

**Representative Michael E. Noel** proposes the following substitute bill:

**FEDERAL LAND EXCHANGE AND SALE AMENDMENTS**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael E. Noel**

Senate Sponsor: Ralph Okerlund

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**LONG TITLE**

**General Description:**

This bill deals with the exchange of federal law for state law.

**Highlighted Provisions:**

This bill:

▶ encourages the federal government to:

- move forward with the exchange of state and federal lands; and
- support, in good faith, congressional action to finalize the exchange of state and

federal lands; and

▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**63J-8-104**, as last amended by Laws of Utah 2012, Chapter 369

**63L-2-201**, as last amended by Laws of Utah 2011, Chapter 247



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

27 Section 1. Section **63J-8-104** is amended to read:

28 **63J-8-104. State land use planning and management program.**

29 (1) The BLM and Forest Service land use plans should produce planning documents  
30 consistent with state and local land use plans to the maximum extent consistent with federal  
31 law and FLPMA's purposes, by incorporating the state's land use planning and management  
32 program for the subject lands that is as follows:

33 (a) preserve traditional multiple use and sustained yield management on the subject  
34 lands to:

35 (i) achieve and maintain in perpetuity a high-level annual or regular periodic output of  
36 agricultural, mineral, and various other resources from the subject lands;

37 (ii) support valid existing transportation, mineral, and grazing privileges in the subject  
38 lands at the highest reasonably sustainable levels;

39 (iii) produce and maintain the desired vegetation for watersheds, timber, food, fiber,  
40 livestock forage, wildlife forage, and minerals that are necessary to meet present needs and  
41 future economic growth and community expansion in each county where the subject lands are  
42 situated without permanent impairment of the productivity of the land;

43 (iv) meet the recreational needs and the personal and business-related transportation  
44 needs of the citizens of each county where the subject lands are situated by providing access  
45 throughout each such county;

46 (v) meet the needs of wildlife, provided that the respective forage needs of wildlife and  
47 livestock are balanced according to the provisions of Subsection [63J-4-401\(6\)\(m\)](#);

48 (vi) protect against adverse effects to historic properties, as defined by 36 C.F.R. Sec.  
49 800;

50 (vii) meet the needs of community economic growth and development;

51 (viii) provide for the protection of existing water rights and the reasonable  
52 development of additional water rights; and

53 (ix) provide for reasonable and responsible development of electrical transmission and  
54 energy pipeline infrastructure on the subject lands;

55 (b) (i) do not designate, establish, manage, or treat any of the subject lands as an area  
56 with management prescriptions that parallel, duplicate, or resemble the management

57 prescriptions established for wilderness areas or wilderness study areas, including the  
58 nonimpairment standard applicable to WSAs or anything that parallels, duplicates, or  
59 resembles that nonimpairment standard; and

60 (ii) recognize, follow, and apply the agreement between the state and the Department  
61 of the Interior in the settlement agreement;

62 (c) call upon the BLM to revoke and revise BLM Manuals H 6301, H 6302, and H  
63 6303, issued on or about February 25, 2011, in light of the settlement agreement and the  
64 following principles of this state plan:

65 (i) BLM lacks congressional authority to manage subject lands, other than WSAs, as if  
66 they are or may become wilderness;

67 (ii) BLM lacks authority to designate geographic areas as lands with wilderness  
68 characteristics or designate management prescriptions for such areas other than to use specific  
69 geographic-based tools and prescriptions expressly identified in FLPMA;

70 (iii) BLM lacks authority to manage the subject lands in any manner other than to  
71 prevent unnecessary or undue degradation, unless the BLM uses geographic tools expressly  
72 identified in FLPMA and does so pursuant to a duly adopted provision of a resource  
73 management plan adopted under FLPMA, 43 U.S.C. Sec. 1712;

74 (iv) BLM inventories for the presence of wilderness characteristics must be closely  
75 coordinated with inventories for those characteristics conducted by state and local  
76 governments, and should reflect a consensus among those governmental agencies about the  
77 existence of wilderness characteristics, as follows:

78 (A) any inventory of wilderness characteristics should reflect all of the criteria  
79 identified in the Wilderness Act of 1964, including:

80 (I) a size of 5,000 acres or more, containing no visible roads; and

81 (II) the presence of naturalness, the opportunity for primitive and unconfined  
82 recreation, and the opportunity for solitude;

83 (B) geographic areas found to contain the presence of naturalness must appear pristine  
84 to the average viewer, and not contain any of the implements, artifacts, or effects of human  
85 presence, including:

86 (I) visible roads, whether maintained or not; and

87 (II) human-made features such as vehicle bridges, fire breaks, fisheries, enhancement

