

Introduced: 4/25/83
Referred: Labor and Commerce

BY JOSEPHSON, FAHRENKAMP,
KERTTULA, V. FISCHER,
ELIASON, GILMAN,
STURGULEWSKI, PETTYJOHN,
KELLY AND HALFORD

1 IN THE SENATE

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 174

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to employment preferences for state
7 residents; and providing for an effective date."

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

9 * Section 1. AS 36.10.010 is amended to read:

10 Sec. 36.10.010. EMPLOYMENT PREFERENCE. (a) In the performance
11 of contracts let by a municipality [THE STATE, A POLITICAL SUBDIVISION
12 OF THE STATE, OR A REGIONAL SCHOOL BOARD WITH RESPECT TO AN
13 EDUCATIONAL FACILITY UNDER AS 14.08.161] for construction, repair,
14 preliminary surveys, engineering studies, consulting, maintenance work
15 or any other retention of services necessary to complete any given
16 project, 95 percent residents shall be employed where they are
17 available and qualified. If 10 or fewer persons are employed under
18 the contract, then 90 percent residents shall be employed where they
19 are available and qualified. In all cases of public works projects,
20 preference shall be given to residents. In an area which has been
21 designated as an area impacted by an economic disaster, residents of
22 that area shall be given employment preference as provided in AS
23 44.33.290, followed by other residents of the state.

24 * Sec. 2. AS 36.10.010 is amended by adding a new paragraph to read:

25 (b) When a construction project is partly or wholly funded by
26 state money and the state or an agency of the state, a department,
27 office, agency, state board, commission, regional school board with
28 respect to an educational facility under AS 14.11.020, public corpo-
29 ration or other organizational unit of or created under the executive,

1 legislative or judicial branch of state government, including the
2 University of Alaska, is a signatory to the construction contract, the
3 contract shall require that the worker hours on a craft-by-craft basis
4 shall be performed at least 95 percent by bona fide state residents.
5 If 10 or fewer persons are employed under the contract, then 90 per-
6 cent residents shall be employed where they are available and quali-
7 fied. In an area which has been designated as an area impacted by an
8 economic disaster, residents of that area shall be given employment
9 preference as provided in AS 44.33.290, followed by other residents of
10 the state.

11 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
12 10.070(c).

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resclution No. SSSB 174
 Title employment preference for state residents
 Requested by House Finance Committee Date 6/18/83

II. FISCAL DETAIL

Agency Affected Labor
 Program Category Affected _____
 BRU, Program, Or Subprogram(s) Affected _____
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES		0				
200 TRAVEL		0				
300 CONTRACTUAL		0				
400 COMMODITIES		0				
500 EQUIPMENT		0				
600 LAND & STRUCTURES		0				
700 GRANTS, CLAIMS, ETC.		0				
TOTAL		0				

FUNDING (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		0				
FEDERAL FUNDS		0				
OTHER (Specify Source)		0				
POSITIONS		0				

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

No funding is provided through this fiscal note since four positions have been included in the FY 84 operating budget.

IV. DATE 6/28/83 PREPARED BY Al Adams *ABA*
 AGENCY Chair, House Finance
 PHONE 465-3706
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/82)

The following individuals may testify on SB 174:

Senator Josephson, prime sponsor

The Commissioner of the Department of Labor, or his
representative

STATE OF ALASKA
FISCAL NOTE

Revision Date May 6, 1983

I. REQUEST

Bill/Resolution No. SS for SB 174
 Title: "...employment preference..."
 Sponsor: Senator Josephson
 Requestor: Senate Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Labor
 Program Category Affected: Worker Prote
 BRU, Program of Subprogram(s) Affected:
Labor Standards & Safety, Wage & Hour

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		72.3	76.6	81.2	86.1	91.3
200 TRAVEL		0				
300 CONTRACTUAL		21.0	22.3	23.6	25.0	26.5
400 COMMODITIES		1.0	1.1	1.2	1.3	1.4
500 EQUIPMENT		3.0	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		97.3	100.0	106.0	112.4	119.2
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		97.3	100.0	106.0	112.4	119.2
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Donald R. Wilson
 Division: Labor Standards and Safety

Phone: 465-4870
 Date: May 6, 1983

Approved by Commissioner: Jim Robison
 Department: Labor

Date: May 6, 1983

LEG:A:48

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislative
 Copy to Department (for Governor introduced bills)
 Copy to Sponsor

roduced bills)

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

TITLE: "An Act relating to employment preference."

