



# LAWS OF ALASKA

1968

Source

CSHB 672 (Finance)

Chapter No.

177

## AN ACT

To provide for state contribution and action to encourage and facilitate final settlement of Alaska native land claims by the federal government; and providing for an effective date.

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

\* Section 1. DECLARATION OF INTENT. It is the policy of the State of Alaska to join with the federal government in a legislative effort to provide a fair, speedy and equitable method for the settlement and satisfaction of the Alaska native land claims. It is the position of the state that in accomplishing this purpose it is in the public interest to minimize procedural delays, remove technical obstacles, to create a public body composed of residents of Alaska with power to process, determine, and expedite the claims and to perform other functions to carry out the provisions of this Act. In order to facilitate and encourage a fair settlement of these land claims between the Alaska natives and the federal government, it is considered in the best interest of the state to make a reasonable contribution to the settlement on the part of the state, by providing that certain royalties or shares of the proceeds derived from state lands be made available to native groups in Alaska as compensation for relinquishment of part of their claims based on aboriginal use and occupancy of lands in Alaska, and thereby to settle with finality all such land claims of Alaska natives insofar as the State of Alaska is concerned.

\* Sec. 2. AS 38 is amended by adding a new chapter to read:

CHAPTER 30. ALASKA NATIVE CLAIMS STATE  
SETTLEMENT ACT OF 1968.

ARTICLE 1. ALASKA NATIVE COMMISSION.

Sec. 38.30.010. ACCEPTANCE OF FEDERAL COMMISSION.

(a) If legislation is enacted by the United States before

April 15, 1969, whereby a commission is created substantially like, and capable of performing the functions of, the Alaska Native Commission set out in this chapter, the state does hereby designate and constitute the commission as the agency for carrying out the Alaska Native Commission purposes and functions set out in this chapter.

(b) Upon the enactment before April 15, 1969, of federal legislation creating such a commission, the governor shall determine whether it is substantially like, and capable of performing the functions of, the commission as set out in this chapter. If the governor determines in the affirmative, he shall certify and make public his determination, whereupon the federally created commission shall become the agency to perform the functions set out in this chapter, and the commission provided for in secs. 30 - 130 of this chapter shall not come into existence. If the governor determines in the negative, secs. 30 - 130 of this chapter become operable immediately.

(c) If no legislation has been enacted by Congress by April 15, 1969, creating a commission to act in the matter of Alaska native land claims, secs. 30 - 130 of this chapter become operable immediately.

Sec. 38.30.020. CRITERIA FOR DETERMINING ACCEPTABILITY OF FEDERAL COMMISSION. In making the determination under sec. 10 of this chapter the governor shall be guided by the following minimum standards of acceptability of a federal commission to discharge the functions set out in this chapter:

- (1) it must provide that the State of Alaska may vest powers in the commission provided by this chapter, except that any additional powers vested in the commission after the effective date of this chapter shall be subject to approval of Congress;
- (2) it must provide for staggered terms of office;
- (3) it must provide that at least a majority of its members be Alaska natives as defined in this chapter;
- (4) the Alaska residence requirements for members of the commission must be substantially the same as those prescribed in sec. 30 of this chapter;
- (5) the scope of judicial review of actions and final determinations of the commission must be at least as ample as that set out in sec. 130 of this chapter;
- (6) it must be empowered to make final determinations of the matters committed to it by this chapter, where this chapter requires final determinations.

Sec. 38.30.030. CREATION OF STATE COMMISSION. There is created in the Office of the Governor an Alaska Native Commission to exercise the duties and powers conferred upon it by this chapter. The commission shall be considered as the head of a regulatory and quasi-judicial agency

of the state. The commission consists of seven members, appointed by the governor and confirmed by a majority of the members of the legislature in joint session. At least four members shall be Alaska natives as defined in this chapter. Each member of the commission shall have been a resident of Alaska continuously for at least five years before his appointment and must remain a resident during his term of office. In appointing members of the commission due regard shall be given to obtaining fair geographic and ethnic representation.

