

## HOUSE BILL NO. 533

INTRODUCED BY T. BERRY, S. SMALL, D. ANKNEY, A. OLSON, B. MCCHESENEY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATE LAND MINE LEASING LAWS;  
5 CLARIFYING LIMITATIONS ON LEASING; CLARIFYING THE LEASING PROCEDURES FOR COAL MINING  
6 LEASES; ALLOWING THE BOARD OF LAND COMMISSIONERS THE DISCRETION IN DEMANDING A  
7 SURETY BOND; PROVIDING AN EXCEPTION TO THE DURATION OF A LEASE IF THE LEASE OR PERMIT  
8 IS CHALLENGED; DEFINING CERTAIN TERMS; ESTABLISHING TEMPORARY REPORTING  
9 REQUIREMENTS; CLARIFYING RENTAL TERMS; AMENDING SECTIONS 77-3-305, 77-3-312, 77-3-313,  
10 77-3-314, AND 77-3-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY  
11 DATE."  
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13 WHEREAS, the Legislature of the State of Montana recognizes the importance of the systematic and  
14 orderly development of coal mining operations and the need to ensure that fair market value is realized in the  
15 leasing of state coal reserves; and

16 WHEREAS, the Legislature desires to streamline the leasing process and to ensure that existing terms  
17 are construed in a manner consistent with original legislative intent.  
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19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
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21 **Section 1.** Section 77-3-305, MCA, is amended to read:

22 **"77-3-305. Limitations on leasing.** (1) The board ~~shall~~ may not issue leases:

23 ~~—(4) to any citizen of another country or any person, partnership, corporation, association, or other legal~~  
24 ~~entity controlled by interests foreign to the United States unless such that country provides for similar or like~~  
25 ~~privileges to citizens of the United States; ~~or~~~~

26 (2) ~~if, after a determination of the amount, location, and quality of the coal on the lands for lease, The~~  
27 board shall consider whether the extraction of the coal from ~~such those~~ lands by strip-mining methods would  
28 adversely affect the methods of recovery of deep minable coal from ~~such those~~ operations on ~~such those~~ lands  
29 in the future."  
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1           **Section 2.** Section 77-3-312, MCA, is amended to read:

2           **"77-3-312. Leasing procedures.** (1) (a) Prior to issuing a coal mining lease, the board shall evaluate  
 3 the coal and land proposed to be leased for the purpose of determining the fair market value of any coal reserves  
 4 located on the land, giving opportunity for and consideration to public comments on such the evaluation.

5           (b) (i) The board may determine fair market value by competitive bid or through an appraisal.

6           (ii) If no competitive bids are offered on the coal and land to be leased, the board may enter into a lease  
 7 that is at least at the full market value as determined by the appraisal pursuant to subsection (1)(b)(i).

8           (2) Leases shall Except as provided in subsection (1)(b), leases must be awarded by a competitive bid  
 9 system, including a bonus bid for the first year's rental that may be amortized for a period of up to 5 years at the  
 10 discretion of the board, and no a lease shall may not be awarded at less than fair market value."

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12           **Section 3.** Section 77-3-313, MCA, is amended to read:

13           **"77-3-313. Bond requirements.** The board shall may also demand a surety company bond in such a  
 14 form and in an amount as it may determine, conditioned for the payment of all royalties due the state and for the  
 15 carrying on of the mining operations according to the terms of the lease; but, However, a lessee may, in lieu of  
 16 furnishing a surety company bond, increase the cash deposit hereinbefore provided for to such provided for under  
 17 this part in an amount as will that in the judgment of the board make makes the furnishing of a bond  
 18 unnecessary."

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20           **Section 4.** Section 77-3-314, MCA, is amended to read:

21           **"77-3-314. Duration of lease.** (1) (a) Coal Except as provided in subsection (1)(b), coal mining leases  
 22 shall must be issued for a primary term of 10 years and so for as long thereafter as coal is produced from such  
 23 lands in commercial quantities.

24           (b) If a lease under this part or a corresponding permit issued pursuant to Title 82, chapter 4, parts 1 and  
 25 2, is challenged before an administrative agency or in court, the primary term of the lease must be extended for  
 26 the period of time that the lease or permit was subject to challenge.

27           (2) A lease not producing coal in commercial quantities at the end of the primary term shall must be  
 28 terminated, unless the leased lands are described in a strip mine permit issued under 82-4-221 or in a mine-site  
 29 location permit under 82-4-122 prior to the end of the primary term, and the lease shall may not be terminated  
 30 so long as said the lands are covered and described under valid permit.

1 (3) For the purpose of this part:

2 (a) "commercial quantities" means that quantity of coal ~~which~~ that can be sold at profit in the commercial  
3 market;

4 (b) "covered and described" under a valid permit or "described" in a strip mine or mine-site location permit  
5 mean that the leased lands or a portion of the leased lands within or outside of the boundaries of the permit area  
6 are included in an integrated operation for the production of coal and are expected to be affected and OR  
7 disturbed at some point during the life of the permittee's strip-mining or underground-mining operation and are  
8 identified in the permittee's permit application."

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10 **Section 5.** Section 77-3-316, MCA, is amended to read:

11 "**77-3-316. Rental and royalty terms.** (1) The compensation of the state under all coal mining leases  
12 ~~shall must~~ be upon a rental and royalty basis and ~~shall must~~ be fixed and determined by the board.

13 (2) The rental and royalty terms of each lease ~~shall must~~ be subject to readjustment to reflect fair market  
14 value at the end of its primary term of 10 years and at the end of each 5-year period thereafter if the lease is  
15 producing coal in commercial quantities.

16 (3) The rental ~~shall may~~ be on a ~~per-acre~~ per-acre basis or per-ton basis but ~~in no case shall it~~ the rental  
17 may not be less than \$2 per acre.

18 (4) (a) The amount of ~~such the~~ royalty ~~shall must~~ be based upon:

19 (i) the kind, grade, and character of the coal in each particular mine;

20 (ii) ~~upon~~ the size, shape, and nature of the coal vein, strata, or body; and

21 (iii) ~~upon~~ the shipping and marketing facilities for the product.

22 (b) Consideration ~~shall must~~ also be given to every other known factor affecting the value of each  
23 particular coal mining lease; ~~but in no case shall~~ the royalty for the coal mined may not be less than 10% of the  
24 f.o.b. mine price of a ton prepared for shipment."

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26 **NEW SECTION. SECTION 6. REPORTING REQUIREMENTS.** (1) ON OR BEFORE SEPTEMBER 1, 2011, JANUARY  
27 1, 2012, APRIL 1, 2012, JUNE 1, 2012, SEPTEMBER 1, 2012, AND JANUARY 1, 2013, THE DEPARTMENT OF LABOR AND  
28 INDUSTRY SHALL REPORT ON THE NUMBER OF JOBS THAT HAVE BEEN CREATED IN MONTANA AS A RESULT OF PASSAGE  
29 OF [THIS ACT] TO:

30 (A) THE GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT; AND

1           (B) THE ENVIRONMENTAL QUALITY COUNCIL.

2           (2) IF REQUESTED, THE GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT SHALL ASSIST THE DEPARTMENT OF  
3 LABOR AND INDUSTRY IN PREPARING THE REPORT.

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5           NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

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7           NEW SECTION. Section 8. Applicability. [This act] applies to coal mining leases in effect on [the  
8 effective date of this act] and to all coal mining leases entered into on or after [the effective date of this act].

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