

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4260 SRES SB 271 1150



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SB

271

# Alaska State Legislature

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POUCH V  
JUNEAU, ALASKA. 99811  
(907) 485-4907

## Senate Committee on Resources

M E M O R A N D U M

February 27, 1986

TO: All Members  
Senate Resources Committee

FR: Staff <sup>H</sup> Senate Resources Committee

RE: SSSB 271 "An Act requiring resident hire on  
certain natural resource projects  
on state land"

Supplemental information packet

CSSB 271 (L & C) that was before the Senate Resources Committee last year has been replaced with SSSB 271. Recent Supreme Court action in Robison v. Francis invalidated state local hire preferences and cited several reasons for this action. The sponsor substitute addresses these concerns and attempts to strengthen earlier versions of the bill. The sponsor substitute also incorporates findings from the Department of Labor study, "Nonresidents Working in Alaska" dated January 17, 1986.

A new sectional analysis has been prepared by the Legislative Affairs Agency and is included in the packet.

### Enclosures:

Sectional Analysis SSSB 271  
Letter - February 12 with press release from  
Senator Josephson  
Letter - January 22 from Senator Josephson

STATE OF ALASKA  
THE LEGISLATURE

POUCHY STATE CAPITOL  
JUNEAU ALASKA 99811  
907-465-1300

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 17, 1986

SUBJECT: Sectional Analysis of SSSB 271 (Resident hire under certain leases and agreements on state lands)

TO: Senator Joe Josephson

FROM: Teresa B. Cramer *TBC*  
Legislative Counsel

You have requested a sectional analysis of SSSB 271.

Section 1 adds a chapter to the Public Lands title.

Sec. 38.45.010 declares that the state policy for development of natural resources includes providing employment opportunities in natural resource development projects to qualified residents.

Sec. 38.45.020 makes legislative findings about unemployment in the state and the need for a resident employment preference, and incorporates the findings made as AS 36.10.005 by ch. 69 SLA 1985 and Department of Labor's recent report.

Sec. 38.45.030 limits eligibility for a hiring preference under the chapter to residents who are unemployed, underemployed or marginally employed, or have completed a job training program..

Sec. 38.45.040 requires employers (defined in Sec. 38.45.100) to meet the resident hiring requirements established by the commissioner of labor. Subsection (b) directs the commissioner of labor to determine the amount of work subject to the resident hiring preference.

Subsection (c) establishes a 50% preference for residents of areas determined by the commissioner of labor to be economically distressed. Subsection (d) sets out the standards

for economically distressed areas, based on average annual family income, and requires a finding that employment of workers who are not residents of the area contributes to the unemployment of area residents.

Subsection (e) establishes that the preference under AS 44.33.285 for residents of an area impacted by an economic disaster supercedes the preference under the rest of the section.

Subsection (f) directs the commissioner of natural resources to incorporate into leases, unitizations agreements and renegotiations of leases or agreements provisions requiring compliance with the chapter and authorizing penalties under Sec. 38.45.080.

Subsection (g) requires the Department of Labor to assist employers to find qualified residents who are seeking employment. It also permits the department to approve the hiring of residents not eligible for preference and nonresidents if there are insufficient eligible, qualified, available residents.

Sec. 38.45.050 requires employers who are subject to the chapter to report to the commissioner of labor as the commissioner requires.

Sec. 38.45.060 applies the chapter to all natural resource projects on state land and directs the Department of Labor to determine the resident hiring preference for each project, limited to employment directly for an employer.

Sec. 38.45.070(a) directs the Department of Labor and the Department of Natural Resources to adopt regulations including regulations to prohibit discrimination against qualified residents in employment. The Administrative Procedure Act applies except as provided in subsection (b).

Subsection (b) states that the employer is the judge of the work qualifications of applicants. An applicant for employment who has been rejected or an employee who has been terminated may appeal to the Department of Labor. Under subsection (c), if the Department of Labor finds that an employer has willfully failed to comply with the chapter, the commissioner may certify the finding to the Department of Natural Resources.

Senator Joe Josephson  
February 17, 1986  
Page 3

Sec. 38.45.080 sets out penalties. Under subsection (a), the Department of Labor may require an employer who rejects a qualified applicant or terminates a qualified employee in violation of the chapter to pay the applicant or employee three times the amount of wages lost. The decision may be appealed to the superior court.

Subsection (b) permits the Department of Natural Resources to impose a variety of penalties on an employer certified by the Department of Labor to be in willful noncompliance with the chapter. Subsection (c) limits how the penalties apply to some lessees.

Sec. 38.45.090 permits either department to seek injunctive relief against a person who fails to comply with the chapter. The Department of Natural Resources may seek injunctive relief to enforce penalties.

Sec. 38.45.100 defines "employer," "natural resource project on state land," "qualified resident," and "resident."

Section 2 limits application of the chapter to leases, contracts, and agreements entered into after the effective date of the Act and also applies the Act to leases, contracts, and agreements entered before the effective date if a renegotiation leads to a major change to the duties of a party.

Section 3 is an immediate effective date.

If I may be of further assistance, please advise.

TBC:mkr  
M3:041



Official Business

# Alaska State Legislature

## Senate

FRANK

FEB 12 1986

Pouch V  
State Capitol  
Juneau, Alaska 99811

February 12, 1986

The Honorable Arliss Sturgulewski  
Alaska State Senate  
P.O. Box V  
Juneau, Alaska 99811

Dear Arliss:

Thank you for co-sponsoring SSSB 271 which would establish local hire preferences for natural resource projects on state lands.

The enclosed press release describes some of the differences between SSSB 271 and the law invalidated in Robison v. Francis, and some of the reasons why I believe our proposal would survive constitutional challenge.

Some of the co-sponsors have expressed interest in making improvements in the bill, and I welcome any future suggestions as SSSB 271 receives committee consideration.

I thought that the enclosed press release might be helpful to you and your staff, or be a useful reference in your file, in case you receive comments, public opinion messages, or questions from constituents.

The next hearing is scheduled in Senate Resources Committee on February 28. I look forward to working with you in the effort to enact new local hire legislation in 1986.

With best wishes, I am

Sincerely,

A handwritten signature in cursive script, appearing to read "Joe P. Joselson".

Joe P. Joselson  
State Senator

JPJ:rak  
Enclosure



Official Business

# Alaska State Legislature

## Senate

Pouch V  
State Capitol  
Juneau, Alaska 99811

FOR IMMEDIATE RELEASE  
February 11, 1986

### SPONSOR SUBSTITUTE FOR SB 271

JUNEAU, AK -- Senator Joe P. Josephson (D - Anchorage) and 13 co-sponsors today introduced a revised version of Senate Bill 271, which would reapply state local hire requirements to natural resource projects on state land.

"The original version of SB 271 has been revised, in order to address constitutional issues raised in recent court decisions", Senator Josephson said. "We believe that the rewritten bill has a good chance of withstanding court scrutiny."

The Supreme Court of Alaska, in the Robison v. Francis decision, struck down a local hire law passed by the Legislature in 1983.

"The 1983 law that the Court invalidated was different from the revised SB 271 in several respects", Senator Josephson said. "First, in that law the legislature imposed mandatory percentages of Alaska workers in the work place. In the new SB 271, the Commissioner of Labor is granted

(more)

discretion to determine how many Alaskans must be employed, on a project basis, in the light of unemployment levels, the availability of Alaska workers, and other factors.

"Second, the old law sought to give all qualified Alaska workers a job preference. The new bill is targeted towards employing unemployed and underemployed Alaskans, and those who have completed job training programs.

"Third, the invalidated statute made no reference to economically distressed areas of the state, while the new bill seeks to alleviate that distress particularly.

"Fourth, the old law contained findings of fact that proved to be inadequate grounds, in constitutional terms, for a local hire preference. The new bill rests upon data now available that shows the extent of nonresident hire as a source of economic and social ills that beset Alaska society today.

"Fifth, the old law dealt with all public works projects, but SB 271 affects hiring practices for operations on state lands only.

"SB 271 represents the most careful, thoughtful, but determined response that I believe the legislature could adopt in the light of Robison v. Francis. The co-sponsors and I are determined to pursue every lawful avenue in the

(more)

interest of employing qualified Alaskans", Senator Josephson concluded.

In 1985, the Senate Labor and Commerce Committee approved the earlier version of SB 271. The new version is scheduled for a public hearing on February 28 in the Senate Resources Committee. Co-sponsors of SB 271 are: Senators Kerttula, V. Fischer, Zharoff, Bennett, Rodey, Eliason, Ferguson, Sackett, Ray, Coghill, Ziegler, Fahrenkamp, and Sturgulewski.

For further information contact:  
Senator Joe Josephson or David Finkelstein  
465-4525



Official Business

# Alaska State Legislature

JAN 22 1986

## Senate

Pouch V  
State Capitol  
Juneau, Alaska 99811

January 22, 1986

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

Dear Senator Sturgulewski:

I appreciate your interest in further consideration of CSSB 271, requiring resident hire on certain natural resource projects on state land. CSSB 271 is presently assigned to the Resources Committee.

You have asked me for my views regarding the implications of the January 17, 1986, decision of the Supreme Court of the State of Alaska in Robison v. Francis.

In that case, the Court held that Alaska's local hire law, AS 36.10.010, requiring that work on public work projects be performed almost entirely by Alaska residents, violates the privileges and immunities clause of article IV, sec. 2, of the Constitution of the United States.

The effects of Robison v. Francis on pending legislation are not altogether clear to me. In that case, the trial court made a finding of fact, which the Supreme Court accepted, that

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

Since it was the State's obligation to demonstrate on the record, by a preponderance of the evidence, that "nonresident construction workers are a peculiar source of unemployment in the construction industry in Alaska", and since that obligation was not met at the trial level, the statute necessarily failed to pass constitutional muster.

The opinion in Robison v. Francis includes a general discussion of the issue of state local hire legislation under the privileges and immunities clause. A fair reading of the opinion suggests strongly that the Supreme Court concludes that the very goal of reducing resident unemployment by "discrimination" against nonresidents is constitutionally impermissible per se, at least in the absence of a showing of economic or social "collapse" such as that shown in the Camden, New Jersey, case (United Building and Trades Council of Camden County and Vicinity vs. Mayor and Council of the City of Camden).

