

CS 55 HB 367 LNC

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Referred: Labor & Commerce,
Judiciary and Finance

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1 IN THE HOUSE

2 HOUSE BILL NO. 367

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act requiring resident hire under certain oil and
7 gas leases and unitization agreements on state land;
8 and providing for an effective date."

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

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

11 CHAPTER 45. RESIDENT EMPLOYMENT PREFERENCE UNDER STATE LEASES.

12 Sec. 38.45.010. STATE POLICY. It is the policy of the state to
13 develop its natural resources to provide the maximum benefit to the
14 people of the state as required by the Constitution of the State of
15 Alaska. These benefits include employment opportunities in natural
16 resource development projects for residents qualified for the employ-
17 ment, as well as receipt of state revenue from the development.

18 Sec. 38.45.020. LEGISLATIVE FINDINGS. The legislature finds:

19 (1) the rate of unemployment among residents of the state
20 is one of the highest in the nation;

21 (2) a major factor of increasing importance in the unem-
22 ployment problem is the failure of employers engaged in the explorat-
23 tion, development, and production of natural resources on state land,
24 and under leases or other agreements granted or permitted by the
25 state, to employ state residents;

26 (3) whereas at an earlier stage of the state's history it
27 was asserted that high unemployment in the state was due to cultural
28 and geographical migration barriers, the state now has many residents
29 who are qualified, trained, and available for employment in the

1 exploration, development, and production of oil and gas on state land,
2 but who are not presently employed because an increasing amount of the
3 work they are qualified to perform is being performed on state land by
4 nonresidents;

5 (4) the state has made significant investments in training
6 programs and vocational education to help furnish industry with qual-
7 ified residents able to work in the development, exploration, and
8 production of oil and gas products on state land;

9 (5) unless the trend towards hiring nonresidents is re-
10 versed, the state's investment in these training and education pro-
11 grams will be of little avail, the state policy of maximizing benefits
12 from natural resource development will be thwarted, and the state will
13 suffer the burdens wrought by increasing demands for public assistance
14 and other state services from unemployed residents and their families;

15 (6) employment of nonresidents displaces qualified resi-
16 dents from work in the development, exploration and production of oil
17 and gas products on state land and from work in service occupations on
18 state land that directly support the development, exploration, and
19 production activities; therefore, the growing number of nonresidents
20 hired for work on state land, in the development, exploration, and
21 production of state resources, is a peculiar source of the unemploy-
22 ment evil now besetting the state;

23 (7) state policies favoring stable levels of taxation have
24 been predicated upon assurances from the oil and gas industry that
25 state residents would receive employment opportunities in the explora-
26 tion, development, and production of oil and gas from state-owned
27 land, but data show that these assurances, and the expectations they
28 created, are not being fulfilled.

29 Sec. 38.45.030. RESIDENT HIRE. (a) An employer shall meet the

1 resident hiring requirements established by the commissioner of labor
2 under this section on an oil and gas project on state lands that is
3 subject to a hiring preference under AS 38.45.050. An employer may
4 not discriminate against qualified residents in employment on an oil
5 and gas project on state land.

6 (b) The commissioner of labor shall determine the amount of work
7 that must be performed under this chapter by qualified residents on an
8 oil and gas project on state land. In making this determination, the
9 commissioner shall consider the nature of the work, the classification
10 of workers, availability of residents, and the willingness of resi-
11 dents to perform the work. The commissioner shall require an employer
12 to make the maximum feasible effort to hire qualified residents for
13 jobs on state land.

14 (c) In order to create, protect, and preserve the right of qual-
15 ified residents to employment in oil and gas projects on state land,
16 the commissioner of natural resources shall incorporate into each
17 lease, unitization agreement, or renegotiation of a lease or agree-
18 ment, provisions requiring compliance with this chapter and authoriz-
19 ing penalties under AS 38.45.070 for failure to comply.

20 (d) The Department of Labor shall maintain a file of the names
21 of qualified residents seeking employment on an oil and gas project on
22 state land. The department shall make the file available to an em-
23 ployer and to an employment or dispatching agency, union, or other
24 similar entity.

25 Sec. 38.45.040. REPORTING PROVISIONS. An employer obligated to
26 meet resident hiring requirements under this chapter shall comply with
27 the reporting provisions that the commissioner of labor determines are
28 reasonably necessary to carry out this chapter.

29 Sec. 38.45.050. APPLICABILITY OF CHAPTER. (a) The Department

1 of Labor shall determine by regulation the minimum monetary value for
2 projects subject to the resident hiring preference under this chapter.
3 In determining the minimum value, the department shall compare the
4 benefit that enures to state residents with administrative and en-
5 forcement costs.

