

COMMITTEE REPORT

5/7/75

HOUSE

Mr. Speaker:

Date May 17, 1975

The Committee on FINANCE has had SB 438

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR House (Kos) AND THAT

CS FOR House (Kos) DO PASS

( ) "and" recommends it BE REFERRED TO THE \_\_\_\_\_

COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

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Members NOT concurring in the Majority report:

\_\_\_\_\_ recommends:  
\_\_\_\_\_ recommends:  
\_\_\_\_\_ recommends:  
\_\_\_\_\_ recommends:  
\_\_\_\_\_ recommends:

\_\_\_\_\_ Chairman

Introduced: 4/16/75  
Referred: Resources and  
Finance

1 IN THE HOUSE

BY GARDINER

2 HOUSE BILL NO. 438

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the leasing of state lands."

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

8 \* Section 1. AS 38.05.075 is amended to read:

9       Sec. 38.05.075. LEASING PROCEDURES. Leasing of land other than  
10 for the extraction of natural resources [THE LEASING] shall be made at  
11 public auction to the highest qualified bidder as determined by the  
12 director, except that, other than leases for public or charitable  
13 purposes under sec. 315 of this chapter, or for agricultural or  
14 grazing purposes, no lease may be issued which is for an amount of money  
15 less than nine per cent of the appraised fair market value of the land.

16 An aggrieved bidder may appeal to the commissioner within five days for  
17 a review of the director's determination. When a valid existing federal  
18 grazing lease is cancelled to allow state selection of the area under  
19 lease, the lessee of the lands has the preference right to lease the  
20 lands without competitive bidding for a term equal to that originally  
21 granted in the cancelled federal lease and upon terms as favorable to  
22 the lessee as those contained in the cancelled federal lease. The  
23 leasing shall be conducted by the director, or his representative, and  
24 the successful bidder shall deposit the first year's rental, or that  
25 portion of it which the commissioner requires, in accordance with his  
26 bid. The director or his representative shall immediately issue a  
27 receipt containing a description of the land or interest leased, the  
28 price bid, and terms of the lease. The receipt shall be acknowledged in  
29 writing by the bidder. A lease, on a form approved by the attorney

1 general, shall be signed by the lessee and, upon approval by the commis-  
2 sioner, shall be signed by the director.

3 \* Sec. 2. AS 38.05.315(c) is amended to read:

4 (c) Eligible applicants under (b) - (d) of this section are limited  
5 to nonprofit corporations, associations, clubs, or societies organized  
6 and operated exclusively for charitable, religious, scientific, or  
7 educational purposes, or for the promotion of social welfare, if the  
8 project for which the land is desired conforms to those objectives and  
9 not commercial development. No lease of land may be granted under this  
10 section for a project closed to the use and enjoyment of the general  
11 public. In every case the applicant shall submit evidence that it is  
12 exempt from payment of federal income tax.

13 \* Sec. 3. AS 38.05.107(b) is amended to read:

14 (b) Values shall be determined as provided by applicable eminent  
15 domain statutes, except that in no case shall the amount of compensation  
16 exceed one half of the total rent a leaseholder has paid on a lease,  
17 other than reasonable compensation for any improvements made to the  
18 leasehold in cases where their value is reduced from the granting of the  
19 easement or exercise of the right-of-way.

20 \* Sec. 4. AS 38.05.095 is amended to read:

21 Sec. 38.05.095. SUBLEASES. A lessee may sublease or assign the  
22 land or portion of it upon which he has a lease if, after application to  
23 the director, the director issues a permit. No permit may be issued  
24 under this section unless the person desiring to sublease or receive the  
25 land by assignment shows that the land will be used or developed  
26 according to a plan approved by the director. Any land under lease which  
27 has not been used or developed within five years according to a plan  
28 approved by the director shall be forfeited to the state. [THE DIRECTOR  
29 MAY ISSUE A PERMIT IF HE FINDS THAT IT IS IN THE BEST INTERESTS OF THE

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STATE TO DO SO.]

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HB 438

ALASKA PUBLIC INTEREST RESEARCH GROUP

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PHONE 274-6765

May 1, 1975

The following is the first installment in a study of state Division of Land policies. Section 1 pertains to right-of-way compensation across state leases. The second section refers to rental rates on state land leases. Lastly the report refers to the ADL policy toward interest rates on contracts for purchase of state lands. Further information on ADL policies and practices will be forthcoming over the next six months.

