

HB0407S01 compared with HB0407

~~text~~ shows text that was in HB0407 but was deleted in HB0407S01.

Inserted text shows text that was not in HB0407 but was inserted into HB0407S01.

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Representative Michael E. Noel proposes the following substitute bill:

UTAH PUBLIC LAND MANAGEMENT ACT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael E. Noel

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions in the Utah Public Land Management Act.

Highlighted Provisions:

This bill:

- ▶ states that public land shall be managed, as much as possible, to promote multiple uses of the land, including hunting;
- ▶ describes the process to sell or exchange a parcel of public land;
- ▶ states that a county sheriff is the primary law enforcement authority on public land;
- ▶ creates the prospective Department of Land Management;
- ▶ describes the procedure to elect the director of the Department of Land Management; and
- ▶ makes technical changes.

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Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63L-8-102, as enacted by Laws of Utah 2016, Chapter 317

63L-8-103, as enacted by Laws of Utah 2016, Chapter 317

63L-8-104, as enacted by Laws of Utah 2016, Chapter 317

63L-8-105, as enacted by Laws of Utah 2016, Chapter 317

63L-8-302, as enacted by Laws of Utah 2016, Chapter 317

63L-8-304, as enacted by Laws of Utah 2016, Chapter 317

63L-8-308, as enacted by Laws of Utah 2016, Chapter 317

63L-8-402, as enacted by Laws of Utah 2016, Chapter 317

79-2-201, as last amended by Laws of Utah 2016, Chapter 317

ENACTS:

63L-8-204, Utah Code Annotated 1953

63L-9-106, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

63L-9-101, (Renumbered from 79-6-101, as enacted by Laws of Utah 2016, Chapter 317)

63L-9-102, (Renumbered from 79-6-102, as enacted by Laws of Utah 2016, Chapter 317)

63L-9-103, (Renumbered from 79-6-103, as enacted by Laws of Utah 2016, Chapter 317)

63L-9-104, (Renumbered from 79-6-104, as enacted by Laws of Utah 2016, Chapter 317)

63L-9-105, (Renumbered from 79-6-105, as enacted by Laws of Utah 2016, Chapter 317)

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

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Section 1. Section **63L-8-102** is amended to read:

63L-8-102. Definitions.

As used in this chapter:

- (1) "Board" means the board created in Section 79-6-104.
- (2) "Commissioner" means the commissioner of the Department of Agriculture and Food, or the commissioner's designee.
- (3) "DAF" means the Department of Agriculture and Food.
- (4) "Director" means the director of the [~~Division~~] Department of Land Management or the director's designee.
- (5) "DLM" means the [~~Division~~] Department of Land Management, [~~a division~~] created [~~within the Department of Natural Resources~~] in Section [~~79-6-102~~] 63L-9-102.
- (6) "Grazing permit" means a document, issued by the [~~Division~~] Department of Land Management, authorizing use of public land for the purpose of grazing domestic livestock.
- (7) "Land use authorization" means an easement, lease, permit, or license to occupy, use, or traverse public land granted for a particular purpose.
- (8) "Minerals" means all classes of inorganic material upon, within, or beneath the surface of public land, including silver, gold, copper, lead, zinc, uranium, gemstones, potash, gypsum, clay, salts, sand, rock, gravel, oil, oil shale, oil sands, gas, coal, and all carboniferous materials.
- (9) "Multiple use" means:
 - (a) the management of the public land and the public land's various resource values so resources are best utilized in the combination that will meet the present and future needs of the citizens of Utah;
 - (b) making the most judicious use of land for some or all of the resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions;
 - (c) a combination of balanced and diverse resource uses that take into account the long-term needs of future generations for renewable and nonrenewable resources, including recreation, hunting, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific, and historic values; and
 - (d) harmonious and coordinated management of the various resources without

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permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources.

(10) "Public land" means any land or land interest acquired by the state from the federal government pursuant to Section 63L-6-103, except:

(a) areas subsequently designated as a protected wilderness area, as described in Title 63L, Chapter 7, Utah Wilderness Act; and

(b) lands managed by the School and Institutional Trust Lands Administration pursuant to Title 53C, School and Institutional Trust Lands Management Act.

(11) "Rangeland" means open public land used for grazing domestic livestock.

(12) "Sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public land consistent with multiple use.

(13) "Wilderness" means the same as that term is defined in Section 63L-7-103.

Section 2. Section **63L-8-103** is amended to read:

63L-8-103. Principal or major use.

