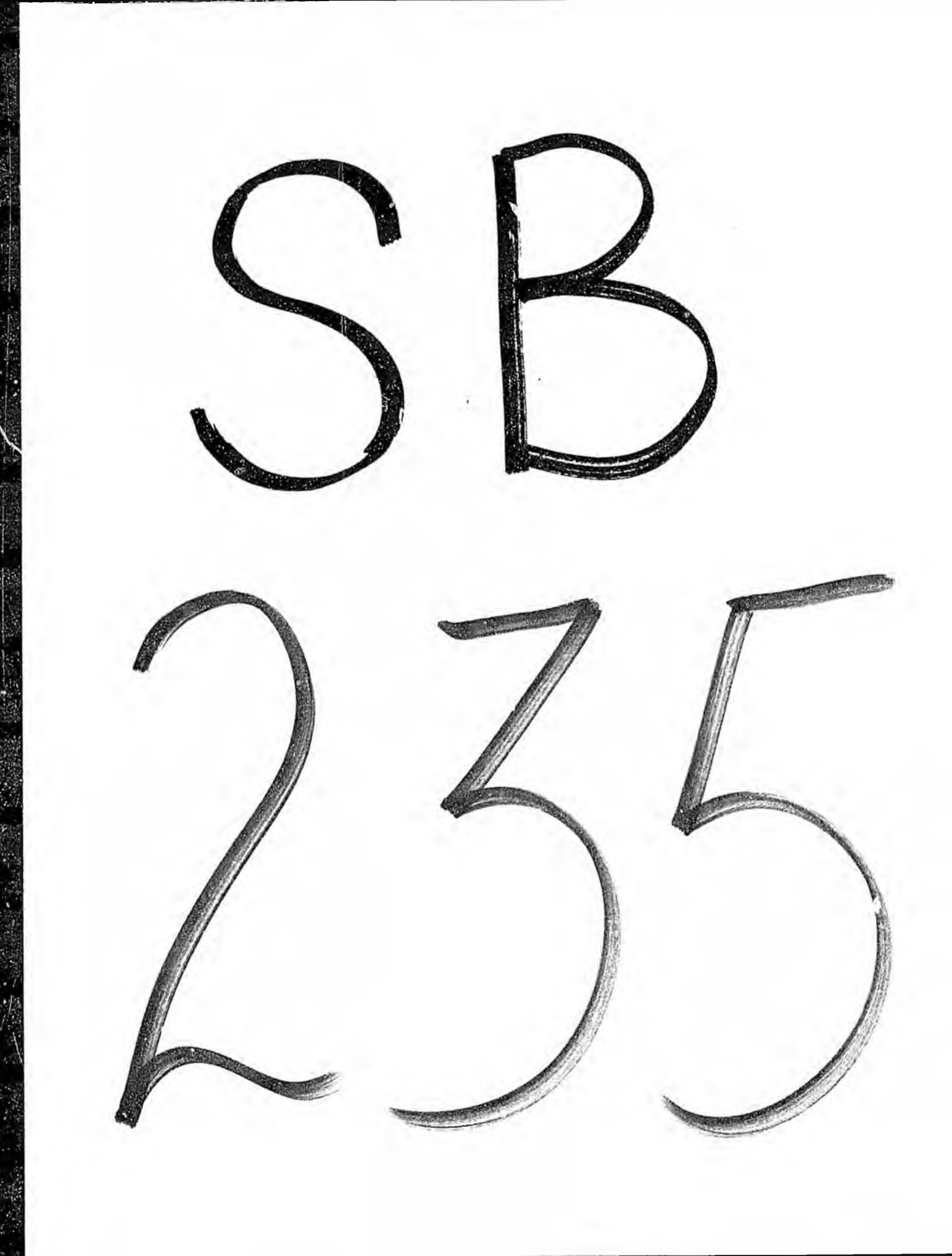
SB
235

BILL CONTACT/ACTION

DATE	CONTACT/ACTION
3/22	Per Roger - Fannenkamp will testify
	Landau - L & C will testify
3/26	Passed out

Alaska State Legislature
House

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Rep. Max F. Gruenberg
FROM: Dave Donley
DATE: February 24, 1985
RE: Alaska Hire

The history of preferential hire for residents of Alaska has been turbulent. The first Alaska Hire law was adopted in 1960. Over the years, the 1960 law was enforced with varying degrees of enthusiasm. Then in 1972, in an effort to obtain employment for Alaskans on the construction of the Trans Alaska Pipeline, the 1972 "Local Hire Under State Leases" law was adopted. The 1972 law required that Alaska residents be employed in preference to non-residents in all construction involving oil and gas development. In 1978 in Hicklin v. Orbeck, the U.S. Supreme Court struck down the 1972 law as contrary to the Privileges and Immunities clause of the U.S. Constitution. While the 1972 law was struck down, the 1960 law was not challenged and remained in effect but was not enforced until 1983.

In 1983, in response to public desire for an enforceable Alaska Hire law and new legal developments, the Alaska legislature amended the 1960 law. The 1983 act, which is the current law, requires 95% Alaska hire on most construction projects funded by State or local funds.

In 1984, the current law was challenged in Francis v. Robison. Superior Court Judge Johnston ruled the current law in violation of the Privileges and Immunities Clause of the U.S. constitution on May 23, 1984. On request of the State of Alaska the Alaska Supreme Court stayed Judge Johnston's action until the State could appeal his decision.

This case is currently on appeal before the Alaska Supreme Court and a decision is expected in the latter half of 1985.

In January of 1985, the Supreme Court of Wyoming upheld a Wyoming Hire law that is even stronger than our current Alaska Law, in that it requires 100% Wyoming hire, not just 95%, on public construction projects. The Wyoming Supreme Court overruled a lower Wyoming court which found, as Judge Johnston found for the Alaska law, that the Wyoming law violated the Privileges and Immunities Clause.

Currently then, our Alaska Hire law is in effect and being enforced and in light of the Wyoming case has a better chance than ever of being found constitutional by our Alaska Supreme Court. Of course, even if

the Alaska Supreme Court approves the current law, Alaska Hire may still be challenged in the U.S. Supreme Court.

SUGGESTIONS FOR LEGISLATIVE ACTION

If our current law is struck down by the Alaska Supreme Court or challenged in the U.S. Supreme Court, the key factor in its success or failure may be the State of Alaska's ability to prove that the resulting discrimination against non-residents is necessary to relieve unemployment among Alaskans.

To effect this proof of need I believe legislative hearings on the subject and the adoption of legislative findings of fact would be advisable. Whether it would be better for the legislature to take action at this time, or to wait until after the Alaska Supreme Court's ruling on the pending case, is difficult to predict.

My suggestion is that the legislature pass a special appropriation bill empowering the Department of Labor to commission a study on the relationship of out-of-state workers to unemployment in Alaska and the Alaska Hire question in general. Such legislation would additionally provide the vehicle for public hearings at which evidence could be compiled to support Alaska Hire.

TO: BETTYE
FM: EDIE
RE: SB 235:- LOCAL HIRE BILL

SB 235 - AN ACT RELATING TO PREFERENTIAL HIRE OF ALASKANS: AND PROVIDING FOR AN EFD

* Section 1. AS 36.10.005. LEGISLATIVE FINDINGS
AS 36.10.006. STATEMENT OF PURPOSE
AS 36.10.007. STATE POLICY
* Section 2. SECTION 1 OF THIS ACT IS RETROACTIVE TO JULY 16, 1983
* Section 3. THIS ACT TAKES EFFECT IMMEDIATELY...

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1) SECTION 1

36.10.005 LEGISLATIVE FINDINGS

ENACTS A SECTION ON "LEGISLATIVE FINDINGS" UNDER THE STATE'S LOCAL HIRE LAW, 36.10. THE 19 FINDINGS ADDRESS FACTORS THAT MAKE ALASKA UNIQUE AND STATE THAT THESE FACTORS LEAD TO THE HIGH RATE OF UNEMPLOYMENT AMONG RESIDENTS; THAT THE STATE SPENDS MOST OF ITS ROYALTY OIL EARNINGS ON GOVERNMENT AND PUBLIC WORKS PROJECTS; THAT THE CONSTRUCTION INDUSTRY ACCOUNTS FOR A SUBSTANTIAL AMOUNT OF AVAILABLE EMPLOYMENT AND THE WORKERS RECEIVE A GREATER AMOUNT OF UNEMPLOYMENT BENEFITS THAT IN OTHER STATES; AND THAT THE STATE HAS AN OBLIGATION TO REDUCE UNEMPLOYMENT AMONG ITS RESIDENT CONSTRUCTION WORKERS ON PROJECTS FUNDED BY STATE ROYALTY OIL MONIES.
UNDER THE PRIVILEGES AND IMMUNITIES CLAUSE OF THE U.S. CONSTITUTION, A STATE MUST SHOW A COMPELLING REASON FOR GIVING AN EMPLOYMENT PREFERENCE TO RESIDENTS. IF A LOCAL HIRE LAW IS BEING CHALLENGED IN A COURT OF LAW, SUFFICIENT EVIDENCE MUST SHOW THAT THE IN-MIGRATION OF NON-RESIDENTS IS DISPLACING QUALIFIED AND AVAILABLE ALASKA RESIDENTS FROM PUBLIC WORKS EMPLOYMENT. BY EXPLICITLY SETTING FORTH THE LEGISLATIVE FINDINGS UNDERLYING THE RESIDENT HIRE LAW, A MORE SOLID FOUNDATION WOULD BE PROVIDED FROM WHICH TO DEFEND THE PRINCIPLES OF ALASKA HIRE.

36.10.006 STATEMENT OF PURPOSE

THE LEGISLATURE ADOPTED A LOCAL HIRE LAW (AS 36.10.010), IN 1983, IN RESPONSE TO PROBLEMS AND CONCERNS IDENTIFIED BY THE LEGISLATIVE FINDINGS (THE FINDINGS OF FACTS) FOR THE PURPOSES OF (1) REDUCING THE LEVEL OF UNEMPLOYMENT AMONG RESIDENTS AND (2) ENSURING THAT QUALIFIED RESIDENT WORKERS DO NOT REMAIN UNEMPLOYED WHILE NON-RESIDENT WORKERS ARE EMPLOYED ON STATE PUBLIC WORKS PROJECTS. THERE ARE THREE SUBSECTIONS TO THE STATEMENT OF PURPOSE. THE FIRST IS THE MOST SPECIFIC AND ALSO ALL INCLUSIVE. THE SECOND AND THIRD ARE LESS SPECIFIC AND ADDRESS, INDIVIDUALLY, EACH PURPOSE. BECAUSE WE DO NOT KNOW HOW SPECIFIC A 'STATEMENT OF PURPOSE' MUST BE TO BE UPHELD IN A COURT OF LAW, THE PURPOSES ARE BROKEN OUT THIS WAY TO FORCE THE COURTS, IF NECESSARY, TO ESTABLISH FOR US HOW SPECIFIC A 'STATEMENT OF PURPOSE' MUST BE.

36.10.007 STATE POLICY

IT IS THE POLICY OF THE STATE THAT WHEN PROJECTS ARE BUILT WITH PUBLIC MONIES THE STATE WILL GRANT AN EMPLOYMENT PREFERENCE TO RESIDENTS.

* Section 2. [illegible]

2) SECTION 2

MAKES THE ACT RETROACTIVE TO JULY 13, 1983. ON THIS DATE, THE LOCAL HIRE LAW WAS ENACTED. IT WAS RECOMMENDED BY THE ATTORNEY GENERAL'S OFFICE THAT IT COULD BE HELPFUL IN THE STATE'S PRESENT APPEAL PROCESS.

