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of the Governor

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1 IN THE HOUSE

BY THE RULES COMMITTEE

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SENATE CS FOR CS FOR HOUSE BILL NO. 67

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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 land; and providing for an effective
7 date."

8

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

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* Section 1. AS 34.55 is amended by adding a new section to read:

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Sec. 34.55.006. FRAUDULENT AND PROHIBITED PRACTICES. It is

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unlawful for a person, in connection with the offer, sale or purchase of
12 subdivided land directly or indirectly, to knowingly

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(1) employ a device, scheme, or artifice to defraud;

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(2) make an untrue statement of a material fact or omit a

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statement of a material fact necessary in order to make the statements

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made, in the light of the circumstances under which they are made, not

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misleading; or

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(3) engage in an act, practice, or course of business which

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operates or would operate as a fraud or deceit upon a person.

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* Sec. 2. AS 34.55.008 is amended to read:

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Sec. 34.55.008. PROHIBITIONS ON DISPOSITIONS OF INTERESTS IN

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SUBDIVISIONS. Unless the subdivided land or the transaction is exempt

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by sec. 42 of this chapter

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(1) no person may offer or dispose of in this state an

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interest in subdivided land [LOCATED OUTSIDE THIS STATE] before the time
26 the subdivided land is registered in accordance with this chapter;

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(2) no person may dispose of an interest in subdivided land

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[LOCATED OUTSIDE THIS STATE] unless a current public offering statement

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is delivered to the purchaser and the purchaser is afforded a reasonable

1 opportunity to examine the public offering statement before the dis-
2 position.

3 * Sec. 3. AS 34.55.022(b) is amended to read:

4 (b) For the purpose of an investigation or proceeding under this
5 chapter, the department or an officer designated by the department
6 [REGULATION] may administer oaths or affirmations, and upon its own
7 motion or upon request of any party shall subpoena witnesses, compel
8 their attendance, take evidence, and require the production of any
9 matter which is relevant to the investigation, including the existence,
10 description, nature, custody, condition, and location of books, docu-
11 ments, or other tangible things and the identity and location of persons
12 having knowledge of relevant facts or any other matter reasonably cal-
13 culated to lead to the discovery of material evidence.

14 * Sec. 4. AS 34.55.028 is repealed and re-enacted to read:

15 Sec. 34.55.028. PENALTIES. (a) A person who wilfully violates
16 secs. 6 or 8 of this chapter is, upon conviction, punishable by a fine
17 of not more than \$50,000, or by imprisonment for not less than one year
18 nor more than five years, or by both fine and imprisonment.

19 (b) Any violation of this chapter other than as provided in (a) of
20 this section or of a regulation adopted under this chapter is a mis-
21 demeanor and is punishable by a fine of not less than \$1,000 or double
22 the amount of gain from the transaction, whichever is larger but not
23 more than \$50,000, or by imprisonment for not more than six months, or
24 by both fine and imprisonment.

25 * Sec. 5. AS 34.55.030(a) is amended to read:

26 (a) A person who disposes of subdivided land in violation of
27 sec. 6 or sec. 8 of this chapter [OR WHO, IN DISPOSING OF SUBDIVIDED
28 LAND, MAKES AN UNTRUE STATEMENT OF A MATERIAL FACT REQUIRED TO BE
29 STATED IN A REGISTRATION STATEMENT OR PUBLIC OFFERING STATEMENT OR

1 NECESSARY TO MAKE THE STATEMENTS MADE NOT MISLEADING,] is liable as
2 provided in this section to the purchaser unless in the case of an
3 untruth or omission it is proved that the purchaser knew of the untruth
4 or omission or that the person offering or disposing of subdivided land
5 did not know and in the exercise of reasonable care could not have known
6 of the untruth or omission.

7 * Sec. 6. AS 34.55.032 is amended to read:

8 Sec. 34.55.032. JURISDICTION. A disposition of subdivided land is
9 subject to this chapter and the superior court of this state has juris-
10 diction in claims or causes of action arising under this chapter if

11 (1) the subdivider's principal office is located in this
12 state; [OR]

13 (2) an offer or disposition of subdivided land is made in
14 this state, whether or not the offeror or offeree is then present in
15 this state, if the offer originates in this state or is directed by the
16 offeror to a person or place in this state and received by the person or
17 at the place to which it is directed; or

18 (3) The subdivided land is located in this state.

19 * Sec. 7. AS 34.55.042(a) is amended to read:

20 (a) Unless the method of disposition is adopted for the purpose of
21 evasion of this chapter, the registration provisions of this chapter do
22 not apply to offers or dispositions of an interest in land

23 (1) by a purchaser of subdivided land for his own account in
24 a single or isolated transaction;

25 (2) if fewer than 10 separate lots, parcels, units or inter-
26 ests in subdivided land located outside this state are offered by a
27 subdivider [PERSON] in a period of 12 months, or if fewer than 50 sepa-
28 rate lots, parcels, units or interests in subdivided land located in
29 this state are offered by a subdivider in a period of 12 months;

1 (3) on which there is a residential, commercial, or indus-
2 trial building, or as to which there is a legal obligation on the part
3 of the seller to construct such a building within one year from date of
4 disposition;

5 (4) to persons who are engaged in the business of construc-
6 tion of buildings for resale, or to persons who acquire an interest in
7 subdivided land for the purpose of engaging, and do engage in the
8 business of construction of buildings for resale;

9 (5) under court order;

10 (6) by a government or government agency;

11 (7) as cemetery lots or interests;

12 (8) if the land is located in this state and is registered or
13 exempt from registration under the provisions of the federal Interstate
14 Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.).