6 (b) An employer shall submit to the department evidence of the
7 monetary value of an oil and gas project on state land. The depart-
8 ment shall determine whether the project is subject to a hiring pref-
9 erence. If the project is subject to a hiring preference, the depart-
10 ment shall determine the extent of the preference under AS 38.45.030.
11 The preference applies only to employment that is performed directly
12 for an employer. The department shall ensure that projects or activ-
13 ities within projects are not artificially divided to prevent coverage
14 under this chapter. If the department finds evidence of artificial
15 division, the burden is on the employer to show that the division is
16 not artificial.

17 Sec. 38.45.060. REGULATIONS AND HEARINGS. (a) The Department
18 of Labor and the Department of Natural Resources shall adopt regula-
19 tions to implement this chapter. The Department of Labor shall adopt
20 regulations prohibiting discrimination against qualified residents in
21 employment on an oil and gas project on state land. Regulations and
22 proceedings under this chapter are subject to the Administrative
23 Procedure Act (AS 44.62) except as provided in (b) of this section.

24 (b) An employer shall determine and judge the work qualifica-
25 tions of applicants for employment. An applicant who has been reject-
26 ed or an employee who has been terminated from employment may request
27 a hearing before the Department of Labor to determine whether the
28 employer violated this chapter in denying the application or terminat-
29 ing the employment. The Department of Labor shall hold a hearing on

1 the question within 10 days of receipt of the request unless the
2 applicant or employee requests a longer period of time.

3 (c) The Department of Labor may conduct investigations and
4 hearings to determine compliance with this chapter. If the commis-
5 sioner of labor finds that an employer has wilfully failed to comply
6 with this chapter, the commissioner may certify the finding to the
7 Department of Natural Resources.

8 Sec. 38.45.070. PENALTIES. (a) If the Department of Labor
9 finds that an employer has rejected a qualified applicant or term-
10 inated a qualified employee from employment in violation of this
11 chapter, the department may require the employer to pay the person
12 three times the amount of wages the person lost and may require addi-
13 tional amounts if the person's actual expenses incurred as a result of
14 the wrongful action exceeded the triple wages assessed. Either party
15 may appeal the department's decision under this section to the su-
16 perior court. The court shall hear the appeal de novo.

17 (b) The Department of Natural Resources, upon certification of
18 noncompliance by the Department of Labor, under AS 38.45.060, may
19 investigate and conduct hearings. If it finds wilful noncompliance,
20 the department may impose on the employer any of the following pen-
21 alties, as appropriate:

22 (1) increase the rent or other forms of compensation re-
23 ceived by the state under the project lease or agreement by a factor
24 of no more than 10; the increase may not exceed \$100,000;

25 (2) require that all or a portion of project operations
26 cease;

27 (3) remove, for an appropriate period of time not to exceed
28 ___ years, the ability of the employer to contract with the state or
29 any of its political subdivisions; or

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

5 Sec. 38.45.080. INJUNCTIVE RELIEF. The Department of Labor or
6 the Department of Natural Resources, in addition to the imposition of
7 penalties under AS 38.45.070, may seek injunctive relief against a
8 person who is not in compliance with this chapter; the Department of
9 Natural Resources may seek injunctive relief to enforce penalties
10 imposed under AS 38.45.070.

11 Sec. 38.45.090. DEFINITIONS. In this chapter

12 (1) "employer" means a person other than the state who is a
13 party to a lease or agreement for an oil and gas project on state land
14 and includes the person's affiliate, principal, subsidiary, contrac-
15 tor, or subcontractor if the activity of the affiliate, principal,
16 subsidiary, contractor, or subcontractor is performed on state land;

17 (2) "oil and gas project on state land" means an oil and
18 gas lease, a unitization agreement, or any renegotiation of a lease or
19 agreement if the state is a party to the lease or agreement and the
20 project is performed in whole or in part on state land;

21 (3) "resident" means a person who

22 (A) except for military service, has been physically
23 present in the state for a period of 30 days immediately before
24 the time the person enters into a contract of employment on an
25 oil and gas project on state land; and

26 (B) shows by all attending circumstances the intention
27 to permanently reside in this state.

28 * Sec. 2. This chapter applies to an oil and gas lease, a unitization
29 agreement, or a renegotiation of a lease or agreement entered into on or

1 after the effective date of this Act.

2 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-

3 10.070(c).