On the other hand, since the requisite factual record was not made, the opinion can also be read as mere dicta (i.e., a philosophical commentary by the Court not necessary to the decision itself, and therefore not considered as guiding judicial precedent).

Areas of uncertainty about the treatment that would be afforded CSSB 271, if enacted, include the following:

1. The invalidated AS 36.10.010 related to state and local construction work; CSSB 271 relates to certain activities on state lands. The scope of AS 36.10.010 is broader and more pervasive than the scope of CSSB 271. The "pervasiveness and intensity" of "the discrimination mandated" informs the degree of judicial deference to the state's status as a market participant acting in a proprietary, rather than a regulatory, role. Thus, the level of judicial scrutiny may be lower under the pending CSSB 271 than was true as to AS 36.10.010. Unlike the invalidated enactment, SB 271 sets no numerical goals or percentages, but instead provides for the determination of resident work goals by the Commissioner of Labor based on the nature of the work, classification of workers, the availability of residents and the willingness of workers to perform the work.

2. It is not clear that the Court gave any consideration to Chapter 69, SLA 1985, which attempted to make retroactive factual findings concerning unemployment conditions in the state. These findings may aid legislation adopted after 1985.

The Honorable Arliss Sturgulewski  
January 22, 1986  
Page Three

3. The State's ability to make a factual showing is helped substantially by the publication of the Department of Labor report, Nonresidents Working in Alaska, which measured the economic impact of nonresidents on Alaska's economy during calendar year 1984. I also believe we should consider having similar studies performed on an annual basis.

4. As the Supreme Court noted, and as I have stated in support of SB 271, "The preferential hire statute involved in Hicklin was struck down because, among other reasons, the statute was too broad." SB 271 is limited to activities on state property, in contrast to the statute invalidated in Hicklin.

5. Legislative committees are finding that chronic unemployment breeds certain severe social problems such as alcoholism and domestic violence. These findings should be incorporated into a revised version of CSSB 271.

My recommendations for further action on CSSB 271 include the following:

1. Incorporate findings from Chapter 69, SLA 1985, and from the report entitled Nonresidents Working in Alaska. For example, the report found that approximately 71,000 (!) nonresident workers earned \$677 million here in 1984 and constituted 22 percent of all employees.

2. Structure the bill in terms of goal-setting targeted for help to the unemployed, the underemployed, and recent graduates of job-training programs.

3. Include, as noted above, a specific finding linking chronic alcoholism and domestic violence to chronic unemployment, based on data now available to the Senate. Senator Vic Fischer, a member of your committee, is working on this important part of our research.

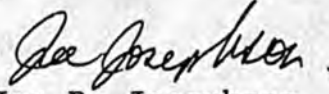
I am requesting that the Legal Services Division of the Legislative Affairs Agency incorporate these suggestions in a revised draft, and I will be pleased to work with you and members of the Committee's staff to incorporate as well any suggestions you may have that would strengthen the legislation and be compatible with its basic goals and objectives.

The Honorable Arliss Sturgulewski  
January 22, 1986  
Page Four

I am hopeful that the revisions will be ready for consideration soon, and that through the public hearing process and our colleagues on the Committee can assist in developing a measure that will help alleviate unemployment among resident Alaskans and the attendant economic and social ills.

With best wishes, I am

Sincerely,



Joe P. Josephson  
State Senator

JPJ:rak

cc: Senator Jalmar Kerttula  
Senator Victor Fischer  
Senator Fred Zha. off

# Alaska State Legislature

ARLISS STURGULEWSKI, Chairman  
BETTYE FAHRENKAMP, Vice Chairman  
JACK COGHILL  
DICK ELIASON  
VIC FISCHER  
RICK HALFORD  
FRED ZHAROFF



P. O. BOX V  
JUNEAU, ALASKA 99811  
(907) 485-4807

## Senate Committee on Resources

M E M O R A N D U M

April 15, 1986  
REVISED

TO: All Members  
Senate Resources Committee

RE: CSSSSB 271 (Resources) "An Act requiring resident hire on certain natural resources projects on state land; and providing for an effective date"

### SUMMARY OF LEGISLATION

CSSSSB 271 (Resources) 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. SB 271 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.

SB 271 also requires reporting by employers, but all specific employee data must be kept confidential.

The Department of Labor may conduct investigations and hearings to determine compliance with this chapter. If the commissioner of labor finds wilful non-compliance, the commissioner may impose a penalty of \$5,000 or 5 percent of any state contract, lease, or agreement price, whichever is less, for the first offense; \$10,000 or 10 percent of any state contract, lease, or agreement price, whichever is less, for the second or subsequent violations, or require that a qualified eligible employee who was rejected in violation of this chapter be compensated the amount of wages that should have been paid.

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

The original version of SB 271 had a much broader requirement for resident hire but probably would have run into constitutional problems. CSSSB 271 (Resources) is much more focused regarding who is eligible for the employment preference, and the preference is restricted to specific areas of the state.

# Alaska State Legislature

ARLISS STURGULEWSKI, Chairman  
BETTYE FAHRENKAMP, Vice Chairman  
JACK COGHILL  
DICK ELIASON  
VIC FISCHER  
RICK HALFORD  
FRED ZHAROFF



P. O. BOX V  
JUNEAU, ALASKA 99811  
(907) 485-4007

## Senate Committee on Resources

M E M O R A N D U M

April 15, 1986  
REVISED

TO: All Members  
Senate Resources Committee

FROM: Staff, Senate Resources Committee

RE: CSSSSB 271 (Resources) "An Act requiring resident hire on certain natural resources projects on state land; and providing for an effective date"

### SECTIONAL ANALYSIS

- 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 States 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.

- 38.45.040 States that employer has final decision on hiring.
- 38.45.050 States that commissioner of labor shall adopt regulations under Administrative Procedure Act.
- 38.45.060 Requires attorney general and commissioner of labor to report annually to legislature and governor on status of employment in state.
- 38.45.070 Establishes eligibility for a resident employment preference. A person must certify to the Department of Labor that they 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; or
  - d) has completed job training program but is not employed or using those skills;
- 38.45.080 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 commission 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

- 38.45.090 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
- 38.45.100 States that the commissioner of natural resources shall incorporate into each contract provisions requiring compliance with resident preference regulations.
- 38.45.110 Requires employees to comply with reporting requirements established by commissioner of labor. All specific employee data is to be kept confidential.
- 38.45.120 Provides for hearings by the Department of Labor to determine if an employer has complied with this chapter, and penalties for violations. Hearings will be in accord with Administrative Procedure Act. Penalties may include: payment to employee for wages lost; a fine of \$5,000 or 5 percent of contract price, whichever is less, for a first violation; or a fine of \$10,000 or 10 percent of contract price, whichever is less, for a second or subsequent violation of this chapter.
- 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.

Original sponsors: Josephson, Kerttula,  
V.Fischer, et al

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 271 (Resources)

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; therefore, the  
28 number of nonresidents hired for work on state land in the develop-  
29 ment, exploration, production, and extraction of state resources is a

1 peculiar source of the unemployment problem now besetting the state;

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

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

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

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

20 Sec. 38.45.040. EMPLOYEE QUALIFICATIONS. An employer shall  
21 determine and judge the work qualifications of applicants for employ-  
22 ment.

23 Sec. 38.45.050. REGULATIONS. The commissioner of labor shall  
24 adopt regulations in accordance with AS 44.62 (Administrative Proce-  
25 dure Act) to implement this chapter and encourage and require the  
26 hiring of residents to the maximum extent permitted by law.

27 Sec. 38.45.060. RESIDENT HIRE REPORT. The attorney general and  
28 the commissioner of labor shall report annually to the legislature and  
29 the governor on the status of employment in the state, the effect of

1 nonresident employment on the employment of residents in the state,  
2 and methods to increase resident hire. The report shall be submitted  
3 by January 31 of each year.

4 Sec. 38.45.070. ELIGIBILITY FOR PREFERENCE. (a) A person is  
5 eligible for an employment preference under this chapter if the person  
6 certifies eligibility as required by the Department of Labor, is a  
7 resident, and

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

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

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

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

17 (b) An employer subject to a resident hiring requirement under  
18 this chapter shall certify that persons employed as residents under  
19 the preference were eligible for the preference at the time of hire.

20 Sec. 38.45.080. DETERMINATION OF UNDEREMPLOYED AREA. (a)  
21 Immediately following a determination by the commissioner of labor  
22 that a census area, economic region, or the state as a whole is an  
23 underemployed area and for the next two fiscal years after the deter-  
24 mination, qualified residents who are eligible under AS 38.45.070  
25 shall be given preference in hiring for work on each natural resource  
26 project on state land that is wholly or partially sited within the  
27 area.

28 (b) The commissioner of labor shall determine the amount of work  
29 that must be performed under this chapter by qualified residents who

1 were eligible for an employment preference under this chapter at the  
2 time of hiring. In making this determination, the commissioner shall  
3 consider the nature of the work, the classification of workers, avail-  
4 ability of eligible residents, and the willingness of eligible resi-  
5 dents to 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. 38.45.090. 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 the state 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 38.45.070 shall be given preference in hiring for at least 50

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

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

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

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

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

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

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

24 Sec. 38.45.100. INCORPORATION INTO CONTRACTS. (a) In order to  
25 create, protect, and preserve the right of eligible qualified resi-  
26 dents to employment in natural resource projects on state land, the  
27 commissioner of natural resources shall incorporate into each con-  
28 tract, lease, unitization agreement, or renegotiation of a contract,  
29 lease or unitization agreement, provisions requiring compliance with

1 this chapter, regulations adopted under this chapter, and all later  
2 amendments to this chapter or the regulations, and authorizing pen-  
3 alties under AS 38.45.120 for failure to comply.

4 (b) The commissioner shall incorporate into each contract,  
5 lease, unitization agreement, or renegotiation a requirement that the  
6 contractor or lessee include in each contract with contractors or  
7 subcontractors who will be operating on state land a provision requir-  
8 ing compliance with this chapter, later amendments of this chapter,  
9 regulations adopted under this chapter, and authorizing penalties  
10 under AS 38.45.120.

