

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 15-0437.01 Bob Lackner x4350

SENATE BILL 15-039

SENATE SPONSORSHIP

Lambert, Cadman

HOUSE SPONSORSHIP

Humphrey,

Senate Committees

State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 CONCERNING THE RETENTION BY THE STATE OF COLORADO OF
102 CONCURRENT JURISDICTION OVER CERTAIN FEDERAL LANDS,
103 AND, IN CONNECTION THEREWITH, THE RETENTION BY THE
104 STATE OF CONCURRENT JURISDICTION OVER LAND OWNED AND
105 OPERATED WITHIN THE STATE BY THE UNITED STATES FOREST
106 SERVICE AND THE UNITED STATES BUREAU OF LAND
107 MANAGEMENT.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Currently, the federal government holds exclusive legislative jurisdiction over land within the state owned and operated by the United States forest service (USFS) and the United States bureau of land management (BLM). This means the federal government possesses all of the authority of the state to legislate and to exercise executive and judicial powers in connection with a particular land area, and the state has not reserved to itself a general right to exercise any of its authority concurrently with the United States. Concurrent legislative jurisdiction is a term that is applied to circumstances where a particular state reserves to itself the right to exercise, concurrently with the United States government, all of the same authority possessed by the United States government with respect to a particular area.

Under the bill, the state retains a concurrent legislative jurisdiction with the United States under the laws of the state in and over all USFS lands and BLM lands within the state:

- ! So that the state retains jurisdiction over civil and criminal processes with respect to such lands;
- ! To tax persons and corporations and their property and transactions on such lands so acquired; and
- ! To exercise such additional powers and legislative authority as will further protect the life, health, and safety of the residents of the state in accordance with the state's police power subject to any limitations arising from federal law.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 3-3-105 as
3 follows:

4 **3-3-105. United States forest service - bureau of land**
5 **management - concurrent jurisdiction - legislative jurisdiction -**
6 **legislative declaration - definitions.** (1) (a) THE GENERAL ASSEMBLY
7 HEREBY FINDS, DETERMINES, AND DECLARES THAT:

8 (I) THE UNITED STATES SUPREME COURT HAS CONSISTENTLY
9 REAFFIRMED THE LEGAL STATUS OF THE FIFTY STATES AS "SEPARATE AND
10 INDEPENDENT SOVEREIGNS";

11 (II) THE GENERAL POWER OF GOVERNING, POSSESSED BY THE

1 STATES BUT NOT BY THE FEDERAL GOVERNMENT, IS THE POLICE POWER.
2 BECAUSE THE POLICE POWER IS CONTROLLED BY FIFTY DIFFERENT STATES
3 INSTEAD OF ONE NATIONAL SOVEREIGN, THE COMPONENTS OF GOVERNING
4 THAT TOUCH ON THE DAILY LIVES OF THE CITIZENRY ARE NORMALLY
5 ADMINISTERED BY SMALLER UNITS OF GOVERNMENT CLOSER TO THE
6 GOVERNED, THEREBY ENSURING THAT THE POWERS DIRECTLY AFFECTING
7 THE LIFE, LIBERTY, AND PROPERTY OF THE PEOPLE ARE HELD BY
8 GOVERNMENTS MORE LOCAL AND ACCOUNTABLE THAN A DISTANT
9 BUREAUCRACY.

10 (III) ARTICLE 1, SECTION 8, CLAUSE 17 OF THE UNITED STATES
11 CONSTITUTION GIVES THE FEDERAL GOVERNMENT THE POWER TO
12 "EXERCISE EXCLUSIVE LEGISLATION IN ALL CASES WHATSOEVER OVER
13 SUCH DISTRICT . . . AS MAY BY CESSION OF PARTICULAR STATES, AND THE
14 ACCEPTANCE OF CONGRESS, BECOME THE SEAT OF THE GOVERNMENT OF
15 THE UNITED STATES, AND TO EXERCISE LIKE AUTHORITY OVER ALL PLACES
16 PURCHASED, BY THE CONSENT OF THE LEGISLATURE OF THE STATE IN
17 WHICH THE SAME SHALL BE, FOR THE ERECTION OF FORTS, MAGAZINES,
18 ARSENALS, DOCKYARDS AND OTHER NEEDFUL BUILDINGS";

