

**ALASKA STATE LEGISLATURE**  
**HOUSE JUDICIARY STANDING COMMITTEE**

February 10, 2014

1:08 p.m.

**MEMBERS PRESENT**

Representative Wes Keller, Chair  
Representative Bob Lynn, Vice Chair  
Representative Neal Foster  
Representative Gabrielle LeDoux  
Representative Charisse Millett  
Representative Max Gruenberg

**MEMBERS ABSENT**

Representative Lance Pruitt

**COMMITTEE CALENDAR**

HOUSE BILL NO. 292

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

- MOVED CSHB 292(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 47

"An Act requiring a party seeking a restraining order, preliminary injunction, or order vacating or staying the operation of a permit 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."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 292

SHORT TITLE: 2014 REVISOR'S BILL

SPONSOR(S): RULES BY REQUEST OF LEGISLATIVE COUNCIL

02/03/14	(H)	READ THE FIRST TIME - REFERRALS
02/03/14	(H)	JUD
02/10/14	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 47

SHORT TITLE: INJUNCTION SECURITY: INDUSTRIAL OPERATION

SPONSOR(s): FEIGE, CHENAULT

01/16/13	(H)	PREFILE RELEASED 1/11/13
01/16/13	(H)	READ THE FIRST TIME - REFERRALS
01/16/13	(H)	JUD
01/30/13	(H)	JUD AT 1:00 PM CAPITOL 120
01/30/13	(H)	Heard & Held
01/30/13	(H)	MINUTE(JUD)
02/10/14	(H)	JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

LISA KIRSCH, Assistant Revisor  
Legal Services  
Legislative Legal and Research Services  
Legislative Affairs Agency (LAA)  
Juneau, Alaska

**POSITION STATEMENT:** Testified on HB 292.

REPRESENTATIVE ERIC FEIGE  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified as one of the prime sponsors of HB 47.

NANCY MEADE, General Counsel  
Administrative Staff  
Office of Administrative Director  
Alaska Court System  
Anchorage, Alaska

**POSITION STATEMENT:** Responded to questions regarding HB 47.

MAYNARD TAPP, Founder and Managing Member  
Hawk Consultants, LLC;  
Member, The Alliance  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 47.

MICHAEL JUNGREIS  
Director, Resource Development Council  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 47.

MIKE PRAX  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of HB 47.

ANDY ROGERS, Deputy Director  
Alaska State Chamber of Commerce  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 47.

**ACTION NARRATIVE**

[1:08:50 PM](#)

CHAIR WES KELLER called the House Judiciary Standing Committee meeting to order at 1:08 p.m. Representatives Foster, LeDoux, Gruenberg, Keller were present at the call to order. Representatives Lynn and Millett arrived as the meeting was in progress.

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**HB 292-2014 REVISOR'S BILL**

[1:09:50 PM](#)

CHAIR KELLER announced the first order of business would be HOUSE BILL NO. 292, "An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

[1:10:11 PM](#)

LISA KIRSCH, Assistant Revisor, Legal Services, Legislative Legal and Research Services, Legislative Affairs Agency advised this bill is the legislature's opportunity to correct and remove any deficiencies, conflicts and/or obsolete provisions. Primarily, the bill updates the names of agencies that have changed due to changes in federal law. The bill also captures several instances of the term "adoptive child," which is not the standard term for a child who has been adopted. The correct terms are "adoptive parent" and "adopted child." Ms. Kirsch informed the committee another reference had been discovered and thus there is an amendment to change the "adoptive child" reference to "adopted child." The bill also updates obsolete date references to the boiler code, and changes the word "stimulation" as it was a typographical error in the statute related to oil wells and hydraulic fracking.

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CHAIR KELLER referred to the deletion of the language in Section 5, "after January 1, 1974," and opined the dates were valuable bits of information, which often marked when a bill passed. He noted three or four sections similar to Section 5, in that they delete dates. He asked whether this bill included a comprehensive list of such date markers in statute and whether such changes had occurred.

