

Offered: 4/4/86
Referred: Finance

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1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 CS FOR SENATE BILL NO. 367 (Judiciary)
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 annually to the legislature and
9 the governor on the status of employment in the state, the effect of
10 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 each year.

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 certifies eligibility as required by the Department of Labor, is a
16 resident, and

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

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

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

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

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

29 Sec. 36.10.150. DETERMINATION OF UNDEREMPLOYED AREA. (a)

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

8 (b) The commissioner of labor shall determine the amount of work
9 that must be performed under this section by eligible qualified resi-
10 dents. In making this determination, the commissioner shall consider
11 the nature of the work, the classification of workers, availability of
12 eligible residents, and the willingness of eligible residents to
13 perform the work.

14 (c) The commissioner shall determine that an economic region of
15 the state or the state as a whole is an underemployed area if the
16 commissioner finds that

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

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

21 (3) the lack of employment opportunities in the area has
22 substantially contributed to serious social or economic problems in
23 the area; and

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

26 Sec. 36.10.160. PREFERENCE FOR RESIDENTS OF ECONOMICALLY DIS-
27 TRESSED AREAS. (a) Immediately following a determination by the
28 commissioner that an economic region of the state is an economically
29 distressed area, and for the next two fiscal years after the

1 determination, qualified residents of the area who are eligible under
2 AS 36.10.140 shall be given preference for at least 50 percent of
3 employment on each project under AS 36.10.180 that is wholly or par-
4 tially sited within the economically distressed area.

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

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

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

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

16 Sec. 36.10.170. PREFERENCE FOR ECONOMICALLY DISADVANTAGED MINOR-
17 ITY RESIDENTS. (a) Immediately following a determination by the
18 commissioner that the female or minority residents of an economic
19 region are economically disadvantaged, and for the next two fiscal
20 years after the determination, qualified female or minority residents
21 of the area who are eligible under AS 36.10.140 shall be given prefer-
22 ence for at least 25 percent of employment on each project under
23 AS 36.10.180 that is wholly or partially sited within the area.

24 (b) The commissioner shall determine that the female or minority
25 residents of an area are economically disadvantaged if the commission-
26 er finds that

27 (1) the female or civilian minority population of the area
28 exceeds the average female or civilian minority population for the
29 state;

1 (2) either the percent of unemployment of female or civil-
2 ian minority residents of the area is at least two times the percent
3 of unemployment of male or nonminority residents of the area or the
4 female or civilian minority population of the area has suffered past
5 economic discrimination;

6 (3) the economic disadvantage of female or civilian minor-
7 ity residents of the area has substantially contributed to serious
8 social or economic problems in the area; and

9 (4) employment of workers who are not residents is a pecu-
10 liar source of unemployment of female or civilian minority residents
11 of the area.

12 (c) In this section, a person is considered to be a member of a
13 minority if the person is a non-Hispanic black, Hispanic, Asian or
14 Pacific Islander, American Indian or Alaskan Native, as those terms
15 are defined by the Equal Employment Opportunity Commission.

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

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

22 (2) a construction project that is partly or wholly funded
23 by state money if the state or an agency of the state, a department,
24 office, agency, state board, commission, regional school board with
25 respect to an educational facility under AS 14.11.020, public corpo-
26 ration, or other organizational unit of or created under the execu-
27 tive, legislative or judicial branch of state government, including
28 the University of Alaska and the Alaska Railroad Corporation, is a
29 signatory to the construction contract;

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

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

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

7 (b) If the governor has declared an area to be an area impacted
8 by an economic disaster under AS 44.33.285, then the preference for
9 residents of the area established under AS 44.33.285 - 44.33.310
10 supercedes the preference under AS 36.10.150 and 36.10.160 for con-
11 tracts awarded by the state.

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

14 Sec. 36.10.190. REPORTING PROVISIONS. An employer obligated to
15 meet resident hire requirements under this chapter shall comply with
16 the reporting provisions that the commissioner of labor determines are
17 reasonably necessary to carry out this chapter. Except for statis-
18 tical data, all information regarding specific employees is confiden-
19 tial and may not be released by the Department of Labor.

20 Sec. 36.10.200. CRIMINAL PENALTIES. (a) A person who makes a
21 false sworn statement in connection with a certification of eligibil-
22 ity for an employment preference under this chapter is subject to
23 criminal prosecution for perjury as provided in AS 11.56.200.

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

29 (c) In addition to criminal penalties imposed by state law, if a

1 person is convicted of a crime in connection with a false statement
2 made in a certification required under AS 36.10.140, and the convic-
3 tion is not reversed, that person shall forfeit all future rights to
4 eligibility for an employment preference under this chapter.

5 Sec. 36.10.210. CIVIL PENALTIES. (a) In addition to any crimi-
6 nal penalties imposed, after a hearing the department may impose a
7 civil penalty on a person who, in connection with certification of
8 eligibility for an employment preference under this chapter,

9 (1) made a false sworn statement; or

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

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

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

23 Sec. 36.10.900. EFFECT OF JUDICIAL DECISIONS. If a provision of
24 this chapter, or the application of a provision to a person or circum-
25 stance, is held invalid, the remainder of this chapter and the appli-
26 cation to other persons or circumstances shall not be affected by the
27 holding. The remainder shall be enforced to the greatest extent
28 constitutionally permissible under the constitutions of the United
29 States and the State of Alaska.

1 Sec. 36.10.990. DEFINITIONS. In this chapter

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

4 (2) "qualified" means possesses the requisite education,
5 training, skills, or experience to perform the work.

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

7 (9) "resident" means a person who establishes residency
8 under AS 01.10.055.

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

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

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

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

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

20 (b) The Department of Labor shall require the qualified incor-
21 porated entity awarded a grant or agents or contractors with whom the
22 Department of Community and Regional Affairs contracts under (a) of
23 this section to comply with the requirements of AS 36.10.150 - 36.10.-
24 170 for employment generated by the grant or contract if the grant or
25 contract is for a public works project.

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

1 * Sec. 11. AS 36.95.010(4) and (5) are repealed.
2 * Sec. 12. AS 36.10.010 is repealed.
3 * Sec. 13. Section 12 of this Act takes effect April 17, 1986, or
4 immediately, in accordance with AS 01.10.070(c), whichever is later, if the
5 final decision of the Alaska Supreme Court in Robison v. Francis, File No.
6 S-493, Opinion No. 3011, January 17, 1986, is not submitted for review to
7 the United States Supreme Court. If the decision is submitted for review
8 but the United States Supreme Court declines to accept review, then sec. 12
9 of this Act takes effect on the date of the order of the United States
10 Supreme Court declining to accept review. If the United States Supreme
11 Court accepts review, then sec. 12 of this Act takes effect on the date of
12 a final decision of the United States Supreme Court affirming the decision
13 of the Alaska Supreme Court.
14 * Sec. 14. Sections 1 - 11 of this Act take effect immediately in
15 accordance with AS 01.10.070(c).