19 (IV) THE DOMAIN OF EXCLUSIVE JURISDICTION BY THE FEDERAL
20 GOVERNMENT IS LIMITED TO THE DISTRICT OF COLUMBIA AND OTHER
21 PLACES PURCHASED BY THE CONSENT OF THE STATE LEGISLATURES FOR
22 THE ERECTION OF FORTS, MAGAZINES, DOCKYARDS, AND OTHER NEEDFUL
23 BUILDINGS INCIDENTAL TO THE POWERS EXPRESSLY GRANTED WITHIN THE
24 CONSTITUTION;

25 (V) THE TERM "OTHER NEEDFUL BUILDINGS" DOES NOT INCLUDE
26 VAST ACRES OF UNDEVELOPED LAND WITHIN THE EXTERIOR BOUNDARIES
27 OF THE STATES;

1 (VI) IN PRIOR DECISIONS, THE UNITED STATES SUPREME COURT
2 HAS HELD THAT THE POWER OF THE UNITED STATES TO PROTECT ITS OWN
3 PROPERTY BY ITS OWN LEGISLATION DOES NOT IMPLY A GENERAL POLICE
4 POWER OVER THE VACANT LANDS WITHIN THE STATE;

5 (VII) DURING THE EISENHOWER ADMINISTRATION, THE UNITED
6 STATES GOVERNMENT ISSUED A REPORT ON JURISDICTION OVER FEDERAL
7 AREAS WITHIN THE STATES THAT STATED IN RELEVANT PART THAT
8 "UNLESS THERE HAS BEEN A TRANSFER OF JURISDICTION PURSUANT TO
9 CLAUSE 17 BY A FEDERAL ACQUISITION OF LAND WITH STATE CONSENT, OR
10 BY CESSION FROM THE STATE TO THE FEDERAL GOVERNMENT, OR UNLESS
11 THE FEDERAL GOVERNMENT HAS RESERVED JURISDICTION UPON THE
12 ADMISSION OF THE STATE, THE FEDERAL GOVERNMENT POSSESSES NO
13 LEGISLATIVE JURISDICTION OVER ANY AREA WITHIN A STATE, SUCH
14 JURISDICTION BEING FOR EXERCISE ENTIRELY BY THE STATE, SUBJECT TO
15 NON-INTERFERENCE BY THE STATE WITH FEDERAL FUNCTIONS . . . THE
16 CONSENT REQUIREMENT OF . . . CLAUSE 17 WAS INTENDED BY THE
17 FRAMERS OF THE CONSTITUTION TO PRESERVE THE STATES'
18 JURISDICTIONAL INTEGRITY AGAINST FEDERAL ENCROACHMENT. . . THE
19 FEDERAL GOVERNMENT CANNOT, BY UNILATERAL ACTION ON ITS PART,
20 ACQUIRE LEGISLATIVE JURISDICTION OVER ANY AREA WITHIN THE
21 EXTERIOR BOUNDARIES OF A STATE."

22 (VIII) THE MANAGEMENT OF FOREST WILDFIRES, WILDFIRE
23 MITIGATION EFFORTS, AND THE INVESTIGATION AND PROSECUTION OF
24 CRIMINAL ACTS SUCH AS ARSON AND ILLEGAL DRUG PRODUCTION REQUIRE
25 A CONCURRENT APPROACH AMONG FEDERAL, STATE, AND LOCAL
26 GOVERNMENTS;

27 (IX) THE UNITED STATES DEPARTMENT OF AGRICULTURE

1 THROUGH THE UNITED STATES FOREST SERVICE HAS BEEN REMISS IN
2 WORKING WITH STATE AND LOCAL GOVERNMENTS TO EFFECTIVELY PLAN,
3 MANAGE, AND COORDINATE BOTH ROUTINE AND EMERGENCY RESPONSES
4 TO THE SEVERE AND GROWING WILDFIRE THREAT TO COLORADO FROM
5 LAND THAT IS CURRENTLY UNDER EXCLUSIVE FEDERAL JURISDICTION; AND

