

AK LEGISLATURE FINANCE COMMITTEES FILES 2007-2008 3378

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Alaska State Legislature



Senator Hollis French

Sponsor Statement

Senate Bill 226 - Vexatious Litigants

SB 226 creates a process in statute for courts to manage the problem of lawsuits brought by individuals who are "vexatious litigants."

A vexatious litigant is defined as a person who, among other things, repeatedly litigates the same claims or previous adverse decisions against the same parties, files multiple frivolous lawsuits, repeatedly files pleadings or motions that are frivolous or in bad faith, or repeatedly engages in tactics that are without merit or intended to cause unnecessary delay.

This bill allows the court to impose reasonable restrictions on vexatious litigants' access to the court. Under SB 226 a court can require conditions, such as the posting of security or prefiling review of a complaint by a presiding judge, before an action filed by a vexatious litigant can proceed. Several states have passed similar legislation to control the problem of vexatious litigation. The provisions in this bill are based on California's Code of Civil Procedure.

Vexatious litigation needlessly burdens the resources of the court system, and creates unnecessary expense for individuals who are the target of this litigation in the public and private sectors. It is certainly important to recognize and protect the individual's right to litigate claims in our court system. SB 226 will only affect those few cases that are clearly without merit. This bill will provide means for screening out extreme examples of meritless cases before they are filed. Please join me in supporting SB 226.



The Voice of Small Business®

Alaska

February 10, 2008

The Honorable Hollis French
State Capitol Building
Juneau, Alaska 99801-1182

RE: Senate Bill 226 – Vexatious Litigants

Dear Senator French,

On behalf of the National Federation of Independent Business/Alaska, I wish to express our support for Senate Bill 226. The National Federation of Independent Business is the largest small-business advocacy group in the state.

A person who, among other things, repeatedly litigates the same claims or previous adverse decisions against the same parties, files multiple frivolous lawsuits, repeatedly files pleadings or motions that are frivolous or in bad faith, or repeatedly engages in tactics that are without merit or intended to cause unnecessary delay simply drives up unnecessary costs for defendants. Eliminating inappropriate and costly litigation is strongly supported by the members of NFIB.

This bill allows the court to impose reasonable restrictions on vexatious litigants' access to the court. Under SB 226 a court can require conditions, such as the posting of security or prefiling review of a complaint by a presiding judge, before an action filed by a vexatious litigant can proceed. Several states have passed similar legislation to control the problem of vexatious litigation.

Vexatious litigation needlessly burdens the resources of the court system, and creates unnecessary expense for individuals who are the target of this litigation in the public and private sectors. This bill will provide means for screening out extreme examples of meritless cases before they are filed.

We appreciate you sponsoring this important legislation.

Sincerely yours,

A handwritten signature in black ink that reads "DENNY".

Dennis DeWitt
Alaska State Director

American Law Reports ALR6th
The ALR databases are made current by the weekly addition of relevant new cases.

(This annotation has not been released for publication in ALR and is subject to revision or withdrawal).

Validity, Construction, and Application of State Vexatious Litigant Statutes

Robin Miller, J.D.

A state vexatious litigant statute permits restrictions on access to the courts by a litigant judicially determined to be vexatious, at least when the litigant is proceeding pro se. The purpose of such a statute is to prevent abuse of the judicial system by those persons who persistently and habitually file lawsuits without reasonable grounds, or who otherwise engage in frivolous conduct in the courts. These statutes have been consistently upheld by the courts. For example, in Wolfe v. George, 385 F. Supp. 2d 1004 (N.D. Cal. 2005), the court held that: (1) the California vexatious litigant statute does not violate litigants' rights to petition for redress of grievances, procedural due process, equal protection, or protection from double jeopardy; (2) the statute is not unconstitutionally vague or overbroad; (3) the statute does not impose an excessive fine or constitute an ex post facto law or a bill of attainder; and (4) the statute does not violate the Supremacy Clause of the U.S. Constitution. This annotation collects and analyzes the federal and state cases discussing the validity, construction, and application of state vexatious litigant statutes.

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This annotation collects and analyzes the federal and state cases discussing the validity, construction, and application of a state vexatious litigant statute. Such a statute permits restrictions on access to the courts by a litigant judicially determined to be vexatious, at least when the litigant is proceeding *pro se*.

Some opinions discussed in this annotation may be restricted by court rule as to publication and citation in briefs; readers are cautioned to check each case for restrictions. A number of jurisdictions may have rules, regulations, constitutional provisions, or legislative enactments directly bearing upon this subject. These provisions are discussed herein only to the extent and in the form that they are reflected in the court opinions that fall within the scope of this annotation. The reader is consequently advised to consult the appropriate statutory or regulatory compilations to ascertain the current status of all statutes discussed herein.

§ 2. Summary and comment

The purpose of a vexatious litigant statute is to prevent abuse of the judicial system by those persons who persistently and habitually file lawsuits without reasonable grounds, or who otherwise engage in frivolous conduct in the courts. Such conduct clogs the court dockets, results in increased costs, and is a waste of judicial resources that are supported by the taxpayers.^[FN1]

California enacted the nation's first vexatious litigant statute^[FN2] in 1963 after suggestions by both the state bar and the state judiciary.^[FN3] This statute was significantly broadened in 1990.^[FN4]

The next state to act, Hawaii, did not do so until 1993.^[FN5] enacting a statute modeled on California's.^[FN6] Other states followed: Ohio in 1996, ^[FN7] Texas in 1997,^[FN8] and Florida in 2000.^[FN9] The latter two are also based on (but are not identical to) California's statute, while Ohio's is dissimilar.

The California statute establishes four tests for vexatiousness; a litigant's satisfying any one is a sufficient basis for a determination that the litigant is vexatious:

- In the immediately preceding seven-year period, the person has commenced, prosecuted, or maintained in *propria persona* at least five litigations, other than in a small claims court, that have been (1) finally determined adversely to the person or (2) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.

- After a litigation has been finally determined against the person, he or she repeatedly relitigates or attempts to relitigate, in *propria persona*, either (1) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (2) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.

- In any litigation while acting in *propria persona*, the person repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

- The person has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.

Statutes enacted in Florida, Hawaii, and Texas embrace some or all of the California statute's criteria for a vexatious litigant, occasionally with modifications. The Ohio statute, taking a different approach, applies to a litigant who has habitually, persistently, and without reasonable grounds engaged in "vexatious conduct," which the statute defines as conduct that either: (1) obviously serves merely to harass or maliciously injure another party to the civil action; (2) is imposed solely for delay; or (3) is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

After a litigant has been determined by the court to be vexatious, all the statutes permit two separate remedies: a requirement that the litigant post security for the opposing party's costs in order to continue the litigation, and a prefiling order requiring the litigant to receive advance judicial permission before commencing new pro se litigation.^[FN10]

Courts asked to consider the constitutionality of a state vexatious litigant statute have consistently upheld the statute (§ 4). Some courts have ruled that such a statute does not apply to criminal or habeas corpus proceedings (§ 5).

Courts have been asked to address various procedural issues in connection with a motion to have a person declared a vexatious litigant under the state vexatious litigant statute. Thus, courts have held, under the circumstances, that such a motion was (§ 6), or was not (§ 7), made in a manner permitted under the statute; that the motion was (§ 8), or was not (§ 9), made by a party permitted under the statute to assert such a motion; that the statute required prior notice and a hearing (§ 10), but did not require the court to issue formal findings (§ 11), before a party could be declared a vexatious litigant; and that the motion was (§ 12), or was not (§ 13), timely under the statute.

In cases resolving substantive issues concerning the propriety of an order declaring a party to be a vexatious litigant, courts have had to address certain threshold issues. Thus, courts have held, at least under the circumstances, that a vexatious litigant was (§ 14), or was not (§ 15), required to be a natural person; that a vexatious litigant was (§ 18), or was not (§ 19), required to be proceeding pro se; and that, where a vexatious litigant was required to be a "plaintiff," a party's status as a plaintiff was (§ 16), or was not (§ 17), supportable.

In cases applying the various definitions of vexatious litigant found in state vexatious litigant statutes, courts have held, under the circumstances, that a showing that there was no reasonable probability that a litigant would prevail in the litigation was (§ 20), or was not (§ 21), a prerequisite for a determination that the litigant was vexatious; that a determination that a party was a vexatious litigant was (§ 22), or was not (§ 23), supportable under a provision in a state vexatious litigant statute defining a vexatious litigant as one who had engaged in persistent vexatious conduct; that a determination that a party was a vexatious litigant was (§ 24), or was not (§ 25), supportable under a provision in a state vexatious litigant statute defining a vexatious litigant as one who had been designated as a vexatious litigant in prior litigation; that a determination that a party was a vexatious litigant was (§ 26), or was not (§ 27), supportable under a provision in a state vexatious litigant statute defining a vexatious litigant as one who had engaged in repeated dilatory or frivolous conduct; that a determination that a party was a vexatious litigant was (§ 28), or was not (§ 29), supportable under a provision in a state vexatious litigant statute defining a vexatious litigant as one who had repeatedly litigated, or attempted to litigate, the same issues; that a determination that a party was a vexatious litigant was (§ 30), or was not (§ 31), supportable under a provision in a state vexatious litigant statute defining a vexatious litigant as one who had commenced a specified number of prior unsuccessful litigations; and that a determination that a party was a vexatious litigant was supportable under an unspecified provision in a state vexatious litigant statute (§ 32).

In other cases involving substantive issues in connection with a motion to have a person declared a vexatious litigant under the state vexatious litigant statute, courts have ruled, at least under the circumstances, that neither the fact that a prior court declined to declare the person to be a vexatious litigant under the statute (§ 33), nor the fact that a prior court had sanctioned the person for the allegedly objectionable conduct (§ 34), precluded the court from granting the motion.

In cases addressing the propriety of the issuance, under the state vexatious litigant statute, of a prefiling order requiring a vexatious litigant to obtain advance judicial permission to commence specified litigation, courts have held, under the circumstances, that the proper party made the motion seeking the issuance of the prefiling order (§ 35); that the motion seeking the issuance of the prefiling order, or the court's order granting the motion, was timely filed (§ 36); that it was (§ 37), or was not (§ 38), permissible for the order to extend to litigation in which the vexatious litigant was represented by counsel rather than proceeding pro se; and that it was impermissible for the order to extend to litigation commenced in certain courts (§ 39).

In cases addressing the propriety of the issuance, under the state vexatious litigant statute, of a court order

requiring a vexatious litigant to post security in order to proceed with specified litigation, courts have held, under the circumstances, that a court was not required to hold a hearing (§ 41), or to make formal findings (§ 40), prior to issuing such an order; that a motion seeking such an order was untimely (§ 42); that the amount of security required was (§ 43), or was not (§ 44), supportable; that the court had (§ 45), or did not have (§ 46), discretion in issuing such an order; that the court properly disposed of unused security (§ 47); that the court improperly specified the form of the security (§ 48); that a finding that a vexatious litigant lacked a reasonable probability of success with respect to certain litigation, so as to support an order for security, was (§ 49), or was not (§ 50), supportable; that it was proper for the order to protect a specified party (§ 51); and that a litigant's receiving judicial permission to proceed with certain litigation did not preclude a court from ordering the litigant to provide security in order to proceed with the litigation (§ 52).

In cases involving the application, rather than the propriety, under the circumstances, of a prefiling order issued against a vexatious litigant under the state vexatious litigant statute, courts have held, under the circumstances, that the litigant sought leave to proceed from the wrong court (§ 53); that the order applied to specific litigation (§ 54); and that the litigant did not submit a sufficient application for leave to proceed (§ 55).

In cases involving the application of an order, under the state vexatious litigant statute, requiring a vexatious litigant to post security in order to proceed with certain litigation, courts have held, under the circumstances, that the order did (§ 56), or did not (§ 57), apply to the litigant's current litigation.

Finally, in several miscellaneous cases arising under state vexatious litigant statutes, courts have held, under the circumstances, that dismissal of the action was an appropriate sanction for a vexatious litigant's failure to comply with the statute or an order issued under the statute (§ 58); that a stay imposed upon the filing of a vexatious litigant motion was (§ 59), or was not (§ 60), preclusive of certain action by the court; that a vexatious litigant's appeal was untimely even taking into account the time expended in complying with a prefiling order (§ 61); and that a pleading filed following a court's denial of a vexatious litigant motion was (§ 62), or was not (§ 63), timely.

§ 3. Practice pointers

A proceeding under a state vexatious litigant statute is just one tool available to rein in litigants who abuse the judicial system. A court may have inherent power to restrict a vexatious litigant's access to the courts, [FN11] or the party harassed by the litigant may be able to secure an anti-suit injunction.[FN12] Furthermore, a court may have either inherent [FN13] or express statutory[FN14] authority to require a party who pursues vexatious litigation, or the party's attorney, to pay the opposing party's attorney's fees.

A court order declaring a party to be a vexatious litigant is usually considered an interlocutory order that cannot be appealed until final judgment is rendered in the action.[FN15]

The state vexatious litigant statutes enacted to date do not provide a mechanism for that designation, once bestowed, to be removed, and only one court appears to have considered the question of whether a mechanism should be provided.[FN16] According to the California state vexatious litigants website, a person's name can be removed from the state list of vexatious litigants only if the court that issued the original vexatious litigant order vacates that order.[FN17]

Where a state-law claim is asserted in a federal court sitting in a state that has enacted a vexatious litigant statute, it appears that a party's status as a vexatious litigant will be determined under federal law, rather than under the state statute,[FN18] unless the federal court has adopted a local rule embracing the standards articulated in the state statute.[FN19]

II. GENERAL PRINCIPLES

§ 4. View that statute is constitutional

Rejecting the indicated federal or state constitutional challenges, the courts in the following cases held that the state's vexatious litigant statute is constitutional.

Legal Encyclopedias

Am. Jur. 2d, Constitutional Law § 620

Am. Jur. 2d, Costs § 81

Am. Jur. 2d, Equity § 27

Am. Jur. 2d, Injunctions § § 39, 78, 191, 204

C.J.S., Actions § 73

C.J.S., Costs § 63

C.J.S., Equity § 38

C.J.S., Injunctions § 99

Trial Strategy

Cause of Action Under 28 USC 1927 to Recover Excess Costs, Expenses, and Attorneys' Fees for Unreasonable and Vexatious Multiplication of Proceedings, 19 Causes of Action 447

Additional References

Appellees' Brief [Leonard v. Abbott], 2004 WL 1873171

Appellant's Reply Brief [Leonard v. Abbott], 2004 WL 1292173

Appellant's First Amended Brief [Leonard v. Abbott], 2004 WL 828168

California state vexatious litigants website, <http://www.courtinfo.ca.gov/courtadmin/aoc/vexatious.htm>

Ohio state vexatious litigants website, http://www.sconet.state.oh.us/Clerk_of_Court/vexatious/

Section 2. Footnotes:

[FN1] See Mayer v. Bristow, 91 Ohio St. 3d 3, 2000-Ohio-109, 740 N.E.2d 656 (2000).

[FN2] See Cal. Civ. Proc. Code § § 391 et seq. (effective Sept. 20, 1963).

[FN3] See Taliaferro v. Hoogs, 236 Cal. App. 2d 521, 46 Cal. Rptr. 147 (1st Dist. 1965); McColm v. Westwood Park Ass'n, 62 Cal. App. 4th 1211, 73 Cal. Rptr. 2d 288 (1st Dist. 1998).

[FN4] See Camerado Ins. Agency, Inc. v. Superior Court, 12 Cal. App. 4th 838, 16 Cal. Rptr. 2d 42 (3d Dist. 1993).

[FN5] See Haw. Rev. Stat. § § 634J-1 et seq.

[FN6] See Standard Management, Inc. v. Kekona, 98 Haw. 95, 43 P.3d 232 (Ct. App. 2001).

[FN7] See Ohio Rev. Code Ann. § 2323.52 (effective March 18, 1997).

[FN8] See Tex. Civ. Prac. & Rem. Code Ann. § § 11.001 et seq. (effective Sept. 1, 1997).

[FN9] See Fla. Stat. Ann. § 68.093 (effective Oct. 1, 2000).