3) SECTION 3

MAKES THE ACT EFFECTIVE IMMEDIATELY

INTRODUCTION OF BILLS (Senate)(cont'd)

SB 234 (cont'd)

to make violation of the new restrictions a misdemeanor, punishable by up to a year in jail and by a maximum fine of $5,000. Violation of the requirement that excess funds be disposed of would be punishable by the greater of three times the amount of the violation or $5,000 plus up to a year in jail.

Does not provide for an effective date (becomes law 90 days after signed).

Introduced March 14 and referred to State Affairs, Judiciary and Finance.

Alaska Local Hire

SENATE BILL NO. 235, by Senators Fahrenkamp, Bennett, Ferguson, Sackett, Zharoff and Vic Fischer. Enacts legislative "findings," "purpose," and "policy" sections under local hire law, AS 36.10.010, to strengthen it in the case of lawsuits. The law requires that 95% of the employees on state funded construction projects be residents of Alaska.

Findings are retroactive to July 16, 1983. Effective immediately. Identical to HB 294.

Introduced March 16 and referred to Judiciary.

INTRODUCTION OF RESOLUTIONS (Senate)

Deficit Reduction Act (amendment of)

SENATE JOINT RESOLUTION NO. 19, by Sen. Coghill. Urges Congress to "amend the Deficit Reduction Act of 1984 (P.L. 98-369) to replace the 'adequate contemporaneous records' requirement with the former 'sufficient evidence' requirement for establishing income tax deductions and investment tax credits, and to return to the former rules for depreciating business equipment."

Introduced March 11 and referred to Finance.

Investment in South Africa

SENATE CONCURRENT RESOLUTION NO. 14, by Sen. Vic Fischer. Identical to HCR 17, page 413.

Introduced March 13 and referred to State Affairs and Finance.

HOUSE BILLS RECEIVED IN THE SENATE

Elevator Safety Standards (revising)

CS FOR HOUSE BILL NO. 64 (L&C), (see pages 57;161;420;463). Received in the Senate on March 12 and referred to Labor and Commerce.

Motor Vehicle Emissions (inspections)

HOUSE BILL NO. 81, (see pages 66;212;322;463). Received in the Senate on March 12 and referred to State Affairs, HESS and Finance.

DAVID ARTHUR DONLEY
ATTORNEY AT LAW
1303 WEST 43rd AVENUE
ANCHORAGE, ALASKA 99503

February 25, 1985

LETTER TO THE EDITOR
RE: THE HISTORY AND FUTURE OF ALASKA HIRE

Currently there appears to be much public misunderstanding about the status of our present Alaska Hire Law AS 36.10.010. As one of the persons who helped draft that legislation I think it is important that all Alaskans understand the history behind and current status of Alaska Hire.

The history of preferential hire for residents of Alaska has been turbulent. The first Alaska Hire law was adopted in 1960. Over the years, the 1960 law was enforced with varying degrees of enthusiasm. Then in 1972, in an effort to obtain employment for Alaskans on the construction of the Trans Alaska Pipeline, the 1972 "Local Hire Under State Leases" law was adopted. The 1972 law required that Alaska residents be employed in preference to non-residents in all construction involving oil and gas development. In 1978 in Hicklin v. Orbeck, the U.S. Supreme Court struck down the 1972 law as contrary to the Privileges and Immunities Clause of the U.S. Constitution. While the 1972 law was struck down, the 1960 law was not challenged and remained in effect but was not enforced until 1983.

In 1983, in response to public desire for an enforceable Alaska Hire law and new legal developments, the Alaska legislature amended the 1960 law. The 1983 act, which is the current law, requires 95% Alaska hire on most construction projects funded by State or local funds.

Then in February 1984 in the case of United Building & Construction Trades Council of Camden County and Vicinity v. Mayor and Council of City of Camden et al, the U.S. Supreme Court reversed a New Jersey Supreme Court holding that the Privileges and Immunities Clause of the U.S. Constitution did not apply to municipal ordinances creating preferential hire for local residents. The court held that such ordinances are properly subject to the requirements of the Privileges and Immunities Clause. The court ordered that on remand, the determination of whether the Camden ordinance violates the Privileges and Immunities Clause should be made under the appropriate constitutional standard which requires determination of whether the ordinance burdens one of those privileges and immunities protected by the clause and if so, whether there is substantial reason for the discrimination against citizens of other states. However, the U.S. Supreme Court found it impossible from the record, as it was presented to the court, to evaluate Camden's contention that its ordinance was carefully tailored to counteract the specified economic and social ills of the unemployment of state residents and a sharp decline in the city's population. On remand, the U.S. Supreme Court recognized that the New

Jersey Supreme Court may decide, consistent with state procedures, on the best method for making the necessary findings of fact.

In 1984, Alaska's current law was challenged in Francis v. Robison. Superior Court Judge Johnstone ruled the current law in violation of the Privileges and Immunities Clause of the U.S. Constitution on May 23, 1984. On request of the State of Alaska the Alaska Supreme Court stayed Judge Johnstone's action until the State could appeal his decision. This case is currently on appeal before the Alaska Supreme Court and a decision is expected in the latter half of 1985.

In January of 1985, the Supreme Court of Wyoming upheld a Wyoming Hire law that is even stronger than our current Alaska law, in that it requires 100% Wyoming hire, not just 95%, on public construction projects. The Wyoming Supreme Court overruled a lower Wyoming court which found, as Judge Johnstone found for the Alaska law, that the Wyoming law violated the Privileges and Immunities Clause. The Wyoming Supreme Court specifically referenced both the Camden desision and Hicklin v. Orbeck in it's decision.

Currently then, our Alaska Hire law is in effect and being enforced and in light of the Wyoming case has a better chance than ever of being found constitutional by our Alaska Supreme Court. Of course, even if the Alaska Supreme Court approves the current law, Alaska Hire may still be challenged in the U.S. Supreme Court.

If our current law is struck down by the Alaska Supreme Court or challenged in the U.S. Supreme Court, the key factor in its success or failure will probably be the State of Alaska's ability to prove that the resulting discrimination against non-residents is necessary to relieve unemployment among Alaskans.

To effect this proof of need legislative hearings on the subject and the adoption of legislative findings of fact may be advisable. Whether it would be better for the legislature to take action at this time, or to wait until after the Alaska Supreme Court's ruling on the pending case, is difficult to predict.

In any event the Department of Labor should be empowered to commission a study on the relationship of out-of-state workers to unemployment in Alaska and the Alaska Hire question in general. Such legislation would additionally provide the vehicle for public hearings at which evidence could be compiled to support Alaska Hire.

Sincerely,

David Arthur Donley

Alaska State Legislature

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Senators Kerttula, Ellason, 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.

Joe Josephson

Senator Joe P. Josephson

ents." "If they can't take the heat, they should stay out of the kitchen," he said. The fast pace of the bill is justified because of the threats, Glenn said. "It's a potentially violent situation that shouldn't be prolonged," he said.

Jim Kerns, Idaho AFL-CIO executive director, said reports of violent threats lacked substance. He predicted that despite the rapid momentum of the legislation, the Senate may sustain the governor's veto, preventing the bill from becoming law. If the bill does become law in Idaho, Kerns said organized labor might seek a referendum on the issue, possibly delaying its implementation. Kerns said that with a right-to-work law, local unions would be weakened by decreased dues and by the "fear factor" of the legislation. "The interpretations of the law are so broad that workers would be afraid to talk to their neighbors."

Prevailing Wage Bill

Idaho's prevailing wage law for public construction also faces a challenge. A bill to repeal the state's "Little Davis-Bacon Act," H.B. 7, passed the house 68 to 16 on Jan. 22, and now is before the full Senate. Previous attempts to repeal the law have been vetoed by Evans each year since 1980.

Republican Representative Dean Haagenson, a Coeur d'Alene contractor who sponsored the bill in the House, said the prevailing wage law adds 15 to 20 percent to the cost of public work projects.

H.B. 7 also strikes the portion of the present public works law mandating an eight-hour workday on public work jobs. Haagenson said this was done to allow workers in remote sites to work four, 10-hour days at straight time.

WYOMING SUPREME COURT UPHOLDS STATE RESIDENT PREFERENCE LAW

The Wyoming Supreme Court says the state's Preference Act requiring contractors to employ state residents on publicly-funded construction projects does not violate the Privileges and Immunities Clause of the U.S. Constitution.

Although the Preference Act infringes upon the rights of out-of-state residents to some extent, it narrowly addresses the goal of reduced unemployment among the state's taxpayers who fund the projects, the court reasons.

State's Objectives

The Wyoming Preference Act says in part:

"Every person who is charged with the duty of construction, reconstructing, improving, enlarging, altering or repairing any public works project or improvement for the state or any political subdivision, municipal corporation, or other governmental unit, shall employ only Wyoming laborers on the project or improvement. Every contract let by any person shall contain a provision requiring that Wyoming labor be used except other laborers may be used when Wyoming laborers are not available for the employment from within the state or are not qualified to perform the work involved. The state employment office nearest the proposed contract or construction site shall maintain a list of laborers, classified by skills, who are residents and are available for employment. When the nearest state employment office is unable to provide the requested number of laborers from its own list, it shall immediately contact other state employment offices and request the names of other available laborers. Every person required to employ Wyoming laborers shall inform the nearest state employment office of his employment needs. If the state employment office certifies that the person's need for laborers cannot be filled from those listed as of the date the information is filed, then the person may employ other than Wyoming laborers." [§§16-6-201-203]

Offense Acknowledged

The case arose when the Converse County prosecuting attorney charged Roger Antonich, Westates Construction Company superintendent, with violating state code §16-6-203 by dismissing a state resident from a public school project so that out-of-state workers could be hired. A county judge dismissed the charges, finding that the statute in question violated the Privileges and Immunities Clause — Article IV — of the U.S. Constitution.

Justice Rose issues the opinion joined by Justices Rooney, Brown, and Cardine. Chief Justice Thomas concurs.

Judge Rose says:

"The State concedes that the discrimination against nonresidents under the Wyoming Preference Act burdens a fundamental right. In an early case, the United States Supreme Court held that the Privileges and Immunities Clause protects the right of a citizen of one state to travel to another state for purposes of employment. *Ward v. Maryland, 12 Wall 418, 430 (1870)* . . . Even more pertinent to the instant case, the Supreme Court recently held that an enactment preferring local workers for public construction projects burdens a fundamental right, and therefore, falls within the purview of the Privileges and Immunities Clause. *United Building and Construction Trades Council of Camden County and Vicinity v. Mayor and Council of the City of Camden . . . [29 CLR 1649 (Feb. 29, 1984)]* . . . Clearly, Wyoming's Preference Act offends the Privileges and Immunities

Clause unless a close link exists between valid reasons for the Act and the discrimination practiced."

Constitutional Balance

Despite the Act's infringement upon a recognized fundamental right, it does not violate the U.S. Constitution because of its narrow focus, Judge Rose says. The Act merely requires that state funds allocated for public works projects be used to hire qualified, available residents in preference to nonresidents. "Since the degree of discrimination bears a close relation to the state's valid resons for discriminatory treatment, we affirm the Act's validity . . . "

Chief Justice Thomas concurs, saying:

"I am satisfied that on the basis of existing precedent the role of the State in connection with constructing, reconstructing, improving, enlarging, altering or repairing any public works project or improvement for the state or any political subdivision, municipal corporation or other governmental unit' is that of a market participant pursuing essentially a proprietary function. It is inappropriate to invoke the Privileges and Immunities Clause to inhibit the State in that regard. Both *Hincklin v. Orbeck, 437 U.S. 518 ... and United Building and Construction Trades Council of Camden County and Vicinity v. Mayor and Council of the City of Camden* ... recognize that while the proprietary interest of the State in the property with which the statue deals is often a crucial factor in determining whether a discriminatory statute against noncitizens violates the Privileges and Immunities Clause. I perceive that, without articulating such a concept, the Supreme Court of the United States has preserved a delcate balance between the Reservation of Powers Clause found in Amendment X to the Constitution of the United States of America and the Privileges and Immunities Clause. The line that is drawn is that between the governmental function of the State and the right of the State to participate in the marketplace, satisfy its proprietary functions, and contract freely with those with whom its chooses to contract."

