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CS FOR SENATE BILL NO. 170(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR ELLIS

A BILL

FOR AN ACT ENTITLED

1 **"An Act modifying the Alaska unemployment insurance statutes to comply with the**
2 **requirements of the federal economic stimulus bill by redefining the base period for**
3 **determining eligibility for unemployment benefits; relating to contributions, interest,**
4 **penalties, and payments under the Alaska Employment Security Act; and providing for**
5 **an effective date."**

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

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

9 LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that
10 (1) P.L. 106-544 (Consolidated Appropriations Act, 2001) amended 26 U.S.C.
11 3301 - 3311 (Federal Unemployment Tax Act) to require certified state unemployment
12 insurance programs to provide federally recognized tribes and their wholly owned
13 subdivisions, subsidiaries, or businesses the option to be a reimbursable employer;

1 (2) the state's unemployment insurance program has been certified by the
2 United States Department of Labor;

3 (3) as a certified program, the Department of Labor and Workforce
4 Development receives federal funds to administer its unemployment insurance program;

5 (4) because this state has a certified program, Alaska employers receive a tax
6 credit of up to 90 percent of the federal unemployment tax that employers are required to pay;

7 (5) to maintain its certified status, this state must conform AS 23.20 (Alaska
8 Employment Security Act) with the requirements of 26 U.S.C. 3301 - 3311 (Federal
9 Unemployment Tax Act);

10 (6) failure to bring AS 23.20 (Alaska Employment Security Act) into
11 compliance with federal legislation could result in the loss of approximately \$20,000,000 in
12 administrative funding under 26 U.S.C. 3301 - 3311 (Federal Unemployment Tax Act) and
13 the loss of approximately \$111,000,000 in tax credits under 26 U.S.C. 3301 - 3311 (Federal
14 Unemployment Tax Act) to employers in this state;

15 (7) of the 33 states that have federally recognized tribes, Alaska is the only
16 state that has not yet passed conforming legislation; and

17 (8) to bring AS 23.20 (Alaska Employment Security Act) into conformity with
18 26 U.S.C. 3301 - 3311 (Federal Unemployment Tax Act), the legislature finds that it is
19 necessary to amend AS 23.20 to allow federally recognized tribes and their wholly owned
20 subdivisions, subsidiaries, or businesses the option to be a reimbursable employer.

21 (b) It is the intent of the legislature that this Act not alter or expand in any way the
22 governmental relationship between federally recognized tribes and the state.

23 * **Sec. 2.** AS 23.20.277(b) is amended to read:

24 (b) At the end of each calendar quarter, or at the end of any other period as
25 determined by the department, the department shall bill each government entity,
26 **federally recognized tribe,** nonprofit organization, or group of nonprofit
27 organizations that has elected to make payments in place of contributions, for benefits
28 paid during the quarter or other prescribed period that are attributable to service in the
29 employ of the government entity, **federally recognized tribe,** nonprofit organization,
30 or group. In the case of nonprofit organizations and groups of nonprofit organizations,
31 the amount billed is an amount equal to the full amount of regular benefits plus

1 extended benefits that are not reimbursable by the federal government. In the case of a
2 government entity or federally recognized tribe, the amount billed is an amount
3 equal to the full amount of the regular benefits plus the full amount of the extended
4 benefits paid.

5 * **Sec. 3.** AS 23.20.277(e) is amended to read:

6 (e) At the end of each taxable year, the department shall determine whether
7 the total of payments for the year made by a nonprofit organization or group of
8 nonprofit organizations is less than, or in excess of, the total amount of regular
9 benefits plus extended benefits not reimbursable by the federal government paid to
10 individuals during the taxable year based on wages attributable to service in the
11 employ of the nonprofit organization or group. In the case of a government entity or
12 federally recognized tribe that has elected to make payments under this section, the
13 department shall determine whether the total of payments for the year is less than, or
14 in excess of, the total amount of regular benefits plus the total amount of extended
15 benefits as determined in this subsection. **If** [EACH ORGANIZATION OR GROUP
16 WHOSE] total payments for the taxable year are less than the amount so determined,
17 the employer is liable for payment of the unpaid balance to the fund in accordance
18 with (f) of this section. If the total payments exceed the amount so determined for the
19 taxable year, all or part of the excess may, at the discretion of the department, be
20 refunded from the fund or retained in the fund as part of the payments that may be
21 required for the next taxable year.

