

Original sponsors: Poland, Croft,  
and Huber

Offered: 4/6/77  
Referred: Rules

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 159 (Finance)

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 AS 38.05.085 is repealed and re-enacted to read: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 25-year period of the lease, the lessee  
13 shall pay the state a fixed base annual rent to be agreed upon by the  
14 parties in compliance with the provisions of this chapter; however, this  
15 annual rent may not exceed 10 per cent of the fair market value of the  
16 property as determined in (b) of this section;

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

20 (3) the readjusted annual rent may not exceed 10 per cent of  
21 the value of the property as determined in (b) of this section or 50 per  
22 cent more than the amount paid each year during the initial period or  
23 the preceding 10-year period, whichever is lower.

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

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

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

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

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

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

21 (g) In this section,

22 (1) "annual rent" means the amount of rent paid annually  
23 determined by multiplying the fair market value by the rental rate com-  
24 puted at the time of the initial 25-year period of the lease or of each  
25 subsequent 10-year period of the lease;

26 (2) "rental rate" means the rate, expressed as a percentage  
27 of fair market value, which a comparable class of privately owned pro-  
28 perty would bring in the open market with the same conditions of lease  
29 as offered by the state.

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

2       Sec. 38.05.103. RIGHTS OF HOLDER OF SECURITY INTEREST. (a) If  
3 there is a breach or default of a term of a lease or of the provisions  
4 of this chapter relating to a lease, the division shall provide written  
5 notice of the breach or default by personal service or by registered or  
6 certified mail to the lessee and to any holder of record having a  
7 security interest in the leased property. The notice shall also make  
8 demand upon the lessee to cure or remedy the breach or default within 60  
9 days from the date of receipt of the notice and demand. If a lessee  
10 fails to cure or remedy the breach or default within 60 days, or within  
11 the additional time which the division may allow for good cause, the  
12 state may, subject to (b) of this section, exercise any right which it  
13 may have at law or as set out in the lease.

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

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

25       Sec. 38.05.105. PERIODIC RENT ADJUSTMENTS. (a) Each lease shall  
26 stipulate that at the conclusion of the initial 25-year period of the  
27 lease and at intervals of 10 years thereafter the annual rent payment  
28 is subject to adjustment. Charges or adjustments shall be based pri-  
29 marily on an adjusted fair market value. However, if the director of

1 the division of lands determines that single-family residential develop-  
2 ment is the best use of the land, the reappraisal period may be length-  
3 ened or the readjustment waived in accordance with regulations adopted  
4 by the department. Before a waiver of rent adjustment is issued, the  
5 land shall have a current reappraisal. A waiver is valid only if  
6 single-family residential development actually occurs. The regulations  
7 adopted under this section shall ensure that the state receives a fair  
8 return from the land.

9 (b) The provisions of sec. 85(b) of this chapter are applicable to  
10 reappraisals of leases required by this section, except that, in deter-  
11 mining an adjusted market value

12 (1) changes in property value due to governmental actions,  
13 including zoning reclassifications, shall be included; and

14 (2) changes in property value due to private improvements  
15 made to the property or other privately owned or leased property since  
16 originally entering into the lease shall be excluded.

17 \* Sec. 4. The provisions of this Act are applicable to state leases which  
18 are in existence on or before the effective date of this Act if a lessee  
19 under a lease elects, in writing, to be bound by this Act. When a lessee  
20 elects to be bound by the provisions of this Act, the state shall enter into  
21 a new lease with the lessee for a term equal to the remaining period of the  
22 original lease which is being terminated that is consistent with the pro-  
23 visions of this Act. However, for purposes of determining the annual rent by  
24 the state, the fair market value of the property which is used to establish  
25 the fixed base annual rent for the initial period of the lease may not  
26 exceed the fair market value as it was last appraised on or before January 1,  
27 1975, brought forward to January 1, 1976, at the rate of 10 per cent per  
28 year, or, if the lease was entered into after January 1, 1975, on the basis  
29 of the fair market value at the time the lease was entered into.

1 \* Sec. 5. The provisions of sec. 4 of this Act expire on January 1, 1979.

2 \* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-

3 070(c).

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