Each parcel of public land in this state shall be managed, as much as possible, to promote the following principal or major uses of the land, consistent with the principles of multiple use and sustained yield:

- (1) domestic livestock grazing;
- (2) fish and wildlife development and utilization, including hunting;
- (3) mineral exploration and production;
- (4) rights-of-way;
- (5) outdoor recreation;
- (6) timber production; and
- (7) wilderness conservation.

Section 3. Section **63L-8-104** is amended to read:

63L-8-104. Declaration of policy -- Sales and exchanges.

(1) The Legislature declares that it is the policy of the state that:

(a) public land be retained in state ownership consistent with the provisions of this chapter for the enjoyment and betterment of the public and the state;

(b) public land may not be sold, except:

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- (i) as consistent with Section 63L-8-204 and the other provisions of this chapter;
 - (ii) as consistent with local land use plans;
 - (iii) with the approval of the director and the board;
 - (iv) after sufficient opportunity for public comment; and
 - (v) for an important public interest;
- (c) goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield, unless otherwise provided by statute; and
- (d) the public land be managed in a manner that will:
 - (i) recognize the state's need for domestic sources of minerals, food, timber, and fiber;
 - (ii) protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values;
 - (iii) where appropriate, preserve and protect certain public land in its natural condition;
 - (iv) provide food and habitat for fish, wildlife, and domestic animals; and
 - (v) provide for hunting, outdoor recreation, human occupancy, and other human use, including the general enjoyment of nature and solitude.

(2) All rules made to effectuate the purposes of this chapter shall be made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 4. Section **63L-8-105** is amended to read:

63L-8-105. Interdepartmental cooperation.

(1) The director, subject to periodic review of the Legislature, may establish programs to conduct projects, planning, permitting, leasing, contracting and other activities on public land.

(2) (a) The director shall provide management policies and programs for all uses of public land, including the principal or major uses described in Section 63L-8-103.

(b) The director shall consult with the commissioner, who may make recommendations to the director on rangeland management issues on public land, including:

- (i) determining the number of domestic animals that may be sustained on a tract of land while maintaining that land for wildlife and fish use and future grazing use; and
 - (ii) issuing grazing permits.
- (c) The director shall consult with other state agencies having management

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responsibility over natural resources that may be impacted by management decisions and actions on public land, including the Department of Natural Resources, the Department of Agriculture and Food, and the Division of Wildlife Resources.

Section 5. Section **63L-8-204** is enacted to read:

63L-8-204. Exchanges and sales.

(1) (a) It is the policy of this state that exchanges of public land are preferred to any sale of public land, and that when pursuing an exchange, an exchange with the School and Institutional Trust Lands Administration is preferred to an exchange with any other party.

(b) If the DLM proposes an exchange of public land for a different parcel of land, the land the DLM seeks to acquire shall be larger in acreage or considered more valuable for one or more of the principal or major uses described in Section 63L-8-103 than the land the DLM is offering in exchange.

(c) The state may exchange a parcel of public land with the federal government, the School and Institutional Trust Lands Administration, or a private party for a similarly valued parcel of land if:

(i) no more than 1,000 acres of public land is exchanged with the federal government, the School and Institutional Trust Lands Administration, or the private party in one calendar year; or

(ii) the exchange is approved by a two-thirds vote of the Legislature.

(2) The DLM may execute a sale of a parcel of public land if:

(a) the requirements of Subsection 63L-8-104(1)(b) have been met;

(b) the following information is made available on the DLM's website for 30 days before the day on which the director executes the sale:

(i) the legal description of the parcel;

(ii) the local land use plan governing the parcel;

(iii) the proposed purchaser of the parcel;

(iv) the DLM's findings that the sale will further an important public objective, including expansion of a local community;

(v) the minutes or a recording of a meeting in which the public comment was taken on the proposed sale; and

(vi) the purchase price, which may not be less than fair market value;

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(c) the director, having completed the land use planning process described in Section 63L-8-202, has determined that the parcel in question:

(i) is not suitable for long-term management by the DLM or another state agency because of the parcel's location or other characteristics; and

(ii) has minimal value for hunting, fishing, or other outdoor recreation;

(d) the parcel is 100 acres or smaller;

(e) the director has determined an exchange, as described in Subsection (1), is not possible;

(f) a competitive bidding process is used to determine the purchaser of the parcel;

(g) the sale is approved by a two-thirds vote of the Legislature; and

(h) the sale is approved by the governor.

