

**HB**

**47**

<TARGET><BILL>HB 47</BILL><SUBJECT>HB  
47</SUBJECT><COMM>SJUD28</COMM></TARGET>

# 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**

## **Sponsor Statement for CSHB 47(JUD)**

*“An Act requiring a party seeking a restraining order, preliminary injunction, or order vacating or staying the operation of certain permits affecting an industrial operation to give security in the amount the court considers proper for costs incurred and damages suffered if the industrial operation is wrongfully enjoined or restrained.”*

Under current law the cost to bring a 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. Judges already have the ability to require security. In most instances, they are not doing so. 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 shut down. The party asking the court to require security must present evidence of the costs and damages incurred. The court should then consider this as one of the relevant factors when it determines a bond/security amount. The amount of security is totally within the hands of the court.

Language was added in the House Judiciary Committee to further clarify that no such security is required of the state and municipalities and to exclude permitting programs in which DEC or DNR issues permits under a state primacy permitting program that was developed under federal law and approved by a federal agency.

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REPRESENTATIVE ERIC A. FEIGE

## CSHB 47(JUD) Explanation of Changes

Section 1, page 1, line 7 new language added **“Unless exempt under AS 09.68.040(a)”** added to make it clear that no such security shall be required of the state or a municipality or of an officer or agency thereof.

Section 1, page 1, lines 9 & 10 inserts **2 commas** – one after *security* and one after *proper*. These insertions match the way Alaska Civil Rule 65(c) reads.

Section 1, line 12 new language added **“Upon request of any party and when that party presents evidence, one relevant factor”** added to clarify that the court will need a request and evidence to support consideration of wages & benefits for employees and payment to contractors and subcontractors. Also emphasizes that this is not the only factor the court takes into consideration.

Section 1, page 2, lines 8 – 15 inserts new language **(d) A party is not required to give security under (b) of this section if the challenged permitting decision or authorization is made by (1) the Department of Environmental Conservation under AS 46.03 or AS 46.14 in a program approved or delegated by the United States Environmental Protection Agency; or (2) the Department of Natural Resources under AS 27.21 in a program approved or delegated by the Office of Surface Mining Reclamation and Enforcement in the United States Department of the Interior** – adds exception language to exclude permitting programs in which DEC or DNR issues permits under a state permitting program that was developed under federal law and approved by a federal agency.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSHB 47(JUD)  
Fiscal Note Number: 1  
(H) Publish Date: 2/21/14

Identifier: HB047- ACS-TRC-01-21-14  
Title: INJUNCTION SECURITY: INDUSTRIAL  
OPERATION  
Sponsor: FEIGE, CHENAULT  
Requester: House Judiciary

Department: Alaska Court System  
Appropriation: Alaska Court System  
Allocation: Trial Courts  
OMB Component Number: 768

**Expenditures/Revenues**

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

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

<b>Change in Revenues</b>								
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Estimated SUPPLEMENTAL (FY2014) cost: 0.0

Estimated CAPITAL (FY2015) 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:**

Updated for 2nd session; unchanged from FY2014 version
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Prepared By:	Nancy Meade, General Counsel	Phone:	(907)264-8264
Division:	Alaska Court System	Date:	12/18/2013 04:00 PM
Approved By:	Nancy Meade for Christine Johnson, Administrative Director	Date:	12/18/13
Agency:	Alaska Court System		

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSHB 47(JUD)

**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  
2014 Legislative Session

Bill Version: CSHB 47(JUD)  
Fiscal Note Number: 2  
(H) Publish Date: 2/21/14

Identifier: HB047-DEC-AQ-01-21-14  
Title: INJUNCTION SECURITY: INDUSTRIAL  
OPERATION  
Sponsor: FEIGE, CHENAULT  
Requester: House Judiciary Committee

Department: Department of Environmental Conservation  
Appropriation: Air Quality  
Allocation: Air Quality  
OMB Component Number: 2061

**Expenditures/Revenues**

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

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
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Estimated SUPPLEMENTAL (FY2014) cost: 0.0

Estimated CAPITAL (FY2015) 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: Alice Edwards, Director	Phone: (907)465-5109
Division: Air Quality	Date: 10/14/2013 04:00 PM
Approved By: Lynn Kent, Deputy Commissioner	Date: 12/19/13
Agency: Department of Environmental Conservation	

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSHB 47(JUD)

**Analysis**

HB 47 would require 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.

