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## SPONSOR STATEMENT

HB 73

Representative Eileen P. MacLean

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HB 73 was introduced primarily to bring state law into compliance with federal law. In 1987, federal law was changed to continue the property tax exemption from federal, state or local taxation on ANCSA land indefinitely, or until development occurs. The bill reflects those changes in state law to avoid confusion in the application of the state's tax laws.

In the drafting process, the attorney noted other sections of state law which need to be updated and has included those changes in HB 73. For the most part, they represent technical or stylistic wording changes to update state law to federal law.

This bill does not expand or reduce any benefits already mandated by federal law. It merely cleans up state law, and ensures that obsolete state statutes do not lead to misinterpretation by state assessors and others who work with Alaska's tax law.

HB 73 has a zero fiscal note from the Department of Revenue.

State and Local Taxation,  
& Regulation of ANCSA Holdings

HOUSE BILL NO. 73, by Rep. MACLEAN. Amends state law by changing reference in certain state statutes to the original Alaska Native Claims Settlement Act (P.L. 92-203) by replacing it with reference to the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 - 1641). The following sections of law are changed:

—AS 29.45.030(a), [Municipal Government. Municipal Taxation. Municipal Property Tax. Required Exemptions] to exempt from general municipal taxation real property or an interest in

real property that is exempt from taxation under certain amendments to the Alaska Native Claims Settlement Act (43 U.S.C. 1636(d), as amended).

Amends AS 29.45.030(m) by changing the definition of "developed" to mean "...that a purposeful modification of land, or an interest in land, [the property] from its original state that effectuates a condition of gainful and productive present use without further substantial modification has been made;..." (underlined language added, bracketed language deleted from current law by this bill).

—Amends AS 43.80.015 [Revenue and Taxation. Miscellaneous Provisions. Taxation Under P.L. 92-203] by changing the title of the section to "Taxation Under Alaska Native Claims Settlement Act, As Amended." Changes reference throughout the section from "P.L. 92-203" to "43 U.S.C. 1601 - 1641, as amended." The new language also cleans up other references to provisions that have been addressed in the amendments to ANCSA.

Adds a new subsection to AS 43.80.015 that says "...reference to 43 U.S.C. 1601 - 1641, as amended, or to any of those sections includes the amendments and additions to any of those sections that are made by (1) P.L. 96-487 (Alaska National Interest Lands Conservation Act); (2) P.L. 100-241 (Alaska Native Claims Settlement Act Amendments of 1987); (3) amendments to 43 U.S.C. 1601 - 1641 (Alaska Native Claims Settlement Act, as amended) after December 17, 1991."

—The amendments made by this Act will be retroactive to December 18, 1991.

If enacted, the bill becomes law the day after it is signed by the Governor.

Introduced January 18, 1993 and referred to the House Community and Regional Affairs Committee, the House Judiciary Committee, and the House Finance Committee.

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Juneau, Alaska 99801-2105

### MEMORANDUM

January 20, 1993

**SUBJECT:** House Bill 73, relating to state and local taxation and other state regulation under the Alaska Native Claims Settlement Act, as amended; and providing for an effective date — sectional analysis (Work Order No. 8-LS0402\A)

**TO:** Representative Eileen MacLean

**FROM:** Jack Chenoweth  
Legislative Counsel 

This measure, a reintroduction of last session's CSHB 451 (Res), amends various provisions of state law that exempt from certain forms of state and local taxation the property that is exempted from taxation by the Alaska Native Claims Settlement Act. The amendments set out in this bill generally reflect the inclusion of changes made by federal law since passage of the original Alaska Native Claims Settlement Act in December, 1971, and the adoption of the first state law exemptions shortly thereafter.

