

109TH CONGRESS  
2D SESSION

# S. 2569

To authorize Western States to make selections of public land within their borders in lieu of receiving five per centum of the proceeds of the sale of public land lying within said States as provided by their respective Enabling Acts.

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## IN THE SENATE OF THE UNITED STATES

APRIL 6, 2006

Mr. HATCH introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To authorize Western States to make selections of public land within their borders in lieu of receiving five per centum of the proceeds of the sale of public land lying within said States as provided by their respective Enabling Acts.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Action Plan for Public  
5 Lands and Education Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:

1           (1) Western States, as a group, are falling be-  
2           hind in education funding as measured by growth of  
3           real per pupil expenditures from 1979 to 1998.

4           (2) Eleven of the 12 States with the lowest real  
5           growth in per pupil expenditures are Western States.

6           (3) The growth rate of real per pupil expendi-  
7           tures in the 13 Western States is less than half such  
8           rate in the 37 other States (28 percent versus 57  
9           percent).

10          (4) On effect of less funding for public edu-  
11          cation in the West is higher pupil-per-teacher ratios.

12          (5) Ten of the twelve States with the largest  
13          pupil-per-teacher ratios are Western States.

14          (6) On average, the 13 Western States have 3  
15          more students per classroom than the 37 other  
16          States.

17          (7) Over the next 10 years, the rate of enroll-  
18          ment growth is projected to be much higher in West-  
19          ern States than in other States.

20          (8) On average, the rate of enrollment growth  
21          of Western States is projected to increase dramati-  
22          cally, while the rate of enrollment growth of other  
23          States is projected to actually decrease.

1           (9) The State and local taxes of Western States  
2           as a percentage of personal income are as high as  
3           or higher than other States.

4           (10) Despite the fact that Western States tax  
5           at a comparable rate and allocate as much of their  
6           budgets to public education as other States, Western  
7           States have lower real growth in per pupil expendi-  
8           tures and have higher pupil-per-teacher ratios.

9           (11) The Federal Government is the source and  
10          potential solver of the problem because of the enor-  
11          mous amount of land the Federal Government owns  
12          in Western States.

13          (12) All States east of an imaginary vertical  
14          line from Montana to New Mexico have, on average,  
15          4.1 percent of their land federally owned, while the  
16          Western States on average have 51.9 percent of  
17          their land federally owned.

18          (13) The Acts enabling the people of territories  
19          of the American West to form their constitutions  
20          and State governments and providing for the admis-  
21          sion of such States into the Union on equal footing  
22          with the original States, included a common provi-  
23          sion of which the following example is typical “That  
24          five per centum of the proceeds of the sales of public  
25          land lying within said States, which shall be sold by

1 the United States subsequent to the admission of  
2 said State into the Union, after deducting all the ex-  
3 penses incident to the same, shall be paid to the said  
4 State, to be used as a permanent fund, the interest  
5 of which only shall be expended for the support of  
6 the common schools within said State.”.

7 (14) The plain language of these enabling acts  
8 proclaims that the public land “shall be sold by the  
9 United States” subsequent to the admission of the  
10 States into the Union.

11 (15) The United States honored the foregoing  
12 language by selling public land within the Western  
13 States until the passage of the Federal Land Policy  
14 and Management Act of 1976, wherein Congress de-  
15 clared that the policy of the United States was to re-  
16 tain public land in Federal ownership and manage-  
17 ment.

18 (16) The United States has broken its solemn  
19 compact with the Western States and breached its  
20 fiduciary duty to the school children who are des-  
21 ignated beneficiaries of the sale of public land under  
22 the terms of the respective enabling Acts of the  
23 Western States.

24 (17) The current shortfall in funding public  
25 education in the Western States requires immediate

1 Congressional action to remedy the above-described  
2 discriminatory Federal land policy and prevent the  
3 further disadvantaging of the school children of the  
4 Western States.

5 (18) The most efficient and cost effective rem-  
6 edy now available to the United States is to grant  
7 to the Western States 5 percent of the remaining  
8 federal land located within each State, authorizing  
9 each State to select such land from the unappropri-  
10 ated public land of the United States within the  
11 boundaries of said State as will satisfy the grant.

