

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 612

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO ENDOWMENT LANDS; AMENDING SECTION 58-104, IDAHO CODE, TO REVISE
2 THE POWERS AND DUTIES OF THE STATE LAND BOARD TO PROVIDE REQUIREMENTS
3 ASSOCIATED WITH THE EXCHANGE OF ENDOWMENT LANDS OR THE USE OF PROCEEDS
4 FROM THE SALE AT PUBLIC AUCTION OF ENDOWMENT LANDS, TO DEFINE A TERM, TO
5 PROVIDE RESTRICTIONS RELATING TO SPECIFIED TYPES OF LANDS AND TO MAKE A
6 TECHNICAL CORRECTION.
7

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

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

11 58-104. STATE LAND BOARD -- POWERS AND DUTIES. The state board of land
12 commissioners shall have power and duties:

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

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

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

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

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

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

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

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

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

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

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

20 (a) Forestland, which means lands capable of regenerating and growing
 21 successive crops of commercial forest products on a sustainable basis;

22 (b) Agricultural lands which means lands used for growing cultivated
 23 plants or agricultural produce;

24 (c) Rangeland, which means lands supporting natural vegetation, gen-
 25 erally grasses, forbs and small brush suitable for grazing by domestic
 26 livestock and wildlife;

27 (d) Minerals, which means lands managed for the production and sale of
 28 sand and gravel, oil and gas, coal and other minerals including precious
 29 metals, decorative rock, phosphates, etc.;

30 (e) Conservation, which means lands for which certain property rights
 31 have been removed or otherwise restricted temporarily or permanently to
 32 maintain temporary or permanent rights for open space, preservation of
 33 habitat, natural areas, parks or other such purposes.

34 10. To regulate and control the use or disposition of lands in the beds
 35 of navigable lakes, rivers and streams, to the natural or ordinary high water
 36 mark thereof, so as to provide for their commercial, navigational, recre-
 37 ational or other public use; provided, that the board shall take no action in
 38 derogation of or seeking to interfere with the riparian or littoral rights
 39 of the owners of upland property abutting or adjoining such lands; except
 40 that when necessary to provide for the highest and best use of such lands for
 41 commercial, navigational, recreational or other public purposes, the board
 42 may acquire the riparian or littoral rights of upland owners by purchase or
 43 gift. The term "natural or ordinary high water mark" as herein used shall be
 44 defined to be the line which the water impresses on the soil by covering it
 45 for sufficient periods to deprive the soil of its vegetation and destroy its
 46 value for agricultural purposes. Provided that this definition shall not be
 47 construed so as to affect or change the vested property rights of either the
 48 state of Idaho or of riparian or littoral property owners. Lands lying be-
 49 low the meander line of a lake bed encompassing a national wildlife refuge
 50 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.
4

5 101. 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.

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

10 123. 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.

15 134. 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.