

HOUSE BILL NO. 46

INTRODUCED BY M. TROPILA

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CALCULATION OF ANNUAL RENTAL PAYMENTS FOR COMMERCIAL LEASING OF STATE TRUST LAND; AMENDING SECTIONS 77-1-902 AND 77-1-905, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 77-1-902, MCA, is amended to read:

**"77-1-902. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Cancellation" means the cessation of a lessee's possessory rights and privileges under a lease due to the lessee's breach of some term of the lease, applicable statutes, or applicable administrative rules.

(2) "Commercial lease" means a contract to use state trust land for a commercial purpose.

(3) (a) "Commercial purpose" means an industrial enterprise, retail sales outlet, business and professional office building, warehouse, motel, hotel, hospitality enterprise, commercial or concentrated recreational use, multifamily residential development, and other similar business.

(b) The term does not include the following uses:

(i) agriculture;

(ii) grazing;

(iii) exploration or development of oil and gas, mineral, and geothermal resources;

(iv) single-family residences, home sites, and cabin sites; and

(v) utility rights-of-way.

(4) "Limited valuation survey" means a survey of land values calculated in the past 2 years in the locality of the proposed commercial lease and obtained from real estate appraisers, property tax assessors, or realtors.

~~(4)~~(5) "Termination" means the automatic completion or ending of the term of a contract according to its provisions. Upon termination, the lessee ceases to have any possessory rights or privileges under a lease."

1           **Section 2.** Section 77-1-905, MCA, is amended to read:

2           **"77-1-905. Rental provisions for commercial leasing -- payments and credits -- administration --**  
 3 **lease options.** (1) The first year's annual rental payment for state trust land leased for commercial purposes must  
 4 be paid by cashier's check, and payment is due upon execution of the lease. The department may require the  
 5 lessee of state trust land for commercial purposes to pay the department's cost of the request for proposals  
 6 process, including publication and other reasonable expenses. Failure to ~~pay~~ make the first year's rental payment  
 7 at the time of lease execution must result in the cancellation of the lease and forfeiture of all money paid. In the  
 8 event of cancellation or in the event that the successful proposer is offered and does not accept the lease, the  
 9 board may enter into negotiations with other persons who submitted a proposal for commercial purposes in  
 10 response to the department request for proposals on that tract.

11           (2) The board shall specify in any commercial lease an annual rental payment that is equal to or greater  
 12 than the full market rental value of the land. ~~The annual rent may not be less than the product of the appraised~~  
 13 ~~value of the land~~

14           (3) Full market rental value is calculated as the product of the valuation of the land as determined by an  
 15 appraisal or a limited valuation survey multiplied by a rate that is 2 percentage points a year less than the rate  
 16 of return of the unified investment program administered by the board of investments pursuant to 17-6-201. The  
 17 rate of return from the unified investment program used in this subsection must be determined no less than 30  
 18 days prior to the execution of the competitive bid.

19           (4) An annual rental payment may not be less than the full market rental value calculated in subsection  
 20 (3) but may be determined as the higher of or a combination of the following:

21           (a) a share of revenue generated by the business for which the commercial property is leased;

22           (b) an evaluation of rental payments for comparable properties in the locality of the lease.

23           (5) A commercial lease may include a rental adjustment formula established by the board that  
 24 periodically adjusts the annual ~~rent~~ rental payment provided for in the lease at frequencies specified in the lease.

25           (6) The board may allow a credit against the annual ~~rent due~~ rental payment for payments made by the  
 26 lessee on behalf of the state of Montana for construction of structures and improvements, special improvement  
 27 district assessments, annexation fees, or other city or county fees attributable to the state's property interest in  
 28 land leased for commercial purposes.

29           (7) The board may accept as lawful consideration in-kind payments of services or materials equal to the  
 30 full market rental value ~~of the rent~~ calculated to be owed on for any commercial lease.

