

REFERENCE TITLE: university trust land management; exchanges

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2459

Introduced by
Representatives Robson: McComish, Nelson, Nichols, Pearce, Stump, Weiers
J, Yarbrough

AN ACT

AMENDING SECTIONS 15-1625, 15-1626, 37-101, 37-202, 37-232, 37-243 AND
37-901, ARIZONA REVISED STATUTES; RELATING TO STATE TRUST LANDS; PROVIDING
FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 15-1625, Arizona Revised Statutes, is amended to
3 read:
4 15-1625. General powers of board as body corporate
5 A. The Arizona board of regents is a body corporate with perpetual
6 succession. The board has jurisdiction and control over the universities.
7 B. The board may:
8 1. Adopt a corporate seal.
9 2. Contract.
10 3. Sue and be sued.
11 4. Purchase, receive, hold, make and take leases and long-term leases
12 of and sell real and personal property for the benefit of this state and for
13 the use of the institutions under its jurisdiction.
14 5. DIRECT THE MANAGEMENT, SALE, LEASE AND OTHER DISPOSITION OF LANDS
15 GRANTED TO THIS STATE FOR UNIVERSITY PURPOSES PURSUANT TO THE ENABLING ACT
16 AND THE CONSTITUTION OF ARIZONA.
17 Sec. 2. Section 15-1626, Arizona Revised Statutes, is amended to read:
18 15-1626. General administrative powers and duties of board
19 A. The board shall:
20 1. Have and exercise the powers necessary for the effective governance
21 and administration of the institutions under its control. To that end, the
22 board may adopt, and authorize each university to adopt, such regulations,
23 policies, rules or measures as are deemed necessary and may delegate in
24 writing to its committees, to its university presidents, or their designees,
25 or to other entities under its control, any part of its authority for the
26 administration and governance of such institutions, including those powers
27 enumerated in section 15-1625, subsection B, paragraphs 2 and 4, paragraphs
28 3, 4, 8, 9, 11 and 12 of this subsection and subsection B of this
29 section. Any delegation of authority may be rescinded by the board at any
30 time in whole or in part.
31 2. Appoint and employ and determine the compensation of presidents
32 with such power and authority and for such purposes in connection with the
33 operation of the institutions as the board deems necessary.
34 3. Appoint and employ and determine the compensation of
35 vice-presidents, deans, professors, instructors, lecturers, fellows and such
36 other officers and employees with such power and authority and for such
37 purposes in connection with the operation of the institutions as the board
38 deems necessary, or delegate its authority pursuant to paragraph 1 of this
39 subsection.
40 4. Remove any officer or employee when the interests of education in
41 this state so require in accordance with its personnel rules and policies.
42 5. Fix tuitions and fees to be charged and differentiate the tuitions
43 and fees between institutions and between residents, nonresidents,
44 undergraduate students, graduate students, students from foreign countries
45 and students who have earned credit hours in excess of the credit hour

1 threshold. For the purposes of this paragraph, the undergraduate credit hour
 2 threshold is one hundred fifty-five hours for students who attend a
 3 university under the jurisdiction of the board in fiscal year 2006-2007, one
 4 hundred fifty hours for students who attend a university under the
 5 jurisdiction of the board in fiscal year 2007-2008 and one hundred forty-five
 6 hours for students who attend a university under the jurisdiction of the
 7 board after fiscal year 2007-2008. The undergraduate credit hour threshold
 8 shall be based on the actual full-time equivalent student enrollment counted
 9 on the twenty-first day after classes begin for the fall semester of 2005 and
 10 every fall semester thereafter and any budget adjustment based on student
 11 enrollment shall occur in the fiscal year following the actual full-time
 12 equivalent student enrollment count. The undergraduate credit hour threshold
 13 shall not apply to degree programs that require credit hours above the credit
 14 hour threshold, credits earned in the pursuit of up to two baccalaureate
 15 degrees, credits earned in the pursuit of up to two state regulated
 16 licensures or certificates, credits earned in the pursuit of teaching
 17 certification, credits transferred from a private institution of higher
 18 education, credits transferred from an institution of higher education in
 19 another state, credits earned at another institution of higher education but
 20 that are not accepted as transfer credits at the university where the student
 21 is currently enrolled and credits earned by students who enroll at a
 22 university under the jurisdiction of the board more than twenty-four months
 23 after the end of that student's previous enrollment at a public institution
 24 of higher education in this state. On or before October 15 of each year, the
 25 board shall report to the joint legislative budget committee the number of
 26 students who were enrolled at universities under the jurisdiction of the
 27 board during the previous fiscal year who met or exceeded the undergraduate
 28 credit hour threshold prescribed in this paragraph. The amount of tuition,
 29 registration fees and other revenues included in the operating budget for the
 30 university adopted by the board as prescribed in paragraph 13 of this
 31 subsection shall be deposited, pursuant to sections 35-146 and 35-147. All
 32 other tuition and fee revenue shall be retained by each university for
 33 expenditure as approved by the board, except that the universities shall not
 34 use any tuition or fee revenue to fund or support an alumni association.