12 **SEC. 3. QUANTITY GRANTS TO WESTERN STATES FOR EDU-**  
13 **CATION IMPROVEMENT.**

14 (a) QUANTITY LAND GRANTS.—Instead of receiving,  
15 for the support of the common schools, 5 percent of the  
16 proceeds of the sales of federally owned land lying within  
17 the Western States which have not been sold by the United  
18 States as of July 1, 2005, grants of land are hereby made  
19 to the Western States. The amount of land granted to  
20 each State shall be equal to 5 percent of the number of  
21 acres of federally owned land within the State as of July  
22 1, 2005.

23 (b) SELECTION PROCESS.—

24 (1) IN GENERAL.—Each Western State shall  
25 select from the unappropriated public lands within

1 the borders of the State in such manner as the legis-  
2 lature of the State may provide, land equal in acre-  
3 age to five percent of the federally owned land in the  
4 State as of July 1, 2005.

5 (2) CALCULATION OF ACREAGE AND NOTIFICA-  
6 TION OF STATE.—The Secretary shall calculate the  
7 exact acreage of federally owned land in each West-  
8 ern State as of July 1, 2005, and designate the un-  
9 appropriated public land, as defined herein, eligible  
10 for selection by the State. The Secretary shall com-  
11 municate to each of the Western States the respec-  
12 tive acreage calculation and designation of land eligi-  
13 ble for selection not later than 1 year after the date  
14 of the enactment of this Act.

15 (c) APPLICATION OF CERTAIN LAW.—Selection and  
16 transfer of land under this Act shall not be considered a  
17 major Federal action for the purposes of section  
18 102(2)(C) of the National Environmental Policy Act of  
19 1969.

20 (d) MINERAL AND OIL AND GAS RIGHTS.—

21 (1) IN GENERAL.—All mineral, oil, and gas  
22 rights to the land selected by the Western States  
23 under this Act shall become the property of the rel-  
24 evant Western State unless the Federal lessee of the  
25 selected land is making royalty payments to the

1 United States from production of minerals, oil, or  
 2 gas, whereupon the particular leasehold interest  
 3 shall remain in the ownership of the United States  
 4 until the leasehold interest terminates. After that  
 5 termination, the mineral, oil, and gas rights shall be-  
 6 come the property of the relevant Western State.

7 (2) SELECTION OF SURFACE RIGHTS.—Western  
 8 States may select only the surface of eligible land if  
 9 the land is located on subsurface mineral, oil, or gas  
 10 deposits that are generating royalty payments to the  
 11 United States. The entire mineral, oil, and gas es-  
 12 tate shall become the property of the Western State  
 13 upon termination of the Federal lease.

14 (e) PERMANENT SCHOOL FUND.—All land selected  
 15 by each of the Western States shall be held in trust by  
 16 a State educational agency empowered to sell or lease such  
 17 land, the proceeds of which shall be used as a permanent  
 18 fund, the interest of which shall be expended only for the  
 19 support of public education.

20 (f) DEFINITIONS.—In this Act:

21 (1) The term “Western States” means Alaska,  
 22 Arizona, California, Colorado, Hawaii, Idaho, Mon-  
 23 tana, New Mexico, Nevada, Oregon, Utah, Wash-  
 24 ington, and Wyoming.

1           (2) The term “Secretary” means the Secretary  
2 of the Interior or the Secretary of Agriculture, as  
3 appropriate.

4           (3) The term “State educational agency” means  
5 the agency of the State primarily responsible for the  
6 supervision of education.

7           (4) The term “federally owned land” means all  
8 land held in the name of the United States or any  
9 agency thereof, including land held in trust, United  
10 States military reservations, Indian reservations, and  
11 any other land used for Federal purposes.

12           (5) The term “unappropriated public lands”  
13 means any and all land under the management and  
14 control of the Bureau of Land Management or  
15 United States Forest Service, excluding land that  
16 is—

17                   (A) held in trust;

18                   (B) located within a United States military  
19 reservation;

20                   (C) a unit of the National Park System;

21                   (D) a Wildlife Refuge;

22                   (E) a Wilderness Area designated by Con-  
23 gress; or

24                   (F) a National Historic Site.

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