Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
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2010

CHAPTER 123

HOUSE BILL 2146

AN ACT

AMENDING SECTIONS 37-284, 37-290, 37-291 AND 37-322.01, ARIZONA REVISED STATUTES; RELATING TO STATE TRUST LANDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 37-284, Arizona Revised Statutes, is amended to read:

37-284. Conflicting short-term lease applications; preference rights

A. A conflicting application for an existing lease for a term of not more than ten years shall be filed at least two hundred seventy days but not more than one year before the expiration date on the lease. THE CONFLICTING APPLICATION MUST BE ACCOMPANIED BY A LIST OF NONREMOVABLE IMPROVEMENTS ON THE LEASED LANDS ON FILE WITH THE DEPARTMENT, INCLUDING FENCES. THE CONFLICTING APPLICANT MUST POST A SURETY BOND OR OTHER FORM OF SECURITY IN THE AMOUNT OF TWO THOUSAND FIVE HUNDRED DOLLARS OR TWENTY PER CENT OF THE RENTAL PAYMENTS OVER THE TERM OF THE CURRENT LEASE, WHICHEVER IS GREATER. THE DEPARTMENT SHALL CALCULATE THE AMOUNT OF THE SECURITY WITHIN THIRTY DAYS AFTER RECEIVING THE CONFLICTING APPLICATION, AND THE CONFLICTING APPLICANT MUST POST THE SECURITY WITHIN THIRTY DAYS AFTER THE DEPARTMENT DETERMINES THE AMOUNT. IF THE CONFLICTING APPLICANT IS UNSUCCESSFUL OR WITHDRAWS THE APPLICATION, THE DEPARTMENT SHALL RETURN THE SECURITY TO THE APPLICANT. IF THE CONFLICTING APPLICANT IS SUCCESSFUL, THE SECURITY SHALL BE APPLIED AGAINST THE VALUE OF THE NONREMOVABLE IMPROVEMENTS.

B. When the department receives a conflicting application, the department shall give the existing lessee thirty days' notice to file an application for renewal pursuant to this section.

~~B.~~ C. If two or more applicants apply to lease the same land for a term of not more than ten years, the department shall approve the application of the one who, after investigation or hearing, appears to have the best right and equity to the lease. The order of filing shall not be a controlling factor in deciding who is entitled to the lease. If it appears that none of the applicants has any right or equities superior to those of another that would outweigh an offer of additional rent, and if it is in the best interest of the trust, the department ~~may~~, at a stated time and after due notice to all applicants, MAY receive bids submitted in accordance with rules of the department. If one of the competing applicants is the existing lessee who has a preferred right of renewal pursuant to section 37-291, the department ~~may~~ SHALL extend the preferred right of renewal to the existing lessee if the existing lessee offers a bid matching the highest bid. The department shall approve the application of the bidder who in all respects is eligible to receive a lease upon the land and will pay the highest annual rental, or the department may reject all bids.

~~C.~~ D. Before the department issues a lease to the successful bidder, the successful bidder shall pay one full year of rent and, unless all parties agree to an extended payment schedule, the appraised value of any nonremovable improvements pursuant to section 37-322.01. If the successful bidder does not pay one full year of rent or the value of any nonremovable improvements within thirty days after the department requests payment, the

department may offer the lease to the next best bidder. A lease that is issued pursuant to this section shall require the lessee to pay annual rent that is equal to the amount of annual rent bid, unless a reappraisal or rental adjustment requires a higher amount.

~~D.~~ E. Any person residing upon contiguous land for which the person has an allowed United States homestead entry or for which the person has received a patent from the United States upon a homestead entry ~~shall~~, upon application, SHALL have a preferred right to lease the amount of contiguous state land necessary for personal use.

~~E.~~ F. Any person lawfully occupying any lands, the title to which is acquired by the state by operation of law, shall have a preference right to lease the occupied land provided application to do so is made within thirty days from and after written notice by the department to such occupant of the acquisition of title.

Sec. 2. Section 37-290, Arizona Revised Statutes, is amended to read:

37-290. Cancellation of lease on reclassification of lands; preferred right to lease reclassified land; refund of advance rental payments

A. Upon reclassification of state lands, whether upon application for reclassification or upon initiation by the commissioner, notice of the decision shall be served upon all interested parties of record in the department. If no appeal from the reclassification is taken as provided for by law, or if the decision of the commissioner is upheld on appeal, any lease upon the land reclassified shall be automatically cancelled~~, and the land offered for lease in the same manner as if it had not been previously leased.~~ ON THE ISSUANCE OF A NEW LEASE OR AT THE TIME OF AUCTION, WHICHEVER OCCURS FIRST.

