

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0019-24_

SPONSOR: Curtis Yanito

**TITLE: An Action Relating to an Emergency and the Navajo Nation Council;
Opposing Utah Senate Bill 57, "Utah Constitutional Sovereignty Act"; Urging the
2024 Utah Legislation to Vote Against Utah Bill 57**

Date posted: January 23, 2024 at 12:56PM

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P.O. Box 3390
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LEGISLATIVE SUMMARY SHEET

Tracking No. 0019-24

DATE: January 23, 2024

TITLE OF RESOLUTION: AN ACTION RELATING TO AN EMERGENCY AND THE NAVAJO NATION COUNCIL; OPPOSING UTAH SENATE BILL 57, “*UTAH CONSTITUTIONAL SOVEREIGNTY ACT*”; URGING THE 2024 UTAH LEGISLATURE TO VOTE DOWN UTAH SENATE BILL 57

PURPOSE: This resolution, if approved, is to oppose Utah S.B. 57 “Utah Constitutional Sovereignty Act and to urge the Utah legislature to vote S.B. 57 down.

This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each Council Delegate to review the proposed resolution in detail.

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
25th NAVAJO NATION COUNCIL – Second Year, 2024

INTRODUCED BY

(Sponsor)



TRACKING NO. 0019-24

AN ACTION
RELATING TO AN EMERGENCY AND THE NAVAJO NATION COUNCIL;
OPPOSING UTAH SENATE BILL 57, “UTAH CONSTITUTIONAL
SOVEREIGNTY ACT”; URGING THE 2024 UTAH LEGISLATURE TO VOTE
AGAINST UTAH SENATE BILL 57

WHEREAS:

- A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §102(A).
- B. Pursuant to 2 N.N.C. §164 (A)(16), matters constituting an emergency shall be limited to cessations of direct services required as an entitlement under Navajo Nation or Federal law, or which directly threaten the sovereignty of the Navajo Nation. Such emergency matters must arise due to the pressing public need for such resolution(s) and must be a matter requiring final action by the Council.
- C. The Navajo Nation, as a sovereign nation, has a government-to-government relationship with the United States of America, of which the State of Utah is a subsidiary.
- D. Senator Scott D. Sandall introduced Utah Senate Bill 57 (S.B. 57) to the 54th Legislature of the State of New Mexico. On January 19, 2024, the Senate passed S.B. 57. See Utah S.B. 57 attached hereto as **Exhibit A**.

1 E. Utah S.B. 57 proposes to establish a framework for the Legislature, by concurrent
2 resolution, to determine that federal directives violate the principles of state
3 sovereignty and are thus prohibited from enforcement by state and local government
4 officials.

5 F. The bill broadly defines “federal directive” as

- 6 a. a statute passed by United States Congress;
- 7 b. an executive order by the President of the United States;
- 8 c. a rule or regulation adopted by a federal agency; or
- 9 d. an order or action by
 - 10 i. a federal agency; or
 - 11 ii. an employee or official appointed by the President of the United States

12 G. Utah S.B. 57 is silent with respect to Indian Nations, who were not consulted in the
13 development of this bill.

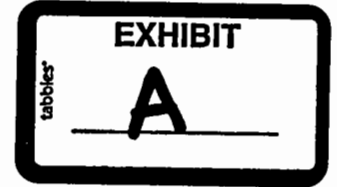
14 H. Nonetheless, in its current draft, Utah S.B. 57 places “federal directives” concerning
15 Indian Nations and American Indians across Utah at risk of being purposely ignored
16 through inaction.

17 I. The Navajo Utah Commission of the Navajo Nation Council passed resolution
18 NUCJAN-936-24, urging the 65th Utah Legislature to vote down S.B. 57. **Exhibit B.**

19 J. For the reasons stated above, it is in the best interest of the Navajo Nation, as a
20 sovereign nation, to oppose the *Utah Constitutional Sovereignty Act*, S.B. 57.

21
22 **THEREFORE, BE IT RESOLVED:**

23 The Navajo Nation Council opposes the Utah Constitutional Sovereignty Act, S.B. 57, and
24 urges the Utah Legislature to vote against this legislation.



Senator Scott D. Sandall proposes the following substitute bill:

UTAH CONSTITUTIONAL SOVEREIGNTY ACT

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott D. Sandall

House Sponsor: Ken Ivory

LONG TITLE

General Description:

This bill enacts the Utah Constitutional Sovereignty Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ establishes a framework for the Legislature, by concurrent resolution, to prohibit the enforcement of a federal directive within the state by government officers if the Legislature determines the federal directive violates the principles of state sovereignty;
- ▶ describes the ways in which a federal directive violates the principles of state sovereignty;
- ▶ limits the authority for requesting a concurrent resolution under the bill;
- ▶ requires the Legislature to consult with the attorney general regarding the potential impact of a concurrent resolution on litigation;
- ▶ specifies the required contents of a concurrent resolution;
- ▶ clarifies the effects of a concurrent resolution upon adoption;
- ▶ establishes requirements for the termination of a concurrent resolution; and
- ▶ clarifies the effects of legislative inaction on a federal directive.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 This bill provides a special effective date.

