

Representative Ken Ivory proposes the following substitute bill:

FEDERALISM COMMISSION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: Kirk A. Cullimore

LONG TITLE

General Description:

This bill amends provisions related to the Federalism Commission.

Highlighted Provisions:

This bill:

▶ amends provisions related to the Federalism Commission's role in reviewing federal laws for compliance with the principles of federalism;

▶ allows the Federalism Commission to contract with a third party ~~§~~→ that is a Utah institution of higher education ←~~§~~ to evaluate federal

laws for compliance with the principles of federalism;

▶ allows the Federalism Commission to analyze and provide recommendations on federal laws and programs; and

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63C-4a-303, as last amended by Laws of Utah 2019, Chapter 246



26 **63C-4a-304**, as renumbered and amended by Laws of Utah 2013, Chapter 101

27

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

29 Section 1. Section **63C-4a-303** is amended to read:

30 **63C-4a-303. Federalism Commission to evaluate federal law -- Curriculum on**
31 **federalism.**

32 (1) (a) In accordance with Section **63C-4a-304**, the commission may evaluate a federal
33 law:

34 [~~(a)~~] (i) as agreed by a majority of the commission; [~~or~~]

35 [~~(b)~~] (ii) submitted to the commission by a council member[-]; or

36 (iii) reported to the commission in accordance with Subsection (1)(b).

37 (b) (i) To assist the commission in the evaluation of federal law as required in this

38 section and Section **63C-4a-304**, the commission may contract with a third party ~~to~~ **that is a Utah**

38a **institution of higher education** ~~to~~ **to monitor**

39 federal law for possible implications on the principles of federalism.

40 (ii) A third party contracted to monitor federal law as described in Subsection (1)(b)(i)

41 shall:

42 (A) monitor federal law for possible implications on the principles of federalism and
43 state sovereignty; and

44 (B) report to the commission any law or action by the federal government that may
45 implicate the principles of federalism or state sovereignty.

46 (2) The commission may request information regarding a federal law under evaluation
47 from a United States senator or representative elected from the state.

48 (3) If the commission finds that a federal law is not authorized by the United States
49 Constitution or violates the principle of federalism as described in Subsection **63C-4a-304**(2), a
50 commission cochair or the commission may:

51 (a) request from a United States senator or representative elected from the state:

52 (i) information about the federal law; or

53 (ii) assistance in communicating with a federal governmental entity regarding the
54 federal law;

55 (b) (i) give written notice of an evaluation made under Subsection (1) to the federal
56 governmental entity responsible for adopting or administering the federal law; and

57 (ii) request a response by a specific date to the evaluation from the federal
58 governmental entity; [~~and~~]

59 (c) request a meeting, conducted in person or by electronic means, with the federal
60 governmental entity, a representative from another state, or a United States Senator or
61 Representative elected from the state to discuss the evaluation of federal law and any possible
62 remedy[-]; or

63 (d) give written notice of an evaluation and the conclusions of the commission to any
64 other relevant entity.

65 (4) The commission may recommend to the governor that the governor call a special
66 session of the Legislature to give the Legislature an opportunity to respond to the commission's
67 evaluation of a federal law.

68 (5) A commission cochair may coordinate the evaluation of and response to federal law
69 with another state as provided in Section [63C-4a-305](#).

70 (6) The commission shall keep a current list on the Legislature's website of:

71 (a) a federal law that the commission evaluates under Subsection (1);

72 (b) an action taken by a cochair of the commission or the commission under
73 Subsection (3);

74 (c) any coordination undertaken with another state under Section [63C-4a-305](#); and

75 (d) any response received from a federal government entity that was requested under
76 Subsection (3).

77 (7) The commission shall develop curriculum for a seminar on the principles of
78 federalism. The curriculum shall be available to the general public and include:

79 (a) fundamental principles of federalism;

80 (b) the sovereignty, supremacy, and jurisdiction of the individual states, including their
81 police powers;

82 (c) the history and practical implementation of the Tenth Amendment to the United
83 States Constitution;

84 (d) the authority and limits on the authority of the federal government as found in the
85 United States Constitution;

86 (e) the relationship between the state and federal governments;

87 (f) methods of evaluating a federal law in the context of the principles of federalism;

88 (g) how and when challenges should be made to a federal law or regulation on the basis
89 of federalism;

90 (h) the separate and independent powers of the state that serve as a check on the federal
91 government;

92 (i) first amendment rights and freedoms contained therein; and

93 (j) any other issues relating to federalism the commission considers necessary.

94 (8) The commission may apply for and receive grants, and receive private donations to
95 assist in funding the creation, enhancement, and dissemination of the curriculum.