MS. KIRSCH confirmed that per Title 1 routine review occurs to remove obsolete dates from statute. She explained that [January 1, 1974] has meaning when there were people who had rights predating that date. However, 1974 is so many years ago that the likelihood of anyone having a right arise prior to that date is very low to nonexistent. She further explained that once the date is far enough back in history, relative to the context it is in and the nature of the section, the date may be determined to be obsolete. Although dates could [be relevant] for 20-30 years, at a certain point the date becomes obsolete and is removed from statute.

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CHAIR KELLER asserted it is good he is not setting the standards for drafting as he believed the value of a date is for historical context. He then questioned whether Section 3 is a substantive change.

MS. KIRSCH stated the revisor's bill cannot include a substantive change. The section of statute being added in Section 3 is AS 40.25.295, which is just the short title. Short titles of an article or section are located at the very end. She noted that these provisions, being added in Section 3 are in the Alaska Public Records Act.

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CHAIR KELLER offered his belief the change of the term "adoptive" to "adopted" is a substantive change, particularly since the two have different meanings in terms of time sensitivities. In the English language adoptive means something different than adopted.

MS. KIRSCH explained that the adoptive parent is the person who becomes a parent by virtue of adopting a child. The child is not the one taking the action, the child is the party who is acted upon and is adopted. The aforementioned is the standard usage of those terms.

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CHAIR KELLER suggested that an adoptive child could be a child in the process of being adopted as opposed to a child who has been adopted sometime in the past.

MS. KIRSCH expressed her understanding that the statutes refer to a child who has been adopted, not a child in the process.

CHAIR KELLER maintained concern with the change and asked if other committee members had a similar concern to which there was no response.

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REPRESENTATIVE GRUENBERG moved that the committee adopt Amendment 1, labelled 28-LS0904\C.1, Kirsch, 2/14/14, which read:

Page 10, following line 13:

Insert a new bill section to read:

"\* **Sec. 20.** AS 39.52.960(11) is amended to read:

- (11) "immediate family member" means
  - (A) the spouse of the person;
  - (B) another person cohabiting with the person in a conjugal relationship that is not a legal marriage;
  - (C) a child, including a stepchild and an **adopted** [ADOPTIVE] child, of the person;
  - (D) a parent, sibling, grandparent, aunt, or uncle of the person; and
  - (E) a parent or sibling of the person's spouse;"

Renumber the following bill sections accordingly.

CHAIR KELLER removed his objection.

There being no further objections, Amendment 1 was adopted.

REPRESENTATIVE LYNN moved to report HB 292, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

CHAIR KELLER stated there being no objections, CSHB 292(JUD) was reported from the House Judiciary Standing Committee.

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The committee took a brief at-ease.

**HB 47-INJUNCTION SECURITY: INDUSTRIAL OPERATION**

[1:24:40 PM](#)

CHAIR KELLER announced that the next order of business would be HOUSE BILL NO. 47, "An Act requiring a party seeking a restraining order, preliminary injunction, or order vacating or staying the operation of a permit 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."

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REPRESENTATIVE LYNN moved to adopt proposed committee substitute for HB 47, Version 28-LS0072\N, Bullock/Wallace, 1/10/14, as the working document.

REPRESENTATIVE GRUENBERG objected for purposes of discussion and inquired as to the difference in Version N.

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REPRESENTATIVE ERIC FEIGE, Alaska State Legislature, speaking as one of the prime sponsors of HB 47, said the only change embodied in Version N is the addition of subsection (d) on page 2. The commissioner of the Department of Environmental Conservation (DEC) was very concerned that under the original language of HB 47 the federal permitting programs for which the state has primacy could be adversely affected in that the state could be open to the possibility of having primacy administratively retracted by the federal government. The new language, he explained, exempts the federal permitting programs that the state administers and over which it has primacy. Therefore, there is not even a hint that this bill would prevent access to the courts by other parties involved in those permits.

