

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

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HJUD

HB 145

87

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145

Bill No. House Bill 145

Date March 3, 1987

Title "An Act relating to resident employment preferences on certain natural resource projects on state land.

Contact: Tom Stuart  
465-4870

Eileen Plate  
465-2700

House Bill 145 seeks to establish resident hire preferences for employment on natural resource projects which are situated on state land in an area which has been determined to be an economically distressed or an underemployment zone.

Under this bill, the Department of Labor would be primarily responsible for

- (1) making determinations of those areas of the state which are economically distressed and those areas where underemployment exists;
- (2) determining the amount of work on a natural resource project which must be performed by eligible and qualified residents;
- (3) assisting in locating qualified and eligible workers, and verifying the eligibility of applicants when a resident preference has been determined to be in effect;
- (4) establishing and monitoring employer reporting requirements;
- (5) conducting investigations and holding hearings to determine compliance with the employment preference provisions; and
- (6) seeking monetary penalties and/or injunctive relief for noncompliance with the employment preference provisions.

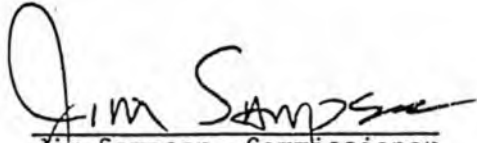
Many of the provisions of this bill are tailored after the employment preference provisions in AS 36.10 which are applicable to public construction projects in the state; and the Department would, therefore, be able to implement this expansion of the employment preference provisions without additional data collection efforts.

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.

In addition, well over \$600 million was paid to nonresidents in both 1984 and 1985. Industries involved in natural resource projects directly, and the construction activities associated with those projects, accounted for a major portion of the earnings received by nonresident workers. The high levels of nonresident earnings were made in years when Alaska's unemployment rate averaged 10.1 percent (1984) and 9.6 percent (1985).

It is in the best interest of Alaska to remedy its high unemployment problem by working to increase the hiring of qualified residents whenever possible. The Department of Labor supports House Bill 145.

APPROVED:

  
Jim Sampson, Commissioner  
Department of Labor



# THE ALLIANCE

P.O. Box 100100 / Anchorage, Alaska 99510 / (907) 278-4444

March 20, 1987

Representative John Sund  
The Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, Alaska 99811

W.D. Bennett - President  
Perkins Cole

Ann Curtis  
Vice President - Events  
Curtis Enterprises

Chuck Becker  
Vice President - Public Policy  
Brown & Root USA, Inc.

Scott Hawkins - Secretary  
Alaska Pacific Bank

Craig Duncan - Treasurer  
Price Waterhouse

Dan Black - Director  
Price/CIRI Construction

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David Dorsey - Director  
Sea-Land Service, Inc.

Tom Dow - Director  
ANNA Development Corporation

Randy Goodrich - Director  
Executive Travel Management, Inc.

David Haugen - Director  
Lynden, Inc.

Joe Matris - Director  
Sustina Recreational Camps

Val McIllyneux - Director  
LECO International, Inc.

Lowell Shinn - Director  
Brown Jug Inc.

Patrick Slater - Director  
Financial Resources Group

J.M. Hans van der Walt - Director  
Enserch Alaska Services, Inc.

Larry G. Anderson - Director  
MarkAir, Inc.

William N. Stiles - Director  
H & S Warehouse

William Webb - Director

Pat Rumley - Director  
Smith, Robinson, Gruening & Brecht

Michelle Fleming  
Executive Director

Joseph Knecht  
Administrative Assistant

Dear Representative Sund:

## ALASKA HIRE - 1987

Many of your fellow legislators have a bumper sticker posted prominently in their office. It reads "Hire Alaskans - It's Good Business", and was created and distributed by the Alaska Support Industry Alliance. Our members live by this motto.

This year you are again presented with the opportunity to pass legislation that mandates local hire, SB 20 and HB 145. You have a difficult choice to make. The issue is very much like prayer in public schools. Failure to support such a high and moral objective is politically risky. But we know that you didn't go to Juneau to take the easy road.

We urge you to take a stand for reality. Our constitution simply does not permit statutory local hire preferences, anymore than it permits the statutory imposition of a particular set of religious standards.

The ALLIANCE is comprised of Alaska business people who are trying to expand Alaska's economy and create jobs for Alaskans. Please do not burden our Alaska businesses with layers of statutory and regulatory compliance requirements for "Alaska Hire", when such law is unenforceable and, more importantly, unnecessary because we already share your dedication to the goal.

We realize that it will be very difficult for you, as an individual legislator, to stand up and be counted as a voice of reason when Alaska Hire becomes a moral and emotional issue. Please know that you have our support, and our willingness to do anything we can to help you bring responsible legislative action to our State government. You may contact Craig Duncan (563-4444) or Bill Webb (272-8590) for additional information on the ALLIANCE's interest in Alaska Hire legislation. Our ALLIANCE membership thanks you for your support.

Sincerely,

Dan Black  
President

**Alaska Support Industry Alliance**

... for responsible economic development

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY  
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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD.	3-31-87	1:30 p.m.
H. JUD.	3-30-87	1:30 p.m.
H. JUD.	3-23-87	1:30 p.m.

# HOUSE COMMITTEE REPORT

(7)

Date referred: 3/11/87

FURTHER REFERRALS: Finance

DATE: 3-31-87

The Judiciary Committee has considered HB 145

"An Act relating to resident employment preferences on certain natural resource projects on state land; and providing for an effective date."

**RECOMMENDS:**

- replace with CS HB 145 (Judiciary) [ ] the same title
- attached amendment(s) [ ] a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:** [ ] \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact [ ] same as previous fiscal note published \_\_\_\_\_
- zero fiscal note [ ] same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

\_\_\_\_\_  
 \_\_\_\_\_  
 Jan Cost  
 \_\_\_\_\_  
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 \_\_\_\_\_  
 \_\_\_\_\_

**SIGNING OTHER RECOMMENDATIONS:**

*Theresa H. Barnes Tolson*  
*John L. Taylor*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Chairman's signature

*Adopted*

*3 Changes*  
① H345 Pg 1, L 20  
~~CS Adds in~~  
The Findings From 36.10.005  
New w/ the bill:  
Pg 2 # (8),  
Pg 3 - alloc (b).

5-0187B  
Cramer  
3/30/87

Original sponsors: Donley, Boyer, Brown, et al.

② H3 145 Pg 5, L 1 "section"  
Changed to "chapter" in CS  
at Pg 6, L 20

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 145 (Judiciary)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
FIFTEENTH LEGISLATURE - FIRST SESSION  
A BILL

③ H3145  
Pg 5, L 7  
"Public works  
Project"  
changed to  
Pg 7, L 7  
"Natural Resources Project on State Land"

For an Act entitled: "An Act relating to resident employment preferences  
on certain natural resource projects on state land;  
and providing for an effective date."

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

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

CHAPTER 47. RESIDENT EMPLOYMENT PREFERENCE UNDER STATE LEASES.

ARTICLE 1. HIRING PREFERENCE.

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

Sec. 38.45.020. LEGISLATIVE FINDINGS. (a) The legislature finds that

*Law* (1) because of its unique climate and its distance from the contiguous states, the state has historically suffered from unique social, seasonal, geographic, and economic conditions that result in an unstable economy;

*Law* (2) the unstable economy is a hardship on the residents of the state and is aggravated by the large numbers of seasonal and transient nonresident workers;

*Law* (3) the rate of unemployment among residents of the state is one of the highest in the nation;

1           Law (4) the state has one of the highest ratios of nonresident-  
2 to-resident workers in the nation;

3           Law (5) the state has a compelling interest in reducing the  
4 level of unemployment among its residents;

5           Law (6) the construction industry in the state accounts for a  
6 substantial percentage of the available employment;

7           Law (7) construction workers receive a greater percentage of  
8 all unemployment benefits paid by the state than is typical of other  
9 states;

10           <sup>143</sup>  
11           <sup>145</sup> Law (8) chronic unemployment can breed severe social problems  
12 including alcoholism and domestic violence;

13           Law (9) historically, the rate of unemployment in the construc-  
14 tion industry in the state is higher than the rate of unemployment in  
15 other industries in the state;

16           Law (10) it is appropriate for the state to consider the welfare  
17 of its residents when it funds construction activity;

18           Law (11) it is in the public interest for the state to allocate  
19 public funds for capital projects in order to reduce unemployment  
20 among its resident construction workers;

21           Law (12) the influx of nonresident construction workers contri-  
22 butes to or causes the high unemployment rate among resident construc-  
23 tion workers because nonresident workers compete with residents for  
24 the limited number of available construction jobs;

25           Law (13) nonresident workers displace a substantial number of  
26 qualified, available, and unemployed Alaska workers on jobs on state  
27 funded public works projects;

28           Law (14) the state has a special interest in seeing that the  
29 benefits of state construction spending accrue to its residents;

          Law (15) the natural resources of land owned by the state belong

1 to the citizens of the state;

2 *Law* (16) Alaskans have chosen to use the majority of the royal-  
3 ties derived from the state's natural resources to fund state govern-  
4 ment;

5 *Law* (17) the vast majority of the state's revenue is derived  
6 from natural resource income rather than from other forms of taxation;

7 *Law* (18) because the state has no personal income tax or sales  
8 tax, nonresident workers use services provided by the state but do not  
9 contribute fairly to the costs of those services; and

10 *Law* (19) Alaskans, more than the residents of other states,  
11 suffer economically when nonresidents displace qualified residents  
12 since resident workers contribute local taxes as well as their share  
13 of the royalties from natural resources.

14 (b) The legislature further finds that

15 *145* (1) the findings of the Department of Labor of the State of  
16 Alaska in its report entitled "Nonresidents Working in Alaska in 1985"  
17 support the need for a resident hiring preference;

18 *145* (2) there is a need for timely, accurate information on the  
19 number of nonresident and resident workers in industries in the state;

20 *145* (3) the state has a continuing interest in determining  
21 whether indirect benefits, including employment opportunities, from  
22 state expenditures, natural resource projects, and agreements concern-  
23 ing the state's natural resources accrue to residents of the state or  
24 to nonresidents;

25 *145* (4) a major factor in the unemployment problem is the  
26 failure of some employers engaged in the exploration, development, and  
27 production of natural resources on state land, and under leases or  
28 other agreements granted or permitted by the state, to employ state  
29 residents;

1 (45) (5) whereas at an earlier stage of the state's history it  
 2 was asserted that high unemployment in the state was due to cultural  
 3 and geographical migration barriers, the state now has many residents  
 4 who are qualified, trained, and available for employment in the explo-  
 5 ration, development, production, and extraction of natural resources  
 6 on state land;

*Barnes*  
 Q. |

7 (45) (6) the state has made significant investments in training  
 8 programs and vocational education to help furnish industry with qual-  
 9 ified residents able to work in the development, exploration, produc-  
 10 tion, and extraction of natural resource products on state land;

11 (45) (7) the state's investment in these training and education  
 12 programs will be of little avail unless state residents receive em-  
 13 ployment opportunities in natural resource projects on state land;

Q:  
*Barnes:*  
*Specifics?* →

14 (45) (8) employment of nonresidents displaces qualified resi-  
 15 dents from work in the development, exploration, production, and  
 16 extraction of natural resource products on state land; therefore, the  
 17 number of nonresidents hired for work on state land in the develop-  
 18 ment, exploration, production, and extraction of state resources is a  
 19 peculiar source of the unemployment problem now besetting the state;

20 (45) (9) the number of state residents who are unable to find  
 21 work is considerably higher than is reflected by unemployment rates  
 22 based on nationally accepted measures;

23 (45) (10) many rural state residents who wish to work do not seek  
 24 employment as frequently as necessary to meet federal definitions of  
 25 unemployment because of continuing lack of employment opportunities in  
 26 rural areas of the state.

27 Sec. 38.45.030. UNAVAILABILITY OF PREFERRED WORKERS. (a) An  
 28 employer subject to hiring requirements under this chapter may request  
 29 the Department of Labor to assist in locating qualified, eligible

1 employees under AS 36.10.070. After receiving a request for assis-  
2 tance, the department shall refer qualified, eligible, available  
3 residents to the employer to fill the employer's hiring needs.

4 (b) If the department is unable to refer a sufficient number of  
5 qualified, eligible, available residents able to perform the work, the  
6 commissioner of labor may approve the hiring of residents who are not  
7 eligible for preference and nonresidents for the balance of the re-  
8 quest.

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

13 Sec. 38.45.050. PREFERENCE IN ZONE OF UNDEREMPLOYMENT. (a)  
14 Immediately following a determination by the commissioner of labor  
15 that a zone of underemployment exists, and for the next two fiscal  
16 years after the determination, qualified residents who are eligible  
17 under AS 36.10.140 shall be given preference in hiring for work on  
18 each natural resource project on state land that is wholly or partial-  
19 ly sited within the zone. The preference applies on a craft-by-craft  
20 or occupational basis.

21 (b) The commissioner of labor shall determine the amount of work  
22 that must be performed under this section by qualified residents who  
23 are eligible for an employment preference under AS 36.10.140. In  
24 making this determination, the commissioner shall consider the nature  
25 of the work, the classification of workers, availability of eligible  
26 residents, and the willingness of eligible residents to perform the  
27 work.

28 (c) The commissioner shall determine that a zone of underemploy-  
29 ment exists if the commissioner finds that

1 (1) the rate of unemployment within the zone is substan-  
2 tially higher than the national rate of unemployment;

3 (2) a substantial number of residents in the zone have  
4 experience or training in occupations that would be employed on a  
5 project;

6 (3) the lack of employment opportunities in the zone has  
7 substantially contributed to serious social or economic problems in  
8 the zone; and

9 (4) employment of workers who are not residents is a pecu-  
10 liar source of the unemployment of residents of the zone.

11 Sec. 38.45.060. PREFERENCE IN ECONOMICALLY DISTRESSED ZONE. The  
12 hiring preference established in AS 36.10.160 for residents of an  
13 economically distressed zone who qualify under AS 36.10.140 applies to  
14 work on each natural resource project on state land that is wholly or  
15 partially sited within an economically distressed zone.

16 Sec. 38.45.070. GENERAL REQUIREMENTS. (a) If the governor has  
17 declared an area to be an area affected by an economic disaster under  
18 AS 44.33.285, then the preference for residents of the area estab-  
19 lished under AS 44.33.285 - 44.33.310 supersedes a preference under  
20 this chapter.

21 (b) The commissioner shall define the boundaries of a zone in  
22 which a preference applies. The boundaries may include a portion of  
23 the state or the state as a whole.

24 Sec. 38.45.080. DETERMINATION OF QUALIFICATIONS, TRANSFERS, AND  
25 CERTIFICATION. (a) An employer shall determine and judge the work  
26 qualifications of applicants for employment.

27 (b) An employer may make a bona fide transfer of management  
28 employees from one project or business activity to another. A posi-  
29 tion filled by a bona fide transfer under this subsection is not

1 considered to have been a vacancy for the purposes of the hiring  
2 requirements under AS 38.45.050 - 38.45.060.

3 (c) An employer subject to a resident hiring requirement under  
4 this chapter shall certify that persons employed as residents under a  
5 preference were eligible for the preference at the time of hiring.

6 (d) A labor organization that dispatches members for work on a  
7 natural resource project on state land under a collective bargaining  
8 agreement shall certify that persons dispatched as residents to meet a  
9 preference were eligible for the preference at the time of dispatch.

10 (e) An employer or labor organization may request assistance  
11 from the Department of Labor in verifying the eligibility of an appli-  
12 cant for a hiring preference under this chapter.

13 Sec. 38.45.090. INCORPORATION INTO CONTRACTS. (a) In order to  
14 create, protect, and preserve the right of eligible qualified resi-  
15 dents to employment in natural resource projects on state land, the  
16 commissioner of natural resources shall incorporate into each con-  
17 tract, lease, unitization agreement, or renegotiation of a contract,  
18 lease or unitization agreement, provisions requiring compliance with  
19 this chapter, regulations adopted under this chapter, and all later  
20 amendments to this chapter or the regulations, and authorizing pen-  
21 alties under AS 38.45.210 for failure to comply.

22 (b) The commissioner shall incorporate into each contract,  
23 lease, unitization agreement, or renegotiation a requirement that the  
24 contractor or lessee include in each contract with contractors or  
25 subcontractors who will be operating on state land a provision re-  
26 quiring compliance with this chapter, regulations adopted under this  
27 chapter, and later amendments to this chapter or the regulations, and  
28 authorizing penalties under AS 38.45.210.

29 Sec. 38.45.100. REPORTING PROVISIONS. An employer obligated to

1 meet resident hiring requirements under this chapter shall comply with  
2 the reporting provisions that the commissioner of labor determines are  
3 reasonably necessary to carry out this chapter. Except for statis-  
4 tical data, information concerning specific employees is confidential  
5 and may not be released to the public by the department. However,  
6 confidential employee information may be shared between departments  
7 for purposes of this chapter.

8 ARTICLE 2. ENFORCEMENT.

9 Sec. 38.45.210. CIVIL PENALTY FOR WILFUL NONCOMPLIANCE. (a)

10 The Department of Labor may conduct investigations and hearings to  
11 determine compliance with this chapter. After a hearing, if the  
12 commissioner of labor finds that an employer has wilfully failed to  
13 comply with this chapter, the commissioner may impose a civil penalty  
14 in an amount no greater than

15 (1) \$5,000 for the first rejection of a qualified eligible  
16 applicant or other violation of this chapter;

17 (2) \$10,000 for the second and each subsequent rejection or  
18 other violation of this chapter.

19 (b) In addition to the imposition of other penalties under this  
20 section, if the Department of Labor finds that an employer has wilful-  
21 ly rejected a qualified eligible applicant or terminated a qualified  
22 eligible employee in violation of this chapter, the department may  
23 require the employer to pay the person the amount of wages the person  
24 lost and may require additional amounts to reimburse the person for  
25 actual expenses incurred as a result of the wrongful action.

26 (c) The commissioner may impose the penalties under this section  
27 on an employer only if the employer itself has failed to comply with  
28 this chapter, regulations adopted under this chapter, or later amend-  
29 ments to this chapter or the regulations, or if the employer has

1 failed to incorporate into its contracts the provision required under  
2 AS 38.45.090(b).

3 (d) In addition to the imposition of penalties under this sec-  
4 tion, the Department of Labor may seek injunctive relief against a  
5 person who is not in compliance with this chapter and the enforcement  
6 of penalties imposed under this section.

7 Sec. 38.45.220. PENALTIES FOR APPLICANTS AND EMPLOYERS. (a) A  
8 person who makes a false sworn statement in connection with a certi-  
9 fication of eligibility for an employment preference under this chap-  
10 ter is subject to criminal prosecution for perjury as provided in  
11 AS 11.56.200.

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

17 (c) In addition to criminal penalties imposed by state law, if a  
18 person is convicted of a crime in connection with a false statement  
19 made in a certification required under AS 38.45.080, and the convic-  
20 tion is not reversed, that person shall forfeit all future rights to  
21 eligibility for an employment preference under this chapter.

22 Sec. 38.45.230. CIVIL PENALTIES FOR FALSE CERTIFICATIONS. (a)  
23 In addition to any criminal penalties imposed and to penalties imposed  
24 under AS 38.45.210 and 38.45.220, after a hearing the department may  
25 impose a civil penalty on a person who, in connection with certifica-  
26 tion of eligibility for an employment preference under this chapter,

27 (1) made a false sworn statement; or

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

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

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

#### 12 ARTICLE 3. GENERAL PROVISIONS.

13 Sec. 38.45.310. APPLICABILITY OF CHAPTER. This chapter applies  
14 to all natural resource projects on state land. The preference ap-  
15 plies only to employment that is performed directly for an employer.

16 Sec. 38.45.390. DEFINITIONS. In this chapter

17 (1) "available" has the meaning given in AS 36.10.990;

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

24 (3) "natural resource project on state land" means a proj-  
25 ect authorized by a contract, lease, unitization agreement, or a  
26 renegotiation of a contract, lease, or unitization agreement for  
27 exploration, development, extraction or production of oil and gas,  
28 leasable mineral, or timber resources if the state is a party to the  
29 contract, lease or unitization agreement and the project is performed

1 in whole or in part on state land; in this paragraph, a leasable  
2 mineral is a mineral included in AS 38.05.150 - 38.05.181;

3 (4) "qualified" has the meaning given in AS 36.10.990;

4 (5) "resident" has the meaning given in AS 36.95.010;

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

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

15 \* Sec. 3. This Act takes effect immediat ly under AS 01.10.070(c).  
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5-0187B ✓  
Cramer  
3/27/87

Original sponsors: Donley, Boyer,  
Brown, et al.

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 145 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

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

11 CHAPTER 45. RESIDENT EMPLOYMENT PREFERENCE UNDER STATE LEASES.

12 ARTICLE 1. HIRING PREFERENCE.

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

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

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

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

25 (3) the findings of the Department of Labor of the State of  
26 Alaska in its report entitled "Nonresidents Working in Alaska in 1985"  
27 support the need for a resident hiring preference;

28 (4) there is a need for timely, accurate information on the  
29 number of nonresident and resident workers in industries in the state;

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

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

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

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

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

24 (10) employment of nonresidents displaces qualified resi-  
25 dents from work in the development, exploration, production, and  
26 extraction of natural resource products on state land; therefore, the  
27 number of nonresidents hired for work on state land in the develop-  
28 ment, exploration, production, and extraction of state resources is a  
29 peculiar source of the unemployment problem now besetting the state;

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

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

8 Sec. 38.45.030. UNAVAILABILITY OF PREFERRED WORKERS. (a) An  
9 employer subject to hiring requirements under this chapter may request  
10 the Department of Labor to assist in locating qualified, eligible  
11 employees under AS 36.10.070. After receiving a request for assis-  
12 tance, the department shall refer qualified, eligible, available  
13 residents to the employer to fill the employer's hiring needs.

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

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

23 Sec. 38.45.050. PREFERENCE IN ZONE OF UNDEREMPLOYMENT. (a)  
24 Immediately following a determination by the commissioner of labor  
25 that a zone of underemployment exists, and for the next two fiscal  
26 years after the determination, qualified residents who are eligible  
27 under AS 36.10.140 shall be given preference in hiring for work on  
28 each natural resource project on state land that is wholly or partial-  
29 ly sited within the zone. The preference applies on a craft-by-craft

1 or occupational basis.