15 * Sec. 8. AS 34.55.044(6) is amended to read:

16 (6) "subdivision" and "subdivided land" mean land [LOCATED
17 OUTSIDE THIS STATE] which is divided or is proposed to be divided for
18 the purpose of disposition into two [10] or more lots, parcels, units or
19 interests and also includes any land whether contiguous or not if two
20 [10] or more lots, parcels, units or interests are offered as a part of
21 a common promotional plan of advertising and sale; if the land is con-
22 tiguous or is known, designated, or advertised as a common unit or by a
23 common name, the land shall be presumed, without regard to the number of
24 lots covered by each individual offering, as being offered for dis-
25 position as part of a common promotional plan;

26 * Sec. 9. AS 38.05.085 is repealed and re-enacted to read:

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

28 (1) for the initial 25-year period of the lease, the lessee
29 shall pay the state a fixed base annual rent to be agreed upon by the

1 parties in compliance with the provisions of this chapter;

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

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

9 (b) When it becomes necessary to determine the fair market value
10 of property as required by (a) of this section, the lessee shall appoint
11 an M.A.I. appraiser and the state shall appoint an M.A.I. appraiser.
12 The two appraisers so appointed shall, within a specified period of time
13 agreed upon by the parties, make their appraisals of the property in
14 question. If the two appraisers agree upon the fair market value, the
15 determination is absolutely binding on the parties. In the event the
16 two appraisers are unable to agree, they shall together appoint a third
17 M.A.I. appraiser who shall then make his appraisal of the property in
18 question. When the third appraisal is completed, the two of the three
19 appraisals which are nearest each other in their determination of the
20 fair market value shall be averaged and the resultant sum shall be the
21 fair market value of the matter in question and absolutely binding on
22 the parties. All costs incurred in making the appraisals provided for
23 in this subsection shall be borne by the state and the lessee equally.

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

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

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

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

6 (g) In this section,

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

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

15 * Sec. 10. AS 38.05 is amended by adding a new section to read:

16 Sec. 38.05.103. RIGHTS OF HOLDER OF SECURITY INTEREST. (a) If
17 there is a breach or default of a term of a lease or of the provisions
18 of this chapter relating to a lease, the division shall provide written
19 notice of the breach or default by personal service or by registered or
20 certified mail to the lessee and to any holder of record having a
21 security interest in the leased property. The notice shall also make
22 demand upon the lessee to cure or remedy the breach or default within 60
23 days from the date of receipt of the notice and demand. If a lessee
24 fails to cure or remedy the breach or default within 60 days, or within
25 the additional time which the division may allow for good cause, the
26 state may, subject to (b) of this section, exercise any right which it
27 may have at law or as set out in the lease.

28 (b) If a lessee fails to cure or remedy a breach or default within
29 the time allowed in (a) of this section, a holder of a security interest

1 who has received notice under (a) of this section may cure or remedy the
2 breach or default if the breach or default can be cured by the payment
3 of money or, if this cannot be done, by performing or undertaking in
4 writing to perform the terms, covenants, restrictions and conditions of
5 the lease capable of performance by the holder. The holder shall act
6 within 60 days from the date of receipt of notice under (a) of this
7 section, or within an additional period as the director may allow for
8 good cause.

9 * Sec. 11. AS 38.05.105 is repealed and re-enacted to read:

10 Sec. 38.05.105. PERIODIC RENT ADJUSTMENTS. (a) Each lease shall
11 stipulate that at the conclusion of the initial 25-year period of the
12 lease and at intervals of 10 years thereafter the annual rent payment
13 is subject to adjustment. Charges or adjustments shall be based pri-
14 marily on an adjusted fair market value. However, if the director of
15 the division of lands determines that single-family residential develop-
16 ment is the best use of the land, the reappraisal period may be length-
17 ened or the readjustment waived in accordance with regulations adopted
18 by the department. Before a waiver of rent adjustment is issued, the
19 land shall have a current reappraisal. A waiver is valid only if
20 single-family residential development actually occurs. The regulations
21 adopted under this section shall ensure that the state receives a fair
22 return from the land.

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

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

28 (2) changes in property value due to private improvements
29 made to the property or other privately owned or leased property since

1 originally entering into the lease shall be excluded.

2 * Sec. 12. CONVERSION OF LEASES. The provisions of secs. 9 - 11 of this
3 Act are applicable to state leases which are in existence on or before the
4 effective date of this Act if a lessee under a lease elects, in writing, to
5 be bound by this Act. When a lessee elects to be bound by the provisions of
6 this Act, the state shall enter into a new lease with the lessee for a term
7 equal to the remaining period of the original lease which is being terminated
8 that is consistent with the provisions of this Act. However, for purposes of
9 determining the annual rent by the state, the fair market value of the
10 property which is used to establish the fixed base annual rent for the
11 initial period of the lease may not exceed the fair market value as it was
12 last appraised on or before January 1, 1975, brought forward to January 1,
13 1976, at the rate of 10 per cent per year, or, if the lease was entered into
14 after January 1, 1975, on the basis of the fair market value at the time the
15 lease was entered into.

16 * Sec. 13. The provisions of sec. 12 of this Act expire on January 1,
17 1979.

18 * Sec. 14. AS 38.05.037(b) is amended to read:

19 (b) The division of lands may [SHALL] exercise its zoning power

20 (1) within federal lands in the unorganized borough only at
21 the times and in the areas it is requested to do so by the Secretary of
22 the Interior to facilitate sales of federal lands within the unorganized
23 borough under Public Law 88-608, 78 Stat. 988;

24 (2) within any portion of a third class borough covered by the
25 Alaska coastal management program adopted in accordance with the pro-
26 visions of AS 46.35 if the municipality has not done so.

27 * Sec. 15. Sections 9 - 13 of this Act take effect immediately in accor-
28 dance with AS 01.10.070(c).