

LEASING OF STATE LANDS

This memorandum discusses the leasing of state lands in North Dakota and the surrounding states of Minnesota, Montana, South Dakota, and Wyoming.

NORTH DAKOTA

State lands in North Dakota are managed by the Board of University and School Lands or the Land Department. These lands are leased at public auction for a maximum lease term of five years. A fair market value leasing system sets the minimum bid for each tract so it compares to what private landowners in the area are receiving for their leases. Private rental rates are obtained from an annual statewide survey of farmers and ranchers compiled on a county-by-county basis and adjusted for tract quality and other factors. The Land Department has over 4,500 leases held by approximately 2,200 lessees. School trust lands are found in all 53 counties, but concentrated in the state's livestock-producing regions, and consist of 97 percent pasture and 3 percent crop or hay.

MINNESOTA

Minnesota Statutes Section 89.17 provides that the Commissioner of Natural Resources has the power to grant and execute, in the name of the state, leases and permits for the use of any forest lands under the authority of the commissioner for any purpose that, in the commissioner's opinion, is not inconsistent with the maintenance and management of the forest lands. Leases or permits are revocable at the discretion of the commissioner at any time subject to such conditions as may be agreed on in the lease. Leases are for a maximum of 10 years with no automatic right of renewal, but the lessee does have an option to renew.

MONTANA

State lands are under the control of the Board of Land Commissioners. Administrative Rules of Montana Section 36.25.103 provides that the board has the authority to direct, control, lease, exchange, and sell school lands and other lands granted for the support of education. The board may issue leases for agriculture, grazing, and mineral production; cabin sites; and other uses under such terms and conditions as best meet the duties of the board to various trusts and the state. In general, a lease or license for agricultural or grazing lands is for 5 years or 10 years and expires on February 28, 10 years or less from the beginning date of the lease or license. Leases are issued on a competitive bid basis subject to a preference right of the current lessee to match the highest bidder.

Concerning the preference right, Administrative Rules of Montana Section 36.25.117 provides that the board retains the right to select the best lessee

possible to fulfill the operating obligations under any lease. In the exercise of the board's discretion to select the best lessee possible for agriculture and grazing leases, the board recognizes that retention of stable, long-term lessees who are familiar with the operating history and characteristics of the lease promotes good stewardship of the land. This security of land tenure encourages the lessee to place and develop improvements which, in turn, increases the productivity of the land and improves its management. Consequently, it is the board's policy to allow an incumbent lessee in good standing, a preference right to meet the high bid and retain the lease.

SOUTH DAKOTA

South Dakota Codified Laws Section 5-5-4 provides that all common school, indemnity, and endowment lands must be leased for pasture, meadow, farming, the growing of crops and grain, and general agricultural purposes at public auction. Section 5-5-6.1 requires the Commissioner of School and Public Lands to establish a minimum annual rental rate per acre on all agricultural lands administered by the commissioner. The minimum annual rental rate per acre is the rate at which the bidding is started. Section 5-5-10.4 requires the commissioner to establish a minimum annual rental rate per acre for all grazing lands. The minimum annual rental rate per acre is the rate at which bidding commences. The section establishes a formula to determine the minimum annual rental per acre. Section 5-5-11 provides that the term of the lease may not exceed five years; however, at the expiration of the initial five-year term, the lessee is entitled, at the lessee's option, to a new lease for the land included in the lessee's original lease for a period of five years.

WYOMING

State lands in Wyoming are governed by the State Board of Land Commissioners and the Office of State Lands and Investments. Section 1 of Chapter 4 of the Rules and Regulations of the Wyoming Board of Land Commissioners provides that leases for grazing or agricultural purposes are for a term of 10 years. Section 36-5-105 of the Wyoming Statutes Annotated provides that in leasing vacant lands, preference must be given to applicants who are bona fide resident citizens of Wyoming and to persons or legal entities authorized to transact business in the state, having actual and necessary use for the land, and who are the owners, lessees, or lawful occupants of adjoining lands who offer to pay an annual rental not less than fair market value as determined by economic analysis for the use of the forage and other commodity available annually on the land for a period of 10 years. This section provides further that an applicant that is the holder of an expiring lease, has paid the rental

when due, and has not violated the provisions of the lease is qualified to have a preferred right to renew the lease by meeting the highest bid offered by another qualified applicant who has actual and necessary use for the land and available forage and whose bid is based on the fair market value using a formula developed by the board.