State of Arizona Senate Thirty-fourth Legislature Second Regular Session 1980

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#### CHAPTER 38

#### SENATE BILL 1012

#### AN ACT

RELATING TO PUBLIC LANDS; PROVIDING FOR STATE CONTROL OF CERTAIN LANDS WITHIN STATE BOUNDARIES; PRESCRIBING DEFINITIONS; PRESCRIBING PUBLIC POLICY FOR USE OF PUBLIC LANDS; PRESCRIBING POWERS AND DUTIES OF STATE LAND DEPARTMENT AND STATE LAND COMMISSIONER; ESTABLISHING A PUBLIC LANDS BOARD OF REVIEW AND PRESCRIBING MEMBERS AND POWERS AND DUTIES; PROVIDING FOR APPEAL OF COMMISSIONER'S DECISIONS ON PUBLIC LANDS; PROVIDING FOR DISPOSAL OF PUBLIC LANDS; PROVIDING FOR TAXATION OF CERTAIN PUBLIC LANDS; PRESCRIBING POWERS AND DUTIES OF ATTORNEY GENERAL: PROVIDING FOR REIMBURSEMENT BY THIS STATE OF CERTAIN FEDERAL PAYMENTS TO COUNTIES IF STATE ACTION REDUCES THE FEDERAL EFFECTIVE PRESCRIBING PROCEDURES DATE FOR AND REIMBURSEMENT TO COUNTIES; AMENDING TITLE 37, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 5, AND MAKING AN APPROPRIATION.

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

Section 1. Legislative intent The legislature finds that:

1. On February 14, 1912, Arizona was admitted to statehood on the condition that it forever disclaim all right and title to unappropriated public land within its boundaries.

2. The State of Arizona has strong moral, historical, economic and legal claims upon the public land retained by the federal government within its borders.

3. The fact that Arizona and other states, especially western states and others admitted to statehood in recent times, were forced to renounce any claim to the unappropriated lands within their boundaries violates the "equal footing" doctrine because Arizona and the other states were denied admission to the Union on an equal footing with the original states.

4. The doctrine of admission to statehood on an equal footing with the other states is based on the very character and purpose of the Union of the states as established by the Constitution of the United States and is supported by very early case law precedent and other governmental actions.

5. The exercise by this state of control over the public lands within its boundaries would greatly benefit the public because the tax

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burden on state residents could be lessened. State administration of the public lands would result in a more coordinated and fair management of public lands. The availability of additional land is absolutely essential to accommodate the rapidly growing population of this state and would enhance the lifestyle of all state residents.

The states of this Union and their citizens are at least as wellequipped as the federal government to make the often difficult policy decisions that are necessary with respect to the appropriate uses to which the lands within the states should be put.

Sec. 2. Title 37, Arizona Revised Statutes, is amended by adding chapter 5, to read:

#### CHAPTER 5

### STATE CLAIMS TO PUBLIC LANDS ARTICLE 1. GENERAL PROVISIONS

37-901. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

"BOARD" MEANS THE PUBLIC LANDS BOARD OF REVIEW.

"PUBLIC LANDS" MEANS ALL LANDS WITHIN THE EXTERIOR BOUNDARIES OF THIS STATE EXCEPT LANDS:

(a) TO WHICH TITLE IS HELD BY ANY NATURAL PERSON, CORPORATION,

COMPANY, PARTNERSHIP, FIRM, ASSOCIATION, SOCIETY OR ANY OTHER ENTITY.

(b) WHICH ARE OWNED OR HELD IN TRUST BY THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE, INCLUDING LEASED SCHOOL OR UNIVERSITY LAND.

(c) LANDS WHICH ARE LOCATED WITHIN AND MEET THE STANDARDS AND PURPOSES OF CONGRESSIONALLY AUTHORIZED NATIONAL PARKS, MONUMENTS, NATIONAL FORESTS AND WILDLIFE REFUGES AND SUCH OTHER LANDS ACQUIRED BY PURCHASE, EXCHANGE, GIFT OR EMINENT DOMAIN CONSENTED TO BY THE LEGISLATURE.

