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1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 145 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to resident employment preferences
7 on certain natural resource projects on state land;
8 and providing for an effective date."

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

10 * Section 1. AS 38 is amended by adding a new chapter to read:

11 CHAPTER 45. RESIDENT EMPLOYMENT PREFERENCE UNDER STATE LEASES.

12 ARTICLE 1. HIRING PREFERENCE.

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

19 Sec. 38.45.020. LEGISLATIVE FINDINGS. (a) The legislature
20 finds that

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) the construction industry in the state accounts for a
6 substantial percentage of the available employment;
- 7 (7) construction workers receive a greater percentage of
8 all unemployment benefits paid by the state than is typical of other
9 states;
- 10 (8) chronic unemployment can breed severe social problems
11 including alcoholism and domestic violence;
- 12 (9) historically, the rate of unemployment in the construc-
13 tion industry in the state is higher than the rate of unemployment in
14 other industries in the state;
- 15 (10) the influx of nonresident construction workers contri-
16 butes to or causes the high unemployment rate among resident construc-
17 tion workers because nonresident workers compete with residents for
18 the limited number of available construction jobs;
- 19 (11) the natural resources of land owned by the state belong
20 to the citizens of the state;
- 21 (12) Alaskans have chosen to use the majority of the royals-
22 ties derived from the state's natural resources to fund state govern-
23 ment;
- 24 (13) the vast majority of the state's revenue is derived
25 from natural resource income rather than from other forms of taxation;
- 26 (14) because the state has no personal income tax or sales
27 tax, nonresident workers use services provided by the state but do not
28 contribute fairly to the costs of those services; and
- 29 (15) Alaskans, more than the residents of other states,

1 suffer economically when nonresidents displace qualified residents
2 since resident workers contribute local taxes as well as their share
3 of the royalties from natural resources.

4 (b) The legislature further finds that

5 (1) the findings of the Department of Labor of the State of
6 Alaska in its report entitled "Nonresidents Working in Alaska in 1985"
7 support the need for a resident hiring preference;

8 (2) there is a need for timely, accurate information on the
9 number of nonresident and resident workers in industries in the state;

10 (3) the state has a continuing interest in determining
11 whether indirect benefits, including employment opportunities, from
12 state expenditures, natural resource projects, and agreements concern-
13 ing the state's natural resources accrue to residents of the state or
14 to nonresidents;

15 (4) a major factor in the unemployment problem is the
16 failure of some employers engaged in the exploration, development, and
17 production of natural resources on state land, and under leases or
18 other agreements granted or permitted by the state, to employ state
19 residents;

20 (5) whereas at an earlier stage of the state's history it
21 was asserted that high unemployment in the state was due to cultural
22 and geographical migration barriers, the state now has many residents
23 who are qualified, trained, and available for employment in the explo-
24 ration, development, production, and extraction of natural resources
25 on state land;

26 (6) the state has made significant investments in training
27 programs and vocational education to help furnish industry with qual-
28 ified residents able to work in the development, exploration, produc-
29 tion, and extraction of natural resource products on state land;

1 (7) the state's investment in these training and education
2 programs will be of little avail unless state residents receive em-
3 ployment opportunities in natural resource projects on state land;

4 (8) employment of nonresidents displaces qualified resi-
5 dents from work in the development, exploration, production, and
6 extraction of natural resource products on state land; therefore, the
7 number of nonresidents hired for work on state land in the develop-
8 ment, exploration, production, and extraction of state resources is a
9 peculiar source of the unemployment problem now besetting the state;

10 (9) the number of state residents who are unable to find
11 work is considerably higher than is reflected by unemployment rates
12 based on nationally accepted measures;

13 (10) many rural state residents who wish to work do not seek
14 employment as frequently as necessary to meet federal definitions of
15 unemployment because of continuing lack of employment opportunities in
16 rural areas of the state.

17 Sec. 38.45.030. UNAVAILABILITY OF PREFERRED WORKERS. (a) An
18 employer subject to hiring requirements under this chapter may request
19 the Department of Labor to assist in locating qualified, eligible
20 employees under AS 36.10.070. After receiving a request for assis-
21 tance, the department shall refer qualified, eligible, available
22 residents to the employer to fill the employer's hiring needs.

23 (b) If the department is unable to refer a sufficient number of
24 qualified, eligible, available residents able to perform the work, the
25 commissioner of labor may approve the hiring of residents who are not
26 eligible for preference and nonresidents for the balance of the re-
27 quest.

