

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0524.01 Bob Lackner x4350

SENATE BILL 14-077

SENATE SPONSORSHIP

Lambert, Lundberg, Marble, Baumgardner, Cadman, Grantham, Harvey, King, Renfroe,
Roberts, Scheffel

HOUSE SPONSORSHIP

Nordberg, Everett

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

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.

[http://www.leg.state.co.us/bills/summaries.](http://www.leg.state.co.us/bills/summaries/))

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.** (1) (a) THE GENERAL ASSEMBLY HEREBY FINDS,
7 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";

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

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

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

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

1 OF THE STATES;

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

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

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

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

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

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

1 (2) AS USED IN THIS SECTION:

2 (a) "USFS LANDS" MEANS LANDS WITHIN THE STATE THAT ARE
3 OWNED AND OPERATED BY THE UNITED STATES FOREST SERVICE AS OF
4 JULY 1, 2014, AND ALL SUCH LANDS THEREAFTER ACQUIRED.

5 (b) "BLM LANDS" MEANS LANDS WITHIN THE STATE THAT ARE
6 OWNED AND OPERATED BY THE BUREAU OF LAND MANAGEMENT WITHIN
7 THE UNITED STATES DEPARTMENT OF THE INTERIOR AS OF JULY 1, 2014,
8 AND ALL SUCH LANDS THEREAFTER ACQUIRED.

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

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

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

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

23 **SECTION 2. Effective date.** This act takes effect July 1, 2014.

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