(d) WHICH ARE CONTROLLED BY THE UNITED STATES DEPARTMENT OF DEFENSE, DEPARTMENT OF ENERGY OR BUREAU OF RECLAMATION AND WHICH WERE ACQUIRED BY CONSENT OF THE LEGISLATURE AND WHICH MEET THE STANDARDS AND PURPOSES FOR WHICH CONTROL WAS AUTHORIZED.

(e) WHICH ARE HELD IN TRUST FOR INDIAN PURPOSES OR WHICH ARE INDIAN RESERVATIONS.

- 37-902. Public lands; public policy; state land department A. THE DEPARTMENT SHALL HOLD THE PUBLIC LANDS OF THIS STATE IN TRUST FOR THE BENEFIT OF THE PEOPLE OF THIS STATE AND SHALL MANAGE THEM IN AN ORDERLY AND BENEFICIAL MANNER CONSISTENT WITH THE PUBLIC POLICY DECLARED IN SUBSECTION B.
- B. THE DEPARTMENT SHALL ADMINISTER THE PUBLIC LANDS OF THIS STATE IN SUCH A MANNER AS TO CONSERVE AND PRESERVE NATURAL RESOURCES, WILDLIFE HABITAT, WILDERNESS AREAS AND HISTORICAL SITES AND ARTIFACTS AND TO PERMIT THE DEVELOPMENT OF COMPATIBLE PUBLIC USES FOR RECREATION, AGRICULTURE, RANCHING, MINING AND TIMBER PRODUCTION AND THE DEVELOPMENT, PRODUCTION AND TRANSMISSION OF ENERGY AND OTHER PUBLIC UTILITY SERVICES UNDER PRINCIPLES OF MULTIPLE USE WHICH PROVIDE THE GREATEST BENEFIT TO THE PEOPLE OF THIS STATE.
- SUBJECT TO EXISTING RIGHTS, ALL PUBLIC LAND IN THIS STATE AND ALL MINERALS NOT PREVIOUSLY APPROPRIATED TO PRIVATE OWNERSHIP ARE THE PROPERTY OF THIS STATE AND SUBJECT TO ITS JURISDICTION AND CONTROL.

E. UNTIL EQUIVALENT MEASURES ARE ENACTED BY THIS STATE, THE RIGHTS AND PRIVILEGES OF THE PEOPLE OF THIS STATE UNDER THE NATIONAL FOREST RESERVE TRANSFER ACT, 16 U.S.C. SEC. 471 ET SEQ., THE GENERAL MINING LAWS, 30 U.S.C. SEC. 21 ET SEQ., THE TAYLOR GRAZING ACT, 43 U.S.C. SEC. 315 ET SEQ., THE DESERT LAND ACT, 43 U.S.C. SEC. 321 ET SEQ., THE CAREY ACT, 43 U.S.C. SEC. 641 ET SEQ., THE PUBLIC RANGELANDS IMPROVEMENT ACT, 43 U.S.C. SEC. 1901 ET SEQ. AND ALL RIGHTS-OF-WAY AND EASEMENTS FOR PUBLIC UTILITIES ARE PRESERVED UNDER THE ADMINISTRATION OF THIS STATE.

