

IN THE HOUSE

MARCH 26, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 27, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 House BILL NO. 104
2 INTRODUCED BY J. Perkins

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO LIMIT THE PREFERENCE
5 RIGHT OF A LESSEE TO RENEW A LEASE FOR STATE AGRICULTURAL OR
6 GRAZING LAND IF THE LESSEE SUBLEASES THE LAND; AND AMENDING
7 SECTIONS 77-6-205, 77-6-208, AND 77-6-210, MCA."

8
9 WHEREAS, section 77-6-205, MCA, provides an existing
10 lessee of state land a preference right to renew the lease;
11 and

12 WHEREAS, the Montana Supreme Court in Jerke v. State
13 Department of Lands, 182 Mont. 294, 597 P.2d 49 (1979), held
14 that it is an unconstitutional application of the preference
15 right statute to allow a lessee to exercise a preference
16 right if the lessee subleases the land and does not use it
17 himself; and

18 WHEREAS, in Skillman v. Department of State Lands, 188
19 Mont. 383, 613 P.2d 1389 (1980), the Supreme Court applied
20 the rule in Jerke to deny a lessee a preference right to
21 lease state grazing land when the lessee did not himself use
22 such land; and

23 WHEREAS, state lands are to be held in trust for the
24 people of Montana; and

25 WHEREAS, allowing the preference right to be exercised

1 by a lessee who subleases the land would be to install the
2 lessee as the trustee of state land.

3 THEREFORE, the Legislature of the State of Montana
4 finds it appropriate to enact legislation to limit the
5 preference right if a lessee subleases state land.

6
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 Section 1. Section 77-6-205, MCA, is amended to read:

9 "77-6-205. Renewal leases. (1) A lessee of state land
10 classed as agricultural, grazing, town lot, city lot, or
11 land valuable for commercial development who has paid all
12 rentals due from him to the state is entitled to have his
13 lease renewed for a period not to exceed the maximum lease
14 period provided in 77-6-109 at any time within 30 days prior
15 to its expiration if no other applications for lease of the
16 land have been received 30 days prior to the expiration of
17 his lease. The renewal shall be at the rental rate provided
18 by law for the renewal period and subject to any other
19 conditions at the time of the renewal imposed by law as
20 terms of the lease. ff Except as provided in [section 4], if
21 other applications have been received, the holder of the
22 lease has the preference right to lease the land covered by
23 his former lease by meeting the highest bid made by any
24 other applicant. Applications for lease of lands in this
25 section shall be given preference in the order of their



1 receipt at the office of the department.

2 (2) The board shall accept the highest bid. If the
3 lessee exercises the preference right and believes the bid
4 to be excessive, he may request an administrative hearing.
5 Such request must contain a statement of reasons why the
6 lessee believes the bid not to be in the state's best
7 interest and must be accompanied by a deposit equal to 20%
8 of the competitive bid in the case of grazing lands and \$1
9 per acre in the case of agricultural lands. The department
10 shall grant the request for a hearing if it determines that
11 the statement indicates evidence that the bid may not be in
12 the state's best interests. The board may, after the
13 hearing, reduce the rental from the amount bid if the lessee
14 shows that the bid is not in the best interest of the state
15 because it is above community standards for a lease of such
16 land, would cause damage to the tract, or impair its
17 long-term productivity. If the board reduces the bid, it
18 shall set forth its findings and conclusions in writing and
19 so inform the lessee and competitive bidder. It is the duty
20 of the board to secure the best lessees possible, so that
21 the state may receive the maximum return possible with the
22 least injury occurring to the land.

23 (3) A renewal lease may be canceled pursuant to
24 77-6-113, 77-6-208, 77-6-209, or 77-6-210 for a violation by
25 the lessee that occurred during the previous lease term but

1 no more than 3 years prior to the date on which the notice
2 of cancellation required by 77-6-211 is issued.
3 Cancellation procedures instituted but not completed before
4 renewal are applicable to the renewal lease."