88 facilities, fire rings, historic mining and other properties, including tailings piles, commercial  
89 radio and communication repeater sites, fencing, spring developments, linear disturbances,  
90 stock ponds, visible drill pads, pipeline and transmission line rights-of-way, and other similar  
91 features;

92 (C) factors, such as the following, though not necessarily conclusive, should weigh  
93 against a determination that a land area has the presence of naturalness:

94 (I) the area is or once was the subject of mining and drilling activities;

95 (II) mineral and hard rock mining leases exist in the area; and

96 (III) the area is in a grazing district with active grazing allotments and visible range  
97 improvements;

98 (D) geographic areas found to contain the presence of solitude should convey the sense  
99 of solitude within the entire geographic area identified, otherwise boundary adjustments should  
100 be performed in accordance with Subsection (1)(c)(iv)(F);

101 (E) geographic areas found to contain the presence of an opportunity for primitive and  
102 unconfined recreation must find these features within the entire area and provide analysis about  
103 the effect of the number of visitors to the geographic area upon the presence of primitive or  
104 unconfined recreation, otherwise boundary adjustments should be performed in accordance  
105 with Subsection (1)(c)(iv)(F);

106 (F) in addition to the actions required by the review for roads pursuant to the  
107 definitions of roads contained in BLM Manual H 6301, or any similar authority, the BLM  
108 should, pursuant to its authority to inventory, identify and list all roads or routes identified as  
109 part of a local or state governmental transportation system, and consider those routes or roads  
110 as qualifying as roads within the definition of the Wilderness Act of 1964; and

111 (G) BLM should adjust the boundaries for a geographic area to exclude areas that do  
112 not meet the criteria of lacking roads, lacking solitude, and lacking primitive and unconfined  
113 recreation and the boundaries should be redrawn to reflect an area that clearly meets the criteria  
114 above, and which does not employ minor adjustments to simply exclude small areas with  
115 human intrusions, specifically:

116 (I) the boundaries of a proposed geographic area containing lands with wilderness  
117 characteristics should not be drawn around roads, rights-of-way, and intrusions; and

118 (II) lands located between individual human impacts that do not meet the requirements

119 for lands with wilderness characteristics should be excluded;

120 (v) BLM should consider the responses of the Department of the Interior under cover  
121 of the letter dated May 20, 2009, clearly stating that BLM does not have the authority to apply  
122 the nonimpairment management standard to the subject lands, or to manage the subject lands in  
123 any manner to preserve their suitability for designation as wilderness, when considering the  
124 proper management principles for areas that meet the full definition of lands with wilderness  
125 characteristics; and

126 (vi) even if the BLM were to properly inventory an area for the presence of wilderness  
127 characteristics, the BLM still lacks authority to make or alter project level decisions to  
128 automatically avoid impairment of any wilderness characteristics without express  
129 congressional authority to do so;

130 (d) achieve and maintain at the highest reasonably sustainable levels a continuing yield  
131 of energy, hard rock, and nuclear resources in those subject lands with economically  
132 recoverable amounts of such resources as follows:

133 (i) the development of the solid, fluid, and gaseous mineral resources in portions of the  
134 subject lands is an important part of the state's economy and the economies of the respective  
135 counties, and should be recognized that it is technically feasible to access mineral and energy  
136 resources in portions of the subject lands while preserving or, as necessary, restoring  
137 nonmineral and nonenergy resources;

138 (ii) all available, recoverable solid, fluid, gaseous, and nuclear mineral resources in the  
139 subject lands should be seriously considered for contribution or potential contribution to the  
140 state's economy and the economies of the respective counties;

141 (iii) those portions of the subject lands shown to have reasonable mineral, energy, and  
142 nuclear potential should be open to leasing, drilling, and other access with reasonable  
143 stipulations and conditions, including mitigation, reclamation, and bonding measures where  
144 necessary, that will protect the lands against unnecessary and undue damage to other significant  
145 resource values;

146 (iv) federal oil and gas existing lease conditions and restrictions should not be  
147 modified, waived, or removed unless the lease conditions or restrictions are no longer  
148 necessary or effective;

149 (v) any prior existing lease restrictions in the subject lands that are no longer necessary

150 or effective should be modified, waived, or removed;

151 (vi) restrictions against surface occupancy should be eliminated, modified, or waived,  
152 where reasonable;

153 (vii) in the case of surface occupancy restrictions that cannot be reasonably eliminated,  
154 modified, or waived, directional drilling should be considered where the mineral and energy  
155 resources beneath the area can be reached employing available directional drilling technology;

156 (viii) applications for permission to drill in the subject lands that meet standard  
157 qualifications, including reasonable and effective mitigation and reclamation requirements,  
158 should be expeditiously processed and granted; and

