SB

802

State of Alaska
Department of Community & Regional Affairs

Date: March 4, 1982

POSITION PAPER

Requested by: Senate Community and Regional Affairs

Subject: Senate Bill No. 802 / House Bill No. 885

Departmental Position: Support With Amendments

Remarks:

HISTORY AND RATIONALE OF SB 802 AND HB 885

History:

In December, 1971 Congress adopted the Alaska Native Claims Settlement Act (ANCSA). In December of 1980, the Alaska National Interest Lands Conservation Act (ANILCA) was passed into federal law amending certain sections of ANCSA.

Section 21(d) of the amended act provided for a property tax moratorium on ANCSA lands for a period of twenty years, subject to certain provisions within the act. That section reads as follows:

TAX MORATORIUM EXTENSION

Sec. 904. Subsection (d) of section 21 of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, 1620(d)), is amended to read:

"(d)(1) Real property interests conveyed, pursuant to this Act, to a Native individual, Native Group, Village or Regional Corporation or corporation established pursuant to section 14(h)(3) which are not developed or leased to third parties or which are used solely for the purposes of exploration shall be exempt from State and local real property taxes for a period of twenty years from the vesting of title pursuant to the Alaska National Interest Lands Conservation Act or the date of issuance of an interim conveyance or patent, whichever is earlier, of those interests to such individual, group, or corporation: Provided, That municipal taxes, local real property taxes, or local assessments may be imposed upon any portion of such interest within the jurisdiction of any governmental unit under the laws of the State which is leased or developed for purposes other than exploration for so long as such portion is leased or being developed: Provided further, That easements, rights-of-way, leaseholds, and similar interests in such real property may be taxed in accordance with State or local law. All rents, royalties, profits, and other revenues or proceeds derived from such property interest shall be taxable to the same extent as

such revenues or proceeds are taxable when received by a non-Native individual or corporation.

"(2) Any real property interest, not developed or leased to third parties, acquired by a Native individual, Native Group, Village or Regional Corporation, or corporation established pursuant to section 14(h)(3) in exchange for real property interests which are exempt from taxation pursuant to paragraph (1) of this subsection shall be deemed to be a property interest conveyed pursuant to this Act and shall be exempt from taxation as if conveyed pursuant to this Act, when such an exchange is made with the Federal Government, the State government, a municipal government, or another Native Corporation, or, if neither party to the exchange receives a cash value greater than 25 per centum of the value of the land exchanged, a private party. In the event that a Native Corporation simultaneously exchanges two or more tracts of land having different periods of tax exemption pursuant to subsection (d), the periods of tax exemption for the exchanged lands received by such Native Corporation shall be determined (A) by calculating the percentage that the acreage of each tract given up bears to the total acreage given up, and (B) by applying such percentages and the related periods of tax exemption to the acreage received in exchange".

A conspicuous lack of definitions for key terms along with certain ambiguities in Sec. 21(d) have caused some interpretation problems for parties impacted by the legislation. ANCSA Corporations have complained of unequal treatment from one taxing jurisdiction to the next, and local assessors have voiced their frustration in attempting to interpret the language. The situation is further complicated by the fact that there is almost no legislative history available for guidance on that section.

The proposed language is intended to provide some clarification of the section and to furnish a means for the proper implementation of the moratorium. It has been drafted in an effort to more closely define those terms which have caused problems or created concerns, and in an attempt to provide some equity of application of Sec. 21 (d) statewide.

Rationale:

The logic followed in drafting the proposed language was drawn from the basic intent of Congress in their adoption of ANCSA. Generally, that intent was to allow Alaska's Native community a reasonable amount of time to develop the lands conveyed to them pursuant to the Act and the opportunity to enter the

economic mainstream of society without being forced to make premature or unwise decisions in order to pay property taxes.

The purpose of Section 21(d) was to assure that local taxes would not be levied on the lands for twenty years, or until such time as they were developed or leased. Based upon consultation with individuals familiar with the legislative history of ANCSA and ANILCA, it appears that Congress intended the taxability of ANCSA lands be linked to the generation of income, thereby providing the revenues necessary to pay property taxes without risking loss of their lands through taxation.