22 * **Sec. 4.** AS 23.20.277(f) is amended to read:

23 (f) Payment of any bill rendered under (b) or (c) of this section shall be made
24 not later than 30 days after the bill was mailed to the last known address of the
25 nonprofit organization, group of nonprofit organizations, government entity, or
26 federally recognized tribe or was otherwise delivered to it, unless there has been an
27 application for review and redetermination in accordance with (h) of this section.

28 * **Sec. 5.** AS 23.20.277(g) is amended to read:

29 (g) Payments made by any nonprofit organization, group of nonprofit
30 organizations, government entity, or federally recognized tribe under the
31 provisions of this section may not be deducted or deductible, in whole or in part, from

1 the remuneration of an individual [INDIVIDUALS] in the employ of the
2 organization, group of organizations, government entity, or federally recognized
3 tribe; nor may contributions be required of an employee on the basis of wages paid to
4 that employee for services performed by the employee in employment for a nonprofit
5 organization, group of nonprofit organizations, government entity, or federally
6 recognized tribe that [WHICH] makes an election to become liable for payments in
7 place of contributions under AS 23.20.276 - 23.20.278 [AS 23.20.276], and the wages
8 are paid during the period of election.

9 * **Sec. 6.** AS 23.20.277(h) is amended to read:

10 (h) The amount due, specified in a bill from the department, is conclusive on
11 the employer [ORGANIZATION] unless, not later than 30 days after the bill was
12 mailed to its last address of record or otherwise delivered to it, the employer
13 [ORGANIZATION] files an application for redetermination by the department, setting
14 out the grounds for the application. The department shall promptly review and
15 reconsider the bill and shall [THEREAFTER] issue a redetermination in any case in
16 which an application for redetermination has been filed. Any redetermination is
17 conclusive on the employer [ORGANIZATION] unless, not later than 30 days after
18 the redetermination was mailed to its last address of record or otherwise delivered to
19 it, the employer [ORGANIZATION] files an appeal to the commissioner, setting out
20 the grounds for the appeal. Proceedings on appeal to the commissioner from the
21 amount of a bill rendered under this subsection or a redetermination of the amount
22 shall be in accordance with AS 23.20.410 - 23.20.470.

23 * **Sec. 7.** AS 23.20.277(j) is amended to read:

24 (j) At the discretion of the department, a nonprofit organization, group of
25 nonprofit organizations, government entity, or federally recognized tribe that
26 elects to become liable for payments in place of contributions under AS 23.20.276 -
27 23.20.278 [AS 23.20.276] is required, within 30 days after the effective date of its
28 election, to execute and file with the department a surety bond approved by the
29 department or it may elect instead to deposit with the department money or securities.
30 The amount of the bond or deposit shall be determined by the department in
31 accordance with regulations adopted by the department.

1 * **Sec. 8.** AS 23.20.277(k) is amended to read:

2 (k) If a nonprofit organization, group of nonprofit organizations,
3 government entity, or federally recognized tribe is delinquent in making payments
4 in place of contributions as required under this section and after having been given
5 notice, the department, after giving notice to the employer who is delinquent, shall
6 [MAY] terminate that employer's [ORGANIZATION'S] election to make payments
7 in place of contributions until a time provided by regulations adopted by the
8 department [AS OF THE BEGINNING OF THE NEXT TAXABLE YEAR, AND
9 THE TERMINATION IS EFFECTIVE FOR THAT AND THE NEXT TAXABLE
10 YEAR].

11 * **Sec. 9.** AS 23.20.277(l) is amended to read:

12 (l) Each employer that is liable for payments in place of contributions shall
13 pay to the department for the fund the amount of regular benefits plus the extended
14 benefits not reimbursable by the federal government paid to individuals that are
15 attributable to service in the employ of that employer. However, a government entity
16 or federally recognized tribe that has elected to make payments under this section is
17 liable for the amount of regular benefits plus the full amount of extended benefits that
18 are attributable to service in the employ of that entity or tribe. If benefits paid to an
19 individual are based on wages paid by more than one employer and one or more of
20 these employers is liable for payments in place of contributions, the amount payable to
21 the fund by each employer that is liable for payments shall be determined by the
22 department in accordance with regulations adopted by the department.

23 * **Sec. 10.** AS 23.20.277 is amended by adding a new subsection to read:

24 (m) The department may not approve an election to make payments in place
25 of contributions if, at the time of the election, a nonprofit organization, group of
26 nonprofit organizations, government entity, or federally recognized tribe is delinquent
27 in making contributions under AS 23.20.165.

