

Offered: 4/14/86
Referred: Judiciary and
Finance

Original sponsors: Pignalberi, Cotten,
Davis, et al

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 367 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act requiring resident hire on certain natural
7 resource projects on state land; and providing for an
8 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 findings made in AS 36.10.005 continue to accurately
20 describe the social, economic, and employment situation in the
21 state;

22 (2) chronic unemployment can breed severe social problems
23 including alcoholism and domestic violence;

24 (3) the findings of the Department of Labor of the State of
25 Alaska in its report entitled "Nonresidents Working in Alaska; A
26 Special Study to Measure the Economic Impact of Nonresidents on
27 Alaska's Economy During Calendar Year 1984" support the need for a
28 resident hiring preference;

29 (4) there is a need for timely, accurate information on the

1 number of nonresident and resident workers in industries in the state;

2 (5) the state has a continuing interest in determining
3 whether indirect benefits, including employment opportunities, from
4 state expenditures, natural resource projects, and agreements concern-
5 ing the state's natural resources accrue to residents of the state or
6 to nonresidents;

7 (6) a major factor in the unemployment problem is the
8 failure of some employers engaged in the exploration, development, and
9 production of natural resources on state land, and under leases or
10 other agreements granted or permitted by the state, to employ state
11 residents;

12 (7) whereas at an earlier stage of the state's history it
13 was asserted that high unemployment in the state was due to cultural
14 and geographical migration barriers, the state now has many residents
15 who are qualified, trained, and available for employment in the explo-
16 ration, development, production, and extraction of natural resources
17 on state land;

18 (8) the state has made significant investments in training
19 programs and vocational education to help furnish industry with qual-
20 ified residents able to work in the development, exploration, produc-
21 tion, and extraction of natural resource products on state land;

22 (9) the state's investment in these training and education
23 programs will be of little avail unless state residents receive em-
24 ployment opportunities in natural resource projects on state land;

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

1 nonresidents hired for work on state land in the development, explor-
2 ation, production, and extraction of state resources is a peculiar
3 source of the unemployment problem now besetting the state;

4 (11) the number of state residents who are unable to find
5 work is considerably higher than is reflected by unemployment rates
6 based on nationally accepted measures;

7 (12) many rural state residents who wish to work do not seek
8 employment as frequently as necessary to meet federal definitions of
9 unemployment because of continuing lack of employment opportunities in
10 rural areas of the state.

11 Sec. 38.45.030. UNAVAILABILITY OF PREFERRED WORKERS. (a) An
12 employer subject to hiring requirements under this chapter may request
13 the Department of Labor to assist in locating qualified, eligible
14 employees. After receiving a request for assistance, the department
15 shall refer qualified, eligible, available residents to the employer
16 to fill the employer's hiring needs.

17 (b) If the department is unable to refer a sufficient number of
18 qualified, eligible, available residents able to perform the work, the
19 commissioner of labor may approve the hiring of residents who are not
20 eligible for preference and nonresidents for the balance of the re-
21 quest.

22 Sec. 38.45.035. EMPLOYEE QUALIFICATIONS. An employer shall
23 determine and judge the work qualifications of applicants for employ-
24 ment.

25 Sec. 38.45.040. REGULATIONS. The commissioner of labor shall
26 adopt regulations in accordance with AS 44.62 (Administrative Proce-
27 dure Act) to implement this chapter and encourage and require the
28 hiring of residents to the maximum extent permitted by law.

29 Sec. 38.45.050. RESIDENT HIRE REPORT. The attorney general and

1 the commissioner of labor shall report annually to the legislature and
2 the governor on the status of employment in the state, the effect of
3 nonresident employment on the employment of residents in the state,
4 and methods to increase resident hire. The report shall be submitted
5 by January 31 of each year.

6 Sec. 38.45.060. ELIGIBILITY FOR PREFERENCE. (a) A person is
7 eligible for an employment preference under this chapter if the person
8 certifies eligibility as required by the Department of Labor, is a
9 resident, and

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

12 (2) is not working and has registered to find work with a
13 public or private employment agency or a local hiring hall;

14 (3) is underemployed or marginally employed as defined by
15 the department; or

16 (4) has completed a job-training program approved by the
17 department and is either not employed or is engaged in employment that
18 does not use the skills acquired in the job-training program.

19 (b) An employer subject to a resident hiring requirement under
20 this chapter shall certify that persons employed as residents under
21 the preference are eligible for the preference.

22 Sec. 38.45.070. DETERMINATION OF UNDEREMPLOYED AREA. (a)
23 Immediately following a determination by the commissioner of labor
24 that a census area, economic region, or the state as a whole is an
25 underemployed area and for the next two fiscal years after the deter-
26 mination, qualified residents who are eligible under AS 38.45.060
27 shall be given preference for work on each natural resource project on
28 state land that is wholly or partially sited within the area.

29 (b) The commissioner of labor shall determine the amount of work

1 that must be performed under this chapter by eligible qualified resi-
2 dents. In making this determination, the commissioner shall consider
3 the nature of the work, the classification of workers, availability of
4 eligible residents, and the willingness of eligible residents to
5 perform the work.

