Original sponsors: Poland, Croft, and Huber

Offered: 3/8/77
Referred: Finance

IN THE SENATE BY THE RESOURCES COMMITTEE

CS FOR SENATE BILL NO. 159

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the leasing of state land other than for the extraction of natural resources; and providing for an effective date."

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

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 AS 38.05.085 is repealed and re-enacted to read:

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

(1) for the initial 25-year period of the lease, the lessee shall pay the state a fixed base annual rental to be agreed upon by the parties in compliance with the provisions of this chapter; however, this annual rental may not exceed 10 per cent of the fair market value of the property as determined in (b) of this section;

(2) the fixed base annual rental to be paid by the lessee shall be readjusted when the initial 25-year period of the lease has expired and, thereafter, every 10 years; and

(3) the readjusted annual rental shall not exceed 10 per cent of the fair market value of the property as determined in (b) of this section or 50 per cent more than the amount paid each year during the initial period or the preceding five-year period, whichever is lower.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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