11 Sec. 38.45.110. REPORTING PROVISIONS. An employer obligated to  
12 meet resident hiring requirements under this chapter shall comply with  
13 the reporting provisions that the commissioner of labor determines are  
14 reasonably necessary to carry out this chapter. Except for statis-  
15 tical data, information concerning specific employees is confidential  
16 and may not be released to the public by the department. However,  
17 confidential employee information may be shared between departments  
18 for purposes of this chapter.

19 Sec. 38.45.120. CIVIL PENALTY. (a) The Department of Labor may  
20 conduct investigations and hearings to determine compliance with this  
21 chapter. After a hearing, if the commissioner of labor finds that an  
22 employer has wilfully failed to comply with this chapter, the commis-  
23 sioner may impose a civil penalty in the amount of

24 (1) the lesser of \$5,000 or five percent of the compensa-  
25 tion to the state under the project, lease, or agreement for the first  
26 rejection of a qualified eligible applicant or other violation of this  
27 chapter;

28 (2) the lesser of \$10,000 or 10 percent of the compensation  
29 to the state under the project, lease, or agreement for the second and

1 each subsequent rejection or other violation of this chapter.

2 (b) In addition to the imposition of other penalties under this  
3 section, if the Department of Labor finds that an employer has wil-  
4 fully rejected a qualified eligible applicant or terminated a quali-  
5 fied eligible employee in violation of this chapter, the department  
6 may require the employer to pay the person the amount of wages the  
7 person lost and may require additional amounts to reimburse the person  
8 for actual expenses incurred as a result of the wrongful action.

9 (c) The commissioner may impose the penalties under this section  
10 on an employer only if the employer itself has failed to comply with  
11 this chapter, later amendments of this chapter, or regulations adopted  
12 under this chapter, or if the employer has failed to incorporate into  
13 its contracts the provision required under AS 38.45.100(b).

14 (d) The Department of Labor, in addition to the imposition of  
15 penalties under this section, may seek injunctive relief against a  
16 person who is not in compliance with this chapter and to enforce  
17 penalties imposed under this section.

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

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

28 (c) In addition to criminal penalties imposed by state law, if a  
29 person is convicted of a crime in connection with a false statement

1 made in a certification required under AS 38.45.060, and the convic-  
2 tion is not reversed, that person shall forfeit all future rights to  
3 eligibility for an employment preference under this chapter.

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

7 Sec. 38.45.250. DEFINITIONS. In this chapter

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

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

16 (3) "natural resource project on state land" means a pro-  
17 ject authorized by a contract, lease, unitization agreement, or a  
18 renegotiation of a contract, lease, or unitization agreement for  
19 exploration, development, extraction or production of oil and gas,  
20 leasable mineral, or timber resources if the state is a party to the  
21 contract, lease or unitization agreement and the project is performed  
22 in whole or in part on state land;

23 (4) "qualified resident" means a resident who possesses the  
24 requisite education, training, skills, or experience to perform the  
25 work;

26 (5) "resident" means a person who establishes residency  
27 under AS 01.10.055;

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

1 \* Sec. 2. AS 38.45, enacted in sec. 1 of this Act, applies to a lease,  
2 unitization agreement, or contract for the development of oil and gas,  
3 leasable mineral, or timber resources entered into on or after the effec-  
4 tive date of this Act and to a renegotiation of the lease, unitization  
5 agreement, or contract. AS 38.45 applies to the renegotiation on or after  
6 the effective date of this Act of a lease, unitization agreement, or con-  
7 tract entered into before the effective date of this Act if the renegotia-  
8 tion results in a major change in the duties of a party.

9 \* Sec. 3. This Act takes effect immediately in accordance with AS 01.-  
10 10.070(c).

# Alaska State Legislature

ARLISS STURGULEWSKI, Chairman  
BETTYE FAHRENKAMP, Vice Chairman  
JACK COGHILL  
DICK ELIASON  
VIC FISCHER  
RICK HALFORD  
FRED ZHAROFF



P. O. BOX V  
JUNEAU, ALASKA 99811  
(907) 485-4907

## Senate Committee on Resources

MEMORANDUM

April <sup>15</sup> 3, 1986  
Revised

TO: All Members  
Senate Resources Committee

FROM: Staff, Senate Resources Committee

RE: CSSSSB 271 (Resources) An Act requiring resident hire on certain natural resource projects on state land; and providing for an effective date"

### SECTIONAL ANALYSIS

- 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 States 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.

<sup>45</sup>  
38.45.035  
.040 States that employer has final decision on hiring.

<sup>050</sup>  
38.45.040 States that commissioner of labor shall adopt regulations under Administrative Procedures Act.

<sup>060</sup>  
38.45.050 Requires attorney general and commissioner of labor to report annually to legislature and governor on status of employment in state.

<sup>070</sup>  
38.45.060 Establishes eligibility for a resident employment preference. A person must certify to the Department of Labor that they 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

<sup>080</sup>  
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<sup>090</sup>

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<sup>100</sup>

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

38.45.100<sup>110</sup>

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

38.45.100<sup>120</sup>

Provides for hearings <sup>AND PENALTIES FOR VIOLATIONS.</sup> 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 wilful intent on the part of the employer, the commissioner may certify the finding to the Department of Natural Resources.~~

~~HEARINGS - THIS WILL~~  
 HEARINGS WILL BE IN ACCORD WITH ADMINISTRATIVE PROCEDURES ACT. PENALTIES MAY INCLUDE PAYMENT TO EMPLOYEE FOR WAGES LOST, A FINE OF \$5000.00 OR 5% OF CONTRACT PRICE WHICHEVER IS LESS FOR 1ST VIOLATION AND A FINE OF \$10,000 OR 10% OF CONTRACT PRICE WHICHEVER IS LESS FOR 2ND OR SUBSEQUENT VIOLATIONS OF THIS CHAPTER.

38.45.120 Provides penalties for the employer that has wilfully 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 wilful 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.

# Alaska State Legislature

ARLISS STURGULEWSKI, Chairman  
BETTYE FAHRENKAMP, Vice Chairman  
JACK COGHILL  
DICK ELIASON  
VIC FISCHER  
RICK HALFORD  
FRED ZHAROFF



P. O. BOX V  
JUNEAU, ALASKA 99811  
(907) 485-4907

## Senate Committee on Resources

MEMORANDUM

April 8<sup>15</sup>, 1986

REVISED

TO: All Members  
Senate Resources Committee

FROM: Staff <sup>H</sup> Senate Resources Committee

RE: CSSSSB 271 (Resources) "An Act requiring resident hire on certain natural resources projects on state land; and providing for an effective date"

### SUMMARY OF LEGISLATION

CSSSSB 271 (Resources) 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. SB 271 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.

INSERT

The Dept of Labor may conduct investigations and hearings to determine compliance with this chapter. If the Commissioner of Labor finds willful non-compliance the commission may impose a ~~penalty~~ penalty of \$5,000 or 5% of ~~the~~ any state contract, ~~or~~ <sup>less</sup> ~~or~~ agreement price whichever is less for the first offense; \$10,000 or 10% of any state contract, ~~less~~ <sup>or</sup> agreement price whichever is less for the second or subsequent violation or require ~~that the amount of wages lost to be~~ ~~an employee be paid.~~ ~~that ~~an~~ ~~so~~ ~~a~~ ~~qualified~~~~ <sup>eligible</sup> that a qualified eligible employee who was rejected in violation of this chapter be paid the amount of wages they would have received.

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.

SB 271 also requires reporting by employers, but all specific employee data must be kept confidential.

*insert*

If a person not entitled to a 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 wilful 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 wilful 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 conducts its own investigation. If the Department of Natural Resources finds wilful 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 SB 271 had a much broader requirement for resident hire but probably would have run into constitutional problems. CSSSB 271 (Resources) is much more focused regarding who is eligible for the employment preference, and the preference is restricted to specific areas of the state.

# Alaska State Legislature

ARLISS STURGULEVSKI, Chairman  
BETTYE FAHRENKAMP, Vice Chairman  
JACK COGHILL  
DICK ELIASON  
VIC FISCHER  
RICK HALFORD  
FRED ZHAROFF



POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4907

## Senate Committee on Resources

MEMORANDUM

May 6, 1985

TO: All Members  
Senate Resources Committee

FROM: Staff *TH*  
Senate Resources Committee

RE: CSSB 271 (L&C) "An Act requiring resident hire on certain natural resource projects on state land; and providing for an effective date."

CSSB 271 (L&C) would establish as state policy that employment opportunities in natural resource development projects be provided to the maximum benefit for qualified Alaska residents.

The Commissioner of Labor shall establish resident hiring requirements for natural resources development projects on state land. Employers covered by this bill must also comply with reporting provisions as determined by the commissioner. Penalties are established for employers failing to comply with this chapter.

SB 271 originally applied only to oil and gas development but was extended to all natural resource projects in the Senate Labor and Commerce Committee.

The Attorney General's office has raised some questions concerning the constitutionality of this bill (see attached letter) in its original form. The CS and the proposed amendments are designed to respond to those concerns.

