



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE May 25, 2022

TO Joint Agriculture, State and Public Lands and Water Resources
Interim Committee

FROM Luke Plumb, Staff Attorney

SUBJECT Topic Summary: State Land Leasing

This summary provides an overview of state land leasing including Wyoming statutory provisions and a discussion of changes made by 2022 House Bill 3, effective on July 1, 2022, case law, land leasing by surrounding states and past proposed and enacted legislation.

Wyoming Statutory Provisions

The statutory structure for the leasing of state lands in Wyoming is contained in title 36 and there are two primary chapters: chapter 5 – leasing generally (for which the section in this memo also includes a discussion of 2022 HB 3) and chapter 6 – mineral leases. These are discussed further in their statutory order.

For state land leasing, there are statutory definitions that provide context to the chapters outlined below. The "Board" is the Board of Land Commissioners.¹ The Board is composed of the five statewide elected officials in Wyoming, the Governor, Secretary of State, State Treasurer, State Auditor and Superintendent of Public Instruction.² The Board is charged with the "direction, control, **leasing**, care and disposal of all lands" with the purpose of benefitting public schools or any other purpose as outlined by the Constitution or the Legislature.³ The word "director" is also defined in statute as the director of the

¹ W.S. 36-1-101(a)(i).

² W.S. 36-2-101 and Wyoming Constitution, Art. 18, Sec. 3.

³ W.S. 36-2-101 (emphasis added).

Office of State Lands and Investments.⁴ The director is the secretary of the Board and keeps the records of the Board, including for any land leasing.⁵ The director is charged with receiving applications for and managing state land leasing, at the discretion of the Board.⁶ The use of the term "state lands" or "land" means any lands that are under the control and direction of the Board.⁷ Similarly, "school land" means those lands that have been acquired by the state of Wyoming from the United States to support public schools and "institutional lands" means those lands that are for the benefit of a state institution that is separate from school lands.⁸ Finally, "old lessee" means the person or entity that is listed as the leaseholder for an expiring lease.⁹

Chapter 5 – leasing generally and 2022 HB 3 (Effective July 1, 2022)

To lease state land, a person must meet certain general criteria that includes being at or above the age of majority, being a citizen or pledging to be a citizen of the United States, being in compliance with the laws of Wyoming and being authorized to conduct business in the state.¹⁰ In addition to personal qualifications of the lessee, there are criteria that must be met when awarding a lease.¹¹ A lease must reflect the fair market value for a similar piece of land based on an economic analysis and as determined by a formula adopted by the Board.¹² The formula that is used by the Board for determination of lease terms must factor in:

- Data that is reasonably available and that covers a sufficient number of years to avoid radical fluctuations in fair market value.
- Any factor that would reasonably reflect the true market value of land available for lease.
- Parameters that the Board can use to respond to any changing resource conditions, market demand and industry viability.
- Any factor that reflects contributions by the lessee to the available land.¹³

⁴ W.S. 36-1-101(a)(ii).

⁵ W.S. 36-3-102(a).

⁶ *Id.*

⁷ W.S. 36-1-101(a)(iv).

⁸ W.S. 36-1-101(a)(v) and (vi).

⁹ W.S. 36-1-101(a)(vii).

¹⁰ W.S. 36-5-101(a).

¹¹ W.S. 35-5-101(b).

¹² *Id.* and note that W.S. 36-1-101(a)(i) defines "board" for purposes of Title 36.

¹³ W.S. 36-5-101(b)(i)-(iv).

A lease of state land for agricultural or grazing purposes can be issued for a term no longer than ten years.¹⁴ Any person or entity wishing to lease state lands for agricultural and grazing purposes must file an application with the Office of State Lands and Investments (OSLI).¹⁵ As a part of their application, the person or entity (applicant) applying for a lease of state lands must pay the regular filing fee and the full amount of the first year's rental cost that the applicant offers to pay in order to lease the land.¹⁶ If there are any improvements on the land to be leased that are owned by another person or entity then the applicant must also include a payment for the estimated amount of the value of the improvements with the application for the lease.¹⁷ The payment for the estimated cost of the improvements on the land to be leased is in addition to the filing fee and first year's offered rent.¹⁸ If an applicant who is awarded a lease under these conditions fails or refuses to complete the lease or to comply with the statutory provisions or Board rules related to leasing, even after the Board provides a thirty day notice of the applicant's failure to comply, then the application will be denied.¹⁹ If an application is denied, then the applicant's rental payment and 25% of the payment made for improvements that was submitted with the application will be retained by the Board as liquidated damages.²⁰ The retained payment for the rental cost will be credited to the appropriate permanent land income fund account and the portion of the improvement payment that was retained will be credited to the general fund.²¹

To apply for renewal of an agricultural and grazing lease, the lessee must file an application with OSLI not earlier than one hundred twenty days before and not later than thirty days before the expiration of the current lease.²² Any conflicting application to lease the agricultural and grazing land must also be filed with OSLI between one hundred twenty days and ninety days before the expiration of the current lease.²³ If OSLI receives a conflicting application for the land, the current lessee must be given at least thirty days' notice to file a lease renewal application.²⁴

¹⁴ W.S. 36-5-102.

¹⁵ W.S. 36-5-103.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² W.S. 36-5-104.