2 (b) The commissioner of labor shall determine the amount of work  
3 that must be performed under this section by qualified residents who  
4 are eligible for an employment preference under AS 36.10.140. In  
5 making this determination, the commissioner shall consider the nature  
6 of the work, the classification of workers, availability of eligible  
7 residents, and the willingness of eligible residents to perform the  
8 work.

9 (c) The commissioner shall determine that a zone of underemploy-  
10 ment exists if the commissioner finds that

11 (1) the rate of unemployment within the zone is substan-  
12 tially higher than the national rate of unemployment;

13 (2) a substantial number of residents in the zone have  
14 experience or training in occupations that would be employed on a  
15 project;

16 (3) the lack of employment opportunities in the zone has  
17 substantially contributed to serious social or economic problems in  
18 the zone; and

19 (4) employment of workers who are not residents is a pecu-  
20 liar source of the unemployment of residents of the zone.

21 Sec. 38.45.060. PREFERENCE IN ECONOMICALLY DISTRESSED ZONE. The  
22 hiring preference established in AS 36.10.160 for residents of an  
23 economically distressed zone who qualify under AS 36.10.140 applies to  
24 work on each natural resource project on state land that is wholly or  
25 partially sited within an economically distressed zone.

26 Sec. 38.45.070. GENERAL REQUIREMENTS. (a) If the governor has  
27 declared an area to be an area affected by an economic disaster under  
28 AS 44.33.285, then the preference for residents of the area estab-  
29 lished under AS 44.33.285 - 44.33.310 supersedes a preference under

1 this chapter.

2 (b) The commissioner shall define the boundaries of a zone in  
3 which a preference applies. The boundaries may include a portion of  
4 the state or the state as a whole.

5 Sec. 38.45.080. DETERMINATION OF QUALIFICATIONS, TRANSFERS, AND  
6 CERTIFICATION. (a) An employer shall determine and judge the work  
7 qualifications of applicants for employment.

8 (b) An employer may make a bona fide transfer of management  
9 employees from one project or business activity to another. A posi-  
10 tion filled by a bona fide transfer under this subsection is not  
11 considered to have been a vacancy for the purposes of the hiring  
12 requirements under AS 38.45.050 - 38.45.060.

13 (c) An employer subject to a resident hiring requirement under  
14 this chapter shall certify that persons employed as residents under a  
15 preference were eligible for the preference at the time of hiring.

16 (d) A labor organization that dispatches members for work on a  
17 natural resource project on state land under a collective bargaining  
18 agreement shall certify that persons dispatched as residents to meet a  
19 preference were eligible for the preference at the time of dispatch.

20 (e) An employer or labor organization may request assistance  
21 from the Department of Labor in verifying the eligibility of an appli-  
22 cant for a hiring preference under this chapter.

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

1 amendments to this chapter or the regulations, and authorizing pen-  
2 alties under AS 38.45.210 for failure to complv.

3 (b) The commissioner shall incorporate into each contract,  
4 lease, unitization agreement, or renegotiation a requirement that the  
5 contractor or lessee include in each contract with contractors or  
6 subcontractors who will be operating on state land a provision re-  
7 quiring compliance with this chapter, regulations adopted under this  
8 chapter, and later amendments to this chapter or the regulations, and  
9 authorizing penalties under AS 38.45.210.

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

#### 18 ARTICLE 2. ENFORCEMENT.

19 Sec. 38.45.210. CIVIL PENALTY FOR WILFUL NONCOMPLIANCE. (a)  
20 The Department of Labor may conduct investigations and hearings to  
21 determine compliance with this chapter. After a hearing, if the  
22 commissioner of labor finds that an employer has wilfully failed to  
23 comply with this chapter, the commissioner may impose a civil penalty  
24 in an amount no greater than

25 (1) \$5,000 for the first rejection of a qualified eligible  
26 applicant or other violation of this chapter;

27 (2) \$10,000 for the second and each subsequent rejection or  
28 other violation of this chapter.

29 (b) In addition to the imposition of other penalties under this

1 section, if the Department of Labor finds that an employer has wilful-  
2 ly rejected a qualified eligible applicant or terminated a qualified  
3 eligible employee in violation of this chapter, the department may  
4 require the employer to pay the person the amount of wages the person  
5 lost and may require additional amounts to reimburse the person for  
6 actual expenses incurred as a result of the wrongful action.

7 (c) The commissioner may impose the penalties under this section  
8 on an employer only if the employer itself has failed to comply with  
9 this chapter, regulations adopted under this chapter, or later amend-  
10 ments to this chapter or the regulations, or if the employer has  
11 failed to incorporate into its contracts the provision required under  
12 AS 38.45.090(b).

13 (d) In addition to the imposition of penalties under this sec-  
14 tion, the Department of Labor may seek injunctive relief against a  
15 person who is not in compliance with this chapter and the enforcement  
16 of penalties imposed under this section.

17 Sec. 38.45.220. PENALTIES FOR APPLICANTS AND EMPLOYERS. (a) A  
18 person who makes a false sworn statement in connection with a certi-  
19 fication of eligibility for an employment preference under this chap-  
20 ter is subject to criminal prosecution for perjury as provided in  
21 AS 11.56.200.

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

27 (c) In addition to criminal penalties imposed by state law, if a  
28 person is convicted of a crime in connection with a false statement  
29 made in a certification required under AS 38.45.080, and the

1 conviction is not reversed, that person shall forfeit all future  
2 rights to eligibility for an employment preference under this chapter.

3 Sec. 38.45.230. CIVIL PENALTIES FOR FALSE CERTIFICATIONS. (a)  
4 In addition to any criminal penalties imposed and to penalties imposed  
5 under AS 38.45.210 and 38.45.220, after a hearing the department may  
6 impose a civil penalty on a person who, in connection with certifica-  
7 tion of eligibility for an employment preference under this chapter,

8 (1) made a false sworn statement; or

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

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

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

### 22 ARTICLE 3. GENERAL PROVISIONS.

23 Sec. 38.45.310. APPLICABILITY OF CHAPTER. This chapter applies  
24 to all natural resource projects on state land. The preference ap-  
25 plies only to employment that is performed directly for an employer.

26 Sec. 38.45.390. DEFINITIONS. In this chapter

27 (1) "available" has the meaning given in AS 36.10.990;

28 (2) "employer" means a person other than the state who is a  
29 party to a contract, lease, or unitization agreement for a natural

1 resource project on state land and the person's affiliate, principal,  
2 subsidiary, contractor, or subcontractor if the activity of the affil-  
3 iate, principal, subsidiary, contractor, or subcontractor is performed  
4 on state land;

5 (3) "natural resource project on state land" means a proj-  
6 ect authorized by a contract, lease, unitization agreement, or a  
7 renegotiation of a contract, lease, or unitization agreement for  
8 exploration, development, extraction or production of oil and gas,  
9 leasable mineral, or timber resources if the state is a party to the  
10 contract, lease or unitization agreement and the project is performed  
11 in whole or in part on state land; in this paragraph, a leasable  
12 mineral is a mineral included in AS 38.05.150 - 38.05.181;

13 (4) "qualified" has the meaning given in AS 36.10.990;

14 (5) "resident" has the meaning given in AS 36.95.010;

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

17 \* Sec. 2. AS 38.45, enacted in sec. 1 of this Act, applies to a lease,  
18 unitization agreement, or contract for the development of oil and gas,  
19 leasable mineral, or timber resources entered into on or after the effec-  
20 tive date of this Act and to a renegotiation of the lease, unitization  
21 agreement, or contract. AS 38.45 applies to the renegotiation on or after  
22 the effective date of this Act of a lease, unitization agreement, or con-  
23 tract entered into before the effective date of this Act if the renegotia-  
24 tion results in a major change in the duties of a party.

25 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).  
26  
27  
28  
29

18  
BY DONLEY BOYER, BROWN, CATO,  
CUTTEN, DAVIDSON, DAVIS, ELLIS,  
FRANK, GOLL, GRUENBERG, HOFFMAN,  
KOPONEN, MILLER, NAVARRE, SUND,  
SWACKHAMMER AND GRUSSENDORF

1 IN THE HOUSE

2 HOUSE BILL NO. 145

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

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

11 CHAPTER 45. RESIDENT EMPLOYMENT PREFERENCE UNDER STATE LEASES.

12 ARTICLE 1. HIRING PREFERENCE.

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

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

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

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

25 (3) the findings of the Department of Labor of the State of  
26 Alaska in its report entitled "Nonresidents Working in Alaska in 1985"  
27 support the need for a resident hiring preference;

28 (4) there is a need for timely, accurate information on the  
29 number of nonresident and resident workers in industries in the state;

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

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

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

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

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

24           (10) employment of nonresidents displaces qualified resi-  
25 dents from work in the development, exploration, production, and  
26 extraction of natural resource products on state land; therefore, the  
27 number of nonresidents hired for work on state land in the develop-  
28 ment, exploration, production, and extraction of state resources is a  
29 peculiar source of the unemployment problem now besetting the state;

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

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

8 Sec. 38.45.030. UNAVAILABILITY OF PREFERRED WORKERS. (a) An  
9 employer subject to hiring requirements under this chapter may request  
10 the Department of Labor to assist in locating qualified, eligible  
11 employees under AS 36.10.070. After receiving a request for assis-  
12 tance, the department shall refer qualified, eligible, available  
13 residents to the employer to fill the employer's hiring needs.

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

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

23 Sec. 38.45.050. PREFERENCE IN ZONE OF UNDEREMPLOYMENT. (a)  
24 Immediately following a determination by the commissioner of labor  
25 that a zone of underemployment exists, and for the next two fiscal  
26 years after the determination, qualified residents who are eligible  
27 under AS 36.10.140 shall be given preference in hiring for work on  
28 each natural resource project on state land that is wholly or partial-  
29 ly sited within the zone. The preference applies on a craft-by-craft

SOC

1 or occupational basis.

2 (b) The commissioner of labor shall determine the amount of work  
3 that must be performed under this section by qualified residents who  
4 are eligible for an employment preference under AS 36.10.140. In  
5 making this determination, the commissioner shall consider the nature  
6 of the work, the classification of workers, availability of eligible  
7 residents, and the willingness of eligible residents to perform the  
8 work.

9 (c) The commissioner shall determine that a zone of underemploy-  
10 ment exists if the commissioner finds that

11 (1) the rate of unemployment within the zone is substan-  
12 tially higher than the national rate of unemployment;

13 (2) a substantial number of residents in the zone have  
14 experience or training in occupations that would be employed on a  
15 project;

16 (3) the lack of employment opportunities in the zone has  
17 substantially contributed to serious social or economic problems in  
18 the zone; and

19 (4) employment of workers who are not residents is a pecu-  
20 liar source of the unemployment of residents of the zone.

21 Sec. 38.45.060. PREFERENCE IN ECONOMICALLY DISTRESSED ZONE. The  
22 hiring preference established in AS 36.10.160 for residents of an  
23 economically distressed zone who qualify under AS 36.10.140 applies to  
24 work on each natural resource project on state land that is wholly or  
25 partially sited within an economically distressed zone.

26 Sec. 38.45.070. GENERAL REQUIREMENTS. (a) If the governor has  
27 declared an area to be an area affected by an economic disaster under  
28 AS 44.33.285, then the preference for residents of the area estab-  
29 lished under AS 44.33.285 - 44.33.310 supersedes a preference under

1 this section.

2 (b) The commissioner shall define the boundaries of a zone in  
3 which a preference applies. The boundaries may include a portion of  
4 the state or the state as a whole.

5 Sec. 38.45.080. DETERMINATION OF QUALIFICATIONS, TRANSFERS, AND  
6 CERTIFICATION. (a) An employer shall determine and judge the work  
7 qualifications of applicants for employment.

8 (b) An employer may make a bona fide transfer of management  
9 employees from one project or business activity to another. A posi-  
10 tion filled by a bona fide transfer under this subsection is not  
11 considered to have been a vacancy for the purposes of the hiring  
12 requirements under AS 38.45.050 - 38.45.060.

13 (c) An employer subject to a resident hiring requirement under  
14 this chapter shall certify that persons employed as residents under a  
15 preference were eligible for the preference at the time of hiring.

16 (d) A labor organization that dispatches members for work on a  
17 [public works project] <sup>natural resources project on state land</sup> under a collective bargaining agreement shall  
18 certify that persons dispatched as residents to meet a preference were  
19 eligible for the preference at the time of dispatch.

20 (e) An employer or labor organization may request assistance  
21 from the Department of Labor in verifying the eligibility of an appli-  
22 cant for a hiring preference under this chapter.

23 Sec. 38 45.090. INCORPORATION INTO CONTRACTS. (a) In order to  
24 create, protect, and preserve the right of eligible qualified resi-  
25 dents to employment in natural resource projects on state land, the  
26 commissioner of natural resources shall incorporate into each con-  
27 tract, lease, unitization agreement, or renegotiation of a contract,  
28 lease or unitization agreement, provisions requiring compliance with  
29 this chapter, regulations adopted under this chapter, and all later

1 amendments to this chapter or the regulations, and authorizing  
2 penalties under AS 38.45.210 for failure to comply.

3 (b) The commissioner shall incorporate into each contract,  
4 lease, unitization agreement, or renegotiation a requirement that the  
5 contractor or lessee include in each contract with contractors or  
6 subcontractors who will be operating on state land a provision re-  
7 quiring compliance with this chapter, regulations adopted under this  
8 chapter, and later amendments to this chapter or the regulations, and  
9 authorizing penalties under AS 38.45.210.

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

18 ARTICLE 2. ENFORCEMENT.

19 Sec. 38.45.210. CIVIL PENALTY FOR WILFUL NONCOMPLIANCE. (a)  
20 The Department of Labor may conduct investigations and hearings to  
21 determine compliance with this chapter. After a hearing, if the  
22 commissioner of labor finds that an employer has wilfully failed to  
23 comply with this chapter, the commissioner may impose a civil penalty  
24 in an amount no greater than

25 (1) \$5,000 for the first rejection of a qualified eligible  
26 applicant or other violation of this chapter;

27 (2) \$10,000 for the second and each subsequent rejection or  
28 other violation of this chapter.

29 (b) In addition to the imposition of other penalties under this

1 section, if the Department of Labor finds that an employer has wilful-  
2 ly rejected a qualified eligible applicant or terminated a qualified  
3 eligible employee in violation of this chapter, the department may  
4 require the employer to pay the person the amount of wages the person  
5 lost and may require additional amounts to reimburse the person for  
6 actual expenses incurred as a result of the wrongful action.

7 (c) The commissioner may impose the penalties under this section  
8 on an employer only if the employer itself has failed to comply with  
9 this chapter, regulations adopted under this chapter, or later amend-  
10 ments to this chapter or the regulations, or if the employer has  
11 failed to incorporate into its contracts the provision required under  
12 AS 38.45.090(b).

13 (d) In addition to the imposition of penalties under this sec-  
14 tion, the Department of Labor may seek injunctive relief against a  
15 person who is not in compliance with this chapter and the enforcement  
16 of penalties imposed under this section.

17 Sec. 38.45.220. PENALTIES FOR APPLICANTS AND EMPLOYERS. (a) A  
18 person who makes a false sworn statement in connection with a certi-  
19 fication of eligibility for an employment preference under this chap-  
20 ter is subject to criminal prosecution for perjury as provided in  
21 AS 11.56.200.

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

27 (c) In addition to criminal penalties imposed by state law, if a  
28 person is convicted of a crime in connection with a false statement  
29 made in a certification required under AS 38.45.080, and the

1 conviction is not reversed, that person shall forfeit all future  
2 rights to eligibility for an employment preference under this chapter.

3 Sec. 38.45.230. CIVIL PENALTIES FOR FALSE CERTIFICATIONS. (a)

4 In addition to any criminal penalties imposed and to penalties imposed  
5 under AS 38.45.210 and 38.45.220, after a hearing the department may  
6 impose a civil penalty on a person who, in connection with certifica-  
7 tion of eligibility for an employment preference under this chapter,

8 (1) made a false sworn statement; or

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

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

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

22 ARTICLE 3. GENERAL PROVISIONS.

23 Sec. 38.45.310. APPLICABILITY OF CHAPTER. This chapter applies  
24 to all natural resource projects on state land. The preference ap-  
25 plies only to employment that is performed directly for an employer.

26 Sec. 38.45.390. DEFINITIONS. In this chapter

27 (1) "available" has the meaning given in AS 36.10.990;

28 (2) "employer" means a person other than the state who is a  
29 party to a contract, lease, or unitization agreement for a natural

1 resource project on state land and the person's affiliate, principal,  
2 subsidiary, contractor, or subcontractor if the activity of the affil-  
3 iate, principal, subsidiary, contractor, or subcontractor is performed  
4 on state land;

5 (3) "natural resource project on state land" means a proj-  
6 ect authorized by a contract, lease, unitization agreement, or a  
7 renegotiation of a contract, lease, or unitization agreement for  
8 exploration, development, extraction or production of oil and gas,  
9 leasable mineral, or timber resources if the state is a party to the  
10 contract, lease or unitization agreement and the project is performed  
11 in whole or in part on state land; in this paragraph, a leasable  
12 mineral is a mineral included in AS 38.05.150 - 38.05.181;

13 (4) "qualified" has the meaning given in AS 36.10.990;

14 (5) "resident" has the meaning given in AS 36.95.010;

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

17 \* Sec. 2. AS 38.45, enacted in sec. 1 of this Act, applies to a lease,  
18 unitization agreement, or contract for the development of oil and gas,  
19 leasable mineral, or timber resources entered into on or after the effec-  
20 tive date of this Act and to a renegotiation of the lease, unitization  
21 agreement, or contract. AS 38.45 applies to the renegotiation on or after  
22 the effective date of this Act of a lease, unitization agreement, or con-  
23 tract entered into before the effective date of this Act if the renegotia-  
24 tion results in a major change in the duties of a party.

25 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

AMENDMENT

Offered in the House

BY: Sund

TO: HB 145

Page 5, After line 16:

Delete "public works project"

Replace with "natural resource project on state land"

*Need Name amendment*

Adopted

A M E N D M E N T #1

By: Taylor

Offered in the STATE AFFAIRS COMMITTEE

TO: CSHB 145(Jud)

Page 7, after line 26:

Insert a new section to read:

*may*  
~~shall~~ "Sec. 38.45.110. RESIDENT CERTIFICATION. (a) The department implement a certification system for state residents. The department may charge applicants for certification a reasonable fee to cover the costs of the certification system.

(b) An employer who reasonably relies on a certification by the department that an applicant or employee is a resident is not liable for penalties under this chapter based on the nonresidence of the applicant or employee."

*at least 500,000*

[10] Under our decision today, Bailey may be entitled to additional permanent partial disability benefits beyond those already paid by Litwin and Travelers. If so, Bailey, should receive an award for attorney's fees "on the amount of compensation controverted and awarded," AS 23.30.145(a), and for costs in the proceedings. AS 23.30.145(b). We remand this case to the Board for a determination of attorney's fees and costs.

AFFIRMED in part, REVERSED in part, and REMANDED for further proceedings consistent with this opinion.

MATTHEWS, Justice, joined by RABINOWITZ, Chief Justice, concurring.

I continue to believe that medical stabilization marks the end of temporary disability under the Alaska Worker's Compensation statute. *Bignell v. Wise Mechanical Contractors*, 651 P.2d 1163, 1169 (Alaska 1982) (Rabinowitz, J., with whom Matthews, J. joins, dissenting). In this case, the Board implicitly found that Bailey's medical condition had stabilized as the majority opinion has recognized. *See supra* at 252-53 n. 10. This implicit finding is supported by substantial evidence and therefore I agree that Bailey's temporary total disability payments were properly ended.

In all other respects, I concur with the majority opinion.



James ROBISON, Commissioner of Labor; Robert Bacolas, Director, Division of Labor Standards and Safety; Donald Wilson, Deputy Director of the Division of Labor Standards and Safety; James R. Carr, Supervisor of the Wage and Hour Administration; the Department of Labor of the State of Alaska, and the State of Alaska, and the International Association of Bridge, Structural and Ornamental Ironworkers, Local 751, Appellants,

v.

James N. FRANCIS, Appellee.

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 751, Appellant,

v.

James N. FRANCIS, Appellee.

James N. FRANCIS, Appellant,

v.

James ROBISON, Commissioner of Labor; Robert Bacolas, Director, Division of Labor Standards and Safety; Donald Wilson, Deputy Director of the Division of Labor Standards and Safety; James R. Carr, Supervisor of the Wage and Hour Administration; the Department of Labor of the State of Alaska, and the State of Alaska, and the International Association of Bridge, Structural and Ornamental Ironworkers, Local 751, Appellees.

Nos. S-493, S-510 and S-552.

Supreme Court of Alaska.

Jan. 17, 1986.

Nonresident who was discharged from job on public construction project after employer was warned by Department of Labor that it had a work force of more than five percent nonresidents on the project, in violation of local hire law, brought suit challenging constitutionality of the law. The Superior Court, Third Judicial District,

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Anchorage, Karl S. Johnstone, J., entered partial final judgment declaring that the statute violated the privileges and immunities clause, and appeal was taken. The Supreme Court, Matthews, J., held that statute requiring that work on public construction projects be performed almost entirely by Alaska residents violates the privileges and immunities clause of the United States Constitution.

Affirmed.

Burke, J., concurred with opinion.

#### 1. Constitutional Law ⇌207(2)

Primary purpose of privileges and immunities clause is to prevent states from enacting measures which discriminate against nonresidents for reasons of economic protectionism. U.S.C.A. Const. Art. 4, § 2, cl. 1.

#### 2. Constitutional Law ⇌207(1)

Privileges and immunities clause does not protect nonresidents from all forms of discrimination; its reach is limited to fundamental rights, i.e., rights involving basic and essential activities, interference with which would frustrate purposes of formation of the union; if threshold fundamental rights requirement is met, discrimination is only permitted where there is a substantial reason which justifies it; no substantial reason will be found absent some showing that nonresidents are a peculiar source of the evil which the state's action is meant to remedy. U.S.C.A. Const. Art. 4, § 2, cl. 1.

#### 3. Constitutional Law ⇌207(1)

Presence of a substantial reason for discrimination against nonresidents does not alone suffice under privileges and immunities clause; means employed by challenged statute discriminating against nonresidents must be closely related to interest served by the statute. U.S.C.A. Const. Art. 4, § 2, cl. 1.

