

HB

73

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

CC ✓
FN ✓

DATE: 2/11/94

FURTHER:

DATE TURNED INTO OFFICE: 5-4-94

The Finance Committee considered HOUSE BILL NO. 73

"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."

and recommends:

- replace with _____ CS _____ (FINANCE)
- or adopt previous _____ CS _____ (_____)
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
DOR	1/3/94	0	

Appropriation No Fiscal Note

DO PASS:

George A. A. / 30

OTHER RECOMMENDATIONS:

Steve Rein No Recommendation
Ben Murphy No Rec

1. *Steve* *do pass*
 Co-Chair: Signature/Recommendation

2. *Steve Rein*
 Co-Chair: Signature/Recommendation

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

No. 1
Bill Version: HB 73
(H) Publish Date: 1/29/93

Revision Date: _____ Dept. Affected: Revenue
Title: ANCSA State Tax Exemptions BRU: Revenue Operations
Component: Income and Excise Audit
Sponsor: Representative MacLean
Requestor: Representative MacLean COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

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

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 *Larry E. Meyers* Phone: 465-2320
Division: Income and Excise Audit Division Date: 1/21/93
Approved by Commissioner: Darrel J. Rexwinkel *Darrel J. Rexwinkel* Date: 1/21/93
Agency: Department of Revenue

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

No. 1
Bill Version: HB 73
(H) Publish Date: 1/29/93

Revision Date: _____ Dept. Affected: Revenue
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OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
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SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE FUND SOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
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Prepared by: Larry E. Meyers, Director *[Signature]* Phone: 465-2320
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Agency: Department of Revenue

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Back-up

SPONSOR STATEMENT

HB 73

Representative Eileen P. MacLean

HB 73 was introduced in order to bring state law into compliance with recent changes to federal law. The Alaska Native Claims Settlement Act (ANCSA) was amended several years ago to continue an exemption from federal, state or local property taxation on ANCSA lands until development occurs. This 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 in state law which need to be updated relative to the federal law. These are merely technical or stylistic changes.

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 was approved unanimously in the House. An identical bill passed through both chambers in the 17th Legislature and was in Senate Rules at the time of adjournment.

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

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL

No. 2
Bill Version: HB 73
(S) Publish Date: 2-11-94

Revision Date: January 3, 1994 Dept. Affected: Revenue
Title: State and local taxation as affected by ANCSA BRU: Revenue Operations
Component: Income & Excise Audit
Sponsor: Representative MacLean
Requestor: Senate Judiciary COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

	FY95	FY96	FY97	FY98	FY99	FY00
OPERATING						
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 FUND SOURCE:	0.0	0.0	0.0	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						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ 0.0

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 Phone: 465-2320
Division: Income and Excise Audit Division Date: January 3, 1994
Approved by Commissioner: Darrel J. Rexwinkel Date: January 3, 1994
Agency: Department of Revenue

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STATE OF ALASKA

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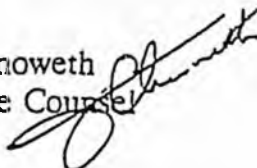
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

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-LS0402A)

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.

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

Page 3

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

COOK INLET REGION, INC.

February 7, 1994

Senator Robin Taylor
Chairman, Senate Judiciary Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Senator Taylor:

It is my understanding that House Bill 73 (HB 73) will soon be scheduled for a hearing in the Senate Judiciary Committee. By way of this letter, I am conveying Cook Inlet Region, Inc.'s support for HB 73 and requesting that you bring it before your committee at the earliest opportunity.

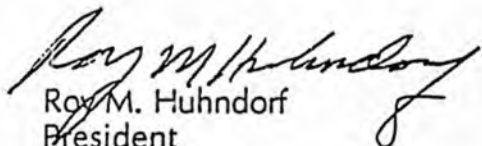
HB 73 was drafted and introduced by Representative Eileen MacLean in order to bring state law into compliance with federal law where certain property tax exemptions apply. While, in fact, federal law prevails in this issue, the bill proposes to avoid confusion and misinterpretation by removing inconsistencies between federal and state law.

It is my understanding that HB 73 does not expand the provisions of federal law, thus ANCSA corporations are not granted additional exemptions on undeveloped property by passage of this bill.

Your assistance on this matter is appreciated.

Sincerely,

COOK INLET REGION, INC.