5 Section 2. Section 77-6-208, MCA, is amended to read:

6 "77-6-208. Assignment of leases -- subleasing -- loss
7 of preference right. (1) Leases to state lands may be
8 assigned on blanks prescribed by the department, but no
9 assignment is binding on the state unless the assignment is
10 filed with the department, approved by it and payment made
11 of the assignment fee under 77-1-302. Preference shall
12 always be given to the applicant who wants the land for his
13 own individual use, so that the full advantage coming from
14 the leasing and use of the lands may reach those who
15 actually till the soil and so that they are not compelled to
16 pay a higher rental than that due the state. If a lessee
17 subleases state lands on terms less advantageous to the
18 sublessee than the terms given by the state or subleases
19 state lands without filing a copy of the sublease with the
20 department and without receiving its approval, the
21 department shall cancel the lease, subject to the appeal
22 procedure provided in 77-6-211.

23 (2) The subleasing of state land may result in loss of
24 the preference right to renew the lease as provided in
25 [section 4].

1 (3) No assignment or series of assignments may be made
 2 to avoid the loss of the preference right under [section
 3 4]."

4 Section 3. Section 77-6-210, MCA, is amended to read:
 5 "77-6-210. Cancellation of leases. (1) The department
 6 may cancel a lease for any of the following causes:

7 (a) fraud, misrepresentation, or concealment of facts
 8 relating to its issue, which if known would have prevented
 9 its issue in the form or to the party issued;

10 (b) subleasing state land in excess of the period
 11 allowed under [section 4];

12 (c) using the land for other purposes than those
 13 authorized by the lease; and

14 (d) for any other cause which in the judgment of the
 15 department makes the cancellation of the lease necessary in
 16 order to do justice to all parties concerned and to protect
 17 the interests of the state.

18 (2) Such--cancellation Cancellation of a lease under
 19 this section does not entitle the lessee to any refund of
 20 rentals paid or exemption from the payment of any rentals,
 21 penalties, or other compensation due the state."

22 NEW SECTION. Section 4. Loss of preference right --
 23 cancellation of lease -- subleasing. (1) Except as provided
 24 in subsection (3), a lessee of state land classed as
 25 agricultural or grazing land may not exercise the preference

1 right provided in 77-6-205 if he subleases the land for more
 2 than 2 years in the term of the lease.

3 (2) The department shall cancel a lease of state
 4 agricultural or grazing land if the lessee subleases the
 5 land for more than 3 years during the term of the lease,
 6 unless the sublease is made between members of a family as
 7 provided in subsection (3).

8 (3) A lessee under subsection (1) or (2) may sublease
 9 the land for a period of not more than 5 years without
 10 losing the preference right or the lease to state land if,
 11 during the term of the lease, the land is subleased only to
 12 a spouse, son, daughter, adopted child, or sibling of the
 13 lessee.

14 NEW SECTION. Section 5. Extension of authority. Any
 15 existing authority of the board of land commissioners to
 16 make rules on the subject of the provisions of this act is
 17 extended to the provisions of this act.

18 NEW SECTION. Section 6. Codification instruction.
 19 Section 4 is intended to be codified as an integral part of
 20 Title 77, chapter 6, part 2, and the provisions of Title 77,
 21 chapter 6, part 2, apply to section 4.

22 NEW SECTION. Section 7. Saving clause. This act does
 23 not affect rights and duties that matured, penalties that
 24 were incurred, or proceedings that were begun before the
 25 effective date of this act.

-End-

APPROVED BY COMMITTEE
ON AGRICULTURE LIVESTOCK
& IRRIGATION

1 HOUSE BILL NO. 804
2 INTRODUCED BY JENKINS
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO LIMIT THE PREFERENCE
5 RIGHT OF A LESSEE TO RENEW A LEASE FOR STATE AGRICULTURAL OR
6 GRAZING LAND IF THE LESSEE SUBLEASES THE LAND; AND AMENDING
7 SECTIONS 77-6-205, 77-6-208, AND 77-6-210, MCA; AND
8 PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE
9 DATE."
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11 WHEREAS, section 77-6-205, MCA, provides an existing
12 lessee of state land a preference right to renew the lease;
13 and

14 WHEREAS, the Montana Supreme Court in Jerke v. State
15 Department of Lands, 182 Mont. 294, 597 P.2d 49 (1979), held
16 that it is an unconstitutional application of the preference
17 right statute to allow a lessee to exercise a preference
18 right if the lessee subleases the land and does not use it
19 himself; and

20 WHEREAS, in Skillman v. Department of State Lands, 188
21 Mont. 383, 613 P.2d 1389 (1980), the Supreme Court applied
22 the rule in Jerke to deny a lessee a preference right to
23 lease state grazing land when the lessee did not himself use
24 such land; and

25 WHEREAS, state lands are to be held in trust for the

1 people of Montana; and

2 WHEREAS, allowing the preference right to be exercised
3 by a lessee who subleases the land would be to install the
4 lessee as the trustee of state land.

