

HB

47

<TARGET><BILL>HB 47</BILL><SUBJECT>HB
47</SUBJECT><COMM>HJUD28</COMM></TARGET>

CS FOR HOUSE BILL NO. 47(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

**Sponsor(s): REPRESENTATIVES FEIGE AND CHENAULT, Johnson, Keller, Hughes, Hawker,
Peggy Wilson, Thompson, Olson, Saddler, Stoltze, Pruitt, Lynn, Millett**

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 certain permits affecting an industrial operation to**
3 **give security in the amount the court considers proper for costs incurred and damages**
4 **suffered if the industrial operation is wrongfully enjoined or restrained."**

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

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

7 (b) Unless exempt under AS 09.68.040(a), a party seeking a restraining order,
8 preliminary injunction, or order vacating or staying the operation of a permit that
9 affects an industrial operation shall give security, in an amount the court considers
10 proper, for costs that may be incurred and damages that may be suffered by the
11 industrial operation if the industrial operation is wrongfully enjoined or restrained.
12 Upon request of any party and when that party presents evidence, one relevant factor
13 the court shall consider is the amount of wages and benefits for employees and
14 payment to contractors and subcontractors of the industrial operation that may be

1 suffered if the industrial operation is wrongfully enjoined or restrained. In this
2 subsection, "industrial operation" includes a construction, energy, or timber activity
3 and oil, gas, and mineral exploration, development, and production.

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

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

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

8 (d) A party is not required to give security under (b) of this section if the
9 challenged permitting decision or authorization is made by

10 (1) the Department of Environmental Conservation under AS 46.03 or
11 AS 46.14 in a program approved or delegated by the United States Environmental
12 Protection Agency; or

13 (2) the Department of Natural Resources under AS 27.21 in a program
14 approved or delegated by the Office of Surface Mining Reclamation and Enforcement
15 in the United States Department of the Interior.

ALASKA STATE LEGISLATURE

House District 6
Co-Chair House Resources Committee
Transportation Committee
Fisheries Committee
Joint Armed Services Committee



State Capitol Room 126
Juneau, Alaska 99801-1182
(907) 465-4859
Fax (907) 465-3799
1-888-465-4859

REPRESENTATIVE ERIC A. FEIGE

MEMORANDUM

TO: Representative Wes Keller, Chair
House Judiciary Committee

FROM: Representative Eric Feige

DATE: February 5, 2014

RE: Hearing Request for HB 47 - Injunction Security: Industrial Operation

I respectfully request that *House Bill 47 - Injunction Security: Industrial Operation*, be scheduled for a second hearing in the House Judiciary Committee. Please feel free to contact me with any thoughts or concerns with respect to this piece of legislation.

Linda Hay will be the staff point of contact. She can be contacted at 465-3715.

Attached you will find a copy of the original bill, sponsor statement, fiscal notes and a blank CS that was prepared at Rep. Feige's request. Sectional analysis and other pertinent background information will follow shortly.

Thank you for your consideration.


Representative Eric Feige
House District 6

ALASKA STATE LEGISLATURE

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Joint Armed Services Committee



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REPRESENTATIVE ERIC A. FEIGE

MEMORANDUM

TO: Representative Wes Keller, Chair
House Judiciary Committee

FROM: Representative Eric Feige

DATE: January 16, 2013

RE: Hearing Request for HB 47 Injunction Security: Industrial Operation

I respectfully request that House Bill 47 Injunction Security: Industrial Operation, be scheduled for a hearing in the House Judiciary Committee. Please feel free to contact me with any thoughts or concerns with respect to this piece of legislation.

Linda Hay will be the staff point of contact. She can be contacted at 465-3715.

Attached you will find a copy of the bill and sponsor statement. Sectional analysis and pertinent background information will follow shortly.

Thank you for your consideration.

Representative Eric Feige
House District 6

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REPRESENTATIVE ERIC A. FEIGE

Sponsor Statement for HB 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.”

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 shutdown projects at significant costs to working Alaskans, businesses and the state treasury. HB 47 seeks to remedy the situation by leveling the playing field.

HB 47 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**”*.

HB47 closely mirrors 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. In most instances, it is not being done. HB 47 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 being shutdown. The amount of security and how it is calculated is totally within the hands of the court.

Additionally, the language already in Alaska Civil Rule 65(c) stating, *“**No such security shall be required of the state or a municipality or an officer or agency thereof**”*.... has not been changed.

ALASKA STATE LEGISLATURE

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REPRESENTATIVE ERIC A. FEIGE

Sponsor Statement for HB 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.”

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 shutdown projects at significant costs to working Alaskans, businesses and the state treasury. HB 47 seeks to remedy the situation by leveling the playing field.

HB 47 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**”*.

HB47 closely mirrors 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. In most instances, it is not being done. HB 47 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 shutdown. The amount of security and how it is calculated is totally within the hands of the court.

CS FOR HOUSE BILL NO. 47()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES FEIGE AND CHENAULT, Johnson, Keller, Hughes, Hawker, Peggy Wilson, Thompson, Olson, Saddler, Stoltze, Pruitt, Lynn, Millett

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 certain permits affecting an industrial operation to**
3 **give security in the amount the court considers proper for costs incurred and damages**
4 **suffered if the industrial operation is wrongfully enjoined or restrained."**

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

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

7 (b) A party seeking a restraining order, preliminary injunction, or order
8 vacating or staying the operation of a permit that affects an industrial operation shall
9 give security in an amount the court considers proper for costs that may be incurred
10 and damages that may be suffered by the industrial operation if the industrial operation
11 is wrongfully enjoined or restrained. The court shall consider the amount of wages and
12 benefits for employees and payment to contractors and subcontractors of the industrial
13 operation that may be suffered if the industrial operation is wrongfully enjoined or
14 restrained. In this subsection, "industrial operation" includes a construction, energy, or

1 timber activity and oil, gas, and mineral exploration, development, and production.

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

3 (1) prohibit a person who is wrongfully enjoined or restrained from
4 obtaining relief that may be available to that person; or

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

6 (d) A party is not required to give security under (b) of this section if the
7 challenged permitting decision or authorization is made by

8 (1) the Department of Environmental Conservation under AS 46.03 or
9 AS 46.14 in a program approved or delegated by the United States Environmental
10 Protection Agency; or

11 (2) the Department of Natural Resources under AS 27.21 in a program
12 approved or delegated by the Office of Surface Mining Reclamation and Enforcement
13 in the United States Department of the Interior.

AMENDMENT #1

OFFERED IN THE HOUSE

BY REPRESENTATIVE FEIGE

TO: CSHB 47(), Draft Version "N"

- 1 Page 1, line 11:
- 2 Delete "The"
- 3 Insert "Upon request of any party and when that party presents evidence, the"

adopted unanimously

AMENDMENT #2

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 47(), Draft Version "N"

- 1 Page 1, line 7:
- 2 Delete "A"
- 3 Insert "Unless exempt under AS 09.68.040(a), a"

adopted unanimously

AMENDMENT #3

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 47(), Draft Version "N"

- 1 Page 1, line 9:
- 2 Following "security":
- 3 Insert ","
- 4 Following "proper":
- 5 Insert ","

adopted unanimously

~~Conceptual Amendment #4~~

Conceptual Amendment to CS HB 47 (Jud) "N" version

by Gruenberg

page 1 line 11 ~~at~~ after "restrained"

delete "The" and insert

"As one relevant factor the"

adopted unanimously

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 10, 2014

SUBJECT: Sectional Summary CSHB 47()
(CSHB 47(); Work Order No. 28-LS0072\N)

TO: Representative Eric Feige
Attn: Linda Hay

FROM: Megan A. Wallace *MAW*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill -- the bill itself is the best statement of its contents.

Section 1. Amends AS 09.40.230 by adding new subsections (b) - (d).

(b) Requires a party seeking a restraining order, preliminary injunction, or order vacating or staying the operation of a permit affecting an industrial operation in a court action to give security; requires the court to consider the amount of wages and benefits for employees, and payment to contractors and subcontractors of the industrial operation when determining the amount of security; and defines "industrial operation."

(c) Provides that the existence of security does not prevent a person wrongfully enjoined or restrained from obtaining other relief and does not limit the amount of recovery.

(d) Provides that a party is not required to give security when challenging a permitting decision or authorization made by the Division of Environmental Conservation and the Department of Natural Resources in certain circumstances.

MAW:ray
14-054.ray

ALASKA STATE LEGISLATURE

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Co-Chair House Resources Committee
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REPRESENTATIVE ERIC A. FEIGE

Federal statutes for programs the state has taken primacy from the federal government for, have specific statutory language in place requiring federal courts to set security or bond amounts on an injunction or temporary restraining order according to the Federal Rules of Procedure.

Federal Rule of Civil Procedure 65(c) states: *(c)SECURITY. The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.*

The exception language in (d) was added because the State has been concerned that EPA or Office of Surface Mining (Dept. of Interior) might view the injunction provision in HB 47 as chilling third parties' access to the court, if those third parties would challenge DEC or DNR permits issued under a state permitting program that was developed under federal law and approved by a federal agency. By adding the exception language to exclude permitting programs in which the State has assumed primacy, the state should avoid this outcome.

