Before Interim Joint Committee On Endowment Asset Issues

Testimony of John L. Runft with extensive attribution to Robert Forrey
Submitted on behalf of the Tax Accountability Committee ("TAC"), an Idaho unincorporated non-profit Association.
Subject: Synopsis - Why Not Sell the Trust Lands and Invest in the Permanent Endowment?
Tuesday and Wednesday
SEPTEMBER 30, 2014 and OCTOBER 1, 2014

Co-Chairmen and members of the Interim Committee:

The attached 4 ½ page synopsis with exhibits is an effort at a "thought piece" that is presented to this interim committee concerning issues of basic policy regarding endowment trust assets. I will be very brief. Rather than attempt to "lecture" the Committee regarding its unique policy making function, I will merely introduce this piece with these few words about what it is and hope that it will help with the analysis that is needed.

Over the years we have often heard state officials and others reflect that we should not simply sell off all of the endowment trust lands and deposit the proceeds into the permanent trust endowment fund. But why, when by most reliable financial measures, the constitutional mandate of "the maximum long term financial return," would appear to be best achieved by so doing? The reasons given for keeping some land, and what kind of land, are often subjective or only partially satisfactory. This piece attempts to provide an articulation of the interrelated legal, financial, and factual reasons for a basic policy for keeping some, certain lands in the trust endowment assets. In order to be competent, such policy must accurately comprehend legal history, meaning of terms, endowment trust standards, and the immutable nature of land as distinct from the concept of real estate. It is respectfully submitted that until the grounds for such a policy are actually so articulated, no real, lasting policy can be developed. We hope this summary articulation will be of assistance.

Why Not Sell the Land and Invest in the Permanent Endowment?

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ISSUE: **Why not to sell off all the trust endowment lands and invest the proceeds in the permanent endowment fund for a higher return? If not, why and what should be done?**

The Idaho Constitution specifies the Land Board's duties in managing State endowment lands. Art. IX Sec.8, expressly states endowment lands must be held in trust to secure the "maximum long term financial return...." In light the historical returns of the endowment fund compared to returns from land held in trust, one could argue that all of the trust lands should be sold off and the proceeds transferred to the permanent endowment fund. Yet, we hesitate. Why?

The salient factors of a basic decision to retain some land in the Endowment Trust have not been well elucidated. The following are some of those factors:

(1) "Long term." Part of the constitutional mandate requires that maximum financial return be "long term." Land, as distinguished from improvements or real estate, is inherently "long term" in that it is immutable, indestructible, and will always have some value. Ownership of, stocks, commodities, bonds, commercial real estate, and business operations contain much higher risk - reward ratios than ownership of land; but they are fundamentally "financial system dependent." In the unlikely event of a catastrophic failure of the financial systems (e.g. stock market, real estate market, banding system, etc.), the land and its basic production would remain intact. In

other words, there is inherent, permanent, long-term value in land itself, divorced from its current function, use, and the improvements thereon, which may well change decades and centuries hence.

(2) Meaning of "Land." In this context, the meaning of "Land" must be properly understood. (See Exhibit "A" attached hereto) The word "land" has been defined inconsistently by the Land Board and used as the situation requires: e.g. as "real estate," including improvements, and "as land only" meaning earth surface as related to lake cabin sites. This misuse of the term "land" has led to misinterpretation of the 1889 Idaho Admission Bill and of the Idaho Constitution Art. IX, §§ 4 and 8, relating to the disposition of trust lands and the use of sale proceeds. "Land" in those seminal documents means the special parameters of a bounded portion of the earth's surface only, and does not include improvements thereon. In this respect, the "long term" inherent value of land is closely tied to the amount of acreage. Accordingly, the long term value of land is traded for speculative value when the Land Board sells large tracts of currently cheap land to purchase small tracts of currently high priced real estate based on the improvements (i.e. "commercial real estate") thereon.

(3) Not dealing in "Land." By dealing with trust land assets primarily based on their real estate values, which is speculative in the long term, the Land Board exceeds its authority. It is thereby not dealing in the sale, purchase, and / or exchange of trust "land," rather it is primarily dealing in the risky commercial real estate market. The real estate, or improvements, component of such trust "lands" transactions must always be a subordinate factor.