5 THEREFORE, the Legislature of the State of Montana
6 finds it appropriate to enact legislation to limit the
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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 77-6-205, MCA, is amended to read:

11 "77-6-205. Renewal leases. (1) A lessee of state land
12 classed as agricultural, grazing, town lot, city lot, or
13 land valuable for commercial development who has paid all
14 rentals due from him to the state is entitled to have his
15 lease renewed for a period not to exceed the maximum lease
16 period provided in 77-6-109 at any time within 30 days prior
17 to its expiration if no other applications for lease of the
18 land have been received 30 days prior to the expiration of
19 his lease. The renewal shall be at the rental rate provided
20 by law for the renewal period and subject to any other
21 conditions at the time of the renewal imposed by law as
22 terms of the lease. if Except as provided in [section 4], if
23 other applications have been received, the holder of the
24 lease has the preference right to lease the land covered by
25 his former lease by meeting the highest bid made by any



1 other applicant. Applications for lease of lands in this
2 section shall be given preference in the order of their
3 receipt at the office of the department.

4 (2) The board shall accept the highest bid. If the
5 lessee exercises the preference right and believes the bid
6 to be excessive, he may request an administrative hearing.
7 Such request must contain a statement of reasons why the
8 lessee believes the bid not to be in the state's best
9 interest and must be accompanied by a deposit equal to 20%
10 of the competitive bid in the case of grazing lands and \$1
11 per acre in the case of agricultural lands. The department
12 shall grant the request for a hearing if it determines that
13 the statement indicates evidence that the bid may not be in
14 the state's best interests. The board may, after the
15 hearing, reduce the rental from the amount bid if the lessee
16 shows that the bid is not in the best interest of the state
17 because it is above community standards for a lease of such
18 land, would cause damage to the tract, or impair its
19 long-term productivity. If the board reduces the bid, it
20 shall set forth its findings and conclusions in writing and
21 so inform the lessee and competitive bidder. It is the duty
22 of the board to secure the best lessees possible, so that
23 the state may receive the maximum return possible with the
24 least injury occurring to the land.

25 (3) A renewal lease may be canceled pursuant to

1 77-6-113, 77-6-208, 77-6-209, or 77-6-210 for a violation by
2 the lessee that occurred during the previous lease term but
3 no more than 3 years prior to the date on which the notice
4 of cancellation required by 77-6-211 is issued.
5 Cancellation procedures instituted but not completed before
6 renewal are applicable to the renewal lease."

7 Section 2. Section 77-6-208, MCA, is amended to read:

8 "77-6-208. Assignment of leases -- subleasing -- loss
9 of preference right. (1) Leases to state lands may be
10 assigned on blanks prescribed by the department, but no
11 assignment is binding on the state unless the assignment is
12 filed with the department, approved by it and payment made
13 of the assignment fee under 77-1-302. Preference shall
14 always be given to the applicant who wants the land for his
15 own individual use, so that the full advantage coming from
16 the leasing and use of the lands may reach those who
17 actually till the soil and so that they are not compelled to
18 pay a higher rental than that due the state. If a lessee
19 subleases state lands on terms less advantageous to the
20 sublessee than the terms given by the state or subleases
21 state lands without filing a copy of the sublease with the
22 department and without receiving its approval, the
23 department shall cancel the lease, subject to the appeal
24 procedure provided in 77-6-211.

25 (2) The subleasing of state land may result in loss of

1 the preference right to renew the lease as provided in
 2 [section 4].

3 (3) No assignment or series of assignments may be made
 4 to avoid the loss of the preference right under [section
 5 4]."