Sec. 38.30.040. TERMS OF OFFICE. The members initially appointed by the governor shall be given terms of office of one, two, three, four, five, six and seven years respectively, the terms to commence upon the day the sections of this chapter concerning an Alaska Native Commission become operable. Their successors shall be appointed for terms of seven years by the governor in the same manner and subject to the same qualifications as the initial appointments, except that a person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he succeeds. Upon the expiration of his term of office a member shall continue to serve until his successor has been appointed and is qualified to take office. The members of the commission shall choose a chairman from the commission's membership. Any commission member may be removed by the governor for inefficiency, neglect of duty, malfeasance in office, or engaging in conduct which violates any conflict of interest laws of the state, and such removal and determination by the governor is not subject to judicial review.

Sec. 38.30.050. COMPENSATION. Commission members shall be paid compensation in the sum of \$35 for each day in which they are engaged in the performance of their official duties. They shall also be reimbursed for expenses which have been authorized by the commission.

Sec. 38.30.060. NOMINATIONS. Any organization recognized by the Secretary of the Interior (or if there be none recognized by him, by the governor) to speak for the Alaska natives on a statewide basis and the statewide native corporation shall each be given the opportunity to recommend prospective appointees to the commission, but the governor is not limited by the recommendations in his exercise of appointive power.

Sec. 38.30.070. LOCATION. The commission shall have its offices and hold its meetings in the state at a place to be determined by the commission.

Sec. 38.30.080. EMPLOYEES AND COMPENSATION. (a) The commission may employ an executive director with the concurrence of the governor. The executive director position shall be in the partially exempt service and the salary shall be as specified in AS 39.27. The commission may employ other personnel and may incur any expenses it considers necessary in the performance of its duties subject to available appropriations. All the personnel hired by the commission shall be in the partially exempt service and their salaries shall be as specified in AS 39.27.

(b) The transactions of the commission shall be subject to preaudit and postaudit.

Sec. 38.30.090. PROCEDURE. The commission shall have power to establish its own rules of procedure, and the time and place of its meetings. The commission is not subject to the Alaska Administrative Procedure Act (AS 44.62) as to functions of an adjudicatory nature. A quorum consists of four members.

Sec. 38.30.100. JURISDICTION AND POWERS. (a) The commission shall carry out the functions delegated it by this chapter and may also accept and carry out the functions delegated to it by the Secretary of the Interior, such as the preparation of official rolls of native groups, if the acceptance of the latter delegated functions do not increase the expense of commission operations which would otherwise be entailed under the appropriations made by the legislature.

(b) The functions of the commission may include, but are not limited to

(1) determination, if authorized by federal law, of the aboriginal use and occupancy of Alaska lands by native groups, the geographical extent thereof, and the boundaries of occupancy attaching to villages and regions;

(2) determination of the number and location of the groups to be recognized officially by the commission;

(3) preparation of an official roster of groups of natives eligible to receive the benefits granted by this chapter and by the laws of Alaska;

(4) investigation of all matters which are the proper subjects of its action, with the power to call upon any of the departments of the state government for information it considers necessary to perform its duties and functions;

(5) the exercise of any power necessary to carry out the purposes of this chapter; and

(6) the exercise of any other powers which may be provided by state or federal law.

(c) The commission shall give reasonable notice to the interested parties before it and an opportunity to be heard before making a final determination on any disputed matter.

Sec. 38.30.110. TESTIMONY OF WITNESSES. A member or employee of the commission, designated in writing by the chairman for that purpose, may administer oaths and examine witnesses. The chairman of the commission, or in his absence, the vice chairman, may in the same manner as a party to litigation, but without costs, apply to the superior court for issuance of subpoenas requiring (1) the attendance and testimony of witnesses and the production of all necessary books, papers, documents, correspondence, and any other evidence from any place in the state at any

designated place of hearing in Alaska, or (2) the taking of depositions before a designated individual who is authorized to administer oaths under the laws of Alaska or any other state. In taking testimony, opportunity is to be given for attendance and examination of the witness by any party who might be adversely affected by the commission's actions.