[FN10] See, e.g., Holcomb v. U.S. Bank Nat. Ass'n, 129 Cal. App. 4th 1494, 29 Cal. Rptr. 3d 578 (4th Dist. 2005) (§ 54); Bravo v. Ismaj, 99 Cal. App. 4th 211, 120 Cal. Rptr. 2d 879 (4th Dist. 2002) (§ 10).

Section 3. Footnotes:

[FN11] See, e.g., Melnitzky v. Apple Bank for Savings, 19 A.D.3d 252, 797 N.Y.S.2d 470 (1st Dep't 2005); Jordan v. State ex rel. Dept. of Motor Vehicles and Public Safety, 110 P.3d 30 (Nev. 2005); May v. Bartnet, 886 So. 2d 324 (Fla. Dist. Ct. App. 4th Dist. 2004).

[FN12] See, e.g., Weaver v. School Bd. Of Leon County, 896 So. 2d 929, 197 Ed. Law Rep. 457 (Fla. Dist. Ct. App. 1st Dist. 2005); Howell v. Texas Workers' Compensation Com'n, 143 S.W.3d 416 (Tex. App. Austin 2004), review denied, (2 pets.) (Apr. 1, 2005).

[FN13] See, e.g., LaMontagne Builders, Inc. v. Bowman Brook Purchase Group, 150 N.H. 270, 837 A.2d 301 (2003); Barnes v. Oklahoma Farm Bureau Mut. Ins. Co., 2000 OK 55, 11 P.3d 162 (Okla. 2000), as corrected, (July 25, 2000) and as corrected, (Aug. 9, 2000) and as corrected, (Jan. 16, 2001).

[FN14] See, e.g., Gibson v. Decatur Federal Sav. & Loan Ass'n, 235 Ga. App. 160, 508 S.E.2d 788 (1998); Lewis v. Powers, 1997 WL 335563 (Ohio Ct. App. 2d Dist. Montgomery County 1997); Township of Lower Merion v. OED, Inc., 762 A.2d 779 (Pa. Commw. Ct. 2000).

[FN15] See, e.g., Stern v. American States Ins. Co., 2003 WL 1611291 (Cal. App. 2d Dist. 2003), unpublished/noncitable, (Mar. 28, 2003); Phillips v. Phillips, 2004 WL 2903519 (Tex. App. Houston 1st Dist. 2004).

[FN16] See PBA, LLC v. KPOD, Ltd., 112 Cal. App. 4th 965, 5 Cal. Rptr. 3d 532 (2d Dist. 2003), review denied, (Jan. 22, 2004) (§ 26), in which the court stated that "[d]espite the apparent unfairness of permanently branding a person as a vexatious litigant, it is unclear how the vexatious litigant determination can be erased in appropriate cases. The statutory scheme ... does not itself provide a procedural mechanism for dissolving an order declaring a person a vexatious litigant."

[FN17] See <http://www.courtinfo.ca.gov/courtadmin/aoc/vexfaq.htm>.

[FN18] See Fox v. Pope, R.I.C.O. Bus. Disp. Guide (CCH) ¶ 10010, 2001 WL 167913 (N.D. Tex. 2001) (unreported opinion); Benoza v. Target Personnel Services, 1997 WL 446232 (N.D. Cal. 1997) (unreported opinion). See also Carlock v. RMP Financial, 2003 WL 24207625 (S.D. Cal. 2003) (unreported opinion; without deciding the "Erie question" of whether federal or state law controlled, the court found that the party was not a vexatious litigant under either standard).

[FN19] See Sanders v. CleanNet of Southern California, Inc., 135 Fed. Appx. 936 (9th Cir. 2005) (this case may be of limited or no precedential value due to court rule); Weissman v. Quail Lodge, Inc., 179 F.3d 1194 (9th Cir. 1999).

Section 4. Footnotes:

[FN20] In Cent. Ohio Transit Auth. v. Timson, 132 Ohio App. 3d 41, 724 N.E.2d 458 (10th Dist. Franklin County 1998) (abrogated by, Mayer v. Bristow, 91 Ohio St. 3d 3, 2000-Ohio-109, 740 N.E.2d 656 (2000)), the court held that, while most of the state vexatious litigator statute was constitutional, Ohio Rev. Code Ann. § 2323.52(G), precluding any appeal from a court's denial of a vexatious litigator's application for leave to proceed with a case, violated Ohio Const. art. I, § 16, providing that all courts shall be open, and every person, for an injury to his or her land, goods, person, or reputation, shall have remedy by due course of law.

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HBriefs and Other Related Documents

Wolfe v. George? D.Cal.,2005.

United States District Court,N.D. California.
 Burton H. WOLFE, Plaintiff,

v.

Ronald M. GEORGE, et al., Defendants.
 No. C 00-1047 SBA.
 Nos. 264, 276, 285.

Aug. 22, 2005.

Background: Civil rights action was brought against state of California, California's Judicial Council, various California trial and appellate judges, and court services analyst employed by the California Judicial Council, seeking declaration that California's Vexatious Litigant Statute was unconstitutional. The District Court dismissed action for lack of subject matter jurisdiction, and plaintiff appealed. The Court of Appeals, 392 F.3d 358, affirmed in part, reversed in part, and remanded. On remand, parties moved and cross moved for judgment on the pleadings.

Holdings: The District Court, Armstrong, J., held that:


- (1) statute did not violate First Amendment right to petition for redress of grievances;
- (2) statute was not unconstitutionally vague or overbroad;
- (3) statute did not violate procedural due process rights of frequent litigants;
- (4) equal protection rights were not violated;
- (5) double jeopardy rights were not violated;
- (6) security requirement was not impermissible excessive fine;
- (7) no ex post facto law or bill of attainder was involved;
- (8) no Supremacy Clause violation was involved; and
- (9) litigant lacked standing to raise third party claims.

Judgment for state.

West Headnotes

[1] Action 13 13 Action13I Grounds and Conditions Precedent13k9 k. Unnecessary or Vexatious Actions.Most Cited CasesConstitutional Law 92 92 Constitutional Law92V Personal, Civil and Political Rights92k91 k. Right of Assembly and Petition. MostCited Cases

California Vexatious Litigant Statute, barring frivolous lawsuits, did not violate First Amendment right to petition for redress of grievances; suits based on intentional falsehoods, or knowingly frivolous claims, were not protected by First Amendment. U.S.C.A. Const.Amend. 1; West's Ann.Cal.C.C.P. § 391 et seq.

[2] Action 13 13 Action13I Grounds and Conditions Precedent13k9 k. Unnecessary or Vexatious Actions.Most Cited CasesConstitutional Law 92 92 Constitutional Law92V Personal, Civil and Political Rights92k82 Constitutional Guaranties in General92k82(6) Particular Rights, Limitations, andApplications92k82(6.1) k. In General. Most CitedCases

California Vexatious Litigant Statute was not unconstitutionally vague, despite claims that pro se litigants would not understand technical legal terms, and that judges were given excessive discretion to determine that litigation was vexatious or lacked merit. U.S.C.A. Const.Amend. 1; West's Ann.Cal.C.C.P. § 391 et seq.

[3] Action 13 

13 Action

131 Grounds and Conditions Precedent

13k9 k. Unnecessary or Vexatious Actions.

Most Cited Cases

Constitutional Law 92  82(6.1)

92 Constitutional Law

92V Personal, Civil and Political Rights

92k82 Constitutional Guaranties in General

92k82(6) Particular Rights, Limitations, and Applications

92k82(6.1) k. In General. Most Cited

Cases

California Vexatious Litigant statute was not unconstitutionally overbroad; there was compelling government interest in supporting uncluttered operation of court, and there were safeguards against suppression of justifiable litigation. U.S.C.A. Const.Amend. 1; West's Ann.Cal.C.C.P. § 391 et seq.

141 Action 13 

13 Action

131 Grounds and Conditions Precedent

13k9 k. Unnecessary or Vexatious Actions.

Most Cited Cases

Constitutional Law 92  305(2)

92 Constitutional Law

92XII Due Process of Law

92k304 Civil Remedies and Proceedings

92k305 Actions

92k305(2) k. Access to Courts; Rights to Hearing and Determination. Most Cited Cases

California Vexatious Litigant Statute did not violate procedural due process rights of frequent litigants; there were no restrictions placed on right to sue until after notice and hearing, and claims that suits filed after entry of order limiting suit were frivolous would be resolved on case by case basis. U.S.C.A. Const.Amend. 14; West's Ann.Cal.C.C.P. § 391 et seq.

151 Action 13 

13 Action

131 Grounds and Conditions Precedent

13k9 k. Unnecessary or Vexatious Actions.

Most Cited Cases

Constitutional Law 92  248(1)

92 Constitutional Law

92XI Equal Protection of Laws

92k243 Creation or Discharge of Liability

92k248 Costs or Fees

92k248(1) k. In General. Most Cited

Cases


Constitutional Law 92  249(1)

92 Constitutional Law

92XI Equal Protection of Laws

92k249 Civil Remedies and Proceedings

92k249(1) k. In General. Most Cited Cases

Costs 102  106

102 Costs

102VI Security for Costs; Proceedings in Forma Pauperis

102k106 k. Statutory Provisions. Most Cited

Cases

Equal protection rights of frequent litigants were not violated by California Vexatious Litigant Statute, requiring them to have complaints screened by court before filing and to post security; financial barrier applied only to activities not protected by constitution. U.S.C.A. Const.Amend. 14; West's Ann.Cal.C.C.P. § 391 et seq.

161 Double Jeopardy 135H 


135H Double Jeopardy

135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected

135Hk22 k. Particular Proceedings. Most Cited

Cases

California Vexatious Litigant Statute, imposing restrictions on persons engaged in frivolous litigation, did not violate double jeopardy clause; no criminal sanctions were involved. U.S.C.A. Const.Amend. 5; West's Ann.Cal.C.C.P. § 391 et seq.

171 Fines 174  1.3

174 Fines

174k1.3 k. Excessive Fines. Most Cited Cases

California Vexatious Litigant Statute, imposing security requirement on litigant found to have engaged in vexatious litigation, did not violate Eighth Amendment prohibition on excessive fines; Eighth Amendment was implicated in criminal and civil forfeiture proceedings, not involved in present case. U.S.C.A. Const.Amend. 8; West's Ann.Cal.C.C.P. §

391 et seq.

181 Action 13 ↪9

15 Action

131 Grounds and Conditions Precedent

13k9 k. Unnecessary or Vexatious Actions.

Most Cited Cases

Constitutional Law 92 ↪199

92 Constitutional Law

92VIII Retrospective and Ex Post Facto Laws

92k198 Retroactive Operation of Ex Post Facto

Laws

92k199 k. In General. Most Cited Cases

California Vexatious Litigant Statute, imposing security requirements when persons with history of vexatious litigation bring suit, was not ex post facto law violating Constitution; ex post facto clause applied only to criminal cases. U.S.C.A. Const. Art. 1, § 9, cl. 3, 10, cl. 1; West's Ann.Cal.C.C.P. § 391 et seq.

191 Action 13 ↪9

13 Action

131 Grounds and Conditions Precedent

13k9 k. Unnecessary or Vexatious Actions.

Most Cited Cases

Constitutional Law 92 ↪82.5

92 Constitutional Law

92V Personal, Civil and Political Rights

92k82.5 k. Bills of Attainder, Prohibition

Against. Most Cited Cases

California Vexatious Litigant Statute, imposing restrictions on litigants with history of vexatious filings, was not unconstitutional bill of attainder; statute had valid and non punitive purpose of protecting courts and other litigants against abuses of judicial process, rather than purpose of inflicting legislative punishment on frequent litigators. U.S.C.A. Const. Art. 1, § 9, cl. 3, 10, cl. 1.

1101 Action 13 ↪9

13 Action

131 Grounds and Conditions Precedent

13k9 k. Unnecessary or Vexatious Actions.

Most Cited Cases

States 360 ↪18.15

360 States

360I Political Status and Relations

360I(B) Federal Supremacy; Preemption

360k18.15 k. Particular Cases, Preemption or Supersession. Most Cited Cases

Absence of any conflicting federal statute precluded claim that California Vexatious Litigant Statute, imposing restrictions on persons engaging in frivolous litigation, violated Supremacy Clause. U.S.C.A. Const. Art. 6, cl. 2; West's Ann.Cal.C.C.P. § 391 et seq.

111 Constitutional Law 92 ↪42.1(1)

92 Constitutional Law

92II Construction, Operation, and Enforcement of Constitutional Provisions

92k41 Persons Entitled to Raise Constitutional Questions

92k42.1 Particular Statutes or Actions Attacked

92k42.1(1) k. In General. Most Cited Cases

Litigant lacked standing to raise claims, on behalf of all persons pursuing pro se claims, that California Vexatious Litigant Statute was unconstitutional; litigant was seeking to represent too broad a class, as statute applied only to those with record of frivolous litigation. U.S.C.A. Const. Art. 3, § 2, cl. 1; West's Ann.Cal.C.C.P. § 391 et seq.

Burton H. Wolfe, San Francisco, CA, pro se.
David M. Verhey, Sacramento, CA, Tom Blake, CA State Attorney General's Office, Thomas A. Blake, Jonathan U. Lee, City Attorney's Office, San Francisco, CA, for Defendants.

ORDER

ARMSTRONG, District Judge.

This matter comes before the Court on Plaintiff's Motion for Judgment on the Pleadings [Docket No. 264] and Defendants' Cross-Motion for Judgment on the Pleadings [Docket No. 276]. Having read and considered the arguments presented by the parties in the papers submitted to the Court, and having heard the argument of Plaintiff and Defendants' counsel at the June 28, 2005 hearing, the Court hereby DENIES Plaintiff's Motion for Judgment on the Pleadings and GRANTS Defendants' Cross-Motion for Judgment on the Pleadings.

BACKGROUND

A. Procedural Background.

On March 27, 2000, Plaintiff Burton Wolfe ("Plaintiff"), filed a Complaint, in propria persona, under 42 U.S.C. § 1983, challenging the constitutionality of California's*1007 Vexatious Litigant Statute. He named as defendants: (1) Justice Gary Strankman, Chief Justice Ronald George, Deborah Silva, the Judicial Council of California, and State of California (collectively known as the "State Defendants"); and (2) Judge Alfred Chiantelli, Judge David Garcia, and Judge Ronald Quidachay (collectively known as the "Judge Defendants").

On March 29, 2002, this Court dismissed Plaintiff's Complaint under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction pursuant to the *Rooker-Feldman* doctrine after finding that Plaintiff's action appeared to be a de facto appeal of prior state court decisions. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16, 44 S.Ct. 149, 68 L.Ed. 362 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482-86, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). The Court also dismissed the State Defendants and the Judge Defendants from the lawsuit. Plaintiff subsequently appealed.

On December 14, 2004, the Ninth Circuit held that this Court erred by dismissing the suit under *Rooker-Feldman*. *See Wolfe v. Strankman*, 392 F.3d 358, 364 (9th Cir.2004). Specifically, the Ninth Circuit found that Plaintiff's references to his involvement in prior state court actions went to show that Plaintiff had standing, and were not de facto appeals from the decisions in those prior actions. *Id.* However, the Ninth Circuit affirmed the dismissal of the State of California and the Judicial Council of California on the grounds that they are not "persons" subject to suit under § 1983. *Id.* at 361. The court further affirmed the dismissal of the Judge Defendants, Justice Strankman, and Chief Justice George in his judicial capacity. *Id.* Finally, the court reversed the dismissal of Chief Justice George, in his administrative capacity, and Ms. Silva, and remanded to this Court for further proceedings. *Id.*

On February 8, 2005, Plaintiff filed a First Amended Complaint, in propria persona, on behalf of himself and on behalf of all persons appearing in the courts of California without representation, for Declaratory and Prospective Injunctive Relief. In the First

Amended Complaint, Plaintiff alleges that California's Vexatious Litigant Statute, California Code of Civil Procedure § § 391 et seq., is unconstitutional. On February 23, 2005, Plaintiff filed a Motion for Judgment on the Pleadings or, in the alternative, for Declaratory Judgment. On May 6, 2005, Defendants filed a Cross-Motion for Judgment on the Pleadings.

