

# HOUSE BILL REPORT

## HB 1964

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**As Reported by House Committee On:**  
Rural Development, Agriculture, & Natural Resources

**Title:** An act relating to requiring the written consent of a lessee before the department of natural resources may terminate a lease for reasons other than default.

**Brief Description:** Requiring the written consent of a lessee before the department of natural resources may terminate a lease for reasons other than default.

**Sponsors:** Representatives Corry, Blake, Ybarra, Mosbrucker, Harris, McCaslin, Barkis and Gildon.

**Brief History:**

**Committee Activity:**

Rural Development, Agriculture, & Natural Resources: 2/19/19, 2/22/19 [DP].

**Brief Summary of Bill**

- Prohibits the Department of Natural Resources from early terminating a lease, other than for default, without the written consent of the lessee.

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### HOUSE COMMITTEE ON RURAL DEVELOPMENT, AGRICULTURE, & NATURAL RESOURCES

**Majority Report:** Do pass. Signed by 8 members: Representatives Blake, Chair; Dent, Assistant Ranking Minority Member; Chapman, Dye, Kretz, Orcutt, Schmick and Walsh.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Shewmake, Vice Chair; Fitzgibbon, Lekanoff, Ramos and Springer.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Pettigrew.

**Staff:** Robert Hatfield (786-7117).

**Background:**

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

The Department of Natural Resources (DNR) manages a number of different categories of land, each for a specific purpose and under different management requirements. This includes approximately 3 million acres of federally granted lands and state forestlands, which the DNR manages to support common schools, counties, and other public institutions.

The DNR has the authority to lease state lands for various purposes, including commercial, industrial, residential, agricultural, and recreational uses, in order to obtain a fair-market rental return to the state or appropriate trust.

The DNR generally may not lease state lands for longer than 10 years, although longer leases are specifically authorized in multiple instances. Lands leased for general agricultural purposes may not exceed 25 years, and leases for tree fruit or grape production may be for up to 55 years. Share crop leases may not exceed 10 years.

When a state land lease for agricultural or grazing purposes includes a nondefault or early termination provision, the DNR must provide advance written notice of at least 180 days to the lessee prior to termination of the lease. In addition to the 180-day advance written notice that the DNR must provide prior to terminating an agricultural or grazing lease, the DNR must also provide the lessee with written documentation demonstrating that the DNR has included the leased land in a plan for higher and better use, a land exchange, or a sale.

The DNR is not required to include a nondefault or early termination provision in any state land lease for agricultural or grazing purposes. The DNR is not prohibited from allowing a lessee to surrender the leasehold subject to the terms provided in the lease. The DNR is not prohibited from executing other lease provisions designed to protect the interests of the lessee in the event that the lease is terminated under a nondefault or early termination provision.

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**Summary of Bill:**

The Department of Natural Resources may not early terminate a lease, other than for default, without the written consent of the lessee.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The Department of Natural Resources (DNR) has to adhere to law and contracts. These leases are not carried out on a level playing field. In the world of private real estate

leasing, a tenant would never enter into a lease where there was a no-remedy early termination provision. Leases could be executed for shorter periods of time if the DNR thinks they might have other plans for the property.

Grazing leases are a big part of cattle ranching across the state; these leases are built into a ranch's business plan. If a cattle rancher builds his business plan based on a lease, he knows the number of head of cattle he needs in order to keep the business viable and when the amount of land available for grazing changes, that impacts the operation of the business.

The DNR manages over 1 million acres of agricultural ground. About 80 percent of that acreage is grazing lands. It is important to keep agriculture healthy in order to keep rural areas healthy. It may be time for the DNR to divest itself from some of its agricultural holdings, and move its fiduciary obligation to other investments.

If DNR leases were written correctly, there would be more bidding. Perhaps the DNR should write leases for shorter terms.

(Opposed) There are concerns with the bill because of revenue impacts. The DNR uses early termination clauses very sparingly. This bill would protect lessees even if it created an economic disadvantage to the trust. These lands were granted at statehood for named beneficiaries, like the common school trust. These are real and enforceable trusts, and the Legislature, as trustee, must act with undivided loyalty to the beneficiaries of the trust. The DNR's dryland leases commonly include an agreed-to clause that stipulates that the DNR may early terminate a lease in three instances: (1) when the property has been included in a plan for higher and better use; (2) when the land is part of a land exchange; or (3) when the land is the subject of a sale. Out of roughly 1300 leases, the DNR has early terminated only 10 since 2015. Nine of those were to move from dryland farming to irrigated agriculture in order to secure a water right. The DNR supported Senate Bill 5015 in 2018, which required the DNR to provide lessees with 180 days of notice in case of a non-default early termination. The current bill protects the interests of lessees over the interests of the trust. The DNR has to demonstrate that the plan for higher and better use is actually real; in one, it was for a solar farm, and for the other nine terminating leases, it was for a \$50 million water right. The DNR does not early terminate a lease for reasons other than default if there is not an early termination clause already in the lease.

It is not proper to just give away a thing of value; the DNR's lease rates were negotiated with the current terms in mind. If the right provided in the bill had existed at the inception of the lease, it likely would have resulted in different rates. The bill may present a constitutional violation.

**Persons Testifying:** (In support) Representative Corry, prime sponsor; Mark Streuli, Washington Cattlemen's Association; Diana Carlen, Washington Association of Wheat Growers; Tom Davis, Washington Farm Bureau; and Dave West.

(Opposed) Angus Brodie, Washington State Department of Natural Resources; and Brian Sims, Washington State School Directors' Association.

**Persons Signed In To Testify But Not Testifying:** None.