159 (ix) any moratorium that may exist against the issuance of qualified mining patents and  
160 oil and gas leases in the subject lands, and any barriers that may exist against developing  
161 unpatented mining claims and filing for new claims, should be carefully evaluated for removal;

162 (e) achieve and maintain livestock grazing in the subject lands at the highest reasonably  
163 sustainable levels by adhering to the policies, goals, and management practices set forth in  
164 Subsection 63J-4-401(6)(m);

165 (f) manage the watershed in the subject lands to achieve and maintain water resources  
166 at the highest reasonably sustainable levels as follows:

167 (i) adhere to the policies, goals, and management practices set forth in Subsection  
168 63J-4-401(6)(m);

169 (ii) deter unauthorized cross-country OHV use in the subject lands by establishing a  
170 reasonable system of roads and trails in the subject lands for the use of an OHV, as closing the  
171 subject lands to all OHV use will only spur increased and unauthorized use; and

172 (iii) keep open any road or trail in the subject lands that historically has been open to  
173 OHV use, as identified on respective county road maps;

174 (g) achieve and maintain traditional access to outdoor recreational opportunities  
175 available in the subject lands as follows:

176 (i) hunting, trapping, fishing, hiking, family and group parties, family and group  
177 campouts and campfires, rock hounding, OHV travel, geological exploring, pioneering,  
178 recreational vehicle parking, or just touring in personal vehicles are activities that are important  
179 to the traditions, customs, and character of the state and individual counties where the subject  
180 lands are located and should continue;

181 (ii) wildlife hunting, trapping, and fishing should continue at levels determined by the  
182 Wildlife Board and the Division of Wildlife Resources and traditional levels of group camping,  
183 group day use, and other traditional forms of outdoor recreation, both motorized and  
184 nonmotorized, should continue; and

185 (iii) the broad spectrum of outdoor recreational activities available on the subject lands  
186 should be available to citizens for whom a primitive, nonmotorized, outdoor experience is not  
187 preferred, affordable, or physically achievable;

188 (h) (i) keep open to motorized travel, any road in the subject lands that is part of the  
189 respective counties' duly adopted transportation plan;

190 (ii) provide that R.S. 2477 rights-of-way should be recognized by the BLM;

191 (iii) provide that a county road may be temporarily closed or permanently abandoned  
192 only by statutorily authorized action of the county or state;

193 (iv) provide that the BLM and the Forest Service must recognize and not unduly  
194 interfere with a county's ability to maintain and repair roads and, where reasonably necessary,  
195 make improvements to the roads; and

196 (v) recognize that additional roads and trails may be needed in the subject lands from  
197 time to time to facilitate reasonable access to a broad range of resources and opportunities  
198 throughout the subject lands, including livestock operations and improvements, solid, fluid,  
199 and gaseous mineral operations, recreational opportunities and operations, search and rescue  
200 needs, other public safety needs, access to public lands for people with disabilities and the  
201 elderly, and access to Utah school and institutional trust lands for the accomplishment of the  
202 purposes of those lands;

203 (i) manage the subject lands so as to protect prehistoric rock art, three dimensional  
204 structures, and other artifacts and sites recognized as culturally important and significant by the  
205 state historic preservation officer or each respective county by imposing reasonable and  
206 effective stipulations and conditions reached by agreement between the federal agency and the  
207 state authorized officer pursuant to the authority granted by the National Historic Preservation  
208 Act, 16 U.S.C. Sec. 470 et seq.;

209 (j) manage the subject lands so as to not interfere with the property rights of private  
210 landowners as follows:

211 (i) the state recognizes that there are parcels of private fee land throughout the subject

212 lands;

213 (ii) land management policies and standards in the subject lands should not interfere  
214 with the property rights of any private landowner to enjoy and engage in uses and activities on  
215 an individual's private property consistent with controlling county zoning and land use laws;  
216 and

217 (iii) a private landowner or a guest or client of a private landowner should not be  
218 denied the right of motorized access to the private landowner's property consistent with past  
219 uses of the private property;

220 (k) manage the subject lands in a manner that supports the fiduciary agreement made  
221 between the state and the federal government concerning the school and institutional trust  
222 lands, as managed according to state law, by:

223 (i) formally recognizing, by duly authorized federal proclamation, the duty of the  
224 federal government to support the purposes of the school and institutional trust lands owned by  
225 the state and administered by SITLA in trust for the benefit of public schools and other  
226 institutions as mandated in the Utah Constitution and the Utah Enabling Act of 1894, 28 Stat.  
227 107;

228 (ii) actively seeking to support SITLA's fiduciary responsibility to manage the school  
229 trust lands to optimize revenue by making the school trust lands available for sale and private  
230 development and for other multiple and consumptive use activities such as mineral  
231 development, grazing, recreation, timber, and agriculture;