²³ *Id.*

²⁴ *Id.*

Any lease of state lands for agricultural and grazing purposes by the Board is required to be leased to incur the "greatest benefit to the state trust land beneficiaries."²⁵ Currently, preference for leasing vacant lands shall be given to those who are "bona fide citizens of the state," who meet the general criteria for leasing state lands and those who have an "actual and necessary use for the land," are owners, lessees or lawful occupants of adjoining lands, and offer to pay an annual rent at least at fair market value for the purposes of using the forage or other commodity on the land for a ten year period under W.S. 36-5-105(b).²⁶

Beginning on July 1 of this year, 2022 HB 3 becomes effective and makes changes to W.S. 36-5-105(b) regarding leasing of vacant lands.²⁷ The new provisions of statute require that an applicant for leasing vacant state lands meet the previously discussed general criteria under W.S. 36-5-101, as opposed to simply providing a preference, and require an applicant to have "actual and necessary use for the land" to be leased, to have the ability to gain access to the land, offer to pay an annual rent that is in keeping with the fair market value for the "same or similar" use of the land, and to have not violated any laws or regulation for leasing state land.²⁸

2022 HB 3 also makes other changes to the process of leasing vacant lands with the first change addressing that preference shall be given to an applicant who owns, currently leases, or lawfully occupies land that adjoins the land that is to be leased.²⁹ However, the Board may decide not to recognize the preference of the applicant for a showing of good cause.³⁰ Preference will be governed by three additional factors with the first being that an applicant who maintains preference to lease land may elect to meet the highest bid of a competing bidder who is not eligible for a preference for the land.³¹ Second, when there are two applicants eligible for a preference, the director of OS LI must request a final bid from the two competing applicants in a manner that the director chooses so that a final determination can be made as to who will be the successful applicant.³² Finally, in an instance where there are two or more applicants eligible for a preference and another applicant who is not eligible for a preference makes a higher bid, then the applicants with

²⁵ W.S. 36-5-105(a).

²⁶ W.S. 36-5-105(b).

²⁷ See 2022 HB 3, available [here](#) (last visited May 17, 2022).

²⁸ W.S. 36-5-105(b) under 2022 HB 3, effective July 1, 2022.

²⁹ W.S. 36-5-105(b)(i) under 2022 HB 3, effective July 1, 2022.

³⁰ W.S. 36-5-105(b)(i) under 2022 HB 3, effective July 1, 2022.

³¹ W.S. 36-5-105(b)(i)(A) under 2022 HB 3, effective July 1, 2022.

³² W.S. 36-5-105(b)(i)(B) under 2022 HB 3, effective July 1, 2022.

a preference can elect to match that higher bid. The successful applicant will be decided by the director as outlined in the second factor.³³

2022 HB 3 requires that before any application is accepted to lease vacant state lands, the director of OSLI must provide notice on the OSLI website and directly to any adjoining private landowner (who is recorded within the county assessor's office or otherwise determined by rule) regarding the vacant land.³⁴ If there is an applicant who would otherwise have preference but the Board does not recognize the applicant's preference for good cause, the Board must provide notice to that applicant with a statement detailing the good cause reason why the preference will not be recognized.³⁵ The notice must provide the applicant an opportunity to request a hearing to appeal the Board's determination in accordance with the Wyoming Administrative Procedure Act where the Board will carry the burden of showing good cause not to recognize the preference.³⁶

Several definitions are also included in the changes made by 2022 HB 3, including "preference," which means that an applicant maintains an elevated position in the bidding process for leasing vacant lands.³⁷ "Vacant land means land that is not currently subject to a grazing and agricultural lease from the board."³⁸ And the definition of "preferred right" is included as a new subsection (h) in W.S. 36-5-105 to distinguish between a "preference" in applying to lease vacant land and a "preferred right" that is the right to renew an existing lease if the old lessee is in compliance with the requirements of the following paragraph.³⁹

Any applicant seeking to renew an existing lease shall have a preferred right to renew, granted the lessee has paid the required rental fees, has not violated the terms of the lease and still meets the general criteria to hold a lease.⁴⁰ To exercise the preferred right to renew, the applicant must meet the highest bid offered by a qualified conflicting applicant, provided that the bid to match is not less than the minimum fair market value nor more than 120% of the maximum fair market value as determined by the Board based on the previous year's values for the state, district or county that is most localized and

³³ W.S. 36-5-105(b)(i)(C) under 2022 HB 3, effective July 1, 2022.

³⁴ W.S. 36-5-105(b)(ii) under 2022 HB 3, effective July 1, 2022.

³⁵ W.S. 36-5-105(b)(iii) under 2022 HB 3, effective July 1, 2022.

³⁶ *Id.*

³⁷ W.S. 36-5-105(b)(iv)(A) under 2022 HB 3, effective July 1, 2022.

³⁸ W.S. 36-5-105(b)(iv)(B) under 2022 HB 3, effective July 1, 2022.

³⁹ W.S. 36-5-105(h) under 2022 HB 3, effective July 1, 2022.

⁴⁰ W.S. 36-5-105(c).

available.⁴¹ The determination by the Board of the minimum and maximum fair market values should be informed by the National Agricultural Statistics Service and should use private grazing land lease rates per animal unit month (AUM), private land irrigated or nonirrigated cropland lease rates, and an adjustment down 20% to account for contributions by the lessee.⁴²

A lessee of state lands may assign, sublease or contract all or part of a lease area if the agreement is approved by the director of OSLI, meets the criteria established by the Board, and still incurs the greatest benefit to the state.⁴³ If a lessee does sublease to another party, one half of the excess rental payments must be paid to the state.⁴⁴ A lessee may have their lease canceled if the lessee fails to obtain approval, but approval to allow the assignment or sublease should not be arbitrarily denied by the director.⁴⁵

Additionally, if any leased state lands are exchanged under the Taylor Grazing Act, the lessee shall have preference to lease the land that is received in the exchange.⁴⁶ W.S. 36-5-106 does not specifically address the state land leasing process but it does to restrict the allowable uses of certain leased lands.⁴⁷

In the event of even rental offers, which is when two qualified applicants apply for and both offer to pay the same and highest rental rate for the same lands without a preexisting or exercised preferred right, the lease shall be awarded to the applicant who holds title to land nearest the land to be leased.⁴⁸ If there is a preferred right in the old lessee, that lessee shall be given fifteen days' notice to exercise their preferred right to renew.⁴⁹ If the old lessee fails to exercise their preferred right within the specified time in the notice by filing their acceptance to renew along with the payment of the first year's rent, then the land shall be awarded automatically to the applicant offering to pay the highest rent for the land or by the process described above for even rental offers.⁵⁰ 2022 HB 3 also makes some conforming changes to this section of the statute to standardize use of the term

⁴¹ W.S. 36-5-105(c).

