AN ACT

AMENDING SECTION 37-620.02, ARIZONA REVISED STATUTES; RELATING TO UNITED STATES LAND ACQUISITION.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 37-620.02, Arizona Revised Statutes, is amended to read:

37-620.02. State consent to acquisition of land by the United States for exclusive jurisdiction

Pursuant to article I, section 8, clause 17 of the Constitution of the United States, the consent of this state may NOT be given to the acquisition, of SALE, GIFT OR GRANT OR ANY OTHER TRANSFER OF AN OWNERSHIP INTEREST IN any other privately owned real property within this state THAT IS NOT IN POSSESSION OF ANY FEDERAL AGENCY AS OF THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION by the United States only upon THAT WOULD REMOVE THE REAL PROPERTY FROM STATE, COUNTY AND MUNICIPAL PROPERTY TAX ROLLS WITHOUT THE EXPRESS, AFFIRMATIVE CONSENT OF THE LEGISLATURE AND THE GOVERNOR THROUGH the governor's signing of a joint resolution adopted by AN AFFIRMATIVE VOTE OF A MAJORITY OF THE MEMBERS the legislature to that effect. The joint resolution shall recite the legal description of the land and the purposes to which the THIS state consents that the property may be used.

Sec. 2. Legislative findings

The Legislature finds that:

1. At the granting of statehood, the new State of Arizona was granted the exclusive right to all lands not assigned under treaty to the Native American tribes.

2. Since the granting of statehood, numerous lands have been retained by the federal government by various means by way of congressional action, thus depriving the State of Arizona of a tax base, which, in comparison to other states, is critical to funding services such as education, public safety and infrastructure.

3. There are three primary legal theories available to Arizona to attempt to prove the claim of tax base in existing American jurisprudence, which are, "the equal sovereignty principle," "the equal footing doctrine" and "the compact theory." All three legal theories provide credible support to the claim of a primary interest in state private property tax base.

4. Arizona relies on approximately sixteen percent of its land area to fund critical services of education, infrastructure, public safety and welfare programs, while other states enjoy nearly complete access to their lands to generate a survivable tax base.

5. The equal sovereignty principle was recently highlighted by the United States Supreme Court in Shelby County, Ala. v. Holder, 570 U.S. 529 (2013), which challenged the requirement of the Voting Rights Act of 1965 (P.L. 89-110, 79 Stat. 437) that certain states preclear their voting laws with the United States Department of Justice as a violation of the constitutional requirement that the states in our federal system be equal in sovereignty. The Court applied a heightened level of scrutiny to the
preclearance requirements because they treated Alabama as unequal in sovereignty and ruled that the preclearance provisions were unconstitutional under the equal sovereignty principle. For the reasons discussed in detail below, the Legislature finds that section 102(a)(1) of the federal land policy and management act of 1976 (P.L. 94-579; 90 Stat. 2743), which reversed almost two hundred years of federal public lands policy from one of disposal to one of near-permanent retention, treats Arizona as unequal in sovereignty as compared to the states with dominion over the land within their borders. This argument, if adopted by the Court, would most likely result in a declaration that the United States cannot forever retain the public lands within Arizona's borders, not an order transferring the public lands to the State of Arizona. Therefore, should the Court be persuaded by this argument, a subsequent political solution negotiated by all stakeholders would most likely be required to resolve the issue. A possible outcome of that political process could be Arizona's ownership of those lands.

6. The equal footing doctrine is based on the equal sovereignty principle. It requires that states newly admitted to the Union receive all incidents of sovereignty enjoyed by the thirteen original states. The equal footing doctrine considers only sovereign and political rights of the newly admitted states, not economic or geographic differences. The original thirteen states stepped into the shoes of the Crown with regard to dominion over public lands within their borders. Similarly, Vermont, Kentucky, Tennessee, Maine, Texas and Hawaii all came into the Union with dominion over their public lands. Dominion over land has historically been viewed as a key incident of sovereignty, and denial of that dominion negatively impacts sovereignty in a variety of ways. Therefore, in order for Arizona to have been admitted as a co-equal sovereign with the states with dominion over public lands within their borders, Arizona also should have received on admission dominion over the land within its borders. A ruling by the United States Supreme Court based on the equal footing doctrine argument would logically result in the transfer of public lands to the State of Arizona.

7. The compact theory posits that the Arizona enabling act was an offer, and Arizona's acceptance of that offer created a solemn compact. Implicit in that compact was the duty of the United States to timely dispose of the public lands within Arizona's borders as it had done with states admitted prior to Arizona. There is historical support for the position that the United States promised to dispose of the public lands, maintained a policy requiring disposal of public lands and acted on that policy from 1784 through the date of Arizona's admission. There is historical evidence that Arizona and the United States both expected, at the time of Arizona's admission, that the public lands would be disposed of consistent with past practice. There is also historical evidence that the intent of the property clause of the Constitution of the United States
was to dispose of public lands, not to forever retain them. Accordingly, an argument can be made that the United States undertook an obligation to dispose of the public lands within Arizona's borders.

8. Since the United States has not disposed of the public lands within Arizona, the state relies on less than sixteen percent of the land it has dominion over as tax base to generate tax revenue in order to pay for critical services. Arizona cannot continue to serve the interests of its citizens if the private property tax base is taken without careful contemplation of consequences of such transfers to a government unit, the United States, which does not pay tax, nor does it compensate for the value of the land it controls through payments in lieu of taxes.

9. Under article I, section 8, clause 17 of the Constitution of the United States, the legislature of each state has the sole authority to give its consent of all purchases of land, "To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings".

Sec. 3. Short title
This act may be cited as the "Tax Base Protection Act".