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BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE SENATE

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HOUSE CS FOR CS FOR SENATE BILL NO. 367 (L&C) am H

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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 AS 36.10.070 is repealed and reenacted to read: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  
26 from the Department of Labor in verifying the eligibility of an  
27 applicant 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 , or a percent representative of the civilian minority resi-  
23 dents in the zone, whichever is greater, of employment on each project  
24 under AS 36.10.180 that is wholly or partially sited within the zone.  
25 The preference applies on a craft-by-craft or occupational basis.

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

29 (1) the percentage of civilian minority residents in the

1 zone exceeds the percentage of civilian minority residents in the  
2 state;

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

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

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

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

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

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

29 (1) either the percent of unemployment of female residents

1 of the zone is at least two times the percent of unemployment of male  
2 residents of the zone or the female population of the zone has suf-  
3 fered past economic discrimination;

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

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

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

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

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

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

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

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

1 (b) If the governor has declared an area to be an area impacted  
2 by an economic disaster under AS 44.33.285, then the preference for  
3 residents of the area established under AS 44.33.285 - 44.33.310  
4 supersedes the preference under AS 36.10.150 - 36.10.175 for contracts  
5 awarded by the state.

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

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

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

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

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

29 (1) made a false sworn statement; or

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

3                   (b) The amount of the civil penalty under (a) of this section  
4 for a person who falsely certifies that the person is eligible for an  
5 employment preference under this chapter is not more than \$400 for  
6 each false certification.

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

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

20                   Sec. 36.10.990. DEFINITIONS. In this chapter

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

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

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

26                   (9) "resident" means a person who establishes residency  
27 under AS 01.10.055.

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

29                   (e) The Department of Labor shall require a municipality awarded

1 a grant for a public works project under (a) of this section to comply  
2 with the hiring preferences under AS 36.10.150 - 36.10.175 for employ-  
3 ment generated by the grant.

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

5 (b) The Department of Labor shall require a recipient awarded a  
6 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. 9. AS 37.05.317 is amended by adding a new subsection to read:

10 (b) The Department of Labor shall require the qualified incor-  
11 porated entity awarded a grant or agents or contractors with whom the  
12 Department of Community and Regional Affairs contracts under (a) of  
13 this section to comply with the requirements of AS 36.10.150 - 36.10.-  
14 175 for employment generated by the grant or contract if the grant or  
15 contract is for a public works project.

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

20 \* Sec. 11. AS 36.10.010 and AS 36.95.010(4) and (5) are repealed.

21 \* Sec. 12. This Act takes effect immediately in accordance with AS 01.-  
22 10.070(c).