Brief explanation of specific terms and concerns with the bill follow:

29.53.020 (k)(1)

Page 1, line 20:

The term "developed" has been the most controversial one in the Act. The common understanding seems to be that the term means an intentional "improvement" or "physical alteration" of the property. For purposes of Sec. 21 (d) however, it appears Congress intended the word "developed" to mean an intentional improvement of the property for the purpose of producing income through use of the land. In the application of Sec. 21 (d), it is not important whether the development occurred prior to conveyance or afterward. Neither does it matter who developed the property. It is only important that as a direct result of the modification, the property was made "ripe" for the production of income.

Essentially, it appears that the taxation of the property should be triggered by its production of income. However, if it is improved to a point of readiness, but the corporation elects, for its own benefit, not to commence income producing activities, taxability is triggered as if those activities had actually begun.

Page 1, line 25:

The term "smallest practicable tract" means that portion of a tract of land which is identified with the income stream (or potential income stream as explained above). The term intends to include the fully developed portion of the land, and possibly a peripheral buffer area if it is reasonably necessary for the productive use of the site. Where municipal zoning setbacks are required, it would be logical to use that setback distance for delineation of the buffer area.

Page 1, line 26:

The portion which says "Surveying, platting, construction of roads, etc." intends to safeguard against loss of the exemption before the property is fully developed. Again, the language attempts to link the definition of "develop" to the generation of income. As a general rule, the income should be produced before the exemption is lost, thereby providing a means to pay the taxes.

Local assessors across the State have unanimously voiced strong objection to that language. They are concerned that it might be construed to say that ANCSA property could be fully developed and still be exempt from taxation. The assessors have said that at some point in the subdivision and development of ANCSA lands for resale purposes, the properties should become taxable.

Page 1, line 29 through page 2, line 3:

This language contradicts the language on Page 1, lines 21-22. In addition, the portion which references AS 41.17.110 in effect allows the property owner to determine whether his own property is exempt. According to the Department of Natural Resources, it is not required that the owner of forest lands file "...a notice of conversion...", unless:

1. The property is being converted to non-forest use, and

2. The amount of property to be converted is in excess of ten acres, and

3. The property will be converted to commercial use.

Clearly, under those conditions, the owner of the forest lands could harvest the trees from the property and construct a hotel on up to nine acres of the land without being required to file a notice or conversion with DNR. Under the current language, neither the commercially cut lands nor the hotel would be taxable. To be workable, the Department strongly suggests that the language be changed as follows:

"...as defined in AS 41.17.950(6),shall be deemed "developed" when a condition for gainful or productive present use [OCCURS] exists. [AND THE OWNER OF THE FOREST LAND FILES A NOTICE OF CONVERSION UNDER AS 41.17.110.]."

Page 2, line 10:

The word "underdeveloped" in this line is a typographical error and should have been "undeveloped". We have confirmed that fact with the drafters of the bill.

29.53.020 (k)(3)

Page 2, lines 10-14:

This paragraph is simply a rewording of certain language from ANCSA Sec. 21(d). The term on line 13, "...subject to the provisions of this subsection." was included so that no individual provision could necessarily reinstate the exemption. For example, if a lease were terminated, but the property were still to be "developed" (as described in 29.53.020 (k)(1)) the exemption would not be reinstated.

The Department feels it is necessary to define the term "exploration" within the bill, and suggest the following language be added under 29.53.020 (k)(4):

For purposes of this section, the term "exploration" shall mean the examination and investigation of undeveloped land believed to contain subsurface non-renewable resources.

STATEMENT

OF

COOK INLET REGION, INC.

ON

SENATE BILL NO. 802

Community & Regional Affairs
Alaska State Senate
March 4, 1982

by: Lance W. Anderson
Vice President, Finance
Cook Inlet Region, Inc.

STATEMENT

OF

COOK INLET REGION, INC.