#### 4. Constitutional Law ⇌207(2)

Employment is a fundamental right entitled to protection of the privileges and immunities clause. U.S.C.A. Const. Art. 4, § 2, cl. 1.

#### 5. Constitutional Law ⇌207(2)

Evidence in action challenging constitutionality of statute [AS 36.10.010] requiring that work on public construction projects be performed almost entirely by Alaska residents was insufficient to support 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.

#### 6. Constitutional Law ⇌207(2)

##### Public Contracts ⇌2

Purpose of local hire law [AS 36.10.-010], to exclude nonresidents from public construction jobs so that more jobs would be available to Alaskans, was not a permissible justification for discrimination against nonresidents under the privileges and immunities clause. U.S.C.A. Const. Art. 4, § 2, cl. 1.

#### 7. Constitutional Law ⇌42.1(5)

Montana resident who was discharged from iron worker job on public construction project after Department of Labor warned employer that it had a work force of more than five percent nonresidents on the project had standing to challenge constitutionality of local hire law [AS 36.10.010] requiring that work on public construction contracts be performed almost entirely by Alaska residents.

#### 8. Constitutional Law ⇌207(2)

##### Public Contracts ⇌2

Local hire statute [AS 36.10.010] which requires that work on public construction projects be performed almost entirely by Alaska residents violates the privileges and immunities clause of the United States Constitution. U.S.C.A. Const. Art. 4, § 2, cl. 1.

Jan Hart DeYoung, Asst. Atty. Gen., Anchorage, and Norman C. Gorsuch, Atty. Gen., Juneau, for State Dept. of Labor, James Robison, Robert Bacolas, Donald Wilson, and James C. Carr.

Allison E. Mendel, Jermain, Dunnagan & Owens, Anchorage, for International Ass'n

of Bridge, Structural and Ornamental Ironworkers, Local 751.

Ron Zobel, Anchorage, for James N. Francis.

Before RABINOWITZ, C.J., and  
BURKE, MATTHEWS, COMPTON and  
MOORE, JJ.

### OPINION

MATTHEWS, Justice.

We hold in this case that Alaska's local hire law, AS 36.10.010,<sup>1</sup> which requires that work on public construction projects be performed almost entirely by Alaska residents, violates the privileges and immunities clause of article IV, § 2 of the United States Constitution.

#### I. FACTUAL AND PROCEDURAL SETTING

James Francis, a Montana resident, was employed in 1983 as an ironworker by Regan Steel & Supply, a sub-contractor on a North Pole High School project. When the Department of Labor discovered that Regan Steel had a work force of more than five percent non-residents on the project, it sent an enforcement notice to the company. As a result, the company discharged Francis.

#### 1. AS 36.10.010 provides:

(a) In the performance of contracts let by a municipality for construction, repair, preliminary surveys, engineering studies, consulting, maintenance work or any other retention of services necessary to complete any given project, 95 percent residents shall be employed where they are available and qualified. If 10 or fewer persons are employed under the contract, then 90 percent residents shall be employed where they are available and qualified. In all cases of public works projects, preference shall be given to residents. In an area which has been designated as an area impacted by an economic disaster, residents of that area shall be given employment preference as provided in AS 44.33.290, followed by other residents of the state.

(b) When a construction project is partly or wholly funded by state money and the state or an agency of the state, a department, office, agency, state board, commission, regional school board with respect to an educational

Francis sued the state and various state officials,<sup>2</sup> seeking a declaration that the local hire law is unconstitutional under the privileges and immunities and the equal protection clauses of the United States Constitution and under the equal rights clause of the Alaska Constitution. In addition, injunctive relief and damages under 42 U.S.C. § 1983 were sought.

Following a non-jury trial, the superior court entered a partial final judgment declaring that the statute violated the privileges and immunities clause. In support of its decision, the court filed detailed findings of fact, including the following:

Between April, 1980, and July, 1982, the population of Alaska has grown by nearly fifteen percent (15%).

The population of Alaska has increased in the recent past more rapidly than at any other time in its history, and the State is growing more rapidly than other states in the union.

Property values in Alaska have been increasing over the last five years.

Alaska is not a depressed area as that term is used in the economics profession.

All sectors of the Alaska economy are expanding and Alaska has experienced very rapid economic growth since 1980.

Employment in Alaska in 1983 was at record levels and the rate of increase

facility under AS 14.11.020, public corporation or other organizational unit of or created under the executive, legislative or judicial branch of state government, including the University of Alaska, is a signatory to the construction contract, the contract shall require that the worker hours on a craft-by-craft basis shall be performed at least 95 percent by bona fide state residents. If 10 or fewer persons are employed under the contract, then 90 percent residents shall be employed where they are available and qualified. In an area which has been designated as an area impacted by an economic disaster, residents of that area shall be given employment preference as provided in AS 44.33.290, followed by other residents of the state.

#### 2. The International Association of Bridge, Structural and Ornamental Ironworkers, Local 751 intervened as a defendant.

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was the best since the days of the Alaska Pipeline in 1974-1975.

In 1983, the construction industry was the strongest sector in the state's economy, and it has had the greatest impact on the Alaska economy since the Alaska Pipeline years.

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

The major factor affecting the level of employment in Alaska in the construction industry is climatic changes as a result of extreme temperature differentials in the winter and summer months. Construction declines to substantially lower levels during the winter months, and increases, peaking out in August and September, during the latter summer months. During the peak periods of construction activity, the state experiences its lowest rate of unemployment.

The expenditure of state funds are a major factor affecting the level of employment in Alaska generally, and the construction industry in particular. The state expenditure for public works projects accounts for approximately sixty to seventy percent (60% to 70%) or more of the total annual construction dollar outlay within the state.

Private investment has a lesser effect on the level of construction activity from year to year in the State of Alaska, and such effect, from time to time, is affected by interest rates.

Unemployment is substantially greater in the rural areas than in the urban areas. The unemployment rate in Anchorage is less than the national average, while in the rural areas, it is greater than the national average and greater than the average within the State of Alaska.

The construction activity is greater within the urban area than within the rural areas. Unemployment is less within the urban areas than within the rural areas. Rural Alaskans lack the training that urban Alaskans have access to in construction work.

In-migration in the State of Alaska is a factor affecting unemployment in the construction industry in Alaska.

Reasonable inferences from the evidence support a finding that most of the job seekers coming to Alaska intend to become residents upon their entry into the state, thus contributing to the rapid population growth within the state.

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.

Among the court's conclusions of law were:

The right to obtain employment in any state is a fundamental right and is a privilege which shall be immune from any burden unless the State of Alaska can show a legitimate purpose for such burden. In this case, the State has failed to establish by a preponderance of the evidence such a legitimate purpose.

The defendants and intervenor have failed to prove by a preponderance of the evidence that nonresident construction workers constitute a peculiar source of unemployment in the State of Alaska. Serious factors affecting unemployment within the State of Alaska are the extreme climatic conditions, the change in the legislative appropriation for public works construction projects, the extreme rapid growth of population experienced by Alaska, and the wildly fluctuating interest rates which have a direct effect on the private sector construction spending. Statistics over the last several years demonstrate that Alaska's unemployment rate has increased at a rate lesser than the nationwide average. Whereas Alaska's unemployment rate for several years was substantially greater than the

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nationwide rate, it now stands much closer to the national average, further supporting the conclusion that nonresident employment is not a serious factor in the unemployment rate in Alaska.

The State and the intervenor have failed to prove by a preponderance of the evidence that there is a substantial reason to discriminate against employment of citizens of other states on public works construction projects within the State of Alaska.

The State and intervenor have failed to prove by a preponderance of the evidence that the preference granted Alaska residents is closely tailored to alleviate unemployment in the construction industry in the State of Alaska.

## II. PURPOSE OF THE PRIVILEGES AND IMMUNITIES CLAUSE

The privileges and immunities clause of section 2, article IV of the United States Constitution provides:

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.<sup>3</sup>

[1] The primary purpose of this clause is to prevent states from enacting measures which discriminate against non-residents for reasons of economic protectionism. *Supreme Court of New Hampshire v. Piper*, — U.S. —, — n. 18, 105 S.Ct. 1272, 1279 n. 18, 84 L.Ed.2d 205 (1985). Historically, it was meant to:

[h]elp fuse into one Nation a collection of independent, sovereign States. It was designed to insure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy. For protection of such equality the citizen of State A was not to be restricted to the uncertain remedies afforded by diplomatic processes and official retaliation. "Indeed, without some provision of the kind removing from the citizens of each State the disabilities of alienage in the other States, and giving them equality of

3. The terms "citizen" and "resident" are essentially interchangeable for the purpose of review under the privileges and immunities clause.

privilege with citizens of those States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists."

In line with this underlying purpose, it was long ago decided that one of the privileges which the clause guarantees to citizens of State A is that of doing business in State B on terms of substantial equality with the citizens of that State.

*Tomer v. Witsell*, 334 U.S. 385, 395-96, 68 S.Ct. 1156, 1161-62, 92 L.Ed. 1460, 1471 (1948) (footnote omitted, citations omitted). In brief, the clause was meant "to prevent discrimination against non-residents, to further the concept of federalism, and to create a national economic unit." *Sheley v. Alaska Bar Association*, 620 P.2d 640, 642 (Alaska 1980) (citations omitted).

## III. FRAMEWORK FOR ANALYSIS OF PRIVILEGES AND IMMUNITIES CLAIMS

### A. Nature of the Right.

[2] The privileges and immunities clause does not protect non-residents against all forms of discrimination. Its reach is limited to "fundamental rights"—rights involving "basic and essential activities, interference with which would frustrate the purposes of the formation of the union." *Baldwin v. Montana Fish and Game Commission*, 436 U.S. 371, 377, 98 S.Ct. 1852, 1862, 56 L.Ed.2d 354, 367-68 (1978).

### B. Substantial Justification.

If the threshold fundamental rights requirement is met, discrimination is only permitted where there is a substantial reason which justifies it. *Tomer*, 334 U.S. at 396, 68 S.Ct. at 1162, 92 L.Ed. at 1471. "No 'substantial reason' will be found absent some showing that nonresidents are 'a peculiar source of the evil' which the state's action is meant to remedy." *Noll v.*

*Hicklin v. Orbeck*, 437 U.S. 518, 524, 98 S.Ct. 2482, 2486, 57 L.Ed.2d 397, 403, n. 8 (1978).

*Alaska Bar Association*, 649 P.2d 241, 243 (Alaska 1982) quoting *Hicklin v. Orbeck*, 437 U.S. 518, 526-27, 98 S.Ct. 2482, 2487-88, 57 L.Ed.2d 397, 405 (1978).

C. Close Relationship Between Perceived Problem and Statutory Solution.

[3] Moreover, the presence of a substantial reason for discrimination does not alone suffice. The means employed by the challenged statute must be closely related to the interests served by the statute. *Toomer*, 334 U.S. at 396, 68 S.Ct. at 1162, 92 L.Ed. at 1471; *Hicklin*, 437 U.S. at 527, 98 S.Ct. at 2488, 57 L.Ed.2d at 405. "In deciding whether the discrimination bears a close or substantial relationship to the state's objective . . . the availability of less restrictive means" is relevant. *New Hampshire v. Piper*, — U.S. at —, 105 S.Ct. at 1282.

D. Market Regulator—Market Participant Distinction.

This method of analysis applies both when the state is acting as a sovereign—a market regulator—and as an owner—a market participant.<sup>4</sup> *United Building & Construction Trades v. Mayor and Council of the City of Camden*, 465 U.S. 206, 220-23, 104 S.Ct. 1020, 1028-30, 79 L.Ed.2d 249, 259-61 (1984); *Hicklin*, 437 U.S. at 528-29, 98 S.Ct. at 2488-89, 57 L.Ed.2d at 406. However, more leeway is granted the state in its perception of "local evils and in prescribing appropriate cures" when it is acting in a proprietary capacity, as where it

"is merely setting conditions on the expenditures of funds it controls." *Camden*, 465 U.S. at 223, 104 S.Ct. at 1030, 79 L.Ed.2d at 261 (citations omitted).

This analytical framework, except for the deference given to the state as a market participant, is quite similar to what has come to be called the level of intermediate scrutiny under the federal equal protection clause. Classifications may be made only for "important" purposes, and the means used to accomplish them must be "fairly and substantially related" to the achievement of those purposes. *State v. Ostrusky*, 667 P.2d 1184, 1192 (Alaska 1983) (citations omitted).<sup>5</sup>

The amount of deference due a state when acting as a market participant is not clear from federal cases. The state suggests, and we believe, that a variable standard must be employed. Thus, where the discrimination is far-reaching and exclusive in nature, and extends to the fringes of the state's proprietary interests, the state is entitled to little deference. On the other hand, where the discrimination is narrow in scope and involves a direct relationship between the state and affected individuals, greater deference is called for.

The "Alaska Hire" statute struck down in *Hicklin*, which covered all employment which was the "result" of state oil and gas leases, which excluded all non-residents from employment so long as qualified Alaskans were available, and which required private employers to discriminate, including those who had no direct dealings with the state, is an example of a case in which the

4. When the state acts as an employer, a lender, a landlord, a buyer, a seller, or an owner of natural resources, it may be regarded as a market participant and for some purposes will be treated differently than when it acts solely as a sovereign body regulating the conduct of others within its jurisdiction. See generally Wells and Hellerstein, *The Governmental Proprietary Distinction in Constitutional Law*, 66 Va.L.Rev. 1073 (1980).

5. The coverage of the two clauses is overlapping but not identical. The privileges and immunities clause does not apply to corporations, or to aliens, while the equal protection clause does, and the equal protection clause applies to many

classifications, while the privileges and immunities clause applies only to those based on residence. 1. Tribe, *American Constitutional Law* § 6-33 at 411-12. Alienage classifications involving non-U.S. citizens are subject to at least an intermediate level of review under federal equal protection doctrine. Tribe, *supra* § 16-31 at 1089-90; *Sugarman v. Dougall*, 413 U.S. 634, 642, 93 S.Ct. at 2847, 37 L.Ed.2d 853, 860 (1973). The removal of the "disabilities of alienage" in the sense of discrimination based on residency in another state of the United States is central to the privileges and immunities clause. *Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 180, 19 L.Ed. 357, 360 (1868).

proprietary interest of the state was entitled to little or no deference. An example where more leeway is due might be a case in which a state law requires residency as a qualification for important non-elective public offices. Cf. *Sugarman v. Dougall*, 413 U.S. 634, 647-49, 93 S.Ct. 2842, 2850-51, 37 L.Ed.2d 853, 862-64 (1973).

unemployed Alaskans." In essence, the state's justification for the local hire law is that it tends to reduce unemployment in Alaska by eliminating non-residents from public works construction projects.

C. Degree of Deference Due The State As A Market Participant.

The scope of the discrimination mandated by the local hire law is extensive. All municipal projects and all projects funded by the state, in whole or in part, are covered. This amounts to some 60 to 70% of all commercial construction in the state. As to those projects covered by the law, non-residents are almost entirely excluded. For example, on Francis's construction crew of 26 workers, 25 of them had to be residents. For crews of fewer than 10 workers all non-residents are excluded. The statute applies to subcontractors who have no direct contractual relationship with the state, and it seeks to pressure private employers to discriminate in their hiring practices. However, it is limited to employment on public works projects, and as such does not extend, as did the Alaska Hire Act struck down in *Hicklin*, to activity in which the state has no proprietary interest.

The pervasiveness and intensity of the discrimination mandated by the act indicate that review should be conducted untempered by consideration of the state's status as a market participant in public works projects. The fact that the act does not extend to activities in which the state's proprietary interest is lacking, taken alone, would suggest a less rigorous standard of review. However, this cannot be conclusive in light of the scope and magnitude of the discrimination. On balance we con-

IV. ANALYSIS

A. The Nature of the Right.

[4] For purposes of privileges and immunities analysis employment in the construction industry must be considered to be a fundamental right entitled to the protection of the privileges and immunities clause. That conclusion was implied in *Hicklin*, 437 U.S. at 524-25, 98 S.Ct. at 2486-87, 57 L.Ed.2d at 404 (1978) and was made explicit in *Camden*, 465 U.S. at 222-23, 104 S.Ct. at 1028-30, 79 L.Ed.2d at 260-61.

B. The State's Justification.

The justification proffered for the discrimination inherent in the local hire law is Alaska's historically high unemployment rate. For each year between 1970 and 1983, except 1975, unemployment in Alaska was higher than the national average.<sup>6</sup> Unemployment in the construction industry is a substantial factor in the overall rate of unemployment. Non-resident construction workers contribute to unemployment in the construction industry because, according to the state, they "take jobs which otherwise would to to Alaskan residents. As such non-resident construction workers are a peculiar source of the unemployment problem in Alaska because they take those construction jobs which otherwise could be filled by

6. A table prepared by the state's expert witness shows the following:

Unemployment Rates			U.S.	Alaska
U.S., Alaska				
1970 - 1983				
	U.S.	Alaska		
1970	4.9%	7.1%	1974	5.6%
1971	5.9	8.3	1975	8.5
1972	5.6	8.3	1976	7.7
1973	4.9	8.5	1977	7.0
			1978	6.0
			1979	5.8
			1980	7.1
			1981	7.1
			1982	9.7
			1983	9.6
				7.9%
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conditions on the ex- controls." *Camden*, S.Ct. at 1030, 79 (omitted).

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clude that review approaching that of the intermediate level of scrutiny is called for.

#### D. Substantiality Of The Justification As A Factual Matter.

There is no doubt that Alaska has an unemployment rate which is higher than the national average and that this constitutes a serious problem. What is lacking is a showing that non-residents are a "peculiar source of the evil" of unemployment. This is in the first instance a factual question. *Camden*, 465 U.S. at 223, 104 S.Ct. at 1030, 79 L.Ed.2d at 262; *Hicklin*, 437 U.S. at 526-27, 98 S.Ct. at 2487-88, 57 L.Ed.2d at 405.

[5] The trial court found that "there is not sufficient evidence to support a finding that non-resident construction workers are a peculiar source of unemployment in the construction industry in Alaska anymore than they would be in any other state." Instead, the trial court detailed other causes of unemployment in the construction industry, including climatic extremes, the absence of construction activities in rural areas, and the lack of training prevalent among rural Alaskans. These findings, which are similar to those noted by the United States Supreme Court in *Hicklin*, 437 U.S. at 526-27, 98 S.Ct. at 2487-88, 57 L.Ed.2d at 405, are supported by the record.<sup>7</sup> As such they are not clearly erroneous and may not be disturbed on appeal. Civil Rule 52(a).

#### E. Substantiality Of The Justification As A Matter Of Law.

[6] As noted, the purpose of the local hire law is to exclude non-residents from public construction jobs so that more jobs will be available to Alaskans. In our view this is not a permissible justification for discrimination under the privileges and immunities clause. To state the same conclusion in conventional privileges and immuni-

ties terms, the justification is not "substantial."

A related point recently was made by the United States Supreme Court in *New Hampshire v. Piper*, — U.S. at — n. 18, 105 S.Ct. at 1279 n. 18. One reason suggested for New Hampshire's law prohibiting non-resident lawyers from becoming members of the bar was the protection of its own lawyers from professional competition. The court dismissed this suggestion: "[T]his reason is not 'substantial'. The privileges and immunities clause was designed primarily to prevent such economic protectionism."

Discrimination for the purpose of benefiting local residents economically was recognized by us as improper in *Lynden Transport, Inc. v. State*, 532 P.2d 700 (Alaska 1975) which involved a statute granting grandfather rights to resident trucking companies but not to non-resident trucking companies. We struck down the statute stating:

A discrimination between residents and non-residents based solely on the object of assisting the one class over the other economically can not be upheld under either the privileges and immunities or equal protection clauses. . . .

Benefiting economic interests of residents over non-residents is not a purpose which may constitutionally vindicate legislation. . . .

*Id.* at 710-11.

Other authorities which suggest that a state may not discriminate against non-residents in order to benefit residents economically include:

—*Hicklin*, 437 U.S. at 526, 98 S.Ct. at 2487, 57 L.Ed.2d at 405. The court observed that for a state to attempt to eliminate its unemployment problem by requiring private employers within the state to discriminate against non-residents was a policy which was "at least dubious."

7. In *State v. Wylie*, 516 P.2d 142 (1973), we struck on equal protection grounds a statute giving a preference in state employment to persons who had resided in the state for one year. We referred to evidence "which indicates that

the state's unemployment problems stem from inadequate education and vocational training and from insufficient job opportunities in remote areas of the state." *Id.* at 149 (footnote omitted).

—*Toomer v. Witsell*, 334 U.S. 385, 68 S.Ct. 1156, 92 L.Ed. 1460 (1948). South Carolina was precluded from excluding non-resident shrimp fishermen in order to create a commercial monopoly which benefited resident fishermen.

—*Ward v. Maryland*, 79 U.S. (12 Wall) 418, 20 L.Ed. 449 (1871). Maryland was precluded from discriminating against non-resident salesmen so that resident merchants might reap greater economic benefits.

—*Metropolitan Life Insurance Co. v. Ward*, — U.S. —, 105 S.Ct. 1676, 84 L.Ed.2d 751 (1985). The Court struck an Alabama law discriminating against out-of-state insurance companies as violative of the equal protection clause. The purpose of the law was to promote domestic industry. The Court held that this purpose was not a legitimate justification for discriminatory treatment: “[P]romotion of domestic business within a state, by discriminating against foreign corporations that wish to compete by doing business there, is not a legitimate state purpose.” — U.S. at —, 105 S.Ct. at 1683.<sup>8</sup>

These cases reflect the view that our constitution protects non-residents from economic discrimination so that our nation can function as an economic unit. Justice Brennan expressed this theme in his concurring opinion in *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 533, 79 S.Ct. 437, 444, 3 L.Ed.2d 480, 488 (1959) cited with approval by the Court in *Metropolitan Life*, — U.S. at —, 105 S.Ct. at 1682, stating:

8. This case was decided on equal protection rather than privileges and immunities grounds. The difference, however, is not significant in the present context because the method of analysis is similar and the privileges and immunities clause provides non-resident individuals with more stringent protection against economic discrimination than does the equal protection clause in cases where the basis for the challenged classification is non-residence. L. Tribe, *American Constitutional Law* § 6-33, at 411-12.

