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**SEVENTEENTH LEGISLATURE
SENATE JUDICIARY COMMITTEE BILL FILE**

Bill Number: SB 283
 Abbreviated Title: Transfer of Shares / ANSCA Cases

Sponsor: Adams Original Received: _____
 Written Request to Schedule Rcv'd: _____ From: _____
 Sponsor's Statement Rcv'd: _____ From: _____
 Sectional Analysis Rqst'd: _____ From: _____
 Sectional Analysis Received: _____

Fiscal Note (Original)
 Rqst'd Of: Fung Bell - Commerce May 15 - Rcv'd From: _____ Date: _____
 Rqst'd Of: _____ Rcv'd From: _____ Date: _____
 Rqst'd Of: _____ Rcv'd From: _____ Date: _____

Fiscal Note (C.S.)
 Rqst'd Of: _____ Rcv'd From: _____ Date: _____
 Rqst'd Of: _____ Rcv'd From: _____ Date: _____
 Rqst'd Of: _____ Rcv'd From: _____ Date: _____

Five Day Notice Given: May 15 - 23d Notice of Hearings Given: May 15, 1991
 Committees of Referral: First: Jud Second: --- Third: May 8
 LAA Contact: Terry Banister To Senate Secretary: _____

COMMITTEE ACTION

DATE: May 19, 1991 Adopted CS and
 _____ Passed out CS and
 _____ Called Banister for final
May 19 1991 Del to Sen Sec

PERSONS TO BE NOTIFIED OF HEARING

- | | |
|------------|-----------|
| 1. Sponsor | 6. _____ |
| 2. Agency | 7. _____ |
| 3. _____ | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

Alaska State Legislature

Al Adams
District L

WHILE IN SESSION
P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3707

OUT OF SESSION
P.O. Box 333
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(907) 442-3245

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Anchorage, Alaska 99503
(907) 561-7622

Official Business

TO: Senator Rick Hallford, Chair
Senate Judiciary Committee

FROM: Senator Al Adams *APA*

RE: Proposed Committee Substitute for Senate Bill 283

DATE: May 16, 1991

Thank you for scheduling the aforementioned legislation. The proposed substitute to SB 283 replaces the existing language of the bill with a simple amendment which extends the December 18, 1991, deadline in AS 13.11.012 and AS 13.16.705 until June 30, 1992. The purpose of this extension is to preserve the status quo for another year to allow the Legislature to take a more detailed look at the revisions proposed in the original bill.

AS 13.11.012 and AS 13.16.705 are statutes which were passed by the Legislature shortly after Congress passed the Alaska Native Claims Settlement Act in 1971. Their purpose was to reconcile state law with federal law, and to simplify the procedure for transferring ANCSA stock when a shareholder died.

Absent special legislation, ANCSA stock would be treated as an asset of the deceased, and subject to the probate laws of Alaska, if the deceased resided in Alaska when he died, or, if not, to the laws of whatever state the shareholder resided in at his death. AS 13.16.705 establishes Alaska as the situs for all Native Corporation stock, making Alaska law the applicable law. It also sets out a special procedure for transferring ANCSA stock. Instead of the stock passing through probate, the regional corporation determines who the heirs of the stock should be on the basis of affidavits submitted by the heirs. As long as the corporation transfers the stock on the basis of the affidavits, it is protected from liability. Any person who believes the stock was wrongfully transferred is entitled to bring an action in Superior Court to determine the rightful heirs to the stock. This is the same procedure which the Legislature has adopted for small estates, and it ensures that the stock can be transferred without a great deal of time or expense while at the same time protecting the rights of the individual heirs.

AS 13.11.012 establishes the surviving spouse's share of ANCSA stock if the deceased died intestate (without a will). Absent this provision, the surviving spouse's share would be determined on the basis of the value of the entire estate, including the ANCSA stock. This would require the estate to value Native Corporation stock. AS 13.11.012 eliminates this need for valuation by providing that the surviving spouse is entitled to a portion of the ANCSA stock.

ANCSA, as originally enacted in 1971, provided that all ANCSA corporation stock was inalienable until December 18, 1991. After that date, the stock would be transferable. AS 13.11.012 and AS 13.16.705 were written to expire on December 18, 1991 to coincide with ANCSA.

