

112TH CONGRESS  
1ST SESSION

# H. R. 2852

To authorize Western States to make selections of public land within their borders in lieu of receiving 5 percent 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 HOUSE OF REPRESENTATIVES

SEPTEMBER 7, 2011

Mr. BISHOP of Utah (for himself, Mr. YOUNG of Alaska, Mr. CHAFFETZ, Mr. GOSAR, Mrs. BLACKBURN, and Mr. GOHMERT) introduced the following bill; which was referred to the Committee on 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 5 percent 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 2011”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:

1           (1) The Acts enabling the people of territories  
2 of the American West to form their constitutions  
3 and State governments and providing for the admis-  
4 sion of such States into the Union on equal footing  
5 with the original States included a common provision  
6 of which the following example is typical: That 5  
7 percent of the proceeds of the sales of public land  
8 lying within said State, which shall be sold by the  
9 United States subsequent to the admission of said  
10 State into the Union, after deducting all the ex-  
11 penses incident to the same, shall be paid to the said  
12 State, to be used as a permanent fund, the interest  
13 of which only shall be expended for the support of  
14 the common schools within said State.

15           (2) Western States, as a group, are falling be-  
16 hind in education funding as measured by growth of  
17 real per pupil expenditures from 1979 to 2007.

18           (3) Nine of the 10 States with the lowest real  
19 growth in per pupil expenditures are Western States.

20           (4) The growth rate of real per pupil expendi-  
21 tures in the 13 Western States is substantially less  
22 than the rate in the 37 other States (56 percent  
23 versus 92 percent).

24           (5) One effect of less funding for public edu-  
25 cation in the West is higher pupil-per-teacher ratios.

1           (6) Nine of the 12 States with the largest  
2 pupil-per-teacher ratios are Western States.

3           (7) On average, the 13 Western States have 3  
4 more students per classroom than the 37 other  
5 States.

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

9           (9) On average, the rate of enrollment growth  
10 in Western States is projected to increase dramati-  
11 cally, while the rate of enrollment growth of most  
12 other States will see minimal growth or decrease.

13           (10) The State and local taxes of Western  
14 States as a percentage of personal income are as  
15 high as or higher than other States.

16           (11) Despite the fact that Western States tax  
17 at a comparable rate and allocate as much of their  
18 budgets to public education as other States, Western  
19 States have lower real growth in per pupil expendi-  
20 tures and have higher pupil-per-teacher ratios.

21           (12) The Federal Government is the source and  
22 potential solver of the problem because of the enor-  
23 mous amount of untaxed land the Federal Govern-  
24 ment owns in Western States.

1           (13) All States east of an imaginary vertical  
2 line from Montana to New Mexico have, on average,  
3 4.1 percent of their land federally owned, while the  
4 Western States on average have 51.9 percent of  
5 their land federally owned.

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

10          (15) The United States honored those Acts by  
11 selling public land within the Western States until  
12 the passage of the Federal Land Policy and Manage-  
13 ment Act of 1976, wherein Congress declared that  
14 the policy of the United States was to retain public  
15 land in Federal ownership and management.

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

22          (17) The current shortfall in funding public  
23 education in the Western States requires immediate  
24 Congressional action to remedy the above-described  
25 discriminatory Federal land policy and prevent the

1 further disadvantaging of the school children of the  
2 Western States.

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

10 **SEC. 3. QUANTITY GRANTS TO WESTERN STATES FOR EDU-**  
11 **CATION IMPROVEMENT.**

12 (a) QUANTITY LAND GRANTS.—Instead of receiving,  
13 for the support of the common schools, 5 percent of the  
14 proceeds of the sales of federally owned land lying within  
15 the Western States which have not been sold by the United  
16 States as of January 1, 2011, grants of land are hereby  
17 made to the Western States. The amount of land granted  
18 to each State shall be equal to 5 percent of the number  
19 of acres of federally owned land within the State as of  
20 January 1, 2011.

21 (b) SELECTION PROCESS.—

22 (1) IN GENERAL.—Each Western State shall  
23 select from the unappropriated public lands within  
24 the borders of the State in such manner as the legis-  
25 lature of the State may provide, land equal in acre-

1       age to 5 percent of the federally owned land in the  
2       State as of January 1, 2011.

3               (2) CALCULATION OF ACREAGE AND NOTIFICA-  
4       TION OF STATE.—The Secretary shall calculate the  
5       exact acreage of federally owned land in each West-  
6       ern State as of January 1, 2011, and designate the  
7       unappropriated public land, as defined herein, eligi-  
8       ble for selection by the State. The Secretary shall  
9       communicate to each of the Western States the re-  
10      spective acreage calculation and designation of land  
11      eligible for selection not later than 1 year after the  
12      date of the enactment of this Act.

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

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

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

1 shall remain in the ownership of the United States  
2 until the leasehold interest terminates. After that  
3 termination; the mineral, oil, and gas rights shall be-  
4 come the property of the relevant Western State.

5 (2) SELECTION OF SURFACE RIGHTS.—Western  
6 States may select only the surface of eligible land if  
7 the land is located on subsurface mineral, oil, or gas  
8 deposits that are generating royalty, rental or bonus  
9 payments to United States. The entire mineral, oil,  
10 and gas estate shall become the property of the  
11 Western State upon expiration or termination of  
12 production in paying quantities from the Federal  
13 lease.

14 (e) PERMANENT SCHOOL FUND.—All land selected  
15 by each of the Western States shall be held in trust by  
16 the State agency empowered to sale or lease such lands,  
17 the proceeds of which shall be used as a permanent fund,  
18 the interest of which shall only be expended for the sup-  
19 port 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  
11 and 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 as the part of an Indian  
18           Reservation;

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

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

22                   (D) a Wildlife Refuge;

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

25                   (F) a National Historic Site;



- 1 (G) a National Monument;
- 2 (H) a National Natural Landmark;
- 3 (I) an Area of Critical Environmental Con-
- 4 cern; or
- 5 (J) a Wilderness Study Area.

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