

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; AMENDING SECTION 41-193, ARIZONA REVISED STATUTES; RELATING TO THE ATTORNEY GENERAL.

(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 ATTORNEY  
7 GENERAL SHALL ANNUALLY REQUEST THE UNITED STATES TO RELINQUISH ALL  
8 CONSTITUTIONALLY NONENUMERATED FEDERAL LAND WITHIN THIS STATE TO THIS STATE  
9 ON OR BEFORE DECEMBER 31, 2021.

10 B. BEGINNING JANUARY 1, 2022, SUBJECT TO LEGISLATIVE APPROPRIATION,  
11 THE ATTORNEY GENERAL MAY INITIATE PROCEEDINGS AGAINST THE UNITED STATES IN  
12 ORDER TO FORCE THE RELINQUISHMENT OF ALL REMAINING CONSTITUTIONALLY  
13 NONENUMERATED FEDERAL LAND WITHIN THIS STATE TO THIS STATE.

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 I, 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. Section 41-193, Arizona Revised Statutes, is amended to read:

41 41-193. Department of law; composition; powers and duties

42 A. The department of law shall be composed of the attorney general and  
43 the subdivisions of the department created as provided in this article.  
44 Unless otherwise provided by law the department shall:

- 1           1. **INITIATE**, prosecute and defend in the supreme court all proceedings  
2 in which the state or an officer ~~thereof~~ **OF THE STATE** in ~~his~~ **THE OFFICER'S**  
3 official capacity is a party.
- 4           2. At the direction of the governor or, **ALTERNATIVELY**, when deemed  
5 necessary by the attorney general, **INITIATE**, prosecute and defend any  
6 proceeding in a state court other than the supreme court in which the state  
7 or an officer ~~thereof~~ **OF THE STATE** is a party or has an interest.
- 8           3. Represent the state in any action **OR INITIATE AN ACTION** in a  
9 federal court, the cost thereof and the expenses of the attorney general  
10 incurred therein to be a charge against the state.
- 11           4. Exercise supervisory powers over county attorneys of the several  
12 counties in matters pertaining to that office and require reports relating to  
13 the public business thereof.
- 14           5. At the direction of the governor, or when deemed necessary, assist  
15 the county attorney of any county in the discharge of the county attorney's  
16 duties.
- 17           6. Maintain a docket of all proceedings in which the attorney general  
18 is required to appear, showing the condition thereof, the proceedings  
19 therein, the proceedings subsequent to judgment and the reasons for any delay  
20 of execution.
- 21           7. ~~Upon~~ **ON** demand by the legislature, or either house or any member  
22 ~~thereof~~ **OF THE LEGISLATURE**, any public officer of the state or a county  
23 attorney, render a written opinion ~~upon~~ **ON** any question of law relating to  
24 their offices. Such opinions shall be public records.
- 25           8. Perform other duties prescribed by law.
- 26           B. The department of law, in the name of the state and under the  
27 direction of the governor, shall purchase property offered for sale under  
28 execution issued ~~upon~~ **ON** a judgment in favor of or for the use of the state,  
29 and shall enter satisfaction, wholly or in part, of such judgment as  
30 consideration for the purchase. If the property of the judgment debtor has  
31 been sold under a prior judgment or is subject to a prior judgment, lien or  
32 encumbrance, the department of law, under direction of the governor, shall  
33 redeem the property from the prior judgment, lien or encumbrance. All money  
34 necessary for the redemption shall **BE PAID**, ~~upon~~ **ON** the order of the  
35 governor, ~~be paid~~ from money appropriated for such purpose.
- 36           C. The department of law shall institute investigations for discovery  
37 of property ~~which~~ **THAT** may have escheated or would escheat to the state, and  
38 for such purpose may require any person before the superior court to answer  
39 investigations, produce books and render accounts relating to the property.  
40 The department may institute action in the superior court ~~of~~ **IN** the county in  
41 which the property is located for recovery of escheats, or may require the  
42 county attorney to conduct such proceedings.

1           Sec. 3. Legislative findings

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

4           1. Was not constitutionally conveyed to the United States.

5           2. Is typically not being used for constitutionally enumerated uses.

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

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

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

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