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REPRESENTATIVE GRUENBERG pointed out that the language on page 1, line 11, of HB 47 reads, "... including an amount for the

payment of wages ..." but was changed in Version N to read, "The court shall consider the amount of wages," The new language in Version N allows the court more discretion, which he characterized as a good amendment.

REPRESENTATIVE FEIGE agreed the aforementioned was also a change and in further response to Representative Gruenberg said he and his staff were not aware of any other changes.

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REPRESENTATIVE GRUENBERG withdrew his objection.

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CHAIR KELLER then objected for purposes of discussion and related his understanding that the language is new in Version N.

REPRESENTATIVE FEIGE clarified that the language on page 2, line 6-13, is new language, which pertains specifically to federal permitting programs that are administered by the state government.

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CHAIR KELLER removed his objection. There being no further objection, Version N was before the committee.

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REPRESENTATIVE FEIGE, continuing his presentation of HB 47, informed the committee that,

In the past several years there have been cases where courts have issued injunctions or stays against companies engaged in the development of resource extraction and other large industrial operations that had been legally permitted. These legally permitted projects now have to 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 as well as the project proponents. House Bill 47 does not condone "sloppily written or wrongfully issued permits" as has been described by some opponents of the bill. If a permittee is violating the terms of the permit then the issuing departments of the state should step in

and either get the situation rectified or temporarily stop the project until it comes into compliance. The state has laid out a rigorous science based permitting system to allow responsible development of our resources for the benefit of all Alaskans. Public involvement and input is encouraged through an established public process. Too often, once this process has been completed and the permits are issued, opponents of the project file public interest litigation seeking an injunction or a stay. Ultimately, those who feel the most immediate impacts of these injunctions are the workers and their families because workers are laid off, both union and non-union.

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House Bill 47 was filed with intent to level the playing field and put those who file these suits on notice that they too have consequences to contend with. Some people have pointed to the title of the bill which uses the words "An Act requiring a party ..." The requirement for security is already there embedded in Alaska Civil Rule 65(c). House Bill 47 parallels the requirements of Rule 65(c), which 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. ..." House Bill 47 was written to work with Rule 65(c), not change it. The court already has the power and authority to require a bond, unfortunately, in most cases they don't require it. This legislation directs the court, when considering the bond amount, to take into account costs that may be incurred and damages that may be suffered, including an amount for the payment of wages and benefits for employees, sub-contractors, and contractors. It does not set a bond amount. The court continues to have full discretion and could still ultimately decide to not require a bond. In this legislation, industrial operation is defined to include a construction, energy or timber activity, and oil, gas and mineral exploration development and production. Historically, we have not seen a large

number of these types of injunctions in state court for two reasons: most lawsuits today have involve federal permits, and in talking with lawyers about this issue, found that many of these cases are settled out of court in an effort to avoid costs and work delays.

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An example of this type of court case would be an injunction filed on the Port Mackenzie Rail Extension just as they were starting to commence construction in the Fall of 2012. A lawsuit filed in federal court which ordered a Stop Work Order on October 1, 2012, eventually, later that Fall on November 28, 2012 that same federal court lifted the order. But for two months almost two hundred people were put out of work and unable to feed their families. Here in Southeast Alaska, fairly recently, the City and Borough of Juneau permitted a cruise ship dock expansion. The Juneau Assembly, last month, approved the contract. It has already had a group file for a Temporary Restraining Order to keep the city from working on the project. Work is not even scheduled to begin until 2015. Of course, you are all aware that we have fairly large projects potentially on our horizon. An effort to build an instate gas line as well as an export line would involve a whole series of mega projects that could potentially be affected by someone wanting to file an injunction. During the interim we continued to work with the administration to deal with some concerns that they had with respect to the unintended consequences centering on the state primacy, i.e., those permits related to clean air, clean water and surface coal. I've detailed some of the new language in Version N of the CS. The new language specifically exempts those federal permit programs that the state administers. It does not, however, do anything to the over one hundred different state permits that the state currently has permit authorization authority for. The language will still apply to those and a list of those permits has been included in your packet.

