

ALASKA LEGISLATURE COMMITTEE FILES 1985-1988 00/2

3500 HLAB HB 356 - HB 367

376



RECORDS CERTIFICATION



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Signature of Camera Operator


Date

H B

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4/2/85

COMMITTEE REPORT HOUSE

JUDICIARY

(7)

FURTHER:

4/8/85

Date: Apr. 23 1985

The committee on LABOR & COMMERCE has had HB 356
"A bill relating to assignment of group life policies of insurance."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Mike Swann

Mike Swann
CHAIRMAN



Official Business

Alaska State Legislature

House

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Representative Gruenberg
FROM: Dave Donley *AD*
RE: April 24, 1985
DATE: HB 356, "Assignment of Group Life Policies of Insurance"

Under current estate tax law, if an insured owns a life insurance policy, upon the insured's death the proceeds of that policy will pass through his estate and be subject to estate tax prior to receipt by the named beneficiary.

If a person other than the insured owns a policy, the proceeds do not pass through the insured's estate and thus are not subject to estate tax.

At common law, it is questionable whether group life policies can be assigned, and the IRS has held that without statutory authorization, assignments are not effective for tax purposes. Accordingly, some 48 states have made group life policies assignable by statute.

Considering that 48 states have already passed similar laws, enactment of HB 356 by the state of Alaska would result in an insignificant reduction in federal revenues. The advantages in estate planning for Alaskans to be provided by this legislation are substantial and fair. Failure to pass this legislation will result in continuance of an inequitable federal tax situation that discriminates against Alaskans.

M E M O R A N D U M

To: All Members, House Labor and Commerce Committee
From: Roger Poppe, Committee Aide
Date: April 25, 1985 Thursday Meeting
Subject: Overview, HF 356

The subject of this bill has not appeared before previous legislatures; this section of the law has not changed since it was established in 1966. There is no companion legislation in the Senate. There is another committee of referral in the House, which is Judiciary. The fiscal note is zero.

This bill is supported by the Alaska Bar Association (see letter by Mr. Goerig in your file), and is not opposed by the DCED, Division of Insurance. There are 48 other states that have already passed similar laws; only Alaska and Delaware do not have it.

Basically, the IRS has held that without state statutes to cover it, group life insurance policies cannot be assigned for tax purposes. This bill would give an Alaskan citizen the right to transfer his ownership of any group life insurance policy to any individual he wishes, without having that right contested by the IRS.

HB 356 File Contents

April 25, 1985 Meeting

- 1) Bill Summary -- Legislative Reporting Service
- 2) Overview -- R. Poppe, Committee Staff
- 3) Statutory Backup -- AS 21.42.270
- 4) Fiscal Note -- Dept. of Commerce and Economic Development
- 5) Memo: From Dave Donley to Rep. Gruenberg, April 24, 85
- 6) Letter from George Goerig to Richard Thwaites, Feb. 25, 85
(see back side for suggested draft)

INTRODUCTION OF BILLS (House)

Elk
(transplant)

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 165, by Reps. Taylor and Sund (see pages 209;379). Note: a sponsor substitute version supersedes all previous versions of the bill.

The bill states: "The Department of Fish and Game shall, over the next three years, cooperate with and assist in the transplanting to Zarembo Island of up to 50 but not less than 10 elk during the fiscal year ending June 30, 1986, up to 50 but not less than 10 elk during the fiscal year ending June 30, 1987, and up to 50 but not less than 10 elk during the fiscal year ending June 30, 1988. The department shall utilize the services of volunteers, organizations and groups to accomplish this transplanting whenever possible. The department is authorized to enter into agreements with similar agencies in other states to facilitate this transplant." Does not provide effective date (takes effect 90 days after Governor signs bill).

Introduced April 9 and referred to Resources, Finance.

Onboard
Observer
Programs
(establishing)

HOUSE BILL NO. 355, by Rep. Thompson. Would establish and implement an onboard observer program to monitor and obtain certain information on fisheries. The majority of the bill is identical to SB 79, see page 100. The title for HB 355 reads "An Act authorizing the establishment and implementation of onboard observer programs," while the title for the Senate bill reads "An Act authorizing the Board of Fisheries to establish onboard observer programs."

Deletes Section 2 (14) (D), which required that all vessel operators "registered under the laws of the state that participate in that fishery" pay a fee to cover the operating costs of the onboard observer program.

Changes the wording for the definition of "fishery" in Sec. 4 (28). Both the House and Senate bills carry the same intent for fishery, but it is worded slightly differently.

Introduced April 8 and referred to the House Special Committee on Fisheries, Resources and Finance.

Group Life
Insurance
Policies
(assigning)

HOUSE BILL NO. 356, by Rep. Gruenberg, Taylor and Pettyjohn. Amends AS 21.42.270 (The Insurance Contract. Assignment of Policies) to allow a group life insurance policy "... to be assigned either by pledge or transfer of title by an assignment executed by the insured alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer." Does not provide effective date (takes effect 90 days after Governor signs bill).

Introduced April 8 and referred to Labor & Commerce, Judiciary.

Student Loans
Used to Pay
Child Care

HOUSE BILL NO. 357, by Reps. Gruenberg, Koponen and Shultz. Would allow proceeds from a state student loan to be used for child care expenses (currently loan may be used only for tuition, books, required fees and room and board). Also allows

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/resolution No.: HB 356
 Title: An assignment of group life policies of insurance
 Sponsor: Gruenberg et al.
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
 Program Category Affected: _____
Consumer Protection
 BRU, Program or Subprogram(s) Affected: _____
Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: John George, Director Phone: 465-2515
 Division: Insurance Date: 4/25/85
 Approved by Commissioner: Loren W. Lounsbury Date: 4/25/85
 Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

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

7/1/84

Sec. 13. ____ . ____ . Assignment of group policies. A group policy may be assignable or not assignable as provided by its terms. Subject to its terms relating to assignability, any group life or group health insurance policy, under the terms of which the beneficiary may be changed upon the sole request of the insured or owner, may be assigned either by pledge or transfer of title, by an assignment executed by the insured or owner alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. Any such assignment shall entitle the insurer to deal with assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge, or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment.

LAW OFFICES

DAVIS & GOERIG

A PROFESSIONAL CORPORATION

405 WEST 36TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99503

TRIGG T. DAVIS
GEORGE E. GOERIG, JR.

TELEPHONE 561-4420
AREA CODE 907

February 25, 1985

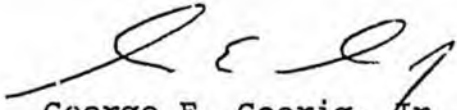
Richard S. Thwaites, Jr.
Chairman of the Alaska Bar Association
Probate Law Section
1031 West 4th Ave., Suite 500
Anchorage, AK 99501

Re: Proposed Statutes Regarding Assignment
of Group Term Life Insurance Policies

Dear Dick:

Enclosed is a proposed statute relating to the assignability of group life insurance policies. This statute shall affirmly establish the right of an individual to transfer his ownership of any group life insurance policy to any individual he wishes. Although at the present time there is no law in effect which specifically prohibits such an assignment, the United States Treasury Department may contest such a person's right unless the state of residency has a statute authorizing such an assignment. The Alaska Bar Association taxation law section supports inactment of this proposed statute.

Very truly yours,


George E. Goerig, Jr.
Attorney At Law

GEG/dvs

Enclosure

Sec. 21.42.270. Assignment of policies. A policy may be assignable or nonassignable, depending upon its terms. Subject to its terms relating to its assignability, a life or disability policy, whether issued before or after July 1, 1966, under the terms of which the beneficiary may be changed upon the sole request of the insured, may be assigned either by pledge or transfer of title by an assignment executed by the insured alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. The assignment entitles the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment until the insurer has received at its home office written notice of termination of the assignment or pledge, or written notice by or on behalf of some other person claiming an interest in the policy which is in conflict with the assignment. (§ 1 ch 120 SLA 1966)

Collateral references. — 43 Am. Jur
2d, Insurance, § 789 et seq.
45 C.J.S., Insurance, § 410 et seq.

Validity of assignment of life insurance
policy to one who has no insurable interest
in insured, 30 ALR2d 1310.

Sec. 21.42.280. Payment discharges insurer. When the proceeds of or payments under a life or disability insurance policy or annuity contract, whether issued before or after July 1, 1966, become payable in accordance with the terms of the policy or contract, or the exercise of a right or privilege under the policy or contract and the insurer makes payment in accordance with the terms of the policy or contract or in accordance with a written assignment, the person then designated under the policy as being entitled thereto shall be entitled to receive the proceeds or payments and to give full acquittance for them. The payments shall fully discharge the insurer from all claims under the policy or contract unless, before payment is made, the insurer has received at its home office written notice by or on behalf of another person that the other person claims to be entitled to the payment or some interest in the policy or contract. (§ 1 ch 120 SLA 1966)

Sec. 21.42.290. Minor may give acquittance. (a) A minor domiciled in this state who has attained the age of 16 years shall be considered competent to receive and to give full acquittance and discharge for a payment or payments in aggregate amount not exceeding \$3,000 in any one year made by a life insurer under the maturity, death or settlement agreement provisions in effect or elected by the minor under a life insurance policy or annuity contract, if the policy, contract or agreement provides for the payment or payments to the minor, and if before the payment the insurer has not received written notice of the appointment of a duly qualified guardian of the property of the minor. A minor may not be considered competent to alienate the right to or to anticipate the payments. This section does not restrict the rights of minors set out in AS 21.42.080.



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

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SECTION ANALYSIS FOR SSHB 367

(Prepared by Senate Resources for companion bill CSSSSB 271)

- Section 1 Establishes new chapter 38.45 Resident Employment Preference Under State Leases.
- 38.45.010 Declares that state policy is to maximize benefits to people from development of natural resources and these benefits include employment opportunities.
- 38.45.020 State the problems associated with unemployment and the need for more data to accurately reflect level of nonresident hire.
- 38.45.030 States that Department of Labor will assist employers in finding qualified workers and, if unable to find sufficient number of resident workers, the Department of Labor may approve of hiring of nonresidents.
- 38.45.035 States that employer has final decision on hiring.
- 38.45.040 States that commissioner of labor shall adopt regulations under Administrative Procedures Act.
- 38.45.050 Requires attorney general and commissioner of labor to report annually to legislature and governor on status of employment in state.
- 38.45.060 Establishes eligibility for a resident employment preference. A person must certify to the Department of Labor that he or she meet one of the following criteria:
- a) is receiving unemployment benefits or has exhausted them
 - b) is not working and has registered to find work with a public or private employment agency or a local hiring hall
 - c) is underemployed or marginally employed as defined by Department of Labor
 - d) has completed job training program but is not employed or using those skills
- 38.45.070 Sets forth criteria for the determination of an underemployed area. After the commissioner of labor has determined an underemployed area, and for two years following, the employment

preference will be in effect. In an underemployed area, the commissioner of labor shall determine the amount of work to be performed by eligible qualified residents. An underemployed area may be a census area, an economic region, or the state as a whole if the following criteria are met:

- a) the unemployment rate is substantially higher than the national rate
- b) a substantial number of residents in the area have experience or training
- c) the lack of employment opportunities has contributed to serious economic and social problems, and
- d) employment of nonresidents is a peculiar source of the unemployment of residents

38.45.080

Provides a preference for residents of an economically distressed area. The commissioner of labor shall determine an economically distressed area, and for two years the resident preference will apply. In an economically distressed area, 50 percent of the employment on each natural resources project on state land shall be given to eligible qualified residents of the area. An economically distressed area must meet the following criteria:

- a) per capita income is less than 90 percent of U.S. per capita income or the unemployment rate is at least 5 percent higher than national rate
- b) lack of employment opportunity has contributed substantially to serious social and economic problems, and
- c) nonresident workers are a peculiar source of unemployment of residents

38.45.090

States that the commissioner of natural resources shall incorporate into each contract provisions requiring compliance with resident preference regulations.

38.45.100

Requires employees to comply with reporting requirements established by commissioner of labor. All specific employee data is to be kept confidential.

38.45.110

Provides for hearings by the Department of Labor to determine if an employer has complied with this chapter. A request for a hearing may be brought by an employee who has been rejected or terminated and a person not entitled to the

preference has been hired. The commissioner shall review the request and may hold a hearing. If the commissioner of labor finds willful intent on the part of the employer, the commissioner may certify the finding to the Department of Natural Resources.

38.45.120

Provides penalties for the employer that has willfully rejected or terminated an eligible qualified employee. If found in violation of this chapter, the employer may be required to pay the amount of lost wages to the employee and any actual expenses incurred as a result of the wrongful action by the employer. Either party may appeal to the Superior Court.

