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1 IN THE HOUSE

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SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 367

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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For an Act entitled: "An Act requiring resident hire on certain natural

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resource projects on state land; and providing for an

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effective date."

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

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

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CHAPTER 45. RESIDENT EMPLOYMENT PREFERENCE UNDER STATE LEASES.

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Sec. 38.45.010. STATE POLICY. It is the policy of the state to

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develop its natural resources to provide the maximum benefit to the

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people of the state as required by the Constitution of the State of

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Alaska. These benefits include employment opportunities in natural

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resource development projects for residents qualified for the employ-

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ment, as well as receipt of state revenue from the development.

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Sec. 38.45.020. LEGISLATIVE FINDINGS. The legislature finds:

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(1) the findings made in AS 36.10.005 continue to accurately

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describe the social, economic, and employment situation in the

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state and specifically apply to employment on natural resources pro-

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jects on state land;

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(2) chronic unemployment breeds severe social problems

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including alcoholism and domestic violence;

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(3) the findings of the Department of Labor of the State of

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Alaska in its report entitled "Nonresidents Working in Alaska; A

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Special Study to Measure the Economic Impact of Nonresidents on

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Alaska's Economy During Calendar Year 1984" support the need for a

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resident hiring preference;

1 (4) a major factor of increasing importance in the unem-
2 ployment problem is the failure of employers engaged in the explora-
3 tion, development, and production of natural resources on state land,
4 and under leases or other agreements granted or permitted by the
5 state, to employ state residents;

6 (5) whereas at an earlier stage of the state's history it
7 was asserted that high unemployment in the state was due to cultural
8 and geographical migration barriers, the state now has many residents
9 who are qualified, trained, and available for employment in the explo-
10 ration, development, production, and extraction of natural resources
11 on state land, but who are not presently employed because an increas-
12 ing amount of the work they are qualified to perform is being per-
13 formed on state land by nonresidents;

14 (6) the state has made significant investments in training
15 programs and vocational education to help furnish industry with qual-
16 ified residents able to work in the development, exploration, produc-
17 tion, and extraction of natural resource products on state land;

18 (7) unless the trend towards hiring nonresidents is re-
19 versed, the state's investment in these training and education pro-
20 grams will be of little avail, the state policy of maximizing benefits
21 from natural resource development will be thwarted, and the state will
22 suffer the burdens wrought by increasing demands for public assistance
23 and other state services from unemployed residents and their families;

24 (8) employment of nonresidents displaces qualified resi-
25 dents from work in the development, exploration, production, and
26 extraction of natural resource products on state land and from work in
27 service occupations on state land that directly support the develop-
28 ment, exploration, and production activities; therefore, the growing
29 number of nonresidents hired for work on state land, in the

1 development, exploration, production, and extraction of state re-
2 sources, is a peculiar source of the unemployment evil now besetting
3 the state;

4 (9) state policies favoring stable levels of taxation have
5 been predicated upon assurances from the natural resource industries
6 that state residents would receive employment opportunities in the
7 exploration, development, and production of natural resources from
8 state-owned land, but data show that these assurances, and the expec-
9 tations they created, are not being fulfilled.

10 Sec. 38.45.030. ELIGIBILITY FOR PREFERENCE. (a) The Department
11 of Labor shall certify a person as eligible for a hiring preference
12 under this chapter if the person applies on a form provided by the
13 department, is a resident, and

14 (1) is receiving unemployment benefits under AS 23.20 or
15 would be eligible to receive benefits but has exhausted them;

16 (2) is not working and has registered with a public or
17 private employment agency or a local hiring hall;

18 (3) is underemployed or marginally employed as determined
19 under regulations adopted by the department; or

20 (4) has completed a job-training program approved by the
21 department.

22 Sec. 38.45.040. RESIDENT HIRE REQUIREMENTS. (a) An employer
23 shall meet the resident hiring requirements established by the commis-
24 sioner of labor under this section on a natural resource project on
25 state land that is subject to a hiring preference under AS 38.45.060.
26 An employer may not discriminate against qualified residents in em-
27 ployment on a natural resource project on state land.