In *United Building and Trades Council of Camden County and Vicinity v. Mayor and Council of the City of Camden*, 465 U.S. 208, 104

*Wheeling [Steel Corp. v. Glander]* 337 U.S. 562, 69 S.Ct. 1291, 93 L.Ed. 1544 teaches that a distinction which burdens . . . nonresidents but not . . . residents is outside the constitutional pale. But this is not because no rational ground can be conceived for a classification which discriminates against nonresidents solely because they are nonresidents: could not such a ground be found in the State's benign and beneficent desire to favor its own residents, to increase their prosperity at the expense of outlanders, to protect them from, and give them an advantage over, “foreign” competition? These bases of legislative distinction are adopted in the national policies of too many countries, including from time to time our own, to say that, absolutely considered, they are arbitrary or irrational. The proper analysis, it seems to me is that *Wheeling* applied the Equal Protection Clause to give effect to its role to protect our federalism by denying Ohio the power constitutionally to discriminate in favor of its own residents against the residents of other state members of our federation.

Restricting entry by non-residents into a job market will make more positions available to residents. It is not difficult to make a case to a sympathetic legislature, whose members are accountable only to residents, that residents are deserving of protection because some of them are unemployed. But the universality of this condition is itself a reason why it is impermissible as a justification in privileges and immunities analysis. If every state could exclude or severely limit non-resident work-

S.Ct. 1020, 79 L.Ed.2d 249 (1984), the United States Supreme Court neither rejected nor approved a city program involving discrimination against non-city residents on public works projects. That case is discussed more fully on page 269, *infra*. The fact that the program was not rejected in the face of a justification of grave economic and social ills may mean that local or state governments may foster discrimination in order to stave off an economic or social collapse, a goal broader than, but related to, that of benefiting local residents economically.

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ers because some of its residents were unemployed our country would be "little more than a league of states" rather than "the Union which now exists." *Paul v. Virginia*, 75 U.S. (8 Wall) 168, 180, 19 L.Ed. 357, 360 (1869). Such a result would run strongly counter to the policy of national economic unity on which the privileges and immunities clause is based. The result would not be much better if the power to exclude non-resident workers were limited to those states with above average unemployment. Many states fit that category and many of the others, no doubt, have particular industries in which a case for protection can be made.

#### F. Relationship Between the Statute and its Purpose.

The preferential hire statute involved in *Hicklin* was struck down because, among other reasons, the statute was too broad. It applied not only to unemployed residents or residents enrolled in job training programs, but to all residents whether employed or unemployed, well trained or poorly trained. The Court observed that less restrictive alternatives were available:

A highly skilled and educated resident who has never been unemployed is entitled to precisely the same preferential treatment as the unskilled, habitually unemployed Arctic Eskimo enrolled in a job-training program. 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 more

9. We made similar observations in *State v. Wylic*, 516 P.2d 142, 149 (Alaska 1973) (one year residency preference in state employment violates equal protection):

It does not appear, however, that the employment preference furthers the purpose of reducing unemployment except by deterring the in-migration of persons from other states. The personnel rules in question do not increase the number of available state employment opportunities, but simply limit the universe of persons who may compete for them. To the extent that the personnel rules "lower unemployment" by fencing out competition

closely tailored to aid the unemployed the Act is intended to benefit. Even if a statute granting an employment preference to unemployed residents or to residents enrolled in job-training programs might be permissible, Alaska Hire's across-the-board grant of a job preference to all Alaskan residents clearly is not.

*Hicklin*, 437 U.S. at 527-28, 98 S.Ct. at 2488, 57 L.Ed.2d at 406.

By giving preferential treatment to residents who do not need it, the present statute suffers from the same vice as that struck down by the United States Supreme Court in *Hicklin*.<sup>9</sup>

#### V. PRIOR DECISIONS CONCERNING PREFERENTIAL HIRE STATUTES

In general, preferential hire systems have not fared well in the courts. The leading case is *Hicklin*, where the United States Supreme Court struck down the Alaska Hire statute. Following *Hicklin*, the courts of several states have held preferential hire statutes concerning state public works invalid on privileges and immunities grounds. *Massachusetts Council of Construction Employers, Inc. v. Mayor of Boston*, 384 Mass. 466, 425 N.E.2d 346 (1981) *rev'd on other grounds*, *White v. Massachusetts Council of Construction Employers*, 460 U.S. 204, 103 S.Ct. 1042, 75 L.Ed.2d 1 (1983); *Neshaminy Constructors, Inc. v. Krause*, 181 N.J.Super. 376, 437 A.2d 733 (Ct.Ch.Div.1981), *aff'd* 187 N.J.Super. 174, 453 A.2d 1359 (Ct.App.Div. 1982); *Salla v. County of Monroe*, 48 N.Y.2d 514, 399 N.E.2d 909, 423 N.Y.S.2d

from other states, the rules impermissibly discriminate against persons who have recently traveled to the state.... The personnel rules creating an employment preference are poorly "tailored" to achieve the objective of lower state unemployment. There are certainly available to the state other means for lower unemployment which impose a lesser burden on the constitutionally protected right to interstate travel.

We suggested in a footnote to this statement that "[j]ob training programs, for example, may reduce unemployment without imposing a burden on the right of interstate travel." *Id.*, n. 14.

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878 (1979), *cert. denied*, 446 U.S. 909, 100 S.Ct. 1836, 64 L.Ed.2d 262 (1980); *Laborers Local Union No. 374 v. Felton Construction Co.*, 98 Wash.2d 121, 654 P.2d 67 (1982).

The Supreme Court of Wyoming took a different view in *Wyoming v. Antonich*, 694 P.2d 60 (Wyo.1985). It rejected a privileges and immunities challenge to a statute giving an employment preference to Wyoming residents on public works projects. In doing so it relied heavily on the recent case of *United Building & Construction Trades Council of Camden County and Vicinity v. Mayor and Council of the City of Camden*, 465 U.S. 208, 104 S.Ct. 1020, 79 L.Ed.2d 249 (1984).<sup>10</sup>

We do not read *Camden* as casting much new light on the present case. The primary issue in *Camden*, and certainly the most controversial, was whether a municipal ordinance which discriminated against in-state residents as well as out-of-state residents was subject to privileges and immunities scrutiny. *Id.* at 224, 104 S.Ct. at 1030, 79 L.Ed.2d at 262 (Blackmun, J., dissenting). The Court did not rule on the question of whether the discrimination was justified by conditions in Camden, or whether the remedy contained in the ordinance was sufficiently closely directed to curing those conditions. It would thus be unwarranted to conclude that the Court approved of Camden's system of discrimination.

Furthermore, the differences between the local hire act here and the ordinance in *Camden* are noteworthy. As the findings

10. *Camden* involved a municipal ordinance of the City of Camden, New Jersey, which established as a "goal" with which contractors must make a good faith effort to comply that at least forty percent of the employees of contractors and subcontractors working on city construction projects be Camden residents. The New Jersey Supreme Court had sustained the ordinance against a privilege and immunities challenge because it was not aimed primarily at out of state residents; instead it discriminated against all non-residents of the city, regardless of their state of residence. 88 N.J. 317, 443 A.2d 148 (1982). The United States Supreme Court reversed the New Jersey court on this point, and went on to hold that a non-resident's interest in

of the trial court indicate, the Alaskan economy is a dynamic and growing one, property values are increasing, and Alaska's population is expanding rapidly. In contrast, in *Camden* the city claimed that it was in a condition of decay, with property values eroding, population sharply declining, and unemployment "spiralling." *Id.* at 222, 104 S.Ct. at 1030, 79 L.Ed.2d at 261. While Alaska's unemployment is chronically high due in large part to unique conditions in rural areas, the economy of the state does not seem remotely comparable to the picture of "grave economic and social ills" suggested in *Camden*. In addition, it appears that the discrimination effected by the Alaska statute is greater than that in *Camden*. Public works account for the majority of commercial construction activity in Alaska. While the opinion does not indicate whether the same is true in *Camden*, the exclusion mandated by our statute—90% to 100% resident workers required—is far more absolute than that in the *Camden* ordinance. As presented to the Court, the ordinance contained only a goal, not a requirement, that 40% of workers on public works construction projects be residents. For these reasons, unlike the Wyoming Supreme Court in *Antonich*, we do not regard *Camden* as precedent supporting approval of our local hire law.

One other case is instructive. It is *Sugarman v. Dougall*, 413 U.S. 634, 93 S.Ct. 2842, 37 L.Ed.2d 853 (1973), which involved a New York statute which precluded non-citizens of the United States from holding competitive civil service positions.<sup>11</sup> The

public works employment was "fundamental," thus subject to protection under the privilege and immunities clause. 465 U.S. at 220-23, 104 S.Ct. at 1028-30, 79 L.Ed.2d at 259-61. The City also contended that the ordinance was justified in order to cure high unemployment and arrest a sharp decline in population. The Court found it impossible to evaluate these justifications as no trial had been held. The case was therefore remanded to the New Jersey courts for further action. 465 U.S. at 222-23, 104 S.Ct. at 1029-31, 79 L.Ed.2d at 261-62.

11. The competitive class included all positions for which it was practicable to determine merit

court held the statute invalid under the equal protection clause of the 14th Amendment.<sup>12</sup> One justification offered for the statute was an economic benefits theory which is similar to the reduction in unemployment rationale, and is relevant to the factor of market participation as well.<sup>13</sup> The argument was that the state had a "special public interest" in confining public employment to its citizens, based on its interest in using state resources for the advancement and profit of members of the state. *Id.* at 643-44, 93 S.Ct. at 2848, 37 L.Ed.2d at 860-61. The Court rejected this argument, finding that it was rooted in the discredited concept that constitutional rights turn on whether a government benefit is characterized as a "right" or "privilege." *Id.*

In the final section of the *Sugarman* opinion the Court suggested the kinds of discriminatory practices against aliens which are permissible. *Id.* at 646-50, 93 S.Ct. at 2849-51, 37 L.Ed.2d 862-64. The Court did not distinguish between alienage in the non-state resident or non-United States citizen senses, and referred to authorities which concerned alienage only of non-state residents. The Court noted that alienage could be a bar to public employment if the statute was based on legitimate state interests relating "to qualifications for a particular position or to the character-

and fitness by a competitive examination and included "nearly the full range of the work tasks, that is, all the way from the menial to the policy making." 413 U.S. at 640, 93 S.Ct. at 2846, 37 L.Ed.2d at 858.

12. See *Tribe, supra* n. 8.

13. In a case following *Sugarman*, *C.D.R. Enterprises v. Board of Education of the City of New York*, 412 F.Supp. 1164 (E.D.N.Y.1976), summarily *aff'd sub nom. Lefkowitz v. C.D.R. Enterprises Limited*, 429 U.S. 1031, 97 S.Ct. 721, 50 L.Ed.2d 742 (1977), the reduction in unemployment rationale was expressly rejected as insufficient as a justification for discrimination against resident aliens and U.S. citizens who had not been residents of New York for at least 12 months.

14. The Court also stated that "in an appropriately defined class of positions" citizenship could be required as a qualification for office.

istics of the employee." <sup>14</sup> *Id.* at 646-47, 93 S.Ct. at 2849-50, 37 L.Ed.2d at 862.

*Sugarman* lends support to the conclusion we have reached in the present case for two reasons. The first is that it rejects the argument that the state's interest in restricting the resources of the state for the advancement and profit of the members of the state entitles the state to discriminate regarding the employment of aliens. The second is that it suggests that the state may restrict the employment of aliens only for reasons which are much narrower than those used in the present case.

## VI. MISCELLANEOUS ISSUES

[7] The appellees also argue that Francis lacks standing because he did not prove that he was dismissed because he was a non-resident. The evidence on this point, although circumstantial, is adequate to sustain the trial court's finding that Francis lost his job because he was not a resident. The appellees also argue that Francis is a resident in fact. This point is frivolous. Not only does the evidence support a finding of non-residency, the state admitted non-residency in its answer. Appellees further contend that Francis lacks standing because injunctive relief will do him no good. This point, too, is frivolous, for it

"[E]ach state has the power to prescribe the qualifications of its officers and the manner in which they shall be chosen." Such power inheres in the State by virtue of its obligation, already noted above, "to preserve the basic conception of a political community." And this power and responsibility of the State applies, not only to the qualifications of voters, but also to persons holding state elective or important nonelective executive, legislative, and judicial positions, for officers who participate directly in the formulation, execution, or review of broad public policy perform functions that go to the heart of representative government. There ... is "where citizenship bears some rational relationship to the special demands of the particular position." *Id.* at 647, 93 S.Ct. at 2850, 37 L.Ed.2d at 862-63 (citations omitted).

*Id.* at 646-47, 93  
2d at 862.

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ignores his claim for damages and for de-  
claratory relief.

In view of our decision, it is unnecessary  
to address Francis's further arguments  
that the local hire statute violates the equal  
rights clause of article I, section 1 of the  
Alaska Constitution and the equal protec-  
tion and privileges and immunities clauses  
of the Fourteenth Amendment to the Unit-  
ed States Constitution.

### VII. CONCLUSION

[8] Our federal constitution contains a  
number of provisions designed to protect  
legally those who lack the power or influ-  
ence to protect themselves politically. It  
also manifests a strong commitment to free  
trade and an aversion to economic protec-  
tionism. The privileges and immunities  
clause combines both of these themes and  
the local hire act is in substantial conflict  
with them. For the reasons stated we AF-  
FIRM the judgment of the superior court  
declaring that the act violates the privi-  
leges and immunities clause of article IV,  
§ 2 of the United States Constitution.

BURKE, Justice, concurring.

I concur in the determination that Alas-  
ka's "local hire" law<sup>1</sup> violates the Privi-  
leges and Immunities Clause of the Consti-  
tution of the United States,<sup>2</sup> for the rea-  
sons stated in the opinion of the court,  
authored by Justice Matthews. In my  
judgment, however, we should decide this  
case on an independent ground. Thus, as  
Francis urges us to do in one of his alterna-  
tive arguments, I would hold the local hire  
law invalid upon the ground that it violates  
the clear and unambiguous language of  
article I, section 1 of the Alaska Constitu-  
tion.<sup>3</sup>

When called upon to determine the con-  
stitutionality of an Alaska statute under  
both the state and federal constitutions, it  
is my belief that this court should consider  
first the requirements of the Alaska Con-

stitution. *Schafer v. Vest*, 680 P.2d 1169,  
1172 (Alaska 1984) (Burke, C.J., concur-  
ring). Although this approach has been  
criticized by some, it is the one favored by  
a number of respected judges and legal  
commentators, whose reasons appear far  
more persuasive to me than do those of the  
persons in the opposite camp. See R.F.  
Utter, *Freedom and Diversity in the Fed-  
eral System: Perspectives on State Con-  
stitutions and the Washington Declara-  
tion of Rights*, 7 U.Puget Sound L.Rev. 491  
(1984). In any event, it is the approach  
that I would employ in the case at bar, for  
the following reasons.

A decision by this court that the local  
hire law violates the Alaska Constitution  
would bring this case to an immediate end,  
since it has long been held that it is beyond  
the power of the United States Supreme  
Court to review a state court's interpreta-  
tion of its state constitution, "as long as  
the state ground is independent of any  
federal ground and is adequate to support  
the judgment." *Id.* at 505, citing *Michigan  
v. Long*, 463 U.S. 1032, 103 S.Ct. 3469, 77  
L.Ed.2d 1201 (1983) and *For Film Corp. v.  
Miller*, 296 U.S. 207, 56 S.Ct. 183, 80 L.Ed.  
158 (1935). The majority opinion, however,  
leaves the final result still uncertain.

Given the understandable popularity of  
local hire measures in Alaska, it is a fore-  
gone conclusion that state officials will be  
under considerable pressure to seek review  
of our determination of the federal ques-  
tion by the final arbiter of such disputes,  
the United States Supreme Court. Should  
the advocates of local hire prevail in that  
forum, it will still be necessary for this  
court to decide whether the present statute  
violates the Alaska Constitution. Thus, the  
ultimate outcome could remain unsettled  
until there is a second decision by this  
court. Rather than expose the parties and  
the people of this state to such uncertainty,  
and the added cost of future litigation, I

1. AS 36.10.

2. U.S. Const. art. IV, § 2.

3. Article I, section 1 of the Alaska Constitution provides, in part, "that all persons are equal and entitled to equal rights, opportunities, and protection under the law."

think we should decide this critical issue of state law here and now.

Another reason for us to examine the requirements of the Alaska Constitution is the almost certain fact that the state legislature will be asked to enact new local hire legislation, after the announcement of our decision. The main difficulty that the legislature faces, as I see it, is the clear and unambiguous statement contained in our state constitution, "*that all persons are equal and entitled to equal rights [and] opportunities.*" Alaska Const. art. 1, § 1 (emphasis added). The fact that it may be

possible to draft a statute that would satisfy the requirement of the United States Constitution does not mean that the same statute will pass muster under this or some other provision of the Alaska Constitution. It is important, I think, to make this clear to the people of this state and their elected representatives.



# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPARTMENT OF LAW

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

OFFICE OF THE ATTORNEY GENERAL

March 26, 1987

MAR 28 1987

The Honorable John L. Sund  
Chairman of House Judiciary Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Re: HB 145, relating to resident  
employment preferences on certain  
natural resource projects

Dear Representative Sund:

I am responding to the request made at your committee's Monday, March 23, 1987 hearing on HB 145 for the Department of Law's views on the constitutionality of the resident employment preference that would be provided under the bill.

As I stated at that hearing, last year the Alaska Supreme Court issued its decision in Francis v. Robison, holding the state's resident employment preference on public construction projects under former AS 36.10.010 invalid under the privileges and immunities clause of the U.S. Constitution. In its decision, the court identified two fundamental problems with the existing law:

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

The Honorable John L. Sund  
Chairman of House Judiciary Committee

March 26, 1987  
Page 2

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

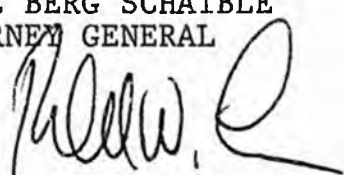
Last year, the legislature adopted new statutory provisions relating to resident employment preference on public construction projects. These addressed the concerns identified by the state supreme court in its Francis decision. As last year's bill worked its way through the legislature, I testified that, because the bill addressed the problems identified by the court and because it targeted only employment which was the result of the expenditure of public funds for public construction projects, the bill had a better than 50 percent chance of surviving a constitutional challenge.

HB 145, which would create a resident employment preference on certain natural resource projects on state land, also addresses the problems identified by the Alaska Supreme Court in its Francis decision. However, because the state's connection ("nexus") to the employment activity which the bill would regulate is not as direct as it is with respect to employment on public construction projects, it is my view that its chances of surviving a constitutional challenge are not greater than 50 percent.

Of course, any attempt to judge the chances of surviving a constitutional challenge are inexact, at best. The one thing that I can assure you and the committee of, however, is that, if passed in substantially the form now before you, the Department of Law is prepared to vigorously defend this proposed resident employment preference.

Sincerely yours,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

By:   
Ronald W. Lorensen  
Deputy Attorney General

RWL/me

cc: The Honorable Dave Donley  
Alaska State Legislature

The Honorable John L. Sund  
Chairman of House Judiciary Committee

March 26, 1987  
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cc continued:

The Honorable Jim Sampson  
Commissioner  
Department of Labor

George Sullivan  
Legislative Lobbyist  
Office of the Governor

Arthur H. Peterson  
Assistant Attorney  
Legislation/Regulations Section

Jan DeYoung  
Assistant Attorney General  
Anchorage AGO

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 24, 1987

SUBJECT: Sectional analysis of HB 145

TO: Representative John Sund  
Chairman, Judiciary Committee

FROM: Teresa B. Cramer *JBC*  
Legislative Counsel

You have requested a sectional analysis of HB 145 relating to Alaskan resident employment preferences on certain natural resource projects on state lands.

Section 1 adds a chapter to the Public Lands title concerning employment on natural resource projects on state land.

ARTICLE 1. HIRING PREFERENCE.

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, the need for a resident employment preference, and incorporates findings made under AS 36.10.005.

Sec. 38.45.030 requires the Department of Labor to assist employers to find qualified, eligible, available employees if the employer requests. The commissioner of labor may approve hiring of residents who do not qualify for preference and of nonresidents if there are insufficient eligible residents.

Sec. 38.45.040 requires the commissioner of labor to adopt regulations to encourage and require the hiring of residents under the chapter.

Sec. 38.45.050 imposes a resident hiring preference for work on natural resource projects located within a zone of underemployment designated by the commissioner of labor. Prefer-

ences are limited to qualified state residents who are eligible under AS 36.10.140. The commissioner determines the amount of work that must be performed by eligible residents. The commissioner must find that the four criteria set out in subsection (c) are met before determining that a zone of underemployment exists.

Sec. 38.45.060 applies the public works project hiring preference for residents of an economically distressed zone to natural resource projects on state land located within an economically distressed zone.

Sec. 38.45.070 establishes that if the governor declares an area to be an area affected by an economic disaster, then preferences under that program supersede preferences under "this section." The language should probably be changed to read "this chapter." Under subsection (d), the commissioner defines the boundaries of a zone in which a preference applies.

Sec. 38.45.080 states that employers determine the work qualifications of applicants. Subsection (b) permits an employer to transfer management employees without conflicting with resident hire requirements. Subsections (c) and (d) require an employer and a labor organization to certify that a person employed or dispatched to satisfy a hiring preference was eligible for the preference at the time of hire or dispatch.

Sec. 38.45.090 directs the commissioner of natural resources to incorporate into leases, unitization agreements, and contracts provisions requiring compliance with the chapter, regulations adopted under the chapter, and later amendments to the chapter or regulations, and authorizing penalties under AS 38.45.210 for failure to comply. The commissioner is also directed to incorporate a requirement that the lessee or contractor will repeat the requirements in any contracts entered under the lease or agreement.

Sec. 38.45.100 requires employers who are subject to the chapter to report to the commissioner of labor as the commissioner requires. The information is confidential.

## ARTICLE 2. ENFORCEMENT.

Sec. 38.45.210 permits the Department of Labor to conduct investigations and hearings to determine compliance with the chapter. The commissioner may impose fines after finding

that an employer has wilfully failed to comply with the chapter. Under subsection (b), the department may require the employer who has wilfully rejected a qualified eligible applicant or terminated a qualified eligible employee in violation of the chapter to pay the person for lost wages and expenses. Under subsection (d) the department may seek injunctive relief.

