

S B

227

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 4/7/89
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER

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

DATE TURNED INTO OFFICE 4-14-89

3/17/89

Mr. President:

Resources _____ Committee considered SB 227

inheritance of homesite 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 ^{DNR} zero fiscal impact
 appropriation no FN attached Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Rick Halford
J. Kraft
Donna
Cheryl
Carol

Arthur S. Fungulochi DoPasso
 Chairman signature (and recommendation)
Acting Chan

Committee backup attached

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						
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REVENUE						
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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)

March 17, 1989

SENATE JOURNAL

p. 834

SB 227

SENATE BILL NO. 227 by Senator Duncan, entitled:

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

was read the first time and referred to the Resources Committee.

April 10, 1989

SENATE JOURNAL

p. 1161

SB 227

Senator Fahrenkamp, Chair, moved and asked unanimous consent that the five-day notice be waived on SENATE BILL NO. 227 (An Act relating to the inheritance of homesite entry permits) for the Resources Committee meeting on April 11. Without objection, it was so ordered.

April 17, 1989

SENATE JOURNAL

p. 1265

SB 227

The Resources Committee considered SENATE BILL NO. 227 (An Act relating to the inheritance of homesite entry permits) and a majority of the committee recommended do pass. The report was signed by Senator Sturgulewski, Acting Chair, and concurred in by Senators Halford, Kerttula, Frank, Eliason and Zharoff.

Zero fiscal note published today from Department of Natural Resources.

SENATE BILL NO. 227 was referred to the Rules Committee.

SB 227

Alaska State Legislature



SENATOR JIM DUNCAN

P. O. BOX V JUNEAU, ALASKA 99811-3100
(907) 465-4766

COMMITTEES:
FINANCE
VICE CHAIR -
HEALTH EDUCATION
& SOCIAL SERVICES
BUDGET & AUDIT
BANKING &
ECONOMIC
DEVELOPMENT

M E M O R A N D U M

April 5, 1989

TO: Senator Bettye Fahrenkamp, Chairperson
Senate Resources Committee

FROM: Senator Jim Duncan

SUBJECT: SB 227, An Act relating to the inheritance of homesite entry permits."

I would appreciate your scheduling SB 227, a bill concerning the inheritance of homesite entry permits, for a hearing before the Senate Resources Committee at your earliest convenience.

This legislation will help clarify the current statutes concerning the eligibility and conveyance of a homesite entry permit by testate or intestate succession. It is my hope that these changes will make it easier to interpret the homesite entry permit statutes.

I have attached some supporting information which you may wish to include in the Committee's bill files.

I look forward to seeing SB 227 on your Committee calendar soon.

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

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
CHRISTAL 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 38.08.060. 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.

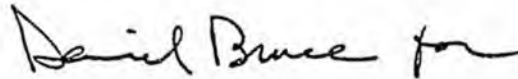
Mr. Dale Staley
July 26, 1988
PAGE 2

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 cursive script, appearing to read "Jim Duncan".

Jim Duncan
Senator

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
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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.

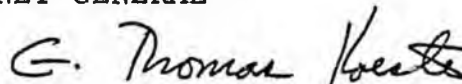
In the meantime, and looking only at the statutes, it would appear that an amendment to clarify the legislature's intent in this regard might be appropriate.

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:d1m

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

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND & WATER MANAGEMENT
POLICY & PROCEDURE COORDINATION

SUBJECT: Attn. Larry D and Janet B re SB 227

I see no big problem with the bill, though it needs some fine-tuning. The sentence added to .040(c) in Section i of the bill is not strictly necessary and confuses the issue somewhat. Adding the "except as provided" language to .040(d) already ensures that inheriting a homestead won't make someone ineligible to get another one, so it would be best to drop the .040(c) addition. If not dropped, fix: permittees don't qualify under BOTH .060(a) and (e); (e) is an alternative to (a). Just refer to AS 38.08.060 plain vanilla. Also, the stress on "the individual" (new language in .040(c)) then has to be counteracted by the wording being added in the new .060(f): we really mean to count the original permittee's efforts too, & why should this opportunity be restricted to inheritance cases? If a father falls gravely ill and has to transfer his permit to his son, shouldn't the father's construction of a dwelling and two years' occupancy of the permit site count toward the son's eventual patent?

This was done very hastily; I'll give it some more thought and call you on Monday.

MARY KAY HESSION
762-2680