AGENCY AFFECTED: Department of Labor

Page 2

Under this bill the Department of Labor will be required to closely scrutinize certified payrolls to assure that residents of an area, which has been designated as an area impacted by economic disaster, are given first preference for employment, where they are available and qualified, so that the economic effects of alleviating the disaster will be maximized. If resident labor is not available, the contractor will inform the department of the number of additional workers needed, the positions to be filled, and the efforts made at recruitment in the area. The department will investigate, and if it is determined that a good faith effort has been made by the contractor, will authorize the recruitment of qualified and available workers from areas adjoining the area impacted by such economic disaster; then followed by residents of the region, and then by residents of the State at large. This expansion of auditing and investigative service will be significant and labor intensive.

Staffing would provide a technician for full-time resident audits, and a full-time investigator in the office to review audit results, make investigations of violations uncovered by the audits, and investigate complaints from sources outside the agency. The investigator would travel throughout the state to provide a quick reaction capability to remote job sites where a majority of the violations occur.

Additional workload results from the requirement that residency is based on worker hours on a craft-by-craft basis.

Assumptions:

Effective date of July 1, 1983

Inflation rate of 6% per annum

Equipment Costs of \$9,000 is a one time item

Inclusion of additional funding (\$251.8 in the Senate Budget) in the final appropriations bill.

The original fiscal note submitted for Sponsor Substitute for Senate Bill 174 requested \$349.0 (6 positions). Of this amount, \$251.8 (4 positions) has been included in the Senate Budget for the Department. This fiscal note is the difference between the original amount requested and the amount included in the Senate Budget 97.3 (2 positions). *NOTE*

1.	POSITION TITLE Wage and Hour Technician I			RANGE/STEP 12A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROX.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER SS for SB174	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT 99	LEG.	

3.	CONTINUATION LEVEL	ADDITION	XX
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	23,688	
6.	Benefits	3,759	
7.	Supplemental Benefits	452	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES	01	31,779
10.	Travel	02	-0-
11.	Contractual	03	11,520
12.	Commodities	04	500
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		45,299

JUSTIFICATION

This position will be required to audit certified payrolls to ascertain if contractors on public projects are employing local residents; if good faith efforts have been made to hire local residents; and further if labor from adjacent areas is being utilized when local skilled labor is not available.

Contractual service includes \$3,120 for indirect support services, and \$3,400 for rent. All other costs are normal operating expenses.

The \$1,500 in the equipment line item is to purchase basic office equipment.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.	100	General Funds 1004	45,299
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
4A KEY NUMBER _____

AGENCY Labor

PROGRAM Worker Protection

BRU Labor Standards and Safety

Wage and Hour

FY 84

13 REQUEST FOR NEW POSITION

Page 1 of 2

Revised Date _____

1.	POSITION TITLE Wage and Hour Investigator I				RANGE/STEP 16A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER SS for SB174	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT 99	LEG.		

3.	CONTINUATION LEVEL	ADDITION	X
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES*		
5.	Salary	30,888	
6.	Benefits	4,902	
7.	Supplemental Benefits	1,894	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES	01	40,564
0.	Travel	02	0
1.	Contractual	03	9,468
2.	Commodities	04	500
3.	Equipment	05	1,500
4.	Other		
5.	TOTAL COST		52,032

JUSTIFICATION

This position would provide professional review of the audit trail for resident hire; make investigations of suspected non-compliance and enforce the required quotas of resident to non-resident. This position would also provide quick reaction response capability to remote areas to apprehend violators while the project is still in process and funds are available for retention by the contacting agency that would have been paid to displaced residents.