35 6. Except as provided in subsection H of this section, adopt rules to
 36 govern its tuition and fee setting process that provide for the following:

37 (a) At least one public hearing at each university as an opportunity
 38 for students and members of the public to comment upon any proposed increase
 39 in tuition or fees.

40 (b) Publication of the notice of public hearing at least ten days
 41 prior to the hearing in a newspaper of general circulation in Maricopa
 42 county, Coconino county and Pima county. The notice shall include the date,
 43 time and location of the public hearing.

44 (c) Public disclosure by each university of any proposed increases in
 45 tuition or fees at least ten days prior to the public hearing.

- 1 (d) Final board action on changes in tuition or fees shall be taken by
2 roll call vote.
- 3 The procedural requirements of subdivisions (a), (b), (c) and (d) of this
4 paragraph apply only to those changes in tuition or fees that require board
5 approval.
- 6 7. Pursuant to section 35-115, submit a budget request for each
7 institution under its jurisdiction that includes the estimated tuition and
8 fee revenue available to support the programs of the institution as described
9 in the budget request. The estimated available tuition and fee revenue shall
10 be based on the tuition and registration fee rates in effect at the time the
11 budget request is submitted with adjustments for projected changes in
12 enrollment as provided by the board.
- 13 8. Establish curriculums and designate courses at the several
14 institutions which in its judgment will best serve the interests of this
15 state.
- 16 9. Award such degrees and diplomas upon the completion of such courses
17 and curriculum requirements as it deems appropriate.
- 18 10. Prescribe qualifications for admission of all students to the
19 universities. The board shall establish policies for guaranteed admission
20 that assure fair and equitable access to students in this state from public,
21 private, charter and home schools. For the purpose of determining the
22 qualifications of honorably discharged veterans, veterans are those persons
23 who served in the armed forces for a minimum of two years and who were
24 previously enrolled at a university or community college in this state. No
25 prior failing grades received by the veteran at the university or community
26 college in this state may be considered.
- 27 11. Adopt any energy conservation standards promulgated by the
28 department of administration for the construction of new buildings.
- 29 12. Employ for such time and purposes as the board requires attorneys
30 whose compensation shall be fixed and paid by the board. Litigation to which
31 the board is a party and for which self-insurance is not provided may be
32 compromised or settled at the direction of the board.
- 33 13. Adopt annually an operating budget for each university equal to the
34 sum of appropriated general fund monies and the amount of tuition,
35 registration fees and other revenues approved by the board and allocated to
36 each university operating budget.
- 37 14. In consultation with the state board of education and other
38 education groups, develop and implement a program to award honors
39 endorsements to be affixed to the high school diplomas of qualifying high
40 school pupils and to be included in the transcripts of pupils who are awarded
41 endorsements. The board shall develop application procedures and testing
42 criteria and adopt testing instruments and procedures to administer the
43 program. In order to receive an honors endorsement, a pupil must demonstrate
44 an extraordinary level of knowledge, skill and competency as measured by the
45 testing instruments adopted by the board in mathematics, English, science and

1 social studies. Additional subjects may be added at the determination of the
2 board. The program is voluntary for pupils.

