A BILL FOR AN ACT

CONCERNING THE RETENTION BY THE STATE OF COLORADO OF
CONCURRENT JURISDICTION OVER CERTAIN FEDERAL LANDS,
AND, IN CONNECTION THERewith, THE RETENTION BY THE
STATE OF CONCURRENT JURISDICTION OVER LAND OWNED AND
OPERATED WITHIN THE STATE BY THE UNITED STATES FOREST
SERVICE AND THE UNITED STATES 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 http://www.leg.state.co.us/billsummaries.)
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.

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

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

3-3-105. United States forest service - bureau of land management - concurrent jurisdiction - legislative jurisdiction - legislative declaration - definitions. (1) (a) The general assembly hereby finds, determines, and declares that:

(I) The United States supreme court has consistently reaffirmed the legal status of the fifty states as "separate and independent sovereigns";

(II) The general power of governing, possessed by the
STATES BUT NOT BY THE FEDERAL GOVERNMENT, IS THE POLICE POWER. BECAUSE THE POLICE POWER IS CONTROLLED BY FIFTY DIFFERENT STATES INSTEAD OF ONE NATIONAL SOVEREIGN, THE COMPONENTS OF GOVERNING THAT TOUCH ON THE DAILY LIVES OF THE CITIZENRY ARE NORMALLY ADMINISTERED BY SMALLER UNITS OF GOVERNMENT CLOSER TO THE GOVERNED, THEREBY ENSURING THAT THE POWERS DIRECTLY AFFECTING THE LIFE, LIBERTY, AND PROPERTY OF THE PEOPLE ARE HELD BY GOVERNMENTS MORE LOCAL AND ACCOUNTABLE THAN A DISTANT BUREAUCRACY.

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

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

(V) THE TERM "OTHER NEEDFUL BUILDINGS" DOES NOT INCLUDE VAST ACRES OF UNDEVELOPED LAND WITHIN THE EXTERIOR BOUNDARIES OF THE STATES;
(VI) In prior decisions, the United States Supreme Court has held that the power of the United States to protect its own property by its own legislation does not imply a general police power over the vacant lands within the state;

(VII) During the Eisenhower administration, the United States government issued a report on jurisdiction over federal areas within the states that stated in relevant part that "unless there has been a transfer of jurisdiction pursuant to clause 17 by a federal acquisition of land with state consent, or by cession from the state to the federal government, or unless the federal government has reserved jurisdiction upon the admission of the state, the federal government possesses no legislative jurisdiction over any area within a state, such jurisdiction being for exercise entirely by the state, subject to non-interference by the state with federal functions . . . the consent requirement of . . . clause 17 was intended by the framers of the Constitution to preserve the states' jurisdictional integrity against federal encroachment. . . The federal government cannot, by unilateral action on its part, acquire legislative jurisdiction over any area within the exterior boundaries of a state."

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

(IX) The United States Department of Agriculture
THROUGH THE UNITED STATES FOREST SERVICE HAS BEEN REMISS IN WORKING WITH STATE AND LOCAL GOVERNMENTS TO EFFECTIVELY PLAN, MANAGE, AND COORDINATE BOTH ROUTINE AND EMERGENCY RESPONSES TO THE SEVERE AND GROWING WILDFIRE THREAT TO COLORADO FROM LAND THAT IS CURRENTLY UNDER EXCLUSIVE FEDERAL JURISDICTION; AND

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

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

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

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

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

(a) So that civil processes in all cases, and such criminal processes as may issue under the authority of this state against any person charged with the commission of any crime without or within such jurisdiction, may be executed on such person as if this consent had not been granted;

(b) To tax persons and corporations and their property and transactions on such lands so acquired; and

(c) 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 police power of the state subject to any limitations arising from federal law.

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

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