Sec. 38.45.220 imposes criminal penalties for making false statements.

Sec. 38.45.230 imposes additional civil penalties for making false certifications.

### ARTICLE 3. GENERAL PROVISIONS.

Sec. 38.45.310 applies the chapter to all natural resource projects on state land for employment performed directly for an employer.

Sec. 38.45.390 contains definitions of "available," "employer," "natural resource project on state land," "qualified," "resident," and "state land."

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

Section 3 is an immediate effective date clause.

If I may be of further assistance, please advise.

TC:mkr  
m10/041

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

Bill Version : HB 145  
Publish Date : \_\_\_\_\_

REQUEST: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: "An Act relating to resident  
employment preference on certain natural..."  
Sponsor: Donlev, Boyer, et al  
Requestor: House Labor and Commerce

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

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

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		27.5	54.9	54.9	54.9	54.9
TRAVEL		11.5	16.0	16.5	17.0	17.5
CONTRACTUAL		3.4	7.0	7.2	7.4	7.6
SUPPLIES		.6	1.1	1.2	1.2	1.2
EQUIPMENT		3.2	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>46.2</b>	<b>79.0</b>	<b>79.8</b>	<b>80.5</b>	<b>81.2</b>

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

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

**FUNDING: (Thousands of Dollars)**

GENERAL FUND		46.2	79.0	79.8	80.5	81.2
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0</b>	<b>46.2</b>	<b>79.0</b>	<b>79.8</b>	<b>80.5</b>	<b>81.2</b>

**POSITIONS:**

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

ANALYSIS : (Attach a separate page if necessary)  
(See attached)

Prepared by: Tom Stuart, Director *Stuart* Phone: 465-4870  
Division: Labor Standards and Safety Date: 3/5/87

Approved by Commissioner: Jim Sampson *Sampson* Date: 3/5/87  
Agency: Labor

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)  
Senate Secretary

## Fiscal Note Analysis

HB 145

Under the provisions of this bill, the department would be responsible for monitoring, investigating, and enforcing resident hire on natural resource projects. The majority of the investigative/enforcement activity would not begin until after January, 1988 when the annual report on resident hire is published and the Commissioner designates those areas or regions of the state in which a hiring preference applies. The following resources would, therefore, be needed beginning in January, 1988:

	1 Wage & Hour Investigator I - 6 months (Anchorage)	1 Half-Time Clerk-Typist III 6 months (Anchorage)	Total
Personal Svcs	21.1	6.4	27.5
Travel	4.0	0	4.0
Contractual	2.3	1.1	3.4
Commodities	.4	.2	.6
Equipment	1.6	1.6	3.2
	<u>29.4</u>	<u>9.3</u>	<u>38.7</u>

The positions would work six months in FY 88 (beginning January 1, 1988) and twelve months from then on. Also, an additional \$7,500 in travel expense would be incurred by existing positions for travel to the North Slope.

### Assumptions

1. The Commissioner will designate those areas or regions of the state where hiring preference applies in January of 1988.
2. Inflation on non-personal services items would be 3% per year.
3. The Prudhoe, Kuparuk and other major natural resource projects presently in operation will not be covered by this bill in the foreseeable future.

Position Title <u>Wage and Hour Investigator I</u>			No. of Positions <u>1</u>	Range/Step <u>16A</u>	Barg. Unit <u>GGU</u>	Gov.:	Approv.:	Disapp.:
Time Status <u>PFT</u>	Staff Months <u>6</u>	RP Number	Location <u>Anchorage</u>		Election District	Leg.:		
Type of Expenditure			Justification					
		Amount	<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. It would also hold hearings when requested.</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 laws.</p> <p>Contractual and commodity costs are average per position costs. The equipment costs are for desks, chairs, cabinets, etc., and are one-time costs.</p>					
<u>1</u>	<u>2</u>	<u>3</u>						
Salary	<u>16,212</u>							
Benefits	<u>4,864</u>							
Premium Pay	<u>-</u>							
Other	<u>-</u>							
Total Personal Services		<u>21,076</u>						
Travel		<u>4,000</u>						
Contractual		<u>2,300</u>						
Commodities		<u>350</u>						
Equipment		<u>1,600</u>						
Other		<u>-</u>						
Total Cost		<u>29,326</u>						
Receipt Code	Funding Source							
	Federal Receipts 1002							
	G. F. Match 1003							
	General Funds 1004		<u>29,326</u>					
	I-A Receipts 1005							
	Program Receipts 1028							
	CIP Receipts 1061							
	Other							
<div style="border: 1px solid black; padding: 5px;">           For B&amp;M Use Only            Key Number _____         </div>								

**Request For  
New Position**

Agency Labor  
 BRU Labor Standards and Safety  
 Component Wage and Hour

Page 1 of 2  
 Revised Date

**FY 87**

Position Title <u>Clerk Typist III</u>			No. of Positions <u>1</u>	Range/Step <u>8A</u>	Barg. Unit <u>GGU</u>	Gov.:	Approv.	Disapp.
Time Status <u>PPT (Half Time)</u>	Staff Months <u>6</u>	RP Number	Location	Election District	Leg.			
Type of Expenditure			Justification					
1		2	3					
Salary		4,893	<p>This position would handle the clerical functions as required in the bill. The position would process and maintain records of the certificates and the reports when received from employers. Typing of regulations and distribution of informational posters would also be duties. Contractual and commodity costs are average per-employee expenses. The equipment expense would be for a desk, chair, etc., and would be a one-time item.</p>					
Benefits		1,468						
Premium Pay								
Other								
Total Personal Services		6,361						
Travel		0						
Contractual		1,100						
Commodities		200						
Equipment		1,600						
Other		-						
Total Cost		9,261						
Receipt Code			Funding Source					
			Federal Receipts 1002					
			G. F. Match 1003					
			General Funds 1004 9,261					
			I-A Receipts 1005					
			Program Receipts 1028					
			CIP Receipts 1061					
			Other					
For B&M Use Only								
Key Number								

**Request For  
New Position**

Agency Labor  
 BRU Labor Standards & Safety  
 Component Wage and Hour

Page 2 of 2  
 Revised Date

**FY 87**

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: HB 145  
Publish Date: \_\_\_\_\_

REQUEST: \_\_\_\_\_

Revision Date: 3/3/87

Agency Affected: \_\_\_\_\_  
BRU: Mineral Management, Petroleum Management  
Forest Management

Title: Resident Employment on Natural Resources Projects on State Land

Sponsor: Dealey, Boyer, Brown, Cato, et. al. Components: \_\_\_\_\_

Requestor: House Labor & Commerce Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Carol Wilson Phone: 465-2400  
Division: Commissioner's Office Date: 3/3/87

Approved by Commissioner: [Signature] Date: 3/3/87  
Agency: Natural Resources

- Distribution (by preparer):
- Legislative Finance
  - Legislative Sponsor
  - Requestor
  - Office of Management and Budget
  - Impacted Agency(ies)
  - Senate Secretary

# HOUSE COMMITTEE REPORT

(7)

Date referred: 2/20/87

FURTHER REFERRALS: Judiciary  
Finance

DATE: 3/5/87  
HB 145

The Labor & Commerce Committee has considered

"An Act relating to resident employment preferences on certain natural resource projects on state land; and providing for an effective date."

**RECOMMENDS:**

- replace with \_\_\_\_\_  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

Dave Douley

Al Ellis

Cliff Davidson

Frank [unclear]

Alto [unclear]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SIGNING OTHER RECOMMENDATIONS:**

Alto [unclear] No Rec

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dave Douley  
Chairman's signature

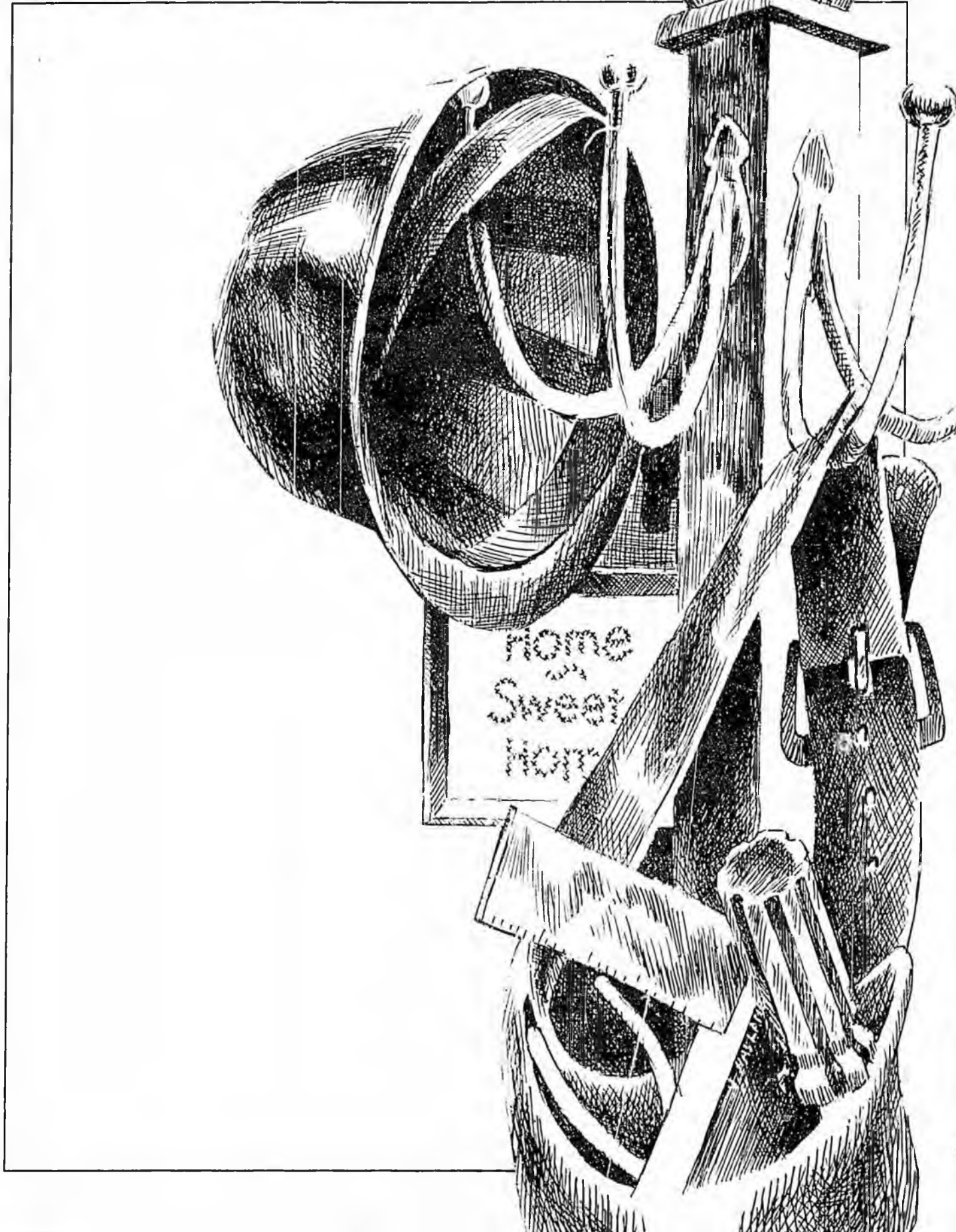
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# Nonresidents Working in Alaska in

1985

Alaska Department of Labor

Steve Cowper, Governor



## **Nonresidents Working in Alaska in 1985**

**State of Alaska  
Department of Labor**

**Steve Cowper, Governor  
Jim Sampson, Commissioner**

**Administrative Services Division**

**Nico Bus, Acting Director**

**Research and Analysis Section**

**Chuck Caldwell, Chief  
Sally Saddler, Research Supervisor**

**Published January 1987**

**Prepared by:**

**Betsy Jensvold  
Jim Wilson  
Chris Kent  
Brynn Keith**

**Labor Economist III  
Labor Economist II  
Statistical Technician I  
Statistical Clerk**

**The following people contributed to the development of this publication:**

**Jeff Hadland  
Rich Grayson  
Judy Kidd  
Josephine Ruby  
Ingrid Zaruba  
Nancy Hilbert  
Linda Corder  
Sandi Depue  
Melanie Sims**

**Labor Economist III  
Programmer Analyst  
Administrative Officer I  
Phototypesetter Operator  
Statistical Clerk  
Statistical Clerk  
Statistical Clerk  
Clerk IV  
Clerk Typist III**

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## PREFACE

In May 1986, the Fourteenth Alaska Legislature amended Title 36 to establish a new system of resident hiring preference on public funded construction projects. The law stipulates that a resident hiring preference will trigger on whenever specific conditions are shown to exist. Consequently, the Commissioner of Labor has been instructed to collect and compile the necessary information and to report annually on the status of employment in Alaska, the effect of nonresident employment on the employment of residents in Alaska, and alternative methods of increasing resident hire.

Last year, under a special appropriation from the legislature, the Department of Labor analyzed the economic impact of nonresident employment in Alaska in 1984. This year's publication, the first annual resident hire report prepared in compliance with Alaska Statute 36.10.130, updates the data contained in that report and provides additional information about the reasons employers hire nonresidents, alternative ways of promoting resident hire, and progress toward determining which geographic areas of the state qualify for preference under existing law.

This report is composed of five chapters and a series of appendixes that contain the best estimates currently available of the impact of nonresidents on Alaska's economy.

Chapter 1 compares employment and unemployment in Alaska to the rest of the United States.

Chapter 2 provides 1985 data about resident and nonresident employment and unemployment in Alaska, and the economic impact of nonresidents on Alaska's economy.

Chapter 3 provides a comparison of how the data contained in Chapter 2 changed from 1984 to 1985.

Chapter 4 describes the process of determining which geographic zones qualify for preference under current law. This chapter explains why no determinations are actually made in this year's report and documents the efforts underway to provide information upon which determinations can be made.

Chapter 5 summarizes the results of several employer surveys in an effort to explain the reasons why employers hire nonresidents and reviews some of the alternative methods available for promoting resident hire.

Readers are urged to read the Sources and Limitations section for an explanation of the limitations of the data provided in this report and to check the Glossary for specific definitions of terms used in this report.

## SOURCES AND LIMITATIONS OF THE DATA

### Primary Sources and Limitations

Residency of workers was determined by crossmatching 1985 wage records from the Alaska Department of Labor with 1985 and 1986 permanent fund dividend records from the Alaska Department of Revenue. Nineteen eighty-five employment data were used because it is the most recent year for which data were available to determine individual residency status. People are legally residents if they have been in Alaska for 30 days and intend to stay. Workers were considered residents if they received a 1985 dividend or filed for a 1986 dividend. Both dividend years were used to accurately determine individual residency status. Use of 1985 permanent fund dividend data accounts for persons who were residents early in 1985 who either died or left the state during 1985. Conversely, use of 1986 permanent fund dividend data accounts for people who became Alaska residents between October 1984 and September 1985. Employed residents who did not provide a social security number on either permanent fund dividend application were not counted as residents since it was impossible to crossmatch the files without a way of verifying that it was the same individual. <sup>1/</sup>

It is important to understand that the Department of Labor wage file, which was the source of all wage and employee data in this report, does not include all those who work in Alaska. Excluded are federal employees and workers who are not covered by the Alaska Employment Security Act. Those who are not covered include self-employed workers, most fishermen, full commission salespersons, agricultural workers, domestic workers, unpaid family workers, private railroad elected and appointed public officials, and some employed students. The largest groups which are not included in this report are self-employed workers (who account for about 9 percent of the Alaskan work force) and federal employees (who account for about 7 percent).

The number of employed residents excluded from Department of Labor wage records is estimated to more than offset the number of residents counted as nonresidents because they did not file for a permanent fund dividend in 1985 or 1986 or because they did not provide a social security number when they did file. Similarly, the number of employed nonresidents not covered by the department's wage records offsets the number of residents counted as nonresidents.

### Why Data Differ From Those Published in Other Reports

Tables providing data on employees and wages by industry and geographic area differ from figures published in other reports by the Alaska Department of Labor, Research and Analysis Section, particularly the Statistical Quarterly series. Differences occur because:

1) This report provides data about employees not employment.

Employees and employment are different concepts. Employees are the individual people who worked for wages during a specific period of time; employment is the number of

---

<sup>1/</sup> 3.8 percent of working (16 years and up) permanent fund dividend applicants did not provide social security numbers. It is believed that most applicants who did not provide a social security numbers did not work, thus minimizing the effect of the missing numbers on data in this report.

filled jobs at a particular point in time. Because not all jobs are filled throughout the year and different individuals work in the same position at different periods of time, employee counts exceed the employment totals given in other publications, especially when comparing annual data. Approximately 70 percent more individuals work in Alaska over a year's time than the annual average number of jobs.

2) Employees and wages are counted in the industry of the employer from whom they earned the most wages.

3) Employees and wages are counted in the census area of the employer's primary business location even though employees may actually work in another part of the state.

This significantly affects state government workers. Consequently, state workers are included in statewide data but excluded from region and census area data. Construction data were also significantly affected because workers are often employed in remote areas far from their company's main business office. Consequently, a new data collection system has been established which will correct this deficiency in the future.

4) Federal government employees and wages are excluded from this report because data for them are not available in Department of Labor wage files.

#### Other Data Sources

Other state data sources used in preparing this report include the Alaska Department of Labor's unemployment insurance claimant file, job service applicant file, local area unemployment statistics, a survey of employers in 1986, the Governor's Council on Alaska Hire's 1986 Alaska Hire Task Force report and Vocational Education Subcommittee employer surveys, and voluntary unemployment data from unions around the state.

National data sources used include information produced by the U.S. Department of Labor's Employment and Training Administration and Bureau of Labor Statistics, and the U.S. Department of Commerce's Bureau of Economic Analysis and Bureau of the Census.

## EXECUTIVE SUMMARY

### Highlights of the Data

-In 1985, \$691 million were paid to 77,000 nonresident workers in Alaska. This represents an increase of \$14 million and 6,000 employees over 1984. The percentages, however, remained constant from 1984 to 1985 with 12 percent of all wages paid to nonresidents who constituted 23 percent of all employees. See pages 20 and 45.

-The average annual earnings of nonresidents was only 43 percent as much as the average annual earnings of residents of Alaska (down from 48% in 1984). Nonresidents did not spend as much time working in Alaska as residents did. Fifty-eight percent of all residents worked during all four calendar quarters, while only 11 percent of nonresidents worked in Alaska in all four quarters. See page 20.

-1984 and 1985 data are strikingly similar. Although nonresident employees and wages increased in 1985 their overall impact, industry impact, and area impact changed only slightly. See page 45.

-The food processing industry (of which 94% of the firms are in seafood processing) had the highest number of nonresident employees (13,512), the highest percent of wages paid to nonresidents (55%), and the highest percentage of nonresident employees (68%). The oil and gas industry paid the highest amount of wages to nonresidents (\$106 million), although the construction industry as a whole paid more (\$149 million). Of all the wages paid to nonresidents in Alaska in 1985, over 21 percent went to nonresidents who worked in construction (building construction, heavy construction, or special trades construction) and over 15 percent went to nonresidents who worked in oil and gas. See page 23.

- The Anchorage-MatSu Region had the lowest percentage of nonresident wages and employees (10% and 21% respectively); the Southwest Region had the highest (24% and 38%). The Southwest Region also contained both the best and worst (mostly the worst) census areas in the state in terms of the percent of wages paid to nonresidents and the percentage of employees who were nonresidents. Wade Hampton had the lowest nonresident wages and employees (7% and 12% respectively); while the Aleutian Islands had the highest (41% and 61%) with the Bristol Bay Borough close behind (39% and 59%). See page 28.

-In 1985, the number of unemployed never fell below 20,500 individuals in any month (19,000 in 1984). The number of employed nonresidents was always greater than 17,000 individuals in any month (16,000 in 1984). See page 33.

-Alaska has unique economic conditions compared to other states. In 1985, Alaska had the fifth highest overall unemployment rate in the nation, the third highest for all nonagricultural industries, the highest in manufacturing and government, and the sixth highest in construction. Alaska also had one of the highest unemployment rates in the nation for many major occupational categories. See page 15.

-Nearly 22 percent of all regular unemployment insurance benefits paid by Alaska in 1985 were interstate payments. This is the highest interstate rate in the nation; approximately 4.5 times the national average. Seventy-four percent of those interstate payments went to nonresidents. See pages 15 and 41.

-Alaska paid almost \$32 million in unemployment insurance benefits to nonresidents in 1985, of which over \$21 million was paid out of state. This represents a significant increase over 1984 in which Alaska paid nonresidents \$20 million in unemployment insurance benefits, including \$17 million in out of state payments. See page 41.

#### Resident Hire Preference Determinations

In 1986, the Fourteenth Alaska Legislature passed a resident hire statute which is complex and substantially different from previous versions. The legislature emphasized the need to pass a law which would withstand a test of constitutionality. Consequently, the new statute uses a very targeted approach based on detailed statistical information.

Before preferences can be implemented, determinations must be made as to which zones qualify for preference based on the specific criteria outlined in chapter 4. Before any determinations can be made, regulations must be approved and data compiled. As of early January 1987, regulations have been drafted and reviewed through the public hearing process but not finalized. Data have been compiled which illustrate the overall economic condition of each zone (see Tables 4-1 and 4-2, pages 60 and 61); however, data about occupational supply and demand are not currently available in enough detail to demonstrate that nonresident workers have displaced qualified, available resident workers in specific occupations in specific areas of the state. Consequently, the Department of Labor has designed a system to collect the necessary detail, and has begun implementation of those procedures. The department expects to have the detailed information needed to evaluate possible determinations for most construction-related occupations by January 1988. Data about the social and economic impact of unemployment are available through a variety of sources which will be analyzed in depth during 1987.

For additional information see chapter 4, beginning on page 57.

#### Reasons Employers Hire Nonresidents

Sixty percent of employers contacted in a Department of Labor survey said their industries hire nonresidents because available Alaskans lack required training or experience.

Thirty-five percent of employers contacted stated that their industries hire nonresidents because there are no Alaskans available. This reason was most commonly cited by employers in food processing.

Fifty percent of employers contacted stated that their industries hire nonresidents because it is company policy to transfer people within the company. This reason was most commonly cited by employers in mining industries.