3 15. Require the publisher of each literary and nonliterary textbook
4 used in the universities of this state to furnish computer software in a
5 standardized format when software becomes available for nonliterary
6 textbooks, to the Arizona board of regents from which braille versions of the
7 textbooks may be produced.

8 16. Require universities that provide a degree in education to require
9 courses that are necessary to obtain a provisional structured English
10 immersion endorsement as prescribed by the state board of education.

11 17. Beginning July 1, 2007, acquire United States flags for each
12 classroom that are manufactured in the United States and that are at least
13 two feet by three feet and hardware to appropriately display the United
14 States flags, acquire a legible copy of the Constitution of the United States
15 and the Bill of Rights, display the flags in each classroom in accordance
16 with title 4 of the United States Code and display a legible copy of the
17 Constitution of the United States and the bill of rights adjacent to the
18 flag.

19 18. To facilitate the transfer of military personnel and their
20 dependents to and from the public schools of this state, pursue, in
21 cooperation with the state board of education, reciprocity agreements with
22 other states concerning the transfer credits for military personnel and their
23 dependents. A reciprocity agreement entered into pursuant to this paragraph
24 shall:

25 (a) Address procedures for each of the following:

26 (i) The transfer of student records.

27 (ii) Awarding credit for completed course work.

28 (iii) Permitting a student to satisfy the graduation requirements
29 prescribed in section 15-701.01 through the successful performance on
30 comparable exit-level assessment instruments administered in another state.

31 (b) Include appropriate criteria developed by the state board of
32 education and the Arizona board of regents.

33 19. Require a university to publicly post notices of all of its
34 employment openings, including the title and description, instructions for
35 applying and relevant contact information.

36 B. The board shall adopt personnel rules. All nonacademic employees
37 of the universities are subject to these rules except for university
38 presidents, university vice-presidents, university deans, legal counsel and
39 administrative officers. The personnel rules shall be similar to the
40 personnel rules under section 41-783. The rules shall include provisions for
41 listing available positions with the department of economic security,
42 competitive employment processes for applicants, probationary status for new
43 nonacademic employees, nonprobationary status on successful completion of
44 probation and due process protections of nonprobationary employees after

1 discharge. The board shall provide notice of proposed rule adoption and an
2 opportunity for public comment on all personnel rules proposed for adoption.

3 C. The board may employ legal assistance in procuring loans for the
4 institutions from the United States government. Fees or compensation paid
5 for such legal assistance shall not be a claim upon the general fund of this
6 state but shall be paid from funds of the institutions.

7 D. The board shall approve or disapprove any contract or agreement
8 entered into by the university of Arizona hospital with the Arizona health
9 facilities authority.

10 E. The board may adopt policies which authorize the institutions under
11 its jurisdiction to enter into employment contracts with nontenured employees
12 for periods of more than one year but not more than five years. The policies
13 shall prescribe limitations on the authority of the institutions to enter
14 into employment contracts for periods of more than one year but not more than
15 five years, including the requirement that the board approve the contracts.

16 F. The board may adopt a plan or plans for employee benefits which
17 allow for participation in a cafeteria plan that meets the requirements of
18 the United States internal revenue code of 1986.

19 G. The board may establish a program for the exchange of students
20 between the universities under the jurisdiction of the board and colleges and
21 universities located in the state of Sonora, Mexico. Notwithstanding
22 subsection A, paragraph 5 of this section, the program may provide for
23 in-state tuition at the universities under the jurisdiction of the board for
24 fifty Sonoran students in exchange for similar tuition provisions for up to
25 fifty Arizona students enrolled or seeking enrollment in Sonoran colleges or
26 universities. The board may direct the universities to work in conjunction
27 with the Arizona-Mexico commission to coordinate recruitment and admissions
28 activities.