B. ~~A lessee, or~~ An applicant for renewal of a lease ~~at the time of the notice of the reclassification~~ shall have a preferred right to lease the reclassified land at the reappraised rental thereof for a term not longer than ten years as determined by the department. The preferred right to lease does not extend to a lessee who has not substantially complied with the terms of ~~his~~ THE lease or who has not placed the land to the use prescribed in the lease during the term of the lease or within the time prescribed in the lease, except when that action was excused for good cause by written authorization by the department.

C. Upon cancellation of the lease of reclassified lands, if the land as reclassified is leased to a person other than the existing lessee or applicant for a renewal lease, the unused pro rata of an advance rental payment made by the existing lessee shall be refunded to such lessee, and the lessee shall be protected in improvements on the land owned by the lessee in the same manner as provided in section 37-322.01.

Sec. 3. Section 37-291, Arizona Revised Statutes, is amended to read:

37-291. Preferred rights to renewal of lease; exceptions; notification

A. Upon application to the state land department not less than thirty days nor more than one year before the expiration of a lease of state lands, the lessee, if ~~he is~~ a bona fide resident of the state or legally authorized to transact business in this state, shall have a preferred right to renewal, bearing even date with the expiration of the old lease, for a term not longer than ten years, as determined by the department, at a reappraised rental.

B. The preferred right of renewal shall not extend to a lessee who has not substantially complied with the terms of ~~his~~ THE lease or who has not placed the land to the use prescribed in the lease during its term or within the time prescribed, unless for good cause the failure to perform was given written authorization by the department. If the department determines the continued leasing of the land is not in the best interest of the state trust, the lease shall not be renewed.

C. Not later than ninety days before the expiration of a lease, the department shall:

1. Notify the lessee by mail of the pending expiration, enclosing an application to renew the lease.

2. Send a copy of the notice to any parties who have registered with the department as mortgagees or other lienholders of the lessee's interest by certified mail, return receipt requested.

D. IF THE EXISTING LEASE IS NOT RENEWED AND THE EXISTING LESSEE IS IN SUBSTANTIAL COMPLIANCE WITH THE TERMS OF THE LEASE AND THERE IS NO NEW LESSEE OR BUYER FOR THE LAND WITHIN NINETY DAYS AFTER THE LEASE TERMINATION, THE COMMISSIONER MUST SIGN AN AGREEMENT TO REIMBURSE THE FORMER LESSEE FOR THE IMPROVEMENTS ON THE LANDS AS PROVIDED BY SECTION 37-322.01.

Sec. 4. Section 37-322.01, Arizona Revised Statutes, is amended to read:

37-322.01. Reimbursement by succeeding lessee of lands not subject to auction for nonremovable improvements; failure to pay; penalty

A. A lessee of state lands that are not subject to lease by auction shall be reimbursed by a succeeding lessee for improvements placed on the lands which are not removable.

B. If the retiring lessee and the new lessee do not agree upon the value of the improvements, or if there is no amortized value established for the improvements, either party may file with the state land department an application for appraisal of the improvements. If a lease is granted pursuant to section 37-284, a request for an appraisal shall be made more than ninety days before the expiration of the lease. Thereafter an appraisal of the improvements shall be made pursuant to section 37-322. FOR AGRICULTURAL AND GRAZING LEASES, THE APPRAISER SHALL CONSIDER THE FOLLOWING IN DETERMINING THE VALUE OF THE IMPROVEMENTS:

1. THE IMPACT TO SURROUNDING STATE LAND.

2. REPLACEMENT COST MINUS PHYSICAL AND FUNCTIONAL OBSOLESCENCE AS IT RELATES TO AGRICULTURE AND GRAZING.

3. ANY OTHER FACTORS THAT THE COMMISSIONER DETERMINES TO BE RELEVANT.

C. Upon making the appraisal, the department shall give notice of the amount by certified mail to each person interested in the appraisal. The notice shall require that the new lessee pay to the department for the prior lessee the entire amount of the appraisal before issuance of the lease unless all parties agree to an extended payment schedule. If the improvements were placed on state lands subject to a commercial lease and if the commissioner determines that the value of the improvements is so great that it inhibits the commissioner's ability to lease the property at fair market value, the commissioner may require reimbursement of the improvements pursuant to a payment schedule of not more than five years.

D. If the improvements are not paid for as agreed in an extended payment schedule, the succeeding lessee shall not be permitted to sell, assign or transfer his lease nor sell, assign or remove any improvements whatever from the land until the entire amount of the appraised value of the improvements has been paid. Upon default the succeeding lessee shall be subject to the same penalties and liabilities as provided by section 37-288 for failure to pay rents, including a cancellation of the lease.

APPROVED BY THE GOVERNOR APRIL 23, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 26, 2010.