A principal change in the federal Act was the addition of 43 U.S.C. 1636(d) by the Alaska National Interest Lands Conservation Act of 1980. Sec. 1636(d) broadened the various protections for lands conveyed under the 1971 Act, but did not necessarily replace the federal tax exemption provided in the original Act. Since 43 U.S.C. 1636(d) did not supersede the exemptions and protections provided by the earlier-enacted 43 U.S.C. 1620, I have recommended that, where reference appears in state law only to sec. 1620 that it be followed by a second reference to sec. 1636(d) as well.

Throughout the measure, the words "as amended" are added. The intent is to conform the state tax exemptions to any further changes to the federal Act in the event the federal Act undergoes further revision in this subject matter area.

Bill section 1, an amendment to AS 29.45.030(a), a provision setting out mandatory municipal property tax exemptions, incorporates a reference to 43 U.S.C. 1636(d), as amended, following the existing reference 43 U.S.C. 1620(d) for the reasons noted two paragraphs above.

SECTIONAL ANALYSIS

Bill section 2, also an amendment to the law applicable to municipalities, makes technical corrections. In context, the terms that are being defined appear in 43 U.S.C. 1636(d), not in 43 U.S.C. 1620. The terms defined in the current statute are revised to reflect the language actually used in the federal provision expressed in a manner that is consistent with Alaska's legislative drafting style.

Bill section 3 revises AS 43.80.015, the principal provision of state law extending an exemption from state taxes to certain property. Specifically:

-- the caption change at page 3, lines 19 and 20, substitutes the full proper name of the federal Act for the Public Law reference;

-- deletion of reference to "the original issue" of shares in lines 20 and 21 is a substantive change; all share transactions--not just the original issues--are made non-taxable events;

-- in lines 21 and 22, "state" substitutes for "Alaska" and the exact cite for the federal Act is inserted for the older reference; these are technical changes to conform to the state's drafting style;

-- the changes made at lines 22 - 24 and 28 - 31 of page 3 replace existing references with the exact federal Act cites;

-- the change made by substitution of the phrase on page 4, lines 2 - 4 of the bill conforms state law to the requirement of the federal Act as to how the basis of land received for purposes of equalization (in the event of land trades) is to be computed; it will be computed as the federal Act directs;

-- the changes made on page 4, lines 5 - 10 are in the nature of substitutions of accurate cites and references;

-- the long addition on lines 12 and 13 and the deletion of the December, 1991, date reflect substantive changes made by 43 U.S.C. 1636(d), a provision that expands and extends the protection from taxation given Native land under the amended federal Act; and

-- the changes made to the balance of bill section 3 on page 4 of the bill either substitute accurate federal law cites or make minor stylistic changes.

Bill section 4, adding a new subsection (e) to AS 43.80.015, enumerates the specific federal legislation that have modified the original Alaska Native Claims Settlement Act, and further allows for changes affecting the tax treatment of property that may be made future federal amendments.

Representative Eileen MacLean

January 20, 1993

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The bill is given an immediate effective date by bill section 6. As with last session's measure, out of an abundance of caution, bill section 5 makes these changes retroactive to December 18, 1991, the 20-year anniversary date of the Alaska Native Claims Settlement Act's taking effect. In the original Act, on that date a number of safeguards initially enacted would have expired. All the safeguards that are of concern for purposes of this legislation have been expanded and extended in the two later federal Acts, especially the addition made by 43 U.S.C. 1636(d).

JC:pl

93-031.plm

# FISCAL NOTE

**STATE OF ALASKA**  
**1993 LEGISLATIVE SESSION**

**BILL NO. HB 73**

Revision Date: \_\_\_\_\_  
 Title: ANCSA State Tax Exemptions  
 Sponsor: Representative MacLean  
 Requestor: Representative MacLean

Dept. Affected: Revenue  
 BRU: Revenue Operations  
 Component: Income and Excise Audit  
 COMPONENT SERIAL NO. 113

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>						
<b>REVENUE FUND SOURCE:</b>	0	0	0	0	0	0

**FUNDING:**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ 0

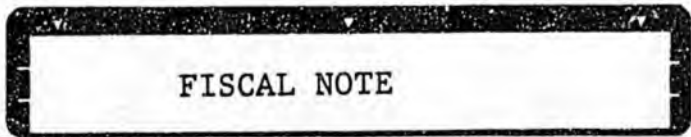
**ANALYSIS:** (Attach a separate page if necessary)

This bill has no effect on the State since there is no state property tax.