Roy M. Huhndorf
President

2/4011

cc: Senator Rick Halford, Co-Chairman, Senate Judiciary Committee
Representative Eileen P. MacLean, Alaska Legislature



BERING STRAITS NATIVE CORPORATION

David

Hon. Eileen P. MacLean
Representative
State Capitol, Room 507
Juneau, AK 99801-1182

RE: HB 73


Dear Representative MacLean:

Please inform the Senate Judiciary Committee and all members of committees at subsequent hearings that Bering Straits Native Corporation fully supports HB 73.

This bill is very important to the extent that it affords our shareholders the same protection as guaranteed by the Alaska Native Claims Settlement Act, as amended. We agree that passage of this bill will avoid misinterpretation and confusion of Alaska statutes.

Thank you for your continued assistance on these matters.

Sincerely,



Jack Carpenter, President & CEO

KONIAG, INC.

4300 B Street, Suite 407, Anchorage, AK 99503

(907) 561-2668 • FAX (907) 562-5258 •

February 1, 1994

Eileen P. MacLean
Alaska State Representative
State Capitol
Room 507
Juneau, AK 99801-1182

Dear Representative MacLean:

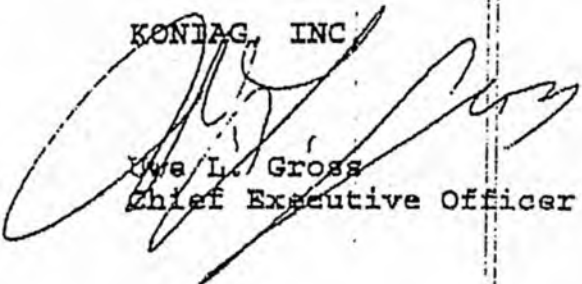
VIA FAX

I am in receipt of your letter of 28 January, 1994 regarding H.B. 73.

Koniag, Inc. was fully supportive of this legislation in 1993 and we continue to offer that support. We believe that it is crucial to bring the state tax code in line with that called for in the 1991 amendments as it affects Native land.

Sincerely,

KONIAG, INC.



Uwe L. Gross
Chief Executive Officer

Post-It™ brand fax transmittal memo 7671		of pages >	
To	Eileen Maclean	From	Uwe Gross
Co.		Co.	
Dept.		Phone #	561-2668
Fax #	463-3241	Fax #	562-5258



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

FEB 10 1994

ALASKA STATE LEGISLATURE

Representative Eileen Panigeo MacLean
Co-Chair House Finance Committee
P.O. Box 830
Barrow, Alaska 99723
(907) 852-7111



WHILE IN JUNEAU
State Capitol, Room 507
Juneau, Alaska 99801-1182
465-4833
465-4525
463-3241 FAX

HOUSE OF REPRESENTATIVES

MEMORANDUM

District 37

North Slope
Borough

Anaktuvuk Pass
Atkasuk
Barrow
Kaktovik
Nulqsut
Point Hope
Point Lay
Wainwright

Northwest Arctic
Borough

Ambler
Buckland
Deering
Kiana
Kivalina
Kobuk
Kolzebue
Noatak
Noorvik
Selawik
Shungnak

Seward Peninsula

Brevig Mission
Diomedes
Shishmaref
Teller
Wales

TO: ✓ Senator Steve Frank, Co-Chairman
Senator Drue Pearce, Co-Chairman
Senate Finance Committee

FROM: Representative Eileen P. MacLean *EM*

DATE: February 9, 1994

SUBJ: Scheduling HB 73 in the Senate Finance Committee

This is to request a hearing for HB 73 in the Senate Finance Committee.

HB 73 will bring state law into compliance with federal amendments made to the Alaska Native Claims Settlement Act (ANCSA) several years ago regarding the exemption of ANCSA property from taxation. References are made throughout the bill to sections of 43 U.S.C. 1601-1642, the ANCSA law. The federal amendments continue an exemption of ANCSA property from taxation until development occurs. Although this change has been made at the federal level, state law has not been brought into conformity with the federal act.

In the bill drafting process, the drafter noted other sections of state law which need to be updated relative to the ANCSA amendments of 1991.

To my knowledge, there are no substantive concerns with this legislation. It is primarily housekeeping in nature and only brings state statutes into compliance with federal law.

HB 73 passed the House unanimously, and an identical bill passed both houses in the 17th Legislature and was in Senate Rules at the time of adjournment.

