

1 SB349
2 128315-1
3 By Senators Ross, Fielding, Coleman, Beasley, Irons, Figures
4 and Singleton
5 RFD: Judiciary
6 First Read: 05-APR-11

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8 SYNOPSIS: Existing law does not require contractors of
9 public works or works for businesses obtaining
10 state or local incentive tax credits, abatements,
11 or preferences to engage resident workers.

12 This bill would provide for the employment
13 of at least a certain amount of resident workers
14 for such construction projects costing more than
15 \$200,000, and would provide for a criminal penalty
16 and a civil cause of action for a violation of this
17 requirement.

18 Amendment 621 of the Constitution of Alabama
19 of 1901, now appearing as Section 111.05 of the
20 Official Recompilation of the Constitution of
21 Alabama of 1901, as amended, prohibits a general
22 law whose purpose or effect would be to require a
23 new or increased expenditure of local funds from
24 becoming effective with regard to a local
25 governmental entity without enactment by a 2/3 vote
26 unless: it comes within one of a number of
27 specified exceptions; it is approved by the

1 affected entity; or the Legislature appropriates
2 funds, or provides a local source of revenue, to
3 the entity for the purpose.

4 The purpose or effect of this bill would be
5 to require a new or increased expenditure of local
6 funds within the meaning of the amendment. However,
7 the bill does not require approval of a local
8 governmental entity or enactment by a 2/3 vote to
9 become effective because it comes within one of the
10 specified exceptions contained in the amendment.

11
12 A BILL
13 TO BE ENTITLED
14 AN ACT
15

16 To provide for the employment of a certain amount of
17 resident workers for public works or works for businesses
18 obtaining state or local incentive tax credits, abatements, or
19 preferences and to provide for criminal penalties and a civil
20 cause of action for violations; and in connection therewith
21 would have as its purpose or effect the requirement of a new
22 or increased expenditure of local funds within the meaning of
23 Amendment 621 of the Constitution of Alabama of 1901, now
24 appearing as Section 111.05 of the Official Recompilation of
25 the Constitution of Alabama of 1901, as amended.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. (a) Every public officer, contractor,
2 superintendent, or agent engaged in or in charge of the
3 construction of any public building or public improvement or
4 works of any kind for the state or any agency or subdivision
5 thereof, including any project financed by bonds issued by a
6 public authority or corporation, or any board, municipal
7 commission, or governmental agency of the state, or any county
8 or municipality in the state, or any agency or subdivision of
9 the state, or a county or municipality therein, or any
10 contractor, superintendent, or agent engaged in or in charge
11 of the construction of any building or improvement or any
12 works of any kind for a business obtaining state or local
13 incentive tax credits, abatements, preferences, or other
14 special tax treatment from the state or any municipality,
15 county, board, municipal commission, or governmental agency of
16 the state or of any municipality or county shall employ at
17 least 90 percent of the workers for the project from persons
18 who have actually resided in Alabama for two years next
19 preceding their employment if the cost to the owner of the
20 construction exceeds two hundred thousand dollars (\$200,000).
21 Measures taken to comply with this provision shall include the
22 posting of notices at the proposed job site and in one local
23 newspaper of general circulation concerning the project and
24 the availability of jobs and how to apply for them, notifying
25 the local building and trade unions of the project and the
26 availability of jobs, and notifying local employment offices
27 of the project and the availability of jobs.

1 (b) In the event workers qualified under this
2 section are not available, then the contractor, officer,
3 superintendent, agent, or person in charge of such work shall
4 notify in writing the local building and trade unions, the
5 mayor of the municipality in which the work is being done, the
6 judge of probate of the county in which the work is being
7 done, and the Governor and public authority or public
8 corporation issuing the bonds for the project. The same
9 written notice shall be given to the president, chair, or
10 executive officer of a board, municipal commission, or
11 governmental agency for which such work is being done and,
12 unless the local building and trade unions, the mayor,
13 Governor, president, executive officer, or chair, as the case
14 may be, shall forthwith supply the contractor, officer,
15 superintendent, agent, or person in charge of the work with
16 the satisfactory workers needed, the contractor, officer,
17 superintendent, or agent may employ workers who are not
18 qualified under this section to make up the deficiency.
19 Nothing in this section shall be construed to prevent the
20 state or any county or municipality or any board or commission
21 from placing or letting any contract for the erection or
22 construction of any public building or public works in the
23 open market or soliciting bids from persons, firms, or
24 corporations outside of the State of Alabama. It is further
25 provided that any person, firm, or corporation from outside of
26 the state that may obtain such a contract for public
27 buildings, abatements, or public works or construction or

1 improvement project for a business obtaining such state or
2 local incentive tax credits, abatements, or preferences, or
3 other special tax treatment shall comply with this section
4 upon undertaking such a contract or work or project.

5 Section 2. (a) When any worker furnishes his or her
6 employer with a certificate from the sheriff, clerk of the
7 circuit court, or member of the board of registrars of the
8 county of his or her domicile to the effect that the worker
9 has actually resided in this state for two years next
10 preceding such employment, the employer, acting in good faith,
11 shall be relieved of any liability for employing such worker.

12 (b) Any person who violates Section 1 is guilty of a
13 Class C misdemeanor and shall, upon conviction, be punished as
14 prescribed by law. Each day of employment in violation of this
15 section shall constitute a separate Class C misdemeanor.

16 (c) Any worker who has actually resided in Alabama
17 for two years next preceding the commencement of a
18 construction project subject to Section 1 who can show that he
19 or she has applied for a job in connection with such a
20 construction project and has not been hired, with a
21 nonresident worker being hired instead, or that he or she
22 would have applied for a job with such construction project
23 had he or she been notified and the officer, contractor,
24 superintendent, or agent engaged in or in charge of such
25 construction project did not provide any reasonable notice,
26 and who can show that he or she is reasonably qualified to
27 work on the project, has a right of action against such

1 officer, contractor, superintendent, or agent for lost wages
2 or salaries thereby resulting from his or her not being hired
3 for the project, together with reasonable attorney's fees and
4 costs upon prevailing under this section.

5 Section 3. Although this bill would have as its
6 purpose or effect the requirement of a new or increased
7 expenditure of local funds, the bill is excluded from further
8 requirements and application under Amendment 621, now
9 appearing as Section 111.05 of the Official Recompilation of
10 the Constitution of Alabama of 1901, as amended, because the
11 bill defines a new crime or amends the definition of an
12 existing crime.

13 Section 4. This act shall become effective on the
14 first day of the third month following its passage and
15 approval by the Governor, or its otherwise becoming law.