6 (c) The commissioner shall determine that a census area, econo-
7 mic region, or the state as a whole is an underemployed area if the
8 commissioner finds that

9 (1) the rate of unemployment within the area is substan-
10 tially higher than the national rate of unemployment;

11 (2) a substantial number of residents in the area have
12 experience or training in occupations that would be employed on a
13 natural resource project on state land;

14 (3) the lack of employment opportunities in the area has
15 contributed to serious social or economic problems in the area; and

16 (4) employment of workers who are not residents is a pecu-
17 liar source of the unemployment of residents of the area.

18 (d) The commissioner shall define the boundaries of a census
19 area or economic region within which a preference applies. In choos-
20 ing whether to apply a preference to a census area, economic region,
21 or the state as a whole, the commissioner shall apply the preference
22 to the smallest unit that will adequately address the problems identi-
23 fied by the findings.

24 Sec. 38.45.080. PREFERENCE FOR RESIDENTS OF ECONOMICALLY DIS-
25 TRESSED AREAS. (a) Immediately following a determination by the
26 commissioner that a census area or economic region of the state is an
27 economically distressed area, and for the next two fiscal years after
28 the determination, qualified residents of the area who are eligible
29 under AS 38.45.060 shall be given preference for at least 50 percent

1 of employment on each natural resource project on state land that is
2 wholly or partially sited within the economically distressed area.

3 (b) The commissioner shall determine that an area is an econom-
4 ically distressed area if the commissioner finds that

5 (1) the per capita income of residents is less than 90
6 percent of the per capita income of the United States as a whole or
7 the unemployment rate in the area exceeds the national rate of unem-
8 ployment by at least five percentage points;

9 (2) the lack of employment opportunities in the area has
10 substantially contributed to serious social or economic problems in
11 the area; and

12 (3) employment of workers who are not residents is a pecu-
13 liar source of unemployment of residents of the area.

14 (c) If the governor has declared an area to be an area affected
15 by an economic disaster under AS 44.33.285, then the preference for
16 residents of the area established under AS 44.33.285 - 44.33.310
17 supercedes the preference under this section.

18 (d) The commissioner shall define the boundaries of a census
19 area or economic region in which a preference applies. In choosing
20 whether to apply a preference to a census area or economic region,
21 the commissioner shall apply the preference to the smallest unit that
22 will adequately address the problems identified by the findings.

23 Sec. 38.45.090. INCORPORATION INTO CONTRACTS. In order to
24 create, protect, and preserve the right of eligible qualified resi-
25 dents to employment in natural resource projects on state land, the
26 commissioner of natural resources shall incorporate into each con-
27 tract, lease, unitization agreement, or renegotiation of a contract,
28 lease or unitization agreement, provisions requiring compliance with
29 this chapter, regulations adopted under this chapter, and all later

1 amendments to this chapter or the regulations, and authorizing pen-
2 alties under AS 38.45.120 for failure to comply. The commissioner
3 shall incorporate into each contract, lease, unitization agreement, or
4 renegotiation a requirement that the lessee include in each contract
5 under the lease or agreement with contractors or subcontractors who
6 will be operating on state land a provision requiring compliance with
7 this chapter, later amendments of this chapter, regulations adopted
8 under this chapter, and authorizing penalties under AS 38.45.120.

9 Sec. 38.45.100. REPORTING PROVISIONS. An employer obligated to
10 meet resident hiring requirements under this chapter shall comply with
11 the reporting provisions that the commissioner of labor determines are
12 reasonably necessary to carry out this chapter. Except for statis-
13 tical data, information concerning specific employees is confidential
14 and may not be released to the public by the department. However,
15 confidential employee information may be shared between departments
16 for purposes of this chapter.

17 Sec. 38.45.110. HEARINGS. (a) If a person not entitled to a
18 preference was hired in a position for which an eligible applicant was
19 rejected or to a position from which an eligible employee was termi-
20 nated, the eligible applicant or eligible former employee may, within
21 30 days after the rejection or termination, request a hearing before
22 the Department of Labor to determine whether the employer violated
23 this chapter in denying the application or terminating the employment.
24 The Department of Labor shall review the request and may hold a hear-
25 ing on the question.

26 (b) The Department of Labor may conduct investigations and
27 hearings to determine compliance with this chapter. If the commis-
28 sioner of labor finds that an employer has wilfully failed to comply
29 with this chapter, the commissioner may certify the finding to the

1 Department of Natural Resources.

2 (c) Proceedings under this section are exempt from AS 44.62
3 (Administrative Procedure Act).

4 Sec. 38.45.120. PENALTIES FOR EMPLOYERS. (a) If the Department
5 of Labor finds that an employer has rejected a qualified eligible
6 applicant or terminated a qualified eligible employee in violation of
7 this chapter, the department may require the employer to pay the
8 person the amount of wages the person lost and may require additional
9 amounts to reimburse the person for actual expenses incurred as a
10 result of the wrongful action. Either party may appeal the depart-
11 ment's decision under this section to the superior court. The court
12 may hear the appeal de novo.