A fiscal note prepared by the Department of Labor and updated to include CSSB 271 (L&C) shows a FY 86 cost of \$177,600. (see attached)

### Enclosures:

1. CSSB 271 Sectional Analysis by Senate Labor and Commerce
2. Fiscal note by Department of Labor
3. Letter from Attorney General, Department of Law
4. Letter and testimony from IBEW in support of bill
5. Testimony from SOHIO objecting to SB 271



Official Business

# Alaska State Legislature

## Senate

### Committee on Labor & Commerce

Pouch V  
State Capitol  
Juneau, Alaska 99811

#### CSSB 271: Sectional Analysis

MEMORANDUM

#### Section 1) Adds a new chapter:

- 38.45.010: Declares that the state policy for development of natural resources includes providing employment opportunities in natural resource development projects.
- 38.45.020: Legislative Findings: references findings about unemployment in the state, investments the state has made in training programs to develop a qualified work force, the social burdens which result from resident workers being displaced by non residents, and the need for a resident employment preference.
- 38.45.030: a) employers of natural resource development projects on state lands shall meet the resident hiring requirements established by the commissioner of labor, and may not discriminate against qualified residents for employment.
- b) the commissioner of labor shall determine the amount of work that must be performed by residents on a natural resource development project on state land. Commissioner shall consider employment factors, and require an employer to make a "maximum feasible effort" to hire qualified residents for jobs on state lands.
- c) Commissioner of DNR shall incorporate into each lease, unitization agreement, or renegotiation lease, provisions requiring compliance with this chapter and authorizing penalties for non compliance.
- d) Employers subject to resident hiring requirements may request the Dept of Labor to assist in locating qualified residents. If the department is unable to refer a sufficient number of qualified residents, it may approve the hiring of nonresidents for the balance of the request.
- 38.45.040: employers obligated to meet hiring requirements under this chapter shall comply with reporting requirements deemed necessary by the commissioner of Labor.

38.45.050: This chapter applies to all natural resource projects on state land, and the Dept of Labor will determine the extent of the resident hire preference for each project. Resident preference applies only to work performed directly for an employer.

38.45.060: a) Both DOL and DNR shall adopt regs for this chapter. DOL shall adopt regs prohibiting discrimination against qualified residents for resource development projects on state land. These regs are subject to the Administrative Procedures Act except as provided in (b).

(b) An employer shall judge the work qualifications of an applicant, however an applicant who has been rejected or terminated may, within 30 days, request a hearing before DOL to determine whether the employer violated the provisions of this chapter. DOL shall hold a hearing within 20 days of receipt of the request unless the employee requests a longer period of time. The administrative procedures act does not apply to this section.

(c) DOL may conduct investigations and hearings to determine compliance with this chapter. If they determine an employer has "wilfully" failed to comply, the commissioner may certify that finding to DNR.

38.45.070: PENALTIES: If DOL finds that an employer has rejected or terminated a qualified employee in violation of this chapter, the department may require the employer to pay 3 times the lost wages to the employee and may require additional amounts if the employee's actual expenses incurred exceed the triple wages assessed. Either party may appeal the decision to the superior court.

Upon certification of noncompliance by DOL, DNR may investigate and conduct hearings. If DNR determines "wilful" noncompliance, they may impose the following penalties:

- 1) increase the compensation received by the state thru a lease or agreement by a factor of no more than 10; not to exceed \$100,000
- 2) require all or a portion of the project to cease;
- 3) remove the eligibility for contracting with the state or it's political subdivisions for a period not to exceed three years; or
- 4) require a noncompliance payment in liquidated damages to the State. Damages may be in an amount equal to 7.5 times the amount of required hours not worked times the "going wage" for the job.

38.45.080: In addition to the penalties imposed, DOL and DNR may seek an injunction for noncompliance with this chapter. DNR may seek an injunction to enforce penalties imposed.

38.45.090: Definitions:

- 1) "employer" is a person, other than the state, who is a party to a lease agreement for a resource development project on state land. This definition includes an affiliate, principal, subsidiary, contractor, or subcontractor if the activity is performed on state land.
- 2) "natural resource project on state land" is a contract, lease, unitization agreement, or renegotiation of such leases for the development of oil and gas, timber, and mineral resources on state land.
- 3) "qualified resident" is defined as a resident who has the necessary training or skills to perform the work.
- 4) "resident" is defined as a person who has been in the state for 30 days prior to entering into a contract for employment on a natural resource development project on state land, and who shows the intention to permanently reside in the state.

Section 2) Chapter applies to a lease, a unitization agreement, or a renegotiated lease or agreement for the development of O&G, timber, or minerals, after the effective date of this act. This chapter also applies to the renegotiation of an agreement entered into before the effective date of this act, if the renegotiation results in a major change to the duties of the parties.

Section 3) Immediate effective date.

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST

Bill/Resolution No.: CS SB 271 (L&C)  
 Title: "An act requiring resident hire on nat. resource proj. st. lands  
 Sponsor: Josephson, et. al.  
 Requestor: senate resources  
 Date of Request: 4/30/85

FISCAL DETAIL

Agency Affected: Labor  
 Program Category Affected: Public Protection  
 BRU, Program or Subprogram(s) Affected: Labor Standards & Safety  
 Wage & Hour Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES		111.9	115.8	239.1	247.5	256.1
200 TRAVEL		17.0	18.0	50.3	53.3	56.5
300 CONTRACTUAL		31.9	28.5	59.9	63.5	67.3
400 SUPPLIES		2.0	2.1	3.9	4.1	4.4
500 EQUIPMENT		14.8	0	5.4	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>177.6</b>	<b>164.4</b>	<b>358.6</b>	<b>368.4</b>	<b>384.3</b>

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

GENERAL FUND		177.6	164.4	358.6	368.4	384.3
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		<b>177.6</b>	<b>164.4</b>	<b>358.6</b>	<b>368.4</b>	<b>384.3</b>

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870  
 Division: Labor Standards & Safety Date: 4/30/85  
 Approved by Commissioner: Jim Robison Date: 4/30/85  
 Agency: Labor

Distribution (by Agency preparing fiscal note):

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

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA  
 THE FOURTEENTH LEGISLATURE  
 BILL/RESOLUTION NO.: CS SB 271 (L&C)  
 TITLE: "An Act requiring resident hire under certain natural resource projects on state lands"  
 AGENCY AFFECTED: Department of Labor

In order to carry out the duties of this bill the Department of Labor would require the following resources:

FYs 86 and 87

Two Wage and Hour Investigators I and one Clerk Typist III would be required to carry out the monitoring activities. Costs associated with these positions are detailed on the attached new position request forms.

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

FYs 88 and beyond

The Prudhoe and Kuparuk unit agreements will possibly be renegotiated this year at which time these leases would be covered by the provisions of this bill. An additional Wage and Hour Investigator and two Wage and Hour Technicians will be required. The costs associated with these positions is summarized below:

	W&H Tech. Anchorage	W&H Tech. Anchorage	W&H Invest. I Fairbanks
Personal Service	34.4	34.4	50.3
Travel	0	0	15.6
Contractual	9.4	9.4	10.9
Commodities	.6	.6	.6
Equipment	<u>1.8</u>	<u>1.8</u>	<u>1.8</u>
	46.2	46.2	79.2

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 will be 3.5% for personal service and 6% for non personal service items.

1	Position Title	Wage & Hour Investigator I	Range/Step	16A	Barg. Unit	GGU	Form 12 Page/Line	GOV.	APPROV.	DISAPP.			
2	Type of Position	PFT	Staff Months	12	RP Number		PCN Number		BRU Priority	Location	Election District	LEG.	
3	CONTINUATION LEVEL		ADDITION		JUSTIFICATION								

4	Type of Expenditure	2	3
5	PERSONAL SERVICES		
5	Salary	32,424	
6	Benefits	5,401	
7	Supplemental Benefits	1,987	
8	Fixed Benefits	2,735	
9	TOTAL PERSONAL SERVICES	01	42,547
10	Travel	02	8,500
11	Contractual	03	9,490
12	Commodities	04	500
13	Equipment	05	1,600
14	Other		
15	TOTAL COST		62,637

This position 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.

The position 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 law. Contractual costs include rent, \$3,600; indirect \$3,890; and other average expenses of \$2,000. Commodities of \$500 and one-time equipment costs of \$1,600 are also included.

16	RECEIPT CODE	FUNDING SOURCE	
16		Federal Receipts	1002
17		G.F. Match	1003
18		General Funds	1004
19		I-A Receipts	1005
20		Program Receipts	1028
21		Other	
			62,637

For M&B Use Only  
 1A Key Number \_\_\_\_\_

13 REQUEST FOR NEW POSITION

AGENCY Department of Labor

PROGRAM Worker Protection

BRU Labor Standards & Safety

COMPONENT Wage & Hour Administration

FY 86

Page 1 of 3  
 Revised Date \_\_\_\_\_

LEG:F:

1	Position Title Wage & Hour Investigator I	Range/Step 16A	Barg. Unit GGU	Form 12 Page/Line	GOV.	APPROV.	DISAPP.
2	Type of Position PFT	Staff Months 12	RP Number	PCN Number	BRU Priority	Location Anchorage	Election District LEG.
3	CONTINUATION LEVEL		ADDITION		JUSTIFICATION		
4	Type of Expenditure			Amount			
	PERSONAL SERVICES						
5	Salary	2		3	<p>This position 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.</p> <p>The position would interact with the Department of Natural Resources and industry contacts to establish an effective monitoring procedure.</p> <p>Travel costs are to establish monitoring procedures and for monitoring compliance with resident hire law. Contractual costs include rent, \$3,600; indirect \$3,890; and other average expenses of \$2,000. Commodities of \$500 and one-time equipment costs of \$1,600 are also included.</p>		
6	Benefits						
7	Supplemental Benefits						
8	Fixed Benefits						
9	TOTAL PERSONAL SERVICES	01		42,547			
10	Travel	02		8,500			
11	Contractual	03		9,490			
12	Commodities	04		500			
13	Equipment	05		1,600			
14	Other						
15	TOTAL COST			62,637			
	RECEIPT CODE	FUNDING SOURCE					
16		Federal Receipts 1002					
17		G.F. Match 1003					
18		General Funds 1004		62,637			
19		I-A Receipts 1005					
20		Program Receipts 1028					
21		Other					

For M&B Use Only  
1A Key Number \_\_\_\_\_

13 REQUEST FOR NEW POSITION

AGENCY Department of Labor

PROGRAM Worker Protection

BRU Labor Standards & Safety

COMPONENT Wage & Hour Administration

FY 86

Page 2 of 3  
Revised Date \_\_\_\_\_

LEG:F:

1	Position Title Clerk Typist III	Range/Step 8A	Barg. Unit GGU	Form 12 Page/Line	GOV.	PROV.	DISAPP.
2	Type of Position PFT	Staff Months 12	RP Number	PCN Number	BRU Priority	Location	Election District
3	CONTINUATION LEVEL	ADDITION		JUSTIFICATION			
4	Type of Expenditure	Amount		<p>This clerical position would provide typing, filing, and data entry under the provisions of this bill.</p> <p>Contractual costs include rent, \$3,600; indirect \$2,348, and other average expenses of \$2,000. Commodities of \$1,000 and one-time equipment costs of \$1,600 are also included.</p>			

	1	2	3
	PERSONAL SERVICES		
5	Salary	19,572	
6	Benefits	3,261	
7	Supplemental Benefits	1,200	
8	Fixed Benefits	2,735	
9	TOTAL PERSONAL SERVICES	01	26,768
10	Travel	02	0
11	Contractual	03	7,948
12	Commodities	04	1,000
13	Equipment	05	1,600
14	Other		
15	TOTAL COST		37,316

RECEIPT CODE	FUNDING SOURCE	Amount
16	Federal Receipts 1002	
17	G.F. Match 1003	
18	General Funds 1004	37,316
19	I-A Receipts 1005	
20	Program Receipts 1028	
21	Other	

For M&B Use Only  
1A Key Number \_\_\_\_\_

13 REQUEST FOR NEW POSITION

AGENCY Department of Labor  
PROGRAM Worker Protection  
BRU Labor Standards & Safety  
COMPONENT Wage & Hour Administration

FY 86

Page 3 of 3  
Revised Date

LEG:F:

STATE OF ALASKA

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

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.