Contractual services include \$4,068 for indirect support services and \$3,400 for rent and \$2,000 for basic operating cost.

The position will require \$1,500 to purchase basic office equipment.

	RECEIPT CODE	FUNDING SOURCE	
6.		Federal Receipts 1002	
7.		G.F. Match 1003	
8.		General Funds 1004	52,032
9.		I-A Receipts 1005	
0.		Program Receipts 1028	
1.		Other	

FOR B&M USE ONLY
4A KEY NUMBER _____

3 REQUEST FOR NEW POSITION

AGENCY Labor

PROGRAM Public Protection

BRU Labor Standards and Safety

COMPONENT Wage and Hour

FY 84

Page 2 of 2

Revised Date _____



Official Business

Alaska State Legislature

NEWCOMER TULL
(JPJ)

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Senator J. Kerttula
FROM: Senator Joe Josephson
DATE: May 11, 1983
RE: SSSB 174 Preferential Hire

Dear Mr. President:

While support for the substance of SSSB 174 appears virtually unanimous among the public and the legislators, some concerns regarding the fiscal note have emerged.

*A
positions
funded
in
FY84
budget*

The Department of Labor has asked for six (6) new employees to enforce the provisions of SSSB 174 should it become law. The Department of Labor has very conservatively estimated wage savings to Alaskans in excess of 3.4 million dollars from the level of enforcement this funding would permit. Given the very conservative nature of Department of Labor's estimates this equals a greater than ten to one return to the citizens of Alaska for each State dollar.

The Senate Finance Committee has already included funding for four of the positions requested by the SSSB 174 fiscal vote as a special Alaska Hire unit within the Department of Labor. I believe we can anticipate a more active enforcement of Alaska hire by the new administration. I believe this fact, combined with the craft by craft requirement of SSSB 174, justifies the addition of all the requested six employees.

I would request your guidance and assistance as to how to best formulate the fiscal note to clarify this situation, guarantee adequate funding of Alaska Hire enforcement, and promote the passage of this legislation.

Joe Josephson
Senator Joe Josephson

JPJ/dd/cme

cc: Senator Sackett
Commissioner Robinson
Peter McDowell, Director OMB



Alaska State Legislature

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Senators Kefttula, Eliason, Mulcahy, Bennett, Sackett, and Rodey

FROM: Senator Josephson

DATE: May 5, 1983

RE: SS SB 174 Preferential Hire

Dear Colleague:

Over the past three weeks, I have received numerous letters, telephone calls and POM's concerning this legislation. You and I, and the people, want to strengthen the employment position of Alaskans in the face of outside employers using outside labor on local projects.

SB 174 was fashioned after an executive order approved in White v. Mass, Council of Constr. Emp., the United States Supreme court decision announced on February 28, 1983. The Court upheld a City of Boston executive order which required at least 50% bona fide resident hire on "any construction project funded in whole or in part by City funds, or funds which... the City expends or administers, and to which the city is signatory." The Court, in the face of a federal constitution Commerce Clause challenge, held that "the application of the mayor's executive order to the contracts in question did not violate the Commerce Clause...".

A recent Washington Supreme Court decision, has cast legal doubt about the validity of AS 36.10 as presently constituted. SB 174 takes advantage of the White decision and puts AS 36.10 in a form that should create a constitutionally permissible employment preference statute.

Subsection (a) addresses employment preference in municipalities only, thus falling well within the boundaries established in White, and avoiding the Commerce Clause challenge.

Subsection (b) addresses employment preference on construction projects partly or wholly funded by state money. This subsection requires that 95 per cent of all workers on such projects be Alaska residents. It also requires that each craft of workers be composed of 95% Alaskan residents. This craft by craft provision will insure that Alaskans will be offered jobs in all craft areas and prevent the importation of a particular craft of workers at the expense of Alaskan residents.