232 (iii) not interfering with SITLA's ability to carry out its fiduciary responsibilities by the  
233 creation of geographical areas burdened with management restrictions that prohibit or  
234 discourage the optimization of revenue, without just compensation;

235 (iv) recognizing SITLA's right of economic access to the school trust lands to enable  
236 SITLA to put those sections to use in its fiduciary responsibilities; [~~and~~]

237 (v) recognizing any management plan enacted by SITLA pursuant to Section  
238 [53C-2-201](#); and

239 (vi) acting responsibly as the owner of land parcels with potential for exchange for  
240 state land parcels by:

241 (A) moving forward with the process for identifying federal land parcels suitable and  
242 desirable for exchange for state land parcels;

243 (B) removing barriers to the exchange of federal land parcels for state land parcels;

244 (C) expediting the procedures and processes necessary to execute the exchange of

245 federal land parcels for state land parcels; and

246 (D) lobbying and supporting in good faith any congressional legislation to enact and

247 finalize the exchange of federal land parcels for state land parcels;

248 (l) oppose the designation of BLM lands as areas of critical environmental concern

249 (ACEC), as the BLM lands are generally not compatible with the state's plan and policy for

250 managing the subject lands, but special cases may exist where such a designation is appropriate

251 if compliance with FLPMA, 43 U.S.C. Sec. 1702(a) is clearly demonstrated and where the

252 proposed designation and protection:

253 (i) is limited to the geographic size to the minimum necessary to meet the standards

254 required by Section 63J-4-401;

255 (ii) is necessary to protect not just a temporary change in ground conditions or visual

256 resources that can be reclaimed or reversed naturally, but is clearly shown as necessary to

257 protect against visible damage on the ground that will persist on a time scale beyond that which

258 would effectively disqualify the land for a later inventory of wilderness characteristics;

259 (iii) will not be applied in a geographic area already protected by other protective

260 designations available pursuant to law; and

261 (iv) is not a substitute for the nonimpairment management requirements of wilderness

262 study areas; and

263 (m) recognize that a BLM visual resource management class I or II rating is generally

264 not compatible with the state's plan and policy for managing the subject lands, but special cases

265 may exist where such a rating is appropriate if jointly considered and created by state, local,

266 and federal authorities as part of an economic development plan for a region of the state, with

267 due regard for school trust lands and private lands within the area.

268 (2) All BLM and Forest Service decision documents should be accompanied with an

269 analysis of the social and economic impact of the decision. Such analysis should:

270 (a) consider all facets of the decision in light of valuation techniques for the potential

271 costs and benefits of the decision;

272 (b) clarify whether the costs and benefits employ monetized or nonmonetized

273 techniques;

274 (c) compare the accuracy, completeness, and viability of monetized and nonmonetized  
275 valuation techniques used as part of the analysis, including all caveats on use of the techniques;  
276 and

277 (d) compare the valuation techniques employed in the analysis to the federal standards  
278 for valuation employed by the U.S. Department of Justice in court actions.

279 Section 2. Section **63L-2-201** is amended to read:

280 **63L-2-201. Federal government acquisition of real property in the state.**

281 (1) As used in this [~~section~~] chapter:

282 (a) "Agency" is defined in Section [63G-10-102](#).

283 (b) "Agency" includes:

284 (i) the School and Institutional Trust Lands Administration created in Section  
285 [53C-1-201](#); and

286 (ii) the School and Institutional Trust Lands Board of Trustees created in Section  
287 [53C-1-202](#).

288 (2) (a) Before legally binding the state by executing an agreement to sell or transfer to  
289 the United States government 10,000 or more acres of any state lands or school and  
290 institutional trust lands, an agency shall submit the agreement or proposal:

291 (i) to the Legislature for its approval or rejection; or

292 (ii) in the interim, to the Legislative Management Committee for review of the  
293 agreement or proposal.

294 (b) The Legislative Management Committee may:

295 (i) recommend that the agency execute the agreement or proposal;

296 (ii) recommend that the agency reject the agreement or proposal; or

297 (iii) recommend to the governor that the governor call a special session of the  
298 Legislature to review and approve or reject the agreement or proposal.

299 (3) Before legally binding the state by executing an agreement to sell or transfer to the  
300 United States government less than 10,000 acres of any state lands or school and institutional  
301 trust lands, an agency shall notify the Natural Resources, Agriculture, and Environment Interim  
302 Committee.

303 (4) Notwithstanding Subsections (2) and (3), the Legislature approves all conveyances  
304 of school trust lands to the United States government made for the purpose of completing the

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**1st Sub. (Buff) H.B. 183**

305 Red Cliffs Desert Reserve in Washington County.