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1 IN THE SENATE

BY THE FINANCE COMMITTEE

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CS FOR SENATE BILL NO. 367 (Finance) am

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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

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

18 (c) The legislature finds that the following factors are reason-
19 able but not exclusive indicators of the ratio of nonresident to
20 resident employees in the state:

21 (1) the ratio of applicants for unemployment insurance who
22 list out-of-state residences to applicants who list residences in the
23 state;

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

28 (d) The legislature finds that

29 (1) the number of state residents who are unable to find

1 work is considerably higher than is reflected by unemployment rates.
2 based on nationally accepted measures;

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

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 AS 36.10.070 is repealed and reenacted to read:

8 Sec. 36.10.070. UNAVAILABILITY OF PREFERRED WORKERS. (a) An
9 employer subject to hiring requirements under this chapter may request
10 the Department of Labor to assist in locating qualified, eligible
11 employees. After receiving a request for assistance, the department
12 shall refer qualified, eligible, available residents to the employer
13 to fill the employer's hiring needs. The employer shall cooperate
14 with the department.

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

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

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

25 Sec. 36.10.130. RESIDENT HIRE REPORT. The attorney general and
26 the commissioner of labor shall report annually to the legislature and
27 the governor on the status of employment in the state, the effect of
28 nonresident employment on the employment of residents in the state,
29 and methods to increase resident hire. The report shall be submitted

1 by January 31 of each year.

2 Sec. 36.10.140. ELIGIBILITY FOR PREFERENCE. (a) A person is
3 eligible for an employment preference under this chapter if the person
4 certifies eligibility as required by the Department of Labor, is a
5 resident, and

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

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

10 (3) is underemployed or marginally employed as defined by
11 the department; or

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

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

18 Sec. 36.10.150. DETERMINATION OF UNDEREMPLOYED AREA. (a)
19 Immediately following a determination by the commissioner of labor
20 that an economic region of the state is an underemployed area or that
21 the state as a whole is an underemployed area, and for the next two
22 fiscal years after the determination, qualified residents of the area
23 who are eligible under AS 36.10.140 shall be given preference in
24 hiring for work on each project under AS 36.10.180 that is wholly or
25 partially sited within the area.

26 (b) The commissioner of labor shall determine the amount of work
27 that must be performed under this section by qualified residents who
28 were eligible for an employment preference under this chapter at the
29 time of hiring. In making this determination, the commissioner shall

1 consider the nature of the work, the classification of workers,
2 availability of eligible residents, who were eligible for an employ-
3 ment preference under this chapter at the time of hiring and the
4 willingness of eligible residents to perform the work.

5 (c) The commissioner shall determine that an economic region of
6 the state or the state as a whole is an underemployed area if the
7 commissioner finds that

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

10 (2) a substantial number of residents in the area have
11 experience or training in occupations that would be employed on a
12 public works project;

13 (3) the lack of employment opportunities in the area has
14 substantially contributed to serious social or economic problems in
15 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 fiscal years after the determi-
22 nation, qualified residents of the area who are eligible under AS 36.-
23 10.140 shall be given preference in hiring for at least 50 percent of
24 employment on each project under AS 36.10.180 that is wholly or par-
25 tially sited within the economically distressed area.

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

28 (1) the per capita income of residents is less than 90
29 percent of the per capita income of the United States as a whole, or

1 the unemployment rate in the area exceeds the national rate of unem-
2 ployment by at least five percentage points;

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

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

8 Sec. 36.10.170. PREFERENCE FOR ECONOMICALLY DISADVANTAGED MINOR-
9 ITY RESIDENTS. (a) Immediately following a determination by the
10 commissioner that the minority residents of a zone are economically
11 disadvantaged, and for the next two fiscal years after the determina-
12 tion, qualified minority residents of the zone who are eligible under
13 AS 36.10.140 shall be given preference in hiring for at least 25
14 percent of employment on each project under AS 36.10.180 that is
15 wholly or partially sited within the zone.