37-903. State land commissioner; powers; duties

A. THE COMMISSIONER MAY:

- 1. WITH THE APPROVAL OF THE BOARD, PROMULGATE RULES AND REGULATIONS DEEMED NECESSARY TO MANAGE THE PUBLIC LANDS IN AN ORDERLY AND BENEFICIAL MANNER ACCORDING TO THIS CHAPTER.
- 2. CONTRACT FOR OR EMPLOY PROFESSIONAL AND CLERICAL PERSONNEL DEEMED NECESSARY TO CARRY OUT HIS FUNCTIONS UNDER THIS CHAPTER. ANY CONTRACT FOR PROFESSIONAL SERVICES MUST BE APPROVED AND ANY MONEY NECESSARY TO COMPENSATE THOSE PERSONS MUST BE APPROVED FOR EXPENDITURE BY THE JOINT LEGISLATIVE BUDGET COMMITTEE.
- 3. CONVEY, LEASE OR PERMIT THE USE OF PUBLIC LANDS TO THE SAME EXTENT OR IN THE SAME MANNER AS THE PUBLIC LANDS ARE CONVEYED, LEASED, LICENSED OR PERMITTED TO BE USED BY THE FEDERAL GOVERNMENT OR ANY OF ITS AGENCIES.
- B. THE COMMISSIONER SHALL DEPOSIT ALL FEES, RENTS, ROYALTIES OR OTHER MONIES PAID TO THIS STATE FOR PURPOSES OF PUBLIC LANDS, EXCEPT FOR STATE TRUST LANDS, WITH THE STATE TREASURER FOR CREDIT TO THE GENERAL FUND.

# 37-904. Public lands board of review; members; powers and duties; administrative staff and offices; service of process

- A. THERE IS ESTABLISHED A PUBLIC LANDS BOARD OF REVIEW CONSISTING OF THE FOLLOWING MEMBERS:
  - 1. STATE LAND COMMISSIONER.
- 2. DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES DIVISION OF AIR AND WATER QUALITY.
  - 3. DIRECTOR OF THE DEPARTMENT OF MINERAL RESOURCES.
  - 4. DIRECTOR OF THE ARIZONA STATE PARKS BOARD.
  - 5. DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION.
  - 6. DEPUTY STATE FORESTER.
  - 7. CHAIRMAN OF THE ARIZONA WATER COMMISSION.
  - DIRECTOR OF THE ARIZONA GAME AND FISH DEPARTMENT.
- 9. AS PROVIDED IN SUBSECTION F, THE CHAIRMAN OF THE BOARD OF SUPERVISORS OF A COUNTY IN WHICH PUBLIC LANDS ARE LOCATED.
- 10. ONE COUNTY SUPERVISOR, APPOINTED BY THE GOVERNOR TO SERVE AT THE PLEASURE OF THE GOVERNOR.