6 Section 3. Section 77-6-210, MCA, is amended to read:
 7 "77-6-210. Cancellation of leases. (1) The department
 8 may cancel a lease for any of the following causes:

9 (a) fraud, misrepresentation, or concealment of facts
 10 relating to its issue, which if known would have prevented
 11 its issue in the form or to the party issued;

12 (b) subleasing state land in excess of the period
 13 allowed under [section 4];

14 (c) using the land for other purposes than those
 15 authorized by the lease; and

16 (d) for any other cause which in the judgment of the
 17 department makes the cancellation of the lease necessary in
 18 order to do justice to all parties concerned and to protect
 19 the interests of the state.

20 (2) Such--cancellation Cancellation of a lease under
 21 this section does not entitle the lessee to any refund of
 22 rentals paid or exemption from the payment of any rentals,
 23 penalties, or other compensation due the state."

24 NEW SECTION. Section 4. Loss of preference right --
 25 cancellation of lease -- subleasing -- PASTURING AGREEMENTS.

1 (1) Except as provided in subsection SUBSECTIONS (3) AND
 2 (4), a lessee of state land classed as agricultural or
 3 grazing land may not exercise the preference right provided
 4 in 77-6-205 if he subleases the land for more than 2 years
 5 in the term of the lease.

6 (2) The department shall cancel a lease of state
 7 agricultural or grazing land if the lessee subleases the
 8 land for more than 3 years during the term of the lease,
 9 unless the sublease is made between members of a family as
 10 provided in subsection (3).

11 (3) A lessee under subsection (1) or (2) may sublease
 12 the land for a period of not more than 5 years without
 13 losing the preference right or the lease to state land if,
 14 during the term of the lease, the land is subleased only to
 15 a spouse, son, daughter, adopted child, or sibling of the
 16 lessee.

17 (4) THE LESSEE DOES NOT LOSE THE PREFERENCE RIGHT FOR
 18 SUBLEASING AS PROVIDED UNDER THIS SECTION IF:

19 (A) THE SUBLEASE IS CONSIDERED TO BE A PASTURING
 20 AGREEMENT; AND

21 (B) THE PASTURING AGREEMENT IS APPROVED IN WRITING BY
 22 THE DEPARTMENT PRIOR TO THE INITIATION OF THE AGREEMENT.

23 (5) FOR PURPOSES OF THIS SECTION, A SUBLEASE MAY NOT
 24 BE CONSIDERED A PASTURING AGREEMENT UNLESS THE LESSEE
 25 PERSONALLY RETAINS ALL ELEMENTS OF MANAGEMENT AND PHYSICAL

1 CONTROL OF THE LAND AND LIVESTOCK. "MANAGEMENT" MEANS BUT IS
 2 NOT LIMITED TO:

3 (A) PROVIDING ALL COSTS FOR IMPROVEMENTS, LAND
 4 MAINTENANCE, AND RANGE RENOVATION, IF RANGE RENOVATION IS
 5 APPROVED BY THE DEPARTMENT;

6 (B) MAKING ALL DECISIONS REGARDING ROTATION OR OTHER
 7 PLACEMENT OF LIVESTOCK ON STATE LAND;

8 (C) PROVIDING NOTIFICATION TO THE DEPARTMENT OF
 9 TURN-IN AND TURN-OUT DATES OF THE LIVESTOCK ON STATE LAND;

10 AND

11 (D) MAKING ALL DECISIONS REGARDING PROPER RANGE
 12 MANAGEMENT, INCLUDING PLACEMENT OF WATER, FENCING, AND SALT.

13 NEW SECTION. Section 5. Extension of authority. Any
 14 existing authority of the board of land commissioners to
 15 make rules on the subject of the provisions of this act is
 16 extended to the provisions of this act.

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 18 Section 4 is intended to be codified as an integral part of
 19 Title 77, chapter 6, part 2, and the provisions of Title 77,
 20 chapter 6, part 2, apply to section 4.

21 NEW SECTION. Section 7. Saving clause. This act does
 22 not affect rights and duties that matured, penalties that
 23 were incurred, or proceedings that were begun before the
 24 effective date of this act.

25 NEW SECTION. SECTION 8. APPLICABILITY. (1) EXCEPT AS

1 PROVIDED IN SUBSECTION (2), THIS ACT DOES NOT APPLY TO A
 2 LESSEE WHO HAS SUBLEASED STATE LAND DURING THE TERM OF AN
 3 EXISTING STATE LEASE.