(4) Violation of "long term" principle. The justification for the retention of land in the trust portfolio, as opposed to selling it off, is fundamentally based on the "long term principle." In essence, by engaging in real estate transactions with trust lands, the Land Board violates that principal in that it converts the long term immutable value of land for the current, speculative value of improvements on land and their current function and use. The "speculative" arm of investing trust assets and maintaining a properly balanced portfolio is the province of the permanent endowment fund, as discussed in the following.

(5) Needless, costly replication and waste of assets. In order to engage in transactions based primarily on current real estate markets values and use and business functions of real estate in specific transactions, the Land Board and the Department of Lands will be required to substantially expand their operations and professional expertise. This costly investment replicates the function of the professional managers of the endowment trust fund. The purpose of the endowment fund is to manage those assets of the trust that are not in the form of land. These professional managers (in N.Y. and elsewhere) not only are already in place, the assets they buy, sell, and trade in the trust portfolio are not only broader that real estate, but are nation-wide in scope and not limited to real estate in Idaho. Also, keeping the dealing in more speculative markets on a remote, established professional basis serves to dispel incentives to crony capitalism that might arise in circumstances of local real estate dealings.

(6) Violation of the prudent investment rule as applied to endowment trust. In so dealing (buying and selling) primarily based on the speculative, currently appraised value of real estate instead of the long term, immutable value of land, the Land Board violates the especially high

standard of the non-commercial "prudent investment rule" that applies to endowment trust lands. The delegates to the Idaho Constitution Convention declared that the Public School Endowment of the lands so transferred to the State of Idaho are a "sacred trust." (See Idaho Attorney General Opinion 10-1.) Idaho Code § 57-715 repeats this especially high standard of trust management expressed in the convention:

> Permanent endowment funds of the state of Idaho are hereby declared to be trust funds of the highest and most sacred order and shall be controlled, managed, and invested ... in accordance with the highest standard as directed by law and according to policies established by the state board of land commissioners, as hereinafter provided.

The Idaho Supreme Court has also adopted the "sacred trust" terminology and has called the endowments "a trust of the most sacred and highest order." *Moon v State Board of Examiners*, 104 Idaho 640, 642 (1983).

(7) **Chilling effect on private enterprise.** The Idaho land Board members continue their quest pursuant to the Asset Management Plan to expand and grow the states involvement in private enterprise in competition with private business, (See analysis of Asset Management Plan, Exhibit "B" hereto.) In so doing, the Land Board ignores the warning from the Idaho Supreme Court in *Village of Moyie Springs V. Aurora Mtg. Co.* (1960) "...it is not the function of government to engage in private business, ...if the state favored industries were successfully managed, private enterprise would of necessity be forced out, and the state, through its municipalities, would increasingly become involved in promoting, sponsoring, regulating and controlling private business, and our free enterprise economy would be replaced by socialism."

(8) Forest lands – a special case. Forest lands would not be so much an exception as they constitute a well-established third combination of land and returns for which Idaho has already developed unique expertise relative to timber harvest. Moreover, whereas the price of forest products is clearly speculative, the use and function of the forest lands is relatively permanent (which is not the case with commercial real estate). The Land Board's dealing in the disposition of forest lands and the timber harvest economy is further justifiable on its own, since a great portion of Idaho land is in fact forested and will likely remain so for the "long term."

CONCLUSION:

The policy decision of how much land to retain, perhaps articulated as above suggested, could be simply and forthrightly made and thereby (a) better define the Land Board's role in managing the retained land consistent with the "long term principal" (subject to the special forest lands category), (b) relegate the sophisticated investment of assets function to the professionals who manage the permanent endowment fund, (c) forego the cost of building up a new, costly bureaucracy, and (c) avoid conflicts with private enterprise in the State of Idaho. The amount of "long term" land that should be retained is a pure policy decision which, after all of the analyses, is to a considerable extent subjective and based on "values" determined by the people's representatives as advised by the Land Board.