- B. THE BOARD SHALL ELECT ONE OF ITS MEMBERS TO SERVE AS CHAIRMAN. THE CHAIRMAN SHALL CALL MEETINGS OF THE BOARD AND PRESCRIBE THE TIME AND PLACE OF EACH MEETING.
- C. MEMBERS OF THE BOARD ARE NOT ELIGIBLE TO RECEIVE COMPENSATION BUT ARE ELIGIBLE FOR REIMBURSEMENT OF EXPENSES PURSUANT TO TITLE 38, CHAPTER 4, ARTICLE 2.
  - D. THE BOARD:
- 1. SHALL REVIEW AND APPROVE OR DISAPPROVE ALL RULES AND REGULATIONS PROPOSED BY THE COMMISSIONER UNDER THIS CHAPTER.
- 2. MAY REVIEW ANY DECISION OF THE COMMISSIONER RELATING TO PUBLIC LANDS UNDER THIS CHAPTER AND AFFIRM, MODIFY OR REVERSE THE DECISION.
- E. THE STATE LAND DEPARTMENT SHALL PROVIDE THE ADMINISTRATIVE STAFF AND OFFICES NEEDED BY THE BOARD, AND THE STATE LAND COMMISSIONER SHALL BE DEEMED THE CLERK OF THE BOARD UPON WHICH NOTICES OF APPEAL AND OTHER PROCESS SHALL BE SERVED.
- F. THE CHAIRMAN OF THE COUNTY BOARD OF SUPERVISORS OF A COUNTY IN WHICH PUBLIC LANDS ARE LOCATED AND WHICH ARE THE SUBJECT OF BOARD ACTION SHALL SERVE AS A MEMBER OF THE BOARD FOR THE PURPOSES OF THE ACTION.
  - 37-905. Appeal of commissioner's decision; board of review; procedures; decision; further appeal
- A. ANY PERSON WHO IS AGGRIEVED BY A DECISION OF THE COMMISSIONER MADE PURSUANT TO THIS CHAPTER MAY APPEAL TO THE BOARD BY LETTER WITHIN THIRTY DAYS AFTER THE DATE OF THE DECISION FROM WHICH THE APPEAL IS TAKEN.
- B. TO HAVE THE EFFECT OF COMMENCING AN APPEAL AS PROVIDED FOR IN SUBSECTION A, A LETTER IS REQUIRED TO:
  - IDENTIFY THE DECISION FROM WHICH THE APPEAL IS TAKEN.
  - 2. STATE LEGAL GROUNDS FOR THE APPEAL.
  - LIST FACTS TO SUPPORT THE GROUNDS FOR THE APPEAL.
  - 4. PROVIDE ANY OTHER INFORMATION SPECIFIED BY THE BOARD.
  - C. UPON RECEIPT OF THE LETTER OF APPEAL, THE BOARD MAY:
  - 1. ORDER THE APPEAL DISMISSED IF IT APPEARS TO LACK MERIT.
- 2. SET A DATE FOR A HEARING ON THE APPEAL NOT MORE THAN FORTY-FIVE DAYS NOR LESS THAN FIFTEEN DAYS AFTER RECEIPT OF THE LETTER OF APPEAL. THE BOARD SHALL NOTIFY THE COMMISSIONER AND THE PERSON APPEALING OF THE DATE, TIME AND PLACE OF HEARING. THE BOARD SHALL CONDUCT THE HEARING IN AN INFORMAL MANNER.
- D. AT THE HEARING THE COMMISSIONER OR HIS REPRESENTATIVE SHALL PRESENT THE FACTS AND REASONS FOR REACHING THE DECISION BEING APPEALED. THE PERSON APPEALING OR HIS REPRESENTATIVE MAY PRESENT FACTS AND REASONS SUPPORTING THE APPEAL. IF THE PERSON APPEALING OR HIS REPRESENTATIVE IS NOT PRESENT, THE BOARD MAY CONSIDER THE INFORMATION SET FORTH IN THE LETTER OF APPEAL.
- E. AFTER THE HEARING, IF HELD, THE BOARD MAY DISMISS THE APPEAL OR TAKE ANY OTHER ACTION WHICH THE BOARD FINDS TO BE REASONABLE AND PROPER. THE BOARD SHALL ISSUE ITS ORDER AS SOON AS PRACTICABLE AFTER CONDUCTING THE HEARING.
- F. THE ORDER OF THE BOARD UNDER THIS SECTION IS A FINAL DECISION IN A CONTESTED CASE AND IS REVIEWABLE UNDER TITLE 12, CHAPTER 7, ARTICLE 6.
  - 37-906. Public lands; disposal; use; written authorization

