

HOUSE BILL NO. 185

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES KELLY, Gatto, Johnson, Peggy Wilson, Coghill, Ramras, Millett

Introduced: 3/12/09

Referred: Labor and Commerce, Finance

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.