

**ALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE**

March 28, 2014

2:03 p.m.

**MEMBERS PRESENT**

Senator John Coghill, Chair  
Senator Lesil McGuire, Vice Chair  
Senator Donald Olson  
Senator Bill Wielechowski

**MEMBERS ABSENT**

Senator Fred Dyson

**COMMITTEE CALENDAR**

CS FOR HOUSE BILL NO. 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."

- HEARD AND HELD

CS FOR HOUSE BILL NO. 218(JUD)

"An Act relating to the aggravating factor at felony sentencing of multiple prior misdemeanors when a prior misdemeanor involves an assault on a correctional employee; providing that deportation is not a proper factor for referral of a case to a three-judge panel for sentencing for a felony; and providing for an effective date."

- MOVED SCS CSHB 218(JUD) OUT OF COMMITTEE

SENATE BILL NO. 201

"An Act relating to the crime of trespass."

- MOVED CSSB 201(JUD) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 47

SHORT TITLE: INJUNCTION SECURITY: INDUSTRIAL OPERATION

SPONSOR(s): REPRESENTATIVE(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  
02/10/14 (H) Heard & Held  
02/10/14 (H) MINUTE(JUD)  
02/14/14 (H) JUD AT 1:00 PM CAPITOL 120  
02/14/14 (H) -- MEETING CANCELED --  
02/19/14 (H) JUD AT 1:00 PM CAPITOL 120  
02/19/14 (H) Moved CSHB 47(JUD) Out of Committee  
02/19/14 (H) MINUTE(JUD)  
02/21/14 (H) JUD RPT CS(JUD) NT 4DP 2NR  
02/21/14 (H) DP: MILLETT, LEDOUX, LYNN, KELLER  
02/21/14 (H) NR: FOSTER, GRUENBERG  
03/12/14 (H) TRANSMITTED TO (S)  
03/12/14 (H) VERSION: CSHB 47(JUD)  
03/14/14 (S) READ THE FIRST TIME - REFERRALS  
03/14/14 (S) JUD  
03/24/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
03/24/14 (S) Heard & Held  
03/24/14 (S) MINUTE(JUD)  
03/28/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 218

SHORT TITLE: SENTENCING;AGGRAVATOR/DEPORTATION STATUS

SPONSOR(s): REPRESENTATIVE(s) CHENAULT, MILLETT, HERRON, LYNN

01/21/14 (H) PREFILE RELEASED 1/10/14  
01/21/14 (H) READ THE FIRST TIME - REFERRALS  
01/21/14 (H) JUD  
02/12/14 (H) JUD AT 1:00 PM CAPITOL 120  
02/12/14 (H) Heard & Held  
02/12/14 (H) MINUTE(JUD)  
02/21/14 (H) JUD AT 1:00 PM CAPITOL 120  
02/21/14 (H) Heard & Held  
02/21/14 (H) MINUTE(JUD)  
02/24/14 (H) JUD AT 1:00 PM CAPITOL 120  
02/24/14 (H) Moved CSHB 218(JUD) Out of Committee  
02/24/14 (H) MINUTE(JUD)  
02/26/14 (H) JUD RPT CS(JUD) NT 4DP 1NR 2AM  
02/26/14 (H) DP: MILLETT, LYNN, PRUITT, KELLER  
02/26/14 (H) NR: FOSTER

02/26/14 (H) AM: LEDOUX, GRUENBERG  
03/14/14 (H) TRANSMITTED TO (S)  
03/14/14 (H) VERSION: CSHB 218(JUD)  
03/14/14 (S) READ THE FIRST TIME - REFERRALS  
03/14/14 (S) JUD  
03/24/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
03/24/14 (S) Heard & Held  
03/24/14 (S) MINUTE(JUD)  
03/28/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 201

SHORT TITLE: CRIMINAL TRESPASS ON PRIVATE PROPERTY

SPONSOR(s): SENATOR(s) STEDMAN

02/24/14 (S) READ THE FIRST TIME - REFERRALS  
02/24/14 (S) JUD  
03/17/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
03/17/14 (S) Heard & Held  
03/17/14 (S) MINUTE(JUD)  
03/28/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

LINDA HAY, Staff  
Representative Eric Feige  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Provided information related to HB 47 on behalf of the sponsor.

RUTH HAMILTON HEESE, Assistant Attorney General  
Civil Division  
Environmental Section  
Department of Law  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions related to HB 47.

JOHN HUTCHINS, Assistant Attorney General  
Civil Division  
Oil, Gas & Mining Section  
Department of Law  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions related to HB 47.

JAMES SULLIVAN  
Southeast Alaska Conservation Council (SEACC)  
Juneau, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 47.

