

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

April 11, 2012

1:34 p.m.

**MEMBERS PRESENT**

Senator Hollis French, Chair  
Senator Bill Wielechowski, Vice Chair  
Senator Joe Paskvan  
Senator John Coghill

**MEMBERS ABSENT**

Senator Lesil McGuire

**COMMITTEE CALENDAR**

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 224(FIN) AM  
"An Act prohibiting the sale or gift of a product containing nicotine to a minor under certain conditions."

- MOVED CSHB 224(FIN) AM OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 55(JUD)  
"An Act adding definitions of 'gravity knife' and 'switchblade' to the criminal law; and relating to reserving the authority to regulate knives to the state with limited exceptions for municipalities to regulate knives."

- MOVED CSHB 55(JUD) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 343(JUD) AM  
"An Act relating to disclosure of records of the Department of Health and Social Services pertaining to children in certain circumstances; and providing for an effective date."

- HEARD & HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 168(JUD)  
"An Act requiring the amount of the security given by a party seeking an injunction or order vacating or staying the operation of a permit affecting an industrial operation to include an amount for the payment of wages and benefits for employees and payments to contractors and subcontractors that may be lost if the industrial operation is wrongfully enjoined."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 224

SHORT TITLE: SALES OF NICOTINE PRODUCTS TO MINOR

SPONSOR(S): REPRESENTATIVE(S) SEATON

04/04/11 (H) READ THE FIRST TIME - REFERRALS  
04/04/11 (H) JUD, FIN  
04/11/11 (H) JUD AT 1:00 PM CAPITOL 120  
04/11/11 (H) Scheduled But Not Heard  
04/13/11 (H) JUD AT 1:00 PM CAPITOL 120  
04/13/11 (H) Moved CSHB 224(JUD) Out of Committee  
04/13/11 (H) MINUTE(JUD)  
04/14/11 (H) JUD RPT CS(JUD) NT 4DP 3NR  
04/14/11 (H) DP: HOLMES, THOMPSON, LYNN, GATTO  
04/14/11 (H) NR: PRUITT, KELLER, GRUENBERG  
02/23/12 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
02/23/12 (H) Scheduled But Not Heard  
02/27/12 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
02/27/12 (H) Moved CSHB 224(FIN) Out of Committee  
02/27/12 (H) MINUTE(FIN)  
02/29/12 (H) FIN RPT CS(FIN) NT 9DP 1AM  
02/29/12 (H) DP: FAIRCLOUGH, T.WILSON, GUTTENBERG,  
COSTELLO, EDGMON, DOOGAN, JOULE,  
STOLTZE,  
02/29/12 (H) THOMAS  
02/29/12 (H) AM: GARA  
03/12/12 (H) TRANSMITTED TO (S)  
03/12/12 (H) VERSION: CSHB 224(FIN) AM  
03/14/12 (S) READ THE FIRST TIME - REFERRALS  
03/14/12 (S) HSS, JUD  
03/28/12 (S) HSS AT 1:30 PM BUTROVICH 205  
03/28/12 (S) Moved CSHB 224(FIN) am Out of Committee  
03/28/12 (S) MINUTE(HSS)  
03/30/12 (S) HSS RPT 4DP  
03/30/12 (S) DP: DAVIS, MEYER, EGAN, DYSON  
04/09/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
04/09/12 (S) Heard & Held  
04/09/12 (S) MINUTE(JUD)  
04/11/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 55

SHORT TITLE: KNIVES, GRAVITY KNIFE & SWITCHBLADE

SPONSOR(S): REPRESENTATIVE(S) NEWMAN, LYNN

01/18/11 (H) PREFILE RELEASED 1/7/11  
 01/18/11 (H) READ THE FIRST TIME - REFERRALS  
 01/18/11 (H) JUD  
 02/15/12 (H) JUD AT 1:00 PM CAPITOL 120  
 02/15/12 (H) Moved CSHB 55(JUD) Out of Committee  
 02/15/12 (H) MINUTE(JUD)  
 02/17/12 (H) JUD RPT CS(JUD) NT 6DP  
 02/17/12 (H) DP: LYNN, GRUENBERG, KELLER, THOMPSON,  
 HOLMES, GATTO  
 03/05/12 (H) TRANSMITTED TO (S)  
 03/05/12 (H) VERSION: CSHB 55(JUD)  
 03/06/12 (S) READ THE FIRST TIME - REFERRALS  
 03/06/12 (S) JUD  
 04/09/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 04/09/12 (S) Heard & Held  
 04/09/12 (S) MINUTE(JUD)  
 04/11/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 343

