



# Arizona State Senate *Issue Brief*

September 27, 2011

## Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series, which includes the *Issue Brief*, *Background Brief* and *Issue Paper*, is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

## ARIZONA STATE TRUST LAND

### INTRODUCTION

Prior to Arizona becoming a state in 1912, the Enabling Act (Act) was passed on June 20, 1910. The Act contained a number of directives designed to prepare the Territory of Arizona for statehood. Included among these provisions was the requirement that sections 2 and 32 of each township be held in trust for the common schools, unless those sections were not available at which point the state selected or traded for other land. Sections 16 and 36 of each township were already granted to the territory for the benefit of public schools by the act of Congress creating the Territory of Arizona in 1863. In time, the needs of other public institutions were recognized by Congress and more than two million additional acres of federal land were granted to the state through the Act for use by the additional beneficiaries. There are a total of 14 beneficiaries to the trust, with the public schools being the major beneficiary. (*See table on the next page for complete list*)

In 1915, the State Land Department (Department) was created by the Legislature and given authority over all state trust lands and the natural products derived from the land. The mission of the Department is to manage the trust lands and maximize revenues for the beneficiaries. These revenues are maintained in either: 1) the respective beneficiary's Permanent Fund, if the revenue is derived from the sale of land or resources; or 2) distributed directly to the beneficiaries, if the revenue is derived from leases, rentals or interest from financed sales. State trust land may be disposed of only as allowed by the state Constitution and the Act; that is, it must be sold or leased for its true value, as determined by an appraisal. Furthermore, all land sales and leases for more than a 10-year period can occur only after advertisement and auction to the highest bidder, unless specifically exempted (Arizona Constitution, Article X, Section 9).

The Arizona State Treasurer is responsible for managing and investing the monies in the Permanent Funds. Earnings are distributed from those investments to the beneficiaries based on a constitutional formula. In FY 2010, \$94.5 million from sales was deposited into the Permanent Funds and approximately \$50 million in expendable revenue was distributed directly to the beneficiaries

<b>Beneficiary</b>	<b>Acreage of Trust Land*</b>	<b>% of Trust Land</b>
Common Schools (K-12)	8,096,064	87.5%
University Land Code	137,909	1.5%
University of Arizona (Act of 2/18/1881)	54,101	0.6%
Miners' Hospital (2 Grants)	95,428	1.0%
Schools for the Deaf and the Blind	82,560	0.9%
State Charitable, Penal and Reformatory Institutions	77,229	0.8%
Penitentiaries	76,111	0.8%
State Hospital Grant	71,248	0.8%
Normal Schools	174,798	1.9%
School of Mines	123,254	1.3%
Military Institutes	80,168	0.9%
Agricultural and Mechanical Colleges	124,944	1.3%
Legislative, Executive and Judiciary Buildings	64,257	0.7%
<b>Total</b>	<b>9,258,071</b>	

*\*Data reflects figures through FY 2010*

(Land Department Annual Report 2009-2010). Expendable revenues consist of those monies from leases, permits, interest from sales contracts and the Treasurer's constitutional formula distribution.

**Department Self-Funding**

Prior to 2009, the operations of the Department were financed through state General Fund appropriations. In FY 2008, for example, the Department's operating budget was \$16,615,100, all of which was appropriated from the General Fund. In 2009, the Legislature established the Trust Land Management Fund (TLMF), which is funded by a portion of the annual proceeds from the sale of trust lands and other assets such as minerals, timber and natural products (Laws 2009, Third Special Session, Chapter 5). TLMF monies can only be used for managing trust lands.

In 2010, the Legislature enacted S.B. 1195 (Laws 2010, Chapter 243) to continue the Department's move to permanent self-funding. The law authorized the Department to retain the fees it collects for applications, permits, appraisals and other administrative transactions. These fees traditionally had been deposited into the state General Fund and appropriated back to the Department.

On April 27, 2010, the Center for Law in the Public Interest filed a lawsuit against the Land Commissioner and the Arizona State Treasurer alleging the TLMF funding mechanism is unconstitutional. In July 2011, the Court of Appeals ruled the Department cannot use the source of funds beyond July 1, 2011. The FY 2012 budget anticipated such a ruling and authorized the Department's use of \$9.9 million from the Arizona Department of Administration's Risk Management Revolving Fund during the fiscal year.

**Land Uses**

Public land, such as parks or national forests, is generally designated for public benefit. Although trust land belongs to the state, it is not considered public land. Public use of trust land is not prohibited, but it is regulated to ensure protection of the land and resources and compensation for its use. The majority of trust lands are currently used for livestock grazing; however, all uses of land must benefit the trust. There are many uses of state trust land, including outright sale of the land, lease or rental of the land, sale of natural resources from the land and grants of rights-of-way.

During the first 50 years of statehood, the state's economy was tied to the extraction and cultivation of natural resources. Thus the management of trust lands was primarily based

on rural land uses such as livestock grazing, agriculture and mineral production. However, as urban areas grew, new industries arose in Arizona and the Department now also addresses urban land and commercial development. With the passage of the Urban Lands Management Act in 1981, the Department was given new authority to plan, zone and merchandize the urban trust lands surrounding the state's major urban population centers. As a result of this change, sale and lease of urban lands have generated the largest revenues for the trust beneficiaries. By the end of FY 2010, the aggregate total book value of the Permanent Funds totaled more than \$2.33 billion.

Currently, state trust land comprises about 12.7 percent of all land in Arizona, equaling more than nine million acres. Nearly all state trust lands are under one or more leases for natural resource uses and commercial development purposes. Additionally, federal land comprises about 42.1 percent of the land in Arizona, Indian Trust about 27.6 percent and private land about 17.6 percent.

