

Original sponsors: Poland, Croft,  
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1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 159 (Finance) am H

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 state lands; and providing for an  
7 effective date.

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

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 AS 38.05.085 is repealed and re-enacted to read:

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

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

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

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

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

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

9 (c) If the director determines that private recreational or resi-  
10 dential development is the best use of the land, the reappraisal period  
11 provided in this section may be lengthened, the initial rate may be  
12 adjusted, or the rent adjustment may be waived in accordance with regula-  
13 tions adopted by the commissioner. Before action is taken under this  
14 subsection, the director shall prepare a written finding that the exten-  
15 sion, rental rate adjustment, or waiver of rent adjustment is in con-  
16 formity with this section and is in the best interests of the state.  
17 Notwithstanding the provisions of AS 38.05.315(d), if the rental rate is  
18 adjusted, the adjusted rent may not exceed four per cent of the fair  
19 market value of the property. An extension, rent adjustment, or waiver  
20 is valid only if private recreational or residential development actually  
21 occurs.

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

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

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

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

4 (h) In this section,

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

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

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

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

26 (b) If a lessee fails to cure or remedy a breach or default within  
27 the time allowed in (a) of this section, a holder of a security interest  
28 who has received notice under (a) of this section may cure or remedy the  
29 breach or default if the breach or default can be cured by the payment

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

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

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

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

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

26 (2) changes in property value due to private improvements  
27 made to the property since originally entering into the lease shall  
28 be excluded.

29 \* Sec. 4. The provisions of this Act are applicable to state leases which

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

13 \* Sec. 5. PURPOSE OF ACT. The longstanding policy of the state, de-  
14 clared in the Constitution of the State of Alaska (art. VIII, sec. 1) and the  
15 Alaska Land Act (AS 38.05.350), has been to encourage the settlement of the  
16 state's land and the development of its resources by making them available  
17 for maximum use consistent with the public interest. In authorizing the  
18 classification of land for settlement as homesites, this Act is intended to  
19 further that policy explicitly, by recognizing that the immediate production  
20 of revenues to the state through the auction of land to the highest bidder,  
21 virtually the only method by which state land has been made available to the  
22 public for residential use, is secondary in importance to the primary, and  
23 ultimately more beneficial and productive, goal of providing land for Alaskans  
24 to settle at a cost reasonably within their means, and that the highest and  
25 best use of some land may clearly be for habitation.

26 \* Sec. 6. AS 38 is amended by adding a new chapter to read:

27 CHAPTER 8. HOMESITES.

28 Sec. 38.08.010. CLASSIFICATION OF LAND FOR HOMESITE ENTRY. (a)

29 The director shall classify, survey, and plat for homesite entry state

1 land which is otherwise vacant, unappropriated and unreserved and is  
2 suitable for erection of residential dwellings to use as a permanent  
3 abode.

4 (b) Land classified as homesite entry land shall be divided into  
5 parcels not exceeding two and one-half acres, in reasonably compact  
6 form, with boundaries conforming as nearly as practicable to natural  
7 geologic and topographic features.

8 (c) Nothing in this section shall be construed to mean that the  
9 director must classify all vacant, unappropriated or unreserved state  
10 land as homesite entry land.

11 Sec. 38.08.020. OFFERING OF LAND FOR HOMESITE ENTRY. Following  
12 classification of land for homesite entry, offerings of homesite entry  
13 land shall be made on a rotating basis from among the four judicial  
14 districts of the state. The director shall publish notice of the  
15 availability of the land for at least three consecutive weeks through  
16 the electronic media and in at least three newspapers of general circu-  
17 lation in the state, at least one of which, if possible, shall be a  
18 newspaper of general circulation in the vicinity of the available land.

19 Sec. 38.08.030. APPLICATIONS FOR HOMESITE ENTRY; FEES. (a) To  
20 qualify for a homesite entry permit, an applicant shall

21 (1) at the time of application have attained the age of 18;

22 (2) submit proof acceptable to the commissioner that he is a  
23 resident of the state at the time of application, and that he has been  
24 a resident of the state for not less than three years immediately  
25 preceding the date his application was submitted, or that he has been a  
26 resident for 20 years cumulatively;

27 (3) agree to comply with the requirements for obtaining a  
28 patent to land set out under sec. 60 of this chapter.

29 (b) Fees for filing an application may not exceed \$10.

1           Sec. 38.08.040. ISSUANCE OF ENTRY PERMIT. (a) An applicant  
2 meeting the qualifications for homesite entry under sec. 30 of this  
3 chapter shall be issued a revocable permit to occupy and improve the  
4 homesite in order to qualify for issuance of patent as provided in this  
5 chapter. The application fee is the sole rent chargeable on the permit  
6 for its duration.

7           (b) If the number of applicants qualified for homesite entry  
8 exceeds the number of available homesites offered, or if several appli-  
9 cants apply and qualify for the same homesite, priority in award of an  
10 entry permit shall be accorded to that applicant showing proof of the  
11 longest residency in the state.

12           (c) The permit may not be assigned, conveyed or otherwise trans-  
13 ferred, but rights under the permit may devolve by testate or intestate  
14 succession. An attempt to assign, convey, or to otherwise transfer the  
15 permit, is void and constitutes a substantial breach.