Loyalty to State Citizens

Continuing, Chief Justice Thomas says:

"It cannot be held objectionable for a sovereign state to adopt legislation which provides in essence that to the extent possible public works contracts benefit the citizens of the state whose contributions to the public treasury fund those projects. A state should not be foreclosed by the invocation of the Constitution of the United States of America from loyalty to interests of its own citizens. So long as a statute is narrowly drawn to protect only the right of the state to contract as it sees fit with respect to expenditures for public works projects which it owns and which it funds, I am satisfied that as a matter of law such a statute does not offend the Privileges and Immunities Clause. . . ."

(*State of Wyoming v. Antonich*; Wyo SupCt, No. 84-35, Jan. 10, 1985.)

ARCO MODULE FABRICATION AWARDED TO UNION AND OPEN SHOP FIRMS

Both union and open shop firms have been awarded contracts valued at about $100 million by the Atlantic Richfield Company. The bids call for fabrication at several locations in the Pacific Northwest of oil and gas production modules and equipment for delivery by sea to Alaska's North Slope.

A contract valued at about $60 million was awarded to union contractors for the 1986 sealift of assembled modules to an ARCO's Sadelrochit site in Alaska. The Sadelrochit contract was awarded to Parsons Constructors Inc., Pasadena, Calif., construction manager for the project. Wright-Schuchart-Harbor will be the general contractor, according to spokesmen for Parsons and WSH.

Parsons' 1986 sealift work for ARCO will be performed in Tacoma, Wash., under the terms of a project agreement negotiated by Parsons, WSH, and the Tacoma building trade unions, *30 CLR 1255 (Jan. 16, 1985)*.

The ARCO work in Tacoma will provide about 1.7 million direct manhours of work for up to 1,500 building tradesmen. Construction is expected to start in about a month, according to a Parsons spokesman.

Open Shop Moves Into Portland

In Portland, Ore., ARCO awarded two module fabrication contracts to large open shop firms which will be working for the first time in this area on this type of construction. ARCO awarded a $30 million contract last month to Daniel International Corp., Greenville, S.C., for manufacture of a modular facility to be delivered by barge to the company's Lisburne site in Alaska in the summer of 1986. Work will begin in April 1985 on Swan Island in Portland, according to a Daniel spokesman. Daniel International is a subsidiary of Fluor Corp., Irvine, Calif.

Brown & Root, Inc., Houston, Tex., was awarded a smaller contract for something over $3 million at about the same time. The contract calls for fabrication of equipment to be delivered this summer by barge to six ARCO drilling sites at Kuparuk on the North Slope, according to an ARCO spokesman.

Meanwhile in Coos Bay, Ore., ERI, Inc., a subsidiary of Kellogg Rust in Houston, is working under a $10 million contract from ARCO for the assembly of equipment for delivery to Kuparuk.

HICKLIN ET AL. *v.* ORBECK, COMMISSIONER, DEPARTMENT OF LABOR OF ALASKA, ET AL.

APPEAL FROM SUPREME COURT OF ALASKA

No. 77-324. Argued March 21, 1978—Decided June 22, 1978

Appellants, at least five of whom are not residents of Alaska, challenged in state court the constitutionality of the "Alaska Hire" statute (which was enacted professedly for the purpose of reducing unemployment within the State) that requires that all Alaskan oil and gas leases, easements or right-of-way permits for oil and gas pipelines, and unitization agreements contain a requirement that qualified Alaska residents be hired in preference to nonresidents. The trial court upheld the statute. The Alaska Supreme Court affirmed except for that part of the Act that contained a one-year durational residency requirement, which it held invalid. *Held:*

1. The invalidation of the one-year durational residency requirement does not moot the case, since a controversy still exists between the nonresident appellants, none of whom can qualify as "residents" under the statutory definition, and the appellees, state officials. Those appellants thus have a continuing interest in restraining the statutory discrimination favoring state residents. P. 523.

2. Alaska Hire violates the Privileges and Immunities Clause of Art. IV, § 2. Pp. 523–534.

(a) Though the Clause "does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it," it "does bar discrimination against citizens of other States where there is no reason for the discrimination beyond the mere fact that they are citizens of other States." *Toomer* v. *Witsell*, 334 U. S. 385, 396. See also *Mullaney* v. *Anderson*, 342 U. S. 415. Pp. 524–526.

(b) Even under the dubious assumption that a State may validly alleviate its unemployment problem by requiring private employers within the State to discriminate against nonresidents, Alaska Hire cannot be upheld, for the record indicates that Alaska's unemployment was not attributable to the influx of nonresident jobseekers, but rather to the fact that a substantial number of Alaska's jobless residents were unemployed either because of lack of education and job training or because of geographical remoteness from job opportunities. Employment of nonresidents threatened to deny jobs to residents only to the extent that jobs for which untrained residents were being prepared might be filled

by nonresidents before the residents' training was completed. Moreover, even if a showing was made that nonresidents were "a peculiar source of the evil," *Toomer* v. *Witsell*, *supra*, at 398, at which Alaska Hire was aimed, the statute would still be invalid, for its discrimination against nonresidents does not bear a substantial relationship to the "evil" that they are said to present, since statutory preference over nonresidents is given to all Alaskans, not just those who are unemployed. Pp. 526–528.

(c) Alaska's ownership of the oil and gas that are the subject matter of Alaska Hire constitutes insufficient justification for the statute's pervasive discrimination against nonresidents. Alaska Hire's reach includes employers who have no connection with the State's oil and gas, perform no work on state land, have no contractual relationship with the State, and receive no payment from the State; and the Act's coverage is not limited to activities connected with the extraction of Alaska's oil and gas. Pp. 528–531.

(d) The conclusion that Alaska Hire cannot withstand constitutional scrutiny is fortified by decisions under the Commerce Clause that circumscribe a State's ability to prefer its own citizens in the utilization of natural resources found within its borders but destined for interstate commerce. *West* v. *Kansas Natural Gas*, 221 U. S. 229; *Pennsylvania* v. *West Virginia*, 262 U. S. 553; and *Foster Packing Co.* v. *Haydel*, 278 U. S. 1. The oil and gas upon which Alaska hinges its discrimination are bound for out-of-state consumption and are of profound national importance while the breadth of the discrimination mandated by Alaska Hire transcends the degree of resident bias that Alaska's ownership of the oil and gas can justifiably support. Pp. 531–534.

565 P. 2d 159, reversed.

BRENNAN, J., delivered the opinion for a unanimous Court.

Robert H. Wagstaff argued the cause for appellants. With him on the briefs was *Lee S. Glass*.

Ronald W. Lorensen, Assistant Attorney General of Alaska, argued the cause and filed a brief for appellees.*

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*Briefs of *amici curiae* urging reversal were filed by *Edwin Vieira, Jr.*, for the National Right to Work Legal Defense Foundation; and by Peabody Testing—Bill Miller X-Ray, Inc.

Ronald Y. Amemiya, Attorney General, and *Lawrence D. Kumabe* and *Michael A. Lilly*, Deputy Attorneys General, filed a brief for the State of Hawaii as *amicus curiae* urging affirmance.

MR. JUSTICE BRENNAN delivered the opinion of the Court.

In 1972, professedly for the purpose of reducing unemployment in the State, the Alaska Legislature passed an Act entitled "Local Hire Under State Leases." Alaska Stat. Ann. §§ 38.40.010 to 38.40.090 (1977). The key provision of "Alaska Hire," as the Act has come to be known, is 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" contain a provision "requiring the employment of qualified Alaska residents" in preference to nonresidents.[1] Alaska Stat. Ann. § 38.40.030 (a) (1977).[2] This employment preference is administered by providing persons meeting the statutory requirements for Alaskan residency with certificates of residence—"resident cards"—that can be presented to an employer covered by the Act as proof of residency. 8 Alaska Admin. Code 35.015 (1977). Appellants, individuals desirous of securing jobs covered by the Act but unable to qualify for the necessary resident cards, challenge Alaska Hire as violative of

[1] The regulations implementing the Act further require that all nonresidents be laid off before any resident "working in the same trade or craft" is terminated: "[T]he nonresident may be retained only if no resident employee is qualified to fill the position." 8 Alaska Admin. Code 35.011 (1977). See also 8 Alaska Admin. Code 35.042 (4) (1977).

[2] The complete text of § 38.40.030 (a) is as follows:

"In order to create, protect and preserve the right of Alaska residents to employment, the commissioner of natural resources shall incorporate into 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, provisions requiring the lessee to comply with applicable laws and regulations with regard to the employment of Alaska residents, a provision requiring the employment of qualified Alaska residents, a provision prohibiting discrimination against Alaska residents and, when in the determination of the commissioner of natural resources it is practicable, a provision requiring compliance with the Alaska Plan, all in accordance with the provisions of this chapter."

both the Privileges and Immunities Clause of Art. IV, § 2, and the Equal Protection Clause of the Fourteenth Amendment.

I

Although enacted in 1972, Alaska Hire was not seriously enforced until 1975, when construction on the Trans-Alaska Pipeline[3] was reaching its peak. At that time, the State Department of Labor began issuing residency cards and limiting to resident cardholders the dispatchment to oil pipeline jobs. On March 1, 1976, in response to "numerous complaints alleging that persons who are not Alaska residents have been dispatched on pipeline jobs when *qualified* Alaska residents were available to fill the jobs," Executive Order #76-1, Alaska Dept. of Labor (Mar. 1, 1976) (emphasis in original), Edmund Orbeck, the Commissioner of Labor and one of the appellees here, issued a cease-and-desist order to all unions supplying pipeline workers[4] enjoining them "to respond to all open job calls by dispatching *all qualified* Alaska residents before *any* non-residents are dispatched." *Ibid.* (emphasis in original). As a result, the appellants, all but one of whom had previously worked on the pipeline, were prevented from obtaining pipeline-related work. Consequently, on April 28, 1976, appellants filed a complaint in the Superior Court in Anchorage seeking declaratory and injunctive relief against enforcement of Alaska Hire.

At the time the suit was filed, the provision setting forth the qualifications for Alaskan residency for purposes of Alaska

[3] See *Trans Alaska Pipeline Rate Cases*, 436 U. S. 631 (1978); Trans-Alaska Pipeline Authorization Act, 87 Stat. 584, 43 U. S. C. § 1651 *et seq.* (1970 ed., Supp. V).

[4] App. 13–14. The vast majority of pipeline jobs were filled through union dispatchment. Deposition of David Finrow, Deputy Director of the Wage and Hour Division of the Alaska Dept. of Labor, in No. 3025 (Sup. Ct. Alaska), pp. 18–19, 28, 48.

Hire, Alaska Stat. Ann. § 38.40.090,[5] included a one-year durational residency requirement. Appellants attacked that requirement as well as the flat employment preference given by Alaska Hire to state residents. By agreement of the parties, consideration of a motion for a preliminary injunction was consolidated with the determination of the suit on its merits. The case was submitted on affidavits, depositions, and memoranda of law; no oral testimony was taken. On July 21, 1976, the Superior Court upheld Alaska Hire in its entirety and denied appellants all relief. On appeal, the Alaska Supreme Court unanimously held that Alaska Hire's one-year durational residency requirement was unconstitutional under both the state and federal Equal Protection Clauses, 565 P. 2d 159, 165 (1977), and held further that a durational residency requirement in excess of 30 days was constitutionally infirm. *Id.*, at 171.[6] By a vote of 3 to 2, however, the court held that the Act's general preference for Alaska residents was constitutionally permissible. Appellants appealed the State Supreme Court's judgment insofar as it embodied the latter holding, and we noted probable jurisdiction. 434 U. S. 919 (1977). We reverse.

