

S

B

1741

Bill No. Sponsor Substitute for Senate Bill 174

Date May 4, 1983

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

Contact: Judy Knight
465-2700

Bob Bacclas
465-4780

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


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

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

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

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

Approved:


Commissioner

POSITION PAPER/Department of Labor

I. REQUEST

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

II. FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

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

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Donald R. Wilson *Donald Wilson*
 Division: Labor Standards and Safety *Jim Knight*
 Phone: 465-4870
 Date: May 6, 1983

Approved by Commissioner: Jim Robison *Jim Robison*
 Department: Labor
 Date: May 6, 1983

LEG:A:48

Distribution:

- Original to Legislative Finance
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- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

TITLE: "An Act relating to employment preference."

AGENCY AFFECTED: Department of Labor

Page 2

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

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

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

Assumptions:

Effective date of July 1, 1983

Inflation rate of 6% per annum

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

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

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

LEG:A:48

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

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

JUSTIFICATION

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

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

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

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

FOR B&M USE ONLY
4A KEY NUMBER _____

13 REQUEST FOR
NEW POSITION

AGENCY Labor

PROGRAM Worker Protection

BRU Labor Standards and Safety

COMPONENT Wage and Hour

FY 84

Page 1 of 2

Revised Date _____

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

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

JUSTIFICATION

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

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

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

	RECEIPT CODE	FUNDING SOURCE	
6.		Federal Receipts 1002	
7.		G.F. Match 10J3	
8.		General Funds 1004	52,032
9.		I-A Receipts 1005	
10.		Program Receipts 1028	
11.		Other	

FOR B&H USE ONLY
4A KEY NUMBER _____

**REQUEST FOR
NEW POSITION**

AGENCY Labor

PROGRAM Public Protection

BRU Labor Standards and Safety

COMPONENT Wage and Hour

Page 2 of 2

Revised Date _____

FY 84

I. REQUEST

Bill/Resolution No.: SSSB 174
 Title: Employ. Preference, State Residents
 Sponsor: Josephson, Kerttula, et al.
 Requestor: _____

II. FISCAL DETAIL

Agency Affected: Department of Labor
 Program Category Affected: _____
 BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Guy Stringham *Guy Stringham*
 Division: Labor Relations

Phone: 465-4403
 Date: April 28, 1982

Approved by Commissioner: Lisa Rudd *L. A.*
 Department: ADMINISTRATION *11328*

Date: 5/4/82

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3/8/83

STATE OF ALASKA
FISCAL NOTE

Revision Date Original, 1983

I. REQUEST

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

II. FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		217.0	230.0	243.8	258.4	273.9
200 TRAVEL		48.0	50.9	54.0	57.2	60.6
300 CONTRACTUAL		72.0	76.3	80.9	85.8	90.9
400 COMMODITIES		3.0	3.2	3.4	3.6	3.8
500 EQUIPMENT		9.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		349.0	360.4	382.1	405.0	429.2
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		349.0	360.4	382.1	405.0	429.2
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		6	6	6	6	6
PART-TIME						
TEMPORARY						

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

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Don Wilson Phone 465-4870
 Division: Labor Standards & Safety Date: 5/11/83
 Approved by Commissioner: Jim Robison Date: _____
 Department: Labor
 LEG:A:47

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3/8/83

1.	POSITION TITLE Wage and Hour Technician I				RANGE/STEP 12A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER SSforSB 174	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 99	LEG.		
3.	CONTINUATION LEVEL	ADDITION	XXX	JUSTIFICATION						
4.	TYPE OF EXPENDITURE			AMOUNT						
	1	2	3							
	PERSONAL SERVICES*									
5.	Salary		23,688							
6.	Benefits		3,759							
7.	Supplemental Benefits		1,452							
8.	Fixed Benefits		2,880							
9.	TOTAL PERSONAL SERVICES	01	31,779							
10.	Travel	02	-0-							
11.	Contractual	03	11,520							
12.	Commodities	04	500							
13.	Equipment	05	1,500							
14.	Other									
15.	TOTAL COST		45,299							
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.	100	General Funds 1004		45,299						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
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4A KEY NUMBER _____										

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

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

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

13 REQUEST FOR
NEW POSITION

AGENCY Labor
PROGRAM Worker Protection
BRU Labor Standards and Safety
COMPONENT Wage and Hour

FY 84

Page 1 of 6
Revised Date _____

1.	POSITION TITLE Wage and Hour Technician I				RANGE/STEP 12A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER SSforSB 174	PCN NUMBER	BRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT 99	LEG.		