4 (2) THIS ACT APPLIES TO A LESSEE OF STATE AGRICULTURAL
 5 OR GRAZING LAND IF, AFTER THE EFFECTIVE DATE OF THIS ACT,
 6 THE LESSEE ENTERS INTO AN AGREEMENT TO SUBLEASE THE LAND TO
 7 ANOTHER PERSON.

8 NEW SECTION. SECTION 9. EFFECTIVE DATE. THIS ACT IS
 9 EFFECTIVE ON PASSAGE AND APPROVAL.

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5 lessee exercises the preference right and believes the bid
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6 renewal are applicable to the renewal lease."

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8 "77-6-208. Assignment of leases -- subleasing -- loss
9 of preference right. (1) Leases to state lands may be
10 assigned on blanks prescribed by the department, but no
11 assignment is binding on the state unless the assignment is
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1 the preference right to renew the lease as provided in
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 12 the land for a period of not more than 5 years without
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 15 a spouse, son, daughter, adopted child, or sibling of the
 16 lessee.

17 (4) THE LESSEE DOES NOT LOSE THE PREFERENCE RIGHT FOR
 18 SUBLEASING AS PROVIDED UNDER THIS SECTION IF:

19 (A) THE SUBLEASE IS ONE-THIRD OR LESS ACRES OF THE
 20 LEASE;

21 (B) THE SUBLEASE IS CONSIDERED TO BE A PASTURING
 22 AGREEMENT; AND

23 (C) THE PASTURING AGREEMENT IS APPROVED IN WRITING
 24 BY THE DEPARTMENT PRIOR TO THE INITIATION OF THE AGREEMENT.

25 (5) FOR PURPOSES OF THIS SECTION, A SUBLEASE MAY NOT

1 BE CONSIDERED A PASTURING AGREEMENT UNLESS THE LESSEE
 2 PERSONALLY RETAINS ALL ELEMENTS OF MANAGEMENT AND PHYSICAL
 3 CONTROL OF THE LAND AND LIVESTOCK. "MANAGEMENT" MEANS BUT IS
 4 NOT LIMITED TO:

5 (A) PROVIDING ALL COSTS FOR IMPROVEMENTS, LAND
 6 MAINTENANCE, AND RANGE RENOVATION, IF RANGE RENOVATION IS
 7 APPROVED BY THE DEPARTMENT;

8 (B) MAKING ALL DECISIONS REGARDING ROTATION OR OTHER
 9 PLACEMENT OF LIVESTOCK ON STATE LAND;

10 (C) PROVIDING NOTIFICATION TO THE DEPARTMENT OF
 11 TURN-IN AND TURN-OUT DATES OF THE LIVESTOCK ON STATE LAND;
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13 (D) MAKING ALL DECISIONS REGARDING PROPER RANGE
 14 MANAGEMENT, INCLUDING PLACEMENT OF WATER, FENCING, AND SALT.

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 16 existing authority of the board of land commissioners to
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6 (2) THIS ACT APPLIES TO A LESSEE OF STATE AGRICULTURAL
 7 OR GRAZING LAND IF, AFTER THE EFFECTIVE DATE OF THIS ACT,
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INTRODUCED BY JENKINS

A BILL FOR AN ACT ENTITLED: "AN ACT TO LIMIT THE PREFERENCE RIGHT OF A LESSEE TO RENEW A LEASE FOR STATE AGRICULTURAL OR GRAZING LAND IF THE LESSEE SUBLEASES THE LAND; AND AMENDING SECTIONS 77-6-205, 77-6-208, AND 77-6-210, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, section 77-6-205, MCA, provides an existing lessee of state land a preference right to renew the lease; and

WHEREAS, the Montana Supreme Court in Jerke v. State Department of Lands, 182 Mont. 294, 597 P.2d 49 (1979), held that it is an unconstitutional application of the preference right statute to allow a lessee to exercise a preference right if the lessee subleases the land and does not use it himself; and

WHEREAS, in Skillman v. Department of State Lands, 188 Mont. 383, 613 P.2d 1389 (1980), the Supreme Court applied the rule in Jerke to deny a lessee a preference right to lease state grazing land when the lessee did not himself use such land; and

WHEREAS, state lands are to be held in trust for the

people of Montana; and

WHEREAS, allowing the preference right to be exercised by a lessee who subleases the land would be to install the lessee as the trustee of state land; AND

WHEREAS, THERE ARE SITUATIONS WHERE A LESSEE PERMITS ANOTHER PERSON TO USE ALL OR A PORTION OF A LEASE THAT SHOULD NOT RESULT IN THE LOSS OF THE PREFERENCE RIGHT.

