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DATE 11/19/01 BY 60322 UCBAW/STP

3352 HJUD HB 466 (FILE 1)

DATE 11/19/01 BY 60322 UCBAW/STP

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 (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 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.

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Sec. 36.10.990. DEFINITIONS. In this chapter

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

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

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

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

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

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

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

(b) The Department of Labor shall require a recipient awarded a grant for a public works project under (a) of this section to comply with the hiring preferences under AS 36.10.150 - 36.10. 70 for employment generated by the grant.

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

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

\* Sec. 10. The provisions of this Act do not apply to a contract entered into before the effective date of this Act unless the contract includes a provision requiring compliance with laws regarding the hiring of 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-49, 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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**STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date: 2/11/86

**REQUEST**

Bill/Resolution No.: SS HB 466  
 Title: "An Act relating to Alaskan  
 resident employment preference..."  
 Sponsor: Boucher, Szymanski, et al  
 Requestor: Labor and Commerce  
 Date of Request: 02/05/86

**FISCAL DETAIL**

Agency Affected: Labor  
 BRU: Labor Standards and Safety  
 Components: Wage and Hour

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		114.8	101.7	105.8	110.0	114.4
SUPPLIES						
EQUIPMENT		46.5	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>161.3</b>	<b>101.7</b>	<b>105.8</b>	<b>110.0</b>	<b>114.4</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING : (Thousands of Dollars)**

GENERAL FUND	0	161.3	101.7	105.8	110.0	114.4
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0</b>	<b>161.3</b>	<b>101.7</b>	<b>105.8</b>	<b>110.0</b>	<b>114.4</b>

**POSITIONS :**

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

**ANALYSIS :** Attach a separate page if necessary

See attached

Prepared by: Bob Bacolas, Director  
 Division: Labor Standards and Safety

Phone: 465-4870  
 Date: 2/11/86

Approved by Commissioner: Jim Robison  
 Agency: Labor

Date: 2/11/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SS HB 456

Currently the Division of Labor Standards and Safety (LS&S) receives weekly certified payroll documents for all public construction projects as required in AS 36. Under this bill the department will use the public construction certified payroll forms as source documents to determine the legal domicile of persons employed on public construction projects. In certain cases the department will also be scrutinizing the ethnic makeup, of the employees to determine the utilization of minorities.

These certified payroll documents are now collected and summarized manually by the Division of Labor Standards and Safety. This fiscal note will fund the automation of the certified payroll documents. This will allow a more timely determination of residency status of persons employed on public construction projects. This automation will also assist in providing a list of employees with incomplete or questionable data. The existing investigative staff will then resolve the questionable items throughly personal contact with employees and employers.

Reports will be developed for the Research and Analysis Division to allow them to do crossmatch reviews with other data sources (e.g. Permanent Fund Dividend).

Specific costs are as follows:

## Contractual Services

Professional fees for data entry	80.0
DP Applications/programming development (one time only \$17.0)	20.0
DP Support (misc. chargeback)	3.0
DP Telecommunications	.8
Communications (phone and postage)	5.0
Equipment repair and maintenance	5.0
Other miscellaneous	1.0
	<u>114.8</u>

## Equipment (one time only)

4 workstations	21.6
3 printers	5.4
3 modems	15.0
75 Mega byte disk pack	1.5
Telecommunication software	3.0
	<u>46.5</u>
Total	161.3

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SS HB 466

A contract for data entry services will be required for entry of all payroll records into the new automated system.

Equipment upgrades and improved telecommunication links between Juneau, Fairbanks and Anchorage will allow online review and audit of certified, payroll data in each location. The equipment will be a one time purchase. Other costs are projected to future years at 4% inflation.

# FISCAL NOTE

Revision Date: 2/10/86

**REQUEST**

Bill/Resolution No.: SS HB 466  
 Title: "An Act relating to Alaska resident employment preference..."  
 Sponsor: Boucher, Szymanski, ET al  
 Requestor: Labor & Commerce  
 Date of Request: 02/05/86

**FISCAL DETAIL**

Agency Affected: Labor  
 BRU: Administrative Services  
 Components: Special Services

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		108.5	108.5	108.5	108.5	108.5
TRAVEL						
CONTRACTUAL		218.2	223.5	246.2	240.4	251.2
SUPPLIES		1.2	1.2	1.3	1.3	1.4
EQUIPMENT		4.0	.8	.9	.9	.7
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>331.9</b>	<b>334.0</b>	<b>356.9</b>	<b>351.1</b>	<b>362.1</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING : (Thousands of Dollars)**

GENERAL FUND		331.9	334.0	356.9	351.1	362.1
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0</b>	<b>331.9</b>	<b>334.0</b>	<b>356.9</b>	<b>351.1</b>	<b>362.1</b>

**POSITIONS :**

FULL-TIME	0	3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Prepared by: Judy G. Knight, Director Phone: 465-2720  
 Division: Administrative Services Date: 2/10/86  
 Approved by Commissioner: Jim Robison Date: 2/10/86  
 Agency: Labor

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

This legislation requires a resident hire report and other economic information for this department to make the determinations required by various sections of this bill. The assumptions are as follows:

1. A resident hire report would be completed biennially. The first report will be issued January 31, 1987.
2. On-going collection of occupational titles from employers, and subsequent computer matching to determine residency status.
3. Occupational information would be a primary feature of the annual report beginning in 1988, permitting more specific identification of the effect of nonresident employment on resident unemployment in Alaska. The provision of occupational titles assumes the department will continue to receive funding at the FY 86 level to provide core occupational information programs.
4. The collection of occupational titles from firms will be phased in over a three year period. Industries identified as having the highest dollar payments to nonresidents in 1984 would be targeted first:

First Year - construction, oil and gas mining, and food processing;

Second Year - all first year industries plus business services, local government, miscellaneous services, eating and drinking places, air transportation, and state government; and

Third Year - all industries.

5. In addition to the occupational information, reporting of the residency status by industry and area would be necessary.
6. Section 36.10.170 (b)(3) would require special extraction of ZIP codes for all applicants of the Permanent Fund Dividend. We assume that the Department of Labor will be able to obtain that information from the Department of Revenue for further computer matching and conversion to census areas.
7. The department will be unable to obtain access to voter registration files.
8. No survey will be conducted to obtain information on a broader definition of unemployment by census area because the costs would be extremely high. This would mean no substantiation of 36.10.005 (f).
9. Substate average family income (A.S. 36.10.160 (b)(1)) is not available except from each decennial census. No attempt to prepare these estimates has been included into this fiscal note.
10. All minority demographic and economic information, except that required from contractors on state funded construction projects, will be derived from the decennial census. No costs are included for this in the fiscal note.

COMMISSION OF FISCAL NOTE ANALYSIS  
 For Bill/Resolution No. SS.HB 466

The contractual services costs are detailed as follows:

<u>Description</u>	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u>	<u>FY 90</u>	<u>FY 91</u>
Key entry	\$ 40.0	\$ 60.0	\$ 62.0	\$ 64.0	\$ 66.0
DP operations	120.0	135.0	150.0	153.0	156.0
DP applications	30.0	4.5	4.7	4.9	5.1
Printing	4.5	0	4.5	0	5.0
Phone (Toll service)	12.0	12.5	13.0	6.0	6.2
Equipment lease	8.0	8.3	8.7	9.0	9.4
Equipment maintenance	.8	.8	.9	.9	.9
Training, shipping, & misc.	2.9	2.4	2.4	2.6	2.6
	<u>\$218.2</u>	<u>\$223.5</u>	<u>\$246.2</u>	<u>\$240.4</u>	<u>\$251.2</u>

Most ongoing costs are increased each year @4% inflation. Printing is budgeted biennially.

## FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: SS HB 466  
 Title: " An Act relating to Alaskan  
 resident employment preference..."

Sponsor: BOUCHER, SZYMANSKI, Et al  
 Requestor: Labor & Commerce  
 Date of Request: 02/05/86

FISCAL DETAIL

Agency Affected: Labor  
Administrative Services  
 BRU: \_\_\_\_\_

Components: Special Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		108.5	108.5	108.5	108.5	108.5
TRAVEL						
CONTRACTUAL		212.2	227.2	244.2	244.4	249.4
SUPPLIES		1.2	1.2	1.2	1.2	1.2
EQUIPMENT		4.0	8	8	8	8
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	331.9	337.7	354.7	354.9	359.9

CAPITAL	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91

REVENUE	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91

FUNDING : (Thousands of Dollars)

GENERAL FUND		331.9	337.7	354.7	354.9	359.9
FEDERAL FUNDS						
OTHER						
TOTAL	0	331.9	337.7	354.7	354.9	359.9

POSITIONS :

FULL-TIME	0	3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Judy Knight, Director  
 Division: Administrative Services

Phone: 465-2720  
 Date: 02/06/86

Approved by Commissioner: Jim Robison  
 Agency: Labor

Date: 02/06/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

This legislation requires an annual resident hire report and other economic information for this department to make the determinations required by various sections of this bill. The assumptions are as follows:

1. An annual resident hire report would be completed by January 31 each year beginning in 1987.
2. On-going collection of occupational titles from employers, and subsequent computer matching to determine residency status.
3. Occupational information would be a primary feature of the annual report beginning in 1988, permitting more specific identification of the effect of nonresident employment on resident unemployment in Alaska. The provision of occupational titles assumes the department will continue to receive funding at the FY 86 level to provide core occupational information programs.
4. The collection of occupational titles from firms will be phased in over a three year period. Industries identified as having the highest dollar payments to nonresidents in 1984 would be targeted first:

First Year-construction, oil and gas mining, and food processing;

Second Year-all first year industries plus business services, local government, miscellaneous services, eating and drinking places, air transportation, and state government; and

Third Year-all industries.

5. In addition to the occupational information, reporting of the residency status by industry and area would be necessary.
6. Section 36.10.170 (b)(3) would require special extraction of ZIP codes for all applicants of the Permanent Fund Dividend. We assume that the Department of Labor will be able to obtain that information from the Department of Revenue for further computer matching and conversion to census areas.
7. The department will be unable to obtain access to voter registration files.
8. No survey will be conducted to obtain information on a broader definition of unemployment by census area because the costs would be extremely high. This would mean no substantiation of 36.10.005 (f).
9. Substate average family income (36.10.160 (b)(1)) is not available except from each decennial census. No attempt to prepare these estimates has been included into this fiscal note.
10. All minority demographic and economic information, except that required from contractors on state funded construction projects, will be derived from the decennial census. No costs are included for this in the fiscal note.