## Arizona Preserve Initiative

The Arizona State Legislature and the Governor enacted the Arizona Preserve Initiative (API) in 1996. API provides a process for conserving trust land as open space within a jurisdiction. As part of this process, trust land may be reclassified and sold or leased through public auction. For the purposes of the API, statute defines conservation as *protection of the natural assets of state trust land for the long-term benefit of the land, the trust beneficiaries, lessees, the public and the unique resources that each area contains such as open space, scenic beauty, protected plants, wildlife, archaeology and multiple use values*. The original legislation allows lands to be reclassified for conservation purposes if the land is within incorporated cities or towns, within one mile of incorporated cities or towns with a population of 10,000 persons or less or within three miles of municipalities with a population exceeding 10,000 persons. Those distances were later increased to ten miles beyond the original boundaries for Maricopa and Pima counties and other specific lands were also made eligible for conservation.

Land may be nominated by the State Land Commissioner (Commissioner) to be reclassified as suitable for conservation purposes on the Commissioner's initiative or if a state or local government, business, state land lessee or a group of citizens submits a petition. Before the land can be reclassified the Department must provide notice, hold public hearings and consider physical and economic impacts to current lessees and determine whether the reclassification is in the best interest of the trust. Once land has been reclassified, an independent appraisal and review appraisal of the fair market value of the land must be completed. Upon issuing statutorily required notices, the Commissioner may hold a public auction for the sale of the land.

Laws 1998, Chapter 204, established a matching funds grant program for API eligible lands and, subsequently, Proposition 303 (Growing Smarter Act), approved by voters in 1998, authorized a \$20 million appropriation each year from the state General Fund for 11 years beginning in FY 2000-2001. The appropriated monies are deposited in the Land Conservation Fund (LCF), which is administered by the State Parks Board.

In 2003, objections were raised concerning the constitutionality of the API program. At the time, API reclassified lands that were prepared for auction carried with them restrictions against development of the land. The concern was that such restrictions may decrease the number of potential bidders and result in possibly lower bid prices at auction. Although no legal action was taken, the Department opted to cancel auctions for the land in question and did not offer any further sales of land under the API program for four years. Several propositions, both through initiatives proposed by citizens, and referendums passed by the Legislature, have since been offered on the ballot to resolve the issue. However, voters have rejected each proposition related to the sale of conservation land.

In November 2007, the Growing Smarter grant program resumed with the purchase of reclassified trust land by the City of Phoenix. The City of Phoenix purchased the parcel using \$44,652,635 in LCF matching monies

distributed by the State Parks Board. According to the Department, in order to resolve any outstanding constitutionality issues, the land was appraised for highest and best use and was sold without any conservation restrictions. This process continues for the sale of API lands.

Since the passage of API in 1996, the Department has sold more than 5,000 acres of reclassified lands, generating approximately \$200 million in revenue to the beneficiaries. Through FY 2009, more than \$96.5 million in Growing Smarter monies has been distributed by the State Parks Board in the form of matching grants.

## Land Exchanges

As mentioned earlier, trust land may be disposed of only as allowed by the state Constitution and the Act. In 1936, the U.S. Congress amended the Act to give Arizona more flexibility in managing and disposing trust land by allowing the state to exchange trust land for other public or private land. To date, the Arizona Constitution has not been amended to incorporate the authority for land exchanges under the Act. Arizona statutes, however, authorize the Department to conduct land exchanges and, prior to 1990, the Department had periodically exchanged state land with the federal government and private landowners (Arizona Revised Statutes, Title 37, Chapter 2, Article 14). In 1990, the Arizona Supreme Court determined that until the state Constitution was amended to authorize trust land exchanges, the state could not conduct them. As a result, the Department halted land exchange activities. (Legislative Council ballot analysis, 1994)

During the past decade, there have been several proposals to amend the Arizona Constitution to provide for land exchanges and other trust land reform [See S.C.R. 2001 (2002); H.C.R. 2045 (2006); and other legislative proposals]. Most recently, in 2010, the Legislature referred S.C.R. 1047 to the ballot as Proposition 110 to amend the state Constitution to authorize land exchanges under certain conditions. The measure narrowly failed at the November general election (See also Laws 2010, Chapter 222).

## ADDITIONAL RESOURCES

- Arizona State Land Department  
1616 W. Adams, Suite 302  
Phoenix, AZ 85007  
602-542-4621  
<http://www.land.state.az.us/>
- Arizona State Parks  
1300 W. Washington  
Phoenix, AZ 85007  
(602) 542-4174  
<http://www.pr.state.az.us/>
- State and School Lands: Arizona Revised Statutes; Arizona Constitution, Article X
- Public Lands: Arizona Revised Statutes, Title 37
- Trust Lands Suitable for Conservation: Arizona Revised Statutes, Title 37, Chapter 2, Article 4.2
- Exchange of Public Lands: Arizona Revised Statutes, Title 37, Chapter 2, Article 14; Arizona Constitution, Article X, Sections 3 & 12
- Land Conservation Fund: Arizona Revised Statutes § 41-511.23
- Other land exchange and trust reform legislative proposals include:  
2001; S.C.R. 1004  
2002; Prop 101 (failed at ballot)  
2004; S.C.R. 1012  
Prop. 100 (failed at ballot)  
2005; S.B. 1500 (NRRRA; Held in Senate)  
2006; H.C.R. 2045  
Prop 105 (failed at ballot)  
Prop 106 (Initiative, failed at ballot)  
2007; H.C.R. 2039 (CMMA, NRRRA; Held in Senate)  
2008; H.C.R. 2057 (CMMA; Held in Committee)  
2009; S.B. 1077, S.C.R. 1030 (NRIPD; Held in Senate)  
2010; S.B.1410; S.C.R. 1047  
Prop 110 (failed at ballot)