HB 47 has no fiscal impact on the Department of Environmental Conservation, Division of Air Quality.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSHB 47(JUD)  
Fiscal Note Number: 3  
(H) Publish Date: 2/21/14

Identifier: HB047-DEC-WQ-01-21-14  
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)

	FY2015	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2015 Request	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>	<b>FY 2015</b>	<b>FY 2015</b>					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
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Estimated SUPPLEMENTAL (FY2014) cost: 0.0

Estimated CAPITAL (FY2015) 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:**

Updated for the 2014 legislative session.

Prepared By: Michelle Bonnet Hale, Director	Phone: (907)269-7599
Division: Water	Date: 10/04/2013 11:05 AM
Approved By: Lynn Kent, Deputy Commissioner	Date: 10/15/13
Agency: Department of Environmental Conservation	

FISCAL NOTE ANALYSIS #3

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSHB 47(JUD)

**Analysis**

HB 47 would require 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.

HB 47 has no fiscal impact on the Department of Environmental Conservation, Division of Water.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSHB 47(JUD)  
Fiscal Note Number: 4  
(H) Publish Date: 2/21/14

Identifier: HB047-LAW-CIV-01-21-14  
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)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

<b>Change in Revenues</b>								
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Estimated SUPPLEMENTAL (FY2014) cost: 0.0

Estimated CAPITAL (FY2015) 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:**

Updated for second session.

Prepared By:	Loretta Withington, Division Operations Manager	Phone:	(907)465-5427
Division:	Administrative Services Division	Date:	01/20/2014 12:00 AM
Approved By:	Michael C. Geraghty, Attorney General	Date:	01/20/14
Agency:	Department of Law, Attorney General's Office		

FISCAL NOTE ANALYSIS #4

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSHB 47(JUD)

**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  
2014 Legislative Session

Bill Version: CSHB 47(JUD)  
Fiscal Note Number: 5  
(H) Publish Date: 2/21/14

Identifier: HB047-DNR-MLW-1-21-14  
Title: INJUNCTION SECURITY: INDUSTRIAL  
OPERATION  
Sponsor: FEIGE, CHENAULT  
Requester: House Judiciary Committee

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)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

<b>Change in Revenues</b>								
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Estimated SUPPLEMENTAL (FY2014) cost: 0.0

Estimated CAPITAL (FY2015) 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:**

Updated for 2nd session to accurately reflect FY2015 and out year costs.
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Prepared By: <u>Brent Goodrum, Director</u>	Phone: <u>(907)269-8600</u>
Division: <u>Mining, Land &amp; Water</u>	Date: <u>12/05/2013 09:00 AM</u>
Approved By: <u>Joe Balash, Commissioner</u>	Date: <u>12/05/13</u>
Agency: <u>Department of Natural Resources</u>	

FISCAL NOTE ANALYSIS #5

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSHB 47(JUD)

**Analysis**

HB47 amends existing statute to require 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 a wrongfully enjoined or restrained industrial operation's costs and damages. This security would include an amount for the payment of wages and benefits for employees and payment to contractors and subcontractors.

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



LEADER in All We Do

March 20, 2014

The Honorable John Coghill  
Chair, Senate Judiciary Committee  
State Senate  
Alaska State Capitol  
Juneau, AK 99801-1182

Dear Senator Coghill,

This letter is a written statement of support for HB 47 – Injunction Security: Industrial Operation.

Doyon, Limited is the state chartered Alaska Native Claims Settlement Act Regional Corporation for Interior Alaska. Doyon has more than 18,900 shareholders. Furthermore Doyon is the largest private landowner in Alaska, with a land entitlement under ANCSA of more than 12.5 million acres. Our mission is to continually enhance our position as a financially strong Native corporation in order to promote the economic and social wellbeing of our shareholders and future shareholders, to strengthen our Native way of life and to protect and enhance our land and resources.