⁴² W.S. 36-5-105(c)(i)-(iii).

⁴³ W.S. 36-5-105(d).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ W.S. 36-5-107.

⁴⁷ W.S. 36-5-106 under 2022 HB 17, effective July 1, 2022 available [here](#) (last visited May 25, 2022).

⁴⁸ W.S. 36-5-108.

⁴⁹ *Id.*

⁵⁰ W.S. 36-5-108.

"preferred right" as defined by W.S. 36-5-105(h) as it relates specifically to existing lessees.⁵¹

The rent payments for leased lands are due annually on the anniversary of the lease upon notice provided at least thirty days before the anniversary date of the lease.⁵² If the rent is not paid by the anniversary date, then the director of OSLI shall notify the lessee that their lease will be canceled if the lessee does not provide the rent payment plus an additional 10% late fee within thirty days of receiving the notice.⁵³ If a lease is canceled for non-payment, then OSLI must advertise the vacant land to be leased as soon as possible.⁵⁴

Lessees of state lands maintain a right to make and remove improvements to those lands under certain conditions.⁵⁵ A lessee may make improvements to the land without permission if each separate improvement costs less than \$2,000 per section. Any improvement that would cost over \$2,000 must be applied for and be approved by the director of OSLI.⁵⁶ The director may reject or deny the application for an improvement over the \$2,000 limit on the basis of whether the improvement would be in the best interest of the state.⁵⁷ The director is limited, however, to approving improvements over \$2,000 that are for fencing, water development, livestock handling facilities and range enhancements.⁵⁸ Any other type of improvement over the \$2,000 limit requires the lessee to submit an application for a special use permit.⁵⁹ If a lessee does not obtain permission to make an improvement that is over \$2,000, then the lessee forfeits the right to any compensation that may be applicable under W.S. 36-5-105 and 36-5-111.⁶⁰ Any improvements to the leased land may be removed, as long as care is taken to minimize injury to the land by the lessee within one hundred twenty days after the expiration of the lease, otherwise those improvements are forfeited to and become property of the state.⁶¹

⁵¹ W.S. 36-5-108 under 2022 HB 3, effective July 1, 2022.

⁵² W.S. 36-5-109.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ W.S. 36-5-110(a).

⁵⁶ *Id.*

⁵⁷ W.S. 36-5-110(a).

⁵⁸ *Id.*

⁵⁹ *Id.* Note: Title 35 does not indicate to whom a special use permit should be submitted or the process for obtaining such a permit.

⁶⁰ *Id.*

⁶¹ W.S. 36-5-110(a).

Previously, lessees were allowed to register any improvements they made to the leased land with or without the permission of the director of OSLI that were made before July 30, 2010, but registration of improvements closed on June 30, 2014.⁶² Lessees were not allowed to register any improvement they made that was over the \$2,000 limit for which OSLI denied their application to make that improvement.⁶³ Lessees who registered the improvements they made to the land they leased were eligible for compensation under W.S. 36-5-105 and 36-5-111.

For compensation of improvements, any future applicant of state lands where improvements have been made or where there are water rights or proportionate interest in irrigation shall pay the director of OSLI for the use and benefit of the owner or maker before receiving the lease.⁶⁴ The cost of using the improvements shall be the "contributory value" of those improvements or benefits, which is the increased value of the property after the lessee's improvements are considered in the valuation of the land.⁶⁵ The owner of an improvement is still allowed to remove the improvements within one hundred twenty days if they notify the director of OSLI in writing.⁶⁶

The form for agricultural and grazing leases on state lands is prescribed by the Board and signed by the director of OSLI on behalf of the state.⁶⁷ Unless the Board deems it necessary, leases do not require a bond to be issued.⁶⁸ The Board also maintains the authority to cancel leases when the Board has proper proof to show that the lease was obtained by fraud or deceit or if the land is being used for an illegal purpose or otherwise the covenants of the lease have been violated.⁶⁹

In addition to agricultural and grazing leases, the Board may award leases of state lands for industrial, commercial, and recreational purposes for terms of up to seventy-five years.⁷⁰ The Board must consider compatible use of the surface area of the state lands,

⁶² W.S. 36-5-110(b).

⁶³ *Id.*

⁶⁴ W.S. 36-5-111.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ W.S. 36-5-112.

⁶⁸ *Id.*

⁶⁹ W.S. 36-5-113.

⁷⁰ W.S. 36-5-114(a).

and any lease for an industrial, commercial, or recreational⁷¹ purpose should still incur the greatest long-term benefit to the state.⁷² However, there can be no action taken that would otherwise substantively impair an existing lease or preferential right to renew.⁷³ For an industrial, commercial, or recreational lease, the Board shall set a rental value that is consistent and not less than the fair market value of the land.⁷⁴ If a Wyoming school district intends to engage in a lease under the terms of this section to construct and maintain school buildings or facilities, the rental fee will be \$100 per acre or the fair market value of the land, whichever is less.⁷⁵ The Board is required to set rules and regulations for implementing policies and procedures for long-term leases for industrial, commercial, and recreational purposes.⁷⁶ Those rules must include requirements for compliance with planning, zoning and allowing the board to terminate a lease for good cause.⁷⁷ Leases for industrial, commercial, and recreational purposes cannot be assigned or transferred without written approval from the Board.⁷⁸

The liability of a state land lessee to users of the land is limited to the liability outlined in W.S. 34-19-101 through 34-19-107, which covers liability of owners of land used for recreation purposes.⁷⁹ The lessee's liability for users of the improvements on the leased land is limited to the same extent as long as the improvement was properly authorized under statute or by the Board and the lessee did not charge the user to use the improvement.⁸⁰

Chapter 6 – mineral leases

Separate from the leasing procedures for grazing and agricultural purposes, chapter 6 of title 36 of Wyoming Statutes provides the framework of state land leasing for oil and gas, natural gas, and coal production. Any state land or state school land may be leased by the

⁷¹ W.S. 36-5-115 defines "recreational purpose" as "land used for cabin sites, public camp sites, public parks and recreation areas, golf courses and any associated residential development, youth groups and ski or winter sports areas."

