

Introduced: 2/14/86
Referred: Labor and Commerce,
Judiciary and Finance

1 IN THE SENATE

BY BENNETT AND KELLY

2

SENATE BILL NO. 431

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 preferences for state residents;
7 requiring resident hire on certain natural resource
8 projects on state land; and providing for an effective
9 date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 33.30.062(a) is amended to read:

12 (a) The commissioner may enter into an agreement with a pri-
13 vately operated correctional facility, but only if the facility is
14 located in the state and if the purpose of the agreement is to involve
15 prisoners in a work or rehabilitation furlough program established
16 under this chapter, to provide necessary facilities under AS 33.30.-
17 282 - 33.30.288, or to confine prisoners convicted of a misdemeanor.
18 Notwithstanding AS 37.05.230(b)(2) [AS 37.05.230(1)(B)], an agreement
19 awarded under this subsection shall be based on competitive bids.

20 * Sec. 2. AS 36.10.010 is amended to read:

21 Sec. 36.10.010. EMPLOYMENT PREFERENCE. (a) In the performance
22 of contracts let by a municipality for construction, repair, prelimi-
23 nary surveys, engineering studies, consulting, maintenance work or any
24 other retention of services necessary to complete any given project,
25 only [95 PERCENT] residents shall be employed where they are available
26 and qualified. [IF 10 OR FEWER PERSONS ARE EMPLOYED UNDER THE CON-
27 TRACT, THEN 90 PERCENT RESIDENTS SHALL BE EMPLOYED WHERE THEY ARE
28 AVAILABLE AND QUALIFIED.] In all cases of public works projects,
29 preference shall be given to residents. In an area which has been

1 designated as an area impacted by an economic disaster, residents of
2 that area shall be given employment preference as provided in
3 AS 44.33.290, followed by other residents of the state.

4 (b) When a construction project is partly or wholly funded by
5 state money and 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 executive,
9 legislative or judicial branch of state government, including the
10 University of Alaska, is a signatory to the construction contract, the
11 contract shall require that all [THE] worker hours [ON A CRAFT-BY-
12 CRAFT BASIS] shall be performed [AT LEAST 95 PERCENT] by bona fide
13 state residents. [IF 10 OR FEWER PERSONS ARE EMPLOYED UNDER THE
14 CONTRACT, THEN 90 PERCENT RESIDENTS SHALL BE EMPLOYED WHERE THEY ARE
15 AVAILABLE AND QUALIFIED.] In an area which has been designated as an
16 area impacted by an economic disaster, residents of that area shall be
17 given employment preference as provided in AS 44.33.290, followed by
18 other residents of the state.

19 * Sec. 3. AS 36.10.070 is amended to read:

20 Sec. 36.10.070. UNAVAILABILITY OF RESIDENT WORKERS. (a) When
21 resident labor is unavailable, the contractor shall inform the commis-
22 sioner of labor of the number of additional workers needed. The
23 commissioner of labor shall investigate the facts and, if the commis-
24 sioner finds that qualified residents are unavailable for the work,
25 the commissioner shall certify [DESIGNATE] the number of nonresidents
26 who may be employed and for what period.

27 (b) When residents other than laborers but who are included in
28 AS 36.10.010 are unavailable, the potential employer shall notify the
29 commissioner of labor of the type and number of persons needed. The

1 commissioner shall investigate the facts and if the commissioner finds
2 that qualified residents are unavailable for work, the commissioner
3 shall certify the number of nonresidents who may be employed, the type
4 of work for which they may be employed, and for what period.

5 * Sec. 4. AS 36.98.040(a) is amended to read:

6 (a) After the responses are submitted, the state agency shall
7 evaluate them. The evaluation shall consist of assigning point values
8 to factors considered by the agency in evaluating each proposal. Each
9 proposal received must be evaluated using the same factors as those
10 set out in the request for proposal. Notwithstanding the ranking of
11 the responses based on the points assigned, if responses are received
12 from two or more residents of the state, then the contract shall be
13 awarded to the resident receiving the greater number of points.

14 * Sec. 5. AS 37.05.230 is repealed and reenacted to read:

15 Sec. 37.05.230. COMPETITIVE BIDS. (a) This chapter and regu-
16 lations established under this chapter apply to contracts, purchases,
17 and sales entered under this section.

