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BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE SENATE

2

CS FOR SENATE 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 relating to Alaskan resident employment
7 preference; and providing for an effective date."

8 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.

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

18 (c) The legislature further finds that the ratio of employees on
19 a certified payroll who did not apply for or were refused a permanent
20 fund dividend under AS 43.23 to employees who were found eligible to
21 receive a dividend is a reasonable but not exclusive indicator of the
22 ratio of nonresident to resident employees on a public works project.

23 (d) When determining the ratio of nonresident to resident em-
24 ployees working on a public works project, the commissioner may con-
25 sider information gathered from on-site surveys of public works proj-
26 ects including individual interviews, questionnaires, examination of
27 the state of registration of vehicles owned or operated by employees,
28 and other information acquired from inspection of certified payrolls.

29 (e) The legislature finds that the following factors are

1 reasonable but not exclusive indicators of the ratio of nonresident to
2 resident employees in the state:

3 (1) the ratio of applicants for unemployment insurance who
4 list out-of-state residences to applicants who list residences in the
5 state;

6 (2) the ratio of employees who are subject to unemployment
7 insurance coverage and who did not apply for or were denied a perma-
8 nent fund dividend to employees who were found eligible for a divi-
9 dend.

10 (f) The legislature finds that

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

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

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 AS 36.10.070 is repealed and reenacted to read:

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

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

1 request.

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

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

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

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

13 Sec. 36.10.140. ELIGIBILITY FOR PREFERENCE. (a) A person is
14 eligible for an employment preference under this chapter if the person
15 registers as required by the Department of Labor, is a resident, and

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

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

20 (3) is underemployed or marginally employed as defined by
21 the department; or

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

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

28* Sec. 36.10.150. DETERMINATION OF UNDEREMPLOYED AREA: (a)
29 Immediately following a determination by the commissioner of labor

1 that an economic region of the state is an underemployed area or that
2 the state as a whole is an underemployed area, and for the next two
3 years after the determination, qualified residents of the area who are
4 eligible under AS 36.10.140 shall be given preference for work on each
5 project under AS 36.10.180 that is wholly or partially sited within
6 the area.

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

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

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

14 (3) the lack of employment opportunities in the area has
15 contributed to 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 Sec. 36.10.160. PREFERENCE FOR RESIDENTS OF ECONOMICALLY DIS-
19 TRESSED AREAS. (a) Immediately following a determination by the
20 commissioner that an economic region of the state is an economically
21 distressed area, and for the next two years after the determination,
22 qualified residents of the area who are eligible under AS 36.10.140
23 shall be given preference for at least 50 percent of employment on
24 each project under AS 36.10.180 that is wholly or partially sited
25 within the economically distressed area. The preference applies to
26 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 unemployment rate in the area exceeds the national

1 rate of unemployment by at least five percentage points;

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

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

6 Sec. 36.10.170. PREFERENCE FOR ECONOMICALLY DISADVANTAGED MINOR-
7 ITY RESIDENTS. (a) Immediately following a determination by the
8 commissioner that the minority residents of an economic region are
9 economically disadvantaged, and for the next two years after the
10 determination, qualified minority residents of the area who are eligi-
11 ble under AS 36.10.140 shall be given preference for at least 25
12 percent of employment on each project under AS 36.10.180 that is
13 wholly or partially sited within the area. The preference applies to
14 worker hours on a craft-by-craft basis.

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

17 (1) the civilian minority population of the area exceeds
18 the average civilian minority population for the state;

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

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

26 (4) employment of workers who are not residents is a pecu-
27 liar source of unemployment of civilian minority residents of the
28 area.

29 (c) In this section, a person is considered to be a member of a

1 minority if the person is black but not of Hispanic origin, Hispanic,
2 Asian or Pacific Islander, American Indian or Alaskan Native, as those
3 terms are defined by the Equal Employment Opportunity Commission.

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

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

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

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

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

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

24 (b) If the governor has declared an area to be an area impacted
25 by an economic disaster under AS 44.33.285, then the preference for
26 residents of the area established under AS 44.33.285 - 44.33.310
27 supercedes the preference under AS 36.10.150 and 36.10.160 for con-
28 tracts awarded by the state.

29 (c) The commissioner shall define the boundaries of an economic

1 region or an area within which a preference applies.

2 Sec. 36.10.190. PENALTIES. (a) A person who makes a false
3 sworn statement in connection with a certification of eligibility for
4 an employment preference under this chapter is subject to criminal
5 prosecution for perjury as provided in AS 11.56.200.

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

11 (c) In addition to criminal penalties imposed by state law, if a
12 person is convicted of a crime in connection with a false statement
13 made in a certification required under AS 36.10.140, and the convic-
14 tion is not reversed, that person shall forfeit all future rights to
15 eligibility for an employment preference under this chapter.

16 Sec. 36.10.900. EFFECT OF JUDICIAL DECISIONS. If a provision of
17 this chapter, or the application of a provision to a person or circum-
18 stance, is held invalid, the remainder of this chapter and the appli-
19 cation to other persons or circumstances shall not be affected by the
20 holding. The remainder shall be enforced to the greatest extent
21 constitutionally permissible under the constitutions of the United
22 States and the State of Alaska.

23 Sec. 36.10.990. DEFINITION. In this chapter "qualified" means
24 possesses the requisite education, training, skills, or experience to
25 perform the work.

26 * Sec. 6. AS 36.95.010 is amended by adding new paragraphs to read:

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

28 (10) "resident" means a person who establishes residency
29 under AS 01.10.055.

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

2 (e) The Department of Labor shall require a municipality awarded
3 a grant for a public works project under (a) of this section to comply
4 with the hiring preferences under AS 36.10.150 - 36.10.170 for employ-
5 ment generated by the grant.

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

7 (b) The Department of Labor shall require a recipient awarded a
8 grant for a public works project under (a) of this section to comply
9 with the hiring preferences under AS 36.10.150 - 36.10.170 for employ-
10 ment generated by the grant.

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

12 (b) The Department of Labor shall require the qualified incor-
13 porated entity awarded a grant or agents or contractors with whom the
14 Department of Community and Regional Affairs contracts under (a) of
15 this section to comply with the requirements of AS 36.10.150 - 36.10.-
16 170 for employment generated by the grant or contract if the grant or
17 contract is for a public works project.

18 * Sec. 10. The provisions of this Act do not apply to a contract en-
19 tered into before the effective date of this Act unless the contract in-
20 cludes a provision requiring compliance with laws regarding the hiring of
21 Alaska residents that take effect during the term of the contract.

22 * Sec. 11. AS 36.95.010(4) and (5) are repealed.

23 * Sec. 12. AS 36.10.010 is repealed.

24 * Sec. 13. Section 12 of this Act takes effect April 17, 1986, or im-
25 mediately, in accordance with AS 01.10.070(c), whichever is later, if the
26 final decision of the Alaska Supreme Court in Robison v. Francis, File No.
27 S-493, Opinion No. 3011, January 17, 1986, is not submitted for review to
28 the United States Supreme Court. If the decision is submitted for review
29 but the United States Supreme Court declines to accept review, then sec. 12

1 of this Act takes effect on the date of the order of the United States
2 Supreme Court declining to accept review. If the United States Supreme
3 Court accepts review, then sec. 12 of this Act takes effect on the date of
4 a final decision of the United States Supreme Court affirming the decision
5 of the Alaska Supreme Court.

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