⁷² W.S. 36-5-114(b).

⁷³ *Id.*

⁷⁴ W.S. 36-5-114(c).

⁷⁵ *Id.*

⁷⁶ W.S. 36-5-114(d).

⁷⁷ *Id.*

⁷⁸ W.S. 36-5-116.

⁷⁹ W.S. 36-5-117(a). *See* Wyoming Statute - Title 34, pages 113-116, available [here](#) (last visited May 23, 2022).

⁸⁰ *Id.* at (a)(i) and (ii).

Board for oil and gas production for a primary term of ten years.⁸¹ An existing lease can be extended by the Board for as long as the lease remains in good standing and oil and gas is produced in paying quantities.⁸² The Board is charged with and authorized to promulgate any rules and regulations necessary for leasing state land for oil and gas, natural gas, and coal production purposes.⁸³

The Board is required to set the terms for mineral lease rental payments, either on a monthly or annual basis.⁸⁴ Those rental payments will be annually applied against royalties that accrue for the same lease year.⁸⁵ Royalties for lands leased for oil and gas production are set at no less than 5% of all oil and gas production that is not otherwise saved and used for production operations.⁸⁶ Additionally, there is a royalty of not less than five cents per ton of coal produced from a mineral lease, which is paid on a mine run of coal basis.⁸⁷ No mineral lease that is issued under these statutory sections can be assigned or transferred without the permission of the director of OSLI, subject to criteria established by the Board.⁸⁸ Mineral leases are separate and distinct from agricultural and grazing leases on the same land.⁸⁹ Statute charged the Board to promulgate rules and regulations to allow for the joint use of specific state lands for both agricultural and mineral leasing as long as there is not an undue burden placed on other classes of state land leases.⁹⁰

The director of OSLI is allowed to join with the United States and its lessees in equitable cooperative or unit plans for development, operations and production of oil and gas.⁹¹ The director is subject to criteria established by the Board to be able to join in these cooperatives, and in deciding to join, the director is required to do so in the interest of conservation and the goal of greater oil and gas production.⁹² To achieve those goals, the director may modify or change any mineral lease terms as mutually agreed to by the lessor and lessee to meet the terms of the cooperative or unit plan, including an extension

⁸¹ W.S. 36-6-101(a).

⁸² *Id.*

⁸³ W.S. 36-6-101(b).

⁸⁴ W.S. 36-6-101(c).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ W.S. 36-6-101(c).

⁹¹ W.S. 36-6-101(d).

⁹² W.S. 36-6-101(d).

of the lease.⁹³ However, when a cooperative or unit plan is terminated or cease to be effective, the lease covering the land where minerals are being produced will remain in effect for at least two years or for the term of the original lease, whichever is longer.⁹⁴

Any mineral lease where actual drilling and production operations start during the primary term of the lease and which are diligently continued will be extended for one-year terms and so long as oil or gas continues to be produced in paying quantities.⁹⁵ Mineral leases of state land that are to produce natural gas may be dedicated to the state of Wyoming for use or benefit of the people of the state.⁹⁶ If the Board determines that dedication of the natural gas for the people is required, the Board can arrange for the sale of the natural gas for the people or arrange for the exchange of the natural gas with producers from lands that are not owned by the state.⁹⁷ If the Board otherwise determines that the dedication of natural gas is not in the public interest, would create waste or unreasonably keep a natural gas producer from marketing the natural gas, dedication can be waived.⁹⁸ The Board is required to promulgate rules to carry out these provisions related to natural gas dedication.⁹⁹

Similar to joint cooperative and unit plans for oil and gas production, the Board may approve cooperative mining development plans for its lessees on behalf of the state.¹⁰⁰ The Board should consider entering into these agreements with the purpose of developing mineral resources in an efficient and economical manner.¹⁰¹ The Board, in entering these agreements, may modify and change any terms of a coal and other minerals lease as mutually agreed by the lessor and lessees.¹⁰² A cooperative development plan can consist of one or more private, state or federal parties who are either leaseholders or maintain a mineral interest, but all lands in a cooperative mining development plan should be under the effective control of a single operator.¹⁰³

⁹³ *Id.*

⁹⁴ W.S. 36-6-101(e).

⁹⁵ W.S. 36-6-101(f).

⁹⁶ W.S. 36-6-101(g).

⁹⁷ W.S. 36-6-101(h).

⁹⁸ *Id.*

⁹⁹ W.S. 36-6-101(j).

¹⁰⁰ W.S. 36-6-101(k).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ W.S. 36-6-101(k).

In terms of coal and other minerals leases, the director may lease any state land or state school land subject to criteria established by the Board.¹⁰⁴ In the same manner as oil and gas leasing, the primary terms for coal mineral leases are for ten years.¹⁰⁵ Coal lessees have an exclusive right to renew their lease for successive ten year terms if they meet certain criteria at the time of filing their renewal application.¹⁰⁶ Those criteria for the right to renew include coal or other minerals are actually being produced on the leased land and the lessee is complying with all terms of the lease, if a cooperative mining development plan is in place, the lessee is complying with that plan to actually produce coal or other minerals, the lessee is engaged in good faith development of the leased land, and if necessary, the lessee has shown the director of OSLI or the Board to their satisfaction that production has been delayed while the lessee has been seeking licenses, permits, approval or other required authorization before production.¹⁰⁷

The term "good faith development" means "the substantial expenditures or firm commitments for exploration, engineering, environmental studies, hydrological studies or research and development which is required for development of the lease."¹⁰⁸ A lessee may submit to the Board a schedule and discussion of proposed expenditures or commitments as it relates to their lease.¹⁰⁹ If a lessee does so, the Board is required to review those materials and within ninety days issue a ruling that would bind the Board and lessee to whether the lessees' proposed expenditures and commitments would qualify to constitute "good faith development."¹¹⁰

Mineral lessees are subject to reporting requirements created by the Board.¹¹¹ Lessees are required to report all production which includes total volume, value and disposition of the produced minerals.¹¹² Any lessee who fails to comply with the reporting requirements is subject to penalties from the board and potential cancellation of their lease.¹¹³

When state or state school land is leased for coal, uranium or other mineral exploration, the Board must require that subsurface log reports and assay reports be submitted to the

¹⁰⁴ W.S. 36-6-101(m).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ W.S. 36-6-101(m)(i) through (iv).

