

1 STATE LAND USE PLANNING

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 Chief Sponsor: Christopher N. Herrod

5 Senate Sponsor: _____

6

7 LONG TITLE

8 General Description:

9 This bill enacts a provision relating to the use of land within the state.

10 Highlighted Provisions:

11 This bill:

12 ▶ requires prior legislative approval for any change of use or wilderness or other
13 designation of specified land; and

14 ▶ makes technical changes.

15 Money Appropriated in this Bill:

16 None

17 Other Special Clauses:

18 None

19 Utah Code Sections Affected:

20 ENACTS:

21 63L-1-208, Utah Code Annotated 1953

22

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

24 Section 1. Section 63L-1-208 is enacted to read:

25 **63L-1-208. Changes in the use of or other designation for land in the state.**

26 (1) As used in this section, "land of the state" does not include:

27 (a) land ceded to the United States under this part;



- 28 (b) land under the concurrent jurisdiction of the state and the United States under this
- 29 part;
- 30 (c) land owned by the state or a political subdivision of the state;
- 31 (d) privately owned land; or
- 32 (e) tribal land.
- 33 (2) Any change in the use of, or wilderness or other designation for, land of the state
- 34 requires the prior approval of the Legislature.

Legislative Review Note
as of 3-1-11 1:05 PM

As required by legislative rule and practice, the Office of Legislative Research and General Counsel provides the following legislative review note to assist the Legislature in making its own determination as to the constitutionality of the bill. The note is based on an analysis of relevant state and federal constitutional law as applied to the bill. The note is not written for the purpose of influencing whether the bill should become law, but is written to provide information relevant to legislators' consideration of this bill. The note is not a substitute for the judgment of the judiciary, which has authority to determine the constitutionality of a law in the context of a specific case.

This bill requires legislative approval of a change in the use of, or a wilderness or other designation for, land in the state, including certain federal land.

In 1894 the U.S. Congress passed the Utah Enabling Act. Act Cong. July 16, 1894, ch. 138, 28 Stat. 107. The Act declared that as a condition of Utah's acceptance into the Union, the people of Utah "agree[d] that they forever disclaim[ed] all right and title to the unappropriated public lands lying within the boundaries thereof; and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States" *Id.* at § 3. At this time, Utah also adopted the U.S. Constitution as a condition to joining the Union. *Id.*

The "Property Clause" of the U.S. Constitution authorizes Congress "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States...." U.S. Const. art. IV, sec. 3, cl. 2. The Property Clause does not require that the federal government receive a state legislature's consent to manage land. The United States Supreme Court has held that "Congress has the same power over [territory] as over any other

property belonging to the United States; and this power is vested in Congress without limitation...." United States v. Gratiot, 39 U.S. 526, 537 (1840). *See also* Kleppe v. New Mexico, 426 U.S. 529, 539 (1976). Pursuant to its broad authority under the Property Clause, Congress may enact legislation to manage or sell federal land, and any legislation Congress enacts "necessarily overrides conflicting state laws under the Supremacy Clause." Kleppe, 426 U.S. at 543. *See* U.S. Const. art. VI, cl. 2.

Based on the courts' previous application of the Property Clause and the Supremacy Clause, there is a high probability that a court would hold that this bill is unconstitutional. The requirement for Utah legislative approval of a change in the use of federal land, or of a wilderness or other designation of federal land, appears to be in direct conflict with federal law. Utah's Enabling Act, the U.S. Constitution, and United States Supreme Court precedent state that the federal government is the sovereign of public lands and may manage those lands according to federal law.

Office of Legislative Research and General Counsel