If the Department of Natural Resources finds after its investigation that there was willful noncompliance, the Department may impose:

- a) an increase in rent not to exceed \$100,000
- b) removal from eligibility for state contracts for a period not to exceed three years
- c) a noncompliance payment not to exceed \$200,000

38.45.130

Provides for penalties for any person who makes false statements regarding their eligibility for a preference.

38.45.200

States that this chapter is applicable to all natural resource projects on state lands

38.45.250

Provides definitions for "available," "employer," "natural resource project on state land," "qualified resident," "resident, and "state land."

Section 2

States that act applies to all contracts after effective date

Section 3

Provides for immediate effective date.

SSHB 367

SUMMARY OF LEGISLATION

(Prepared by Senate Resources for companion bill CSSSSB 271)

SSHB 367 would establish an employment preference for Alaska residents under certain conditions. Because a blanket policy requiring Alaska resident hire has been held unconstitutional, it was necessary to target a preference to specific projects and specific employees. HB 367 is directed at establishing an employment preference on natural resource projects on state land with the rationale that the state is a participant in the contract and can require that certain conditions be met in the lease of state natural resources.

The employment preference extends only to specific areas as designated by the commissioner of labor. These areas can be: census areas, of which there are 23 in Alaska; economic regions, of which there are six in Alaska; or the state as a whole. There are two types of employment preference areas. One is an underemployed area, and the second is an economically distressed area. The commissioner of labor must be able to substantiate the designation of these areas for an employment preference through extensive data collection and analysis.

An employment preference can be granted by the commissioner of labor only to specific employees who are unemployed, registered to find work, underemployed or have completed job training programs but are not using that skill.

The determination of an underemployed area would provide that an employment preference be given to specific Alaska residents as identified above. The commissioner of labor shall determine the amount of work that must be performed by preferred employees only after investigation and study.

In a determination of an economically distressed area, the employment preference would be granted to at least 50 percent of the qualified residents of that area.

The Department of Natural Resources shall include in all its contracts for oil and gas, leasable minerals or timber resources language to carry out the requirement of this chapter.

HB 367 also requires reporting by employers, but all specific employee data must be kept confidential.

If a person not entitled to preference is hired in a position for which an eligible applicant was rejected, the rejected applicant may request a hearing before the commissioner of

labor. The commissioner may hold a hearing. If the Department of Labor finds willful intent not to comply on the part of the employer, the department may require the employer to reimburse the employee for lost wages. Either party may appeal to the Superior Court.

If willful noncompliance is found by the Department of Labor, then the Department of Labor shall notify the Department of Natural Resources. The Department of Natural Resources may hold hearings and conduct its own investigation. If the Department of Natural Resources finds willful noncompliance, it may impose any of the following penalties: 1) increase the rent or other compensation to a maximum of \$100,000; 2) remove the eligibility of the employer to state contracts for a period not to exceed three years; or 3) require a noncompliance payment not to exceed \$200,000. Item number three is designed to apply to subcontractors or affiliates.

There also are penalties for false statements made by any person claiming an employment preference.

The original version of HB 367 had a much broader requirement for resident hire but probably would have run into constitutional problems. SSHB 367 is much more focused regarding who is eligible for the employment preference, and the preference is restricted to specific areas of the state.

Comments on the Supreme Court's Resident Hire Decision

The recent decision by Alaska's Supreme Court, Francis vs. Robison, on the subject of resident hire, was a good decision from the viewpoint of those of us who are trying to write a constitutional law.

It is necessary to be cognizant of three things in order to gauge the meaning of the decision. First, is the time-frame to which the decision applies. The case has been before the Supreme Court since June 4, 1984. Prior to that, it had been in the Superior Court from December 1, 1983 to May 23, 1984, six months. The offense for which Mr. Francis sued the state, occurred in October, 1983. It is in the context of this time-frame that the Supreme Court made its decision. The reason this is significant is that the economic conditions that existed then do not exist now. The body of data to support the state's position did not exist then. We believe we have it now. The statute which was strengthened in 1985 was not considered by the Court. And, most significantly, the philosophical approach in the legislation currently being worked on is very different from the statute that was just invalidated by the court. The decision was focused on the specific time and conditions involved in the specific complaint by Mr. Francis.

Secondly, the scope of the opinion is narrow in that it relies on the findings of fact of the lower court and does not introduce new or additional arguments. Insofar as the decision is predicated on findings of fact, then when it can be proven that the facts change it is logical that the conclusion must also change. Here are some of the facts on which the Court predicated its decision. Most Alaskans will recognize that these facts do not hold true in 1986, if they ever did:

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

- The Department of Labor's 1984 report puts that figure at 18.3%.

2. "Employment in Alaska in 1983 was at record levels, and the rate of increase was the best since the days of the Alaska Pipeline years."

- the January 1985 national unemployment rate is 6.7% compared to 10.5% in Alaska.

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

- Department of Labor estimates put employment within the construction industry at 18,203, representing a 10% decrease from 1983.

The fact that the state could not disprove them in trial indicates only that we had poor data, not that we had poor arguments.

Thirdly, it is important to note that the subject matter of the findings are economic in nature. Resident hire is an economic issue. It is not merely a hypothetical construct that falls exclusively on one side of the constitutional line or the other. It is an issue of 677 million dollars flowing out of the state's economy in 1984 without circulating through the hands of anyone who lives here. It is an issue of the purchasing power and the job creation that should accrue to Alaskans from that money. It is an issue of whether or not those of us who fulfill our obligations of citizenship and invest our lives in Alaska are entitled to be first among equals for the fruits of our own labor.

The privileges and immunities clause of the federal constitution is a formidable barrier to resident hire preference, as well it should be. In effect this clause says that every citizen has the same rights no matter what state he or she is in. Its purpose is to, "prevent discrimination against non-residents, to further the concept of federalism, and to create a national economic unit. However there is some relief. In the words of the court, "the privileges and immunities clause does not protect non-residents against all forms of discrimination. Its reach is limited to "fundamental rights" involving basic and essential activities, interference with which would frustrate the purposes of the formation of the union." So the test for our resident hire law is to demonstrate that it does not threaten the principles of federal unity. The way to do this is to positively show the correlation between crime, welfare costs, alcohol and drug abuse and domestic violence on the one hand and unemployment on the other.

HB 367 File Contents

May 2, 1985 Thursday Meeting

- 1) Bill Summary - Legislative Reporting Service
- 2) Overview -- R. Poppe, Committee Staff
- 3) Hand-out Folder by Sponsor, includes:
 - a) Background Statement
 - b) Sectional Analysis
 - c) Position Papers
 - d) Proposed CS for HB 367, with Suggested Amendments
 - e) Fiscal Notes
- 4) SB 271, CSSb 271 (L & C)



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 9, 1986

The Honorable Mike Navarre
Alaska State House of
Representatives
P.O. Box V
Juneau, AK 99811

Dear Representative Navarre:

I am taking this opportunity to respond to a letter addressed to Representative Boucher from Charlie Bussell concerning opposition to the confirmation of Walter R. Gardner's appointment to the Board of Electrical Examiners.

Mr. Gardner has held an electrical administrator's license (#AA240) in this state since 1972. He is one of 46 out of approximately 520 persons licensed in Alaska who is qualified in all categories of electrical administration. These categories include: inside wiring, outside wiring, residential wiring, outside communications, and inside communications.

You can see from his resume that Mr. Gardner has over thirty years experience in the field of large construction with over twenty years experience in the Alaska construction industry, including engineering and management, electrical power and communications, and as field surveillance officer for the Trans-Alaska pipeline. His qualifications include expertise in arctic and subarctic construction.

Mr. Bussell's reference to an applicant he felt was unjustly reviewed by the board should be directed to Nancy Dunn, Director of the Division of Occupational Licensing, for investigation.

In closing, I must respond to the last paragraph of Mr. Bussell's letter with regard to appointments of women and minorities to boards and commissions during this administration. Mr. Bussell states that Natives and women have been "sorely overlooked by the present administration."

April 9, 1986

Statistics compiled in February 1986 reveal that 22 percent of the appointments made by Governor Sheffield since he took office have been of minorities. This thrust by the Governor underscores his continuing concern to have minority representation on official state boards. These same statistics indicate that 41 percent of the Governor's appointees have been women.

The fact that women and minorities have enjoyed an increased opportunity to serve on boards and commissions during this administration is now, and will continue to be, a direct reflection of Governor Sheffield's priorities.

Sincerely,

A handwritten signature in cursive script that reads "Barbara A. Dale".

Barbara A. Dale
Special Staff Assistant
to the Governor

Alaska State Legislature
House of Representatives



Labor and Commerce Committee

April 7, 1986

Honorable Ben Grussendorf
Speaker of the House
Pouch V
Juneau, AK 99801

Dear Mr. Speaker:

The House Labor & Commerce Committee has reviewed the qualifications for the following named individuals who have been submitted in nomination by the Governor, and recommends that they be confirmed.

Athletic Commission

Anderson, Stanley

Term began 02/10/86, expires 05/14/87

Board of Barbers and Hairdressers

Kueber, Marse

Original term began 05/02/83, reappointed 06/24/85
expires 07/01/88

Board of Dental Examiners

Baxter, Christine

Term began 01/07/86, expires 02/01/89

Gellert, Hubert

Term began 04/03/85, expires 02/01/89

Woller, Timothy

Original term began 10/31/84, reappointed 01/16/86
expires 02/01/90

Board of Electrical Examiners

Boyd, Steven

Term began 05/21/85, expires 07/10/87

Gardner, Walter

Term began 01/19/85, expires 07/10/88

Guide Licensing and Control Board

Gamble, Sr., Edward J.

Term began 04/01/86, expires 06/15/88

Occupational Safety and Health Review Board

Hoff, Jr., Donald F.

Term began 04/01/86, expires 08/01/88

Concurring

Mike Navarre, Chairman

Mike Davis, Vice-Chairman

H. A. "Red" Boucher

Virginia Collins

Niilo Koponen

Drue Pearce

Alyce Hanley

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

Revision Date : 4/8/86

REQUEST

Bill/Resolution No. : 2dSS HB 367
 Title : "An Act requiring resident hire on certain natural resources projects."

Sponsor : Pignalberi, Cotten et. al.
 Requestor : Labor & Commerce
 Date of Request : 4/7/86

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		113.9	231.4	231.4	231.4	231.4
TRAVEL		17.0	47.7	49.6	51.6	53.7
CONTRACTUAL		21.0	12.2	12.7	13.2	13.7
SUPPLIES		2.0	3.6	3.7	3.8	3.9
EQUIPMENT		4.8	4.8	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	158.7	299.7	297.4	300.0	302.7

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

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

FUNDING : (Thousands of Dollars)

GENERAL FUND	0	158.7	299.7	297.4	300.0	302.7
FEDERAL FUNDS						
OTHER						
TOTAL	0	158.7	299.7	297.4	300.0	302.7

POSITIONS :

FULL-TIME	0	3	6	6	6	6
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Robert J. Bacolas Sr.
 Division : Labor Standards & Safety

Phone : 465-4870
 Date : 4/8/86

Approved by Commissioner : Jim Robison
 Agency : Labor

Date : 4/8/86

Distribution (by Agency preparing fiscal note):

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

Position Title Clerk Typist III			No. of Positions 1	Range/Step 8A	Barg. Unit GGU	Gov.	Approv.	Disapp.
Time Status PFT,	Staff Months 12	RP Number	Location Anchorage		Election District	Leg.		
Justification								
This position would provide typing, filing, and data entry under the provisions of this bill.								
Contractual and commodities costs are average per employee costs. The equipment costs are for a desk, chair, cabinets, etc., and are a one-time item.								
Type of Expenditure			Amount					
1	2	3						
Salary	20,316							
Benefits	6,095							
Premium Pay								
Other								
Total Personal Services		26,411						
Travel		-0-						
Contractual		2,000						
Commodities		1,000						
Equipment		1,600						
Other								
Total Cost		31,011						
Receipt Code			Funding Source					
			Federal Receipts 1002					
			G. F. Match 1003					
			General Funds 1004					
			31,011					
			I A Receipts 1005					
			Program Receipts 1028					
			CIP Receipts 1061					
			Other					
For DCM Use Only Key Number								

**Request For
New Position**

Agency Labor
 BRU Labor Standards and Safety
 Component Wage and Hour

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

Revision Date : 4/8/86

REQUEST

Bill/Resolution No. : 2dSS HB 367
 Title : "An Act requiring resident hire
 on certain natural resources projects..."