¹⁰⁸ W.S. 36-6-101(n).

¹⁰⁹ *Id.*

¹¹⁰ W.S. 36-6-101(n).

¹¹¹ W.S. 36-6-101(o).

¹¹² W.S. 36-6-101(o).

¹¹³ *Id.*

state geologist within ninety days after completing drilling and reporting.¹¹⁴ Reports submitted to the Wyoming Oil and Gas Conservation Commission can satisfy this requirement.¹¹⁵ All reports submitted under this section are deemed confidential for three years and that confidentiality can be extended in one year increments upon written request to the state geologist before the date of expiration.¹¹⁶ Otherwise, those reports become property of the state once confidentiality has expired.¹¹⁷ The state geologist or state coal mine inspector shall visit and report on any coal and mineral lease at the request of the board.¹¹⁸

Existing oil and gas leases on state or school lands including extensions and any joinder by the Board into a cooperative or unit plan of development including modification of lease terms adopted prior to 1955 were ratified under W.S. 36-6-103.¹¹⁹ Compensation must be provided for improvements on mineral lands that may be sold or leased to a party other than the owner of the improvements.¹²⁰ The new owner or lessee shall pay either a price agreed upon by the new party and the owner of the improvement or the price will be fixed by the board.¹²¹ "Improvements" mean surface improvements including machinery, equipment and development of the leased land but does not include wells that do not produce oil or shafts that do not produce coal in commercial quantities.¹²²

Counties, cities, towns, and school districts are allowed to lease any real property that is acquired or owned by that entity for the exploration, development and production of oil and gas if the governing body determines it is in its best interest.¹²³ A county, city, town, or school district cannot lease land for oil and gas or other mineral purpose if doing so would interfere with public use of the land or the purpose for which the land was acquired.¹²⁴ The governing body of those entities that do enter into mineral leases can modify the terms of the lease in order to meet with the terms of a cooperative or unit plan agreement in a consistent fashion as is allowed for the Board.¹²⁵ Consequently, a

¹¹⁴ W.S. 36-6-102(a).

¹¹⁵ *Id.*

¹¹⁶ W.S. 36-6-102(b).

¹¹⁷ W.S. 36-6-102(b).

¹¹⁸ W.S. 36-6-105.

¹¹⁹ W.S. 36-3-103.

¹²⁰ W.S. 36-6-104.

¹²¹ *Id.*

¹²² W.S. 36-6-104.

¹²³ W.S. 36-6-201.

¹²⁴ W.S. 36-6-201.

¹²⁵ W.S. 36-6-202.

governing body can establish its own rules and regulations in keeping with this act so long as that body enters into the lease or contract pursuant to a resolution duly adopted by the governing body, the body determines the size and shape of the parcels of land being leased, any minerals lease is not more than ten years, any extension of the lease term is for the continued production of minerals in paying quantities and the body reserves a royalty of not less than one-eighth of all mineral production from the leased lands.¹²⁶ Any lease or contract entered into by a county, city, or town before the enactment of these statutes in 1949 was ratified by W.S. 36-6-204.¹²⁷

Finally, chapter 6 – mineral leases, provides for the calculation of royalties on oil, natural gas and other associated mineral production.¹²⁸ Specifically, definitions of "associated natural resource," "natural gas," "oil," "processing plant," return on investment," and "transportation facilities" provide guidance on how royalties can be determined for state mineral leases.¹²⁹ It should be noted that for the calculations of state lease royalties, other than those royalties owed to the United States, no lessee or their successor on the leased state land may deduct from their royalty obligation "return on investment costs."¹³⁰ This applies to all state leases of oil, natural gas and associated natural resources.

Relevant Case Law

The following cases provide context to the statutory provisions of leasing state lands:

The Wyoming Supreme Court addressed two important issues in *Riedel v. Anderson*, the status of school lands in Wyoming and the constitutionality of preference in leasing state lands.¹³¹ The Court considered whether state school lands are subject to and encumbered by a trust and if so, to what extent.¹³² The second primary issue was whether the statutory right of preference to renew a state land lease violated the management duties of those lands.¹³³ This case arose when an applicant for a parcel of land that was leased for agricultural purposes submitted a bid at a higher rate than the old lessee had submitted in their renewal application.¹³⁴ The new applicant met the requirements to lease the land but

¹²⁶ W.S. 36-6-203(i) through (iv).

¹²⁷ W.S. 36-6-204.

¹²⁸ See W.S. 36-6-301.

¹²⁹ W.S. 36-6-301(a)(i) through (vi).

¹³⁰ W.S. 36-6-302(a).

¹³¹ *Riedel v. Anderson*, 70 P.3d 223 (Wyo. 2003).

¹³² *Riedel*, 70 P.3d at 226.