30 **Utah Code Sections Affected:**

31 ENACTS:

32 63G-16-201, Utah Code Annotated 1953

33 63G-16-202, Utah Code Annotated 1953



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

36 Section 1. Section 63G-16-201 is enacted to read:

37 **Part 2. Utah Constitutional Sovereignty Act**

38 **63G-16-201. Definitions.**

39 As used in this part:

40 (1) "Board of education" means:

41 (a) a local school board described in Title 53G, Chapter 4, School Districts;

42 (b) the State Board of Education;

43 (c) the State Charter School Board created under Section 53G-5-201; or

44 (d) a charter school governing board described in Title 53G, Chapter 5, Charter

45 Schools.

46 (2) "Federal agency" means a department, agency, authority, commission, council,
47 board, office, bureau, or other administrative unit of the executive branch of the United States
48 government.

49 (3) "Federal directive" means:

50 (a) a statute passed by the United States Congress;

51 (b) an executive order by the president of the United States;

52 (c) a rule or regulation adopted by a federal agency; or

53 (d) an order or action by:

54 (i) a federal agency; or

55 (ii) an employee or official appointed by the president of the United States.

56 (4) (a) "Government officer" means:

57 (i) an individual elected to a position in state or local government, when acting in the
58 capacity of the state or local government position;

59 (ii) an individual elected to a board of education, when acting in the capacity of a
60 member of a board of education;

61 (iii) an individual appointed to fill a vacancy in a position described in Subsection
62 (4)(a)(i) or (ii), when acting in the capacity of the position; or

63 (iv) an individual appointed to or employed in a full-time position by state government,
64 local government, or a board of education, when acting in the capacity of the individual's
65 appointment or employment.

66 (b) "Government officer" does not include a member or employee of the legislative
67 branch of state government.

68 (5) "Local government" means:

69 (a) a county, city, town, or metro township;

70 (b) a special district governed by Title 17B, Limited Purpose Local Government
71 Entities - Special Districts;

72 (c) a special service district governed by Title 17D, Chapter 1, Special Service District
73 Act;

74 (d) a community reinvestment agency governed by Title 17C, Limited Purpose Local
75 Government Entities - Community Reinvestment Agency Act;

76 (e) a conservation district governed by Title 17D, Chapter 3, Conservation District Act;

77 (f) a redevelopment agency; or

78 (g) an interlocal entity or a joint cooperative undertaking governed by Title 11, Chapter
79 13, Interlocal Cooperation Act.

80 Section 2. Section **63G-16-202** is enacted to read:

81 **63G-16-202. Resolution of the Legislature invoking state sovereignty --**

82 **Requirements -- Effect upon adoption -- Termination -- Relation to other law.**

83 (1) The Legislature may, by concurrent resolution, prohibit a government officer from
84 enforcing or assisting in the enforcement of a federal directive within the state if the
85 Legislature determines the federal directive violates the principles of state sovereignty in
86 accordance with Subsection (2).

87 (2) A federal directive violates the principles of state sovereignty if the federal

88 directive restricts or infringes upon:

89 (a) a power or a right reserved to the state by the Tenth Amendment to the United
90 States Constitution; or

91 (b) the state's rights or interests to provide for the health, safety, and welfare and
92 promote the prosperity of the state's inhabitants.

93 (3) A request for a concurrent resolution under Subsection (1) may not be filed unless:

94 (a) the request is approved by the speaker of the House of Representatives and the
95 president of the Senate; or

96 (b) while the Legislature is convened and conducting business on the floor, identical
97 motions to approve the request are made in each chamber of the Legislature and both motions
98 are approved by a two-thirds majority of the members present in each chamber.

99 (4) The Legislature shall consult with and consider any recommendations provided by
100 the attorney general concerning the potential impact that a concurrent resolution may have on
101 current or anticipated litigation.

102 (5) A concurrent resolution under Subsection (1) shall:

103 (a) identify the federal directive the Legislature has determined violates the principles
104 of state sovereignty under Subsection (2);

105 (b) include the information or findings upon which the Legislature has made the
106 determination in Subsection (5)(a);

107 (c) specify the government officers to which the concurrent resolution applies;

108 (d) explain the effect that the concurrent resolution will have on the applicability of the
109 federal directive within the state, including a description of any activities or forms of assistance
110 that a government officer specified in Subsection (5)(c) is prohibited from conducting in
111 connection with the enforcement of the federal directive; and

112 (e) describe any other requirements for a government officer specified in Subsection
113 (5)(c) to comply with the concurrent resolution.