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REPRESENTATIVE ERIC A. FEIGE

CSHB 47 Injunction Security Testimony

DEC Deputy Commissioner Lynn Kent – available for questions in audience

Ruth Hamilton Heese, Dept of Law/Environmental Section – on line for questions

DNR Deputy Commissioner Ed Fogels – available for questions in audience

Nancy Meade, General Counsel, Alaska Court System – available for questions in audience

Cori Mills, Assistant Attorney General, Dept. of Law – available for questions in audience

Megan Wallace, Leg. Legal – on line for questions

Mike Jungries, Davis, Wright, Tremaine – Anchorage RDC Director -- on line

Maynard Tapp – on line

Andy Rogers, Alaska State Chamber – on line

Overview of Injunctions in Alaska

Prepared by Department of Law

February 13, 2014

Injunctions are court orders that an act be done or not be done. To obtain an injunction, an applicant must show harm will occur if the adverse party is not enjoined. Generally this means an applicant will be significantly hurt and monetary compensation will not protect the applicant. An applicant must also provide a security to cover an adverse party's costs and damages in case that party is wrongfully enjoined. The State, municipalities, and their officers and agencies are not required to provide securities.

Type of Injunction	Description & Standard to Obtain	Security	Duration
Temporary Restraining Order (TRO)	<p><i>Description:</i> TROs are generally issued to prevent irreparable harm prior to a preliminary injunction hearing. Due to the very short timeframe for these hearings, the adverse party frequently may not receive notice of the hearing before it occurs.</p> <p><i>Standard:</i> An applicant must make the same showing as for a preliminary injunction (see below). If an adverse party does not receive notice of the hearing, an applicant must also show: (1) specific facts that the applicant will face immediate and irreparable harm before an adverse party can be heard in opposition; and (2) certification by the applicant's attorney of any attempts to give notice and the reasons why notice should not be required.</p>	<p>An applicant must provide security, and the court determines the amount.</p>	<p>No more than 10 days.</p>
Preliminary Injunction	<p><i>Description:</i> Preliminary injunctions are issued to maintain the status quo and prevent harm pending trial and a decision on the merits of a case.</p> <p><i>Standard:</i> There are two ways an applicant may receive a preliminary injunction. An applicant shows that: (1) the applicant faces irreparable harm; (2) the adverse party is adequately protected, such as by a bond or because any injury to the adverse party would be slight compared to the applicant's injury; and (3) the applicant raises serious and substantial issues on the merits of the case, <i>i.e.</i>, the issues are not frivolous or obviously without merit.</p> <p>Alternatively, if an applicant cannot show either (1) or (2) above, the applicant must meet a heightened standard showing probable success on the merits of the case.</p>	<p>An applicant must provide security, and the court determines the amount.</p>	<p>Until the court issues a final decision or other order.</p>
Permanent Injunction	<p><i>Description:</i> Permanent injunctions are issued after a trial or proceeding on the merits of a case and are part of the court's judgment.</p> <p><i>Standard:</i> The court makes a legal determination that the activity at issue can or cannot be engaged in.</p>		<p>Duration is determined by the court.</p>

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REPRESENTATIVE ERIC A. FEIGE

Alaska Civil Rule 65(C)

(c) Security. 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. No such security shall be required of the state or a municipality or of an officer or agency thereof, or unless otherwise ordered by the court, in domestic relations actions or proceedings.

down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

Civil Rule 65(c)

(c) **Security.** 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. No such security shall be required of the state or a municipality or of an officer or agency thereof, or unless otherwise ordered by the court, in domestic relations actions or proceedings.

A surety upon a bond or undertaking under this rule submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the persons giving the security if their addresses are known.

(d) **Form and Scope of Injunction or Restraining Order.** Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) **Standing Preliminary Injunctions in Domestic Relations Actions.** The presiding judge of each judicial district may issue a standing injunction which restrains the parties in all domestic relations actions, except dissolutions, domestic violence actions and uniform reciprocal enforcement actions, from:

(1) removing any child who is the subject of the action from the State of Alaska without the written consent of the other party;

(2) disposing of, encumbering or transferring any marital property without the written consent of the other party, except reasonably using funds for the parties or the parties' children's personal and necessary expenses; and

(3) threatening, harassing, or harming the other party.

Such a standing injunction shall be effective against a party upon receipt of a copy of the standing injunction by the party or the party's attorney.

(Adopted by SCO 5 October 9, 1959; amended by SCO 30 effective February 1, 1961; by SCO 223 effective January 1, 1976; by SCO 258 effective November 15, 1976; by Section 2, Chapter 82, Session Laws of Alaska 1977 effective September 1, 1977; by SCO 708 effective July 15, 1986; by SCO 1153 effective July 15, 1994; by SCO 1269 effective July 15, 1997; by SCO 1361 effective October 15, 1999; and by SCO 1620 effective August 16, 2006)

Note: AS 10.06.630, as enacted by ch. 166, § 1, SLA 1988, amended Civil Rule 65 by changing the procedure for enjoining dissolution proceedings under AS 10.06.630.

Note: In 1996, the legislature enacted AS 18.66.110-18.66.130 relating to domestic violence protective orders. According to § 78 ch. 64 SLA 1996, these statutes have the effect of amending Civil Rule 65 relating to temporary restraining orders, the method of obtaining those orders, and the timing of those orders.

Note: Chapter 42 § 2 SLA 1999 enacts AS 09.19.200 which governs the remedies available in civil litigation involving conditions in correctional facilities. According to § 3 of the act, the enactment of AS 09.19.200 has the effect of amending Civil Rules 59(f), 60(b), 62, and 65 by altering the remedies available and the procedure to be used in litigation involving correctional facilities.

Note: Chapter 87 SLA 03 (HB 1) enacted AS 18.65.850-860, which addresses protective orders for persons who are victims of stalking not involving domestic violence. According to Section 8(b) of the Act, these provisions have the effect of amending Civil Rule 65 relating to temporary restraining orders, the method of obtaining those orders, and the timing of those orders.

Note: Chapter 54 SLA 2005 (HB 95) enacted extensive amendments and new provisions related to public health, including public health emergencies and disasters. According to Section 13(d) of the Act, AS 18.15.375(c)(3), (d), and (e), and 18.15.385(d) (k), enacted in Section 8, have the effect of amending Civil Rule 65 by allowing temporary and ex parte injunctions to be issued and by expediting the procedures related to injunctive relief in matters involving public health.

Note: Chapter 36 SLA 2006 (SB 54) enacted changes to the protective order statutes for crimes involving stalking to include crimes involving sexual assault and sexual abuse. According to section 12 of the Act, the amendments to AS 18.65.850 and AS 18.65.855 made in sections 4 through 8 of the Act have the effect of changing Civil Rule 65 by changing the method for obtaining, and the timing of, temporary restraining orders.

Cross References

CROSS REFERENCE: AS 09.40.230

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FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version HB047
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) HB047-ACS-TRC-1-24-13 Dept. Affected Alaska Court System
 Title An Act requiring injunction security in amount proper for Appropriation Trial Courts
damages if industrial operation is wrongfully enjoined Allocation _____
 Sponsor Representatives Feige and Chenault
 Requester _____ OMB Component Number 768

Expenditures/Revenues (Thousands of Dollars)

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

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates					
			FY14	FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

	FY14	FY15	FY16	FY17	FY18	FY19
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Prgm (DGF)						
1037 GF/MH (UGF)						
1178 temp code (UGF)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

	FY14	FY15	FY16	FY17	FY18	FY19
Full-time						
Part-time						
Temporary						

CHANGE IN REVENUES

	FY14	FY15	FY16	FY17	FY18	FY19

Estimated **SUPPLEMENTAL (FY13) operating costs** _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY14) costs** _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? no
 If yes, by what date are the regulations to be adopted, amended, or repealed? _____ Discuss details in analysis section.

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial version.

Prepared by Nancy Meade, General Counsel
 Division Alaska Court System
 Approved by Nancy Meade for Christine Johnson, Administrative Director
Alaska Court System

Phone 907-463-4736
 Date/Time 1/24/13 3:00 PM
 Date 1/24/2013

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB047

Analysis

HB 47 would add a new subsection to AS 09.40.230 to require a party seeking a restraining order, preliminary injunction, or staying a permit that affects an industrial operation to give security in an amount determined by the court for costs that may be suffered by the industrial operation if it is wrongfully enjoined or restrained, including an amount for the payment of wages and benefits for employees and payments to contractors and subcontractors of the industrial operation.

HB 47 will have no fiscal impact on the court system.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 47 (A)
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB047-DEC-WQ-01-14-13
Title: INJUNCTION SECURITY: INDUSTRIAL
OPERATION
Sponsor: FEIGE, CHENAULT
Requester: House Judiciary Committee

Department: Department of Environmental Conservation
Appropriation: Water
Allocation: Water Quality
OMB Component Number: 2062

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed? N/A

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Michelle Bonnet Hale, Director	Phone:	(907)269-6281
Division	Water	Date:	01/14/2013 01:44 PM
Approved By:	Lynn Kent, Deputy Commissioner	Date:	01/25/13
	Dept. of Environmental Conservation		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 47

Analysis

This bill has no fiscal impact on the Department of Environmental Conservation, Division of Water.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 47 (A)
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB047-LAW-CIV-01-25-13
Title: INJUNCTION SECURITY: INDUSTRIAL
OPERATION
Sponsor: FEIGE, CHENAULT
Requester: (H) Judiciary

Department: Department of Law
Appropriation: Civil Division
Allocation: Oil, Gas and Mining
OMB Component Number: 2091

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Initial version, not applicable.

