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INTRODUCED BY

*Sen. Steve Stansbury* *Sen. Sam Santschi* BILL NO. *380*

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM CHARGING A LESSEE OF CERTAIN STATE LAND A FEE FOR EXERCISING THE LESSEE'S LEASE RENEWAL PREFERENCE RIGHT; CLARIFYING THE PROCEDURE BY WHICH A LESSEE OF STATE LAND MUST BE NOTIFIED OF A LEASE EXPIRATION; REQUIRING A STATE LAND LESSEE TO NOTIFY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION OF THE LESSEE'S DESIRE TO RENEW A LEASE; ESTABLISHING THAT ANY FEE CHARGED TO A LESSEE BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADMINISTER THE RENEWAL OF A LEASE MUST BE DEDUCTED FROM THE LEASE PAYMENT; AMENDING SECTIONS 77-1-302, 77-6-204, AND 77-6-205, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

**Section 1.** Section 77-1-302, MCA, is amended to read:

**"77-1-302. Setting fees.** ~~The~~ (1) Except as provided in subsection (2), the department may prescribe fees, with the approval of the board, for the issuance, filing, or making of a copy of any instrument or for any other service.

(2) The department may not charge a fee to a lessee for exercising the lease renewal preference right provided in 77-6-205."

**Section 2.** Section 77-6-204, MCA, is amended to read:

**"77-6-204. Notification of termination of lease -- renewal form.** (1) Not more than 60 days and not less than 30 days prior to the expiration of a lease, the department shall notify, by certified mail, the lessee that the lease is due to expire and the date on which the lease will expire.

(2) The department shall include with the notice a form on which the lessee may express a desire to renew the lease. If the lessee desires to renew the lease:

(a) the desire to renew must be clearly indicated on the form and the form must be returned to and received by the department prior to expiration of the lease; or

1           **(b) the lessee shall by other means notify the department in writing of the desire to renew the**  
 2 **lease, and the notification must be received by the department prior to the expiration of the lease.**

3           **(3) When Whenever** a lease expires, is canceled, or is voluntarily terminated under 77-6-116, the  
 4 department shall immediately notify the holder of the lease and all persons who have expressed an interest  
 5 in leasing the land during or immediately preceding the term of the expired, canceled, or terminated lease.”

6  
 7           **Section 3.** Section 77-6-205, MCA, is amended to read:

8           **“77-6-205. Renewal leases.** (1) **(a)** A lessee of state land classed as agricultural, grazing, town  
 9 lot, city lot, or land valuable for commercial development who has paid all rentals due the state or who has  
 10 voluntarily terminated a lease under 77-6-116 is entitled to have the lease renewed for a period not to  
 11 exceed the maximum lease period provided in 77-6-109. **The entitlement to renew may be exercised:**

12           **(i)** at any time within 30 days prior to ~~its~~ **expiration or of the lease;**

13           **(ii)** within 30 days following voluntary termination ~~if no other applications for lease of the land have~~  
 14 ~~been received 30 days prior to the expiration of the lease or within 30 days following voluntary termination~~  
 15 **of the lease; or**

16           **(iii)** **as provided in subsection (1)(c).**

17           **(b)** The renewal must be at the full market rental rate established by the board for the renewal  
 18 period and subject to any other conditions at the time of the renewal imposed by law as terms of the lease.

19           **(c)** Except as provided in 77-6-212, if other applications have been received, the holder of the lease  
 20 has the preference right to lease the land covered by the former lease by meeting the highest bid made by  
 21 any other applicant.

22           **(d)** Applications for lease of lands in this section must be given preference in the order of their  
 23 receipt at the office of the department.

24           (2) The board shall accept the highest bid. If the lessee exercises the preference right and believes  
 25 the bid to be excessive, the lessee may request an administrative hearing. The request must contain a  
 26 statement of reasons why the lessee believes the bid not to be in the state’s best interest. The department  
 27 shall grant the request for a hearing if it determines that the statement indicates evidence that the bid may  
 28 not be in the state’s best interests. The board may, after the hearing, reduce the rental from the amount  
 29 bid if the lessee shows that the bid is not in the best interest of the state because it is above community  
 30 standards for a lease of the land, would cause damage to the tract, or would impair its long-term

1 productivity. If the board reduces the bid, it shall set forth its findings and conclusions in writing and inform  
2 the lessee and competitive bidder of the reduction. It is the duty of the board to secure the best lessees  
3 possible, so that the state may receive the maximum return possible with the least injury occurring to the  
4 land.

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

9 (4) A renewal lease may be voluntarily terminated pursuant to 77-6-116.

10 (5) If the department charges a fee to the lessee for the administrative costs of renewing the lease,  
11 the amount of the fee must be deducted from the first lease payment due from the lessee. A fee may not  
12 be charged to the lessee for exercising the lease preference right provided in subsection (1)(c)."

13

14 **NEW SECTION. Section 4. Effective date.** [This act] is effective July 1, 1997.

15

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0380, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act prohibiting the Department of Natural Resources and Conservation from charging a lessee of certain state land a fee for exercising the lessee's lease renewal preference right; clarifying the procedure by which a lessee of state land must be notified of a lease expiration; requiring a state land lessee to notify the Department of Natural Resources and Conservation of the lessee's desire to renew a lease; establishing that any fee charged to a lessee by the Department of Natural Resources and Conservation to administer the renewal of a lease must be deducted from the lease payment.

ASSUMPTIONS:

1. The Department of Natural Resources and Conservation renews 950 leases per year. Under current rules, there is a renewal fee of \$25 per lease. The purpose of the renewal fee is to offset the department's cost in performing a field evaluation on the lease; processing the renewal; and sending annual billings over the term of the lease. Revenue would decrease by \$23,750 per year.
2. The proposed legislation requires renewal notifications be sent by certified mail. Certified mail costs \$2.52/letter. Total costs to send certified renewal notices would be \$2,394 (950 leases X \$2.52/letter). Current mailing costs by regular mail are \$304 (950 letters X \$0.32/letter). Therefore, the net new cost would be \$2,090 (\$2,394 - \$304).

FISCAL IMPACT:

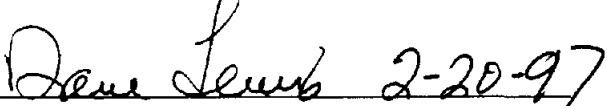
	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
Operating Expenses	2,090	2,090
<u>Funding:</u>		
General Fund (01)	2,090	2,090
<u>Revenues:</u>		
General Fund (01)	(23,750)	(23,750)
<u>Net Impact on Fund Balance:</u>		
General Fund (01)	(25,840)	(25,840)

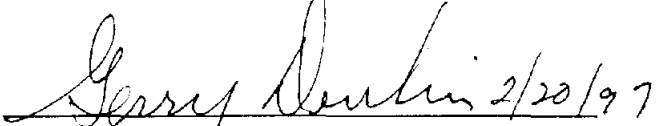
LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The backing up of the time frames may create problems for future federal farm program signups and payments for leases subject to renewal.

TECHNICAL NOTES:

1. Section 3. 77-6-205(5), MCA, as proposed may violate Article X, Section 5 of the Montana Constitution which requires that 95% of all rent received from the leasing of school lands shall be distributed to the school districts as provided by law; and the remaining 5% shall be added to the public school fund.
2. Section 3. 77-6-205(5), MCA, implies that the department could charge a fee, yet 77-6-302(2), MCA, says the department may not charge a renewal fee. This conflict needs to be resolved.

  
 DAVE LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

  
 GERRY DEVLIN, PRIMARY SPONSOR      DATE