

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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 POSSESSION BY THE STATE OF COLORADO OF POLICE**
102 **POWER JURISDICTION OVER CERTAIN FEDERAL LANDS FOR**
103 **WHICH THE FEDERAL GOVERNMENT HAS ASSERTED ONLY A**
104 **PROPRIETORIAL INTEREST, AND, IN CONNECTION THEREWITH,**
105 **THE POSSESSION BY THE STATE AND ITS POLITICAL SUBDIVISIONS**
106 **OF THEIR JURISDICTIONAL RIGHTS OVER LAND MANAGED**
107 **WITHIN THE STATE BY THE UNITED STATES FOREST SERVICE**
108 **AND THE BUREAU OF LAND 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. Legislative declaration.** (1) The general assembly
3 hereby finds, determines, and declares that:

4 (a) In its "Patient Protection and Affordable Care Act" decision,
5 Nat'l Fed'n of Indep. Bus., et. al. v. Sebelius, et al., 132 S. Ct. 2566,
6 released in June 2012 (ACA decision), the United States Supreme Court
7 reaffirmed the status of the fifty states as "separate and independent
8 sovereigns";

9 (b) The court made it clear that the federal government "must
10 show that a constitutional grant of power authorizes each of its actions";

1 (c) In contrast, the Supreme Court further explained that "the
2 same does not apply to the States, because the Constitution is not the
3 source of their power. . . . The States thus can and do perform many of the
4 vital functions of modern government...". Indeed, the Tenth Amendment
5 to the United States Constitution explicitly states that "[t]he powers not
6 delegated to the United States by the constitution, nor prohibited by it to
7 the states, are reserved to the states respectively, or to the people."
8 Among these powers the Tenth Amendment confers upon each state is the
9 police power, or the right of a state, subject to due process and other
10 limitations, to establish and enforce laws protecting the public's health,
11 safety, and general welfare.

12 (d) In the ACA decision, the Supreme Court added, "Our cases
13 refer to this general power of governing, possessed by the States but not
14 by the Federal Government, as the 'police power.' . . . Because the police
15 power is controlled by 50 different States instead of one national
16 sovereign, the facets of governing that touch on citizens' daily lives are
17 normally administered by smaller governments closer to the governed.
18 The Framers thus ensured that powers which 'in the ordinary course of
19 affairs, concern the lives, liberties, and properties of the people' were held
20 by governments more local and more accountable than a distant federal
21 bureaucracy";

22 (e) In that case, the Supreme Court also highlighted a vital role of
23 states' authority in relation to the federal government, stating, "The
24 independent power of the States also serves as a check on the power of
25 the Federal Government: 'By denying any one government complete
26 jurisdiction over all the concerns of public life, [a federal system in which
27 power is shared between the federal government and the states] protects

1 the liberty of the individual from arbitrary power." and "In the typical
2 case we look to the States to defend their prerogatives by adopting 'the
3 simple expedient of not yielding' to federal blandishments when they do
4 not want to embrace the federal policies as their own.";

5 (f) The Supreme Court, concluding this line of logic, declared,
6 "The States are separate and independent sovereigns. Sometimes they
7 have to act like it.";

8 (g) In *Utah Power and Light v. United States*, 243 U.S. 389
9 (1917), the U.S. Supreme Court held that "The power of the United States
10 to protect its property by its own legislation from private trespass and
11 waste does not, and cannot, imply a general police power over the vacant
12 public lands within a State. The section in the Constitution relating to the
13 admission of new States, and the concomitant disposition of the public
14 lands, excludes, by its express terms, any construction by which the
15 United States may claim any additional governmental or police powers
16 within the States in which such public land is situated.";

17 (h) Article 1, section 8, clause 17 of the United States
18 Constitution, referred to herein as "Clause 17," states that the federal
19 government will "exercise exclusive legislation in all cases whatsoever
20 over such district (not exceeding ten miles square) as may by cession of
21 particular states, and the acceptance of congress, become the seat of the
22 government of the United States, and to exercise like authority over all
23 places purchased by the consent of the legislature of the state in which the
24 same shall be, for the erection of forts, magazines, arsenals, dockyards
25 and other needful buildings";

26 (i) The domain of exclusive jurisdiction by the federal government
27 is limited to the District of Columbia and other places purchased by the

1 consent of the state legislatures for the erection of forts, magazines,
2 arsenals, dockyards, and other needful buildings, which does not include
3 vast acres of undeveloped land, incidental to the powers expressly granted
4 within the constitution;

5 (j) During the Eisenhower Administration, the United States
6 government published a report entitled "Report of the Interdepartmental
7 Committee for the Study of Jurisdiction Over Federal Areas Within the
8 States" in which four basic areas of federal jurisdiction were identified:

9 **(I) Exclusive Legislative Jurisdiction:** This term is applied when
10 the federal government possesses, by whichever method acquired, all of
11 the authority of the state, and in which the state concerned has not
12 reserved to itself the right to exercise any of the authority concurrently
13 with the United States except to serve civil or criminal process in the area
14 for activities that occurred outside the area;

15 **(II) Concurrent Legislative Jurisdiction:** This term is applied
16 in those instances wherein by granting to the United States authority,
17 which would otherwise amount to exclusive legislative jurisdiction over
18 an area, the State concerned has reserved to itself the right to exercise,
19 concurrently with the United States, all of the same authority;

20 **(III) Partial Legislative Jurisdiction:** This term is applied in
21 those instances wherein a state has granted authority to the federal
22 government to legislate over an area of the state but the state has reserved
23 to itself the right to exercise, by itself or concurrently with the United
24 States, other authority constituting more than merely the right to serve
25 civil or criminal process in the area, or the right to tax private property;
26 and

27 **(IV) Proprietary Interest Only:** This term is applied to those

1 instances wherein the federal government has acquired some right or title
2 to an area in a state but has not obtained any measure of the state's
3 authority over the area. In applying this definition, recognition should be
4 given to the fact that the United States, by virtue of its functions and
5 authority under various provisions of the constitution, has many powers
6 and immunities not possessed by ordinary landholders with respect to
7 areas in which it acquires an interest, and of the further fact that all its
8 properties and functions are held or performed in a governmental, rather
9 than a proprietary, capacity;

10 (k) The report also stated, "It scarcely needs to be said that unless
11 there has been a transfer of jurisdiction (1) pursuant to [Clause 17] by a
12 Federal acquisition of land with State consent, or (2) by cession from the
13 State to the Federal Government, or unless the Federal Government has
14 reserved jurisdiction upon the admission of the State, the Federal
15 Government possesses no legislative jurisdiction over any area within a
16 State, such jurisdiction being for exercise entirely by the State, subject to
17 non-interference by the State with Federal functions. . . . The Federal
18 Government cannot, by unilateral action on its part, acquire legislative
19 jurisdiction over any area within the exterior boundaries of a State. . . .
20 The consent requirement of [Clause 17] was intended by the framers of
21 the Constitution to preserve the States' jurisdictional integrity against
22 federal encroachment";

23 (l) In Surplus Trading Co. v. Cook, 281 U.S. 647, 650 (1930), the
24 United States Supreme Court stated that "[i]t is not unusual for the United
25 States to own within a State lands which are set apart and used for public
26 purposes. Such ownership and use without more do not withdraw the
27 lands from the jurisdiction of the State. On the contrary, the lands remain

1 part of her territory and within the operation of her laws, save that the
2 latter cannot affect the title of the United States or embarrass it in using
3 the lands or interfere with its right of disposal.";

4 (m) The "Inventory Report On Jurisdictional Status of Federal
5 Areas Within the States", compiled by the United States General Services
6 Administration in 1962, categorizes virtually the entirety of United States
7 Forest Service (USFS) and Bureau of Land Management (BLM) land in
8 the state of Colorado as Proprietary Interest Only;

9 (n) Since 1962, the state of Colorado has ceded concurrent
10 jurisdiction to the federal government over certain lands dedicated to
11 national park and other purposes. However, as of the effective date of this
12 act, at least 97% of the federal lands in Colorado are held in a
13 proprietary interest capacity only, and this includes almost the entirety
14 of USFS and BLM land in the state.

15 (o) The management of forest wildfires, wildfire mitigation
16 efforts, and the investigation and prosecution of criminal acts such as
17 arson and illegal drug production require a cooperative approach among
18 federal, state, and local governments;

19 (p) The United States department of agriculture through the USFS
20 has been remiss in working with state and local governments to
21 effectively plan, manage, and coordinate both routine and emergency
22 responses to the constant wildfire threat to Colorado from land that it
23 currently manages;

24 (q) The ability of Colorado counties and the state to respond to
25 wildfires that start on land managed by the United States government, and
26 specifically by the USFS and the BLM, has been restricted by the federal
27 government, resulting in clear and imminent dangers to the life, health,

1 and safety of residents of the state, both within federal lands and on land
2 within the territorial boundaries of counties and municipalities that border
3 federal land.

