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BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE SENATE

2 HOUSE CS FOR 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 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 AS 36.10.070 is repealed and reenacted to read: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) In approving job-training programs under (a) of this sec-
16 tion, the department shall use information and findings from other
17 state and federal agencies as much as possible.

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

21 (d) A labor organization that dispatches members for work on a
22 public works project under a collective bargaining agreement shall
23 certify that persons dispatched as residents to meet a preference were
24 eligible for the preference at the time of dispatch.

25 (e) An employer or labor organization may request assistance from
26 the Department of Labor in verifying the eligibility of an applicant
27 for a hiring preference under this chapter.

28 Sec. 36.10.150. DETERMINATION OF ZONE OF UNDEREMPLOYMENT. (a)
29 Immediately following a determination by the commissioner of labor

1 that a zone of underemployment exists, and for the next two fiscal
2 years after the determination, qualified residents of the zone who are
3 eligible under AS 36.10.140 shall be given preference in hiring for
4 work on each project under AS 36.10.180 that is wholly or partially
5 sited within the zone. The preference applies on a craft-by-craft or
6 occupational basis.

7 (b) The commissioner of labor shall determine the amount of work
8 that must be performed under this section by qualified residents who
9 are eligible for an employment preference under AS 36.10.140. In
10 making this determination, the commissioner shall consider the nature
11 of the work, the classification of workers, availability of eligible
12 residents, and the willingness of eligible residents to perform the
13 work.

14 (c) The commissioner shall determine that a zone of underemploy-
15 ment exists if the commissioner finds that

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

18 (2) a substantial number of residents in the zone have
19 experience or training in occupations that would be employed on a
20 public works project;

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

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

26 Sec. 36.10.160. PREFERENCE FOR RESIDENTS OF ECONOMICALLY DIS-
27 TRESSED ZONES. (a) Immediately following a determination by the
28 commissioner that an economically distressed zone exists, and for the
29 next two fiscal years after the determination, qualified residents of

1 the zone who are eligible under AS 36.10.140 shall be given preference
2 in hiring for at least 50 percent of employment on each project under
3 AS 36.10.180 that is wholly or partially sited within the zone. The
4 preference applies on a craft-by-craft or occupational basis.

5 (b) The commissioner shall determine that an economically dis-
6 tressed zone exists if the commissioner finds that

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

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

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

16 Sec. 36.10.170. PREFERENCE FOR ECONOMICALLY DISADVANTAGED MINOR-
17 ITY RESIDENTS. (a) Immediately following a determination by the
18 commissioner that the minority residents of a zone are economically
19 disadvantaged, and for the next two fiscal years after the determina-
20 tion, qualified minority residents of the zone who are eligible under
21 AS 36.10.140 shall be given preference in hiring for at least 25
22 percent of employment on each project under AS 36.10.180 that is
23 wholly or partially sited within the zone. The preference applies on
24 a craft-by-craft or occupational basis.

25 (b) The commissioner shall determine that the minority residents
26 of a zone are economically disadvantaged if the commissioner finds
27 that

28 (1) the percentage of civilian minority residents in the
29 zone exceeds the percentage of civilian minority residents in the

1 state;

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

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

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

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

16 Sec. 36.10.175. PREFERENCE FOR ECONOMICALLY DISADVANTAGED FEMALE
17 RESIDENTS. (a) Immediately following a determination by the commis-
18 sioner that the female residents of a zone are economically disadvan-
19 taged, and for the next two fiscal years after the determination,
20 qualified female residents of the zone who are eligible under AS 36.-
21 10.140 shall be given preference in hiring for at least 25 percent of
22 employment on each project under AS 36.10.180 that is wholly or par-
23 tially sited within the zone. The preference applies on a craft-by-
24 craft or occupational basis.