B. Statutory Background.

California's Vexatious Litigant Statute (the "statute") is codified at California Code of Civil Procedure § § 391 et seq. The statute defines a vexatious litigant as a person who:

(1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.

(2) After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.

(3) In any litigation while acting in propria persona, repeatedly files unmeritorious*1008 motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

(4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.

Cal.Code of Civ. Proc. § 391(b)(1)-(4). Pursuant to the statute, a defendant may move the court to require the pro se plaintiff to provide security if the defendant can make a showing that the plaintiff is a vexatious litigant and that there is not a reasonable probability that the plaintiff will prevail in the litigation against the moving party. *See Cal.Code of Civ. Proc. § 391.1*. Upon making the requisite findings, the court may then order the plaintiff to provide a security ^{EN1} that compensates for the reasonable costs and attorney fees of defending the

suit. Cal.Code Civ. Proc. § § 391.1, 391.3. If the plaintiff fails to post the security, the action may be dismissed. Cal.Code Civ. Proc. § 391.4.

FN1. A "security" is defined in the statute as an "undertaking to assure payment, to the party for whose benefit the undertaking is required to be furnished, of the party's reasonable expenses, including attorney's fees and not limited to taxable costs, incurred in or in connection with a litigation instituted, caused to be instituted, or maintained or caused to be maintained by a vexatious litigant." Cal.Code Civ. Proc. § 391(c).

Once a plaintiff has been declared a "vexatious litigant" within the meaning of the statute, the court may also enter an order prohibiting that plaintiff from filing new state court litigation absent leave of the presiding judge where the litigation is proposed to be filed. Cal.Code Civ. Proc. § 391.7. This order is referred to as a "prefiling" order. Cal.Code Civ. Proc. § 391.7. After the prefiling order is issued, the presiding judge shall permit the filing of further litigation if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay. Cal.Code of Civ. Proc. § 391.7(b).

LEGAL STANDARD

A. Motion for Judgment on the Pleadings.

Under Federal Rule of Civil Procedure 12(c), any party may move for judgment on the pleadings at any time after the pleadings are closed but within such time as not to delay the trial. Fed.R.Civ.P. 12(c). "For the purposes of the motion, the allegations of the non-moving party must be accepted as true, while the allegations of the moving party which have been denied are assumed to be false." Hal Roach Studios, Inc. v. Richard Feiner and Co., Inc., 896 F.2d 1542, 1550 (9th Cir.1990). Judgment on the pleadings is proper when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law. *Id.* When brought by the defendant, a motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) is a "means to challenge the sufficiency of the complaint after an answer has been filed." NewNet, Inc. v. Lavasoft, 356 F.Supp.2d 1090, 1115

(C.D.Cal.2004). A motion for judgment on the pleadings is therefore similar to a motion to dismiss. *Id.* When the district court must go beyond the pleadings to resolve an issue on a motion for judgment on the pleadings, the proceeding is properly treated as a motion for summary judgment. Fed.R.Civ.P. 12(c); Bonilla v. Oakland Scavenger Co., 697 F.2d 1297, 1301 (9th Cir.1982).

*1009 B. Declaratory Judgment.

28 U.S.C. § 2201 provides that "[i]n a case of a real controversy within its jurisdiction ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such." 28 U.S.C. § 2201.

Declaratory judgment is appropriate where, as here, an injunction is not available because there are no pending state court proceedings. Steffel v. Thompson, 415 U.S. 452, 463, 94 S.Ct. 1209, 39 L.Ed.2d 505 (1974) ("When no state prosecution is pending and the only question is whether declaratory relief is appropriate, the congressional scheme that makes the federal courts the primary guardians of constitutional rights, and the express congressional authorization of declaratory relief, afforded because it is a less harsh and abrasive remedy than the injunction, become the factors of primary significance.")

ANALYSIS

A. Plaintiff's and Defendants' Cross-Motions for Judgment on the Pleadings.

In his Motion for Judgment on the Pleadings, Plaintiff seeks a declaratory judgment from this Court that California's Vexatious Litigant Statute, California Code Civil Procedure § § 391 et seq., is unconstitutional. ^{FN2} Plaintiff asserts the following bases for a finding that the Vexatious Litigant Statute is unconstitutional: (1) it violates the First Amendment; (2) it is overbroad; (3) it is vague; (4) it violates the due process clause of the Fifth and Fourteenth Amendments ^{FN3}; (5) it violates the equal protection clause of the Fourteenth Amendment; (6) it violates the double jeopardy clause of the Fifth Amendment; (7) it violates the excessive fines clause

of the Eighth Amendment; (8) it is an impermissible ex post facto law or bill of attainder; and (9) it generally conflicts with federal law and violates 42 U.S.C. § 1983. Defendants, on the other hand, move for judgment on the pleadings on the basis that the Vexatious Litigant Statute is not unconstitutional on any of the aforementioned grounds. Additionally, Defendants assert that Plaintiff lacks standing to assert third-party rights.^{FN4}

FN2. Plaintiff actually contends that the statute is unconstitutional “on its face” and “as applied.” However, Plaintiff has not produced any admissible evidence demonstrating that the statute is unconstitutional as “applied” to himself or others. Instead, he relies on vague references to certain “facts” that are clearly outside of his own personal knowledge and “documents” that have not been produced to the Court. See, e.g., Pl’s Mot. at 19. Plaintiff has therefore failed on his burden of proof with respect to his “as applied” constitutional challenge and, accordingly, only his facial challenge is discussed below.

FN3. Since Plaintiff is challenging a state statute, his due process cause of action is most appropriately characterized as claim brought under the Fourteenth Amendment, not the Fifth Amendment. Thus, hereafter, discussion of Plaintiff’s due process claim will refer exclusively to the Fourteenth Amendment. It should be noted, however, that the due process analysis is the same under both the Fourteenth and Fifth Amendment. See Rodriguez v. Cook, 169 F.3d 1176, 1179 n. 4 (9th Cir.1999).

FN4. Although it is not clear from the parties’ briefing, both parties conceded at the June 28, 2005 hearing that, pursuant to the Ninth Circuit’s ruling in Wolfe, Plaintiff’s personal standing has been established and is no longer challenged by Defendants. See Wolfe, 392 F.3d at 364 (“We construe Wolfe’s references to the prior judicial actions ... as ... part of his demonstration that he is sufficiently threatened with actual harm from the future operation of the Vexatious Litigant Statute that he has standing to bring the present suit.”).

*1010 1. Constitutionality under the First

Amendment.

a. First Amendment Right to Petition for Grievances.

[1] With respect to Plaintiff’s First Amendment claim, the Court must first determine whether the Vexatious Litigant Statute actually encroaches upon a right guaranteed by the First Amendment.

The United States Supreme Court has long recognized that the right to petition for a redress or grievance is a liberty safeguarded by the Bill of Rights and is intimately connected both in origin and in purpose with the other First Amendment rights of free speech and free press. United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass’n, 389 U.S. 217, 222, 88 S.Ct. 353, 19 L.Ed.2d 426 (1967).^{FN5} However, the Supreme Court has also consistently held that “baseless litigation is *not* immunized by the First Amendment right to petition.” Bill Johnson’s Restaurants, Inc. v. N.L.R.B., 461 U.S. 731, 743, 103 S.Ct. 2161, 76 L.Ed.2d 277 (1983) (“[S]ince sham litigation by definition does not involve a bona fide grievance, it does not come within the first amendment right to petition.”). In fact, as the Supreme Court stated in Bill Johnson’s Restaurants, “The first amendment interests involved in private litigation—compensation for violated rights and interest, the psychological benefits of vindication, public airing of disputed facts—are not advanced when the litigation is based on intentional falsehoods or on knowingly frivolous claims.” *Id.*

FN5. The First Amendment is “incorporated” against the states by virtue of the Fourteenth Amendment. Hague v. C.I.O., 307 U.S. 496, 512-13, 59 S.Ct. 954, 83 L.Ed. 1423 (1939).

Applying the Bill Johnson’s Restaurants holding to the Vexatious Litigant Statute, the Court finds that the Vexatious Litigant Statute does not violate the First Amendment. By its very terms, the statute is only implicated once the state court has concluded that there is “no reasonable probability that [the plaintiff] will prevail in the litigation against the moving defendant.” Cal.Code Civ. Proc. § 391.3. Further, even when a plaintiff has been declared a vexatious litigant, the statute does not preclude a plaintiff from filing subsequent lawsuits, so long as those lawsuits have merit. See Cal.Code Civ. Proc. § 391.7; see Wolfgram v. Wells Fargo Bank, 53

Cal.App.4th 43, 60, 61 Cal.Rptr.2d 694 (1997) ("When a vexatious litigant knocks on the courthouse door with a colorable claim, he may enter.") Thus, to the extent that Plaintiff's argument is premised on his belief that the Vexatious Litigant Statute encroaches upon a First Amendment right because it is a prohibitive ban on meritorious litigation, his argument is fatally flawed. The Vexatious Litigant Statute is not, as Plaintiff contends, an absolute ban on the right to petition for grievances.

2. Vagueness.

[2] Plaintiff has also not proven that the Statute is unconstitutionally vague. "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." Gravned v. City of Rockford, 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972). To survive a vagueness challenge, the statute must give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. *Id.* This is particularly important when sensitive areas of First Amendment freedoms are involved; in such cases, the statute must have sufficiently clear terms such that citizens are not led to "steer far wider of the unlawful zone ... than if the boundaries of the forbidden areas were clearly marked." *Id.* *1011 The statute must also provide explicit standards for those who apply it so that arbitrary and discriminatory enforcement is prevented. *Id.*

In support of his vagueness challenge, Plaintiff contends that the statute fails to provide warning of what conduct is proscribed because it does not define the terms "finally determined adversely," "unmeritorious pleadings," "unnecessary discovery," or "other tactics that are frivolous." Having considered Plaintiff's arguments, the Court finds that there is absolutely no merit to the contention that words such as "final," "adverse," "unmeritorious," "unnecessary," "tactics," or "frivolous" are incomprehensible to a person of ordinary intelligence. Second, while it may be true that a complete stranger to litigation may not readily understand the correct meaning of the terms "discovery" and "pleadings," Plaintiff's contention that an "ordinary person" would not understand these terms is completely undermined by the fact that the "ordinary person" in this context is a person who either: (1) has engaged in litigation on at least five prior occasions within seven years; (2) is actively involved in current litigation; or (3) has recently

been involved in litigation and is reinitiating that litigation. See Cal.Code Civ. Proc. § 391(b). Thus, the argument that such a person is not able to comprehend fairly basic concepts of litigation is tenuous, at best, and defies credibility. The Vexatious Litigant Statute simply has no applicability to a person who is a complete stranger to litigation.

Moreover, even assuming, *arguendo*, that "sensitive areas of First Amendment freedoms" are involved, the Court does not find that there is any lack of clarity in the statute that would lead citizens to "steer far wider of the unlawful zone" than necessary. The activity "prohibited" by the statute is unmistakably clear: it is the pursuit of litigation that lacks merit and is instituted solely for the sake of harassment and delay. Indeed, the definition of the term "vexatious litigant" alone contains a considerable amount of detail. See Cal.Code Civ. Proc. § 391. Since this is not "a vague, general ... ordinance, but a statute written specifically for the [court] context, where the prohibited disturbances are easily measured by their impact" the Court finds that the statute gives "fair notice to those to whom it is directed." See Gravned, 408 U.S. at 112, 92 S.Ct. 2294.

Additionally, since the statute provides for actual notice and a hearing before it is even triggered, there is arguably nothing to "steer clear of" at all, as even a person who unjustifiably pursues frivolous litigation is free to continue his activities until his opponent asks the court to intervene. Cal.Code Civ. Proc. § 391.1. Significantly, even then, the person cannot be declared a "vexatious litigant" until after the court has conducted a hearing and given the plaintiff the opportunity to be heard. *Id.*

Plaintiff's alternative argument, that the alleged "vagueness" of the statute enables judges to interpret the statute in an arbitrary and discriminatory manner, is also unpersuasive. Undisputedly, even outside of the Vexatious Litigant context, judges are regularly called upon to determine what constitutes a "final adverse determination," an "unmeritorious pleading," "frivolous tactics," or "unnecessary discovery." See, e.g., Cal.Code Civ. Proc. 128.5 ("Every trial court may order a party, the party's attorney, or both to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay."); see also Cal. Rule of Court 27(c) (permitting Court of Appeal to "impose sanctions, including the award or denial of costs, on a party or an attorney for (a) *1012 taking a frivolous

appeal or appealing solely to cause delay; (b) including in the record any matter not reasonably material to the appeal's determination; or (c) committing any other unreasonable violation of these rules." The fact that a judge performs this function is one of the most fundamental underpinnings of the judicial system. See, e.g., Ellis v. Roshei Corp., 143 Cal.App.3d 642, 648, 192 Cal.Rptr. 57 (1983) ("A trial court is empowered to exercise its supervisory power in such a manner as to provide for the orderly conduct of the court's business and to 'guard against inept procedures and unnecessary indulgences which would tend to hinder, hamper or delay the conduct and dispatch of its proceedings.'"). Thus, Plaintiff's argument that "a judge can [not] come up with applicable definitions for such terms" is wholly without merit. The case law makes clear that California state court judges are, in fact, consistently and fairly construing the statute. See, e.g., Childs v. PainelVehber Inc., 29 Cal.App.4th 982, 992, 35 Cal.Rptr.2d 93 (1994).

Plaintiff's position is also based entirely on the faulty premise that "in a CCP 391 proceeding a First Amendment right is at stake." Again, by definition, a "CCP 391 proceeding" involves only litigation where the plaintiff cannot demonstrate that he has any reasonable likelihood of prevailing. Such frivolous litigation is not protected by the First Amendment.

Finally, Plaintiff's concern that litigants are often required to post securities of varying amounts, or subjected to pre-filing orders with varying standards, does not compel the conclusion that judges are enforcing the statute in an arbitrary or discriminatory manner. If anything, it suggests that state court judges are appropriately deciding each matter on a case-by-case basis, after giving careful consideration to the particular facts of the situation. This supports a finding of constitutionality. Gravned, 408 U.S. at 119, 92 S.Ct. 2294 ("[the] decision is made, as it should be, on an individualized basis, given the particular fact situation."). Accordingly, the Court finds that the Vexatious Litigant Statute is not unconstitutionally vague.

3. Overbreadth.

[3] Plaintiff's argument that the Vexatious Litigant Statute is unconstitutionally overbroad is also flawed. Although "[a] clear and precise enactment may nevertheless be 'overbroad' if in its reach it prohibits constitutionally protected conduct," there is simply

no basis to conclude that the Vexatious Litigant Statute "sweeps within its prohibitions" constitutionally protected activities. Gravned, 408 U.S. at 115, 92 S.Ct. 2294.

First, as set forth above, the Vexatious Litigant Statute is not a prohibitive ban on the general right to petition for *bona fide* grievances. In fact, the Vexatious Litigant Statute does not prohibit the filing of meritorious litigation or special proceedings, such as the filing of a habeas corpus petition. See, e.g., In re Bittaker, 55 Cal.App.4th 1004, 1011-12, 64 Cal.Rptr.2d 679 (1997) (holding that a petition for writ of habeas corpus is not a civil action or proceedings within the meaning of the Vexatious Litigant Statute). Second, the purpose of the Vexatious Litigant Statute is undeniably significant and legitimate. Specifically, the purpose of the statute is to protect courts from "the unreasonable burden placed upon [them] by groundless litigation [which] prevents the speedy consideration of proper litigation and [consumes] tremendous time and effort." First Western Dev. Corp. v. Superior Court, 212 Cal.App.3d 860, 870, 261 Cal.Rptr. 116 (1989). The Vexatious Litigant also protects the general public, as well, because "[t]he constant suer ... becomes *1013 a serious problem to others than the defendant he dogs ... [b]y clogging court calendars, he causes real detriment to those who have legitimate controversies to be determined and to the taxpayers who must provide the courts." Taliaferro v. Hoogs, 237 Cal.App.2d 73, 74, 46 Cal.Rptr. 643 (1965).