SHORT TITLE: DISCLOSURE OF CHILDREN'S RECORDS

SPONSOR(s): REPRESENTATIVE(s) MUNOZ

02/22/12 (H) READ THE FIRST TIME - REFERRALS  
 02/22/12 (H) HSS, JUD  
 03/15/12 (H) HSS AT 3:00 PM CAPITOL 106  
 03/15/12 (H) Moved CSHB 343(HSS) Out of Committee  
 03/15/12 (H) MINUTE(HSS)  
 03/16/12 (H) HSS RPT CS(HSS) 3DP 3NR  
 03/16/12 (H) DP: SEATON, MILLER, KERTTULA  
 03/16/12 (H) NR: MILLETT, HERRON, KELLER  
 03/26/12 (H) JUD AT 1:00 PM CAPITOL 120  
 03/26/12 (H) Heard & Held  
 03/26/12 (H) MINUTE(JUD)  
 03/28/12 (H) JUD AT 1:00 PM CAPITOL 120  
 03/28/12 (H) Moved CSHB 343(JUD) Out of Committee  
 03/28/12 (H) MINUTE(JUD)  
 03/30/12 (H) JUD RPT CS(JUD) 4DP 1NR 1AM  
 03/30/12 (H) DP: GRUENBERG, KELLER, PRUITT, THOMPSON  
 03/30/12 (H) NR: LYNN  
 03/30/12 (H) AM: HOLMES  
 04/06/12 (H) TRANSMITTED TO (S)  
 04/06/12 (H) VERSION: CSHB 343(JUD) AM  
 04/07/12 (S) READ THE FIRST TIME - REFERRALS  
 04/07/12 (S) JUD  
 04/11/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 168

SHORT TITLE: INJUNCTION SECURITY: INDUSTRIAL OPERATION  
SPONSOR(s): REPRESENTATIVE(s) FEIGE

02/23/11	(H)	READ THE FIRST TIME - REFERRALS
02/23/11	(H)	JUD
02/25/11	(H)	BILL REPRINTED 2/24/11
03/21/11	(H)	JUD AT 1:00 PM CAPITOL 120
03/21/11	(H)	Heard & Held
03/21/11	(H)	MINUTE(JUD)
03/23/11	(H)	JUD AT 1:00 PM CAPITOL 120
03/23/11	(H)	<Bill Hearing Canceled>
03/30/11	(H)	JUD AT 1:00 PM CAPITOL 120
03/30/11	(H)	Scheduled But Not Heard
04/04/11	(H)	JUD AT 1:00 PM CAPITOL 120
04/04/11	(H)	Moved CSHB 168(JUD) Out of Committee
04/04/11	(H)	MINUTE(JUD)
04/05/11	(H)	JUD RPT CS(JUD) 3DP 2NR
04/05/11	(H)	DP: KELLER, PRUITT, THOMPSON
04/05/11	(H)	NR: GRUENBERG, HOLMES
04/07/11	(H)	TRANSMITTED TO (S)
04/07/11	(H)	VERSION: CSHB 168(JUD)
04/08/11	(S)	READ THE FIRST TIME - REFERRALS
04/08/11	(S)	L&C, JUD
02/23/12	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/23/12	(S)	<Bill Hearing Postponed>
03/01/12	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/01/12	(S)	Heard & Held
03/01/12	(S)	MINUTE(L&C)
03/13/12	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/13/12	(S)	Heard & Held
03/13/12	(S)	MINUTE(L&C)
03/20/12	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/20/12	(S)	Moved CSHB 168(JUD) Out of Committee
03/20/12	(S)	MINUTE(L&C)
03/21/12	(S)	L&C RPT 2DP 3NR
03/21/12	(S)	DP: GIESSEL, MENARD
03/21/12	(S)	NR: EGAN, DAVIS, PASKVAN
03/23/12	(S)	L&C UPDATED (2012 FORMAT) FISCAL NOTES
04/11/12	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

REPRESENTATIVE CATHY MUNOZ  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Sponsor of HB 343.

TONY NEWMAN, Program Officer  
Division of Juvenile Justice  
Department of Health and Social Services (DHSS)  
Juneau, AK

**POSITION STATEMENT:** Testified in support of HB 343.

STACIE KRALY, Assistant Attorney General  
Human Services Section  
Civil Division  
Department of Law (DOL)  
Juneau, AK

**POSITION STATEMENT:** Answered questions related to HB 343.

QUINLAN STEINER, Public Defender  
Public Defender Agency  
Department of Administration (DOA)  
Anchorage, AK

**POSITION STATEMENT:** Answered questions related to HB 343.

REPRESENTATIVE ERIC FEIGE  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Sponsor of HB 168.

