

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 495

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO STATE ENDOWMENT LANDS; AMENDING CHAPTER 1, TITLE 58, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 58-104, IDAHO CODE, TO PROVIDE LEGISLATIVE FINDINGS; AMENDING SECTION 58-104, IDAHO CODE, TO REDESIGNATE THE SECTION, TO REVISE THE PROCEDURES BY WHICH THE STATE BOARD OF LAND COMMISSIONERS EXERCISES CERTAIN POWERS AND DUTIES BY PROVIDING THAT, EXCEPT WHERE STATE ENDOWMENT LAND IS USED BY A PUBLIC ENTITY FOR A PUBLIC PURPOSE, ALL NONAGRICULTURAL IMPROVEMENTS SHALL BE LEASED OR SOLD TO PRIVATE PERSONS, NATURAL OR ARTIFICIAL, AND ALL NONAGRICULTURAL BUSINESS OPERATIONS SHALL BE SOLD TO PRIVATE PERSONS, NATURAL OR ARTIFICIAL; AMENDING SECTION 58-104A, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION 58-133, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE ACQUISITION OF LAND AND TO REVISE PROVISIONS RELATING TO AUTHORIZATION FOR THE STATE BOARD OF LAND COMMISSIONERS TO HOLD PROCEEDS FROM THE SALE OF LAND FOR A SPECIFIED TIME; AND AMENDING SECTION 5-246, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 1, Title 58, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 58-104, Idaho Code, and to read as follows:

58-104. LEGISLATIVE FINDINGS. (1) The Idaho Admission Bill, 26 Stat. L. 215, as amended by Public Law 105-296 (1998), and the Idaho Constitution, as amended, together authorize the Idaho state board of land commissioners to acquire, hold, sell, lease and exchange state endowment lands of the state of Idaho, and to receive proceeds from the sale of said state endowment lands, in trust for the sole benefit of public schools and other designated institutions. Said institutions are herein referred to as the "beneficiaries," and said state endowment lands and the proceeds of their sale are herein referred to as "trust assets";

(2) The Idaho Admission Bill and the Idaho Constitution together require that the state board of land commissioners exercise its authority over trust assets in such manner as will secure the maximum long term financial return for the beneficiaries and as may be prescribed by law;

(3) The Idaho legislature is constitutionally authorized to exercise its power to regulate the procedure of the Idaho state board of land commissioners in its dealing with trust assets, and to prescribe the manner and method in which the Idaho state board of land commissioners shall acquire, hold, sell, lease or exchange trust assets for the use and benefit of the beneficiaries of said trust assets;

(4) The trust assets are for the benefit of present and future generations, constitute a "trust of the most sacred and highest order" (Moon v.

1 State Board of Examiners, 104 Idaho 640, 642(1983)), and "shall forever re-
2 main inviolate and intact" (U.S. v. Fenton, 27 F. Supp. 816 (1939));

3 (5) It is hereby found, therefore, that trust assets must be managed to
4 foster and promote their long term stability and permanency, and that the use
5 of trust assets in the acquisition, holding, owning or operation of a poten-
6 tially unlimited spectrum of business enterprises by the Idaho state board
7 of land commissioners, except as provided herein, will expose trust assets
8 to undue risk of loss and will not provide the appropriate standard of sta-
9 bility and permanency required for their "long term" management;

10 (6) The protection of trust assets will be further fostered and pro-
11 moted by requiring that proceeds from the sale of state endowment lands de-
12 posited into the land bank fund pursuant to section 58-133(2), Idaho Code,
13 be immediately transferred to the permanent endowment fund for the benefit
14 of the respective endowment beneficiaries if not used to acquire other land
15 within six (6) months;

16 (7) In accordance with the preceding findings, the legislature of the
17 state of Idaho hereby enacts this act for the sole purpose of protecting and
18 benefiting the beneficiaries of the trust assets.

19 SECTION 2. That Section 58-104, Idaho Code, be, and the same is hereby
20 amended to read as follows:

21 58-104A. STATE LAND BOARD -- POWERS AND DUTIES. The state board of land
22 commissioners shall have power:

23 1. To exercise the general direction, control and disposition of the
24 public lands of the state; provided however, that except where the state en-
25 dowment land is used by a public entity for a public purpose, all nonagricul-
26 tural improvements on said land shall be leased or sold to private persons,
27 natural or artificial, and all nonagricultural business operations located
28 on or using said state endowment land shall be sold to private persons, natu-
29 ral or artificial.