Prepared By:	Loretta Withington, Division Operations Manager	Phone:	(907)465-5427
Division	Administrative Services Division	Date:	01/25/2013 12:08 AM
Approved By:	Michael C. Geraghty, Attorney General	Date:	01/25/13
	Department of Law		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 47

Analysis

HB 47 would amend existing Statutes to add a requirement that a party seeking a restraining order, preliminary injunction, or order vacating or staying the operation of a permit affecting an industrial operation shall provide security in an amount determined by the court for the industrial operation's costs and damages, including employees wages and benefits and payment to contractors and subcontractors.

The Department of Law anticipates zero fiscal impact.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 47 (A)
Fiscal Note Number: _____
() Publish Date: _____

identifier: HB047-DNR-MLW-1-24-13
Title: INJUNCTION SECURITY: INDUSTRIAL
OPERATION
Sponsor: FEIGE, CHENAULT
Requester: House Judiciary

Department: Department of Natural Resources
Appropriation: Land & Water Resources
Allocation: Mining, Land & Water
OMB Component Number: 3002

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? NO
If yes, by what date are the regulations to be adopted, amended or repealed? N/A

Why this fiscal note differs from previous version:

Initial Version

Prepared By:	Brent Goodrum, Director	Phone:	(907)269-8625
Division	Mining, Land and Water	Date:	01/24/2013 05:23 PM
Approved By:	Daniel S. Sullivan, Commissioner	Date:	01/24/13
	Department of Natural Resources		

FISCAL NOTE ANALYSIS

**STATE OF ALASKA
2013 LEGISLATIVE SESSION**

BILL NO. HB047

Analysis

HB047 requires a party seeking a restraining order, preliminary injunction, or order vacating or staying the operation of a permit that affects an industrial operation to give security in an amount determined by the court for costs that may be incurred and damages that may be suffered by an industrial operation that has been wrongfully enjoined or restrained. This security would include an amount for the payment of wages and benefits for employees and payment to contractors and subcontractors of the industrial operation.

There will be no anticipated fiscal impact to the Department of Natural Resources.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
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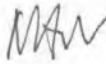
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 10, 2014

SUBJECT: Injunction security
(CSHB 47()); Work Order No. 28-LS0072(N)

TO: Representative Eric Feige
Attn: Linda Hay

FROM: Megan A. Wallace 
Legislative Counsel

This memorandum is a corrected version of the draft dated February 8, 2014, serves as a follow-up to the memorandum, dated February 1, 2013, from Dennis C. Bailey, and answers the same questions in analyzing CSHB 47().

1. Does CSHB 47() require Alaskans to post a bond when requesting a stay or injunction?

Yes. The bill states that "a party seeking a restraining order, preliminary injunction, or order vacating or staying the operation of a permit that affects an industrial operation shall give security" This is a requirement.

2. Does CSHB 47() make posting a bond mandatory?

Yes.

It should be noted, however, that despite the seemingly mandatory language in both CSHB 47() and Rule 65(c) relating to security for injunctions, the federal courts, including the Ninth Circuit, have interpreted the comparable federal rule as giving the court full discretion of the amount of security required, **if any**. See *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) ("Despite the seemingly mandatory language, Rule 65(c) invests the district court with discretion as to the amount of security required, *if any*. In particular, the district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct.") (internal quotations omitted) (emphasis in original) (citing *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003) and *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999)); see also *Language Line Servs., Inc. v. Language Servs. Associates, Inc.*, 500 F. App'x 678, 681 (9th Cir. 2012) ("LSA incorrectly argues that Federal Rule of Civil Procedure 65(c) requires the posting of a bond. Despite the mandatory language of Rule 65(c), district courts retain 'discretion as to the amount of security required, *if any*.'" (emphasis in original). While the Alaska Supreme Court has

never reached this issue, it would not be unreasonable to assume that it would reach a similar conclusion if asked to do so.

3. *Does CSHB 47() set the bond amount?*

No. The bill does not set a dollar figure for the bond amount. The bill allows the court to set the amount "the court considers proper."

4. *Does CSHB 47() prevent plaintiffs from filing an action?*

Civil Rule 65(c) already requires security in all cases involving a restraining order or preliminary injunction. Further, because CSHB 47() continues to allow the court full discretion in determining the amount of security, it is unlikely that it will prevent plaintiffs from filing an action. As a practical matter, the security would not be due at the time the complaint is filed, but would become due after a determination by the court of the amount due.

See also the analysis of the *Patrick* case in Mr. Bailey's memo.

5. *Does CSHB 47() apply to the state or municipalities?*

CSHB 47() does not expressly exempt the state or municipalities from posting a bond, but under AS 09.68.040(a), they would not be required to do so. AS 09.68.040(a) provides:

(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.

Based on this section, the state or a municipality or their officers would not be required to post bond as security under HB 47.

6. *Does CSHB 47() apply to Alaska Native Corporations?*

Yes.

7. *Would CSHB 47() apply to a dispute among neighbors where one wishes to stop another from a residential construction activity?*

Probably not, but it would likely depend on the scope of the project. The definition of the term "industrial operation" in the bill includes "construction"; whether the construction is industrial construction would depend on the particular circumstances.

8. *Does CSHB 47() mirror Alaska Civil Rule 65(c) by allowing the court to set an amount that it "considers proper" when determining an amount for security?*

Yes. Both CSHB 47() and Rule 65(c) allow a court to set the security in an amount it deems proper. The bill, however, states that the court shall consider specific factors when determining such amount.

Representative Eric Feige

February 10, 2014

Page 3

9. *Does CSHB 47() in any way attempt to have the injunction security include compensation for lost profit?*

No, not specifically, but the court could likely consider potential lost profits in determining the amount of security.

10. *Would CSHB 47() create a court rule change that requires a two-thirds majority vote?*

In my opinion, the revised language of CSHB 47() does not make it any more or less likely, as compared to the original version, that the legislation will be considered as changing a court rule. Civil Rule 65(c) reads, in part:

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.

The factors that are now required to be considered by the court under CSHB 47() could already be considered by the court under Rule 65(c). Ultimately, however, regardless of the factors considered, both CSHB 47() and Rule 65(c) leave the court with discretion about the amount of security to require.

Regardless of the changes in CSHB 47(), the argument could still be made that the legislation makes an indirect court rule change because it specifically mandates that the court consider "the amount of wages and benefits for employees and payment to contractors and subcontractors of the industrial operation." In addition, Rule 65(c) exempts the state and municipalities from the security requirement, whereas CSHB 47() only exempts a party from providing security where the permitting decision was made by the Department of Environmental Conservation and the Department of Natural Resources in limited circumstances. Therefore, if the state or a municipality seeks an injunction relating to an industrial operation in other cases, CSHB 47() would apply. As previously articulated, this suggests that a two-thirds vote may be required. Moreover, this legislation requires a party to give security when seeking a restraining order, preliminary injunction, *or* "order vacating or staying the operation of a permit that affects an industrial operation." Rule 65(c) only requires security in cases requesting a restraining order or preliminary injunction. There may be some limited circumstances where a party seeks an "order vacating or staying the operation of a permit that affects an industrial operation" or permanent injunction as a part of a civil action and does not seek temporary injunctive relief. Because this legislation extends the security requirement beyond cases seeking a restraining order or preliminary injunction, it may be deemed a court rule change and a two-thirds vote may be required.

MAW:med
14-010.med

DIVISION OF MINING, LAND & WATER AUTHORIZATIONS

Division of Mining, Land & Water Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Upland and Tideland Permits	AS 38.05.850	11 AAC 96.050 - 145 Miscellaneous Land Use	5 years max	1 year extensions up to 5 times allowed or reissue for another term of up to 5 years
Trapping Cabin Permits	AS 38.95.075 AS 38.95.080 AS 38.95.085	11 AAC 05.010 Fees ((a)(5)(A)) 11 AAC 94 Trapping Cabin Construction Permits	10 years	1 year extensions or reissue for another term up to 10 years
Commercial Recreation Permits	AS 38.05.850	11 AAC 09.030 Generally allowed uses 11 AAC 09.300 Commercial-use permit 11 AAC 05.010 Fees ((3)(A-C))	Up to 1 year	No extensions. Renew up to 1 year
Personal Use Cabin Permits	AS 38.04.035 AS 38.05.020 AS 41.21.020 AS 38.04.900	Chapter 65. Personal Use Cabin Permits. 11 AAC 65.010 Applicability 11 AAC 65.020 Applications 11 AAC 65.030 Application Fees 11 AAC 65.040 Renewals 11 AAC 65.050 Permit decision 11 AAC 65.060 Density within state game refuge and critical habitat areas 11 AAC 65.070 Conflicting applications 11 AAC 65.080 Ownership and renewal 11 AAC 65.090 Conditions of permit 11 AAC 65.100 Appeals 11 AAC 65.900 Definitions	Lifetime for group of people	6 year interval update renewal until permittees die
Log Transfer Facility Permits	AS 38.05.850	11 AAC 05.010 Fees 11 AAC 55.215 Waterfront development land	5 years	1 year extension or reissue

