

SENATE BILL REPORT

EHB 1199

As Passed Senate, March 30, 2021

Title: An act relating to providing compensation to department of natural resources lessees whose leases are terminated for reasons other than default.

Brief Description: Providing compensation to department of natural resources lessees whose leases are terminated for reasons other than default.

Sponsors: Representatives Corry, Chapman, Davis, Dent and Eslick.

Brief History: Passed House: 2/12/21, 96-0.

Committee Activity: Agriculture, Water, Natural Resources & Parks: 3/11/21, 3/11/21 [DP].

Floor Activity: Passed Senate: 3/30/21, 49-0.

Brief Summary of Bill

- Requires the Department of Natural Resources (DNR) to compensate lessees in the event that DNR exercises a nondefault or early termination provision in a state land lease for agricultural or grazing purposes.
- Establishes compensation formulas for agricultural leases and for grazing leases.
- Establishes certain requirements for DNR in the event that DNR exercises a nondefault or early termination provision in a state land lease for agricultural or grazing purposes.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Majority Report: Do pass.

Signed by Senators Van De Wege, Chair; Salomon, Vice Chair; Warnick, Ranking Member; Rolfes, Short and Stanford.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Karen Epps (786-7424)

Background: The Department of Natural Resources (DNR) manages a number of different categories of land, each for a specific purpose and under different management requirements. These include approximately three million acres of federally-granted lands and state forest lands, which DNR manages to support common schools, counties, and other public institutions.

DNR has the authority to lease state lands for commercial, industrial, residential, agricultural, and recreational uses in order to obtain a fair-market rental return to the state or appropriate trust. DNR generally may not lease state lands for longer than ten years, although longer leases are specifically authorized in multiple instances. Lands leased for agricultural purposes may not exceed 25 years, except leases for tree fruit or grape production, which may be for up to 55 years. Share crop leases may not exceed ten years. DNR must include language in any grazing lease that explains the right of access, and associated assumption of liability when a livestock owner makes a request to retrieve livestock, at-risk due to a wildfire.

When a state land lease for agricultural or grazing purposes includes a nondefault or early termination provision, DNR must provide:

- advance written notice of at least 180 days to the lessee prior to termination of the lease; and
- written documentation to the lessee demonstrating DNR has included the leased land in a plan for higher and better use, a land exchange, or a sale.

DNR is not required to include a non-default or early termination provision in any agricultural or grazing state land lease. DNR is not prohibited from allowing the lessee to surrender the property under the lease subject to terms provided in the lease. DNR may execute other lease provisions designed to protect the interests of the lessee in the event the lease is terminated under a non-default or early termination provision.

Summary of Bill: If DNR exercises a nondefault or early termination provision in a state land lease for agricultural or grazing purposes, DNR shall compensate the lessee according to the following schedule:

1. For agricultural leases, DNR must pay the expected net return the lessee would have realized from crops raised on the leased land to the lessee. The net return must be calculated according to the following formula: the annual net revenue per acre for the class of crop produced by the lessee, less the rental rate per acre for the land leased by the lessee; multiplied by the number of acres leased by the lessee. The annual net revenue per acre for a class of crop must be calculated according to the most recent rolling average annual net rental return per acre for that class of crop as established by the county assessor of the county in which the leased land is located. If the county assessor of the county in which the land is located has not established an annual net rental return per acre, DNR must use the net rental return per acre as established by

the county assessor of the nearest county in which the county assessor has established such an annual net rental return per acre. The annual net rental return per acre, as established by the county assessor, must be adjusted to reflect the total annual net revenue per acre. For grazing leases, DNR must pay to the lessee the annual rent for the land subject to the lease, multiplied by a factor of six, except that DNR is not required to compensate the lessee for any years that are specifically designated in the lease as nongrazing years.

2. For both grazing leases and agricultural leases, DNR must make payments to the lessee on an annual basis for the remaining term of the terminated lease, unless DNR and the lessee agree to an alternate schedule of payments. If payments are made on any schedule other than on an annual basis, DNR must subject any advance payments to an appropriate discount rate in order to reflect the net present value of the compensation owed by DNR.

For both grazing leases and agricultural leases, if the lessee has placed any authorized improvements on the land subject to the lease, DNR is responsible for compensating the lessee for the fair market value of the improvements. If an agreement cannot be reached between DNR and the lessee on the fair market value of the improvements, the valuation must be determined by a board of appraisers.

If DNR's exercise of a nondefault or early termination provision results in removal of fencing from the land subject to the lease, DNR is responsible for ensuring the replacement of any removed fencing. If DNR's exercise of a nondefault or early termination provision causes the lessee to incur a financial penalty as a result of an early withdrawal from a Natural Resources Conservation Service program, DNR is responsible for reimbursing the lessee for payment of the financial penalty.

The compensation and reimbursement available to a lessee is the sole financial remedy available to the lessee based on DNR's exercise of a nondefault or early termination provision in an agriculture or grazing lease. Appeal rights are unaffected by this relief.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The intent of the bill is to ensure that when DNR terminates a lease early for higher and better use the lessees are treated fairly, while also upholding DNR's responsibility as fiduciary managers. DNR exercises the early termination clause very infrequently and prefers to wait until a lease expires before moving to a property to a higher and better use. It is important to provide certainty to lessees that

they will not be harmed and encourage lessees to make investments and improvements on the land that they otherwise would not make if they were at risk of losing that investment. This bill helps to incentivize stewardship by the lessees. DNR has implemented agency guidance to include components of the bill because DNR sees this as a good business practice. There was a situation with wheat growers and a situation with a sheep farmer in which leases were terminated early that came at great cost to the farmers and in those situations there was no way for DNR to provide payment for what the farmers were going to lose. This bill creates an opportunity for DNR to provide a guarantee that the lessee will be kept whole. This bill is fair and reasonable to both DNR and farmers who enter into leases with DNR. If DNR enters into a lease with farmers, they must be held accountable and held to the terms of the lease. If DNR needs to terminate a lease under the best and highest use of the property provision, then DNR needs to compensate the farmers for the remainder of the lease as these leases can be critical to a farmer's operation.

Persons Testifying: PRO: Tom Davis, Washington Farm Bureau; David West, West Ranch; Ryan Poe, Washington Association of Wheat Growers; Duane Emmons, Department of Natural Resources.

Persons Signed In To Testify But Not Testifying: No one.