

**SB**

**129**

## SENATE COMMITTEE REPORT First Committee of Referral

DATE: 3/3/05

FURTHER:

Date of 5-Day Notice: \_\_\_\_\_  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

Judiciary Committee considered

SENATE BILL NO. 129

### SB 129 WRONGFUL FILING OF LIS PENDENS

"An Act relating to the wrongful recording of a notice of pendency of an action relating to title to or right to possession of real property."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**  
 Same Title  
 New Title

**House Bill:**  
 Same Title  
 Technical Title Change  
 New Title w/ SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
			X	
			X	
	X			
	X			
<b>CHAIR:</b>	✓			

# ALASKA STATE LEGISLATURE

Senate District H  
600 E. Railroad Avenue  
Wasilla AK 99654  
907-376-4866  
907-373-4724 – Fax  
Senator\_Charlie\_Huggins@legis.state.ak.us



State Capitol, Room 417  
Juneau AK 99801-1182  
907-465-3878  
Fax: 907-465-3265  
800-862-3878  
[www.akrepublicans.org/huggins/](http://www.akrepublicans.org/huggins/)

## Charlie Huggins Senator

3/8/05

### Sponsor Statement

**SB 129 – An act relating to the wrongful recording of a notice of pendency of an action relating to title to or right to possession of real property**

---

SB 129 seeks to discourage abusive filings of illegal lis pendens notices and in fact makes it a Class A misdemeanor to file a wrongful “notice of lis pendens”<sup>1</sup>. While the filing does not create a formal lien, such a notice can have an impact similar to that of a lien on the ability of the targeted person to do business with the affected real estate.

SB 129 responds to instances of nuisance filings used as a form of retribution against public officials. Current law is clear that lis pendens are only supposed to be filed against property for which the title or right to possession is subject to litigation, but the recorder’s office currently has no way to prevent people from filing improper lis pendens. Ordinarily, the improper filing is against property that is not subject to dispute; however, the filing is made simply because the filer has a grievance against the owner or someone connected with the owner.

In one case in 2003, a former state employee filed lis pendens targeting the home, development property and mining claims of members of the Alaska Board of Game, an assistant attorney general, and a real estate developer. None of the properties were actually the subject of a title or possession dispute, but the case took months and thousands of dollars of attorney time to resolve.

<sup>1</sup>*Notice of lis pendens* . – A notice filed on public records for the purpose of warning all persons that the title to certain property is in litigation, and that they are in danger of being bound by an adverse judgment. The notice is for the purpose of preserving rights pending litigation.

**Contact Information – Deborah Grundmann 465-4711**

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 129  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title Wrongful Filing of Lis Pendens BRU Alaska Court System  
 Component Trial Courts  
 Sponsor Senator Huggins  
 Requester \_\_\_\_\_ Component No. 768

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of SB 129.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750  
 Division: Alaska Court System Date/Time 3/21/05 11:35 AM  
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 3/21/2005  
 Agency: Alaska Court System

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB129-LAW-T&WC-3-18  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
 Title "An Act relating to the wrongful recording of a RDU CIVIL  
notice of pendency..." Component Torts & Workers' Compensation  
 Sponsor Senator Huggins  
 Requester Senate Judiciary Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 The proposed legislation would make it a Class A misdemeanor to present a lis pendens to a recorder with reckless disregard for the fact that the underlying action does not concern title to or possession of the property at issue. The intent of the legislation is to deter the use of improper restraints on real property of public officials and members of the public as a means of retribution or intimidation.  
  
 Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director Phone 465-3673  
 Division: Administrative Services Division Date/Time 3/18/05 2:32 PM  
 Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General Date 3/18/2005  
 Agency: Department of Law

**Sectional Analysis of SB 129 (wrongful recording of notice of pendency of action relating to title or possession of real property)**

SB 129 seeks to discourage abusive filings of illegal *lis pendens* notices. There is currently no penalty for filing illegal *lis pendens* notices. Filing a *lis pendens* notice creates property title "clouds" that can interfere with property sales or financing.

**Sec. 1.** The first section of the bill adds an additional type of conduct to the actions designated in AS 11.46.560(a) as comprising "the crime of offering a false instrument for recording in the second degree." This crime is a Class A misdemeanor. Under SB 129, criminal liability is extended to those who file notices of *lis pendens* with the recorder of deeds with knowing or reckless disregard for the fact that the court action specified in the notice does not concern either the title to, or the right to possess, the real property referred to in the notice. Liability is also extended to those who file such a notice with knowing or reckless disregard for the fact that there is no pending court action at all that concerns either the title to, or the right to possess, the real property referred to in the notice.

The language in section 1 tracks AS 09.45.940, which sets out the circumstances under which it is proper to file with the recorder of deeds a notice of the pendency of an action affecting title to real property or the right to possession of real property. The common legal term for these notices is "notices of *lis pendens*." Under SB 129, a person knowingly or recklessly using a notice of *lis pendens* in circumstances not provided in AS 09.45.940 will, in general, be subject to prosecution.