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Exhibit "A"

Interpretation of the word "Land" by the Idaho Land Board

SUMMARY: **The word "land" has been defined inconsistently and used by the Land Board as the situation requires: e.g. as "real estate," including improvements, and "as land only" meaning earth surface as relating to lake cabin sites. This abuse of the term "land" has led to misinterpretation of the 1889 Idaho Admission Bill and of the Idaho Constitution Art. IX, §§ 4 and 8, relating to the location and disposition of Public Lands and the use of sale proceeds. "Land" in those seminal documents means earth surface only, and does not include improvements and thereby justify the Land Board's utilizing trust assets in getting into the risky commercial real estate market in violation of the extremely high trust standard required for the management of the trust assets. .**

The Idaho Land Board members have struggled for years in their attempt to manage the public school and other endowment lands granted to Idaho by the United States Congress. Law suits and legal actions involving the Land Board have become common place in recent years partly because the Board refuses to honor mandates set down in the Idaho Constitution, and they twist the meaning and interpretation of words.

Regarding proper interpretation of words in documents was addressed in AG Opinion No. 02-1: "The rules governing interpretation of a statute have recently been reiterated by the Idaho Supreme Court: The interpretation should begin with an examination of the literal words of the statute, and this language should be given its plain, obvious, and rational meaning." (emphasis added)

Now, consider the word "land". What is the plain, obvious, and rational meaning of the word "land" in Idaho Code § 55-101 A?

> 55-101 A. LANDS DEFINED. Lands are the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substances, ...

Blacks Law Dictionary defines "land" as follows: "Land is not the fixed content of that space, although, as we shall see, the owner of that space may well own those fixed contents.

Land is immovable, 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, so the "land" remains immutable."

The Idaho Land Board members seem to be confused between the definitions of Land and Real Estate. Idaho Code 55-101 defines "**real estate**" in part as "That which is affixed to land," and "That which is appurtenant to land." Blacks Law Dictionary defines "appurtenant" as: "Something that belongs or is attached to something else, something annexed to a more important thing."

In this instance that "more important thing" is land. The Noah Webster 1828 Dictionary defines land as, "Any small portion of the superficial part of the earth or ground. The solid matter which constitutes the fixed part of the surface of the globe."

Therefore, the question must be posed, what did Congress grant to Idaho through the 1889 Idaho Admission Act? The pertinent provisions of the Act are as follows:

> "Paragraph 4. School lands- sections numbered 16 and 36 in every township of said state... are hereby granted to said state for the support of common schools,..."
>
> "Paragraph 5. Proceeds of the sale of school **land**... may be deposited in the land bank fund to be used to acquire, in accordance with State law, other **land** in the State..."
>
> "**Land** granted for educational purposes under this Act may be exchanged for other public or private **land**." (emphasis added)

Notice there is no mention of real estate, businesses, or buildings.

> Art. IX, Sec. 8 of the Idaho Constitution is consistent with the Admission Act and provides as follows:
>
> Location and Disposition of Public Lands. It shall be the duty of the State Board of Land commissioners to provide for the location, protection, sale, or rental of all

> the lands... granted to or acquired by the state by of from the general government...
>
> The legislature shall... provide by law... that the general grants of land... shall be subject to disposal at public auction...
>
> The legislature shall have power to... exchange granted or acquired lands... for other lands....

Idaho Constitution Art. IX, Sec. 4, provides:

> ...proceeds from the sale of school lands may be... used to acquire other lands....

Again, in these seminal documents there is no mention of improvements, commercial real estate, office buildings, retail and light industrial business designations, hospitality, ski resorts, etc., as listed in the Board's Asset Management Plan. Yet, it is anticipated that Idaho's Attorney General will argue that land is not only dirt and natural growth, but includes anything that may be built or placed upon the land such as buildings or other structures or that may be harvested therefrom. Yet, the AG and Land Board change their definition of land when it suits their purposes, for example when it comes to the Priest and Payette Lakes lots. In their notice for auctions, they state:

> "The auction is an oral, public auction, and active bidding is for the LAND ONLY. The State owns the land, not the cabins on top of the land." The auction notice continues: "The price for the houses and other improvements on top of the land... are not being bid on, only the land."

