

## STATEMENT OF PURPOSE

### RS19770

This joint resolution proposes to amend Article IX, Section 8 of the Idaho Constitution to allow for the disposition of state endowment lands by the Board of Land Commissioners in "a commercially reasonable manner consistent with the duties of care entrusted to the trustees and State law." *Endowment Land Transaction Advisory Committee Report and Recommendation for the State Board of Land Commissioners* at 12 (July 7, 2009) (Advisory Committee Report). In addition, Article IX, Section 8 would be amended to remove the limitation on the sale of more than three-hundred and twenty acres to any one individual, company or corporation. These amendments will allow the Board to establish procedures for disposition of state endowment lands consistent with contemporary real estate transaction practices.

The Idaho Constitution provides that the State Board of land Commissioners (Land Board) is the trustee for the nine endowments established by the Idaho Admission Bill. "All endowment assets of the State of Idaho must, per the state Constitution be managed 'in such manner as will secure the maximum long term financial return' to the trust beneficiaries." *State Trust Lands Asset Management Plan* at 3 (July 2008). As the trustee, "the Land Board is obligated to manage the assets of each trust with undivided loyalty to the beneficiaries of the trusts." *Id.* In furtherance of these duties, the Land Board in 1996 appointed the Governor's Committee on Endowment Fund Investment Reform for the purpose of studying and recommending changes to the governance structure for the state endowments. The objective was to ensure that the governance structure reflected modern trust management principles. As a result of the Committee's report, a suite of constitutional and statutory amendments were enacted in 1998 that consolidated governance of the financial and land assets of the endowments under the Land Board. The purpose of these changes was to ensure that the financial and lands assets are managed as a unified trust under the principles of the Idaho Prudent Investor Act (Idaho Code Title 68, Chapter 5). The mission of the Land Board is to manage the combined assets "to provide a perpetual stream of income to the beneficiaries by: maximizing long-term financial return at a prudent level of risk, protecting future generations' purchasing power, and providing a relatively stable and predictable payout." *Asset management Plan* at 3.

In 2001, then Governor Kempthorne appointed a Citizens Ad Hoc Evaluation Committee on Lands/Endowment to assist in the development of an endowment reform implementation plan. The Committee recommended that the "Land Board adopt a formal Land Trust Investment Policy that includes, among other standard items, the following three areas: statement of investment objectives, annual investment plan and commercial real estate policies." *Governor's Citizens Ad hoc Evaluation Committee on Lands/Endowment, Attachment 1* at 1 (July 10, 2001). Through the development of the land Trust Investment Policy, it became apparent that the disposition provisions of the Idaho Constitution needed to be reviewed. Thus, in 2009, the Land Board appointed the Endowment Land Transaction Advisory Committee (Advisory Committee) "to provide an impartial review of the specific elements of the Idaho State Constitution and the Admission Bill governing the disposition of Endowment lands."

On July 21, 2009, the Advisory Committee submitted a report to the Land Board recommending two changes to Article IX, Section 8. First, the Advisory Committee recommended that the constitution be amended to grant the Land Board greater flexibility in the means used for the disposition of state endowment lands. Currently, Article IX, Section 8 requires that dispositions of state endowment lands be through public auction. The Committee recommended that the

constitution be amended to allow the Land Board to use any commercially reasonable means used by prudent investors. The Advisory Committee concluded that "[b]y prescribing the method for disposal [the Constitution] may not allow for the maximum price to seller and/or the maximum long-term value to the beneficiaries." *Advisory Committee Report* at 11. "Further, the current language does not allow the legislature the flexibility to create alternatives by statute." *Id.* "The optimal form of marketing the sale is dependent on many factors, including market conditions, depth of market, type of property, specific property characteristics, and financing that may be available. The main reason for the proposed language change is to allow flexibility for maximizing the investment of the Endowment Lands to the beneficiaries." *Id.* at 11-12. While the Advisory Committee acknowledged the need for transparency in any disposition of state endowment lands, it concluded that "[a] significant body of law and case law already exists with respect to the duty of care obligation of trustees, and thus would apply to transactions under the more flexible structure" recommended. *Id.* at 12. "The proposed language [provides] general guidance to the trustees in the Constitution rather than detailing specifics" but will "ensure that the trustees are and will always be fully responsible as fiduciaries of the trust." *Id.* at 13.

The rationale for the Advisory Committee's second recommendation to delete the 320 acre limitation on the purchase of state endowment lands by any one individual, company or corporation is that larger tracts of lands are often required for commercially feasible development. *Id.* at 14. "Typical transactions in the private sector currently exceed this size and would be precluded by the limitation, especially if the project is residential or a mixed use project." *Id.* Deletion of this limitation will allow the Land Board to participate in desirable market opportunities and to achieve a greater return for the endowment beneficiaries.

## FISCAL NOTE

These amendments will not impact the general fund. If adopted, the amendments will enhance the financial returns from state endowment lands.

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