

Senate Labor and Commerce Committee
March 13, 2012
Testimony of Carl Portman, Deputy Director,
Resource Development Council for Alaska
HB168, Injunctive Security for Industrial Operations

Chairman Egan and members of the committee, thank you for the opportunity to testify this afternoon on HB168, Injunctive Security for Industrial Operations. RDC appreciates the scheduling of this bill and we recognize the many other issues demanding the committee's time.

One of RDC's top legislative priorities is to support efforts to bring more accountability to the appeals and litigation process for community and resource development projects. HB 168 makes progress in this regard by ensuring opponents to projects have some "skin in the game."

Under current law, plaintiffs have little incentive not to file lawsuits and appeals and seek injunctions to stop development projects. Seeking injunctions costs plaintiffs very little while the project sponsors endure the high costs of uncertainty and delay. The discovery phase in these types of cases can cost hundreds of thousands of dollars to the State and project proponents. Even when projects are not enjoined, the uncertainty of litigation can effectively stop progress on projects.

It is not just the project sponsor who is adversely affected by these injunctions. The employees of project sponsors, contractors, and their employees often are burdened with the direct and immediate impacts of a stay on a permit, which causes construction and development to shut down. Often those hurt the most are workers and their families, because when projects are enjoined, workers are often laid off. Under existing law, judges have not required opponents of developing Alaska's resources to post bonds or other security to cover the economic harm to the project and to the workforce caused by parties seeking injunctions.

HB 168 does not limit the ability of citizens to sue. What it does do is require a bond in those cases where an injunction is requested before the case is adjudicated.

HB168 strikes an appropriate balance by removing incentives for filing ideologically-based challenges designed simply to delay projects while still preserving the right to bring meritorious challenges.

Examples of ideologically-based challenges abound throughout Alaska. The timber industry in Southeast Alaska would be in better shape today if a bond was required before timber sales are enjoined. That industry has been decimated by endless appeals and litigation over federal timber sales. Recent headlines included yet more legal challenges that may further delay exploratory drilling in the Alaska OCS, drilling that has yet to occur on leases sold in 2008. Litigation in the arctic OCS is delaying the State's goal to increase throughput in TAPS through new OCS development. While these cases are in federal jurisdiction, litigation in State court is likely to increase with the primacy assumed over the water program.

The ability of project proponents to weather the storm of an unfounded stay of activities varies based on project economics and the strength of the balance sheets of those developing the projects. A worker who loses employment because of a court ordered stay might not have the lasting power to wait out what are often lengthy legal proceedings. It is fitting that this bill was referred to this committee, as both labor and commerce are directly impacted. This bill can provide some accountability to mitigate disruption of commerce while protecting the interests of workers engaged in projects that may be subject to challenges.

RDC encourages this committee to pass this bill. Thank you again for hearing this bill and allowing time for our testimony.