~~enacted by the bill, which would...~~  
~~...scope of the bill, which would...~~  
~~...employment activity on state oil and gas leases, etc., which would...~~  
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

Dept. of Law response

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 38.45.020), 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

April 16, 1985  
Page 3

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.

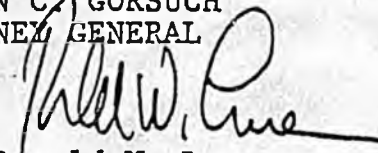
3) The bill does not address the problem in Hicklin of giving all state residents an employment preference, whether or not they are unemployed, or underemployed. In this regard, creating "employment target groups" comprised of unemployed residents, chronically underemployed residents, and training-qualified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

# International Brotherhood

# of Electrical Workers

TELEPHONE  
(907) 272-6571  
TELEX 25-250

J. J. "JACK" HULL  
BUSINESS MANAGER • FINANCIAL SECRETARY



2702 DENALI STREET  
ANCHORAGE, ALASKA 99503

ERIC WORTHINGTON  
PRESIDENT

Local 1547

April 23, 1985

The Honorable Senator Zharoff  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, Alaska 99811

Dear Senator Zharoff:

Thank you very much for the opportunity to speak before the Senate Labor and Commerce Committee regarding SB 271 on April 17, 1985.

In order to help facilitate the hearing process, I shortened my presentation before you. However, I have enclosed my complete written testimony and a copy for each member of the Senate Labor and Commerce Committee.

If you need any further statistics or other information from our organization, please contact me or Jack Hull, the Business Manager, and we will be sure to assist you in any way we can.

Sincerely,

Dixie Lee Hudish  
Industrial Relations Officer

Enclosure

cc:

Senator Sackett ✓  
Senator Ray  
Senator Eliason  
Senator Bennett  
Senator Josephson  
Senator Kertulla  
Senator V. Fischer  
Representative Pignalberi  
Representative Cotten  
Representative Davis  
Representative Phillips  
Representative Hurley  
Representative Navarre  
Representative Goll  
Representative Sund

DLH/eb

PUBLIC TESTIMONY

ON

SB 271

SENATOR V. FISCHER

April 17, 1985

Mr. Chairman, members of the Senate Labor and Commerce Committee:

My name is Dixie Hudish, Industrial Relations Officer for the International Brotherhood of Electrical Workers (IBEW), Local No. 1547, 2702 Denali Street, Anchorage, Alaska 99503. I am speaking on behalf of Jack Hull, Business Manager, of the IBEW.

First of all I would like to thank those legislators who have worked so diligently on this proposed Bill that the IBEW wholeheartedly supports SB 271.

The IBEW is most concerned with out of state firms who are awarded bids for construction and bringing their own workers from out of state.

Presently, in our Fairbanks office, where jobs are dispatched out for slope work, we have approximately 200 residents in all four classifications (Communication, Wireman, Lineman and Apprentice)

out of work. We have only 100 members (local residents) working on the slope at this time. Compared to 600 residents last year who are on Book I. Local resident members who have lived in Alaska one year and have worked a certain number of hours (2,080 hours within the past four years) in the trade are dispatched first from Book I.

We have better than 32% Alaska natives in the Apprenticeship program at Fairbanks. These apprentices are from Barrow, Nome, Kotzebue, Galena, Tanana and Fort Yukon. Yet there are 40 apprentice wireman and 120 wireman out of work from the Fairbanks dispatch area.

We have 12% Alaska Natives in the Apprenticeship program in Anchorage and there are presently 70 apprentices out of work (34 wireman, 24 lineman, and 12 communication). Most of these Alaska Native apprentices are from the Bethel area.

We know that a majority of our local people are losing their jobs, primarily from out of state firms who are hiring their own people and bringing them up here to work on the slope.

I would like to mention several oil field firms who are doing just that:

1. GSL Oil Field Service - A firm out of Corpus Christi, Texas, who is working out of the Prudhoe Bay Hotel. They have up to 50-60 workers, mostly out of state, presently hired as maintenance road crews.
2. Pingo Oil Field Service - They hire maintenance people and are of state.
3. North Oilfield Service - Out of state people.
4. Udelhoven Oil Field Service - A good portion of their workers are out of state and work at Kapuruk.

These oil field services are mostly subcontracted by either ARCO or SOHIO.

VECO is another large firm who hires a lot of out of state workers.

The IBEW has not dispatched any non-resident since September 1984.

Out of approximately 300 total electricians working on the slope we can fairly say 200 are not local people. The situation

appears not to be getting any better for our local workers, but worse.

We have approximately 300 local people out of work from the Anchorage Dispatch office. This is a very large amount of our members unemployed. Many of these members, I am sure are drawing unemployment.

We have seen many situations where outside firms are awarded contracts only to hire people from outside. Case in point is the Irby Construction Company from Jackson, Mississippi, who received the contract to build the Inter-tie line between Fairbanks and Anchorage. You might say one-half of the line was built by out of state people.

I could continue on with more examples, but I feel I have painted a big enough picture for all of you to realize the situation our local resident members are up against. One only needs to come up on a flight out of Los Angeles, etc. to verify the number of out of state workers heading for the North Slope. The IBEW feels this bill would favorably help the economic picture of Alaska. The oil and gas industry needs to be more responsive to the needs of resident hire and this bill would provide just that.



# LABORERS INTERNATIONAL UNION OF NORTH AMERICA

LOCAL NUMBER 942

OFFICES: 315 BARNETTE ST., FAIRBANKS, ALASKA 99701 PHONE (907) 456-4584  
369 S. FRANKLIN STREET, JUNEAU, ALASKA 99801 PHONE (907) 586-2860

WILLIE LEWIS  
President

JOE J. THOMAS  
Business Manager and  
Secretary-Treas.

JUNEAU OFFICE  
JAMES R. WAKEFIELD  
Assistant  
Business Manager

members unemployed Many of these members are unemployed

The following is a breakdown of people dispatched to work through Laborers Local #942 between January 1984 and April 10, 1985.

Total Dispatched	-	4278
Residents	-	3923
Nonresidents	-	355
92% Resident Hire		

Total dispatched from Fairbanks hall for work at Prudhoe Bay.

Total	-	1833
Residents	-	1620
Nonresidents	-	213*
88% Resident Hire		

\*Better than 90% of this figure was name requests by Employer.

Total dispatched from Fairbanks hall for all work other than Prudhoe Bay.

Total	-	2030
Residents	-	1896
Nonresidents	-	134
93% Resident Hire		

Total dispatched from Juneau and Ketchikan halls (includes all of South-eastern Alaska.)

Total	-	415
Residents	-	407
Nonresidents	-	8*
98% Resident Hire		

\*All eight were name requests by Employers as foremen or individuals with special skills.

Total dispatched by all three Local #942 Hiring Halls (Fairbanks, Juneau, Ketchikan) for work other than Prudhoe Bay.

Total	-	2445
Residents	-	2303
Nonresidents	-	142
94% Resident Hire		

MR. CHAIRMAN AND MEMBERS OF THE SENATE LABOR AND COMMERCE. MY NAME IS CHARLIE ELDER AND I AM AN EMPLOYEE OF SOHIO AS AN EXECUTIVE CONSULTANT FOR OUR INTEREST IN ALASKA.

MY PURPOSE TODAY IS TO LAY ON THE TABLE SOHIO'S OBJECTIONS AND COMMENTS ON SENATE BILL 271, AND I WILL ATTEMPT TO BE BRIEF. I WILL BE GLAD TO HAVE QUESTIONS AT ANY TIME DURING MY COMMENTS. AND, OF COURSE, IT WILL BE OPEN SEASON AT THE CONCLUSION OF MY REMARKS. I WILL COMMENT TODAY ON A NUMBER OF PROVISIONS OF SB271, BUT OVERRIDING ALL OF THE LATER STATEMENTS IS THE FACT THAT THIS BILL GREATLY ERODES OUR RIGHT TO MANAGE. THIS IS AN INHERENT RIGHT AND ABSOLUTELY NECESSARY IF WE ARE TO DO THE BEST JOB IN THE INTEREST OF OUR COMPANY, EMPLOYEES, AND STOCKHOLDERS. IN VIEW OF THE STAKE THE STATE OF ALASKA HAS IN OUR PERFORMANCE, SUCCESSES AND FAILURES, THE LACK OF MANAGEMENT CONTROL, I BELIEVE, WILL FAR OUTWEIGH THE PROVISIONS OF THIS BILL AND SHOULD BE A FACTOR IN YOUR DELIBERATIONS. THE "RIGHT TO MANAGE" IS UNIVERSALLY RECOGNIZED AND IN MY NEARLY 40 YEARS WITH SOHIO I HAVE NEVER SIGNED A CONTRACT (AND THERE HAVE BEEN MANY) WITH A UNION OR A NONUNION CONTRACTOR WHICH DID NOT CONTAIN REFERENCE TO MANAGEMENT RIGHTS AS FOLLOWS:

MANAGEMENT RIGHTS

SOHIO RETAINS FULL AND EXCLUSIVE AUTHORITY FOR THE MANAGEMENT OF ITS OPERATION. SOHIO RETAINS THE RIGHT TO DIRECT THE WORKING FORCE, INCLUDING THE HIRING, PROMOTIONS,

TRANSFERS, DISCIPLINE OR DISCHARGE OF EMPLOYEES: THE SELECTION OF FOREMAN; THE ASSIGNMENT OF OVERTIME WORK AND THE DETERMINATION OF WHEN IT SHALL BE WORKED. NO RULES, CUSTOMS, OR PRACTICES WHICH LIMITS OUR PRODUCTIVITY, EFFICIENCY OR THE INDIVIDUAL AND/OR JOINT WORKING EFFORTS OF EMPLOYEES SHALL BE PERMITTED.

