

Introduced: 1/16/76
Referred: Labor & Management
and Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 **FUS SCS** HOUSE BILL NO. 591 **am re-en. S**

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the employment of Alaska residents
7 under state leases; and providing for an effective
8 date."

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

10 * Section 1. AS 38.40.030(a) is amended to read:

11 CHAPTER 40. RESIDENT EMPLOYMENT [LOCAL HIRE]

12 UNDER STATE LEASES.

13 Sec. 38.40.030. RESIDENT EMPLOYMENT [HIRE]. (a) In order to
14 create, protect and preserve the right of Alaska residents to employ-
15 ment, the commissioner of natural resources shall incorporate into all
16 oil and gas leases, easements or right-of-way permits for oil or gas
17 pipeline purposes, unitization agreements, or any renegotiation of any
18 of the preceding to which the state is a party, provisions requiring
19 the lessee to comply with applicable laws and regulations with regard
20 to the employment [HIRE] of Alaska residents, [. THE COMMISSIONER
21 SHALL INCLUDE] a provision requiring the employment [HIRING] of quali-
22 fied Alaska residents, a provision prohibiting discrimination against
23 Alaska residents and, when in the determination of the commissioner
24 of natural resources it is practicable, a provision requiring compli-
25 ance with the Alaska Plan, all in accordance with the provisions of
26 this chapter.

27 * Sec. 2. AS 38.40.030(b) is repealed and re-enacted to read:

28 (b) All employment falling within the purview of sec. 50 of this
29 chapter shall be filled by Alaska residents if they are qualified and

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1 available. The commissioner of labor, whose decision is final, shall
2 determine the resident status of individuals for purposes of this
3 chapter and issue a certificate to persons determined to be residents
4 of the state.

5 * Sec. 3. AS 38.40.030(d) is repealed and re-enacted to read:

6 (d) The Department of Labor shall adopt regulations necessary to
7 implement the provisions of this chapter.

8 * Sec. 4. AS 38.40.040(a) is amended to read:

9 (a) An employer [PERSONS] obligated to meet resident employment
10 [HIRING] requirements under this chapter shall comply with those
11 reporting provisions which the commissioner of labor determines are
12 reasonably necessary to carry out the purposes and intent of this
13 chapter.

14 * Sec. 5. AS 38.40.040(b) is repealed and re-enacted to read:

15 (b) The Department of Labor shall prepare a list of certified
16 Alaska residents and, upon request, shall make it available to an
17 employer subject to this chapter, and to any employment or dispatching
18 agency, union, or other similar entity.

19 * Sec. 6. AS 38.40.060 is repealed and re-enacted to read:

20 Sec. 38.40.060. HEARINGS AND INVESTIGATIONS. (a) A qualified
21 Alaska resident who has been rejected for or terminated from employ-
22 ment by an employer subject to this chapter may request a hearing
23 before the Department of Labor to determine if the employer is in
24 compliance with the provisions of this chapter. The department shall
25 investigate, set a date for and hold a hearing within 30 days after
26 receipt of the request, unless the person applying requests a longer
27 period of time.

28 (b) The Department of Labor may, on its own motion, conduct
29 appropriate investigations and hearings to determine compliance with

1 the provisions of this chapter.

2 (c) The commissioner of labor, acting on a complaint or his own
3 motion, upon finding wilful non-compliance by an employer with the
4 provisions of this chapter, may certify that finding to the Department
5 of Natural Resources.

6 (d) Hearings and investigations conducted under this chapter are
7 not subject to the Administrative Procedure Act (AS 44.62).

8 * Sec. 7. AS 38.40 is amended by adding a new section to read:

9 Sec. 38.40.065. STANDING TO SUE. A qualified Alaska resident
10 upon whose complaint the Department of Labor has found an employer in
11 non-compliance with this chapter has standing to seek judicial relief
12 for lost wages, damages and expenses.

13 * Sec. 8. AS 38.40.070 is repealed and re-enacted to read:

14 Sec. 38.40.070. PENALTIES. (a) Upon finding that a qualified
15 Alaska resident has been rejected for or terminated from employment,
16 in violation of this chapter, the Department of Labor may require a
17 non-compliance payment to the state up to 10 times the number of hours
18 required, but not worked by an Alaska resident, times the going wage
19 or salary rate for the particular job or activity involved.

20 (b) The Department of Natural Resources, upon receipt of a
21 certification of wilful non-compliance of an employer by the commis-
22 sioner of labor and after appropriate investigations and hearings,
23 may, subject to judicial review, impose the following penalties:

24 (1) increase rent or other forms of compensation received
25 by the state by a factor of no more than 10 but in no event to exceed
26 \$100,000;

27 (2) require that all or any portion of project operations
28 be halted;

29 (3) stop payment on any or all existing contracts between

1 that person and the state; or

2 (4) remove, for an appropriate period of time, the eligi-
3 bility of the person to contract with the state or any of its political
4 subdivisions.

5 (c) Notwithstanding (a) of this section, no penalty may be
6 imposed against a lessee because of non-compliance with the provisions
7 of this chapter by a supplier of the lessee's contractor or subcon-
8 tractor if the lessee has received and retained a certificate from the
9 supplier certifying that the supplier is in compliance with the pro-
10 visions of this chapter. However, no certificate from the supplier is
11 a bar to the imposition of a penalty against a lessee unless the
12 certificate was made (1) upon oath or affirmation, (2) on forms prepared
13 by the commissioner of labor furnished to the lessee before the date
14 of the supplier's non-compliance, and the lessee has furnished a copy
15 of the certificate to the commissioner of labor together with additional
16 information the commissioner may require, and (3) by a supplier who is
17 not himself a contractor or subcontractor of the lessee.

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

22 * Sec. 9. AS 38.40.080 is amended to read:

23 Sec. 38.40.080. INJUNCTIVE RELIEF. The Department of Labor or
24 the Department of Natural Resources, in addition to the imposition of
25 any penalties under sec. 70 of this chapter, may seek injunctive
26 relief against an employer [A PERSON] not in compliance with the
27 provisions of this chapter. Either department [; THE DEPARTMENT OF
28 NATURAL RESOURCES] may seek injunctive relief to enforce penalties
29 which it has imposed under sec. 70 of this chapter.

1 * Sec. 10. AS 38.40.090 is repealed and re-enacted to read:

2 Sec. 38.40.090. DEFINITIONS. In this chapter

3 (1) "resident" means a person who

4 (A) except for brief intervals, military service,
5 attendance at an educational or training institution, or for
6 absences for good cause, is physically present in the state for a
7 period of one year immediately before the time his status is
8 determined;

9 (B) maintains a place of residence within the state;

10 (C) has established residency for voting purposes
11 within the state;

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

14 (E) shows by all attending circumstances that his
15 intent is to make Alaska his permanent residence;

16 (2) "qualified" means capable, through education, training,
17 or experience, of performing the duties and satisfying the usual terms
18 and conditions of the employment, if those duties, terms and conditions
19 meet the reasonable standards of the industry as required of other
20 employees performing the same type of work in the industry;

21 (3) "wilful non-compliance" means intentionally, knowingly,
22 or purposely, without justifiable excuse, not giving preference to
23 qualified Alaska residents in employment covered by this chapter;

24 (4) "non-compliance" means not giving preference to qualified
25 Alaska residents in employment covered by this chapter.

26 * Sec. 11. This Act takes effect immediately in accordance with AS 01.-
27 10.070(c).

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