

**S B**

**227**

# HOUSE COMMITTEE REPORT

(9)

Date Referred: April 20, 1989

FURTHER REFERRALS:

Date of Committee Action: 5-4-89

The RESOURCES Committee considered:

SB 227

SENATE BILL NO. 227

[INHERITED HOMESITE ENTRY PERMITS]

"An Act relating to the inheritance of homesite entry permits."

RECOMMENDATIONS:

- be replaced with \_\_\_\_\_  the same title
- have attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):  
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact \_\_\_\_\_
- zero fiscal note \_\_\_\_\_
- zero with analysis \_\_\_\_\_

- fiscal note(s) \_\_\_\_\_
- zero fiscal note(s) DNR 4-17-89
- zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNING:  
(Check appro. column)

	Do Not Pass	No Rec	Amend
<u>Mike Deane</u>			
<u>W. Urness</u>		*	
<u>Cliff Davidson</u>		✓	
_____			
_____			
_____			
_____			
_____			

\_\_\_\_\_  
Chairman's Signature

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: SB 227  
PUBLISH DATE: 4/17/89

FISCAL NOTE

REQUEST:

Revision Date: 10-Apr-89 Agency Affected: Natural Resources  
 Title: An Act relating to the inheritance of homesite entry permits. BRU: Land & Water Mgmt  
 Sponsor: Senator Duncan Components: Land & Water Mgmt  
 Requestor: Senate Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Ostrovsky Phone: 465-2400  
 Division: Commissioner's Office Date: 10-Apr-89

Approved by Commissioner: Lennie Gorsuch Date: 10-Apr-89  
 Agency: Department of Natural Resources

Distribution (by preparer) :  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

BY SENATOR DUNCAN

Senate Bill 227

"An Act relating to the inheritance of homesite entry permits."

Section 1.

Provides that a person who has qualified for a homesite entry permit and inherits an unpatented homesite entry permit of another applicant may be issued a patent for both homesite entries if they can meet the standard requirements for issuance.

Section 2.

Allows for a person who is holding a homesite patent to apply for and hold a homesite entry permit by inheritance as provided in section 1.

Section 3.

Provides for a homesite entry permit holder who has inherited an entry permit of another applicant may use the efforts of the deceased applicant to qualify for the patent to be issued on the inherited homesite.

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE \_\_\_\_\_  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER

\*\*FISCAL NOTE(S) MUST BE ATTACHED  
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE \_\_\_\_\_

3/17/89

Mr. President:

Resources \_\_\_\_\_ Committee considered \_\_\_\_\_ SB 227

inheritance of home site entry permits

and recommended:

replace with CS \_\_\_\_\_  same title  
 attached amendment(s) and  new title

\_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

FISCAL NOTE(S) attached  zero  
 appropriation no FN attached

fiscal impact  
 Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

*Keith Halford*  
\_\_\_\_\_  
*J. Gaffal*  
\_\_\_\_\_  
*Donna*  
\_\_\_\_\_  
*Michael*  
\_\_\_\_\_  
*Carol*  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Antoin S. Fungulerchi Do Pass*  
Chairman signature (and recommendation)

Committee backup attached

*Acting Chan*

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701-4679

September 23, 1988

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600

The Honorable Jim Duncan  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Re: Homesite entry permits  
AG File No. 663-89-0071

Dear Senator Duncan:

This is a belated response to your August 10, 1988, inquiry regarding the proper interpretation of AS 38.08.040 -- 38.08.060(c) as those sections pertain to a homesite permittee or patentee receiving a bequest of a homesite entry permit. As I explained to Dale Staley of your staff on September 16, 1988, I have been unable to address this matter before now because of the press of defensive litigation -- i.e., defending the state in actions brought by others. (These cases include, among others, United States v. Alaska, the "Dinkum Sands" case; Weiss v. State, the mental health trust land case; and USAG v. State, a challenge to the state's management of the Southeast Alaska seine and gillnet fleets on the basis of area, time, and gear restrictions.)

I nonetheless have briefly looked at AS 38.08.040 -- 38.08.060(c), and agree with your initial conclusion that the statutes are somewhat inconsistent. AS 38.08.040(c) provides for the transfer of a homesite permit "by testate or intestate succession, to a spouse during marriage, by order of a court as part of a divorce settlement, or to either a member of the immediate family or a grantee of the applicant in the case of an extreme emergency or illness that disables the applicant." At the same time, AS 38.08.040(d) provides in part that "a person may not simultaneously hold more than one homesite entry permit." In addition, AS 38.08.060(c) provides that a person may not be issued more than one homesite patent in a lifetime.