4 (r) The jurisdictional right of the state of Colorado and its political
5 subdivisions to mitigate potential risks to life and to the public health or
6 safety should not be fettered by an intrusive and uncooperative federal
7 bureaucracy; and

8 (s) By enacting this legislation, the state of Colorado, on its own
9 behalf and on behalf of political subdivisions, asserts the jurisdictional
10 right it possesses under long-standing principles of federal law to respond
11 to and to take action on public lands managed within the state by the
12 USFS within the United States department of agriculture and the BLM
13 within the United States department of the interior for which the federal
14 government claims only a proprietorial interest when conditions on such
15 land adversely affect, or pose a clear and imminent danger to, life and the
16 public health and safety of the residents of the state. The assertion of such
17 jurisdictional right will, among other things, facilitate the planning,
18 management, and coordination of federal, state, and local response to
19 wildfire threats and emergencies, thereby reducing the clear and imminent
20 dangers such wildfires pose to life and to the public health and safety.

21 **SECTION 2.** In Colorado Revised Statutes, **add 3-2-102 as**
22 **follows:**

23 **3-2-102. State and political subdivisions - jurisdictional right**
24 **to respond to and take action on federally managed lands - U.S.**
25 **department of agriculture - bureau of land management - definitions.**

26 (1) AS USED IN THIS SECTION:

27 (a) "BLM LANDS" MEANS LANDS WITHIN THE STATE THAT ARE

1 OWNED AND MANAGED BY THE BUREAU OF LAND MANAGEMENT WITHIN
2 THE UNITED STATES DEPARTMENT OF THE INTERIOR AS OF JULY 1, 2015,
3 AND ALL SUCH LANDS THEREAFTER ACQUIRED.

4 (b) "JURISDICTIONAL RIGHT" MEANS THE ABILITY OF THE STATE OF
5 COLORADO OR A POLITICAL SUBDIVISION OF THE STATE, AS APPLICABLE,
6 TO EXERCISE ITS LAWFUL POLICE POWERS OVER A GIVEN LAND AREA.

7 (c) "POLITICAL SUBDIVISION" MEANS A COUNTY, CITY AND
8 COUNTY, CITY, TOWN, SERVICE AUTHORITY, SCHOOL DISTRICT, LOCAL
9 IMPROVEMENT DISTRICT, LAW ENFORCEMENT AUTHORITY, CITY OR
10 COUNTY HOUSING AUTHORITY, OR WATER, SANITATION, FIRE PROTECTION,
11 METROPOLITAN, IRRIGATION, DRAINAGE, OR OTHER SPECIAL DISTRICT, OR
12 ANY OTHER KIND OF MUNICIPAL, QUASI-MUNICIPAL, OR PUBLIC
13 CORPORATION ORGANIZED PURSUANT TO LAW.

14 (d) "PROPRIETORIAL INTEREST" REFERS TO THOSE INSTANCES IN
15 WHICH THE FEDERAL GOVERNMENT HAS ACQUIRED SOME RIGHT OR TITLE
16 TO AN AREA IN A STATE BUT HAS NOT OBTAINED ANY MEASURE OF THE
17 STATE'S AUTHORITY OVER THE AREA.

18 (e) "USFS LANDS" MEANS LANDS WITHIN THE STATE THAT ARE
19 OWNED AND MANAGED BY THE UNITED STATES FOREST SERVICE AS OF
20 JULY 1, 2015, AND ALL SUCH LANDS THEREAFTER ACQUIRED.

21 (2) IN ACCORDANCE WITH LEGAL PRINCIPLES OF FEDERAL LAW
22 THAT ARE LONG UNDERSTOOD, THE STATE OF COLORADO POSSESSES, ON
23 ITS OWN BEHALF AND ON BEHALF OF ITS POLITICAL SUBDIVISIONS, THE
24 JURISDICTIONAL RIGHT TO RESPOND TO AND TO TAKE ACTION ON BLM
25 LANDS OR USFS LANDS FOR WHICH THE FEDERAL GOVERNMENT CLAIMS
26 ONLY A PROPRIETORIAL INTEREST WHEN CONDITIONS ON SUCH LANDS
27 ADVERSELY AFFECT, OR POSE A CLEAR AND IMMINENT DANGER TO, LIFE

1 AND THE PUBLIC HEALTH AND SAFETY OF THE RESIDENTS OF THE STATE;
2 EXCEPT THAT, IN THE CASE OF ANY CONFLICT BETWEEN THE
3 JURISDICTIONAL RIGHT ASSERTED IN THIS SUBSECTION (2) AND ANY
4 FEDERAL ACTIVITY RESPECTING THE LANDS SPECIFIED IN THIS SECTION,
5 THE FEDERAL ACTIVITY CONTROLS.

6 **SECTION 3. Effective date.** This act takes effect July 1, 2015.

7 **SECTION 4. Safety clause.** The general assembly hereby finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, and safety.