

**LAND DESIGNATION MODIFICATIONS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Carl Wimmer**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill requires legislative approval of a wilderness designation, declaration, or plan and a national monument designation or declaration.

**Highlighted Provisions:**

This bill:

▸ requires legislative approval of a wilderness designation, declaration, or plan by the federal government under the Wilderness Act or the Federal Land Policy and Management Act; and

▸ requires legislative approval of a national monument designation or declaration by the federal government under the Antiquities Act.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**65A-10-9**, Utah Code Annotated 1953

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

Section 1. Section **65A-10-9** is enacted to read:



28           **65A-10-9. Prohibition of wilderness designation and preservation withdrawal --**  
29 **National monument -- Sheriff to enforce access.**

30           (1) As used in this section:

31           (a) "Wilderness" is as defined in 16 U.S.C. Sec. 1131(c) and 43 U.S.C. Sec. 1702(i).

32           (b) "Wilderness protection" means:

33           (i) the preservation of wilderness;

34           (ii) the preservation of wilderness characteristics;

35           (iii) the preservation of wilderness values; or

36           (iv) the preservation of wilderness uses.

37           (2) Unless the Legislature adopts a joint resolution approving or adopting a  
38 designation, declaration, or plan, the following designations, declarations, or plans are void:

39           (a) a designation or declaration of a wilderness area in the state by Congress in  
40 accordance with the Wilderness Act of 1964, 16 U.S.C. Sec. 1131, et seq.;

41           (b) a land use plan or resource management plan developed by the Secretary of the  
42 Interior designating land for wilderness protection in the state in accordance with the Federal  
43 Land Policy and Management Act of 1976, 43 U.S.C. Sec. 1701, et seq., including and  
44 notwithstanding 43 U.S.C. Sec. 1714(d) or (e) a withdrawal of public lands in the state by the  
45 Secretary of the Interior for wilderness protection; and

46           (c) a designation or declaration of a national monument in the state in accordance with  
47 the Antiquities Act of 1906, 16 U.S.C. Sec. 431 et seq.

48           (3) (a) If the Secretary of the Interior inventories public land in the state in accordance  
49 with 43 U.S.C. Sec. 1711 for the purposes of designating the public land as having wilderness  
50 characteristics and as a wilderness study area in accordance with 43 U.S.C. Sec. 1782(a), the  
51 Secretary of the Interior, subject to Subsection (3)(b) and notwithstanding 43 U.S.C. Sec.  
52 1782(c), may not regulate the public land or otherwise manage the public land in a manner that  
53 varies or in any way that deviates from the regulation or management of the public land before  
54 the initiation of the inventory and wilderness study area review.

55           (b) The Secretary of the Interior shall regulate and manage the public land in  
56 accordance with the Wilderness Act of 1964, 16 U.S.C. Sec. 1131, if:

57           (i) the U.S. Congress designates or declares the public land as a wilderness area in  
58 accordance with 16 U.S.C. Sec. 1131, et. seq.; and

59 (ii) the Legislature adopts a joint resolution approving or adopting the designation or  
60 declaration.

61 (4) Unless the Legislature adopts a joint resolution approving or adopting a  
62 designation, declaration, or plan in accordance with Subsection (2), the county sheriff:

63 (a) of the county in which land subject to Subsection (2)(a) or (3)(a) is located shall  
64 ensure public access to the land in a manner consistent with public access before the initiation  
65 of the inventory and wilderness study area review;

66 (b) of the county in which land subject to Subsection (2)(b) is located shall ensure  
67 public access to the land in a manner consistent with public access:

68 (i) before the proposed adoption of a land use plan or resource management plan; or

69 (ii) before the proposed withdrawal of the public land; and

70 (c) of the county in which land subject to Subsection (2)(c) is located shall ensure  
71 public access to the land in a manner consistent with public access before the proposed national  
72 monument designation or declaration.

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### Legislative Review Note

as of 2-25-11 3:07 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 that the Utah Legislature approve a congressional wilderness designation or declaration of public land. This bill prohibits the Secretary of the Interior from regulating or managing public land recommended for congressional wilderness designation in Utah in a manner that varies or in any way deviates from the regulation or management of the land before the initiation of the inventory and wilderness study area review unless the wilderness designation is approved by the Utah Legislature. This bill also prohibits the Secretary of the Interior from making a withdrawal of public lands in Utah if the withdrawal is for wilderness protection unless the Utah Legislature adopts a joint resolution approving the withdrawal. Finally, this bill requires that the Utah Legislature approve a congressional designation or declaration of a national monument.

Under the Wilderness Act of 1964, Congress may designate public land as a wilderness area. *See* 16 U.S.C. Sec. 1131. The wilderness designation process is initiated by the Secretary of the Interior, who inventories federal lands for wilderness qualities. The Secretary then recommends a wilderness study area to the President for wilderness protection, and the President then makes a recommendation to Congress. *See* 43 U.S.C. Sec. 1782(a) and (b). *See also Oregon Natural Desert Ass'n. v. BLM*, 531 F.3d 1114, 1119 (9th Cir. Or. 2008). While congressional approval is pending, the Secretary is directed, with limited exceptions, to manage the wilderness study area "in a manner so as not to impair the suitability of [the area] for preservation as wilderness...." 43 U.S.C. Sec. 1782(c). The Secretary of the Interior may also withdraw federal land "from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program." 43 U.S.C. Sec. 1702(j). The Secretary may, without congressional approval, withdraw public land "aggregating less than five thousand acres." 43 U.S.C. 1714(d). Likewise, the Secretary may make an "emergency withdrawal" without congressional approval if "an emergency situation exists and that extraordinary measures must be taken to preserve values that would otherwise be lost....," although the Secretary is required to notify committees in the U.S. House of Representatives and the U.S. Senate. 43 U.S.C. Sec. 1714(e). Finally, Congress may designate or declare a national monument in accordance with the Antiquities Act of 1906. *See* 16 U.S.C. Sec. 431.

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 United States Supreme 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 requirements for Utah legislative approval of congressional wilderness designations, the requirement for Utah legislative approval for withdrawal of public lands for

wilderness by the Secretary of the Interior, the requirement that public land recommended for wilderness designation be managed the same way it was managed before the wilderness designation, and the requirement for Utah legislative approval of a national monument designation all appear 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**

# FISCAL NOTE

H.B. 347

SHORT TITLE: **Land Designation Modifications**

SPONSOR: **Wimmer, C.**

2011 GENERAL SESSION, STATE OF UTAH

## STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget. The Legislative General Counsel has attached a detailed Legislative Review Note to this bill. If provisions in the bill are challenged in court, there will be costs associated with defending those provisions.

## LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

## DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.