16           (d) An applicant may apply for more than one available homesite.  
17 No person holding a homesite patent may apply for a homesite entry  
18 permit, no person may simultaneously hold more than one homesite entry  
19 permit, and no person who is a member of the homesite entry permit  
20 holder's household may be issued a homesite entry permit while a member  
21 of the homesite entry permit holder's household.

22           Sec. 38.08.050. REVOCATION OF ENTRY PERMIT. (a) The entry permit  
23 may only be revoked for failure to erect a dwelling as required under  
24 sec. 60 of this chapter, or for other substantial breach of the terms  
25 and conditions of the homesite entry permit.

26           (b) Upon revocation and termination of a permit, improvements or  
27 chattels upon the homesite shall be managed, and subsequent issuance of  
28 a permit for entry on the homesite shall be conditioned, in the same  
29 manner as provided in AS 38.05.090 for removal or reversion of improve-

1 ments upon termination of leases of state land.

2 Sec. 38.08.060. ISSUANCE OF PATENT. (a) A person who enters upon  
3 homesite entry land under a permit issued by the director shall be  
4 issued a patent to the land conveying an unencumbered title if that  
5 person

6 (1) occupies the land for a cumulative total of 21 months  
7 within the three-year period following issuance of the homesite entry  
8 permit;

9 (2) erects a habitable, permanent, single-family dwelling on  
10 the homesite, which meets all applicable state and local regulations,  
11 within three years of the date of issuance of the homesite entry permit;  
12 for the purposes of this paragraph, mobile homes are not considered to  
13 be permanent dwellings unless they are placed on a permanent foundation;

14 (3) reimburses the state for the survey and platting under-  
15 taken in accordance with this chapter. The director shall provide by  
16 regulation for installment payments of this reimbursement.

17 (b) Nothing in this chapter shall be construed to prohibit a  
18 person issued a homesite entry permit from residing in a temporary  
19 habitable dwelling on the homesite until revocation of the homesite  
20 entry permit or issuance of a patent to the homesite.

21 (c) No person may be issued more than one patent during his life-  
22 time, nor may any person who is a member of a patent holder's household  
23 be issued a patent while a member of the patent holder's household.

24 (d) If a dwelling is found to have been substantially completed  
25 under sec. 100 of this chapter, patent shall be issued upon completion  
26 of the dwelling, notwithstanding (a)(2) of this section.

27 Sec. 38.08.070. LAND LOCATED WITHIN MUNICIPALITIES. No state land  
28 which is located within the boundaries of an organized borough or city  
29 may be classified for homesite entry under this chapter until the pro-

1 posed use of the land has been studied and approved jointly by the  
2 director and the local planning authority. Nothing in this section or  
3 AS 29.18.190 prevents the director from selecting and classifying for  
4 homesite entry land which would otherwise be available for borough or  
5 city selection under AS 29.18.190. If classified for homesite entry,  
6 the land shall not be available for city or borough selection.

7 Sec. 38.08.080. REQUIRED ZONING. No state land which is located  
8 within the boundaries of a municipality which exercises planning and  
9 zoning authority under AS 29 may be offered by the director for homesite  
10 entry under this chapter until the land has been zoned by the governing  
11 body of the municipality for residential use only. No state land which  
12 is located within a municipality which does not exercise planning and  
13 zoning authority, or which is located in the unorganized borough, may be  
14 offered by the director for homesite entry under this chapter unless the  
15 division of lands has adopted zoning regulations under AS 38.05.037 to  
16 restrict the use of the land to residential purposes.

17 Sec. 38.08.090. DISCLAIMER OF INTENT TO PROVIDE SERVICES. Nothing  
18 in this chapter obligates the state to provide services to lands which  
19 are the subject of homesite entry and patent.

20 Sec. 38.08.100. SUBSTANTIAL COMPLETION OF DWELLING. An entry  
21 permit may not be revoked for failure to erect a dwelling in the time  
22 required under sec. 60(a)(2) of this chapter if the director finds that  
23 erection of the dwelling has been substantially completed and progress  
24 toward completion is being made at the expiration of the time required.

25 Sec. 38.08.110. REGULATIONS. The commissioner shall adopt regula-  
26 tions in accordance with AS 44.62.180 - 44.62.290 to carry out the  
27 purposes of this chapter.

28 Sec. 38.08.120. DEFINITIONS. In this chapter

29 (1) "commissioner" means the commissioner of natural re-

1 sources;

2 (2) "habitable dwelling" means a dwelling of a permanent  
3 nature, together with fixtures and facilities, including sanitary  
4 facilities, required or customary in the vicinity of the land made  
5 available for homesite entry.

6 (3) "resident" means a person who is not claiming residence  
7 in another state and shows by all attending circumstances that his  
8 intent is to make this state his permanent residence.

9 \* Sec. 7. AS 29.33.090 is amended by adding a new subsection to read:

10 (c) The assembly shall regulate and restrict the use of state land  
11 within the borough which is vacant, unappropriated and unreserved and  
12 which is found suitable for classification and disposal for homesite  
13 entry under AS 38.05.327. Compliance with the provisions of this sub-  
14 section is a prerequisite to issuance of homesite entry permits for land  
15 within the borough.

16 \* Sec. 8. AS 29.13.100 is amended by adding a new paragraph to read:

17 (37) AS 29.33.090(c) (zoning of state land for homesite  
18 entry)

19 \* Sec. 9. The provisions of sec. 4 of this Act expire on January 1, 1979.

20 \* Sec. 10. This Act takes effect immediately in accordance with  
21 AS 01.10.070(c).