18 (b) A contract for construction and repairs, or a purchase of
19 and contract for supplies, materials, equipment, and contractual
20 services must be based on competitive bids; an award shall be made to
21 the lowest responsible bidder after advertising for bids, except that

22 (1) if two or more responsible bidders in a bid proceeding
23 are Alaska bidders, then the bid shall be awarded to the lowest re-
24 sponsible Alaska bidder; and

25 (2) competitive bids need not be required

26 (A) for contractual services where no competition
27 exists;

28 (B) for sales involving fair trade items;

29 (C) when, in the judgment of the purchasing agent,

1 food, clothing, or medical supplies, or materials for use in
2 laboratory and experimental studies may be purchased otherwise to
3 the best advantage of the state;

4 (D) where rates are fixed by law or ordinance;

5 (E) for items traded in on like items; or

6 (F) for professional services.

7 (c) If the amount of the contractual services, purchase, or sale
8 is estimated to exceed \$5,000, sealed bids shall be solicited, when
9 practicable, by publication in a newspaper calculated to reach pro-
10 spective bidders and by posting notices in public places within the
11 area where the work is to be performed or material furnished and in
12 addition the department may also designate a trade journal for publi-
13 cation. The department shall also solicit bids by sending notices by
14 mail to all active prospective bidders known to it and all bids shall
15 be sealed when received, and shall be opened in public at the hour
16 stated in the notice; the department may limit the solicitation of
17 bids or negotiate directly if it finds that it is in the best inter-
18 ests of the state.

19 (d) A contractual service, purchase, or sale where the known
20 requirements are estimated to be less than \$5,000 may be made either
21 upon competitive bids in accordance with (c) of this section or in the
22 open market, in the discretion of the department; but, so far as
23 practicable, shall be based on at least three competitive bids and
24 recorded as provided in AS 37.05.240. Small purchases of less than
25 \$500 in the discretion of the department may be made on the open
26 market, and may be by cash payment from petty cash accounts set aside
27 for that purpose. The department shall determine the amount of the
28 petty cash accounts needed by each state agency, and inspect the petty
29 cash accounts at least once each year to determine that the total plus

1 amounts of receipts for unreplenished disbursements is equal to the
2 fixed sum of cash set aside; shortages in petty cash accounts are a
3 personal liability of the responsible head of the agency to whom the
4 account is set aside; the department shall make all necessary regu-
5 lations governing use and replenishment of petty cash funds.

6 (e) The provisions of this section relative to competitive bids
7 do not apply to

8 (1) contracts for the operation of transportation systems
9 for students to and from the schools within the state, as are autho-
10 rized under AS 14.09.010; and these contracts may be awarded by bid or
11 negotiation and, at the discretion of the Board of Education, may be
12 awarded for periods of three years or less;

13 (2) air taxi services used by state employees when no
14 formal contract is executed; the department affected shall pay the air
15 taxi operator the tariff rates as published by the operator with the
16 Air Transportation Commission for the type of aircraft required; the
17 tariffs need not be uniform throughout the state and may reflect the
18 diverse conditions of various areas of the state; the air taxi service
19 used in each case shall be selected by the state employee who is to
20 fly in the aircraft, or if more than one state employee is flying in
21 the aircraft, by the employee in charge; in all cases the air taxi
22 operator shall have complied with AS 02.05 and other prequalifying
23 regulations established by the department;

24 (3) the purchase of products or services manufactured or
25 provided by a sheltered workshop;

26 (4) the purchase of products or services provided by the
27 correctional industries program established under AS 33.32; or

28 (5) the purchase of residential child care services under
29 AS 47.40.

1 (f) In this section an "Alaska bidder," for the purpose of bid
2 awards under (b)(1) of this section, is a person who

3 (1) holds a current Alaska business license;

4 (2) submits a bid for goods or services under the name as
5 appearing on the person's current Alaska business license;

6 (3) has maintained a place of business within the state for
7 a period of six months immediately preceding the date of the bid; and

8 (4) if a joint venture, is composed entirely of venturers
9 that qualify under this paragraph.

10 (g) The provisions of this section relative to an Alaska bidder
11 do not apply to contracts estimated to exceed \$5,000 of the Department
12 of Transportation and Public Facilities which are authorized under
13 AS 35.15 or AS 19.10.

14 (h) Requests for and acceptance of bids or other proposals for
15 professional services shall comply with AS 24.23 or AS 36.98.