30 2. To appoint its executive officer, the director of the department of
31 lands.

32 3. To perform legislative functions not inconsistent with law and to
33 delegate to its executive officer and his assistants the execution of all
34 policies adopted by it.

35 4. To review upon appeal all decisions of the director of the department
36 of lands in contested matters.

37 5. To determine the policy, direct the work to be undertaken, solicit
38 bids, contract for work to be performed, and appropriate from its funds the
39 money necessary to carry out such work.

40 6. To prescribe rules, not inconsistent with law, for the government
41 of the department, the conduct of its employees and clerks, the distribution
42 and performance of its business and the custody, use and preservation of the
43 records, papers, books, documents, and property pertaining thereto.

44 7. To engage in reseeding and reforestation programs on the public
45 lands of the state.

46 8. To exchange any public lands of the state, over which the board
47 has power of disposition and control for lands of equal value, the title to
48 which, or power of disposition, belongs or is vested in the governing body or
49 board of trustees of any state governmental unit, agency or institution.

1 9. To regulate and control the use or disposition of lands in the beds
 2 of navigable lakes, rivers and streams, to the natural or ordinary high water
 3 mark thereof, so as to provide for their commercial, navigational, recre-
 4 ational or other public use; provided, that the board shall take no action in
 5 derogation of or seeking to interfere with the riparian or littoral rights
 6 of the owners of upland property abutting or adjoining such lands; except
 7 that when necessary to provide for the highest and best use of such lands for
 8 commercial, navigational, recreational or other public purposes, the board
 9 may acquire the riparian or littoral rights of upland owners by purchase or
 10 gift. The term "natural or ordinary high water mark" as herein used shall be
 11 defined to be the line which the water impresses on the soil by covering it
 12 for sufficient periods to deprive the soil of its vegetation and destroy its
 13 value for agricultural purposes. Provided that this definition shall not be
 14 construed so as to affect or change the vested property rights of either the
 15 state of Idaho or of riparian or littoral property owners. Lands lying be-
 16 low the meander line of a lake bed encompassing a national wildlife refuge
 17 as established under the authority of the Migratory Bird Conservation Act of
 18 February 18, 1929 (45 Stat. 1222), as amended, or the Fish and Wildlife Coordi-
 19 nation Act (48 Stat. 401), as amended, or the Fish and Wildlife Act of 1956
 20 (70 Stat. 1119), as amended (16 USC 742a through 742i), are not subject to
 21 the application of this act.

22 10. To enter into a joint exercise of powers agreement with the United
 23 States forest service in the department of agriculture, pursuant to section
 24 67-2328, Idaho Code.

25 11. To direct and oversee the conduct and operations of the endowment
 26 fund investment board and the Idaho department of lands.

27 12. To appoint and consult with expert advisors for each critical func-
 28 tion for which the state board of land commissioners has responsibility. In
 29 this context, the term "expert advisor" shall mean a person engaged in the
 30 business for which he holds himself out to be an expert and who is experienced
 31 in that field.

32 13. Strategically plan and establish policies to coordinate the man-
 33 agement of state lands with the investment goals of the permanent endowment
 34 funds and earnings reserve funds.

35 14. To provide reports of the status and performance of state endowment
 36 lands and the respective endowment funds to the state affairs committees of
 37 the senate and the house of representatives within fourteen (14) days after a
 38 regular session of the legislature convenes.

39 15. To make distributions to endowment income funds as provided in sec-
 40 tion 57-723A, Idaho Code.

41 SECTION 3. That Section 58-104A, Idaho Code, be, and the same is hereby
 42 amended to read as follows:

43 58-104AB. TWO DIVISION HEADS -- DIRECTION AND CONTROL -- AREAS OF
 44 OPERATION -- QUALIFICATIONS -- APPLICATIONS. The director shall have power
 45 to appoint two (2) division heads who shall be known as administrators,
 46 one (1) to handle matters concerning lands, minerals and grazing, and the
 47 other to handle matters concerning forestry and fire. The qualifications
 48 of the division administrator for forestry and fire shall be graduation
 49 from a full four (4) year college course with a bachelor's degree, with a

major in forestry including five (5) years of technical experience in the forestry-land management field; or, ten (10) years of successful and progressive technical experience of forestry and land management activities of such a nature as to enable the applicant to perform his duties successfully at the professional level.