REPRESENTATIVE FEIGER advised the committee there were representatives in the room from the Department of Natural Resources, Department of Environmental Conservation, the Alaska

Court System, Department of Law, and Legislative Legal available for questions, and also a number of people online to testify.

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REPRESENTATIVE LEDOUX inquired as to what was the percentage of injunctions filed in the state versus federal court.

REPRESENTATIVE FEIGE maintained that most of the injunctions brought forth are in federal court. In further response to Representative LeDoux, Representative Feige affirmed that HB 47 would not impact federal courts.

REPRESENTATIVE LEDOUX inquired as to how much assistance this bill could provide projects.

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REPRESENTATIVE FEIGE clarified that HB 47 does not impact federal courts as it is not in the state's arena of authority. However, the possibility exists that plaintiffs could seek injunctions under state court, which he opined is a vulnerability within the state's legal structure. Although Civil Rule 65(c) already requires security, the overwhelming majority of judges do not appear willing to require parties to post bonds. He said he did not know whether [the actions of the judges] were the intent of the legislature or the intent of the original rule. If HB 47 passes, the legislation would send a significant message to the third branch of government that the legislature encourages judges to look closely at requiring security bonds, especially in cases like this. Regarding the total number of court cases like this, he deferred to the court system.

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CHAIR KELLER advised the committee it was not his intention for the committee to vote on HB 47 today, as it had just received a memorandum from Legal Services.

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REPRESENTATIVE GRUENBERG opined that the current language is a definite improvement and asked Representative Feige if his staff would make a copy of his presentation for his review.

REPRESENTATIVE FEIGE agreed to do so.

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REPRESENTATIVE MILLETT noted her appreciation for HB 47, which she felt was a long time in coming as Alaska must make a statement about frivolous lawsuits and actions taken to slow down projects and cause projects to be more expensive. She said Alaskans are not taking these actions rather it is non-government organizations (NGO) from out-of-state that have found a beautiful picturesque place like Alaska and use it as their biggest fundraising tool in the Lower 48. Representative Millet related that she is offended that Alaskans are being treated in this manner.

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CHAIR KELLER advised the committee that Friday's meeting is scheduled for bills previously heard, of which could include HB 47. He then turned to public testimony.

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NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System, in speaking to Representative LeDoux's earlier question, preliminary injunctions are tracked, but there are not statistics on preliminary injunctions against industrial operations as that is not a term used in its data base yet. Anecdotally, she related that over the last six or seven years there have been possibly two or three cases that would fall into what the sponsor intended to cover with HB 47. This bill is similar to CR 65(c) as the courts do have authority to set the security. Many times, she explained, parties will stipulate the amount of security for various actions for preliminary injunction or TROs and for the most part judges accept those stipulations. The security is intended to cover the costs and damages that the enjoined party might suffer if the injunction were wrongfully granted. The court holds the security until the end of the case and if the enjoined party should not have been enjoined, the security can be used to pay the costs and damages that party suffered.

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REPRESENTATIVE GRUENBERG emphasized the need for the committee to carefully understand the language of CR 65 in order to understand the legal issues involved in HB 47, which is what

will, if anything, be changed by HB 47. He then asked whether the trial court has broad discretion in issuing injunctions.

MS. MEADE advised the trial court has discretion whether or not to grant a motion for preliminary injunction, but there are specific legal tests it must apply.

REPRESENTATIVE GRUENBERG requested Ms. Meade briefly enumerating what the list of factors.

MS. MEADE expressed concern she would misstate them as they were not written before her.

CHAIR KELLER requested Ms. Meade come prepared to discuss the legal tests on Friday.