Division of Mining, Land & Water Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Private Easements	AS 38.05.850	11 AAC 05.010 Fees 11 AAC 96.060 Performance Guaranty 11 AAC 96.065 Insurance 11 AAC 86.150 Plan of operations instead of land use permit 11 AAC 96.070 Annual Report, Completion Statement 11 AAC 96.145 Violations 11 AAC 53.010-900 Records, Surveys and Platting	Can be perpetual; issued for that necessary	No Renewal
Public Easements	AS 38.05.850	11 AAC 51.10 Applicability of Chapter 11 AAC 51.15-100 Identification, Reservation, and Modification of Public Easements 11 AAC 55.040 Classification 11 AAC 67.087 Access 11 AAC 86.150 Plan of operations instead of land use permit 11 AAC 96.060 Performance Guaranty 11 AAC 96.065 Insurance 11 AAC 96.070 Annual Report, Completion Statement 11 AAC 96.145 Violations 11 AAC 53.010-900 Records, Surveys and Platting	Can be perpetual; issued for that necessary	No Renewal
Easement Vacations	AS 19.30.410 AS 38.04.058 AS 38.04.200 AS 38.05.127 AS 40.15.070 AS 40.15.305	11 AAC 51.065. Vacation of easements 11 AAC 53.730. Replats and vacations 11 AAC 53.210. General plat standards	No term	No Renewal

Division of Mining, Land & Water Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Upland and Tideland Leases	AS 38.05.070-105	11 AAC 55.202. Settlement land 11AAC 58 Leasing Regulations 11 AAC 58.510 Lease Utilization 11AAC 58.570 Notice of Default 11AAC 58.410 Rental 11 AAC 58.720 Inspection 11AAC 58.910 Definitions 11 AAC 55 Classification 11 AAC 62.840. Definitions 11 AAC 96.060 Performance Guaranty 11 AAC 96.065 Insurance	55 years max; 10-25 common	Once for period not to exceed initial term; older leases have other conditions
Recreation Facilities Development	AS 38.05.073	11 AAC 58.910. Definitions.	55 years max	Depends on terms of Lease
Aquatic Farm Leases	AS 38.05.083	Chapter 63 Aquatic Farmsite Permits and Leases 11 AAC 63.010. Applicability 11 AAC 63.020 Application periods 11 AAC 63.030 Aquatic Farmsite lease applications 11 AAC 63.040 Associated facilities; upland owner preference right; upland owner access right 11 AAC 63.050 Application review; best interest finding 11 AAC 63.060 Notice and opportunity to comment 11 AAC 63.080 Required security 11 AAC 63.100 Issuance of aquatic farmsite lease 11 AAC 63.110 General lease provisions Sec 38.05.083 Aquatic farming and hatchery site leases (lease fees) 11 AAC 63.900 Definitions	10 years	10 years if producing
Public and Charitable Leases or Land Sale	AS 38.05.810	None for land sales	No Limit; No term for land sale	Negotiable; No renewal or extension for land sale
Public and Charitable Material Sales	AS 38.05.810	N/A due to new statute for Material Sales. New regulations will be written.	Up to 10 years	Renewal up to 10 years

Division of Mining, Land & Water Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Railroad Conveyances	AS 42.40.360-370 AS 42.40.460-465	None	No term	No Renewal
Log Transfer Facility Leases	AS 38.05.020 AS 38.05.035 AS 38.05.083 AS 38.05.127 AS 38.06.128	11 AAC 63.050. Application review; best interest finding.	25 years typically	1 renewal allowed for same term
Trespass	None	None	No term	No Renewal
Material Sales	AS 38.05.550	N/A. New regulations will be written due to statute change.	Up to 5 years	Renewal up to 5 years
RS2477 Rights of Way	AS 19.30.400	11 AAC 51.055	No term	No Renewal
Plat Approval Unorganized Boroughs	AS 29.03.030	None	No term	No Renewal
Interagency Land Management Assignment	AS 38.05.027 AS 38.05.020 AS 38.05.030 Exceptions. AS 38.05.035 Powers and duties of the director	11 AAC 05.010 Fees ((e)(15)(A-D))	No term but reversion interest when not used	Reviewed every 5 years for appropriate use
Exchange	AS 38.50.010-170	11 AAC 67.250. Public hearing 11 AAC 67.200. Purpose 11 AAC 67.210. Initiation of exchange 11 AAC 67.240. Appraisal 11 AAC 67.260. Final exchange agreement 11 AAC 67.270. Title insurance 11 AAC 67.220. State land or interests in state land subject to exchange 11 AAC 67.230. Preliminary exchange agreement 11 AAC 55.170. Reserved use land 11 AAC 55.040. Classification 11 AAC 05.010. Fees	No term	No Renewal

Division of Mining, Land & Water Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Preference Rights – Lease, Permit, Tidelands	AS 38.05.035(b) AS 38.05.075(b-d) AS 38.05.087 AS 38.05.102 AS 38.05.820	None	No Term	No Renewal
Land Sales – Subdivision	AS 38.05.045-060	11 AAC 67.002. Applicability 11 AAC 67.005. General qualifications 11 AAC 67.007. Application 11 AAC 67.008. Ineligibility due to default 11 AAC 67.010. Proof of eligibility based on residency 11 AAC 67.012. Disposal brochure 11 AAC 67.015. Land available 11 AAC 67.020. Proper location 11 AAC 67.022. No warranty implied 11 AAC 67.025. Homeowners 11 AAC 67.029. Notice 11 AAC 67.045. Auction procedure	No term	No renewal or extension

Division of Mining, Land & Water Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Land Sales – Remote Recreational Cabin sites	AS 38.05.600	11 AAC 67.060. Lottery procedure 11 AAC 67.062. Proof of eligibility 11 AAC 67.065. Preference rights 11 AAC 67.067. Lottery sale contract 11 AAC 67.070. Failure to pay deposit 11 AAC 67.800. Qualifications for remote cabin site 11 AAC 67.805. Designating areas for remote recreational 11 AAC 67.810. Local review of staking areas 11 AAC 67.815. Offering remote recreational cabin sites. 11 AAC 67.820. Staking instructions 11 AAC 67.825. Lease application; priority 11 AAC 67.830. Rejection or modification of lease application 11 AAC 67.835. Lease conditions 11 AAC 67.840. Deposits, refunds, and credits 11 AAC 67.845. Access	Lease – 3 year term Sale – no term	One 1-year lease extension; One 5-year lease renewal
Land Sales - Preference Rights (includes agriculture)	AS 38.05.035(b) AS 38.05.035(f) AS 38.05.068 AS 38.05.069 AS 38.05.102	11 AAC 67.052. Sales to Forest Service permittees 11 AAC 67.053. Preference right to certain business users (these cover only two of the 5 statutory authorities – .035(f) and .068)	No term	No renewal or extension

Division of Mining, Land & Water Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Land Sales - Agriculture	AS 38.05.059 AS 38.05.321	11 AAC 67.160. Administration of 11 AAC 67.160-11 AAC 67.195 11 AAC 67.162. Title and interest conveyed 11 AAC 67.165. Actions for trespass, damages, and forfeiture 11 AAC 67.167. Agricultural preference right 11 AAC 67.170. Sale notice 11 AAC 67.172. Purchaser qualification 11 AAC 67.175. Qualifications for purchase by lottery 11 AAC 67.177. Farm conservation plan 11 AAC 67.180. Contents of farm conservation plan 11 AAC 67.185. Farm development plan 11 AAC 67.187. Construction of real property improvements 11 AAC 67.188. Subdivision 11 AAC 67.190. Retained interests in land 11 AAC 67.192. Sale, assignment, or sublease of agricultural interest Section	No term	No renewal or extension
Land Sales – Veteran’s Discount	AS 38.05.940	11 AAC 67.891. Applicability 11 AAC 67.893. Discount application 11 AAC 67.895. Procedure 11 AAC 67.897. Binding Determination	No terms	No renewal or extension
Land Sales – Veteran’s Preference	AS 38.05.067	11 AAC 67.050. Veteran's preference	No terms	No renewal or extension
Land Sale Contracts Pending Adjudication	AS 38.05.65	None	Terms vary in length up to 55 years	No Renewal

Division of Mining, Land & Water Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Land Sales Contracts (includes Agriculture)	AS 38.05.065	11 AAC 54.320. Assignments 11 AAC 54.330. Modification 11 AAC 54.340. Cancellation - Forfeiture 11 AAC 54.350. Notice of breach 11 AAC 54.360. Notice or demand 11 AAC 54.370. Rights of collateral assignee 11 AAC 54.380. Entry or re-entry 11 AAC 54.390. Re-sale 11 AAC 54.400. Forfeiture of payments 11 AAC 54.410. Written waiver 11 AAC 54.430. Rental for improvements or personal property not removed 11 AAC 54.440. Sanitation 11 AAC 54.450. Building and zoning codes 11 AAC 54.460. Fire protection 11 AAC 54.470. Purchase contract credit 11 AAC 54.480. Conditional contract 11 AAC 67.875. Installment payments 11 AAC 67.877. Interest 11 AAC 67.879. Service charge 11 AAC 67.880. Additional payments	5 – 20 years	No renewal or extension
Patent Issuance	None	11 AAC 67.280. Execution of exchange. 11 AAC 83.165. Conditional leases. (patent denial) 11 AAC 83.605. Notice of patent. 11 AAC 67.149. Request for patent. 11 AAC 67.015. Land available. 11 AAC 86.115. Locations on state-selected land. 11 AAC 67.154. Agricultural homesteads. 11 AAC 67.153. Assignment; conveyance; transfer. 11 AAC 83.600. Date of transfer – Uplands and shorelands.	Perpetual	None
Title Report	None	None	2 years valid	None