Although Plaintiff does not dispute that the inherent purpose of the Vexatious Litigant Statute is important and legitimate, he argues that the statute must be overturned because there are "many [other] ways of dealing with nuisance litigants that are less drastic than imposing affordable monetary barriers or blacklisting them." However, this argument is entirely insufficient to support an overbreadth challenge to the constitutionality of a statute that (1) serves a substantial and legitimate purpose, and (2) is not aimed at, and does not encompass, constitutionally protected speech or activities. See Virginia v. Hicks, 539 U.S. 113, 118, 123 S.Ct. 2191, 156 L.Ed.2d 148 (2003) ("[T]here comes a point at which ... [one] cannot justify prohibiting ... enforcement of ... a law that reflects 'legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct.'"). Since the Vexatious Litigant Statute is specifically aimed at controlling constitutionally unprotected conduct, the "legitimate state interest" standard mandates that the Court uphold its validity.

Even assuming that the statute *does* affect constitutionally protected speech, however, Plaintiff has not shown that the statute is unconstitutionally "overbroad." A statute affecting constitutionally protected speech is not overbroad if it is narrowly tailored and does not prohibit substantially more protected speech or conduct than necessary. Ironically, here, the very purpose of the notice and hearing requirement of the statute, as well as the "prefiling order" process set forth in the statute, is to *ensure* that constitutionally protected activities (*i.e.* the filing of meritorious claims) are *not* prohibited in any way. It is, like the ordinance scrutinized and ultimately upheld by the Supreme Court in *Grayned*, the Vexatious Litigant Statute is constitutional because it is narrowly tailored to further the compelling interest in having a legal system that is not needlessly disrupted by baseless and frivolous litigation. *Grayned*, 408 U.S. at 121, 92 S.Ct. 2294 ("Far from having an impermissibly broad prophylactic ordinance, ... [the statute] punishes only conduct which disrupts or is about to disrupt normal ... activities."); *see also Cox v. State of Louisiana*, 379 U.S. 559, 562, 85 S.Ct. 476, 13 L.Ed.2d 487 (1965) ("Since we are committed to a government of laws and not of men, it is of the utmost importance that the administration of justice be absolutely fair and orderly. This Court has recognized that the unhindered and untrammelled functioning of our courts is part of the very foundation of our constitutional democracy."). As such, Plaintiff's overbreadth challenge fails.

4. Constitutionality under the Fourteenth Amendment.

a. Procedural Due Process.

[4] Next, Plaintiff argues that the Vexatious Litigant Statute violates the fundamental precepts of due process of fair treatment, fair play, decency, and justice guaranteed by the Fourteenth Amendment. It should be noted that this same argument was previously considered by the California Court of Appeals in *Wolfgram* and ultimately rejected. *See Wolfgram*, 53 Cal.App.4th at 60, 61 Cal.Rptr.2d 694.

The Supreme Court has established that due process "requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a

meaningful opportunity to be heard." *Boddie v. Connecticut*, 401 U.S. 371, 377, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971). Here, the Vexatious Litigant Statute fulfills the requirements set forth in *Boddie* because (1) the state's interest in controlling the unfettered abuse of the legal system overrides a litigant's personal interest in filing frivolous pleadings, and (2) the statute provides a litigant with an ample and meaningful opportunity to be heard. In fact, it is beyond dispute that the Vexatious Litigant Statute explicitly provides for notice and opportunity to be heard before the plaintiff is subjected to any adverse effects of the statute. Moreover, even when a prefiling order has been entered, there is never a "blanket" prohibition on further filings; a plaintiff deemed to be a vexatious litigant may always file a new action so long as the presiding judge determines that the litigation has merit and has not been filed for the purpose of harassment or delay. Cal.Code Civ. Proc. § 391.7(b). Such determinations are appropriately made on a case-by-case basis. *Id.* If the plaintiff believes that he has been wrongly denied of the opportunity to pursue meritorious litigation, relief by way of mandamus is immediately available to challenge the presiding judge's abuse of discretion. Cal.Code Civ. Proc. § 1085.

b. Substantive Due Process and the Equal Protection Clause of the Fourteenth Amendment.

[5] Plaintiff also argues that the Vexatious Litigant Statute violates the due process and equal protection clauses of the Fourteenth Amendment because it unfairly discriminates against pro se litigants in that it (1) imposes a financial barrier to the pro se litigant's "right to sue," and (2) creates a disparity between how pro se litigants and represented parties are treated by the courts. These arguments, however, are insufficient to invalidate the statute under the Fourteenth Amendment.

First, the fact that the vexatious litigant *may* be required to pay a "security" does not violate the Fourteenth Amendment since this so-called "financial barrier" only serves to bar frivolous litigation, which is not protected by the Constitution. *See California Code of Civil Procedure § 391.3* (stating that the Court may only order the payment of a security once the court has determined, "after hearing the evidence upon the motion, ... that the plaintiff is a vexatious litigant and that *there is no reasonable probability that the plaintiff will prevail in the litigation against the moving defendant.*") (emphasis added); *see also Cal.Code Civ. Proc. § 391(c)* (the amount of the

security is limited to the opposing party's "reasonable expenses ... incurred in or in connection with a litigation instituted, caused to be instituted, or maintained or caused to be maintained by a vexatious litigant." (emphasis added).

Relying primarily on the Supreme Court's holding in *Boddie*, and the District of Columbia Court of Appeals's holding in *In re Green*, 669 F.2d 779, 785 (D.C.Cir.1981), Plaintiff essentially seeks to have this Court hold that the imposition of any cost associated with civil litigation is unconstitutional.^{FN6} This is not, however, what the Fourteenth Amendment requires, and Plaintiff's reliance on *Boddie* and *Green* is utterly misplaced. In fact, in *Green*, the *1015 District of Columbia Court of Appeals expressly acknowledged that the "right of access to the courts ... is neither absolute or unconditional." *In re Green*, 669 F.2d at 785. Further, in *United States v. Kras*, 409 U.S. 434, 446, 93 S.Ct. 631, 34 L.Ed.2d 626 (1973), the Supreme Court declined to follow this particular holding in *Boddie* after noting that *Boddie's* holding was limited to cases involving a state's regulation of a fundamental right, such as marriage. *Id.* at 446, 93 S.Ct. 631 ("We are ... of the opinion that the [bankruptcy] filing fee requirement does not deny [the litigant of] the equal protection of the laws."). Thus, under *Kras*, in cases where a fundamental right is not implicated, a statute will be upheld if there is a rational justification for it. *Id.*; see also *Ortwein v. Schwab*, 410 U.S. 656, 656, 93 S.Ct. 1172, 35 L.Ed.2d 572 (1973) (upholding validity of appellate filing fee applied to indigents seeking to appeal an adverse welfare decision).

^{FN6} Plaintiff also relies on *Roberts v. LaFallee*, 389 U.S. 40, 42, 88 S.Ct. 194, 19 L.Ed.2d 41 (1967) and *Bounds v. Smith*, 430 U.S. 817, 825, 97 S.Ct. 1491, 52 L.Ed.2d 72. However, these cases involve a prisoner's right of access to the courts, which is not applicable in this context. The Vexatious Litigant Statute does not apply to criminal proceedings, see Cal.Code of Civ. Proc. 391(a), or to petitions for writ of habeas corpus, see *In re Bittaker*, 55 Cal.App.4th at 1011-12, 64 Cal.Rptr.2d 679.

Plaintiff's alternative argument that the Vexatious Litigant Statute unfairly disadvantages pro se litigants is also fundamentally flawed. While Plaintiff may subjectively believe that the statute is a "weapon" hurled against unsuspecting persons who

are "unskilled at law," it has long been recognized that the Vexatious Litigant Statute was enacted for the purpose of protecting defendants from overly litigious, vexing, and harassing plaintiffs and protecting the courts from having to expend countless hours dealing with meritless litigation. This is clear not only from the history of the statute but also from the very terms of the statute itself. See, e.g., *First Western Dev. Corp. v. Superior Court*, 212 Cal.App.3d 860, 870, 261 Cal.Rptr. 116 (1989) ("The vexatious litigant statutes were enacted to require a person found a vexatious litigant to put up security for the reasonable expenses of a defendant who becomes the target of one of these obsessive and persistent litigants whose conduct can cause serious financial results to the unfortunate object of his attack.")

Additionally, the Vexatious Litigant Statute does not, as Plaintiff contends, subject pro se litigants to undue burdens that are not equally borne by attorneys and represented parties. Indeed, the Vexatious Litigant Statute is not unique; the California Code of Civil Procedure contains other similar measures intended to control the filing of frivolous litigation. See, e.g., Cal.Code Civ. Proc. § 128.5 (providing for the imposition of sanctions against an attorney or party who litigates in bad faith); Cal.Code of Civ. Proc. § 907 (allowing a Court of Appeals to impose costs on an attorney or party who pursues a frivolous appeal); Cal.Code Civ. Proc. § 128.7 (providing for the imposition of sanctions against an attorney who submits papers to the court for the sole purpose of harassing the opposing party or causing delay).

Attorneys are also subject to California Business and Professions Code § 6068, which provides, *inter alia*, that an attorney must: (1) support the Constitution and laws of the United States and California, (2) maintain the respect due to the courts of justice and judicial officers, (3) counsel or maintain only actions, proceedings, or defenses that appear to him or her legal or just; (4) employ means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law; and (5) not encourage either the commencement or the continuance of an action or proceeding for a corrupt motive of passion or interest. Cal. B & P Code § 6068. Additionally, an attorney's conduct is regulated by the State Bar of California and California's Rules of Professional Responsibility. See Cal. B & P Code § 6068.7 (providing that a court must notify the *1016 State Bar when sanctions in excess of \$1,000 are imposed.)

Although Plaintiff attempts to distinguish the Vexatious Litigant Statute by noting that lawyers are not subject to a rule that "disciplines" them for "losing five lawsuits in seven years," Plaintiff conveniently overlooks the fact that a pro se litigant's prior litigation record *only* becomes relevant when that litigant attempts to pursue a *sixth* litigation that has no reasonable probability of success. This distinction is significant and Plaintiff's failure to even acknowledge it makes his argument unpersuasive.

Further, in evaluating Plaintiff's argument, the Ninth Circuit's analysis in *Rodriguez* is instructive. In *Rodriguez*, the Ninth Circuit considered a Fifth Amendment challenge to 28 U.S.C. § 1915(g) (commonly referred to as the "three-strike rule").^{FN7} *Rodriguez*, 169 F.3d at 1179. In upholding the three-strike rule, the Ninth Circuit noted that "requiring prisoners to make the same financial decisions as non-prisoners before filing a cause of action does not violate equal protection." *Id.* The court also stated that "[a]lthough prisoners are entitled to meaningful access to the courts, courts are not obliged to be a playground where prisoners with nothing better to do continuously file frivolous claims. Only after demonstrating an inability to function within the judicial system is an indigent inmate asked to pay for access to the courts." *Id.* at 1180. Accordingly, the Ninth Circuit concluded that § 1915(g) permissibly "precludes prisoners with a history of abusing the legal system from continuing to abuse it while enjoying IFP status." *Id.* Thus, under the holding of *Rodriguez*, neither the security provision of the Vexatious Litigant Statute nor its analogous "six-strike rule" can be considered unconstitutional.

^{FN7} The three-strike rule provides that "[i]n no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding ... [in forma pauperis] if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(e).

Accordingly, the Court hereby finds that the Vexatious Litigant Statute does not violate the due process or equal protection clause of the Fourteenth Amendment.

5. Double Jeopardy Clause of the Fifth Amendment.

[6] Plaintiff also argues that the Vexatious Litigant Statute violates the double jeopardy clause of the Fifth Amendment. While the double jeopardy clause may be enforced against the states due to its incorporation into the due process clause of the Fourteenth Amendment, *see Benton v. Maryland*, 395 U.S. 784, 794, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969), the double jeopardy clause simply does not apply to the Vexatious Litigant Statute.

Specifically, the double jeopardy clause serves to prohibit multiple punishments for *criminal* conduct. *See Abbate v. United States*, 359 U.S. 187, 198-99, 79 S.Ct. 666, 3 L.Ed.2d 729 (1959) ("The basis of the Fifth Amendment protection against double jeopardy is that a person shall not be harassed by successive trials; that an accused shall not have to marshal the resources and energies necessary for his defense more than once for the same alleged *criminal acts*.") (emphasis added). Although the cases upon which Plaintiff relies—namely *United States v. Halper*, 490 U.S. 435, 109 S.Ct. 1892, 104 L.Ed.2d 487 (1989) and *1017 *United States v. \$405,089.23 U.S. Currency*, 33 F.3d 1210 (9th Cir.1994)—discuss the fact that a civil fine may be considered "punitive," significantly, both cases involved a predicate *criminal* offense. *See Halper*, 490 U.S. at 437, 109 S.Ct. 1892 (defendant initially charged under criminal false claims act statute); *see also \$405,089.23 U.S. Currency*, 33 F.3d at 1213 (defendants initially charged with conspiracy and money laundering arising out of large-scale methamphetamine manufacturing operation). Further, the holding in *Halper* was later abrogated by the Supreme Court in *Hudson v. United States*, 522 U.S. 93, 98-99, 118 S.Ct. 488, 139 L.Ed.2d 450 (1997) (holding that the double jeopardy clause "protects only against the imposition of multiple criminal punishments for the same offense"). Thus, the fact that Plaintiff subjectively feels that the Vexatious Litigant Statute operates as a "punishment" is irrelevant. The relevant inquiry under the Fifth Amendment is whether the statute serves as a second punishment for a *criminal* offense, which it clearly does not. Indeed, in order to reach this conclusion, the Court would have to first accept the utterly preposterous premise that the pursuit of frivolous litigation is criminal conduct. Accordingly, the Court finds that Plaintiff has failed to state a claim under the double jeopardy clause of

the Fifth Amendment.

6. Excessive Fines Clause of the Eighth Amendment.

[7] Plaintiff's argument that the Vexatious Litigant Statute violates the excessive fines clause of the Eighth Amendment is equally without merit. Plaintiff's specific contention is that the Vexatious Litigant Statute violates the excessive fines clause of the Eighth Amendment because it punishes, as well as deters, use of the courts. However, like Plaintiff's double jeopardy clause allegation, Plaintiff's excessive fines clause claim relies entirely upon the assumption that the Vexatious Litigant Statute is somehow related to criminal conduct. This assumption is unjustified under the applicable case law.

The Eighth Amendment reads in its entirety: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Const. Amend. VIII. The Supreme Court has long understood the Eighth Amendment to apply primarily, and perhaps exclusively, to criminal prosecutions and punishments. Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, Inc., 492 U.S. 257, 262, 109 S.Ct. 2909, 106 L.Ed.2d 219 (1989); see, e.g., Fong Yue Ting v. United States, 149 U.S. 698, 730, 13 S.Ct. 1016, 37 L.Ed. 905 (1893) (stating that Eighth Amendment is inapplicable to deportation because deportation is not punishment for a crime). "Bail, fines, and punishment traditionally have been associated with the criminal process, and by subjecting the three to parallel limitations the text of the Amendment suggests an intention to limit the power of those entrusted with the criminal-law function of government." Browning-Ferris, 492 U.S. at 263, 109 S.Ct. 2909 (quoting Ingraham v. Wright, 430 U.S. 651, 664-668, 97 S.Ct. 1401, 51 L.Ed.2d 711 (1977)).

