
Capital Budget Committee

HB 1192

Brief Description: Concerning the transfer of federal land to the state.

Sponsors: Representatives Taylor, Shea, Kretz, G. Hunt, Short, Chandler, Schmick, Scott, McCaslin, Buys, Vick, Haler, Condotta and Young.

Brief Summary of Bill

- Requires the federal government to extinguish and transfer its title to certain public lands by December 31, 2015.
- Establishes a Joint Select Committee on Transfer of Public Lands to consider matters and propose legislation related to the extinguishment and transfer of federal title to the state.

Hearing Date: 2/3/15

Staff: Meg VanSchoorl (786-7105).

Background:

Enabling Act.

In February 1889 Congress passed an Enabling Act to authorize the admission of Washington and three other states to the Union "on an equal footing with the original states." Among other things, the Enabling Act granted lands to Washington for common schools and other educational and state purposes. The Enabling Act also stated that Washington would receive a portion of proceeds from land sold by the United States after Washington's admission to statehood:

Sec. 13. That five per centum of the proceeds of the sales of public lands lying within said States which shall be sold by the United States subsequent to the admission of said States into the Union, after deducting all the expenses incident to the same, shall be paid to the said States, to be used as a permanent fund, the interest of which only shall be expended for the support of common schools within said States, respectively.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In addition, the Enabling Act required the state constitutional conventions to agree to certain conditions under "ordinances irrevocable without the consent of the United States and the people of said States." One of these conditions was that the people of Washington disclaim rights to "unappropriated public lands," with such lands being "subject to the disposition of the United States" until sold by the United States:

Sec. 4. That the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof. . . .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[.]

State Constitution.

Ratified by Washington's voters in November of 1889, the state Constitution contains a number of provisions that reflect the requirements of the Enabling Act, including creation of permanent funds for the lands granted by the U.S. to the state for schools and other educational and state purposes.

The Constitution also includes Article XXVI, "Compact with the United States," a section expressly declaring a compact with the United States under the terms of the Enabling Act. This section replicates the language of Section 4 of the Enabling Act by disclaiming the title to "unappropriated public lands" and agreeing that these lands are subject to the disposition of the United States.

Public Lands in Washington.

According to the Washington Public Lands Inventory (Washington State Recreation and Conservation Office, July 2014), the land area of Washington totals nearly 46 million acres. Non-public ownership is about 57 percent of the total (26 million acres) with the remaining 43 percent (20 million acres) in public ownership. Of the publicly-owned acreage, 12.7 million acres is owned by the federal government, 6.5 million acres by the state, and the balance by local governments.

According to the Federal Land Ownership: Overview and Data Report (Congressional Research Service, February 2012), the majority of Washington land in federal ownership is managed by: the U.S. Forest Service (76 percent); the National Park Service (15 percent); the Department of Defense (3.6 percent); the Bureau of Land Management (3.6 percent); and the Fish and Wildlife Service (1.5 percent).

The management of land owned in the name of the state has been delegated to a number of state agencies and universities. The management approach for the land is generally determined by the jurisdiction, authorities and priorities of the agency delegated the management responsibilities. The Department of Natural Resources (DNR), the Department of Fish and Wildlife (WDFW), and the State Parks and Recreation Commission (Parks) are three agencies that manage many acres of undeveloped public lands in the state. Each of these agencies implement different management goals. The DNR is primarily responsible for managing land in a manner that satisfies its fiduciary duty to the various state trust beneficiaries, the WDFW manages land to

enhance wildlife habitat and hunting access, and Parks primarily provides recreational access. The largest number of acres, 5.6 million, is managed by the DNR.

Summary of Bill:

Findings and Intent.

The Legislature finds that the federal government's fiscal capacity to responsibly manage and handle the many growing threats to its public lands is at risk. In addition, the Legislature finds that Washington has not obtained all of the benefits from Enabling Act provisions related to federal government land disposal. The Legislature intends to create a joint legislative task force to analyze public lands and make recommendations on disposal of properties, including title transfer.

Definitions.

Definitions are provided for: "governmental entity," "net proceeds," and "public lands."

"Public lands" mean lands within the exterior boundaries of the state but excludes: lands held by a non-governmental entity; lands owned or held in trust by the state, a political subdivision or an independent entity; lands reserved for state public education or higher education institution; school and institutional trust lands; certain lands managed by the National Parks and the U.S. Forest Service as of January 1, 2014; lands designated as part of the National Wilderness Preservation System under the Wilderness Act of 1964; federal real or tangible personal property within a municipal boundary; U.S. Military or U.S. Department of Energy lands; and certain lands, including water rights, belonging to an Indian, tribe, band, or community.

Title Transfers.

By December 31, 2015 the federal government must extinguish its title to all public lands and transfer title to the state.

If the state later transfers its title to these lands, it must retain five percent of the net proceeds and deposit them into the Permanent Common School Fund. The state must transfer 95 percent of the net proceeds to the federal government.

Joint Select Committee on Transfer of Public Lands.

A Joint Select Committee on Transfer of Public Lands (Committee) is established.

Membership. Eight members as follows:

- two members from each of the two largest caucuses of the House of Representatives (House), appointed by the Speaker of the House.
- two members from each of the two largest caucuses of the Senate, appointed by the President of the Senate.

Responsibilities. With guidance from interested parties and stakeholders, the Committee must prepare proposed legislation that:

- creates a Public Lands Commission to administer the public lands title transfer to the state and to address certain aspects of public land management;
- establishes actions that must be taken if the federal government does not meet the public lands title extinguishment requirements;
- modifies the definition of "public lands," as necessary;
- determines, or creates a process for determining, interests, rights, or uses related to resources such as easements, grazing, mining, oil and other fossil fuels, recreation, water, and timber; and
- determines what "the expenses incident to the sale of public lands" are.

The Committee must also decide whether to propose legislation related to:

- administrative processes for title extinguishment and transfers;
- prioritization of management actions to be performed by the state and its political subdivisions before and after federal title extinguishment to preserve and promote certain state interests;
- procedures and requirements related to subjecting public lands to property taxation;
- other requirements related to national forests, national recreation areas, and other public lands administered by the federal government; and
- indemnification of a political subdivision for actions related to federal title extinguishment and transfer.

The Committee may study other related issues as determined by the Commissioner and the Attorney General.

The Committee must make preliminary reports to the Legislature by June 30, 2015 and October 31, 2015, and deliver a final report to the Legislature by January 2, 2016. The section expires June 30, 2016.

Staffing and Expenses. Staffing must be provided by the House Office of Program Research and the Senate Committee Services. Expenses must be paid jointly by the House and the Senate. Legislative members of the Committee must be reimbursed for travel expenses.

Other.

The Act may be known and cited as the Transfer of Public Lands Act. Proceeds from the transfer of public lands title from the federal government to the state are added to the list of sources of principal into the Permanent Common School Fund. The bill contains a severability clause.

Appropriation: None.

Fiscal Note: Requested on 2/2/15.

Effective Date: The bill contains an emergency clause and takes effect immediately.