The Alaska Public Interest Group is a non-profit citizens group, formed to provide information to policy makers and the public on a wide range of public concerns, particularly insofar as those concerns affect Alaskan consumers and taxpayers. This report was prepared by APIRG employees James Love and Cathy Allen.

RIGHT-OF-WAY COMPENSATION ACROSS STATE LEASES

In 1974, CSIB 559 am S was passed by the legislature and allowed to become law without the governor's signature. The effective date of the bill was August 15, 1974. The act was passed in order to pre-emp, retroactively, provisions in State leases reserving the State's right to grant easements and exercise rights-of-way on land leases by the State. This provision, a standard section in every State land lease, is commonly known as paragraph six. Paragraph six states:

6. The Lessor (the State) expressly reserves the right to grant easements or right-of-way across the land herein leased if it is determined by the Director to be in the best interests of the State to do so; provided, however, that the Lessee shall be entitled to compensation for all improvements or crops which are damaged or destroyed as a direct result of the utilization of such easement or right-of-way.

HB 559 (AS 38.05.076) changed this provision, by providing leaseholders with the following interests in their leases:

Sec. 38.05.076 COMPENSATION RELATING TO EASEMENTS OR RIGHT-OF-WAY ACROSS STATE LEASES. (a) Provisions in State land leases to the contrary notwithstanding... the lessee shall be entitled to compensation for the

value of the easement granted or right-of-way exercised and for the reduction in value of the leasehold resulting from the granting of the easement or exercise of the right-of-way...

Prior to the passage of this bill, leaseholders were not compensated for easements granted, or rights-of-way exercised by the state across state lands, except for improvements on the property, such as land fill, buildings, etc.. The state had, since statehood, reserved this interest in its leases. The importance of paragraph six in state leases cannot be overemphasized. With the provision in the lease, the state reserved the right to reclaim land needed for Highway expansion, utility easements, and for other public purposes. Under HB 559 the state will have to pay compensation to leaseholders in order to cross its own lands.

Richard P. Kerns, Assistant Attorney General for Highways, in a May 1, 1974 memo to then Attorney General Gorsuch, wrote that: "I believe the impetus behind this bill is a few leaseholders holding State leases on school land situated near the intersection of Minnesota By-Pass and International Airport Road at Anchorage."

Prior to the passage of the bill, two law suits had been filed against the State asking for a judgment that paragraph six of the lease forms could not be exercised by the State in rights-of-way proceedings against leaseholders in this area. The right-of-way in this area was for the expansion of the Minnesota By-Pass to International Airport Road. The first suit was filed by Rail-Air in 1971. The second suit was

filed on behalf of Wesway Steel, sublessor from Rail-Air. The suit was filed by Wesway Steel counsel, Bob Hartig, in August 1973. Neither suit was actively pursued by the leaseholders until after the passage of HB 559. Kerns, in his May 1974 memo, attributes this lack of aggressiveness to the following:

"It would appear, I should think, to anyone familiar with the above facts, that the reason no aggressive action has been taken in the two actions now pending in court is that CS 559 am S was anticipated, and that the bill is intended to apply to all existing leases whether past or future..."

Just how much compensation will be due leaseholders is unclear. Language spelling out what interest the leaseholder is due for a right-of-way is interpreted differently by different parties.

"The lessee shall be entitled to compensation for the value of the easement granted or right-of-way exercised and for the reduction in value of the leasehold resulting from the granting of the easement or exercise of the right-of-way...Values shall be determined by applicable eminent domain statutes..."

One interpretation of this is that the leaseholder would be entitled to compensation for the fair market value of the land taken for rights-of-way or easements, as though the leaseholder owned the land, even though the leaseholder is obligated to pay annual rent for the term of the lease.

The other interpretation is that leaseholders are entitled to compensation for the interest they hold in the lease, insofar as the lease has a fair market value in its own right. Generally speaking, the more favorable the terms of a lease, the more valuable the lease becomes, on the market.

Kerns referred to this situation, and its possible effect, in his May 1974 memo to the Attorney General:

"In my opinion, CS 559 am S creates a windfall for the leaseholders because the contract rent charged by the State is below market. What the leaseholders are seeking is for the state to pay them the market value of the advantage they hold because the State is not charging what the market indicates the rent should be. To me, this is a double travesty of justice..."