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REPRESENTATIVE GRUENBERG remarked that he was not sure the court system is the appropriate branch to answer that question, and requested that staff from Legislative Legal and Research Services be available on Friday. In response to Representative Lynn, Representative Gruenberg explained that CR 65 covers the following three types of injunctions, with the specified meaning: temporary injunction is attending a hearing; a preliminary injunction is after a hearing pending trial, and a permanent injunction is covered by the rule of procedure. There are also statutes on the subject, which he requested be included in the committee's packet.

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REPRESENTATIVE LEDOUX related her understanding that for state permits if a party desired a TRO against the state, the party would be against the state. For federal permits and the category of permits for which the state has primacy, is basically the federal program. However, a party cannot sue the state in federal court. She then explored whether a party could simply sue the industrial operation in federal court and not include the state as a party.

MS. MEADE related her understanding that HB 47 addresses injunctions filed against the industrial operation itself and not against the state as the defending party to the injunction. The intent, she opined, was to cover lawsuits in which a group or individual wishes to stop the industrial operation from proceeding and that group itself is the defendant/respondent,

and thus is enjoined. She specified that she had not understood that the state would be a party to those actions, which could take place in state or federal court.

REPRESENTATIVE LEDOUX surmised then that any lawsuit with any federal element whatsoever could be brought in federal court.

MS. MEADE stated her agreement with Representative LeDoux.

REPRESENTATIVE GRUENBERG cautioned the committee not to ask the court system as this may be an issue that ultimately comes before it.

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MAYNARD TAPP, Founder and Managing Member, Hawk Consultants, LLC, Member, The Alliance, opined that delaying Alaskan projects hurts The Alliance members, and therefore hurts workers that are the employees of The Alliance. For example, a recent cancelation of a project caused 70 people to lose their job in 1 company. Those 70 people earned \$60,000 - \$80,000 annually and the loss of wages has a major impact on local communities. Currently, there are approximately 180 jobs at risk on another project in rural Alaska. The impact of those lost wages on individuals as well as most communities would be staggering. If a party desires to delay a project, it should be held accountable for the financial harm caused by its actions, he opined.

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MR. TAPP, in response to Representative Gruenberg advised he is one of the principals for Hawk Consultants, LLC, which leases personnel to oil companies.

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MICHAEL JUNGREIS, Director, Resource Development Council (RDC), clarified that although he is a partner with Davis, Wright and Tremaine, LLP, he is testifying on his own behalf and that of the RDC. He related that the RDC favors this legislation and emphasized the injunction power is the most powerful tool of the court as it has the power to stop any activity from occurring in the state. In a preliminary injunction, the court frequently has only relatively sketchy factual materials available to it in order to make a determination. A large scale enterprise, which may be employing scores of hundreds of people and deploying

millions of dollars into a major economic activity in this state, can be brought to a complete halt by the power judges can impose. He related his experience that judges are reluctant to impose the bonding requirement the law allows. Therefore, he opined, it is important for the legislature to make it clear that judges must consider the impact the decisions they make have on individuals, the economy, and on the economic activity they can stop.

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MR. JUNGREIS explained that the standard for granting an injunction, which is in State Division of Elections v. Metcalf, (Alaska 2005) and has been cited since 2005, is that if the threatened injury is irreparable, meaning something that cannot be brought back as in chopping down a forest or filling in a lake, then all the plaintiff must do is raise "a serious and substantial question" that is not frivolous or obviously without merit. The bottom line is that a plaintiff who claims a serious enough injury does not have to persuade the judge that the plaintiff is going to win. In fact, the judge may conclude the plaintiff is probably going to lose, but when it is not a frivolous case a preliminary injunction must be granted, even on partial knowledge. He opined that when judges have to grant an injunction, it is critical that the injunction only be granted with protection for the enterprises that are the life blood of the state.

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REPRESENTATIVE LEDOUX asked if the standards for granting a TRO were less than for a preliminary injunction.