THEREFORE, the Legislature of the State of Montana finds it appropriate to enact legislation to limit the preference right if a lessee subleases state land IN CERTAIN CIRCUMSTANCES.

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

Section 1. Section 77-6-205, MCA, is amended to read:

"77-6-205. Renewal leases. (1) A lessee of state land classed as agricultural, grazing, town lot, city lot, or land valuable for commercial development who has paid all rentals due from him to the state is entitled to have his lease renewed for a period not to exceed the maximum lease period provided in 77-6-109 at any time within 30 days prior to its expiration if no other applications for lease of the land have been received 30 days prior to the expiration of his lease. The renewal shall be at the rental rate provided by law for the renewal period and subject to any other conditions at the time of the renewal imposed by law as



1 terms of the lease. If Except as provided in [section 4], if
 2 other applications have been received, the holder of the
 3 lease has the preference right to lease the land covered by
 4 his former lease by meeting the highest bid made by any
 5 other applicant. Applications for lease of lands in this
 6 section shall be given preference in the order of their
 7 receipt at the office of the department.

8 (2) The board shall accept the highest bid. If the
 9 lessee exercises the preference right and believes the bid
 10 to be excessive, he may request an administrative hearing.
 11 Such request must contain a statement of reasons why the
 12 lessee believes the bid not to be in the state's best
 13 interest and must be accompanied by a deposit equal to 20%
 14 of the competitive bid in the case of grazing lands and \$1
 15 per acre in the case of agricultural lands. The department
 16 shall grant the request for a hearing if it determines that
 17 the statement indicates evidence that the bid may not be in
 18 the state's best interests. The board may, after the
 19 hearing, reduce the rental from the amount bid if the lessee
 20 shows that the bid is not in the best interest of the state
 21 because it is above community standards for a lease of such
 22 land, would cause damage to the tract, or impair its
 23 long-term productivity. If the board reduces the bid, it
 24 shall set forth its findings and conclusions in writing and
 25 so inform the lessee and competitive bidder. It is the duty

1 of the board to secure the best lessees possible, so that
 2 the state may receive the maximum return possible with the
 3 least injury occurring to the land.

4 (3) A renewal lease may be canceled pursuant to
 5 77-6-113, 77-6-208, 77-6-209, or 77-6-210 for a violation by
 6 the lessee that occurred during the previous lease term but
 7 no more than 3 years prior to the date on which the notice
 8 of cancellation required by 77-6-211 is issued.
 9 Cancellation procedures instituted but not completed before
 10 renewal are applicable to the renewal lease."

11 Section 2. Section 77-6-208, MCA, is amended to read:
 12 "77-6-208. Assignment of leases -- subleasing -- loss
 13 of preference right. (1) Leases to state lands may be
 14 assigned on blanks prescribed by the department, but no
 15 assignment is binding on the state unless the assignment is
 16 filed with the department, approved by it and payment made
 17 of the assignment fee under 77-1-302.

18 (2) Preference shall always be given to the applicant
 19 who wants the land for his own individual use, so that the
 20 full advantage coming from the leasing and use of the lands
 21 may reach those who actually till the soil and so that they
 22 are not compelled to pay a higher rental than that due the
 23 state.

24 (3) If a lessee subleases state lands on terms less
 25 advantageous to the sublessee than the terms given by the

1 ~~state or subleases state lands without filing a copy of the~~
 2 ~~sublease with the department and without receiving its~~
 3 ~~approval, the department shall cancel the lease, subject to~~
 4 ~~the appeal procedure provided in 77-6-211. IF A LESSEE~~
 5 ~~SUBLEASES STATE LANDS WITHOUT FILING A COPY OF THE SUBLEASE~~
 6 ~~WITH THE DEPARTMENT AND WITHOUT RECEIVING ITS APPROVAL, THE~~
 7 ~~DEPARTMENT MAY CANCEL THE LEASE, SUBJECT TO THE APPEAL~~
 8 ~~PROCEDURE PROVIDED IN 77-6-211.~~

