



LAWS OF ALASKA

1972

Source

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Chapter No.

191

AN ACT

Relating to the leasing of state land for the purposes of oil and gas pipeline construction and operation and oil and gas exploration and production; and providing for an effective date.

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

* Section 1. AS 38 is amended by adding a new chapter to read:

CHAPTER 40. LOCAL HIRE UNDER STATE LEASES.

Sec. 38.40.010. STATE POLICY. It is the policy of the state in the development of its natural resources to seek and accomplish the development of its human resources by providing maximum employment opportunities for its residents in conjunction with natural resource management.

Sec. 38.40.020. LEGISLATIVE FINDINGS. The legislature finds that Alaska has a uniquely high unemployment record among the states due both to cultural and geographical migration barriers which record has existed for many years and which experts have attested to will persist without drastic governmental intervention. The legislature further finds that employment opportunities which do from time to time occur in the areas of the state which suffer from the largest chronic unemployment problem are nonrecurring and usually relate to the exploitation of the state's natural resources and that the state has an obligation to assure that the benefits of this employment enure to the benefit of residents of the state.

Sec. 38.40.030. RESIDENT HIRE. (a) In order to create, protect and preserve the right of Alaskan residents to employment the commissioner of natural resources shall incorporate into all oil and gas leases, easements or right-of-way permits for oil or gas pipeline purposes, unitization agreements or any renegotiation of any of the

preceding to which the state is a party provisions requiring the lessee to comply with applicable laws and regulations with regard to hire of Alaskan residents. The commissioner shall include a provision requiring the hiring of qualified Alaskan residents, a provision prohibiting discrimination against Alaskan residents and, when in the determination of the commissioner it is practicable, a provision requiring compliance with the Alaska Plan, all in accordance with the provisions of this chapter.

(b) In implementing this chapter the commissioner of labor shall determine the amount of work which must be performed by qualified Alaskan residents under this chapter. In making this determination the commissioner shall consider the nature of the work, the classification of workers, availability of residents, the willingness of residents to perform the work and shall require the maximum feasible effort by employers to fill available jobs with qualified Alaskans.

(c) In implementing this chapter the commissioner of labor may require compliance with the terms and conditions of the Alaska Plan as approved by the United States Secretary of Labor to the extent feasible.

(d) In implementing this chapter the commissioner of labor shall adopt regulations prohibiting discrimination against Alaskan residents in hiring practices.

Sec. 38.40.040. REPORTING PROVISIONS. (a) Persons obligated to meet resident hiring requirements under this chapter shall comply with those reporting provisions which the commissioner of labor determines are reasonably necessary to carry out the purposes and intent of this chapter.

(b) The Department of Labor shall maintain a file consisting of the names of qualified Alaskan residents seeking the type of employment covered by this chapter and resident Alaskans enrolled in approved on-the-job training programs who are qualified to perform the work required under this chapter.

Sec. 38.40.050. APPLICABILITY OF CHAPTER. (a) The provisions of this chapter apply to all employment which is a result of oil and gas leases, easements, leases or right-of-way permits for oil or gas pipeline purposes, unitization agreements or any renegotiation of any of the preceding to which the state is a party after the effective date of this chapter; however, the activity which generates the employment must take place inside the state and it must take place either on the property under the control of the person subject to this chapter or be directly related to activity taking place on the property under his control and the activity must be performed directly for the person subject to this chapter or his contractor or a subcontractor of his contractor or a supplier of his contractor or subcontractor.

(b) The Department of Labor shall determine a dollar amount value of each project or activity covered by this chapter and set a minimum dollar figure below which this

chapter does not apply. In arriving at this minimum dollar figure the department shall consider the benefit which enures to Alaskan residents versus administrative and enforcement costs. The department, by appropriate investigation and ruling, shall insure that projects or activities within projects are not artificially divided to prevent coverage under this chapter. The burden is upon the person covered by this chapter to show that artificial division has or is not occurring.

Sec. 38.40.060. REGULATIONS AND HEARINGS. (a) The Departments of Labor and Natural Resources shall promulgate appropriate regulations to implement the provisions of this chapter. Regulations and hearings promulgated or conducted under this chapter are subject to the Administrative Procedure Act (AS 44.62) except as provided in (b) of this section.

(b) It shall be the employer's responsibility to determine and adjudge the work qualifications of the prospective employee. A person who is qualified and has been rejected may request a hearing before the Department of Labor to determine if the potential employer is in compliance with the provisions of this chapter. The department shall set a date for and hold a hearing on the question within 10 days of receipt of the request unless the person applying requests a longer period of time.

Sec. 38.40.070. PENALTIES. (a) The Department of Natural Resources, upon certification of noncompliance of a person by the Department of Labor, after appropriate investigations and hearings, may, subject to judicial review, impose any of the following appropriate penalties:

(1) increase in rental or other forms of compensation received by the state by a factor of no more than 10 but in no event to exceed \$100,000;

(2) require the halting of all or any portion of project operations;

(3) stop payments on any or all existing contracts with the state;

(4) remove, for an appropriate period of time the ability of the person to contract with the state or any of its political subdivisions; or

(5) require a noncompliance payment in liquidated damages to the state in an amount equal to seven and one-half times the number of hours required, but not worked by Alaskan residents, times the going wage or salary rate for the particular job or activity involved.

(b) Notwithstanding the provisions of (a) of this section, no penalty may be imposed against a lessee because of noncompliance with the provisions of this chapter by a supplier of the lessee's contractor or subcontractor if the lessee has received and retained a certificate from the supplier certifying that the supplier is in compliance with the provisions of this chapter. No certificate from the supplier is a bar to the imposition

of a penalty against a lessee unless the certificate was made (1) upon oath or affirmation, (2) on forms prepared by the commissioner of labor furnished to the lessee before the date of the supplier's noncompliance, and the lessee has furnished a copy of the certificate to the commissioner of labor together with such additional information as the commissioner may require, and (3) by a supplier who is not himself a contractor or subcontractor of the lessee.

(c) The commissioner of labor, by regulation adopted under this chapter, may designate the intervals within which certificates of suppliers must be furnished under this section in order to constitute a bar against the imposition of penalties.

Sec. 38.40.080. INJUNCTIVE RELIEF. The Department of Labor or the Department of Natural Resources, in addition to the imposition of any penalties under sec. 70 of this chapter, may seek injunctive relief against a person not in compliance with the provisions of this chapter; the Department of Natural Resources may seek injunctive relief to enforce penalties imposed under sec. 70 of this chapter.

Sec. 38.40.090. DEFINITIONS. In this chapter "resident" means a person who

(1) except for brief intervals or military service has been physically present in the state for a period of one year immediately prior to the time he enters into a contract of employment; and

(2) maintains a place of residence within the state; and

(3) has established a residency for voting purposes within the state; and

(4) has not, within the period of required residency, claimed residency in another state; and

(5) shows by all attending circumstances that his intent is to make Alaska his permanent residence.

* Sec. 2. If a court of competent jurisdiction invalidates any of the criteria or tests of residency in sec. 90 of this chapter, the term "resident" then means a person who satisfies the remaining criteria or tests not invalidated, and this chapter shall be administered and enforced accordingly.

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