1 IN THE SENATE BY COGHILL

2 SENATE BILL NO. 249

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act requiring certain employers engaged in
7 natural resource projects on state land located in a
8 zone of underemployment or an economically distressed
9 zone to comply with certain preferences for employing
10 qualified, eligible, available residents; and pro-
11 viding for an effective date."

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

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

14 CHAPTER 45. RESIDENT EMPLOYMENT PREFERENCE UNDER STATE LEASES.

15 ARTICLE 1. HIRING PREFERENCE.

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

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

23 (1) the findings made in AS 36.10.005 continue to accurate-
24 ly describe the social, economic, and employment situation in the
25 state;

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

28 (3) the findings of the Department of Labor of the State of
29 Alaska in its report entitled "Nonresidents Working in Alaska; A

1 Special Study to Measure the Economic Impact of Nonresidents on
2 Alaska's Economy During Calendar Year 1984" support the need for a
3 resident hiring preference;
4 (4) there is a need for timely, accurate information on the
5 number of nonresident and resident workers in industries in the state;
6 (5) the state has a continuing interest in determining
7 whether indirect benefits, including employment opportunities, from
8 state expenditures, natural resource projects, and agreements concern-
9 ing the state's natural resources accrue to residents of the state or
10 to nonresidents;
11 (6) a major factor in the unemployment problem is the
12 failure of some employers engaged in the exploration, development, and
13 production of natural resources on state land, and under leases or
14 other agreements granted or permitted by the state, to employ state
15 residents;
16 (7) whereas at an earlier stage of the state's history it
17 was asserted that high unemployment in the state was due to cultural
18 and geographical migration barriers, the state now has many residents
19 who are qualified, trained, and available for employment in the explo-
20 ration, development, production, and extraction of natural resources
21 on state land;
22 (8) the state has made significant investments in training
23 programs and vocational education to help furnish industry with qual-
24 ified residents able to work in the development, exploration, produc-
25 tion, and extraction of natural resource products on state land;
26 (9) the state's investment in these training and education
27 programs will be of little avail unless state residents receive em-
28 ployment opportunities in natural resource projects on state land;
29 (10) employment of nonresidents displaces qualified

1 residents from work in the development, exploration, production, and
2 extraction of natural resource products on state land; therefore, the
3 number of nonresidents hired for work on state land in the develop-
4 ment, exploration, production, and extraction of state resources is a
5 peculiar source of the unemployment problem now besetting the state;
6 (11) the number of state residents who are unable to find
7 work is considerably higher than is reflected by unemployment rates
8 based on nationally accepted measures;
9 (12) many rural state residents who wish to work do not seek
10 employment as frequently as necessary to meet federal definitions of
11 unemployment because of continuing lack of employment opportunities in
12 rural areas of the state.
13 Sec. 38.45.030. UNAVAILABILITY OF PREFERRED WORKERS. (a) An
14 employer subject to hiring requirements under this chapter may request
15 the Department of Labor to assist in locating qualified, eligible
16 employees under AS 36.10.070. After receiving a request for assis-
17 tance, the department shall refer qualified, eligible, available
18 residents to the employer to fill the employer's hiring needs.
19 (b) If the department is unable to refer a sufficient number of
20 qualified, eligible, available residents able to perform the work, the
21 commissioner of labor may approve the hiring of residents who are not
22 eligible for preference and nonresidents for the balance of the re-
23 quest.
24 Sec. 38.45.040. REGULATIONS. The commissioner of labor shall
25 adopt regulations in accordance with the Administrative Procedure Act
26 (AS 44.62) to implement this chapter and encourage and require the
27 hiring of residents to the maximum extent permitted by law.
28 Sec. 38.45.050. PREFERENCE IN 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 who are eligible
3 under AS 36.10.140 shall be given preference in hiring for work on
4 each natural resource project on state land that is wholly or partial-
5 ly sited within the zone. The preference applies on a craft-by-craft
6 or 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 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. 38.45.060. PREFERENCE IN ECONOMICALLY DISTRESSED ZONE. The
27 hiring preference established in AS 36.10.160 for residents of an
28 economically distressed zone who qualify under AS 36.10.140 applies to
29 work on each natural resource project on state land that is wholly or

1 partially sitad within an economically distressed zone.

2 Sec. 38.45.070. GENERAL REQUIREMENTS. (a) If the governor has
3 declared an area to be an area affected by an economic disaster under
4 AS 44.33.285, then the preference for residents of the area estab-
5 lished under AS 44.33.285 - 44.33.310 supercedes a preference under
6 this section.

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

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

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

18 (c) An employer subject to a resident hiring requirement under
19 this chapter shall certify that persons employed as residents under a
20 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 appli-
27 cant for a hiring preference under this chapter.

