

## STATEMENT OF PURPOSE

### RS20474

The legislation would repeal provisions of Chapter 3, Title 58 of the Idaho Code to conform with Idaho Supreme Court holdings, to resolve constitutional issues identified by the Idaho Attorney General, and ensure conformance with the direction in Article IX, § 8 of the Idaho Constitution that state endowment lands are "subject to disposal at public auction for the use and benefit of the respective object for which said grants of land were made. . . ." Idaho Code §§ 310A and 310B contain provisions that conflict with this mandate. Idaho Code § 58-310B was held to be unconstitutional by the Idaho Supreme Court in *Idaho Watersheds Project v. State Bd. Of Land Commissioners*, 133 Idaho 64, 982 P.2d 367 (1999), because its requirement that the Board's award of leases in conflict auctions must consider both direct returns to endowment beneficiaries and indirect revenues resulting from , "the additional sales, income, and property taxes that would be generated by using endowment lands to support a healthy livestock industry was an attempt "to promote funding for the schools and the state through the leasing of school endowment lands," in violation of the mandate of Article IX, § 8, that the only allowable criteria for awarding leases is the "maximum long term financial return' to the schools." *Id.* In 2009 the Idaho Attorney General issued an Opinion addressing Idaho Code § 58-310A. Observing that Section 58-310B was patterned after Section 58-310A, the Attorney General concluded that the public auction requirement of Article IX, § 8 applies to all leases of endowment land and "that a court would hold the stated purpose of Section 58-310A violated the duty of undivided loyalty to trust beneficiaries, since . . . the elimination of the public auction requirement was done explicitly for the benefit of the lessees, not the benefit of the trust beneficiaries." On December 17, 2010, in *Wasden v. State Board of Land Commissioners*, an action challenging the constitutionality of Idaho Code § 58-310A, the Fourth Judicial District Court issued a preliminary injunction enjoining the Land Board from issuing new leases pursuant to the statute. Judge Bail opined that the "public auction" requirement of the constitution cannot be negated simply by a statute. It will require a constitutional amendment to remove that requirement. (A motion for summary judgment on the constitutionality of the statute is pending before the district court.) Continuing reliance on courts to resolve such issues will increase uncertainty among lessees and adversely affect endowment income. This bill will bring certainty to beneficiaries and lessees by amending those provisions of Idaho Code related to cottage site and grazing leases to conform with the public auction requirement of Article IX, § 8 as construed by the above referenced legal decisions.

### FISCAL NOTE

This legislation will have no financial impact on the General Fund, however there is a potential for an increase in the Endowment Earnings Reserve as people bid on the leases put up for auction.

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