Leaseholders in the International Way Subdivision have extremely favorable rental rates. According to an appraisal conducted by Walter Potts on July 28, 1974, the following leaseholders pay the stated amounts of rent:

<u>Leaseholder</u>	<u>Land Value</u>	<u>Annual Rent</u>
The Three Baers	479,290 S.F. @ \$0.91/S.F. = \$436,000	\$2,380
Mizer & Sowash	169,884 S.F. @ \$1.76/S.F. = \$299,000	\$2,610
D. L. Fahrny	55,565 S.F. @ \$1.60/S.F. = \$ 88,904	\$ 840
Russ Meekins & James O'Malley	256,709 S.F. @ \$1.01/S.F. = \$259,000	\$4,205

Potts' appraisal was conducted on behalf of the State, and it can be expected that the leaseholders will obtain appraisals which place the value of the land they lease somewhat

higher. In discussions with AKPIRG staff, one leaseholder, Russ Meekins Sr, claimed that the land he leases was worth close to \$4.00 per square foot, fee simple. This being the case, the value of the land he leases for \$4,205 per year would be worth close to a million dollars. In any event, it is clear that many leaseholders are paying the State substantially below the market 10% of the Fair Market Value rent. This rent advantage makes their leaseholds more valuable, and increases the likelihood of rather large compensations to the leaseholders from the State. Compensation due to leaseholders in this area may well exceed one million dollars, and, in any event, far exceeds total payments made on affected leaseholdings, as a result of HB 559. According to the 1974 ADL Annual Report, the school trust fund has received a total of \$6,253,701 in payment for rentals and right-of-way compensation on school lands since statehood.

In at least two areas, HB 559 has legal problems:

1) There is a constitutional prohibition against public appropriations except for a public purpose:

Article IX, Section 6. Public Purpose

No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose.

CSHB 559 am 3 gave leaseholders an interest in public lands they never owned in the first place. That interest may result

in public compensation if rights-of-way are exercised on State leases. The act was a windfall for leaseholders, and, in any event, compensation might not be construed as for a public purpose.

2) The U.S. Supreme Court, in Larsen v. Arizona, 87 S.Ct. 584 (1967) ruled that the State of Arizona had no power to grant a compensable property right to a private party, who had leased school trust lands, since that was contrary to the terms under which the State of Arizona had obtained the school trust lands. School lands were acquired by the State of Alaska through a grant to the State by the United States of America under Sec. 6(k) of the Alaska Statehood Act for the purposes for which they were reserved under Section 1 of the Act of March 4, 1915, (38 Stat. 1214; 48 U.S.C., Sec. 353), as amended. A portion of the act reads:

"That the entire proceeds or income derived from said reserved lands, are set apart as separate and permanent funds...to be invested and the income from which shall be expended only for the exclusive use and benefit of the public schools of Alaska..."

This may preclude the holder of any lease from sharing in the compensation paid for right-of-way or easements taken from school lands.

## LEGISLATIVE HISTORY

HB 559 was originally introduced by Speaker of the House, Tom Fink, on February 5, 1974. The bill passed the House on April 17, and the Senate four days later on April 21.

Legislators contacted by AKPIRG researchers indicated that the prime mover of the legislation was Russ Meekins Sr., a leaseholder in the International Way Subdivision who had received notice that approximately 6 acres of his land would be taken for a highway right-of-way. In addition to Meekins, Representative Bob Hartig lobbied legislators for the passage of the bill and testified before the House Finance Committee on the measure. Hartig, at the time, represented two leaseholders in the International Airport area who were also involved in right-of-way proceedings with the Highway Department.

Russ Meekins Sr. had experienced previous problems with the State exercising their right-of-way option. In 1960 Meekins leased approximately 34 acres of mental health lands in the Potter Marsh area. Subsequent to his leasing of the land, the State exercised its right-of-way and extended the Seward Highway through his leasehold. Meekins attempted unsuccessfully to get compensation for this. At one point, Keenan, Director of the Division of Lands, wrote to Bob Hartig, who was then working in the Attorney General's office, representing the Division of Lands, and asked if

the State could trade lands with Meekins to make up for the right-of-way taken from his leasehold. It appears that this was not followed through.

Shortly after his unsuccessful experiences in the Potter Marsh area, Meekins was informed that 5.983 acres of land, between International Airport Road and Minnesota Drive would be condemned by the State for the contraction of a new expansion of the Minnesota Bypass. Meekins had been leasing this land in partnership with the late James O'Malley. The property was valuable and Meekins had a favorable lease from the State. Since 1960, Meekins and O'Malley had paid something less than \$35,000.00 in rental payments on the land which had never been improved. Payment on the land as of 1974 was less than in 1960 when the leases were originally entered into.