MR. JUNGREIS, noting that he had been practicing law in this state for a while and had appeared in a number of cases in which both preliminary and temporary injunctions were issued, responded he was not certain but the TRO, which by its terms can only be issued for a 10 day period, also requires security. Information upon which a TRO is granted frequently consists of an affidavit or two and rarely is there live testimony. As a result, there are some judges who are extremely reluctant to grant TROs unless there is something terrible going on like a child who is about to be removed from the state or someone is about to be taken off life support. This legislation, he opined, would apply to a TRO in an industrial permitting situation.

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REPRESENTATIVE LEDOUX related her understanding that for a preliminary injunction a party has to show a likelihood of success on the merits as opposed to simply showing that it is not a frivolous lawsuit. However, she said she was not certain that a party had to show the likelihood of success with a TRO as it is maybe a more lax standard.

MR. JUNGREIS conveyed the current standard is in two parts depending upon the severity of injury that the plaintiff claims. If the plaintiff's injury is not claimed to be all that severe or if it is claimed to be less than irreparable, the plaintiff must present a clear showing of probable success on the merits. In that instance, the judge would be required to believe the plaintiff was going to win before issuing the injunction. There is a "lessened" standard for which the harm that is alleged is of a greater amount. If a plaintiff is claiming the neighbor is going to block the driveway, the plaintiff must show it is probably going to win. If a plaintiff asserts the injury is irreparable, such as filling in a lake or chopping down a forest, the plaintiff is not required to show it is likely to win, but rather must show the case is not frivolous.

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MR. JUNGREIS, in response to Representative Gruenberg; suggested the committee [consult] the following cases: State, Division of Elections v. Metcalf, 110 P.3d 976 (Alaska 2005); Misyura v Misyura, 244 P.3d 519 (Alaska 2010). In further response, Mr. Jungreis offered that the court is considering the seriousness of the injury, whether the defendant can be protected if the [injunction] is granted, and whether the court can be certain the defendant is not injured if the injunction turns out to have been granted in error. The aforementioned, he opined, is the purpose of HB 47. The other issue is how good of a case has the plaintiff presented to require an injunction. Although it's likely the duration is an element that would be taken into account in assessing all of the factors, he was not certain it would be a separate factor.

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REPRESENTATIVE GRUENBERG, questioned whether the legislation could simply provide this as a factor to be considered rather than specifying out hard and fast rules that may cause constitutional problems.

MR. JUNGREIS said that the court has to consider the factors, but [the ultimate decision] is for the court to determine. The court must be able to show it reviewed every factor and understood those were critical factors that must be taken into consideration, although the factors do not absolutely control the decision. This legislation does not attempt to specify dollar for dollar exactly how the court must determine the issue, he stated.

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REPRESENTATIVE LEDOUX asked whether the denial of a TRO or preliminary injunction, or the amount of bond the court requires to be posted is appealable. If it is appealable, is it appealable on an expedited basis, she asked.

REPRESENTATIVE GRUENBERG answered that [denial and amount of bond is absolutely appealable].

MR. JUNGREIS agreed with Representative Gruenberg that certainly in every legal system, the failure to grant or the granting of injunctive relief all give rise to an immediate right to appeal.

REPRESENTATIVE GRUENBERG advised the technical term for the process would be "Petition for Review."

MR. JUNGREIS answered that he was not certain of that term but offered that there is no question a party has the right to Petition for Review for any interlocutory order. Clearly, a party has a right to appeal, but he was uncertain whether the court must hear the appeal.

MS. MEADE agreed with Representative Gruenberg that the denial or granting of the order would be a Petition for Review and would definitely be allowable by a court above the trial level. In further response to Representative Gruenberg, Ms. Meade confirmed injunctions must be brought in the superior court and not the district court. If the decision is appealed, it first goes to a single justice, and then can be reviewed by the entire court. Appeals, she clarified, are not expedited per se and they are not in the rule regarding which proceedings are automatically expedited. However, Petitions for Review can be handled faster than an appeal on a full case, she pointed out.

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REPRESENTATIVE LEDOUX noted her understanding whether or not a court heard a Petition for Review was discretionary.