[5] Section 38.40.090 provides:

"In this chapter

"(1) 'resident' means a person who

"(A) except for brief intervals, military service, attendance at an educational or training institution, or for absences for good cause, is physically present in the state for a period of one year immediately before the time his status is determined;

"(B) maintains a place of residence in the state;

"(C) has established residency for voting purposes in the state;

"(D) has not, within the period of required residency, claimed residency in another state; and

"(E) shows by all attending circumstances that his intent is to make Alaska his permanent residence."

[6] Appellees have not cross-appealed this portion of the Alaska Supreme Court's decision, which rests upon an independent and adequate state ground. *Murdock* v. *Memphis*, 20 Wall. 590 (1875).

II

Preliminarily, we hold that this case is not moot. Despite the Alaska Supreme Court's invalidation of the one-year durational residency requirement, a controversy still exists between at least five of the appellants—Tommy Ray Woodruff, Frederick A. Mathers, Emmett Ray, Betty Cloud, and Joseph G. O'Brien—and the state appellees. These five appellants have all sworn that they are not residents of Alaska. Record 43, 47, 49, 96, 124. Therefore, none of them can satisfy the element of the definition of "resident" under § 38.40.090 (1) (D) that requires that an individual "has not, within the period of required residency, claimed residence in another state." They thus have a continuing interest in restraining the enforcement of Alaska Hire's discrimination in favor of residents of that State.[7]

Appellants' principal challenge to Alaska Hire is made under the Privileges and Immunities Clause of Art. IV, § 2: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." That provision, which "appears in the so-called States' Relations Article, the same Article that embraces the Full Faith and Credit Clause, the Extradition Clause . . . , the provisions for the admission of new States, the Territory and Property Clause, and the Guarantee Clause, *Baldwin* v. *Montana Fish and Game Comm'n*, 436 U. S. 371, 379 (1978), "establishes a norm of comity," *Austin* v. *New Hampshire*, 420 U. S. 656, 660 (1975), that is to prevail among the States with respect to their treat-

[7] As to the remaining three appellants—Sidney S. Hicklin, Ruby E. Dorman, and Harry A. Browning—the case does appear moot. At the time this suit was instituted, all three claimed to be Alaskan residents, but none had lived in the State continuously for one year. Record 45, 51–52, 126–127. Consequently, the only aspect of Alaska Hire they challenged was the Act's one-year durational residency requirement. When this requirement was held invalid by the Alaska Supreme Court, their controversy with the appellees seems to have terminated.

ment of each other's residents.[8] The purpose of the Clause, as described in *Paul* v. *Virginia*, 8 Wall. 168, 180 (1869), is

> "to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States, and egress from them; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws. It has been justly said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this."

Appellants' appeal to the protection of the Clause is strongly supported by this Court's decisions holding violative of the Clause state discrimination against nonresidents seeking to ply their trade, practice their occupation, or pursue a common calling within the State. For example, in *Ward* v. *Maryland*, 12 Wall. 418 (1871), a Maryland statute regulating the sale of most goods in the city of Baltimore fell to the privileges and immunities challenge of a New Jersey resident against whom the law discriminated. The statute discriminated against nonresidents of Maryland in several ways: It required nonresident merchants to obtain licenses in order to practice their trade without requiring the same of certain similarly situated Maryland merchants; it charged nonresidents a higher license fee than those Maryland residents who were required to secure licenses; and it prohibited both resident and nonresident merchants from using nonresident salesmen, other than their regular employees, to sell their goods in the city. In holding that the statute violated the Privileges and Immunities Clause, the Court observed that "the clause plainly and unmistakably secures and protects the right of a citizen of one State to pass into any other State of the Union for the purpose of engaging in lawful commerce, trade, or business without molestation." *Id.*, at 430. *Ward* thus recognized that a resident of one State is constitutionally entitled to travel to another State for purposes of employment free from discriminatory restrictions in favor of state residents imposed by the other State.

Again, *Toomer* v. *Witsell*, 334 U. S. 385 (1948), the leading modern exposition of the limitations the Clause places on a State's power to bias employment opportunities in favor of its own residents, invalidated a South Carolina statute that required nonresidents to pay a fee 100 times greater than that paid by residents for a license to shrimp commercially in the three-mile maritime belt off the coast of that State. The Court reasoned that although the Privileges and Immunities Clause "does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it," *id.*, at 396, "[i]t does bar discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States." *Ibid.* A "substantial reason for the discrimination" would not exist, the Court explained, "unless there is something to indicate that noncitizens constitute a peculiar source of the evil at which the

[8] Although this Court has not always equated state residency with state citizenship, compare *Travis* v. *Yale & Towne Mfg. Co.*, 252 U. S. 60, 78–79 (1920), and *Blake* v. *McClung*, 172 U. S. 239, 246–247 (1898), with *Southern R. Co.* v. *Mayfield*, 340 U. S. 1, 3–4 (1950); *Douglas* v. *New Haven R. Co.*, 279 U. S. 377, 386–387 (1929); and *La Tourette* v. *McMaster*, 248 U. S. 465, 469–470 (1919), it is now established that the terms "citizen" and "resident" are "essentially interchangeable," *Austin* v. *New Hampshire*, 420 U. S. 656, 662 n. 8 (1975), for purposes of analysis of most cases under the Privileges and Immunities Clause of Art. IV, § 2. See *Toomer* v. *Witsell*, 334 U. S. 385, 397 (1948).

[discriminatory] statute is aimed." *Id.*, at 398. Moreover, even where the presence or activity of nonresidents causes or exacerbates the problem the State seeks to remedy, there must be a "reasonable relationship between the danger represented by non-citizens, as a class, and the . . . discrimination practiced upon them." *Id.*, at 399. *Toomer*'s analytical framework was confirmed in *Mullaney* v. *Anderson*, 342 U. S. 415 (1952), where it was applied to invalidate a scheme used by the Territory of Alaska for the licensing of commercial fishermen in territorial waters; under that scheme residents paid a license fee of only $5 while nonresidents were charged $50.

Even assuming that a State may validly attempt to alleviate its unemployment problem by requiring private employers within the State to discriminate against nonresidents—an assumption made at least dubious by *Ward*[9]—it is clear that under the *Toomer* analysis reaffirmed in *Mullaney*, Alaska Hire's discrimination against nonresidents cannot withstand scrutiny under the Privileges and Immunities Clause. For although the statute may not violate the Clause if the State shows "something to indicate that noncitizens constitute a peculiar source of the evil at which the statute is aimed," *Toomer* v. *Witsell*, *supra*, at 398, and, beyond this, the State "has no burden to prove that its laws are not violative of the . . . Clause," *Baldwin* v. *Montana Fish and Game Comm'n*, 436 U. S., at 402 (BRENNAN, J., dissenting), certainly no showing was made on this record that nonresidents were "a peculiar source of the evil" Alaska Hire was enacted to remedy, namely, Alaska's "uniquely high unemployment." Alaska Stat. Ann. § 38.40.020 (1977). What evidence the record does contain indicates that the major cause of Alaska's high unemployment was not the influx of nonresidents seeking employment, but rather the fact that a substantial number of Alaska's jobless residents—especially the unemployed Eskimo and Indian residents—were unable to

[9] Cf. *Edwards* v. *California*, 314 U. S. 160 (1941).

secure employment either because of their lack of education and job training or because of their geographical remoteness from job opportunities;[10] and that the employment of nonresidents threatened to deny jobs to Alaska residents only to the extent that jobs for which untrained residents were being prepared might be filled by nonresidents before the residents' training was completed.

Moreover, even if the State's showing is accepted as sufficient to indicate that nonresidents were "a peculiar source of evil," *Toomer* and *Mullaney* compel the conclusion that Alaska Hire nevertheless fails to pass constitutional muster. For the discrimination the Act works against nonresidents does not bear a substantial relationship to the particular "evil" they are said to present. Alaska Hire simply grants all Alaskans, regardless of their employment status, education, or training, a flat employment preference for all jobs covered by the Act. A highly skilled and educated resident who has never been unemployed is entitled to precisely the same preferential treatment as the unskilled, habitually unemployed Arctic Eskimo enrolled in a job-training program. If

[10] For example, a report quoted in the State's Memorandum in Opposition to Plaintiffs' Motion for Partial Preliminary Injunction and Second Motion for Preliminary Injunction, Record 58, observed:

"The skill levels of in-migrants and seasonal workers are generally higher than those of the unemployed or under-employed resident workers. *Their ability to command jobs in Alaska is a symptom of, rather than the cause of conditions resulting in high unemployment rates*, particularly among Alaska Natives. Those who need the jobs the most tend to be undereducated, untrained, or living in areas of the state remote from job opportunities. Unless unemployed residents—most of whom are Eskimos and Indians—have access to job markets and receive the education and training required to fit them into Alaska's increasingly technological economy and unless there is a restructuring of labor demands, new jobs will continue to be filled by persons from other states who have the necessary qualifications." Federal Field Committee for Development Planning in Alaska, Economic Outlook for Alaska 311-312 (1971) (emphasis added; footnote omitted).

Alaska is to attempt to ease its unemployment problem by forcing employers within the State to discriminate against nonresidents—again, a policy which may present serious constitutional questions—the means by which it does so must be more closely tailored to aid the unemployed the Act is intended to benefit. Even if a statute granting an employment preference to unemployed residents or to residents enrolled in job-training programs might be permissible, Alaska Hire's across-the-board grant of a job preference to all Alaskan residents clearly is not.

Relying on *McCready* v. *Virginia*, 94 U. S. 391 (1877), however, Alaska contends that because the oil and gas that are the subject of Alaska Hire are *owned* by the State,[11] this ownership, of itself, is sufficient justification for the Act's discrimination against nonresidents, and takes the Act totally without the scope of the Privileges and Immunities Clause. As the State sees it "the privileges and immunities clause [does] not apply, and was never meant to apply, to decisions by the states as to how they would permit, if at all, the use and distribution of the natural resources which they own . . . ." Brief for Appellees 20 n. 14. We do not agree that the fact that a State owns a resource, of itself, completely removes a law concerning that resource from the prohibitions of the Clause. Although some courts, including the court below, have read *McCready* as creating an "exception" to the Privileges and Immunities Clause, we have just recently confirmed that "[i]n more recent years . . . the Court has recognized

[11] At the time Alaska was admitted into the Union on January 3, 1959, 99% of all land within Alaska's borders was owned by the Federal Government. In becoming a State, Alaska was granted and became entitled to select approximately 103 million acres of those federal lands. Alaska Statehood Law, 72 Stat. 340, § 6, note preceding 48 U. S. C. § 21. The selection process is not yet complete, but since 1959 large portions of land have been conveyed to the State, in fee, by the Federal Government. Full title to those lands and to the minerals on and below them is vested in the State. 72 Stat. 342, § 6 (i), note preceding 48 U. S. C. § 21.

that the States' interest in regulating and controlling those things they claim to 'own' . . . is by no means absolute." *Baldwin* v. *Montana Fish and Game Comm'n*, 436 U. S., at 385. Rather than placing a statute completely beyond the Clause, a State's ownership of the property with which the statute is concerned is a factor—although often the crucial factor—to be considered in evaluating whether the statute's discrimination against noncitizens violates the Clause. Dispositive though this factor may be in many cases in which a State discriminates against nonresidents, it is not dispositive here.

