

# HOUSE BILL REPORT

## SHB 2498

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**As Passed House:**  
February 17, 2020

**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:** House Committee on Appropriations (originally sponsored by Representatives Corry, Blake, Walsh, Mosbrucker, Chandler, Hoff, Dye, Graham, Davis, Dent, Dufault, Van Werven, Maycumber, Rude, Ybarra, Lekanoff, Eslick and Leavitt).

**Brief History:**

**Committee Activity:**

Rural Development, Agriculture, & Natural Resources: 1/22/20, 1/29/20 [DP];  
Appropriations: 2/8/20, 2/11/20 [DPS].

**Floor Activity:**

Passed House: 2/17/20, 98-0.

**Brief Summary of Substitute 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.
- Creates certain additional obligations for the DNR in the event that the DNR exercises a nondefault or early termination provision in a state land lease for agricultural or grazing purposes.

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

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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.*

**Majority Report:** Do pass. Signed by 11 members: Representatives Blake, Chair; Shewmake, Vice Chair; Chandler, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Kretz, Lekanoff, Orcutt, Ramos, Schmick, Springer and Walsh.

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

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 32 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Stokesbary, Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Chopp, Cody, Corry, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Kilduff, Kraft, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Schmick, Senn, Springer, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

**Staff:** Dan Jones (786-7118).

### **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. 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.

### **Summary of Substitute Bill:**

In the event the Department of Natural Resources (DNR) exercises a nondefault or early termination provision in a state land lease for agricultural or grazing purposes, the department shall compensate the lessee according to the following schedule:

- For agricultural leases, the DNR shall pay to the lessee the expected net return the lessee would have realized from crops raised on the leased land. 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, the 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, the DNR must pay to the lessee the annual rent for the land subject to the lease, multiplied by a factor of six, except that the DNR is not required to compensate the lessee for any years that are specifically designated in the lease as nongrazing years.

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

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

If the DNR's exercise of a nondefault or early termination provision results in the removal of fencing from the land subject to the lease, the DNR is responsible for ensuring the replacement of any removed fencing.

If the 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, the DNR is responsible for reimbursing the lessee for payment of the financial penalty.

The compensation available to a lessee under the bill is the sole financial remedy available to the lessee based on the DNR's exercise of a nondefault or early termination provision in an agriculture or grazing lease.

**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 (Rural Development, Agriculture, & Natural Resources):**

(In support) Farmers and grazers set up a business plan based on a certain term, and early terminations disrupt that business plan.

Relationships have improved on the issue of agricultural leases. This is a fair bill for everyone involved. It puts farmers and cattlemen on level ground for agricultural leases.

The cost of equipment continues to grow, and there is also the cost of improvements; those costs need to be spread out over a certain acreage in order to pencil out.

Farmers make business decisions based on the premise that leases will run for their full term.

This bill represents an opportunity to resolve a lease termination promptly, which means more revenue to trust beneficiaries as a result of a higher and better use. There is one concern that is easily resolved, which is that payments should be conditioned on prompt acceptance of the termination, so that there is not a prolonged appeal process. It would be good to see clarity in the bill that ensures a lease termination gets resolved promptly.

There have been concerns on this issue for years, so it is good to see a solution. There are concerns that the early acceptance requirement would bring about unfair leverage on the part of the Department of Natural Resources (DNR).

The bill demonstrates what can be achieved when there is cooperation and collaboration between business partners. The bill provides lessees with assurance that their investments will be protected, which in turn benefits the trust, since people are willing to make investments, and more people will be inclined to bid, and bid higher, for leases. The bill retains DNR's ability to use the early termination clause where there is a higher and better use.

(Opposed) None.

**Staff Summary of Public Testimony (Appropriations):**

(In support) None.

(Opposed) None.

**Persons Testifying** (Rural Development, Agriculture, & Natural Resources): Representative Corry, prime sponsor; Diana Carlen, Ryan Poe, and Marci Green, Washington Association of Wheat Growers; Brian Sims, Washington State School Directors Association; Tom Davis, Washington Farm Bureau; Mark Streuli, Washington Cattlemen's Association; and Duane Emmons, Department of Natural Resources.

**Persons Testifying** (Appropriations): None.

**Persons Signed In To Testify But Not Testifying** (Rural Development, Agriculture, & Natural Resources): None.

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