

HB0183S01 compared with HB0183

~~{deleted text}~~ shows text that was in HB0183 but was deleted in HB0183S01.

inserted text shows text that was not in HB0183 but was inserted into HB0183S01.

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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: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

▶ ~~{amends the state land use planning and management program;~~

▶ ~~requires the School and Institutional Trust Lands Administration to, by certain dates:~~

• ~~evaluate state land;~~

• ~~identify parcels;~~ encourages the federal government to:

• move forward with the exchange of state and federal ~~{land that are suitable for a federal land exchange;~~ and

• ~~make reports to the secretary of the United States Department of Agriculture;~~

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~~Legislative Management Committee, and Natural Resources, Agriculture, and Environment Interim Committee}~~ 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

~~ENACTS:~~

~~**63L-2-202**, Utah Code Annotated 1953~~

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

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

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

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

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

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

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

(iii) produce and maintain the desired vegetation for watersheds, timber, food, fiber, livestock forage, wildlife forage, and minerals that are necessary to meet present needs and

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future economic growth and community expansion in each county where the subject lands are situated without permanent impairment of the productivity of the land;

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

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

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

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

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

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

(b) (i) do not designate, establish, manage, or treat any of the subject lands as an area with management prescriptions that parallel, duplicate, or resemble the management prescriptions established for wilderness areas or wilderness study areas, including the nonimpairment standard applicable to WSAs or anything that parallels, duplicates, or resembles that nonimpairment standard; and

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

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

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

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

(iii) BLM lacks authority to manage the subject lands in any manner other than to prevent unnecessary or undue degradation, unless the BLM uses geographic tools expressly

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identified in FLPMA and does so pursuant to a duly adopted provision of a resource management plan adopted under FLPMA, 43 U.S.C. Sec. 1712;

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

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

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

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

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

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

(II) human-made features such as vehicle bridges, fire breaks, fisheries, enhancement facilities, fire rings, historic mining and other properties, including tailings piles, commercial radio and communication repeater sites, fencing, spring developments, linear disturbances, stock ponds, visible drill pads, pipeline and transmission line rights-of-way, and other similar features;

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

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

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

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

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

(E) geographic areas found to contain the presence of an opportunity for primitive and unconfined recreation must find these features within the entire area and provide analysis about

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the effect of the number of visitors to the geographic area upon the presence of primitive or unconfined recreation, otherwise boundary adjustments should be performed in accordance with Subsection (1)(c)(iv)(F);

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

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

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

(II) lands located between individual human impacts that do not meet the requirements for lands with wilderness characteristics should be excluded;

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

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

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

(i) the development of the solid, fluid, and gaseous mineral resources in portions of the

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subject lands is an important part of the state's economy and the economies of the respective counties, and should be recognized that it is technically feasible to access mineral and energy resources in portions of the subject lands while preserving or, as necessary, restoring nonmineral and nonenergy resources;

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

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

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

(v) any prior existing lease restrictions in the subject lands that are no longer necessary or effective should be modified, waived, or removed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) expediting the procedures and processes necessary to execute the exchange of federal land parcels for state land parcels; and

(D) lobbying and supporting in good faith any congressional legislation to enact and finalize the exchange of federal land parcels for state land parcels;

(l) oppose the designation of BLM lands as areas of critical environmental concern (ACEC), as the BLM lands are generally not compatible with the state's plan and policy for managing the subject lands, but special cases may exist where such a designation is appropriate if compliance with FLPMA, 43 U.S.C. Sec. 1702(a) is clearly demonstrated and where the proposed designation and protection:

(i) is limited to the geographic size to the minimum necessary to meet the standards required by Section 63J-4-401;

(ii) is necessary to protect not just a temporary change in ground conditions or visual resources that can be reclaimed or reversed naturally, but is clearly shown as necessary to protect against visible damage on the ground that will persist on a time scale beyond that which

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

(iii) will not be applied in a geographic area already protected by other protective designations available pursuant to law; and

(iv) is not a substitute for the nonimpairment management requirements of wilderness study areas; and

(m) recognize that a BLM visual resource management class I or II rating is generally not compatible with the state's plan and policy for managing the subject lands, but special cases may exist where such a rating is appropriate if jointly considered and created by state, local, and federal authorities as part of an economic development plan for a region of the state, with due regard for school trust lands and private lands within the area.

(2) All BLM and Forest Service decision documents should be accompanied with an analysis of the social and economic impact of the decision. Such analysis should:

(a) consider all facets of the decision in light of valuation techniques for the potential costs and benefits of the decision;

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

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

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

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

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

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

(a) "Agency" is defined in Section 63G-10-102.

(b) "Agency" includes:

(i) the School and Institutional Trust Lands Administration created in Section 53C-1-201; and

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

(2) (a) Before legally binding the state by executing an agreement to sell or transfer to

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the United States government 10,000 or more acres of any state lands or school and institutional trust lands, an agency shall submit the agreement or proposal:

- (i) to the Legislature for its approval or rejection; or
- (ii) in the interim, to the Legislative Management Committee for review of the

agreement or proposal.

(b) The Legislative Management Committee may:

- (i) recommend that the agency execute the agreement or proposal;
- (ii) recommend that the agency reject the agreement or proposal; or
- (iii) recommend to the governor that the governor call a special session of the

Legislature to review and approve or reject the agreement or proposal.

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

(4) Notwithstanding Subsections (2) and (3), the Legislature approves all conveyances of school trust lands to the United States government made for the purpose of completing the Red Cliffs Desert Reserve in Washington County.

~~{ Section 3. Section 63L-2-202 is enacted to read:~~

~~63L-2-202. Identification and appraisal of state land.~~

~~(1) The agency shall:~~

~~(a) by January 1, 2016:~~

~~(i) evaluate state land, including:~~

~~(A) investigating mineral examinations;~~

~~(B) conducting title searches;~~

~~(C) conducting archeological surveys;~~

~~(D) removing encumbrances, if possible; and~~

~~(E) curing any deficiencies that may prevent highest and best use;~~

~~(ii) establish standards to determine whether a parcel of state land evaluated under Subsection (1)(a)(i) is suitable for a potential federal land exchange;~~

~~(iii) subject to Subsection (2), appraise a parcel of state land that meets the standards established under Subsection (1)(a)(ii) according to nationally recognized appraisal standards;~~

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~~including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisitions described in the Federal Lands Policy and Management Act of 1976;~~

~~—— (iv) identify federal land that is suitable and desirable for federal land exchange; and~~

~~—— (v) communicate the findings of Subsections (1)(a)(i) through (iv) to the secretary of the United States Department of Agriculture, the Legislative Management Committee, and the Natural Resources, Agriculture, and Environment Interim Committee; and~~

~~—— (b) by November 30, 2016, report to the Legislative Management Committee and the Natural Resources, Agriculture, and Environment Interim Committee on the status of federal land exchanges, including:~~

~~—— (i) any barriers that prevent the expeditious exchange of land as authorized by the Federal Land Management and Policy Act of 1976; and~~

~~—— (ii) the agency's plan to promote the exchange of federal lands.~~

~~—— (2) When conducting the appraisal of a parcel of state land, as authorized in Subsection (1)(a)(iii), the agency shall take into account the recommended uses of federal land surrounding a parcel, as described in the current land use plan of the county in which the parcel is situated.~~

Legislative Review Note

~~—— as of 3-5-14 10:22 AM~~

~~Office of Legislative Research and General Counsel}~~