MIKE JUNGREIS, member  
Resource Development Council for Alaska, Inc. (RDC)  
Anchorage, AK

**POSITION STATEMENT:** Testified in support of HB 168.

RACHEL PETRO, President and CEO  
Alaska State Chamber of Commerce  
Anchorage, AK

**POSITION STATEMENT:** Testified in support of HB 168, version D.

ANDREW KELLER, representing himself  
Fairbanks, AK

**POSITION STATEMENT:** Testified in opposition to HB 168.

BOB DICKSON, representing himself  
Anchorage, AK

**POSITION STATEMENT:** Testified in support of HB 168.

TERRY SEVY, representing himself  
Anchorage, AK

**POSITION STATEMENT:** Stated firm opposition to HB 168.

BONNIE ZIRCLE, representing herself

Palmer, AK

**POSITION STATEMENT:** Testified in opposition to HB 168.

ANDY MODEROW, Executive Director  
Alaska Conservation Alliance  
Anchorage, AK

**POSITION STATEMENT:** Testified in opposition to HB 168.

TOM WALDO, Attorney  
Earth Justice  
Juneau, AK

**POSITION STATEMENT:** Testified in opposition to HB 168.

EMILY BREEZE, representing herself  
Healy, AK

**POSITION STATEMENT:** Testified in opposition to HB 168.

MIKE SATRY, Executive Director  
Council of Alaska Producers  
Juneau, AK

**POSITION STATEMENT:** Testified in support of HB 168.

KATHY WASSERMAN, Executive Director  
Alaska Municipal League (AML)  
Juneau, AK

**POSITION STATEMENT:** Testified that the municipalities are concerned with HB 168.

SHIRLEY MARQUART, Mayor  
City of Unalaska and  
President  
Alaska Municipal League  
Unalaska, AK

**POSITION STATEMENT:** Raised questions about HB 168.

BARBARA HUFF-TUCKNESS, Executive Director  
Governmental Affairs  
Teamsters Local 959  
Anchorage, AK

**POSITION STATEMENT:** Testified in support of HB 168.

#### **ACTION NARRATIVE**

[1:34:56 PM](#)

**CHAIR HOLLIS FRENCH** called the Senate Judiciary Standing Committee meeting to order at 1:34 p.m. Present at the call to

order were Senators Wielechowski, Coghill, and Chair French. Senator Paskvan arrived soon thereafter.

**HB 224-SALES OF NICOTINE PRODUCTS TO MINOR**

[1:35:41 PM](#)

CHAIR FRENCH announced the consideration of HB 224, "An Act prohibiting the sale or gift of a product containing nicotine to a minor under certain conditions." The bill was heard previously and public testimony was taken. Finding no further questions or discussion, he asked the will of the committee.

[1:35:59 PM](#)

SENATOR WIELECHOWSKI moved to report CS for HB 224 from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that CSHB 224(FIN)am moved from the Senate Judiciary Standing Committee.

**HB 55-KNIVES, GRAVITY KNIFE & SWITCHBLADE**

[1:36:12 PM](#)

CHAIR FRENCH announced the consideration of HB 55, "An Act adding definitions of 'gravity knife' and 'switchblade' to the criminal law; and relating to reserving the authority to regulate knives to the state with limited exceptions for municipalities to regulate knives." The bill was heard previously and public testimony was taken. Finding no further questions or discussion, he asked the will of the committee.

[1:36:37 PM](#)

SENATOR WIELECHOWSKI moved to report CS for HB 55 from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that CSHB 55(JUD) moved from the Senate Judiciary Standing Committee.

[1:36:50 PM](#)

At ease from 1:36 p.m. to 1:37 p.m.

**HB 343-DISCLOSURE OF CHILDREN'S RECORDS**

[1:37:58 PM](#)

CHAIR FRENCH announced the consideration of HB 343, "An Act relating to disclosure of records of the Department of Health

and Social Services pertaining to children in certain circumstances; and providing for an effective date."

SENATOR PASKVAN joined the committee.

[1:38:28 PM](#)

REPRESENTATIVE CATHY MUNOZ, sponsor of HB 343, said the bill does three primary things. First, it assures that the Division of Juvenile Justice (DJJ) and the Office of Children's Services (OCS) can exchange information to provide necessary services to children without undue delay. Second, it allows individuals with a legitimate interest - such as former clients who once were children in state custody, their parents or guardians - to receive information about delinquency history and health records from DJJ. Third, it clarifies cumbersome language in current law regarding public disclosure of juvenile information. The legislation strives to preserve the legislative intent of maintaining public safety by disclosing appropriate information on serious offenders while protecting the confidentiality of offenders who pose less risk to society.

