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**HOUSE
COMMITTEE REPORT**

(7)

JUDICIARY

Date referred: 4/14/86

FURTHER REFERRALS: FINANCE

DATE: April 21, 1986

The LABOR & COMMERCE Committee has considered CSSB 367 (Fin) am

"Act relating to Alaskan resident employment preference; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with House CS for CS SB 367(LTC) same title
- new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Mike Savane
Mike Kovach
Steve Leary
Bob Miller
Bob Fisher
Mike Dan

Alyce Shirley - No Lec

Mike Savane
Chairman

Cramer ✓
4/23/86

Original sponsors: Faiks, Josephson,
Sturgulewski, et al

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 367 (L&C)

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 Alaskan resident employment
7 preference; and providing for an effective date."

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

9 * Section 1. PURPOSE. The legislature recognizes that the state has a
10 significant unemployment problem. This Act is intended to better fulfill
11 the state's duty of loyalty to its citizens, reduce unemployment among
12 residents of the state, remedy social harms resulting from chronic unem-
13 ployment, and assist economically and socially disadvantaged residents. If
14 the courts find that a portion of AS 36.10 is unconstitutional, the public
15 interest requires that the remaining portions be implemented as fully as
16 possible.

17 * Sec. 2. AS 36.10.005 is amended by adding new subsections to read:

18 (c) The legislature finds that the following factors are reason-
19 able but not exclusive indicators of the ratio of nonresident to
20 resident employees in the state:

21 (1) the ratio of applicants for unemployment insurance who
22 list out-of-state residences to applicants who list residences in the
23 state;

24 (2) the ratio of employees who are subject to unemployment
25 insurance coverage and who did not apply for or were denied a perma-
26 nent fund dividend to employees who were found eligible for a divi-
27 dend.

28 (d) The legislature finds that

29 (1) the number of state residents who are unable to find

1 work is considerably higher than is reflected by unemployment rates
2 based on nationally accepted measures;

3 (2) many rural state residents who wish to work do not seek
4 employment as frequently as necessary to meet federal definitions of
5 unemployment because of continuing lack of employment opportunities in
6 rural areas of the state.

7 * Sec. 3. AS 36.10.070 is repealed and reenacted to read:

8 Sec. 36.10.070. UNAVAILABILITY OF PREFERRED WORKERS. (a) An
9 employer subject to hiring requirements under this chapter may request
10 the Department of Labor to assist in locating qualified, eligible
11 employees. After receiving a request for assistance, the department
12 shall refer qualified, eligible, available residents to the employer
13 to fill the employer's hiring needs. The employer shall cooperate
14 with the department.

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

20 * Sec. 4. AS 36.10.075 is amended by adding a new subsection to read:

21 (b) The commissioner of labor shall adopt regulations to encour-
22 age and require the hiring of residents to the maximum extent permit-
23 ted by law.

24 * Sec. 5. AS 36.10 is amended by adding new sections to read:

25 Sec. 36.10.130. RESIDENT HIRE REPORT. The attorney general and
26 the commissioner of labor shall report annually to the legislature and
27 the governor on the status of employment in the state, the effect of
28 nonresident employment on the employment of residents in the state,
29 and methods to increase resident hire. The report shall be submitted

1 by January 31 of each year.

2 Sec. 36.10.140. ELIGIBILITY FOR PREFERENCE. (a) A person is
3 eligible for an employment preference under this chapter if the person
4 certifies eligibility as required by the Department of Labor, is a
5 resident, and

6 (1) is receiving unemployment benefits under AS 23.20 or
7 would be eligible to receive benefits but has exhausted them;

8 (2) is not working and has registered to find work with a
9 public or private employment agency or a local hiring hall;

10 (3) is underemployed or marginally employed as defined by
11 the department; or

12 (4) has completed a job-training program approved by the
13 department and is either not employed or is engaged in employment that
14 does not use the skills acquired in the job-training program.

15 (b) In approving job-training programs under (a) of this sec-
16 tion, the department shall use information and findings from other
17 state and federal agencies as much as possible.

18 (c) An employer subject to a resident hiring requirement under
19 this chapter shall certify that persons employed as residents under
20 the 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 from
26 the Department of Labor in verifying the residence of an applicant.

27 Sec. 36.10.150. DETERMINATION OF ZONE OF UNDEREMPLOYMENT. (a)
28 Immediately following a determination by the commissioner of labor
29 that a zone of underemployment exists, and for the next two fiscal

1 years after the determination, qualified residents of the zone who are
2 eligible under AS 36.10.140 shall be given preference in hiring for
3 work on each project under AS 36.10.180 that is wholly or partially
4 sited within the zone. The preference applies on a craft-by-craft or
5 occupational basis.

