

**TRANSFER OF PUBLIC LANDS ACT AND RELATED
STUDY**

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill addresses issues related to public lands, including the transfer of title to public lands to the state and requiring the Constitutional Defense Council to study or draft proposed legislation on certain issues related to public lands.

Highlighted Provisions:

This bill:

- ▶ enacts the Transfer of Public Lands Act;
- ▶ defines terms;
- ▶ requires the United States to extinguish title to public lands and transfer title to those public lands to the state on or before December 31, 2014;
- ▶ provides that if the state transfers title to public lands with respect to which the state receives title to the public lands under the Transfer of Public Lands Act, the state shall retain 5% of the net proceeds the state receives, and pay 95% of the net proceeds the state receives to the United States;
- ▶ provides that the 5% of the net proceeds of those sales of public lands shall be deposited into the permanent State School Fund;
- ▶ provides a severability clause;
- ▶ requires the Constitutional Defense Council to study or draft legislation on certain issues related to the transfer, management, and taxation of public lands, including:



- 28 • drafting proposed legislation creating a public lands commission; and
- 29 • establishing actions that shall be taken to secure, preserve, and protect the state's
- 30 rights and benefits related to the United States' duty to have extinguished title to
- 31 public lands and transferred title to those public lands to the state; and
- 32 ▶ makes technical and conforming changes.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 This bill provides an immediate effective date.

37 **Utah Code Sections Affected:**

38 ENACTS:

39 **63L-6-101**, Utah Code Annotated 1953

40 **63L-6-102**, Utah Code Annotated 1953

41 **63L-6-103**, Utah Code Annotated 1953

42 **63L-6-104**, Utah Code Annotated 1953

43 **Uncodified Material Affected:**

44 ENACTS UNCODIFIED MATERIAL



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

47 Section 1. Section **63L-6-101** is enacted to read:

48 **CHAPTER 6. TRANSFER OF PUBLIC LANDS ACT**

49 **63L-6-101. Title.**

50 This chapter is known as the "Transfer of Public Lands Act."

51 Section 2. Section **63L-6-102** is enacted to read:

52 **63L-6-102. Definitions.**

53 As used in this chapter:

54 (1) "Governmental entity" is as defined in Section 59-2-511.

55 (2) "Net proceeds" means the proceeds from the sale of public lands, after subtracting
56 expenses incident to the sale of the public lands.

57 (3) "Public lands" means lands within the exterior boundaries of this state except:

58 (a) lands to which title is held by a person who is not a governmental entity;

59 (b) lands owned or held in trust by this state, a political subdivision of this state, or an
60 independent entity;

61 (c) lands reserved for use by the state system of public education as described in Utah
62 Constitution Article X, Section 2, or a state institution of higher education listed in Section
63 53B-1-102;

64 (d) school and institutional trust lands as defined in Section 53C-1-103;

65 (e) a national park affirmatively ceded to the United States by state statute;

66 (f) public lands that:

67 (i) on January 1, 2012, are designated as part of the National Wilderness Preservation
68 System under the Wilderness Act of 1964, 16 U.S.C. Sec. 1131 et seq.; and

69 (ii) are affirmatively ceded to the United States by state statute;

70 (g) lands with respect to which the jurisdiction is ceded to the United States as
71 provided in Section 63L-1-201 or 63L-1-203;

72 (h) real property or tangible personal property owned by the United States if the
73 property is within the boundaries of a municipality; or

74 (i) lands, including water rights, belonging to an Indian or Indian tribe, band, or
75 community that is held in trust by the United States or is subject to a restriction against
76 alienation imposed by the United States.

77 Section 3. Section **63L-6-103** is enacted to read:

78 **63L-6-103. Transfer of public lands.**

79 (1) On or before December 31, 2014, the United States shall:

80 (a) extinguish title to public lands; and

81 (b) transfer title to public lands to the state.

82 (2) If the state transfers title to any public lands with respect to which the state receives
83 title under Subsection (1)(b), the state shall:

84 (a) retain 5% of the net proceeds the state receives from the transfer of title; and

85 (b) pay 95% of the net proceeds the state receives from the transfer of title to the
86 United States.

87 (3) In accordance with Utah Constitution Article X, Section 5, the amounts the state
88 retains in accordance with Subsection (2)(a) shall be deposited into the permanent State School
89 Fund.

90 Section 4. Section **63L-6-104** is enacted to read:

91 **63L-6-104. Severability clause.**

92 If any provision of this chapter or the application of any provision to any person or
93 circumstance is held invalid by a final decision of a court of competent jurisdiction, the
94 remainder of this chapter shall be given effect without the invalid provision or application. The
95 provisions of this chapter are severable.