28 Sec. 38.45.040. REGULATIONS. The commissioner of labor shall
29 adopt regulations in accordance with AS 44.62 (Administrative

1 Procedure Act) to implement this chapter and encourage and require the
2 hiring of residents to the maximum extent permitted by law.

3 Sec. 38.45.050. PREFERENCE IN ZONE OF UNDEREMPLOYMENT. (a)
4 Immediately following a determination by the commissioner of labor
5 that a zone of underemployment exists, and for the next two fiscal
6 years after the determination, qualified residents who are eligible
7 under AS 36.10.140 shall be given preference in hiring for work on
8 each natural resource project on state land that is wholly or partial-
9 ly sited within the zone. The preference applies on a craft-by-craft
10 or occupational basis.

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

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

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

22 (2) a substantial number of residents in the zone have
23 experience or training in occupations that would be employed on a
24 project;

25 (3) the lack of employment opportunities in the zone has
26 substantially contributed to serious social or economic problems in
27 the zone; and

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

1 Sec. 38.45.060. PREFERENCE IN ECONOMICALLY DISTRESSED ZONE. The
2 hiring preference established in AS 36.10.160 for residents of an
3 economically distressed zone who qualify under AS 36.10.140 applies to
4 work on each natural resource project on state land that is wholly or
5 partially sited within an economically distressed zone.

6 Sec. 38.45.070. GENERAL REQUIREMENTS. (a) If the governor has
7 declared an area to be an area affected by an economic disaster under
8 AS 44.33.285, then the preference for residents of the area estab-
9 lished under AS 44.33.285 - 44.33.310 supersedes a preference under
10 this chapter.

11 (b) The commissioner shall define the boundaries of a zone in
12 which a preference applies. The boundaries may include a portion of
13 the state or the state as a whole.

14 Sec. 38.45.080. DETERMINATION OF QUALIFICATIONS, TRANSFERS, AND
15 CERTIFICATION. (a) An employer shall determine and judge the work
16 qualifications of applicants for employment.

17 (b) An employer may make a bona fide transfer of management
18 employees from one project or business activity to another. A posi-
19 tion filled by a bona fide transfer under this subsection is not
20 considered to have been a vacancy for the purposes of the hiring
21 requirements under AS 38.45.050 - 38.45.060.

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

25 (d) A labor organization that dispatches members for work on a
26 natural resource project on state land under a collective bargaining
27 agreement shall certify that persons dispatched as residents to meet a
28 preference were eligible for the preference at the time of dispatch.

29 (e) An employer or labor organization may request assistance

1 from the Department of Labor in verifying the eligibility of an appli-
2 cant for a hiring preference under this chapter.

3 Sec. 38.45.090. INCORPORATION INTO CONTRACTS. (a) In order to
4 create, protect, and preserve the right of eligible qualified resi-
5 dents to employment in natural resource projects on state land, the
6 commissioner of natural resources shall incorporate into each con-
7 tract, lease, unitization agreement, or renegotiation of a contract,
8 lease or unitization agreement, provisions requiring compliance with
9 this chapter, regulations adopted under this chapter, and all later
10 amendments to this chapter or the regulations, and authorizing pen-
11 alties under AS 38.45.210 for failure to comply.

12 (b) The commissioner shall incorporate into each contract,
13 lease, unitization agreement, or renegotiation a requirement that the
14 contractor or lessee include in each contract with contractors or
15 subcontractors who will be operating on state land a provision re-
16 quiring compliance with this chapter, regulations adopted under this
17 chapter, and later amendments to this chapter or the regulations, and
18 authorizing penalties under AS 38.45.210.

19 Sec. 38.45.100. REPORTING PROVISIONS. An employer obligated to
20 meet resident hiring requirements under this chapter shall comply with
21 the reporting provisions that the commissioner of labor determines are
22 reasonably necessary to carry out this chapter. Except for statis-
23 tical data, information concerning specific employees is confidential
24 and may not be released to the public by the department. However,
25 confidential employee information may be shared between departments
26 for purposes of this chapter.

27 Sec. 38.45.110. RESIDENT CERTIFICATION. (a) The department may
28 implement a certification system for state residents. The department
29 may charge applicants for certification a reasonable fee to cover the

1 costs of the certification system.

2 (b) An employer who reasonably relies on a certification by the
3 department that an applicant or employee is a resident is not liable
4 for penalties under this chapter based on the nonresidence of the
5 applicant or employee.