Prepared by: Larry E. Meyers, Director  
 Division: Income and Excise Audit Division  
 Approved by Commissioner: Darrel J. Rexwinkel  
 Agency: Department of Revenue

Phone: 465-2320  
 Date: 1/21/93  
 Date: 1/21/93

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# Alaska Federation of Natives, Inc.

January 27, 1993

Representative Eileen MacLean  
Alaska State Legislature  
Capitol Office Building  
Juneau, Alaska 99811

Dear Representative MacLean:

The Alaska Federation of Natives has reviewed House Bill 73 as introduced on January 18, 1993. This letter is intended to convey the Federation's support for the bill as introduced.

With the exception of two language changes, HB 73 is identical to CSHB (Resources) introduced in the Second Session of the 17th Alaska Legislature.

Amendments to AS 43.90.015, as HB 73 proposes, will prevent inconsistencies with AS 29.45.030 (m) and bring AS 43.90.015 into conformity with the Alaska Native Claims Settlement Act (ANCSA), as amended.

ANCSA provisions are controlling in this matter and thus amending Alaska statutes via HB 73 will serve to limit the potential for future conflict and litigation expenses.

I view HB 73 simply as an effort to conform state law with federal law.

Thank you for your interest in this matter.

Sincerely,

Julie E. Kitka  
President

## Land Protections

The land protections described in this section are probably the most significant gains for Alaska Natives contained in the "1991" law.

The "1991" law provides that all "undeveloped" land owned by village, urban and regional corporations automatically have the following protections:

1. The land cannot be taxed.
2. The land cannot be taken by trespassers who otherwise might acquire rights to the land through adverse possession (also known as trespassers or squatters' rights).
3. The land cannot be taken by creditors to pay a debt owed by the corporation.
4. The land cannot be lost if the corporation files bankruptcy.
5. The land cannot be lost even if the corporation is involuntarily dissolved.

Because these land protections are so important, they are now automatic. The corporation's board of directors does not need to take action, unless an activity creating "development" has already occurred. Shareholders do not need to vote in order to protect the corporation's undeveloped land.

### LAND AUTOMATICALLY PROTECTED FROM...



Taxes on undeveloped land



Bad debts



Adverse possession

## Loss of Land Protections

Members of a Native corporation board of directors must understand that actions they take could result in the loss of these land protections. Land protections can be lost in three ways:

1. Leased: If the board of directors leases the land, the protections are lost. Even though the leased land is not "developed," it can be taxed, taken by adverse possession or sold by creditors or a bankruptcy judge to pay the corporation's debts.

*Exception: If the purpose of the lease is to allow oil, gas or mineral exploration, then the land protections continue to apply.*

2. Pledged: Protections can be lost if the board of directors mortgages or pledges the land as security in a commercial transaction, such as a bank loan. If the land is

pledged, it can be taxed and it can be sold by creditors or a bankruptcy judge to pay the corporation's debts.

3. Developed: If the board of directors develops the land, it loses the automatic protections. The land can be taxed, taken by adverse possession, or, if the corporation gets into trouble, the land can be seized and sold by creditors or a bankruptcy judge to pay the corporation's debts.

### WAYS TO LOSE LAND PROTECTIONS



Leased



Pledged



Developed

Native corporations should be very cautious about pledging their undeveloped land to a bank or anyone else.

## Definition of "Developed" Land

The "1991" law defines "developed" as *"a purposeful modification of land from its original state that effectuates a condition of gainful and productive present use without further substantial modification."*

Because this definition is complicated, it is important that a board of directors be very cautious when it makes decisions about using the corporation's land. If there is any question that a board action or decision might result in losing land protections, the board should seek advice from an attorney before a final decision is made.

