

ALASKA STATE LEGISLATURE

House District 6
Co-Chair House Resources Committee
Transportation Committee
Fisheries Committee
Joint Armed Services Committee



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Sponsor Statement for CSHB 47(JUD)

“An Act requiring a party seeking a restraining order, preliminary injunction, or order vacating or staying the operation of certain permits affecting an industrial operation to give security in the amount the court considers proper for costs incurred and damages suffered if the industrial operation is wrongfully enjoined or restrained.”

Under current law the cost to bring a lawsuit against a legally permitted project is in effect zero. There is very little risk in bringing a suit. All the risk is borne by the defendants. These actions do shutdown projects at significant costs to working Alaskans, businesses and the state treasury. HB 47 seeks to remedy the situation by leveling the playing field.

HB 47 parallels the requirements of Alaska Civil Rule 65(c). As written, 65(c) states: “***no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained***”.

HB47 closely mirrors the language of Alaska Civil Rule 65(c) in order to clarify that the proposed statute would not change the court rule. Judges already have the ability to require security. In most instances, they are not doing so. HB 47 simply requests that part of the court’s deliberation process should include payment of wages and benefits for employees & payments to contractors and sub-contractors of the industrial operation that is being shut down. The party asking the court to require security must present evidence of the costs and damages incurred. The court should then consider this as one of the relevant factors when it determines a bond/security amount. The amount of security is totally within the hands of the court.

Language was added in the House Judiciary Committee to further clarify that no such security is required of the state and municipalities and to exclude permitting programs in which DEC or DNR issues permits under a state primacy permitting program that was developed under federal law and approved by a federal agency.