RICK ROGERS, Executive Director  
Resource Development Council (RDC)  
Anchorage, Alaska

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

TOM WRIGHT, Staff  
Representative Mike Chenault  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Explained the U.3 amendment to HB 218.

ANNE CARPENETI, Assistant Attorney General  
Criminal Division  
Legal Services Section  
Department of Law (DOL)  
Juneau, Alaska

**POSITION STATEMENT:** Commented on the U.3 amendment to HB 218.

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

**POSITION STATEMENT:** Commented on the U.3 amendment to HB 218.

DARWIN PETERSON, Staff  
Senator Bert Stedman  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Explained the difference between the original version of SB 201 and Version U.

#### **ACTION NARRATIVE**

[2:03:14 PM](#)

**CHAIR JOHN COGHILL** called the Senate Judiciary Standing Committee meeting to order at 2:03 p.m. Present at the call to order were Senators Wielechowski, McGuire, Olson, and Chair Coghill.

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

[2:03:50 PM](#)

**CHAIR COGHILL** announced the consideration of HB 47. "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." [CSHB 47(JUD) was before the committee.] Noting that this was the second hearing, he asked Ms. Hay if she had any information to add.

[2:04:21 PM](#)

LINDA HAY, Staff, Representative Eric Feige, Alaska State Legislature, Juneau, Alaska, said Ruth Hamilton Heese is online to address the question that Senator Wielechowski had about the DEC provisions. She added that the sponsor worked closely with the administration during the Interim to address the concerns on permits that the state has received from the federal government through primacy. She noted that Ed Fogels with the Department of Natural Resources (DNR) was available to answer questions about primacy regarding surface coal and Nancy Meade was available to address suggestions from the Court System.

SENATOR WIELECHOWSKI asked the Department of Law why clean air and clean water was exempt.

RUTH HAMILTON HEESE, Assistant Attorney General, Civil Division, Environmental Section, Department of Law Juneau, Alaska, explained that the state agencies were concerned that EPA or the Department of Interior might view the injunction provision as chilling third party access to the court and withdraw approval of the program. [Teleconference terminated due to indiscernible audio.]

[2:07:54 PM](#)

JOHN HUTCHINS, Assistant Attorney General, Civil Division, Oil, Gas & Mining Section, Department of Law, Juneau, Alaska, offered to answer questions.

SENATOR WIELECHOWSKI referenced page 1, line 9, and asked how he envisions the courts will determine what constitutes proper security.

MR. HUTCHINS offered his expectation that it would work in much the same way as securing a bond for a preliminary injunction. The court makes a determination about the amount of security based on testimony during the hearing.

SENATOR WIELECHOWSKI asked how much it might cost a middle class homeowner who is trying to enjoin a multimillion dollar mine on the adjacent property.

MR. HUTCHINS said he didn't believe the language would change the amount that is required under existing Rule 65, but it does have the effect of asking courts to look at broader policy considerations and the impact of the injunction on people generally.

SENATOR WIELECHOWSKI asked, under the current Court Rule 65, if there was a security requirement for an order vacating or staying the operation of certain permits.

MR. HUTCHINS replied Court Rule 65 only addresses injunctions.

SENATOR WIELECHOWSKI asked if this was a new provision.

MR. HUTCHINS answered yes.

SENATOR WIELECHOWSKI asked if there was an exemption for an average homeowner who could not afford to challenge a large industrial corporation if the homeowner thought a permit was wrongfully issued.

MR. HUTCHINS said no, but if the homeowner can show irreparable injury the court has discretion under Court Rule 65 and discretion under this statute to set a bond that is fair.

SENATOR WIELECHOWSKI pointed out that the language on page 1, lines 12-14 appears to remove much of the discretion that the court currently has under Court Rule 65.

MR. HUTCHINS responded that the purpose of Court Rule 65 is to try to reach a fair allocation of costs, and it too has mandatory language. He opined that what the wages and benefits language adds is a look at both the costs sustained by the industrial operation and the potential impact on workers and contractors who may or may not be parties to the litigation.

CHAIR COGHILL opened public testimony.

[2:17:18 PM](#)

JAMES SULLIVAN, Southeast Alaska Conservation Council (SEACC), stated that SEACC opposes HB 47 in the belief that Alaskans should always have the right to petition the court if they believe that the government has not done its job properly or if a corporation isn't following the terms of its permit. He maintained that HB 47 created double standards within the legal system by exempting permits under the Clean Water Act, the Clean Air Act, and surface coal mining. This was done because the

state was concerned that it would lose its ability to administer permits under those federal programs. This patchwork approach imposes bonding requirements for some permits but not for others. He further highlighted that this law protects the state and municipalities from having to bond, but not private citizens and tribal groups, or Alaskan organizations.