Position Title <b>Labor Economist II</b>			No. of Positions	Rate/Step	Range/Unit	Gov.	Approved	Drapp																																																															
Time Status <b>PFT</b>	Staff Months <b>12.0</b>	RP Number	Location <b>Juneau</b>	Election District	Leg.																																																																		
<b>Justification</b>																																																																							
This position will have primary responsibility for the analysis of data and preparation of the annual resident hire report. Specifically the duties would include:																																																																							
<ol style="list-style-type: none"> <li>1. Coordinate the collection and monitor the validity of relevant resident hire related statistics from other agencies including the Department of Revenue and the Division of Labor Standards and Safety.</li> <li>2. Coordinate the updating and crossmatching of resident hire related data files on the main-frame computer with the analyst programmer.</li> <li>3. Analyze microcomputer resident hire data base to generate resident hire related tables and reports. The reports will include data relating to occupational displacement of nonresidents by census area and other related economic statistics associated with issue of resident hire.</li> <li>4. Supervise the Statistical Clerk that will prepare the basic resident hire data tables for the report.</li> <li>5. Prepare the annual resident hire report.</li> </ol>																																																																							
Contractual services costs include phone, training, equipment lease and maintenance, and other miscellaneous items.																																																																							
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Request For  
New Position

Agency Labor  
 BRU Administrative Services  
 Component Special Services

Page \_\_\_\_\_ of \_\_\_\_\_  
Revised Date \_\_\_\_\_

FY 87

Position Title <b>Statistical Clerk</b>			No. of Positions <b>2</b>	Range/Step <b>BB</b>	Unit <b>GG</b>	Gov.	Appov.	Disapp																																																											
Time Status <b>PFT</b>	Staff Months <b>12.0</b>	RP Number	Location <b>Juneau</b>		Election District	Leg.																																																													
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**Request For  
New Position**

Agency Labor  
 BRU Administrative Services  
 Component Special Services

Page      of       
 Revised Date     

**FY 87**

STATE OF ALASKA 1986 LEGISLATIVE FISCAL NOTE

**REQUEST** Page 1 of 2

Bill/Resolution No. : SS HB 466  
 Title : "An Act relating to Alaskan resident employment preference..."  
 Sponsor : Boucher, Szymanski, et al  
 Requestor : Labor and Commerce  
 Date of Request : 02/05/86

Revision Date : \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected : Labor  
 BRU : Labor Standards and Safety  
 Components : Wage and Hour

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		114.3	101.7	105.3	110.0	114.4
SUPPLIES						
EQUIPMENT		46.5	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANECUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>161.3</b>	<b>101.7</b>	<b>105.3</b>	<b>110.0</b>	<b>114.4</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING : (Thousands of Dollars)**

GENERAL FUND	0	161.3	101.7	105.3	110.0	114.4
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0</b>	<b>161.3</b>	<b>101.7</b>	<b>105.3</b>	<b>110.0</b>	<b>114.4</b>

**POSITIONS :**

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

**ANALYSIS :** Attach a separate page if necessary

See attached

Prepared by: Bob Bacolas, Director  
 Division : Labor Standards and Safety  
 Approved by Commissioner : Jim Robison  
 Agency : Labor

Phone : 465-4870  
 Date : 02/20/86  
 Date : 02/06/86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Currently the Division of Labor Standards and Safety (LS&S) receives weekly certified payroll documents for all public construction projects as required in AS 36. Under this bill the department will use the public construction certified payroll forms as source documents to determine the legal domicile of persons employed on public construction projects. In certain cases the department will also be scrutinizing the ethnic makeup of the employees to determine the utilization of minorities.

These certified payroll documents are now collected and summarized manually by Labor Standards and Safety. This fiscal note will fund the automation of the certified payroll documents. This will allow access by the Research and Analysis section of the department to make residency determinations. Research and Analysis will in turn provide to Labor Standards and Safety lists of employees with incomplete or questionable data regarding their residency status. Labor Standards and Safety will then resolve the questionable items through personal contact with employees and employers by using existing investigative staff.

Specific costs are as follows:

Contractual Services

Professional fees for data entry	80.0
DP Applications/programming development (one time only \$17.0)	20.0
DP Operations	3.0
DP Telecommunications	.8
Communications (phone and postage)	5.0
Equipment repair and maintenance	5.0
Other miscellaneous	<u>1.0</u>
	114.8

Equipment (one time only)

4 workstations	21.6
3 printers	5.4
3 modems	15.0
75 Mega byte disk pack	1.5
Telecommunication software	<u>3.0</u>
	46.5

Total 161.3

This bill will require automating the certified payroll information. It will be necessary to develop the programming for automation. Ongoing enhancements and maintenance of the programming will also be required. A contract for data entry services will be executed. There will be an equipment upgrade of the existing data processing equipment in the Labor Standards and Safety Division. The equipment will be a one time purchase. Other costs are projected to future years at 4% inflation.

# Alaska State Legislature

POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4931

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(907) 349-2192



CHAIRMAN  
Special Committee on  
Telecommunications

MEMBER  
Labor and Commerce  
State Affairs  
Finance—Subcommittee Administration

Representative H. A. "Red" Boucher

## MEMORANDUM

To: All Members, House Judiciary Committee

From: Representative H.A. "Red" Boucher

Date: March 24, 1986

Subject: Suggested additional changes to Proposed CSSSHB 466 (Jud) (version 2, 3/19/86 by Cramer)

After conferring with Deputy Attorney General Ron Lorenson, as sponsor of HB 466 I would like to propose the following additional amendments to the latest draft version of the bill:

1) At the end of Section 36.10.150 (a)--page 4, line 7), add the phrase "The preference applies to worker hours on a craft by craft basis."

Through oversight, this line was omitted from this section, although it appears in the sections on preference for economically disadvantaged minority residents, and for residents of economically distressed areas.

2) Insert in Section 36.10.210 (page 8, line 3) immediately following "(a)," : Following a hearing on the matter, and in addition to any criminal penalties imposed, etc.

This would thus require the Department to hold some kind of hearing process on the matter before they could impose a civil penalty.

3) In Section 36.10.210 (b), delete this entire subsection and insert the following:

(b) The penalty for a person who falsely certifies eligibility for an employment preference is not more than \$400 for each instance of false certification and forfeiture of all future rights to eligibility for an employment preference under this chapter.

(c) The penalty for an employer who falsely certifies that persons employed as residents under an applicable employment preference are eligible for the preference is not

more than \$2,000 for each of the first five instances of false certification. The penalty for the sixth false certification made by an employer and for each false certification thereafter is at least \$2,000 and not more than \$4,000.

This would make clear who would pay what level of fine. As the draft currently reads, a person can be an individual or a corporate entity, so we need to make it clear that for the purposes of the civil penalty, an individual is subject to a lesser fine than a corporate entity.

# Alaska State Legislature

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Special Committee on  
Telecommunications

MEMBER  
Labor and Commerce  
State Affairs  
Finance—Subcommittee Administration

## Representative H. A. "Red" Boucher

### MEMORANDUM

To: All Committee Members  
House Judiciary Committee

From: Rep. H.A. "Red" Boucher  
Sponsor, HB 466

Date: March 21, 1986

Subject: Proposed CS SSHB 466 (Jud)

Attached please find a proposed CS for SSHB 466 (Jud), version 2, dated March 19, 1986; along with a section analysis provided by Teresa Cramer.

Version one of the proposed CS incorporates requested changes in the bill requested by the Department of Labor in their March 4 memo; by the Department of Law in Loreson's February 26 memo; and in response to issues raised at previous Judiciary Committee hearings.

Version two incorporates additional changes that were made after further consultation with the Dept. of Labor and with Senator Josephson's office, in an attempt to make the language of HB 477 and SB 271 more compatible and consistent.

The Sectional Analysis basically compares the original SSHB 466 that came out of House Labor and Commerce Committee with the first version and second version of the proposed CS. Since the second version contains all of the changes from the first version plus some additions, I have only attached the second version for simplicity's sake.

I believe that what we have in this proposed draft is the best bill that we can craft to balance out the various administrative, statistical and constitutional needs that have to be met. I would appreciate it if you would read this bill over carefully, and if you have any objections or concerns, to contact my office or the Committee chair before next the scheduled hearing on the bill this Monday, and we will try to accommodate them. It is imperative that this important piece of legislation is acted on as rapidly as possible; and I ask the Committee member's assistance and cooperation in acting on the bill as rapidly as possible.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 21, 1986

SUBJECT: Current versions of HB 466  
TO: Representative Red Boucher  
FROM: Teresa B. Cramer *JBC*  
Legislative Counsel

You have requested a memorandum pointing out the differences between SSHB 466 and Versions 1 and 2 of CSSSHB 466 (Judiciary). Version 1 is dated 3/7/86. Version 2 is dated 3/19/86.

COMPARING SSHB 466 WITH CSSSHB 466 (JUDICIARY), VERSION 1

Version 1 rewrites some of the language in the findings found in sec. 2 of the bill. The changes are not substantive.

Version 1 combines Sec. 36.10.140(a) and (b) for clarity and adds a new subsection (b), requiring employers to certify that persons employed as residents are eligible for the preference.

In Secs. 36.10.150, 36.10.160, and 36.10.170, creating three different resident hiring preferences, Version 1 changes the effective date of the preference from "during the two fiscal years following a determination" to "immediately and for the two fiscal years following a determination."

Also in those sections, in the findings that the commissioner must make to impose the preference, the finding relating to the employment of workers who are not residents is changed. The phrase "of the area" is deleted from the following

employment of workers who are not residents of the area is a peculiar source of the unemployment of residents of the area. (Emphasis added.)

In Sec. 36.10.160(b)(1), Version 1 deletes reference to the

average family income being below the adjusted poverty guideline of the federal Department of Health and Human Services.

Version 1 changes the definition of minority person found in Sec. 36.10.170(c).

Version 1 adds criminal penalties, Sec. 36.10.190, for making false statements concerning eligibility for employment preferences under the chapter.

Version 1 adds a definition of "resident" to sec. 6 of the bill, based on the definition of residency found in Title 1.

Version 1 adds sec. 10 which applies the Act to any contracts that include a provision requiring compliance with laws regarding resident hire that take effect during the term of the contract. It also corrects the effective date for potential the repeal of AS 36.10.010 to reflect the date by which a writ of certiorari must be filed.

#### COMPARING VERSION 1 AND VERSION 2 OF CSSH 466 (JUDICIARY)

In Sec. 36.10.140, Version 2 requires that a person "certifies eligibility" for the preference, making clear that the department is not intended to run a registration program for the preference.

Version 2 adds a new subsection (b) to 36.10.150 to require the commissioner of labor to determine the amount of work that must be performed on a project by eligible qualified residents. This replaces the requirement in SSHB 466 and Version 1 that all work be performed by residents.

In secs. 36.10.150, 36.10.160, and 36.10.170, to the finding concerning the contribution that unemployment makes to social or economic problems, Version 2 requires that the commissioner find that the lack of employment has contributed to serious social or economic problems.

In Sec. 36.10.160(b)(1), Version 2 permits the commissioner to find that the per capita income of residents is less than 90 percent of the U.S. per capita income as an alternative to finding that the unemployment rate exceeds the national rate by at least 5 percentage points.

Version 2 adds a new Sec. 36.10.190, requiring employers to

Representative Red Boucher  
Page 3  
March 21, 1986

report as required by the commissioner of labor. It also  
adds a section imposing civil penalties, Sec. 36.10.210.

If I may be of further assistance, please advise.

