise subject to federal oversight.

(2) Federal land within the state is presumed to be under proprietary interest, allowing exercise of state authority while reserving the federal right to execute delegated constitutional functions, unless the federal government demonstrates that jurisdiction over the federal land is:

(a) exclusive federal jurisdiction;

(b) concurrent jurisdiction; or

(c) partial jurisdiction.

(3) (a) The commission shall:

(i) provide time during at least one commission meeting in each year and as necessary to hear from governmental entities regarding ~~{ disputes over the }~~ jurisdictional ~~{ split off }~~ disputes over federal land within the state ~~};~~

~~};~~

(ii) under direction from the speaker of the House of Representatives and the president of the Senate, conduct coordination hearings regarding any jurisdictional discrepancies between federal agencies and governmental entities as may be appropriate.

(b) The commission shall notify the Legislative Management Committee of any dispute ~~{ brought }~~ or coordination hearing before the commission under Subsection (3)(a).

Section 3. **Effective date.**

This bill takes effect on May 1, 2024.