A handwritten signature in cursive script, appearing to read "Joe P. Josephson".

Senator Joe P. Josephson

Bill No. Sponsor Substitute for Senate Bill 174

Date May 4, 1983

Title "An Act relating to employment preferences for state residents; and providing for an effective date."

Contact: Judy Knight
465-2700

Bob Bacolas
465-4780

During the years when the Trans-Alaska Pipeline was being built, the department maintained an effective resident hire program, both within the construction of the pipeline and public construction contracts. A resident hire unit for enforcement of Title 36 was located within the Wage and Hour Administration, which was staffed with 12 employees, eight professional and four clerical support. Their activities were supportive of the activities of the three staff members assigned to public construction enforcement. Many newcomers finding it difficult to obtain oilfield work turned to traditional construction activities for employment. The resident requirements for "pipeline" employment were substantially more stringent than those for public construction. The result was that employers hiring for public construction and the Title 36 enforcement unit could rely on the activities of the "pipeline" enforcement unit for much of the leg-work required to verify residency. It was a simple matter to check for the "resident card" required under Title 38.

In 1978 the Supreme Court in the matter of Hicklin v. Orbeck, overturned the residency aspect of Title 38. Subsequently, in the budget process all twelve "pipeline" positions were deleted and the entire staff was laid off. Consequently, since 1978 the department has not had any positions funded for enforcement of resident hire.

The Department recently completed a survey to determine the wages paid to non-residents that should have been paid to residents on public construction. Based on this survey we projected the figures for the entire fiscal year ending June 30, 1983. To arrive at the dollar value of wages lost by displaced residents we used a 40 hour work week and a base level wage, plus benefits, for the lowest paid job class subject to our wage surveys. Therefore, the actual dollar value of wages lost to residents in FY 83 would be more than the figure estimated from certified payrolls.

Number of displaced residents:	3767
Estimated value of lost wages:	\$3,394,160.00

The Department supports this legislation which addresses resident preference in light of recent court decisions. This bill, coupled with the necessary staff resources to enforce resident preference, will do much to increase employment opportunities for Alaskan residents.

Approved:


Commissioner

POSITION PAPER/Department of Labor

TO: Senators Fahrenkamp, Kerttula, V. Fischer
Eliason, Gilman, Sturgulewski, Pettyjohn
Kelly and Halford

FROM: Senator Josephson
DATE: April 19, 1983

RE: SB 174 Preferential Hire - Proposed Sponsor Substitute

Dear Co-Sponsor and Colleague:

Attached is a workdraft of a Sponsor Substitute for Senate bill 174. Over the past three weeks, I have received numerous letters, telephone calls and POM's concerning the bill. You and I, and the people, want to strengthen the employment position of Alaskans in the face of outside employers using outside labor on local projects.

The original SB 174 was fashioned after an executive order approved in White v. Mass. Council of Constr. Emp., the United States Supreme court decision announced on February 28, 1983.¹ The Court upheld an executive order issued by Boston Mayor Kevin White. The order provided for at least 50% bona fide Boston resident hire on "any construction project funded in whole or in part by City funds, or funds which ... the City expends or administers, and to which the city is signatory." The Court, in the face of a federal Commerce Clause² challenge, stated that "if the city is a market participant, then the Commerce Clause establishes no barrier to conditions such as these which the city demands for its participation. Impact on out-of-state residents figures in the equation only after it is decided that the city is regulating the market rather than participating in it, ..." 51 LW at 4213. The Court held that "the application of the mayor's executive order to the contracts in question did not violate the Commerce Clause ..." 51 LW at 4214.

¹51 LW 4211.

²Article IV, sec. 2. cl. 1. United States Constitution.

