

REFERENCE TITLE: federal government; land acquisition; consent

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HB 2376

Introduced by
Representatives Diaz: Hendrix

AN ACT

AMENDING SECTION 37-620.02, ARIZONA REVISED STATUTES; AMENDING TITLE 37, CHAPTER 4, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2; RELATING TO UNITED STATES LAND ACQUISITION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 37-620.02. State consent required; acquisition of private
5 real property by the United States; joint
6 resolution; exception

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

20 B. THIS SECTION DOES NOT LIMIT THE RIGHTS OF ANY INDIAN TRIBE WITH
21 RESPECT TO THE TRIBE'S INDIAN LANDS, RESERVATIONS AND LANDS ACQUIRED AS A
22 SETTLEMENT OF A LAND CLAIM.

23 Sec. 2. Heading change

24 The chapter heading of title 37, chapter 4, Arizona Revised
25 Statutes, is changed from "ACQUISITION OF PRIVATE REAL PROPERTY BY STATE
26 OR POLITICAL SUBDIVISION" to "ACQUISITION OF PRIVATE REAL PROPERTY BY
27 GOVERNMENT ENTITIES".

28 Sec. 3. Title 37, chapter 4, Arizona Revised Statutes, is amended
29 by adding article 2, to read:

30 ARTICLE 2. ACQUISITION OF PRIVATE REAL
31 PROPERTY BY FEDERAL GOVERNMENT

32 37-821. Sale of private real property to federal government;
33 notice; joint legislative committee; civil penalty;
34 definitions

35 A. ON THE OPENING OF ESCROW FOR THE SALE OF PRIVATE REAL PROPERTY
36 TO THE FEDERAL GOVERNMENT OR A FEDERAL AGENCY, THE ESCROW AGENT SHALL DO
37 BOTH OF THE FOLLOWING:

38 1. NOTIFY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE
39 PRESIDENT OF THE SENATE THAT A CONTRACT FOR THE SALE OF PRIVATE REAL
40 PROPERTY TO THE FEDERAL GOVERNMENT OR A FEDERAL AGENCY HAS BEEN PLACED IN
41 ESCROW.

42 2. SUBMIT A REQUEST IN WRITING TO THE SPEAKER OF THE HOUSE OF
43 REPRESENTATIVES AND THE PRESIDENT OF THE SENATE FOR APPROVAL OF THE SALE
44 PURSUANT TO SECTION 37-620.02.

1 B. FOR A PRIVATE SALE OF PRIVATE REAL PROPERTY TO THE FEDERAL
2 GOVERNMENT OR A FEDERAL AGENCY THAT IS NOT PROCESSED THROUGH ESCROW, THE
3 PRIVATE REAL PROPERTY OWNER SHALL DO BOTH OF THE FOLLOWING:

4 1. NOTIFY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE
5 PRESIDENT OF THE SENATE OF THE SALE OF PRIVATE REAL PROPERTY TO THE
6 FEDERAL GOVERNMENT OR A FEDERAL AGENCY.

7 2. SUBMIT A REQUEST IN WRITING TO THE SPEAKER OF THE HOUSE OF
8 REPRESENTATIVES AND THE PRESIDENT OF THE SENATE FOR APPROVAL OF THE SALE
9 PURSUANT TO SECTION 37-620.02.

10 C. ON RECEIPT OF THE REQUEST FOR APPROVAL PURSUANT TO SUBSECTION A
11 OR B OF THIS SECTION, THE PRESIDENT OF THE SENATE AND SPEAKER OF THE HOUSE
12 OF REPRESENTATIVES SHALL APPOINT A JOINT LEGISLATIVE COMMITTEE TO CONSIDER
13 THE REQUEST FOR APPROVAL. IF THE COMMITTEE APPROVES THE REQUEST, THE
14 LEGISLATURE SHALL PREPARE A JOINT RESOLUTION FOR THE LEGISLATURE TO
15 APPROVE THE SALE PURSUANT TO SECTION 37-620.02. IF THE COMMITTEE DOES NOT
16 APPROVE THE REQUEST, THIS STATE SHALL EXERCISE THE RIGHT OF FIRST REFUSAL
17 TO PURCHASE THE PRIVATE REAL PROPERTY PURSUANT TO SECTION 37-822.