TC:mkr  
m4/033

# STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

## DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P.O. BOX 1149  
JUNEAU, ALASKA 99802  
PHONE: (907) 465-2700

March 4, 1986

The Honorable H. A. "Red" Boucher  
House of Representatives  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Re: SSHB 466

Dear Representative Boucher:

In the course of reviewing SSSB 271 (Senator Josephson's local hire bill on natural resource projects), my staff has made a number of additional suggestions and comments regarding SSHB 466 which I would like to bring to your attention.

From an administrative standpoint, the Department of Labor would like to see SSHB 466 and SSSB 271 parallel each other as closely as possible, to avoid having to administer two different sets of preferences and procedures on local hire. While there are some differences between the public construction and the natural resource industries, we believe that a single, unified set of procedures, as well as a uniform definition of "residency", would not only be more efficient to administer but would also avoid confusion by the covered industries and the public.

In addition to the comments and language changes recommended in our previous position paper on SSHB 466 dated February 24, 1986, we offer the following comments and suggestions (which we have also made on SSSB 271):

1. In evaluating how the registration process would work under SSHB 466, the Department believes that the most efficient method of establishing a person's eligibility for a hiring preference would be through a self certification procedure similar to that used by the Department of Revenue in its administration of the permanent fund dividend program. Certification of eligibility by individual applicants and their prospective employers, under rules established

March 4, 1986

by the department, would greatly reduce the state's registration and processing burden and would also make registration easier for residents in rural areas. Each applicant would complete, under penalty of perjury, an application form developed by the Department; the prospective employer would then certify compliance with the eligibility criteria much the same way that employers previously certified the residency of their employees on public construction under AS 36.10.010. Any discrepancies or questions could be referred to the Department for auditing. The Department could thus concentrate its resources to monitoring compliance on an audit/exception basis similar to the permanent fund dividend program. In addition, stiff penalties should be included for persons making knowingly false statements in certifying eligibility for an employment preference.

Accordingly, we suggest that Sec. 36.10.140 be rewritten as follows:

- (a) To be eligible for an employment preference under this chapter, a person must register as required by the Department of Labor.
- (b) A person is eligible for an employment preference under this chapter if the person applies on a form approved by the Department, 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.
- (c) An employer subject to resident hiring requirements under this chapter shall certify that persons employed on projects subject to an employment preference are eligible for such preference in accordance with this chapter.

March 4, 1986

2. On page 4, line 29, delete "the average annual family income of residents of the area is below the adjusted poverty guidelines of the federal Department of Health and Human Services or that . . . ." Because average annual family income figures are determined only every 10 years while the federal poverty guidelines are updated annually, a comparison of the two measures would not be valid statistically.
  
3. Sec. 36.10.150(b)(4), Sec. 36.10.160(b)(3), and Sec. 36.10.170 (b)(4) all require a determination that the "employment of workers who are not residents of the area is a peculiar source of unemployment of residents of the area." (emphasis added) This language would require the Department to determine the impact of out-of-state workers on a local area but also the impact of other Alaskans who are not residents of the area. Such formulation would go beyond the parameters of our recent study and would significantly increase research and analysis costs, although the charge may be desirable from a legal standpoint. If at all possible, the Department would recommend deleting the term "of the area" from page 4, line 17; page 5, line 7; and page 5, line 28.
  
4. In keeping with our proposed system of self-certification by persons applying for an employment preference, we believe that SSHB 466 ought to contain severe penalties for making a knowingly false statement on application or certification forms. Perhaps the best place to include penalties would be in a new section 36.10.190 as follows:

Sec. 36.10.190. PENALTIES. (a) A person who makes a false sworn statement in connection with a certification of eligibility for an employment preference under this chapter is subject to criminal prosecution for perjury as provided in AS 11.56.200.

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

March 4, 1986

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

We believe that the inclusion of these additional items will improve our administration of SSHB 466. If you have any questions or other concerns regarding the bill please feel free to contact me or my staff.

Sincerely,

  
for Jim Robison  
Commissioner

cc: House Judiciary Committee Members  
Senator Joe Josephson  
Ron Lorensen, Deputy Attorney General  
Terry Cramer, Legislative Counsel

**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

February 28, 1986

The Honorable Arliss Sturgulewski  
Chairman, Senate Resources Committee  
Alaska State Legislature  
P. O. Box V  
Juneau, AK 99811

Re: SSSB 271, relating to  
certain natural resource  
projects on state land

Dear Senator Sturgulewski:

I am responding to your request of February 25, 1986 for our comments regarding SSSB 271, relating to employment preferences on certain natural resource projects on state land.

As you know, the Alaska Supreme Court recently issued its decision in Francis v. Robison, holding the state's resident employment preference on public construction projects (AS 36.10.010) invalid under the privileges and immunities clause of the U.S. Constitution. In its decision, the court identified two fundamental problems with the existing law:

1. In the court's view, unemployment among residents, even where it is the result of non-residents being hired in Alaska, is not a permissible justification for a resident hire clause. The court considers this to be impermissible economic discrimination. Before a resident preference can be upheld, there must be a substantial justification beyond the fact that Alaskans are unemployed. The court suggests (but does not decide) that a preference implemented "in order to stave off an economic or social collapse" might be permissible.

2. The scope of the preference provided by AS 36.10.010 was too broad, since it was available to Alaskans who already had jobs as well as to unemployed Alaskans.

While the provisions of SSSB 271 do address the second of these problems by extending the preference to certain "target groups" of Alaska residents (e.g. unemployed or underemployed

persons), I am concerned that it does not adequately deal with the first problem. Under the bill, the general employment preference established by proposed AS 38.45.040(b) applies whether or not it can be shown that unemployment among residents, which is caused by the hiring of non-residents, has led or threatens to lead to adverse social or economic consequences for the state or an area of the state. Also, the bill appears to provide the preference for any kind of employment activity on state land. Other than in the area of construction, there is probably not presently sufficient factual information available to support extending the preference to other employment sectors. I would recommend that both of these deficiencies be addressed.

With respect to technical changes that might improve the bill, I would offer two suggestions:

1. Under the bill as currently drafted, the special preference for economically distressed areas created by proposed AS 38.45.040(c) (p.4,1.7) is effective "during the three fiscal years following a determination by the commissioner of labor..." A literal reading of this language leads to the result that the preference will only take effect on July 1 of a particular year (the beginning of the first fiscal year following the commissioner's determination), even if the commissioner made his or her determination months earlier. Unless this result is intended, the language should be revised to make it clear that the preference takes effect immediately following a determination by the commissioner and remains in effect until the end of the third full fiscal year after that determination. Also, I would suggest reducing the period of applicability of the preference from three to two years, unless strong justification for such a long period of applicability is provided in the bill or in the legislative record.

2. Proposed AS 38.45.070(a) requires that all hearings other than those conducted by the Department of Labor under subsec. (b) are subject to the Administrative Procedure Act (AS 44.62). As the bill is presently drafted, this would mean that investigative hearings conducted by the Department of Labor under subsec. (c) would be subject to the APA. The APA procedure can be unnecessarily formal and cumbersome, particularly for hearings that are primarily investigative in nature. I would recommend that the bill be

The Honorable Arliss Sturgulewski  
Chairman, Senate Resources Committee

February 28, 1986  
Page 3

revised to exclude Department of Labor hearings under subsec. (c) from APA coverage, as well.

3. Proposed AS 38.45.100, setting out applicable definitions, contains some potentially unclear provisions:

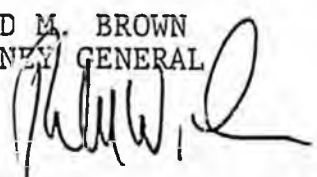
(a) The definition of "employer" can be read as applying only to persons (including affiliates, principals, contractors, etc) who are actually a party to a natural resource lease or agreement. I doubt this is the intended scope of the definition. I think this interpretation can be avoided by deleting the word "includes" on p.8, 1.5 of the bill.

(b) "Natural resource project on state land" is defined as being a contract, lease, etc. This is at least confusing since "project" usually contemplates some kind of activity, whereas a "contract" or a "lease" is just a piece of paper with words on it. I would suggest adopting separate definitions for "natural resource lease or agreement" and "project" ("or natural resource project") and then using these terms, as applicable, in the bill.

I will plan to attend your committee's scheduled hearing on SSSB 271, Friday afternoon, February 28 in order to be available should you or any committee member have any further questions.

Sincerely yours,

HAROLD M. BROWN  
ATTORNEY GENERAL

By:   
Ronald W. Lorensen  
Deputy Attorney General

RWL/ glg  
cc: The Honorable Joe Josephson  
Alaska State Legislature

Honorable Jim Robison, Commissioner  
Department of Labor

Terry Cramer, Attorney  
Legislative Affairs Agency

Bill No. Sponsor Substitute for  
Senate Bill 271

Date February 28, 1986

Title "An Act requiring resident hire on  
certain natural resource projects on  
state land; and providing for an  
effective date."

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

The Sponsor Substitute for Senate Bill 271 establishes resident hire requirements for employment on natural resource projects on state land.

*Explanation*  
Because of the beneficial impact of resident hiring on the work force and the Alaskan economy, the Department continues to strongly support the principle that qualified and available Alaska residents should be given employment preference on natural resource projects on land owned by the state. This is consistent with our view that the state should be entitled to remedy economic and social ills by giving preference to its own citizens in the development of the state's natural resources.

The sponsor substitute for SB 271 contains additional provisions which refine the employment preferences and make the bill more legally defensible. From an administrative standpoint, however, the Department would offer the following comments and recommended changes to the bill:

Sec. 38.45.020.

With respect to findings (4), (5), and (7), the Department does not have sufficient statistical information available to support any statements regarding the "trend" of nonresident employment. Our special study of nonresidents working in Alaska was essentially a one-time snapshot based on calendar year 1984. Considerable further research would have to be done before any employment "trends" could be identified and statistically supported. With respect to finding (8), although the Department's recent study identified levels of nonresident employment, wages, and unemployment benefits paid for all major industries in the state, it contained displacement information for the construction industry only. It would require additional time and resources to statistically demonstrate the displacement of Alaskan workers in natural resources or other non-construction industries.

Sec. 38.45.030.

The Department believes that the most efficient method of establishing eligibility for a hiring preference is through a certification procedure similar to that used by the Department of Revenue in its administration of the permanent fund dividend program. Certification of eligibility by individual applicants, together with verification by the prospective employer, would greatly reduce the state's registration and processing costs and would increase the accessibility of registration in rural areas. The Department could then devote its resources to monitoring compliance on an audit/exception basis, similar to the permanent fund dividend program. Stiff penalties should be added to Sec. 38.45.080 for making false statements in applying for an employment preference.

- Combine support
- working on 271 + 466
- admin pref + proc. similar
- suggest changes to streamline procedure (certification, residency)

**POSITION PAPER/Department of Labor**

Accordingly, we suggest that Sec. 38.45.030 be amended to read as follows:

(a) "A person is eligible for a hiring preference under this chapter if the person applies on a form approved by the department, 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 with a public or private employment agency or 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.

(b) An employer subject to resident hire requirements under this chapter shall certify that persons employed on natural resource projects on state land are eligible for a hiring preference in accordance with this chapter."

Sec. 38.45.040.

Assuming that the Commissioner of Labor may be lawfully delegated the broad authority to establish resident hiring requirements under subsections (a) and (b), significant costs could be saved if the department were to administer the employment preferences by geographical areas and job classifications rather than on a project-by-project basis.

