

SENATE BILL NO. 24

INTRODUCED BY J. WELBORN

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE VALUATION PROCESS FOR COMMERCIAL LEASING OF STATE LAND; EXTENDING LEASE PERIODS; DEFINING TERMS; AND AMENDING SECTIONS 77-1-902 AND 77-1-905, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 77-1-902, MCA, is amended to read:

"77-1-902. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Cancellation" means the cessation of a lessee's possessory rights and privileges under a lease due to the lessee's breach of some term of the lease, applicable statutes, or applicable administrative rules.

(2) "Commercial lease" means a contract to use state trust land for a commercial purpose.

(3) (a) "Commercial purpose" means an industrial enterprise, retail sales outlet, business and professional office building, warehouse, motel, hotel, hospitality enterprise, commercial or concentrated recreational use, multifamily residential development, and other similar business.

(b) The term does not include the following uses:

(i) agriculture;

(ii) grazing;

(iii) exploration or development of oil and gas, mineral, and geothermal resources;

(iv) single-family residences, home sites, and cabin sites; and

(v) utility rights-of-way.

(4) "Land value" is the monetary value of the land determined by an appraisal by a certified general appraiser or a department staff appraiser or by a limited valuation.

(5) "Limited valuation" means estimating the land value of commercial lease land by analyzing comparable land valuations conducted within 2 years of the lease commencement date as provided by real estate appraisers, local tax assessors, local realtors, an evaluation of local market rents, or a combination of those

1 methods.

2 (4)(6) "Termination" means the automatic completion or ending of the term of a contract according to
3 its provisions. Upon termination, the lessee ceases to have any possessory rights or privileges under a lease."

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5 **Section 2.** Section 77-1-905, MCA, is amended to read:

6 **"77-1-905. Rental provisions for commercial leasing -- payments and credits -- administration --**

7 **lease options.** (1) The first year's annual rental payment for state trust land leased for commercial purposes must
8 be paid by cashier's check or electronic funds transfer, as defined in 32-6-103, and payment is due upon
9 execution of the lease. The department may require the lessee of state trust land for commercial purposes to pay
10 the department's cost of the request for proposals process, including publication and other reasonable expenses.
11 Failure to make the first year's rental payment at the time of lease execution must result in the cancellation of the
12 lease and forfeiture of all money paid. In the event of cancellation or in the event that the successful proposer is
13 offered and does not accept the lease, the board may enter into negotiations with other persons who submitted
14 a proposal for commercial purposes in response to the department request for proposals on that tract.

15 (2) ~~The board shall specify in any commercial lease an annual rental payment equal to the full market~~
16 ~~rental value of the land.~~ The annual rental payment is full market value and may not be less than the product of
17 the ~~appraised value of the land~~ value multiplied by a rate that is 2 percentage points a year less than the rate of
18 return of the unified investment program administered by the board of investments pursuant to 17-6-201. The rate
19 of return from the unified investment program used in this subsection must be determined no less than 30 days
20 prior to the execution of the competitive bid. A commercial lease may include a rental adjustment formula
21 established by the board that periodically adjusts the annual rental payment provided for in the lease at
22 frequencies specified in the lease. The board may allow a credit against the annual rental payment for payments
23 made by the lessee on behalf of the state of Montana for construction of structures and improvements, special
24 improvement district assessments, annexation fees, or other city or county fees attributable to the state's property
25 interest in land leased for commercial purposes. The board may accept as lawful consideration in-kind payments
26 of services or materials equal to the full market rental value calculated for any commercial lease. A lease issued
27 under this part may include an amortization schedule to be used to determine the value to the lessee of
28 improvements when the lease is terminated.

29 (3) The department may use funds appropriated from the trust land administration account provided for
30 in 77-1-108 to contract with realtors, property managers, surveyors, legal counsel, or lease administrators to

1 administer the commercial lease, either singly or in common with other leases, or to provide assistance to the
2 department in the administration of commercial leases.

3 (4) In anticipation of entering into a commercial lease, the board may issue an option to lease at a rental
4 rate that the board determines to be appropriate. ~~An option to lease may not exceed a term of 2 years.~~ An option
5 to lease may not be construed to grant a right of immediate possession or control over the land but may only
6 preserve the optionholder's exclusive right to obtain a commercial lease on the land in the future."

7 - END -