The reason is that Alaska has little or no proprietary interest in much of the activity swept within the ambit of Alaska Hire; and the connection of the State's oil and gas with much of the covered activity is sufficiently attenuated so that it cannot justifiably be the basis for requiring private employers to discriminate against nonresidents. The extensive reach of Alaska Hire is set out in Alaska Stat. Ann. § 38.40.050 (a) (1977). That section provides:

> "The provisions of this chapter apply to *all employment which is a result* of oil and gas leases, easements, leases or right-of-way permits *for oil or gas pipeline purposes*, unitization agreements [12] or any renegotiation of any of the preceding to which the state is a party after July 7, 1972; however, the activity which generates the employment must take place inside the state and it must

[12] The term "unitization agreement" is not defined in the Act. Alaska's Commissioner of Natural Resources gave the following definition of the term:

"Well, unitization agreement is an agreement between the operators and any given oil field as to the equity that each of them would have with respect to the oil and gas resources in that field. And in some cases that word is used to also include something called the 'Plan of Operations', which sets out the way in which an oil field or gas field would be operated pursuant to the State's conservation laws." Deposition of Guy R. Martin in No. 3025 (Sup. Ct. Alaska), p. 5.

take place either on the property under the control of the person subject to this chapter *or be directly related to activity taking place on the property under his control* and the activity must be performed directly for the person subject to this chapter *or his contractor or a subcontractor of his contractor or a supplier of his contractor or subcontractor.*" (Emphasis added.)

Under this provision, Alaska Hire extends to employers who have no connection whatsoever with the State's oil and gas, perform no work on state land, have no contractual relationship with the State, and receive no payment from the State. The Act goes so far as to reach suppliers who provide goods or services to subcontractors who, in turn, perform work for contractors despite the fact that none of these employers may themselves have direct dealings with the State's oil and gas or ever set foot on state land.[13] Moreover, the Act's coverage is not limited to activities connected with the extraction of Alaska's oil and gas.[14] It encompasses, as emphasized by the dissent below, "employment opportunities at refineries and in distribution systems utilizing oil and gas obtained under Alaska leases." 565 P. 2d, at 171. The only limit of any consequence on the Act's reach is the requirement that "the

[13] According to one of the administrative regulations implementing Alaska Hire, "[s]uppliers shall have the same hiring requirements as an employer covered by this chapter, as to that portion of their supply business that is the result of a project or activity of a lessee, contractor or subcontractor." 8 Alaska Admin. Code 35.080 (a) (1977).

[14] The Commissioner of Natural Resources expressed this understanding of the scope of the Act:

Mr. Martin: ". . . I think it would cover relationships such as anything on a work pad or an associated construction road or possibly a site for a support camp or construction camp."

Mr. Wagstaff (attorney for appellants): "What about things such as docks if shipping is being used?"

Mr. Martin: "I would think that it could possibly include that." Deposition of Guy R. Martin, *supra*, at 4.

activity which generates the employment must take place inside the state." Although the absence of this limitation would be noteworthy, its presence hardly is: for it simply prevents Alaska Hire from having what would be the surprising effect of requiring potentially covered out-of-state employers to discriminate against residents of their own State in favor of nonresident Alaskans. In sum, the Act is an attempt to force virtually all businesses that benefit in some way from the economic ripple effect of Alaska's decision to develop its oil and gas resources to bias their employment practices in favor of the State's residents. We believe that Alaska's ownership of the oil and gas that is the subject matter of Alaska Hire simply constitutes insufficient justification for the pervasive discrimination against nonresidents that the Act mandates.[15]

Although appellants raise no Commerce Clause challenge to the Act, the mutually reinforcing relationship between the Privileges and Immunities Clause of Art. IV, § 2, and the Commerce Clause—a relationship that stems from their common

[15] *Heim* v. *McCall*, 239 U. S. 175 (1915) and *Crane* v. *New York*, 239 U. S. 195 (1915)—if they have any remaining vitality, see *Sugarman* v. *Dougall*, 413 U. S. 634, 643–645 (1973); *C. D. R. Enterprises, Ltd.* v. *Board of Education*, 412 F. Supp. 1164 (EDNY 1976), summarily aff'd *sub nom. Lefkowitz* v. *C. D. R. Enterprises, Ltd.*, 429 U. S. 1031 (1977)—do not suggest otherwise. In those cases, a New York statute that limited employment "in the construction of public works" to United States citizens and also required that an employment preference be given to New York citizens in such projects was upheld against challenges under both the Constitution and the Treaty of 1871 with Italy. Although the Art. IV, § 2, Privileges and Immunities Clause, along with the Due Process, Equal Protection, and Privileges and Immunities Clauses of the Fourteenth Amendment, was listed as one of the constitutional bases for attacking the statute, no out-of-state United States citizen challenged the law. As a consequence, both the appellants and the Court were concerned almost exclusively with the statute's discrimination against resident aliens. This was reflected in the Court's holding, which was limited to the Fourteenth Amendment and Treaty challenges and expressed no view on appellants' passing Art. IV, § 2, privileges and immunities claim.

origin in the Fourth Article of the Articles of Confederation [16] and their shared vision of federalism, see *Baldwin* v. *Montana Fish and Game Comm'n*, 436 U. S., at 379–380—renders several Commerce Clause decisions appropriate support for our conclusion. *West* v. *Kansas Natural Gas*, 221 U. S. 229 (1911), struck down an Oklahoma statutory scheme that completely prohibited the out-of-state shipment of natural gas found within the State. The Court reasoned that if a State could so prefer its own economic well-being to that of the Nation as a whole, "Pennsylvania might keep its coal, the Northwest its timber, [and] the mining States their minerals," so that "embargo may be retaliated by embargo" with the result that "commerce [would] be halted at state lines." *Id.*, at 255. *West* was held to be controlling in *Pennsylvania* v. *West Virginia*, 262 U. S. 553 (1923), where a West Virginia statute that effectively required natural gas companies within the State to satisfy all fuel needs of West Virginia residents before transporting any natural gas out of the State was held to violate the Commerce Clause. *West* and *Pennsylvania* v. *West Virginia* thus established that the location in a given State of a resource bound for interstate commerce is an insufficient basis for preserving the benefits of the resource exclusively or even

[16] That Article provided: "The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions, as the inhabitants thereof respectively; provided, that such restrictions shall not extend so far as to prevent the removal of property, imported into any State, to any other State of which the owner is an inhabitant; provided, also that no imposition, duties or restriction, shall be laid by any State on the property of the United States, or either of them." 9 Journal of the Continental Congress 908–909 (1777) (Library of Congress ed., 1907).

principally for that State's residents. *Foster Packing Co.* v. *Haydel*, 278 U. S. 1 (1928), went one step further; it limited the extent to which a State's purported *ownership* of certain resources could serve as a justification for the State's economic discrimination in favor of residents. There, in the face of Louisiana's claim that the State owned all shrimp within state waters, the Court invalidated a Louisiana law that required the local processing of shrimp taken from Louisiana marshes as a prerequisite to their out-of-state shipment. The Court observed that "by permitting its shrimp to be taken and all the products thereof to be shipped and sold in interstate commerce, the State necessarily releases its hold and, as to the shrimp so taken, definitely terminates its control." *Id.*, at 13.

West, *Pennsylvania* v. *West Virginia*, and *Foster Packing* thus establish that the Commerce Clause circumscribes a State's ability to prefer its own citizens in the utilization of natural resources found within its borders, but destined for interstate commerce. Like Louisiana's shrimp in *Foster Packing*, Alaska's oil and gas here are bound for out-of-state consumption. Indeed, the construction of the Trans-Alaska Pipeline, on which project appellants' nonresidency has prevented them from working, was undertaken expressly to accomplish this end.[17] Although the fact that a state-owned resource is destined for interstate commerce does not, of itself, disable the State from preferring its own citizens in the utilization of that resource, it does inform analysis under the Privileges and Immunities Clause as to the permissibility of the discrimination the State visits upon nonresidents based on its ownership of the resource. Here, the oil and gas upon

[17] In authorizing the construction of the Trans-Alaska Pipeline, Congress expressly found that "[t]he early development and delivery of oil and gas from Alaska's North Slope *to domestic markets* is in the national interest because of growing domestic shortages and increasing dependence upon insecure foreign sources." 43 U. S. C. § 1651 (a) (1970 ed., Supp. V) (emphasis added).

which Alaska hinges its discrimination against nonresidents are of profound national importance.[18] On the other hand, the breadth of the discrimination mandated by Alaska Hire goes far beyond the degree of resident bias Alaska's ownership of the oil and gas can justifiably support. The confluence of these realities points to but one conclusion: Alaska Hire cannot withstand constitutional scrutiny. As Mr. Justice Cardozo observed in *Baldwin* v. *G. A. F. Seelig, Inc.*, 294 U. S. 511, 523 (1935), the Constitution "was framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division." [19]

Reversed.

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[18] In enacting the Alaska Natural Gas Transportation Act of 1976, 15 U. S. C. § 719 *et seq.* (1976 ed.) Congress declared:

"(1) a natural gas supply shortage exists in the contiguous States of the United States;

"(2) large reserves of natural gas in the State of Alaska could help significantly to alleviate this supply shortage;

"(3) the expeditious construction of a viable natural gas transportation system for delivery of Alaska natural gas to United States markets is in the national interest; and

"(4) the determinations whether to authorize a transportation system for delivery of Alaska natural gas to the contiguous States and, if so, which system to select, involve questions of the utmost importance respecting national energy policy, international relations, national security, and economic and environmental impact, and therefore should appropriately be addressed by the Congress and the President in addition to those Federal officers and agencies assigned functions under law pertaining to the selection, construction, and initial operation of such a system." 15 U. S. C. § 719 (1976 ed.). See n. 17, *supra*.

[19] In light of our conclusion that Alaska Hire is invalid under the Privileges and Immunities Clause of Art. IV, § 2, we have no occasion to address appellants' challenges to the Act under the Equal Protection Clause of the Fourteenth Amendment.

WISE, MAYOR OF DALLAS, ET AL. *v.* LIPSCOMB ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 77-529. Argued April 26, 1978—Decided June 22, 1978

Respondents, Negro and Mexican-American residents of Dallas, Tex., brought this action for injunctive and declaratory relief against petitioners, the Mayor and members of the Dallas City Council, alleging that the City Charter's at-large system of electing council members unconstitutionally diluted the vote of racial minorities. After an evidentiary hearing, the District Court orally declared that system unconstitutional and then "afforded the city an opportunity as a legislative body for the City of Dallas to prepare a plan which would be constitutional." The City Council then passed a resolution expressing its intention to enact an ordinance that would provide for eight council members to be elected from single-member districts and for the three remaining members, including the Mayor, to be elected at large. After an extensive remedy hearing, the District Court approved the plan, which the City Council thereafter formally enacted as an ordinance. The District Court later issued a memorandum opinion that sustained the plan as a valid legislative Act. The Court of Appeals reversed, holding that the District Court had erred in evaluating the plan only under constitutional standards without also applying the teaching of *East Carroll Parish School Bd.* v. *Marshall*, 424 U. S. 636, which held that, absent exceptional circumstances, judicially imposed reapportionment plans should use only single-member districts. *Held:* The judgment is reversed and the case is remanded. Pp. 539-547; 547-549.

551 F. 2d 1043, reversed and remanded.

MR. JUSTICE WHITE, joined by MR. JUSTICE STEWART, concluded:

1. Federal courts, absent special circumstances, must employ single-member districts when they impose remedial reapportionment plans. That standard, however, is more stringent than the constitutional standard that is applicable when the reapportionment is accomplished by the legislature. Here, after the District Court had invalidated the Dallas at-large election scheme in the City Charter, the city discharged its duty to devise a substitute by enacting the eight/three ordinance, which the District Court reviewed as a legislatively enacted plan and held constitutional despite the use of at-large voting for three council seats. Pp. 539-543.

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Representative H. A. "Red" Boucher

PRESS RELEASE

SUBJECT: Alaska Hire Legislation DATE: March 15, 1985

Today I introduced in the House two pieces of legislation on the subject of Alaska Hire.