On page 4, line 6, the term "hire" should be changed to "employ".

It may be clearer to organize subsections (c), (d), and (e) into a separate section, with some explanation of how the "distressed area" local preference relates to the more flexible preference described in subsections (a) and (b).

On page 4, line 18, delete "the average annual family income of residents of the area is below the adjusted poverty guidelines of the federal Department of Health and Human Services or. . . ." Average annual family income figures are only determined every ten years whereas the poverty guidelines are updated annually, so a comparison of the two would not be valid statistically.

On page 4, line 23, subparagraph (2) should be changed to read: "Employment of workers who are not residents is a peculiar source of unemployment of residents of the area." This change will make it far less expensive to compile and provide statistical information on the impact of nonresidents on employment.

Sec. 38.45.080.

Civil and/or criminal penalties should be added for willful falsification of an eligibility application or employer certification.

Sec. 38.45.100.

The definition of "resident" should be consistent across all employment preference legislation. The department recommends that the basic residency definition contained in AS 01.10.055 be set forth or cross-referenced in subparagraph (4) of this section.

APPROVED:



Jim Robison, Commissioner  
Department of Labor

# Alaska State Legislature

POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4931



CHAIRMAN  
Special Committee on  
Telecommunications

DISTRICT 10  
BOX 111038  
ANCHORAGE, ALASKA 99511  
(907) 349-2192

MEMBER  
Labor and Commerce  
State Affairs  
Finance—Subcommittee Administration

## Representative H. A. "Red" Boucher

To: Mike M. Miller, Chairman  
House Judiciary

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

Date: February 26, 1986

Subject: Hearings on HB 466 and SB 367

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.

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

February 26, 1986

The Honorable M. Mike Miller  
Chairman of House Judiciary Committee  
Alaska State Legislature  
P. O. Box V  
Juneau, AK 99811

Dear Representative Miller:

Re: SSHB 466

I am responding to a request from Hayden Kaden of your staff for our comments regarding SSHB 466, relating to Alaskan resident employment preference.

As you know, the Alaska Supreme Court recently issued its decision in Francis v. Robison, holding the state's resident employment preference on public construction projects (AS 36.10.010) invalid under the privileges and immunities clause of the U.S. Constitution. In its decision, the court identified two fundamental problems with the existing law:

1. In the court's view, unemployment among residents, even where it is the result of non-residents being hired in Alaska, is not a permissible justification for a resident hire preference under the privileges and immunities clause. The court considers this to be impermissible economic discrimination. Before a resident preference can be upheld, there must be a substantial justification beyond the fact that Alaskans are unemployed. The court suggests (but does not decide) that a preference implemented "in order to stave off an economic or social collapse" might be permissible.

2. The scope of the preference provided by AS 36.10.010 was too broad, since it was available to Alaskans who already had jobs as well as to unemployed Alaskans.

The provisions of SS HB 466 address both of these problems. Under the bill, the employment preference would only go into effect after the Commissioner of Labor has made certain findings regarding the social or economic effects of unemployment among Alaska residents. Also, the preference would only extend to certain "target groups" of Alaska residents (e.g. unemployed or underemployed persons). Creation of a constitutionally valid resident employment preference remains an elusive goal for Alaska. While there are no certainties in this area of the law, I do feel that this bill is defensible and stands a reasonable chance of being upheld if challenged in the courts.

With respect to technical changes that might improve the bill, I would offer two suggestions:

1. Under the bill as currently drafted, the preferences created by proposed AS 36.10.150-170 are effective "during the two fiscal years following a determination by the commissioner of labor...". A literal reading of this language leads to the result that a preference will only take effect on July 1 of a particular year (the beginning of the first fiscal year following the commissioner's determination), even if the commissioner made his or her determination months earlier. Unless this result is intended, the language of secs. 150(a), 160(a), and 170(a) should be revised to make it clear that the preference takes effect immediately following a determination by the commissioner and remains in effect until the end of the second full fiscal year after that determination.

2. The language of sec. 10 (p. 7, 1.29), dealing with the contracts to which the bill would apply, should be revised in light of Governor Sheffield's Administrative Order 88. I would suggest adding language along the following line to the end of the sentence: "and to contracts entered into before the effective date of this Act if the contract includes a provision requiring compliance with laws regarding the hiring of Alaska residents that might take effect during the term of the contract."

I will plan to attend your committee's scheduled hearing on SS HB 466, Wednesday afternoon, February 26, in order

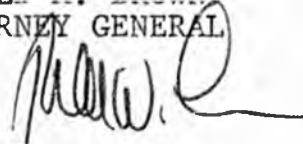
The Honorable M. Mike Miller  
Chairman of House Judiciary Committee

February 26, 1986  
Page 3

to be available should you or any committee member have any further questions.

Sincerely,

HAROLD M. BROWN  
ATTORNEY GENERAL



By: Ronald W. Lorensen  
Deputy Attorney General

RWL/me

cc: The Honorable Red Boucher  
Alaska State Legislature

The Honorable Jim Robison  
Commissioner  
Department of Labor

Arthur H. Peterson  
Assistant Attorney General  
Legislation/Regulations Section

Terry Cramer  
Legislative Legal Counsel  
Legislative Affairs Agency

Bill No. Sponsor Substitute for House Bill No. 466

Date February 24, 1986

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

Contact: Bob Landau  
465-2700  
Chuck Caldwell  
465-4500

The Sponsor Substitute for House Bill 466 would establish three new types of resident employment preferences on public construction projects to replace the current resident employment preference in AS 36.10.010 which has been found to be unconstitutional by the Alaska Supreme Court.

As the State agency charged with the administration and enforcement of resident hire preferences, the Department of Labor strongly supports the creation of these new employment preferences. The Department believes that because the new preference categories are much more narrowly focused than existing law, they stand a much better chance of being factually and legally supported in the event of a challenge. The preferences are specifically tailored to benefit only those unemployed and disadvantaged Alaskans who are most in need of employment.

Under this bill, the Department of Labor will have substantial research and enforcement responsibilities. In order to provide the necessary factual foundation to support each of the new employment preferences, the Department will have a continuing obligation to research and compile economic and statistical data on various aspects of employment and unemployment in Alaska. Because many of the criteria which would trigger application of the preferences cannot be substantiated with currently available information, the department's research staff will be required to go well beyond the bounds of its recent study on nonresidents working in Alaska.

Virtually all of the concerns noted by the Department in its earlier position paper on this bill have been addressed in the sponsor substitute. The only significant additional concern the department would raise at this time is the need to provide a clear and consistent definition of "resident" as used in the bill. The Department recommends that the basic definition of "residency" in AS 01.10.055 be used for the purposes of resident employment preferences. This definition could be easily referenced in AS 36.10.990, the definition section of the sponsor substitute; in addition, the present definition of "resident" in AS 36.95.010(5) could be repealed in section 11 of the bill.

The Department would also offer the following minor grammatical corrections and revisions to clarify certain sections of the bill:

AS 36.10.005(c) should be amended to read: "The legislature further finds that the ratio of employees on a certified payroll who did not apply for or were refused a permanent fund dividend under AS 43.23 to employees who were found eligible to receive a dividend is a reasonable but not exclusive indicator of the ratio of nonresident to resident employees on a public works project."

**POSITION PAPER/Department of Labor**

February 24, 1986

AS 36.10.005(d) should be amended to read: "When determining the ratio of nonresident to resident employees working on a public works project, the commissioner may consider information gathered from on-site surveys of public works projects, including individual interviews, questionnaires, examination of the state of registration of vehicles owned or operated by employees, and other information acquired from inspection of certified payrolls."

AS 36.10.005(e) should be amended to read: "The legislature finds that the following factors are reasonable but not exclusive indicators of the ratio of nonresident to resident employees in the state:

- 1) The ratio of applicants for unemployment insurance who list an out-of-state residence to applicants who list residences in the state;
- 2) The ratio of employees who are subject to unemployment insurance coverage and who did not apply for or were denied a permanent fund dividend to employees who were found eligible for a dividend."

Two fiscal notes are attached; one from the Administrative Services Division and one from the Labor Standards and Safety Division.

APPROVED:



Jim Robison, Commissioner  
Department of Labor

**STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date : 2/10/86

**REQUEST**

Bill/Resolution No. : SS HB 466  
 Title : "An Act relating to Alaska  
 resident employment preference..."  
 Sponsor : Boucher, Szymanski, ET al  
 Requestor : Labor & Commerce  
 Date of Request : 02/05/86

**FISCAL DETAIL**

Agency Affected : Labor  
 BRU : Administrative Services  
 Components : Special Services

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		108.5	108.5	108.5	108.5	108.5
TRAVEL						
CONTRACTUAL		218.2	223.5	246.2	240.4	251.2
SUPPLIES		1.2	1.2	1.3	1.3	1.4
EQUIPMENT		4.0	.8	.9	.9	1.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>331.9</b>	<b>334.0</b>	<b>356.9</b>	<b>351.1</b>	<b>362.1</b>

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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**FUNDING : (Thousands of Dollars)**

GENERAL FUND		331.9	334.0	356.9	351.1	362.1
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0</b>	<b>331.9</b>	<b>334.0</b>	<b>356.9</b>	<b>351.1</b>	<b>362.1</b>

**POSITIONS :**

FULL-TIME	0	3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Prepared by : Judy G. Knight, Director Phone : 465-2720  
 Division : Administrative Services Date : 2/10/86

Approved by Commissioner : Jim Robison Date : 2/10/86  
 Agency : Labor

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SS HB 466

This legislation requires a resident hire report and other economic information for this department to make the determinations required by various sections of this bill. The assumptions are as follows:

1. A resident hire report would be completed biennially. The first report will be issued January 31, 1987.
2. On-going collection of occupational titles from employers, and subsequent computer matching to determine residency status.
3. Occupational information would be a primary feature of the annual report beginning in 1988, permitting more specific identification of the effect of nonresident employment on resident unemployment in Alaska. The provision of occupational titles assumes the department will continue to receive funding at the FY 86 level to provide core occupational information programs.
4. The collection of occupational titles from firms will be phased in over a three year period. Industries identified as having the highest dollar payments to nonresidents in 1984 would be targeted first:

First Year - construction, oil and gas mining, and food processing;

Second Year - all first year industries plus business services, local government, miscellaneous services, eating and drinking places, air transportation, and state government; and

Third Year - all industries.

5. In addition to the occupational information, reporting of the residency status by industry and area would be necessary.
6. Section 36.10.170 (b)(3) would require special extraction of ZIP codes for all applicants of the Permanent Fund Dividend. We assume that the Department of Labor will be able to obtain that information from the Department of Revenue for further computer matching and conversion to census areas.
7. The department will be unable to obtain access to voter registration files.
8. No survey will be conducted to obtain information on a broader definition of unemployment by census area because the costs would be extremely high. This would mean no substantiation of 36.10.005 (f).
9. Substate average family income (A.S. 36.10.160 (b)(1)) is not available except from each decennial census. No attempt to prepare these estimates has been included into this fiscal note.
10. All minority demographic and economic information, except that required from contractors on state funded construction projects, will be derived from the decennial census. No costs are included for this in the fiscal note.