Although the Supreme Court has held that the Eighth Amendment excessive fines clause extends to civil forfeiture proceedings, see Alexander v. United States, 509 U.S. 544, 559-59, 113 S.Ct. 2766, 125 L.Ed.2d 441 (1993), Plaintiff's attempt to equate the "security" provision of the Vexatious Litigant Statute with a "civil forfeiture" is wholly without merit. Notably, there are significant differences between a "civil forfeiture" and a "security" which Plaintiff overlooks. First, a civil forfeiture proceeding necessarily relates to prior criminal conduct. See, e.g., United States v. Premises Known as RR# 1, 14

F.3d 864, 869 (3d Cir.1994) ("The Government bears the initial burden of proof in attaching property for trial in civil forfeiture *1018 cases and to do so it must establish some connection between the alleged criminal activity and the ... property the Government seeks to forfeit."); see also United States v. Certain Real Property and Premises, 954 F.2d 29, 33 (2nd Cir.1992) (stating that 21 U.S.C. § 881(a)(7) provides for the forfeiture of real property which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of a violation of the narcotics laws). Second, in a civil forfeiture proceeding, the Government is the entity who retains the money or property. In contrast, under the Vexatious Litigant Statute, the "security" is provided for the exclusive benefit of the opposing party. See Cal.Code Civ. Proc. § 391(c) (defining a security as "an undertaking to assure payment, to the party for whose benefit the undertaking is required to be furnished, of the party's reasonable expenses.") (emphasis added). These distinctions are important, as they are critical features that bring a civil forfeiture within the ambit of the Eighth Amendment. See Browning-Ferris, 492 U.S. at 265, 109 S.Ct. 2909 ("[W]e think it significant that at the time of the drafting and ratification of the Amendment, the word "fine" was understood to mean a payment to a sovereign as punishment for some offense.").

Accordingly, there is no basis upon which this Court can conclude that the Vexatious Litigant Statute violates the excessive fines clause of the Eighth Amendment.

7. The Ex Post Facto Clause and the Bill of Attainder Clause.

[8][9] Plaintiff's argument that the Vexatious Litigant Statute is an ex post facto law prohibited by the Article I, Section 10 of the United States Constitution is also baseless. The Supreme Court has expressly held that the ex post facto clause is aimed at laws that "retroactively alter the definition of crimes or increase the punishment for criminal acts." California Dept. of Corrections v. Morales, 514 U.S. 499, 504, 115 S.Ct. 1597, 131 L.Ed.2d 588 (1995) (emphasis added). For example, the ex post facto clause "is violated if a change in the law creates 'a sufficient risk of increasing the measure of punishment attached to the covered crime.'" Himes v. Thompson, 336 F.3d 848, 855 (9th Cir.2003) (quoting California Dept. of Corr. v. Morales, 514 U.S. 499, 115 S.Ct. 1597, 131 L.Ed.2d 588 (1995)). Since the Vexatious Litigant Statute does not involve

penal legislation, the ex post facto clause is simply inapplicable to this case.^{FN8}

^{FN8} Further, as Defendants correctly note, Plaintiff's reliance on Landgraf v. USI Film Products, 511 U.S. 244, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1944), and Ralis v. RFE/RL, Inc., 770 F.2d 1121 (D.C.Cir.1985), is misplaced. Both Landgraf and Ralis concern "retroactive" statutory enactments. Landgraf, 511 U.S. at 266-67, 114 S.Ct. 1483; Ralis, 770 F.2d at 1123-24. That is not an issue here.

Plaintiff has also not demonstrated that the Vexatious Litigant Statute is an unconstitutional "bill of attainder." A bill of attainder is "a law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial." Nixon v. Adm'r of Gen. Servs., 433 U.S. 425, 468, 97 S.Ct. 2777, 53 L.Ed.2d 867 (1977). As stated by the Supreme Court in Nixon, "Just as Article III confines the Judiciary to the task of adjudicating concrete 'cases or controversies,' so too the Bill of Attainder Clause was found to 'reflect ... the Framers' belief that the Legislative Branch is not so well suited as politically independent judges and juries to the task of ruling upon the blameworthiness of, and levying appropriate punishment upon, specific persons.'" Id. (quoting *1019 United States v. Brown, 381 U.S. 437, 445, 85 S.Ct. 1707, 14 L.Ed.2d 484 (1965)). Given that the inherent concern of the bill of attainder clause is the separation of powers doctrine, Plaintiff's attempt to define the Vexatious Litigant Statute as a "bill of attainder" is decidedly strained. However, even assuming, *arguendo*, that the Vexatious Litigant Statute falls within the ambit of the bill of attainder clause, Plaintiff still fails to demonstrate that it meets the criteria set forth by the Supreme Court in Selective Service System v. Minnesota Pub. Interest Research Group, 468 U.S. 841, 847, 104 S.Ct. 3348, 82 L.Ed.2d 632 (1984).

In Selective Service System, the Supreme Court noted that, to constitute a bill of attainder, the statute must (1) specify the affected persons, and (2) inflict punishment (3) without a judicial trial. Id. Three inquiries determine whether a statute inflicts punishment on the specified individual or group: (1) whether the challenged statute falls within the historical meaning of legislative punishment; (2) whether the statute, viewed in terms of the type and severity of burdens imposed, reasonably can be said

to further nonpunitive legislative purposes; and (3) whether the legislative record evinces a congressional intent to punish. Id. at 852, 104 S.Ct. 3348. Although Plaintiff vigorously argues that the Vexatious Litigant Statute is a "sadistic" statute that was enacted for the sole purpose of punishing pro se litigants, there is simply no credible support for this conclusion outside of Plaintiff's own speculative theories. As noted previously, it has been consistently recognized that the purpose of the statute was to protect courts and defendants from "the unreasonable burden placed upon [them] by groundless litigation." First Western Dev. Corp. v. Superior Court, 212 Cal.App.3d 860, 870, 261 Cal.Rptr. 116 (1989). Since this purpose is decidedly legitimate and non-punitive, Plaintiff has not demonstrated that the Vexatious Litigant Statute is a "bill of attainder."

8. Supremacy Clause.

Last, Plaintiff argues that the Vexatious Litigant Statute conflicts with numerous federal laws thereby violating the Supremacy Clause of the United States Constitution. Specifically, he contends that the Vexatious Litigant Statute "conflicts with the right under Title 28 U.S.C. § 1654 to litigate in pro per and the right provided under Title 28 U.S.C. § 1915 ... to conduct a case without prepayment of fees or imposition of 'security.'" Additionally, Plaintiff argues that the statute violates 42 U.S.C. § 1983.^{FN9} All of these arguments lack merit.

^{FN9} Plaintiff also argues that the Vexatious Litigant Statute improperly "enables a state court to prohibit and punish a pro se litigant for failing to prevail in five litigations in a federal court under federal standards." However, he fails to articulate how this violates the Supremacy Clause.

[10] First, there is no inherent conflict with 28 U.S.C. § 1654, which provides that "parties may plead and conduct their own cases personally" according to the rules of such courts. Id. Nor is there a conflict with 28 U.S.C. § 1915, which explicitly provides that a federal court may dismiss a case filed *in forma pauperis* if the court determines that the action or appeal is frivolous, malicious, or fails to state a claim on which relief may be granted. 28 U.S.C. § 1915(e). As to Plaintiff's § 1983 claim, as previously explained, *supra*, this is premised on his flawed assumption that a person has an absolute right

to file litigation, regardless of its merits. There is no such right under the Constitution. See *Bill Johnson's Restaurants, Inc.*, 461 U.S. at 743, 103 S.Ct. 2161 (“[B]aseless litigation is not immunized by the First Amendment right to petition.”). Accordingly, *1020 Plaintiff has failed to state a claim under the Supremacy Clause.

9. Third Party Standing.

[11] Although the Court has concluded that the Vexatious Litigant Statute is constitutional and that Defendants are entitled to judgment as a matter of law on the merits of Plaintiff's Complaint, the Court will briefly address Defendant's objection to Plaintiff's purported third-party standing.

As previously noted, *supra*, Plaintiff seeks declaratory judgment in this action on behalf of himself and on behalf of “all persons appearing or trying to appear in the Courts of California without benefit of representation by counsel.” First Amended Complaint (“FAC”) at 1:23-25. Defendants have conceded that Plaintiff has standing to pursue this action on behalf of himself. See *Wolfe*, 392 F.3d at 364 (finding that Plaintiff's prior state court actions are sufficient to establish that Plaintiff is threatened with actual harm from the future operation of the Vexatious Litigant Statute and therefore sufficient to establish standing). However, Defendants argue that Plaintiff does not have standing to assert constitutional rights on behalf of other persons.

“Article III of the Constitution limits the ‘judicial power’ of the United States to the resolution of ‘cases’ and ‘controversies.’” *Valley Forge Christian College v. Americans United for Separation of Church & State*, 454 U.S. 464, 471, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982) (citations omitted). Generally, there are three requirements for Article III standing: (1) injury in fact, which means an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical; (2) a causal relationship between the injury and the challenged conduct, which means that the injury fairly can be traced to the challenged action of the defendants, and has not resulted from the independent action of some third party not before the court; and (3) a likelihood that the injury will be redressed by a favorable decision, which means that the prospect of obtaining relief from the injury as a result of a favorable ruling is not too speculative. *Lujan v. Defenders of Wildlife*, 504

U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). The party invoking federal jurisdiction bears the burden of establishing each of these elements. *Id.*

Courts typically employ a presumption against third-party standing. *Singleton v. Wulff*, 428 U.S. 106, 113-14, 96 S.Ct. 2868, 49 L.Ed.2d 826 (1976). However, the presumption may be rebutted in circumstances where: (1) the litigant has suffered an injury in fact and has a close relation to the third party; and (2) where there is some hindrance to the third-party's ability to protect his or her own interests. See *Powers v. Ohio*, 499 U.S. 406, 411, 111 S.Ct. 1364, 113 L.Ed.2d 411 (1991). Plaintiff argues that he meets both of these exceptions due to the unique nature and circumstances of this case.^{EN10} The Court *1021 does not find Plaintiff's argument persuasive. First, Plaintiff's contention that “all persons appearing or trying to appear in the Courts of California without benefit of representation by counsel” are subjected to the Vexatious Litigant Statute results from a gross misreading of the Statute. As this Court has observed, *supra*, the terms of the Statute make it clear that it applies to only a limited class of persons; specifically, it applies only to those persons who have demonstrated a clear inability to pursue meritorious litigation or who have utterly failed to adroitly navigate the California court system. Accordingly, the class of persons that Plaintiff seeks to represent is unnecessarily overbroad and, therefore, Plaintiff has not demonstrated that he has a close relationship with such parties. Second, Plaintiff has not effectively demonstrated that there is any hindrance to the third parties' abilities to protect their own interests. To the contrary, as Defendants correctly note, a person determined to be a “vexatious litigant” can always challenge such determination through the appropriate appellate process. In fact, it appears that Plaintiff's belief that third parties are hindered in pursuing such litigation is premised solely on Plaintiff's subjective belief that other persons are not capable of “proceeding with the level of ability and competence that they now have with Wolfe effectively representing them.” Pl's Supp. Reply to Def's Mot. at 12:8-10. This argument has no basis in law or fact. Further, because the Court has concluded that Plaintiff has not raised a cognizable claim under the First Amendment, the Supreme Court's holding in *Broadrick v. Oklahoma*, 413 U.S. 601, 612, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973) does not support Plaintiff's position. See *id.* (finding that the restriction on third-party standing is relaxed when the plaintiff is asserting a First Amendment claim). Accordingly, the Court sustains Defendants' objection to Plaintiff's assertion of standing on behalf

of "all persons appearing or trying to appear in the Courts of California without benefit of representation by counsel."

FN10. Plaintiff has also filed a Request for Judicial Notice [Docket No. 285] asking the Court to take judicial notice of the following documents: (1) a June 30, 1999 copy of the Vexatious Litigant List, (2) an incomplete excerpt from a December 15, 2004 article of the *Daily Journal* regarding Plaintiff; (3) a copy of the Prefiling Order form used by the California courts; and (4) an April 29, 2005 copy of the Vexatious Litigant List. Plaintiff does not clearly explain why he wants the Court to take judicial notice of these documents. However, it appears to the Court that some of these documents are tangentially related to Plaintiff's third-party standing argument. Accordingly, Plaintiff's Request for Judicial Notice is GRANTED IN PART AND DENIED IN PART. The Court hereby takes judicial notice of the June 30, 1999 copy of the Vexatious Litigant List, the December 15, 2004 *Daily Journal* article, and the April 29, 2005 copy of the Vexatious Litigant List for the limited purpose of determining whether Plaintiff has third-party standing.

CONCLUSION

IT IS HEREBY ORDERED THAT Plaintiff's Motion for Judgment on the Pleadings [Docket No. 264] is DENIED and Defendants' Cross-Motion for Judgment on the Pleadings [Docket No. 276] is GRANTED.

IT IS FURTHER ORDERED THAT Plaintiff's Request for Judicial Notice [Docket No. 285] is GRANTED IN PART AND DENIED IN PART.

IT IS SO ORDERED.

JUDGMENT

In accordance with the Court's Order denying Plaintiff's Motion for Judgment on the Pleadings and granting Defendants' Cross-Motion for Judgment on the Pleadings,

IT IS HEREBY ORDERED THAT final judgment is entered in favor of Defendants on all of Plaintiff's

causes of action. All matters calendared in this action are VACATED. The Clerk shall close the file and terminate any pending matters.

IT IS SO ORDERED.

N.D.Cal.,2005.
Wolfe v. George
385 F.Supp.2d 1004

Briefs and Other Related Documents ([Back to top](#))

• [4:00CV01047](#) (Docket) (Mar. 27, 2000)

END OF DOCUMENT

SB

229

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SB 229
(S) Publish Date: 2/19/08

Identifier (file name): SB229-DFG-DWC-02-11-08 Dept. Affected: Fish & Game
Title: Tanana Valley Forest/Minto Flats Refuge RDU: Wildlife Conservation
Component: Wildlife Conservation
Sponsor: Senator Thomas
Requester: Senate Resources Committee Component Number: 473

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

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

Passage of this bill will have no fiscal impact on the Department of Fish and Game

Prepared by: David Thomson, Administrative Manager
Division: Wildlife Conservation
Approved by: Tom Lawson, Director
Division of Administrative Services

Phone: 465-6194
Date/Time: 2/11/08 4:00 PM
Date: 2/11/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 229
(S) Publish Date: 2/19/08

Identifier (file name): SB229-DNR-For-02-12-08 Dept. Affected: Natural Resources
Title: Tanana Valley State Forest/Minto Flats State Game RDU: Resource Development
Refuge boundary adjustment Component: Forest Management & Development
Sponsor: Sen. Thomas
Requester: Senate Resources Component Number: 435

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0	0
Part-time	0	0	0	0	0	0	0
Temporary	0	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill will add approx. 101,610 acres of land to the Tanana Valley State Forest (TVSF), delete approx. 66,218 acres, and redesignate approx. 4,298 acres as part of the Minto Flats State Game Refuge (MFSGR). This better aligns boundaries with the intent of the TVSF and MFSGR, increases land management efficiency, and updates the boundaries to correspond with correct and current land status. This proposal was developed and reviewed through the 2001 update to the TVSF Management Plan. Controversial parcels were removed following interagency and public review, and the package of changes in this bill had broad support and no known opposition. These changes will not require new positions or funding. There is no short-term impact on revenue, but it protects the revenue stream from timber receipts by ensuring that more commercial forest land will remain part of the long-term sustained yield land timber base to provide lumber, fuelwood, wildlife habitat, and recreation and tourism benefits.

Prepared by: Martha Freeman
Division: Forestry
Approved by: Tom Irwin, Commissioner
Natural Resources

Phone: 269-8473
Date/Time: February 12, 2008
Date: February 12, 2008

ALASKA STATE LEGISLATURE



SENATOR JOE THOMAS

SB 229 – Relating to the Tanana Valley State Forest and to assignment of certain forest land to the Minto Flats State Game Refuge; and providing for an effective date.

Sponsor Statement

Senator Joe Thomas

Senate Bill 229 amends the boundaries of the Tanana Valley State Forest (TVSF) to correct errors in legal descriptions, reflect updated land status, and to better match the management intent for the Forest. This is done by adding and deleting boundary references to the legal descriptions in statute. These changes result in a net increase to the state forest of approximately 40,000 acres. SB 229 also moves approximately 4,300 acres from the state forest to the Minto Flats State Game Refuge.