[1:41:15 PM](#)

TONY NEWMAN, Program Officer, Division of Juvenile Justice, Department of Health and Social Services (DHSS), spoke to the benefits of improving OCS and DJJ's ability to collaborate. The amendment to AS 47.12.310(f) (Section 3) will enable DJJ to be more responsive to requests, particularly from individuals with a need for background information on their juvenile history. Provisions in Section 4 will improve the ability of staff and the public to understand when information about a juvenile offense is subject to public disclosure and when it is not.

He stated that the proposed bill will not change any laws regarding victim notification, and parents and agencies with well-established rights to juvenile information will continue to receive the necessary information to effectively carry out their duties. The laws surrounding child abuse and neglect are not affected by the proposed bill.

[1:43:45 PM](#)

SENATOR PASKVAN asked for specifics on how the guardian ad litem or OCS employee can get a request for nondisclosure before the court.

MR. NEWMAN said the intention is not for the OCS employee to object. The guardian ad litem (GAL) or child's attorney would make the objection and the court would rule on whether the

release of information was in the best interest of the child. He continued to say that DJJ intends to develop policy and regulation to guide staff in understanding the type of information that is appropriate to exchange between the divisions.

[1:46:49 PM](#)

SENATOR PASKVAN said he was trying to understand the physical mechanism to get to the court house in those limited circumstances when it was not in the best interest to disclose the information.

MR. NEWMAN said DDJ and OCS employees already share information in all but a few pockets of the state, and this statute clarifies that presumption. He deferred further explanation to Ms. Kraly.

SENATOR PASKVAN mentioned the \$75 civil filing fee and asked what physical process is followed to get before a judge to object to the disclosure of information.

[1:49:43 PM](#)

STACIE KRALY, Assistant Attorney General, Human Services Section, Civil Division, Department of Law (DOL), explained that the majority of these situations are existing court cases so there would be a pending child in need of aid (CINA) action or a pending juvenile justice matter. In that context, the guardian ad litem, public defender, child, parent or guardian could file a motion in those existing cases. In the rare instance when neither a CINA action nor juvenile justice matter is pending, an application for an original action would have to be filed with the court to protect or prohibit further disclosure. The individuals representing the minor would bring that motion.

MS. KRALY acknowledged that the issue of the filing fee wasn't discussed since the majority of cases arise in an existing civil context.

[1:51:08 PM](#)

CHAIR FRENCH asked for a discussion of the tension between the desire to protect a minor from their youthful indiscretions and the need for the public to be aware of those acts in certain circumstances.

MR. NEWMAN said he believes the intention of the 1997 law regarding public disclosure was to reconcile that tension,

because some information about juvenile offenses clearly should be available to the public.

CHAIR FRENCH asked if the general rule is that most juvenile records will stay confidential.

MR. NEWMAN said yes; the statute is very specific regarding the conditions under which agency records may be released. HB 343 addresses the release of information that will be rehabilitative and in the child's interest.

[1:53:22 PM](#)

CHAIR FRENCH asked if the language on page 5, line 29 through the end of the subsection says that if information is stored in electronic form it may be disclosed in that same medium.

MR. NEWMAN said yes.

CHAIR FRENCH asked how the seven enumerated offenses listed on page 5, lines 11-18, fit in the scheme of the bill.

MR. NEWMAN explained that current law and the bill provide that when a minor is charged with having committed one of those more serious offenses, the information about the offense may be disclosed upon adjudication if the juvenile is age 13 or older. Lesser offenses are not eligible for public disclosure.

CHAIR FRENCH asked if in some situations juvenile jurisdiction can be maintained to age 21.

MR. NEWMAN relayed that juvenile jurisdiction for a new offense applies to age 18. A juvenile already under agency jurisdiction can be maintained under probation supervision or in state custody until his or her 19th birthday, and if both the juvenile and court agree, jurisdiction can extend to the 20th birthday.

CHAIR FRENCH asked if this law could pertain to an individual who is age 19.

MR. NEWMAN responded that a 19-year-old who commits a new offense and is already under juvenile jurisdiction will generally be remanded to the adult system.

CHAIR FRENCH asked if the bill provides that in the future those records can be disclosed.

MR. NEWMAN said current law and this bill provide that public disclosure will be maintained for five years after the adjudication. The reasoning was that the public safety concern would generally have passed by then.

1:58:57 PM

SENATOR COGHILL asked if the requests for information might come from schools or foster homes.

MR. NEWMAN replied there are different statutes that allow foster parents and victims to receive information about a juvenile's history. The bill is addressing information that may be disclosed to the public.

CHAIR FRENCH asked if the bill had any opposition.

MR. NEWMAN said no.

2:00:00 PM

CHAIR FRENCH closed public testimony, and asked Mr. Steiner if the Public Defender Agency had concerns about the current version of HB 343.