Sec. 38.30.120. FINAL DETERMINATIONS. The final determinations of the commission in any matter which is disputed before it and in any matter which will be irrevocably binding upon the persons affected, shall be in writing, filed with the commission, and shall set out the operative facts upon which its determination is based, the reasons in support of its determination, and a definite statement of the determination that is made by the commission.

Sec. 38.30.130. JUDICIAL REVIEW. (a) The actions and final determinations of the commission may be reviewed at the instance of a person adversely affected by commission actions or determinations, by a petition for review filed in the superior court. In considering a petition for review the court shall be limited to considering and deciding only the following questions:

(1) whether any specific provision of this chapter, the Constitution of the United States, or the Constitution of the State of Alaska has been violated;

(2) whether the commission acted capriciously or arbitrarily;

(3) whether there is information, published or written material, evidence, or other data in the record to sustain the findings, recommendations, decisions, or actions of the commission as being reasonable;

(4) whether the commission acted within the powers granted it under this chapter.

(b) The court may remand the matter reviewed for further proceedings as are required under this chapter and may grant other appropriate judicial relief.

## ARTICLE 2. ROYALTY.

Sec. 38.30.140. RIGHT TO PROCEEDS. (a) If the present land freeze imposed by the United States Department of the Interior is unconditionally removed and terminated on or before October 10, 1968, the natives of Alaska are hereby granted the right to a royalty and share equal to five per cent of the proceeds made subject to this chapter under sec. 160 of this chapter, until the amount received from the state in accordance with sec. 180 of this chapter totals \$50,000,000.

(b) In the event the land freeze is removed in accordance with (a) of this section but is subsequently reimposed, the Alaska natives' right to proceeds under (a) of this section shall terminate.

(c) The phrase "land freeze" as used in this section

means (1) the failure or refusal on the part of the United States Department of the Interior to dispose of public lands in Alaska under the Public Land Laws of the United States, including without limitation the Alaska Statehood Act (72 Stat. 339), because of the pendency of native land claims or protests; or (2) any temporary withdrawal by the United States Department of the Interior of any public lands in Alaska retained in effect, or made after the effective date of this chapter, because of the pendency of native land claims.

Sec. 38.30.150. PROPERTY INTEREST. Except as provided in secs. 140 - 160 and secs. 170(b) and (f) and 340 of this chapter, the royalty or share of proceeds granted in this chapter is an irrevocable grant, and the right of Alaska natives to the same vests on the day this chapter becomes law, subject to their acceptance in accordance with sec. 340 of this chapter.

Sec. 38.30.160. ROYALTY SOURCES. The proceeds subject to this chapter are all monetary revenues, other than taxes and receipts from licenses, received by the state, after the effective date of this chapter, from the sale, lease, exchange, or other disposal of lands which are or have been selected by the state under sec. 6(a) and (b) of the Alaska Statehood Act (72 Stat. 339), as amended except those lands which are or have been under state lease or contract on or before the effective date of this chapter.

Sec. 38.30.170. DISTRIBUTION OF PROCEEDS. (a) The royalty or share of proceeds granted under sec. 140 of this chapter shall be distributed to three classes of recipients: (1) 75 per cent to incorporated native groups; (2) 20 per cent to regional native corporations; and (3) five per cent to the statewide native corporation.

(b) Fifty per cent of the total proceeds distributed under (a) of this section to each native corporation shall be used for construction and maintenance of public works projects.

(c) The apportionment of the royalty shall be based upon the number of persons on the final rolls and distribution shall be made under rules and regulations adopted by the commission.

(d) A copy of an annual report of all expenditures of funds granted under this chapter made by recipients under (a) of this section shall be submitted annually to the Office of the Governor.

(e) The money apportioned to each corporation shall be used in accordance with the annual budgets prepared by the corporation, submitted to and not disapproved by the commission.