Being inconsistent and confused about the definition and meaning of the word "land" has caused the Land Board a great deal of difficulty in recent years. Perhaps the simple answer to the Board's confusion would be for them to adhere to or read numerous court admonitions regarding interpretation and effect to words:

> The Court will give effect to the plain language of an unambiguous statutory or constitutional provision. It reviews the provision's language as a

> whole, considering the meaning of each word so as not to render any word superfluous or redundant."
> *Wasden v. State Bd. of Land Com'rs*, 153 Idaho 190, 280 P.3d 693, 699 (Idaho 2012)

There is little doubt that the members of the Land Board are cognizant of the differences between land and real estate after reading their notice for auction of "LAND ONLY" at Priest and Payette Lakes. Nevertheless, as stated in the Asset Management Plan on page 24, their management objective is to "Add properties to the commercial portfolio to improve diversity in land asset revenue streams." And on page 31, the plan calls for "Opportunities... to become more competitive in the **real estate market**." (Emphasis added) In this respect, the Plan's objectives and operation are described as follows:

> "Detailed underlying business plans are required for each asset classification..." The assets include, "but are not limited to, Commercial Real estate properties, office, retail and light industrial business designations, public facilities, hospitality, energy resources (wind hydro, geothermal) communication sites, ski resorts, etc.," (pg.23)

Hence, it becomes clear that rather than sticking with acquisition, selling and, exchanging land, which is an immutable, "long term" asset for the trust, the Land Board is using the trust assets to go into business - the risky business of commercial real estate. In tandem with this objective, their Business Plan on page 35 calls for them to "Identify and Describe Our Competition."

This objective of the Plan clearly calls for the use of the trust assets in a commercially risky manner that violates the extremely high trust standard required for the management of the trust assets. The delegates to the Idaho Constitution Convention declared that the Public School Endowment of the lands so transferred to the State of Idaho are a "sacred trust." See Idaho Attorney General Opinion 10-1. Idaho Code § 57-715 repeats this especially high standard of trust management expressed in the convention:

> Permanent endowment funds of the state of Idaho are hereby declared to be trust funds of the highest and most sacred order and shall be controlled, managed, and invested ... in accordance with the highest standard as directed by law and according to policies established by the state board of land commissioners, as hereinafter provided.

The Idaho Supreme Court has also adopted the "sacred trust" terminology and has called the endowments "a trust of the most sacred and highest order." Moon v State Board of Examiners, 104 Idaho 640, 642 (1983). Clearly, proceeds from the sale of the trust lands are no less "sacred" than the land whence they were derived and deserve the same highest standard of trust management. The mandate to "secure the maximum long term financial return" must be exercised in accordance with this highest of trust standards and not pursuant to a lesser commercial real estate business standard of asset management. In this respect, it must be understood that the "prudent investor rule," although an elevated trust standard, is still, nevertheless, a commercial standard of investment. As a starting point the prudent investor rule must be applied (Atty. Gen. Op. 10-1), and yet applied in a manner whereby the trust assets are managed in conformance with that higher "sacred" standard that exceeds the purely commercial aspect of the prudent investor rule. It is clear that in the quest to achieve the "maximum long term financial return," the Idaho Department of Land's Heartland report applies a commercial investment standard which is insufficient to meet the investment requirements of the Idaho endowment trust. The highest trust management standards are required in the management of these proceeds since they are applicable solely to the benefit of the beneficiaries of the public school endowment fund.

The current Land Board justifies their entering into the commercial business world in competition with private enterprise by transmogrifying the meaning of the word "LAND".

The Legislature can correct this by writing a very clear definition of the word "land" in keeping with the intent of the Idaho Admission Act and our Constitution. After all, the Idaho Constitution did not authorize the State Board of Real Estate. It established the State Board of LAND Commissioners.

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Exhibit "B"

OBJECTIONABLE PROVISIONS
OF
THE STATE TRUST LANDS ASSET MANAMEMENT PLAN

The State Trust Lands Asset Management Plan was adopted in Dec. 2011.