28 (b) The commissioner of labor shall determine the amount of work
29 that must be performed under this chapter by eligible qualified

1 residents on a natural resource project on state land. In making this
2 determination, the commissioner shall consider the nature of the work,
3 the classification of workers, availability of eligible residents, and
4 the willingness of eligible residents to perform the work. The com-
5 missioner shall require an employer to make the maximum feasible
6 effort to hire eligible qualified residents for jobs on state land.

7 (c) During the three fiscal years following a determination by
8 the commissioner of labor that a census area, census subarea, or an
9 economic region of the state is an economically distressed area, at
10 least 50 percent of resident employment preference under this section
11 on each project that is wholly or partially sited within the
12 economically distressed area shall consist of residents of the area.
13 The 50 percent preference applies to worker hours on a craft-by-craft
14 basis.

15 (d) The commissioner of labor shall determine that an area is an
16 economically distressed area under (c) of this section if the commis-
17 sioner finds that

18 (1) the average annual family income of residents of the
19 area is below the adjusted poverty guidelines of the federal Depart-
20 ment of Health and Human Services or that the unemployment rate in the
21 area exceeds the national rate of unemployment by at least five per-
22 centage points; and

23 (2) employment of workers who are not residents of the area
24 is a contributing cause of unemployment of residents of the area.

25 (e) If the governor has declared an area to be an area affected
26 by an economic disaster under AS 44.33.285, then the preference for
27 residents of the area established under AS 44.33.285 - 44.33.310
28 supercedes the preference under this section.

29 (f) In order to create, protect, and preserve the right of

1 eligible qualified residents to employment in natural resource proj-
2 ects on state land, the commissioner of natural resources shall incor-
3 porate into each lease, unitization agreement, or renegotiation of a
4 lease or agreement, provisions requiring compliance with this chapter,
5 regulations adopted under this chapter, and all later amendments to
6 this chapter or the regulations, and authorizing penalties under
7 AS 38.45.080 for failure to comply. The commissioner shall incorpo-
8 rate into each lease, agreement, or renegotiation a requirement that
9 the lessee include in each contract under the lease or agreement with
10 contractors or subcontractors who will be operating on state land a
11 provision requiring compliance with this chapter, later amendments of
12 this chapter, regulations adopted under this chapter, and authorizing
13 penalties under AS 38.45.080.

14 (g) An employer subject to resident hiring requirements under
15 this chapter may request the Department of Labor to assist in locating
16 eligible, qualified, available employees. After receiving a request
17 for assistance, the department shall refer eligible, qualified, avail-
18 able residents to the employer to fill the employer's hiring needs.
19 If the department is unable to refer a sufficient number of eligible
20 residents, it may approve the hiring of residents who are not eligible
21 for preference and nonresidents for the balance of the request.

22 Sec. 38.45.050. REPORTING PROVISIONS. An employer obligated to
23 meet resident hiring requirements under this chapter shall comply with
24 the reporting provisions that the commissioner of labor determines are
25 reasonably necessary to carry out this chapter.

26 Sec. 38.45.060. APPLICABILITY OF CHAPTER. This chapter applies
27 to all natural resource projects on state land. The Department of
28 Labor shall determine the extent of the resident hiring preference for
29 each project under AS 38.45.040. The preference applies only to

1 employment that is performed directly for an employer.

2 Sec. 38.45.070. REGULATIONS AND HEARINGS. (a) The Department
3 of Labor and the Department of Natural Resources shall adopt regula-
4 tions to implement this chapter. The Department of Labor shall adopt
5 regulations prohibiting discrimination against qualified residents in
6 employment on a natural resource project on state land. Regulations
7 and proceedings under this chapter are subject to the Administrative
8 Procedure Act (AS 44.62) except as provided in (b) of this section.