From the statutes, we cannot conclude which provisions would control if a homesite entry permittee or patentee also

The Honorable Jim Duncan  
Our File No. 663-89-0071

September 23, 1988  
Page 2

received a transfer of a homesite entry permit under the methods authorized in AS 38.08.040(c). The transfer provisions of that subsection would seem to authorize a transfer; the prohibitions in AS 38.08.040(d) and AS 38.08.060(c) would appear to prohibit it.

We have been unable to find any administrative regulation addressing this situation, and we are not aware of any instance in which this situation has been addressed by the Department of Natural Resources. You may wish to contact that department directly to determine whether such a situation has occurred in the past and, if so, how the department handled it administratively.

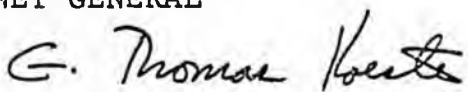
In the meantime, and looking only at the statutes, it would appear that an amendment to clarify the legislature's intent in this regard might be appropriate.

If we can answer further questions, please contact us at your convenience.

Sincerely,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

By:

  
G. Thomas Koester  
Assistant Attorney General

GTK:dlm

cc: Hon. Judith M. Brady  
Commissioner  
Department of Natural Resources

ATTORNEYS AT LAW

**BAXTER & MARKS**

PROFESSIONAL CORPORATION

P. O. BOX 32819  
JUNEAU, ALASKA 99803  
(907) 789-3166 (Telephone)  
(907) 789-1913 (Telecopier)

FRED J. BAXTER  
STEVEN G. MARKS  
DANIEL G. BRUCE  
CRYSTAL SOMMERS BRAND

July 26, 1988

Mr. Dale Staley  
Senator Duncan's Office  
P. O. Box V  
Juneau, Alaska 99811

Dear Dale:

A client of mine has requested that I contact your office requesting Senator Duncan's assistance in obtaining a statutory interpretation as to AS 38.08.050, and AS 38.08.050. Our specific concern has to do with AS 38.08.060(c). This provision provides that a person may not be issued more than one patent for a homesite during a lifetime, nor may any person who is a member of a patent holder's household be issued a patent while a member of the patent holder's household.

The situation my client is confronted with is that while he currently is a patent-holder, AS 38.08.060 appears to prohibit him from having issued any further patents in his name. My client has now been bequeathed an interest in a homesite entry permit by his aunt. While I can understand the intent of the Legislature prohibiting an individual and/or family members from multiple filings, it seems rather harsh to prohibit a patent holder of a homesite from receiving a homesite entry permit which he would then be entitled to prove up on. If the language of AS 38.08.060(c) is taken at face value, my client would not be able to receive a bequest left to him.

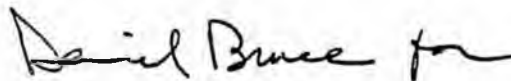
Mr. Dale Staley  
July 26, 1988  
PAGE 2

I am requesting your assistance in contacting the Attorney General's Office in an attempt to determine whether it was actually the legislative intent of this statutory section to prohibit an individual from inheriting a homesite entry permit when in fact he has already been issued a patent. The statute specifically provides that a homesite entry permit may be assigned by testate or intestate succession. Allowing the conveyance by testate or intestate succession without a limitation set forth in AS 38.08.040, seems to be contradictory of the language in AS 38.08.060(c).

Your assistance in attempting to obtain a clarification of the legislative intent in this regard would be helpful. Should you desire additional information, please feel free to contact me.

Very truly yours,

BAXTER & MARKS



Fred J. Baxter

FJB/pc

WPS 1.33



# Alaska State Legislature

SENATOR JIM DUNCAN

P. O. Box V JUNEAU, ALASKA 99811

(907) 465-4766

COMMITTEES  
FINANCE  
RESOURCES  
BUDGET AND AUDIT

August 10, 1988

Grace Berg Schaible  
Attorney General  
State of Alaska  
P.O. Box K  
Juneau, Alaska 99811

Dear Attorney General Schaible:

I am requesting a formal opinion concerning the proper interpretation of AS 38.08.040 thru AS38.08.060(c) as those sections pertain to a patent holder of a homesite receiving a bequeath of a homesite entry permit.

My first reading of the statutes is that a person may not hold more than one homesite entry permit or patent. However, the statute does provide for transfer by testate or intestate succession. This form of conveyance without statutory limitation seems to be contradictory to the provisions of AS 38.08.060(c) that reads in part, "A person may not be issued more than one patent during a lifetime..."

I would like to know if this statute is contradictory or not. Does it prohibit an individual from inheriting a homesite entry permit when in fact he has already been issued a patent or is that a misinterpretation of the statute?

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jim Duncan", written over a horizontal line.

Jim Duncan  
Senator