Plan Objective: "Detailed underlying business plans are required for each asset classification..." The assets include, "but are not limited to, Commercial Real estate properties, office, retail and light industrial business designations, public facilities, hospitality, energy resources (wind hydro, geothermal) communication sites, ski resorts, etc.," (pg.23) This plan also calls for changing ownership and land management practices of federal and private land holdings so as to . (emp. added pg. 24) And to add properties to the commercial portfolio..." (p.24)

Ultra Vires Change of Purpose of Trust: The endowment trust requirement for "undivided loyalty" to the trust and it's beneficiaries is violated by the Asset Plan in its purpose of "providing for the support of the prorata cost of health, life, safety services benefiting the properties and tenants." (emp. added pg.24)

Proposed Action to Change Political and Social Attitudes: To achieve objectives goals of the Asset Plan, the Land Board Members list as their, "Challenges: Changing social and political attitudes and values, markets , and products." And, "Operating a profit oriented business within a government agency." (pg.26)

Analyze capability of Private Competition: Appendix A of the plan describes the Asset Business Plan Template. Some of the features in the Template are to: "Identify and Describe our Competition. Who are they, the size of the firms, their location, their products and capacity, describe competitor strengths, products and competing resources." (pg 35)

Amend Article IX §8 of Idaho Constitution to Get Rid of Auction Requirement: A major impediment to the operation of the Asset Management Plan is the Idaho Constitution, Art. IX, Sec.8. The Constitution limits the Board to dealing only with, "lands, heretofore... granted to or acquired by the state by or from the general (Federal) government..." In addition, the Constitution requires that, "...grants of land made by congress..."are, "...subject to disposal at public auction..."

To overcome these Constitutional restrictions, the Asset Management Plan, states as "Challenges: Constraints pursuant to Article IX Section 8 that do not conform to modern business practices: All land sales are subject to disposal at public auction."

Former IDL Director George Bacon commented to the Idaho Reporter, Jan. 6, 2011, "we need a constitutional amendment to be able to operate like anyone else would or we're never going to get top dollar."

At the July 21, 2009 meeting of the state board of land commissioners, the board discussed and accepted the report of the citizen based Endowment Land Transaction Advisory Committee.

"The report identified the need to reform portions of the Idaho Constitution and Admissions Bill to allow the board greater flexibility in its endowment land leasing, sales, exchange and development program. Existing language presents hurdles that tend to protract negotiations, create convoluted and awkward contract terms, limit revenue sharing opportunities and even arrest the state's ability to capitalize on current market conditions."

It Is Not The Function Of Government To Engage In Private Business: The Idaho Supreme Court in *Village of Moyie Springs V. Aurora Mtg. Co.* (1960) stated: "...it is not the function of government to engage in private business, ...if the state favored industries were successfully managed, private enterprise would of necessity be forced out, and the state, through its municipalities, would increasingly become involved in promoting, sponsoring, regulating and controlling private business, and our free enterprise economy would be replaced by socialism."

Final Thoughts Regarding a Specific Example:
The 10 Barrel Beer Pub's "negotiated" lease is a prime example where the Land Board has altered or removed the competitive nature of the auction itself, by limiting the class of people who may participate, or by narrowly designing the RFP or specs to fit the precise needs of a favored potential lessee, or by refurbishing a property preparatory to leasing to the specific requirements of a favored lessee, or by a combination of the above. The competitive nature of the auction was poisoned when the class of participants was artificially limited; no one else could place a bid at auction.

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Submitted on behalf of the Tax Accountability Committee ("TAC"),
an Idaho unincorporated non-profit Association.
October 1, 2014
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Subject: - Final amendment of Idaho Code §58-138 (1); relating to the exchange of state lands. (formerly SB 1277 which passed and became effective 07-01-14). A copy of I.C. §138 is attached hereto as Exhibit "A" for ready reference.

1. BACKGROUND:

The passage of SB 1277 in the previous legislative session reaffirmed the Idaho legislature's constitutional jurisdiction to establish specific procedures and parameters of the Idaho State Board of Land Commissioners (Land Board)'s function. The purpose of SB 1277 in amending Idaho Code §58-138 (1) was to clarify that section and enhance the utility of the land exchange process. That purpose was achieved by expressly allowing multiparty land exchanges with the State of Idaho that will involve the related collateral purchase and sale of assets transacted before, after, or simultaneously with an exchange pursuant to a comprehensive agreement covering all transactions related to the actual exchange, which agreement will be disclosed to the state.