Sponsor : Pignalberi, Cotten, et. al.
 Requestor : Labor & Commerce
 Date of Request : 4/7/86

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		133.6	133.6	133.6	133.6	133.6
TRAVEL		0	0	0	0	0
CONTRACTUAL		193.7	204.0	242.2	241.1	247.2
SUPPLIES		1.2	1.2	1.3	1.3	1.4
EQUIPMENT		4.0	.8	.9	.9	1.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	332.5	339.6	378.0	376.9	383.2

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

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

FUNDING : (Thousands of Dollars)

GENERAL FUND	0	332.5	339.6	378.0	376.9	383.2
FEDERAL FUNDS						
OTHER						
TOTAL	0	332.5	339.6	378.0	376.9	383.2

POSITIONS :

FULL-TIME		3	3	3	3	3
PART-TIME		1	1	1	1	1
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Judy G. Knight, Director Phone : 465-2720
 Division : Administrative Services Date : 4/8/86

Approved by Commissioner : Jim Robison Date : 4/8/86
 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
Bill/Resolution No. 2dSS HB 367

This legislation was carefully drafted to maximize its chances in any future court challenge. This resulted in a complex set of area designations and determinations of resident preferences that are based on objective statistics. To make the determinations and designations specified in this legislation will require this department to collect and analyze extensive occupational information by area resident status. Our assumptions are as follows:

1. An annual report designating underemployment areas would be completed by January 31 of each year beginning in 1987.
2. On-going collection of occupational titles would be required from employers, and extensive computer matching would be necessary to determine residency status.
3. 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.

4. In addition to the occupational information, reporting of the residency status by industry and area would be necessary.
5. Information to make the determinations of Sec. 38.45.070 (b) will be developed as follows:

Nature of the work The Standard Industrial Classification (SIC) coding will be used for all information related to the employers' type of business. This will hold down costs and permit aggregate comparisons.

Classification of workers Nationally accepted occupational classification coding will be used for all information related to individuals' occupations.

Availability of eligible residents Our analysis will consider registered applicants in Job Service, employment, job turnover, unemployment and training program completers by occupation.

Willingness of eligible residents to perform the work This will be done in two stages:

a) Estimates of eligible and available residents within each economic region will be evaluated relative to the projected employment for relevant occupations.

b) all occurrences where the Department is unable to assist an employer to place a qualified resident will be recorded as to the specific occupation and area. Subsequent cases will not require resident placement in that occupation and area until sufficient data exists to indicate that qualified residents are available.

6. Resident hire legislation requires comprehensive statistical support of the displacement of residents by nonresident workers, and the resulting social effects.
7. Extensive mainframe data processing costs will be required. No one computer file has all of the information necessary for the analysis required by this legislation. Records of several files, with as many as 2 million records (UI wage items), have to be matched together by Social Security Number (SSN), and information on occupational titles and Certified Payrolls entered and edited.

An additional field for the occupational title will be added to all UI wage item reports from employers. As detailed in item #3 reporting from industries will be phased in. Costs are estimated to be \$20,000 in FY 87, \$40,000 in FY 88, and \$62,000 in FY 89. Increases in FY 90 and FY 91 are anticipated due to inflation and a greater number of firms.

Programming costs include: modification of programs used last year (\$2,000); development of new applications in FY 87 (\$25,500); and system maintenance, and analytical extractions (\$2,000) in all years. Estimated total programming costs are \$29,500 for FY 87 (983 hours @ \$30 per hour including all benefits and overhead), dropping to \$4,500 (150 hours @ \$30 per hour) in FY 88, and experiencing small inflationary costs in later years.

Primary processing will be done on the DOL computer. Costs are allocated to projects based upon use, in conformance with federal and state accounting requirements. Total data processing operations costs are estimated at \$116,000 in FY 87. Primarily due to the phase in of additional industries' occupational titles costs will increase to \$131,000 in FY 88, \$146,000 in FY 89, \$149,000 in FY 90, and \$152,000 in FY 91.

Microcomputers will be used for analysis and editing when possible to minimize costs.

8. Printing costs for the annual report are estimated at \$4,500 the first year with inflationary increases in FY 90 and FY 91. This is based upon an assumption of 1,500 copies at \$3 each.

9. Long distance phone calls will be done on a daily basis to verify the accuracy of occupational titles. The greatest number of calls will occur in the first year that an industry is surveyed. After the first three years the costs would drop.

Additional calls will be necessary each year to address the annual report requirement to determine "methods to increase resident hire." High nonresident employment by occupation, industry, and/or area will be identified in our statistical work. Calls will be made to follow up on the reasons for the high nonresident employment and solutions to increase resident hiring will be sought.

10. As currently drafted the statistical and analytical requirements of House Bill 367 closely parallel that of House Bill 466. If both pieces of legislation are enacted our fiscal note for House Bill 466 would also cover all of our costs for House Bill 367.

. Summary of
Nonpersonal Services by Year

	FY 87	FY 88	FY 89	FY 90	FY 91
Travel	0	0	0	0	0
Key Entry	20,000	40,000	62,000	64,000	66,000
DP Operations	116,000	131,000	146,000	149,000	152,000
DP Applications	29,500	4,500	4,700	4,900	5,100
Printing	4,500	4,500	4,500	4,700	5,000
Long Distance Phone Service	12,000	12,500	13,000	6,000	6,200
Equipment Lease	8,000	8,300	8,700	9,000	9,400
Equipment Maintenance	800	800	900	900	900
Training, shipping, & Misc.	2,900	2,400	2,400	2,600	2,600
Total Contractual	193,700	204,000	242,200	241,100	247,200
Supplies	1,200	1,200	1,300	1,300	1,400
Equipment (desk, chair, software)	4,000	800	900	900	1,000

Position Title Labor Economist III			No. of Positions 1	Range/Step 18B	Barg. Unit GGU	Gov.	Approv.	Disapp.
Time Status PFT	Staff Months 12.0	RP Number	Location Juneau		Election District	Leg.		
Type of Expenditure			Justification					
		Amount	<p>This position will have primary responsibility for the analysis of data, the preparation of the annual resident hire report, and the determination of the amount of work required in underemployed areas. Specifically, the duties would include:</p> <ol style="list-style-type: none"> 1) Coordinate the collection and monitor the validity of relevant resident hire related statistics from other agencies. 2) Coordinate the updating and crossmatching of resident hire related data files with the analyst programmer. 3) Develop, collect and analyze data that are required to determine the amount of work to be done by nonresidents in underemployed areas. 4) Supervise the statistical technician who will collect new data for the determination of work by nonresidents, and develop the occupational code conversion program. 5) Analyze microcomputer resident hire data bases to generate resident hire related tables and reports. 6) Supervise the Statistical Clerk that will prepare the basic resident hire data tables for the report. <p>Contractual services costs include equipment lease, training, and other miscellaneous items.</p>					
1	2	3						
Salary	40,188							
Benefits	12,283							
Premium Pay								
Other								
Total Personal Services		52,471						
Travel		0						
Contractual		3,600						
Commodities		365						
Equipment		1,400						
Other								
Total Cost		57,836						
Receipt Code	Funding Source							
	Federal Receipts	1002						
	G. F. Match	1003						
	General Funds	1004	57,836					
	I-A Receipts	1005						
	Program Receipts	1028						
	CIP Receipts	1061						
	Other							
For B&M Use Only								
Key Number								

**Request For
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Agency Labor
 BRU Administrative Services
 Component Special Services

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Position Title Labor Economist II			No. of Positions 1	Range/Step 16B	Barg. Unit GGJ	Gov.	Approv.	Disapp.
Time Status PPT	Staff Months 3	RP Number	Location Juneau		Election District	Leg.		
Justification								
This part-time position will be necessary to help the Labor Economist III analyze and compile data for the annual resident hire report. This position will work for three months prior to the report deadline.								
Specific duties include:								
1) Conduct exploratory data analysis of economic information that illustrates the effect of the nonresident worker in the Alaska economy; show the degree of displacement of residents by nonresidents.								
2) Use a microcomputer to prepare graphs tables and narrative that result from the exploratory data analysis.								
Contractual services include miscellaneous phone, training and equipment lease cost.								
Type of Expenditure			Amount					
1			2			3		
Salary			8,412					
Benefits			4,965					
Premium Pay								
Other								
Total Personal Services						13,377		
Travel								
Contractual						900		
Commodities						100		
Equipment						0		
Other								
Total Cost						14,377		
Receipt Code			Funding Source					
			Federal Receipts 1002					
			G. F. Match 1003					
			General Funds 1004			14,377		
			I-A Receipts 1005					
			Program Receipts 1028					
			CIP Receipts 1061					
			Other					
For B&M Use Only								
Key Number _____								

**Request For
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Position Title Statistical Technician I			No. of Positions	Range/Step 12B	Barg. Unit RAU	Gov.	Approv.	Unapp.
Time Status PFT	Staff Months 12	RP Number	Location Juneau		Election District	Leg.		
Type of Expenditure			Justification					
1		2	3					
Salary		26,592	This position will have primary responsibility for assisting the Labor Economist III with the collection, and formulation of data for the resident hire report and for the determination of the amount of work to be done by nonresidents. This position will be heavily involved in the quality control of data collected. Specifically, the duties would include: 1) Collect and edit data to be used to analyze labor supply, and labor shortage of Alaska workers; collect and edit data on social variables to be correlated to the impact of unemployment. 2) Create and use quality control look up tables to ensure all data are properly coded; this includes industry, occupation, and area codes. 3) Use the microcomputer to load information into spreadsheets to show the occupational displacement of residents by nonresidents. 4) Prepare and update tables of economic information by resident status.					
Benefits		9,152						
Premium Pay								
Other								
Total Personal Services		35,744						
Travel								
Contractual		3,600						
Commodities		365						
Equipment		1,300						
Other								
Total Cost		41,009						
Receipt Code		Funding Source						
		Federal Receipts 1002						
		G. F. Match 1003						
		General Funds 1004		41,009				
		I-A Receipts 1005						
		Program Receipts 1028						
		CIP Receipts 1061						
		Other						
For B&M Use Only Key Number _____								

Contractual services costs include phone, equipment lease, training, etc.

**Request For
New Position**

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Position Title Statistical Clerk			No. of Positions 1	Range/Step 10B	Barg. Unit 600	Gov. <input type="checkbox"/>	Approv. <input type="checkbox"/>	Disapp. <input type="checkbox"/>
Time Status PFT	Staff Months 12.0	RP Number	Location Juneau		Election District 4	Leg. <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Justification								
This position will work on the quality control of occupational titles which would be submitted by employers each quarter. Specifically, the duties would be:								
<ol style="list-style-type: none"> 1. Review detailed edit listings. 2. Update edit data files. 3. Call employers for clarification when necessary. 4. Correct occupational titles. 5. Prepare computer summaries of results. 								
Contractual costs for this position include phone, training, and other miscellaneous items.								
Type of Expenditure			Amount					
1			2			3		
Salary			23,580					
Benefits			8,458					
Premium Pay								
Other								
Total Personal Services						32,038		
Travel						0		
Contractual						3,600		
Commodities						365		
Equipment						1,300		
Other								
Total Cost						37,303		
Receipt Code			Funding Source					
			Federal Receipts 1002					
			G. F. Match 1003					
			General Funds 1004			37,303		
			I-A Receipts 1005					
			Program Receipts 1028					
			CIP Receipts 1061					
			Other					
For B&M Use Only								
Key Number _____								

**Request For
New Position**

Agency Labor
 BRU Administrative Services
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CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. 2dSS HB 367

In order to carry out the monitoring activities, investigations, and hearings required of this bill the Department of Labor would need the following resources:

FY 87

Two Wage and Hour Investigator I's and one Clerk-Typist III would be required. Costs and duties associated with these positions are detailed on the attached Request for New Position forms.

In addition to these costs, these would be a one time expense of \$15,000 to develop software and lease equipment to capture residency information.

FY 88 and beyond

Major Prudhoe and Kuparuk unitization agreements are due to be renegotiated in FY 88. At that time the agreements will be covered by the provisions of this bill. An additional Wage and Hour Investigator located in Fairbanks and two Wage and Hour Technicians will be required. Costs associated with these positions are summarized below:

	<u>W&H Tech. Anchorage</u>	<u>W&H Tech. Anchorage</u>	<u>W&H Invest. I Fairbanks</u>
Personal Service	33.6	33.6	50.3
Travel	0	0	15.0
Contractual	2.0	2.0	2.0
Commodities	.5	.5	.5
Equipment	1.6	1.6	1.6
	<u>37.7</u>	<u>37.7</u>	<u>69.4</u>

Also, an additional \$15,000 in travel expense would be incurred by existing positions for travel to the North Slope.

Assumptions

1. The major unitization agreements (Prudhoe Bay and Kuparuk) will not be covered by this bill until FY 88 when the agreements are renegotiated.
2. Inflation on non-personal services items would be 4% per year.