96 (9) The commission shall submit a report on or before November 30 of each year to the
97 Government Operations Interim Committee and the Natural Resources, Agriculture, and
98 Environment Interim Committee that:

99 (a) describes any action taken by the commission under Section 63C-4a-303; and

100 (b) includes any proposed legislation the commission recommends.

101 Section 2. Section 63C-4a-304 is amended to read:

102 **63C-4a-304. Standard for evaluation of federal law.**

103 (1) The commission shall evaluate whether a federal law evaluated under Section
104 63C-4a-303 is authorized by:

105 (a) United States Constitution, Article I, Section 2, to provide for the decennial census;

106 (b) United States Constitution, Article I, Section 4, to override state laws regulating the
107 times, places, and manner of congressional elections, other than the place of senatorial
108 elections;

109 (c) United States Constitution, Article I, Section 7, to veto bills, orders, and resolutions
110 by Congress;

111 (d) United States Constitution, Article I, Section 8, to:

112 (i) lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for
113 the common defense and general welfare of the United States, but all duties, imposts, and
114 excises shall be uniform throughout the United States;

115 (ii) borrow money on the credit of the United States;

116 (iii) regulate commerce with foreign nations, among the several states, and with the
117 Indian tribes;

118 (iv) establish a uniform rule of naturalization and uniform laws on the subject of

119 bankruptcies throughout the United States;

120 (v) coin money, regulate the value of coin money and of foreign coin, and fix the
121 standard of weights and measures;

122 (vi) provide for the punishment of counterfeiting the securities and current coin of the
123 United States;

124 (vii) establish post offices and post roads;

125 (viii) promote the progress of science and useful arts, by securing for limited times to
126 authors and inventors the exclusive right to their respective writings and discoveries;

127 (ix) constitute tribunals inferior to the supreme court;

128 (x) define and punish piracies and felonies committed on the high seas and offences
129 against the law of nations;

130 (xi) declare war, grant letters of marque and reprisal, and make rules concerning
131 captures on land and water;

132 (xii) raise and support armies, but no appropriation of money to that use shall be for a
133 longer term than two years;

134 (xiii) provide and maintain a navy;

135 (xiv) make rules for the government and regulation of the land and naval forces;

136 (xv) provide for calling forth the militia to execute the laws of the union, suppress
137 insurrections, and repel invasions;

138 (xvi) provide for organizing, arming, and disciplining the militia, and for governing the
139 part of the militia that may be employed in the service of the United States, reserving to the
140 states respectively, the appointment of the officers and the authority of training the militia
141 according to the discipline prescribed by Congress;

142 (xvii) exercise exclusive legislation in all cases whatsoever, over such district, which
143 may not exceed 10 miles square, as may, by cession of particular states and the acceptance of
144 Congress, become the seat of the government of the United States, and to exercise like
145 authority over all places purchased by the consent of the legislature of the state in which the
146 place shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful
147 buildings; or

148 (xviii) make all laws which shall be necessary and proper for carrying into execution
149 the powers listed in this section, and all other powers vested by the United States Constitution

150 in the government of the United States, or in any department or officer of the United States;

151 (e) United States Constitution, Article I, Section 9, to authorize a federal officer to
152 receive benefits from a foreign nation;

153 (f) United States Constitution, Article I, Section 10, to fix the pay of members of
154 Congress and of federal officers;

155 (g) United States Constitution, Article II, Section 1, to:

156 (i) set the time for choosing electors; or

157 (ii) establish who succeeded to the presidency after the vice president;

158 (h) United States Constitution, Article II, Section 2, to:

159 (i) serve as Commander-in-Chief of the armed forces;

160 (ii) require the written opinions of executive officers;

161 (iii) grant reprieves and pardons;

162 (iv) make vacancy appointments;

163 (v) make treaties, subject to the advice and consent of the United States Senate;

164 (vi) appoint foreign affairs officers subject to the advice and consent of the United
165 States Senate;

166 (vii) appoint domestic affairs officers subject either to the advice and consent of the
167 United States Senate or pursuant to law;

168 (viii) appoint judges subject to the advice and consent of the United States Senate; or

169 (ix) authorize the president to fill designated inferior offices without senatorial
170 consent;

171 (i) United States Constitution, Article II, Section 3, to:

172 (i) receive representatives of foreign powers;

173 (ii) execute the laws;

174 (iii) commission United States officers;

175 (iv) give Congress information;

176 (v) make recommendations to Congress;

177 (vi) convene Congress on extraordinary occasions; or

178 (vii) adjourn Congress if it cannot agree on a time;

179 (j) United States Constitution, Article III, Section 1, to:

180 (i) create exceptions to the supreme court's appellate jurisdiction;

- 181 (ii) fix the jurisdiction of federal courts inferior to the supreme court; or
182 (iii) declare the punishment for treason;
- 183 (k) United States Constitution, Article IV, Section 1, to establish the rules by which the
184 records and judgments of states are proved in other states;
- 185 (l) United States Constitution, Article IV, Section 3, to:
186 (i) manage federal property;
187 (ii) dispose of federal property;
188 (iii) govern the federal territories; or
189 (iv) consent to admission of new states or the combination of existing states;
- 190 (m) United States Constitution, Article IV, Section 4, to defend states from invasion,
191 insurrection, and non-republican forms of government;
- 192 (n) United States Constitution, Article V, Section 1, to propose constitutional
193 amendments;
- 194 (o) United States Constitution, Article VI, Section 1, to prescribe the oath for federal
195 officers;
- 196 (p) United States Constitution, Amendment XIII, to abolish slavery;
- 197 (q) United States Constitution, Amendment XIV, to guard people from certain state
198 abuses;
- 199 (r) United States Constitution, Amendment XVI, to impose taxes on income from any
200 source without having to apportion the total dollar amount of tax collected from each state
201 according to each state's population in relation to the total national population;
- 202 (s) United States Constitution, Amendment XX, to revise the manner of presidential
203 succession;
- 204 (t) United States Constitution, Amendment XV, XIX, XXIII, or XXIV, to extend and
205 protect the right to vote; or
- 206 (u) United States Constitution, Amendment XVII, to grant a pay raise to a sitting
207 Congress.
- 208 (2) The commission shall evaluate whether a federal law evaluated under Section
209 [63C-4a-303](#) violates the principle of federalism by:
210 (a) affecting the distribution of power and responsibility among the state and national
211 government;

- 212 (b) limiting the policymaking discretion of the state;
- 213 (c) impacting a power or a right reserved to the state or its citizens by the United States
- 214 Constitution, Amendment IX or X; or
- 215 (d) impacting the sovereignty rights and interest of the state or a political subdivision to
- 216 provide for the health, safety, and welfare and promote the prosperity of the state's or political
- 217 subdivision's inhabitants.
- 218 (3) In the evaluation of a federal law, the commission:
- 219 (a) shall rely on:
- 220 (i) the text of the United States Constitution, as amended;
- 221 (ii) the meaning of the text of the United States Constitution, as amended, at the time
- 222 of its drafting and ratification; and
- 223 (iii) a primary source document that is:
- 224 (A) directly relevant to the drafting, adoption, ratification, or initial implementation of
- 225 the United States Constitution, as amended; or
- 226 (B) created by a person directly involved in the drafting, adoption, ratification, or
- 227 initial implementation of the United States Constitution, as amended;
- 228 (b) may rely on other relevant sources, including federal court decisions; and
- 229 (c) is not bound by a holding by a federal court.
- 230 (4) (a) If the commission determines that a federal law is not authorized as described in
- 231 this section or otherwise violates the principles of federalism, the commission may recommend
- 232 appropriate action, including:
- 233 (i) no action;
- 234 (ii) correspondence with relevant federal agencies or leaders;
- 235 (iii) initiating or coordinating public education efforts;
- 236 (iv) initiating or joining multi-state coordination;
- 237 (v) outreach and coordination with state and local government officers and agencies;
- 238 (vi) outreach or coordination with the state's congressional delegation and Congress as
- 239 a whole;
- 240 (vii) lobbying the state's congressional delegation and Congress as a whole;
- 241 (viii) legal challenges of the federal action;
- 242 (ix) enacting state laws to assert, defend, and preserve the constitutional allocation and

243 balance of governing powers between the federal government and the state; or

244 (x) other actions within the constitutional powers of the state.

245 (b) (i) The Legislative Management Committee shall include on the standing agenda

246 for the Legislative Management Committee a report from the commission as described in

247 Subsection (4)(b)(ii).

248 (ii) The commission:

249 (A) shall provide to the Legislative Management Committee a report with respect to

250 federal laws that the commission determines are not authorized as described in this section or

251 otherwise violate the principles of federalism; and

252 (B) with approval of the Legislative Management Committee, may take appropriate

253 action.

254 (iii) If the Legislative Management Committee is not meeting within a reasonable time,

255 the commission may:

256 (A) provide a report to the speaker of the House of Representatives and the president of

257 the Senate with respect to federal laws that the commission determines are not authorized as

258 described in this section or otherwise violate the principles of federalism; and

259 (B) with approval from the speaker of the House of Representatives and the president

260 of the Senate, take appropriate action.