The special state legislation is necessary because it is difficult, if not impossible, to value ANCSA stock. Because the stock is inalienable, it cannot be bought, sold, pledged as security for a debt, or otherwise transferred, except in very limited circumstances. The stock therefore has no market value. Nor can the true value of Native Corporation stock be determined by reference to the financial statements of the corporation. Although the land is the major asset of many corporations, most have yet to receive all of the land they are entitled to under ANCSA. In addition, because of the speculative value of much of the land and certain accounting conventions, most of the Native Corporations assign no value to the land for financial statement purposes. Thus, the financial statements of most Native Corporations do not necessarily reflect the true value of the corporation.

AS 13.11.012 and AS 13.16.705 eliminated the need to make these difficult valuations, and established a simple procedure for the transfer of stock, thereby eliminating the need for costly lawyers and accountants.

In 1987 congress amended ANCSA. Basic ANCSA stock, now called "Settlement Common Stock", will remain inalienable indefinitely, until the shareholders vote to make the stock transferable. In addition, Native Corporations are given certain

opportunities to issue additional stock, both alienable and inalienable.

In order to make AS 13.11.012 and AS 13.16.705 conform to the revisions of ANCSA, as well as to take care of certain other needed changes, SB 283 was introduced. The Committee was concerned, however, that there was insufficient time remaining in the session to thoroughly consider all of its provisions.

The proposed amendment will preserve the status quo for an additional year to allow the Legislature time next session to consider all the revisions that are necessary. Without the amendment, the estates of those individuals who die after December 18, 1991 would be subject to probate, and could require expensive and time-consuming determinations of the value of ANCSA stock. In addition, certain individuals could acquire vested rights, preventing future legislation from being retroactive, and resulting in disparate treatment of ANCSA heirs.

The proposed amendment affects only stock issued by ANCSA corporations. It will have no effect upon any other stock or any asset of any Native other than ANCSA corporation stock.

May 15, 1991

315 as House Version —

Kito Jr - Wants to Str. Title —

add 1992 sunset for Present Transfer Stat.

Placed on Colorado on reg. cement.

7-LS1279G /
Bannister
5/15/91

CS FOR SENATE BILL NO. 283 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): SENATOR ADAMS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the inheritance and transfer of stock in corporations organized under
2 the Alaska Native Claims Settlement Act."

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

4 * Section 1. AS 13.11.012 is amended to read:

5 Sec. 13.11.012. SHARE OF THE SPOUSE IN CERTAIN STOCK. Until June 30, 1992
6 [DECEMBER 18, 1991], the intestate share of the surviving spouse in stock in a corporation
7 organized under the laws of Alaska under 43 U.S.C. 1601 - 1628 (Alaska Native Claims
8 Settlement Act) is:

9 (1) if there is no surviving issue, all of it;

10 (2) if the decedent is survived by issue, one-half of it.

11 * Sec. 2. AS 13.16.705(a) is amended to read:

12 (a) Until June 30, 1992 [DECEMBER 18, 1991], stock in a corporation organized under
13 the laws of Alaska under 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement Act) that
14 [WHICH] is inalienable under either that Act or its articles of incorporation is not subject to

1 probate nor shall its value be considered in determining the value of an estate or allowance under
2 this title. Upon death of the holder, if the stock does not pass by the testamentary disposition
3 clause on the stock certificate, properly executed, it passes by will or intestate succession. In
4 such a case, the determination of the person entitled to the stock shall be made by the appropriate
5 regional corporation on the basis of an affidavit, furnished to it and to the corporation which
6 issued the stock, showing the right of the person entitled to the stock to receive it and to have
7 a new certificate issued. The affidavit, accepted in good faith by a corporation, has the same
8 effect as an affidavit under AS 13.16.685, and the person entitled to the stock, if the affidavit is
9 not accepted, has the remedy set out in AS 13.16.685. In case of dispute as to the person entitled
10 to receive the stock, a person claiming ownership may bring an independent action in the superior
11 court.