ON

SENATE BILL NO. 802

MARCH 4, 1982

The Alaska Native Claims Settlement Act, 43 U.S.C. § 1620(d), as amended, provided a tax exemption for real property and interests therein conveyed to individuals and native corporations under the Settlement Act. The exemption exists for twenty years from the date of statuatory vesting of title or interim conveyance or patent, whichever is earlier, and is terminated during the period the property is "developed" or "leased to third parties" for purposes other than exploration. While the legislative history of the Settlement Act provides little guidance as to the correct definition of the term, it is clear that the federal statute must be given the broadest reasonable interpretation in favor of the tax-exempt status. Federal courts, including the United

States Supreme Court, have held that federal statutes affecting native lands are to be construed strictly in favor of the native land-holder. This policy has been followed particularly with respect to tax exemptions for native lands. In the absence of an explicit tax exemption under state law, each borough assessor would have to reach an independent determination of the meaning of the federal statute. The opportunities for inconsistency and a costly and unnecessary litigation burden on both the boroughs and the native corporations is clear. The present bill will resolve the most troublesome problem, that of the definition of the terms "developed" and "leased to third parties" by providing a uniform tax exemption which is at least as broad as that provided by the federal statute. This will insure uniformity of application among the boroughs and bring state law into line with the federal exemption.

In summary, CIRI supports passage of Sentate Bill No. 802 because:

1. It embodies and implements the most basic principle underlying interpretation of ANCSA § 21(d) -- that the tax exemption should be construed in favor of the native land-holder, and

2. By providing broad definitions of the terms "lease" and "developed", it automatically will resolve the vast majority of present tax exemption issues and will avoid inconsistency and a costly and unnecessary litigation burden on both the boroughs and the native land owners.

Draft

TESTIMONY OF SEALASKA CORPORATION
BEFORE THE
ALASKA STATE LEGISLATURE
ON
SENATE BILL NO. 802 "AN ACT RELATING TO TAX EXEMPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE."

My name is Robert W. Loescher, Vice President for Resource Management, Sealaska Corporation. Thank you very much for this opportunity to present comments of Sealaska on proposed legislation Senate Bill No. 802 "An Act relating to tax exemptions; and providing for an effective date."

Sealaska Corporation supports the basic intent of the legislation which is:

- to provide for the exemption from real property taxes certain properties conveyed under the Alaska Native Claims Settlement Act

- to implement the tax exemption required by ANCSA Section 21(d) as amended by ANILCA Section 904, which read as follows:

PL 92-203 Section 21(d): "(d) Real property interests conveyed, pursuant to this Act, to a Native individual, Native group, or Village or Regional Corporation which are not developed or leased to third parties, shall be exempt from State and local real property taxes for a period of twenty years after the date of enactment of this Act: Provided, That municipal taxes, local real property taxes, or local assessments may be imposed upon leased or developed real property within the jurisdiction of any governmental unit under the laws of the State: Provided further, That easements, rights-of-way, leaseholds, and similar interests in such real property may be taxed in accordance with State or local law. All rents, royalties, profits, and other revenues or proceeds derived from such property interests shall be taxable to the same extent as such revenues or proceeds are taxable when received by a non-Native individual or corporation."

"SEC. 904. Subsection (d) of section 21 of the Alaska Native

Claims Settlement Act, as amended (43 U.S.C. 1601, 1620(d)), is amended to read: "(d)(1) Real property interests conveyed, pursuant to this Act, to a Native individual, Native Group, Village or Regional Corporation or corporation established pursuant to section 14(h)(3) which are not developed or leased to third parties or which are used soldely for the purposes of exploration shall be exempt from State and local real property taxes for a period of twenty years from the vesting of title pursuant to the Alaska National Interest Lands Conservation Act or the date of issuance of an interim conveyance or patent, whichever is earlier, for those interests to such individual, group, or corporation: Provided, That municipal taxes, local real property taxes, or local assessments may be imposed upon any portion of such interest within the jurisdiction of any governmental unit under the laws of the State so long as such portion is leased or being developed: Provided further, That easements, rights-of-way, leaseholds, and similar interests in such real property may be taxed in accordance with State or local law. All rents, royalties, profits, and other revenues or proceeds derived from such property interests shall be taxable to the same extent as such revenues or proceeds are taxable when received by a non-Native individual or corporation."

- to define the term "developed" as used in ANCSA Section 21(d) inorder to establish the point in time at which exempted property becomes taxable under State and local governmental authorities.

Of particular concern to Sealaska Corporation and other timberland owners is the application of the proposed legislation to Forest land throughout Alaska. The proposed language included within AS 29.53.020 (k)(1) which reads as follows - is acceptable:

> "Forest lands, as defined in AS 41.17.950(6), shall be deemed "developed" when gainful or productive present use occurs and the owner of the forest land files a notice of conversion under AS 41.17.110."