MR. SULLIVAN explained that when an Alaska court makes a decision on a temporary restraining order or a preliminary injunction, the plaintiff must show balance of hardships or irreparable harm. Because this standard is already very high the bill doesn't solve any problems, but it would send a clear message to Alaskans that this legislature believes that the value of Alaskans' rights is commensurate to the value of their checkbook. That would be an unfortunate message to send, which is why SEACC opposes HB 47, he concluded.

SENATOR OLSON commented that in the recent past Alaska environmental issues have become an international football. Some groups that don't have Alaska's best interest at heart are joining litigation and taking advantage of people in the rural areas and trying to inhibit activities like reindeer herding and hunting. He questioned how to create a reasonable balance between the varied interests because litigation is very expensive.

MR. SULLIVAN agreed that litigation can be very costly, but it is SEACC's belief that no one should be financially intimidated from accessing the court. Every Alaskan should have the ability to go to court and say their rights are being violated without having a financial backer.

SENATOR WIELECHOWSKI argued that the law as it exists already protects Alaskans. To get a restraining order right now the plaintiff has to prove irreparable harm and post a bond. If the plaintiff loses they'll have to pay attorney's fees under Court Rule 82. He opined that the law is already weighted in favor of industry and HB 47 tips it further by increasing the bond requirement. The average Alaskan won't be able to afford to go to court to get the relief that they are constitutionally entitled to seek, he said.

[2:23:38 PM](#)

RICK ROGERS, Executive Director, Resource Development Council (RDC), Anchorage, Alaska, stated that RDC supports a rigorous science-based permitting system that allows responsible development of Alaska's resources. RDC also supports public

input through the public process, but too often opponents of projects file litigation after the process is complete and it delays or stops the permitted development. If the litigation ultimately is found to have no merit, it is the Alaska workers who suffer the most from lost wages and opportunities. HB 47 helps rectify this by requiring parties seeking a restraining order to post a bond to cover lost wages or benefits if the [project] is found to be wrongfully enjoined.

RDC does not believe that the bill prevents appeals or litigation of state permits or that it restricts the rights of public interest litigants. It does force public interest litigants to recognize that there is a financial risk of their actions and it does provide security for Alaska workers. For these reasons, RDC supports HB 47.

CHAIR COGHILL asked Ms. Hay if she would like to speak to the issue of the public interest litigant and small property owners.

MS. HAY responded that Court Rule 65(c) already says that a bond is required and the amount is at the discretion of the court. Legislative Legal essentially said the courts already have the ability to take wages into account and HB 47 simply highlights that as one relevant economic factor the court should consider. With regard to the homeowner who has a mine next door, that person would have had ample opportunity to talk about it during the permitting process. And if a permit isn't being followed, that should be addressed by the department that issued the permit, not the court.

SENATOR OLSON said he assumes that the bill is in response to the suit filed by Bella Hammond and Vic Fischer to stop the Pebble Mine, and he wonders how someone from Shishmaref or Noatak could afford to challenge a major project next door now that there is no longer an ability to do so under the Coastal Zone Management Plan. This appears to be another impediment to the people in rural areas, he said.

MS. HAY responded that HB 47 affects industrial operations that occur on state land going forward. It was not crafted for Pebble Mine, but it is one of those operations.

[2:30:50 PM](#)

CHAIR COGHILL announced he would hold HB 47 in committee for further consideration.

**HB 218-SENTENCING;AGGRAVATOR/DEPORTATION STATUS**

[2:31:10 PM](#)

CHAIR COGHILL announced the consideration of HB 218. "An Act relating to the aggravating factor at felony sentencing of multiple prior misdemeanors when a prior misdemeanor involves an assault on a correctional employee; providing that deportation is not a proper factor for referral of a case to a three-judge panel for sentencing for a felony; and providing for an effective date." He noted this was the second hearing and there was an amendment for the committee to consider.

[2:31:39 PM](#)

SENATOR MCGUIRE moved to adopt Amendment 1, labeled 28-LS0941\U.3.

CHAIR COGHILL objected for an explanation.

**AMENDMENT 1**

OFFERED IN THE SENATE  
TO: CSHB 218(JUD)

Page 6, line 18:

Delete "or that collateral consequences may or will result if the defendant is classified as deportable"

Page 6, line 26:

Delete "or that collateral consequences may or will result if the defendant is classified as deportable"

[2:31:46 PM](#)

TOM WRIGHT, Staff, Representative Mike Chenault, Alaska State Legislature, Juneau, Alaska, explained that Public Defender Quinlan Steiner brought the amendment forward after the first hearing and then worked with the Department of Law on compromise language. The essence is that deportation will not be a consideration in requesting a three-judge panel, whereas unduly harsh collateral consequences may be taken into consideration for requesting a three-judge panel.

