

HB

29

<TARGET><BILL>HB 29</BILL><SUBJECT>HB
29</SUBJECT><COMM>HJUD28</COMM></TARGET>

**Alaska Legislature
Representative Charisse Millett**

Session:

State Capitol Building, Room 403
Juneau, AK 99801
Phone (907) 465-3879
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Interim:

Anchorage LIO
716 W 4th Ave., Room 390
Anchorage, AK 99501
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MEMORANDUM

To: Chairman Wes Keller, House Judiciary Committee
From: Rep. Charisse Millett
Subject: Hearing request for House Bill 29
Date: Wednesday, January 16, 2013



I respectfully request a hearing on HB 29 in the House Judiciary Committee at your earliest convenience. All the necessary documents are included with this request.

Akis Gialopsos is the staffer assigned to this legislation and he can be reached at (907) 465-4937.

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District 24

SPONSOR STATEMENT for HB 29

“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 an amount the court considers proper and requiring a court that determines the proper amount of security to consider including 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 enjoined.”

The courts of this state and country have and continue to serve the essential purpose of being a means of legal redress for residents and citizens with legitimate grievances. Worryingly, there has been a trend to use the judicial system as a means of achieving political ends. Individuals and interest groups in recent history have been able to obtain injunctions against industrial projects that had already received the proper permits while pursuing a suit against them. While the lengthy discovery process moved at what is comparably a glacial pace, employees were laid off. Contractors and subcontractors incurred losses that were unexpected because the permitting process had been followed and completed. Necessary development projects are stalled or outright culled due to the overbearing costs associated with the injunction or stay. By the time the trial has concluded, in many if not the majority of cases the plaintiffs do not succeed in their suit. However, the suit was simply a means to the real goal of many of these plaintiffs and groups: using the injunction cudgel of the courts to halt and kill industrial projects. Since there is no cost associated with stalling these projects, there is a sizeable incentive for utilizing these means.

HB 29 seeks to balance the rights of stakeholders to have access to the courts while also preventing undue harm coming to industrial endeavors that have been sanctioned by the state. Defendants currently shoulder the full responsibility of an injunction, even if they are successful in their suit. This bill brings a balance to all the parties involved by requiring a bond to be posted by the plaintiff pursuing either a stay or injunction.

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Sectional Analysis of HB 29

Section 1. Requires a court to consider an amount of security that must be posted by a person seeking an injunction, or order vacating or staying the operation of a permit that affects an industrial operation. The court's consideration of the costs that an industrial operation may incur, if the operation is wrongly enjoined, must include an amount for payment of wages and benefits for employees, and payment to contractors and subcontractor of the industrial operation.

Defines an industrial operation to include a construction, energy, or timber activity and oil, gas, and mineral exploration, development and production.

Does not prohibit a person who is wrongly enjoined from other relief or otherwise limit the amount that a person may recover in the action.

Prepared by:
Vasilios Gialopsos

HOUSE BILL NO. 29

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE MILLETT

Introduced: 1/7/13

Referred: Prefiled

A BILL

FOR AN ACT ENTITLED

1 **"An Act requiring a party seeking a restraining order, preliminary injunction, or order**
2 **vacating or staying the operation of a permit affecting an industrial operation to give**
3 **security in an amount the court considers proper and requiring a court that determines**
4 **the proper amount of the security to consider including an amount for the payment of**
5 **wages and benefits for employees and payments to contractors and subcontractors that**
6 **may be lost if the industrial operation is wrongfully enjoined."**

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 *** Section 1.** AS 09.40.230 is amended by adding new subsections to read:

9 (b) A party seeking a restraining order, preliminary injunction, or order
10 vacating or staying the operation of a permit that affects an industrial operation shall
11 give security in an amount the court considers proper for costs that may be incurred
12 and damages that may be suffered by an industrial operation that has been wrongfully
13 enjoined or restrained. A court determining the proper amount of the security shall

1 consider an amount for the payment of wages and benefits for employees and payment
2 to contractors and subcontractors of the industrial operation. In this subsection,
3 "industrial operation" includes a construction, energy, or timber activity and oil, gas,
4 and mineral exploration, development, and production.

5 (c) The existence of security under (b) of this section does not

6 (1) prohibit a person who is wrongly enjoined or restrained from
7 obtaining relief that may be available to that person; or

8 (2) limit the amount that a party may recover in the action.

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**Teleconference Request and List of Potential Witnesses in Person and through
the LIO Sites**

To: Rep. Wes Keller
Chairman, House Judiciary Committee

Rep. Keller,

As part of our office's hearing request, we also respectfully ask for the use of teleconferencing capabilities and to consider the list of potential members of the public who may be testifying in support of HB 29 either in person or through the LIO sites. They include but are not necessarily limited to:

1. A member of the Alaska Chamber of Commerce
2. A member from the Resource Development Council
3. A member from the Alliance
4. A member from the Alaska Miners Association
5. A member from the Alaska Oil and Gas Association

Once we are notified as to who the individuals are from these organizations testifying, we will notify the committee aide to Judiciary immediately.

Respectfully,
Office of Representative Charisse Millett