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BILL CONTACT/ACTION

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4/1/86	NOTIFIED FRICS (4525) AND ZIMMHOFF (3244)
	BACKUP?

# Alaska State Legislature

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CHAIRMAN  
Special Committee on  
Telecommunications

MEMBER  
Labor and Commerce  
State Affairs  
Finance—Subcommittee Administration

## Representative H. A. "Red" Boucher

To: Pat Rodey, Chairman  
Senate Judiciary

From: Representative H.A. "Red" Boucher  
Senator Jan Faiks *Jan Faiks*

Date: February 26, 1986 *Red*

Subject: Hearings on HB 466 and SB 367

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You have no doubt heard about the recent Alaskan Supreme Court decision which struck down the Alaska resident hire law in the Francis case. HB 466 and SB 367, in the opinion of the Attorney General's Office, respond directly to the major objections the Court raised in regards to the current law.

We have been further advised that in order for a new Alaska resident preferential hire law to be put in place and be constitutionally defensible, it is not enough that we show there is high unemployment in Alaska. We have to obtain findings that show unemployment can lead to a host of social problems, such as alcoholism, suicide, poverty, violent crimes, broken homes and families, even insolvency and bankruptcy. Even more importantly, we need to obtain testimony that focuses on outsiders as being a "significant contributing cause" of unemployment in Alaska, and on some other constitutional aspects as well.

We are further caught in a bind of trying to balance the problem of getting a new piece of legislation in place by the end of this session (which has to go through 4 to 6 Committees), against the problem of trying to obtain as much public testimony as possible for the record (so that we can demonstrate to any future court that we did indeed consider the constitutional problems raised).

We thus need to obtain both written (statements, publications, statistics) and spoken input on this issue of resident hire, and attempt in teleconferenced hearings to balance input from expert witnesses with input from private citizens chronicling their individual problems. We would appreciate it very much if you could attempt to strike this balance if your Committee is one of those holding hearings on these two bills.

A lot of the written and published material that is referred to by expert witnesses will not be obtainable until weeks later. We would like to therefore also request your indulgence in entering these various documents into the Committee hearing record as they come in and catch up to the Committee they are in, as they will be extremely critical in providing the basis for any future court cases on resident hire. This may even entail additional public teleconference hearings.

We respectfully request that we be allowed to work with your Committee towards meeting the above goals as the hearings on these bills progress.

Cramer  
4/1/86

Original sponsors: Faiks, Josephson,  
Sturgulewski and V.Fischer

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 367 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to Alaskan resident employment  
7 preference; and providing for an effective date."

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

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

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

18 (c) The legislature further finds that the ratio of employees on  
19 a certified payroll who did not apply for or were refused a permanent  
20 fund dividend under AS 43.23 to employees who were found eligible to  
21 receive a dividend is a reasonable but not exclusive indicator of the  
22 ratio of nonresident to resident employees on a public works project.

23 (d) When determining the ratio of nonresident to resident em-  
24 ployees working on a public works project, the commissioner may con-  
25 sider information gathered from on-site surveys of public works proj-  
26 ects including individual interviews, questionnaires, examination of  
27 the state of registration of vehicles owned or operated by employees,  
28 and other information acquired from inspection of certified payrolls.

29 (e) The legislature finds that the following factors are

1 reasonable but not exclusive indicators of the ratio of nonresident to  
2 resident employees in the state:

3 (1) the ratio of applicants for unemployment insurance who  
4 list out-of-state residences to applicants who list residences in the  
5 state;

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

10 (f) The legislature finds that

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

14 (2) many rural state residents who wish to work do not seek  
15 employment as frequently as necessary to meet federal definitions of  
16 unemployment because of continuing lack of employment opportunities in  
17 rural areas of the state.

18 \* Sec. 3. AS 36.10.0/0 is repealed and reenacted to read:

19 Sec. 36.10.070. UNAVAILABILITY OF PREFERRED WORKERS. (a) An  
20 employer subject to hiring requirements under this chapter may request  
21 the Department of Labor to assist in locating qualified, eligible  
22 employees. After receiving a request for assistance, the department  
23 shall refer qualified, eligible, available residents to the employer  
24 to fill the employer's hiring needs. The employer shall cooperate  
25 with the department.

26 (b) If the department is unable to refer a sufficient number of  
27 qualified, eligible, available residents able to perform the work, the  
28 commissioner of labor may approve the hiring of residents who are not  
29 eligible for preference and nonresidents for the balance of the

request.

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

(b) The commissioner of labor shall adopt regulations to encourage and require the hiring of residents to the maximum extent permitted by law.

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

Sec. 36.10.130. RESIDENT HIRE REPORT. The attorney general and the commissioner of labor shall report annually to the legislature and the governor on the status of employment in the state, the effect of nonresident employment on the employment of residents in the state, and methods to increase resident hire. The report shall be submitted by January 31 of each year.