(3) All proceeds of a sale under Subsection (2) shall be:

(a) deposited in the Public Land Management Fund created in Section 63L-8-308; and

(b) used to:

(i) acquire additional land that the DLM has determined would be appropriate for public purposes;

(ii) improve existing public land for one or more principal or major uses, as described in Section 63L-8-103; and

(iii) increase the utilization of the public land by the public.

Section 6. Section **63L-8-302** is amended to read:

63L-8-302. Department of Land Management.

Except as otherwise provided by law, the [~~Division~~] Department of Land Management, created in Section [~~79-6-102~~] 63L-9-102, shall provide necessary staff support for the implementation of this chapter.

Section 7. Section **63L-8-304** is amended to read:

63L-8-304. Enforcement authority.

(1) The director shall issue rules as necessary to implement the provisions of this chapter with respect to the management, use, and protection of the public land and property located on the public land.

(2) At the request of the director, the attorney general may institute a civil action in a district court for an injunction or other appropriate remedy to prevent any person from utilizing

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public land in violation of this chapter or rules issued by the director under this chapter.

(3) The use, occupancy, or development of any portion of the public land contrary to any rule issued by the DLM in accordance with this chapter, and without proper authorization, is unlawful and prohibited.

(4) (a) [~~Except as provided in Subsections (4)(b) and (c), the local~~] The locally elected county sheriff is the primary law enforcement authority with jurisdiction on public land to enforce:

(i) all the laws of this state; and

(ii) this chapter and rules issued by the director pursuant to Subsection (1).

~~[(b) The director may employ and utilize within the DLM certified peace officers that, if and when deployed, will be the primary law enforcement authority with jurisdiction on public land to enforce this chapter and rules issued pursuant to Subsection (1).]~~

~~[(c)] (b) Conservation officers employed by the Division of Wildlife Resources [~~are the primary law enforcement authority with jurisdiction on public land~~] also have authority to enforce the laws and regulations under Title 23, Wildlife Resources Code of Utah, for the sake of any protected wildlife.~~

(c) A conservation officer shall work cooperatively with the locally elected county sheriff to enforce the laws and regulations under Title 23, Wildlife Resources Code of Utah, for the sake of protected wildlife and in the majority of cases shall take the lead.

(d) Nothing herein shall be construed as enlarging or diminishing the responsibility or authority of a state certified peace officer in performing the officer's duties on public land.

Section 8. Section **63L-8-308** is amended to read:

63L-8-308. Public Land Management Fund.

(1) There is created an expendable special revenue fund known as the "Public Land Management Fund."

(2) The fund shall consist of:

(a) fees collected by the DLM under this chapter;

(b) money appropriated to the fund by the Legislature;

(c) money collected under Section 63L-8-505;

(d) money voluntarily donated or contributed to the fund; [~~and~~]

(e) proceeds, as described in Subsection 63L-8-104(3); and

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~~[(e)]~~ (f) interest earned on the fund.

(3) The DLM may expend money in the fund on:

(a) administration costs;

(b) project planning;

(c) a payment authorized by this chapter; and

(d) other duties required under this chapter, including the acquisition and improvement of public land, as described in Section 63L-8-104.

(4) The DLM shall annually expend money in the fund to pay a county in lieu of taxes the county cannot levy on public land owned by the state:

(a) in an amount no less than the highest amount ever fully authorized by Congress for payment to the county under the federal Payments in Lieu of Taxes and Secure Rural Schools programs, according to the most recent federal formulas before the effective date of this chapter, as described in Section 63L-8-602; and

(b) as funding allows.

Section 9. Section 63L-8-402 is amended to read:

63L-8-402. Grazing fees -- Feasibility study -- Contents -- Submission of report -- Annual distribution and use of range betterment funds -- Nature of distributions.

(1) As used in this section:

(a) "Animal unit" means one mature 1,000 pound cow and the cow's suckling calf;

(b) "Animal unit month" means the amount of forage needed by an animal unit grazing for one month; and

(c) "Forage" means the food and water necessary to sustain a cow, according to the cow's metabolic weight.

~~[(1)]~~ (2) The Legislature finds that, as of 2016, a substantial amount of the rangelands on the public land is deteriorating in quality due to federal mismanagement, and that installation of additional range improvements could arrest much of the continuing deterioration and lead to substantial betterment of forage conditions with resulting benefits to wildlife, watershed protection, and livestock production.

~~[(2)]~~ (3) The director, in consultation with the commissioner, shall ~~[(a)]~~ (a) conduct a study to determine necessary range improvements on public land; and ~~[(b)]~~

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~~}(b){}~~ establish a fee, in accordance with Section 63J-1-504, to be charged for domestic livestock grazing on public land that is equitable to the:

~~[(+)](a)~~ state and the state's citizens; and

~~[(+)](b)~~ holders of grazing permits and leases on rangeland.