As the law currently stands, there are only two procedures for the disposition of Idaho trust lands: (1) exchanges of equal value, and (2) sales based on auctions ("bidding"). They are fundamentally different transactions. Exchanges of assets are made on a fixed price based on "equal value," whereas auction sales entail a variable price arrived at by competitive bidding. Hence, exchanges are distinguishable from sales, because at the point of exchange there must be "equal value," not conflicting bids. Sales are not based on a concept of "equal value," but rather, the concept of inequality at the point of sale, which goes to "highest and best bid." (This distinction would be weakened if, as has been suggested by some, the "equal value" requirement were amended to allow exchanges for "equal or better value." The "better" value would lead to a quasi-bidding process to achieve the desired higher value.).

It is transparency that makes the exchanges work. Hence, there must be a comprehensive agreement disclosing all such preceding and simultaneous sales, purchases of assets (both real and personal), and closings that make the exchange work. Post exchange sales and purchases by the parties need not be disclosed unless they are part of the exchange.

2. PROPOSALS FOR FURTHER AMENDMENT OF I.C. §58-138 (1):

Some question has arisen concerning the wording regarding "primary value" in the first sentence of I.C. §58-138 (1) as well as regarding the nature and extent of the "use" by a public entity for a "public purpose." The current wording in questions provides that an exchange may be made as follows:

"for lands of equal value, public or private, excepting lands that have as their primary value buildings or other structures, unless said buildings or other structures are continually used by a public entity for a public purpose."

One issue is whether the words "primary value" refers to economic value of buildings or to the inferred value of their utility for commercial purposes. This arose because "used" is referenced as the criterions following the "unless" clause. In order to clarify that the word "value" is an economic reference, the exception must be expressly described as referring to use "for commercial purposes" as defined in § 58-307(5).

Also, there was concern expressed with the looseness of the broad, new category of "buildings or other structures" that are "continually" used by a public entity for a "public purpose." Obviously, these "buildings and structures" that the state would be acquiring in this last clause must be on land that is either (a) already owned by the state, or (b) leased from a private party by the state, or (c) so held by a related public entity (e.g. university, etc.), which would inherently manifest a "public purpose." Therefore, the looseness might be best remedied by reference to the specific Idaho Code sections dealing the state's control and disposition of its owned lands and interests in land (e.g. leases) owned by others. This would comprise the type of property that would comply with the "public purpose" requirement.

The proposed revision set forth below deletes the words "public purpose" and the reference to "buildings" and "structures" and creates the exception to the exception through reference to specific existing statutory provisions that deal with the disposition of land devoted to the "public purpose" uses of land by the state and

related public entities such as set forth in the Surplus Property Act (I.C. §§ 58-331 – 58-335); other lands (I.C. §§ 58-335B - 58-337); Sale of Timber on State Lands I.C. §§ 58-401- 58-415 (and under the Idaho State Building Authority Act (I.C. §§ 67-6401 - 67-6424), and categorically includes lands that are utilized for public educational or related research purposes. Reference to these sections would get rid of the necessity of proving "continual use," and would encompass all lands and interests in land held by the state or other public entities for a "public purpose" that would be available for acquisition by the state in a land exchange (as distinguished from a "sale"). The current and proposed revised wording for consideration by the interim committee after passage of SB 1277 is as follows:

Current:
"for lands of equal value, public or private, excepting lands that have as their primary value buildings or other structures, unless said buildings or other structures are continually used by a public entity for a public purpose."

Revised:
"for lands of equal value, public or private, except for lands, utilized for commercial purposes as defined in Section 58-307(5), Idaho Code, provided that such exception shall not apply to such lands that are subject to disposition by the state pursuant to Section 58-330; Sections 58-331 – 58-337; 58-401 – 58-415; and Sections 67-6401 - 67-6424, Idaho Code, or to lands that are utilized for public educational or related research purposes.