In 1983 the Legislature created the 1.8 million-acre Tanana Valley State Forest that stretches from Manley to Tok. The forest is open to mining, gravel extraction, oil and gas leasing, and grazing. The Department of Natural Resources manages the state forests for a sustained yield of these resources, with the primary purpose of timber management (AS 41.17.200). The Bonanza Creek Experimental Forest, a 12,400-acre area dedicated to forestry research, is also located within the state forest.

State forests provide fish and wildlife habitat, clean water, opportunities for recreation and tourism, and minerals. In addition to the management of these resources, the Tanana Valley State Forest offers many recreational opportunities including hunting, fishing, trapping, camping, hiking, dog mushing, cross-country skiing, wildlife viewing, snow machining, gold panning, boating, and berry-picking.

In 1996, the division updated the Tanana Valley State Forest Management Plan and established a citizens' advisory committee. The

CN 7 124

12-member citizen's advisory committee, representing a variety of state forest users, actively participates in forest planning in the Tanana Basin. This entity has endorsed the recommendations on management of the forest and has carefully crafted the changes in a manner that resulted in support from all affected land users and owners.

SB 229 is supported by the Alaska State Forest Association, the Fairbanks Economic Development Corporation, hunting and recreation groups as well as all surrounding land owners.

Please join me in amending the Tanana Valley State Forest to better align with its original intent and support the passage of Senate Bill 229.

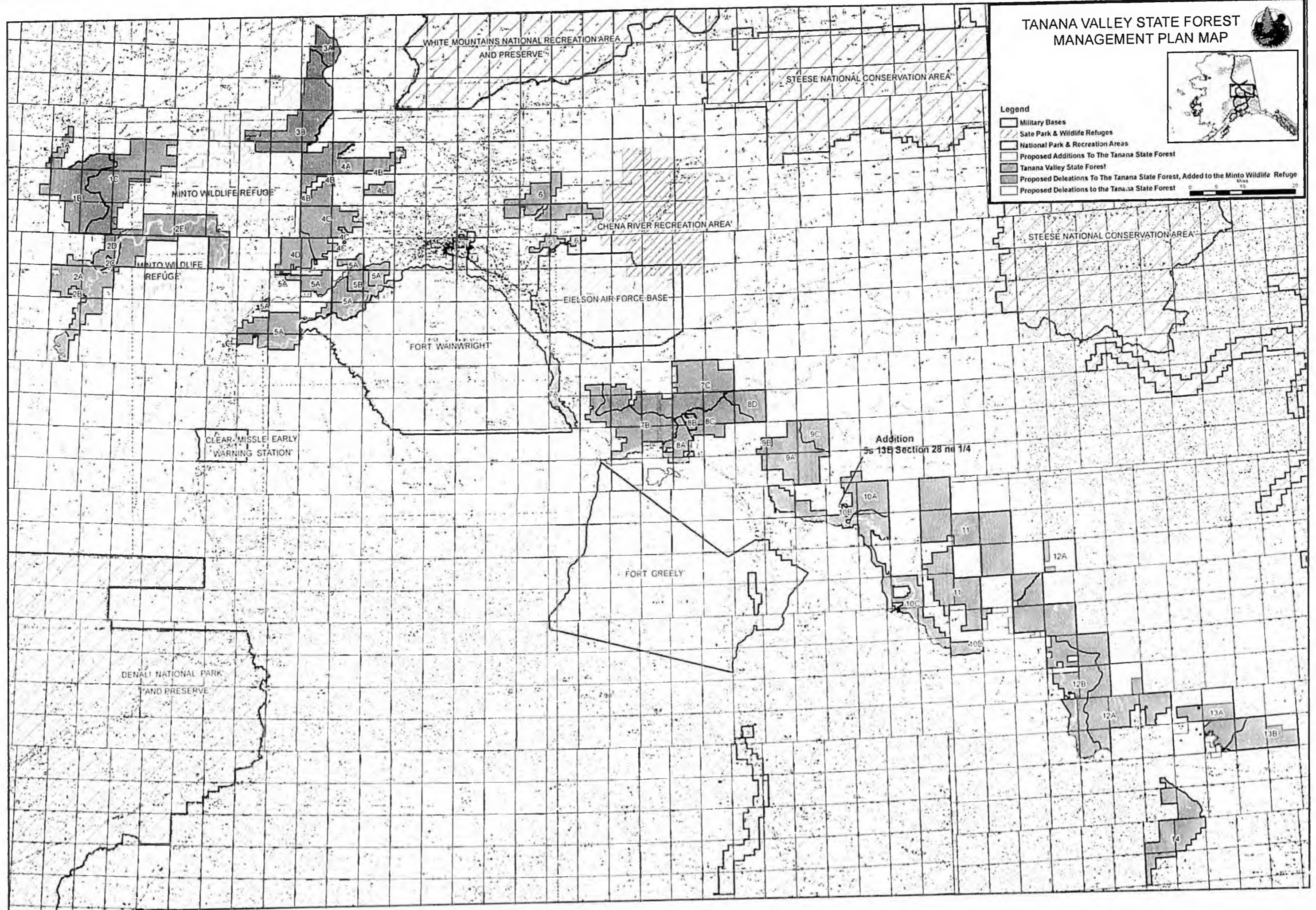
TANANA VALLEY STATE FOREST MANAGEMENT PLAN MAP



Legend

- Military Bases
- State Park & Wildlife Refuges
- National Park & Recreation Areas
- Proposed Additions To The Tanana State Forest
- Tanana Valley State Forest
- Proposed Deletions To The Tanana State Forest, Added to the Minto Wildlife Refuge
- Proposed Deletions to the Tanana State Forest

0 5 10 20 Miles



ALASKA STATE LEGISLATURE



SENATOR JOE THOMAS

Sectional Analysis

SB 229 – Amendments to the Boundary of the Tanana Valley State Forest and Assignment of Certain Forest Land to the Minto Flats State Game Refuge

This bill would implement changes to the boundary of the Tanana Valley State Forest (TVSF) recommended by the 2001 update to the TVSF Management Plan. Some land deleted from the State Forest would be reassigned to the Minto State Game Refuge. These proposals were thoroughly reviewed by the public and agencies during the planning process. The package of proposals was revised following the comment period, and the final package was non-controversial.

Section 1 – Minto Flats State Game Refuge. Section 1 amends the legal description for the Refuge to incorporate three parcels of land deleted from within the TVSF. (See map) These parcels are wetlands adjacent to the existing Refuge that do not contain commercially valuable forest land, and would be better managed as part of the Refuge. They total 4,298 acres.

Section 2 – Tanana Valley State Forest. Section 2 repeals and reenacts the legal description for the TVSF. State Forests consist "primarily of commercially valuable forest land determined by the governor to be necessary for retention in State ownership for management under the principles of multiple use and sustained yield" (AS 11.17.210(a)). Almost all of the 1.78 million acres in the Tanana Valley State Forest are commercially valuable forest land. Some State lands adjacent to the State Forest also contain valuable forest resources, and some land within the TVSF does not have commercial forest potential. The proposed changes to the TVSF would move approximately 101,610 acres of general domain state land into the State Forest, and delete approximately 66,220 acres, for a net increase of approximately 35,390 acres.

Land recommended for addition to the State Forest contains high-value commercial forest land, much of which is easily accessible. Most parcels are already classified for Forestry under the Tanana Basin Area Plan, and all are compatible with the intent of the State Forest. Some have been harvested historically, and provide access to other lands within the State Forest, while other parcels are isolated pieces of State land adjacent to the State Forest. Incorporating these into the TVSF would add to the value of the State Forest and consolidate management authority in these areas. One 160-acre parcel with

ALASKA STATE LEGISLATURE



SENATOR JOE THOMAS

unusual prairie features would be added to the Volkmar Bluffs Research Natural Area within the State Forest.

Land recommended for deletion from the State Forest is not commercially valuable forest land. The deletions include the three wetland parcels recommended for addition to the Minto Flats State Game Refuge, wetlands and high-elevation lands north of Tok and Tanacross, and a parcel of high-value recreation land along the Chatanika River.

Land deleted from the Tanana Valley State Forest would be managed as part of the adjacent management units under the Tanana Basin Area Plan. These lands would remain open for public access and multiple use.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

BOARD OF FORESTRY

SARAH PALIN, GOVERNOR

550 West 7th Avenue, Suite 1450
Anchorage, AK 99501

February 4, 2008

Senator Joe Thomas
State Capitol, Room 510
Juneau, AK 99801-1182

Dear Senator Thomas,

The Board of Forestry represents diverse interests with respect to forestry in Alaska. By law, it provides a forum for forest management issues on state land, and is charged with monitoring the implementation and effectiveness of the Forest Resources and Practices Act on all lands (AS 41.17.047).

The Board of Forestry would like to express its support for SB 229, amendments to the boundary of the Tanana Valley State Forest and the Minto Flats Game Refuge. This bill would correct old drafting errors, update the boundaries to be consistent with changes in land status, add productive forest land to the State Forest, and delete wetlands and other non-productive forest land. The revised boundary will better match the purpose of State Forests, and the intent to included primarily commercially valuable forest land (AS 41.17.200.-210).

In the 25 years since it was established, the State Forest has proved its worth as a source of sawtimber and fuelwood, wildlife habitat, and hunting and recreation opportunities for Alaskans.

The changes in this bill were recommended by the 2001 update to the Tanana Valley State Forest Management Plan, with wide public support. The Board officially commended the Department of Natural Resources for the broad public process used to draft and revise the Tanana Valley State Forest Management Plan update. SB 229 will implement these widely supported recommendations.

We encourage prompt passage of SB 229, and thank you for introducing this bill.

Sincerely,



Chris Maisch, Chair

ALASKA BOARD OF FORESTRY

Rob Bosworth
Matt Cronin
Wayne Nicolls
John DiMarchi

Erin McLarnon
Bill Oliver
Rick Rogers
Ron Wolfe



Briefing:

Tanana Valley State Forest changes

DEPARTMENT OF NATURAL RESOURCES

December 12, 2007

DIVISION OF FORESTRY

Background. The 2001 update to the TVSF Management Plan recommended a package of changes to the boundaries of the State Forest. As a part of that package, the plan recommends some of the deletions from the State Forest to be added to the Minto State Game Refuge. These proposals were thoroughly reviewed by the public and agencies during the planning process, and the proposals in the final plan were non-controversial. There were no comments on these proposals during the final comment period.

A. RECOMMENDATIONS FOR ADDITIONS TO THE TANANA VALLEY STATE FOREST: Amend AS 41.17.400(d)

Alaska Statutes Section 41.17.210 states that State Forest proposals shall consist "primarily of commercially valuable forest land determined by the governor to be necessary for retention in State ownership for management under the principles of multiple use and sustained yield..." Almost all of the 1.78 million acres in the Tanana Valley State Forest is commercially valuable forest land. Some State lands adjacent to the State Forest, however, contain valuable forest resources that would benefit the State Forest by their addition to that legislatively designated area. The lands listed in the following packet, and shown on the accompanying map, are recommended for addition to the State Forest. They total approximately 101,610 acres.

The lands recommended for addition to the State Forest contain high-value commercial forest lands, many of which are easily accessible. Most are already classified Forestry under the Tanana Basin Area Plan, and all are compatible with the intent of the State Forest. Some have been harvested historically, and some provide access to other lands within the State Forest. Some of the smaller parcels are isolated pieces of State land adjacent to the State Forest. Adding them to the State Forest would add to the value of the State Forest and consolidate management authority in these areas.

B. RECOMMENDATIONS FOR DELETIONS FROM THE TANANA VALLEY STATE FOREST: Amend AS 41.17.400(d)

The Tanana Valley State Forest contains approximately 66,218 acres of land that do not contain valuable forest resources. On the basis of the statutory criteria in the previous section, DNR recommends several deletions from the Tanana Valley State Forest. Some of the lands are wetlands adjacent to the Minto Flats State Game Refuge that contain no commercially valuable timberland. Another area recommended for deletion contains the shorelands of the Chatanika River, an extremely high value recreation area. The other lands on the deletion list consist of two townships: one comprised of wetlands and the other made up of high-elevation, unforested lands.

C. ADDITIONS TO THE MINTO FLATS STATE GAME REFUGE OF LANDS RECOMMENDED FOR DELETION FROM THE TANANA VALLEY STATE FOREST: Amend AS 16.20.037(a).

Three parcels of land within the TVSF containing wetlands adjacent to the Minto Flats State Game Refuge are recommended to be withdrawn from the State Forest and added to the Refuge. They do not contain commercially valuable forest land, and would be better managed as part of the Refuge. They total 4,298 acres.

List of proposed additions to the Tanana Valley State Forest

The following list summarizes the recommended additions to the State Forest (a total of approximately 101,610 acres):

1. This strip of land, located between Minto Flats and the adjacent State Forest, contains productive upland forests of white spruce and hardwoods. The unit is presently accessed by the Dunbar-Livengood winter trail and will be accessed by an all-season forest road. (4,480 acres within T1N R6W F.M.)

2. These units are on Nenana Ridge, border the State Forest, and have similar values. They are highly productive, easily accessible, upland forests. Adding these units to the State Forest will consolidate the State's highest value forest lands under a single management authority and plan. (14,568 acres within T2S R4W, T2S R5W, and T3S R5W F.M.)

Note: If this subunit is added to the State Forest, the following management guidelines will be added to the entire Subunit 5A. "A 300-foot buffer from centerline on each side of the roadway should be managed to maintain or enhance scenic views along the highway. Development activities such as timber harvesting and land-use authorizations may be allowed within this buffer if the activity is designed to maintain or enhance the scenic values of the highway corridor, and to provide opportunities for viewing background scenery."

3. This unit has several parcels which comprise the bulk of the timberland occurring between Fort Greely and the Tanana River. The timber consists of productive white spruce stands along the Tanana River and mixed white spruce/hardwood stands on uplands to the South. Management goals would emphasize the area's wildlife, recreation, and timber resources. Because of habitat values in the floodplain, the recommended additions to the State Forest are south of the 1000-foot contour line from the Tanana River. (21,189 acres, within T7S R6E, T7S R7E, T7S R8E, T8S R5E, T8S R6E, T8S R7E, and T8S R8E F.M.)

4. This quarter-section lies adjacent to the Tanana Valley State Forest Subunit 10B, the Volkmar Bluffs Research Natural Area. It encompasses a large prairie feature that is similar to the prairie system in the adjacent Tanana Valley State Forest research natural area. This amendment is designed to expand the research natural area to include the remainder of the prairie system. (160 acres within T9S R13E F.M.)

5. This unit consists of several small parcels of land near Dot Lake that were not included in the State Forest because of questionable land status. The primary purpose of adding these to the State Forest is to consolidate land management in the area. (9,600 acres within T21N R8E, T22N R8E, T23N R6E, and T23N R7E C.R.M.)

6. This block is located along the Tanana River near Tok between Native lands and the State Forest. The units contain commercial timber, have good access, and would be

valuable additions to the State Forest. (23,033 acres within T18N R13E, T19N R12E, and T19N R13E C.R.M.)

7. This small parcel north of Tanacross was excluded in the legal description of the TVSF because of federal interest. However, the federal interest is no longer valid. (40 acres within T21N R10E C.R.M.)

8. These three parcels of land are located near Dot Lake between Native lands and the State Forest. Their addition to the State Forest will consolidate management authority. (5,600 acres within T21N R8E and T23N R6E C.R.M.)

9. This township, north of Dot Lake, was left out of the TVSF legislation by a mistake in a legal description that substituted a wrong township. Although the unit is currently inaccessible, including it in the State Forest as originally proposed would offer some management efficiency because it shares common access and similar resource values with adjoining State Forest lands to the west and south. (23,040 acres, T25N R7E C.R.M.)