~~[(3)]~~ The director shall report the result of the study described in Subsection (2)(a) to the Natural Resources, Agriculture, and Environment Interim Committee, together with recommendations to implement a reasonable grazing fee schedule. ~~{~~

~~(4){}~~

(4) Subject to Subsection (5), the fee described in Subsection (3) shall be:

(a) determined using the following indices:

(i) the rental charge of pasturing cattle on private rangeland, or the forage value index

(FVI):

(ii) the average annual sales price of beef cattle, or the beef cattle price index (BCPI):

and

(iii) the cost of livestock production, or the prices paid index (PPI); and

(b) calculated as follows: ((FVI + BCPI - PPI)/100)

(5) (a) The minimum grazing fee shall be \$1.35 per animal unit month.

(b) The annual fee adjustment may not exceed 25% of the grazing fee from the previous fiscal year.

~~[(4)](6)~~ (a) Fifty percent of all money received by the state as fees for grazing domestic livestock on public land shall be deposited into the Grazing Land Fund created in Section 63L-8-310.

(b) Fifty percent of money received by the state as fees for grazing domestic livestock on the public land shall be deposited into the Public Land Management Fund created in Section 63L-8-308.

Section ~~{9}~~10. Section **63L-9-101**, which is renumbered from Section 79-6-101 is renumbered and amended to read:

CHAPTER 9. DEPARTMENT OF LAND MANAGEMENT

~~[79-6-101]~~. **63L-9-101. Title.**

This chapter is known as the "[Division] Department of Land Management."

Section ~~{10}~~11. Section **63L-9-102**, which is renumbered from Section 79-6-102 is

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renumbered and amended to read:

~~[79-6-102].~~ **63L-9-102. Creation of the Department of Land Management.**

(1) There is created a [~~Division of Land Management within the Department of Natural Resources, created in Section 79-2-201~~] Department of Land Management.

(2) The [~~division~~] department shall be staffed:

(a) upon the state receiving title to at least [~~100,000~~] 250,000 acres of public land from the federal government pursuant to Section 63L-6-103; and

(b) as funding [~~is~~] appropriated by the Legislature [~~and~~] allows[~~;~~and].

~~[(c) as determined by the director of the Department of Natural Resources.]~~

(3) The [~~division~~] department may sue and be sued as required to carry out the purposes of this chapter and Title 63L, Chapter 8, Utah Public Land Management Act.

Section ~~{11}~~12. Section **63L-9-103**, which is renumbered from Section 79-6-103 is renumbered and amended to read:

~~[79-6-103].~~ **63L-9-103. Director.**

(1) Upon the requirements described in Subsection [~~79-6-102~~] 63L-9-102(2) being fulfilled, [~~the executive director of the Department of Natural Resources shall appoint a director of the Division of Land Management~~] a director shall be elected as described in Section 63L-9-106, and thereafter hire personnel to staff the [~~division~~] department.

(2) The director shall:

(a) be the executive and administrative head of the [~~Division~~] Department of Land Management;

(b) have demonstrated ability and experience in the administration and management of state or federal lands; and

(c) not hold any other public office or be involved in a political party or organization.

(3) The director [~~of the Division of Land Management, under administrative direction of the executive director,~~] shall have:

(a) executive authority and control of the [~~Division~~] Department of Land Management; and

(b) authority over all personnel matters.

Section ~~{12}~~13. Section **63L-9-104**, which is renumbered from Section 79-6-104 is renumbered and amended to read:

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~~[79-6-104].~~ 63L-9-104. Public Land Management Advisory Board.

- (1) There is created the Public Land Management Advisory Board.
- (2) The board consists of the following 11 members:
 - (a) the lieutenant governor, or the lieutenant governor's designee;
 - (b) one representative, appointed by the governor, who represents the interests of oil, gas, and mining;
 - (c) one representative, appointed by the governor, who represents the interests of agriculture;
 - (d) one representative, appointed by the governor, who represents the interests of outdoor recreation;
 - (e) one representative, appointed by the governor, who represents the interests of environmental groups;
 - (f) three representatives, appointed by the governor, who represent the interests of county commissioners;
 - (g) one representative, appointed by the governor, who represents the interests of rural transportation;
 - (h) one representative, appointed by the governor, who represents the interests of wildlife management; and
 - (i) one representative, appointed by the governor, who represents the interests of forest management.
- (3)
 - (a) Members shall be appointed for a term of four years.
 - (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms of the members described in Subsections (2)(b) through (i) to ensure that the terms of board members are staggered so that half of the appointed board is appointed every two years.
- (4) A member may serve more than one term.
- (5) A member shall hold office until the expiration of the member's term and until the member's successor is appointed, but not more than 90 days after the expiration of the member's term.
- (6) When a vacancy occurs in the membership for any reason, a replacement shall be appointed for the unexpired term.