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

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

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

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

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

(b) An employer subject to a resident hiring requirement under this chapter shall certify that persons employed as residents under the preference are eligible for the preference.

Sec. 36.10.150. DETERMINATION OF UNDEREMPLOYED AREA. (a)

1 Immediately following a determination by the commissioner of labor  
2 that an economic region of the state is an underemployed area or that  
3 the state as a whole is an underemployed area, and for the next two  
4 fiscal years after the determination, qualified residents of the area  
5 who are eligible under AS 36.10.140 shall be given preference for work  
6 on each project under AS 36.10.180 that is wholly or partially sited  
7 within the area.

8 (b) The commissioner of labor shall determine the amount of work  
9 that must be performed under this section by eligible qualified resi-  
10 dents. In making this determination, the commissioner shall consider  
11 the nature of the work, the classification of workers, availability of  
12 eligible residents, and the willingness of eligible residents to  
13 perform the work.

14 (c) The commissioner shall determine that an economic region of  
15 the state or the state as a whole is an underemployed area if the  
16 commissioner finds that

17 (1) the rate of unemployment within the area is substan-  
18 tially higher than the national rate of unemployment;

19 (2) a substantial number of residents in the area desire  
20 work in occupations that would be employed on a public works project;

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

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

26 Sec. 36.10.160. PREFERENCE FOR RESIDENTS OF ECONOMICALLY DIS-  
27 TRESSED AREAS. (a) Immediately following a determination by the  
28 commissioner that an economic region of the state is an economically  
29 distressed area, and for the next two fiscal years after the

1 determination, qualified residents of the area who are eligible under  
2 AS 36.10.140 shall be given preference for at least 50 percent of  
3 employment on each project under AS 36.10.180 that is wholly or par-  
4 tially sited within the economically distressed area.

5 (b) The commissioner shall determine that an area is an econom-  
6 ically distressed area if the commissioner finds that

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

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

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

16 Sec. 36.10.170. PREFERENCE FOR ECONOMICALLY DISADVANTAGED MINOR-  
17 ITY RESIDENTS. (a) Immediately following a determination by the  
18 commissioner that the female or minority residents of an economic  
19 region are economically disadvantaged, and for the next two fiscal  
20 years after the determination, qualified female or minority residents  
21 of the area who are eligible under AS 36.10.140 shall be given prefer-  
22 ence for at least 25 percent of employment on each project under  
23 AS 36.10.180 that is wholly or partially sited within the area.

24 (b) The commissioner shall determine that the female or minority  
25 residents of an area are economically disadvantaged if the commission-  
26 er finds that

27 (1) the female or civilian minority population of the area  
28 exceeds the average female or civilian minority population for the  
29 state;

1           (2) either the percent of unemployment of female or civil-  
2           ian minority residents of the area is at least two times the percent  
3           of unemployment of male or nonminority residents of the area or the  
4           female or civilian minority population of the area has suffered past  
5           economic discrimination;

6           (3) the economic disadvantage of female or civilian minor-  
7           ity residents of the area has substantially contributed to serious  
8           social or economic problems in the area; and

9           (4) employment of workers who are not residents is a pecu-  
10          liar source of unemployment of female or civilian minority residents  
11          of the area.

12          (c) In this section, a person is considered to be a member of a  
13          minority if the person is black but not of Hispanic origin, Hispanic,  
14          Asian or Pacific Islander, American Indian or Alaskan Native, as those  
15          terms are defined by the Equal Employment Opportunity Commission.

16          Sec. 36.10.180. PROJECTS SUBJECT TO PREFERENCE. (a) The pref-  
17          erences established in AS 36.10.150 - 36.10.170 apply to

18           (1) the performance of contracts let by a municipality for  
19           construction, repair, preliminary surveys, engineering studies, con-  
20           sulting, maintenance work, or any other retention of services neces-  
21           sary to complete a given project;

22           (2) a construction project that is partly or wholly funded  
23           by state money if the state or an agency of the state, a department,  
24           office, agency, state board, commission, regional school board with  
25           respect to an educational facility under AS 14.11.020, public corpo-  
26           ration, or other organizational unit of or created under the execu-  
27           tive, legislative or judicial branch of state government, including  
28           the University of Alaska and the Alaska Railroad Corporation, is a  
29           signatory to the construction contract;

1 person is convicted of a crime in connection with a false statement  
2 made in a certification required under AS 36.10.140, and the convic-  
3 tion is not reversed, that person shall forfeit all future rights to  
4 eligibility for an employment preference under this chapter.

5 Sec. 36.10.210. CIVIL PENALTIES. (a) In addition to any crimi-  
6 nal penalties imposed, after a hearing the department may impose a  
7 civil penalty on a person who, in connection with certification of  
8 eligibility for an employment preference under this chapter,

9 (1) made a false sworn statement; or

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

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

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

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

1 (3) work performed on a public works project under a grant  
2 to a municipality under AS 37.05.315;

3 (4) work performed on a public works project under a grant  
4 to a named recipient under AS 37.05.316; and

5 (5) work performed on a public works project under a grant  
6 to an unincorporated community under AS 37.05.317.