13 (b) The Department of Natural Resources, upon certification of
14 noncompliance by the Department of Labor under AS 38.45.110, may
15 investigate and conduct hearings. If it finds wilful noncompliance,
16 the department may impose on the employer one or more of the following
17 penalties:

18 (1) increase the rent or other forms of compensation re-
19 ceived by the state under the project lease or agreement; the increase
20 may not exceed \$100,000;

21 (2) remove, for an appropriate period of time not to exceed
22 three years, the eligibility of the employer to contract with the
23 state or any of its political subdivisions; or

24 (3) require a noncompliance payment in liquidated damages
25 to the state in an amount equal to seven and one-half times the number
26 of hours required but not worked by eligible qualified residents
27 multiplied by the going wage or salary rate for the particular job or
28 activity involved; the payment may not exceed \$200,000.

29 (c) The commissioner may impose the penalties under this section

1 on an employer only if the employer itself has failed to comply with
2 this chapter or incorporate into the contract, lease, or unitization
3 agreement with the violator a provision requiring compliance with this
4 chapter.

5 (d) The Department of Labor or the Department of Natural Resources,
6 in addition to the imposition of penalties under this section,
7 may seek injunctive relief against a person who is not in compliance
8 with this chapter. The Department of Natural Resources may seek
9 injunctive relief to enforce penalties imposed under this section.

10 Sec. 38.45.130. CRIMINAL PENALTIES. (a) A person who makes a
11 false sworn statement in connection with a certification of eligibil-
12 ity for an employment preference under this chapter is subject to
13 criminal prosecution for perjury as provided in AS 11.56.200.

14 (b) A person who makes an unsworn falsification, with the intent
15 to mislead a public servant in the performance of a duty, in connec-
16 tion with a certification of eligibility for an employment preference
17 under this chapter, is subject to criminal prosecution as provided in
18 AS 11.56.210.

19 (c) In addition to criminal penalties imposed by state law, if a
20 person is convicted of a crime in connection with a false statement
21 made in a certification required under AS 38.45.060, and the convic-
22 tion is not reversed, that person shall forfeit all future rights to
23 eligibility for an employment preference under this chapter.

24 Sec. 38.45.140. CIVIL PENALTIES. (a) In addition to any crimi-
25 nal penalties imposed and to penalties imposed under AS 38.45.120,
26 after a hearing the department may impose a civil penalty on a person
27 who, in connection with certification of eligibility for an employment
28 preference under this chapter,

29 (1) made a false sworn statement; or

1 (2) made an unsworn falsification with intent to mislead a
2 public servant in the performance of a duty.

3 (b) The amount of the civil penalty under (a) of this section
4 for a person who falsely certifies that the person is eligible for an
5 employment preference under this chapter is not more than \$400 for
6 each false certification. The person also forfeits all future rights
7 to eligibility for an employment preference under this chapter.

8 (c) The amount of the civil penalty under (a) of this section
9 for an employer who falsely certifies that employees are residents
10 eligible for a preference under this chapter is not more than \$2,000
11 for each of the first five false certifications. The penalty for the
12 sixth false certification made by an employer and for each false
13 certification thereafter is at least \$2,000 and not more than \$4,000.

14 Sec. 38.45.200. APPLICABILITY OF CHAPTER. This chapter applies
15 to all natural resource projects on state land. The preference app-
16 lies only to employment that is performed directly for an employer.

17 Sec. 38.45.250. DEFINITIONS. In this chapter

18 (1) "available" means physically present at the place of
19 hire at the time requested by the employer;

20 (2) "employer" means a person other than the state who is a
21 party to a contract, lease, or unitization agreement for a natural
22 resource project on state land and the person's affiliate, principal,
23 subsidiary, contractor, or subcontractor if the activity of the affil-
24 iate, principal, subsidiary, contractor, or subcontractor is performed
25 on state land;

26 (3) "natural resource project on state land" means a pro-
27 ject authorized by a contract, lease, unitization agreement, or a
28 renegotiation of a contract, lease, or unitization agreement for
29 exploration, development, extraction or production of oil and gas,

1 leasable mineral, or timber resources if the state is a party to the
2 contract, lease or unitization agreement and the project is performed
3 in whole or in part on state land;

4 (4) "qualified resident" means a resident who possesses the
5 requisite education, training, skills, or experience to perform the
6 work;

7 (5) "resident" means a person who establishes residency
8 under AS 01.10.055;

9 (6) "state land" means all land, including shore, tide, and
10 submerged land, belonging to or acquired by the state.

11 * Sec. 2. AS 38.45, enacted in sec. 1 of this Act, applies to a lease,
12 unitization agreement, or contract for the development of oil and gas,
13 leasable mineral, or timber resources entered into on or after the effec-
14 tive date of this Act and to a renegotiation of the lease, unitization
15 agreement, or contract. AS 38.45 applies to the renegotiation on or after
16 the effective date of this Act of a lease, unitization agreement, or con-
17 tract entered into before the effective date of this Act if the renegotia-
18 tion results in a major change in the duties of a party.

19 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
20 10.070(c).