Meekins lobbied aggressively for the passage of HB 559. The minutes of committee's meetings frequently refer to Meeking's comments including occasional references to amendments and committee substitutes that were being prepared for the bill. At one point, according to the minutes of the House Finance Committee, Russ Meekins Sr. was included in a subcommittee formed to iron out possible objections the Division of Lands might have with the legislation. The March 7, 1974, Finance Committee minutes state that a subcommittee meeting was held between Mr. Meekins Sr., Rep. Russ Meekins Jr. (appointed to the Finance Committee by the

Speaker months earlier to fill the vacancy created by Representative Hillstrand's death) and Deputy Commissioner William Fackler from the Department of Natural Resources. The minutes indicate that the purpose of the meeting was to place Fackler on the record as stating that he had no problems with the bill.

After HB 559 was passed into law, Mr. Meekins' situation at International Airport was substantially altered. Instead of receiving no compensation for land he had paid rent and taxes on in excess of \$50,000, Meekins stands to receive between \$250,000 and \$400,000 from the Courts if HB 559 is found to be constitutional. In addition to the payments Meekins may receive for this parcel, he currently holds in his name, or in the names of members of his immediate family, twelve other leases.

Representative Hartig represents clients who stand to benefit by this legislation as much as Meekins. Hartig became familiar with the problems in the right-of-way clause on State leases while representing the Division of Lands during his tenure as an Assistant Attorney General. After leaving the AG's office and entering private practice, Hartig represented clients who were having difficulties with the State regarding rights-of-way in state leases. On April 16, 1973, Bob Hartig wrote to the State, on behalf of Wesway Steel Company, rejecting an offer of \$15,000 for compensation of a leasehold being condemned for right-of-way

by the Highway Department. Wesway Steel had purchased the sublease from Rail-Air in January 1971. According to memoranda in the Attorney General's office regarding this transaction, Wesway Steel entered into the sublease after Rail-Air was notified that the State would be exercising the right-of-way.

On August 14, 1973, Hartig, on behalf of Wesway Steel, commenced an action against the State for a judgment declaring that the State does not have the right to exercise "paragraph 6" of the lease without paying market value for this leasehold interest in addition to the value of the improvements. The action was answered by the State and not pursued aggressively by Hartig until the passage of HB 559. Dick Kearns, Assistant Attorney General representing the Highway Department, in a memo dated May 1, 1974, to then Attorney General Gorsuch, attributes this lack of aggressive action to the fact that Hartig and his clients anticipated the passage of HB 559. Prior to the passage of HB 559, Hartig's client would have received \$15,000 in compensation for improvements on the leasehold. If HB 559 remains intact, Wesway Steel may receive between \$253,000 and \$315,000 in compensation.

In addition to Wesway Steel, Hartig represents R. D. Mizer and Bob Sowash in right-of-way litigation. Mizer and Sowash lease school lands in the same general area. Their compensation may be in excess of \$300,000 for 3.9 acres of

leased lands as a result of HB 559.

Legislators contacted by AKPIRG indicate that Hartig lobbied others for passage of HB 559. In addition, legislative records indicate that Representative Hartig testified on the bill during House Finance Committee hearings.

On March 28, 1974, the minutes of the House Finance Committee recorded Hartig's testimony on HB 559. According to the minutes, Hartig indicated that "He was speaking based on information obtained in the Attorney General's office in Anchorage...Under the lease forms that the Department (ADL) uses...the State in granting the lease reserves right-of-way across the land...the State is doing a disservice by forcing people to make leases under those circumstances. The State loses money because of that requirement being in the lease..." In addition to the above comments, the minutes of the meeting state that "Mr. Hartig said that his testimony was in no way self-serving."

## RENTAL RATES ON STATE LAND LEASES

Rental rates on state land are initially determined either by competitive bid, or if through negotiation, a percentage of the appraised Fair Market Value of the land. All land leases, except those specifically exempted under 11 AAC 58.520 (Adjustment of Rental), have their rental rate readjusted every five years. The authority for these provisions are:

### 38.05.075 Leasing Procedure

"The leasing (of state lands) shall be made at public auction to the highest qualified bidder..."

### 38.05.105 Periodic Rental Adjustments

"Each lease shall stipulate that the annual rental payment is subject to adjustment at five-year intervals and changes or adjustment shall be based primarily on a reappraised annual rental value..."