Position Title Wage and Hour Investigator I			No. of Positions 2	Range/Step 10A	Base Unit GGU	Gov.	Approv.	Disapp
Time Status PFT	Staff Months 12	RP Number	Location Anchorage		Election District	Leg.		
Justification								
Type of Expenditure			Amount					
1			2			3		
Salary			67,320					
Benefits			20,196					
Premium Pay								
Other								
Total Personal Services			87,516					
Travel			17,000					
Contractual			4,000					
Commodities			1,000					
Equipment			3,200					
Other								
Total Cost			112,716					
Receipt Code			Funding Source					
			Federal Receipts 1002					
			G. E. Match 1003					
			General Funds 1004			112,716		
			I-A Receipts 1005					
			Program Receipts 1028					
			CIP Receipts 1061					
			Other					
For B&M Use Only								
Key Number _____								

These positions would monitor new or re-negotiated oil and gas leases and other natural resources projects on state land to ensure compliance with resident hire laws. They would also hold hearings when requested.

The positions would interact with the Department of Natural Resources and industry contacts to establish an effective monitoring procedure.

Travel costs are to establish monitoring procedures and for monitoring compliance with resident hire laws.

Contractual and commodity costs are average per position costs. The equipment costs are for desks, chairs, cabinets, etc., and are one-time costs.

**Request For
New Position**

Agency Labor
 BRU Labor Standards and Safety
 Component Wage and Hour

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M E M O R A N D U M

To: All Members, House Labor and Commerce Committee
From: Roger Poppe, Committee Aide
Date: May 2, 1985
Subject: Overview, HB 367; Resident Hire on Oil and Gas Leases

There is a companion bill in the Senate, SB 271, which was sponsored by Senator Josephson. This bill changed to a CS by the Senate Labor and Commerce Committee, and it currently is in Senate Resources Committee.

While this has been an on-going issue of concern to Alaskans going back to the early pipeline days, there has not been recent legislation that has focuses specifically on local hire in a specific industry. In fact, the state's local hire law was found to be unconstitutional (in Hicklin v. Orbeck) because of its broadness, and this bill attempts to correct that deficiency by excluding employers who:

- a. had no direct connection to the state's oil and gas industry
- b. performed no work on state land
- c. had no contractual relationship with the state
- d. received no payment from the state.

The Department of Labor came in with a position paper dated April 30, 1985 that listed some 9 major areas of concern (see blue section on Position Papers), and then detailed these 9 areas into 23 detailed amendments that are listed in its paper titled Department of Labor Proposed Amendments to House Bill 367 (see yellow tab of Suggested Amendments). These concerns and specific proposed amendments have all been incorporated into a proposed CS by the Sponsor that is in the yellow tab section also. The 3 pages of Suggested Amendments at the front of the yellow tab section are really a Sectional Analysis of the proposed CS (the white tab titled Sectional Analysis is for the original HB 367).

The proposed CS, if it is approved by the Committee, will make it word for word the same as the CS SB 271 (L & C). The Committee may wish to consider the additional two proposed amendments from Commissioner Esther Wunnicke of the Dept. of Natural Resources, dated April 26, 1985, and marked in yellow magic marker (which is found in your folder under the blue tab marked Position Papers).

The Fiscal Note requested by the Department of Labor was so confusing and complicated for the original bill, that one was never drawn up; hence, the current FN was made for the Senate CS SB 271, which will apply to the CS HB 367 if our Committee adopts that version. Please note that the fiscal impact is sizeable and increases over time.

Introduced April 11 and referred to the House Special Committee on Oil & Gas, Resources and Finance.

Resident Hire HOUSE BILL NO. 367, by Reps. Pignalberi, Cotten, Davis,
(under certain Phillips, Hurley, Navarre, Goll and Sund. See Senate Bill 271,
oil & gas page 585, identical.
leases)

Introduced April 11 and referred to Labor & Commerce, Judiciary, Finance.

Uniform HOUSE BILL NO. 368, by Reps. Gruenberg and Pignalberi.
Comparative Would adopt the Uniform Comparative Fault Act. Defines the
Fault Act term "fault" to include "...acts or omissions that are in any
(adoption of) measure negligent or reckless toward the person or property of
the actor or others, or that subject a person to strict tort
liability. The term also includes breach of warranty, unreasonable

INTRODUCTION OF BILLS (Senate)

Resident Hire SENATE BILL NO. 271, by Senators Josephson, Kerttula, Vic
(under certain Fischer and Zharoff. Would require Alaska resident hire on
oil & gas certain oil and gas leases and unitization agreements on state
leases) land. Enacts new AS 38.45 establishing the policy and findings
relative to resident employment preference under state leases.
Directs the Commissioner of Labor to establish resident hiring
requirements and to establish the minimum monetary value for
projects subject to the preference. In determining the minimum
monetary value the Dept. of Labor (DOL) must "compare the benefit
that accrues to state residents with administrative and enforcement
costs."

Employers must submit to DOL evidence of the monetary value, then DOL determines whether the project will be subject to resident hire provisions, and if so, to what extent. Preference would only apply to employment that is performed directly for an employer.

An employer that rejects a qualified resident in violation of the new law may be required to pay the person three times the amount of lost wages, plus payment of any expenses.

If DOL finds wilful noncompliance, it may impose any of the following penalties: (1) increase the rent or other forms of compensation received by the state by a factor of no more than 10 (maximum of \$100,000); (2) require that all or a portion of the project operations cease; (3) removed, for an unspecified number of years, the ability of the employer to contract with the state or its political subdivisions; or (4) require a noncompliance payment in liquidated damages to the state of 7-1/2 times the number of hours required but not worked by qualified residents, times the going wage for the job involved.

DOL or the Dept. of Natural Resources could also seek injunctive relief against an employer who is not in compliance; DNR may seek injunctive relief to enforce penalties.

Applies to an oil and gas lease, a unitization agreement, or a renegotiation of a lease or agreement entered into on or after the effective date of the bill. Effective immediately.

Introduced April 8 and referred to Labor & Commerce and Resources.

SENATE BILL NO. 272, by Senator P. Fischer. Appropriates
for the Bureau

Bill No. House Bill No. 367

Date April 30, 1985

Title "An Act requiring resident hire under certain oil and gas leases and unitization agreements on state land; and providing for an effective date."

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

House Bill 367 would establish a resident hire preference for all employment on oil and gas projects on state land.

Under the bill, the Department of Labor would be primarily responsible for: (1) establishing resident hire requirements for each oil and gas project on state land; (2) maintaining and making available a list of qualified residents seeking employment on oil and gas projects; (3) establishing and monitoring employer reporting requirements; (4) conducting investigations and holding hearings to determine compliance with resident hire requirements; (5) seeking monetary penalties and/or injunctive relief for noncompliance; and (6) promulgating requirements for oil and gas projects on state land.

Because of the beneficial impact of resident hiring on the workforce and the economy in general, the Department strongly endorses the principle that qualified Alaska residents should be given employment preference on natural resource projects on state land. This is consistent with the view that a state is entitled to give preference to its own citizens in the development of the state's natural resources.

Although the Department supports House Bill 367, the bill as presently drafted would have a significant fiscal impact. We believe this impact could be reduced through the following refinement to the bill:

Because of the substantial cost involved in establishing and maintaining a comprehensive list of all qualified residents for oil and gas employment, AS 38.45.030(d) should be amended to require that, upon the receipt of an employer job order for oil and gas employment, the Department will then screen its applicant pool for qualified residents and make the appropriate referrals. It would be very costly to maintain an updated list of all qualified residents interested in oil and gas employment.

In addition, making such a list available to employment agencies, unions, and other entities would run afoul of both state and federal confidentiality laws. Once such an "official" list of qualified applicants is circulated, the potential for abuse of that list is enormous. In its place, the Department recommends a job order/referral system similar to what is currently done on public construction projects.

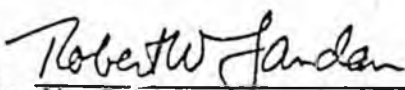
The Department also recommends additional amendments as follows:

1. Additional legislative findings be added to Sec. 38.45.020 to emphasize the particular problems caused by non-resident hire in Alaska.
2. The scope of the bill be expanded to include mineral and timber resource projects in addition to oil and gas leases.

3. An additional provision be added to Sec. 38.45.030(c) to require that companies, who contract with contractors or subcontractors who operate on state land, incorporate, in any contract entered into after the effective date of the bill, a provision requiring the contractor or subcontractor to comply with the provisions of chapter 38.45.
4. The monetary threshold under 38.45.050(b) be eliminated, making the Department responsible for establishing resident hire requirements for each covered project.
5. In Sec. 38.45.060(b), specify that applicants who have been rejected or employees who have been terminated from employment have 30 days to request a hearing, and that the Department be given 20 days, instead of 10, to hold a hearing after a request is received. This will allow the Department sufficient time to investigate a complaint and prepare for a hearing.
6. Under 38.45.070(b)(3), the maximum period for debarment from public construction projects be established as three years for violating companies.
7. A new subsection be added to 38.45.070 to specify that the penalties of having to pay increased rent or having to cease operations could apply only if the employer in violation is a lessee under lease of a state, agency, or is a subsidiary or affiliate of the lessee. For example, these penalties would not be applied when a company is in compliance with this chapter, but a contractor or subcontractor is not unless the company has failed to incorporate, in any contract with the violator entered into after the effective date of this chapter, a provision requiring the contractor or subcontractor to comply with the provisions of this chapter.
8. A definition of "qualified resident" be included in 38.45.090.
9. Clarification be made in Sec. 2 of the bill that only those renegotiations of contracts that involve major changes to duties of the parties will require incorporation of the resident hire provisions.

Attached are line-by-line amendments which would incorporate the Department's recommendations.

APPROVED:


for Jim Robison, Commissioner
Department of Labor

Department of Labor
Proposed Amendments to
House Bill 367

1. Amend Sec. 38.45.020 by adding four additional findings, as follows:
 1. because of its unique climate and its distance from the contiguous states, the state has historically suffered from unique social, seasonal, geographic, and economic conditions that result in an unstable economy;
 2. the unstable economy is a hardship on the residents of the state and is aggravated by the large numbers of seasonal and transient nonresident workers;
 3. the state has one of the highest ratios of nonresident to resident workers in the nation;
 4. the state has a compelling interest in reducing the level of unemployment among its residents;
2. Amend line 1 on page 2 to read:

"exploration, development, production, and extraction of natural resources on state land,"
3. Amend line 8 on page 2 to read:

"production, and extraction of natural resources on state land;"
4. Amend lines 16 and 17 on page 2 to read:

"dents from work in the development, exploration, production and extraction of natural resource products on state land and from work in service occupations on"
5. Amend lines 20 and 21 on page 2 to read:

"hired for work on state land, in the development, exploration, production, and extraction of state resources, is a peculiar source of the unemploy-"
6. Amend line 24 on page 2 to read:

"been predicated upon assurances from the natural resource industries that"
7. Amend line 26 on page 2 to read:

"tion, development, and production of natural resources from state-owned"
8. Amend line 2 on page 3 to read:

"under this section on a natural resource project on state land that is"

9. Amend lines 4 and 5 on page 3 to read:

"not discriminate against qualified residents in employment on a natural resource project on state land."

10. Amend line 8 on page 3 to read:

"natural resource project on state land. In making this determination, the"

11. Amend line 15 on page 3 to read:

"ified residents to employment in natural resource projects on state land,"

12. Amend lines 18 thru 24 on page 3 to read:

"ment, provisions requiring compliance with this chapter, regulations adopted under this chapter, and all later amendments to this chapter or the regulations, and authorizing penalties under AS 38.45.070 for failure to comply. The commissioner shall incorporate into each lease, agreement, or renegotiation a requirement that the lessee include a provision requiring compliance with this chapter, later amendments of this chapter, regulations adopted under this chapter and authorizing penalties under AS 38.45.070 in a contract under the lease or agreement with contractors or subcontractors who will be operating on state land.

(d) An employer subject to resident hiring requirements under this chapter may request the Department of Labor to assist in locating qualified available resident employees. After receiving a request for assistance, the department shall refer qualified available residents to the employer to fill the employer's hiring needs. If the department is unable to refer a sufficient number of residents, it may approve the hiring of nonresidents for the balance of the request."

13. Amend Sec. 38.45.050, beginning on line 29 of page 3 and continuing thru line 16 of page 4 to read:

"Sec. 38.45.050. APPLICABILITY OF CHAPTER. This chapter applies to all natural resource projects on state land. The Department of Labor shall determine the extent of the resident hiring preference for each project under AS 38.45.030. The preference applies only to employment that is performed directly for an employer."