16 * Sec. 6 AS 37.05.240(a) is amended to read:

17 (a) Except as otherwise provided in AS 37.05.230, a contract or
18 purchase made by or under the supervision of the department for which
19 competitive bids are required shall be awarded to the lowest responsi-
20 ble bidder. The department shall determine the responsibility of the
21 bidder based upon the bidder's (1) adherence to the bid specifica-
22 tions, (2) proposed terms of delivery, (3) compliance with state laws,
23 (4) performance record, (5) financial capability, and (6) compliance
24 with conditions imposed in the solicitation for bids. The purchasing
25 agent may cancel the solicitation for bids before the award upon a
26 written finding which specifies the relevant facts that it is in the
27 state's best interest. However, if the purchasing agent makes the
28 contract or purchase after the solicitation for bids is cancelled, the
29 purchase or contract shall be made in accordance with AS 37.05.230(c)

1 [AS 37.05.230(2)]. Before the awarding of a contract for a building
2 or the making of repairs upon a building, the department shall see
3 that the bids conform with plans and specifications approved by the
4 Department of Transportation and Public Facilities. All bids with the
5 names of the bidders and the amounts of the bids, together with all
6 documents pertaining to the award of a contract, shall be made a part
7 of a file or record and retained by the department for three years,
8 unless reproduced by microfilming and these files or records are open
9 to public inspection at all reasonable times. An aggrieved bidder may
10 within five days after an award of contract appeal to the department
11 for hearing, with notice to interested parties, for redetermination
12 and final award in accordance with law.

13 * Sec. 7. AS 37.05.260 is amended to read:

14 Sec. 37.05.260. PREFERENCE FOR ALASKA PRODUCTS. This chapter
15 does not modify, amend, or alter AS 36.15.010 and 36.15.020 regarding
16 preference for Alaska forest products, or AS 36.20.010 regarding
17 preference to producers or dealers in Alaska except as provided in
18 AS 37.05.230(b) [AS 37.05.230(1)].

19 * Sec. 8. AS 37.05.316 is amended to read:

20 Sec. 37.05.316. GRANTS TO NAMED RECIPIENTS. When an amount is
21 appropriated or allocated to a department as a grant for a named
22 recipient which is not a municipality, the department to which the
23 appropriation or allocation is made shall promptly notify the named
24 recipient of the availability of the grant and request the named
25 recipient to submit a proposal to provide the goods or services spec-
26 ified in the appropriation act, or both, for which the appropriation
27 or allocation is made. At the same time, the department may issue a
28 request for proposals from other qualified persons to provide the same
29 goods or services, or both, in the same area. The department shall

1 contract with the named recipient unless the Office of the Governor,
2 with due regard for any local expertise or experience among those
3 making proposals, determines that an award of the contract to a dif-
4 ferent party would better serve the public interest. If the contract
5 is awarded to another party than that named by the legislature, the
6 basis of that action shall be stated in writing at the time the grant
7 is issued and a copy of the written statement shall be sent to the
8 Legislative Budget and Audit Committee. A contract shall be executed
9 within 60 days after the effective date of the appropriation or allo-
10 cation. The purchase of the goods or services, or both, shall be in
11 accordance with AS 37.05.230(b)(2) [AS 37.05.230(1)(B)].

12 * Sec. 9. AS 38 is amended by adding a new chapter to read:

13 CHAPTER 45. RESIDENT EMPLOYMENT PREFERENCE UNDER STATE LEASES.

14 Sec. 38.45.010. STATE POLICY. It is the policy of the state to
15 develop its natural resources to provide the maximum benefit to the
16 people of the state as required by the Constitution of the State of
17 Alaska. These benefits include employment opportunities in natural
18 resource development projects for residents qualified for the employ-
19 ment, as well as receipt of state revenue from the development.

20 Sec. 38.45.020. LEGISLATIVE FINDINGS. The legislature finds:

21 (1) because of its unique climate and its distance from the
22 contiguous states, the state has historically suffered from unique
23 social, seasonal, geographic, and economic conditions that result in
24 an unstable economy;

25 (2) the unstable economy is a hardship on the residents of
26 the state and is aggravated by the large numbers of seasonal and
27 transient nonresident workers;

28 (3) the rate of unemployment among residents of the state
29 is one of the highest in the nation;

1 (4) the state has one of the highest ratios of nonresident
2 to resident workers in the nation;

3 (5) the state has a compelling interest in reducing the
4 level of unemployment among its residents;