Some things can be done on the land without losing the protections. In some circumstances, land can be surveyed, and roads, electricity lines and sewers can be built. Whether such actions are "safe" can only be determined on a case by case basis.

Finally, land is automatically considered to be "developed" if it is subdivided, even if no changes are made to the land. For that reason, the corporation should never subdivide any of its land without careful study of the impacts on the status of its land.

To protect important subsistence uses, the law says that hunting and fishing on village and regional corporation land do not make the land "developed." For that reason, fish camps, trapping cabins and other structures may be built and used on the land if they are needed for subsistence hunting, fishing or gathering. The corporation may also charge a fee to hunters, fishermen and guides without losing the protections of "undeveloped" land.

## Regaining Land Protections

Even if land is mortgaged, leased or "developed," the protections automatically resume when the mortgage or lease expires or the development ends. For example, if a village corporation leases some of its land for five years, during the years it is leased, the land can be taxed or sold to pay the corporation's debts. However, when the five years are over and the lease expires, the land is again automatically protected from taxation and creditors.

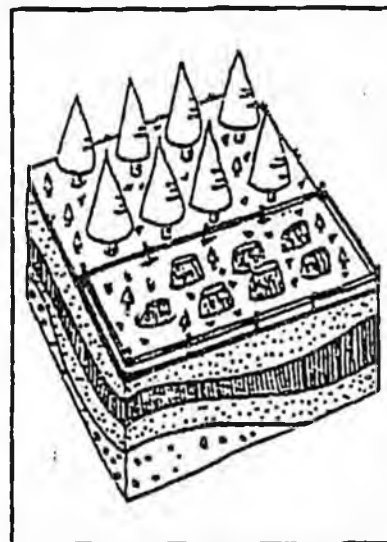
*Example: A corporation runs a gold-mining operation on otherwise-undeveloped land. During the years that the mining takes place, the land can be taxed or taken to pay a debt. But if the corporation closes down the mining operation, and restores the land to its original condition, the land then qualifies as "undeveloped" and gains back the protection lost when the venture began.*

If a corporation has already subdivided land, it can be returned to "undeveloped" status if the land is resubdivided back to its original state. The resubdivision must be approved by whichever platting authority has jurisdiction. In these cases, the protections do apply to land that was previously subdivided.

## Timber Development

The "1991" law makes an important change on how protections apply to timber development. For example, if a village corporation cuts timber on its land, only the approximate area where timber is actually cut can be taxed. Under the old law, a larger area of land would lose the protections and thus become vulnerable to taxes and loss by other means. Now, protections are lost only on the parcel of land where timber cutting and development are actually occurring and only during the period of harvest.

Timber lands can also regain land protection. During the years a village corporation cuts timber for commercial sale, the land is considered "developed," and thus can be taxed, if the corporation is in a taxing jurisdiction, or taken to pay creditors. When the commercial harvest ends, though, the land is no longer considered to be "developed" and the land is automatically protected.



**Only area where  
timber is cut  
loses protection**

## Tax Recapture on Subdivided Land

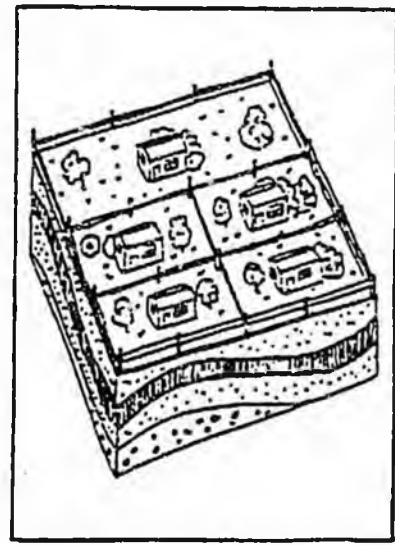
If a Native corporation is in a taxing jurisdiction and its land is subdivided, the corporation must pay the amount of taxes that would have been

levied during the 30 months before the subdivision plat is recorded. The back taxes must be paid in semi-annual installments. The entire amount must be paid off within 30 months of the date the plat is recorded.