(f) If in the judgment of the commission, a court of competent jurisdiction or the legislative audit committee the proceeds distributed to a recipient under this chapter are not used in the manner prescribed in (b) of this section, there shall be withheld from the next annual appropriation of royalties owing the recipient under this chapter a sum equal to the amount improperly spent. The

amount so withheld shall be distributed to the recipient only upon certification by the Legislative Audit Committee to the legislature that the ratio of expenditures required under (b) of this section has been adjusted by the noncomplying recipient native corporation in such a manner that the corporation is now in compliance with (b) of this section. When the amount which would have been received from the state under secs. 140 and 180 of this chapter equals \$50,000,000 except for the provisions of this subsection, the amount being withheld by the state shall be considered forfeited by the noncomplying native corporation and shall revert to the state's general fund.

Sec. 38.30.180. TRUST AND ADVANCE ROYALTY. (a) The royalty and share of proceeds to which a recipient corporation is entitled under secs. 140 - 170 of this chapter shall be received and held in trust by the state. After the final rolls have been completed and the apportionment of each recipient corporation determined, the legislature shall annually appropriate to the designated recipients the royalty and share of proceeds held in trust by the state.

(b) Commencing in fiscal 1968 - 1969, if the amount accumulated in trust each fiscal year does not equal at least \$500,000, the difference between the amount accumulated and the sum of \$500,000 shall be appropriated out of the general fund as an advance on the royalty payments and shall be payable on July 1 of the second succeeding fiscal year. If any sums are advanced out of the general fund in accordance with this subsection, the amount of the funds advanced shall be repaid the state by transferring to the general fund one-half of any excess over \$500,000 that may be accumulated in trust during any subsequent fiscal year until such advances have been repaid in full.

### ARTICLE 3. INCORPORATION OF NATIVE GROUPS.

Sec. 38.30.190. CERTIFICATE OF INCORPORATION. Under rules and regulations which the Alaska Native Commission may prescribe, each native group, regional native corporation, and the statewide native corporation entitled to benefits under this chapter or the Federal Alaska Native Claims Act of 1968 shall incorporate under the Alaska Business Corporation Act, as modified by this chapter and said rules and regulations, except those native groups which elect to incorporate or remain incorporated under the Indian Reorganization Act. Until 100 years after the effective date of this chapter the articles of incorporation and all amendments shall be subject to the approval of the commission.

Sec. 38.30.200. MEMBERSHIP AND STOCK. (a) All natives enrolled on the rolls of the native group incorporated or to be incorporated under the Federal Alaska Native Claims Act of 1968 shall be the initial members and shareholders of the incorporated native group. Each membership shall be represented by 100 shares of the capital stock of the corporation, of no par value, which shall be issued to each member.

(b) Shares of stock shall be inalienable from the

first holder of the shares, by operation of law or otherwise, except upon his death when the shares shall pass by devise or inheritance free of any claims against the estate. When ownership of shares passes by devise or inheritance, such shares shall be partitioned, so far as may be practicable, in whole shares among those entitled to them. The corporation shall retire by purchase any shares in which fractional interests valued at less than \$100 exist.

(c) The second holder of shares of stock must be, or be descended from at least, one of the first members of any native group incorporated under sec. 190 until 50 years after the effective date of this chapter. Thereafter, the stock shall be freely alienable, provided that the corporation may adopt any provision restricting stock ownership permitted ordinary business corporations.

(d) A person not entitled to hold stock may lawfully acquire stock by devise or inheritance, in which event the corporation shall purchase the stock at its fair value.

Sec. 38.30.210. VOTING RIGHTS. All shares shall carry voting rights and cumulative voting is required. Stock held by a minor may be voted by his parent or guardian.

Sec. 38.30.220. PURPOSE. (a) The corporations may carry on any lawful business permitted by the Alaska Business Corporation Act in Alaska, and, with the consent of the commission, outside of Alaska. All investments in securities shall be in accordance with an investment program which makes provisions for skilled investment counsel.