6 (X) THE ABILITY OF COLORADO COUNTIES AND THE STATE TO
7 RESPOND TO WILDFIRES THAT START ON LAND OWNED AND OPERATED BY
8 THE UNITED STATES GOVERNMENT, AND SPECIFICALLY BY THE UNITED
9 STATES FOREST SERVICE AND THE BUREAU OF LAND MANAGEMENT, HAS
10 BEEN RESTRICTED BY THE FEDERAL GOVERNMENT, RESULTING IN CLEAR
11 AND IMMINENT DANGERS TO THE LIFE, HEALTH, AND SAFETY OF RESIDENTS
12 OF THE STATE, BOTH WITHIN FEDERAL LANDS AND ON LAND WITHIN THE
13 TERRITORIAL BOUNDARIES OF COUNTIES AND MUNICIPALITIES THAT
14 BORDER FEDERAL LAND.

15 (b) BY ENACTING THIS SECTION, THE STATE OF COLORADO RETAINS
16 FOR ITSELF CONCURRENT JURISDICTION OVER PUBLIC LANDS OWNED AND
17 OPERATED WITHIN THE STATE BY THE UNITED STATES FOREST SERVICE
18 WITHIN THE UNITED STATES DEPARTMENT OF AGRICULTURE AND THE
19 BUREAU OF LAND MANAGEMENT WITHIN THE UNITED STATES
20 DEPARTMENT OF THE INTERIOR. RETENTION BY THE STATE OF
21 CONCURRENT JURISDICTION OVER SUCH LANDS IN ACCORDANCE WITH THE
22 PROVISIONS OF THIS SECTION WILL, AMONG OTHER THINGS, FACILITATE
23 THE PLANNING, MANAGEMENT, AND COORDINATION OF FEDERAL, STATE,
24 AND LOCAL RESPONSE TO WILDFIRE THREATS AND EMERGENCIES, THEREBY
25 REDUCING THE CLEAR AND IMMINENT DANGERS SUCH WILDFIRES POSE TO
26 LIFE AND PUBLIC HEALTH AND SAFETY OF THE RESIDENTS OF THE STATE.

27 (2) AS USED IN THIS SECTION:

1 (a) "BLM LANDS" MEANS LANDS WITHIN THE STATE THAT ARE
2 OWNED AND OPERATED BY THE BUREAU OF LAND MANAGEMENT WITHIN
3 THE UNITED STATES DEPARTMENT OF THE INTERIOR AS OF JULY 1, 2015,
4 AND ALL SUCH LANDS THEREAFTER ACQUIRED.

5 (b) "USFS LANDS" MEANS LANDS WITHIN THE STATE THAT ARE
6 OWNED AND OPERATED BY THE UNITED STATES FOREST SERVICE AS OF
7 JULY 1, 2015, AND ALL SUCH LANDS THEREAFTER ACQUIRED.

8 (3) THE STATE OF COLORADO HEREBY RETAINS CONCURRENT
9 LEGISLATIVE JURISDICTION WITH THE UNITED STATES UNDER THE LAWS
10 OF THE STATE IN AND OVER ALL USFS LANDS AND BLM LANDS:

11 (a) SO THAT CIVIL PROCESSES IN ALL CASES, AND SUCH CRIMINAL
12 PROCESSES AS MAY ISSUE UNDER THE AUTHORITY OF THIS STATE AGAINST
13 ANY PERSON CHARGED WITH THE COMMISSION OF ANY CRIME WITHOUT OR
14 WITHIN SUCH JURISDICTION, MAY BE EXECUTED ON SUCH PERSON AS IF
15 THIS CONSENT HAD NOT BEEN GRANTED;

16 (b) TO TAX PERSONS AND CORPORATIONS AND THEIR PROPERTY
17 AND TRANSACTIONS ON SUCH LANDS SO ACQUIRED; AND

18 (c) TO EXERCISE SUCH ADDITIONAL POWERS AND LEGISLATIVE
19 AUTHORITY AS WILL FURTHER PROTECT THE LIFE, HEALTH, AND SAFETY OF
20 THE RESIDENTS OF THE STATE IN ACCORDANCE WITH THE POLICE POWER
21 OF THE STATE SUBJECT TO ANY LIMITATIONS ARISING FROM FEDERAL LAW.

22 **SECTION 2. Effective date.** This act takes effect July 1, 2015.

23 **SECTION 3. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, and safety.