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SS.HB 466

The contractual services costs are detailed as follows:

<u>Description</u>	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u>	<u>FY 90</u>	<u>FY 91</u>
Key entry	\$ 40.0	\$ 60.0	\$ 62.0	\$ 64.0	\$ 66.0
DP operations	120.0	135.0	150.0	153.0	156.0
DP applications	30.0	4.5	4.7	4.9	5.1
Printing	4.5	0	4.5	0	5.0
Phone (Toll service)	12.0	12.5	13.0	6.0	6.2
Equipment lease	8.0	8.3	8.7	9.0	9.4
Equipment maintenance	.8	.8	.9	.9	.9
Training, shipping, & misc.	2.9	2.4	2.4	2.6	2.6
	<u>\$218.2</u>	<u>\$223.5</u>	<u>\$246.2</u>	<u>\$240.4</u>	<u>\$251.2</u>

Most ongoing costs are increased each year @4% inflation. Printing is budgeted biennially.

**STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date : 2/11/86

**REQUEST**

Bill/Resolution No. : SS HB 466  
 Title : "An Act relating to Alaskan  
 resident employment preference..."  
 Sponsor : Boucher, Szymanski, et al  
 Requestor : Labor and Commerce  
 Date of Request : 02/05/86

**FISCAL DETAIL**

Agency Affected : Labor  
 BRU : Labor Standards and Safety  
 Components : Wage and Hour

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		114.8	101.7	105.8	110.0	114.4
SUPPLIES						
EQUIPMENT		46.5	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>161.3</b>	<b>101.7</b>	<b>105.8</b>	<b>110.0</b>	<b>114.4</b>

CAPITAL						
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REVENUE						
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**FUNDING : (Thousands of Dollars)**

GENERAL FUND	0	161.3	101.7	105.8	110.0	114.4
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0</b>	<b>161.3</b>	<b>101.7</b>	<b>105.8</b>	<b>110.0</b>	<b>114.4</b>

**POSITIONS :**

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

**ANALYSIS :** Attach a separate page if necessary

See attached

Prepared by: Bob Bacolas, Director  
 Division : Labor Standards and Safety

Phone : 465-4870  
 Date : 2/11/86

Approved by Commissioner: Jim Robison  
 Agency : Labor

Date : 2/11/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SS HB 466

Currently the Division of Labor Standards and Safety (LS&S) receives weekly certified payroll documents for all public construction projects as required in AS 36. Under this bill the department will use the public construction certified payroll forms as source documents to determine the legal domicile of persons employed on public construction projects. In certain cases the department will also be scrutinizing the ethnic makeup, of the employees to determine the utilization of minorities.

These certified payroll documents are now collected and summarized manually by the Division of Labor Standards and Safety. This fiscal note will fund the automation of the certified payroll documents. This will allow a more timely determination of residency status of persons employed on public construction projects. This automation will also assist in providing a list of employees with incomplete or questionable data. The existing investigative staff will then resolve the questionable items throughly personal contact with employees and employers.

Reports will be developed for the Research and Analysis Division to allow them to do crossmatch reviews with other data sources (e.g. Permanent Fund Dividend).

Specific costs are as follows:

## Contractual Services

Professional fees for data entry	80.0
DP Applications/programming development (one time only \$17.0)	20.0
DP Support (misc. chargeback)	3.0
DP Telecommunications	.8
Communications (phone and postage)	5.0
Equipment repair and maintenance	5.0
Other miscellaneous	1.0
	<u>114.8</u>

## Equipment (one time only)

4 workstations	21.6
3 printers	5.4
3 modems	15.0
75 Mega byte disk pack	1.5
Telecommunication software	3.0
	<u>46.5</u>
Total	161.3

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SS HB 466

A contract for data entry services will be required for entry of all payroll records into the new automated system.

Equipment upgrades and improved telecommunication links between Juneau, Fairbanks and Anchorage will allow online review and audit of certified payroll data in each location. The equipment will be a one time purchase. Other costs are projected to future years at 4% inflation.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 18, 1986

SUBJECT: Sectional analysis of SSHB 466  
TO: Representative Red Boucher  
FROM: Teresa B. Cramer *TBC*  
Legislative Counsel

You have requested a sectional analysis of SSHB 466, relating to Alaskan resident employment preferences.

Section 1 sets out the legislature's purpose for the bill.

Section 2 adds several subsections to the findings of fact that already exist in statute concerning the need for resident preference in employment. Subsection (c) addresses how to determine the ratio between residents and nonresidents on a project. Subsection (d) permits the commissioner to consider information gathered from the job site. Subsection (e) addresses how to determine the ratio between residents and nonresidents working in the state as a whole. Subsection (f) addresses the unreliability of unemployment statistics as a measure of Alaskans who are unable to find work.

Section 3 requires the Department of Labor to assist employers to locate qualified, eligible, employees and permits the department to approve the hiring of residents who are not eligible for a preference and nonresidents if there are insufficient qualified, eligible, available residents.

Section 4 requires the commissioner of labor to adopt regulations encouraging and requiring local hire to the maximum extent permitted by law.

Section 5 adds new sections to the chapter on employment preferences.

Sec. 36.10.130 requires the attorney general and the commissioner of labor to report biennially on employment in the state and to recommend methods to increase resident hire.

Sec. 36.10.140 requires registration before a person is eligible for a resident hiring preference and limits the preference to residents who are unemployed, underemployed or marginally employed, or graduates of job training programs who have not found appropriate work.

Secs. 36.10.150 - 36.10.170 establish various preferences for residents eligible under sec. 36.10.140. In all three, the preferences last for two years and apply to worker hours on a craft-by-craft basis on projects included in AS 36.10.180. In each case, before imposing the preference on a project in the area, the commissioner must find that workers who are not residents of the area are a peculiar source of the unemployment of area residents.

Sec. 36.10.150 establishes a resident hiring preference for underemployed areas of the state. The preference requires that work on a public works project wholly or partially sited within the area be performed by residents of the area. Subsection (b) sets the criteria that an economic region must meet to be considered an underemployed area. The commissioner may find that the state as a whole is an underemployed area.

Sec. 36.10.160 establishes a hiring preference for economically distressed areas of the state. The preference requires that 50 percent of the employment on a project wholly or partially sited within the area be performed by residents of the area. Subsection (b) sets the criteria that an area must meet to be considered an economically distressed area.

Sec. 36.10.170 establishes a preference for economically disadvantaged minority residents. The preference requires that 25 percent of the employment on a project wholly or partially sited within the area be performed by minority residents of the area. Subsection (b) sets the criteria for the preference. It applies to census areas where the civilian minority population exceeds the average civilian minority population for the state, civilian minority resident unemployment is twice as high as nonminority unemployment in the census area or the civilian minority population has suffered past economic discrimination, and

Representative Red Boucher  
Page 3  
February 18, 1986

the economic disadvantage of minority residents has contributed to social or economic problems. Subsection (c) defines who is considered a member of a minority.

Sec. 36.10.180 defines the scope of projects to which the preferences under AS 36.10.150 - 36.10.170 apply. Subsection (a) applies the preference to the same kinds of projects covered by AS 36.10.010 and to grants to a municipality, a named recipient, and to an unincorporated community. Subsection (b) establishes that the preferences under AS 44.33.285 for residents of an area impacted by an economic disaster supercede the preferences under secs. 36.10.150 and 36.10.160. Subsection (c) directs the commissioner of labor to define the boundaries of regions and areas.

Sec. 36.10.900 is consistent with general state severability clause at AS 01.10.030 and requires that if a portion of the chapter is held invalid, then the rest of the chapter remains in force.

Sec. 39.10.990 defines "qualified."

Section 6 adds a definition of "craft" to the public construction title.

Sections 7 - 9 permit the Department of Labor to require grant recipients to comply with these resident hire requirements for employment generated by the grant.

Section 10 applies the Act to contracts entered on or after the effective date of the Act.

Section 11 repeals an obsolete definition of "qualified."

Section 12 repeals the current resident preference law.

Section 13 makes section 12 effective on the date that litigation on the current resident preference law is resolved.

Section 14 is an immediate effective date for the rest of the Act.

If I may be of further assistance, please advise.

TC:mkr  
M3:043



# Alaska State Legislature

## House

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

January 31, 1986

Representative Red Pouch  
P.O. Box V  
Juneau, Alaska 99811

Dear Red,

As you know, I have in the past and continue to favor one comprehensive local hire bill over several piecemeal bills. With this in mind, I am going to attempt to amend the best piece of legislation offered to date. I will ask Labor & Commerce to amend HB466 in accordance with the attached.

I'd appreciate your support.

Yours truly,

A handwritten signature in cursive script that reads "Marco".

Marco A. Pignalberi  
MAP: drb

cc: Mike Navarre

A M E N D M E N T

Offered in the HOUSE

By Pignalberi

TO: HB 466

Page 3, lines 17 - 18, delete "public works"

Page 5, line 18, delete "and"

Page 5, line 26, delete "." and insert "; and"

Page 5, after line 26, insert a new paragraph to read:

"(3) an oil or gas lease, a unitization agreement, or any renegotiation of a lease or agreement if the state is a party to the lease or agreement and the project is performed in whole or in part on state land."

# Alaska State Legislature

POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4931

DISTRICT 10  
BOX 11103  
ANCHORAGE, ALASKA 99511  
(907) 349-2192



CHAIRMAN  
Special Committee on  
Telecommunications

MEMBER  
Labor and Commerce  
State Affairs  
Finance—Subcommittee Administration

Representative H. A. "Red" Boucher

## M E M O R A N D U M

DATE: January 27, 1986  
TO: Representative H.A. "Red" Boucher  
FROM: Dave Donley, Attorney at Law  
SUBJECT: HB 466 (a bill creating an Alaskan worker employment preference) and the effect of the recent Alaska Supreme Court decision on Alaska Hire (Francis v. Robinson)

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### GENERAL COMMENTS

Alaskans have been forced to wait almost two years for our Supreme Court to decide the constitutionality of AS 36.10.010 which provided a preference to Alaska residents on 95% of the jobs on public works projects.

Unfortunately, the Supreme Court's decision in Francis v. Robison finding AS 36.10.010 unconstitutional provided almost nothing new in the form of guidance to lawmakers. The court ignored both legislators' request for advice and last year's legislative action (HB 294) without explanation.

SSHB 466 addresses virtually every concern identified by the court's majority decision in Francis.

Nothing in this area of constitutional law is an absolute but these proposals are the best yet and are clearly legally superior to any resident hire law that has ever been tested or for that matter, even adopted, in the nation.

### ANALYSIS OF THE IMPACT OF FRANCIS v. ROBISON ON HB 466

- I. The Supreme Court accepted without comment the Superior Court's findings of fact.
  - A. Testimony on HB 294 (1985) and HCR 20 (1985) clearly contradicts these 1984 findings by the Superior Court.
  - B. The decision ignores existence of HB 294 -- makes no comment at all on its significance and effect or lack of it.