QUINLAN STEINER, Public Defender, Public Defender Agency, Department of Administration (DOA), discussed working with Mr. Newman throughout the process and the work that was done on sections 1 and 4 to improve the bill. Addressing the circumstances of nondisclosure was critical, he said.

CHAIR FRENCH asked if a juvenile could oppose the release of these records.

MR. STEINER said yes, but as a practical matter it will generally come from the guardian ad litem in a CINA case. Theoretically at that point there is no juvenile justice case

CHAIR FRENCH asked how many juveniles whose records will be released will be represented by someone who will receive notice of the release.

MR. STEINER said there is no notice provision, and a juvenile may not have a lawyer unless there is an ongoing CINA case.

CHAIR FRENCH asked if in his judgment notice isn't necessary.

MR. STEINER responded that that was one reason he worked closely to preserve the option to litigate.

CHAIR FRENCH recalled that the Public Defender Agency rarely takes a position on a bill. He asked if it was fair to say he didn't oppose it.

MR. STEINER confirmed that he didn't take a position on the bill, but some sections, Section 4 in particular, were an improvement.

[2:05:24 PM](#)

CHAIR FRENCH announced he would hold HB 343 in committee.

**HB 168-INJUNCTION SECURITY: INDUSTRIAL OPERATION**

[2:05:40 PM](#)

CHAIR FRENCH announced the consideration of HB 168, and noted the committee had lost its quorum.

[2:06:12 PM](#)

REPRESENTATIVE ERIC FEIGE, sponsor of HB 168, introduced HB 168 speaking to the following sponsor statement:

Under current law the cost to bring a public litigant 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 shut down projects at significant costs to working Alaskans, businesses and the state treasury. CSHB 168(JUD) seeks to remedy the situation by leveling the playing field.

CSHB 168(JUD) 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."

At the request of the Department of Law, HB 168 was amended to more closely mirror the language of Alaska Civil Rule 65(c) in order to clarify that the proposed statute would not change the court rule. The court already has the ability to require security. CSHB 168(JUD) 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 shut down. The amount of security and how it is calculated is totally within the hands of the court.

2:09:32 PM

CHAIR FRENCH recapped an earlier conversation with the sponsor regarding primacy and relayed that he subsequently asked Legislative Legal to address that question and whether the current version of the bill may raise issues for the EPA similar to those it expressed in a 2006 letter about a bill passed by the Utah Legislature. Legislative Counsel, Dennis C. Bailey, said the short answer is "Yes." He asked Representative Feige if he had had an opportunity to read the memo.

REPRESENTATIVE FEIGE confirmed that he was familiar with the Utah case.

CHAIR FRENCH explained the issue is whether or not Alaska law is the same as federal law with respect to injunctions. Too much separation jeopardizes the state's position of primacy on several areas of permitting. He asked the sponsor if his office sought any legal advice regarding the primacy issue.

REPRESENTATIVE FEIGE replied they asked for verification on several question.

CHAIR FRENCH asked if the responses were in memo form or verbal conversations with attorneys.

REPRESENTATIVE FEIGE said both.

CHAIR FRENCH asked if he cared to share any of those memos with the committee.

REPRESENTATIVE FEIGE said he didn't bring that information, but he did not believe the bill raised a significant primacy issue and he was prepared to add intent language to clarify that point.

2:12:12 PM

CHAIR FRENCH asked if an unjust result in any case in Alaska illustrates the need for the bill.

REPRESENTATIVE FEIGE cited the May 2004 Pogo Mine case as one example that put some people out of work for about two weeks. In another example Shell Oil's projects on the Chukchi and Beaufort

seas were stopped for several years. About 700 jobs were affected the summer he was involved. He opined that the concept of enjoining a resource project was not unusual and the bill was being proactive.

2:13:39 PM

CHAIR FRENCH asked if bonds were posted in the Shell cases.

REPRESENTATIVE FEIGE said he didn't know; those were federal cases.

CHAIR FRENCH reminded the committee that primacy is whether or not Alaska law tracks federal law.

SENATOR PASKVAN asked about the federal legal standard for posting a bond that is similar to or different than what is proposed in the bill.

REPRESENTATIVE FEIGE deferred the question to Mike Jungreis.

2:15:08 PM

MIKE JUNGREIS, member, Resource Development Council of Alaska, Inc., (RDC), testified in support of HB 168. He spoke of the awesome power of judges to grant injunctions and highlighted that the bill is aimed only at preliminary adjudications, before a judge knows whether a permit, for example, was properly or improperly granted. It gives the court guidance on what factors to consider in deciding whether or not to grant an injunction, including the potential damage to employees, contractors, and small businesses. He emphasized that the decision does not restrict any access to the court or the ability of the court to issue a final injunction.

