

5-0258A
Referred: State Affairs, Labor & Commerce
Resources and Finance

1 IN THE SENATE BY JOSEPHSON

2 SENATE BILL NO. 20

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. The legislature finds:

20 (1) the findings made in AS 36.10.005 continue to accurately
21 describe the social, economic, and employment situation in the
22 state;

23 (2) chronic unemployment can breed severe social problems
24 including alcoholism and domestic violence;

25 (3) the findings of the Department of Labor of the State of
26 Alaska in its report entitled "Nonresidents Working in Alaska; A
27 Special Study to Measure the Economic Impact of Nonresidents on
28 Alaska's Economy During Calendar Year 1984" support the need for a
29 resident hiring preference;

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

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

8 (6) a major factor in the unemployment problem is the
9 failure of some employers engaged in the exploration, development, and
10 production of natural resources on state land, and under leases or
11 other agreements granted or permitted by the state, to employ state
12 residents;

13 (7) whereas at an earlier stage of the state's history it
14 was asserted that high unemployment in the state was due to cultural
15 and geographical migration barriers, the state now has many residents
16 who are qualified, trained, and available for employment in the explo-
17 ration, development, production, and extraction of natural resources
18 on state land;

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

23 (9) the state's investment in these training and education
24 programs will be of little avail unless state residents receive em-
25 ployment opportunities in natural resource projects on state land;

26 (10) employment of nonresidents displaces qualified resi-
27 dents from work in the development, exploration, production, and
28 extraction of natural resource products on state land; therefore, the
29 number of nonresidents hired for work on state land in the

1 development, exploration, production, and extraction of state re-
2 sources is a peculiar source of the unemployment problem now besetting
3 the state;

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

7 (12) many rural state residents who wish to work do not seek
8 employment as frequently as necessary to meet federal definitions of
9 unemployment because of continuing lack of employment opportunities in
10 rural areas of the state.

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

17 (b) If the department is unable to refer a sufficient number of
18 qualified, eligible, available residents able to perform the work, the
19 commissioner of labor may approve the hiring of residents who are not
20 eligible for preference and nonresidents for the balance of the re-
21 quest.

22 Sec. 38.45.040. REGULATIONS. The commissioner of labor shall
23 adopt regulations in accordance with AS 44.62 (Administrative Proce-
24 dure Act) to implement this chapter and encourage and require the
25 hiring of residents to the maximum extent permitted by law.

26 Sec. 38.45.050. PREFERENCE IN ZONE OF UNDEREMPLOYMENT. (a)
27 Immediately following a determination by the commissioner of labor
28 that a zone of underemployment exists, and for the next two fiscal
29 years after the determination, qualified residents who are eligible

1 under AS 36.10.140 shall be given preference in hiring for work on
2 each natural resource project on state land that is wholly or partial-
3 ly sited within the zone. The preference applies on a craft-by-craft
4 or occupational basis.

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

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

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

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

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

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

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

29 Sec. 38.45.070. GENERAL REQUIREMENTS. (a) If the governor has

1 declared an area to be an area affected by an economic disaster under
2 AS 44.33.285, then the preference for residents of the area estab-
3 lished under AS 44.33.285 - 44.33.310 supercedes a preference under
4 this section.

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

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

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

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

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

23 (e) An employer or labor organization may request assistance
24 from the Department of Labor in verifying the eligibility of an appli-
25 cant for a hiring preference under this chapter.

26 Sec. 38.45.090. INCORPORATION INTO CONTRACTS. (a) In order to
27 create, protect, and preserve the right of eligible qualified resi-
28 dents to employment in natural resource projects on state land, the
29 commissioner of natural resources shall incorporate into each

1 contract, lease, unitization agreement, or renegotiation of a con-
2 tract, lease or unitization agreement, provisions requiring compliance
3 with this chapter, regulations adopted under this chapter, and all
4 later amendments to this chapter or the regulations, and authorizing
5 penalties under AS 38.45.210 for failure to comply.

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

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

21 ARTICLE 2. ENFORCEMENT.

22 Sec. 38.45.210. CIVIL PENALTY FOR WILFUL NONCOMPLIANCE. (a)
23 The Department of Labor may conduct investigations and hearings to
24 determine compliance with this chapter. After a hearing, if the
25 commissioner of labor finds that an employer has wilfully failed to
26 comply with this chapter, the commissioner may impose a civil penalty
27 in an amount no greater than

28 (1) \$5,000 for the first rejection of a qualified eligible
29 applicant or other violation of this chapter;

1 (2) \$10,000 for the second and each subsequent rejection or
2 other violation of this chapter.

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

10 (c) The commissioner may impose the penalties under this section
11 on an employer only if the employer itself has failed to comply with
12 this chapter, regulations adopted under this chapter, or later amend-
13 ments to this chapter or the regulations, or if the employer has
14 failed to incorporate into its contracts the provision required under
15 AS 38.45.090(b).

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

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

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

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

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

11 (1) made a false sworn statement; or

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

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

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

25 ARTICLE 3. GENERAL PROVISIONS.

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

29 Sec. 38.45.390. DEFINITIONS. In this chapter

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

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

8 (3) "natural resource project on state land" means a proj-
9 ect authorized by a contract, lease, unitization agreement, or a
10 renegotiation of a contract, lease, or unitization agreement for
11 exploration, development, extraction or production of oil and gas,
12 leasable mineral, or timber resources if the state is a party to the
13 contract, lease or unitization agreement and the project is performed
14 in whole or in part on state land; in this paragraph, a leasable
15 mineral is a mineral included in AS 38.05.150 - 38.05.181;

16 (4) "qualified" has the meaning given in AS 36.10.990;

17 (5) "resident" has the meaning given in AS 36.95.010;

18 (6) "state land" means all land, including shore, tide, and
19 submerged land, belonging to or acquired by the state.

20 * Sec. 2. AS 38.45, enacted in sec. 1 of this Act, applies to a lease,
21 unitization agreement, or contract for the development of oil and gas,
22 leasable mineral, or timber resources entered into on or after the effec-
23 tive date of this Act and to a renegotiation of the lease, unitization
24 agreement, or contract. AS 38.45 applies to the renegotiation on or after
25 the effective date of this Act of a lease, unitization agreement, or con-
26 tract entered into before the effective date of this Act if the renegotia-
27 tion results in a major change in the duties of a party.

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