For additional information see chapter 5, beginning on page 62.

#### Promoting Resident Hire

Employers commonly promote the hiring of residents by having a company resident hire policy; advertising openings locally; or using local unions, Job Service offices, local private employment agencies or universities to find workers.

Employers felt the State could increase resident hire by promoting the issue, and working actively to train and place resident workers.

In a survey concerning vocational education, 40 percent of respondents from the manufacturing and wholesale trade industries felt there was not a trained Alaska labor force available.

More than 95 percent of employers who responded to the vocational education survey said they would prefer to hire Alaskans. Nearly 76 percent of survey respondents indicated that they would be willing to hire an underqualified Alaskan if the Alaskan could be trained.

The 1986 Alaska Hire Task Force Report presented 36 alternatives for promoting resident hire in Alaska. The report was intended primarily for policy makers to use as a reference of new ideas and initiatives on resident hire.

The Department of Labor is now collecting additional data from employers relating to the occupation and work location of their employees. This will allow the department to evaluate the impact of nonresident employment by individual occupation and specific work location. Then Alaska's policy makers can use those facts to adjust laws, regulations, administrative procedures, and programs to comprehensively encourage higher levels of resident employment throughout Alaska.

For additional information see chapter 5, beginning on page 62.

## CHAPTER 1. INTERSTATE COMPARISONS

This chapter provides an overview of Alaska's economy in comparison with other states.

### Overview

Alaska is a unique state in many ways, particularly when it comes to the condition of the labor market. Alaska has one of the highest unemployment rates, one of the most seasonal economies, an unusually high percentage of unemployment insurance benefits paid to out-of-state claimants, a relatively large dependence on the construction industry for jobs, and a large nonresident workforce. At the same time, the geographic dispersion of Alaska's labor force and the short-term or seasonal nature of many jobs often combine to make it difficult for Alaskans to find out about jobs in other parts of Alaska. Demand for workers in Alaska combined with a national recession made Alaska a viable job market for many nonresidents. As the economy improves in the Lower 48 and worsens in Alaska there may be less incentive for nonresident workers to come to Alaska, but it also becomes increasingly important that residents have a way of learning where jobs exist and a way of preparing themselves to hold those jobs.

### Unemployment Rate: Overall, by Industry, and by Occupation

In 1985 Alaska had the third highest unemployment rate of any state for private nonagricultural wage and salary workers and the fifth highest overall unemployment rate. In addition, Alaska had the highest unemployment rate in three of seven major industrial categories (Table 1-1), and it was one of the four worst states in seven of eleven major occupational categories (Table 1-2). Relative to other states, Alaska fared best in the services industry where it ranked tenth worst and sales occupations where it ranked fifteenth worst.

### Unemployment Insurance Benefits

In 1985 Alaska sent a higher percentage of regular unemployment insurance benefits out of state than any other state in the nation. While the national average was 4.8 percent, Alaska sent 21.6 percent out of state; this is 4.5 times the national average (Table 1-3). Over three-quarters of that money went to nonresidents (Table 2-14).

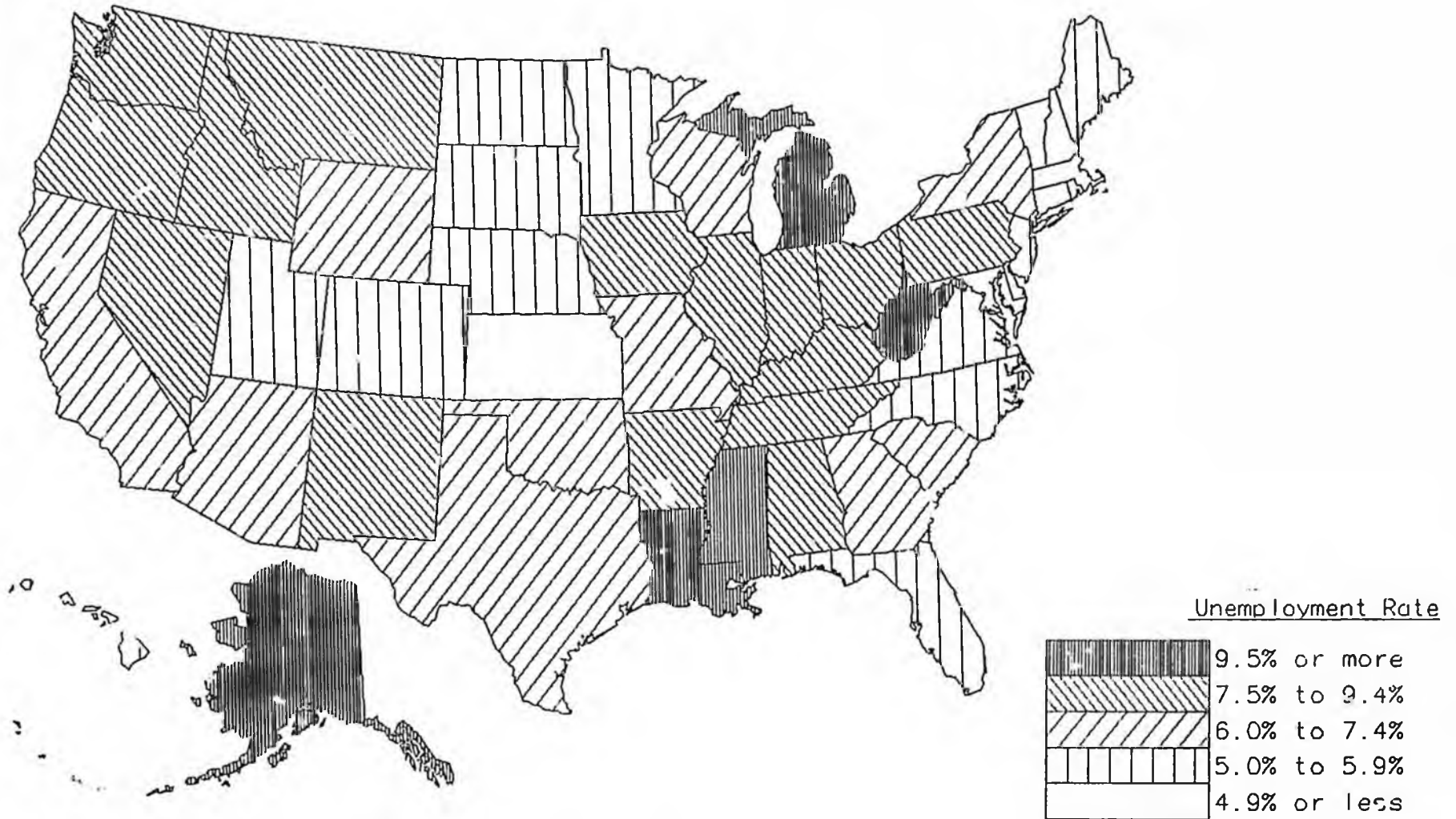
### The Construction Industry

In 1985 Alaska had the sixth highest unemployment rate of any state for the construction industry. Nevertheless, construction is especially important to Alaska's economy as it comprises nearly twice as large a share of total employment as it does for the United States as a whole (Table 1-4). Alaska's dependence on the construction industry, along with the high level of unemployment in that industry, makes the impact of nonresidents working in construction an area of special concern.

FIGURE 1-1

# U.S. AVERAGE UNEMPLOYMENT RATE - 1985

By State



Source: Alaska Department of Labor, Research and Analysis.

TABLE 1-2

UNEMPLOYMENT RATE BY STATE  
FOR MAJOR OCCUPATIONAL CATEGORIES  
1985

	Managerial and Professional Specialty		Technical Sales, and Administrative Support		Service Occupations	Precision Production, Craft, & Repair	Operators, Fabricators, and Laborers			Farming, Forestry, & Fishing		
	Executive Administrative, & Managerial	Professional Specialty	Technicians & Related Support	Sales			Administrative Support, Including Clerical	Machine Operators, Assemblers, & Inspectors	Transportation & Material Moving		Handlers, Equipment Cleaners, Helpers & Laborers	
	Total											
Alabama	7.7	2.2	1.3	..	7.3	2.8	11.8	10.0	12.8	9.3	16.9	6.5
ALASKA	9.3	3.3	3.1	5.2	5.8	8.8	12.7	11.3	12.9	17.7	22.6	12.5
Alaska's Rank	3rd	7th	4th	5th	15th	1st	2nd	4th	11th	1st	3rd	4th
Arizona	6.1	3.3	2.0	4.2	5.4	5.9	7.8	5.0	11.6	5.2	11.2	20.9
Arkansas	7.3	1.7	2.0	..	4.2	6.6	11.5	6.8	11.1	5.3	15.7	9.9
California	6.4	3.1	2.7	3.4	5.5	5.1	7.8	7.8	12.2	8.5	14.3	15.6
Colorado	5.4	2.3	1.6	3.3	4.3	5.4	7.9	6.5	9.3	7.7	16.1	..
Connecticut	4.3	1.9	2.2	5.2	2.2	4.4	5.5	5.2	6.7	6.0	13.6	..
Delaware	4.5	2.3	1.3	4.6	5.6	2.9	6.1	3.3	7.7	8.4	7.8	..
D.C.	7.4	1.7	2.4	4.6	12.0	6.5	10.4	10.5	..	9.8	21.8	..
Florida	5.4	2.0	2.2	3.1	5.0	4.5	8.2	5.5	9.9	7.0	8.6	9.2
Georgia	5.5	1.6	2.0	4.2	3.8	5.0	10.5	3.8	8.5	2.5	8.7	9.4
Hawaii	4.8	1.5	2.0	1.9	5.1	5.1	5.9	5.9	7.8	7.5	7.7	4.7
Idaho	7.4	3.7	2.1	6.1	6.1	4.1	8.8	9.8	12.9	11.8	15.2	8.0
Illinois	7.9	3.3	2.5	4.8	6.8	5.4	11.9	8.2	14.4	12.4	17.0	6.6
Indiana	7.0	3.0	2.5	2.7	7.3	4.7	10.6	5.9	9.6	10.0	17.6	4.7
Iowa	7.1	3.0	2.7	1.4	6.3	4.7	9.5	7.8	14.3	8.4	20.3	3.3
Kansas	4.6	2.8	1.1	3.4	3.1	4.7	6.2	6.3	5.7	4.0	12.1	2.4
Kentucky	8.2	1.8	1.6	..	6.9	6.2	11.4	10.7	13.6	8.2	14.7	7.1
Louisiana	10.1	3.6	3.4	1.8	8.7	6.2	15.8	14.1	15.8	11.5	19.3	11.1
Maine	5.0	2.1	0.9	..	2.8	3.1	5.2	5.9	9.2	9.8	11.5	7.1
Maryland	4.0	2.3	1.9	0.3	3.3	3.3	6.3	4.0	11.4	5.0	11.4	5.4
Massachusetts	3.5	2.0	1.7	1.7	2.6	3.3	3.8	4.3	5.9	6.0	8.8	7.0
Michigan	8.5	3.5	2.6	3.7	7.1	7.0	12.3	8.3	11.7	12.1	15.8	11.7
Minnesota	5.3	2.7	2.2	2.1	3.9	4.6	5.5	6.8	11.7	8.9	8.8	6.6
Mississippi	9.1	3.2	3.4	..	7.1	5.0	12.3	10.1	14.3	7.1	20.1	10.0
Missouri	5.7	1.8	1.1	3.7	6.1	3.5	8.3	6.3	9.1	7.5	12.1	7.9
Montana	7.1	2.5	3.0	6.6	5.1	6.0	10.6	8.8	14.4	8.8	17.1	6.1
Nebraska	4.8	2.7	2.2	..	4.8	2.8	6.5	7.5	8.2	5.0	11.7	2.3
Nevada	7.4	4.4	4.2	..	4.6	4.2	8.1	14.2	..	10.0	18.3	..
New Hampshire	3.5	1.9	1.9	2.7	3.0	2.7	4.9	2.8	6.0	4.3	7.0	..
New Jersey	.9	1.7	2.1	2.0	3.6	4.9	6.4	4.6	10.5	8.8	12.3	6.5
New Mexico	7.7	2.4	1.7	2.4	6.8	5.3	10.7	10.4	14.0	12.5	24.5	5.9
New York	5.7	2.4	2.8	3.0	5.2	5.1	7.2	5.7	11.0	8.4	14.0	9.0
North Carolina	4.7	1.5	1.2	3.0	3.3	3.1	6.4	4.7	8.2	4.7	10.8	5.7
North Dakota	5.3	3.2	1.9	4.4	3.1	4.3	6.0	9.1	7.0	11.9	15.1	3.1
Ohio	7.9	3.7	2.6	3.1	5.5	6.0	10.4	9.9	10.8	10.9	18.5	12.8
Oklahoma	6.6	1.8	1.9	3.8	5.0	4.9	8.6	9.6	7.8	10.9	16.4	9.7
Oregon	8.4	4.6	1.7	..	5.4	5.8	11.6	11.2	16.6	11.6	15.6	8.9
Pennsylvania	7.0	2.8	2.5	5.4	5.1	5.0	9.2	8.1	12.3	10.2	16.0	7.8
Rhode Island	4.4	1.9	2.3	0.3	4.2	2.6	3.8	5.4	8.8	5.8	10.9	..
South Carolina	5.8	1.5	1.2	0.6	4.0	3.1	9.1	5.5	10.7	7.5	13.5	7.6
South Dakota	4.6	1.9	1.4	2.2	3.0	3.1	6.0	7.5	11.0	9.5	14.5	2.0
Tennessee	7.0	2.5	1.4	2.3	5.4	4.4	9.5	7.4	13.3	6.3	13.4	6.2
Texas	6.3	2.6	2.2	4.2	5.5	4.9	8.9	6.8	11.0	8.9	13.5	8.0
Utah	5.5	2.0	1.4	2.0	5.0	5.2	6.1	7.6	9.8	7.8	14.8	5.6
Vermont	4.5	1.3	3.2	1.3	2.1	3.1	7.6	3.5	8.2	8.5	12.7	6.8
Virginia	4.7	2.0	1.7	1.0	5.0	3.4	8.3	4.7	11.1	3.2	9.0	4.7
Washington	7.5	3.6	2.7	4.7	6.1	5.6	9.4	9.2	14.1	8.1	18.2	11.4
West Virginia	11.8	3.2	2.3	..	8.6	4.9	13.4	17.3	22.2	17.1	25.2	9.0
Wisconsin	6.3	3.2	2.6	5.3	4.3	4.3	6.8	8.1	10.9	6.7	15.2	6.0
Wyoming	6.7	2.6	2.3	..	4.7	3.8	8.5	9.4	..	7.4	18.0	6.9

Source: U.S. Bureau of Labor Statistics (BLS), Geographic Profile of Employment and Unemployment, 1985.  
Published September 1986.

Note: "..." indicates that the labor force base does not meet the BLS publication standards of reliability.

TABLE 1-1  
 UNEMPLOYMENT RATE BY STATE  
 FOR NONAGRICULTURAL INDUSTRIES  
 1985

	Total	Construc- tion	Manufacturing			TCPU 1/ Trade	FIRE 2/ Services	Govern- ment		
			Total	Durable Goods	Non- Durable Goods					
Alabama	9.1	20.8	10.3	10.7	9.8	4.2	9.2	2.5	6.6	4.1
ALASKA	10.7	21.8	16.5	--	13.8	8.7	9.8	5.8	7.5	8.5
Alaska's Rank	3rd	6th	1st	--	2nd	2nd	8th	1st	10th	1st
Arizona	6.6	8.9	6.3	6.4	--	4.0	7.9	4.6	6.1	2.3
Arkansas	8.1	13.3	7.9	7.5	8.3	4.9	8.1	3.3	9.2	6.6
California	7.1	12.5	7.8	7.0	9.7	4.6	7.4	3.4	6.4	3.6
Colorado	5.9	10.2	6.9	7.7	5.1	3.8	5.8	5.3	4.5	4.1
Connecticut	4.6	11.3	5.5	5.3	6.0	4.2	4.3	1.8	3.3	2.5
Delaware	4.8	7.7	3.6	5.8	2.7	5.3	5.4	3.1	4.9	3.3
D.C.	9.8	24.6	4.8	--	4.8	9.3	14.7	3.9	7.3	4.0
Florida	5.8	7.9	6.6	6.3	7.1	4.1	6.3	3.1	5.4	3.4
Georgia	5.9	6.4	5.9	4.8	6.6	3.4	7.3	6.3	4.6	4.4
Hawaii	5.4	12.8	4.6	--	3.4	3.2	6.0	3.8	4.5	4.8
Idaho	8.7	21.0	10.8	13.6	8.0	7.2	7.4	4.6	6.3	5.5
Illinois	8.9	16.2	9.9	11.0	8.1	7.2	10.0	3.8	7.5	4.6
Indiana	8.0	14.0	7.7	7.7	7.8	6.0	8.3	4.3	8.0	4.1
Iowa	8.9	16.6	11.4	13.2	9.1	6.1	8.5	2.8	7.1	3.1
Kansas	5.2	10.2	5.0	4.7	5.4	2.0	5.6	2.9	5.0	3.8
Kentucky	9.4	19.7	9.4	10.4	7.9	5.4	9.7	5.3	7.0	4.8
Louisiana	11.8	21.8	10.9	12.1	9.5	8.6	12.3	5.8	10.3	5.0
Maine	6.0	14.8	6.8	4.5	8.5	4.5	5.0	2.4	4.2	1.7
Maryland	4.8	7.4	5.2	3.8	7.4	4.2	5.4	1.2	4.4	2.5
Massachusetts	3.9	6.8	4.2	5.6	5.7	4.4	4.1	1.5	3.3	2.1
Michigan	9.1	18.0	8.0	8.1	7.8	7.4	10.1	5.4	3.8	7.4
Minnesota	5.9	11.5	6.4	6.8	5.7	3.9	6.0	4.4	4.8	4.0
Mississippi	10.4	16.9	11.9	10.7	13.3	6.0	10.6	2.1	9.1	6.6
Missouri	6.5	13.6	6.3	7.0	5.2	3.6	7.3	2.2	6.3	3.6
Montana	9.0	20.9	12.1	13.0	10.9	5.1	8.8	3.8	7.0	5.9
Nebraska	6.1	14.2	7.2	7.0	7.4	2.6	6.5	2.1	5.4	3.0
Nevada	8.6	19.5	8.4	9.1	--	8.8	8.0	2.7	7.6	2.4
New Hampshire	4.1	6.7	3.9	3.6	4.5	0.4	4.3	3.1	4.1	1.4
New Jersey	5.6	9.2	5.7	6.1	5.4	4.8	5.9	3.2	5.3	2.8
New Mexico	9.9	22.2	10.2	11.1	9.2	10.1	10.2	3.2	6.6	5.0
New York	6.5	11.5	7.0	5.7	8.7	5.4	7.5	3.5	5.9	3.3
North Carolina	5.3	7.5	6.4	4.7	7.6	3.0	5.4	1.9	4.1	2.5
North Dakota	6.3	20.9	6.9	--	6.3	4.7	5.3	1.9	3.9	5.4
Ohio	8.6	21.9	8.2	9.0	6.4	7.4	8.7	4.3	7.3	5.5
Oklahoma	7.5	21.8	6.5	6.5	6.5	5.9	7.0	4.2	5.8	3.7
Oregon	9.9	19.0	12.0	10.9	14.3	6.4	9.3	3.5	8.8	4.1
Pennsylvania	7.7	15.3	9.6	9.8	9.3	7.4	7.3	3.0	5.5	4.9
Rhode Island	5.0	10.4	5.7	5.2	6.8	4.1	4.7	2.9	3.8	2.0
South Carolina	6.9	10.1	7.6	7.8	7.6	4.6	5.9	3.9	6.8	2.6
South Dakota	6.0	22.2	10.3	11.0	9.5	3.8	4.9	2.2	3.3	4.5
Tennessee	8.1	15.2	9.4	9.9	9.0	4.3	9.0	2.2	5.0	4.3
Texas	7.3	11.5	7.2	6.9	7.5	4.7	8.6	3.7	6.4	3.1
Utah	6.7	16.5	7.4	7.2	7.5	4.4	5.0	5.1	5.5	2.8
Vermont	5.2	9.1	5.2	5.1	5.6	3.2	4.5	2.2	5.6	3.1
Virginia	5.6	6.7	7.0	6.0	8.1	1.5	6.7	3.1	4.3	2.4
Washington	8.7	18.6	7.4	7.7	6.5	5.5	9.6	3.3	8.2	5.6
West Virginia	14.3	26.9	16.0	20.0	11.5	8.2	11.1	--	11.8	6.1
Wisconsin	7.2	17.4	7.7	7.8	7.6	5.3	6.3	4.1	6.4	4.7
Wyoming	8.6	19.5	10.2	--	--	2.9	7.8	1.8	9.1	2.6

Source: U.S. Bureau of Labor Statistics (BLS), Geographic Profile of Employment and Unemployment, 1985.  
 Published September 1986.

Note: "--" indicates that the labor force base does not meet BLS publication standards for reliability.

1/ Transportation, Communications, and Public Utilities.

2/ Finance, Insurance, and Real Estate.

