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1 IN THE HOUSE

2

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 466

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to Alaskan resident employment

7

preference; and providing for an effective date."

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

9

* Section 1. PURPOSE. The legislature recognizes that the state has a
10 significant unemployment problem. This Act is intended to better fulfill
11 the state's duty of loyalty to its citizens, reduce unemployment among
12 residents of the state, remedy social harms resulting from chronic unem-
13 ployment, and assist economically and socially disadvantaged residents. If
14 the courts find that a portion of AS 36.10 is unconstitutional, the public
15 interest requires that the remaining portions be implemented as fully as
16 possible.

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* Sec. 2. AS 36.10.005 is amended by adding new subsections to read:

18

(c) The legislature further finds that the ratio between the
19 employees on a certified payroll who did not apply for or were refused
20 a permanent fund dividend under AS 43.23 to those employees who were
21 found eligible to receive a dividend is an adequate but not exclusive
22 indicator of the ratio on a project of nonresident to resident em-
23 ployees.

24

(d) The commissioner may consider information gathered from site
25 surveys of construction projects including individual interviews,
26 questionnaires, comparison of the state in which vehicles owned or
27 operated by employees are registered, and other information acquired
28 from inspection of certified payrolls when determining the ratio of
29 nonresident to resident employees working on a public works project.

1 (e) The legislature finds that the following factors may be
2 reasonable but are not exclusive indicators of the ratio of nonresi-
3 dent to resident employees in the state:

4 (1) the ratio between applicants for unemployment insurance
5 claims who list an out-of-state residence and those applicants who
6 list residences in the state;

7 (2) the ratio between employees who are subject to unem-
8 ployment insurance coverage and who did not apply for or were denied a
9 permanent fund dividend and those employees who were found eligible
10 for a dividend.

11 (f) The legislature finds that

12 (1) the number of state residents who are unable to find
13 work is considerably higher than is reflected by unemployment rates
14 based on nationally accepted measures;

15 (2) many rural state residents who wish to work do not seek
16 employment as frequently as necessary to meet federal definitions of
17 unemployment because of continuing lack of employment opportunities in
18 rural areas of the state.

19 * Sec. 3. AS 36.10.070 is repealed and reenacted to read:

20 Sec. 36.10.070. UNAVAILABILITY OF PREFERRED WORKERS. (a) An
21 employer subject to hiring requirements under this chapter may request
22 the Department of Labor to assist in locating qualified, eligible
23 employees. After receiving a request for assistance, the department
24 shall refer qualified, eligible, available residents to the employer
25 to fill the employer's hiring needs. The employer shall cooperate
26 with the department. .

27 (b) If the department is unable to refer a sufficient number of
28 qualified, eligible, available residents able to perform the work, the
29 commissioner of labor may approve the hiring of residents who are not

1 eligible for preference and nonresidents for the balance of the re-
2 quest.

3 * Sec. 4. AS 36.10.075 is amended by adding a new subsection to read:

4 (b) The commissioner of labor shall adopt regulations to encour-
5 age and require the hiring of residents to the maximum extent permit-
6 ted by law.

7 * Sec. 5. AS 36.10 is amended by adding new sections to read:

8 Sec. 36.10.130. RESIDENT HIRE REPORT. The attorney general and
9 the commissioner of labor shall report biennially to the legislature
10 and the governor on the status of employment in the state, the effect
11 of nonresident employment on the employment of residents in the state,
12 and methods to increase resident hire. The report shall be submitted
13 by January 31 of the first session of a legislature.

14 Sec. 36.10.140. ELIGIBILITY FOR PREFERENCE. (a) To be eligible
15 for an employment preference under this chapter, a person must regis-
16 ter as a resident as required by the Department of Labor. The depart-
17 ment may permit registration through a local hiring hall.

18 (b) The Department of Labor shall certify a person as eligible
19 for a hiring preference under this chapter if the person registers
20 under (a) of this section, is a resident, and

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

23 (2) is not employed and has registered to find work with a
24 public or private employment agency or a local Hiring Hall;

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

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

1 Sec. 36.10.150. DETERMINATION OF UNDEREMPLOYED AREA. (a)
2 During the two fiscal years following a determination by the commis-
3 sioner of labor that an economic region of the state is an underem-
4 ployed area or that the state as a whole is an underemployed area,
5 qualified residents of the area who are eligible under AS 36.10.140
6 shall be given preference for work on each project under AS 36.10.180
7 that is wholly or partially sited within the area.

8 (b) The commissioner shall determine that an economic region of
9 the state or the state as a whole is an underemployed area if the
10 commissioner finds that

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

13 (2) a substantial number of residents in the area desire
14 work in occupations that would be employed on a public works project;

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

17 (4) employment of workers who are not residents of the area
18 is a peculiar source of the unemployment of residents of the area.

19 Sec. 36.10.160. PREFERENCE FOR RESIDENTS OF ECONOMICALLY DIS-
20 TRESSED AREAS. (a) During the two fiscal years following a deter-
21 mination by the commissioner that an economic region of the state is
22 an economically distressed area, qualified residents of the area who
23 are eligible under AS 36.10.140 shall be given preference for at least
24 50 percent of employment on each project under AS 36.10.180 that is
25 wholly or partially sited within the economically distressed area.
26 The preference applies to worker hours on a craft-by-craft basis.

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

29 (1) the average annual family income of residents of the

1 area is below the adjusted poverty guidelines of the federal Depart-
2 ment of Health and Human Services or that the unemployment rate in the
3 area exceeds the national rate of unemployment by at least five per-
4 centage points;

5 (2) the lack of employment opportunities in the area has
6 contributed to social or economic problems in the area; and

7 (3) employment of workers who are not residents of the area
8 is a peculiar source of unemployment of residents of the area.