Division of Mining, Land & Water Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Navigability Determinations	AS 38.05.127	None	No term	No Renewal
Native Allotments	AS 38.05.035(b)(9)	11 AAC 67.930	No term	No Renewal
906K Concurrences	None	N/A. Found under section 906(k) of ANILCA (PL 96-487).	BLM Terms	BLM Terms
Municipal Entitlements	AS 38.04.035 AS 38.04.900 AS 38.05.020 AS 41.21.020	11 AAC 65.050. Permit decision.	No Term	No Renewal
Tideland Conveyances	AS 38.05.125 AS 38.10.010-040	None	No Term	No Renewal

Division of Mining, Land & Water Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Mining Claims	AS 38.05.185-275	11 AAC 86.100. Applicability 11 AAC 86.105. Discovery defined 11 AAC 86.107. Payments and refunds 11 AAC 86.108. Notices 11 AAC 86.110. Existing mining claims, federal leases and permits 11 AAC 86.115. Locations on state-selected land 11 AAC 86.125. Failure to comply 11 AAC 86.135. Mineral deposits open to location 11 AAC 86.140. Drawing of prior existing locations 11 AAC 86.145. Surface use 11 AAC 86.150. Plan of operations instead of land use permit 11 AAC 86.155. Sale, lease, or other transfer 11 AAC 86.200. Discovery required 11 AAC 86.202. MTRSC and traditional mining claims and leasehold locations 11 AAC 86.205. Marking locations 11 AAC 86.210. Attaching location notice 11 AAC 86.215. Certificate of location and first rental payment	No Term	No Renewal

Division of Mining, Land & Water Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Mining Claims (CONTINUED)		11 AAC 86.220. Annual labor 11 AAC 86.221. Annual rental 11 AAC 86.223. Abandonment, relinquishment, and relocation 11 AAC 86.225. Service of notice on co-owners 11 AAC 86.230. Recordation of sale, lease, or other transfer 11 AAC 86.250. General principles for conversion of a traditional location to a converted MTRSC location 11 AAC 86.255. Certificate of location for a converted MTRSC location 11 AAC 86.260. Rental age of a converted location 11 AAC 86.265. Credit or deficiency in payment of rental on a converted location 11 AAC 86.270. Labor obligation on a converted location 11 AAC 86.290. Definitions		
Prospecting Site	AS 38.05.245	11 AAC 86.400. Purpose and rights acquired 11 AAC 86.405. Boundaries and corners 11 AAC 86.410. Prospecting site location notice and certificate of location 11 AAC 86.422. Term and rental 11 AAC 86.425. Prospecting work 11 AAC 86.430. Prospecting sites located before August 20, 2000 11 AAC 86.435. Staking claims on expired sites'	2 years	No Renewal

Division of Mining, Land & Water Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Mineral Leases	AS 38.05.205 AS 38.05.135-157	11 AAC 86.305. Applications for lease 11 AAC 86.309. Showing of discovery 11 AAC 86.311. Survey of exterior boundary 11 AAC 86.312. Lease duration 11 AAC 86.313. Annual rental 11 AAC 86.314. Annual labor 11 AAC 86.321. Surrender	55 year max; typical 10 year	Up to 55 year
Coal Permitting and Reclamation and Bonding	AS 27.21.010-999	11 AAC 90.001. Adoption by reference 11 AAC 90.002-011 General Permitting Requirements 11 AAC 90.071-101 Reclamation and Operation Plan 11 AAC 90.111-133 Processing of Permit Applications 11 AAC 90.141-157 Permitting and Special Categories of Mining 11 AAC 90.201-213 Bonding 11 AAC 90.901-911 General Provisions	5 years, but commissioner may grant for longer term if applicant demonstrates need (AS 27.21.070); must begin mining within 3 years absent an extension under AS 27.21.070(b)	Right of successive renewal (AS 27.21.080); "reasonable" extensions of time to commence mining granted under AS 27.21.070(b)

Division of Mining, Land & Water Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Coal Leasing	AS 38.05.145-150	11 AAC 85.005. Leasing procedures in general 11 AAC 85.010. Competitive designation 11 AAC 85.015. Bidding terms 11 AAC 85.020. Right to reject bids 11 AAC 85.100. Leasing procedures in general 11 AAC 85.105. Noncompetitive designation 11 AAC 85.106. Leasing of land within or underlying a shallow natural gas lease 11 AAC 85.110. Coal prospecting permits 11 AAC 85.115. Permit extensions 11 AAC 85.120. Permit conversion to lease 11 AAC 85.200. Best interest determination 11 AAC 85.205. Reevaluation 11 AAC 85.210. Statement of conformity to acreage limitations 11 AAC 85.215. Lease terms 11 AAC 85.220. Royalty 11 AAC 85.220. Royalty 11 AAC 85.225. Royalty value computation 11 AAC 85.230. Royalty in kind 11 AAC 85.235. Lease rental 11 AAC 85.240. Rental and royalty relief	Indeterminate period of time, subject to the conditions of diligent development and continued operation of the mine (11 AAC 85.215)	Subject to review of the lease operations at least every 10 years
Coal Leasing (CONTINUED)		11 AAC 85.245. Coal lease bond 11 AAC 85.250. Plan of operations 11 AAC 85.255. Transfer of interest 11 AAC 85.260. Limitation on overriding royalties 11 AAC 85.265. Suspension and termination 11 AAC 85.270. Coal mining units 11 AAC 85.275. Cooperative leasing 11 AAC 85.280. Surface Mining Control and Reclamation Act		

Division of Mining, Land & Water Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Coal lease proposed plan of exploration and development	AS 38.05.145-150	11 AAC 85.215. Lease terms	An accepted plan remains in effect until production commences or until the commissioner accepts a revision of the plan	No Renewal
Coal Mining Unit	AS 38.05.145-150	11 AAC 85.270. Coal mining units	Indeterminate period of time	Subject to review of the lease operations at least every 10 years
Coal Prospecting Permit	AS 38.05.145-150	11 AAC 85.110. Coal prospecting permits	3 years	Up to 3 two-year extensions
Annual Placer Mining Application (APMA)	AS 38.05.850	11 AAC 96.010. Uses requiring a permit 11 AAC 96.014. Special use land 11 AAC 96.016. Designated public use areas 11 AAC 96.018. Uses requiring registration 11 AAC 96.020. Generally allowed uses 11 AAC 96.025. Conditions for generally allowed uses 11 AAC 96.030. Application 11 AAC 96.035. Commercial harvest of non-timber forest products 11 AAC 96.040. Term and conditions 11 AAC 96.060. Performance guaranty 11 AAC 96.065. Insurance 11 AAC 96.070. Annual report; completion statement 11 AAC 96.080. Confidential status of information 11 AAC 96.090. Inspection of operation 11 AAC 96.110. Appeals	5 years max	No Renewal
Millsite Permit/Lease	AS 38.05.255	11 AAC 86.600. Millsite permit	Same as mineral lease term	None

Division of Mining, Land & Water Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Mineral Exploration Permit	AS 38.05.850	11 AAC 96.010. Uses requiring a permit 11 AAC 96.014. Special use land 11 AAC 96.016. Designated public use areas 11 AAC 96.018. Uses requiring registration 11 AAC 96.020. Generally allowed uses 11 AAC 96.025. Conditions for generally allowed uses 11 AAC 96.030. Application 11 AAC 96.035. Commercial harvest of non-timber forest products 11 AAC 96.040. Term and conditions 11 AAC 96.060. Performance guaranty 11 AAC 96.065. Insurance 11 AAC 96.070. Annual report; completion statement 11 AAC 96.090. Inspection of operation 11 AAC 96.110. Appeals	5 years max	No Renewal
Plan of Operations	AS 38.05.020	11 AAC 86.150. Plan of operations instead of land use permit 11 AAC 86.800. Plan of operations	Up to 10 years	Up to 10 years

Division of Mining, Land & Water Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Mining Reclamation Plan	AS 27.19.030	11 AAC 97.100. Applicability 11 AAC 97.200. Land reclamation performance standards 11 AAC 97.210. Disposal of buildings, structures, and debris on state land 11 AAC 97.220. Underground mines 11 AAC 97.230. Heap leach operations 11 AAC 97.240. Acid rock drainage 11 AAC 97.250. Material sites 11 AAC 97.300. Reclamation plan approval, procedure 11 AAC 97.310. Reclamation plan 11 AAC 97.320. Term; conditional approval; renewal 11 AAC 97.330. Amendment of reclamation plan 11 AAC 97.340. Record keeping and inspection; notice address 11 AAC 97.350. Successor in interest	Up to 10 years	Up to 10 years
Mining Reclamation Bonding	AS 27.19.040-050	11 AAC 97.400. Bonding required 11 AAC 97.405. Corporate surety bond 11 AAC 97.410. Personal bond and letter of credit, certificate of deposit, or deposit of cash or gold 11 AAC 97.415. Acreage to be bonded 11 AAC 97.420. Amount of bond 11 AAC 97.425. Bonding pool 11 AAC 97.430. Liability exceeding bond amount; bonding pool deposit 11 AAC 97.435. Release or decrease of bond, and refund of bonding pool deposit 11 AAC 97.440. Interest; use of bonding pool 11 AAC 97.445. Assignment 11 AAC 97.450. Exception to bonding requirement 11 AAC 97.500. Letter of intent	Until reclamation covered by bond is complete	Bonds can be replaced with new bonds that provide same coverage