(b) To the extent permitted by its articles and by-laws, the corporation may make distributions from earned surplus or capital as gifts, grants or loans to shareholders, descendants of the first holders of the shares of the corporation and to persons of at least one-sixteenth native blood who would have been eligible for membership as a first holder but for the lack of sufficient blood quantum and who are enrolled by the corporation upon a special roll, provided that no gifts or grants may be made after 50 years from the effective date of this chapter. The corporation may at any time make charitable and educational donations as allowed by the Alaska Business Corporation Act.

(c) The regional corporations may make distributions from earned surplus or capital as grants or loans to native group corporations of the region of such regional corporation and to municipal corporations and native villages within the region.

(d) The statewide corporation may make distributions from earned surplus or capital as grants or loans to regional corporations or native group corporations.

Sec. 38.30.230. CAPITAL. The capital of the corporation shall consist of the land conveyed to the corporation by the United States under the Federal Alaska Native

Claims Act of 1968, entered at its fair market value upon receiving the conveyance therefore, the money received under the Act, and the money received from the royalty and share in revenues granted by this chapter.

Sec. 38.30.240. CORPORATION NOT A GOVERNMENT INSTRUMENTALITY. A corporation organized under this chapter may not be an agency or instrumentality of the State of Alaska or of the United States for any purpose, and the state and the United States are not responsible for the corporation's actions or debts unless specifically guaranteed or insured.

Sec. 38.30.250. RESIDENCE RESTRICTIONS. Residence may not be restricted, and residence or proposed residence may not be made a restriction on membership or shareholding, voting of shares, or receipt of benefits from the corporation, provided that distribution of land in kind for townsite lots, fish camp sites, or other aboriginal use may be limited to residents, but continued residence may not be made a condition of any such distribution of land in kind.

Sec. 38.30.260. PROHIBITION ON PER CAPITA DISTRIBUTIONS. The corporation may not make any per capita distribution, except as permitted by secs. 220(b) and 270 of this chapter. The corporation may declare and pay dividends as any other business corporation. Distributions in partial liquidation or liquidation may be made after 100 years after the effective date of this chapter.

Sec. 38.30.270. LIMITS ON DISTRIBUTIONS. Distributions under sec. 220(b) of this chapter are subject to the following provisions:

- (1) eligibility of persons for distributions shall be established by the articles of incorporation;
- (2) eligible persons may make applications for gifts, grants or loans to improve their personal conditions under standards prescribed by the bylaws subject to the approval of the Alaska Native Commission; if the purpose of the application is to allow the applicant to move himself or his family from the village or from Alaska, this is not a bar to approval of the application; approval is not a bar to a subsequent application from the same applicant;
- (3) the corporation shall not distribute more than 160 acres to any person, including all persons in his immediate family, and shall not distribute more than 10 per cent of the land it receives under the Federal Alaska Native Claims Act of 1968 in kind to applicants; the distribution shall be under standards prescribed by the bylaws subject to the approval of the Alaska Native Commission;
- (4) Other than land, the corporation may not distribute as distributions more than 10 per cent of the royalty received from the state under this chapter nor more than 20 per cent of its other capital.

Sec. 38.30.280. DISSOLUTION. During the period of 100 years after the effective date of this chapter, any corporation may be dissolved only if the Alaska Native Commission determines that the dissolution would be in the best interests of the shareholders.

Sec. 38.30.290. MERGER AND CONSOLIDATION. A native group corporation may merge with any other native group corporation, or, together with all other native group corporations of the region, with the appropriate regional native association or corporation. Regional native associations and corporations may merge. All mergers shall be subject to the approval of the Alaska Native Commission.

Sec. 38.30.300. TAXATION. (a) Lands held by a native corporation authorized by this chapter and revenues from these lands shall be taxable except to the extent prohibited by federal law.

(b) Royalties received by the corporation from grants made by the Federal Alaska Native Claims Act of 1968 or this chapter may not be taxed to the corporation.

(c) Dividends paid to shareholders shall be taxable to the shareholder.

(d) Distributions from capital during the period distributions are permitted may not be taxable to the shareholders or other recipients.

(e) Liquidation payments shall be taxable, but only to the extent of gain during the period the property was received and held by the corporation.

Sec. 38.30.310. RULES AND REGULATIONS. The commission may adopt rules and regulations to implement secs. 190 - 300 of this chapter.