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

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

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

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

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

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

25 Sec. 36.10.160. PREFERENCE FOR RESIDENTS OF ECONOMICALLY DIS-
26 TRESSED ZONES. (a) Immediately following a determination by the
27 commissioner that an economically distressed zone exists, and for the
28 next two fiscal years after the determination, qualified residents of
29 the zone who are eligible under AS 36.10.140 shall be given preference

1 in hiring for at least 50 percent of employment on each project under
2 AS 36.10.180 that is wholly or partially sited within the zone. The
3 preference applies on a craft-by-craft or occupational basis.

4 (b) The commissioner shall determine that an economically dis-
5 tressed zone exists if the commissioner finds that

6 (1) the per capita income of residents of the zone is less
7 than 90 percent of the per capita income of the United States as a
8 whole, or the unemployment rate in the zone exceeds the national rate
9 of unemployment by at least five percentage points;

10 (2) the lack of employment opportunities in the zone has
11 substantially contributed to serious social or economic problems in
12 the zone; and

13 (3) employment of workers who are not residents is a pecu-
14 liar source of unemployment of residents of the zone.

15 Sec. 36.10.170. PREFERENCE FOR ECONOMICALLY DISADVANTAGED MINOR-
16 ITY RESIDENTS. (a) Immediately following a determination by the
17 commissioner that the minority residents of a zone are economically
18 disadvantaged, and for the next two fiscal years after the determina-
19 tion, qualified minority residents of the zone who are eligible under
20 AS 36.10.140 shall be given preference in hiring for at least 25
21 percent of employment on each project under AS 36.10.180 that is
22 wholly or partially sited within the zone. The preference applies on
23 a craft-by-craft or occupational basis.

24 (b) The commissioner shall determine that the minority residents
25 of a zone are economically disadvantaged if the commissioner finds
26 that

27 (1) the percentage of civilian minority residents in the
28 zone exceeds the percentage of civilian minority residents in the
29 state;

1 (2) either the percent of unemployment of civilian minority
2 residents of the zone is at least two times the percent of unemploy-
3 ment of nonminority residents of the zone or the civilian minority
4 population of the zone has suffered past economic discrimination;

5 (3) the economic disadvantage of civilian minority resi-
6 dents of the zone has substantially contributed to serious social or
7 economic problems in the zone; and

8 (4) employment of workers who are not residents is a pecu-
9 liar source of unemployment of civilian minority residents of the
10 zone.

11 (c) In this section, a person is considered to be a member of a
12 minority if the person is Hispanic, Asian or Pacific Islander, Ameri-
13 can Indian or Alaskan Native, or Black as those terms are defined by
14 the Equal Employment Opportunity Commission.

15 Sec. 36.10.175. PREFERENCE FOR ECONOMICALLY DISADVANTAGED FEMALE
16 RESIDENTS. (a) Immediately following a determination by the commis-
17 sioner that the female residents of a zone are economically disadvan-
18 taged, and for the next two fiscal years after the determination,
19 qualified female residents of the zone who are eligible under AS 36.-
20 10.140 shall be given preference in hiring for at least 25 percent of
21 employment on each project under AS 36.10.180 that is wholly or par-
22 tially sited within the zone. The preference applies on a craft-by-
23 craft or occupational basis.

24 (b) The commissioner shall determine that the female residents
25 of a zone are economically disadvantaged if the commissioner finds
26 that

27 (1) either the percent of unemployment of female residents
28 of the zone is at least two times the percent of unemployment of male
29 residents of the zone or the female population of the zone has

1 suffered past economic discrimination;

2 (2) the economic disadvantage of female residents of the
3 zone has substantially contributed to serious social or economic prob-
4 lems in the zone; and

5 (3) employment of workers who are not residents is a pecu-
6 liar source of unemployment of female residents of the zone.

7 Sec. 36.10.180. PROJECTS SUBJECT TO PREFERENCE. (a) The pref-
8 erences established in AS 36.10.150 - 36.10.175 apply to work per-
9 formed

10 (1) under a contract for construction, repair, preliminary
11 surveys, engineering studies, consulting, maintenance work, or any
12 other retention of services necessary to complete a given project that
13 is let by the state or an agency of the state, a department, office,
14 state board, commission, public corporation, or other organizational
15 unit of or created under the executive, legislative or judicial branch
16 of state government, including the University of Alaska and the Alaska
17 Railroad Corporation, or by a political subdivision of the state
18 including a regional school board with respect to an educational
19 facility under AS 14.11.020;

20 (2) on a public works project under a grant to a municipal-
21 ity under AS 37.05.315;

22 (3) on a public works project under a grant to a named
23 recipient under AS 37.05.316;

24 (4) on a public works project under a grant to an unincor-
25 porated community under AS 37.05.317; and

26 (5) on any other public works project or construction
27 project that is funded in whole or in part by state money.