He reported that the Ninth Circuit Court of Appeals has occasionally issued injunctions to stop projects with only a minimum bond requirement. The Kensington Mine case is an example. Also, the U.S. Supreme Court held that there must be a determination as to whether a bond should be required and the amount. He emphasized that it is certainly consistent with federal law and has been Alaska's long-standing law that a bond be issued. The bill neither extends nor restricts the powers of the court; it gives guidelines.

MR. JUNGREIS opined that the current situation is out of balance because the applicants have no skin in the game. They are not required to come up with any way to protect the project, employees, and contractors for the damage that can be done with

a preliminary injunction. The bill tries to redress that balance and place things on an even keel. Finally, it does not restrict the state's power to grant permits; it only applies to third parties.

CHAIR FRENCH asked if he was familiar with the Pogo Mine case.

MR. JUNGREIS said yes, but he couldn't say that this statute would have come into play. He reiterated that it would have been invoked in the Kensington case, and opined that it would have been helpful to all concerned if the courts had specific guidelines for evaluating damage.

[2:21:40 PM](#)

SENATOR PASKVAN asked if the state has the ability to file an injunction.

MR. JUNGREIS said this proposal would not affect the state; the state is excused from posting a bond for injunctions.

REPRESENTATIVE FEIGE added that the state could simply withdraw or suspend the permit if it wanted to stop a project.

SENATOR PASKVAN asked if the state has the ability to seek an immediate injunction during the operational phase.

REPRESENTATIVE FEIGE offered his understanding that the department can shut down a project based on the permitting.

[2:24:17 PM](#)

RACHEL PETRO, President and CEO, Alaska State Chamber of Commerce, testified in support of HB 168, version D. She reported that the Alaska Chamber set litigation reform related to resource development in Alaska as a top legislative priority this year. She said under current law it costs virtually nothing to challenge a legally permitted project in Alaska. The risk and cost of litigation is borne by the defendants and Alaskans are put out of work. HB 168 seeks to level the legal playing field without infringing on any party's right to bring a legitimate issue to court. The bill does not attempt to change court rules; it simply articulates a request that wages of working Alaskans be considered. She expressed hope that the bill would gain the same bipartisan support it enjoyed in the House.

CHAIR FRENCH asked if she had any examples where the bill might have prevented a wrongful injunction that shut down a project if the party seeking the injunction had to post a bond.

MS. PETRO offered to follow up with specific examples.

CHAIR FRENCH said the question he was trying to answer was, "Are we doing something wrong we need to fix?"

[2:28:11 PM](#)

ANDREW KELLER, representing himself, Fairbanks, AK, testified in opposition to HB 168. He stated that the bill will discourage parties from questioning permits granted to corporations for industrial projects and effectively prohibit whistle-blowing. It will seriously reduce the ability to protect the air, water, wildlife, and safety from corporate irresponsibility. He noted the recent 23<sup>rd</sup> year anniversary of the Exxon Valdez spill, and warned against making it harder to prevent errors that result in disaster.

[2:29:49 PM](#)

BOB DICKSON, representing himself, Anchorage, AK, summarized his legal career and said he was testifying in support of HB 168. He said the first point is that the bill does not deter access to the court; it simply requires the court to follow the existing Court Rule 65(c). He read subsection (c) and relayed that in all his experience he has yet to see a bond required.

He addressed the primacy question saying it's an argument without merit because the primacy issue deals with the process for issuing permits and the bill does not involve that process at all. He also pointed out that Alaska Civil Rule 65(c) is the same as the federal rule 65(c). It says the court may issue a preliminary injunction or a temporary restraining order only if the movement gives security in the amount the court considers proper. The problem, he said, is that courts grant injunctions without following the rule and requiring a bond.

He noted that the Legal Services memorandum talked about the legal grounds for getting a preliminary injunction, and pointed out that the standard is A.J. Industries v. Alaska Public Service Commission. That standard allows courts to issue injunctions even when the defendant cannot be adequately protected. The problem is that it actually takes very little to challenge a development project. This bill would remedy that situation and help the wage earners and subcontractors on a project. Addressing the question of where this has been a problem, he said no one can come up with a specific example because those cases are typically settled so there is no determination of a prevailing party.

SENATOR PASKVAN asked if maintaining primacy requires compliance with a standard that is no less than the same opportunity for judicial review under federal law.

MR. DICKSON offered his understanding that it relates to the permitting process. To the extent that it addresses equivalent judicial law, both the state and federal 65(c) rules are the same.

SENATOR PASKVAN again asked if maintaining primacy requires the state to provide access to judicial review that is no less than the federal standard.

MR. DICKSON said the access goes to the ability to appeal to the court the issuance of a permit and the bill doesn't affect that. Anyone can go into court and try to explain how the permitting process is flawed and that would be the same in both the state and federal court systems.