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

JUSTIFICATION

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

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

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

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

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4A KEY NUMBER _____

3 REQUEST FOR
NEW POSITION

AGENCY Labor

PROGRAM Worker Protection

BRU Labor Standards and Safety

COMPONENT Wage and Hour

FY 84

Page 2 of 6

Revised Date _____

1.	POSITION TITLE Wage and Hour Technician I			RANGE/STEP 12A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER SSforSB 174	PCN NUMBER	BRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT 99	LEC.	
3.	CONTINUATION LEVEL	ADDITION	XX	JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT					
	1	2	3						
	PERSONAL SERVICES*								
5.	Salary	23,688							
6.	Benefits	3,759							
7.	Supplemental Benefits	1,452							
8.	Fixed Benefits	2,880							
9.	TOTAL PERSONAL SERVICES	01	31,779						
10.	Travel	02	-0-						
11.	Contractual	03	11,520						
12.	Commodities	04	500						
13.	Equipment	05	1,500						
14.	Other								
15.	TOTAL COST		45,299						
<p>This position will be required to audit certified payrolls to ascertain if contractors on public projects are employing local residents; if good faith efforts have been made to hire local residents; and further if labor from adjacent areas is being utilized when local skilled labor is not available.</p> <p>Contractual service includes \$3,120 for indirect support services, and \$3,400 for rent. All other costs are normal operating expences.</p> <p>The \$1,500 in the equipment line item is to purchase basic office equipment.</p>									
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts 1002							
17.		G.F. Match 1003							
18.	100	General Funds 1004		45,299					
19.		I-A Receipts 1005							
20.		Program Receipts 1028							
21.		Other							
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13 REQUEST FOR
NEW POSITION

AGENCY Labor

PROGRAM Worker Protection

BRU Labor Standards and Safety

COMPONENT Wage and Hour

FY 84

Page 3 of 6

Revised Date _____

1.	POSITION TITLE Wage and Hour Investigator I			RANGE/STEP 16A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISB.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER SSforSB 174	PCN NUMBER	BRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT 99	U.C.	

3.	CONTINUATION LEVEL	ADDITION	
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	30,888	
6.	Benefits	4,902	
7.	Supplemental Benefits	1,894	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES	01	40,564
10.	Travel	02	12,000
11.	Contractual	03	12,468
12.	Commodities	04	500
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		67,032

JUSTIFICATION

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

Contractual services includes \$4,068 for indirect support services and \$3,400 for rent and \$5,000 for basic operating cost.

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

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	67,032
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

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4A KEY NUMBER _____

13 REQUEST FOR
NEW POSITION

AGENCY Labor
PROGRAM Public Protection
BRU Labor Standards and Safety
COMPONENT Wage and Hour

FY 84

Page 4 of 6
Revised Date

POSITION TITLE Wage and Hour Investigator I				RANGE/STEP 16A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV	APPROV	DISCIP
CLASSIFICATION OF POSITION T	STAFF MONTHS 12	RP NUMBER SSforSB 174	PCN NUMBER	BRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT 99	LEG		

INVESTIGATION LEVEL	ADDITION	AMOUNT
1	2	3
TYPE OF EXPENDITURE		
PERSONAL SERVICES		
Salary	30,888	
Fringe Benefits	4,902	
Elemental Benefits	1,894	
Medical Benefits	2,880	
TOTAL PERSONAL SERVICES	01	40,564
Travel	02	18,000
Contractual	03	12,468
Supplies	04	500
Equipment	05	1,500
TOTAL COST		73,032

JUSTIFICATION

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

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

RECEIPT CODE	FUNDING SOURCE	AMOUNT
	Federal Receipts 1002	
	G.F. Match 1003	
	General Funds 1004	73,032
	I-A Receipts 1005	
	Program Receipts 1028	
	Other	

USE ONLY NUMBER _____

AGENCY Labor

PROGRAM Public Protection

BRU Labor Standards and Safety

COMPONENT Wage and Hour

FY 84

QUEST FOR POSITION

POSITION TITLE Wage and Hour Investigator I				RANGE/STEP 16A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAB.
TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER SSforSB 174	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 99	LEG.		

CONTINUATION LEVEL ADDITION

TYPE OF EXPENDITURE		AMOUNT
1	2	3
PERSONAL SERVICES		
Salary	30,888	
Benefits	4,902	
Supplemental Benefits	1,894	
Fixed Benefits	2,880	
TOTAL PERSONAL SERVICES	01	40,564
Travel	02	18,000
Contractual	03	12,468
Commodities	04	500
Equipment	05	1,500
Other		
TOTAL COST		73,032

RECEIPT CODE	FUNDING SOURCE	AMOUNT
	Federal Receipts 1002	
	G.F. Match 1003	
	General Funds 1004	73,032
	I-A Receipts 1005	
	Program Receipts 1028	
	Other	

B&M USE ONLY
A KEY NUMBER _____

JUSTIFICATION

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

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REQUEST FOR
NEW POSITION

AGENCY Labor
PROGRAM Public Protection
BRU Labor Standards and Safety
COMPONENT Wage and Hour

FY 84

Page 6 of 6
Revised Date _____

TO: Senator Josephson
FROM: H.M. Lancaster II
DATE: March 22, 1983

RE: Senate bill 174--Alaska Hire Preference Law

The current preferential hire law facially discriminates against non-residents in public works employment. Residency, as applied in AS 36.010.100, is based upon one's domicile which is defined in AS 36.95.010(5). Simple residency requirements are analyzed under the Privileges and Immunities Clause of the U.S. Constitution, Article IV, sec. 2.