114 (6) A concurrent resolution under Subsection (1):

115 (a) takes effect upon adoption and has the force of law; and

116 (b) after taking effect, may only be terminated by concurrent resolution.

117 (7) The requirements for filing a request for a concurrent resolution in Subsection (3)
118 apply to a concurrent resolution described in Subsection (6)(b).

119 (8) The inaction of the Legislature in determining that a federal directive violates the
120 principles of state sovereignty by concurrent resolution under this section:

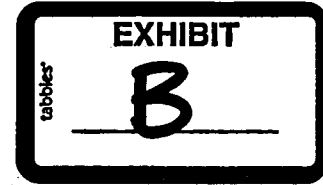
121 (a) does not imply or create a presumption that the federal directive is lawful under the
122 United States Constitution; and

123 (b) has no effect on the attorney general's authority to pursue any appropriate legal
124 action to challenge the federal directive on the basis of state sovereignty.

125 (9) This section supersedes any conflicting provisions of Utah law.

126 Section 3. **Effective date.**

127 If approved by two-thirds of all the members elected to each house, this bill takes effect
128 upon approval by the governor, or the day following the constitutional time limit of Utah
129 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
130 the date of veto override.



**RESOLUTION OF THE
NAVAJO UTAH COMMISSION
OF THE NAVAJO NATION COUNCIL**

NUCJAN-936-24

**OPPOSING S.B. 57 (UTAH CONSTITUTIONAL SOVEREIGNTY ACT) AND URGING
THE 2024 UTAH LEGISLATURE TO VOTE DOWN LEGISLATION**

Whereas:

1. The Navajo Utah Commission (NUC) is a governmental subdivision of the Navajo Nation and is subject to oversight of the Navajo Nation Council – Naabik’iyati” Committee pursuant to resolution no. NABIAP-21-15; and
2. S.B. 57 is sponsored by Rep. Scott D. Sandall of District 11 during the 2024 Utah Legislature; and
3. S.B. 57 establishes the Utah Constitutional Sovereignty Act; and
4. S.B 57 establishes a framework for the Legislature, by concurrent resolution, to prohibit the enforcement of a federal directive within the state by government officers of the Legislature determines the federal directive violates the principles of state sovereignty; and
5. S.B. 57 defines “federal directive” as “(a) a statute passed by the United States Congress; (b) an executive order by the president of the United States; (c) a rule or regulation adopted by a federal agency; or (d) an order or action by: (i) a federal agency; or (ii) an employee or official appointed by the president of the United States;” and
6. S.B 57 in its current form places all federal directives concerning Tribes and American Indians across Utah, at risk of being ignored by undefined standards; and
7. Further, S.B. 57 fails to mention the third sovereign embedded in the U.S. Constitution, Indian Tribes; and, further, Federally recognized Tribes in Utah were not consulted on this bill;
8. Additionally, S.B. 57 has been framed as a “process”, yet it does not contemplate any standards for initiating the “process” to pass a Concurrent Resolution to ignore a “federal directive”, and “process” has unintended consequences; and

9. The Navajo Nation and Tribes have co-created many “federal directives” with the U.S. Federal Government, as part of Federal Trust Responsibility, and these “federal directives” rest on centuries of Federal Indian Law and Policy; and,

NOW THEREFORE BE IT RESOLVED THAT:

1. That the Navajo Utah Commission hereby requests the Senator Sandall, Utah Legislative Leadership, to carve out an exception for Federally Recognized Tribes in Utah.

CERTIFICATION

We, hereby certify that the foregoing resolution was duly considered by Navajo Utah Commission at a duly called meeting in Window Rock, Arizona at which a quorum was present and the same was passed by a vote of _ in favor, _ opposed, and _ abstentions, this 19th day of January, 2024.



Curtis Yanito, Chairperson
NAVAJO UTAH COMMISSION

MOTION:

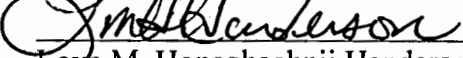
SECOND:

Chair Yanito not voting



MEMORANDUM

TO: Hon. Curtis Yanito
25th Navajo Nation Council

FROM: 
Loya M. Honaghaahnii Henderson, Attorney
Office of Legislative Counsel

DATE: **January 23, 2024**

SUBJECT: **RELATING TO AN EMERGENCY AND THE NAVAJO NATION COUNCIL; OPPOSING UTAH SENATE BILL 57, "UTAH CONSTITUTIONAL SOVEREIGNTY ACT"; URGING THE 2024 UTAH LEGISLATURE TO VOTE DOWN UTAH SENATE BILL 57**

I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees' powers outlined in 2 N.N.C. §§301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).

Please ensure that his particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.