25 (b) The commissioner shall determine that the female residents
26 of a zone are economically disadvantaged if the commissioner finds
27 that

28 (1) either the percent of unemployment of female residents
29 of the zone is at least two times the percent of unemployment of male

1 residents of the zone or the female population of the zone has suf-
2 fered past economic discrimination;

3 (2) the economic disadvantage of female residents of the
4 zone has substantially contributed to serious social or economic prob-
5 lems in the zone; and

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

8 Sec. 36.10.180. PROJECTS SUBJECT TO PREFERENCE. (a) The pref-
9 erences established in AS 36.10.150 - 36.10.175 apply to work per-
10 formed

11 (1) under a contract for construction, repair, preliminary
12 surveys, engineering studies, consulting, maintenance work, or any
13 other retention of services necessary to complete a given project that
14 is let by the state or an agency of the state, a department, office,
15 state board, commission, public corporation, or other organizational
16 unit of or created under the executive, legislative or judicial branch
17 of state government, including the University of Alaska and the Alaska
18 Railroad Corporation, or by a political subdivision of the state
19 including a regional school board with respect to an educational
20 facility under AS 14.11.020;

21 (2) on a public works project under a grant to a municipal-
22 ity under AS 37.05.315;

23 (3) on a public works project under a grant to a named
24 recipient under AS 37.05.316;

25 (4) on a public works project under a grant to an unincor-
26 porated community under AS 37.05.317; and

27 (5) on any other public works project or construction
28 project that is funded in whole or in part by state money.

29 (b) If the governor has declared an area to be an area impacted

1 by an economic disaster under AS 44.33.285, then the preference for
2 residents of the area established under AS 44.33.285 - 44.33.310
3 supersedes the preference under AS 36.10.150 - 36.10.175 for contracts
4 awarded by the state.

5 (c) The commissioner shall define the boundaries of a zone
6 within which a preference applies.

7 Sec. 36.10.190. REPORTING PROVISIONS. An employer obligated to
8 meet resident hire requirements under this chapter shall comply with
9 the reporting provisions that the commissioner of labor determines are
10 reasonably necessary to carry out this chapter. Except for statis-
11 tical data, all information regarding specific employees is confiden-
12 tial and may not be released by the Department of Labor. However,
13 confidential employee information may be shared between departments
14 for purposes of this chapter.

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

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

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

29 Sec. 36.10.210. CIVIL PENALTIES. (a) In addition to any

1 criminal penalties imposed, after a hearing the department may impose
2 a civil penalty on a person who, in connection with certification of
3 eligibility for an employment preference under this chapter,

4 (1) made a false sworn statement; or

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

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

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

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

25 Sec. 36.10.990. DEFINITIONS. In this chapter

26 (1) "qualified" means possesses the requisite education,
27 training, skills, or experience to perform the work;

28 (2) "zone" includes a census area in the state, an economic
29 region of the state, and the state as a whole.

- 1 * Sec. 6. AS 36.95.010 is amended by adding a new paragraph to read:
2 (9) "resident" means a person who establishes residency
3 under AS 01.10.055.
- 4 * Sec. 7. AS 37.05.315 is amended by adding a new subsection to read:
5 (e) The Department of Labor shall require a municipality awarded
6 a grant for a public works project under (a) of this section to comply
7 with the hiring preferences under AS 36.10.150 - 36.10.175 for employ-
8 ment generated by the grant.
- 9 * Sec. 8. AS 37.05.316 is amended by adding a new subsection to read:
10 (b) The Department of Labor shall require a recipient awarded a
11 grant for a public works project under (a) of this section to comply
12 with the hiring preferences under AS 36.10.150 - 36.10.175 for employ-
13 ment generated by the grant.
- 14 * Sec. 9. AS 37.05.317 is amended by adding a new subsection to read:
15 (b) The Department of Labor shall require the qualified incor-
16 porated entity awarded a grant or agents or contractors with whom the
17 Department of Community and Regional Affairs contracts under (a) of
18 this section to comply with the requirements of AS 36.10.150 - 36.10.-
19 175 for employment generated by the grant or contract if the grant or
20 contract is for a public works project.
- 21 * Sec. 10. The provisions of this Act do not apply to a contract en-
22 tered into before the effective date of this Act unless the contract in-
23 cludes a provision requiring compliance with laws regarding the hiring of
24 Alaska residents that take effect during the term of the contract.
- 25 * Sec. 11. AS 36.10.010 and AS 36.95.010(4) and (5) are repealed.
- 26 * Sec. 12. This Act takes effect immediately in accordance with AS 01.-
27 10.070(c).