- A. AFTER JANUARY 1, 1980 NO SALE, CONVEYANCE OR OTHER DISPOSAL OF PUBLIC LANDS MAY BE AUTHORIZED BY THE COMMISSIONER UNLESS SPECIFICALLY AUTHORIZED BY LAW BY THE LEGISLATURE.
- B. EXCEPT AS AUTHORIZED BY THIS CHAPTER OR BY THE COMMISSIONER PURSUANT TO LAW, ANY SALE, LEASE, EXCHANGE, ENCUMBRANCE OR OTHER DISPOSAL OF ANY PARCEL OF OR INTEREST IN THE PUBLIC LANDS IS VOID.
- C. ANY PERSON WHO INTENDS TO PERFORM OR CARRY OUT ANY ACT WITH RESPECT TO THE USE, MANAGEMENT OR DISPOSAL OF ANY PUBLIC LANDS UNDER ANY STATUTE, ORDINANCE, REGULATION, CUSTOM OR USAGE OF THE UNITED STATES OR OTHERWISE SHALL OBTAIN WRITTEN AUTHORIZATION FROM THE COMMISSIONER CONFIRMING OR APPROVING THE ACT. THE COMMISSIONER SHALL GIVE THE WRITTEN AUTHORIZATION ONLY AS PERMITTED UNDER THIS CHAPTER.
- D. ANY PERSON WHO DOES NOT OBTAIN WRITTEN AUTHORIZATION AS REQUIRED UNDER SUBSECTION C MAY BE ENJOINED IN AN ACTION BROUGHT BY THE ATTORNEY GENERAL FROM PERFORMING OR CONTINUING TO CARRY OUT ANY ACT RESPECTING THE USE, MANAGEMENT OR DISPOSAL OF ANY PUBLIC LANDS.
- E. ANY PERSON WHO RECEIVES ANY MONEY OR OTHER CONSIDERATION FOR ANY PURPORTED SALE OR OTHER DISPOSITION OF ANY PUBLIC LANDS WHICH WAS MADE IN VIOLATION OF THIS CHAPTER IS LIABLE TO THIS STATE FOR THAT MONEY OR THE VALUE OF ANY OTHER CONSIDERATION. THE MONEY OR VALUE OF ANY OTHER CONSIDERATION MAY BE RECOVERED FOR THIS STATE IN AN ACTION BROUGHT BY THE ATTORNEY GENERAL.

## 37-907. Federal lands acquired without legislative consent; placement on tax rolls

ALL FEDERAL LANDS ACQUIRED BEFORE THE EFFECTIVE DATE OF THIS SECTION WITHOUT CONSENT OF THE LEGISLATURE THROUGH GIFT, PURCHASE, EXCHANGE OR EMINENT DOMAIN SHALL BE PLACED ON THE GENERAL TAX ROLLS OF THE COUNTIES OF THIS STATE IN THE NAME OF THE GRANTOR OF THE RESPECTIVE TRANSACTIONS. SUCH PROPERTY IS SUBJECT TO TAXATION IN THE SAME MANNER AS LIKE PROPERTY FROM AND AFTER JANUARY 1, 1981 UNLESS PRIOR TO JANUARY 1, 1981 THE LEGISLATURE SPECIFICALLY APPROVES AND CONSENTS TO FEDERAL OWNERSHIP OF THE LANDS.

37-908. Powers and duties of attorney general

THE ATTORNEY GENERAL MAY INITIATE OR DEFEND AN ACTION COMMENCED IN ANY COURT TO CARRY OUT OR ENFORCE THIS CHAPTER OR SEEK ANY APPROPRIATE JUDICIAL RELIEF TO PROTECT THE INTERESTS OF THIS STATE. ENFORCEMENT OF THIS CHAPTER RESTS EXCLUSIVELY WITH THE ATTORNEY GENERAL.

37-909. State payments to counties

- A. A COUNTY RECEIVING PAYMENTS FROM THE FEDERAL GOVERNMENT OR ANY FEDERAL AGENCY UNDER 31 UNITED STATES CODE SECTION 1601 ET SEQ., WHOSE PAYMENTS ARE REDUCED DUE TO ACTION TAKEN BY THIS STATE UNDER THIS ARTICLE SHALL BE REIMBURSED BY THE STATE TREASURER FROM THE STATE GENERAL FUND IN THE TOTAL AMOUNT OF THE REDUCED REVENUES.
- B. PRIOR TO RECEIVING ANY AMOUNT FROM THE STATE TREASURER, THE BOARD OF SUPERVISORS OF AN AFFECTED COUNTY SHALL SUBMIT TO THE STATE TREASURER, ON A FORM PROVIDED BY THE STATE TREASURER, THE FOLLOWING INFORMATION:
  - THE ACREAGE AND LOCATION OF THE LAND INVOLVED.
- 2. THE TOTAL AMOUNT OF REVENUE RECEIVED FROM THE FEDERAL GOVERNMENT UNDER 31 UNITED STATES CODE SECTION 1601 ET SEQ., FOR THE PRIOR FISCAL YEAR.