SECTION 4. That Section 58-133, Idaho Code, be, and the same is hereby amended to read as follows:

58-133. ACQUISITION, SALE, LEASE, EXCHANGE OR DONATION OF PUBLIC LANDS -- CREATION AND OPERATION OF LAND BANK FUND. (1) The state board of land commissioners may select and purchase, lease, receive by donation, hold in trust, or ~~in any manner~~ acquire for and in the name of the state of Idaho such tracts or leaseholds of land as it shall deem proper, and after inventory and classification as provided herein, shall determine the best use or uses of said lands: provided, however, that all state-owned lands classified as chiefly valuable for forestry, reforestation, recreation and watershed protection are hereby reserved from sale and set aside as state forests.

(2) The proceeds from the sale of state endowment land may be deposited into a fund which shall be known as the "land bank fund," which is hereby created in the state treasury for the purpose of temporarily holding proceeds from land sales pending the purchase of other land for the benefit of the beneficiaries of the endowment. A record shall be maintained showing separately from each of the respective endowments the moneys received from the sale of endowment lands. Moneys from the sale of lands which are a part of an endowment land grant shall be used only to purchase land for the same endowment.

(3) All moneys deposited in the land bank fund, including earnings on those moneys, are hereby continually appropriated to the state board of land commissioners for the purposes enumerated in this section. The state board of land commissioners may hold proceeds from the sale of land in the land bank fund for a period not to exceed ~~five (5) years~~ six (6) months from the effective date of sale. If, by the end of ~~the fifth year~~ said six (6) months, the proceeds from the land sale have not been encumbered to purchase other land within the state, the proceeds shall be deposited in the permanent endowment fund of the respective endowment along with any earnings on the proceeds from the land sale, unless the period is extended by the legislature.

SECTION 5. That Section 5-246, Idaho Code, be, and the same is hereby amended to read as follows:

5-246. PRESCRIPTIVE OVERFLOW EASEMENTS. In conformity with the limitations of actions time period set forth in sections 5-203 through 5-206, Idaho Code, the owner of a dam shall be deemed to have obtained a nonexclusive prescriptive overflow easement over real property which has been inundated or overflowed by the operations of the dam for at least a part of a year for any consecutive five (5) year period prior to commencement of an action by the property owner seeking relief inconsistent with such nonexclusive prescriptive overflow easement. Said dam owner shall be deemed to have not forfeited said nonexclusive prescriptive overflow easement if the reason for

1 the failure to exercise the easement is a lack of water caused by drought or
2 acts of God.

3 It is further provided that if a dam has inundated or overflowed real
4 property for at least a part of a year for the five (5) consecutive years
5 prior to the enactment of this section, then the owner of the dam shall be
6 deemed to have obtained a nonexclusive prescriptive overflow easement here-
7 under over said real property one (1) year after the enactment of this sec-
8 tion, provided, no action seeking relief inconsistent with such nonexclu-
9 sive prescriptive overflow easement has been commenced by the property owner
10 within one (1) year of the enactment of this section. The provisions of this
11 section shall not be construed to affect the riparian and littoral rights of
12 property owners to have access to and use of waters in this state, or to re-
13 strict any use of the underlying property for any purpose otherwise consis-
14 tent with ownership thereof, even if said use reasonably interferes with the
15 storage of water on the property, but said use shall not unreasonably in-
16 terfere with the storage of water on the property. Nothing herein shall be
17 deemed to affect any prescriptive overflow easement that any dam owner may
18 have previously acquired under common law. The provisions of this section
19 shall not be construed to apply to the beds of navigable waters lying below
20 the natural or ordinary high ~~watermark~~ water mark as defined in subsection
21 (c) of section 58-1302, Idaho Code, and subsection (9) of section 58-104A,
22 Idaho Code, or any other lands owned by the state of Idaho.