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Referred: Labor & Management
and Commerce

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

CS HOUSE BILL NO. 701 Am

2
3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to public construction contracts."

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

8 * Section 1. AS 36.05 is amended by adding a new section to read:

9 Sec. 36.05.015. APPLICABILITY TO MOBILE, MODULAR OR PREFABRICATED
10 BUILDING UNITS. (a) A manufacturer contracting with the state or a
11 political subdivision of the state for the manufacture and sale within
12 the state of made-to-order mobile, modular, or prefabricated building
13 units, which are purchased by the state or a political subdivision of
14 the state to be used as a substitute for the on-site construction of
15 permanent buildings, shall pay not less than the prevailing wage for
16 work of a similar nature in the region in which the manufacturing is
17 done.

18 (b) The provisions of (a) of this section apply to any contract
19 between a contractor or subcontractor with the state and a manufacturer
20 who would be covered by subsection (a) if contracting directly with the
21 state.

22 * Sec. 2. AS 36.05.030 is amended to read:

23 Sec. 36.05.030. AUTHORITY. (a) The Department of Labor [PUBLIC
24 WORKS] has the authority to determine the prevailing wage, and whether
25 or not secs. 10 - 110 [40] of this chapter are being violated. The
26 department may when necessary for the enforcement of secs. 10 - 110

27 (1) conduct investigations and hold hearings concerning
28 wages;

29 (2) compel the attendance of witnesses and the production

1 of books, papers and documents;

2 (3) promulgate regulations.

3 (b) If a person violates secs. 10 - 110 [40] of this chapter the
4 attorney general shall, when requested [INSTRUCTED] by the Department of
5 Labor, [PUBLIC WORKS TAKE IMMEDIATE STEPS TO] enforce these provisions.

6 * Sec. 3. AS 36.05 is amended by adding a new section to read:

7 Sec. 36.05.035. NOTIFICATION OF CONTRACT AWARDS. Upon awarding
8 a public construction contract, the state or a political subdivision of
9 the state shall

10 (1) immediately notify the commissioner of labor of the
11 amount of the contract, the effective date of the contract, the identity
12 of the contractor and all subcontractors, the site or sites of
13 construction and provide a project description; and

14 (2) verify that the bonding requirements of ch. 25 of this
15 title have been met.

16 * Sec. 4. AS 36.05.040 is repealed and re-enacted to read:

17 Sec. 36.05.040. FILING SCHEDULE OF EMPLOYEES, WAGES PAID AND OTHER
18 INFORMATION. All contractors or subcontractors who perform work on a
19 public construction contract for the state or for a political sub-
20 division of the state shall, before the Wednesday of each week, file
21 with the Department of Labor a sworn affidavit for the previous week,
22 setting out in detail the number of men employed, wages paid, job
23 classification of each employee, hours worked each day and week, and
24 other information which the Department of Labor requires.

25 * Sec. 5. AS 36.05.050(a) is amended to read:

26 (a) Eight hours in any calendar day is a day's work on work done
27 for the state or a political subdivision of [MUNICIPALITY WITHIN] the
28 state, subject to (b) of this section.

29 * Sec. 6. AS 36.05.050(b) is amended to read:

1 (b) Work done by contract or subcontract on public construction
2 [A BUILDING OR IMPROVEMENT, OR WORK ON A ROAD, BRIDGE, STREET, ALLEY OR
3 BUILDING] for the state or a political subdivision of the state
4 [MUNICIPALITY] shall be done under this section, except that in cases
5 of extraordinary emergency the hours for work may be extended. For
6 this purpose, this section is made a part of all contracts, sub-
7 contracts or agreements for work done for the state or a political
8 subdivision of [MUNICIPALITY IN] the state.

9 * Sec. 7. AS 36.05.060 is amended to read:

10 Sec. 36.05.060. PENALTY FOR VIOLATION [OF SEC. 50] OF THIS
11 CHAPTER. A contractor [, SUBCONTRACTOR, OR AGENT OF A CONTRACTOR OR
12 SUBCONTRACTOR, FOREMAN OR EMPLOYER,] who violates [SEC. 50 OF] this
13 chapter, is guilty of a misdemeanor, and upon conviction is punishable
14 by a fine of not less than \$100 [\$50] nor more than \$2,000 [\$500], or
15 by imprisonment for not less than 10 days nor more than 90 days, or by
16 both. Each day a violation exists constitutes a separate offense.

17 * Sec. 8. AS 36.05.070(a) is amended to read:

18 (a) The advertised specifications for a public construction
19 contract exceeding \$2,000 to which the state or a political subdivision
20 of the state is a party [FOR THE CONSTRUCTION, ALTERATION, OR REPAIR,
21 INCLUDING PAINTING AND DECORATING OF PUBLIC BUILDINGS OR PUBLIC WORKS
22 OF THE STATE OR A POLITICAL SUBDIVISION,] which requires or involves the
23 employment of mechanics, laborers, or field surveyors shall contain a
24 provision stating the minimum wages to be paid various classes of
25 laborers, mechanics, or field surveyors.