The history of Alaska hire law has an interesting twist to it. Some years ago, professedly for the purpose of reducing unemployment in the State, the Alaska Legislature passed an Act entitled "Local Hire Under State Leases." AS 38.40.010 - 38.40.090 (1977). The key provision of "Alaska Hire" was the requirement that "all oil and gas leases, easements, or right-of-way permits for oil or gas pipeline purposes, unitization agreements, or any renegotiation of any of the preceding to which the state is a party" must contain a provision "requiring the employment of qualified Alaska residents" in preference to nonresidents. AS 38.40.030(a)(1977). The fate of that part of the "Alaska Hire" statute, as you well know, was decided in Hicklin v. Orbeck, 437 U.S. 518 (1978). The Supreme Court struck down one statute as contrary to the Privileges and Immunities Clause. (The Privileges and Immunities Clause places the citizens of each state upon the same footing with citizens of other states, so far as the advantages resulting from citizenship in the states are concerned.)

Oddly enough, the current employment preference statute, AS 36.10.010, was on the books at the time "Alaska Hire" was under debate, and had been enacted in 1960. Counsel on both sides of the case went to great lengths to circumvent any discussion of AS 36.10.010. And to date, this statute has never been challenged. Former Attorney General, Wilson Condon, in a June 17, 1982 opinion, file no. J66-282-82³, recommended that the statute be enforced as is, and that such enforcement decisions be made subject to "independent budgetary restraints and not doubts as to the constitutionality of the law." Id. at p. 21. But the attorney general's opinion opened by stating that "the Hicklin decision has caused substantial uncertainty regarding the continued validity of AS 36.10." Id. at p. 2.

A recent Washington Supreme Court decision, moreover, casts legal doubt about the validity of AS 36.10. as presently constituted. Laborers Local Union No. 374 v. Felton Construction, 654 P.2d 67 (Wash. 1982). In Felton, the Washinton court struck down an employment preference statute,³ under a Privileges and Immunities Clause analysis. The Court relied upon

³RCW 39.16.005 provides in pertinent part:

"In all contracts let by the state ... or any county, city ... for the erection, construction, alteration, demolition, or repair of any public building ... or any other kind of public work or improvement, the contractor or subcontractor shall employ ninety-five percent or more bona fide Washington residents as employees where more than forty persons are employed, and ninety percent or more bona fide Washington residents as employees where forty or less persons are employed ..."

an earlier Supreme Court case,⁴ and recognized as "fundamental" those privileges and immunities bearing upon the vitality of the Nation as a single entity [treating] all citizens, resident and nonresident, equally."

According to the Court, a two-tiered test must be applied to overcome the Privileges and Immunities Clause. Once within the ambit of the clause, a state must demonstrate a valid independent reason for discriminating against nonresidents by showing:

(1) something to indicate that non-citizens constitute a peculiar source of the evil at which the discrimination statute is aimed.

(2) the discrimination bears a substantial relationship and is closely tailored to the particular evil nonresidents present.

The state conceded, in its amicus brief, that the Washington law operated discriminate against nonresident workers in limited context on public works construction.

The proposed Sponsor Substitute takes advantage of the White decision and puts AS 36. 10 in a form that should create a constitutionally permissible employment preference statute. Subsection (a) addresses employment preference in municipalities only, thus falling well within the boundaries established in White, and avoiding the Commerce Clause challenge.

Subsection (b) is fashioned more closely after the language of the executive order approved in White and avoids the possible weakness (overbreath) denoted in Felton, and referred in White. The court in Felton noted as a significant factor in its decision that "[w]hile the economic impact of RCW 39.16 on the private sector is not as far ranging as the Alaska Hire statute, it nevertheless affects private employers who have no direct dealings with the State." The Supreme Court in White intimated, by citing Hicklin, that the overbreath of applicability of a preferential hire law is a significant factor in determining whether violation of Privileges and Immunities has occurred. The Sponsor Substitute takes into consideration the language of Hicklin, Felton, and White to provide a stronger, more defensible Alaska hire law.

⁴Baldwin v Fish & Game Comm'n, 436 U.S. 371, 383 (1978).

Introduced: 4/25/83
Referred: Labor and Commerce

BY JOSEPHSON, FAHRENKAMP,
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