¹³³ *Id.*

¹³⁴ *Id.*

the old lessee matched the new applicant's higher bid amount and ultimately, the lease was renewed to the old lessee.¹³⁵ The new applicant challenged the ruling to award the lease to the old lessee and this case ultimately came before the Wyoming Supreme Court.¹³⁶

The Court determined that the issues raised in this case invoked the public interest to address both claims.¹³⁷ Turning to the first primary issue, the Court determined that lands that were granted to Wyoming by the United States when Wyoming was admitted to the Union were not subject to a federal trust and the Wyoming Constitution did not impose a trust on those lands either.¹³⁸ However, a the Court determined a statutory trust was created for school lands by the leasing statutes discussed above when guidelines were established for the management of those lands when leasing or otherwise managing and disposing of any school lands.¹³⁹ The Court noted that the word "trust" is often used in statute when referring to state and school lands but in those contexts, it relates to the requirements that the land be leased to gain the greatest benefit for the state.¹⁴⁰ Given that the Court decided that school lands were subject to a statutory trust, the next question was the extent of the state's fiduciary duty.¹⁴¹

The second primary issue the Court reviewed was the constitutionality of lease preferences and the fiduciary duty the state has in terms of those lands.¹⁴² Several claims were raised in this case including that the statutory right to renew breached the state's fiduciary duty to receive fair market value for leases of school lands, that the statutory construction of preference essentially amounted to an absolute right to renewal and that the right to preference for renewal violated the constitutional prohibition on granting privileges to anyone who uses school lands, among others.¹⁴³ The Court determined that the state did not violate its fiduciary duty in its management of state trust lands because there was not satisfactory evidence to show a lack of sufficient income from those lands.¹⁴⁴ In addition, the Court found that the leases that were awarded on preference did not undervalue the land that was granted by the board considering that an old lessee is

¹³⁵ *Id.*

¹³⁶ *Id.* at 226-227.

¹³⁷ *Id.* at 230-231.

¹³⁸ *Id.* at 235.

¹³⁹ *Id.* at 233 and 235.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 233.

¹⁴² *Id.*

¹⁴³ *Riedel*, 70 P.3d at 233-234.

¹⁴⁴ *Id.* at 234.

required to meet any higher bid for the land.¹⁴⁵ The Court recognized that an old lessee still was required to put in effort to obtain a lease and consideration should be made for any improvements made to the leasehold.¹⁴⁶ Ultimately, the Court decided that the state did not violate any constitutional or fiduciary duty in its management of trust lands by following the statutory provisions for lease preference.¹⁴⁷

In terms of preferential rights, the Wyoming Supreme Court ruled in *Office of State Lands & Invs. v. Mule Shoe Ranch, Inc.* that OSLI properly required an applicant for an agricultural and grazing lease with preference to meet the higher bid of an applicant who did not have a preference to the leased land.¹⁴⁸ The applicant who offered the higher bid but did not have preference was found to meet all the requirements for leasing the land and their bid was significantly higher than the bid offered by old lessee who had preference.¹⁴⁹ The old lessee challenged the requirement that they were required to meet the higher bid for the lease because OSLI did not conduct an economic analysis and did not base the rate on fair market value.¹⁵⁰ The Court ruled that the statutory scheme related to state land leasing did not preclude OSLI and the board from considering a higher bid than what the formula within its rules calculated.¹⁵¹ The Court determined that the board was authorized to accept the higher of the two competing bids and that the board was carrying out its duty to lease the state lands in a way to gain the greatest benefit to the state.¹⁵²

Land Leasing by Surrounding States

Below is a brief overview of the state land leasing processes by the surrounding states including Colorado, Idaho, Montana, Nebraska, South Dakota, and Utah.¹⁵³

Colorado leases state trust land minerals to earn money to benefit their public schools.¹⁵⁴ The statutory framework for state land leasing is contained in title 36 of the Colorado

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 234 and 235.

¹⁴⁸ *Office of State Lands & Invs. v. Mule Shoe Ranch, Inc.*, 252 P.3d 951, (Wyo. 2011).

¹⁴⁹ *Id.* at 953-954.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 958. And note that W.S. 36-5-105(b)(i)(A) under 2022 HB 3, effective July 1, 2022 anticipates this situation.

¹⁵² *Id.*

¹⁵³ This information is gathered with assistance from the National Conference of State Legislatures.

revised statutes.¹⁵⁵ The state board of land commissioners operates and maintains the state land leasing program for the state.¹⁵⁶ A notable difference between Colorado and Wyoming is the renewal process. Colorado allows any current lessee to negotiate with the state board of land commissioners to establish terms for a new lease of a parcel of land.¹⁵⁷ A new lessee is only awarded the lease if the parties cannot reach a new agreement for a particular parcel.¹⁵⁸ Also, the State of Colorado maintains several categories of leases including: agriculture, commercial real estate, ecosystem services, geothermal, mining, oil and gas, permits, recreation, renewable energy, rights-of-way, tower, and water.¹⁵⁹ All leases issued by the board of land commissioners have bond and insurance requirements.¹⁶⁰ In addition to lease contracts, Colorado also issues permits for short-term land access, provided there will be little or no impact to the land, which includes: exploration, road access, temporary access, and commercial filming/photography.¹⁶¹

Idaho leases state endowment trust lands to earn money to benefit various state institutions but the primary recipient of the proceeds of state land leasing are returned to their public school system.¹⁶² The constitutional and statutory framework for state land leasing is contained in Article IX of the Idaho Constitution and title 58, chapters 1 and 3 of Idaho statutes.¹⁶³ Similar to Wyoming, Idaho has a state board of land commissioners that controls and oversees state lands and the Idaho department of lands by appointing that department's director.¹⁶⁴ The state board of land commissioners lease state lands and fix the rental payment amounts.¹⁶⁵ Idaho allows leases for grazing, farming, conservation, commercial buildings, recreational homesites, and mining.¹⁶⁶ Idaho maintains leases for differing lengths of time including a general restriction that land leases shall be for no

¹⁵⁴ See Colorado State Land Board website, available [here](#) (last visited May 18, 2022).

¹⁵⁵ See Title 36, Article 1 – State Board of Land Commissioners, available [here](#) (last visited May 18, 2022).