26 * Sec. 9. AS 36.05.070(b) is repealed.

27 * Sec. 10. AS 36.05.070(c)(4) is amended to read:

28 (4) The state or a political subdivision shall [MAY]
29 withhold so much of the accrued payments as is necessary to pay to

1 laborers, mechanics, or field surveyors employed by the contractor or
2 subcontractors the difference between (A) the rates of wages required
3 by the contract to be paid laborers, mechanics, or field surveyors on
4 the work, and (B) the rates of wages in fact received by laborers,
5 mechanics or field surveyors.

6 * Sec. 11. AS 36.05.090(a) is amended to read:

7 (a) The state disbursing officer in the case of a state contract
8 and the local fiscal officer in the case of a [LOCAL] political sub-
9 division contract shall pay directly to laborers, mechanics or field
10 surveyors from accrued payments withheld under the terms of the contract
11 the wages due laborers, mechanics or field surveyors under sec. 70 of
12 this chapter.

13 * Sec. 12. AS 36.05.090(b) is amended to read:

14 (b) The state disbursing officer or the local fiscal officer
15 shall distribute to all departments of the state government and to all
16 political subdivisions of the state [LOCAL GOVERNMENTAL BODIES] a list
17 giving the names of persons who have disregarded their obligations to
18 employees [AND SUBCONTRACTORS]. No person [CONTRACT MAY BE AWARDED TO
19 THE PERSONS] appearing on this list and no [OR TO A] firm, corporation,
20 partnership or association in which the person has an interest may work
21 as a contractor or subcontractor on a public construction contract for
22 the state or a political subdivision of the state until three years
23 after the date of publication of the list.

24 If the accrued payments withheld under the contract are in-
25 sufficient to reimburse all the laborers, mechanics, or field surveyors
26 with respect to whom there has been a failure to pay the wages required
27 under sec. 70 of this chapter, the laborers, mechanics or field
28 surveyors have the right of action or intervention or both against the
29 contractor and his sureties conferred by law upon persons furnishing

1 labor or materials, and in the proceedings it is not a defense that the
2 laborers, mechanics or field surveyors accepted or agreed to accept
3 less than the required rate of wages or voluntarily made refunds.

4 * Sec. 13. AS 36.05.100 is amended to read:

5 Sec. 36.05.100. EFFECT OF SECS. 70 - 110 [120] OF THIS CHAPTER ON
6 OTHER LAWS. Sec. 70 - 110 [120] of this chapter do not supersede or
7 impair authority granted by state law to provide for the establishment
8 of specific wage rates.

9 * Sec. 14. AS 36.05.120 is repealed.

10 * Sec. 15. AS 36.10.010 is amended to read:

11 Sec. 36.10.010. EMPLOYMENT PREFERENCE. In the performance of
12 contracts let by the state or a political subdivision of the state
13 [, BOROUGHs, CITIES AND SCHOOL DISTRICTS] for construction, repair,
14 preliminary surveys, engineering studies or maintenance work, 95 per
15 cent residents shall be employed where they are available and qualified.
16 If 10 or fewer persons are employed under the contract, then 90 per
17 cent residents shall be employed where they are available and qualified.
18 In all cases of public works projects, preference shall be given to
19 residents.

20 * Sec. 16. AS 36.10 is amended by adding a new section to read:

21 Sec. 36.10.015. APPLICABILITY TO MOBILE, MODULAR OR PREFABRICATED
22 BUILDING UNITS. (a) A manufacturer contracting with the state or a
23 political subdivision of the state, for the manufacture and sale within
24 the state of made-to-order mobile, modular, or prefabricated building
25 units which are purchased by the state or a political subdivision of
26 the state to be used as a substitute for the on-site construction of
27 permanent buildings, shall meet the residential employment preference
28 specified in sec. 10 of this chapter.

29 (b) The provisions of sec. 10 apply to any contract between a

1 contractor or subcontractor with the state and a manufacturer who would
2 be covered under (a) of this section if contracting directly with the
3 state.

4 * Sec. 17. AS 36.10.050 is amended to read:

5 Sec. 36.10.050. EMPLOYMENT OF ALIENS. Contractors may not employ
6 an alien on public works projects of the state or a political sub-
7 division of the state [, BOROUGH, CITY, AND SCHOOL DISTRICT PUBLIC WORKS
8 PROJECTS] unless the alien worker has in good faith declared his
9 intention of becoming a citizen, and meets the residence requirement
10 set out in sec. 110(3) of this chapter.