The first bill (HB 294) adds legislative findings of fact and purpose to our current Alaska Hire law AS 36.10.010. AS 36.10.010 is currently in effect and being enforced but is before the Alaska Supreme Court for review in the case of Francis v Robison.

These proposed additions to AS 36.10.010 have been drafted in cooperation with the Department of Labor and incorporate case law on the subject of local hire which has occurred since AS 36.10.010 was adopted in 1983. Most notable of such cases was the recent Wyoming Supreme Court case which upheld a local hire law similar to AS 36.10.010. House Bill 294 has been cosponsored by 33 other Representatives.

The second bill (HB 295) provides the Department of Labor with $100,000 to conduct a study into ways the state may provide preference to Alaskan workers. House Bill 295 has been cosponsored by 21 other Representatives

Both these bills have been endorsed by the Department of Labor as providing the necessary factual foundation to support a resident hire preference under current legal standards. The study would allow the Department to assemble information currently not available to support future state action to ensure that Alaskans receive preference for jobs in Alaska.

Also today Senator Fahrenkamp introduced legislation identical to HB 294 in the Senate (SB 235). Senator Fahrenkamp explained: "Most of the revenues going into public works projects comes from royalty oil money belonging to Alaskans. We want to ensure that Alaskan's will continue to be given a hiring preference on public works projects funded by money that rightfully belongs to them. Representative Boucher and I have introduced legislation that is designed to reinforce existing law and hopefully protect it from any legal challenges in the future."

For your background, I'm attaching a memorandum on this subject. Representative Gruenberg has allowed Dave Donley of his staff to assist me on this matter. Please contact Dave at 465-4986, Capitol Room 112, or Edie Russell of Senator Fahrenkamp's office for additional background.

STATE OF ALASKA

OFFICE OF THE GOVERNOR

JUNEAU

BILL SHEFFIELD
GOVERNOR

NEWS RELEASE

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GOVERNOR SHEFFIELD ANNOUNCES JOB SURVEY RESULTS
March 15, 1985
No. 85-34

FOR IMMEDIATE RELEASE

JUNEAU -- The Alaska Department of Labor has surveyed North Slope construction firms and found a significant number of non-resident workers employed, Governor Bill Sheffield announced today. Of the 2,123 workers employed by 10 companies, 600 were non-resident.

"These figures are simply not acceptable," Sheffield said. "Furthermore, with the influx of workers expected on the North Slope this spring and summer, the situation is bound to get worse."

Jim Robison, commissioner of the Department of Labor, will be meeting with representatives of the 10 companies next week, as well as with other North Slope firms. Robison also is examining the hiring record for maintenance and operations personnel of a major oil producer and others to determine if similar problems exist there.

"I have asked Commissioner Robison to work in close cooperation with the private sector in addressing the issue of jobs for Alaskans," the Governor said. "In the past, we have assessed the workforce needs of the timber and fishing industries, and we've been very successful in getting their cooperation in putting Alaska residents to work first. We are trying to expand that effort now."

A preferential hire law for Alaskans on oil and gas development projects was enacted by the state in 1972 but struck

-MORE-

down as unconstitutional by the U.S. Supreme Court six years later. The state has responded with expanded job training and placement programs for Alaskans, as well as with a local hire law on state-funded construction programs. That law, requiring 95 percent local hire, is currently under challenge before the Alaska Supreme Court.

"The economic problems caused by involuntary unemployment are a serious menace to the health and welfare of the people of the state," the Governor said. "When jobs open up, we need to place Alaskans in them, or train Alaskans to fill the needs of industry."

Sheffield said he was particularly concerned about reports that non-residents were being recruited for Alaska jobs through solicitions by companies in such states as Louisiana, Texas, Arkansas and Oklahoma.

-30-

Ironworker awaits respons

by Kay Monroe Levine
Times Writer

A written response is due from state attorneys Monday in the case of a Montana ironworker who is appealing a Superior Court judge's decision to strike down Alaska's local hire law last May.

The ruling by Anchorage Superior Court Karl Johnstone favored the ironworker, James Francis. However, Francis' attorney, Ron Zobel, filed a brief in December asking the Alaska Supreme Court to return the case to the Superior Court. Zobel argued that the lower court should have found the law unconstitutional for more reasons than it did and that the Superior Court has not finished its work on the case.

The law requires that 90 to 95 percent of all workers on state and local government construction projects be Alaskans. In handing down his decision, Johnstone said workers have a fundamental constitutional right to seek work in any state.

Assistant Attorney General Jan Hart DeYoung, who had argued that construction workers from the Lower 48 take jobs from Alaskans, filed an appeal in the case in June. The Supreme Court ruled in July that the local hire law will be enforced until the court makes a final decision in the case.

Francis challenged the law as discriminatory after losing his job on a North Pole High School project during October of 1983.

in local hire dispute

The state had informed his employer, Regan Steel & Supply Co., that it was violating the preferential hiring law.

The state required the firm to comply with the law within one week and Francis and several others were fired. However, Francis' union, Ironworkers Local 751, agreed in July to treat him like an Alaska union member until the case was resolved so that he did not have to remain unemployed for the duration.

But the union also has filed a separate appeal of the decision favoring Francis. "Intervenors (Local 751) attack the factual findings which underlie the court's conclusion that Francis was a nonresident, that AS 36.10.010 caused Francis to lose his job, and that the statute was a cause of Francis' continued unemployment," union attorneys argued.

The state also appealed Johnstone's May decision. In a brief filed in late December, DeYoung argued as she has before that the court has been ignoring evidence about chronic unemployment in Alaska.

"The state has also presented evidence from which a strong inference can be drawn that nonresident construction workers contribute to its unemployment," she concluded in asking for a reversal.

No oral arguments are scheduled in upcoming weeks for any of the three appeal cases.

Alaska's 8.9 percent unemployment tops nation

Associated Press
and Times Business Staff

2/7/85

Washington — Alaska has the highest insured unemployment rate in the country, the Labor Department said today in reporting figures on the number of jobless claims in the nation.

The department said Alaska's insured jobless rate, a seasonally adjusted figure, for the week ending Jan. 19 was 8.9 percent. The next highest rate in the country was in West Virginia where is was 7.7 percent. Other high rates reported today included Idaho, 6.3 percent; Washington, 6.0 percent; Montana, 5.7 percent; Maine and Pennsylvania, 5.5 percent; North Dakota and Oregon, 5.4 percent; and Arkansas, 5.2 percent.

Nationally, first-time applications for unemployment compensation rose to 394,000 for the week ending Jan. 26, up 3,000 from the previous week, the Labor Department said.

The total number of people collecting jobless benefits under state programs was 2,504,000 for the week ending Jan. 19, down 36,000 from the previous week's 2,540,000, said the department's Employment and Training Administration.

The insured jobless rate was unchanged at 2.8 percent for the week ending Jan. 19. The rate reflects the proportion of those eligible in the 114 million-member U.S. civilian labor force who are drawing unemployment compensation.

The number of recipients of jobless benefits through Jan. 19 under a variety of state and federal programs was 3,553,400, down 11,400 from the previous week's seasonally unadjusted 3,564,800. During the comparable week a year ago, the number of recipients was 3,949,500.

Daily News Miner 2/16/85

State jobless rate up to 11.2 percent

JUNEAU (AP)—Alaska's jobless rate climbed to 11.2 percent in January, nearly a full percentage point above the December figure of 10.3 percent but well below the 12.5 percent of a year ago, the state Department of Labor said Friday.

Nationally, the comparable unemployment rate was 8 percent for January.

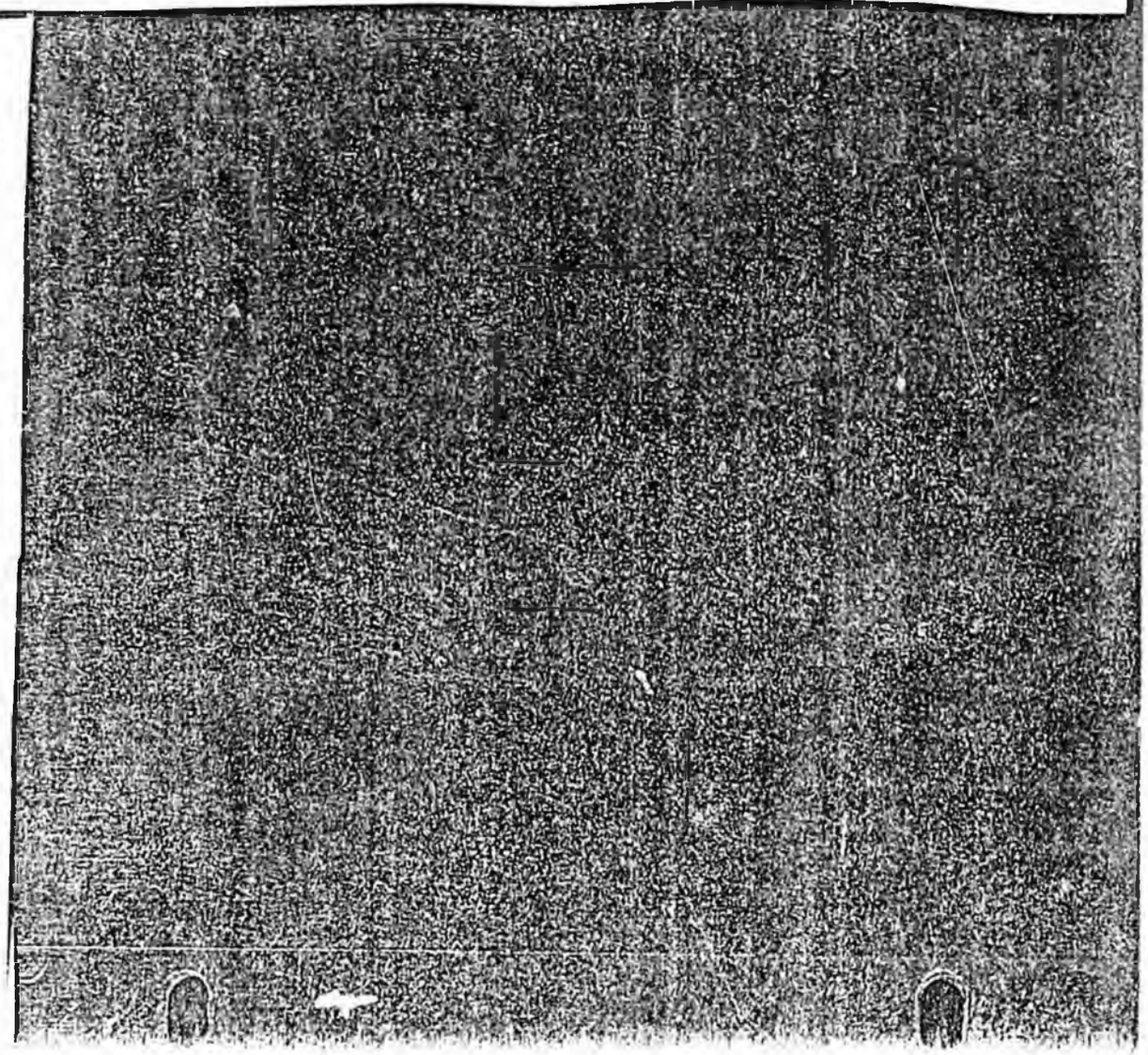
Nonagricultural employment in Alaska dipped by about 4,800 jobs from December to January, officials said.

The trade sector showed the largest employment drop during the period, largely because of store layoffs and a normal winter drop in work at eating and drinking establishments, analysts said.

Mining was the only industry to gain in employment through the month. Increased activity in the oil and gas industry was the primary factor behind that increase, officials said.

Locally, the Skagway-Yakutat-Angoon area had the highest jobless rate for the month, with 22.1 percent. The Aleutian Islands reported the lowest unemployment figure, or 3.3 percent.

Anchorage showed a jobless rate of 8.2 percent for January, up from the previous month's 7.7 percent.