MS. MEADE agreed with Representative LeDoux. She further agreed with Representative LeDoux that a party has the right to file a [Petition for Review], but that doesn't mean the court will do anything about it.

REPRESENTATIVE GRUENBERG provided that if that is the case, that unless and until the court issued a superseding order on appeal the trial court's original order would remain in effect.

MS. MEADE agreed with Representative Gruenberg.

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MS. MEADE directed attention to the following language in Version N on page 1, line 11: "The court shall consider the amount of wages and benefits for employees and payments to contractors and subcontractor ...". She suggested it might be beneficial to use the following language: "Upon the request of any party and when that party presents credible evidence ..." because if the industrial operation does not want to disclose records about its wages or its contracts or subcontractors, the court would not have evidence to consider. With the aforementioned suggested language the court has to consider this because otherwise it would not have the means or information to consider those factors. The sponsor, she related, was receptive to including such language.

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CHAIR KELLER directed the sponsor to be prepared on Friday with language for discussion on that matter.

MS. MEADE informed the committee the language would be provided to the committee.

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MIKE PRAX state that the [suggested language] change to "something the court shall consider" rather than just "do," is needed. This legislation, he opined, is necessary as it does appear that injunctions are granted too easily. Furthermore, the committee should know how often injunctions are overturned, he opined. He related that he followed the Healy Clean Coal Project for which tens of millions of dollars a year to the

members of Golden Valley [Electric Association GVEA] were lost, which he acknowledged would not be considered. Objections to Healy Clean Coal, he opined, were without merit from the start and it appeared the injunction strategy was to run the costs up so GVEA would give up on the project regardless of the merits of the case. He further opined that the aforementioned happens often as it is a strategy attorneys apply sometimes. This legislation is needed to maintain equity, which should be a primary goal and focus of the committee. Mr. Prax said he had not given thought to Section 1(d), which will not require it under cases in which the state is acting with primacy over federal regulations. He encouraged the committee to contact the United States Environmental Protection Agency (EPA) or someone in the federal government to obtain their opinions directly. He proffered that State agencies are often overly conservative in their interpretation of these laws and too concerned, therefore, about losing primacy. He was not sure that the EPA and the Department of Natural Resources would object to this legislation to the degree that it would withdraw primacy. The fact that a party has issued a court action, by itself, discourages a company from moving forward, and thus he did not see harm in maintaining equity.

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CHAIR KELLER said he identified with Mr. Prax's remarks regarding the state needing to be overly cautious with what the federal programs require, and he advised the legislature must stay on top of it at all times.

REPRESENTATIVE GRUENBERG expressed the need to consider the high cost of litigation and how the party with deep pockets can make it difficult for the other party to be heard. If the desire is for equity, he suggested the committee consider what it can do to ensure the law is not misused.

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MR. JUNGREIS remarked that he and the Resource Development Council believe something on this order is critical to ensure that the projects, which are the life blood of this state, are protected from this particular type of disruption.

[2:29:24 PM](#)

ANDY ROGERS, Deputy Director, Alaska State Chamber of Commerce, informed the committee that the Alaska State Chamber (Chamber)

is a member organization made up of companies across the state and these types of injunctions are an ever-occurring issue for the Chamber. The business community supports passage of this bill and when legislation receives universal support and agreement from across the state and across a broad section of industries, it carries weight. The Chamber will continue to support the core concepts of this legislation. The Chamber went on record on behalf of Alaska's businesses and encouraged the committee to pass this legislation out of committee.

[2:31:23 PM](#)

CHAIR KELLER announced he would leave public testimony open.

[2:32:11 PM](#)

REPRESENTATIVE GRUENBERG explained there is a body of law on injunctions and the committee should review the background upon which this bill is presented.

CHAIR KELLER announced his intent to take a vote on the bill on Friday. [HB 47 was held over.]

[2:34:17 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Standing Judiciary Committee meeting was adjourned at 2:34 PM.