

**HOUSE BILL NO. 185**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

**BY REPRESENTATIVE KELLY**

**Introduced: 3/12/09**

**Referred:**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the labor organization position of state agencies and others with**  
2 **regard to construction contracts paid for by state money."**

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

4 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
5 to read:

6 LEGISLATIVE PURPOSES. The legislature declares that the purposes of this Act are  
7 to

8 (1) promote and ensure open competition on construction contracts entered  
9 into by the state's executive branch and construction contracts for which the state provides  
10 financial assistance;

11 (2) maintain the neutrality of the state government toward the labor relations  
12 of contractors on state and state-assisted construction projects;

13 (3) expand job opportunities, especially for small and disadvantaged  
14 businesses;

1 (4) prevent discrimination against contractors and their employees who  
 2 perform work for the state based on whether or not they are affiliated with a labor  
 3 organization; and

4 (5) promote the economic, nondiscriminatory, and efficient administration and  
 5 completion of construction projects of the state and construction projects that receive state  
 6 financial assistance.

7 \* **Sec. 2.** AS 36.90 is amended by adding new sections to read:

8 **Article 5. Neutrality in Position on Labor Organizations.**

9 **Sec. 36.90.400. State construction contracts.** A state agency that procures or  
 10 enters into a construction contract, the construction manager, if any, for the contract  
 11 and the controlling documents for the construction contract may not

12 (1) require a bidder, offeror, contractor, or subcontractor to enter into  
 13 or comply with, or prohibit a bidder, offeror, contractor, or subcontractor from  
 14 entering into or complying with, a labor organization agreement for the construction  
 15 contract or a related construction contract; or

16 (2) discriminate against a bidder, offeror, contractor, or subcontractor  
 17 for

18 (A) signing or complying with an agreement with a labor  
 19 organization with respect to the construction contract or a related construction  
 20 contract; or

21 (B) refusing to sign or comply with a labor organization  
 22 agreement with respect to the construction contract or a related construction  
 23 contract.

24 **Sec. 36.90.410. Grants, agreements, and other assistance.** A state agency  
 25 that awards a grant, provides financial assistance, or enters into an agreement with  
 26 another person, including a governmental agency, for a construction project shall  
 27 require that the controlling documents of the grant recipient, the financial assistance  
 28 recipient, the parties to the agreement, and the construction manager, if any, for the  
 29 construction contract do not

30 (1) require or prohibit a bidder, offeror, contractor, or subcontractor  
 31 from entering into or adhering to an agreement with a labor organization for the

1 construction contract or a related construction contract; or

2 (2) discriminate against a bidder, offeror, contractor, or subcontractor  
3 for

4 (A) signing or complying with a labor organization agreement  
5 with respect to the construction contract or a related construction contract; or

6 (B) refusing to sign or comply with a labor organization  
7 agreement with respect to the construction contract or a related construction  
8 contract.

9 **Sec. 36.90.430. Failure to comply.** If a state agency, a recipient of a grant or  
10 financial assistance from a state agency, a party to an agreement with a state agency,  
11 or a construction manager acting on behalf of the state agency, the recipient, or the  
12 other party, fails to comply with AS 36.90.400 or 36.90.410, the state agency  
13 procuring or entering into the construction contract, grant, financial assistance  
14 agreement, or other agreement shall take the action, consistent with law, that the state  
15 agency determines to be appropriate.

16 **Sec. 36.90.440. Making of exemptions.** (a) A state agency may exempt a  
17 procurement, contract, subcontract, grant, financial assistance agreement, or other  
18 agreement from AS 36.90.400 or 36.90.410 if the state agency determines that the  
19 exemption is necessary in order to avoid an imminent threat to public health or safety.

20 (b) A state agency may not base a determination under (a) of this section on  
21 the existence or possibility of a dispute with a labor organization concerning

22 (1) a contractor or a subcontractor who has not signed or is not  
23 complying with a labor organization agreement; or

24 (2) construction employees who are not members of or affiliated with a  
25 labor organization.

26 **Sec. 36.90.450. Exemptions.** The provisions of AS 36.90.400 - 36.90.495 do  
27 not apply to a construction contract

28 (1) for a natural gas pipeline by a licensee under AS 43.90; or

29 (2) if money from the federal government is being used for the  
30 construction project and the federal government requires that a labor organization  
31 agreement be used.

1           **Sec. 36.90.480. Regulations.** The Department of Administration may adopt  
2 regulations to implement AS 36.90.400 - 36.90.495.

3           **Sec. 36.90.485. Rule of construction.** The provisions of AS 36.90.410 may  
4 not be construed to prohibit a contractor or subcontractor from voluntarily entering  
5 into or adhering to an agreement with a labor organization for a construction contract.

6           **Sec. 36.90.490. Definitions.** In AS 36.90.400 - 36.90.495,

7                   (1) "construction" has the meaning given in AS 36.30.990;

8                   (2) "controlling documents" means bid specifications, contracts, and  
9 other documents that control the procurement and implementation of a contract;

10                  (3) "labor organization" means an organization that engages in  
11 collective bargaining or deals with employers concerning grievances, terms, or  
12 conditions of employment, or for other mutual aid or protection of employees;

13                  (4) "labor organization agreement" means an agreement with a labor  
14 organization;

15                  (5) "state agency" means a department, institution, board, commission,  
16 division, authority, public corporation, or other administrative unit of the executive  
17 branch of state government, including the University of Alaska, Alaska Railroad  
18 Corporation, Alaska Housing Finance Corporation, Alaska Aerospace Development  
19 Corporation, and Alaska Commercial Fishing and Agriculture Bank.

20           **Sec. 36.90.495. Short title.** AS 36.90.400 - 36.90.495 may be cited as the  
21 Government Neutrality in Contracting Act.

22 \* **Sec. 3.** AS 37.05.318 is amended to read:

23           **Sec. 37.05.318. Further regulations prohibited.** Notwithstanding AS 44.62  
24 (Administrative Procedure Act), AS 37.07 (Executive Budget Act), and other  
25 provisions of this chapter, a state agency may not adopt regulations or impose  
26 additional requirements or procedures to implement, interpret, make specific, or  
27 otherwise carry out the provisions of AS 37.05.315 - 37.05.317 unless required by the  
28 federal government for participation in federal programs, **and except as authorized**  
29 **by AS 36.90.480.**

30 \* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to  
31 read:

1           APPLICABILITY. This Act does not apply to a construction contract, grant, financial  
2 assistance agreement, or other agreement that is entered into before the effective date of this  
3 Act. In this section, "construction" has the meaning given in AS 36.90.490, enacted by sec. 2  
4 of this Act.