Division of Mining, Land & Water Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Mining Reclamation Approval	AS 27.19.010-100	11 AAC 97.100 - 250. Reclamation Performance Standards 11 AAC 97.300 - 350. Reclamation Plan 11 AAC 97.400-450 Reclamation Bonding 11 AAC 97.500 - 510 Reclamation Exceptions	No term; as long as site is operational	No Renewal
Offshore Mineral Lease	AS 38.05.250	11 AAC 86.500. Permit applications 11 AAC 86.505. Effective date 11 AAC 86.510. Acceptable permit work 11 AAC 86.515. Compliance with permit rental requirement 11 AAC 86.520. Grouping of permits 11 AAC 86.525. Failure to comply 11 AAC 86.528. Permit extension 11 AAC 86.530. Conversion of an offshore prospecting permit to a mining lease 11 AAC 86.532. Duration of "grandfather rights" leases 11 AAC 86.535. Survey 11 AAC 86.541. Offshore mining lease rental 11 AAC 86.545. Leases granted by competitive bidding 11 AAC 86.565. Land in terminated permits and leases 11 AAC 86.575. Production and lease extension 11 AAC 86.580. Suspension	Up to 20 years, typical 10 years	Up to 20 years
Approval to Operate Dam	AS 46.17.010-900	11 AAC 93.173. Certificates of approval. 11 AAC 93.167. Certification of dams constructed before May 31, 1987. 11 AAC 93.171. Dam construction, repair, or modification.	3-5 years depending on hazard level	Renewal based on inspection
Approval to Modify Dam	AS 46.17.010-900	11 AAC 93.171. Dam construction, repair, or modification.	Generally 2 years	No Renewal

Division of Mining, Land & Water Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Instream Flow Reservation	AS 46.15.145	11 AAC 93.142. Content of application 11 AAC 93.146. Issuance of a certificate of reservation of water 11 AAC 93.970. Definitions	Perpetual until modified or removed	No renewal or extension but subject to review after 10 years
Temporary Water Use Permits (TWUP)	AS 46.15.155	11 AAC 93.210. Temporary water use. 11 AAC 93.220. Procedure for temporary water use.	5 years; issued for length necessary	5 years; issued for length necessary
Water Rights	AS 46.15.010-140	11 AAC 93.530. Effect of the order. 11 AAC 93.250. Commissioner's decision of preferred use status. 11 AAC 93.070. Departmental investigations. 11 AAC 93.410. Initiating an administrative basin-wide adjudication. 11 AAC 93.520. Department order. 11 AAC 93.120. Issuance of a permit to appropriate water 11 AAC 93.220. Procedure for temporary water use 11 AAC 93.060. Water rights on state-leased land 11 AAC 93.065. Water rights on private-leased land 11 AAC 93.970. Definitions 11 AAC 93.430. Federal reserved water rights claims 11 AAC 84.895. Water rights 11 AAC 93.110. Hearings 11 AAC 93.035. Requirement to apply for the use of a significant amount of water 11 AAC 110.400. Activities requiring a federal authorization subject to consistency review 11 AAC 93.930. Procedure for the transfer and change of appropriations 11 AAC 93.172. Dam removal or abandonment	No Term	No Renewal

Division of Mining, Land & Water Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Coal Exploration Permit and Reclamation	AS 27.21.200	11 AAC 90.161 Exploration that does not substantially disturb the natural land surface 11 AAC 90.163 Exploration that substantially disturbs the natural land surface or occurs in an area designated unsuitable for surface coal mining 11 AAC 90.165 Administrative processing of coal exploration notices and applications 11 AAC 90.167 Coal exploration bonding and performance standards 11 AAC 90.907(h)	2 years	Renewable
Contracts Pending Adjudication	AS 38.05.065	None	None	None

Division of Mining, Land & Water Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Set Net/Shore Fish Leasing	AS 38.05.082	11 AAC 64.430 Assignment 11 AAC 05.010 (6) (G) Application fees 11 AAC 05.010 (13) (D) Shore Fishery Diagram review fee 11 ACC 64.370 Annual Rent 11 AAC 64 Shore Fisheries Leasing 11 AAC 64.010. Short title 11 AAC 64.020. Participation in shore fishery 11 AAC 64.040. Advisory committees 11 AAC 64.050. Tide and submerged land available for leasing 11 AAC 64.060. Permanent improvements disallowed 11 AAC 64.061. Staking and filing period 11 AAC 64.070. Size of lease tracts 11 AAC 64.080. Maximum number of net sites and lease tracts 11 AAC 64.090. Marking of sites and tracts 11 AAC 64.180. Reasonable utilization 11 AAC 64.200. Closed area 11 AAC 64.220. Hardship clause; waiver of rental 11 AAC 64.230. Qualifications of applicant 11 AAC 64.240. Trusteeship for minors 11 AAC 64.250. Appointment of trustee 11 AAC 64.260. Application	10 Years	10 Years

Division of Mining, Land & Water Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Set Net/Shore Fish Leasing (CONTINUED)	AS 38.05.082	11 AAC 64.280. Proof of qualification 11 AAC 64.301. Term of lease 11 AAC 64.330. Rights prior to leasing 11 AAC 64.370. Annual rental 11 AAC 64.380. Receipt of annual rental 11 AAC 64.391. Extension of lease 11 AAC 64.410. Lease termination 11 AAC 64.430. Assignment 11 AAC 64.440. Succession to applicant's interest 11 AAC 64.450. Protest 11 AAC 64.460. Appeal 11 AAC 64.470. Finality of decision 11 AAC 64.490. Disputes of boundary line location 11 AAC 64.565. Transition 11 AAC 64.570. Definitions 11 ACC 05.010 Fees	10 years	10 Years

DIVISION OF OIL & GAS AUTHORIZATIONS

DOG Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Permitting/Lease Plan of Operations	AS 38.05.180	11 AAC 83.158. Plan of operations	3 years (<i>permit condition based not in regulation</i>)	Through amendment approval
Permitting/Unit Plan of Operations	AS 38.05.180	11 AAC 83.346. Unit Plan of Operations	3 years (<i>permit condition</i>)	Through amendment approval
Permitting/Exploration License Plan of Operations	AS 38.05.132	11 AAC 82.951. Plan of Operations	3 years (<i>permit condition</i>)	Through amendment approval
Permitting/Geothermal Plan of Operations	AS 38.05.181	11 AAC 84.750. Plan of Operations	3 years (<i>permit condition</i>)	Through amendment approval
Permitting/Geophysical Exploration Miscellaneous Land Use Permit	AS 38.05.850	11 AAC 96.070. Annual report; completion statement 11 AAC 96.090. Inspection of operation 11 AAC 96.145. Violation 11 AAC 96.150. Definitions 11 AAC 96.210. Submission of seismic data and stratigraphic test data 11 AAC 96.220. Confidential status of information 11 AAC 96.230. Reimbursement for seismic exploration data 11 AAC 96.240. Liability 11 AAC 96.250. Definitions	5 year	Permit may be extended of any number of consecutive periods, each period not to exceed one year.
Easement (North Slope)	AS 38.05.850	None	Can be perpetual	No Renewal

DOG Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Unitization	AS 38.05.180(p)	11 AAC 83.301. Purpose 11 AAC 83.303. Criteria 11 AAC 83.306. Application for unit approval 11 AAC 83.311. Public notice 11 AAC 83.316. Unit approval 11 AAC 83.321. Copies of application required 11 AAC 83.326. Standard unit agreement 11 AAC 83.328. Parties 11 AAC 83.331. Unit operator 11 AAC 83.336. Effective date and term of unit agreement 11 AAC 83.341. Unit plan of exploration 11 AAC 83.343. Unit plan of development 11 AAC 83.346. Unit plan of operations 11 AAC 83.351. Participating area	5 years	Production Extends Term

DOG Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Unitization Continued	AS 38.05.180(p)	11 AAC 83.356. Unit area; contraction and expansion 11 AAC 83.361. Certification of well test results 11 AAC 83.366. Unit operating agreement 11 AAC 83.371. Allocation of production and costs 11 AAC 83.373. Severance 11 AAC 83.374. Default 11 AAC 83.379. Signatures 11 AAC 83.380. Counterparts 11 AAC 83.383. Notation of approval 11 AAC 83.385. Modification of unit agreement 11 AAC 83.390. Unit bonds 11 AAC 83.393. Approval of federal and private party units 11 AAC 83.395. Definitions	5 years	Production Extends Term
Pooling	AS 38.05.180(s)	11 AAC 83.400. Applications	No Term	No Renewal
Drilling Contracts	AS 38.05.180(t)	11 AAC 83.400. Applications	No Term	No Renewal
Gas Storage	AS 38.05.180(u)	11 AAC 83.500. Qualifications to hold storage lease	No Term	No Renewal
Raise Rent	AS 38.05.180(n)		No Term	No Renewal

DOG Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Appeal	Assorted	11 AAC 02.010-.900 (Appeals)	No Term	No Renewal
Practice and Procedure	AS 38.05. 020	11 AAC 88.100-.185 (Practice and Procedure)	No Term	No Renewal
Oil and Gas Leases	AS 38.05.180	Title 11, Chapter 82, 83, & 88 (Mineral Leasing Procedure, Oil and Gas Leasing, Practice and Procedure)	10 years max	Production in paying quantities or committed to a unit

DOG Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Exploration Licenses	AS 38.05.131-134	11 AAC 82.903. Description of land 11 AAC 82.906. Term 11 AAC 82.909. License proposal 11 AAC 82.912. Request for competing proposals 11 AAC 82.915. Qualifications 11 AAC 82.918. Public notice 11 AAC 82.921. Invitation to bid 11 AAC 82.924. Bid deposit 11 AAC 82.927. Submitted bid 11 AAC 82.930. Joint bid 11 AAC 82.933. Tie bids 11 AAC 82.936. Notification of competitive award 11 AAC 82.939. Return of bid deposits 11 AAC 82.942. Effective date of license 11 AAC 82.945. Bonding or other security	10 years max	May convert to a lease if work commitment is met