¹⁵⁶ C.R.S. 36-1-101.5.

¹⁵⁷ C.R.S. 36-1-118.

¹⁵⁸ *Id.*

¹⁵⁹ See Colorado State Land Board website, available [here](#) (last visited May 18, 2022).

¹⁶⁰ *Id.*

¹⁶¹ See Colorado State Land Board website, available [here](#) (last visited May 18, 2022).

¹⁶² See Idaho Department of Lands website, available [here](#) (last visited May 18, 2022).

¹⁶³ See Idaho Constitution, Art. IX, Sec. 7 and 8, available [here](#) (last visited May 18) and Idaho Statutes, Title 58, **chapter 1** and **chapter 3** (last visited May 18, 2022).

¹⁶⁴ I.C.A. 58-104(1) and (2).

¹⁶⁵ I.C.A. 58-304.

¹⁶⁶ See Brief History of Idaho's Endowment Trust Lands, available [here](#) (last visited May 18, 2022).

longer than twenty years except for specific categories such as: thirty five years for residential purposes and forty nine years for commercial purposes.¹⁶⁷ Renewal of state land leases are required to be filed with the department of lands and are disposed of by the board of land commissioners and the board maintains a process to auction off a lease to the highest bidder if application is made by two or more parties.¹⁶⁸

Montana leases state lands as well to benefit the state, primarily by supporting their common schools and any other endowed state institution.¹⁶⁹ The statutory framework for state lands administration includes state land leasing in title 77 of Montana statutes.¹⁷⁰ State land leasing in Montana is also at the discretion of its state board of land commissioners which is comprised of Montana's five top elected officials.¹⁷¹ State trust lands are otherwise managed by the department of natural resources and conservation's trust lands management division.¹⁷² Statutory requirements for leasing outline who may lease lands, sets rates and requires that lands be leased by competitive bid for at least fair market value.¹⁷³ The renewal process gives preference to the prior lessee who can exercise their preference by meeting the highest bid of a conflicting applicant who does not maintain preference.¹⁷⁴ Montana primarily divides their trust lands into four categories for management: agriculture and grazing, forest, minerals and real estate.¹⁷⁵

Nebraska maintains trust lands specifically to benefit its public school system and the board of education lands and funds is charged with overseeing, managing and leasing any trust land.¹⁷⁶ The statutory framework for state land leasing in Nebraska is found in title 72 of Nebraska statutes, and the board holds fairly sweeping authority, including rulemaking.¹⁷⁷ The board consists of five members appointed by the governor with the

¹⁶⁷ I.C.A. 58-307(1) through (4).

¹⁶⁸ I.C.A. 58-307(8) and (9); 58-310.

¹⁶⁹ See Montana Department of Natural Resources & Conservation – Trust Lands Management, available [here](#) (last visited May 18, 2022).

¹⁷⁰ See Montana Statutes, Title 77, *et. al* available [here](#) (last visited May 18, 2022).

¹⁷¹ See Montana Department of Natural Resources & Conservation – Land Board, available [here](#) (last visited May 18, 2022).

¹⁷² *Id.*

¹⁷³ See M.C.A. 77-1-106, 77-1-113, 77-6-202.

¹⁷⁴ M.C.A. 77-6-205(1) through (3).

¹⁷⁵ See Montana Department of Natural Resources & Conservation – Trust Lands Management, available [here](#) (last visited May 18, 2022).

¹⁷⁶ See Nebraska Board of Educational Lands and Funds, available [here](#) (last visited May 18, 2022).

¹⁷⁷ See N.R.S. 72-201, available [here](#) (last visited May 18, 2022).

consent of the majority of members elected to the legislature.¹⁷⁸ The board primarily leases state land for agricultural, mineral and renewable energy purposes.¹⁷⁹ The board determines rental fees and schedules with the guiding factor be that leases are set at fair market value.¹⁸⁰ The board may lease land for terms of five to twelve years and specific terms of leases are set in statute.¹⁸¹ Generally, current lessees are given a right to renew a lease if they are found to be in compliance with all lease terms and requirements but the board does maintain the power to lease any land to a new applicant if the prior lessee fails to file or meet requirements for a renewal of a state land lease.¹⁸²

South Dakota, like the other states discussed, manages state lands to benefit its education system.¹⁸³ The primary legal framework for state land leasing is found in article VII of the South Dakota Constitution and in title 5 of South Dakota statutes.¹⁸⁴ The trust lands that are available for lease are administered by the office of the commissioner of school and public lands.¹⁸⁵ By the South Dakota Constitution, state lands may be leased primarily for agricultural purposes and are limited to five-year terms.¹⁸⁶ These requirements are statutorily codified and generally, agricultural lessees are given the option to renew their lease for an additional five-year term without "public advertising" if they complete an application to renew before the current lease's expiration date.¹⁸⁷ While the constitutional mandate primarily relates to agricultural and surface leasing, South Dakota does also statutorily allow mineral leasing which is still overseen and maintained by the commissioner of school and public lands.¹⁸⁸ And mineral leases are treated fairly similarly with additional requirements that any mineral exploration must be done under a

¹⁷⁸ N.R.S. 72-201(1).

¹⁷⁹ See Nebraska Board of Educational Lands and Funds, available [here](#) (last visited May 18, 2022).

¹⁸⁰ N.R.S. 72-205.

¹⁸¹ N.R.S. 72-234.

¹⁸² N.R.S. 72-240.02.

¹⁸³ See South Dakota School & Public Lands – history of school and public lands, available [here](#) (last visited May 18, 2022).

¹⁸⁴ See South Dakota State Constitution, Article VII, available [here](#) (last visited May 18, 2022) and South Dakota Codified Laws, Title 5, available [here](#) (last visited May 18, 2022).

¹⁸⁵ South Dakota State Constitution, Art. VII, Sec. 6 and 9.

¹⁸⁶ South Dakota State Constitution at Sec. 9.