In practice, the Division of Lands has set rental rates at 6% of an appraised value of the land being leased. There are no statutory or regulatory provisions which establish this percentage, nor do leases issued by the Division mention any specific formula as to how rental readjustment will be established. Discussions with ADL officials reveal a general lack of knowledge as to why this system is used. The state is not charging what the market indicates rent should be. Leases on the private market are readjusted at

around 10% of the market value of the land.

ADL practices had been extremely favorable to the leaseholders. In many cases, land was leased through auction at a fairly competitive rate and after five years, using the formula of readjusting rent at 6% of the land's appraised value, rents on lands were reduced by the Division. In reviewing the leasing of school and mental health lands in the Anchorage area, AkPIRG researchers discovered that many leaseholders are paying less rent now than 15 years ago on choice parcels of land.

The State's policy of establishing rental rates substantially below market values results in lost revenue for the State and encourages speculation by leaseholders.

AS 38.05.105 entitled Periodic Rental Adjustments states that readjustments will be "based primarily on a reappraised annual rental value..." This is the most specific language available indicating how rental rates will be adjusted. For the purposes of protecting the interests of the State, this could be amended to read as follows:

"Based primarily on a reappraised annual rental value which is the fair market value of the leasehold and in no event less than 9% of the appraised fair market value of the land, excluding improvements."

On the other hand, it appears that the division could accomplish this administratively without the need for new

legislation. This second course of action is favored by ADL officials who want more time to analyze the problem.

Based upon our discussions with ADL officials, we feel that further study of the problem is reasonable. We are satisfied that ADL officials are concerned about the situation and have confidence in their renewed efforts to deal with this issue.

## INTEREST ON CONTRACTS FOR PURCHASE OF LANDS

When land is offered for sale by the State, a successful bidder may purchase the land on contract.

11 AAC 54.300 Maximum Term

"Persons purchasing State land may do so under contract...in annual installments of not less than 10 percent of the original principal...excluding interest..."

On contracts for sale, the interest on the unpaid principal is established by regulation.

11 AAC 54.310 Interest

Interest shall be charged on all contracts of purchase at the rate of six percent per annum on unpaid balances.

AS 38.05.065 Terms of contract for sale

"...interest at the rate of not less than five percent a year..."

The statutory minimum for interest was established in 1959 at 5%. In 1969, the regulation establishing the interest rate was amended to provide that all interest payments would be six percent. The six percent rate is currently in effect. ADL officials are currently preparing for the June 7, 1975 sale of 206,000 acres of land in the Kenai Peninsula area, (North Kenai Area Auction #225)

Discussions with ADL officials indicate that current market conditions justify an interest rate of more than 8-1/2% on the sale. The 8-1/2% figure is based on an April 15, 1975 study by ADL appraiser Bruce Atkinson of 35 1974 land sales in the Kenai Peninsula Area.

The regulation setting the interest rate will not allow this, since it does not provide a minimum. The regulation just states that interest rates will be a flat 6%. The regulation could be changed, but not before the Kenai land sale takes place. The legislature could remedy this by amending the enabling statute for the regulation, providing that interest rates shall be a minimum of 8 percent.

Sec. 38.05.065 Terms of contract sale

"...interest at the rate of not less than eight (FIVE) percent a year..."

STATE  
of ALASKA

## MEMORANDUM

TO:  Norman C. Gorsuch  
 Attorney General  
 Juneau AGO

Attention: Donna Pegues  
 Assistant Attorney General

DATE May 1, 1974

FROM: Richard P. Eerns, AAG  
 Highway Section  
 Anchorage AGO

SUBJECT: CSHE 559 ams

I welcome this opportunity to pass on some comments in connection with the above referenced bill for consideration by the Attorney General while reviewing this bill for the Governor. I believe the impetus behind this bill is a few leaseholders holding State leases on school-land situated near the intersection of Minnesota By-Pass and International Airport Road at Anchorage.

The history (as it is known to me) of grants of right-of-way to the highway department by the division of lands over State lease lands begins with a lease dated September 15, 1959, granted to a now defunct corporation called Territory Supply Company, the name of which was later changed to Warehouse Terminal Park, Inc. This lease covered the area shown in cross-hatch on Exhibit "A" attached and contains in pertinent part the provision that:

(a) "IT IS HEREBY COVENANTED AND AGREED by both parties hereto that this lease is issued subject to all of the provisions and requirements thereto, which are found in the Alaska Land Act of 1959, and the regulations issued thereunder, . . . , the same as though they were set forth in full over the signature of the contracting parties hereto."