DOG Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Exploration Licenses Continued	AS 38.05.131-134	11 AAC 82.948. Reservations 11 AAC 82.951. Plan of operations 11 AAC 82.954. Relinquishment of lands 11 AAC 82.957. Surrenders 11 AAC 82.960. Audit 11 AAC 82.963. Appeals 11 AAC 82.966. Assignments 11 AAC 82.969. Effective date of assignments 11 AAC 82.972. Responsibility 11 AAC 82.975. Termination 11 AAC 82.978. Conversion request 11 AAC 82.981. Submittal of geologic and geophysical data 11 AAC 82.984. Confidentiality 11 AAC 82.990. Definitions	10 years max	May convert to a lease if work commitment is met

DOG Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Geothermal Prospecting Permits and Leases	AS 38.05.181	11 AAC 87.010 - .290 (Geothermal Drilling and Conservation)	10 years	May be renewed for 5 years if actively engaged in drilling operations; lease is valid for duration of commercial production

OTHER DNR AUTHORIZATIONS

State Pipeline Coordinator's Office Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Right-of-Way Lease	AS 38.35	11 AAC 80.005 - .085	Up to 30 years	Up to 30 years, per requirements of 11 AAC 80.065 - .075 and AS 38.35.110.

SPCO authorizations shared with DLMW (for AS 38.35 pipeline purposes only):

- 1) Material Sales AS 38.05.550 (page 4)
- 2) Temporary Water Use Permits AS 46.15.155 (page 18)
- 3) Land Use Permit AS 38.05.850 (DMLW titled this the "Upland and Tideland Permits" on page 1)
- 4) Private Easements AS 38.05.850 (page 2)
- 5) Mining Reclamation Plan AS 27.19.030 (page 16) (Note – our office has not done this yet, as none of our material sites have closed – but all of our material sites are subject to this requirement.)

Division of Agriculture Authorization	Statute	Regulation	Term	Renewals
State Farm Conservation Plans	AS 38.05.321	11 AAC 67.177 and 180	Prior to contract	None
Elk Farming License	AS 03.05.075	None	2 years	Biennial
Bees and Bee Keeping Equipment	AS 03.47.030	11 AAC 35.010-35.020	None	None
Brand Program	AS 03.40	None	None	None
Alaska Grown Application	AS 03.05.010(a)(1)	None	None	None

OTHER DNR AUTHORIZATIONS

Division of Parks & Outdoor Recreation Authorization	Statute	Regulation	Term	Renewals
Park Use		11 AAC 18.010 Special park use permits 11 AAC 18.025 Procedure	Varies	None
Commercial Use (Non-Competitive)		11 AAC 18.030 Non-Competitive Commercial Use Permit	1-5 years	None
Commercial Use (Competitive)		11 AAC 18.040 Competitive Commercial Use Permit	3-5 years	5 years
Commercial Use-Alaska Chilkat Bald Eagle Preserve		11 AAC 21.100 Commercial Activities	2 years	2 years
Conditional activities-Alaska Chilkat Bald Eagle Preserve		11 AAC 21.120 Conditional Activities	Varies	None
Archaeological & Historic Site Investigation and Collection	AS 41.35.080	11 AAC 16.030 Investigation and collection permits 11 AAC 16.040 Qualified persons 11 AAC 16.050 Reports 11 AAC 16.060 Restoration of area 11 AAC 16.070 Permit restrictions 11 AAC 16.080 Cancellation of permits 11 AAC 16.090 Examination of site	3 years	3 years

While there is statutory authority (as listed in the administrative code) there is no specific statutory reference or direction for the issuance of park use permits. State statutes (AS 41.21.020(a)(6) and AS 38.05.295) authorize the department to adopt regulations to manage public use and designate incompatible uses.

OTHER DNR AUTHORIZATIONS

Division of Forestry Authorization	Statute	Regulation	Term	Renewals or Extensions of Term
Log brands	AS 45.50.210-220	11 AAC 71.315, .500-.590, .910(19)	5 years	May be renewed for successive 5-year terms
Beach log salvage licenses	AS 38.05.115(c), AS 45.50.230(a)(2), .232-.237	11 AAC 71.035(b), .080, .280, .440-.430	1 year	May be renewed annually for up to 3 years
Competitive timber sales	AS 38.05.110, .120	11 AAC 71.060, .065, .075, .210, .092, .910 (1) and (12)	No limit	1 year
Small negotiated commercial use timber sales	AS 38.05.115	11 AAC 71.045, .092	1 year	None
Negotiated sales for areas of high unemployment	AS 38.05.118	11 AAC 71.055, .092, .210	Up to 25 years	1 year not to exceed the original 25-year limit
Negotiated sales for value-added products	AS 38.05.123	11 AAC 71.092, .094, .096, .098, .210	Up to 10 years	1 year not to exceed the original 10-year limit
Personal use timber sales	AS 38.05.115	11 AAC 71.050	1 year	None
General permits	AS 38.05.850	11 AAC 71.050	1 year	None
Burn permits	AS 41.15.060	11 AAC 95.400-.440	Not specified in statute or regulation	Not specified in statute or regulation

Note 1: Log storage permits under AS 38.05.850(a) are issued by DMLW but not listed separately on their list of authorization.

Note 2: DOF must review Detailed Plans of Operations (DPO) prior to the start of forest operations on private, municipal, and trust land. However, this review is not a permit or license.

DEC Authorizations and Permits

Environmental Health Division

1. Pesticide Permit
2. Pesticide Permit – Aerial Spraying
3. Pesticide product registration
4. Pesticide applicator certification
5. Food Service Establishment Permit
6. Temporary Food Service Permit
7. Seafood Processor Permit
8. Hazardous Waste Management Facility Permit
9. Animal Importation Permit/Health Certificate
10. Biological Products for Veterinary Purposes Permit
11. Milk Processing Permit
12. Cheese Processing Permit
13. Reindeer Slaughtering or Processing Facility
14. Drinking water system plan approval
15. Drinking Water Laboratory Approval
16. Certificate of Sanitary Standards – Body Piercing, Tattooing or Permanent Cosmetic Coloring
17. Food Service Worker Card
18. Solid Waste Management and Disposal Permit
19. Small Class III Municipal Solid Waste Landfill Authorization
20. One-time-use Rural Landfill Authorization
21. Public Water System Sanitary Survey Inspector Certification
22. Temporary Storage of Drilling Waste Plan Approval
23. Solid Waste as Fill Plan Approval
24. Daily Screening Laboratory Approval

Water Division

1. Water and Wastewater Operator Certification
2. Cruise Ship Vessel General Permit
3. APDES permit for wastewater discharges to surface water
4. Wastewater permit for land and subsurface discharges
5. Wastewater treatment system plan approval and approval to operate
6. Certificate of Reasonable Assurance (Clean Water Act Section 401 Certification) for US Army Corp of Engineer Section 404 dredge and fill permits and EPA NPDES wastewater discharge permits

Spill Prevention and Response Division

1. Surface Oiling Permits
2. Oil Spill Prevention and Contingency Plans (C-plans) approval
3. Contingency Plan revocation for failure to comply
4. Underground Storage Tank Registration
5. Certification of Underground Storage Tank Workers and Inspectors
6. Underground Storage Tank Laboratory Approval
7. Oil spill response action contractor registration
8. Oil spill response action contractor failure to comply
9. Oil spill cleanup contractor failure to comply
10. Oil spill incident management team registration

11. Oil spill incident management team failure to comply
12. Financial responsibility certificates
13. Contaminated Site Interim Removal Action Approval
14. Contaminated Site Approval of Disposal of Soil or Groundwater
15. Contaminated Site Characterization Workplans / Reports Approval
16. Contaminated Site Cleanup Levels / Final Cleanup Reports Approval
17. Contaminated Site Risk Assessment Reports Approval
18. Contaminated Site Cleanup Plans (sampling, analysis & waste mgmt.) Approval
19. Spill Response Incident Action Plan Approval
20. Spill Response Incident Waste Disposal Plan Approval
21. Spill Response Incident Dispersant Application Approval
22. Spill Response Incident In Situ Burning Plan Approval
23. Spill Response Incident Cleanup Plan Approval

Air Quality Division

1. Air Quality Operating Permit – Title V
2. Air Quality Major Source Construction Permits – Title I: Prevention of Significant Deterioration (PSD)/New Source Review (NSR)
3. Air Quality Minor Permits – Title I
4. Air Quality Owner Requested Limits Approval
5. Air Quality General Minor Permits – Asphalt Plants; Crushers; Oil & Gas Drilling Rig
6. Air Quality General Operation Permits – Asphalt Plants; Fuel Limited Diesel Electric Plants
7. Air Quality Open Burn Approvals
8. Air Quality Pre-Approved Emission Limits – Diesel Engine; Gasoline Distribution Facility

January 28, 2013

The Honorable Eric Feige
Alaska House of Representatives
Co-Chairman, House Resources Committee
Capitol Room 126
Juneau, AK 99801

Re: House Bill 47

Dear Representative Feige,

The Alaska State Chamber of Commerce (Alaska Chamber) is an organization dedicated to improving the business climate in Alaska. The Alaska Chamber represents hundreds of statewide businesses from Ketchikan to Barrow that share a common goal: to make Alaska a viable and competitive place to do business. Today, I am writing in support of House Bill (HB) 47- Injunction Security.

