

House Engrossed

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HOUSE BILL 2176

AN ACT

AMENDING TITLE 37, CHAPTER 5, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING
SECTION 37-910; RELATING TO PUBLIC LANDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 37, chapter 5, article 1, Arizona Revised Statutes,
3 is amended by adding section 37-910, to read:

4 37-910. Relinquishment of nonenumerated federal land:
5 applicability: definition

6 A. FROM AND AFTER THE EFFECTIVE DATE OF THIS SECTION, THE COMMISSIONER
7 SHALL ANNUALLY REQUEST THE UNITED STATES TO RELINQUISH ALL CONSTITUTIONALLY
8 NONENUMERATED FEDERAL LAND WITHIN THIS STATE THROUGH SALE OR TO THE STATE
9 LAND TRUST ON OR BEFORE DECEMBER 31, 2025.

10 B. BEGINNING JANUARY 1, 2026, THE ATTORNEY GENERAL SHALL INITIATE
11 PROCEEDINGS AGAINST THE UNITED STATES IN ORDER TO FORCE THE RELINQUISHMENT OF
12 ALL REMAINING CONSTITUTIONALLY NONENUMERATED FEDERAL LAND WITHIN THIS STATE
13 TO THE STATE LAND TRUST.

14 C. THIS SECTION DOES NOT APPLY TO PROPERTY:

15 1. THAT IS HELD BY THE UNITED STATES FOR THE BENEFIT, INCLUDING WATER
16 RIGHTS, OF A FEDERAL RECLAMATION PROJECT OR MANAGED BY A POLITICAL
17 SUBDIVISION OF THIS STATE OR A SPECIAL TAXING DISTRICT ORGANIZED UNDER
18 TITLE 48.

19 2. ON WHICH PERMANENT IMPROVEMENTS ARE CONSTRUCTED OR THAT IS LEGALLY
20 ENCUMBERED.

21 3. THAT IS ASSOCIATED WITH ELECTRICAL POWER PROJECTS, INCLUDING
22 GENERATION, TRANSMISSION OR DISTRIBUTION.

23 D. FOR THE PURPOSES OF THIS SECTION, "CONSTITUTIONALLY NONENUMERATED
24 FEDERAL LAND" MEANS LAND THAT IS HELD BY THE FEDERAL GOVERNMENT AND THAT DOES
25 NOT SERVE A PURPOSE ENUMERATED IN THE UNITED STATES CONSTITUTION, INCLUDING
26 ARTICLE 1, SECTION 8, PARAGRAPH 17 OF THE UNITED STATES CONSTITUTION, AND:

27 1. INCLUDES:

- 28 (a) UNITED STATES BUREAU OF LAND MANAGEMENT HOLDINGS.
- 29 (b) NATIONAL FORESTS.
- 30 (c) WILDERNESS AREAS.
- 31 (d) WILDLIFE REFUGES.
- 32 (e) NATIONAL MONUMENTS.
- 33 (f) NATIONAL HISTORIC SITES.

34 2. DOES NOT INCLUDE:

- 35 (a) NATIONAL PARKS.
- 36 (b) INDIAN RESERVATIONS.
- 37 (c) FEDERAL MILITARY INSTALLATIONS.
- 38 (d) FEDERAL LANDS THAT CONTAIN PERMANENT IMPROVEMENTS SUCH AS FEDERAL
39 STRUCTURES FOR POST OFFICES, FEDERAL COURTS AND FEDERAL AGENCIES.

40 Sec. 2. Legislative findings

41 A. The 42.1 percent of Arizona land (approximately 30,700,000 acres)
42 under the control of the United States:

- 43 1. Was not constitutionally conveyed to the United States.
- 44 2. Is typically not being used for constitutionally enumerated uses.

1 3. Has been held since Arizona's 1912 statehood, which is an
2 unreasonable length of time.

3 4. Is grossly disproportionate to similar federal land holdings within
4 the eastern states, which constitutes a violation of the Equal Footing
5 Doctrine and the principle of basic fairness across sovereign states.

6 B. In comparison to eastern states, the large presence of the United
7 States as a landholder within this state clearly dilutes state sovereignty,
8 impedes this state's ability to govern (for example, to lay and collect
9 taxes, fund education, fund first responders, fund and maintain
10 infrastructure and exercise policing powers), and begs the question as to
11 whether those lands in question actually comprise a portion of the current
12 state of Arizona or whether they have not fundamentally changed disposition
13 from the territorial status that existed before 1912.

14 C. According to Professor Robert Natelson of the Independence
15 Institute, the United States Constitution grants the federal government no
16 plenary power to hold land, only to dispose of and to acquire real estate and
17 other property to carry out any enumerated purpose, either in the exercise of
18 a core power or through the implied powers memorialized in the Necessary and
19 Proper Clause. Land acquired or held by the federal government within states
20 may be held only for enumerated purposes, and all federal holdings not being
21 used or needed for enumerated purposes must be disposed of within a
22 reasonable time. Nonenclave federal land held under the Property Clause
23 should be held only for enumerated purposes. The land is subject to state
24 law, and the federal government must be treated like any other landowner.
25 States must respect the discharge of legitimate federal functions associated
26 with federally held lands.