Regulations issued under the authority of the Alaska Land Act of 1959 provides in pertinent part that:

The lessor expressly reserves the right to grant easements or rights of way across leased land if it is determined in the best interest of Alaska to do so. The lessee whose lands such easements or rights of way shall cross shall be entitled to damages for all improvements or crops destroyed or damaged. Damages shall be limited to improvements and crops only and loss shall be determined by fair market value.

A portion of this original lease (depicted in cross-hatch on Exhibit "B") through a series of eight assignments, came into the hands of Red Air Industrial Park, Inc.

Norman C. Gorsuch  
Re: CSHB 559

May 1, 1974  
Page 2

Warehouse Terminal Park, Inc. defaulted on the balance of the original lease and a new lease was granted by the Division of Lands under date of July 27, 1931 to Jet Terminals, Inc. This new lease contains the express provision that:

"The Lessor expressly reserves the right to grant easements or rights-of-way across the land herein leased if it is determined to be in the best interests of the State to do so; provided, however, that the Lessee shall be entitled to compensation for all improvements or crops which are damaged or destroyed as a direct result of such easement or right-of-way."

The portion covered by this new lease is shown in cross-hatch on Exhibit "A". This lease remained in Jet Terminals Inc. until July 31, 1963 when it was assigned to Rail-Air Industrial Park Inc., subject, however, to a small portion shown blocked in on Exhibit "D" which Jet Terminals had sub-leased to Robert L. Hartwig. (Not to be confused with attorney for Wesway Steel and State Representative Robert L. Hartig).

At this status of ownership of the property thus far mentioned, the Division of Lands granted a right-of-way to the department of highways by inter-departmental Land Management Transfer No. 41850 dated January 23, 1969. This grant covered the property shown in cross-hatch on Exhibit "E". The purpose of this right-of-way was to extend the Minnesota By-pass from Northern Lights Blvd. to International Airport Road, which project has, of course, been completed and in use for some time.

Following procedures outlined in a memorandum opinion dated July 31, 1962, by Michael M. Holmes, then Assistant Attorney General, (Exhibit "F") the State paid a total of \$5400.00 for improvements pursuant to the terms of the lease agreements and \$29,950.00 to the school trust fund as the sum representing the full value of the land granted. This latter payment to the trust fund for full land value follows (so I have been told by previous assistants to the attorney general for lands and highways), the reasoning set forth in the U. S. Supreme Court decision in Larsen v. Arizona, 87 S.Ct. 594 (1967) a copy which is attached for your convenience as Exhibit "G". After considerable discourse between attorneys for the State and H. Russell Holland, attorney for Rail-Air, as to whether the terms of the lease really meant what was said therein, action was commenced on April 13, 1971, against the State by Holland on behalf of Rail-Air. Answer was filed by the State setting forth among other things the defense of the terms of the lease. Nothing further has happened in the case.

Subsequent to the granting of this right-of-way but prior to initiating action against the State, to wit, January 26, 1971, Rail-Air assigned the portion of its lease shown in cross-hatch on Exhibit "H" to Wesway Steel Company, Inc. Rumor has it that, in spite of the knowledge that Rail-Air had that the State was exercising the terms of the lease and the plain language in the lease itself, Wesway paid a considerable sum to Rail-Air for this sub-lease.

During this state of ownership, Lands in January, 1973 issued another group of transfers granting right-of-way over the portion shown in cross-hatch on Exhibit "I" to highways. This latest transfer involved the following:

Parcel No. 1 (Exhibit "J" total lease area heavy line. Portion for R/W in cross-hatch)

LESSOR: Pacific Seal Co. of Alaska  
Mortgagee: Small Business Administration  
Mortgage: Matanuska Valley Bank

Parcel No. 2 (Exhibit "K")

LESSOR: Rail-Air

Parcel No. 3 (Exhibit "L")

LESSOR: Wesway Steel

For these parcels 1, 2 and 3 the department of highways paid or tendered

School Trust Fund	\$585,700
Sublease Hartwig for warehouse	\$ 99,900
Tendered Wesway Steel for landfill	25,000
Tendered Rail-Air for landfill	\$ 20,000
Trailer park and utility hookups	\$ 3,300

In response to this latest exercise of paragraph 6 of the lease agreements, the State received letters from attorneys for Rail-Air (Exhibit "M") and Mat Valley Bank (Exhibit "N") Wesway Steel, on August 14, 1973, through its attorney Robert L. Hartig, commenced action for judgment declaring that the State does not have the right to exercise paragraph 6 without paying market value for the leasehold interest in addition to the value of the improvements. Answer was made by the State and, again, nothing further has happened in this action.

