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1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 271 (Resources)
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; therefore, the
28 number of nonresidents hired for work on state land in the develop-
29 ment, exploration, production, and extraction of state resources is a

1 peculiar source of the unemployment problem now besetting the state;

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

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

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

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

20 Sec. 38.45.040. EMPLOYEE QUALIFICATIONS. An employer shall
21 determine and judge the work qualifications of applicants for employ-
22 ment.

23 Sec. 38.45.050. REGULATIONS. The commissioner of labor shall
24 adopt regulations in accordance with AS 44.62 (Administrative Proce-
25 dure Act) to implement this chapter and encourage and require the
26 hiring of residents to the maximum extent permitted by law.

27 Sec. 38.45.060. RESIDENT HIRE REPORT. The attorney general and
28 the commissioner of labor shall report annually to the legislature and
29 the governor on the status of employment in the state, the effect of

1 nonresident employment on the employment of residents in the state,
2 and methods to increase resident hire. The report shall be submitted
3 by January 31 of each year.

4 Sec. 38.45.070. ELIGIBILITY FOR PREFERENCE. (a) A person is
5 eligible for an employment preference under this chapter if the person
6 certifies eligibility as required by the Department of Labor, is a
7 resident, and

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

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

12 (3) is underemployed or marginally employed as defined by
13 the department; or

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

17 (b) An employer subject to a resident hiring requirement under
18 this chapter shall certify that persons employed as residents under
19 the preference were eligible for the preference at the time of hire.

20 Sec. 38.45.080. DETERMINATION OF UNDEREMPLOYED AREA. (a)
21 Immediately following a determination by the commissioner of labor
22 that a census area, economic region, or the state as a whole is an
23 underemployed area and for the next two fiscal years after the deter-
24 mination, qualified residents who are eligible under AS 38.45.070
25 shall be given preference in hiring for work on each natural resource
26 project on state land that is wholly or partially sited within the
27 area.

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

1 were eligible for an employment preference under this chapter at the
2 time of hiring. In making this determination, the commissioner shall
3 consider the nature of the work, the classification of workers, avail-
4 ability of eligible residents, and the willingness of eligible resi-
5 dents to 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. 38.45.090. 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 38.45.070 shall be given preference in hiring for at least 50

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

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

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

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

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

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

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

24 Sec. 38.45.100. INCORPORATION INTO CONTRACTS. (a) In order to
25 create, protect, and preserve the right of eligible qualified resi-
26 dents to employment in natural resource projects on state land, the
27 commissioner of natural resources shall incorporate into each con-
28 tract, lease, unitization agreement, or renegotiation of a contract,
29 lease or unitization agreement, provisions requiring compliance with

1 this chapter, regulations adopted under this chapter, and all later
2 amendments to this chapter or the regulations, and authorizing pen-
3 alties under AS 38.45.120 for failure to comply.

4 (b) The commissioner shall incorporate into each contract,
5 lease, unitization agreement, or renegotiation a requirement that the
6 contractor or lessee include in each contract with contractors or
7 subcontractors who will be operating on state land a provision requir-
8 ing compliance with this chapter, later amendments of this chapter,
9 regulations adopted under this chapter, and authorizing penalties
10 under AS 38.45.120.

11 Sec. 38.45.110. REPORTING PROVISIONS. An employer obligated to
12 meet resident hiring requirements under this chapter shall comply with
13 the reporting provisions that the commissioner of labor determines are
14 reasonably necessary to carry out this chapter. Except for statis-
15 tical data, information concerning specific employees is confidential
16 and may not be released to the public by the department. However,
17 confidential employee information may be shared between departments
18 for purposes of this chapter.

19 Sec. 38.45.120. CIVIL PENALTY. (a) The Department of Labor may
20 conduct investigations and hearings to determine compliance with this
21 chapter. After a hearing, if the commissioner of labor finds that an
22 employer has wilfully failed to comply with this chapter, the commis-
23 sioner may impose a civil penalty in the amount of

24 (1) the lesser of \$5,000 or five percent of the compensa-
25 tion to the state under the project, lease, or agreement for the first
26 rejection of a qualified eligible applicant or other violation of this
27 chapter;

28 (2) the lesser of \$10,000 or 10 percent of the compensation
29 to the state under the project, lease, or agreement for the second and

1 each subsequent rejection or other violation of this chapter.

2 (b) In addition to the imposition of other penalties under this
3 section, if the Department of Labor finds that an employer has wil-
4 fully rejected a qualified eligible applicant or terminated a quali-
5 fied eligible employee in violation of this chapter, the department
6 may require the employer to pay the person the amount of wages the
7 person lost and may require additional amounts to reimburse the person
8 for actual expenses incurred as a result of the wrongful action.

9 (c) The commissioner may impose the penalties under this section
10 on an employer only if the employer itself has failed to comply with
11 this chapter, later amendments of this chapter, or regulations adopted
12 under this chapter, or if the employer has failed to incorporate into
13 its contracts the provision required under AS 38.45.100(b).

14 (d) The Department of Labor, in addition to the imposition of
15 penalties under this section, may seek injunctive relief against a
16 person who is not in compliance with this chapter and to enforce
17 penalties imposed under this section.

18 Sec. 38.45.130. PENALTIES FOR APPLICANTS AND EMPLOYERS. (a) A
19 person who makes a false sworn statement in connection with a certi-
20 fication of eligibility for an employment preference under this chap-
21 ter is subject to criminal prosecution for perjury as provided in
22 AS 11.56.200.

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

28 (c) In addition to criminal penalties imposed by state law, if a
29 person is convicted of a crime in connection with a false statement

1 made in a certification required under AS 38.45.060, and the convic-
2 tion is not reversed, that person shall forfeit all future rights to
3 eligibility for an employment preference under this chapter.

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

7 Sec. 38.45.250. DEFINITIONS. In this chapter

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

10 (2) "employer" means a person other than the state who is a
11 party to a contract, lease, or unitization agreement for a natural
12 resource project on state land and the person's affiliate, principal,
13 subsidiary, contractor, or subcontractor if the activity of the affil-
14 iate, principal, subsidiary, contractor, or subcontractor is performed
15 on state land;

16 (3) "natural resource project on state land" means a pro-
17 ject authorized by a contract, lease, unitization agreement, or a
18 renegotiation of a contract, lease, or unitization agreement for
19 exploration, development, extraction or production of oil and gas,
20 leasable mineral, or timber resources if the state is a party to the
21 contract, lease or unitization agreement and the project is performed
22 in whole or in part on state land;

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

26 (5) "resident" means a person who establishes residency
27 under AS 01.10.055;

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

1 * Sec. 2. AS 38.45, enacted in sec. 1 of this Act, applies to a lease,
2 unitization agreement, or contract for the development of oil and gas,
3 leasable mineral, or timber resources entered into on or after the effec-
4 tive date of this Act and to a renegotiation of the lease, unitization
5 agreement, or contract. AS 38.45 applies to the renegotiation on or after
6 the effective date of this Act of a lease, unitization agreement, or con-
7 tract entered into before the effective date of this Act if the renegotia-
8 tion results in a major change in the duties of a party.

9 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
10 10.070(c).