16 (b) The commissioner shall determine that the minority residents
17 of a zone are economically disadvantaged if the commissioner finds
18 that

19 (1) the percentage of civilian minority residents in the
20 zone exceeds the percentage of civilian minority residents in the
21 state;

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

26 (3) the economic disadvantage of civilian minority resi-
27 dents of the zone has substantially contributed to serious social or
28 economic problems in the zone; and

29 (4) employment of workers who are not residents is a

1 peculiar source of unemployment of civilian minority residents of the
2 zone.

3 (c) In this section, a person is considered to be a member of a
4 minority if the person is Hispanic, Asian or Pacific Islander,
5 American Indian or Alaska Native, or Black as those terms are defined
6 by the Equal Employment Opportunity Commission.

7 Sec. 36.10.175. PREFERENCE FOR ECONOMICALLY DISADVANTAGED FEMALE
8 RESIDENTS. (a) Immediately following a determination by the commis-
9 sioner that the female residents of a zone are economically disad-
10 vantaged, and for the next two fiscal years after the determination,
11 qualified female residents of the zone who are eligible under AS 36.-
12 10.140 shall be given preference for at least 25 percent of employment
13 on each project under AS 36.10.180 that is wholly or partially sited
14 within the zone.

15 (b) The commissioner shall determine that the female residents
16 of a zone are economically disadvantaged if the commissioner finds
17 that

18 (1) either the percent of unemployment of female residents
19 of the zone is at least two times the percent of unemployment of male
20 residents of the zone or the female population of the zone has suf-
21 fered past economic discrimination;

22 (2) the economic disadvantage of female residents of the
23 zone has substantially contributed to serious social or economic
24 problems in the zone; and

25 (3) employment of workers who are not residents is a pecu-
26 liar source of unemployment of female residents of the zone.

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

29 (1) the performance of contracts let by a municipality for

1 construction, repair, preliminary surveys, engineering studies, con-
2 sulting, maintenance work, or any other retention of services neces-
3 sary to complete a given project;

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

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

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

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

18 (b) If the governor has declared an area to be an area impacted
19 by an economic disaster under AS 44.33.285, then the preference for
20 residents of the area established under AS 44.33.285 - 44.33.310
21 supercedes the preference under AS 36.10.150 and 36.10.160 for con-
22 tracts awarded by the state.

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

25 Sec. 36.10.190. REPORTING PROVISIONS. An employer obligated to
26 meet resident hire requirements under this chapter shall comply with
27 the reporting provisions that the commissioner of labor determines are
28 reasonably necessary to carry out this chapter. Except for statis-
29 tical data, all information regarding specific employees is

1 confidential and may not be released by the Department of Labor.
2 However, confidential employee information may be shared between
3 departments for purposes of this chapter.

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

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

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

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

22 (1) made a false sworn statement; or

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

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

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

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

14 Sec. 36.10.990. DEFINITIONS. In this chapter

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

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

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

20 (9) "resident" means a person who establishes residency
21 under AS 01.10.055.

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

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

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

28 (b) The Department of Labor shall require a recipient awarded a
29 grant for a public works project under (a) of this section to comply

1 with the hiring preferences under AS 36.10.150 - 36.10.170 for employ-
2 ment generated by the grant.

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

4 (b) The Department of Labor shall require the qualified incor-
5 porated entity awarded a grant or agents or contractors with whom the
6 Department of Community and Regional Affairs contracts under (a) of
7 this section to comply with the requirements of AS 36.10.150 - 36.10.-
8 170 for employment generated by the grant or contract if the grant or
9 contract is for a public works project.

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

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

15 * Sec. 12. AS 36.10.010 is repealed.

16 * Sec. 13. Section 12 of this Act takes effect April 17, 1986, or
17 immediately, in accordance with AS 01.10.070(c), whichever is later, if the
18 final decision of the Alaska Supreme Court in Robison v. Francis, File No.
19 S-493, Opinion No. 3011, January 17, 1986, is not submitted for review to
20 the United States Supreme Court. If the decision is submitted for review
21 but the United States Supreme Court declines to accept review, then sec. 12
22 of this Act takes effect on the date of the order of the United States
23 Supreme Court declining to accept review. If the United States Supreme
24 Court accepts review, then sec. 12 of this Act takes effect on the date of
25 a final decision of the United States Supreme Court affirming the decision
26 of the Alaska Supreme Court.

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