If you have any questions, please contact David Harding of my staff at 465-6871.

HB 73

ALASKA STATE LEGISLATURE

Representative Eileen Panigeo MacLean
Co-Chair House Finance Committee
P.O. Box 830
Barrow, Alaska 99723
(907) 852-7111



WHILE IN JUNEAU
State Capitol, Room 507
Juneau, Alaska 99801-1182
465-4833
465-4525
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HOUSE OF REPRESENTATIVES

District 37

North Slope
Borough

Anaktuvuk Pass
Atkasuk
Barrow
Kaktovik
Nulqsut
Point Hope
Point Lay
Wainwright

Northwest Arctic
Borough

Ambler
Buckland
Deering
Kiana
Kivalina
Kobuk
Kotzebue
Noatak
Noorvik
Selawik
Shungnak

Seward Peninsula

Brevig Mission
Diomedes
Shishmaref
Teller
Wales

MEMORANDUM

TO: Senator Drue Pearce, Co-Chair
Senate Finance Committee

FROM: Rep. Eileen P. MacLean *[Signature]*

DATE: February 25, 1994

RE: HB 73

When HB 73 (ANCSA Property Tax Exemptions) was heard in Senate Finance on Wednesday, several members had a question about the drafter's sectional analysis's reference to provisions in the bill that accomodate any future changes in the federal law.

The attached memo from Jack Chenoweth addresses this question. If you need any further information on this, please contact David Harding of my staff (-6871).

Thanks for your consideration of this legislation.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

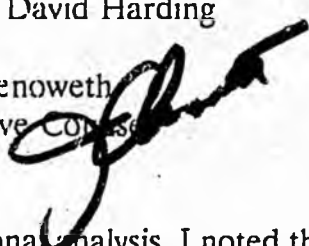
MEMORANDUM

February 24, 1994

SUBJECT: House Bill 73 (Work Order No. 8-LS0402\A)

TO: Representative Eileen MacLean
ATTN: David Harding

FROM: Jack Chenoweth
Legislative Counsel



In my January 20, 1993, sectional analysis, I noted that, throughout this measure, the words "as amended" are added following reference to particular provisions of the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq. The intent, I noted, was

. . . to conform the state tax exemptions to any further changes in the federal Act in the event the federal Act undergoes further revision in this subject matter area.

Under the "supremacy clause," article VI of the United States Constitution, state action will be required to give way to federal legislation when a law of a state is in actual conflict with a valid Act of the United States Congress. Under another provision by which the United States Constitution reserves to the Congress the power to regulate commerce with Indian tribes, federal law will apply to determine whether and to what extent a state law levying and collecting a tax may have force. So, if, for instance, Congress should broaden or narrow the tax exemptions set out in one or more of the various provisions identified in this measure--should expand or contract an existing tax exemption or add one not now provided--state law would necessarily be required to conform, irrespective of whether the body of state law recognized the change or was silent. By inserting "as amended" behind the various United States Code references, the intent is only one of keeping the body of state law in conformity to the changes made in federal law, if any, on the state and local government taxation of land subject to the ever-changing provisions of the Alaska Native Claims Settlement Act. ✓

In the body of the Alaska Statutes, incorporation of the words "as amended" following reference to a federal Act is not uncommon. It happens with some regularity, as you might expect, with references to the Internal Revenue Code and the Alaska

Representative Eileen MacLean

February 24, 1994

Page 2

Statehood Act, but also involves a fair number of other enactments that appear in the body of the Alaska Statutes under their popular name or by their United States Code (U.S.C.) reference. I assume it is done, depending upon the context in which it appears, to assure that the body of state law that depends on federal law antecedents is kept current, or out of recognition that, in the many areas in which federal activity intrudes, administrators of state laws will execute or implement the laws and programs for which they are responsible cognizant of the changes that the Congress would impose on the state and its political subdivisions by application of the federal supremacy clause.

JBC:pl

94-159.plm

BILL: HB 73

SHORT TITLE: ANCSA STATE TAX EXEMPTIONS

BILL VERSION:

SPONSOR(S): REPRESENTATIVE(S) MACLEAN

CURRENT STATUS: (S) FIN

STATUS DATE: 02/11/94

HEARING: (S) FIN FEB. 23 09:00 AM SENATE FINANCE 518

TITLE: "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."