9 (b) An employer shall determine and judge the work qualifica-
10 tions of applicants for employment. An applicant who has been reject-
11 ed or an employee who has been terminated from employment may, within
12 30 days after the rejection or termination, request a hearing before
13 the Department of Labor to determine whether the employer violated
14 this chapter in denying the application or terminating the employment.
15 The Department of Labor shall hold a hearing on the question within 20
16 days of receipt of the request unless the applicant or employee re-
17 quests a longer period of time.

18 (c) The Department of Labor may conduct investigations and
19 hearings to determine compliance with this chapter. If the commis-
20 sioner of labor finds that an employer has wilfully failed to comply
21 with this chapter, the commissioner may certify the finding to the
22 Department of Natural Resources.

23 Sec. 38.45.080. PENALTIES. (a) If the Department of Labor
24 finds that an employer has rejected a qualified applicant or term-
25 inated a qualified employee from employment in violation of this
26 chapter, the department may require the employer to pay the person
27 three times the amount of wages the person lost and may require addi-
28 tional amounts if the person's actual expenses incurred as a result of
29 the wrongful action exceeded the triple wages assessed. Either party

1 may appeal the department's decision under this section to the su-
2 perior court. The court may hear the appeal de novo.

3 (b) The Department of Natural Resources, upon certification of
4 noncompliance by the Department of Labor under AS 38.45.070, may
5 investigate and conduct hearings. If it finds wilful noncompliance,
6 the department may impose on the employer any of the following pen-
7 alties:

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

11 (2) require that all or a portion of project operations
12 cease;

13 (3) remove, for an appropriate period of time not to exceed
14 three years, the eligibility of the employer to contract with the
15 state or any of its political subdivisions; or

16 (4) require a noncompliance payment in liquidated damages
17 to the state in an amount equal to seven and one-half times the number
18 of hours required but not worked by eligible qualified residents
19 multiplied by the going wage or salary rate for the particular job or
20 activity involved.

21 (c) The commissioner may impose the penalties under (b)(1) and
22 (2) of this section on a lessee only if the lessee itself has failed
23 to comply with this chapter or incorporate into the contract with the
24 violator a provision requiring compliance with this chapter.

25 Sec. 38.45.090. INJUNCTIVE RELIEF. The Department of Labor or
26 the Department of Natural Resources, in addition to the imposition of
27 penalties under AS 38.45.080, may seek injunctive relief against a
28 person who is not in compliance with this chapter. The Department of
29 Natural Resources may seek injunctive relief to enforce penalties

1 imposed under AS 38.45.080.

2 Sec. 38.45.100. DEFINITIONS. In this chapter

3 (1) "employer" means a person other than the state who is a
4 party to a lease or agreement for a natural resource project on state
5 land and includes the person's affiliate, principal, subsidiary,
6 contractor, or subcontractor if the activity of the affiliate, princi-
7 pal, subsidiary, contractor, or subcontractor is performed on state
8 land;

9 (2) "natural resource project on state land" means a con-
10 tract, lease, unitization agreement, or a renegotiation of a contract,
11 lease, or agreement for exploration, development, extraction or pro-
12 duction of oil and gas, mineral, or timber resources if the state is a
13 party to the contract, lease or agreement and the project is performed
14 in whole or in part on state land;

15 (3) "qualified resident" means a resident who possesses the
16 requisite education, training, skills, or experience to perform the
17 work;

18 (4) "resident" means a person who

19 (A) except for military service, has been physically
20 present in the state for a period of 30 days immediately before
21 the time the person enters into a contract of employment on a
22 natural resource project on state land; and

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

25 * Sec. 2. AS 38.45, enacted in sec. 1 of this Act, applies to a lease,
26 unitization agreement, or contract for the development of oil and gas,
27 mineral, or timber resources entered into on or after the effective date of
28 this Act and to a renegotiation of the lease, agreement, or contract.
29 AS 38.45 applies to the renegotiation on or after the effective date of

1 this Act of a lease, agreement, or contract entered into before the effec-
2 tive date of this Act if the renegotiation results in a major change to the
3 duties of a party.

4 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
5 10.070(c).