EXHIBIT "A"
Copy of I.C. §58-138

TITLE 58
PUBLIC LANDS
CHAPTER 1
DEPARTMENT OF LANDS

58-138. EXCHANGE OF STATE LAND. (1) The state board of land commissioners may at its discretion, when in the state's best interest, exchange, and do all things necessary to exchange fee simple title to include full surface and mineral rights to any of the state lands now or hereafter held and owned by this state for lands of equal value, public or private, excepting lands that have as their primary value buildings or other structures, unless said buildings or other structures are continually used by a public entity for a public purpose. Land that the state owns known as "cottage sites" can be exchanged for lands of equal value, public or private. As used in this section, an exchange of state lands means a transaction in which the state conveys the land to another party or parties pursuant to an agreement that predates the exchange, in which transaction a party conveying land to the state may be different from a party to whom the state conveyed land. The parties dealing with the state in such an exchange transaction shall not be prohibited from purchasing or selling assets related to accomplishing the transaction before, simultaneously or after said transaction, provided that all such prior and simultaneous purchases and sales are expressly provided for in the exchange agreement.

(2) Provided further the state board of land commissioners may, in its discretion, hereafter grant and receive less than fee simple title, and grant or allow such reservations, restrictions, easements or such other impairment to title as may be in the state's best interest.

(3) No exchanges shall be made involving leased lands except upon the written agreement of the lessee.

(4) Subject to the approval of the state board of land commissioners, the first lease on lands acquired through land exchange and in lieu selections shall be offered to the present user, lessee, or permittee of the land, provided that the present user agrees in writing to enter into a contractual management program through which the resource values of the land may be enhanced or improved for the purpose of increasing the income to the endowed institutions.

(5) Prior to the exchange of any state endowment lands pursuant to this section, the state board of land commissioners shall have an appraisal and review appraisal conducted of the lands it desires to exchange along with an appraisal and a review appraisal of the lands it is proposing to acquire in the exchange. All such appraisals and review appraisals shall be performed by appraisers who are licensed or certificated to perform such work in accordance with chapter 41, title 54, Idaho Code, and who are designated as members of the appraisal institute (MAI). All such appraisals and review appraisals shall conform to the uniform standards of professional appraisal practice (USPAP) standards.

(6) In determining the fair market value of state endowment lands to be exchanged and acquired pursuant to this section, the state board of land commissioners shall consider all relevant information and circumstances including, but not limited to, the appraisals and review appraisals required by the provisions of subsection (5) of this section and any evidence that enhances or detracts from their reliability.

(7) Annually on or before January 15 of each year, the state board of land commissioners shall submit a report of all state endowment lands exchanged and acquired and all appraisals and review appraisals conducted pursuant to this section to both houses of the legislature and to the audit division of the legislative services office.

History:

[58-138, added 1963, ch. 147, sec. 1, p. 431; am. 1971, ch. 161, sec. 1, p. 780; am. 1979, ch. 191, sec. 1, p. 554; am. 1980, ch. 353, sec. 1, p. 915; am. 1992, ch. 226, sec. 2, p. 677.; am. 2014, ch. 98, sec. 1, p. 292; am. 2014, ch. 246, sec. 1, p. 615.]

EXHIBIT "B"
Copy of I.C. § 307(5)

TITLE 58
PUBLIC LANDS
CHAPTER 3
APPRAISEMENT, LEASE, AND SALE OF LANDS

(5) The term "commercial purposes" means fuel cells, low impact hydro, wind, geothermal resources, biomass, cogeneration, sun or landfill gas as the principal source of power with a facility capable of generating not less than twenty-five (25) kilowatts of electricity, industrial enterprises, retail sales outlets, business and professional office buildings, hospitality enterprises, commercial recreational activities, multifamily residential developments and other similar businesses. For purposes of this section, farming leases, grazing leases, conservation leases including lands enrolled in federal conservation programs such as the conservation reserve enhancement program (CREP), noncommercial recreation leases, oil and gas leases, mineral leases, communication site leases, single family, recreational cottage site and homesite leases, and leases for other similar uses, are not considered leases for commercial purposes. The terms fuel cells, low impact hydro, wind, geothermal resources, biomass, cogeneration, sun or landfill gas shall have the same definitions as provided in section 63-3622QQ, Idaho Code.
(6) T