In furtherance of this mission, Doyon has been pursuing several oil and gas exploration projects in Interior Alaska on Doyon lands and State of Alaska leases. While Doyon is committed to the responsible development of our lands, there is a risk at every stage of these projects for administrative and legal challenges from third parties who appear to seek to stop all resource development.

HB 47 addresses litigation activities which are a costly risk to our exploration efforts. The costs of these litigation efforts are born solely by resource developers; and the efforts can delay permitted projects. HB 47 provides a mechanism to remedy the situation by leveling the playing field.

Currently, all of the risks and costs of such challenges are borne by the developer. We believe that challenges to resource development projects are often made without a reasonable likelihood of success, cause significant delay to projects, which then in turn increases risk of not achieving a reasonable and predictable return on investment for the project, and that such poorly founded challenges often result in meritorious projects not being developed. We believe it would be more equitable to require a bond be posted so that parties seeking to challenge projects are encouraged to more fully consider the merits of a challenges and face some risk (similar to the risks faced by the project developer) in challenging the projects.



**DOYON**  
*Limited*

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**LEADER** in All We Do

Doyon does not seek to restrict parties from legitimate challenges to projects that do not adhere to applicable federal and state requirements, but by balancing the risks, we believe the Alaska State Legislature would be removing a significant disincentive for developing resources projects.

Thank you for the work you do to support Alaska, and for the opportunity to comment. If you have any questions about this letter of support, please contact our office at (907) 459-2000.

Sincerely,

Aaron M. Schutt  
President and CEO

CC: Representative Eric Feige



Council of  
Alaska Producers

**Comments HB 47**  
**Injunction Security: Industrial Operations**

February 14, 2014

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

Dear Representative Keller,

The Council of Alaska Producers (CAP) is writing to support House Bill 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.

CAP is a non-profit trade association formed in 1992 and serves as a spokesperson for the large metal mines and major metal developmental projects in the state. Bringing together mining companies with interest in Alaska, the Council represents and informs members on legislative and regulatory issues, supports and advances the mining industry, educates members, the media, and the general public on mining related issues, and promotes economic opportunity and environmentally sound mining practices.

Currently, when a plaintiff files an injunction to stop a development project, the delays mean higher costs for the developer and, if the project is enjoined, delays or shutdowns also mean lost wages for employees and contractors. Yet there is very little accountability for the plaintiff.

HB 47 preserves the right of a citizen to appeal or litigate state permits; however it requires them to recognize the financial risk of their actions to other Alaskans. We believe that this bill will encourage public involvement in the early stages of the permitting process and will provide security for Alaskan workers and their families.

Thank you hearing this bill. We encourage the Judiciary Committee to pass it from committee quickly.

Sincerely,

Karen Matthias  
Managing Consultant

Alaska Rules of Procedure  
Rule 65. Injunctions.

(a) Preliminary Injunction.

(1) Notice. No preliminary injunction shall be issued without notice to the adverse party.

(2) Consolidation of Hearing With Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a) (2) shall be so construed and applied as to save the parties any rights they may have to trial by jury.

(b) Temporary Restraining Order -- Notice -- Hearing -- Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set 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.

(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.

## 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
<b>Temporary Restraining Order (TRO)</b>	<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>
<b>Preliminary Injunction</b>	<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>
<b>Permanent Injunction</b>	<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>



# RESOURCE DEVELOPMENT COUNCIL

Growing Alaska Through Responsible Resource Development

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Corri Feige

Mike Ferris

Jeff Foley

Pat Foley

Carol Fraser

Tim Gallagher

Ricky Gease

Matt Gill

Dan Graham

Scott Habberstad

Karl Hanneman

Rick Harris

Rock Hengen

Steve Hites

Teresa Imm

Michael Jepserson

Mike Jungreis

Frank Kelty

Thomas Krzewinski

John Lau

Tom Lovas

Thomas Mack

John MacKinnon

Stephanie Madsen

Karen Matthias

Sam Mazzeo

Ron McPheters

James Mery

Eddie Packee

Lisa Parker

Judy Patrick

Charlie Powers

Shannon Price

Glenn Reed

Mike Satre

Keith Silver

Loralie Simon

John Sturgeon

Jan Trigg

Doug Ward

Ex-Officio Members

Senator Mark Begich

Senator Lisa Murkowski

Congressman Don Young

Governor Sean Parnell

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



March 21, 2014

Via E-mail and Facsimile

Senate Judiciary Committee  
c/o Senator John Coghill  
State Capitol Room 119  
Juneau, AK 99801  
Senator.John.Coghill@akleg.gov  
Fax: (907) 465-3258

Dear Senator Coghill:

We write to express our opposition to HB 47.