SB271 REMOVES FROM SOHIO A LARGE PORTION OF THESE MANAGEMENT RIGHTS AND WE BELIEVE IN THE OVERALL IT WILL WORK TO THE DETRIMENT OF THE STATE. NONE OF THE FOREGOING SHOULD BE INTERPRETED THAT SOHIO WILL NOT CONTINUE ITS GOOD FAITH EFFORT TO HAVE ALASKANS IN THE JOBS WITHOUT A LEGISLATIVE REQUIREMENT TO DO SO.

THE FOREGOING IS OUR BASIC OBJECTION, BUT WE HAVE THE FOLLOWING ADDITIONAL QUESTIONS AND COMMENTS:

- I. IF THE BILL IS UNCONSTITUTIONAL WE WILL ALL FIND OUT LATER, BUT PASSING THIS QUESTION FOR THE MOMENT, IT APPEARS THE BILL IS PUNITIVE IN NATURE OR PERHAPS THE KINDEST THING THAT COULD BE SAID IS THAT IT'S GROSSLY UNFAIR IN THAT ITS APPLICATION IS LIMITED TO THE OIL INDUSTRY AND ITS SUPPORT CONTRACTORS - NOT MENTIONING OUR OTHER INDUSTRIES UTILIZING MUCH HIGHER PERCENTAGES OF NONRESIDENTS.

AN ALASKAN DOL ANALYSIS UPDATED TO MARCH 31, 1985 CONTINUES AS FOLLOWS NONRESIDENT EMPLOYMENT IN BUSINESSES AND INDUSTRIES IN THE STATE.

- A. FOOD PROCESSING (75% NONRESIDENTS).
- B. EATING AND DRINKING PLACES (51%).
- C. MINING OTHER THAN OIL AND GAS (48%).
- D. LOGGING AND LUMBER (48%)
- E. CONSTRUCTION (45%).
- F. HOTELS (44%).
- G. BUSINESS SERVICES (44%).
- H. FISHERIES ?
- I. TOURISM ?

THE OIL INDUSTRY DOES NOT EVEN MAKE THE SCOREBOARD. BY WHAT LOGIC ARE THESE BUSINESSES EXCLUDED FROM SB 271? THIS INFORMATION FLIES IN THE FACE OF LEGISLATIVE FINDINGS (2).

2. LEGISLATIVE FINDINGS (4) (5) REFERS TO THE INVESTMENT BY THE STATE IN TRAINING PROGRAMS. WHILE I AM NOT FAMILIAR WITH ANY SPECIFIC TRAINING PROGRAMS CONDUCTED FOR THE PRIVATE SECTOR, WE APPRECIATE AND COMMEND THE STATE FOR THEIR SUPPORT OF VOCATIONAL EDUCATION. SOHIO HAS MADE SUBSTANTIAL USE OF THESE FACILITIES TO TRAIN ALASKAN WORKERS. WE HAVE PAID TUITION OF \$125,000 OVER THE LAST FIVE YEARS TO THE VOC-ED FACILITIES AND HAVE ALSO AWARDED SCHOLARSHIPS AMOUNTING TO \$38,000 TO GRADUATES THROUGHOUT THE STATE FOR ATTENDANCE AT OTHER INSTITUTIONS. WE DO NOT BELIEVE THE STATE'S INVESTMENTS HAVE BEEN OF LITTLE AVAIL.

3. SECTION 38.45.030 RESIDENT HIRE PASSES THE RESPONSIBILITY OF PREPARING REGULATIONS AND ADMINISTERING PROVISIONS OF THE BILL TO THE COMMISSIONER OF LABOR AND THE COMMISSIONER OF THE DEPARTMENT OF NATURAL RESOURCES.

THE COMMISSIONER OF LABOR IS CHARGED WITH 17 DISTRICT RESPONSIBILITIES, INCLUDING THE ASSESSMENT PENALTIES, WHICH I WILL NOT REPEAT.

THE COMMISSIONER OF DNR HAS THE RESPONSIBILITY TO STUDY AND EVALUATE DOL CERTIFICATION, INVESTIGATION AND HOLD HERINGS, AND, IF WILLFULL NONCOMPLIANCE IS DETERMINED THE COMMISSIONER CAN IMPOSE SEVERE PENALTIES.

IN ADDITION, DOL OR DNR MAY SEEK INJUNCTIVE RELIEF AGAINST A PERSON WHO IS NOT IN COMPLIANCE.

4. INsofar AS THE EMPLOYER IS CONCERNED HE MUST, IN THE INTEREST OF GOOD BUSINESS, CONSIDER AND MAKE A JUDGMENT ON AT LEAST ELEVEN ISSUES, MOST OF WHICH ENCROACH ON HIS RIGHT TO MANAGE.

5. INsofar AS THE STATE IS CONCERNED SB271 CERTAINLY DOES NOT ENCOURAGE INVESTMENT IN OIL DEVELOPMENT, AND IT COULD PREVENT THE LOWEST COST DEVELOPMENT WHICH MAY BE NECESSARY FOR FOR THE MARGINAL FIELDS WE EXPECT TO BE WORKING WITH.

IF PASSED, SB271 WILL CERTAINLY RESULT IN HIGHER ADMINISTRATIVE COSTS IF ALL OF THE PROVISIONS ARE CARRIED OUT. I AM CURIOUS AS TO WHETHER OR NOT THIS POINT HAS BEEN CONSIDERED.

THE STATE WILL ACQUIRE A BILL THAT IS BASICALLY UNINFORCEABLE, AND ASSURES THE CERTAINTY OF MANY LAWSUITS FILED BY INDIVIDUALS, THE INDUSTRY AND ITS ASSOCIATED CONTRACTORS.

6. FINALLY, IT'S COUNTERPRODUCTIVE TO THE STATE POLICY  
- CONTAINED N SECTION 38.45.010.

THIS CONCLUDES MY PREPARED REMARKS.

BEEN CONSIDERED.

THE STATE WILL ACQUIRE A BILL THAT IS BASICALLY

NON-PROFITABLE, AND AS FOR THE COMPANIES OF THE STATE  
WILL BE THE ONLY ONE REMAINING AND THE ASSOCIATED  
CONTRIBUTIONS.

FINALLY, IT'S COUNTERPRODUCTIVE TO THE STATE POLICY

2

Bill No.

Committee Substitute for Senate Bill  
No. 271 (L&C)

Date May 7, 1985

Title

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

Contact:

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

This bill establishes a resident hire preference for all employment on natural resource projects on state land.

Under the bill, the Department of Labor would be primarily responsible for:  
(1) establishing resident hire requirements for each project; (2) referring qualified residents who are seeking employment; (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 natural resource 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 Committee Substitute for Senate Bill 271, we would recommend additional amendments, as follows:

1. Add a new section to provide that the hiring preference be extended only to unemployed or underemployed persons or to persons who have completed a job-training program.

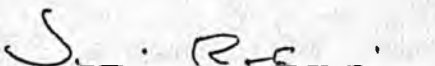
This would enhance the constitutional defensibility of this bill inasmuch as it would then directly focus on the unemployment problems set out in the legislative findings section of the bill (38.45.020).

2. Amend Sec. 38.45.060(b) to provide the Department some flexibility in the appeal process. As written, this section would require the Department to hold a hearing every time one is requested.

The Department would prefer to institute a "review" process and only hold hearings as appropriate.

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

APPROVED:

  
Jim Robison, Commissioner  
Department of Labor

**POSITION PAPER/Department of Labor**

Department of Labor  
Proposed Amendments to  
Committee Substitute for Senate Bill 271 (L&C)

- ✓ 1. Add a new Section 38.45.030 to read:

Sec. 38.45.030. ELIGIBILITY FOR PREFERENCE. (a) The Department of Labor shall certify a person as eligible for a hiring preference under this chapter if the person is a resident, and

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

(2) is unemployed and has registered with a public or private employment agency;

(3) is underemployed or marginally employed as determined by regulations adopted by the department; or

(4) has completed a job-training program approved by the department.

Note: Present Sections 38.45.030-38.45.100 would need to be renumbered, as well as any statutory references included in the Sections.

- ✓ 2. Insert the term "eligible," before the term "qual-" in line 25 on page 3.
- ✓ 3. Insert the term "eligible," before the term "qualified" in lines 12 and 13 and before the term "residents" on line 15 of page 4.
- ✓ 4. Amend line 16 on page 4 to read:  
"approve the hiring of residents who are not eligible for preference or nonresidents for the balance of the request."
- ✓ 5. Amend line 7 on page 5 to read:  
30 days after the rejection or termination, request a review by
- ✓ 6. Change the word "shall" in line 10 of page 5 to "may"

**EXXON** COMPANY, U.S.A.

POUCH 0601 - ANCHORAGE, ALASKA 99502-0601 (907) 501-5331

ALASKA OPERATIONS  
WESTERN DIVISIONRICHARD H. WEAVER  
OPERATIONS MANAGER

May 8, 1985

Senator Arliss Sturgulewski  
Alaska State Legislature  
Pouch V (MS 8100)  
Juneau, Alaska 99811

Dear Senator Sturgulewski:

Exxon has certain serious concerns with Senate Bill 271.