List of proposed deletions from the State Forest

The following list summarizes the recommended withdrawals (a total of approximately 66,071 acres):

1. TVSF Subunit 1C: 1,898 acres within T1N R11W and T2N R11W F.M.
These two parcels of the Minto Flats along the Tolovana River are recommended for withdrawal so as to consolidate most wetlands in Minto Flats under a single management intent. The areas are highly productive wildlife habitat but contain very little timberland. The area borders the Minto Flats State Game Refuge, and is recommended as an addition to the Refuge.
2. TVSF Subunit 3B: 2,400 acres within T4N R7W F.M.
This parcel consists of wetlands bordering the Minto Flats State Game Refuge. The area borders the Minto Flats State Game Refuge, and is recommended as an addition to the Refuge.
3. TVSF Subunit 4B: 2,400 acres within T3N R3W F.M.
This parcel contains shorelands of the Chatanika River. It is recommended as a TVSF withdrawal to be available for designation as part of the Chatanika State Recreation River corridor. In the interim it would be managed for public recreation and wildlife habitat as part of Tanana Basin Area Plan Subunit 1E1. The area is comprised mostly of poorly drained wetlands along the Chatanika River and contains little timberland.
4. TVSF Subunit 12A: 19,200 acres within T21N R10E C.R.M.
This township contains low relief and swampy, noncommercial forest; it was not included in the original administration proposal. The unit's inclusion in the State Forest does not offer any management advantages for adjacent State Forest lands. It would

become part of Tanana Basin Area Plan Subunit 6G1, which is designated for wildlife habitat and forestry.

5. TVSF Subunit 12A: 19,200 acres within T25N R8 C.R.M.

This township was apparently included in the State Forest because of a mistake made in the range. This unit is generally at a high elevation with few significant resources appropriate for the State Forest system. It would become part of Tanana Basin Area Plan Subunit 6J2 which is designated for resource management.

6. TVSF Subunit 13A, 13B: 21,120 acres within T19N R15E and T20N R13E C.R.M.

These two parcels were underlain entirely by permafrost and forested with noncommercial black spruce. They have no other important resource values or advantages for inclusion in the State Forest. They would become part of Tanana Basin Area Plan Subunit 6J3 which is designated for wildlife habitat.

Additions to Minto State Game Refuge

1. TVSF Subunit 1C: 1,898 acres within T1N R11W and T2N R11W F.M.

These two parcels on the Minto Flats in TVSF Subunit 1C along the Tolovana River are recommended to be added to the Refuge. This change would consolidate most wetlands in Minto Flats under a single management intent. The areas are highly productive wildlife habitat but contain very little timberland. The area borders the Minto Flats State Game Refuge.

2. TVSF Subunit 3B: 2,400 acres within T4N R7W

This parcel consists of wetlands bordering the Minto Flats State Game Refuge.



FAIRBANKS
Economic Development

301 Cushman St., Suite 301, Fairbanks, AK 9970

January 29, 2008

Dear Senator Joe Thomas,

The Fairbanks Economic Development Corporation (FEDC) strives to promote value added product development in Interior Alaska and, therefore, thanks you for your sponsorship of Senate Bill 229: An act relating to the Tanana Valley Forest.

Fairbanks' remote location poses some challenges to economic development. However, when looking to the abundant natural resources found in the Interior, there is also great opportunity for the creation of new, higher paying jobs through responsible development of those valuable resources.

FEDC has long been a supporter of Interior Forest product development and, in partnership with the State Division of Forestry, Tanana Chiefs Conference, and State of Alaska Office of Economic Development, publishes "New Growth"; a prospectus offering information to potential forest industry developers. Our continuing effort is to encourage and support existing & potential businesses aimed at developing local, value added forest products for use here in Alaska. The most crucial need in developing new forest product businesses is ensuring sustainable, easily accessible, high value forest lands for development.

FEDC strongly supports SB 229. Passage of this legislation will add over 100,000 acres of commercially valuable forest land to the State Forest. These lands would increase the amount of valuable forest resources available for the development of value added products for the Interior and the State of Alaska.

This initiative can be a great asset to the State of Alaska, the Interior and to our continued pursuit of a diversified, stable and self-sustaining economy. FEDC thanks you for your time and efforts in sponsoring this bill and is excited about the potential it will bring to our State Forest lands.


Jim Dodson
CEO/President
Fairbanks Economic Development Corporation


Cassie Finkel
Project Manager, Fairbanks Economic Development Corporation

CC: Chris Malsch
Marty Freeman

Northland Wood Products, Inc.

4000 CUSHMAN - FAIRBANKS, ALASKA 99701-7534
TELEPHONE 907-452-4000
FAX 907-452-1391

February 29, 2008

Senator Joe Thomas,
State Capitol Room 510
Juneau, Ak 99801-1182

Dear Senator Thomas,

We support SB 229 amending the boundary of the Tanana State Forest and the Minto Flats game refuge. Northland Wood Products as a company has been harvesting timber in the Tanana State Forest, and what would become the State Forest, since 1965, for our sawmill here in Fairbanks. We were involved with the creation of the Tanana State Forest at that time, seeing the long term benefit of protecting this very valuable resource for future generations. As we see it, SB 229 is very beneficial in that it adds more timber to the State Forest base and consolidates the forest management authority over these areas.

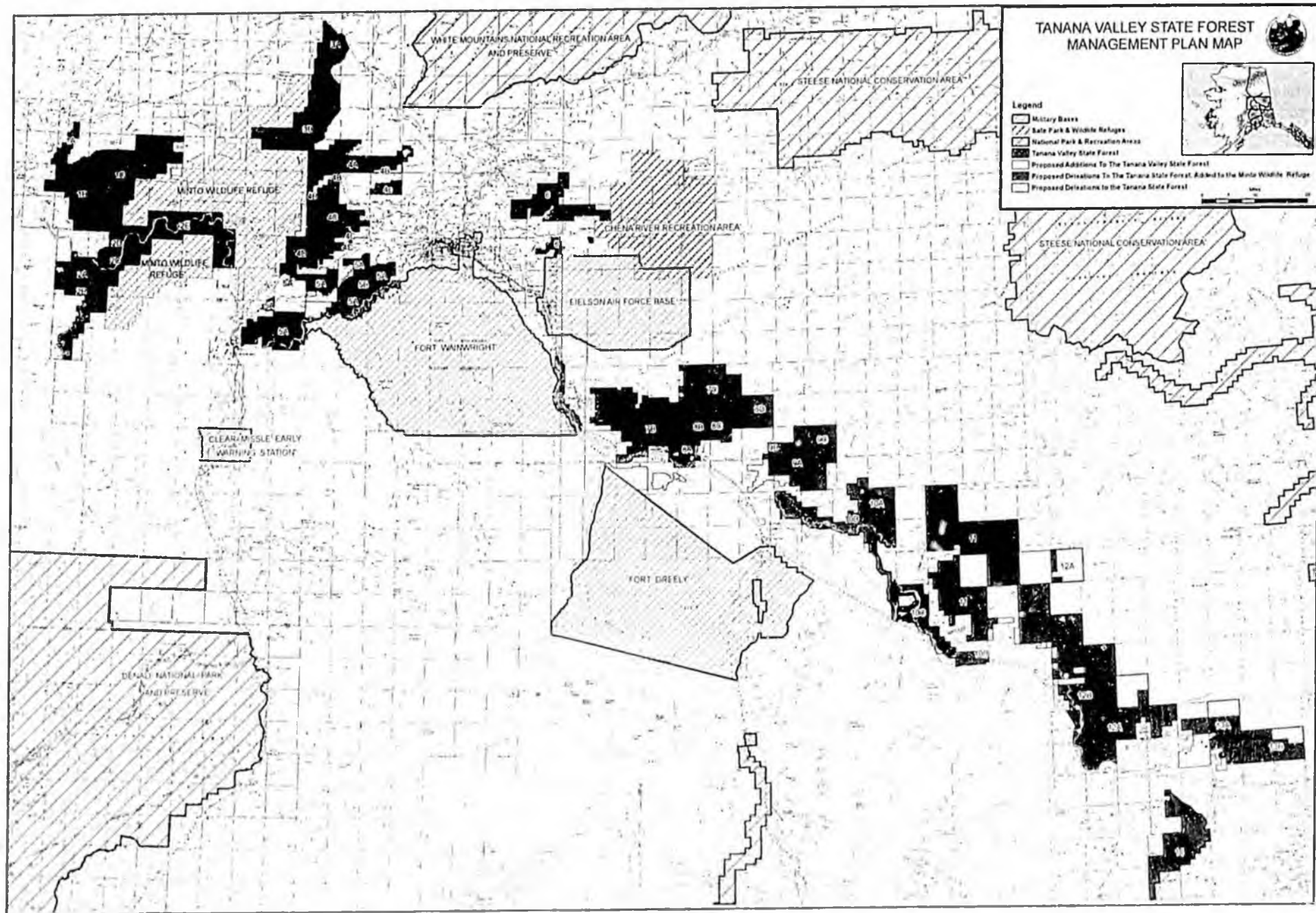
We currently process 3 to 4 million board feet of timber each year and employ some 35 people year around, producing lumber and timbers for the local market. We are very dependent upon the forest resources in the Tanana State Forest and are very much in favor of any legislation that improves and strengthens it.

Again, we strongly support SB 229 and thank you for introducing it.

Sincerely,



Ronald D. Rasmussen
Vice President and Mgr, Woods Operations



SB

229

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 2/19/08

FURTHER:

DATE TURNED
IN TO OFFICE: 3/03/08

Finance Committee considered SENATE BILL NO. 229

SB 229 TANANA VALLEY FOREST/MINTO FLATS REFUGE

"An Act relating to the Tanana Valley State Forest and to assignment of certain forest land to the Minto Flats State Game Refuge; and providing for an effective date."

and recommends:

- be replaced with SCS or CS _____ (_____)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<hr/>	
HOUSE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DNR	2/12			✓	1
ADM	2/11			✓	2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	EITZEN	✓			
	THOMAS	✓			
	DYSON	✓			
	HUGGINS	✓			
	OLSON			✓	
CO-CHAIR:	HOFFMAN			✓	
CO-CHAIR:	STEADMAN	✓			

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SB 229
(S) Publish Date: 2/19/08

Identifier (file name): SB229-DFG-DWC-02-11-08 Dept. Affected: Fish & Game
Title: Tanana Valley Forest/Minto Flats Refuge RDU: Wildlife Conservation
Component: Wildlife Conservation
Sponsor: Senator Thomas
Requester: Senate Resources Committee Component Number: 473

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES							
-----------------------------	--	--	--	--	--	--	--

CHANGE IN REVENUES ()							
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FUND SOURCE (Thousands of Dollars)

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other Interagency Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Passage of this bill will have no fiscal impact on the Department of Fish and Game

Prepared by: David Thomson, Administrative Manager
Division: Wildlife Conservation
Approved by: Tom Lawson, Director
Division of Administrative Services

Phone: 465-6194
Date/Time: 2/11/08 4:00 PM
Date: 2/11/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 229
(S) Publish Date: 2/19/08

Identifier (file name): SB229-DNR-For-02-12-08 Dept. Affected: Natural Resources
Title: Tanana Valley State Forest/Minto Flats State Game RDU: Resource Development
Refuge boundary adjustment Component: Forest Management & Development
Sponsor: Sen. Thomas
Requester: Senate Resources Component Number: 435

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES		0.0	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()		0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0	0
Part-time	0	0	0	0	0	0	0
Temporary	0	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill will add approx. 101,610 acres of land to the Tanana Valley State Forest (TVSF), delete approx. 66,218 acres, and redesignate approx. 4,298 acres as part of the Minto Flats State Game Refuge (MFSGR). This better aligns boundaries with the intent of the TVSF and MFSGR, increases land management efficiency, and updates the boundaries to correspond with correct and current land status. This proposal was developed and reviewed through the 2001 update to the TVSF Management Plan. Controversial parcels were removed following interagency and public review, and the package of changes in this bill had broad support and no known opposition. These changes will not require new positions or funding. There is no short-term impact on revenue, but it protects the revenue stream from timber receipts by ensuring that more commercial forest land will remain part of the long-term sustained yield land timber base to provide lumber, fuelwood, wildlife habitat, and recreation and tourism benefits.

Prepared by: Martha Freeman
Division: Forestry
Approved by: Tom Irwin, Commissioner
Natural Resources

Phone 269-8473
Date/Time February 12, 2008
Date February 12, 2008



FAIRBANKS
Economic Development

301 Cushman St., Suite 301, Fairbanks, AK 9970

January 29, 2008

Dear Senator Joe Thomas,

The Fairbanks Economic Development Corporation (FEDC) strives to promote value added product development in Interior Alaska and, therefore, thanks you for your sponsorship of Senate Bill 229: An act relating to the Tanana Valley Forest.

Fairbanks' remote location poses some challenges to economic development. However, when looking to the abundant natural resources found in the Interior, there is also great opportunity for the creation of new, higher paying jobs through responsible development of those valuable resources.

FEDC has long been a supporter of Interior Forest product development and, in partnership with the State Division of Forestry, Tanana Chiefs Conference, and State of Alaska Office of Economic Development, publishes "New Growth"; a prospectus offering information to potential forest industry developers. Our continuing effort is to encourage and support existing & potential businesses aimed at developing local, value added forest products for use here in Alaska. The most crucial need in developing new forest product businesses is ensuring sustainable, easily accessible, high value forest lands for development.

FEDC strongly supports SB 229. Passage of this legislation will add over 100,000 acres of commercially valuable forest land to the State Forest. These lands would increase the amount of valuable forest resources available for the development of value added products for the Interior and the State of Alaska.

This initiative can be a great asset to the State of Alaska, the Interior and to our continued pursuit of a diversified, stable and self-sustaining economy. FEDC thanks you for your time and efforts in sponsoring this bill and is excited about the potential it will bring to our State Forest lands.


Jim Dodson
CEO/President
Fairbanks Economic Development Corporation


Cassie Finkel
Project Manager, Fairbanks Economic Development Corporation

CC: Chris Maisch
Marty Freeman

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

BOARD OF FORESTRY

SARAH PALIN, GOVERNOR

550 West 7th Avenue, Suite 1450
Anchorage, AK 99501

February 4, 2008

Senator Joe Thomas
State Capitol, Room 510
Juneau, AK 99801-1182

Dear Senator Thomas,

The Board of Forestry represents diverse interests with respect to forestry in Alaska. By law, it provides a forum for forest management issues on state land, and is charged with monitoring the implementation and effectiveness of the Forest Resources and Practices Act on all lands (AS 41.17.047).

The Board of Forestry would like to express its support for SB 229, amendments to the boundary of the Tanana Valley State Forest and the Minto Flats Game Refuge. This bill would correct old drafting errors, update the boundaries to be consistent with changes in land status, add productive forest land to the State Forest, and delete wetlands and other non-productive forest land. The revised boundary will better match the purpose of State Forests, and the intent to included primarily commercially valuable forest land (AS 41.17.200,-210).

In the 25 years since it was established, the State Forest has proved its worth as a source of sawtimber and fuelwood, wildlife habitat, and hunting and recreation opportunities for Alaskans.

The changes in this bill were recommended by the 2001 update to the Tanana Valley State Forest Management Plan, with wide public support. The Board officially commended the Department of Natural Resources for the broad public process used to draft and revise the Tanana Valley State Forest Management Plan update. SB 229 will implement these widely supported recommendations.

We encourage prompt passage of SB 229, and thank you for introducing this bill.

Sincerely,



Chris Maisch, Chair

ALASKA BOARD OF FORESTRY

Rob Bosworth
Matt Cronin
Wayne Nicolls
John DiMarchi

Erin McLarnon
Bill Oliver
Rick Rogers
Ron Wolfe

ALASKA STATE LEGISLATURE



SENATOR JOE THOMAS

Sectional Analysis

SB 229 – Amendments to the Boundary of the Tanana Valley State Forest and Assignment of Certain Forest Land to the Minto Flats State Game Refuge

This bill would implement changes to the boundary of the Tanana Valley State Forest (TVSF) recommended by the 2001 update to the TVSF Management Plan. Some land deleted from the State Forest would be reassigned to the Minto State Game Refuge. These proposals were thoroughly reviewed by the public and agencies during the planning process. The package of proposals was revised following the comment period, and the final package was non-controversial.

Section 1 – Minto Flats State Game Refuge. Section 1 amends the legal description for the Refuge to incorporate three parcels of land deleted from within the TVSF. (See map) These parcels are wetlands adjacent to the existing Refuge that do not contain commercially valuable forest land, and would be better managed as part of the Refuge. They total 4,298 acres.