9 ~~{2}(4) The subleasing of state land may result in loss~~
 10 ~~of the preference right to renew the lease as provided in~~
 11 ~~[section 4].~~

12 ~~{3}(5) No assignment or series of assignments may be~~
 13 ~~made to avoid the loss of the preference right under~~
 14 ~~[section 4]."~~

15 Section 3. Section 77-6-210, MCA, is amended to read:
 16 "77-6-210. Cancellation of leases. (1) The department
 17 may cancel a lease for any of the following causes:

18 (a) fraud, misrepresentation, or concealment of facts
 19 relating to its issue, which if known would have prevented
 20 its issue in the form or to the party issued;

21 (b) ~~subleasing state land in excess of the period~~
 22 ~~allowed under CONTRARY TO THE PROVISIONS OF [section 4];~~

23 (c) using the land for other purposes than those
 24 authorized by the lease; and

25 (d) for any other cause which in the judgment of the

1 department makes the cancellation of the lease necessary in
 2 order to do justice to all parties concerned and to protect
 3 the interests of the state.

4 ~~(2) Such cancellation~~ Cancellation of a lease under
 5 this section does not entitle the lessee to any refund of
 6 rentals paid or exemption from the payment of any rentals,
 7 penalties, or other compensation due the state."

8 NEW SECTION. Section 4. Loss of preference right --
 9 cancellation of lease -- subleasing -- PASTURING AGREEMENTS.

10 (1) Except as provided in subsection SUBSECTIONS (3) AND
 11 (4), a lessee of state land classed as agricultural or
 12 grazing land may not exercise the preference right provided
 13 in 77-6-205 if he subleases the land for more than 2 years
 14 in the term of the lease.

15 (2) The department shall cancel a lease of state
 16 agricultural or grazing land if the lessee subleases the
 17 land for more than 3 years during the term of the lease,
 18 unless the sublease is made between members of a family as
 19 provided in subsection (3).

20 (3) A lessee under subsection (1) or (2) may sublease
 21 the land for a period of not more than 5 years without
 22 losing the preference right or the lease to state land if,
 23 during the term of the lease, the land is subleased only to
 24 a spouse, son, daughter, adopted child, or sibling of the
 25 lessee.

1 (4) THE LESSEE DOES NOT LOSE THE PREFERENCE RIGHT FOR
2 OR RIGHT TO LEASE BECAUSE OF SUBLEASING AS PROVIDED UNDER
3 THIS SECTION IF:

4 (A) THE SUBLEASE IS ONE-THIRD OR LESS ACRES OF THE
5 LEASE; OR

6 ~~(A)~~(B) THE SUBLEASE IS CONSIDERED TO BE A PASTURING
7 AGREEMENT; AND

8 ~~(B)~~(C) ~~--THE--PASTURING-AGREEMENT~~ IS APPROVED IN WRITING
9 BY THE DEPARTMENT PRIOR TO THE INITIATION OF THE AGREEMENT.

10 (5) FOR PURPOSES OF THIS SECTION, A SUBLEASE MAY NOT
11 BE CONSIDERED A PASTURING AGREEMENT UNLESS THE LESSEE
12 PERSONALLY RETAINS ~~ALL-ELEMENTS-OF~~ MANAGEMENT AND PHYSICAL
13 CONTROL OF THE LAND AND LIVESTOCK. "MANAGEMENT" MEANS BUT IS
14 NOT LIMITED TO:

15 (A) PROVIDING ALL COSTS FOR IMPROVEMENTS, LAND
16 MAINTENANCE, AND RANGE RENOVATION, IF RANGE RENOVATION IS
17 APPROVED BY THE DEPARTMENT;

18 (B) MAKING ALL DECISIONS REGARDING ROTATION OR OTHER
19 PLACEMENT OF LIVESTOCK ON STATE LAND;

20 ~~(C) PROVIDING-NOTIFICATION-TO-THE-DEPARTMENT-OF~~ MAKING
21 ALL DECISIONS REGARDING TURN-IN AND TURN-OUT DATES OF THE
22 LIVESTOCK ON STATE LAND; AND

23 (D) MAKING ALL DECISIONS REGARDING PROPER RANGE
24 MANAGEMENT, INCLUDING PLACEMENT OF WATER, FENCING, AND SALT.

