

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 612

BY WAYS AND MEANS COMMITTEE

AN ACT

RELATING TO ENDOWMENT LANDS; AMENDING SECTION 58-104, IDAHO CODE, TO REVISE THE POWERS AND DUTIES OF THE STATE LAND BOARD TO PROVIDE REQUIREMENTS ASSOCIATED WITH THE EXCHANGE OF ENDOWMENT LANDS OR THE USE OF PROCEEDS FROM THE SALE AT PUBLIC AUCTION OF ENDOWMENT LANDS, TO DEFINE A TERM, TO PROVIDE RESTRICTIONS RELATING TO SPECIFIED TYPES OF LANDS AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 58-104, Idaho Code, be, and the same is hereby amended to read as follows:

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

1. To exercise the general direction, control and disposition of the public lands of the state.

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

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

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

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

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

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

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

9. Notwithstanding any other provisions of titles 55 and 58, Idaho Code, to exchange any endowment lands of the state for lands of equal value or, in the event proceeds generated from the sale at public auction of endowment lands are not deposited into the land bank fund or the permanent endowment fund of the respective endowment, to purchase lands with such proceeds. The provisions of this subsection are prescribed by virtue of the authority granted to the legislature in section 7, article IX, of the constitution of the state of Idaho. For purposes of the provisions of this

subsection, the term "lands" is defined as described in land law 9 (Peter Butt, 2nd ed. 1988), as reprinted in Black's law dictionary, seventh edition: "... 'Land' is not restricted to the earth's surface, but extends below and above the surface. Nor is it confined to solids, but may encompass within its bounds such things as gases and liquids. A definition of 'land' along the lines of 'a mass of physical matter occupying space' also is not sufficient, for an owner of land may remove part or all of that physical matter, as by digging up and carrying away the soil, but would nevertheless retain as part of his 'land' the space that remains. Ultimately, as a juristic concept, 'land' is simply an area of three-dimensional space, its position being identified by natural or imaginary points located by reference to the earth's surface. 'Land' is not the fixed contents of that space, although, ... the owner of that space may well own those fixed contents. Land is immoveable, as distinct from chattels, which are moveable; it is also, in its legal significance, indestructible. The contents of the space may be physically severed, destroyed or consumed, but the space itself, and so the 'land', remains immutable."

For purposes of the power and duty as provided in this subsection, lands shall be restricted to the following:

- (a) Forestland, which means lands capable of regenerating and growing successive crops of commercial forest products on a sustainable basis;
- (b) Agricultural lands which means lands used for growing cultivated plants or agricultural produce;
- (c) Rangeland, which means lands supporting natural vegetation, generally grasses, forbs and small brush suitable for grazing by domestic livestock and wildlife;
- (d) Minerals, which means lands managed for the production and sale of sand and gravel, oil and gas, coal and other minerals including precious metals, decorative rock, phosphates, etc.;
- (e) Conservation, which means lands for which certain property rights have been removed or otherwise restricted temporarily or permanently to maintain temporary or permanent rights for open space, preservation of habitat, natural areas, parks or other such purposes.

10. To regulate and control the use or disposition of lands in the beds of navigable lakes, rivers and streams, to the natural or ordinary high water mark thereof, so as to provide for their commercial, navigational, recreational or other public use; provided, that the board shall take no action in derogation of or seeking to interfere with the riparian or littoral rights of the owners of upland property abutting or adjoining such lands; except that when necessary to provide for the highest and best use of such lands for commercial, navigational, recreational or other public purposes, the board may acquire the riparian or littoral rights of upland owners by purchase or gift. The term "natural or ordinary high water mark" as herein used shall be defined to be the line which the water impresses on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. Provided that this definition shall not be construed so as to affect or change the vested property rights of either the state of Idaho or of riparian or littoral property owners. Lands lying below the meander line of a lake bed encompassing a national wildlife refuge as established under the authority of the Migratory Bird Conservation Act of

1 February 18, 1929 (45 Stat. 1222), as amended, or the Fish and Wildlife Coordination Act (48 Stat. 401), as amended, or the Fish and Wildlife Act of 1956  
2 (70 Stat. 1119), as amended (16 U.S.C. 742a through 742i), are not subject to  
3 the application of this act.  
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5 141. To enter into a joint exercise of powers agreement with the United  
6 States forest service in the department of agriculture, pursuant to section  
7 67-2328, Idaho Code.

8 142. To direct and oversee the conduct and operations of the endowment  
9 fund investment board and the Idaho department of lands.

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

15 144. Strategically plan and establish policies to coordinate the man-  
16 agement of state lands with the investment goals of the permanent endowment  
17 funds and earnings reserve funds.

18 145. To provide reports of the status and performance of state endowment  
19 lands and the respective endowment funds to the state affairs committees of  
20 the senate and the house of representatives within fourteen (14) days after a  
21 regular session of the legislature convenes.

22 156. To make distributions to endowment income funds as provided in sec-  
23 tion 57-723A, Idaho Code.