28 (b) If the governor has declared an area to be an area impacted
29 by an economic disaster under AS 44.33.285, then the preference for

1 residents of the area established under AS 44.33.285 - 44.33.310
2 supersedes the preference under AS 36.10.150 - 36.10.175 for contracts
3 awarded by the state.

4 (c) The commissioner shall define the boundaries of a zone
5 within which a preference applies.

6 Sec. 36.10.190. REPORTING PROVISIONS. An employer obligated to
7 meet resident hire requirements under this chapter shall comply with
8 the reporting provisions that the commissioner of labor determines are
9 reasonably necessary to carry out this chapter. Except for statis-
10 tical data, all information regarding specific employees is confiden-
11 tial and may not be released by Department of Labor. However,
12 confidential employee information may be shared between departments
13 for purposes of this chapter.

14 Sec. 36.10.200. CRIMINAL PENALTIES. (a) A person who makes a
15 false sworn statement in connection with a certification of eligibil-
16 ity for an employment preference under this chapter is subject to
17 criminal prosecution for perjury as provided in AS 11.56.200.

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

23 (c) In addition to criminal penalties imposed by state law, if a
24 person is convicted of a crime in connection with a false statement
25 made in a certification required under AS 36.10.140, and the convic-
26 tion is not reversed, that person shall forfeit all future rights to
27 eligibility for an employment preference under this chapter.

28 Sec. 36.10.210. CIVIL PENALTIES. (a) In addition to any crimi-
29 nal penalties imposed, after a hearing the department may impose a

1 civil penalty on a person who, in connection with certification of
2 eligibility for an employment preference under this chapter,

3 (1) made a false sworn statement; or

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

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

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

17 Sec. 36.10.900. EFFECT OF JUDICIAL DECISIONS. If a provision of
18 this chapter, or the application of a provision to a person or circum-
19 stance, is held invalid, the remainder of this chapter and the appli-
20 cation to other persons or circumstances shall not be affected by the
21 holding. The remainder shall be enforced to the greatest extent
22 constitutionally permissible under the constitutions of the United
23 States and the State of Alaska.

24 Sec. 36.10.990. DEFINITIONS. In this chapter

25 (1) "qualified" means possesses the requisite education,
26 training, skills, or experience to perform the work;

27 (2) "zone" includes a census area in the state, an economic
28 region of the state, and the state as a whole.

29 * Sec. 6. AS 36.95.010 is amended by adding a new paragraph to read:

1 (9) "resident" means a person who establishes residency
2 under AS 01.10.055.

3 * Sec. 7. AS 37.05.315 is amended by adding a new subsection to read:

4 (e) The Department of Labor shall require a municipality awarded
5 a grant for a public works project under (a) of this section to comply
6 with the hiring preferences under AS 36.10.150 - 36.10.175 for employ-
7 ment generated by the grant.

8 * Sec. 8. AS 37.05.316 is amended by adding a new subsection to read:

9 (b) The Department of Labor shall require a recipient awarded a
10 grant for a public works project under (a) of this section to comply
11 with the hiring preferences under AS 36.10.150 - 36.10.175 for employ-
12 ment generated by the grant.

13 * Sec. 9. AS 37.05.317 is amended by adding a new subsection to read:

14 (b) The Department of Labor shall require the qualified incor-
15 porated entity awarded a grant or agents or contractors with whom the
16 Department of Community and Regional Affairs contracts under (a) of
17 this section to comply with the requirements of AS 36.10.150 - 36.10.-
18 175 for employment enerated by the grant or contract if the grant or
19 contract is for a public works project.

20 * Sec. 10. The provisions of this Act do not apply to a contract en-
21 tered into before the effective date of this Act unless the contract in-
22 cludes a provision requiring compliance with laws regarding the hiring of
23 Alaska residents that take effect during the term of the contract.

24 * Sec. 11. AS 36.10.010 and AS 36.95.010(4) and (5) are repealed.

25 * Sec. 12. This Act takes effect immediately in accordance with AS 01.-
26 10.070(c).

Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE

907-465-3740



JAN FAIKS
FOUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

April 10, 1986

MEMORANDUM

TO: Members, Senate Finance Committee

FROM: Senator Jan Faiks

SUBJECT: Background on CS for Senate Bill 367 (Finance),
an Act relating to Alaskan resident employment
preference

I. The Problem

The problem of nonresident hire in Alaska was the topic of a report recently completed by the Department of Labor. Entitled "Nonresidents Working in Alaska", this report presents statistics that are based upon the 1984 employment season.