6 ARTICLE 2. ENFORCEMENT.

7 Sec. 38.45.210. CIVIL PENALTY FOR WILFUL NONCOMPLIANCE. (a)

8 The Department of Labor may conduct investigations and hearings to
9 determine compliance with this chapter. After a hearing, if the
10 commissioner of labor finds that an employer has wilfully failed to
11 comply with this chapter, the commissioner may impose a civil penalty
12 in an amount no greater than

13 (1) \$5,000 for the first rejection of a qualified eligible
14 applicant or other violation of this chapter;

15 (2) \$10,000 for the second and each subsequent rejection or
16 other violation of this chapter.

17 (b) In addition to the imposition of other penalties under this
18 section, if the Department of Labor finds that an employer has wilful-
19 ly rejected a qualified eligible applicant or terminated a qualified
20 eligible employee in violation of this chapter, the department may
21 require the employer to pay the person the amount of wages the person
22 lost and may require additional amounts to reimburse the person for
23 actual expenses incurred as a result of the wrongful action.

24 (c) The commissioner may impose the penalties under this section
25 on an employer only if the employer itself has failed to comply with
26 this chapter, regulations adopted under this chapter, or later amend-
27 ments to this chapter or the regulations, or if the employer has
28 failed to incorporate into its contracts the provision required under
29 AS 38.45.090(b).

1 (d) In addition to the imposition of penalties under this sec-
2 tion, the Department of Labor may seek injunctive relief against a
3 person who is not in compliance with this chapter and the enforcement
4 of penalties imposed under this section.

5 Sec. 38.45.220. PENALTIES FOR APPLICANTS AND EMPLOYERS. (a) A
6 person who makes a false sworn statement in connection with a certi-
7 fication of eligibility for an employment preference under this chap-
8 ter is subject to criminal prosecution for perjury as provided in
9 AS 11.56.200.

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

15 (c) In addition to criminal penalties imposed by state law, if a
16 person is convicted of a crime in connection with a false statement
17 made in a certification required under AS 38.45.080, and the convic-
18 tion is not reversed, that person shall forfeit all future rights to
19 eligibility for an employment preference under this chapter.

20 Sec. 38.45.230. CIVIL PENALTIES FOR FALSE CERTIFICATIONS. (a)
21 In addition to any criminal penalties imposed and to penalties imposed
22 under AS 38.45.210 and 38.45.220, after a hearing the department may
23 impose a civil penalty on a person who, in connection with certifica-
24 tion of eligibility for an employment preference under this chapter,

25 (1) made a false sworn statement; or

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

28 (b) The amount of the civil penalty under (a) of this section
29 for a person who falsely certifies that the person is eligible for an

1 employment preference under this chapter is not more than \$400 for
2 each false certification. The person also forfeits all future rights
3 to eligibility for an employment preference under this chapter.

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

10 ARTICLE 3. GENERAL PROVISIONS.

11 Sec. 38.45.310. APPLICABILITY OF CHAPTER. This chapter applies
12 to all natural resource projects on state land. The preference ap-
13 plies only to employment that is performed directly for an employer.

14 Sec. 38.45.390. DEFINITIONS. In this chapter

15 (1) "available" has the meaning given in AS 36.10.990;

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

22 (3) "natural resource project on state land" means a proj-
23 ect authorized by a contract, lease, unitization agreement, or a
24 renegotiation of a contract, lease, or unitization agreement for
25 exploration, development, extraction or production of oil and gas,
26 leasable mineral, or timber resources if the state is a party to the
27 contract, lease or unitization agreement and the project is performed
28 in whole or in part on state land; in this paragraph, a leasable
29 mineral is a mineral included in AS 38.05.150 - 38.05.181;

- 1 (4) "qualified" has the meaning given in AS 36.10.990;
2 (5) "resident" has the meaning given in AS 36.95.010;
3 (6) "state land" means all land, including shore, tide, and
4 submerged land, belonging to or acquired by the state.

5 * Sec. 2. AS 38.45, enacted in sec. 1 of this Act, applies to a lease,
6 unitization agreement, or contract for the development of oil and gas,
7 leasable mineral, or timber resources entered into on or after the effec-
8 tive date of this Act and to a renegotiation of the lease, unitization
9 agreement, or contract. AS 38.45 applies to the renegotiation on or after
10 the effective date of this Act of a lease, unitization agreement, or con-
11 tract entered into before the effective date of this Act if the renegotia-
12 tion results in a major change in the duties of a party.

13 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).