9 Sec. 36.10.170. PREFERENCE FOR ECONOMICALLY DISADVANTAGED MINOR-
10 ITY RESIDENTS. (a) During the two fiscal years following a deter-
11 mination by the commissioner that the minority residents of an eco-
12 nomic region are economically disadvantaged, qualified minority resi-
13 dents of the area who are eligible under AS 36.10.140 shall be given
14 preference for at least 25 percent of employment on each project under
15 AS 36.10.180 that is wholly or partially sited within the area. The
16 preference applies to worker hours on a craft-by-craft basis.

17 (b) The commissioner shall determine that minority residents of
18 an area are economically disadvantaged if the commissioner finds that

19 (1) the civilian minority population of the area exceeds
20 the average civilian minority population for the state;

21 (2) either the percent of unemployment of civilian minority
22 residents of the area is at least two times the percent of unemploy-
23 ment of nonminority residents of the area or the civilian minority
24 population of the area has suffered past economic discrimination;

25 (3) the economic disadvantage of civilian minority resi-
26 dents of the area has contributed to social or economic problems in
27 the area;

28 (4) employment of workers who are not residents of the area
29 is a peculiar source of unemployment of civilian minority residents of

1 the area.

2 (c) In this section, a person is considered a member of a minor-
3 ity if the person is a member of a racial or ethnic minority group
4 recognized by the federal Bureau of the Census.

5 Sec. 36.10.180. PROJECTS SUBJECT TO PREFERENCE. (a) The pref-
6 erences established in AS 36.10.150 - 36.10.170 apply to

7 (1) the performance of contracts let by a municipality for
8 construction, repair, preliminary surveys, engineering studies, con-
9 sulting, maintenance work, or any other retention of services neces-
10 sary to complete a given project;

11 (2) a construction project that is partly or wholly funded
12 by state money and to which the state or an agency of the state, a
13 department, office, agency, state board, commission, regional school
14 board with respect to an educational facility under AS 14.11.020,
15 public corporation, or other organizational unit of or created under
16 the executive, legislative or judicial branch of state government,
17 including the University of Alaska and the Alaska Railroad Corpo-
18 ration, is a signatory to the construction contract;

19 (3) work performed on a public works project under a grant
20 to a municipality under AS 37.05.315;

21 (4) work performed on a public works project under a grant
22 to a named recipient under AS 37.05.316; and

23 (5) work performed on a public works project under a grant
24 to an unincorporated community under AS 37.05.317.

25 (b) If the governor has declared an area to be an area impacted
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 AS 36.10.150 and 36.10.160 for con-
29 tracts awarded by the state.

1 (c) The commissioner shall define the boundaries of an economic
2 region or an area within which a preference applies.

3 Sec. 36.10.900. EFFECT OF JUDICIAL DECISIONS. If a provision of
4 this chapter, or the application of a provision to a person or circum-
5 stance, is held invalid, the remainder of this chapter and the appli-
6 cation to other persons or circumstances shall not be affected by the
7 holding. The remainder shall be enforced to the greatest extent
8 constitutionally permissible under the constitutions of the United
9 States and the State of Alaska.

10 Sec. 36.10.990. DEFINITION. In this chapter "qualified" means
11 possesses the requisite education, training, skills, or experience to
12 perform the work.

13 * Sec. 6. AS 36.95.010 is amended by adding a new paragraph to read:

14 (9) "craft" means a recognized construction trade;

15 * Sec. 7. AS 37.05.315 is amended by adding a new subsection to read:

16 (e) The Department of Labor may require a municipality awarded a
17 grant under (a) of this section to comply with the hiring preferences
18 under AS 36.10.150 - 36.10.170 for employment generated by the grant.

19 * Sec. 8. AS 37.05.316 is amended by adding a new subsection to read:

20 (b) The Department of Labor may require a grant recipient under
21 (a) of this section to comply with the hiring preferences under
22 AS 36.10.150 - 36.10.170 in employment generated by the grant.

23 * Sec. 9. AS 37.05.317 is amended by adding a new subsection to read:

24 (b) The Department of Labor may require the qualified incor-
25 porated entity awarded a grant or agents or contractors with whom the
26 Department of Community and Regional Affairs contracts under (a) of
27 this section to comply with the requirements of AS 36.10.150 - 36.10.-
28 170 for employment generated by the grant.

29 * Sec. 10. The provisions of this Act do not apply to a contract

1 entered into before the effective date of this Act.

2 * Sec. 11. AS 36.95.010(4) is repealed.

3 * Sec. 12. AS 36.10.010 is repealed.

4 * Sec. 13. Section 12 of this Act takes effect February 16, 1986, or
5 immediately, in accordance with AS 01.10.070(c), whichever is later, if the
6 final decision of the Alaska Supreme Court in Robison v. Francis, File No.
7 S-493, Opinion No. 3011, January 17, 1986, is not submitted for review to
8 the United States Supreme Court. If the decision is submitted for review
9 but the United States Supreme Court declines to accept review, then sec. 12
10 of this Act takes effect on the date of the order of the United States
11 Supreme Court declining to accept review. If the United States Supreme
12 Court accepts review, then sec. 12 of this Act takes effect on the date of
13 a final decision of the United States Supreme Court affirming the decision
14 of the Alaska Supreme Court.

15 * Sec. 14. Sections 1 - 11 of this Act take effect immediately in
16 accordance with AS 01.10.070(c).