11 * Sec. 18. AS 36.10.090 is amended to read:

12 Sec. 36.10.090. PUBLICATION OF LIST OF VIOLATORS. The
13 commissioner of labor shall distribute to all departments and agencies
14 of the state government and to all political subdivisions of the state
15 [LOCAL GOVERNMENTS] a list of the names of persons or firms convicted
16 of a violation of this chapter. No [CONTRACT MAY BE AWARDED TO A]
17 person appearing on the list and no [OR TO A] firm, corporation,
18 partnership or association in which the person has an interest may work
19 as a contractor or subcontractor on a public construction contract for
20 the state or a political subdivision until after three years from the
21 date of publication of the list.

22 * Sec. 19. AS 36.10.110 is repealed.

23 * Sec. 20. AS 36.10 is amended by adding a new section to read:

24 Sec. 36.10.120. REGULATIONS. The Department of Labor may when
25 necessary to enforce this chapter

26 (1) conduct investigations and hold hearings relating to
27 employment preference;

28 (2) compel the attendance of witnesses and the production
29 of books, papers and documents;

1 (3) promulgate regulations.

2 * Sec. 21. AS 36.10 is amended by adding a new section to read:

3 Sec. 36.10.125. ENFORCEMENT. The attorney general shall, when
4 requested by the Department of Labor, enforce the provisions of this
5 chapter. The attorney general may obtain a court order prohibiting a
6 contractor or subcontractor violating this chapter from continuing to
7 work on existing public construction contracts of the state or a
8 political subdivision of the state. The state or political subdivision
9 of the state may prosecute the work to completion by contract or other-
10 wise, and the contractor or subcontractor and his sureties are liable
11 for excess costs for completing the work.

12 * Sec. 22. AS 36.25.010(a) is amended to read:

13 (a) Before a contract exceeding \$2,000 for the construction,
14 alteration, or repair of a public building or public work of the state
15 or a political subdivision of the state is awarded to a general or
16 specialty contractor, the contractor shall furnish to the state or a
17 political subdivision of the state the following bonds, which become
18 binding upon the award of the contract to that contractor:

19 (1) a performance bond with a corporate surety qualified to
20 do business in the state, or at least two individual sureties who shall
21 each justify in a sum equal to the amount of the bond; the amount of
22 the performance bond shall be equivalent to the amount of the payment
23 bond;

24 (2) a payment bond with a corporate surety qualified to do
25 business in the state, or at least two individual sureties who shall
26 each justify in a sum equal to the amount of the bond for the protection
27 of all persons who supply labor and material in the prosecution of the
28 work provided for in the contract; when the total amount payable by
29 the terms of the contract is not more than \$1,000,000, the payment bond

1 shall be in a sum of one-half the total amount payable by the terms of
2 the contract; when the total amount payable by the terms of the contract
3 is more than \$1,000,000 and not more than \$5,000,000, the payment bond
4 shall be in a sum of 40 per cent of the total amount payable by the
5 terms of the contract; when the total amount payable by the terms of
6 the contract is more than \$5,000,000, the payment bond shall be in the
7 sum of \$2,500,000.

8 * Sec. 23. AS 36.25.020(c) is amended to read:

9 (c) A suit brought under this section shall be brought in the
10 name of the state or the political subdivision of the state for the
11 use of the person suing in the superior court. No suit may be started
12 after the expiration of one year after the date of final settlement of
13 the contract. The state or political subdivision of the state is not
14 liable for costs of expenses of the suit.

15 * Sec. 24. Title 36 is amended by adding a new chapter to read:

16 Sec. 36.95.010. DEFINITIONS. In this title unless the context
17 requires otherwise

18 (1) "contractor" means the contractor including the sub-
19 contractor;

20 (2) "laborers, mechanics, or field surveyors" means a
21 person who engages in work which is basically physical or unskilled in
22 nature; or who engages in work, requiring the use of tools or machines,
23 which basically consists of the shaping and working of materials into
24 some type of structure, machine or other object; or who engages in
25 outdoor tasks related to the operation of finding and delineating
26 contour, dimensions, position, topography, as of any part of the earth's
27 surface, by preparation of measured plan or description of any area or
28 other portion of country or of road or line through any area or other
29 portion of country;

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(3) "public construction" or "public works" means the on-site erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, of highways or other improvements to real property under contract for the state or a political subdivision of the state;

(4) "qualified" means one who, except for apprentices, is a journeyman mechanic in his particular trade;

(5) "resident" means a person who has maintained his domicile in the state for not less than one year immediately preceding his employment on public construction. For the purposes of this title, domicile is the true and permanent home of a person from which he has no present intention of removing and to which he intends to return whenever he is away;

(6) "state or a political subdivision of the state" means any state department, state agency, state university, borough, city, village, school district or other state subdivision;

(7) "wages" includes fringe benefits.