First, I would point out that Exxon supports the concept and practice of local hire, and has traditionally employed a high percentage of local residents (as defined by the statutes) in its operations. Since 1980, 93% of new hires into our Alaska Operations have been local hires with a trend toward an even higher percentage since 1981. To the best of our knowledge, other oil companies follow similar practices.

Our concerns arise from the very findings which purport to justify the passage of the bill. We believe the findings of the legislation incorrectly identify a primary contributing factor to unemployment in the state to be the failure of the resource extraction industry to employ state residents. This finding is not based upon fact. I believe that your committee will find, upon review of Alaska's employment statewide, that the performance of oil companies with respect to local hire is among the best in Alaska's private sector.

I would urge your committee to conduct careful review of the proposed legislation to determine the immediate and future impact of the proposed law. I would specifically urge you to address:

- o Whether there is in fact need for legislative action in this area.
- o Whether there is basis for passage of a bill directed at one industry. The present bill is, in our view, discriminatory toward the oil and gas industry without justification. Industries that likely have much higher non-resident hire ratios, such as fishing and tourism, are not addressed in the bill.
- o Whether this bill will create unacceptable administrative and associated financial burdens for the state and industry. The fiscal impact of implementing this bill does not seem to have been considered.

- o The potential for bureaucratic abuse.

Specific provisions of the bill which will in our view create the problems just addressed are:

- o Sec. 38.45.030 Resident Hire Requirements

- (b) This subsection does not incorporate objective legislative standards for the determination by the Commissioner of Labor of the amount of work that must be performed by qualified residents. It imposes substantial burdens on lessees to familiarize the Commissioner with the nature of work to be performed in exploring for and developing natural resources from state lands; this effort would require a detailed review of each job to be filled. Despite this imposition, there is no express provision for administrative review of the Commissioner's decision.
- (c) This subsection could result in the imposition of new lease or unit requirements on parties to existing leases or units on account of later amendments to this chapter or the regulations.
- (d) This subsection imposes specific recruiting methods and further requires employers to obtain permission from the Commissioner of Labor for each non-resident hire. This requirement could result in significant delays in the exploration and development of state leases.

- o Sec. 38.45.040 Reporting Provisions

This section could result in onerous reporting burdens.

- o Sec. 38.45.060 Regulations and Hearings

- (b) This subsection imposes the requirement that every rejected applicant or terminated employee is entitled to a hearing upon request. This requirement will result in hearings of frivolous claims. Further, this subsection creates the unwarranted inference that each failure to hire a resident or termination of a resident has a discriminatory purpose.
- (c) This subsection authorizes the Department of Labor to carry on burdensome investigations and hearings without probable cause to believe that a violation has occurred or that the employer is not in compliance with this chapter.

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MAY 8 1985

Page 3

o Sec. 38.45.070 Penalties

The penalties provided by this provision are far in excess of the types of penalties imposed for other types of employment discrimination. Many of the penalties, such as increased rents, are unrelated to the actions which gave rise to the proceeding. Subsection (c) would require leases to renegotiate all existing contracts for services, labor, or materials in order to insert provisions on Alaska hire.

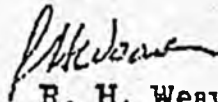
o Sec. 38.45.090(2) Definition

This definition expands the scope of the meaning of "natural resource project on state land" far beyond its ordinary meaning. It appears to require Alaska hire for all contracts and activities related to lease exploration and development, including consulting agreements and construction contracts for work to be done outside the state, lease and unit administration, negotiation of unit agreements, and other activities which may not normally be performed in Alaska. This broad applicability was held to be unconstitutional in Hicklin v. Orbeck, 437 U.S. 518 (1978).

May I also direct your attention to the administrative burdens and costs which the bill would impose on the state of Alaska and the companies that carry out resource development. The Departments of Labor and Natural Resources will have extensive new responsibilities to fulfill, and they will be required to expend considerable financial and human resources in order to carry out the letter and intent of the law.

In conclusion, let me reaffirm that Exxon has been and will continue to be supportive of the practice of local hire. We urge the Committee not to move this bill until it has had time to carefully consider the potential impacts of the bill, the burdens it will place on both the State and the affected industries, and its very constitutionality.

Very truly yours,



R. H. Weaver

RHW/427/dag

# Alaska State Legislature

ARLISS STURGULEWSKI, Chairman  
BETTYE FAHRENKAMP, Vice Chairman  
JACK COGHILL  
DICK ELIASON  
VIC FISCHER  
RICK HALFORD  
FRED ZHAROFF



POUCH V  
JUNEAU, ALASKA. 99811  
(907) 465-4807

## Senate Committee on Resources

MEMORANDUM

May 6, 1985

TO: All Members  
Senate Resources Committee

FROM: Staff *JK*  
Senate Resources Committee

RE: CSSB 271 (L&C) "An Act requiring resident hire on certain natural resource projects on state land; and providing for an effective date."

CSSB 271 (L&C) would establish as state policy that employment opportunities in natural resource development projects be provided to the maximum benefit for qualified Alaska residents.

The Commissioner of Labor shall establish resident hiring requirements for natural resources development projects on state land. Employers covered by this bill must also comply with reporting provisions as determined by the commissioner. Penalties are established for employers failing to comply with this chapter.

SB 271 originally applied only to oil and gas development but was extended to all natural resource projects in the Senate Labor and Commerce Committee.

The Attorney General's office has raised some questions concerning the constitutionality of this bill (see attached letter) in its original form. The CS and the proposed amendments are designed to respond to those concerns.

A fiscal note prepared by the Department of Labor and updated to include CSSB 271 (L&C) shows a FY 86 cost of \$177,600. (see attached)

### Enclosures:

1. CSSB 271 Sectional Analysis by Senate Labor and Commerce
2. Fiscal note by Department of Labor
3. Letter from Attorney General, Department of Law
4. Letter and testimony from IBEW in support of bill
5. Testimony from SOHIO objecting to SB 271



Official Business

# Alaska State Legislature

## Senate

### Committee on Labor & Commerce

Pouch V  
State Capitol  
Juneau, Alaska 99811

CSSB 271: Sectional Analysis

Section 1) Adds a new chapter:

38.45.010: Declares that the state policy for development of natural resources includes providing employment opportunities in natural resource development projects.

38.45.020: Legislative Findings: references findings about unemployment in the state, investments the state has made in training programs to develop a qualified work force, the social burdens which result from resident workers being displaced by non residents, and the need for a resident employment preference.

38.45.030: a) employers of natural resource development projects on state lands shall meet the resident hiring requirements established by the commissioner of labor, and may not discriminate against qualified residents for employment.

b) the commissioner of labor shall determine the amount of work that must be performed by residents on a natural resource development project on state land. Commissioner shall consider employment factors, and require an employer to make a "maximum feasible effort" to hire qualified residents for jobs on state lands.

c) Commissioner of DNR shall incorporate into each lease, unitization agreement, or renegotiation lease, provisions requiring compliance with this chapter and authorizing penalties for non compliance.

d) Employers subject to resident hiring requirements may request the Dept of Labor to assist in locating qualified residents. If the department is unable to refer a sufficient number of qualified residents, it may approve the hiring of nonresidents for the balance of the request.

38.45.040: employers obligated to meet hiring requirements under this chapter shall comply with reporting requirements deemed necessary by the commissioner of Labor.

38.45.050: This chapter applies to all natural resource projects on state land, and the Dept of Labor will determine the extent of the resident hire preference for each project. Resident preference applies only to work performed directly for an employer.

38.45.060: a) Both DOL and DNR shall adopt regs for this chapter. DOL shall adopt regs prohibiting discrimination against qualified residents for resource development projects on state land. These regs are subject to the Administrative Procedures Act except as provided in (b).

(b) An employer shall judge the work qualifications of an applicant, however an applicant who has been rejected or terminated may, within 30 days, request a hearing before DOL to determine whether the employer violated the provisions of this chapter. DOL shall hold a hearing within 20 days of receipt of the request unless the employee requests a longer period of time. The administrative procedures act does not apply to this section.

(c) DOL may conduct investigations and hearings to determine compliance with this chapter. If they determine an employer has "wilfully" failed to comply, the commissioner may certify that finding to DNR.

38.45.070: PENALTIES: If DOL finds that an employer has rejected or terminated a qualified employee in violation of this chapter, the department may require the employer to pay 3 times the lost wages to the employee and may require additional amounts if the employee's actual expenses incurred exceed the triple wages assessed. Either party may appeal the decision to the superior court.

Upon certification of noncompliance by DOL, DNR may investigate and conduct hearings. If DNR determines "wilful" noncompliance, they may impose the following penalties:

- 1) increase the compensation received by the state thru a lease or agreement by a factor of no more than 10; not to exceed \$100,000
- 2) require all or a portion of the project to cease;
- 3) remove the eligibility for contracting with the state or it's political subdivisions for a period not to exceed three years; or
- 4) require a noncompliance payment in liquidated damages to the State. Damages may be in an amount equal to 7.5 times the amount of required hours not worked times the "going wage" for the job.

38.45.080: In addition to the penalties imposed, DOL and DNR may seek an injunction for noncompliance with this chapter. DNR may seek an injunction to enforce penalties imposed.

38.45.090: Definitions:

- 1) "employer" is a person, other than the state, who is a party to a lease agreement for a resource development project on state land. This definition includes an affiliate, principal, subsidiary, contractor, or subcontractor if the activity is performed on state land.
- 2) "natural resource project on state land" is a contract, lease, unitization agreement, or renegotiation of such leases for the development of oil and gas, timber, and mineral resources on state land.
- 3) "qualified resident" is defined as a resident who has the necessary training or skills to perform the work.
- 4) "resident" is defined as a person who has been in the state for 30 days prior to entering into a contract for employment on a natural resource development project on state land, and who shows the intention to permanently reside in the state.

Section 2) Chapter applies to a lease, a unitization agreement, or a renegotiated lease or agreement for the development of O&G, timber, or minerals, after the effective date of this act. This chapter also applies to the renegotiation of an agreement entered into before the effective date of this act, if the renegotiation results in a major change to the duties of the parties.