14. Amend line 21 on page 4 to read:

"employment on a natural resource project on state land. Regulations and"

15. Amend line 26 on page 4 to read:

"ed or an employee who has been terminated from employment may, within 30 days after the rejection or termination, request"

16. Amend line 1 on page 5 to read:

"the question within 20 days of receipt of the request unless the"

17. Amend line 28 on page 5 to read:

"three years, the eligibility of the employer to contract with the state or"

18. Amend Sec. 38.45.070 by adding a new subsection to read:

"(c) The commissioner may impose the penalties under (b)(1) and (2) of this section on a lessee only if the lessee itself has failed to comply with this chapter or incorporate into the contract with the violator a provision requiring compliance with this chapter."

19. Amend line 13 on page 6 to read:

"party to a lease or agreement for a natural resource project on state land"

20. Amend AS 38.45.090(2), lines 17 thru 20 on page 6, to read:

"(2) "natural resource project on state land" means a contract, lease, unitization agreement, or a renegotiation of a contract, lease, or agreement for exploration, development, extraction or production of oil and gas, mineral, or timber resources if the state is a party to the contract, lease or agreement and the project is performed in whole or in part on state land;"

21. Amend Sec. 38.45.090 by adding a new definition to read:

"qualified resident" means a resident who possesses the requisite education, training, skills, or experience to perform the work;

22. Amend line 25 on page 6 to read:

"natural resource project on state land; and"

23. Amend Sec. 2, beginning on line 28 on page 6 and continuing thru line 1 on page 7, to read:

"Sec. 2. This chapter applies to a lease, unitization agreement, or contract for the development of oil and gas, or mineral or timber resources entered into after the effective date of this Act and to a renegotiation of the lease, agreement or contract. This chapter applies to the renegotiation after the effective date of this Act of a lease, agreement, or contract entered into before the effective date of this Act if the renegotiation results in a major change to the duties of a party."

^ ^
Cramer
v 4/7/86 v

BY SIGNALBERI, COTTEN,
DAVIS, PHILLIPS, HURLEY,
NAVARRE, GOLL, SUND AND
FURNACE

1 IN THE HOUSE

5
2d

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 367 (Loc)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act requiring resident hire on certain natural
7 resource projects on state land; and providing for an
8 effective date."

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

10 * Section 1. AS 38 is amended by adding a new chapter to read:

11 CHAPTER 45. RESIDENT EMPLOYMENT PREFERENCE UNDER STATE LEASES.

12 Sec. 38.45.010. STATE POLICY. It is the policy of the state to
13 develop its natural resources to provide the maximum benefit to the
14 people of the state as required by the Constitution of the State of
15 Alaska. These benefits include employment opportunities in natural
16 resource development projects for residents qualified for the employ-
17 ment, as well as receipt of state revenue from the development.

18 Sec. 38.45.020. LEGISLATIVE FINDINGS. The legislature finds:

19 (1) the findings made in AS 36.10.005 continue to accurately
20 ly describe the social, economic, and employment situation in the
21 state;

22 (2) chronic unemployment can breed severe social problems
23 including alcoholism and domestic violence;

24 (3) the findings of the Department of Labor of the State of
25 Alaska in its report entitled "Nonresidents Working in Alaska; A
26 Special Study to Measure the Economic Impact of Nonresidents on
27 Alaska's Economy During Calendar Year 1984" support the need for a
28 resident hiring preference;

29 (4) there is a need for timely, accurate information on the

1 number of nonresident and resident workers in industries in the state;

2 (5) the state has a continuing interest in determining
3 whether indirect benefits, including employment opportunities, from
4 state expenditures, natural resource projects, and agreements concern-
5 ing the state's natural resources accrue to residents of the state or
6 to nonresidents;

7 (6) a major factor in the unemployment problem is the
8 failure of some employers engaged in the exploration, development, and
9 production of natural resources on state land, and under leases or
10 other agreements granted or permitted by the state, to employ state
11 residents;

12 (7) whereas at an earlier stage of the state's history it
13 was asserted that high unemployment in the state was due to cultural
14 and geographical migration barriers, the state now has many residents
15 who are qualified, trained, and available for employment in the explo-
16 ration, development, production, and extraction of natural resources
17 on state land;

18 (8) the state has made significant investments in training
19 programs and vocational education to help furnish industry with qual-
20 ified residents able to work in the development, exploration, produc-
21 tion, and extraction of natural resource products on state land;

22 (9) the state's investment in these training and education
23 programs will be of little avail unless state residents receive em-
24 ployment opportunities in natural resource projects on state land;

25 (10) employment of nonresidents displaces qualified resi-
26 dents from work in the development, exploration, production, and
27 extraction of natural resource products on state land and from work in
28 service occupations on state land that directly support the develop-
29 ment, exploration, and production activities; therefore, the number of

1 nonresidents hired for work on state land in the development, explor-
2 ation, production, and extraction of state resources is a peculiar
3 source of the unemployment problem now besetting the state;

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

7 (12) many rural state residents who wish to work do not seek
8 employment as frequently as necessary to meet federal definitions of
9 unemployment because of continuing lack of employment opportunities in
10 rural areas of the state.

11 Sec. 38.45.030. UNAVAILABILITY OF PREFERRED WORKERS. (a) An
12 employer subject to hiring requirements under this chapter may request
13 the Department of Labor to assist in locating qualified, eligible
14 employees. After receiving a request for assistance, the department
15 shall refer qualified, eligible, available residents to the employer
16 to fill the employer's hiring needs.

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

22 Sec. 38.45.035. EMPLOYEE QUALIFICATIONS. An employer shall
23 determine and judge the work qualifications of applicants for employ-
24 ment.

25 Sec. 38.45.040. REGULATIONS. The commissioner of labor shall
26 adopt regulations in accordance with AS 44.62 (Administrative Proce-
27 dure Act) to implement this chapter and encourage and require the
28 hiring of residents to the maximum extent permitted by law.

29 Sec. 38.45.050. RESIDENT HIRE REPORT. The attorney general and

1 the commissioner of labor shall report annually to the legislature and
2 the governor on the status of employment in the state, the effect of
3 nonresident employment on the employment of residents in the state,
4 and methods to increase resident hire. The report shall be submitted
5 by January 31 of each year.

6 Sec. 38.45.060. ELIGIBILITY FOR PREFERENCE. (a) A person is
7 eligible for an employment preference under this chapter if the person
8 certifies eligibility as required by the Department of Labor, is a
9 resident, and

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

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

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

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

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

22 Sec. 38.45.070. DETERMINATION OF UNDEREMPLOYED AREA. (a)
23 Immediately following a determination by the commissioner of labor
24 that a census area, economic region, or the state as a whole is an
25 underemployed area and for the next two fiscal years after the deter-
26 mination, qualified residents who are eligible under AS 38.45.060
27 shall be given preference for work on each natural resource project on
28 state land that is wholly or partially sited within the area.

29 (b) The commissioner of labor shall determine the amount of work

1 that must be performed under this chapter by eligible qualified resi-
2 dents. In making this determination, the commissioner shall consider
3 the nature of the work, the classification of workers, availability of
4 eligible residents, and the willingness of eligible residents to
5 perform the work.

6 (c) The commissioner shall determine that a census area, econo-
7 mic region, or the state as a whole is an underemployed area if the
8 commissioner finds that

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

11 (2) a substantial number of residents in the area have
12 experience or training in occupations that would be employed on a
13 natural resource project on state land;

14 (3) the lack of employment opportunities in the area has
15 contributed to serious social or economic problems in the area; and

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

18 (d) The commissioner shall define the boundaries of a census
19 area or economic region within which a preference applies. In choos-
20 ing whether to apply a preference to a census area, economic region,
21 or the state as a whole, the commissioner shall apply the preference
22 to the smallest unit that will adequately address the problems identi-
23 fied by the findings.

24 Sec. 38.45.080. PREFERENCE FOR RESIDENTS OF ECONOMICALLY DIS-
25 TRESSED AREAS. (a) Immediately following a determination by the
26 commissioner that a census area or economic region of t is an
27 economically distressed area, and for the next two fiscal years after
28 the determination, qualified residents of the area who are eligible
29 under AS 38.45.060 shall be given preference for at least 50 percent

1 of employment on each natural resource project on state land that is
2 wholly or partially sited within the economically distressed area.

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

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

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

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

14 (c) If the governor has declared an area to be an area affected
15 by an economic disaster under AS 44.33.285, then the preference for
16 residents of the area established under AS 44.33.285 - 44.33.310
17 supercedes the preference under this section.

18 (d) The commissioner shall define the boundaries of a census
19 area or economic region in which a preference applies. In choosing
20 whether to apply a preference to a census area or economic region,
21 the commissioner shall apply the preference to the smallest unit that
22 will adequately address the problems identified by the findings.

23 Sec. 38.45.090. INCORPORATION INTO CONTRACTS. In order to
24 create, protect, and preserve the right of eligible qualified resi-
25 dents to employment in natural resource projects on state land, the
26 commissioner of natural resources shall incorporate into each con-
27 tract, lease, unitization agreement, or renegotiation of a contract,
28 lease or unitization agreement, provisions requiring compliance with
29 this chapter, regulations adopted under this chapter, and all later

1 amendments to this chapter or the regulations, and authorizing pen-
2 alties under AS 38.45.120 for failure to comply. The commissioner
3 shall incorporate into each contract, lease, unitization agreement, or
4 renegotiation a requirement that the lessee include in each contract
5 under the lease or agreement with contractors or subcontractors who
6 will be operating on state land a provision requiring compliance with
7 this chapter, later amendments of this chapter, regulations adopted
8 under this chapter, and authorizing penalties under AS 38.45.120.

9 Sec. 38.45.100. REPORTING PROVISIONS. An employer obligated to
10 meet resident hiring requirements under this chapter shall comply with
11 the reporting provisions that the commissioner of labor determines are
12 reasonably necessary to carry out this chapter. Except for statis-
13 tical data, information concerning specific employees is confidential
14 and may not be released to the public by the department. However,
15 confidential employee information may be shared between departments
16 for purposes of this chapter.

17 Sec. 38.45.110. HEARINGS. (a) If a person not entitled to a
18 preference was hired in a position for which an eligible applicant was
19 rejected or to a position from which an eligible employee was termi-
20 nated, the eligible applicant or eligible former employee may, within
21 30 days after the rejection or termination, request a hearing before
22 the Department of Labor to determine whether the employer violated
23 this chapter in denying the application or terminating the employment.
24 The Department of Labor shall review the request and may hold a hear-
25 ing on the question.

26 (b) The Department of Labor may conduct investigations and
27 hearings to determine compliance with this chapter. If the commis-
28 sioner of labor finds that an employer has wilfully failed to comply
29 with this chapter, the commissioner may certify the finding to the

1 Department of Natural Resources.

2 (c) Proceedings under this section are exempt from AS 44.62
3 (Administrative Procedure Act).

4 Sec. 38.45.120. PENALTIES FOR EMPLOYERS. (a) If the Department
5 of Labor finds that an employer has rejected a qualified eligible
6 applicant or terminated a qualified eligible employee in violation of
7 this chapter, the department may require the employer to pay the
8 person the amount of wages the person lost and may require additional
9 amounts to reimburse the person for actual expenses incurred as a
10 result of the wrongful action. Either party may appeal the depart-
11 ment's decision under this section to the superior court. The court
12 may hear the appeal de novo.

13 (b) The Department of Natural Resources upon certification of
14 noncompliance by the Department of Labor under AS 38.45.110, may
15 investigate and conduct hearings. If it finds wilful noncompliance,
16 the department may impose on the employer one or more of the following
17 penalties:

18 (1) increase the rent or other forms of compensation re-
19 ceived by the state under the project lease or agreement; the increase
20 may not exceed \$100,000;

21 (2) remove, for an appropriate period of time not to exceed
22 three years, the eligibility of the employer to contract with the
23 state or any of its political subdivisions; or

24 (3) require a noncompliance payment in liquidated damages
25 to the state in an amount equal to seven and one-half times the number
26 of hours required but not worked by eligible qualified residents
27 multiplied by the going wage or salary rate for the particular job or
28 activity involved; the payment may not exceed \$200,000.

29 (c) The commissioner may impose the penalties under this section

Sec 200 / 210
of HR 466

1 on an employer only if the employer itself has failed to comply with
2 this chapter or incorporate into the contract, lease, or unitization
3 agreement with the violator a provision requiring compliance with this
4 chapter.

5 (d) The Department of Labor or the Department of Natural Resour-
6 ces, in addition to the imposition of penalties under this section,
7 may seek injunctive relief against a person who is not in compliance
8 with this chapter. The Department of Natural Resources may seek
9 injunctive relief to enforce penalties imposed under this section.

Delete

10 Sec. 38.45.130. PENALTIES FOR APPLICANTS AND EMPLOYERS. (a) A
11 person who makes a false sworn statement in connection with a certi-
12 fication of eligibility for an employment preference under this chap-
13 ter is subject to criminal prosecution for perjury as provided in
14 AS 11.56.200.