SENATOR PASKVAN asked if it could be argued that the state system is more restrictive than the federal system with respect to parties before the court.

MR. DICKSON offered his understanding that federal law does not have an equivalent to HB 168, but the test for getting a preliminary injunction in federal court is basically the same as in state court. A lot of federal courts are entering injunctions without requiring any bonds, he said.

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TERRY SEVY, representing himself, Anchorage, AK, stated firm opposition to HB 168. He said the bill will favor large corporations and strip individuals of their right to take action against such corporations by making it economically impossible. He spoke to the importance of developing resources prudently to ensure clean air and water for future generations. HB 168 lacks such wisdom and invites disaster, he said.

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BONNIE ZIRCLE, representing herself, Palmer, AK, testified in opposition to HB 168. She displayed photos showing damage to her West Virginia family home, farmland, and nearby streams. She explained the family home and farm was near an open pit mine that blasted once a day, and that her Palmer home and hundreds of others were located within a mile of the proposed Wishbone Hill Mine in Palmer. She said it will have the same blasting

schedule. Because her experience in West Virginia was a damaged home, slurry pond residue on farmland and contaminated wells and streams, she questioned how it would be possible to protect homes and families in the MatSu Valley if HB 168 were to pass.

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ANDY MODEROW, Executive Director, Alaska Conservation Alliance, noted that he submitted written testimony. He stated that ACA has concern that HB 168 is unconstitutional, punitive, and does nothing to stop frivolous litigants. The bill would require Alaskans to bond for the costs of delay if a judge issues temporary relief after initial review of a case. He explained that temporary relief is only granted if a case is likely to succeed and if irreparable harm will occur if it is not granted. If a case is frivolous, the judge will throw it out. This punishes Alaskans that bring the strongest cases and does nothing to punish the frivolous litigant. He emphasized that it runs contrary to the American tradition of protecting whistle-blowers to require a citizen to pay for a governmental error or a corporation not following the terms of a permit. He concluded stating that communities, tribal organizations, municipalities, and individual Alaskans ought to have the right to stand up for clean air, land, and water.

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TOM WALDO, Attorney, Earth Justice, Juneau, AK, stated that HB 168 impermissibly prevents citizens from making effective use of the courts to protect resources by requiring the posting of unaffordable bonds. He emphasized that it is very difficult to get a preliminary injunction. The applicant has to show the case is very strong and that irreparable harm will result absent the stay. These requests aren't made very often, but can be very important. He said his experience is that bonds for injunctions for industrial operations would often be in the millions of dollars. This means the bill effectively prevents people from getting preliminary injunctions or stays in any circumstance, even to prevent irreparable harm.

He listed three reasons that the bill would be unconstitutional. First, it changes court rules adopted by the Alaska Supreme Court that already govern injunctions, stays, and bonds. The court would have no discretion. Second, it violates equal protection because it singles out a particular class of citizens for particularly discriminatory treatment. Third, it violates due process, because it deprives citizens of meaningful access to the courts to get interim relief.

MR. WALDO stated that Earth Justice represented the appellants in the Pogo Mine litigation, and that is a particularly inappropriate example to illustrate any reason for HB 168. There was never an injunction and the case never went to court. He explained that the EPA issued a permit under the Clean Water Act and Earth Justice filed an appeal to establish a legal point about jurisdiction under the Act. The Pogo Mine responded by stopping construction and laying off workers. Although people attribute that to an injunction, the parties to the case did not intend to shut down the mine.

He concluded that the effect of the bill will be to prevent citizens from getting needed relief in cases where it is appropriate in order to avoid a hypothetical problem that no one has been able to establish exists in the real world.

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EMILY BREEZE, representing herself, Healy, AK, said she was testifying against HB 168 because it works to erode cherished and vital constitutional rights: the right to have one's voice heard and access to the courts. She spoke of the option to bring forth local grievances and issues, the ability to ask questions, and voice concerns or support, and described these as treasured actions. She relayed that she lives in a town that feels the effects of resource development, and that fracking will potentially occur beneath her house. If HB 168 were to pass she couldn't ask for a second look on these projects because she couldn't afford the bond. She stated that it was the job of the court system to weed out frivolous lawsuits, and the people should listen if the court finds reason for an injunction.

MS. BREEZE concluded that by opposing the bill she was supporting the creation of future jobs, the responsible cultivation of natural resources, the health and safety of her family and community members, and the right to have an equal opportunity to have her voice heard.