ISER RESEARCH SUMMARY

Institute of Social and Economic Research, University of Alaska September 1984, R.S. No. 20

Economic Impacts of Capital Spending in Alaska

A report by the University's Institute of Social and Economic Research indicates that Alaska's construction industry is increasingly supported by state capital spending. State capital appropriations in 1982 (not including loan programs) of $1,203.2 million represented a fivefold increase above the average annual expenditure of $237 million during the 1970s. Capital spending in 1982 directly produced 7,450 jobs and supported 5,731 additional jobs, for a total of 13,181. This amounts to an expenditure of approximately $91,000 for the equivalent of each full-time job of one year's duration (Table 1). If all funds appropriated had been spent in 1982 and all jobs produced in 1982, this would have accounted for one-third of all construction jobs and 6 percent of total jobs in the state for that year.

The report is the first of a two-part project designed to estimate the economic impact of capital expenditures for different types of projects and to assess the dollars required to operate and maintain these projects in future years. Types of capital expenditures being investigated include highways, schools, office buildings, and sewer works. Private construction activities have similar impacts on the economy. The direct, indirect, and induced effects[1] of particular construction efforts on Alaska's economy are measured in terms of employment, wages and salaries, personal income, value added, and output.

For example, as shown in Table 2, $1 million in school construction produces the equivalent of 10.6 jobs of one year's duration, $355 thousand in wages, $354 thousand in resident personal income, and $1.46 million of total output in Alaska. Table 2 also demonstrates how the size of the economic impact varies with the type of project. In general, the more labor-intensive projects (for example, maintenance, as opposed to initial construction), have larger impacts on the economy. This occurs because more of each dollar spent on labor remains within the economy, compared to a dollar spent on materials which are procured almost exclusively from outside the state. In addition, the higher wages in heavy construction result in a higher ratio of indirect and induced employment to direct employment than other categories of construction. This occurs because indirect and induced employment depend upon the proportion of personal income that remains in Alaska rather than the number of directly created jobs.

Table 2 also illustrates that dollars spent on general government operations create both direct and total economic effects two-and-one-half times those spent on capital projects. Thus, if supporting (subsidizing) employment is a goal of state spending, expenditures in general government operations have significantly greater economic impacts than do capital expenditures.

Factors Affecting the Economic Impact of Construction Spending

The impact of construction spending is largely determined by how fast the money "leaks out" of the economy. This leakage depends primarily on the local availability of (1) construction "inputs" (labor and materials) and (2) goods and services purchased by construction employees. Figure 1 shows how $1 million of school construction funds is typically spent. Little of the 55 percent allocated to materials impacts the local economy because almost no materials are manufactured in Alaska. For imported materials, only portions of the wholesale and transport margins provide income for firms within the state. The local direct impact occurs primarily through

[1] *Direct Effect* is the direct purchase of a commodity, service, or labor input needed to design or construct a project. *Indirect Effect* results from the demand for commodities, services, and labor needed to produce the inputs required to construct the project. *Induced Effect* results when individuals spend in Alaska the wages, salaries, and other income resulting from the direct and indirect effects of the project.

TABLE 1

Estimated Employment Impact of 1982 State Capital Appropriations[a,b]

Budget Category	Appropriation (million $)	Direct Employment Produced[c]	Total Employment Produced[c,d]
Building–education	$139.8	741	1,485
Building–other	141.1	810	1,510
Highway, airport, & other transportation	231.4	854	1,995
Water & Sewer	26.3	122	235
Harbors, docks, flood control	34.7	215	379
Energy Projects	368.2	2,279	4,024
Equipment	57.9	–	–
Other	61.0	–	–
Subtotal	$1,060.4	5,021	9,628
Engineering, design, & planning	142.8	2,429	3,553
Total	$1,203.2[e]	7,450	13,181

[a]Including municipal grants but not loan programs.

[b]Based upon appropriation bills.

[c]Average annual equivalent.

[d]Total = direct + indirect + induced.

TABLE 2

Economic Impact of $1 Million of State Spending: Contract Construction and Operations

Project Type	Average Annual[a,b] Equivalent Employment Produced (Jobs) Direct	Total[c]	Wages and Salaries[d] (thousand $) Direct	Total[c]	Output[e] (thousand $) Direct	Total[c]	Personal Income[f] (thousand $) Direct	Total[c]
Construction								
School	5.30	10.62	$240	$355	$1,000	$1,462	$224	$354
Office	5.74	10.70	260	368	1,000	1,435	238	359
Hospital	5.97	11.30	270	385	1,000	1,455	252	381
Sewers	4.64	8.94	210	307	1,000	1,397	212	321
Highway and Street	3.69	8.62	220	335	1,000	1,489	216	347
Land Reclamation	6.19	10.93	280	384	1,000	1,425	276	394
Operations								
Highway and Street Maint	6.71	12.45	400	533	1,000	1,568	371	524
Nonfarm Building Maint.	7.73	12.83	350	461	1,000	1,452	329	453
General Govt. Operations	17.01	24.88	530	701	1,000	1,700	584	776

[a]At 1982 average wage rate levels.

[b]Wage and salary employment in Alaska is independent of the residence of the worker (does not include proprietors).

[c]Total = direct + indirect + induced.

[d]Wages and salaries is that paid to workers for employment which occurs in Alaska independent of the place of residence of the worker.

[e]Direct output by construction firm to government plus other output attributable to Alaskan businesses. In the trade sector this is the trade margin rather than the value of goods sold.

[f]The component of value added which accrues to Alaskan residents. Because a portion of wages and salaries, proprietor income, and profits which is project-generated accrues to nonresidents, the personal income impact is not much larger than that of wages and salaries.

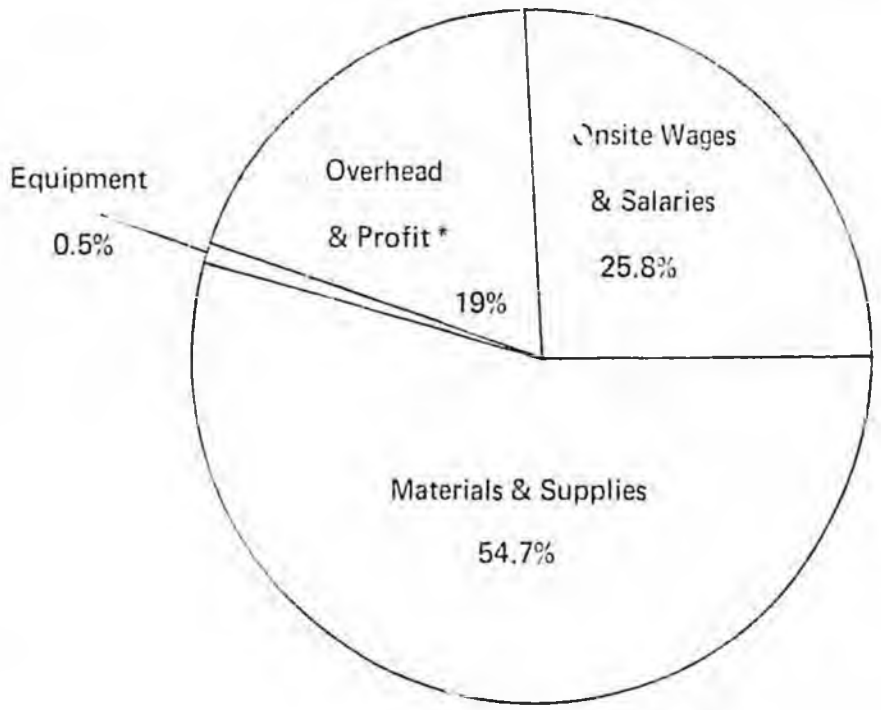


Figure 1. Distribution of Contract Costs for Public Schools

*Includes off-site wages, fringe benefist, construction financing, inventory, other overhead, and profit.

Source: U.S. Department of Labor, Bureau of Labor Statistics, "Labor and Material Requirements for Sewer Works Construction," Bulletin 2003, January 1979, Tables 12, 13 and 14.

wage and salary payments, although some workers may remain in the state only until the job is finished and leave with their earnings. Subsequent impacts result primarily when workers spend their wages in the local economy. Most money spent on commodity purchases flows out of the local economy to the places where those commodities are produced. Money spent on local services, however, remains within the local economy to generate an additional round of spending.

Additional Economic Impacts

In addition to those effects described and measured above, there may be other effects before, during, and after construction which add to the economic impact. These are:

- Anticipatory Effects. The announcement of a project may cause the business sector to invest in expansion of supporting industries before construction. Preconstruction planning and design may also impact the economy.
- Accelerator Effects. Investment in the business sector (new stores) or household sector (new housing) may result if the general level of economic activity strains the capacity of existing infrastructure.[2] This is a major factor in generating business cycles.
- Government Effects. Growth in the private sector generally increases the demand for goods and services provided by the public sector.
- Operation and Maintenance Effects. The operation and maintenance of new capital facilities require labor, commodities, and services. Operations and maintenance also generate indirect and induced effects.
- Structural Change Effects. The existence of a new capital facility may produce an increase or even a decrease in economic activity because it changes the structure of the econ-

[2]Economic infrastructure is the underlying foundation upon which an economy is built. It includes the basic supporting services required by an economy to operate, such as communications, transportation, and public utilities.

omy. One type of structural change is a change in the price or availability of inputs to production. For example, a hydroelectric facility which reduced the price of electricity could attract industry that would otherwise not locate in the state, or a transportation improvement could make local businesses less competitive in relation to lower 48 firms. Structural change can also result from a change in market size. A recent phenomenon in Alaska has been the establishment of new types of business services made possible by an increase in the size of the Alaskan market. The economic "scale" effects occur independently of the source of the increase in market size, i.e. private or public investments.

This Research Summary *was written by Scott Goldsmith of the Institute of Social and Economic Research, University of Alaska. Address any questions to Scott Goldsmith at ISER, 707 A Street, Suite 206, Anchorage, Alaska 99501, telephone 278-4621.*

* * * *

RECENT RESEARCH SUMMARIES

- "Alaska Statewide Housing Needs Study," by Cheryl K. Thomas Associates, et al., November 1983, RS No. 12.
- "Effective Schooling in Rural Alaska," by Judith Kleinfeld and G. Williamson McDiarmid, January 1984, RS No. 13.
- "The Anchorage Consumer Price Index—How Accurate?" by Scott Goldsmith and Phillip Rowe, January 1984, RS No. 14.
- "Effects of State Fisheries Management on Nonresident Fishermen," by Gunnar Knapp, Thomas A. Morehouse, and Karen A. White, January 1984, RS No. 15.
- "Alaska's Urban and Rural Governments," by Thomas A. Morehouse, Gerald A. McBeath, and Linda Leask, February 1984, RS No. 16.
- "Alaska Resources Development: What Beyond Prudhoe Bay?" by Thomas A. Morehouse, et al., February 1984, RS No. 17.
- "Alaska Economic Projections and the Effects of OCS Development," by Matt Berman and Teresa Hull, June 1984, RS No. 18.
- "Import Substitution in Alaska," by Lee Huskey, Arlon R. Tussing, and Thomas Singer, June 1984, RS No. 19.

RESEARCH SUMMARY (No. 20)
Institute of Social and Economic Research
Lee Gorsuch, Director
707 "A" Street, Suite 206
Anchorage, Alaska 99501

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JAMES N. FRANCIS,

Plaintiff,

v.

JAMES ROBISON, COMMISSIONER OF LABOR, et al.,

Defendants,

JAN 83-9969 Civil

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the evidence, the Court makes the following Findings and Conclusions:

1. The plaintiff, James N. Francis, came to the State of Alaska in September of 1983 to look for work.

2. The plaintiff claims residency in the State of Montana, and has numerous indicia of such residency, such as real and personal property in Montana, voter registration in Montana, a driver's license from Montana, a bank account in Montana, and his license plates for his vehicle are from Montana.

