

Introduced: 2/15/77
Referred: Resources and Finance

1 IN THE SENATE

BY POLAND, CROFT AND HUBER

2 *FCS HOS* SENATE BILL NO. 159 *F.N. amant*

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the leasing of state land other
7 than for the extraction of natural resources; and pro-
8 viding for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 38.05.085 is repealed and re-enacted to read:

11 Sec. 38.05.085. TERM OF LEASE. (a) The lease shall provide that

12 (1) for the initial 10-year period of the lease, the lessee
13 shall pay the state a fixed base annual rental to be agreed upon by the
14 parties in compliance with the provisions of this chapter; however, this
15 annual rental may not exceed eight per cent of the fair market value of
16 the property as determined in (b) of this section;

17 (2) the fixed base annual rental to be paid by the lessee
18 shall be readjusted when the initial 10-year period of the lease has
19 expired and, thereafter, every five years; and

20 (3) the readjusted annual rental shall not exceed eight per
21 cent of the fair market value of the property as determined in (b) of
22 this section or 50 per cent more than the amount paid each year during
23 the initial period or the preceding five-year period, whichever is
24 higher.

25 (b) When it becomes necessary to determine the fair market value
26 of property as required by (a) of this section, the lessee shall appoint
27 an M.A.I. appraiser and the state shall appoint an M.A.I. appraiser.
28 The two appraisers so appointed shall, within a specified period of time
29 agreed upon by the parties, make their appraisals of the property in

FCS HOS SB 159 *F.N. amant*

1 question. If the two appraisers agree upon the fair market value, the
2 determination is absolutely binding on the parties. In the event the
3 two appraisers are unable to agree, they shall together appoint a third
4 M.A.I. appraiser who shall then make his appraisal of the property in
5 question. When the third appraisal is completed, the two of the three
6 appraisals which are nearest each other in their determination of the
7 fair market value shall be averaged and the resultant sum shall be the
8 fair market value of the matter in question and absolutely binding on
9 the parties. All costs incurred in making the appraisals provided for
10 in this subsection shall be borne by the state and the lessee equally.

11 (c) The lessee shall make advance payments of the annual rent or
12 portion of it as the director, with the approval of the commissioner,
13 may require.

14 (d) A preference right lessee of grazing or forest land may follow
15 the payment schedule established in his cancelled federal lease or
16 grazing permit if he so desires.

17 (e) Notice of all actions by the department affecting the rights
18 of a lease or lessee shall be given to the lessee.

19 (f) A violation of a provision of this chapter or of a term or
20 provision of a lease subjects the lessee to appropriate legal action,
21 including, but not limited to, a forfeiture of the lease.

22 * Sec. 2. AS 38.05 is amended by adding a new section to read:

23 Sec. 38.05.103. RIGHTS OF HOLDER OF SECURITY INTEREST. (a) If
24 there is a breach or default of a term of a lease or of the provisions
25 of this chapter relating to a lease, the division shall provide written
26 notice of the breach or default by personal service or by registered or
27 certified mail to the lessee and to any holder of record having a
28 security interest in the leased property. The notice shall also make
29 demand upon the lessee to cure or remedy the breach or default within 60

1 days from the date of receipt of the notice and demand. If a lessee
2 fails to cure or remedy the breach or default within 60 days, or within
3 the additional time which the division may allow for good cause, the
4 state may, subject to (b) of this section, exercise any right which it
5 may have at law or as set out in the lease.

6 (b) If a lessee fails to cure or remedy a breach or default within
7 the time allowed in (a) of this section, a holder of a security interest
8 who has received notice under (a) of this section may cure or remedy the
9 breach or default if the breach or default can be cured by the payment
10 of money or, if this cannot be done, by performing or undertaking in
11 writing to perform the terms, covenants, restrictions and conditions of
12 the lease capable of performance by the holder. The holder shall act
13 within 60 days from the date of receipt of notice under (a) of this
14 section, or within an additional period as the director may allow for
15 good cause.

16 * Sec. 3. AS 38.05.105 is repealed and re-enacted to read:

17 Sec. 38.05.105. PERIODIC RENTAL ADJUSTMENTS. (a) Each lease
18 shall stipulate that at the conclusion of the initial 10-year period of
19 the lease and at intervals of five years thereafter the annual rental
20 payment is subject to adjustment. Charges or adjustments shall be based
21 primarily on a reappraised annual rental value. However, if the director
22 of the division of lands determines that residential development is the
23 best use of the land, the reappraisal period may be lengthened or the
24 readjustment waived in accordance with regulations adopted by the depart-
25 ment. Before a waiver of rental adjustment is issued, the land shall
26 have a current reappraisal. A waiver is valid only if residential
27 development actually occurs, and only if necessary for obtaining primary
28 long-term financing. The regulations adopted under this section shall
29 ensure that the state receives a fair return from the land.

1 (b) The provisions of sec. 85(b) of this chapter are applicable to
2 reappraisals of leases required by this section.

3 * Sec. 4. The provisions of this Act are applicable to state leases which
4 are in existence on or before the effective date of this Act if a lessee
5 under a lease elects, in writing, to be bound by this Act. When a lessee
6 elects to be bound by the provisions of this Act, the state shall enter into
7 a new lease with the lessee for a term equal to the full period of the
8 original lease which is being terminated that is consistent with the pro-
9 visions of this Act. However, for purposes of determining the annual rent by
10 the state, the fair market value of the property which is used to establish
11 the fixed base annual rental for the initial period of the lease may not
12 exceed the fair market value as it was last appraised on or before January 1,-
13 1975, or, if the lease was entered into after January 1, 1975, on the basis
14 of the fair market value at the time the lease was entered into.

15 * Sec. 5. This Act takes effect immediately in accordance with AS 01.10.-
16 070(c).