The effect of this provision is to exempt developed or undeveloped forest land unless the landowner notices the State of Alaska pursuant to AS 41.17.110 that he intends to reclassify or convert his forest land after timber harvesting to other uses such as residential, commercial or industrial purposes. The

provision in the Forest Resources and Practices Act reads, as follows:

> "Sec. 41.17.110. Conversion of forest land to other uses. An intention to convert forest land to other uses after timber harvesting may be stated in the notification submitted under AS 41.17.090. In that event, reforestation rquirements adopted under this chapter do not apply, except that conversion shall be completed during the time set by regulation for minimum reforestation of the land, and other requirements for revegetation may be imposed to the extent permitted by law. If the commissioner finds at any time that the responsible party has failed to conform to the intent to convert as stated in the notification, the commissioner shall revoke approval of the conversion and require full compliance with reforestation requiremens. (Sec. 1 ch 108 SLA 1978)"

Our concern is that the definition "real property" which is used in ANCSA and Title 29 not include and specifically exclude reference or application to "forest land" - where taxation is a consideration. Currently, the definition of these terms in Alaska statutes are, as follows:

> "AS 29.78.010 (13) "real property" means land and improvements and all possessory rights and privileges appurtenant to the property and includes personal property affixed to the land or improvements."
>
> "AS 41.17.950 (6) "forest land" means land stocked or having been stocked with forest trees of any size and not currently developed for nonforest use, regardless of whether presently available or accessible for commercial purposes, and includes any such land under state, municipal, or private ownership;"

Sealaska Corporation wants to make it perfectly clear that it is not opposing consideration of taxation of forest lands at this time or in the future, but is seriously concerned about the basis or philosophy of any tax program on forest resources considered by the legislature or advanced by timber industry. This proposed legislation "touches the edge" of that discussion in an incomplete manner. By this we mean that:

- forest lands should be treated on a resource severance tax basis rather than on real property basis as envisioned in

- o forest lands are a resource of State concern and not a resource which should be dealt with in Title 29 Municipal Governments. Oversight, regulation and any taxation of the forest resource should be administered by State government and not by local governments.

This philosophy is clearly expressed in the legislature's Declaration of Intent AS 41.17.010 of the Forest Resources and Practices Act adopted three years ago, as follows:

Sec. 41.17.010. Declaration of intent. The legislature declares that

(1) the forest resources of Alaska are among the most valuable natural resources of the state, and furnish timber and wood products, fish and wildlife, tourism, outdoor recreation, water, soil, air, minerals, and general health and welfare;

(2) economic enterprises and other activities and pursuits derived from forest resources warrant the continuing recognition and support of the state;

(3) the state has a fundamental obligation to insure that management of forest resources guarantees perpetual supplies of renewable resources, provides nonrenewable resources in a manner consistent with that obligation, and serves the needs of all Alaska for the many products, benefits, and services obtained from them;

(4) government administration of forest resources should combine professional management services, regulatory measures, and economic incentives in a complementary fashion, and should draw upon the expertise of professional foresters in conjunction with other disciplines;

(5) under the leadership of the Department of Environmental Conservation, the state should exercise its full responsibility and authority for control of nonpoint source pollution with respect to the Federal Water Pollution Control Act, as amended;

(6) subject to Sec. 307(f) of the Coastal Zone Management Act of 1972 (P.L. 92-583), the provisions of this chapter shall be the basis for forest management standards, policies, and guidelines developed under the Alaska Coastal Management Act. (Sec. 1 ch 108 SLA 1978)

- o any forest resource tax program by the State of Alaska should consider, at a minimum, equal assessment or parity between federal and state and even local forest lands in the

application of the (PILOT) payment in lieu of taxes by government timberland holders or lease holders and the level of taxes to be applied to private landowners. These resources compete in the market place. It is important not to create an artificially induced disincentive by an inequitable tax program as a part of development of timber resources in Alaska.

Additionally, it is hoped, that in the future if a tax program is designed for forest resources that such a program would recognize and provide credits for those forest land owners who make every effort and investment to meet environmental restrictions and requirements, reforestation and other similar requirements now incorporated in the public laws and are becoming a matter of business practice.

Sealaska Corporation urges your positive consideration of this bill this session. We are available to work and discuss the many aspects of forest land taxation at any time, now or in the future. Thank you.