25 NEW SECTION. Section 5. Extension of authority. Any

1 existing authority of the board of land commissioners to
2 make rules on the subject of the provisions of this act is
3 extended to the provisions of this act.

4 NEW SECTION. Section 6. Codification instruction.
5 Section 4 is intended to be codified as an integral part of
6 Title 77, chapter 6, part 2, and the provisions of Title 77,
7 chapter 6, part 2, apply to section 4.

8 NEW SECTION. Section 7. Saving clause. This act does
9 not affect rights and duties that matured, penalties that
10 were incurred, or proceedings that were begun before the
11 effective date of this act.

12 NEW SECTION. SECTION 8. APPLICABILITY. (1) EXCEPT AS
13 PROVIDED IN SUBSECTION (2), THIS ACT DOES NOT APPLY TO A
14 LESSEE WHO HAS SUBLEASED STATE LAND DURING THE TERM OF AN
15 EXISTING STATE LEASE.

16 (2) THIS ACT APPLIES TO A LESSEE OF STATE AGRICULTURAL
17 OR GRAZING LAND IF, AFTER THE EFFECTIVE DATE OF THIS ACT,
18 THE LESSEE ENTERS INTO AN AGREEMENT TO SUBLEASE THE LAND TO
19 ANOTHER PERSON.

20 NEW SECTION. SECTION 9. EFFECTIVE DATE. THIS ACT IS
21 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

STANDING COMMITTEE REPORT

Senate Agriculture, Livestock & Irrigation
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MARCH 16 19 87

SENATE

MR. PRESIDENT

We, your committee on AGRICULTURE, LIVESTOCK & IRRIGATION

having had under consideration HOUSE BILL No. 804

third reading copy (blue color)

Jenkins (Bengtson)

LIMIT PREFERENCE RIGHT FOR LEASE OF STATE AGRICULTURAL OR GRAZING LANDS

Respectfully report as follows: That HOUSE BILL No. 804

BE AMENDED AS FOLLOWS:

1. Page 2, line 1.
Strike: "and"

2. Page 2, line 4.
Following: "land"
Insert: "; and"

WHEREAS, there are situations where a lessee permits another person to use all or a portion of a lease that should not result in the loss of the preference right"

3. Page 2, line 7.
Following: "land"
Insert: "in certain circumstances"

4. Page 4, line 13.
Following: "77-1-302."
Insert: "(2)"

5. Page 4, line 18.
Following: "state."
Insert: "(3)"

6. Page 4, lines 20 through 22.
Following: "state"
Strike: remainder of line 20 through "approval" on line 22

7. Page 4, line 24.
Following: "77-6-211."
Insert: "If a lessee subleases state lands without filing a copy of the sublease with the department and without receiving its approval, the department may cancel the lease, subject to the appeal procedure provided in 77-6-211."

8. Page 4, line 25.
Strike: "(2)"
Insert: "(4)"

9. Page 5, line 3.
Strike: "(3)"
Insert: "(5)"

10. Page 5, lines 12 and 13.
Strike: "in excess of the period allowed under"
Insert: "contrary to the provisions of"

11. Page 6, line 20.
Following: "LEASE;"
Insert: "or"

12. Page 6, line 22.
Strike: ";"

13. Page 6, line 23.
Strike: "(C) THE PASTURING AGREEMENT"

14. Page 7, line 2.
Strike: "ALL ELEMENTS OF"

15. Page 7, line 10.
Strike: "PROVIDING NOTIFICATION TO THE DEPARTMENT OF"
Insert: "making all decisions regarding"

and as amended,
BE CONCURRED IN

(continued)

Chairman

Boylan
PAUL F. BOYLAN, Chairman

PFB
3/16/87

MB

MB

XXXXXXXX

XXXXXXXXXX

3-18-87

DATE

10:10

TIME

MR. CHAIRMAN: I MOVE TO AMEND House Bill No. 804

third reading copy (blue) as follows:
Color

1. Page 6, line 17.

Strike: "FOR"

Insert: "or right to lease because of"

AK
ADOPT

REJECT

Senator Bengtson

Senator Bengtson