Section 3) Immediate effective date.

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST

Bill/Resolution No.: CS SB 271 (L&C)  
 Title: "An act requiring resident hire on nat. resource proj. st. lands"  
 Sponsor: Josephson, et. al.  
 Requestor: Senate Resources  
 Date of Request: 4/30/85

FISCAL DETAIL

Agency Affected: Labor  
 Program Category Affected: Public Protection  
 BRU, Program or Subprogram(s) Affected: Labor Standards & Safety Wage & Hour Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES		111.9	115.8	239.1	247.5	256.1
200 TRAVEL		17.0	18.0	50.3	53.3	56.5
300 CONTRACTUAL		31.9	28.5	59.9	63.5	67.3
400 SUPPLIES		2.0	2.1	3.9	4.1	4.4
500 EQUIPMENT		14.8	0	5.4	0	0
500 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
300 MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>177.6</b>	<b>164.4</b>	<b>358.6</b>	<b>368.4</b>	<b>384.3</b>

<b>CAPITAL</b>						
----------------	--	--	--	--	--	--

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

GENERAL FUND		177.6	164.4	358.6	368.4	384.3
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		<b>177.6</b>	<b>164.4</b>	<b>358.6</b>	<b>368.4</b>	<b>384.3</b>

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870  
 Division: Labor Standards & Safety Date: 4/30/85

Approved by Commissioner: Jim Robison Date: 4/30/85  
 Agency: Labor

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

## FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA  
THE FOURTEENTH LEGISLATURE  
BILL/RESOLUTION NO.: CS SB 271 (L&C)  
TITLE: "An Act requiring resident hire under certain natural resource  
projects on state lands"  
AGENCY AFFECTED: Department of Labor

In order to carry out the duties of this bill the Department of Labor would require the following resources:

### FYs 86 and 87

Two Wage and Hour Investigators I and one Clerk Typist III would be required to carry out the monitoring activities. Costs associated with these positions are detailed on the attached new position request forms.

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

### FYs 88 and beyond

The Prudhoe and Kuparuk unit agreements will possibly be renegotiated this year at which time these leases would be covered by the provisions of this bill. An additional Wage and Hour Investigator and two Wage and Hour Technicians will be required. The costs associated with these positions is summarized below:

	W&H Tech. Anchorage	W&H Tech. Anchorage	W&H Invest. I Fairbanks
Personal Service	34.4	34.4	50.3
Travel	0	0	15.6
Contractual	9.4	9.4	10.9
Commodities	.6	.6	.6
Equipment	<u>1.8</u>	<u>1.8</u>	<u>1.8</u>
	46.2	46.2	79.2

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 will be 3.5% for personal service and 6% for non personal service items.

Position Title Wage & Hour Investigator I	Range/Step 16A	Barg. Unit GGU	Form 12 Page/Line	GOV.	APPROV.	DISAPP.	
Type of Position PFT	Staff Months 12	RP Number	PCN Number	BRU Priority	Location Anchorage	Election District	LEG.

CONTINUATION LEVEL	ADDITION	Amount
Type of Expenditure		
PERSONAL SERVICES		
Salary	32,424	
Benefits	5,401	
Supplemental Benefits	1,987	
Fixed Benefits	2,735	
TOTAL PERSONAL SERVICES	01	42,547
Travel	02	8,500
Contractual	03	9,490
Commodities	04	500
Equipment	05	1,600
Other		
TOTAL COST		62,637

**JUSTIFICATION**

This position 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.

The position 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 law. Contractual costs include rent, \$3,600; indirect \$3,890; and other average expenses of \$2,000. Commodities of \$500 and one-time equipment costs of \$1,600 are also included.

RECEIPT CODE	FUNDING SOURCE	Amount
	Federal Receipts 1002	
	G.F. Match 1003	
	General Funds 1004	62,637
	I-A Receipts 1005	
	Program Receipts 1028	
	Other	

For I&B Use Only  
 A Key Number \_\_\_\_\_

13 REQUEST FOR NEW POSITION

AGENCY Department of Labor

PROGRAM Worker Protection

BRU Labor Standards & Safety

COMPONENT Wage & Hour Administration

FY 86

Page 1 of 3  
 Revised Date

LEG:F:

1	Position Title Wage & Hour Investigator I	Range/Step 16A	Barg. Unit GGU	Form 12 Page/Line	GOV.	APPROV.	DISAPP.
2	Type of Position PFT	Staff Months 12	RP Number	PCN Number	BRU Priority	Location Anchorage	Election District LEG.

CONTINUATION LEVEL		ADDITION	
Type of Expenditure			Amount
	1	2	3
<b>PERSONAL SERVICES</b>			
5	Salary		32,424
6	Benefits		5,401
7	Supplemental Benefits		1,987
8	Fixed Benefits		2,735
9	<b>TOTAL PERSONAL SERVICES</b>	01	42,547
0	Travel	02	8,500
1	Contractual	03	9,490
2	Commodities	04	500
3	Equipment	05	1,600
4	Other		
5	<b>TOTAL COST</b>		62,637

**JUSTIFICATION**

This position 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.

The position 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 law. Contractual costs include rent, \$3,600; indirect \$3,890; and other average expenses of \$2,000. Commodities of \$500 and one-time equipment costs of \$1,600 are also included.

RECEIPT CODE	FUNDING SOURCE		
6	Federal Receipts	1002	
7	G.F. Match	1003	
8	General Funds	1004	62,637
9	I-A Receipts	1005	
0	Program Receipts	1028	
1	Other		

or M&B Use Only  
A Key Number \_\_\_\_\_

13 REQUEST FOR NEW POSITION

AGENCY Department of Labor

PROGRAM Worker Protection

BRU Labor Standards & Safety

COMPONENT Wage & Hour Administration

FY 86

Page	2	of	3
Revised Date			

LEG:F:

Position Title Clerk Typist III	Range/Step 8A	Barg. Unit GGU	Form 12 Page/Line	GOV.	APPROV.	DISAPP.
Type of Position PFT	Staff Months 12	RP Number	PCN Number	BRU Priority	Location Anchorage	Election District LEG.

CONTINUATION LEVEL	ADDITION	
Type of Expenditure		Amount
1	2	3
<b>PERSONAL SERVICES</b>		
Salary	19,572	
Benefits	3,261	
Supplemental Benefits	1,200	
Fixed Benefits	2,735	
<b>TOTAL PERSONAL SERVICES</b>	01	26,768
Travel	02	0
Contractual	03	7,948
Commodities	04	1,000
Equipment	05	1,600
Other		
<b>TOTAL COST</b>		37,316

**JUSTIFICATION**

This clerical position would provide typing, filing, and data entry under the provisions of this bill.

Contractual costs include rent, \$3,600; indirect \$2,348, and other average expenses of \$2,000. Commodities of \$1,000 and one-time equipment costs of \$1,600 are also included.

RECEIPT CODE	FUNDING SOURCE	
	Federal Receipts	1002
	G.F. Match	1003
	General Funds	1004
	I-A Receipts	1005
	Program Receipts	1028
	Other	
		37,316

For M&B Use Only  
 A Key Number \_\_\_\_\_

13 REQUEST FOR NEW POSITION

AGENCY Department of Labor

PROGRAM Worker Protection

BRU Labor Standards & Safety

COMPONENT Wage & Hour Administration

FY 86

Page	3	of	3
Revised Date			

LEG:F:

# STATE OF ALASKA

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

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 in 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, 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

Dept. of Law response

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 38.45.020), 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

April 16, 1985  
Page 3

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.

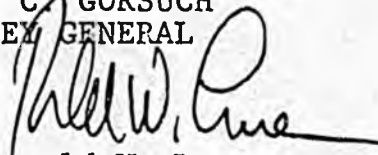
3) The bill does not address the problem in Hicklin of giving all state residents an employment preference, whether or not they are unemployed or underemployed. In this regard, creating "employment target groups" comprised of unemployed residents, chronically underemployed residents, and training-qualified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

# International Brotherhood

# of Electrical Workers

TELEPHONE  
(907) 272-6571  
TELEX 25-250

J. J. "JACK" HULL  
BUSINESS MANAGER • FINANCIAL SECRETARY



2702 DENALI STREET  
ANCHORAGE, ALASKA 99503

ERIC WORTHINGTON  
PRESIDENT

Local 1547



April 23, 1985

The Honorable Senator Zharoff  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, Alaska 99811

Dear Senator Zharoff:

Thank you very much for the opportunity to speak before the Senate Labor and Commerce Committee regarding SB 271 on April 17, 1985.

In order to help facilitate the hearing process, I shortened my presentation before you. However, I have enclosed my complete written testimony and a copy for each member of the Senate Labor and Commerce Committee.

If you need any further statistics or other information from our organization, please contact me or Jack Hull, the Business Manager, and we will be sure to assist you in any way we can.

Sincerely,

Dixie Lee Hudish  
Industrial Relations Officer

Enclosure

cc:

Senator Sackett ✓  
Senator Ray  
Senator Eliason  
Senator Bennett  
Senator Josephson  
Senator Kertulla  
Senator V. Fischer  
Representative Pignalberi  
Representative Cotten  
Representative Davis  
Representative Phillips  
Representative Hurley  
Representative Navarre  
Representative Goll  
Representative Sund

DLH/eb

PUBLIC TESTIMONY

ON

SB 271

April 17, 1985

Mr. Chairman, members of the Senate Labor and Commerce Committee:

My name is Dixie Hudish, Industrial Relations Officer for the International Brotherhood of Electrical Workers (IBEW), Local No. 1547, 2702 Denali Street, Anchorage, Alaska 99503. I am speaking on behalf of Jack Hull, Business Manager, of the IBEW.

First of all I would like to thank those legislators who have worked so diligently on this proposed Bill that the IBEW wholeheartedly supports SB 271.

The IBEW is most concerned with out of state firms who are awarded bids for construction and bringing their own workers from out of state.

Presently, in our Fairbanks office, where jobs are dispatched out for slope work, we have approximately 200 residents in all four classifications (Communication, Wireman, Lineman and Apprentice)