For that year, Alaska had the fifth highest unemployment rate in the country. Non-Alaskans represented about 1/5 of the instate labor force. For any one month, there were never less than 19,000 persons unemployed in Alaskans and there were never less than 16,000 nonresidents working here.

II. History of Past Local Hire Legislation

In 1960, the Legislature passed AS 36.10.010. This law requires 90-95% local hire on public construction projects. It was amended in 1972, 1976, and 1978.

In January of this year, the Alaska Supreme Court struck down the 1978 version of AS 36.10.010. In the case of Robison v. Francis, the Court said that this local hire law violates the Privileges and Immunities Clause of the U.S. Constitution. Simply stated, this clause says that a state

OUT OF SESSION

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must give nonresidents the same privileges that it gives residents.

Last session, the Legislature added findings in order to strengthen this law.

III. What Francis v. Robison Says

Although the Supreme Court did not tell us how to write a valid local hire law, it did provide some general guidelines about what could and what could not be contained in statute.

For a constitutional local hire law, the state must show that there is a "substantial justification" for burdening the right of nonresidents to get a job in Alaska. The state must show documented proof that non-Alaskans are a "peculiar source" of the high unemployment here.

Furthermore, the law's method must be closely tailored to meet the problem. That is, the law must benefit unemployed Alaskans, just not Alaskans in general.

Finally, the state should show a link between high unemployment and resulting "social ills". That is, there should be a documented connection between our high unemployment rate and our high incidence of drug and alcohol abuse, domestic violence, suicide, and so forth.

IV. What CS for Senate Bill 367 (Finance) Does

Like AS 36.10.010, this bill requires local hire on public construction projects. However, it has been tailored to satisfy the constitutional questions raised by the Francis decision. Also, it has been amended to conform with the latest version of its companion, House Bill 466, and to suggestions made by the Department of Labor.

After reciting the purpose of the bill in Section 1, Section 2 adds more findings to those added by the legislature during last session. These findings support the need for local hire legislation and identify methods for determining if nonresidents are a "peculiar source" of high local unemployment.

If employers request assistance in locating eligible residents, Section 3 requires the Department of Labor to help them. If no eligible residents are available, this

section allows employers to hire ineligible residents and nonresidents.

Section 4 authorizes the Commissioner to adopt local hire regulations.

Section 5 contains the substantive requirements for local hire on public construction projects. It requires the Department of Labor to prepare an annual report on nonresident hire in the State. It also requires the Department to identify among the six economic regions of the state three types of areas. These are underemployment areas, economically distressed areas, and areas where female and minority residents are economically disadvantaged.

Once these areas have been identified, for the following two years eligible residents must be given preference for hire. This preference applies to any construction projects which are contracted by a municipality or which are funded by state funds or grants.

For projects located in underemployment and economically distressed areas, residents will be eligible for the hiring preference if they are unemployed, underemployed, or marginally employed. For projects in underemployment areas, the Commissioner will determine the amount of work that must be performed by these residents. For projects in economically distressed areas, these residents must be given preference for at least one-half of the jobs.

For projects located in areas where female or minority residents are economically disadvantaged, these residents must be given preference for at least one-fourth of the jobs.

Eligibility for the hiring preference will be established by a self-certification process. Section 5 establishes criminal and civil penalties for making false certifications.

Section 6 defines residency according to one's physical presence in the state for at least thirty days and by other indications of intent to remain here.

Sections 7 through 9 require the Department of Labor to enforce the resident hiring preference against municipalities and grantees of state funds. According to Section 10, the Act does not apply to construction contracts issued before the effective date of this act unless these contracts adopt the effect of local hire laws passed during

their lifetime. Section 11 repeals conflicting statutory definitions of the terms "qualified" and "resident".

Section 12 repeals AS 36.10.010, the current local hire law which was declared unconstitutional. Section 13 says that if the state does not appeal the Alaska Supreme Court's decision, the repeal of AS 36.10.010 takes effect on the effective date of this bill or at the state's deadline for appealing this decision, whichever is later. If the state does appeal the Francis decision, the repeal will take effect on the date the U.S. Supreme Court declines to review the appeal or the date the U.S. Court upholds our Court's decision. If the Supreme Court overturns the state court and upholds our current local hire law, then AS 36.10.010 will not be repealed and will remain on the books.

Section 14 gives the other sections of the bill an immediate effective date.

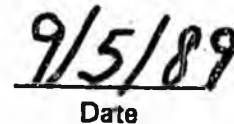
Thank you.



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