28 * **Sec. 11.** AS 23.20.278 is amended to read:

29 **Sec. 23.20.278. Financing benefits paid to employees of the state, [AND**
30 **ITS] political subdivisions of the state, or a federally recognized tribe. A federally**
31 **recognized tribe, a political subdivision, or a department, division, or other agency of**

1 the state subject to this chapter, under AS 23.20.525(a)(14) [AS 23.20.525(a)(4) AND
2 (14)], shall pay contributions under the provisions of AS 23.20.165, unless it elects to
3 reimburse the department for the unemployment compensation fund according to the
4 provisions applicable to nonprofit organizations, government entities, or federally
5 recognized tribes under AS 23.20.276 and 23.20.277.

6 * **Sec. 12.** AS 23.20.381(j) is amended to read:

7 (j) Benefits based on services described in (e) and (h) of this section shall be
8 denied under (e), (h), and (i) of this section to an individual who performed those
9 services in an educational institution while in the employ of an educational service
10 agency. In this subsection, "educational service agency" means a governmental
11 agency, [OR] governmental entity, or federally recognized tribe that is established
12 and operated exclusively for the purpose of providing services to one or more
13 educational institutions [INSTITUTION].

14 * **Sec. 13.** AS 23.20.520(3) is amended to read:

15 (3) "base period" means the first four of the last five completed
16 calendar quarters immediately preceding the first day of an individual's benefit year,
17 except that if an individual would not otherwise be eligible for unemployment
18 compensation because of the use of a base period that does not include the most
19 recently completed calendar quarter immediately preceding the first day of an
20 individual's benefit year, "base period" means, and eligibility shall be
21 determined using, the four most recently completed calendar quarters before the
22 start of the benefit year;

23 * **Sec. 14.** AS 23.20.520(10) is amended to read:

24 (10) "employing unit" means one or more departments or other
25 agencies of the state, a political subdivision of the state, a federally recognized tribe,
26 an individual, or a type of organization, partnership, association, trust, estate, joint
27 trust company, insurance company, or domestic or foreign corporation, or the receiver,
28 referee in bankruptcy, trustee, or successor of one of these, or the legal representative
29 of a deceased person, that [WHICH] has or [, AFTER JANUARY 1, 1937,] had one
30 or more individuals performing service for it in the state; an individual performing
31 services in the state for an employing unit that [WHICH] maintains two or more

1 separate establishments in the state is considered as employed by a single employing
2 unit for the purposes of this chapter; notwithstanding any provision in this chapter, any
3 employing unit **that** [WHICH] employs individuals whose services must be covered
4 by the unemployment insurance laws of this state [AFTER DECEMBER 31, 1971] as
5 a condition of approval of the unemployment insurance laws of this state under 26
6 U.S.C. 3304(a) (Internal Revenue Code of 1954), as amended, will be considered an
7 employer as to those individuals and is subject to contributions on all wages paid
8 [AFTER DECEMBER 31, 1971,] or reimbursement payments to cover benefits paid
9 based on services performed [AFTER DECEMBER 31, 1971], depending on the
10 applicable law;

11 * **Sec. 15.** AS 23.20.520(14) is amended to read:

12 (14) "institution of higher education" means an educational institution
13 **that** [WHICH]

14 (A) admits as regular students only individuals having a
15 certificate of graduation from a high school, or the recognized equivalent of a
16 high school graduation certificate;

17 (B) is legally authorized in the state in which it is located to
18 provide a program of education beyond high school;

19 (C) provides an educational program for which it awards a
20 bachelor's or higher degree, or provides a program **that** [WHICH] is
21 acceptable for full credit toward either degree, a program of postgraduate or
22 postdoctoral studies, or a program of training to prepare students for gainful
23 employment in a recognized occupation; and

24 (D) **is operated by a federally recognized tribe or** is a public
25 or other nonprofit institution;

26 * **Sec. 16.** AS 23.20.520 is amended by adding a new paragraph to read:

27 (22) "federally recognized tribe"

28 (A) means a tribe that is recognized by the United States
29 Secretary of the Interior to exist as an Indian tribe under 25 U.S.C. 479a
30 (Federally Recognized Indian Tribe List Act of 1994);

31 (B) includes any subdivision, subsidiary, or business enterprise

1 wholly owned by a federally recognized tribe.