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

20 (c) In addition to criminal penalties imposed by state law, if a
21 person is convicted of a crime in connection with a false statement
22 made in a certification required under AS 38.45.060, and the convic-
23 tion is not reversed, that person shall forfeit all future rights to
24 eligibility for an employment preference under this chapter.

25 Sec. 38.45.200. APPLICABILITY OF CHAPTER. This chapter applies
26 to all natural resource projects on state land. The preference app-
27 lies only to employment that is performed directly for an employer.

28 Sec. 38.45.250. DEFINITIONS. In this chapter

29 (1) "available" means physically present at the place of

1 hire at the time requested by the employer;

2 (2) "employer" means a person other than the state who is a
3 party to a contract, lease, or unitization agreement for a natural
4 resource project on state land and the person's affiliate, principal,
5 subsidiary, contractor, or subcontractor if the activity of the affil-
6 iate, principal, subsidiary, contractor, or subcontractor is performed
7 on state land;

8 (3) "natural resource project on state land" means a pro-
9 ject authorized by a contract, lease, unitization agreement, or a
10 renegotiation of a contract, lease, or unitization agreement for
11 exploration, development, extraction or production of oil and gas,
12 leasable mineral, or timber resources if the state is a party to the
13 contract, lease or unitization agreement and the project is performed
14 in whole or in part on state land;

15 (4) "qualified resident" means a resident who possesses the
16 requisite education, training, skills, or experience to perform the
17 work;

18 (5) "resident" means a person who establishes residency
19 under AS 01.10.055;

20 (6) "state land" means all land, including shore, tide, and
21 submerged land, belonging to or acquired by the state.

22 * Sec. 2. AS 38.45, enacted in sec. 1 of this Act, applies to a lease,
23 unitization agreement, or contract for the development of oil and gas,
24 leasable mineral, or timber resources entered into on or after the effec-
25 tive date of this Act and to a renegotiation of the lease, unitization
26 agreement, or contract. AS 38.45 applies to the renegotiation on or after
27 the effective date of this Act of a lease, unitization agreement, or con-
28 tract entered into before the effective date of this Act if the renegot-
29 iation results in a major change in the duties of a party.

1 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
2 10.070(c).
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John R. Kemp
Manager of Alaskan Operations

Conoco Inc.
3201 C Street
Suite 200
Anchorage, AK 99503

April 19, 1985

Honorable Mike Navarre
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

Dear Representative Navarre:

Conoco is currently constructing its Milne Point facilities to become the third production operator on the North Slope of Alaska. We anticipate production from Milne Point will be 30,000 BOPD in early 1986. Comparatively speaking, the production from our entire Milne Point Unit will be less than two above-average Prudhoe Bay producing wells. Needless to say, Milne Point is a marginal field.

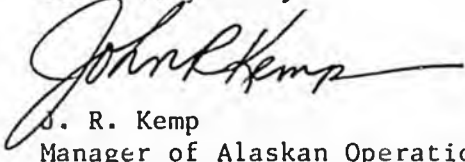
As operator for the Milne Point Unit, Conoco has been challenged to prove that marginal fields, which hold the key to Alaska's future oil and gas development, can be economically developed and operated.

Through innovation and hard work Conoco is meeting this challenge. Our efforts have not been unimpeded however. Milne Point continues to be burdened with a 20% royalty rate - the highest royalty on the North Slope, and market forces continue to adversely impact the economics of the project. We have struggled to meet the myriad of time consuming permitting requirements, and we have conscientiously complied with all applicable State and Federal regulations.

We now find ourselves faced with the likelihood of further impediments in the form of Senate Bill No. 271 (House Bill No. 367). This bill, if enacted into law, will force Conoco to devote additional staff to our human resources efforts, subject us to additional reporting and record keeping requirements, and expose us to potentially costly law suits and penalties even though we currently employ a hiring preference for Alaskan residents. Additional costs in terms of money, manpower, and time, are significant and will hamper the full development of the Milne Point Unit.

Conoco is proud of its efforts in hiring Alaskans and employing Alaskan firms during our relatively short period of involvement in Alaska. We do not feel that we should be subjected to additional government regulation. We urge you to support marginal oil field development in Alaska, and vote against Senate Bill No. 271 (House Bill No. 367).

Yours very truly,



J. R. Kemp
Manager of Alaskan Operations

km

The Milne Point Project



CONOCO

a Du Pont subsidiary



MILNE POINT DATA

Discovered in 1980

Project commitment in 1984

First oil due in early 1986

Located 35 miles northwest of Prudhoe Bay; 650 miles north of Anchorage; 240 miles north of the Arctic Circle

Processing capacity 32,000 barrels of oil a day

Number of wells (Phase I) 18 producers, 12 water injectors and four service wells. Eighteen wells were drilled in advance of project development

Recoverable reserves estimated in excess of 100 million barrels (Phases I-IV)

Cost \$325 million (Phase I), \$800 million (Phases I-IV)

Pipeline 14-inch, 11½-mile line tied to the Trans Alaska Pipeline via the Kuparuk line

Accommodation for 350 people

Temperature variation -80 degrees F to 80 degrees F

Permafrost 1,800 ft. to 2,000 ft. thick

A Precedent Is Set

Only windswept acres defined Milne Point, Alaska, on January 26, 1984.

That same day, Conoco and its partners shook hands on a decision to develop Milne Point as the first small oil field on the North Slope.

While Milne Point's recoverable reserves are estimated in excess of 100 million barrels, they are modest by Alaskan standards. To make

oil production economic from this marginal field, Conoco had to move faster and design more frugally than ever attempted in such a desolate spot.

The challenge was to compress three years of work into two years — something that had never been tried on the North Slope.

Only one year after project approval, an operations complex for housing, recreation and office space for 350 people was completed and construction had begun on a pipeline. To save additional time and money, Conoco engineers created an innovative method for building the oil processing equipment. This procedure allowed for pre-commissioning and testing of the processing equipment before transporting it from Everett, Wash., to the North Slope by sea lift.

When oil begins flowing in early 1986, the first phase of Milne Point will be achieved, having provided jobs for Alaskans and broadened the state's economic base. Three more phases of the project are waiting in the wings, contingent on economic conditions. Those phases would make it possible to extend production of the field beyond the year 2000.

Milne Point is a project that will serve as a pattern for the development of other small fields in the Arctic. Conoco — the third operator on the North Slope — is guiding it to a successful completion.

Partners in the Milne Point project are:

Operator: Conoco, a subsidiary of the Du Pont Company
Chevron U.S.A.

Champlin Petroleum Co., a subsidiary of Union Pacific Corp.
Cities Service Oil and Gas Corp., a wholly owned subsidiary of Occidental Petroleum Corp.
Reading & Bates Petroleum Co.

Front photo: The entrance to the Milne Point operations complex



STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

L+C Comm file
BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-485-2400

April 26, 1985

The Honorable Mike Navarre
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Navarre:

The Department of Natural Resources defers to the Department of Labor and the Department of Law concerning the constitutionality and applicability of House Bill No. 367. We would, however, point out some of the difficulties that may be incurred when implementing this legislation.

Determining whether a project is subject to local hire requirements could be a problem in cases where part of an oil and gas development project is a shore based facility on a state land lease; or where part of a project is on an oil and gas lease held by another company; or where part of a project is on federal or private land. The regulations developed to implement HB 367 could probably define more specifically the application of local hire requirements under these situations.

To avoid possible difficulties associated with requiring the incorporation of a local hire clause when minor changes are made in existing leases or unit agreements, we suggest the following changes to line 17, page 3: Add the word "new" before the word "unitization" and replace "renegotiation" with "major change". I have enclosed information related to unit agreements to clarify the need for these changes.

As you may know, there have been a number of different resident hire stipulations included in state oil and gas leases over the last decade, and several of the most recent are presented below:

In 1980, the stipulation read:

Lessees shall comply with all valid and applicable laws and regulations with regard to the hiring of Alaska residents. Lessee will not discriminate against Alaska residents, as prohibited by applicable laws and regulations of the State of Alaska. Lessee will furnish the Alaska Department of Labor a quarterly

April 26, 1985

report regarding the employment of Alaska residents on the leased area in compliance with regulations adopted by the Commissioner of Labor.

In 1982, the provision was revised to read:

The lessee is encouraged to hire Alaska residents to perform work done by or for it within the State of Alaska in connection with this lease to the extent that residents are available, willing and qualified. The lessee must submit to the Director, DMEM, a program detailing the affirmative steps it will take to recruit and hire Alaska residents and the statistical indicators it will use to document the program's success. The lessee will submit these statistics annually to the Director, DMEM.

The currently used term eliminates the reporting requirement, at the request of the Department of Labor.

The lessee is encouraged to hire and employ Alaska residents and companies, to the extent that they are available and qualified, for work performed on the leased area.

Lease terms relating to the provisions in HB 367 could be inserted in oil and gas leases and agreements by existing staff and monitoring and enforcement activities could also be completed by existing staff.

If we may provide additional information about this bill or local hire requirements, please let me know.

Sincerely,



Esther C. Wunnicke
Commissioner

cc: House Labor and Commerce
Committee members
Sponsors

MEMORANDUM

State of Alaska

Department of Natural Resources

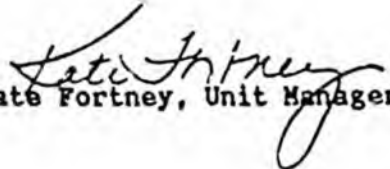
Division of Oil and Gas

TO: Fred Vreeman, NRO

DATE: April 16, 1985

FILE NO: 4-509.2

TELEPHONE NO: 276-2653

FROM: 
Kate Fortney, Unit Manager

SUBJECT: Renegotiation of Unit Agreements.

Following is a summary of the various types of unitization activities in which the State might be construed to have the ability to negotiate or renegotiate unit agreement terms. A table listing the unitization activities for the past two years for the existing State units is also attached. If you need any further information, please advise.

SUMMARY OF UNITIZATION ACTIVITIES

1. Approval of a Unit: the creation of a voluntary unit out of separate oil and gas leases is approved pursuant to AS 38.05.180(p)&(q), AS 31.05.110, and 11 AAC 83.301 -- 11 AAC 83.395. The State has the authority to renegotiate rental, royalty, minimum royalty, drilling, and producing terms under AS 38.05.180(p) and the unitization clauses of the various leases.
2. Amendment of a Unit Agreement: bilateral amendment of the unitization contract originally approved by the State at the time of unitization. In most cases, the State does not have any control over the direction of an amendment to a unit agreement, although we can negotiate amendment (or addition) of terms we feel are important in return for amendment of other terms the unit operator wants or proposes. For example, a number of units have requested approval of amendments to their unit agreements postponing the formation of a participating area until 90 days prior to production (a change from their original terms requiring a participating area within five years of certification of a well as capable of production in paying quantities).
3. Expansion of a Unit: expansion of the unit area of an existing unit to include additional leases. We can renegotiate rental, royalty, minimum royalty, drilling, and producing terms of certain leases at the time of expansion of a unit; however, to date we have only been able to make the renegotiated terms applicable to the leases to be added to the unit. It's all a game of negotiation; if the entire unit wants the new leases to be added to the unit badly enough, we could probably make the renegotiated terms stick to the entire unit. So far, we haven't had a strong enough case to cause the terms to be added to the entire units; with the upcoming expansion of Prudhoe Bay Unit to encompass the leases in the Lisburne reservoir, we may have such a case (especially since the AOGCC Field Rules for that reservoir dictate that no production from the Lisburne may occur until the unit has been expanded to include all of the Lisburne leases).

4. Contraction of a Unit: units are required to be contracted to essentially their productive acreage within a specified time after the commencement of production. It is doubtful whether we have the ability to induce the amendment of any unit agreement terms at that time, as the language of the unit agreement usually just calls for contraction down to the participating area. Possibly we might have some room for negotiation if the working interest owners want a larger area than we feel is absolutely justified by the geology, but probably not.
5. Approval of Plans of Exploration/Development: each unit is required to present a plan of exploration or development pursuant to 11 AAC 83.341 -- 11 AAC 83.343. The State is more or less obliged to approve such plan if it meets the terms of those regulations.
6. Extension of Unit Agreement: the State has the authority to approve an extension of a unit if it has not discovered oil or gas in paying quantities by the time the original unit agreement expires (usually five years from the unit's initial approval). This happens very rarely.
7. Change in Unit Operator: the State must approve any change in the Unit Operator of a Unit. It is possible that we could tie our approval to a concurrent amendment of the unit agreement, but I think we would be on shaky grounds.
8. Misc. Approvals: the State receives many requests for approvals of miscellaneous activities that do not fall under any of the above categories (e.g. deferral of required unit work commitments, extension of time to comply with unit agreement or plan of development terms, negotiation and construction of emergency storage and field cost settlements for productive units, etc.) It is possible that we could negotiate the addition of a resident hire term as a condition of approval of certain of these approvals.