18 D. ANY STATE AGENCY OR ANY OFFICER OR EMPLOYEE OF A STATE AGENCY
19 THAT IS NOTIFIED OR LEARNS OF A NOTICE FROM THE UNITED STATES DEPARTMENT
20 OF THE INTERIOR REGARDING AN EFFORT TO PLACE PRIVATE REAL PROPERTY LOCATED
21 IN THIS STATE IN TRUST AS PART OF AN INDIAN TRIBE'S SETTLEMENT OF A LAND
22 CLAIM SHALL IMMEDIATELY NOTIFY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
23 AND THE PRESIDENT OF THE SENATE SO THAT THE LEGISLATURE MAY DO ANY OF THE
24 FOLLOWING, AS APPLICABLE:

- 25 1. PROVIDE COMMENT.
- 26 2. FILE AN ADMINISTRATIVE APPEAL.
- 27 3. FILE AN ACTION IN THE APPROPRIATE COURT.

28 E. A PERSON WHO VIOLATES SUBSECTION A OR B OF THIS SECTION IS
29 SUBJECT TO A CIVIL PENALTY OF AT LEAST \$500 BUT NOT MORE THAN \$1,000.

30 F. FOR THE PURPOSES OF THIS SECTION, "ESCROW" AND "ESCROW AGENT"
31 HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 6-801.

32 37-822. Right of first refusal

33 A. NOTWITHSTANDING ANY OTHER LAW, THIS STATE HAS THE RIGHT OF FIRST
34 REFUSAL TO PURCHASE PRIVATE REAL PROPERTY THAT THE FEDERAL GOVERNMENT IS
35 CONTRACTING TO ACQUIRE THROUGH A SALE, GIFT OR GRANT OR ANY OTHER TRANSFER
36 OF AN OWNERSHIP INTEREST.

37 B. A PURCHASE OF PRIVATE REAL PROPERTY PURSUANT TO THIS SECTION
38 SHALL OCCUR IN A TIMELY MANNER AND, IF POSSIBLE, THE PURCHASE PROCESS
39 SHALL BE CONCLUDED WITHIN THE SAME TIME PERIOD IN WHICH THE ORIGINAL
40 TRANSACTION WOULD HAVE CONCLUDED.

41 37-823. Applicability

42 THIS ARTICLE DOES NOT APPLY TO A TRUSTEE'S DEED OR MORTGAGE THAT IS
43 INSURED OR HELD BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN
44 DEVELOPMENT, THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS OR THE
45 FEDERAL HOUSING ADMINISTRATION.

1 Sec. 4. Legislative findings

2 The legislature finds that:

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

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

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

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

21 5. The equal sovereignty principle was recently highlighted by the
22 United States Supreme Court in *Shelby County, Ala. v. Holder*, 570 U.S. 529
23 (2013), which challenged the requirement of the Voting Rights Act of 1965
24 (P.L. 89-110, 79 Stat. 437) that certain states preclear their voting laws
25 with the United States Department of Justice as a violation of the
26 constitutional requirement that the states in our federal system be equal
27 in sovereignty. The Court applied a heightened level of scrutiny to the
28 preclearance requirements because they treated Alabama as unequal in
29 sovereignty and ruled that the preclearance provisions were
30 unconstitutional under the equal sovereignty principle. For the reasons
31 discussed in detail below, the Legislature finds that section 102(a)(1) of
32 the federal land policy and management act of 1976 (P.L. 94-579; 90 Stat.
33 2743), which reversed almost two hundred years of federal public lands
34 policy from one of disposal to one of near-permanent retention, treats
35 Arizona as unequal in sovereignty as compared to the states with dominion
36 over the land within their borders. This argument, if adopted by the
37 Court, would most likely result in a declaration that the United States
38 cannot forever retain the public lands within Arizona's borders, not an
39 order transferring the public lands to the State of Arizona. Therefore,
40 should the Court be persuaded by this argument, a subsequent political
41 solution negotiated by all stakeholders would most likely be required to
42 resolve the issue. A possible outcome of that political process could be
43 Arizona's ownership of those lands.

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

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

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

41 9. Under article I, section 8, clause 17, Constitution of the
42 United States, the legislature of each state has the sole authority to
43 give its consent of all purchases of land, "to exercise exclusive
44 Legislation in all Cases whatsoever, over such District (not exceeding ten
45 Miles square) as may, by Cession of particular States, and the Acceptance

1 of Congress, become the Seat of the Government of the United States, and
2 to exercise like Authority over all Places purchased by the Consent of the
3 Legislature of the State in which the Same shall be, for the Erection of
4 Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings".

5 Sec. 5. Short title

6 This act may be cited as the "Tax Base Protection Act".