Before the final plat is approved, the government with tax jurisdiction must notify the corporation of the taxes it will owe.

*Example: Corporation Z decides to subdivide 50 acres on a scenic river site. Until now, the land has been "undeveloped" and exempt from property taxes. On September 1, 1990, the subdivision plat is recorded. The corporation must pay an amount equal to property taxes it would have paid on that 50 acres from March 1, 1988 to September 1, 1990. The total tax bill on the 50 acres is \$10,000. Corporation Z must make its first \$2,000 payment March 1, 1991. The total bill must be paid off by March 1, 1993.*

## TAX RECAPTURE



Tax recapture applies only if the land being subdivided is within the boundaries of a taxing jurisdiction, such as a borough or municipality with the power to tax.

**Subdivided land**

## Summary

One of the most important changes made by the "1991" law is that Land Bank protections are now automatic. No board action is required because the land protections automatically apply to all undeveloped ANCSA lands. Native land, so long as it remains undeveloped, is protected from property taxes, from squatters, from being taken to pay a bad debt and from bankruptcy.

Before, corporations had to apply to the federal government to get these protections. Now, they're automatic; nothing else is required. A corporation loses these protections if its land is pledged, leased, developed or subdivided. Native corporation board members must recognize the types of actions that may result in losing land protections.

Board members may want to review the status of their lands in light of the definition of "developed," to determine whether any of the corporation's land does not qualify for automatic protections.

Even if the land protections are lost, they can be regained if the lease ends or development activity stops.

# HOUSE COMMITTEE REPORT

(7)

Date Referred: January 18, 1993

FURTHER REFERRALS:

Judiciary  
Finance

Date of Committee Action: 1-28-93

The COMMUNITY AND REGIONAL AFFAIRS Committee considered:

HB 73

HOUSE BILL NO. 73

ANCSA STATE TAX EXEMPTIONS

"An Act relating to state and local taxation and other state regulation as affected by the Alaska Native Claims Settlement Act, as amended, and related federal statutes; and providing for an effective date."

**RECOMMENDATIONS:**

be replaced with \_\_\_\_\_ ~~the same title~~  a new title

have attached amendments(s)

do pass

do not pass

no recommendations

~~Individual~~ individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note Revenue

zero fiscal note(s) \_\_\_\_\_

	SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Sanders	<i>Jerry Sanders</i>	✓	<i>John N. Rain</i>		✓	
Bunde	<i>W. R. Bunde</i>	✓	<i>Rep Willis</i>		✓	
Williams	<i>W. K. Williams</i>	✓				
Toohey	<del><i>Shoemaker</i></del>	✓				
Olberg	<i>Harley Olberg</i>	✓				

*Harley Olberg*  
CHAIRMAN'S SIGNATURE



HOUSE COMMUNITY AND REGIONAL AFFAIRS

DATE: 1/28/93

PLACE: CAPITOL RM 124

SUBJECT OF MEETING:  
 DCRA OVERVIEW  
 \* HB 73: ANCSA STATE TAX EXEMPTIONS

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
JACK CHENOWETH	L.A.A. LOCAL SERVICES				465-2450	Y (N)	HB 73 - DRAFTING ATTORNEY AVAILABLE TO ANSWER QUESTIONS
EDGAR BLATCHFORD	DCRA				4700	(Y) N	DCRA OVERVIEW
BRUCE R. GERAHTY	DCRA				4700	(Y) N	DCRA OVERVIEW
JOHN WALSH	DCRA				4700	(Y) N	DCRA OVERVIEW
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	