C. HB 294's backup and the recent DOL study appear to provide part of the factual basis the court says is necessary in the Francis decision. Additional findings based on evidence of social ills caused by resident unemployment need to be included in HB 466.

D. Additionally HB 466 adds new findings (page 1, sec. 2) which are designed to assist and guide the Commissioner of Labor and reviewing courts in making future fact findings.

E. Sec. 2 of HB 466 also helps identify the special employment problems of rural Alaska.

II. Resident preference law must have a substantial reason which justifies it.

A. Reason for any state mandated employment preference for residents can not be only to provide an economic advantage for residents over non-residents. Reason must be to correct a social ill or ills that result from resident unemployment.

B. The Francis decision requires "some showing that nonresidents are 'a peculiar source of evil' which state action is meant to remedy," and the Supreme Court finds this evidence lacking in the Superior Court's findings of fact.

C. The Supreme Court used the "clearly erroneous" standard for review of facts established by Superior Court. This very high standard of review prevented modification of these fact findings which, given newly available data, appear very erroneous.

D. HB 466 incorporates the "peculiar source of evil" standard as a threshold finding that must be made by Commissioner of Labor before any preference for residents goes into effect.

E. The new DOL study, HB 294 (1985), new findings of fact in HB 466 (sec.2), together with evidence of resulting social ills from resident unemployment, will create a new constitutional fact basis for the resident employment preference in HB 466.

F. Legislative public hearings are needed to carefully document evidence by testimony of specific examples of non-residents displacing residents and resulting social ills.

III. The means employed by the challenged statute must be closely related to the interests served by the statute.

A. In deciding whether discrimination bears a close or substantial relationship to the state's objective . . . the availability of less restrictive means is relevant.

B. This means the justification for legislation must not be just to give Alaskans jobs before outsiders. The reason for legislation

must be something else other than to benefit residents economically.

C. The U.S. Supreme Court, in its Camden decision recognized one possible justification for resident employment preference is to stave off grave economic and social ills.

D. High unemployment alone is not enough: HB 466 answers this issue through findings of fact (sec. 2) but possibly needs strengthening to address the strong emphasis on this concern by the court by making clear that the purpose of the legislation is to address articulated economic or social ill(s).

E. "Closely related" means the State needs to limit preference to those Alaskans who really need it.

F. HB 466 limits the preferences by requiring those Alaskans who desire a preference to register as unemployed, underemployed or as recently completing job training. HB 466 also adopts a method to target unemployment preference to those geographical areas and social groups who need it the most: preference for residents of economically distressed areas; and preference for economically disadvantaged minority residents.

#### IV. Market Regulator vs. Market Participant Distinction

- A. More leeway is granted states in their perception of "local evils and in prescribing appropriate cures" when they are acting in a proprietary capacity, where they are merely setting conditions on the expenditures of funds they control.
- B. The Alaska Supreme Court in Francis adopts a sliding scale as to amount of deference appropriate to the state as a market participant. Little deference is appropriate when state action (discrimination against non-residents) is far reaching and greater deference is appropriate when state action is narrow in focus.
- C. This implies that percentages or the scope of preferences may be important. HB 466 handles this by incorporating Rep. Gruenberg's proposal for a "judicial decisions effect" savings clause.
- D. This distinction also implies that it is important to separate contracts where the state is a signatory vs. others. HB 466 does this by including separate severable sections to cover expenditures by grantees and subcontractors.

#### V. Level of Scrutiny: "Low, intermediate and high"

An "intermediate level" of scrutiny is adopted under the facts found by the Superior Court in Francis. At this intermediate level of scrutiny classification/discrimination in favor of residents may be made only for "important" purposes and the

means used to accomplish them must be "fairly and substantially related" to achievement of those purposes.

#### VI. Miscellaneous

- A. Distinguishes the U.S. Supreme Court's Camden decision -- Alaska economy growing while New Jersey's was not.
- B. Disagrees with Wyoming's Supreme Court's Antonich decision reasoning which upheld Wyoming's resident preference law.
- C. The Court says Alaskan unemployment is a rural and not an urban problem (HB 466 takes this into account in economic distressed area preference and disadvantaged minority preference.)

#### VII. The Concurring Opinion by Justice Burke

- A. Justice Burke's solo concurring opinion cites the Alaska Constitution, Art. I, Sec. 1: "that all persons are equal and entitled to equal rights, opportunities, and protection under the law" as prohibiting a resident employment preference.
- B. If necessary an amendment to the Alaskan Constitution can be designed to answer this concern.

#### CONCLUSIONS

- 1) The Francis case decision offers some guidance to preparation of a new Alaska Hire law but not directly -- it must be carefully extracted from implication, logic and reasoning.
- 2) HB 466 already directly addresses almost every fault the court found with the old law. With some careful fine tuning, HB 466 can cover every concern of the court except that raised by the concurring opinion regarding the Alaska Constitution.
- 3) A careful legislative process is needed to do this form of legislation correctly. Findings of fact must be substantiated on the record by testimony and/or evidence.
- 4) Additional severable sections may be added to HB 466 to cover jobs on state-owned lands based on the courts reasoning.



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

ADMINISTRATIVE ORDER NO. 88

Pursuant to my authority as Governor under article III of the Alaska Constitution, I find and direct as follows:

1. The historical and continuing high rate of unemployment among Alaska residents poses serious social and economic consequences that are chronic in nature. These consequences include, but are certainly not limited to, high rates of alcoholism, poverty, broken families, violent crimes, and personal and commercial insolvencies and bankruptcies.

2. A significant and contributing factor to this high rate of unemployment, particularly in certain industries such as construction, is the hiring by employers of non-resident workers, even though resident workers are available and qualified to perform the work.

3. The Alaska Supreme Court's recent decision in Francis v. Robison, No. 3011, January 17, 1986, held the state's present resident hire law (AS 36.10) to be unconstitutional and placed significant limitations on the state's ability to provide for resident hiring preferences.

4. The Alaska Legislature is presently considering a number of bills that would provide for certain hiring preferences for Alaska residents or targeted groups of Alaska residents. However, these measures might not be enacted and take effect until late in the Spring of 1986.

5. A number of state-funded public works projects will be put out to bid and may be awarded before the effective date of any new legislation that might be enacted to provide for certain hiring preferences for Alaska residents.

6. In order to maximize the coverage and benefits of any new resident hire legislation that might be adopted, it is in the public interest to ensure that all state-funded public works construction projects awarded and after the date of this administrative order and before the effective date of any resident hire legislation that might be enacted incorporate a provision securing the contractors' agreement and commitment to comply with any applicable resident hire

legislation that might subsequently take effect during the term of the contract.

7. Consequently, I direct that language that provides substantially as follows be included in any public works bid document issued or public works contract awarded by any state agency in the executive branch after the date of this order and before the effective date of any applicable resident hire legislation that might be enacted:

Contractor shall comply with all applicable and valid laws and regulations regarding the hiring of Alaska residents now in effect or that might subsequently take effect during the term of this contract. In order to ensure that contractor's subcontractors will comply with all applicable laws and regulations regarding the hiring of Alaska residents now in effect or that might subsequently take effect, contractor shall include in its contracts with subcontractors under this contract language that is substantially the same as the first sentence of this provision.

8. I also direct that language that provides substantially as follows be included in any grant to a municipality under AS 37.05.315 for public works, any grant to a named recipient under AS 37.05.316 for public works, and any grant to an unincorporated municipality under AS 37.05.317 for public works that is made after the date of this order and before the effective date of any applicable resident hire legislation that might be enacted:

In carrying out the provisions of this grant, grantee shall comply with all applicable and valid laws and regulations regarding the hiring of Alaska residents now in effect or that might subsequently take effect during the term of this grant. Grantee shall require its contractors for the public works carried out under this grant to comply with all applicable laws and regulations regarding the hiring of Alaska residents now in effect or that might subsequently take effect during the term of this grant. Grantee shall also

require its contractors for the public works carried out under this grant to require their subcontractors to comply with all applicable laws and regulations regarding the hiring of Alaska residents now in effect or that might subsequently take effect during the term of this grant.

This Order takes effect immediately.

DATED at Juneau, Alaska this 17<sup>th</sup> day of February, 1986.

  
\_\_\_\_\_  
Bill Sheffield  
Governor

# **Isenson Associates**

**Research Report**

## **P R E F E R E N T I A L   H I R E   L A W S : P R E C E D E N T S   a n d   I M P A C T S**

**Prepared for**

**Representative Al Adams  
Chairman**

**House Finance Committee  
Alaska State Legislature**

**By Isenson Associates**

**Researched and Written by**

**Dave Donley**

**Attorney at Law**

**December 27, 1985**

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**Appendix (the order of appended materials corresponds to the order of the summary)**

# U.S CONSTITUTION

1. **Privileges and Immunities Clause, Article IV, Sec. 2:**

"The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several States."

2. **Equal Protection Clause, 14th Amendment:**

"No state shall ...deny any person within its jurisdiction the equal protection of the laws."

3. **Commerce Clause, Article I, Sec. 8, Clause 3:**

"The Congress shall have power... to regulate commerce with foreign nations, and among the several states, and with Indian tribes."

# ALASKA LAW

## **1960 Alaska Hire Law** AS 36.10.010-.090, Employment Preference

First Alaska Hire Law, which in AS 36.10.010 required 95 per cent resident hire for "performance of contracts let by the State." AS 36.10.020-.090 included guidelines for application and enforcement of the law and a monetary penalty for noncompliance.

AS 36.10.010 was apparently enforced with varying degrees of enthusiasm over the years. Both parties in the Hicklin case went to great lengths to circumvent any discussion of AS 36.10.010 and it was never challenged. Immediately following the Hicklin decision it seems AS 36.10.010 was not enforced. Former Attorney General Wilson Condon in a June 17, 1982 opinion, File No. J66-282-82, recommended that the statute be enforced and that such enforcement decisions be made subject to "independent budgetary restraints and not doubts as to the constitutionality of the law." But the opinion opened by saying: "The Hicklin decision has caused substantial uncertainty regarding the continued validity of AS 36.10."

In 1983 SB 174 amended AS 36.10.010.

## **Alaska's 1972 "Local Hire Under State Leases" Law** Amended in 1976 AS 38.40.010 - .090

The U.S. Supreme Court in Hicklin v. Orbeck 437 U.S. 518 (1978) reversed the Alaska Supreme Court and ruled the Act [specifically AS 38.40.030 (a)] as a violation of the Privileges and Immunities Clause of the U.S. Constitution.

The Act was subsequently removed from Alaska law.

## **Alaska's 1983 "Alaska Hire Law" (SB 174)** AS 36.10.010 Employment Preference

During the 1983 legislative session in response to the White v. Mass. Council of Construction Employers case (White), 460 U.S. 204 (1983), Sen. Joe Josephson introduced SB 174 amending AS 36.10.010 (the 1960 Alaska Hire Law).

The purpose of SB 174 was to strengthen AS 36.10.010 by using the guidelines provided by the U.S. Supreme Court in the White case. The first version of SB 174, like the ordinance in the White case, required 50 per cent resident hire. A sponsor substitute, SSSB 174 raised the percentage requirement to that of the 1960 law, 95 per cent.