[2:33:04 PM](#)

ANNE CARPENETI, Assistant Attorney General, Criminal Division, Legal Services Section, Department of Law (DOL), Juneau, Alaska, affirmed that DOL discussed this with the Public Defender Agency

and arrived at a fair compromise. She summarized that the fact of being deportable is not something that can go to a three-judge panel for sentencing, but if the defendant can establish unduly harsh collateral consequences and the sentencing judge finds that those claims are proved by clear and convincing evidence, that could be considered as a basis for going to a three-judge panel.

[2:34:03 PM](#)

QUINLAN STEINER, Public Defender, Public Defender Agency, Department of Administration (DOA), said the intent of the amendment is to preserve a defendant's ability to plead unduly harsh collateral consequences that may flow from an eventual deportation, but the defendant would not be able to plead the fact that he/she would be deported as grounds for obtaining a three-judge panel.

SENATOR WIELECHOWSKI asked for examples where keeping the provision would result in one decision and removing it would result in a different decision.

MS. CARPENETI said a person whose sentence range is high enough to be considered deportable by immigration authorities would not be able to argue that fact to qualify for a three-judge panel. Whereas if the person was Syrian, for example, and could establish by clear and convincing evidence that the effect of being deported to Syria would result in unduly harsh collateral consequences, that could be argued to qualify for a three-judge panel.

MR. STEINER added that if a person was trying to plead the fact that they'd be deported and nothing more, they wouldn't be entitled to argue that to obtain a three-judge panel. But if the person could plead some further consequence of the deportation such as it would result in death, then the person could argue that that qualifies for a three-judge panel.

SENATOR MCGUIRE stated support for the amendment because it accommodates people seeking political asylum who might face murder if they're deported.

CHAIR COGHILL removed his objection and Amendment 1 was adopted. Finding no further questions or comments, he solicited a motion.

[2:37:53 PM](#)

SENATOR MCGUIRE moved to report CS for HB 218, as amended, from committee with individual recommendations and attached fiscal note(s).

CHAIR COGHILL announced that without objection, SCS CSHB 218(JUD) passes from the Senate Judiciary Standing Committee.

[2:38:15 PM](#)

At Ease

**SB 201-CRIMINAL TRESPASS ON PRIVATE PROPERTY**

[2:39:51 PM](#)

CHAIR COGHILL reconvened the meeting and announced the consideration of SB 201. "An Act relating to the crime of trespass." He noted this was the second hearing and there was a new committee substitute (CS).

[2:40:08 PM](#)

SENATOR MCGUIRE moved to adopt the work draft CS for SB 201, labeled 28-LS1470\U, for discussion purposes.

CHAIR COGHILL objected for discussion purposes.

[2:40:37 PM](#)

DARWIN PETERSON, Staff, Senator Bert Stedman, Alaska State Legislature Juneau, Alaska, explained that the original version of SB 201 deleted AS 11.46.350(b) and (c), which would essentially eliminate the need to post a "no trespassing" sign in order to keep people off your private property. The committee substitute (CS) now deletes just AS 11.46.350(c), which is the description of what the "no trespassing" sign should look like and specifies where the sign has to be placed on the property. Under the CS, a private landowner would have to post a "no trespassing" sign on his/her property but there wouldn't be a requirement that it's posted at every possible entry point to the property.

CHAIR COGHILL said he brought the CS forward because the current statute imposes huge liability on the property owner because the posting requirements are so technical and exacting. The simple requirements to personally communicate or post are reasonable, he said.

SENATOR WIELECHOWSKI asked how the courts have defined "reasonably conspicuous manner" and what that requires for trespass signs.

MR. PETERSON offered to follow up with the definition.

CHAIR COGHILL said he would make sure the answer was distributed to all the committee members.

[2:44:11 PM](#)

SENATOR STEDMAN, Alaska State Legislature, Juneau, Alaska, sponsor of SB 201, summarized that the intent of the bill is to have the private property owner post a "no trespassing" sign, but not require one to be posted on every access point. He stated support for the CS saying that it makes a better bill.

CHAIR COGHILL removed his objection.

SENATOR WIELECHOWSKI asked what the penalty is for trespassing.

MR. PETERSON replied it's a class B misdemeanor.

CHAIR COGHILL asked what level of proof is needed for a misdemeanor.

SENATOR WIELECHOWSKI answered it's beyond a reasonable doubt. He then asked if the Castle Doctrine extends to property or just a person's house.

MR. PETERSON said he didn't know.

[2:47:48 PM](#)

CHAIR COGHILL found no further questions or objection and stated that Version U was adopted. He solicited a motion.

[2:47:56 PM](#)

SENATOR MCGUIRE moved to report CS for SB 201, Version U, from committee with individual recommendations and attached fiscal note(s).

CHAIR COGHILL announced that without objection, CSSB 201(JUD) passes from the Senate Judiciary Standing Committee.

[2:48:48 PM](#)

There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 2:48 p.m.