As you may have learned last week while meeting with Alaska Chamber Fly-In attendees, litigation reform as it relates to resource development in Alaska is one of Alaska Chamber's issues it would like addressed during the 28th Alaska Legislature. Currently, the cost to challenge a legally permitted project in Alaska is virtually nothing. Instead, the risk is borne by defendants. Often the discovery phase in litigation can cost the State of Alaska and project proponents hundreds of thousands of dollars in attorney's fees. Such delays put Alaskans out of work creating personal hardship and potentially increasing State service costs.

HB 47 seeks to level the legal playing field without infringing on any parties right to bring a legitimate issue to court by requesting the court consider wages and benefits of workers as well as payments to contractors. We are hopeful that HB 47 will enjoy the bipartisan support HB 168 received in 2011.

Sincerely,



Rachael A. Petro
President/CEO



ALASKA STATE
CHAMBER
OF COMMERCE

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Alaska Business*

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Turning Conservation Values into State Priorities

www.acvoters.org

January 30, 2013

Representative Wes Keller
State Capitol, Rm. 118
Juneau, AK 99801-1182

Dear Rep. Keller:

The Alaska Conservation Voters opposes HB 47, which would require Alaskans to post a bond or security when seeking a stay or injunction against a government-issued permit affecting an industrial operation.

HB 47 puts corporate and foreign interests above Alaskans and their communities.

To begin, this legislation is not aimed at frivolous lawsuits. Already, a frivolous lawsuit will not receive a stay or preliminary injunction, because a court can't issue those remedies unless it first determines that the plaintiff is likely to win and that "irreparable harm" would result without the stay or injunction. Instead, this legislation is targeted at lawsuits with merit, and this legislation imposes its burden at the expense of ordinary Alaskans and their communities. Under HB 47, the Alaskan seeking an injunction or stay will be required to post a bond that is typically unaffordable to all but the most wealthy corporations and individuals. In sum, the bill penalizes all but the extraordinarily wealthy and deters meritorious claims before they are adjudicated at all.

Further, when a case against a permit is brought forward by an Alaskan, it is questioning the permitting process used by the issuing governmental agency or illegal practices by industry. Thus, an injunction or stay will only be issued when government hasn't done its job properly, or when a corporation is violating the law or the terms of its permit, as determined by judicial review. Requiring a citizen to pay for a governmental error or corporate crime puts a chilling effect on a long tradition of protecting American whistleblowers in our democracy.

HB 47 would block Alaskans from protecting their communities and way of life by preventing them from challenging government-issued permits that have resulted in legally redressible injuries. It would force Alaskans challenging a permit to post a bond equal to potential damages suffered by an industrial operation. This remedy protects wealthy corporations – many of which merely do business in Alaska and/or are from foreign countries – over resident Alaskans who live, work, and raise their families in this great state. The bond will in many cases exceed \$1

Alaska Conservation Voters www.acvoters.org
810 N Street, Ste. 203, Anchorage, Alaska 99501 / Ph. 907.258.6171 / Fax 907.258.6177

million, which effectively prevents almost any Alaskan from filing a suit to challenge what may be a fast-tracked, sloppy agency decision. Obviously this is the intent of the legislation—to keep Alaskans from exercising their constitutional rights.

HB 47 violates the Alaska Constitution.

Beyond being bad policy, the bill is also likely unconstitutional for three reasons. First, it violates the Equal Protection clause by targeting those litigants who challenge permits for industrial operations, and protecting only industrial operations. This discriminates unconstitutionally against local landowners, community groups, native organizations, commercial and sport fishers and hunters, and other Alaskans who seek to ensure that state agencies are doing their jobs.

Second, in practice it would often deny access to courts, in violation of Due Process rights, for Alaskans who do not have the financial resources to post the required bond but have an otherwise valid claim. It is not hard to imagine a landowner or a community that does not have the millions to post the bond this bill would require. That person or community would be prohibited from protecting the land it has owned for decades yet is now threatened by a major industrial operation.

Third, HB 47 is a change to court rules, which violates the Alaska Constitution unless the bill is approved by two-thirds of each house and specifically states that it is a change to court rules. Currently Civil Rule 65(c) and Appellate Rules 204(d) and 603(a)(2) govern the bonds that would be affected by HB 168. Indeed, the bill closely parallels the language of Civil Rule 65(c).

HB 47 is poorly drafted and would be extraordinarily difficult for a court to apply.

The bill contains several provisions that are ambiguous or make no sense and would be challenging for a court to enforce. For example, the bill purports to require a bond for an order “vacating” a permit. However, a court will vacate a permit only at the conclusion of a case, after finding that the issuing agency actually violated the law. That is not a situation where bonds come into play. Bonds are instead required only for temporary injunctions or stays, in case the person does not ultimately prevail. It would make no sense and serve no purpose to require a bond of the party who has won the case. If that is the intent of the bill, then it is merely a punitive and unconstitutional attempt to prevent successful litigants from obtaining the relief to which they are entitled.

Similarly, the bill purports to require the bond to cover damages wrongfully suffered by “an industrial operation.” An industrial operation, in turn, is defined in the bill as various activities. But damages are suffered only by litigants, such as persons, corporations, or organizations. There is no precedent for measuring or awarding damages to an activity rather than a party, and the very concept is bizarre and seemingly impossible to apply.

Further, the legislation is ambiguous as to the point at which a bond would be required. Departing from current court rules, the bill requires a bond from a party “seeking” a stay,

preliminary injunction, or vacatur. If that were read to require a bond whenever a case was filed against an industrial permit, it would effectively require an exorbitant fee at the time of filing—an unconstitutional requirement and drastic change to current court procedures. Further, if the bill were interpreted to require bonds whenever a stay or preliminary injunction is sought, and before the court orders one, its main impact would be to deter likely meritorious claims from ever being raised—again a clear violation of constitutional rights.

For the reasons stated above, the Alaska Conservation Voters opposes HB 47. The only purpose the bill would serve is to keep regular Alaskans out of court and to protect sloppy permitting decisions that could greatly impact Alaska's future.

Sincerely,

A handwritten signature in black ink, appearing to be 'AM', with a long horizontal flourish extending to the right.

Andy Moderow
Executive Director
Alaska Conservation Voters



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February 10, 2014

Representative Wes Keller, Chair
House Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801

Re: HB 47, Injunctive Security: Industrial Operations

Dear Representative Keller:

The Resource Development Council for Alaska (RDC) is writing in support of HB 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.

Thank you for hearing HB47. RDC is a statewide, non-profit, membership-funded organization founded in 1975. The RDC membership is comprised of individuals and companies from Alaska's oil and gas, mining, timber, tourism, and fisheries industries, as well as Alaska Native corporations, local communities, organized labor, and industry support firms. RDC's purpose is to link these diverse interests together to encourage a strong, diversified private sector in Alaska and expand the state's economic base through the responsible development of our natural resources.

One of RDC's top legislative priorities is to support efforts to bring more accountability to the appeals and litigation process for community and resource development projects. HB 47 makes progress in this regard by ensuring opponents to projects have some "skin in the game."

Under current law plaintiffs have little incentive not to file lawsuits and appeals and seek injunctions to stop development projects. Seeking injunctions costs plaintiffs very little while the project sponsors 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 and project proponents. Even when projects are not enjoined, the uncertainty of litigation can effectively stop progress on projects.

It is not just the project sponsor who is adversely affected by these injunctions. The employees of project sponsors, contractors, and their employees often are burdened with the direct and immediate impacts of a stay on a permit, which causes construction and

development to shut down. Often those hurt the most are workers and their families, because when projects are enjoined, workers are often laid off. Under existing law, judges have not required opponents of developing Alaska's resources to post bonds or other security to cover the economic harm to the project and to the workforce caused by parties seeking injunctions.

HB 47 does not limit the ability of citizens to sue. What it does do is require a bond in those cases where an injunction is requested before the case is adjudicated. HB47 strikes an appropriate balance by removing incentives for filing ideologically based challenges designed simply to delay projects while still preserving the right to bring meritorious challenges.

Examples of ideologically based challenges abound throughout Alaska. Perhaps the timber industry in Southeast Alaska would be in better shape today if a bond had been required before the scores of timber sales had been appealed resulting in stays and injunctions. That industry has been decimated by endless appeals and litigation over federal timber sales. Recent headlines illustrate the impact of more legal challenges that are resulting in further delay of exploratory drilling in the Alaska Outer Continental Shelf (OCS), drilling that has yet to occur on leases sold in 2008. Litigation in the Arctic OCS is delaying the State's goal to increase throughput in TAPS through new OCS development. While many of these cases are in federal jurisdiction, litigation in State court is also common.

The ability of project proponents to weather the storm of an unfounded stay of activities varies based on project economics and the strength of the balance sheets of those developing the projects. A worker who loses employment because of a court ordered stay might not have the lasting power to wait out what are often lengthy legal proceedings. HB47 can provide some accountability to mitigate disruption of commerce while protecting the interests of workers engaged in projects that may be subject to ideologically based challenges.

RDC appreciates the Judiciary Committee hearing this bill and encourages the committee to pass this bill from committee as soon as possible.

Regards,

A handwritten signature in black ink, appearing to read "Rick Rogers", with a long horizontal flourish extending to the right.

Rick Rogers, Executive Director
Resource Development Council for Alaska

cc: Representative Feige