SSSB 174 passed the legislature with a fiscal vote providing Alaska Hire enforcement officers to the Department of Labor's budget for the first time since 1978.

### **1985 Alaska Hire Law (HB 294)**

Sec. 1 Ch. 69, SLA 1985  
Amendment of AS 36.10

Sponsored by Rep. Red Boucher, this legislation added legislative findings of fact, a statement of purpose and a statement of State policy regarding Alaska Hire to the existing 1983 law.

HB 294 incorporated case law on the subject of local hire which had occurred since passage of the 1983 law (including Wyoming v. Antonich and Camden).

HB 294 contained a clause making its effect retroactive to the date of passage of the 1983 law.

Based on HB 294's improvements to the 1983 law, the Attorney General's office entered into a settlement agreement in the Francis case which would have allowed the state to continue to enforce AS 36.10.010 requiring Alaska Hire. The Alaska Supreme Court refused to allow this settlement agreement.

### **Drafting History of HB 294 (1985)**

Memorandum from Dave Donley to Rep. Max Gruenberg suggesting HB 294 and HB 295, February 24, 1985.

Letter from Deputy Commissioner of Labor Bob Landau to Rep. Red Boucher re: HB 294 suggesting terminology change from "in-migration" to "influx," May 3, 1985.

Memo from Dave Donley to Rep. Red Boucher suggesting minor changes in HB 294, May 1, 1985.

Memo from Billy Berrier, director of the division of legal services, Legislative Affairs Agency, to Rep. Red Boucher suggesting terminology change from "royalty" to "natural resources income," April 22, 1985.

Memo from Legislative Counsel Teresa Cramer to Rep. Max Gruenberg re: retroactive clause in HB 294, March 26, 1985.

Proposed letter of intent by House Judiciary Committee re: HB 294 and Committee agenda indicating letter of intent unnecessary, April 12, 1985. Comment: Clearly indicates Legislature was aware HB 294 Findings of Fact conflicted with the Francis case.

## U.S. SUPREME COURT DECISIONS

### Hicklin v. Orbeck

437 U.S. 518 (1978)

Lawsuit brought by Alaska nonresidents challenging the constitutionality of Alaska's 1972 "Local Hire Under State Leases" Act (AS 38.40.010-.090).

That Act, enacted in 1972, professedly for the purpose of reducing unemployment within the state, required that all Alaskan oil and gas leases, easements or right-of-way permits for oil and gas pipelines and utilization agreements contain a requirement that qualified Alaska residents be hired in preference to nonresidents.

The Alaska Superior Court in Hicklin v. Orbeck upheld the statute. The Alaska Supreme Court affirmed except for that part of the Act that contained a one year residency requirement, which it held invalid.

The U.S. Supreme Court reversed the Alaska Supreme Court and ruled the Act a violation of the Privileges and Immunities Clause of the U.S. Constitution. That clause places the citizens of each state upon the same footing with the citizens of other states so far as the advantages resulting from citizenship are concerned. Though the clause does not always preclude disparity of treatment when valid independent reasons exist for it, it does bar discrimination for no reason other than a person is a citizen of another state. See Toomer v. Witsell 334 U.S. 385, 396 and Mullaney v. Anderson. [342 U.S. 415 Pp. 525-526]

The Court found:

No showing was made that nonresidents were a "peculiar source of the evil" (unemployment)

The Act made no distinction between employed and unemployed Alaskans.

The Act's effects were overbroad including workers who had no connection with the State's oil and gas or the State's land.

Because oil and gas are bound for out-of-state consumption, the Commerce Clause limits such discrimination.

Comment: This decision contains many arguably racist statements commenting on the employability of Alaska's Native population.

## The Camden Case

### United Building & Construction Trades Council of Camden County and Vicinity v. Mayor and Council of City of Camden, et al

104 Court 1020, 79 L. Ed. 2d 249 (1984)

In 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, USSC 81-2110, February 21, 1984, the United States Supreme Court reversed a New Jersey Supreme Court decision. The U.S. Supreme Court held that the Privileges and Immunities Clause of Article IV of the Federal Constitution did not apply to municipal ordinances creating preferential hire for local residents.

By municipal ordinance, the City of Camden, New Jersey requires subcontractors working on city construction projects be Camden residents. The Court held that such ordinances are properly subject to the strictures 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 specified economic and social ills: 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.

The fact that a state or municipality is expending its own funds or funds it administers in accordance with the terms of a grant was stated by the Court to be a factor, perhaps a crucial factor to be considered in evaluating whether the ordinance or statute's discrimination violates the Privileges and Immunities Clause.

Comment: The 1983 Alaska Hire Act was drafted before the Camden decision and so did not benefit from the Court's guidance in the drafting process.

### Toomer v. Witsell

334 U.S. 385 (1948)

U.S. Supreme Court held that a South Carolina law requiring nonresidents to pay \$2,500 for a fishing permit that cost residents \$25 was a violation of the

Privileges and Immunities Clause of Article IV, Sec. 2. Cited by the U.S. Supreme Court in Hicklin as "the leading modern exposition of the limitations the (Privileges and Immunities) Clause places on a state's power to bias employment opportunities in favor of its own residents..." [437 U.S. at 525]

Cited by Alaska Superior Court in Hicklin as recognizing a "national resources exception" to the Privileges and Immunities Clause which it defined as "the principle that a State may prefer its residents in dealing with natural resources it owns." [565 P.2d at 169]

## The White Case

### White v. Massachusetts Council of Construction Employees

460 U.S. 204 75 L. Ed. 2d 1 (1983)

Basis for 1983 Alaska Hire Law (SB174), which amended AS 36.10.010. U.S. Supreme Court held that an executive order by the Mayor of Boston requiring 50 per cent local resident hire on all construction projects funded by city or city administered funds did not violate the Commerce Clause.

In this case the U.S. Supreme Court held that the City of Boston's resident work force preference (requiring employment of at least 50 per cent bona fide residents of Boston on construction projects funded in whole or in part by the city) did not violate the Commerce Clause of the U.S. Constitution. The Court reasoned that Boston was a market participant rather than a market regulator, entitled to favor its own citizens over others while acting in a proprietary manner. The Court noted that the record did not support a finding that the preference would have a "significant impact" on firms employing out-of-state residents.

The Court recognized the "market participant" exception to the Commerce Clause citing the Hughes and Reeves cases. The Court stated the rule as:

[W]hen a State or local government enters the market as a participant it is not subject to the restraints of the Commerce Clause. As we said in Reeves, in this kind of case there is a "single inquiry: whether the challenged 'program constituted direct State participation in the market.'"

Under White Alaska can favor its own citizens while acting as a market participant without violating the Commerce Clause. Measures that required others to favor Alaskans over out-of-state residents would be subject to Commerce Clause and Privileges and Immunities prohibitions. White and Hicklin v. Orbeck, [437 U.S. 518 (1978)]

## Hughes v. Alexandria Scrap Corporation

426 U.S. 794 (1976)

Along with Reeves Inc. v. Stake 447 U.S. 429 (1980), recognizes the "market participant" exception to the Commerce Clause. The U. S. Supreme Court held that a Maryland law requiring extra paperwork by out-of-state scrap disposers, to collect a State "bounty" for its destruction of junk cars was not a violation of the Commerce Clause. The Court stated that "[n]othing in the purposes animating the Commerce Clause prohibits a state, in the absence of congressional action, from participating in the market and exercising the right to favor its own citizens over others." [426 U.S. at 810, quoted in 75 L. Ed. 2d at 5] The Court stated the rule as follows:

[W]hen a State or local government enters the market as a participant it is not subject to the restraints of the Commerce Clause. As we said in Reeves, in this kind of case there is a "single inquiry: whether the challenged program constituted direct State participation in the market."

## Reeves Inc. v. Stake

447 U.S. 429 (1980)

Along with Hughes v. Alexandria Scrap Corp. 426 U.S. 794 (1976) recognizes the "market participant" exception to the Commerce Clause. The U.S. Supreme Court held that South Dakota's policy, during periods of cement shortage, of confining sales of state-produced cement to South Dakota residents did not violate the Commerce Clause.

## Baldwin v. Fish and Game Commission of Montana

436 U.S. 371 (1978)

The U.S. Supreme Court ruled that a Montana statutory elk hunting license scheme which requires nonresidents to pay over seven times as much as residents, was not a violation of the Privileges and Immunities Clause of Article IV Sec. 2 or the Equal Protection Clause of the 14th Amendment.

The Court held that:

Access by nonresidents to recreational big-game hunting in Montana does not fall within the category of rights protected by the Privileges and Immunities Clause. Only with respect to those "privileges" and "immunities" bearing upon the vitality of the

Nation as a single entity must a State treat all citizens, resident and nonresident, equally, and here equality in access to Montana elk is not basic to the maintenance or well being of the Union. [Pp. 378-388]

The statutory scheme is an economic means not unreasonably related to the preservation of a finite resource; elk, and a substantial regulatory interest of that State, and hence does not violate the Equal Protection Clause. In view of the fact that residents contribute to the costs of maintaining the elk hunting program, the great increase in nonresident hunters in recent years, the limit in the elk supply, and the difficulties in supervising hunting practices, it cannot be said that either the license fee differentials or the required combination license for nonresidents is irrational. [Pp. 388-391]

## FEDERAL APPEALS COURTS DECISIONS

### W.C.M. Window Co. v. Bernardi

730 F. 2d 486 (1984)

Recent Seventh Circuit Court of Appeals case which overturns an Illinois preference law as violating the Privileges and Immunities Clause. The Court considered the White, Camden and Hicklin cases in its decision.

The Court noted that *Illinois had offered no evidence* of the benefits of a residents' preference law in dealing with a problem created by nonresidents and suggested the kind of evidence needed to meet a challenge under the Privileges and Immunities clause.

The Court explained:

We are not told the unemployment rate in Illinois' construction industry, what such unemployment costs the State, whether it would be significantly increased by throwing open public construction projects to nonresidents (which might just cause a reshuffling of jobs between public and private projects, and whether the costs -- if any -- to Illinois of allowing nonresident labor on such projects, costs in higher unemployment or welfare benefits paid unemployed construction workers or their families, are likely to exceed any cost savings in public construction from hiring nonresident workers.

# ALASKA CASE LAW

## Francis v. Robinson

3AN 83-9969

Beginning in 1983 the Alaska Department of Labor enforced the newly revised AS 36.10.010. In early 1984 this civil lawsuit against the State of Alaska was brought by nonresident ironworker, Francis, challenging the constitutionality of AS 36.10.010. On May 23, 1984 the Superior Court ruled in favor of Francis based on the Privileges and Immunities Clause of the U.S. Constitution and its Findings of Fact.

Two months later the Alaska Supreme Court at the request of the State, stayed the effect of the Superior Court's decision pending appeal by the State. This allowed the State to continue enforcing AS 36.10.010 until July 10, 1985 when the Court lifted the stay. The Court made no statement in lifting the stay.

During the 1985 session the legislature passed HB 294 which added Findings of Fact, Policy and Purpose clauses to AS 36.10.010 in an attempt to improve the law's chances in a Court challenge.