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(7) The board shall elect annually a chair and a vice chair from the board's members.

(8) (a) The board shall meet at least quarterly.

(b) Special meetings may be called by the chair upon the chair's own initiative, upon the request of the director, or upon the request of three members of the board.

(c) Three days' notice shall be given to each member of the board before a meeting.

(9) Six members constitute a quorum at a meeting, and the action of a majority of members present is the action of the board.

(10) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section ~~{13}~~14. Section **63L-9-105**, which is renumbered from Section 79-6-105 is renumbered and amended to read:

~~[79-6-105].~~ **63L-9-105. Department of Land Management duties.**

~~[Under the direct supervision of the executive director and in consultation with the board, the division]~~ The department shall manage and administer all public land, as defined in Section 63L-8-102, consistent with the procedures, policies, and directives in Title 63L, Chapter 8, Utah Public Land Management Act.

Section ~~{14}~~15. Section **63L-9-106** is enacted to read:

63L-9-106. Election of the department director.

(1) (a) The chief administrative officer of the department is a director, selected as described in this section.

(b) The director shall be chosen by a vote of county commissioners and county council members, as described in Subsection (1)(c).

(c) (i) Each county shall have one vote, cast by a simple majority of the county's commissioners or council members.

(ii) If a county's commissioners or council members cannot achieve consensus on the individual for whom the county will be casting the county's vote, the county forfeits the vote.

(iii) Except as provided in Subsection (1)(c)(iv), the director shall be chosen by 5:00

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p.m. the day after a general election.

(iv) If the governor removes the director, as described in Subsection (1)(d), the county commissioners and county council members shall have 30 days from the day on which the director is removed to select a new director.

(d) The director may be removed at the will of the governor.

(e) The director shall receive a salary established by the governor within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

(2) The director shall:

(a) administer and supervise the department and provide for coordination and cooperation among the boards, divisions, councils, and committees of the department;

(b) approve the budget of each board and division;

(c) participate in regulatory proceedings as appropriate for the functions and duties of the department;

(d) report at the end of each fiscal year to the governor on department and board activities; and

(e) perform other duties as provided by statute.

(3) By following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act the director, may accept an executive or legislative provision that is enacted by the federal government, whereby the state may participate in the distribution, disbursement, or administration of a fund or service from the federal government for purposes consistent with the powers and duties of the department.

Section ~~{15}~~16. Section **79-2-201** is amended to read:

79-2-201. Department of Natural Resources created.

(1) There is created the Department of Natural Resources.

(2) The department comprises the following:

(a) Board of Water Resources, created in Section 73-10-1.5;

(b) Board of Oil, Gas, and Mining, created in Section 40-6-4;

(c) Board of Parks and Recreation, created in Section 79-4-301;

(d) Wildlife Board, created in Section 23-14-2;

(e) Board of the Utah Geological Survey, created in Section 79-3-301;

(f) Water Development Coordinating Council, created in Section 73-10c-3;

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- (g) Division of Water Rights, created in Section 73-2-1.1;
- (h) Division of Water Resources, created in Section 73-10-18;
- (i) Division of Forestry, Fire, and State Lands, created in Section 65A-1-4;
- (j) Division of Oil, Gas, and Mining, created in Section 40-6-15;
- (k) Division of Parks and Recreation, created in Section 79-4-201;
- (l) Division of Wildlife Resources, created in Section 23-14-1;
- ~~[(m) Division of Land Management, created in Section 79-6-102;]~~
- ~~[(n)]~~ (m) Utah Geological Survey, created in Section 79-3-201;
- ~~[(o)]~~ (n) Heritage Trees Advisory Committee, created in Section 65A-8-306;
- ~~[(p)]~~ (o) Recreational Trails Advisory Council, authorized by Section 79-5-201;
- ~~[(q)]~~ (p) Boating Advisory Council, authorized by Section 73-18-3.5;
- ~~[(r)]~~ (q) Wildlife Board Nominating Committee, created in Section 23-14-2.5; and
- ~~[(s)]~~ (r) Wildlife Regional Advisory Councils, created in Section 23-14-2.6.

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Legislative Review Note

Office of Legislative Research and General Counsel