2 * **Sec. 17.** AS 23.20.525(a)(14) is amended to read:

3 (14) service performed [AFTER DECEMBER 31, 1977,] in the
4 employ of this state or any of its instrumentalities or any political subdivision of this
5 state or any of its instrumentalities or any instrumentality of any of the foregoing and
6 one or more other states or political subdivisions, **or in the employ of a federally**
7 **recognized tribe**, if that service is excluded from "employment" under 26 U.S.C.
8 3306(c)(7) (Federal Unemployment Tax Act, Internal Revenue Code) and is not
9 excluded from "employment" under **AS 23.20.526(d)** [AS 23.20.526(d)(8)];

10 * **Sec. 18.** AS 23.20.526(d) is amended to read:

11 (d) For the purposes of **AS 23.20.525(a)(6) and (14)** [AS 23.20.525(a)(4) - (6)
12 AND (14)], the term "employment" does not apply to service performed

13 (1) by a duly ordained, commissioned, or licensed minister of a church
14 in the exercise of the person's ministry or by a member of a religious order in the
15 exercise of duties required by the order;

16 (2) in a facility conducted for the purpose of carrying out a program of
17 rehabilitation for individuals whose earning capacity is impaired by age or physical or
18 mental deficiency or injury or providing remunerative work for individuals who,
19 because of their impaired physical or mental capacity, cannot be readily absorbed in
20 the competitive labor market by an individual receiving the rehabilitation or
21 remunerative work;

22 (3) as part of an unemployment work-relief or work-training program
23 assisted or financed in whole or in part by **a federally recognized tribe or** any federal
24 agency or any agency of a state or political subdivision of the state, by an individual
25 receiving work relief or work training;

26 (4) for a state hospital by an inmate of a prison or correctional
27 institution;

28 (5) in the employ of a school, college, or university if the service is
29 performed by a student who is enrolled and is regularly attending classes at the school,
30 college, or university;

31 (6) by an individual under the age of 22 who is enrolled at a nonprofit

1 or public educational institution that normally maintains a regular faculty and
2 curriculum and normally has a regularly organized body of students in attendance at
3 the place where its educational activities are carried on as a student in a full-time
4 program, taken for credit at the institution, that combines academic instruction with
5 work experience if the service is an integral part of the program and the institution has
6 so certified to the employer, except that this paragraph does not apply to service
7 performed in a program established for or on behalf of an employer or group of
8 employers;

9 (7) in the employ of a hospital if the service is performed by a patient
10 of the hospital, as defined in AS 23.20.520;

11 (8) in the employ of the state or a political subdivision of the state if
12 the service is performed by an individual in the exercise of duties

13 (A) as a judicial officer, the governor, the lieutenant governor,
14 a person hired or appointed as the head or deputy head of a department in the
15 executive branch, a person hired or appointed as the director of a division of a
16 department in the executive branch, an assistant to the governor, a chair or
17 member of a state commission or board, state investment officers and the state
18 comptroller in the Department of Revenue, an appointed or elected municipal
19 officer, any other elected official, the fiscal analyst of the legislative finance
20 division, the legislative auditor of the legislative audit division, the executive
21 director of the Legislative Affairs Agency, and the directors of the divisions
22 within the Legislative Affairs Agency;

23 (B) as a member of the Alaska Army National Guard or Alaska
24 Air National Guard or Alaska Naval Militia;

25 (C) as an employee serving on only a temporary basis in case
26 of fire, storm, snow, earthquake, flood, or similar emergency; or

27 (D) as an election official or election worker if the amount of
28 remuneration received by the individual during the calendar year for services
29 as an election official or election worker is less than \$1,000;

30 (9) in the employ of

31 (A) a church or a convention or association of churches; or

(B) an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or a convention or association of churches;

(10) in the employ of a federally recognized tribe in this state if the service is performed by an individual in the exercise of duties as an officer of the federally recognized tribe and meets the requirements of 26 U.S.C. 3309(b)(3)(E) (Federal Unemployment Tax Act, Internal Revenue Code).

* **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to read:

REVISOR'S INSTRUCTION. The revisor of statutes shall change the heading of AS 23.20.277 from "Reimbursement payments by nonprofit organizations and government entities" to "Reimbursement payments by nonprofit organizations, government entities, and federally recognized tribes."

* **Sec. 20.** Section 13 of this Act takes effect January 1, 2010.

* **Sec. 21.** Sections 1 - 12 and 14 - 19 of this Act take effect immediately under AS 01.10.070(c).