**Sec. 2.** Section 2 makes it a complete defense to criminal liability if the person filing the wrongful notice shows that the owner of the property consented to the filing. Thus, even if the filing of the notice is not within the law as set out in AS 09.45.940, the person making the filing is not guilty of a misdemeanor if the owner of the property agreed to let the wrongful document be filed with the recorder of deeds.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

KENNETH H. MANNING, JD, )

Plaintiff, )

v. )

ALASKA BOARD OF GAME, GREG )

ROCZICKA, Chair, GEORGE MATTZ, )

MIKE FLEAGLE, DANA PRUHS, )

BEN GRUSSENDORF, Vice Chair, )

GREG STREVELER, JULIE MAIER, )

STATE OF ALASKA DEPT. OF LAW, )

KEVIN SAXBY, ASSISTANT )

ATTORNEY GENERAL, State of )

Alaska Department of Law, )

Defendants. )

Case No. 3AN-02-4392 Ci

**AFFIDAVIT OF MARK SPARROW**

Mark Sparrow, being first duly sworn, deposes and states:

1. My name is Mark Sparrow. I am a resident of Anchorage, Alaska and am over the age of eighteen. I make this affidavit on personal knowledge.
2. I am not a defendant in this case.
3. I have never been a member of the Alaska Board of Game.
4. I do not know Kenneth Manning, and to my knowledge I have never had any contact with him.
5. Since February, 2003, I have been one of the owners of Lot 9A, Block 6, Plat 71-256, District 301 (hereafter "Lot 9A").

- 6. Lot 9A is an integral part of a 28-unit condominium development project that is scheduled for construction this summer.
- 7. Lot 9A is under contract for sale at a price of \$244,500. The title company for the transaction is First American Title.
- 8. First American Title has informed me that it will not insure the title of Lot 9A until the *lis pendens* filed by Mr. Manning is removed. Title insurance is required for the transaction to proceed.
- 9. If the *lis penden* is not removed promptly, I believe I will suffer serious financial harm.

\_\_\_\_\_  
Mark Sparrow

STATE OF ALASKA )  
ANCHORAGE, ~~SS~~ ) ss.  
THIRD JUDICIAL DISTRICT

Personally appeared before me the above-named Mark Sparrow this \_\_ day of April, 2004, and made oath that the foregoing statements are true to the best of his knowledge.

\_\_\_\_\_  
Notary Public, ~~IN AND FOR ALASKA~~  
Printed name:  
My commission expires: \_\_\_\_\_

**ALASKA LAND TITLE ASSOCIATION**  
P.O. Box 241811 • Anchorage, Alaska 99524

March 22, 2005

The Honorable Charlie Huggins  
Alaska State Senate  
State Capitol Building  
Juneau, Alaska

Subject: Letter of Support for SB 129

Dear Senator Huggins:

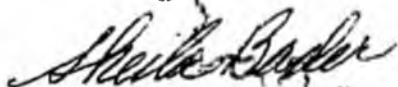
The Legislative Committee of the Alaska Land Title Association (ALTA) has met and discussed SB129, an Act relating to wrongful recording of lis pendens. This letter is to express support by ALTA for SB129.

The Alaska Land Title Association is the state professional association and voice of the title insurance industry. ALTA members search, review and insure land titles to protect home buyers and mortgage lenders who invest in real estate. Members of the association are in business in communities throughout Alaska.

During our review and discussion of this bill, we noted that SB129 would help prohibit abusive recordings of lis pendens against blameless property owners. While it is hard to imagine why someone would use such disingenuous methods, history has shown that this, indeed, can happen.

Thank you for sponsoring this bill and allowing us this opportunity to express support.

Sincerely,

  
Sheila Bader, President  
Alaska Land Title Association  
[Sheila@aktitle.com](mailto:Sheila@aktitle.com)

**ALASKA LAND TITLE ASSOCIATION**

P.O. Box 241811 • Anchorage, Alaska 99524

March 22, 2005

The Honorable Charlie Huggins  
Alaska State Senate  
State Capitol Building  
Juneau, Alaska

Subject: Letter of Support for SB 129

Dear Senator Huggins:

The Legislative Committee of the Alaska Land Title Association (ALTA) has met and discussed SB129, an Act relating to wrongful recording of liens. This letter is to express support by ALTA for SB129.

The Alaska Land Title Association is the state professional association and voice of the title insurance industry. ALTA members search, review and insure land titles to protect home buyers and mortgage lenders, who invest in real estate. Members of the association are in business in communities throughout Alaska.

During our review and discussion on SB129, we noted that SB129 would help prohibit abusive recordings of liens against blameless property owners. While it is hard to imagine why someone would use such disingenuous methods, history has shown that this, indeed, can happen.

Thank you for sponsoring this bill and allowing us this opportunity to express support.

Sincerely,



Sheila Bader, President  
Alaska Land Title Association  
[Sheila@aktile.com](mailto:Sheila@aktile.com)