2257A

cc: Kay Brown
Jim Eason
Bill Van Dyke
Pam Rogers
Renel Hall

Introduced: 4/8/85
Referred: Labor and Commerce
Resources

BY JOSEPHSON, KERTTULA
V. FISCHER AND ZHAROFF

1 IN THE SENATE

2

SENATE BILL NO. 271

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act requiring resident hire under certain oil and
7 gas leases and unitization agreements on state land;
8 and providing for an effective date."

9

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

10

* Section 1. AS 38 is amended by adding a new chapter to read:

11

CHAPTER 45. RESIDENT EMPLOYMENT PREFERENCE UNDER STATE LEASES.

12

Sec. 38.45.010. STATE POLICY. It is the policy of the state to
13 develop its natural resources to provide the maximum benefit to the
14 people of the state as required by the Constitution of the State of
15 Alaska. These benefits include employment opportunities in natural
16 resource development projects for residents qualified for the employ-
17 ment, as well as receipt of state revenue from the development.

18

Sec. 38.45.020. LEGISLATIVE FINDINGS. The legislature finds:

19

(1) the rate of unemployment among residents of the state
20 is one of the highest in the nation;

21

(2) a major factor of increasing importance in the unem-
22 ployment problem is the failure of employers engaged in the explora-
23 tion, development, and production of natural resources on state land,
24 and under leases or other agreements granted or permitted by the
25 state, to employ state residents;

26

(3) whereas at an earlier stage of the state's history it
27 was asserted that high unemployment in the state was due to cultural
28 and geographical migration barriers, the state now has many residents
29 who are qualified, trained, and available for employment in the

1 exploration, development, and production of oil and gas on state land,
2 but who are not presently employed because an increasing amount of the
3 work they are qualified to perform is being performed on state land by
4 nonresidents;

5 (4) the state has made significant investments in training
6 programs and vocational education to help furnish industry with qual-
7 ified residents able to work in the development, exploration, and
8 production of oil and gas products on state land;

9 (5) unless the trend towards hiring nonresidents is re-
10 versed, the state's investment in these training and education pro-
11 grams will be of little avail, the state policy of maximizing benefits
12 from natural resource development will be thwarted, and the state will
13 suffer the burdens wrought by increasing demands for public assistance
14 and other state services from unemployed residents and their families;

15 (6) employment of nonresidents displaces qualified resi-
16 dents from work in the development, exploration and production of oil
17 and gas products on state land and from work in service occupations on
18 state land that directly support the development, exploration, and
19 production activities; therefore, the growing number of nonresidents
20 hired for work on state land, in the development, exploration, and
21 production of state resources, is a peculiar source of the unemploy-
22 ment evil now besetting the state;

23 (7) state policies favoring stable levels of taxation have
24 been predicated upon assurances from the oil and gas industry that
25 state residents would receive employment opportunities in the explora-
26 tion, development, and production of oil and gas from state-owned
27 land, but data show that these assurances, and the expectations they
28 created, are not being fulfilled.

29 Sec. 38.45.030. RESIDENT HIRE. (a) An employer shall meet the

1 resident hiring requirements established by the commissioner of labor
2 under this section on an oil and gas project on state lands that is
3 subject to a hiring preference under AS 38.45.050. An employer may
4 not discriminate against qualified residents in employment on an oil
5 and gas project on state land.

6 (b) The commissioner of labor shall determine the amount of work
7 that must be performed under this chapter by qualified residents on an
8 oil and gas project on state land. In making this determination, the
9 commissioner shall consider the nature of the work, the classification
10 of workers, availability of residents, and the willingness of resi-
11 dents to perform the work. The commissioner shall require an employer
12 to make the maximum feasible effort to hire qualified residents for
13 jobs on state land.

14 (c) In order to create, protect, and preserve the right of qual-
15 ified residents to employment in oil and gas projects on state land,
16 the commissioner of natural resources shall incorporate into each
17 lease, unitization agreement, or renegotiation of a lease or agree-
18 ment, provisions requiring compliance with this chapter and authoriz-
19 ing penalties under AS 38.45.070 for failure to comply.

20 (d) The Department of Labor shall maintain a file of the names
21 of qualified residents seeking employment on an oil and gas project on
22 state land. The department shall make the file available to an em-
23 ployer and to an employment or dispatching agency, union, or other
24 similar entity.

25 Sec. 38.45.040. REPORTING PROVISIONS. An employer obligated to
26 meet resident hiring requirements under this chapter shall comply with
27 the reporting provisions that the commissioner of labor determines are
28 reasonably necessary to carry out this chapter.

29 Sec. 38.45.050. APPLICABILITY OF CHAPTER. (a) The Department

1 of Labor shall determine by regulation the minimum monetary value for
2 projects subject to the resident hiring preference under this chapter.
3 In determining the minimum value, the department shall compare the
4 benefit that enures to state residents with administrative and en-
5 forcement costs.

6 (b) An employer shall submit to the department evidence of the
7 monetary value of an oil and gas project on state land. The depart-
8 ment shall determine whether the project is subject to a hiring pref-
9 erence. If the project is subject to a hiring preference, the depart-
10 ment shall determine the extent of the preference under AS 38.45.030.
11 The preference applies only to employment that is performed directly
12 for an employer. The department shall ensure that projects or activ-
13 ities within projects are not artificially divided to prevent coverage
14 under this chapter. If the department finds evidence of artificial
15 division, the burden is on the employer to show that the division is
16 not artificial.

17 Sec. 38.45.060. REGULATIONS AND HEARINGS. (a) The Department
18 of Labor and the Department of Natural Resources shall adopt regula-
19 tions to implement this chapter. The Department of Labor shall adopt
20 regulations prohibiting discrimination against qualified residents in
21 employment on an oil and gas project on state land. Regulations and
22 proceedings under this chapter are subject to the Administrative
23 Procedure Act (AS 44.62) except as provided in (b) of this section.

24 (b) An employer shall determine and judge the work qualifica-
25 tions of applicants for employment. An applicant who has been reject-
26 ed or an employee who has been terminated from employment may request
27 a hearing before the Department of Labor to determine whether the
28 employer violated this chapter in denying the application or terminat-
29 ing the employment. The Department of Labor shall hold a hearing on

1 the question within 10 days of receipt of the request unless the
2 applicant or employee requests a longer period of time.

3 (c) The Department of Labor may conduct investigations and
4 hearings to determine compliance with this chapter. If the commis-
5 sioner of labor finds that an employer has wilfully failed to comply
6 with this chapter, the commissioner may certify the finding to the
7 Department of Natural Resources.

8 Sec. 38.45.070. PENALTIES. (a) If the Department of Labor
9 finds that an employer has rejected a qualified applicant or term-
10 inated a qualified employee from employment in violation of this
11 chapter, the department may require the employer to pay the person
12 three times the amount of wages the person lost and may require addi-
13 tional amounts if the person's actual expenses incurred as a result of
14 the wrongful action exceeded the triple wages assessed. Either party
15 may appeal the department's decision under this section to the su-
16 perior court. The court shall hear the appeal de novo.

17 (b) The Department of Natural Resources, upon certification of
18 noncompliance by the Department of Labor, under AS 38.45.060, may
19 investigate and conduct hearings. If it finds wilful noncompliance,
20 the department may impose on the employer any of the following pen-
21 alties, as appropriate:

22 (1) increase the rent or other forms of compensation re-
23 ceived by the state under the project lease or agreement by a factor
24 of no more than 10; the increase may not exceed \$100,000;

25 (2) require that all or a portion of project operations
26 cease;

27 (3) remove, for an appropriate period of time not to exceed
28 ___ years, the ability of the employer to contract with the state or
29 any of its political subdivisions; or

1 (4) require a noncompliance payment in liquidated damages
2 to the state in an amount equal to seven and one-half times the number
3 of hours required but not worked by qualified residents, times the
4 going wage or salary for the particular job or activity involved.

5 Sec. 38.45.080. INJUNCTIVE RELIEF. The Department of Labor or
6 the Department of Natural Resources, in addition to the imposition of
7 penalties under AS 38.45.070, may seek injunctive relief against a
8 person who is not in compliance with this chapter; the Department of
9 Natural Resources may seek injunctive relief to enforce penalties
10 imposed under AS 38.45.070.

11 Sec. 38.45.090. DEFINITIONS. In this chapter

12 (1) "employer" means a person other than the state who is a
13 party to a lease or agreement for an oil and gas project on state land
14 and includes the person's affiliate, principal, subsidiary, contrac-
15 tor, or subcontractor if the activity of the affiliate, principal,
16 subsidiary, contractor, or subcontractor is performed on state land;

17 (2) "oil and gas project on state land" means an oil and
18 gas lease, a unitization agreement, or any renegotiation of a lease or
19 agreement if the state is a party to the lease or agreement and the
20 project is performed in whole or in part on state land;

21 (3) "resident" means a person who

22 (A) except for military service, has been physically
23 present in the state for a period of 30 days immediately before
24 the time the person enters into a contract of employment on an
25 oil and gas project on state land; and

26 (B) shows by all attending circumstances the intention
27 to permanently reside in this state.

28 * Sec. 2. This chapter applies to an oil and gas lease, a unitization
29 agreement, or a renegotiation of a lease or agreement entered into on or

1 after the effective date of this Act.

2 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-

3 10.070(c).

Offered: 4/30/85
Referred: Resources

Original sponsors: Josephson, Kerttula,
V.Fischer and Zharoff

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE SENATE

2

CS FOR SENATE BILL NO. 271 (L&C)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

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7 resource projects on state land; and providing for an
8 effective date."

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13 develop its natural resources to provide the maximum benefit to the
14 people of the state as required by the Constitution of the State of
15 Alaska. These benefits include employment opportunities in natural
16 resource development projects for residents qualified for the employ-
17 ment, as well as receipt of state revenue from the development.

18

Sec. 38.45.020. LEGISLATIVE FINDINGS. The legislature finds:

19

(1) because of its unique climate and its distance from the

20

contiguous states, the state has historically suffered from unique

21

social, seasonal, geographic, and economic conditions that result in

22

an unstable economy;

23

(2) the unstable economy is a hardship on the residents of

24

the state and is aggravated by the large numbers of seasonal and

25

transient nonresident workers;

26

(3) the rate of unemployment among residents of the state

27

is one of the highest in the nation;

28

(4) the state has one of the highest ratios of nonresident

29

to resident workers in the nation;

1 (5) the state has a compelling interest in reducing the
2 level of unemployment among its residents;

3 (6) a major factor of increasing importance in the unem-
4 ployment problem is the failure of employers engaged in the explora-
5 tion, development, and production of natural resources on state land,
6 and under leases or other agreements granted or permitted by the
7 state, to employ state residents;

8 (7) whereas at an earlier stage of the state's history it
9 was asserted that high unemployment in the state was due to cultural
10 and geographical migration barriers, the state now has many residents
11 who are qualified, trained, and available for employment in the explo-
12 ration, development, production, and extraction of natural resources
13 on state land, but who are not presently employed because an increas-
14 ing amount of the work they are qualified to perform is being per-
15 formed on state land by nonresidents;

16 (8) the state has made significant investments in training
17 programs and vocational education to help furnish industry with qual-
18 ified residents able to work in the development, exploration, produc-
19 tion, and extraction of natural resource products on state land;

20 (9) unless the trend towards hiring nonresidents is re-
21 versed, the state's investment in these training and education pro-
22 grams will be of little avail, the state policy of maximizing benefits
23 from natural resource development will be thwarted, and the state will
24 suffer the burdens wrought by increasing demands for public assistance
25 and other state services from unemployed residents and their families;

26 (10) employment of nonresidents displaces qualified resi-
27 dents from work in the development, exploration, production, and
28 extraction of natural resource products on state land and from work in
29 service occupations on state land that directly support the develop-

1 ment, exploration, and production activities; therefore, the growing
2 number of nonresidents hired for work on state land, in the develop-
3 ment, exploration, production, and extraction of state resources, is a
4 peculiar source of the unemployment evil now besetting the state;

5 (11) state policies favoring stable levels of taxation have
6 been predicated upon assurances from the natural resource industries
7 that state residents would receive employment opportunities in the
8 exploration, development, and production of natural resources from
9 state-owned land, but data show that these assurances, and the expect-
10 ations they created, are not being fulfilled.

11 Sec. 38.45.030. RESIDENT HIRE REQUIREMENTS. (a) An employer
12 shall meet the resident hiring requirements established by the commis-
13 sioner of labor under this section on a natural resource project on
14 state land that is subject to a hiring preference under AS 38.45.050.
15 An employer may not discriminate against qualified residents in em-
16 ployment on a natural resource project on state land.