The Attorney General then reviewed the Legislature's action and advised the Governor: "By identifying the purpose of resident hiring preference and by supporting the purpose with factual findings, this bill may provide the justification for the state statute found lacking by the Superior Court."

The State asked that the Supreme Court send the case back to the Superior Court, where the revised statute could be considered. That motion was denied.

A Supreme Court decision is expected in late 1985 or early 1986.

## OTHER STATES' CASE LAW

### Wyoming v. Antonich 694 P. 2d. 60 (1985), January 10, 1985

During the last half of 1984 the Wyoming Supreme Court considered a constitutional challenge to Wyoming's Preference Act. That act is very similar to AS 16.10.010, except that it requires 100 per cent Wyoming resident hire on public works projects, whereas AS 16.10.010 only requires 95 per cent Alaska resident hire.

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."

As with the Alaska law, the Wyoming Preference Act had been found an unconstitutional violation of the Privileges and Immunities Clause of the U.S. Constitution by a lower State Court.

The Wyoming Supreme Court, looking toward the U.S. Supreme Court's decision in Camden, reversed its lower Court and found the Wyoming Preference Act constitutional. The State conceded that the discrimination against nonresidents under the Wyoming Preference Act burdened a fundamental right protected by the Privileges and Immunities Clause, as it protects the right of a citizen of one State to travel to another State for purposes of employment. But despite the Act's infringement upon a recognized fundamental right, the Wyoming Supreme

Court found it does not violate the U.S. Constitution *because of its narrow focus*. The Court held that the Act merely requires that state funds allocated for public works projects be used to hire qualified, available residents in preference to nonresidents, and "*Since the degree of discrimination bears a close relation to the State's valid reasons for discriminatory treatment, we affirm the Act's validity...*"

Chief Justice Thomas, concurring, stated:

"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 Hicklin 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 statute 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 delicate 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 right of the State to participate in the marketplace, satisfy its proprietary functions, and contract freely with those with whom it 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 the 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...

### The Caveat in Antonich: Beware the Lack of Nexus

The Wyoming Supreme Court, unlike the drafters of Alaska's 1983 SSSB 174, had the Camden decision from which to base a prediction of the response of the U.S. Supreme Court to such State preferential hire laws. The majority of the Wyoming Supreme Court seemed contented that a sufficient nexus existed between the presence of nonresident workers on Wyoming public works projects and unemployment of Wyoming residents from the bare fact that unemployment existed in Wyoming.

The Court reviewed no evidence that out of state workers were the cause of Wyoming's unemployment problems or even that Wyoming had an unusually high rate of unemployment. Rather, the Court identified the goal of the Wyoming law as not the eradication of general unemployment, but rather:

...to prevent a qualified Wyoming worker's remaining unemployed while a nonresident goes to work on a government funded construction project. [Antonich, p. 5]

To satisfy the requirement pronounced in Camden of narrowly and specifically addressing the pronounced problem, the Wyoming Court relied on the statutory language requiring that only *qualified* Wyoming residents need be hired. If no qualified residents are available, nonresidents can be hired so as to minimize the law's discriminatory aspects.

The weaknesses in these arguments are apparent and Wyoming Chief Justice in a specially concurring decision recognizes the key deficiency -- *the lack of nexus between out-of-state workers and Wyoming's unemployment problem*.

I am in complete accord with the result reached by the majority in this case, but I have a concern about the adequacy of the record to support the nexus between the evil of a qualified Wyoming worker's remaining unemployed while a nonresident goes to work on a government funded construction project' and the statute in question. I agree that is a possibility, but the record does not demonstrate it. [Antonich, p. 1 of the concurring opinion]

Chief Justice Thomas goes on to comment:

The statutory language simply makes the state employment offices a repository of information, and does not limit the "list of laborers, classified by skills, who are residents" to the unemployed. It simply requires that they be "available for employment." [Antonich, supra]

Only after noting these reservations did Chief Justice Thomas go on to make some of the most convincing arguments for the constitutionality of such resident preference laws: the right of States to freely perform proprietary functions and their duty of loyalty to their own residents. It might appear that

Chief Justice Thomas was pointing out his serious misgivings with lack of nexus to make his best arguments appear to directly respond to and negate this possibly fatal weakness.

**Laborers Local Union No. 374 v. Felton Construction**  
654 P2d 67 (Washington 1982)

Washington Supreme Court ruled Washington statute requiring 90 to 95 per cent resident hire on public works projects violated the Privileges and Immunities Clause.

Court found the *State made no showing* of existence of valid independent reason for discriminating against nonresidents, that nonresidents were a particular source of evil or that there was a reasonable relationship between danger represented by nonresidents as a class and the discrimination practiced against them.

## LEGAL RESEARCH

### **Constitutionality of Public Works Resident Preference**

Alaska Attorney General Opinion  
June 17, 1982 File NO. J66-282-82.

In response to a request from Commissioner of Labor Ed Orbeck, the Attorney General issued this official opinion calling for the enforcement of AS 36.10.010:

It examines the relation between the Hicklin case and AS36.10.010 and the Privileges and Immunities Clause and concludes that while "the Hicklin decision has caused substantial uncertainty regarding the continued validity of AS 36.10.010" *the statute should be enforced* subject to "independent budgetary restraints and not doubts as to the constitutionality of the law."

### **Application of Local Hire Law to Susitna Project Design Contract**

State of Alaska Attorney General Opinion  
File No. 366-481-83, September 12, 1983

Examines AS 36.10.010 as amended in 1983, provides overview of employment preference case law, comments on Alaska's bidder preference law AS 37.05.230 and concludes AS 36.10.010 requires Alaska hire for design of Susitna project.

### **Landmark Reversals and Durational Residency Cases of the U.S. Supreme Court**

Alaska State Legislature, House Research Agency Report  
April 15, 1983

Provides summaries of the following U.S. Supreme Court decisions:

opinions which have reversed the Court's own stance on an issue.

opinions regarding the constitutionality of durational residency requirements.

Comment: Provides important insight into how and why the U.S. Supreme Court changes its stand on an issue and sets out how the Court has considered when residency requirements "rationally further a legitimate State purpose."

**Local Hire Laws In Other States**  
Alaska State Legislature, House Research Agency Report  
March 15, 1985

Copies of local hire laws of 19 States (including Alaska) and a short analysis.

Comment: Alaska's preferential hire laws appear much more sophisticated and legally defensible than the majority of such laws in other States.

**Legislative Remedies for Rural Unemployment**  
**A Legal Analysis**

A report to the Alaska State Department of Labor by Goldberg and Associates,  
September 7, 1984

Report Commissioned by the Alaska State Department of Labor to study legislative options for dealing with the unemployment problem in rural areas.

Contains a review of preferential hire laws and legal authority, Federal programs, minority preference and programs in other jurisdictions.

Because of the contemporaneous Francis v. Robison case this report intentionally avoids direct consideration of options involving AS 36.10.010 and Alaska Hire in general.

## ECONOMIC RESEARCH

### **Alaska State Department of Labor Weekly Updates on Alaska Hire**

In response to the interest in Alaska Hire shown by the 1985 Legislature, the Department of Labor now provides the Governor's office and interested parties a weekly progress report on the status of enforcement (whether mandatory or voluntary) of Alaska Hire (AS 36.10.010) and research in process.

### **Minutes of the House Labor & Commerce Committee on HB 294 and HB 295 Regarding Alaska Hire March 27, 1985**

Contains testimony of Lt. Gov. Steve McAlpine, Sen. Joe Josephson, Deputy Attorney General Ron Lorenson, Deputy Commissioner of Labor Robert Landau and Dave Donley, attorney, in support of HB 294 and HB 295.

### **Minutes of the House Labor & Commerce Committee on HB 294, HB 295 and HCR 20 Regarding Alaska Hire April 1, 1985**

Contains testimony of Chuck Caldwell, Research Chief of Alaska Department of Labor; Dave Donley, attorney; Deputy Commissioner of Labor Robert Landau; Rep. Marco Pignalberi; John Abshire, Iron Workers Union; Mano Frey, president, Alaska State AFL-CIO; and Barry Haight, president, Fairbanks Central Labor Council.

Comment: Caldwell testimony regarding verification of Finding of Fact in HB 294 is very important as it directly contradicts some of the Superior Court's Findings of Fact in the Francis case.

**Alaska Department of Labor Testimony  
Confirming Findings of Fact Contained in HB 294 (1985)**  
Submitted to House Labor & Commerce Committee, April 1, 1985

Testimony generally confirms the 18 Findings of Fact contained in HB 294 (1985).

Comment: This is very important evidence in support of the economic basis to constitutionally justify resident preference in AS 36.10.010 or future such laws. Directly contradicts some of the Superior Courts Findings of Fact in the Francis case.

**Assessing The Economic Impacts of Capital Expenditures --  
A Working Paper**

By Scott Goldsmith and Phillip Rowe  
Institute of Social and Economic Research, University of Alaska  
for the Alaska Division of Policy Development and Planning  
September 1982

Reports on work by the Institute on developing methods for determining the impact of State capital spending on the Alaskan economy and public sector finances. While the economic impact of capital spending varies with the type of project, the report concludes that a multiplier effect of about 1.458 exists or that for each \$1 million in capital spending, \$1.458 million of economic activity is generated.

Comment: Provides a basis of economic and political arguments in favor of Alaska Hire. Not particularly useful in legal analysis. [Copies available from the University of Alaska, Institute of Social and Economic Research, Anchorage]

**Public Capital Formation In Alaska: Current Levels,  
Fiscal Effects, and Future Prospects**

By Scott Goldsmith, Dona Lehr and Phillip Rowe  
Institute of Social and Economic Research,  
University of Alaska, Anchorage  
For the Alaska Office of Management and Budget  
August 1984

This report deals with the fiscal effects of capital spending, examining the relationships between particular types of capital projects and the demands which those projects place on the budget of the State in subsequent years.

[Copies available from the University of Alaska, Institute of Social and Economic Research, Anchorage]

Comment: Provides a basis of economic and political arguments in favor of Alaska Hire. Not particularly useful in legal analysis.

### **The Sustainable Level of Economic Activity in Alaska**

By Scott Goldsmith, associate professor of economics  
Institute of Social and Economic Research, University of Alaska, Anchorage  
Presented at the Western Regional Science Association  
Annual Meeting in San Diego, California  
February 28, 1985

The paper explores the relation between state spending and economic growth, how the economy might respond to budget reductions, and factors which may help to sustain the economy after Prudhoe Bay production declines.

### **Alaska's Economy Since Statehood: The Institute of Social and Economic Research MAP Economic Data Base**

Alaska Review of Social and Economic Conditions, February 1984  
The Institute of Social and Economic Research, University of Alaska

Most comprehensive collection of economic data then available on Alaska's economy. Record of Alaska's economic activity since statehood.

Comment: General economic backup of economic evidence supporting Alaska Hire legislation.

### **Economic Impacts of Capital Spending in Alaska**

Research Summary  
Institute of Social and Economic, September 1984

Summarizes research on the direct, indirect and induced effects of particular construction efforts on Alaska's economy measured in terms of employment, wages, personal income, value added and output.

Concludes that general government expenditures have significantly greater economic impacts than do capital expenditures.