12 * Sec. 3. AS 13.16.705(e) is amended to read:

13 (e) The situs of inalienable stock of all corporations organized under 43 U.S.C. 1601 -
14 1628 is Alaska, until June 30, 1992 [DECEMBER 18, 1991].

two

It is necessary to extend the sunset dates in ~~three~~ Alaska statutes from December 18, 1991 to June 30, 1992 in order to prevent the waste of Alaska Native shareholders' moneys on attorneys' fees which will be required to probate ANCSA stock and protect Native corporation lands from possible threats of boroughs and cities to tax those lands.

The statutes were drafted prior to the 1987 amendments by Congress (the 1991 amendments) which extended the restrictions on stock transfer beyond December 18, 1991.

The AFN has drafted legislation which would extend those deadlines and also make certain other amendments to state law (SB 283, HB 315), but these bills were introduced too late in this session for action.

As an interim measure until the Judiciary Committees are able to hold hearings on the bills next session, it is recommended that the legislature simply extend the deadlines through the end of the next session of the legislature. These are noncontroversial amendments.

The ~~three~~ ^{*two*} statutes are: AS 13.11.012, AS 13.16.705(a)(e), and ~~AS 43.00.015(a)~~.

F A X T R A N S M I T T A L M E M O

TO: <u>Kumbe</u>	FAX #:	<table border="1"><tr><td>NO. OF PAGES</td></tr></table>	NO. OF PAGES
NO. OF PAGES			
DEPT: _____	<u>463-3164</u>		
FROM: <u>R. Price</u>	PHONE: _____		
CO: _____	FAX #: _____		

Post-It brand fax transmittal memo 7671

Proposed Substitute For SB 283

A BILL

FOR AN ACT ENTITLED

"An Act relating to the inheritance and transfer of stock in corporations organized under the Alaska Native Claims Settlement Act"

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

* Section 1. AS 13.11.012 is amended to read:

Sec. 13.11.012. **SHARE OF THE SPOUSE IN CERTAIN STOCK.**
Until [DECEMBER 18, 1991] June 30, 1992, the intestate share of the surviving spouse in stock in a corporation organized under the laws of Alaska under 43 U.S.C. 1601-1628 (Alaska Native Claims Settlement Act) is:

- (1) if there is no surviving issue, all of it;
- (2) if the decedent is survived by issue, one-half of it.

*Sec. 2. AS 13.16.705(a) is amended to read:

(a) Until [DECEMBER 18, 1991] June 30, 1992, stock in a corporation organized under the laws of Alaska under 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement Act) is not subject to probate nor shall its value be considered in determining the value of an estate or allowance under this title. Upon death of the holder, if the stock does not pass by the testamentary disposition clause on the stock certificate, properly executed, it passes by will or intestate succession. In such a case, the determination of the person entitled to the stock shall be made by the appropriate regional corporation on the basis of an affidavit, furnished to it and to the corporation which issued the stock, showing the right of the person entitled to the stock to receive it and to have a new certificate issued. The affidavit accepted in good faith by a corporation, has the same effect as an affidavit under AS 13.16.685, and the person entitled to the stock, if the affidavit is not accepted, has the remedy set out in AS 13.16.685. In case of dispute as to the person entitled to receive the stock, a person claiming ownership may bring an independent action in the superior court.

*Sec. 3. AS 13.16.705(e) is amended to read:

(e) The situs of inalienable stock of all corporations organized under 43 U.S.C. 1601-1628 is Alaska, until June 30, 1992.

It is necessary to extend the sunset dates in three Alaska statutes from December 18, 1991 to June 30, 1992 in order to prevent the waste of Alaska Native shareholders' moneys on attorneys' fees which will be required to probate ANCSA stock and protect Native corporation lands from possible threats of boroughs and cities to tax those lands.

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As an interim measure until the Judiciary Committees are able to hold hearings on the bills next session, it is recommended that the legislature simply extend the deadlines through the end of the next session of the legislature. These are noncontroversial amendments.

The ^{two} three statutes are: AS 13.11.012, AS 13.16.705(a)(e), and ~~AS 13.16.015(a)~~.

F A X T R A N S M I T T A L M E M O *****

TO: <u>Kumbel</u>	FAX #:	<u>463-3164</u>	NO. OF PAGES
DEPT: _____	PHONE: _____		
FROM: <u>R. Paie</u>	PHONE: _____		
CO: _____	FAX #:	_____	

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