It would appear, I should think, to anyone familiar with the above facts, that the reason no aggressive action has been taken in the two actions now pending in court is that CS 559 was anticipated, and that the bill is intended to apply to all existing leases whether past or future. In my opinion CS 559 was creates a windfall for the leaseholders because the contract rent charged by the State is below market. What the leaseholders are seeking here is for the State to pay them the market value of the advantage they hold because

the State is not charging what the market indicates the rent should be. To me this is a double travesty of justice. For a succinct explanation of this principle of contract vs. economic rent see The Appraisal of Real Estate, American Institute of Real Estate Appraisers, (Sixth Edition 1973). A copy of a portion of the text is attached as Exhibit "O". In other words, if the leases required market rent, there would be no particular market value in the leasehold interests. Surely the object of the State in leasing this land is for a purpose other than merely trafficking in their speculative value. And in those instances where a leaseholder has obtained a lease and actually made improvements, why is he not made whole by paying him for the value of those improvements and by making an appropriate adjustment in the lease payments? All of which is done under the present law.

Common sense and basic fairness alone should compel a provision be included before approval to at least require an election by the leaseholder to the effect that if he elects to have the State pay market value, he agrees to pay market rent to the State on the remainder of the leasehold. For the State to pay him market value, but condone his continuing to pay the State for less than market value, is, in my opinion, unconscionable.

In addition to what is, in my view, a windfall to the leaseholders under CS 559 am, it is very possible that the department of highways will still have to make payment to the trust fund for the full value of the land. In the ordinary case of privately leased lands where the contract rent is below market the lessors interest has a minimal market value. But how can the school trust fund be penalized because the trustees are not charging market rent?

There is also the possibility that the Bureau of Public Roads may not participate in this additional payment to the leaseholders, but the question of this possibility is better addressed to the highway department right-of-way section at Juneau

Finally, there is attached as Exhibit "P", an AMATS map of the Greater Anchorage area showing the extent of State administered property which is either leased or available for leasing under the same terms as the property which I believe gave rise to this bill.

In conclusion, I can only say that I see no merit in a bill which would compensate a few people for the fact alone that they have had the good fortune to hold a lease from the State with below market rental rates, in addition to compensating them for the value of the improvements they may have placed on the property.

RPX/smk

Enclosures (Exhibits "A" to "P" and AMATS map)

HOUSE FINANCE COMMITTEE

March 7, 1974

3:55 P.M.

PRESENT This was a Sub-committee Meeting between Representative Meekins, and Mr. Meekins Sr. and Mr. Fackler regarding HB 559.

HB 559 Rep. Meekins asked Mr. Fackler for his comments on HOUSE BILL NO. 559 (An Act relating to compensation for the taking of rights-of-way leases).

Mr. Fackler said they really had no particular problems with it. He understood it was a bill to take care of some conditions that have come up where they have given a lease to a person who takes it and does something with another part effecting the right-of-way which turns out to be bigger than anyone thought it would be.

Mr. Fackler said that Mr. Hogan had asked about a fiscal note on the bill, but he said they didn't see that it would result in additional cost except for what the settlement might be.

Rep. Meekins said he had just wanted to make sure Mr. Fackler didn't have any problems with the Bill, and Mr. Fackler reiterated that there weren't any.

3/7/74

(Compensation for taking of rights-of-way across state leases).

Mr. Hartig and Mr. Meekins Sr. were present to testify.

Mr. Meekins Sr. said there was going to have to be a Committee Substitute for the bill. They had discovered that the language had accidentally been taken from the portion of the statutes dealing with oil leases instead of the right one.

Mr. Hartig said that his testimony was in no way self-serving. He was speaking based on information obtained in the Attorney General's Office in Anchorage. Under the lease forms that the Department uses and, in particular, Natural Resources, there is a Section 6 which provides that the State in granting the lease reserves right-of-way across the land. The section does not refer to any specific amount. If they take the right-of-way, the only compensation they have to make is reduction of the lease cost for the amount of land actually taken plus the actual value of improvements. The State is doing a disservice by forcing people to make leases under those circumstances. The State loses money because of that requirement being in the lease, since it effects the way the lessee bids.