Not all discrimination under the clause is invalid. Toomer v. Witsell, 334 U.S. 385, 396 (1948). However, the discrimination must be motivated by an independent and valid state purpose, and the clause "does not bar discrimination beyond the mere fact that they are citizens of other states." Id. To demonstrate a substantial relationship between a valid state purpose and the discrimination at issue, the state must show that the "noncitizens constitute a particular source of evil at which the statute is aimed." Toomer, at 398; Hicklin v. Orbeck, 437 U.S. 518, 526 (1978). The Privileges and Immunities Clause ensures that this retained sovereignty will not render an individual an alien within his own nation. Paul v. Virginia, 8 Wall 168, 180 (1869).

States, do however, routinely act in capacities other than as a sovereign. In Hughes v. Alexandria Scrap Corp., 426 U.S. 794 (1976) and in Reeves Inc. v. Stake, 447 U.S. 429 (1980), the Court held that state and local governments, in the face of a Commerce Clause challenge, may participate in the market place and exercise the right to favor its own citizens over others.

The propriety of the principal of AS 36.010.100 has recently been tested in Labors Local Union No. 374 v. Felton Construction, 654 P2d. 67(Washington 1982). The Court decided the threshold inquiry of whether the interest of preferential hire subject to state legislation is a privilege or immunity within the meaning of the U.S. Constitution, Article IV, sec. 2. In the spring of 1980, the City of Aberdeen awarded a sanitary sewer project to the lowest bidder, the Felton Construction Company, a Montana corporation. The project was funded by 25 percent

state and local funds and 75 percent federal funds. Appellant sued Felton and the city alleging that Appellees had not employed the statutorily required percentage of Washington residents on the city sewer project.

The Washington court in its analysis stated the following rationale for discharging the state's preferential hire law:

- (1) no valid independent reason shown for discriminating against nonresidents
- (2) nothing was shown to indicate that noncitizens constituted a peculiar source of evil at which the statute was aimed.
- (3) no reasonable relationship between the danger represented by non citizens, as a class, and the discrimination practiced upon them.

The Court cited Baldwin v. Fish & Game Comm'n, 436 U.S. 371, 383 (1978) for the proposition that the extent to which the privileges and immunities clause protects a citizen's right to be placed on the same footing with citizens of other states so far as the advantages resulting from citizenship in the States are concerned, those rights are fundamental. The right to pursue a livelihood in a State other than one's own is a right that is protected by the Clause and points to those interests basic to the maintenance or wellbeing of the Union.

The Court analyzed the motive of the State and declared that "While the State's proprietary role would not exempt it from privileges and immunities scrutiny, it might justify an otherwise illegitimate legislative purpose of seeking to foster state economic welfare." Felton, at p. 70. The State failed to demonstrate a valid state interest. Secondly, "absent an identified peculiar evil" stated the Court, "it is difficult to determine if the statute is closely related to eliminating the evil non-residents present."

The Court did not dispute the proprietary interest of the State. The project was a public works effort involving state tax dollars. However, the Court found that the statute was not limited to the ownership rights of the State. It specifically placed limitations on private contractors and their subcontractors. And in doing so the Court found

inappropriate the the hardship created by the statute because it affected private employers who had no direct dealings with the state. Felton, at p. 71.

It is at this juncture where the current Alaska employment preference law is infirm. It applies to "... any other retention of services necessary to complete any given project,". That language carries with it the prohibition elicited in Hicklin, "that an attempt to force virtually business that benefits in some way from the economic ripple effect... biases their employment practices in favor of the State's residents." at p. 532. The current statute is probably too broad in its application.

The viability of SB 174 rests upon the White Case. The court did not reach the Privileges and Immunities question. (NOTE: see the March 9, 1983 memo from Billy Berrier). However, the Court does quote the prohibition of Hicklin as to the broadness of applicability, and hints that a more narrowly drawn means of hiring local workers with a statement of local economic need may pass the test. The state as a market participant may be afforded the privileges of other private enterprises in the execution of its policy with its own resources.

Detail Analysis Senate Bill 174

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

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

Assumptions:

Effective date of July 1, 1983
Inflation rate of 6 percent per annum
Equipment costs of \$9,000 is a one-time item



Alaska State Legislature

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

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

Dear Mr. President:

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

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

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

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


Senator Joe Josephson

JPJ/dd/cme

cc: Senator Sackett
Commissioner Robinson
Peter McDowell, Director OMB



Alaska State Legislature

Official Business

Pou...
State Capitol
Juneau, Alaska 99811

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

FROM: Senator Josephson

DATE: May 5, 1983

RE: SS SB 174 Preferential Hire

Dear Colleague:


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

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

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

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

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


Senator Joe P. Josephson

Bill No. Sponsor Substitute for Senate Bill 174

Date May 4, 1983

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

Contact: Judy Knight
465-2700

Bob Bacolas
465-4780

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


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

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

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

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

Approved:


Commissioner

POSITION PAPER/Department of Labor