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BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE SENATE

2

CS FOR SENATE BILL NO. 271 (L&C)

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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 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) because of its unique climate and its distance from the
20 contiguous states, the state has historically suffered from unique
21 social, seasonal, geographic, and economic conditions that result in
22 an unstable economy;

23 (2) the unstable economy is a hardship on the residents of
24 the state and is aggravated by the large numbers of seasonal and
25 transient nonresident workers;

26 (3) the rate of unemployment among residents of the state
27 is one of the highest in the nation;

28 (4) the state has one of the highest ratios of nonresident
29 to resident workers in the nation;

1 (5) the state has a compelling interest in reducing the
2 level of unemployment among its residents;

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

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

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

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

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

1 ment, exploration, and production activities; therefore, the growing
2 number of nonresidents hired for work on state land, in the develop-
3 ment, exploration, production, and extraction of state resources, is a
4 peculiar source of the unemployment evil now besetting the state;

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

11 Sec. 38.45.030. RESIDENT HIRE REQUIREMENTS. (a) An employer
12 shall meet the resident hiring requirements established by the commis-
13 sioner of labor under this section on a natural resource project on
14 state land that is subject to a hiring preference under AS 38.45.050.
15 An employer may not discriminate against qualified residents in em-
16 ployment on a natural resource project on state land.

17 (b) The commissioner of labor shall determine the amount of work
18 that must be performed under this chapter by qualified residents on a
19 natural resource project on state land. In making this determination,
20 the commissioner shall consider the nature of the work, the classi-
21 fication of workers, availability of residents, and the willingness of
22 residents to perform the work. The commissioner shall require an
23 employer to make the maximum feasible effort to hire qualified resi-
24 dents for jobs on state land.

25 (c) In order to create, protect, and preserve the right of qual-
26 ified residents to employment in natural resource projects on state
27 land, the commissioner of natural resources shall incorporate into
28 each lease, unitization agreement, or renegotiation of a lease or
29 agreement, provisions requiring compliance with this chapter, regula-

1 tions adopted under this chapter, and all later amendments to this
2 chapter or the regulations, and authorizing penalties under AS 38.45.-
3 070 for failure to comply. The commissioner shall incorporate into
4 each lease, agreement, or renegotiation a requirement that the lessee
5 include a provision requiring compliance with this chapter, later
6 amendments of this chapter, regulations adopted under this chapter and
7 authorizing penalties under AS 38.45.070 in a contract under the lease
8 or agreement with contractors or subcontractors who will be operating
9 on state land.

10 (d) An employer subject to resident hiring requirements under
11 this chapter may request the Department of Labor to assist in locat-
12 ing qualified available resident employees. After receiving a request
13 for assistance, the department shall refer qualified available
14 residents to the employer to fill the employer's hiring needs. If the
15 department is unable to refer a sufficient number of residents, it may
16 approve the hiring of nonresidents for the balance of the request.

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

21 Sec. 38.45.050. APPLICABILITY OF CHAPTER. This chapter applies
22 to all natural resource projects on state land. The Department of
23 Labor shall determine the extent of the resident hiring preference for
24 each project under AS 38.45.030. The preference applies only to
25 employment that is performed directly for an employer.

26 Sec. 38.45.060. REGULATIONS AND HEARINGS. (a) The Department
27 of Labor and the Department of Natural Resources shall adopt regula-
28 tions to implement this chapter. The Department of Labor shall adopt
29 regulations prohibiting discrimination against qualified residents in

1 employment on a natural resource project on state land. Regulations
2 and proceedings under this chapter are subject to the Administrative
3 Procedure Act (AS 44.62) except as provided in (b) of this section.

4 (b) An employer shall determine and judge the work qualifica-
5 tions of applicants for employment. An applicant who has been reject-
6 ed or an employee who has been terminated from employment may, within
7 30 days after the rejection or termination, request a hearing before
8 the Department of Labor to determine whether the employer violated
9 this chapter in denying the application or terminating the employment.
10 The Department of Labor shall hold a hearing on the question within 20
11 days of receipt of the request unless the applicant or employee re-
12 quests a longer period of time.

13 (c) The Department of Labor may conduct investigations and
14 hearings to determine compliance with this chapter. If the commis-
15 sioner of labor finds that an employer has wilfully failed to comply
16 with this chapter, the commissioner may certify the finding to the
17 Department of Natural Resources.

18 Sec. 38.45.070. PENALTIES. (a) If the Department of Labor
19 finds that an employer has rejected a qualified applicant or term-
20 inated a qualified employee from employment in violation of this
21 chapter, the department may require the employer to pay the person
22 three times the amount of wages the person lost and may require addi-
23 tional amounts if the person's actual expenses incurred as a result of
24 the wrongful action exceeded the triple wages assessed. Either party
25 may appeal the department's decision under this section to the su-
26 perior court. The court may hear the appeal de novo.

27 (b) The Department of Natural Resources, upon certification of
28 noncompliance by the Department of Labor under AS 38.45.060, may
29 investigate and conduct hearings. If it finds wilful noncompliance,

1 the department may impose on the employer any of the following pen-
2 alties:

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

6 (2) require that all or a portion of project operations
7 cease;

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

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

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

20 Sec. 38.45.080. INJUNCTIVE RELIEF. The Department of Labor or
21 the Department of Natural Resources, in addition to the imposition of
22 penalties under AS 38.45.070, may seek injunctive relief against a
23 person who is not in compliance with this chapter; the Department of
24 Natural Resources may seek injunctive relief to enforce penalties
25 imposed under AS 38.45.070.

26 Sec. 38.45.090. DEFINITIONS. In this chapter

27 (1) "employer" means a person other than the state who is a
28 party to a lease or agreement for a natural resource project on state
29 land and includes the person's affiliate, principal, subsidiary,

1 contractor, or subcontractor if the activity of the affiliate, princi-
2 pal, subsidiary, contractor, or subcontractor is performed on state
3 land;

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

10 (3) "qualified resident" means a resident who possesses the
11 requisite education, training, skills, or experience to perform the
12 work;

13 (4) "resident" means a person who

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

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

20 * Sec. 2. This chapter applies to a lease, unitization agreement, or
21 contract for the development of oil and gas, or mineral or timber resources
22 entered into after the effective date of this Act and to a renegotiation of
23 the lease, agreement or contract. This chapter applies to the renegotia-
24 tion after the effective date of this Act of a lease, agreement, or con-
25 tract entered into before the effective date of this Act if the renegotia-
26 tion results in a major change to the duties of a party.

27 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
28 10.070(c).