7 (b) If the governor has declared an area to be an area impacted  
8 by an economic disaster under AS 44.33.285, then the preference for  
9 residents of the area established under AS 44.33.285 - 44.33.310  
10 supercedes the preference under AS 36.10.150 and 36.10.160 for con-  
11 tracts awarded by the state.

12 (c) The commissioner shall define the boundaries of an economic  
13 region or an area within which a preference applies.

14 Sec. 36.10.190. REPORTING PROVISIONS. An employer obligated to  
15 meet resident hire requirements under this chapter shall comply with  
16 the reporting provisions that the commissioner of labor determines are  
17 reasonably necessary to carry out this chapter. Except for statis-  
18 tical data, all information regarding specific employees is confiden-  
19 tial and may not be released by the Department of Labor.

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

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

29 (c) In addition to criminal penalties imposed by state law, if a

1           Sec. 36.10.990. DEFINITIONS. In this chapter

2           (1) "available" means physically present at the place of  
3 hire at the time requested by the employer;

4           (2) "qualified" means possesses the requisite education,  
5 training, skills, or experience to perform the work.

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

7           (9) "resident" means a person who establishes residency  
8 under AS 01.10.055.

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

10          (e) The Department of Labor shall require a municipality awarded  
11 a grant for a public works project under (a) of this section to comply  
12 with the hiring preferences under AS 36.10.150 - 36.10.170 for employ-  
13 ment generated by the grant.

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

15          (b) The Department of Labor shall require a recipient awarded a  
16 grant for a public works project under (a) of this section to comply  
17 with the hiring preferences under AS 36.10.150 - 36.10.170 for employ-  
18 ment generated by the grant.

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

20          (b) The Department of Labor shall require the qualified incor-  
21 porated entity awarded a grant or agents or contractors with whom the  
22 Department of Community and Regional Affairs contracts under (a) of  
23 this section to comply with the requirements of AS 36.10.150 - 36.10.-  
24 170 for employment generated by the grant or contract if the grant or  
25 contract is for a public works project.

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

1 \* Sec. 11. AS 36.95.010(4) and (5) are repealed.

2 \* Sec. 12. AS 36.10.010 is repealed.

3 \* Sec. 13. Section 12 of this Act takes effect April 17, 1986, or  
4 immediately, in accordance with AS 01.10.070(c), whichever is later, if the  
5 final decision of the Alaska Supreme Court in Robison v. Francis, File No.  
6 S-493, Opinion No. 3011, January 17, 1986, is not submitted for review to  
7 the United States Supreme Court. If the decision is submitted for review  
8 but the United States Supreme Court declines to accept review, then sec. 12  
9 of this Act takes effect on the date of the order of the United States  
10 Supreme Court declining to accept review. If the United States Supreme  
11 Court accepts review, then sec. 12 of this Act takes effect on the date of  
12 a final decision of the United States Supreme Court affirming the decision  
13 of the Alaska Supreme Court.

14 \* Sec. 14. Sections 1 - 11 of this Act take effect immediately in  
15 accordance with AS 01.10.070(c).

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FILE SB 367 bills  
MOVED AT

# Alaska State Legislature

CO-CHAIRMAN  
FINANCE COMMITTEE  
907-465-3740

JAN FAIKS  
FOLCH V  
CAPITOL BUILDING  
JUNEAU ALASKA 99811

## Senate

April 1, 1986

### MEMORANDUM

TO: Senator Pat Rodey, Chairman  
Senate Judiciary Committee

FROM: Senator Jan Faiks *JF*

SUBJECT: Background on Senate Bill 367, an Act relating to  
Alaskan resident employment preference

Senate Bill 367 requires local hire on public construction projects. It was introduced to replace our current local hire law, AS 36.10.010. This law was declared unconstitutional by the Alaska Supreme Court in January.

SB 367 has been tailored to satisfy the constitutional questions raised by the Francis decision. Also, it has been amended to conform with the latest version of its companion, House Bill 466. CSSH B 466(Jud) passed from the House Judiciary Committee on April 1.

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

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

Section 4 authorizes the Commissioner to adopt local hire regulations.

OUT OF SESSION

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

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

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

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

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

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

Sections 7 through 9 require the Department of Labor to enforce the resident hiring preference against municipalities and grantees of state funds. According to Section 10, the Act does not apply to construction contracts issued before the effective date of this act unless these contracts adopt the effect of local hire laws passed during their lifetime. Section 11 repeals conflicting statutory definitions of the terms "qualified" and "resident".

Section 12 repeals AS 36.10.010, the current local hire law which was declared unconstitutional. Section 13 says that

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

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