29 H. Subsection A, paragraph 6, subdivisions (a), (b), (c) and (d) of
30 this section do not apply to fee increases that are set by individual
31 universities and that do not require approval by the Arizona board of regents
32 before the fee increase becomes effective.

33 I. THE BOARD MAY ADOPT RULES FOR THE MANAGEMENT, SALE, LEASE AND OTHER
34 DISPOSITION OF LANDS THAT WERE GRANTED TO THIS STATE FOR UNIVERSITY PURPOSES
35 PURSUANT TO THE ENABLING ACT AND THE CONSTITUTION OF THIS STATE.

36 Sec. 3. Section 37-101, Arizona Revised Statutes, is amended to read:

37 37-101. Definitions

38 In this title, unless the context otherwise requires:

39 1. "Agricultural lands" means lands which are used or can be used
40 principally for raising crops, fruits, grains and similar farm products.

41 2. "Amortized value" means the value for improvements established
42 pursuant to section 37-281.02, subsection G.

43 3. "Commercial lands" means lands which can be used principally for
44 business, institutional, religious, charitable, governmental or recreational

- 1 purposes, or any general purpose other than agricultural, grazing, mining,
2 oil, homesite or rights-of-way.
- 3 4. "Commissioner" means the state land commissioner.
- 4 5. "Community identity package" means a design theme including such
5 elements as architecture, landscape, lighting, street furniture, walls and
6 signage.
- 7 6. "Department" means the state land department.
- 8 7. "Grazing lands" means lands which can be used only for the ranging
9 of livestock.
- 10 8. "Holding lease" means a commercial lease issued solely to grant a
11 limited use leasehold interest in state land in anticipation of future
12 development.
- 13 9. "Homesite lands" means lands which are suitable for residential
14 purposes.
- 15 10. "Improvements" means anything permanent in character which is the
16 result of labor or capital expended by the lessee or ~~his~~ THE LESSEE'S
17 predecessors in interest on state land in its reclamation or development, and
18 the appropriation of water thereon, and which has enhanced the value of the
19 land.
- 20 11. "Infrastructure" means facilities or amenities, such as streets,
21 utilities, landscaping and open space, which are constructed or located on
22 state lands and which are intended to benefit more than the land on which
23 they are immediately located by enhancing the development potential and value
24 of the state lands impacted by the facility or amenities.
- 25 12. "Leapfrog development" means the development of lands in a manner
26 requiring the extension of public facilities and services from their existing
27 terminal point through intervening undeveloped areas that are scheduled for
28 development at a later time, according to the plans of the local governing
29 body having jurisdiction for the area and which is responsible for the
30 provision of these facilities and services.
- 31 13. "Leased school ~~or-university~~ land" means school ~~or-university~~ land
32 for which a lease has been issued by the state, or the territory of Arizona,
33 under which the lessee retains rights.
- 34 14. "Master developer" means a person who assumes, as a condition of a
35 land disposition, the responsibilities prescribed by the department for
36 infrastructure or community identity package amenities, or both, or for
37 implementing a development plan containing a master plan area.
- 38 15. "Participation contract" means a contract arising out of a sale
39 together with other rights and obligations in trust lands whereby the
40 department receives a share of the revenues generated by subsequent sales or
41 leases.
- 42 16. "Section of land" means an area of land consisting of six hundred
43 forty acres.
- 44 17. "State lands" means ~~any~~ land owned or held in trust, or otherwise,
45 by the state, including leased school ~~or-university~~ land, **BUT NOT INCLUDING**

1 LANDS THAT WERE GRANTED TO THIS STATE FOR UNIVERSITY PURPOSES PURSUANT TO THE
2 ENABLING ACT AND THE CONSTITUTION OF THIS STATE.

3 18. "Sublease" means an agreement in which the lessee relinquishes
4 control of the leased land to another party for the purposes authorized in
5 the lease.

6 19. "Urban lands" means any state lands which are adjoining existing
7 commercially or homesite developed lands and which are either:

8 (a) Within the corporate boundaries of a city or town.

9 (b) Adjacent to the corporate boundaries of a city or town.