96 Section 5. **Constitutional Defense Council study.**

97 (1) During the 2012 interim, the Constitutional Defense Council created in Section
98 63C-4-101 shall prepare proposed legislation:

99 (a) creating a public lands commission to:

100 (i) administer the transfer of title of public lands to the state; and

101 (ii) address the management of public lands and the management of multiple uses of
102 public lands, including addressing managing open space, access to public lands, local planning,
103 and the sustainable yield of natural resources on public lands;

104 (b) to establish actions that shall be taken to secure, preserve, and protect the state's
105 rights and benefits related to the United States' duty to have extinguished title to public lands,
106 in the event that the United States does not meet the requirements of Title 63L, Chapter 6,
107 Transfer of Public Lands Act;

108 (c) making any necessary modifications to the definition of "public lands" in Section
109 63L-6-102;

110 (d) making a determination of or a process for determining interests, rights, or uses
111 related to:

112 (i) easements;

113 (ii) geothermal resources;

114 (iii) grazing;

115 (iv) mining;

116 (v) recreation;

117 (vi) rights of entry;

118 (vii) special uses;

119 (viii) timber;

120 (ix) water; or

- 121 (x) other natural resources or other resources;
122 (e) to establish the conditions under which the state shall cede a national park to the
123 United States, which may include:
124 (i) any circumstances under which a national park shall revert to the state;
125 (ii) the retention of interests, rights, or uses described in Subsection (1)(d); and
126 (iii) whether the state should retain any power to:
127 (A) impose a tax, fee, or charge on activities conducted within a national park; or
128 (B) serve civil or criminal process on a person who is within the boundaries of a
129 national park;
130 (f) to preserve as wilderness public lands that, on January 1, 2012, are designated as
131 part of the National Wilderness Preservation System under the Wilderness Act of 1964, 16
132 U.S.C. Sec. 1131 et seq.; and
133 (g) determining what constitutes "expenses incident to the sale of public lands"
134 described in Subsection 63L-6-102(2).
135 (2) During the 2012 interim, the Constitutional Defense Council created in Section
136 63C-4-101 shall study and determine whether to prepare proposed legislation:
137 (a) to administer the process for:
138 (i) the United States to extinguish title to public lands;
139 (ii) the state to receive title to public lands from the United States; or
140 (iii) the state to transfer title to any public lands the state receives in accordance with
141 Title 63L, Chapter 6, Transfer of Public Lands Act;
142 (b) establishing a prioritized list of management actions for the state and the political
143 subdivisions of the state to perform on public lands:
144 (i) before and after the United States extinguishes title to public lands; and
145 (ii) to preserve and promote the state's interest in:
146 (A) protecting public health and safety;
147 (B) preventing catastrophic wild fire and forest insect infestation;
148 (C) preserving watersheds;
149 (D) preserving and enhancing energy and the production of minerals;
150 (E) preserving and improving range conditions; and
151 (F) increasing plant diversity and reducing invasive weeds on range and woodland

152 portions of the public lands;

153 (c) establishing procedures and requirements for subjecting public lands to property
154 taxation;

155 (d) establishing other requirements related to national forests, national monuments,
156 national recreation areas, or other public lands administered by the United States; and

157 (e) addressing the indemnification of a political subdivision of the state for actions
158 taken in furtherance of Title 63L, Chapter 6, Transfer of Public Lands Act.

159 (3) The Constitutional Defense Council may study any other issue related to public
160 lands as determined by the Constitutional Defense Council.

161 (4) The Constitutional Defense Council shall:

162 (a) make a preliminary report on its study and preparation of proposed legislation to the
163 Natural Resources, Agriculture, and Environment Interim Committee:

164 (i) on or before the June 2012 interim meeting; and

165 (ii) on or before the September 2012 interim meeting; and

166 (b) report on its findings, recommendations, and proposed legislation to the Natural
167 Resources, Agriculture, and Environment Interim Committee on or before the November 2012
168 interim meeting.

169 **Section 6. Effective date.**

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

Legislative Review Note

as of 2-14-12 12:40 PM

As required by legislative rules 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 enacts the Transfer of Public Lands Act, which requires the United States to extinguish title to public lands and transfer title to public lands to the state on or before December 31, 2014.

If challenged, this bill raises questions of who has the right to dispose of and possess the land held by the United States.

The "Property Clause" of the Constitution of the United States 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 Supreme Court of the United States 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*.

The Supreme Court of the United States has ruled that "[w]ith respect to the public domain, the Constitution vests in Congress the power of disposition and of making all needful rules and regulations. That power is subject to no limitations. Congress has the absolute right to prescribe the times, the conditions, and the mode of transferring this property, or any part of it, and to designate the persons to whom the transfer shall be made. No State legislation can interfere with this right or embarrass its exercise; and to prevent the possibility of any attempted interference with it, a provision has been usually inserted in the compacts by which new States have been admitted to the Union, that such interference with the primary disposal of the soil of the United States shall never be made." *Gibson v. Chouteau*, 80 U.S. 92 (1872).

The Transfer of Public Lands Act requires that the United States extinguish title to public lands and transfer title to those public lands to Utah by a date certain. Under the *Gibson* case, that requirement would interfere with Congress' power to dispose of public lands. Thus, that requirement, and any attempt by Utah in the future to enforce the requirement, have a high probability of being declared unconstitutional.

Office of Legislative Research and General Counsel