HB 73

Bill/Resolution Floor Action

Page 2 of 3

Current Status: (S) FIN

Jrn-Date	Jrn-Page	Action
1 01/18/93	102	(H) READ THE FIRST TIME - REFERRAL(S)
2 01/18/93	102	(H) CRA, JUDICIARY, FINANCE
3 01/29/93	174	(H) CRA RPT 5DP 2NR
4 01/29/93	174	(H) DP: SANDERS, BUNDE, WILLIAMS, TOOHEY,
5 01/29/93	174	(H) DP: OLBERG NR: DAVIES, WILLIS
6 01/29/93	174	(H) -ZERO FISCAL NOTE (REV) 1/29/93
7 02/10/93	287	(H) JUD RPT 6DP
8 02/10/93	287	(H) DP: PORTER, PHILLIPS, NORDLUND, JAMES
9 02/10/93	287	(H) DP: KOTT, GREEN
10 02/10/93	287	(H) -PREVIOUS ZERO FN (REV) 1/29/93
11 02/17/93	370	(H) FIN REFERRAL WAIVED
12 02/24/93	435	(H) RULES TO CALENDAR 2/24/93
13 02/24/93	436	(H) READ THE SECOND TIME
14 02/24/93	436	(H) ADVANCED TO THIRD READING UNAN CONSENT
15 02/24/93	436	(H) READ THE THIRD TIME HB 73
16 02/24/93	436	(H) PASSED Y39 N- E1
17 02/24/93	436	(H) EFFECTIVE DATES VOTE SAME AS PASSAGE
18 02/24/93	446	(H) TRANSMITTED TO (S)

HB 73

Bill/Resolution Floor Action

Page 3 of 3

Current Status: (S) FIN

Jrn-Date	Jrn-Page	Action
1 02/25/93	480	(S) READ THE FIRST TIME - REFERRAL(S)
2 02/25/93	480	(S) CRA, JUD, FIN
3 03/10/93	709	(S) CRA RPT 2DP 2NR
4 03/10/93	709	(S) PREVIOUS H ZERO FISCAL NOTE (REV)
5 02/11/94	2785	(S) JUD RPT 2DP 2NR
6 02/11/94	2785	(S) ZERO FISCAL NOTE PUBLISHED (REV)
7 02/11/94	2785	(S) REFERRED TO FINANCE

Selection=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP	SUBJ	EXIT	MENU	TEXT	PRINT	BWD	FWD	CMT/JRNL	FIRST	LAST	QUIT

Land Protection

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.

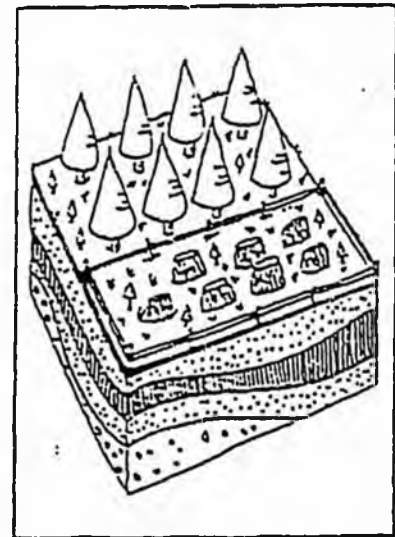
Example: A corporation runs a gold-mining operation on otherwise undeveloped land. During the years that the mining takes place, the land can be taxed or taken to pay a debt. But if the corporation closes down the mining operation, and restores the land to its original condition, the land then qualifies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

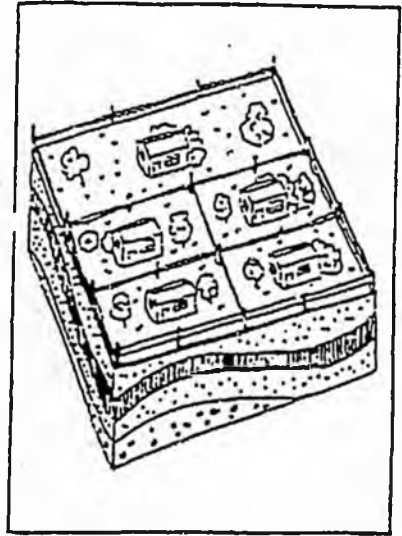
If a Native corporation is in a taxing jurisdiction and its land is subdivided, the corporation must pay the amount of taxes that would have been

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



Subdivided land

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.

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.