Mr. Hartig said that when he was in the Attorney General's Office, he came up against this many times. If a person owns a lease, it is usually worth money, but not in Alaska. The problem has never been litigated because it is usually settled out of court.

Mr. Hartig said that the federal government has a right-of-way clause in its leases too, but it is more specific. It doesn't leave it open the way the State does. He thought that by having the clause in the lease, it was a way for the Department of Highways to obtain land without paying anything. This means leasehold interests aren't worth anything. He didn't know of any other lease that is that way.

Mr. Hartig thought the Committee Substitute would be more in line with what the law really was.

There was some general discussion on the matter.

Chairman Freeman thought they were spending too much time on what was really a legal matter. It was moved that the Committee report it back to the Judiciary Committee for further work. There was no objection, it was so ordered.

RECESS

Meeting recessed at 3:20 P.M.

The Legislature of the State of Alaska  
FISCAL NOTE

First Session - Ninth Legislature

I. REQUEST

Bill No. HB 438

Title: An act relating to the leasing of State lands

Requested by: House Finance

Date: May 15, 1975

Return Date Requested:

Agency: Lands- Natural Resources

Program:

II. FISCAL DETAIL

Budget Request Unit(s) Affected:

A. EXPENDITURES: (Thousands of dollars)

- 0 -

OBJECT	FY 75	FY 76	FY 77	FY 78	FY 79	FY 80
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0				

B. FUNDING: (Thousands of dollars)

- 0 -

GENERAL FUND						
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

- 0 -

PERMANENT/TEMPORARY	/	/	/	/	/	/
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Work load will be absorbed into present staff and budget. May have to rely on accounting help in analyzing financial statements occasionally, but the increased cost of leases would tend to reduce the amount of leases. Generally the bill would have a positive fiscal impact rather than negative.

Present lease income per annum = \$ 851,173 (FY 74)  
Less Open to Entry Income -135,460  
Fixed at \$40 per year

IV. ~~XXXXXXXXXXXXXXXX~~ 50% increase in  
~~XXXXXXXXXXXXXXXX~~ Lease Rentals

\$ 715,713 at 6%  
357,857 at 3% - new revenue  
\$1,073,570 at 9% - total

V. DATE: May 15, 1975

PREPARED BY: *Kathy Jacobsen for* Kenneth H. Hallback

Original: Legislative Finance  
cc: Budget and Management  
Prime Sponsor (First Legislator Named)

THIS  BILL  RESOLUTION

has been prepared by the staff of the Legislative Council in response to the request and at the direction of the sponsor. The staff has attempted to place it in proper legal and clerical form subject to any special limitations or instructions of the sponsor. Member requests are kept confidential by the staff and any announcement of intent to have a document drafted or introduced remains the prerogative and responsibility of the sponsoring member in dealing with colleagues and other persons. The Council or its staff may not endorse or comment on policy matters involved in a bill or resolution. The substance and merits of a bill or resolution are the responsibility of the sponsor.

Delivered to sponsor: 5-7-75

Original sponsor: Gardiner

1 IN THE HOUSE

BY ~~THE FINANCE COMMITTEE~~

2 CS FOR HOUSE BILL H.B. 438 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the leasing of state lands."

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

8 \* Section 1. AS 38.05.315(c) is amended to read:

9 (c) Eligible applicants under (b) - (d) of this section are  
10 limited to nonprofit corporations, associations, clubs, or societies  
11 organized and operated exclusively for charitable, religious, scientific,  
12 or educational purposes, or for the promotion of social welfare, if the  
13 project for which the land is desired conforms to those objectives and  
14 not commercial development. No lease of land may be granted under this  
15 section for a project closed to the use and enjoyment of the general  
16 public. In every case the applicant shall submit evidence that it is  
17 exempt from payment of federal income tax. As a condition of and in  
18 consideration of the rights acquired under a lease granted under (b) -  
19 (d) of this section, each eligible organization and its parent or sub-  
20 sidary organizations shall (1) maintain and preserve books, accounts,  
21 and records that the director prescribes by regulation as necessary and  
22 appropriate; and (2) accord at all reasonable times to the state and its  
23 authorized agents and auditors the right of access to those books,  
24 accounts and records for the purpose of inspecting, examining and copying  
25 them. Any information provided the state in the course of an audit  
26 becomes a matter of public record.

27 \* Sec. 2. AS 38.05.107 is repealed.

*not required  
W. J. Gardiner  
11/20/64*

1199

Jail

Original sponsor: Gardiner

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