17 (b) The commissioner of labor shall determine the amount of work
18 that must be performed under this chapter by qualified residents on a
19 natural resource project on state land. In making this determination,
20 the commissioner shall consider the nature of the work, the classi-
21 fication of workers, availability of residents, and the willingness of
22 residents to perform the work. The commissioner shall require an
23 employer to make the maximum feasible effort to hire qualified resi-
24 dents for jobs on state land.

25 (c) In order to create, protect, and preserve the right of qual-
26 ified residents to employment in natural resource projects on state
27 land, the commissioner of natural resources shall incorporate into
28 each lease, unitization agreement, or renegotiation of a lease or
29 agreement, provisions requiring compliance with this chapter, regula-

1 tions adopted under this chapter, and all later amendments to this
2 chapter or the regulations, and authorizing penalties under AS 38.45.-
3 070 for failure to comply. The commissioner shall incorporate into
4 each lease, agreement, or renegotiation a requirement that the lessee
5 include a provision requiring compliance with this chapter, later
6 amendments of this chapter, regulations adopted under this chapter and
7 authorizing penalties under AS 38.45.070 in a contract under the lease
8 or agreement with contractors or subcontractors who will be operating
9 on state land.

10 (d) An employer subject to resident hiring requirements under
11 this chapter may request the Department of Labor to assist in locat-
12 ing qualified available resident employees. After receiving a request
13 for assistance, the department shall refer qualified available
14 residents to the employer to fill the employer's hiring needs. If the
15 department is unable to refer a sufficient number of residents, it may
16 approve the hiring of nonresidents for the balance of the request.

17 Sec. 38.45.040. REPORTING PROVISIONS. An employer obligated to
18 meet resident hiring requirements under this chapter shall comply with
19 the reporting provisions that the commissioner of labor determines are
20 reasonably necessary to carry out this chapter.

21 Sec. 38.45.050. APPLICABILITY OF CHAPTER. This chapter applies
22 to all natural resource projects on state land. The Department of
23 Labor shall determine the extent of the resident hiring preference for
24 each project under AS 38.45.030. The preference applies only to
25 employment that is performed directly for an employer.

26 Sec. 38.45.060. REGULATIONS AND HEARINGS. (a) The Department
27 of Labor and the Department of Natural Resources shall adopt regula-
28 tions to implement this chapter. The Department of Labor shall adopt
29 regulations prohibiting discrimination against qualified residents in

1 employment on a natural resource project on state land. Regulations
2 and proceedings under this chapter are subject to the Administrative
3 Procedure Act (AS 44.62) except as provided in (b) of this section.

4 (b) An employer shall determine and judge the work qualifica-
5 tions of applicants for employment. An applicant who has been reject-
6 ed or an employee who has been terminated from employment may, within
7 30 days after the rejection or termination, request a hearing before
8 the Department of Labor to determine whether the employer violated
9 this chapter in denying the application or terminating the employment.
10 The Department of Labor shall hold a hearing on the question within 20
11 days of receipt of the request unless the applicant or employee re-
12 quests a longer period of time.

13 (c) The Department of Labor may conduct investigations and
14 hearings to determine compliance with this chapter. If the commis-
15 sioner of labor finds that an employer has wilfully failed to comply
16 with this chapter, the commissioner may certify the finding to the
17 Department of Natural Resources.

18 Sec. 38.45.070. PENALTIES. (a) If the Department of Labor
19 finds that an employer has rejected a qualified applicant or term-
20 inated a qualified employee from employment in violation of this
21 chapter, the department may require the employer to pay the person
22 three times the amount of wages the person lost and may require addi-
23 tional amounts if the person's actual expenses incurred as a result of
24 the wrongful action exceeded the triple wages assessed. Either party
25 may appeal the department's decision under this section to the su-
26 perior court. The court may hear the appeal de novo.

27 (b) The Department of Natural Resources, upon certification of
28 noncompliance by the Department of Labor under AS 38.45.060, may
29 investigate and conduct hearings. If it finds wilful noncompliance,

1 the department may impose on the employer any of the following pen-
2 alties:

3 (1) increase the rent or other forms of compensation re-
4 ceived by the state under the project lease or agreement by a factor
5 of no more than 10; the increase may not exceed \$100,000;

6 (2) require that a or a portion of project operations
7 cease;

8 (3) remove, for an appropriate period of time not to exceed
9 three years, the eligibility of the employer to contract with the
10 state or any of its political subdivisions; or

11 (4) require a noncompliance payment in liquidated damages
12 to the state in an amount equal to seven and one-half times the number
13 of hours required but not worked by qualified residents multiplied by
14 the going wage or salary rate for the particular job or activity
15 involved.

16 (c) The commissioner may impose the penalties under (b)(1) and
17 (2) of this section on a lessee only if the lessee itself has failed
18 to comply with this chapter or incorporate into the contract with the
19 violator a provision requiring compliance with this chapter.

20 Sec. 38.45.080. INJUNCTIVE RELIEF. The Department of Labor or
21 the Department of Natural Resources, in addition to the imposition of
22 penalties under AS 38.45.070, may seek injunctive relief against a
23 person who is not in compliance with this chapter; the Department of
24 Natural Resources may seek injunctive relief to enforce penalties
25 imposed under AS 38.45.070.

26 Sec. 38.45.090. DEFINITIONS. In this chapter

27 (1) "employer" means a person other than the state who is a
28 party to a lease or agreement for a natural resource project on state
29 land and includes the person's affiliate, principal, subsidiary,

1 contractor, or subcontractor if the activity of the affiliate, princi-
2 pal, subsidiary, contractor, or subcontractor is performed on state
3 land;

4 (2) "natural resource project on state land" means a con-
5 tract, lease, unitization agreement, or a renegotiation of a contract,
6 lease, or agreement for exploration, development, extraction or pro-
7 duction of oil and gas, mineral, or timber resources if the state is a
8 party to the contract, lease or agreement and the project is performed
9 in whole or in part on state land;

10 (3) "qualified resident" means a resident who possesses the
11 requisite education, training, skills, or experience to perform the
12 work;

13 (4) "resident" means a person who

14 (A) except for military service, has been physically
15 present in the state for a period of 30 days immediately before
16 the time the person enters into a contract of employment on a
17 natural resource project on state land; and

18 (B) shows by all attending circumstances the intention
19 to permanently reside in this state.

20 * Sec. 2. This chapter applies to a lease, unitization agreement, or
21 contract for the development of oil and gas, or mineral or timber resources
22 entered into after the effective date of this Act and to a renegotiation of
23 the lease, agreement or contract. This chapter applies to the renegotia-
24 tion after the effective date of this Act of a lease, agreement, or con-
25 tract entered into before the effective date of this Act if the renegotia-
26 tion results in a major change to the duties of a party.

27 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
28 10.070(c).

HB 367 File Contents

May 2, 1985 Thursday Meeting

- 1) Bill Summary - Legislative Reporting Service
- 2) Overview -- R. Poppe, Committee Staff
- 3) Hand-out Folder by Sponsor, includes:
 - a) Background Statement
 - b) Sectional Analysis
 - c) Position Papers
 - d) Proposed CS for HB 367, with Suggested Amendments
 - e) Fiscal Notes
- 4) SB 271, CSSB 271 (L & C)

May 7, 1985 Meeting

- 5) Letter from J. R. Kemp of Conoco to Chairman Navarre -- April 19
- 6) Revised Proposed CS HB 367 -- May 6, 1985
- 7) Memo from Rep. Pignalberi to Rep. Navarre of May 3, 85; with attached memo from Deputy Att. Gen. Ron Lorensen to Senator Fred Zharoff dated April 16, 1985
- 8) Proposed Additional Amendments, Dept. of Labor -- May 7, 1985



Official Business

Alaska State Legislature

House

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

DATE: May 3, 1985
TO: Representative Mike Navarre
FROM: Representative Marco A. Pignalberi *MAP*
SUBJECT: HB 367, Resident Hire Under Oil and Gas Leases

Enclosed is a letter from Deputy Attorney General Ron Lorenson on the subject of resident hire under oil and gas leases dated April 16, 1985.

During the Labor and Commerce hearing yesterday on HB 367, a question was raised concerning the constitutionality of establishing a resident preference in all leases on natural resource projects on state land. As you can see from the letter, the state's position in developing a sound constitutional argument is greatly enhanced by incorporating "employment target groups" into any local hire law.

I am having prepared, for your consideration, an amendment to include this suggestion.

MAP:mk
Enclosure

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

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

OFFICE OF THE ATTORNEY GENERAL

April 16, 1985 . RECEIVED

APR 18

Josephson,

The Honorable Fred Zharoff
Chairman, Senate Labor and
Commerce Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: SB 271: Resident Hire
Under Oil and Gas Leases

Dear Senator Zharoff:

I am responding to a request from a member of your staff for our comments regarding SB 271, which deals with resident hire under certain oil and gas leases. Unfortunately, I will be in Anchorage at the time of your committee's scheduled hearing on this bill. However, if any questions arise during the course of that hearing, I would certainly be happy to respond to them upon my return early next week.

As you probably know, the Alaska Legislature first enacted a resident hire law with respect to state oil and gas leases in 1972. That law, AS 38.40, was enforced by the Department of Labor throughout the period of construction of the Trans-Alaska Pipeline, but was ultimately held unconstitutional by the United States Supreme Court in the case of Hicklin v. Orbeck, 437 U.S. 518 (1978). SB 271 appears to be an attempt to craft a resident hire requirement for employment activity on state oil and gas leases, etc., which would satisfy the concerns of the U.S. Supreme Court in Hicklin. However, the new preference established by the bill may still be found by the courts to exceed the permissible scope of a state's ability to establish employment preferences for residents, consistent with the Hicklin case.

In Hicklin, the U.S. Supreme Court found essentially three separate problems with "Alaska Hire":

1) The court did not believe that the justifications advanced by the State in favor of the resident preference were adequate. At the time the legislature adopted AS 38.40, it did not have before it an adequate factual basis to validate its determination that state

intervention in the job market in the form of an employment preference for residents was necessary.

2) Even if the State could have adequately justified imposing a resident hire requirement on certain employers, the broad sweep of AS 38.40 in applying to any employer who benefited in some manner from the "economic ripple effect of Alaska's decision to develop its oil and gas resources" simply went too far, in the Court's view. As the Court pointed out, "Alaska hire extends to employers who have no connection whatsoever with the State's oil and gas, perform no work on state land, have no contractual relationship with the State, and receive no payment from the State." Hicklin, at 530.

3) Even if the State could have justified imposing a resident hire requirement, and even if it only applied to an employer who had a direct relationship with the State (i.e. by contract or by working on State-owned land) the scope of the preference as it applied to individual residents was still too broad. In this regard, the court noted that "Alaska Hire simply grants all Alaskans, regardless of their employment status, education, or training, a flat employment preference for all jobs covered by the Act. . . . If Alaska is to attempt to ease its unemployment problem by forcing employers within the State to discriminate against non-residents -- again, a policy which may present serious constitutional questions -- the means by which it does so must be closely tailored to aid the unemployed the Act is intended to benefit." Hicklin, at 527-528.

While SB 271 does address some of the concerns raised in Hicklin, it appears to leave some of them unresolved:

1) Although the bill sets out a broader and more comprehensive set of legislative findings (AS 38.45.(20)), I am not aware that any factual studies or other kinds of inquiries have been conducted which would provide a firm basis for these findings. If they do exist, they should be presented during the course of the legislature's consideration of the bill and made a part of the legislative record. In that regard, I understand there is a proposal under active consideration in the House (HB 295) which would appropriate \$100,000 to the Department of Labor for just such a study.

The Honorable Fred Zharoff
Chairman, Senate Labor and
Commerce Committee

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2) The bill does seem to address the problem in Hicklin of applying the resident hire requirement to too broad a range of employers. Under the bill, only employers engaged in activity on state lands would be subject to the law.

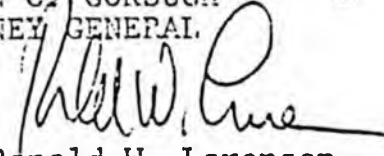
3) The bill does not address the problem in Hicklin of giving all state residents an employment preference, whether or not they are unemployed or underemployed. In this regard, creating "employment target groups" comprised of unemployed residents, chronically underemployed residents, and training-qualified residents should respond to those concerns in Hicklin.

If I can provide any further background or assistance, please do not hesitate to contact me.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


Ronald W. Lorensen
Deputy Attorney General

RWL:vrh

cc: Honorable Joe Josephson
Senator

Honorable Red Boucher
Representative

Honorable Marco Pignalberi
Representative