- 3. THE TOTAL AMOUNT OF REVENUE RECEIVED FROM THE FEDERAL GOVERNMENT UNDER 31 UNITED STATES CODE SECTION 1601 ET SEQ., FOR THE CURRENT FISCAL YEAR.
- 4. THE TOTAL AMOUNT OF REVENUE LOST BY THE COUNTY DURING THE CURRENT FISCAL YEAR DUE TO ACTION TAKEN UNDER THIS ARTICLE.
- C. THE STATE TREASURER, AFTER VERIFYING THE INFORMATION SUBMITTED, SHALL DRAW A WARRANT ON THE STATE GENERAL FUND AND SEND THE WARRANT TO THE COUNTY WHICH SUBMITTED THE INFORMATION UNDER SUBSECTION B.
- D. A COUNTY SHALL NOT RECEIVE AN AMOUNT FROM THE STATE TREASURER THAT, WHEN COMBINED WITH THE AMOUNT RECEIVED FROM THE FEDERAL GOVERNMENT, EXCEEDS THE TOTAL AMOUNT THE COUNTY WOULD HAVE BEEN ELIGIBLE FOR UNDER 31 UNITED STATES CODE SECTION 1601 ET SEQ., DURING THE SAME PERIOD OF TIME.

Sec. 3. Appropriation; lapsing

- A. There is appropriated to the department of law from the general fund the sum of sixty thousand dollars for purposes of implementing sections 37-908 and 37-906, subsection D, Arizona Revised Statutes, as added by this act.
- B. The appropriation made in this section is exempt from section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

Sec. 4. Intent regarding termination

Notwithstanding the provisions of this act, the legislature intends that if the provisions of title 41, chapter 20, Arizona Revised Statutes, operate to terminate an agency, any provisions regarding powers, duties, functions or personnel added or amended by this act terminate on the date of termination of the particular agency.

Sec. 5. Conditional enactment

Arizona Revised Statutes section 37-909, as added by section 2 of this act becomes effective only after a final judicial adjudication determines that this act is constitutional.

Vetoed by the Governor - April 12, 1980

Passed the House and Senate overriding the Governor's veto by the following vote:

Passed the Senate - April 14, 1980: 21 Ayes, 8 Nays, 1 Not Voting

Passed the House - April 15, 1980: 46 Ayes, 8 Nays, 6 Not Voting

Passed the Senate March 31, 1980	Passed the House (fp. 1), 1980
by the following vote: 20 Ayes,	by the following vote: $47$ Ayes,
O Nays, O Not Voting.	Nays,Not Voting.
President of the Senate	Frank Kollegene House
Secretary of the Senate	L. Jane Dichards. Chief Clerk of the House
EXECUTIVE DEPARTMENT OFFICE OF THE GOV	
This Bill was received by the Governor this 2rd day of Quaril, 1980 at 11:50 c'clock A.M.	APPROVED THIS 8 DAY OF DAY OF at 12 o'clock PM.
Secretary to the Governor	Bu Sulland Governor of Arizona
EXECUTIVE DEPARTMENT OFFICE OF SECRETARY	
This Bill was received by t	the Secretary of
State this day	of,
19, at o'clock _	M
Secr	retary of State

Passed the Senate Opril 14, 1980	Passed the House Opril 15, 1980
OVERRIDING THE GOVERNOR'S VETO	OVERRIDING THE GOVERNOR'S VETO
by the following vote: 21 Ayes,	by the following vote: Ayes,
Not Voting.	8 Nays, 6 Not Voting
President of the Senate	Frank Kelley Speaker/of the House
Shirley L. Wheaton	L. Jane Richards
Secretary of the Senate	Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of

State this 15th day of april,

19 80, at 4,00 o'clock T. M.