10 (c) Lands for which the designation as urban lands is requested
11 pursuant to section 37-331.01.

12 20. "Urban sprawl" means the development of lands in a manner requiring
13 the extension of public facilities and services on the periphery of an
14 existing urbanized area where such extension is not provided for in the
15 existing plans of the local governing body having the responsibility for the
16 provision of these facilities and services to the lands in question.

17 Sec. 4. Section 37-202, Arizona Revised Statutes, is amended to read:

18 37-202. Selection board; powers and duties; distribution of
19 central Arizona project water to state trust lands

20 A. There is established a selection board composed of the governor,
21 the state treasurer exercising those powers of the surveyor-general with
22 respect to the selection of lands as provided in this section and the
23 attorney general.

24 B. The selection board shall do all things necessary to comply with
25 the laws of the United States and of the state in securing title to the lands
26 granted to the state in quantity or as indemnity by the enabling act, or to
27 any other lands which may be granted to the state.

28 C. The board shall file upon and select, and cause to be withdrawn and
29 surveyed for selection, lands the commissioner from time to time recommends
30 for selection or for withdrawal and survey.

31 D. The selection board shall cancel, relinquish and release the claim
32 of the state and reconvey to the United States any tract of land erroneously
33 listed to the state or any tract upon which, at the time of selection or
34 withdrawal, a bona fide claim has been initiated by an actual settler.

35 E. The board shall designate which of the lands selected shall be
36 assigned to each specific fund designated in the grants made to the state by
37 the United States. The selections shall be apportioned among the various
38 grants so that each fund shall receive as nearly as possible its pro rata
39 share of the different classes of land selected.

40 F. The board shall determine the distribution of all central Arizona
41 project water allocated for the benefit of state trust lands. All
42 allocations of central Arizona project water made by the selection board
43 shall be used on state trust lands except that if state trust lands to which
44 central Arizona project waters have been allocated are sold, then the central
45 Arizona project water allocated to those lands may be used on those lands.

1 All allocations of central Arizona project water made by the selection board
2 shall conform to the Arizona state water plan administered by the department
3 of water resources. Allocations greater than ten per cent of the total amount
4 of central Arizona project water available to the state for the benefit of
5 state trust lands shall require legislative approval by concurrent resolution
6 before such allocation is available for use.

7 G. If state land is included in a proposed corporate limit of a
8 municipality, the selection board, at the commissioner's request, may render
9 a determination approving or rejecting the inclusion of the state land in the
10 proposed corporate limit.

11 H. THE SELECTION BOARD SHALL APPROVE ANY EXCHANGE OF TRUST LAND
12 BETWEEN BENEFICIARIES TO ENSURE THAT THE LANDS EXCHANGED ARE OF SUBSTANTIALLY
13 EQUAL VALUE BASED ON APPRAISAL.

14 Sec. 5. Section 37-232, Arizona Revised Statutes, is amended to read:
15 37-232. Application to purchase state lands or for
16 reimbursement for improvements; deposit

17 A. A person desiring to purchase state lands, or the lessee of any
18 leased school ~~or university~~ land entitled to reimbursement for improvements
19 thereon, may make a verified written application to the state land department
20 to purchase the land.

21 B. In all cases, the application shall contain the name, age and
22 residence of the applicant and a description of the land sought to be
23 purchased. The application shall also contain the following information, as
24 applicable:

25 1. If a lessee of school ~~or university~~ lands is the applicant, the
26 application shall contain the date the lease of the land was issued to him.

27 2. If the applicant has or claims the right of possession by
28 instrument in writing from a former lessee, the application shall contain the
29 name of ~~his~~ THE assignor or grantor, the date of the original lease and the
30 date of the assignment, and ~~he~~ THE APPLICANT shall attach to ~~his~~ THE
31 application the original instrument of assignment, or if lost, furnish proof
32 of loss.

33 3. If the applicant claims by judgment of a court or by operation of
34 law, ~~he~~ THE APPLICANT shall attach to the application a certified copy of the
35 instrument ~~giving him such~~ GRANTING THAT right.