#### ARTICLE 4. GENERAL PROVISIONS.

Sec. 38.30.320. CONTRACTS WITH THE ALASKA DIVISION OF LANDS. A native group may contract with the state division of lands for the management of lands, provided that no sale, lease, exchange or other disposal of such lands may be made without the approval of the governing body of the native group. The contract may cover all or a portion of the lands of the native group, shall be terminable upon reasonable notice by either party, and shall provide for the terms of management by reference to law or regulation or otherwise. The Department of Natural Resources is authorized to receive and expend, subject to appropriation, funds necessary to carry out its functions under this section.

Sec. 38.30.330. EXCHANGE OF LANDS. With the consent of, and in accordance with regulations made by the commission, a native group which would otherwise be entitled to exercise preference right selection of native township grants on lands within their area of claims based on aboriginal use and occupancy, which however have been selected by and patented to the state, may obtain such lands, if the same have not been disposed of, by

exchanging lands of equal value with the state.

Sec. 38.30.340. EFFECT OF CHAPTER. (a) The royalty grant and other provisions contained in secs. 140 - 160 and secs. 170(a), (b), (d) and (f), 180, 340 and 350 of this chapter effect a final and complete contract of settlement of all native claims against the state and the natives of Alaska, by accepting any of the royalties granted in those sections, shall be considered to have accepted, approved and ratified the grant and each and every term of the contract settlement and the contract thereby created may not be impaired.

(b) If within six years after the effective date of this chapter none of the royalty is accepted by the natives of Alaska in accordance with (a) of this section, all royalty shares granted under this chapter, including those held in trust by the state, shall become null and void and shall revert to the state.

Sec. 38.30.350. RESTRICTION ON STATE SELECTIONS. (a) If the present land freeze (as defined in sec. 140 of this chapter) imposed by the United States Department of the Interior is unconditionally removed and terminated on or before October 10, 1968, the state may not, for a period of 18 months after the effective date of this chapter, exercise its right of selection under the Alaska Statehood Act outside of that area bounded on the east by 141° west longitude, on the west by 152° west longitude, on the north by the 66° north latitude and on the south by the Pacific Ocean, unless it receives the prior consent of the native group which claims, on the basis of aboriginal use and occupancy, the area to be selected.

Sec. 38.30.360. MUNICIPAL CORPORATIONS. This chapter does not prevent the incorporation of villages as municipal corporations, or the continued existence of villages which are municipal corporations, under state law.

Sec. 38.30.370. SHORT TITLE. This chapter may be cited as the Alaska Native Claims State Settlement Act of 1968.

Sec. 38.30.380. DEFINITIONS. In this chapter

(1) "commission" means the Alaska Native Commission established by this chapter or by federal act, as appropriate;

(2) "native" and "Alaska native" means any Alaskan Indian, Eskimo, or Aleut, including but not limited to any Alaska native whose adoptive parent is not an Alaska native, of at least one-fourth degree Indian, Eskimo, or Aleut blood or, in the absence of proof of a minimum blood quantum, who is regarded as native by the native group in which he claims enrollment, and whose father or mother was regarded as native by that or any other native group;

(3) "native group" means any tribe, band, village, community association, or other identifiable

group of Indians, Aleuts, or Eskimos of Alaska, resident in Alaska, including identifiable groups of residents of a locality which, as such a group, claims Indian title to land in Alaska by virtue of aboriginal use and occupancy at any time; "group" or "native group" may, when appropriate, include not only "native group" but also "regional native association", "regional native corporation" and the "statewide native corporation";

(4) "regional native association" means an association of natives or native groups organized to represent the interests of the natives of a region of Alaska which is greater than the area occupied or formerly occupied by an historic native group; the interests of native groups within the region may be merged in the regional association;

(5) "regional native corporation" means a corporation organized under the laws of Alaska and this chapter, representing the interests of the natives of a particular region of Alaska; the interests of native groups within the region may be merged in the regional native corporation.

\* Sec. 3. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.