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MIKE SATRY, Executive Director, Council of Alaska Producers, Juneau, AK, testified in support of HB 168. He stated that the council supports a rigorous science-based permitting system that allows responsible development of Alaska's resources. The council also respects the established public process used to manage these resources. However, when a permitted project is inappropriately enjoined it can harm Alaskan workers and families due to lost wages and opportunities. HB 168 seeks to mitigate this issue by requiring parties seeking an injunction

or stay to post a bond to cover lost wages and benefits if the project is found to be wrongfully enjoined. It appropriately directs the court to consider the potential for lost wages and benefits when addressing industrial operations. He said the council is respectful of an individual's rights to seek relief through the courts if they believe a permit has been granted in error. By giving the courts broad discretion in the calculation of the bond, the bill protects the rights of both parties.

The bill does not affect federal permits appeals or litigation; it does not prevent appeals or litigation of state permits; and it does not impair the state's regulatory responsibilities or permit enforcement activities. It does encourage involvement in the early stages of public participation in the permitting process and it requires litigants of state permits to recognize the financial risk of their actions.

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KATHY WASSERMAN, Executive Director, Alaska Municipal League (AML), stated that AML is very concerned about HB 168 because it does not make the municipal exemption clear. The current court rule says that municipalities are exempt from securities and injunctions and it is important to maintain that exemption.

CHAIR FRENCH said he heard testimony that the state might be exempt from the rule but he didn't hear municipalities mentioned.

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SHIRLEY MARQUART, Mayor, City of Unalaska, AK and President, Alaska Municipal League, made two points on the topic of HB 168. The first related to maintaining the exemption for municipalities. She said occasions do exist when a municipality decides to speak on an issue or effect a change by going through the court system. This wouldn't be possible if the municipality had to set aside what may be millions of dollars to post a bond. This would endanger municipal operating funds.

The second point was that the bill did not include fisheries as an "industrial organization." She discussed the federal injunction granted in 2000 to protect Steller sea lions that shut down cod and pollock fisheries in the western Aleutians. Although there is no link between those fisheries and the low pup count, Adak, Unalaska, Akutan, Sand Point, King Cove, Kodiak, and 63 CDQ villages in western Alaska have been living under an injunction for 12 years.

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BARBARA HUFF-TUCKNESS, Director, Governmental and Legislative Affairs, Teamsters Local 959, testified in support of HB 168. She said she didn't believe the bill changed any court rules. The union doesn't have deep pockets and potential injunctions are taken very seriously. She spoke to what the union supports with regard to clean air, land, water and safe working conditions on projects. She maintained there was nothing wrong with asking people to put a little skin in the process if it encouraged people to be more proactive at the beginning of the environmental process. Both sides of the issue definitely need to be heard, and HB 168 doesn't close that door. Individuals and groups will continue to be able to voice their concerns in court, but the bill provides some relief for workers that are inappropriately impacted.

REPRESENTATIVE FEIGE addressed the concerns that were raised in testimony. He said existing state law covers AML's concern regarding whether or not municipalities would be exempt from posting bonds. He directed attention to AS 09.68.040 Parties exempt from giving bond and read subsection (a):

(a) In an action or proceeding in a court in which the state or a municipality is a party or in which the state or a municipality is interested, a bond or undertaking is not required of the state, a municipality, or an officer of the state or municipality.

Referring to the pictures Ms. Zircle distributed, he suggested that the permitting process in Alaska is significantly different than in West Virginia. The fact that no permits have been rejected in the last five years speaks to the strength of the system. He continued that Court Rule 65(c) already requires a bond and the bill simply asks the court to consider the wages of affected employees and contractors in any bond that is posted. It does not give specific direction to the judges or significantly change that rule. Citizens will continue to have the ability to bring suit.

To address the primacy issue he offered suggested language for a letter of intent that would accompany the bill:

It is the intent of the legislature that when deciding what security to require of a party seeking an injunction or stay of a permit affecting an industrial operation, a court can consider the effect that the

injunction or stay could have on the employees and contractors of the permittee. It is also the intent of the legislature not to constrain the court's authority or discretion under governing court rules, but to direct the court's attention to that category of potential harm to the permittee, its employees and contractors that the requirement of surety should protect against. It is the further intent of the legislature that this legislation operating in conjunction with AS 09.68.040(c) will assure the court's consideration of the potential impacts to permittees, employees, and contractors facing suspension of the permitted operations.

CHAIR FRENCH said the primacy issue was his biggest concern about the bill. Similar legislation passed in Utah and Governor Huntsman vetoed it based on the primacy issue. The Department of Natural Resources brought up primacy concerns last year in testimony before the House Judiciary Committee. The court system also expressed concerns about managing these bonds. He said he would continue to research the issue.

CHAIR FRENCH held HB 168 in committee.

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There being no further business to come before the committee, Chair French adjourned the meeting at 3:09 p.m.