¹⁸⁷ *Id.* and S.D.C.L 5-5-11.

¹⁸⁸ S.D.C.L 5-7-1.

lease, however, lessees are still given preferential right to renew or purchase any land they operate.¹⁸⁹

Finally, Utah manages state trust lands in support of its public school system and all proceeds from their state trust land administration is deposited into permanent endowments all related to education in the state.¹⁹⁰ The statutory framework for state land leasing is found in titles 53C, 53D and 65A of Utah statutes.¹⁹¹ The primary authority for leasing state lands is the school and institutional trust lands administration (SITLA).¹⁹² SITLA is managed by a board of trustees that appoints a director to administer the state lands of Utah, with most regulatory authority for leasing done by rule and regulation adopted by SITLA.¹⁹³ Utah, through SITLA, offers leases for renewable energy, mining, oil and gas and various types of surface purposes such as agricultural, commercial and telecommunications.¹⁹⁴

¹⁸⁹ S.D.C.L 5-7-48.

¹⁹⁰ See Trust Lands Administration – SITLA and Trust Lands Explained, available [here](#) (last visited May 18, 2022).

¹⁹¹ See Utah Code Annotated, Title 53 C, available [here](#); Title 53D, available [here](#); Title 65A, available [here](#) (last visited May 18, 2022).

¹⁹² U.C.A. Title 53D, chapter 1 – school and institutional trust fund management act.

¹⁹³ U.C.A. 53D-1-401.

¹⁹⁴ Trust Lands Administration – Work with Us, available [here](#) (last visited May 18, 2022).

Past Proposed and Enacted Legislation

Bill Number ¹⁹⁵	Catch Title	Summary	Sponsor	Status
2022 HB 3	State land leases	This bill specifies when and how preference may be given to applicants for leases of state lands and how to determine the successful applicant. The act also clarifies the general eligibility to be qualified to lease state lands. If the Board of Land Commissioners determines good cause exists not to recognize a preference for an applicant who is an adjoining landowner, lessee, or lawful occupant, this act requires the Board to issue written notice of the good cause and opportunity for an appeal hearing to the applicant who is not being given a preference. The bill also addresses notice requirements.	Agriculture	HEA 49, Session Laws Chapter 89
2022 HB 17	Veterans facilities-surrounded by grazing	This bill authorizes the State Board of Land Commissioners to lease state lands surrounding the Veterans' Home and Skilled Nursing Facility in Buffalo, Wyoming and the Oregon Trail State Veterans' Cemetery in Evansville, Wyoming only for grazing, and prohibits disposal of the lands as long as the veterans' facilities exist in the locations adjacent to the state lands.	Transportation	HEA 20, Session Laws Chapter 27
2022 HB 137	State land exchanges-public notice.	This bill requires any person or entity that desires to propose a land exchange shall submit an application with supporting documentation on the value of the lands proposed to be exchanged and the board of land commissioners shall post notice of the proposed land exchange on its official website which shall specify the method for obtaining additional information and to provide public comment.	Western	Governor vetoed

¹⁹⁵ Note: all bill numbers are links to the legislation on the wyoleg.gov website.

2021 SF 114	State land leases.	This bill sets the process for how the board of land commissioners shall award leases for vacant lands by preference and provides the process for auction if two or more applicants maintain a preference for lands to be leased.	Boner	Governor vetoed
2021 HB 164 (also 2017 SF 119 and 2016 SF 88))	Grand Teton National Park-transfer of state lands.	This bill authorizes the board of land commissioners to sell a parcel in Teton county to the United States for cash or other consideration such as a land exchange if approved by the legislature.	Schwartz (2017 Coe, 2016 Bebout)	Failed House 3 rd Reading
2021 HB 242	State land leases-amendments.	This bill allows the board of land commissioners to lease state lands for residential purposes for terms of not more than 99 years and provides for the requirements of any such residential state land lease.	Harshman	House did not consider for COW
2020 HB 37	Voluntary land exchange process.	This bill authorizes the Board of Land Commissioners to develop an expedited process for the exchange of state lands if the exchange is requested by the lessee of state lands and the exchange would facilitate legal access to state or federal lands. Committee considered but did not sponsor in 2022: 22LSO-0043.	Agriculture	Died in committee
2020 HB 90	State lands—notice of lease sales.	This bill requires the board of land commissioners or director of the office of state land and investments to provide notice to surface, subsurface and mineral lessees regarding any proposed lease sale or renewal and any sale or trade of state lands within 60 days of the proposed action.	Roscoe	Senate did not consider for COW
2020 HB 218	State land exchange-notice and posting.	This bill requires the office of state lands and investments to include requirements in its rules to provide immediate public notice and posting of any proposed land exchanges received by the office or made by the director.	Clausen	House did not consider for COW
2020 HB 219	State land leases-disposal rules.	This bill requires the board of land commissioners to promulgate rules to govern the issuance of special use permits for the disposal of produced and fresh water on leased states lands for oil and gas operations, including requirements for public comment.	Clausen	Failed introduction in the House

2019 SJ 1	State-federal school trust lands exchange.	This joint resolution requesting the United States Congress to enact legislation to exchange landlocked trust lands in Wyoming to allow the state to maximize revenues of the lands.	Agriculture	Failed House COW
2019 HB 50	Legislative review of state land transfers.	This bill requires that any proposed agreement to exchange or sell more than 639 acres of state land be submitted to the legislature for review and approval not more than 120 days before a regular or special session.	Agriculture	House postponed indefinitely
2018 HB 131	Impact assessment-state land exchanges.	This bill requires the board of land commissioners to assess how any state land exchange will impact access to adjacent public land and related economic impacts of the altered access, including consideration of the affect on valuation of the lands exchanged.	Henderson	Failed introduction in the House

This summary provides a general overview of state land leasing, including Wyoming statutory provisions, case law, land leasing by surrounding states and past proposed and enacted legislation. Please let me know if you have any questions or need further information.