5 (6) a major factor of increasing importance in the unem-
6 ployment problem is the failure of employers engaged in the explora-
7 tion, development, and production of natural resources on state land,
8 and under leases or other agreements granted or permitted by the
9 state, to employ state residents;

10 (7) whereas at an earlier stage of the state's history it
11 was asserted that high unemployment in the state was due to cultural
12 and geographical migration barriers, the state now has many residents
13 who are qualified, trained, and available for employment in the explo-
14 ration, development, production, and extraction of natural resources
15 on state land, but who are not presently employed because an increas-
16 ing amount of the work they are qualified to perform is being per-
17 formed on state land by nonresidents;

18 (8) the state has made significant investments in training
19 programs and vocational education to help furnish industry with qual-
20 ified residents able to work in the development, exploration, produc-
21 tion, and extraction of natural resource products on state land;

22 (9) unless the trend towards hiring nonresidents is re-
23 versed, the state's investment in these training and education pro-
24 grams will be of little avail, the state policy of maximizing benefits
25 from natural resource development will be thwarted, and the state will
26 suffer the burdens wrought by increasing demands for public assistance
27 and other state services from unemployed residents and their families;

28 (10) employment of nonresidents displaces qualified resi-
29 dents from work in the development, exploration, production, and

1 extraction of natural resource products on state land and from work in
2 service occupations on state land that directly support the develop-
3 ment, exploration, and production activities; therefore, the growing
4 number of nonresidents hired for work on state land, in the develop-
5 ment, exploration, production, and extraction of state resources, is a
6 peculiar source of the unemployment evil now besetting the state;

7 (11) state policies favoring stable levels of taxation have
8 been predicated upon assurances from the natural resource industries
9 that state residents would receive employment opportunities in the
10 exploration, development, and production of natural resources from
11 state-owned land, but data show that these assurances, and the expect-
12 ations they created, are not being fulfilled.

13 Sec. 38.45.030. RESIDENT HIRE REQUIREMENTS. (a) Except as
14 provided in (c) of this section, an employer shall hire state resi-
15 dents for all work performed directly for the employer on a natural
16 resource project on state land. An employer may not discriminate
17 against qualified residents in employment on a natural resource proj-
18 ect on state land.

19 (b) In order to create, protect, and preserve the right of qual-
20 ified residents to employment in natural resource projects on state
21 land, the commissioner of natural resources shall incorporate into
22 each lease, unitization agreement, or renegotiation of a lease or
23 agreement, provisions requiring compliance with this chapter, regula-
24 tions adopted under this chapter, and all later amendments to this
25 chapter or the regulations, and authorizing penalties under AS 38.45.-
26 060 for failure to comply. The commissioner shall incorporate into
27 each lease, agreement, or renegotiation a requirement that the lessee
28 include a provision requiring compliance with this chapter, later
29 amendments of this chapter, regulations adopted under this chapter and

1 authorizing penalties under AS 38.45.060 in a contract under the lease
2 or agreement with contractors or subcontractors who will be operating
3 on state land.

4 (c) An employer may request the Department of Labor to assist in
5 locating qualified available resident employees. After receiving a
6 request for assistance, the department shall refer qualified available
7 residents to the employer to fill the employer's hiring needs. If the
8 department is unable to refer a sufficient number of residents, the
9 commissioner may certify the unavailability and approve the hiring of
10 nonresidents for the balance of the request.

11 Sec. 38.45.040. REPORTING PROVISIONS. An employer obligated to
12 meet resident hiring requirements under this chapter shall comply with
13 the reporting provisions that the commissioner of labor determines are
14 reasonably necessary to carry out this chapter.

15 Sec. 38.45.050. REGULATIONS AND HEARINGS. (a) The Department
16 of Labor and the Department of Natural Resources shall adopt regula-
17 tions to implement this chapter. The Department of Labor shall adopt
18 regulations prohibiting discrimination against qualified residents in
19 employment on a natural resource project on state land. Regulations
20 and proceedings under this chapter are subject to the Administrative
21 Procedure Act (AS 44.62) except as provided in (b) of this section.

22 (b) An employer shall determine and judge the work qualifica-
23 tions of applicants for employment. An applicant who has been reject-
24 ed or an employee who has been terminated from employment may, within
25 30 days after the rejection or termination, request a hearing before
26 the Department of Labor to determine whether the employer violated
27 this chapter in denying the application or terminating the employment.
28 The Department of Labor shall hold a hearing on the question within 20
29 days of receipt of the request unless the applicant or employee

1 requests a longer period of time.