36 4. If the application is by one claiming a right to reimbursement for
37 improvements placed on leased school ~~or university~~ lands, ~~he~~ THE APPLICANT
38 shall set forth in the application a list of improvements made upon the land.

39 C. The department shall require an applicant to pay a deposit before
40 beginning to process an application to purchase state trust lands if the
41 applicant:

42 1. Has requested that a property be reappraised or advertised, or
43 both, within two years of the most recent public auction of that same
44 property.

1 2. Has previously held title to that same property under a certificate
2 of purchase.

3 3. Is known to be a second time applicant on the same property that
4 was previously offered at public auction.

5 D. If the applicant is subject to a deposit pursuant to subsection C,
6 the department shall place the deposit in a noninterest bearing account and
7 the deposit shall be calculated on a percentage of the estimated value of the
8 property. Monies must be deposited at the time of filing an application or
9 at a time determined by the commissioner. If the applicant is not the
10 successful bidder at public auction, the department shall refund the deposit
11 to the applicant. If the applicant is the successful bidder, the department
12 shall apply the deposit to the purchase price at auction. If there are no
13 bids at the time of the auction, the department shall transfer the deposit
14 made by the applicant to the appropriate trust beneficiary.

15 Sec. 6. Section 37-243, Arizona Revised Statutes, is amended to read:

16 37-243. Payment of rent in arrears; payment for use of land

17 If the owner of improvements upon leased school ~~or university~~ lands
18 sold as provided by this article is the purchaser of the lands and is in
19 arrears for rent due under a permit or lease, or if ~~he~~ THE OWNER has failed
20 to take out a permit or to pay rent, then before a certificate of purchase is
21 issued ~~to him he shall~~ THE OWNER, in addition to the payments required by
22 this article, SHALL pay to the department all rent ~~for which he~~ THAT is in
23 arrears, and if no rent has been stipulated, ~~he~~ THE OWNER shall be charged
24 for the use and occupation of the land. Interest at the rate of five per
25 cent per annum shall be charged on all such amounts, and added to the amount
26 to be paid. A like charge shall be made against the occupant, if some other
27 party is the purchaser of the land and improvements.

28 Sec. 7. Section 37-901, Arizona Revised Statutes, is amended to read:

29 37-901. Definitions

30 In this chapter, unless the context otherwise requires:

31 1. "Board" means the public lands board of review.

32 2. "Public lands" means all lands within the exterior boundaries of
33 this state except lands:

34 (a) To which title is held by any natural person, corporation,
35 company, partnership, firm, association, society or any other entity.

36 (b) Which are owned or held in trust by this state or any political
37 subdivision of this state, including leased school ~~or university~~ land.

38 (c) Lands which are located within and meet the standards and purposes
39 of congressionally authorized national parks, monuments, national forests and
40 wildlife refuges and such other lands acquired by purchase, exchange, gift or
41 eminent domain consented to by the legislature.

42 (d) Which are controlled by the United States department of defense,
43 department of energy or bureau of reclamation and which were acquired by
44 consent of the legislature and which meet the standards and purposes for
45 which control was authorized.

1 (e) Which are held in trust for Indian purposes or which are Indian
2 reservations.

3 Sec. 8. Conditional enactment

4 This act is not effective unless both of the following occur:

5 1. The Constitution of Arizona is amended by vote of the people at the
6 next general election to authorize separate management of lands granted to
7 this state for university purposes and the exchange of lands between trust
8 beneficiaries. The enactment of any provision of this act conditioned on the
9 results of the election does not constitute a submission of any provision of
10 this act to the voters under the power of the referendum.

11 2. On or before December 31, ____, the Arizona - New Mexico Enabling
12 Act (Act of June 20, 1910; 36 Stat. 557) is amended by Congress and signed
13 into law to authorize the management and exchange of state trust lands as
14 proposed by paragraph 1 of this section. On or before December 31, ____, the
15 state land commissioner shall notify the director of the Arizona legislative
16 council in writing whether or not this condition occurred and the date the
17 enabling act was amended.