Nunamta Aulukestai (“Nunamta”) comprises directors appointed by eleven Native Corporations and nine tribes, including Ekwok Natives Limited, Koliganek Natives Limited, Saguyak Inc., Aleknagik Natives Limited, Choggiung Limited, Stuyahok Limited, Manakotak Natives Limited, Togiak Natives Limited, Levelock Natives Limited, Bristol Bay Native Corporation, Twin Hills Native Corporation, Ekwok Village Council, New Koliganek Village Council, Clarks Point Village Council, Aleknagik Traditional Council, Curyung Tribal Council, New Stuyahok Traditional Council, Manakotak Village Council, Togiak Traditional Council, Levelock Village Council. Nunamta represents Alaska residents in the Bristol Bay region who rely on the land, fish, wildlife, cultural resources and waters of the region for subsistence and their cultural way of life. Since its founding in 2006, Nunamta has actively advocated to protect the natural resources of Bristol Bay.

Nunamta strongly opposes HB 47. This bill will represents another shift in government favoritism to Outside and foreign interests seeking private profit from Alaska’s public resources, while creating hurdles for Alaskans seeking to protect their fish and water resources. It shifts the cost of doing business in Alaska to the concerned public that already bears the inherent costs from social and other impacts from large projects in our communities, rather than to the companies that stand to gain tremendous private profits from our resources.

If passed, HB 47 may affect the bond requirement on any person “seeking a restraining order,

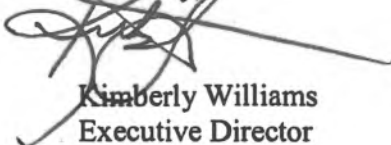
preliminary injunction, or order vacating or staying the operation of a permit that affects an industrial operation.” HB 47 at sec. 1. “Industrial operation” includes “a construction, energy, or timber activity and oil, gas, and mineral exploration, development, and production.” *Id.*

Under this legislation, a party that challenges an industrial permit, whether the party seeks preliminary relief or not, may have to post a bond covering broad categories of project costs to even file a case or maintain an appeal. The costs the bond could cover include employee wages and benefits, as well as contractor or subcontractor payments.

The bill represents a significant change from the statutes, regulations, and court rules that are currently in place in Alaska. In an original action, a court already has discretion to impose a bond when a party seeks a temporary restraining order or preliminary injunction. Alaska R. Civ. P. 65(c). This judicial discretion is consistent with Federal Rule of Civil Procedure 65(c). If a party files an appeal of a permitting decision, under Alaska Appellate Rules 204(d) and 603(a)(2), the Superior Court sitting as a court of review also has reasonable discretion regarding imposing a bond to stay the decision of the agency. *See Breck v. Moore*, 910 P.2d 599, 609 (Alaska 1996). Some legislators believe this bill is needed to stop frivolous lawsuits, but there are already mechanisms in place for the court to stop frivolous lawsuit. This bill is overbroad and instead applies to every challenge to a permitting decision, and would squelch civil discourse and public participation even in completely nonfrivolous lawsuits.

There are substantial hurdles and significant deterrents for citizens to enforce their judicial rights already built into Alaska’s judicial system, including the English Rule for attorney’s fees. The Court also has broad authority to dismiss frivolous claims and to sanction parties who abuse the system. There is simply no need for HB 47 to impose burdens on the public’s access to the judicial system.

Sincerely,



Kimberly Williams  
Executive Director

cc: Bristol Bay Native Corporation  
Bristol Bay Native Association  
Senator Lesil McGuire  
Senator Gary Stevens  
Senator Lyman Hoffman  
Senator Hollis French  
Representative Alan Austerman  
Representative Bryce Edgmon  
Representative Bob Herron