2 (c) The Department of Labor may conduct investigations and
3 hearings to determine compliance with this chapter. If the commis-
4 sioner of labor finds that an employer has wilfully failed to comply
5 with this chapter, the commissioner may certify the finding to the
6 Department of Natural Resources.

7 Sec. 38.45.060. PENALTIES. (a) If the Department of Labor
8 finds that an employer has rejected a qualified applicant or term-
9 inated a qualified employee from employment in violation of this
10 chapter, the department may require the employer to pay the person
11 three times the amount of wages the person lost and may require addi-
12 tional amounts if the person's actual expenses incurred as a result of
13 the wrongful action exceeded the triple wages assessed. Either party
14 may appeal the department's decision under this section to the su-
15 perior court. The court may hear the appeal de novo.

16 (b) The Department of Natural Resources, upon certification of
17 noncompliance by the Department of Labor under AS 38.45.050, may
18 investigate and conduct hearings. If it finds wilful noncompliance,
19 the department may impose on the employer any of the following pen-
20 alties:

21 (1) increase the rent or other forms of compensation re-
22 ceived by the state under the project lease or agreement by a factor
23 of no more than 10; the increase may not exceed \$100,000;

24 (2) require that all or a portion of project operations
25 cease;

26 (3) remove, for an appropriate period of time not to exceed
27 three years, the eligibility of the employer to contract with the
28 state or any of its political subdivisions; or

29 (4) require a noncompliance payment in liquidated damages

1 to the state in an amount equal to seven and one-half times the number
2 of hours required but not worked by qualified residents multiplied by
3 the going wage or salary rate for the particular job or activity
4 involved.

5 (c) The commissioner may impose the penalties under (b)(1) and
6 (2) of this section on a lessee only if the lessee itself has failed
7 to comply with this chapter or incorporate into the contract with the
8 violator a provision requiring compliance with this chapter.

9 Sec. 38.45.070. INJUNCTIVE RELIEF. The Department of Labor or
10 the Department of Natural Resources, in addition to the imposition of
11 penalties under AS 38.45.060, may seek injunctive relief against a
12 person who is not in compliance with this chapter; the Department of
13 Natural Resources may seek injunctive relief to enforce penalties
14 imposed under AS 38.45.060.

15 Sec. 38.45.900. DEFINITIONS. In this chapter

16 (1) "employer" means a person, other than the state, who is
17 a party to a lease or agreement for a natural resource project on
18 state land and includes the person's affiliate, principal, subsidiary,
19 contractor, or subcontractor if the activity of the affiliate, princi-
20 pal, subsidiary, contractor, or subcontractor is performed on state
21 land;

22 (2) "natural resource project on state land" means a con-
23 tract, lease, unitization agreement, or a renegotiation of a contract,
24 lease, or agreement for exploration, development, extraction or pro-
25 duction of oil and gas, mineral, or timber resources if the state is a
26 party to the contract, lease or agreement and the project is performed
27 in whole or in part on state land including submerged state land;

28 (3) "qualified resident" means a resident who possesses the
29 requisite education, training, skills, or experience to perform the

1 work;

2 (4) "resident" means a person who

3 (A) except for military service, has been physically
4 present in the state for a period of 30 days immediately before
5 the time the person enters into a contract of employment on a
6 natural resource project on state land; and

7 (B) shows by all attending circumstances the intention
8 to permanently reside in this state.

9 * Sec. 10. The amendments proposed by secs. 1 and 4 - 8 of this Act
10 apply to purchases for which solicitation for bids are announced after the
11 effective date of this Act.

12 * Sec. 11. The amendments proposed by secs. 2 and 3 of this Act apply
13 to contracts entered into after the effective date of this Act.

14 * Sec. 12. The amendments proposed by sec. 9 of this Act apply to a
15 lease, unitization agreement, or contract for the development of oil and
16 gas, or mineral or timber resources entered into after the effective date
17 of this Act and to a renegotiation of the lease, agreement or contract.
18 The amendments proposed by sec. 9 of this Act apply to the renegotiation
19 after the effective date of this Act of a lease, agreement, or contract
20 entered into before the effective date of this Act if the renegotiation
21 results in a major change in the duties of a party.

22 * Sec. 13. This Act takes effect immediately in accordance with AS 01.-
23 10.070(c).