28 Sec. 38.45.090. INCORPORATION INTO CONTRACTS. (a) In order to
29 create, protect, and preserve the right of eligible qualified

1 residents to employment in natural resource projects on state land,
2 the commissioner of natural resources shall incorporate into each con-
3 tract, lease, unitization agreement, or renegotiation of a contract,
4 lease or unitization agreement, provisions requiring compliance with
5 this chapter, regulations adopted under this chapter, and all later
6 amendments to this chapter or the regulations, and authorizing penal-
7 ties under AS 38.45.210 for failure to comply.
8 (b) The commissioner shall incorporate into each contract,
9 lease, unitization agreement, or renegotiation a requirement that the
10 contractor or lessee include in each contract with contractors or
11 subcontractors who will be operating on state land a provision re-
12 quiring compliance with this chapter, regulations adopted under this
13 chapter, and later amendments to this chapter or the regulations, and
14 authorizing penalties under AS 38.45.210.
15 Sec. 38.45.100. REPORTING PROVISIONS. An employer obligated to
16 meet resident hiring requirements under this chapter shall comply with
17 the reporting provisions that the commissioner of labor determines are
18 reasonably necessary to carry out this chapter. Except for statis-
19 tical data, information concerning specific employees is confidential
20 and may not be released to the public by the department. However,
21 confidential employee information may be shared between departments
22 for purposes of this chapter.
23 ARTICLE 2. ENFORCEMENT.
24 Sec. 38.45.210. CIVIL PENALTY FOR WILFUL NONCOMPLIANCE. (a)
25 The Department of Labor may conduct investigations and hearings to
26 determine compliance with this chapter. After a hearing, if the
27 commissioner of labor finds that an employer has wilfully failed to
28 comply with this chapter, the commissioner may impose a civil penalty
29 in an amount no greater than

1 (1) $7,000 for the first rejection of a qualified eligible
2 applicant or other violation of this chapter;
3 (2) $14,000 for the second and each subsequent rejection or
4 other violation of this chapter.
5 (b) In addition to the imposition of other penalties under this
6 section, if the Department of Labor finds that an employer has wilful-
7 ly rejected a qualified eligible applicant or terminated a qualified
8 eligible employee in violation of this chapter, the department may
9 require the employer to pay the person the amount of wages the person
10 lost and may require additional amounts to reimburse the person for
11 actual expenses incurred as a result of the wrongful action.
12 (c) The commissioner may impose the penalties under this section
13 on an employer only if the employer itself has failed to comply with
14 this chapter, regulations adopted under this chapter, or later amend-
15 ments to this chapter or the regulations, or if the employer has
16 failed to incorporate into its contracts the provision required under
17 AS 38.45.090(b).
18 (d) In addition to the imposition of penalties under this sec-
19 tion, the Department of Labor may seek injunctive relief against a
20 person who is not in compliance with this chapter and the enforcement
21 of penalties imposed under this section.
22 Sec. 38.45.220. PENALTIES FOR APPLICANTS AND EMPLOYERS. (a) A
23 person who makes a false sworn statement in connection with a certi-
24 fication of eligibility for an employment preference under this chap-
25 ter is subject to criminal prosecution for perjury as provided in
26 AS 11.56.200.
27 (b) A person who makes an unsworn falsification, with the intent
28 to mislead a public servant in the performance of a duty, in connec-
29 tion with a certification of eligibility for an employment preference

1 under this chapter, is subject to criminal prosecution as provided in
2 AS 11.56.210.
3 (c) In addition to criminal penalties imposed by state law, if a
4 person is convicted of a crime in connection with a false statement
5 made in a certification required under AS 38.45.080, and the convic-
6 tion is not reversed, that person shall forfeit all future rights to
7 eligibility for an employment preference under this chapter.
8 Sec. 38.45.230. CIVIL PENALTIES FOR FALSE CERTIFICATIONS. (a)
9 In addition to any criminal penalties imposed and to penalties imposed
10 under AS 38.45.210 and 38.45.220, after a hearing the department may
11 impose a civil penalty on a person who, in connection with certifica-
12 tion of eligibility for an employment preference under this chapter,
13 (1) made a false sworn statement; or
14 (2) made an unsworn falsification with intent to mislead a
15 public servant in the performance of a duty.
16 (b) The amount of the civil penalty under (a) of this section
17 for a person who falsely certifies that the person is eligible for an
18 employment preference under this chapter is not more than $700 for
19 each false certification. The person also forfeits all future rights
20 to eligibility for an employment preference under this chapter.
21 (c) The amount of the civil penalty under (a) of this section
22 for an employer who falsely certifies that employees are residents
23 eligible for a preference under this chapter is not more than $3,000
24 for each of the first five false certifications. The penalty for the
25 sixth false certification made by an employer and for each false
26 certification thereafter is at least $3,000 and not more than $7,000.
27 ARTICLE 3. GENERAL PROVISIONS.
28 Sec. 38.45.310. APPLICABILITY OF CHAPTER. This chapter applies
29 to all natural resource projects on state land. The preference

applies only to employment that is performed directly for an employer.

Sec. 38.45.390. DEFINITIONS. In this chapter

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

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

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

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

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

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

* Sec. 2. AS 38.45, enacted in sec. 1 of this Act, applies to a lease, unitization agreement, or contract for the development of oil and gas, leasable mineral, or timber resources entered into on or after the effective date of this Act and to a renegotiation of the lease, unitization agreement, or contract. AS 38.45 applies to the renegotiation on or after the effective date of this Act of a lease, unitization agreement, or contract entered into before the effective date of this Act if the renegotiation results in a major change in the duties of a party.

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