3. The plaintiff has never been issued an Alaska hunting, fishing or trapping license.

4. The plaintiff is in the State of Alaska for the purpose of finding work so that he can eventually return to his home in the State of Montana.

5. The plaintiff belongs to the International Association of Bridge, Structural and Ornamental Ironworkers, Local 598, in Kalispell, Montana.

6. The plaintiff is an experienced and skilled ironworker by trade.

7. Upon the plaintiff's arrival in Alaska in September of 1983, he placed his name upon the out-of-work list of Ironworkers Local 751 which has hiring halls in Anchorage and Fairbanks, Alaska.

8. Placement upon the union's out-of-work list is the usual and accustomed manner in which an ironworker

patched by Ironworkers Local 751 to employment with Regan Steel & Supply Company working on construction on the North Pole High School project at North Pole, Alaska.

10. The North Pole High School project is a public works construction project.

11. The plaintiff was 127th on the union's B list at the time he received this dispatch. Such list is primarily maintained for nonresident union members.

12. The procedure in Local 751 is to call all names on the A list first and then the B list in their order in both the hiring halls in Anchorage and Fairbanks simultaneously.

13. No persons on Local 751's out-of-work list on the A list were willing or able to accept the dispatch to the North Pole High School on September 19, 1983.

14. No persons above the plaintiff on Local 751's out-of-work B list were willing or able to accept the dispatch to the North Pole High School on September 19, 1983.

15. The North Pole Senior High School project became the subject of a Department of Labor enforcement effort under A.S. 36.10.010 on October 10, 1983.

16. A number of nonresidents were identified as working for plaintiff's employer, Regan Steel & Supply Company, and it was notified by the Department of Labor on October 12, 1983, that it was not in compliance with A.S. 36.10.010 because of the nonresidents employed on the job.

17. The Department of Labor, in the October 12, 1983, letter to plaintiff's employer, gave it seven days from the receipt of that letter to come in compliance with A.S. 36.10.010 or funds supporting the project would be withheld.

18. On October 17, 1983, the plaintiff's employer informed the State Department of Labor that it would come into compliance with A.S. 36.10.010 by laying off nonresidents.

19. The plaintiff received his termination notice

the plaintiff was performing prior to his termination.

21. Regan Steel & Supply's work on the North Pole High School construction project continued after the plaintiff's termination.

22. Plaintiff was terminated because of his nonresidency.

23. Termination of plaintiff's employment with Regan Steel & Supply Company was the result of the enforcement of A.S. 36.10.010.

24. Since the plaintiff's termination by Regan Steel & Supply Company at the North Pole High School construction project, the plaintiff has sought work in the State of Alaska in the construction industry by placing his name upon Ironworkers Local 751's out-of-work list and going to the union hall every day to search for work.

25. It is likely that but for enforcement of A.S. 36.10.010, plaintiff, because of his work experience, would be employed within the State of Alaska.

26. Between April, 1980, and July, 1982, the population of Alaska has grown by nearly fifteen percent (15%).

27. The population of Alaska has increased in the recent past more rapidly than at any other time in its history, and the State is growing more rapidly than other states in the union.

28. Property values in Alaska have been increasing over the last five years.

29. Alaska is not a depressed area as that term is used in the economics profession.

30. All sectors of the Alaska economy are expanding and Alaska has experienced very rapid economic growth since 1980.

31. Employment in Alaska in 1983 was at record levels, and the rate of increase was the best since the days of the Alaska Pipeline in 1974-1975.

greatest impact on the Alaska economy since the Alaska Pipeline years.

33. The construction industry in Alaska was exceptionally strong in both the public and private sectors during 1983.

34. Construction activity in the State of Alaska in 1984 is unlikely to reach the levels of 1983, but no precipitous decline is expected.

35. Numerous factors determine economic conditions, including unemployment, in the construction industry in the State of Alaska.

36. The major factor affecting the level of employment in Alaska in the construction industry is climatic changes as a result of extreme temperature differentials in the winter and summer months. Construction declines to substantially lower levels during the winter months, and increases, peaking out in August and September, during the latter summer months. During the peak periods of construction activity, the state experiences its lowest rate of unemployment.

37. The expenditure of state funds are a major factor affecting the level of employment in Alaska generally, and the construction industry in particular. The state expenditure for public works projects accounts for approximately sixty to seventy percent (60% to 70%) or more of the total annual construction dollar outlay within the state.

38. Private investment has a lesser effect on the level of construction activity from year to year in the State of Alaska, and such effect, from time to time, is affected by interest rates.

39. Unemployment is substantially greater in the rural areas than in the urban areas. The unemployment rate in Anchorage is less than the national average, while in the rural areas, it is greater than the national average and greater than the average within the State of Alaska.

40. The construction activity is greater within

41. Rural Alaskans lack the training that urban Alaskans have access to in construction work.

42. In-migration in the State of Alaska is a factor affecting unemployment in the construction industry in Alaska.

43. Alaska has the greatest proportion of out-of-state unemployment benefit payments (interstate claims). Alaska is also close to the top of all states in the dollar value of interstate claims.

44. There is no evidence in the record to establish what percent of the interstate claims are being paid to non-residents as opposed to residents who vacation or reside outside the state during the winter months. It is clear, however, from the record that interstate claims are made predominantly during the winter months, during which time construction activity has diminished because of the climatic change.

45. Reasonable inferences from the evidence support a finding that most of the job seekers coming to Alaska intend to become residents upon their entry into the state, thus contributing to the rapid population growth within the state.

46. There is not sufficient evidence to support a finding that nonresident construction workers are a peculiar source of unemployment in the construction industry in Alaska any more than they would be in any other state. The only inference that can be drawn from the record is that nonresident construction workers come to Alaska to work during peak construction periods of time, during which there are more jobs available and less unemployment resulting.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties and the subject matter of the proceedings.

2. At all times applicable to this proceeding, the plaintiff did not qualify for the employment preference provided by A.S. 36.10.010, since at the time of discrimination, he was a nonresident of the State of Alaska.

[illegible] of the United States Constitution.

5. A.S. 36.10.010 draws a distinction based upon state citizenship.

6. A.S. 36.10.010 on its face and in its application violates the Privileges and Immunities Clause of Article IV of the United States Constitution.

7. The right to obtain employment in any state is a fundamental right and is a privilege which shall be immune from any burden unless the State of Alaska can show a legitimate purpose for such burden. In this case, the state has failed to establish by a preponderance of the evidence such a legitimate purpose.

8. The defendants and intervenor have failed to prove by a preponderance of the evidence that nonresident construction workers constitute a peculiar source of unemployment in the State of Alaska.

9. Serious factors affecting unemployment within the State of Alaska are the extreme climatic conditions, the change in the legislative appropriation for public works construction projects, the extreme rapid growth of population experienced by Alaska, and the wildly fluctuating interest rates which have a direct effect on the private sector construction spending.

10. Statistics over the last several years demonstrate that Alaska's unemployment rate has increased at a rate lesser than the nationwide average. Whereas Alaska's unemployment rate several years was substantially greater than the nationwide rate, it now stands much closer to the national average, further supporting the conclusion that nonresident employment is not a serious factor in the unemployment rate in Alaska.

11. The State and the intervenor have failed to prove by a preponderance of the evidence that there is a substantial reason to discriminate against employment of

12. A.S. 36.10.010 provides that ninety to ninety-five percent of Alaska residents shall be employed on municipal public works construction projects where they are available and qualified.

13. A.S. 36.10.010 requires that ninety to ninety-five percent of the workers on a state-funded construction project, on a craft by craft basis, shall be Alaska state residents where they are available and qualified.

14. The State and intervenor have failed to prove by a preponderance of the evidence that the preference granted Alaska residents is closely tailored to alleviate unemployment in the construction industry in the State of Alaska.

IT IS ORDERED that plaintiff shall file and serve a proposed Partial Judgment consistent with these Findings of Fact and Conclusions of Law.

Dated at Anchorage, Alaska, this 23 day of May, 1984.

KARL S. JOHNSTONE, Judge

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 235

Title: "An Act relating to preferential hire of Alaskans..."

Sponsor: Fahrenkamp, Bennett et al.

Requestor: Senate Judiciary

Date of Request: 3/18/85

FISCAL DETAIL

Agency Affected: Labor

Program Category Affected: Public Protection

BRU, Program or Subprogram(s) Affected: Labor Standards & Safety / Wage & Hour Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870

Division: Labor Standards & Safety Date: 3/19/85

Approved by Commissioner: Jim Robison Date: 3/19/85

Agency: Labor

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
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Impacted Agency(ies)

7/1/84

SB 35

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M March 26, 1985

SUBJECT: Retrospective application of HB 294

TO: Representative Max Gruenberg

FROM: Teresa B. Cramer TBC
Legislative Counsel

You have asked for an explanation of the retrospective clause in HB 294. Section 1 of HB 294 makes legislative findings of fact, establishes a state policy, and enunciates a state purpose concerning the resident employment preference in public construction in AS 36.10.010. Section 2 of the bill makes section 1 retroactive to July 16, 1983. Section 3 of the bill states that the entire Act takes effect immediately.

AS 01.10.090 provides that "(n)o statute is retrospective unless expressly declared therein." Since HB 294 by its terms makes the provisions of section 1 retroactive to July 16, 1983, this statute does not apply.

The Alaska Supreme Court has held that there is an absolute prohibition against retrospective laws when their purpose is punitive. Watts v. Seward School Board, 421 P.2d 586 (1966), vacated, 391 U.S. 592, 88 S. Ct. 1753, 20 L.Ed.2d 842 (1968), judgement reinstated, 454 P. 2d 732 (1969). However, that holding does not apply to HB 294 since the bill is not a punitive measure and, in fact, makes no changes to the application of the current employment preference law. The court has applied curative legislation and legislation making procedural changes retrospectively, even where the legislation itself did not provide for retroactive application. Zurfluh v. State, 620 P.2d 690 (1980) and Matanuska Maid, Inc. v. State, 620 P.2d 182 (1980).

While it is not clear what effect applying this bill retrospectively will have, there is no legal or constitutional prohibition against doing so.

If I may be of further assistance, please advise.

TBC:csh
c3/066

Bill No. Senate Bill No. 235

Date March 21, 1985

Title "An Act relating to preferential hire of Alaskans; and providing for an effective date."

Contact: Robert Landau
465-2700
Eileen Plate
465-2700

Since 1982, one of the Department's highest priorities has been the enforcement of preferential hiring of Alaska residents on state-funded public works projects, pursuant to AS 36.10.010. In late 1983, however, the state's resident hire law was challenged on constitutional grounds and resulted in a Superior Court decision that the law was unconstitutional. That decision is now on appeal to the Alaska Supreme Court.

One of the Superior Court's key findings was that there was insufficient evidence to show that the in-migration of non-residents was displacing qualified and available Alaska residents from public works employment. By explicitly setting forth the legislative findings underlying the resident hire law, Senate Bill No. 235 would provide a more solid foundation from which to defend the principle of Alaska hire. The Department of Labor, therefore, strongly endorses the comprehensive legislative findings contained in the bill.

It is noted that section 2 of the bill proposes a retroactive effective date for the provisions of section 1. The department has no problem with the retroactive date per se. However, the legality of the retroactive effective date could play a major role in determining the constitutionality of section 1 as a whole should a legal challenge to the section arise in the future. Therefore, a careful legal review may be in order to assure that the provisions of section 1 do fall within the legal parameters of the types of provisions which can be retroactive.

The Department of Labor supports Senate Bill No. 235. It will not have a fiscal impact on the department.

APPROVED:

for Robert W. Landau, Deputy
Jim Robison, Commissioner
Department of Labor

POSITION PAPER/Department of Labor