TABLE 1-2

UNEMPLOYMENT RATE BY STATE  
FOR MAJOR OCCUPATIONAL CATEGORIES  
1985

	Total	Managerial and Professional Specialty		Technical Sales, and Administrative Support		Service Occupations	Precision Production, Craft, & Repair	Operators, Fabricators, and Laborers			Farming, Forestry, & Fishing	
		Executive Administrative, & Managerial	Professional Specialty	Technicians & Related Support	Sales			Administrative Support, including Clerical	Machine Operators, Assemblers, & Inspectors	Transportation & Material Moving		Handlers, Equipment Cleaners, Helpers & Laborers
Alabama	7.7	2.2	1.3	--	7.3	2.8	11.8	10.0	12.8	9.3	16.9	6.5
ALASKA	9.3	3.3	3.1	5.2	5.8	8.8	12.7	11.3	12.9	17.7	22.6	12.5
Alaska's Rank	3rd	7th	4th	5th	15th	1st	2nd	4th	11th	1st	3rd	4th
Arizona	6.1	3.3	2.0	4.2	5.4	5.9	7.8	5.0	11.6	5.2	11.2	20.9
Arkansas	7.3	1.7	2.0	--	4.2	6.6	11.5	6.8	11.1	5.3	15.7	9.9
California	6.4	3.1	2.7	3.4	5.5	5.1	7.8	7.8	12.2	8.5	14.3	15.6
Colorado	5.4	2.3	1.6	3.3	4.3	5.4	7.9	6.5	9.3	7.7	16.1	--
Connecticut	4.3	1.9	2.2	5.2	2.2	4.4	5.5	5.2	6.7	6.0	13.6	--
Delaware	4.5	2.3	1.3	4.6	5.6	2.9	6.1	3.3	7.7	8.4	7.8	--
D.C.	7.4	1.7	2.4	4.6	12.0	6.5	10.4	10.5	--	9.8	21.8	--
Florida	5.4	2.0	2.2	3.1	5.0	4.5	8.2	5.5	9.9	7.0	8.6	9.2
Georgia	5.5	1.6	2.0	4.2	3.8	5.0	10.5	3.8	8.5	2.5	8.7	9.4
Hawaii	4.8	1.5	2.0	1.9	5.1	5.1	5.9	5.9	7.8	7.5	7.7	4.7
Idaho	7.4	3.7	2.1	6.1	6.1	4.1	8.8	9.8	12.9	11.8	15.2	8.0
Illinois	7.9	3.3	2.5	4.8	6.8	5.4	11.9	8.2	14.4	12.4	17.0	6.6
Indiana	7.0	3.0	2.5	2.7	7.3	4.7	10.6	5.9	9.6	10.0	17.6	4.7
Iowa	7.1	3.0	2.7	1.4	6.3	4.7	9.5	7.8	14.3	8.4	20.3	3.3
Kansas	4.6	2.8	1.1	3.4	3.1	4.7	6.2	6.3	5.7	4.0	12.1	2.4
Kentucky	8.2	1.8	1.6	--	6.9	6.2	11.4	10.7	13.6	8.2	14.7	7.1
Louisiana	10.1	3.6	3.4	1.8	8.7	6.2	15.8	14.1	15.8	11.5	19.3	11.1
Maine	5.0	2.1	0.9	--	2.8	3.1	5.2	5.9	9.2	9.8	11.5	7.1
Maryland	4.0	2.3	1.9	0.3	3.3	3.3	6.3	4.0	11.4	5.0	11.4	5.4
Massachusetts	3.5	2.0	1.7	1.7	2.6	3.3	3.8	4.3	5.9	6.0	8.8	7.0
Michigan	8.5	3.5	2.6	3.7	7.1	7.0	12.3	8.3	11.7	12.1	15.8	11.7
Minnesota	5.3	2.7	2.2	2.1	3.9	4.6	5.5	6.8	11.7	8.9	8.8	6.6
Mississippi	9.1	3.2	3.4	--	7.1	5.0	12.3	10.1	14.3	7.1	20.1	10.0
Missouri	5.7	1.8	1.1	3.7	6.1	3.5	8.3	6.3	9.1	7.5	12.1	7.9
Montana	7.1	2.5	3.0	6.6	5.1	6.0	10.6	8.8	14.4	8.8	17.1	6.1
Nebraska	4.8	2.7	2.2	--	4.8	2.8	6.5	7.5	8.2	5.0	11.7	2.3
Nevada	7.4	4.4	4.2	--	4.6	4.2	8.1	14.2	--	10.0	18.3	--
New Hampshire	3.5	1.9	1.9	2.7	3.0	2.7	4.9	2.8	6.0	4.3	7.0	--
New Jersey	4.9	1.7	2.1	2.0	3.6	4.9	6.4	4.6	10.5	8.8	12.3	6.5
New Mexico	7.7	2.4	1.7	2.4	6.8	5.3	10.7	10.4	14.0	12.5	24.5	5.9
New York	5.7	2.4	2.8	3.0	5.2	5.1	7.2	5.7	11.0	8.4	14.0	9.0
North Carolina	4.7	1.5	1.2	3.0	3.3	3.1	6.4	4.7	8.2	4.7	10.8	5.7
North Dakota	5.3	3.2	1.9	4.4	3.1	4.3	6.0	9.1	7.0	11.9	15.1	3.1
Ohio	7.9	3.7	2.6	3.1	5.5	6.0	10.4	9.9	10.8	10.9	18.5	12.8
Oklahoma	6.6	1.8	1.9	3.8	5.0	4.9	8.6	9.6	7.8	10.9	16.4	9.7
Oregon	8.4	4.6	1.7	--	5.4	5.8	11.6	11.2	16.6	11.6	15.6	8.9
Pennsylvania	7.0	2.8	2.5	5.4	5.1	5.0	9.2	8.1	12.3	10.2	16.0	7.8
Rhode Island	4.4	1.9	2.3	0.3	4.2	2.6	3.8	5.4	8.8	5.8	10.9	--
South Carolina	5.8	1.5	1.2	0.6	4.0	3.1	9.1	5.5	10.7	7.5	13.5	7.6
South Dakota	4.6	1.9	1.4	2.2	3.0	3.1	6.0	7.5	11.0	9.5	14.5	2.0
Tennessee	7.0	2.5	1.4	2.3	5.4	4.4	9.5	7.4	13.3	6.3	13.4	6.2
Texas	6.3	2.6	2.2	4.2	5.5	4.9	8.9	6.8	11.0	8.9	13.5	8.0
Utah	5.5	2.0	1.4	2.0	5.0	5.2	6.1	7.6	9.8	7.8	14.8	5.6
Vermont	4.5	1.3	3.2	1.3	2.1	3.1	7.6	3.5	8.2	8.5	12.7	6.8
Virginia	4.7	2.0	1.7	1.0	5.0	3.4	8.3	4.7	11.1	3.2	9.0	4.7
Washington	7.5	3.6	2.7	4.7	6.1	5.6	9.4	9.2	14.1	8.1	18.2	11.4
West Virginia	11.8	3.2	2.3	--	8.6	4.9	13.4	17.3	22.2	17.1	25.2	9.0
Wisconsin	6.3	3.2	2.6	5.3	4.3	4.3	6.8	8.1	10.9	6.7	15.2	6.0
Wyoming	6.7	2.6	2.3	--	4.7	3.8	8.5	9.4	--	7.4	18.0	6.9

Source: U.S. Bureau of Labor Statistics (BLS), Geographic Profile of Employment and Unemployment, 1985.  
Published September 1986.

Note: "--" indicates that the labor force base does not meet the BLS publication standards of reliability.

TABLE 1-3

REGULAR UNEMPLOYMENT INSURANCE BENEFITS PAID BY STATE  
(Excludes Supplemental, Federal and Extended Benefits)  
1985

	Total Benefits		Interstate Benefits			Total Benefits		Interstate Benefits	
	Amount Paid	Amount Paid	% of Total	Rank		Amount Paid	Amount Paid	% of Total	Rank
U.S.	\$14,642,779,059	\$701,059,539	4.8	-					
ALASKA	116,328,341	25,140,283	21.6	1					
Alabama	172,898,551	4,196,216	2.4	49	Montana	54,782,895	2,557,450	4.7	29
Arizona	81,773,649	6,897,056	8.4	7	Nebraska	64,281,894	5,105,791	7.9	9
Arkansas	116,574,190	5,511,263	4.7	27	Nevada	70,189,863	10,602,184	15.1	3
California	1,983,303,609	83,702,610	4.2	32	New Hampshire	17,537,685	1,337,504	7.6	11
Colorado	172,686,237	11,357,803	6.6	19	New Jersey	677,053,844	39,765,002	5.9	23
Connecticut	181,212,828	13,747,398	7.6	12	New Mexico	63,308,330	4,457,279	7.0	17
D.C.	22,261,066	2,835,599	12.7	5	New York	1,217,224,725	55,409,761	4.6	30
Delaware	55,705,225	8,901,993	16.0	2	North Carolina	248,939,685	7,220,134	2.9	45
Florida	253,376,601	15,720,208	6.2	20	North Dakota	46,899,173	3,320,317	7.1	16
Georgia	207,645,233	8,614,941	4.1	33	Ohio	751,311,869	26,411,088	3.5	39
Hawaii	58,673,274	3,965,408	6.8	18	Oklahoma	168,344,850	9,929,843	5.9	22
Idaho	68,682,975	3,058,053	4.5	31	Oregon	255,208,363	20,696,674	8.1	8
Illinois	932,549,824	31,759,697	3.4	41	Pennsylvania	1,103,679,127	34,620,259	3.1	43
Indiana	187,608,819	6,426,050	3.4	0	Rhode Island	79,355,313	3,088,585	3.9	35
Iowa	178,994,810	4,681,434	2.6	47	South Carolina	143,971,813	4,855,800	3.4	42
Kansas	139,744,391	14,715,416	10.5	6	South Dakota	13,806,347	648,085	4.7	28
Kentucky	176,433,281	4,566,210	2.6	48	Tennessee	180,900,153	5,536,802	3.1	44
Louisiana	465,960,502	36,097,266	7.7	10	Texas	667,003,658	48,657,616	7.3	13
Maine	68,267,497	3,827,482	5.6	24	Utah	83,858,165	5,966,499	7.1	15
Maryland	209,920,708	11,274,740	5.4	25	Vermont	31,948,945	1,316,258	4.1	34
Massachusetts	414,527,837	15,725,255	3.8	37	Virginia	142,386,675	10,276,065	7.2	14
Michigan	661,198,505	13,463,979	2.0	50	Washington	412,077,031	20,245,940	4.9	26
Minnesota	322,760,610	9,838,403	3.0	45	West Virginia	151,750,340	5,468,198	3.6	38
Mississippi	102,743,080	3,916,523	3.8	36	Wisconsin	415,330,914	7,223,904	1.7	51
Missouri	196,875,289	11,676,949	5.9	21	Wyoming	32,920,470	4,724,266	14.4	4

Source: Alaska Department of Labor, Research and Analysis

TABLE 1-4

TOTAL EMPLOYMENT AND CONSTRUCTION EMPLOYMENT  
(Employment in thousands)  
ALASKA 1985

	United States			Alaska		
	Total	Construction		Total	Construction	
	Emp (thous)	Emp (thous)	% of Total	Emp (thous)	Emp (thous)	% of Total
1985--						
January	94,575	4,124	4.4	215.3	14.4	6.7
February	94,799	4,001	4.2	218.7	14.8	6.8
March	96,045	4,180	4.4	221.5	15.6	7.0
April	96,909	4,457	4.6	225.7	16.8	7.4
May	97,830	4,699	4.8	230.7	18.8	8.1
June	98,377	4,837	4.9	237.5	21.2	8.9
July	97,650	4,659	4.8	245.9	22.3	9.1
August	97,924	4,954	5.1	245.7	23.4	9.5
September	98,675	5,022	5.1	242.5	23.5	9.7
October	99,309	5,014	5.0	234.5	20.9	8.9
November	99,527	4,900	4.9	227.4	16.4	7.2
December	99,700	4,707	4.7	223.9	14.5	6.5
Annual Avg	97,610	4,630	4.7	230.8	18.6	8.0

Source: U.S. Department of Labor, Bureau of Labor Statistics, Employment and Earnings, 1985.

## CHAPTER 2. NONRESIDENT WORKERS IN ALASKA, 1985

This chapter contains the best data currently available about the impact of nonresidents on Alaska's economy. The chapter is divided into two major sections: a review of resident and nonresident employee and wage data by industry, area, and the state as a whole, and an analysis of the economic impact of nonresident employment.

### RESIDENT AND NONRESIDENT WAGES AND WORKERS

#### Resident and Nonresident Employees and Earnings

In 1985 \$691 million was paid to 77,000 nonresident workers in Alaska. Nonresidents made up 23 percent of Alaska's employees in 1985, and they earned 12 percent of all wage and salary income (Figure 1-1).

Alaska has a seasonal economy in which wages and employment peak in the summer months. Nonresident employment follows an even more exaggerated seasonal pattern (Figures 2-2 and 2-3). Nearly 45 percent of nonresidents worked in Alaska during only one calendar quarter of 1985. In contrast, 58 percent of residents worked during all four quarters of 1985 (Table 2-1). Consequently, although nonresidents made up only 12-19 percent of Alaska's work force during any single calendar quarter, they comprise 23 percent of all individuals who worked in Alaska in 1985.

FIGURE 2-1

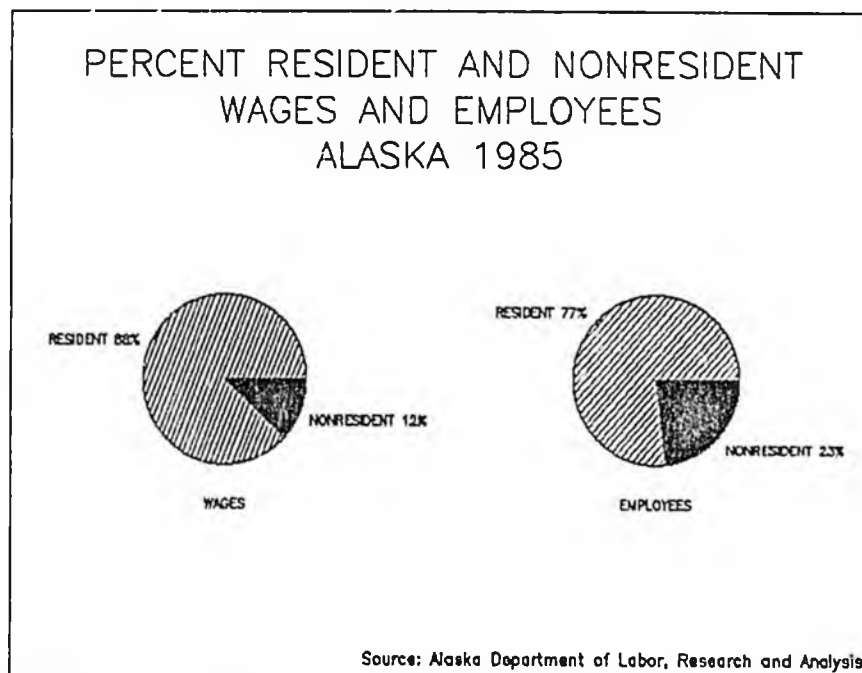


FIGURE 2-2

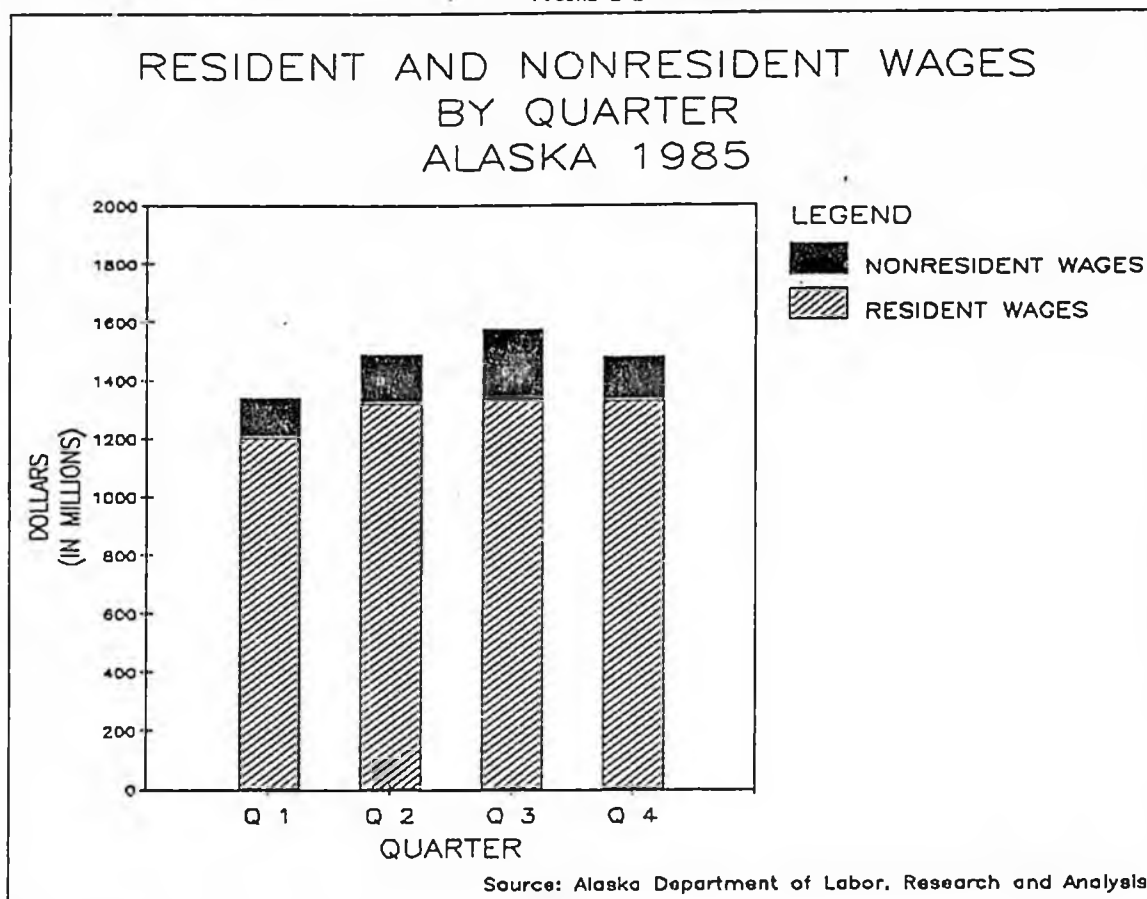


FIGURE 2-3

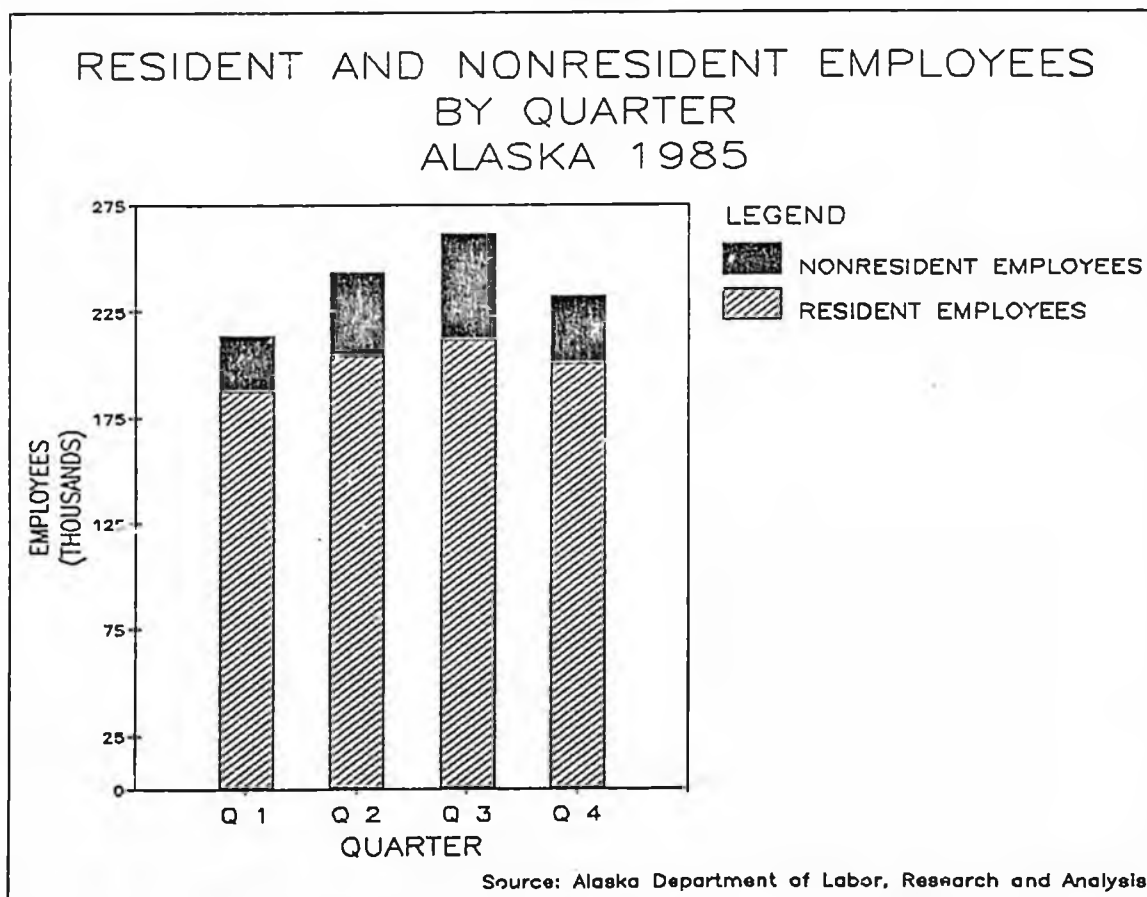


TABLE 2-1

TOTAL QUARTERS WORKED IN ALASKA  
DURING 1985

Total Quarters Worked	Percent Resident	Percent Nonresident
1 Quarter	11.0	44.8
2 Quarters	14.9	29.9
3 Quarters	16.4	14.5
4 Quarters	57.6	10.9

Source: Alaska Department of Labor, Research and Analysis

TABLE 2-2

DISTRIBUTION OF QUARTERS WORKED IN ALASKA  
DURING 1985

Distribution of Quarters Worked	Percent Resident	Percent Nonresident
1 Quarter Only		
Quarter 1	2.5	10.6
Quarter 2	1.5	7.4
Quarter 3	2.8	17.1
Quarter 4	4.2	9.7
2 Quarters Only		
Quarters 1 & 2	4.2	6.6
Quarters 1 & 3	0.6	0.5
Quarters 1 & 4	0.8	0.3
Quarters 2 & 3	3.0	12.0
Quarters 2 & 4	0.5	0.5
Quarters 3 & 4	5.8	10.0
3 Quarters Only		
Quarters 1,2 & 3	5.8	4.6
Quarters 1,2 & 4	2.0	0.6
Quarters 1,3 & 4	1.6	0.5
Quarters 2,3 & 4	7.0	8.8
4 Quarters Only		
quarters 1,2,3 & 4	57.6	10.9

Source: Alaska Department of Labor, Research and Analysis

## Resident and Nonresident Employees and Earnings by Industry

During 1985 almost \$5.9 billion was paid to wage and salary employees in Alaska, of which approximately 12 percent went to nonresidents. Nearly 330,000 different individuals worked in nonfederal, nonagricultural wage and salary employment in Alaska at some time during 1985; approximately 23 percent of whom were nonresidents.

In terms of total dollars paid to nonresidents during 1985, oil and gas, heavy construction, and food processing (of which 94 percent of the firms are in seafood processing) had the greatest impact (Table 2-3). Construction (all types combined) accounted for 22 percent of all wages paid to nonresidents, oil and gas 15 percent, and food processing 9 percent. Other industries which paid a large amount of wages to nonresidents in 1985 include state and local government, business and miscellaneous services, and eating and drinking places.

Government paid only 4 percent of its total wages to nonresidents, making it the "industry" sector least affected by nonresidents. In private industry, the undercount of residents (as discussed in the limitations) is believed to be offset by the number of self-employed nonresidents. This is not the case with government employment; as result, the number of nonresident workers in government may be lower than the published estimates.

Eight of the top ten industries in terms of percentage of their total wages paid to nonresidents were too small to individually account for even 2 percent of the total wages paid to nonresidents in 1985. The two which remained were food processing, which paid 55 percent of their wages to nonresidents and accounted for 9 percent of all wages paid to nonresidents, and heavy construction, which paid 27 percent of their wages to nonresidents and accounted for 11 percent of wages paid to nonresidents.

In terms of total nonresidents employed in 1985, food processing, eating and drinking places, and construction (all types combined) had the greatest impact (Table 2-5). Food processing accounts for 18 percent of all nonresidents employed, construction 14 percent, and eating and drinking places 11 percent. Other industries which employed large numbers of nonresidents included business services, oil and gas, local government, hotels, and food stores. Government again turns out to be the "industry" sector with the least nonresident employees on a percentage basis, at 8 percent.

Again, eight of the top ten industries in terms of their percentage of nonresident employees were too small to account for even 2 percent of the total nonresidents employed in 1985. The two which remained were food processing, which employed 68 percent nonresidents and accounted for 18 percent of all nonresidents employed, and eating and drinking places, which employed 33 percent nonresidents and accounted for 11 percent of all nonresidents employed.

Seafood harvesting employment is not included in the wage and employee data in this report; however, the most recent estimates by the Alaska Department of Labor indicate that 20.5 percent of all seafood harvesting employment in 1983 was nonresident. The 1983 estimate of average monthly nonresident seafood harvesting employment is 1,629.

The average annual earnings per worker for nonresidents in all industries were only 43 percent of that received by resident workers. (Appendix Table A-5). Nonresidents often work in the seasonal construction and food processing industries, and generally work in Alaska for a much shorter portion of the year than residents do. This accounts, at least in part, for the significantly lower average annual earnings of nonresidents; however, nonresidents also receive less average wages per quarter than residents (Appendix Tables A-4 and A-8). This indicates either a shorter job tenure or lower wages than residents.

TABLE 2-3

TEN INDUSTRIES WITH THE  
HIGHEST WAGES PAID TO NONRESIDENTS  
ALASKA 1985

Standard Industrial Classification (SIC)	Nonresident	
	Wages (thous)	Rank
Oil and Gas	\$106,646	1
Heavy Construction	74,009	2
Food Processing	61,964	3
Special Trades Construction	41,574	4
Building Construction	34,146	5
Business Services	33,222	6
Local Government	31,747	7
State Government	28,217	8
Eating and Drinking Places	27,111	9
Miscellaneous Services	23,410	10

Source: Alaska Department of Labor, Research and Analysis

TABLE 2-4

TEN INDUSTRIES WITH OVER \$1 MILLION IN WAGES  
AND THE HIGHEST PERCENTAGE OF WAGES PAID TO NONRESIDENTS  
ALASKA 1985

Standard Industrial Classification (SIC)	Resident Wages (thous)	Nonresident		
		Wages (thous)	% of Total	Rank
Food Processing	\$50,462	\$61,964	55	1
Fishing, Hunting, Trapping 1/ Nonclassifiable 2/	4,069	2,175	35	2
Metal Mining 1/	11,082	4,702	30	3
Logging	12,621	5,046	29	4
Normetal/Nonfuel Mining	28,916	10,898	27	5
Heavy Construction	x	x	27	6
Miscellaneous Repair	199,691	74,009	27	7
Water Transportation	15,408	5,140	25	8
Transportation Equip Mfg	37,733	10,401	22	9
	2,217	605	21	10

Source: Alaska Department of Labor, Research and Analysis

Note: "x" indicates that information is nondisclosable.

Note: Industry rank in this table may be slightly different from ranks listed in Table 2-7. Table 2-7 ranks all industries, while Table 2-4 includes only industries with over \$1 million in wages.

1/ Data include only nonagricultural wage and salary employees covered by unemployment insurance. Consequently, data provided for this industry may not be representative of the industry as a whole.

2/ Not classified in any other industry.

TABLE 2-5  
TEN INDUSTRIES WITH THE HIGHEST  
NUMBER OF NONRESIDENT EMPLOYEES  
ALASKA 1985

Standard Industrial Classification (SIC)	Nonresidents	
	Number of Employees	Rank
Food Processing	13,512	1
Eating and Drinking Places	8,838	2
Special Trades Construction	4,215	3
Business Services	3,926	4
Oil and Gas	3,679	5
Building Construction	3,464	6
Local Government	3,395	7
Heavy Construction	3,370	8
Hotels	2,427	9
Food Stores	2,227	10

Source: Alaska Department of Labor, Research and Analysis

TABLE 2-6  
TEN INDUSTRIES WITH OVER 200 EMPLOYEES  
AND THE HIGHEST PERCENTAGE OF NONRESIDENT EMPLOYEES  
ALASKA 1985

Standard Industrial Classification (SIC)	Resident	Nonresident		Rank
	Number of Employees	Number of Employees	% of Total	
Food Processing	6,431	13,512	68	1
Fishing, Hunting, Trapping 1/	348	285	45	2
Logging	1,296	864	40	3
Metal Mining 1/	511	326	39	4
Nonclassifiable 2/	1,119	308	35	5
Nonmetal/Nonfuel Mining	x	x	35	6
Transportation Equip Mfg	146	77	35	7
Eating and Drinking Places	17,793	8,838	33	8
Recreation Services	1,566	773	33	9
Motion Pictures	375	178	32	10

Source: Alaska Department of Labor, Research and Analysis

Note: x indicates that information is nondisclosable.

Note: Industry rank in this table may be slightly different from ranks listed in Table 2-7. Table 2-7 ranks all industries, while Table 2-6 includes only industries with over 200 employees.

- 1/ Data include only nonagricultural wage and salary employees covered by unemployment insurance. Consequently, data provided for this industry may not be representative of the industry as a whole.
- 2/ Not classified in any other industry.

TABLE 2-7

ALL 76 INDUSTRIES RANKED  
BY NONRESIDENT WAGES AND EMPLOYEES  
ALASKA 1985

Standard Industrial Classification (SIC)	Rank Based on			
	Nonresident Wages		Nonresident Employees	
	Amount Paid to Nonres	Wages Paid to Nonres as a % of Total	Number of Nonres Employees	Nonresident Employees as a % of Total
	Rank	Rank	Rank	Rank
State Government	8	69	11	74
Local Government	7	70	7	73
Agriculture 1/				
Crops	62	20	56	17
Livestock	63	17	61	24
Agricultural Services	52	18	46	14
Forestry	60	39	63	41
Fishing/Hunting/Trapping 1/	42	3	43	3
Mining				
Metal 1/	25	5	41	5
Coal	53	29	66	62
Oil & Gas	1	16	5	25
Nonmetal/Nonfuel	49	8	52	8
Construction				
Building	5	13	6	15
Heavy	2	9	7	13
Special Trades	4	22	3	22
Manufacturing				
Food	3	2	1	2
Textiles	73	72	73	65
Apparel	65	32	64	26
Lumber/Wood	48	26	49	27
Logging	15	7	22	4
Furniture	68	36	65	55
Paper	38	40	45	45
Printing	39	61	67	52
Chemicals	71	51	68	23
Petro Refining	67	73	69	76
Rubber/Miscellaneous	64	44	62	28
Leather	75	1	76	1
Concrete	50	46	53	53
Primary Metals	69	42	68	30
Fabricated Metals	57	37	57	44
Machinery	58	49	65	50
Electrical Machinery	76	76	74	75
Transportation Equipment	56	12	55	9
Measuring	70	31	72	16
Miscellaneous	61	30	60	32
Trans., Comm., & Pub. Utilities				
Local Transit	41	21	35	29
Motor Freight	16	27	24	34
Water Transportation	17	11	26	18
Air Transportation	11	24	12	38
Pipelines	32	62	54	72
Transportation Services	44	43	42	48
Communications	12	34	20	54
Utilities	26	65	44	67
Wholesale Trade				
Durable	14	56	19	60
NonDurable	21	58	21	49

TABLE 2-7 (Continued)

ALL 76 INDUSTRIES RANKED  
BY NONRESIDENT WAGES AND EMPLOYEES  
ALASKA 1985

Standard Industrial Classification (SIC)	Rank Based on			
	Nonresident Wages		Nonresident Employees	
	Amount Paid to Nonres	Wages Paid to Nonres as a % of Total	Number of Nonres Employees	Nonresident Employees as a % of Total
	Rank	Rank	Rank	Rank
<b>Retail Trade</b>				
Hardware	33	54	33	51
General Merchandise	23	48	15	47
Food Stores	19	55	10	35
Auto/Service Station	20	47	17	43
Apparel	47	38	27	31
Furniture	45	52	36	39
Eating/Drinking	9	19	2	10
Miscellaneous Retail	22	50	13	46
<b>Finance, Ins., &amp; Real Estate</b>				
Banking	28	68	32	71
Credit Agencies	37	59	37	59
Brokers	55	66	59	66
Insurance	54	71	51	68
Insurance Agents	46	67	48	64
Real Estate	34	41	29	40
Combined Insurance	74	75	75	69
Investment Company	35	53	39	61
<b>Services</b>				
Hotels	18	25	9	19
Personal Services	43	45	28	37
Business Services	6	15	4	21
Auto Repair	30	28	31	33
Miscellaneous Repair	24	10	40	20
Motion Pictures	59	33	50	12
Recreation Services	40	14	23	11
Health Services	13	63	14	63
Legal Services	31	57	38	57
Private Education	51	35	47	36
Social Services	29	60	18	56
Museums	72	74	70	70
Membership Organizations	36	64	25	58
Private Households	66	6	58	6
Miscellaneous Services	10	23	16	42
Nonclassifiable 2/	27	4	30	7

Source: Alaska Department of Labor, Research and Analysis Section

Note: Industry rankings listed in this table may be slightly different from ranks listed in Tables 2-4 and 2-6. Table 2-7 ranks all industries, while Tables 2-4 and 2-6 include only those industries with over \$1 million in wages (Table 2-4) or over 200 employees (Table 2-6).

1/ Data includes only nonagricultural wage and salary employees covered by unemployment insurance. Consequently, data provided for this industry may not be representative of the industry as a whole.

2/ Not classified in any other industry.

## Resident and Nonresident Employees and Earnings by Geographic Zone

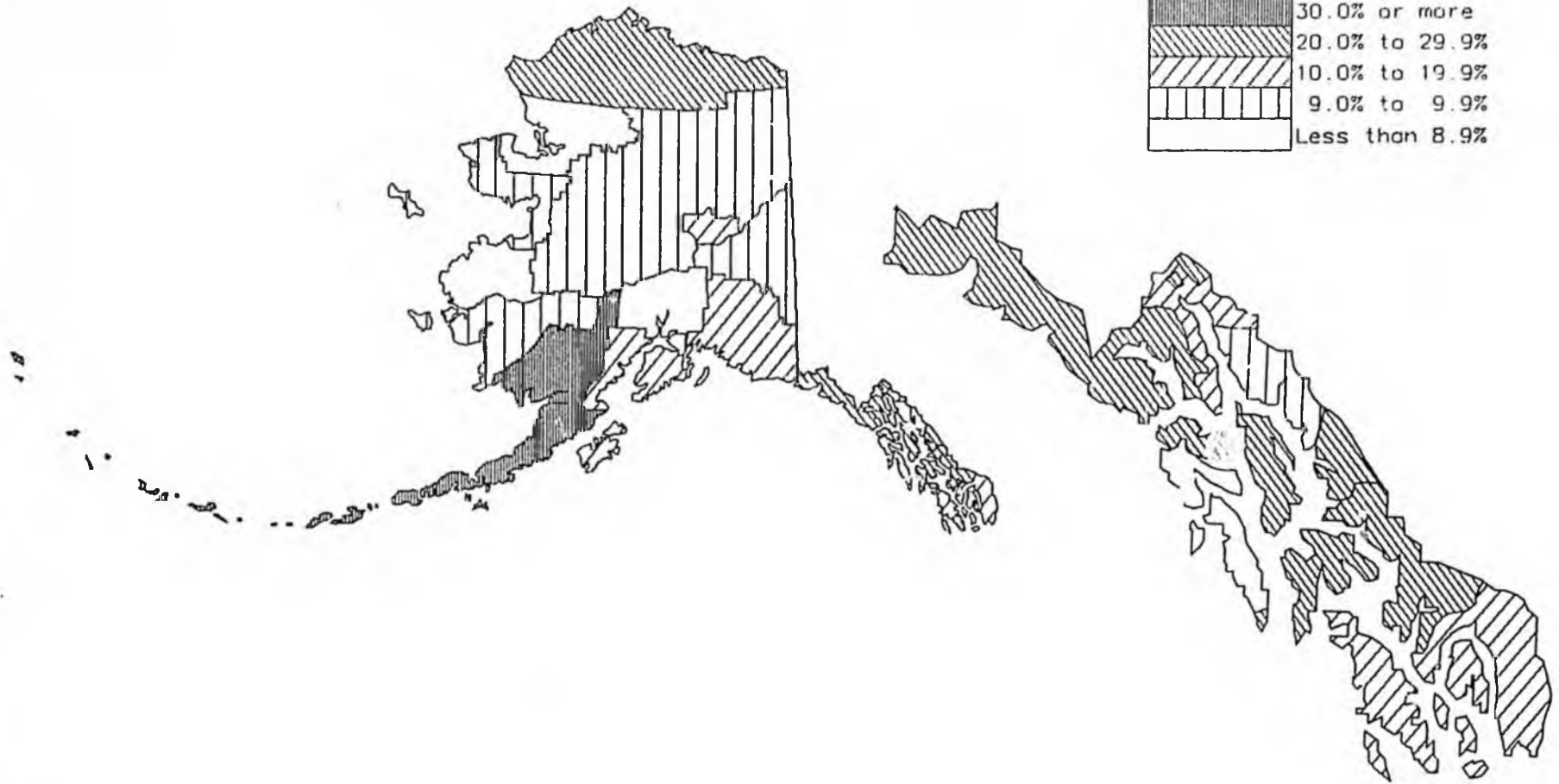
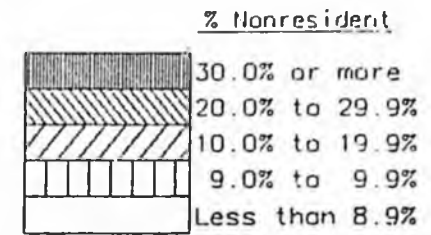
The five census areas with the highest percentage of wages paid to nonresidents in 1985 were: the Aleutian Islands (41 percent), Bristol Bay Borough (39 percent), Dillingham (30 percent), Skagway-Yakutat-Angoon (28 percent), and Wrangell-Petersburg (25 percent) (Figure 2-4). Most of the wages paid to nonresidents in these areas were paid to workers in the manufacturing (seafood processing) industry (Appendix Tables A-31, A-32, A-34, A-36, A-37). The North Slope Borough had the sixth highest percent of wages paid to nonresidents (25 percent), with the majority of those wages going to workers in the construction and mining industries (Appendix Table A-24). Anchorage, Fairbanks, and the North Slope Borough lead the state in total wages paid to nonresidents, with 40 percent, 16 percent, and 10 percent respectively of all wages paid to nonresidents in 1985 (Appendix Table A-5).

Those same five census areas also had the highest percentage of nonresident employees; the Aleutian Islands, 61 percent; Bristol Bay Borough, 59 percent; Dillingham, 46 percent; Skagway-Yakutat-Angoon, 43 percent; and Wrangell-Petersburg, 43 percent (Figure 2-5). Most of the nonresident employees in those areas also worked in the manufacturing (seafood processing) industry. The North Slope, however, slipped to ninth place behind Kodiak Island Borough, Valdez-Cordova, and Haines Borough, three other census areas with a high percentage of nonresident employees due to the food processing industry. This time Anchorage, Fairbanks, and the Kenai Peninsula Borough lead the state in the total number of nonresident employees, with 41 percent, 10 percent, and six percent respectively of all nonresident employees in Alaska during 1985.

FIGURE 2-6

# % OF TOTAL WAGES PAID TO NONRESIDENTS

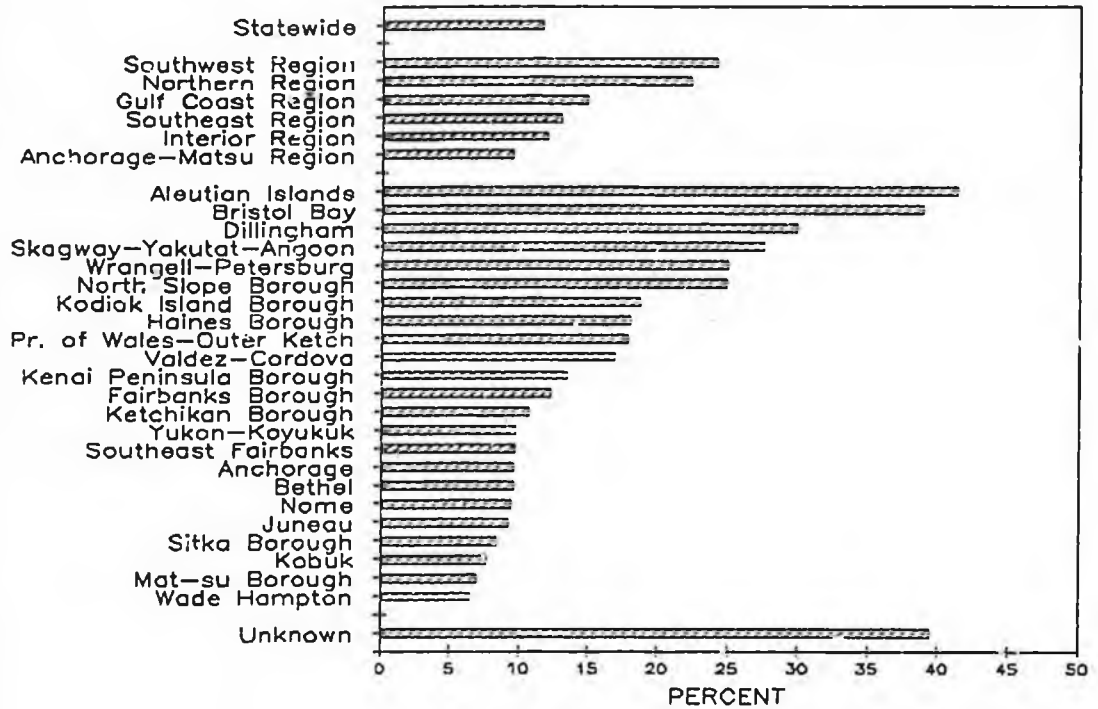
By Census Area, Alaska 1985



Source: Alaska Department of Labor, Research and Analysis.

FIGURE 2-4

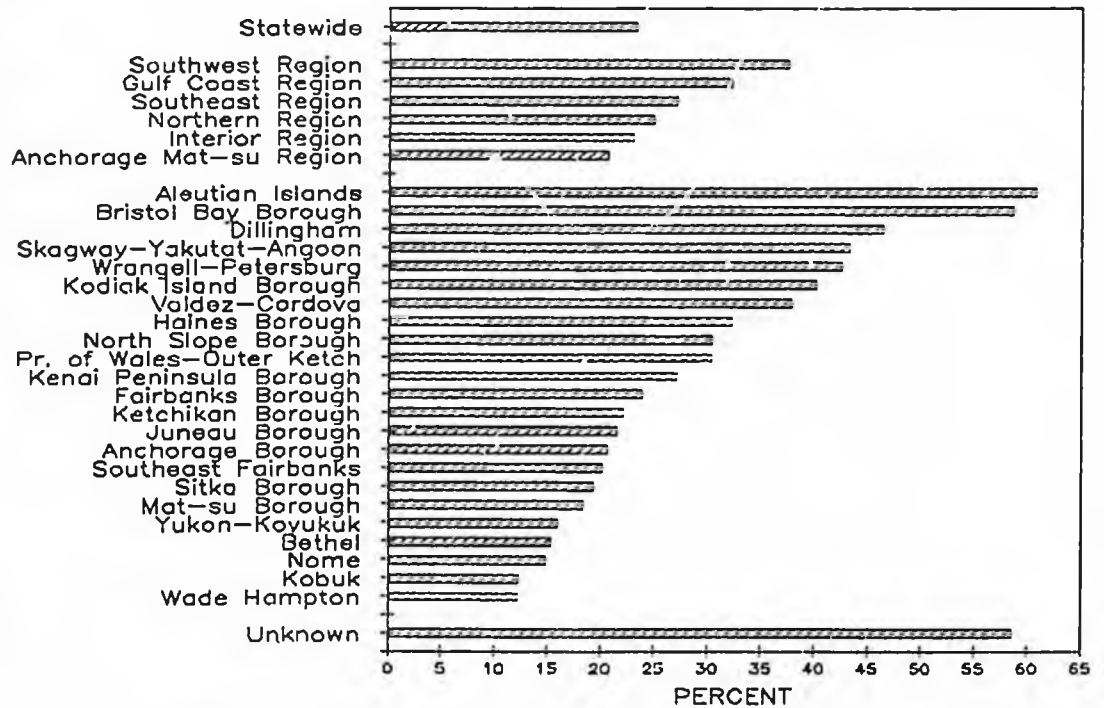
% OF TOTAL WAGES PAID TO NONRESIDENTS  
BY GEOGRAPHIC ZONE, 1985



Source: Alaska Department of Labor, Research and Analysis

FIGURE 2-5

% OF EMPLOYEES WHO WERE NONRESIDENTS  
BY GEOGRAPHIC ZONE, 1985



Source: Alaska Department of Labor, Research and Analysis