Section 2 – Tanana Valley State Forest. Section 2 repeals and reenacts the legal description for the TVSF. State Forests consist "primarily of commercially valuable forest land determined by the governor to be necessary for retention in State ownership for management under the principles of multiple use and sustained yield" (AS 41.17.210(a)). Almost all of the 1.78 million acres in the Tanana Valley State Forest are commercially valuable forest land. Some State lands adjacent to the State Forest also contain valuable forest resources, and some land within the TVSF does not have commercial forest potential. The proposed changes to the TVSF would move approximately 101,610 acres of general domain state land into the State Forest, and delete approximately 66,220 acres, for a net increase of approximately 35,390 acres.

Land recommended for addition to the State Forest contains high-value commercial forest land, much of which is easily accessible. Most parcels are already classified for Forestry under the Tanana Basin Area Plan, and all are compatible with the intent of the State Forest. Some have been harvested historically, and provide access to other lands within the State Forest, while other parcels are isolated pieces of State land adjacent to the State Forest. Incorporating these into the TVSF would add to the value of the State Forest and consolidate management authority in these areas. One 160-acre parcel with

ALASKA STATE LEGISLATURE



SENATOR JOE THOMAS

unusual prairie features would be added to the Volkmar Bluffs Research Natural Area within the State Forest.

Land recommended for deletion from the State Forest is not commercially valuable forest land. The deletions include the three wetland parcels recommended for addition to the Minto Flats State Game Refuge, wetlands and high-elevation lands north of Tok and Tanacross, and a parcel of high-value recreation land along the Chatanika River.

Land deleted from the Tanana Valley State Forest would be managed as part of the adjacent management units under the Tanana Basin Area Plan. These lands would remain open for public access and multiple use.



Briefing:

Tanana Valley State Forest changes

DEPARTMENT OF NATURAL RESOURCES

December 12, 2007

DIVISION OF FORESTRY

Background. The 2001 update to the TVSF Management Plan recommended a package of changes to the boundaries of the State Forest. As a part of that package, the plan recommends some of the deletions from the State Forest to be added to the Minto State Game Refuge. These proposals were thoroughly reviewed by the public and agencies during the planning process, and the proposals in the final plan were non-controversial. There were no comments on these proposals during the final comment period.

A. RECOMMENDATIONS FOR ADDITIONS TO THE TANANA VALLEY STATE FOREST: Amend AS 41.17.400(d)

Alaska Statutes Section 41.17.210 states that State Forest proposals shall consist "primarily of commercially valuable forest land determined by the governor to be necessary for retention in State ownership for management under the principles of multiple use and sustained yield..." Almost all of the 1.78 million acres in the Tanana Valley State Forest is commercially valuable forest land. Some State lands adjacent to the State Forest, however, contain valuable forest resources that would benefit the State Forest by their addition to that legislatively designated area. The lands listed in the following packet, and shown on the accompanying map, are recommended for addition to the State Forest. They total approximately 101,610 acres.

The lands recommended for addition to the State Forest contain high-value commercial forest lands, many of which are easily accessible. Most are already classified Forestry under the Tanana Basin Area Plan, and all are compatible with the intent of the State Forest. Some have been harvested historically, and some provide access to other lands within the State Forest. Some of the smaller parcels are isolated pieces of State land adjacent to the State Forest. Adding them to the State Forest would add to the value of the State Forest and consolidate management authority in these areas.

B. RECOMMENDATIONS FOR DELETIONS FROM THE TANANA VALLEY STATE FOREST: Amend AS 41.17.400(d)

The Tanana Valley State Forest contains approximately 66,218 acres of land that do not contain valuable forest resources. On the basis of the statutory criteria in the previous section, DNR recommends several deletions from the Tanana Valley State Forest. Some of the lands are wetlands adjacent to the Minto Flats State Game Refuge that contain no commercially valuable timberland. Another area recommended for deletion contains the shorelands of the Chatanika River, an extremely high value recreation area. The other lands on the deletion list consist of two townships: one comprised of wetlands and the other made up of high-elevation, unforested lands.

C. ADDITIONS TO THE MINTO FLATS STATE GAME REFUGE OF LANDS RECOMMENDED FOR DELETION FROM THE TANANA VALLEY STATE FOREST: Amend AS 16.20.037(a).

Three parcels of land within the TVSF containing wetlands adjacent to the Minto Flats State Game Refuge are recommended to be withdrawn from the State Forest and added to the Refuge. They do not contain commercially valuable forest land, and would be better managed as part of the Refuge. They total 4,298 acres.

List of proposed additions to the Tanana Valley State Forest

The following list summarizes the recommended additions to the State Forest (a total of approximately 101,610 acres):

1. This strip of land, located between Minto Flats and the adjacent State Forest, contains productive upland forests of white spruce and hardwoods. The unit is presently accessed by the Dunbar-Livengood winter trail and will be accessed by an all-season forest road. (4,480 acres within T1N R6W F.M.)

2. These units are on Nenana Ridge, border the State Forest, and have similar values. They are highly productive, easily accessible, upland forests. Adding these units to the State Forest will consolidate the State's highest value forest lands under a single management authority and plan. (14,568 acres within T2S R4W, T2S R5W, and T3S R5W F.M.)

Note: If this subunit is added to the State Forest, the following management guidelines will be added to the entire Subunit 5A. "A 300-foot buffer from centerline on each side of the roadway should be managed to maintain or enhance scenic views along the highway. Development activities such as timber harvesting and land-use authorizations may be allowed within this buffer if the activity is designed to maintain or enhance the scenic values of the highway corridor, and to provide opportunities for viewing background scenery."

3. This unit has several parcels which comprise the bulk of the timberland occurring between Fort Greely and the Tanana River. The timber consists of productive white spruce stands along the Tanana River and mixed white spruce/hardwood stands on uplands to the South. Management goals would emphasize the area's wildlife, recreation, and timber resources. Because of habitat values in the floodplain, the recommended additions to the State Forest are south of the 1000-foot contour line from the Tanana River. (21,189 acres, within T7S R6E, T7S R7E, T7S R8E, T8S R5E, T8S R6E, T8S R7E, and T8S R8E F.M.)

4. This quarter-section lies adjacent to the Tanana Valley State Forest Subunit 10B, the Volkmar Bluffs Research Natural Area. It encompasses a large prairie feature that similar to the prairie system in the adjacent Tanana Valley State Forest research natural area. This amendment is designed to expand the research natural area to include the remainder of the prairie system. (160 acres within T9S R13E F.M.)

5. This unit consists of several small parcels of land near Dot Lake that were not included in the State Forest because of questionable land status. The primary purpose of adding these to the State Forest is to consolidate land management in the area. (9,600 acres within T21N R8E, T22N R8E, T23N R6E, and T23N R7E C.R.M.)

6. These block is located along the Tanana River near Tok between Native lands and the State Forest. The units contain commercial timber, have good access, and would be

valuable additions to the State Forest. (23,033 acres within T18N R13E, T19N R12E, and T19N R13E C.R.M.)

7. This small parcel north of Tanacross was excluded in the legal description of the TVSF because of federal interest. However, the federal interest is no longer valid. (40 acres within T21N R10E C.R.M.)

8. These three parcels of land are located near Dot Lake between Native lands and the State Forest. Their addition to the State Forest will consolidate management authority. (5,600 acres within T21N R8E and T23N R6E C.R.M.)

9. This township, north of Dot Lake, was left out of the TVSF legislation by a mistake in a legal description that substituted a wrong township. Although the unit is currently inaccessible, including it in the State Forest as originally proposed would offer some management efficiency because it shares common access and similar resource values with adjoining State Forest lands to the west and south. (23,040 acres, T25N R7E C.R.M.)

List of proposed deletions from the State Forest

The following list summarizes the recommended withdrawals (a total of approximately 66,071 acres):

1. TVSF Subunit 1C: 1,898 acres within T1N R11W and T2N R11W F.M.
These two parcels of the Minto Flats along the Tolovana River are recommended for withdrawal so as to consolidate most wetlands in Minto Flats under a single management intent. The areas are highly productive wildlife habitat but contain very little timberland. The area borders the Minto Flats State Game Refuge, and is recommended as an addition to the Refuge.
2. TVSF Subunit 3B: 2,400 acres within T4N R7W F.M.
This parcel consists of wetlands bordering the Minto Flats State Game Refuge. The area borders the Minto Flats State Game Refuge, and is recommended as an addition to the Refuge.
3. TVSF Subunit 4B: 2,400 acres within T3N R3W F.M.
This parcel contains shorelands of the Chatanika River. It is recommended as a TVSF withdrawal to be available for designation as part of the Chatanika State Recreation River corridor. In the interim it would be managed for public recreation and wildlife habitat as part of Tanana Basin Area Plan Subunit 1E1. The area is comprised mostly of poorly drained wetlands along the Chatanika River and contains little timberland.
4. TVSF Subunit 12A: 19,200 acres within T21N R10E C.R.M.
This township contains low relief and swampy, noncommercial forest; it was not included in the original administration proposal. The unit's inclusion in the State Forest does not offer any management advantages for adjacent State Forest lands. It would

become part of Tanana Basin Area Plan Subunit 6G1, which is designated for wildlife habitat and forestry.

5. TVSF Subunit 12A: 19,200 acres within T25N R8 C.R.M.

This township was apparently included in the State Forest because of a mistake made in the range. This unit is generally at a high elevation with few significant resources appropriate for the State Forest system. It would become part of Tanana Basin Area Plan Subunit 6J2 which is designated for resource management.

6. TVSF Subunit 13A, 13B: 21,120 acres within T19N R15E and T20N R13E C.R.M.

These two parcels were are underlain entirely by permafrost and forested with noncommercial black spruce. They have no other important resource values or advantages for inclusion in the State Forest. They would become part of Tanana Basin Area Plan Subunit 6J3 which is designated for wildlife habitat.

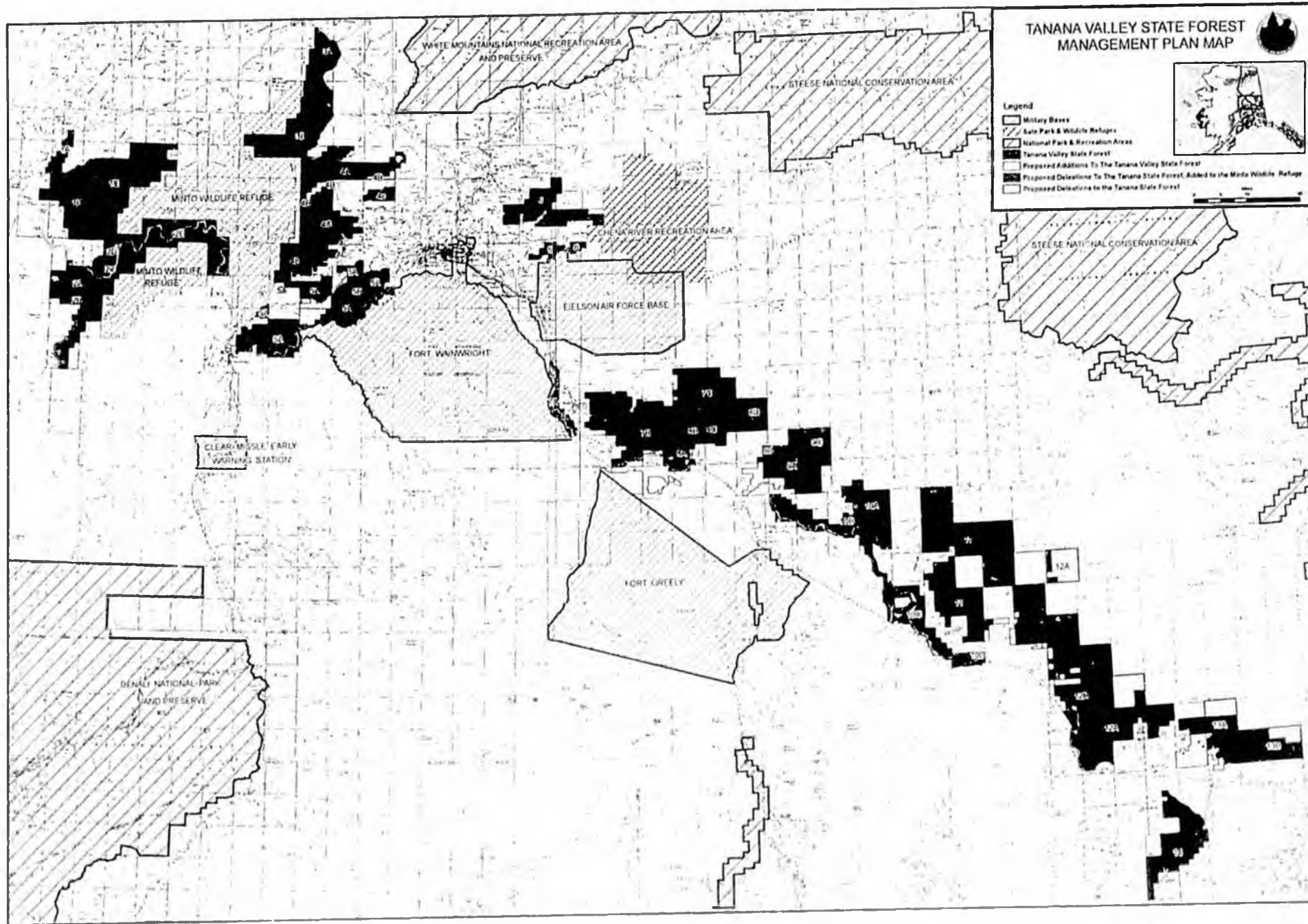
Additions to Minto State Game Refuge

1. TVSF Subunit 1C: 1,898 acres within T1N R11W and T2N R11W F.M.

These two parcels on the Minto Flats in TVSF Subunit 1C along the Tolovana River are recommended to be added to the Refuge. This change would consolidate most wetlands in Minto Flats under a single management intent. The areas are highly productive wildlife habitat but contain very little timberland. The area borders the Minto Flats State Game Refuge.

2. TVSF Subunit 3B: 2,400 acres within T4N R7W

This parcel consists of wetlands bordering the Minto Flats State Game Refuge.



TANANA VALLEY STATE FOREST
MANAGEMENT PLAN MAP



- Legend
- Military Bases
 - State Park & Wildlife Refuges
 - National Park & Recreation Areas
 - Tanana Valley State Forest
 - Proposed Additions To The Tanana Valley State Forest
 - Proposed Deletions To The Tanana State Forest Added to the Minto Wildlife Refuge
 - Proposed Deletions to the Tanana State Forest



ALASKA STATE LEGISLATURE



SENATOR JOE THOMAS

SB 229 – Relating to the Tanana Valley State Forest and to assignment of certain forest land to the Minto Flats State Game Refuge; and providing for an effective date.

Sponsor Statement

Senator Joe Thomas

Senate Bill 229 amends the boundaries of the Tanana Valley State Forest (TVSF) to correct errors in legal descriptions, reflect updated land status, and to better match the management intent for the Forest. This is done by adding and deleting boundary references to the legal descriptions in statute. These changes result in a net increase to the state forest of approximately 40,000 acres. SB 229 also moves approximately 4,300 acres from the state forest to the Minto Flats State Game Refuge.

In 1983 the Legislature created the 1.8 million-acre Tanana Valley State Forest that stretches from Manley to Tok. The forest is open to mining, gravel extraction, oil and gas leasing, and grazing. The Department of Natural Resources manages the state forests for a sustained yield of these resources, with the primary purpose of timber management (AS 41.17.200). The Bonanza Creek Experimental Forest, a 12,400-acre area dedicated to forestry research, is also located within the state forest.

State forests provide fish and wildlife habitat, clean water, opportunities for recreation and tourism, and minerals. In addition to the management of these resources, the Tanana Valley State Forest offers many recreational opportunities including hunting, fishing, trapping, camping, hiking, dog mushing, cross-country skiing, wildlife viewing, snow machining, gold panning, boating, and berry-picking.

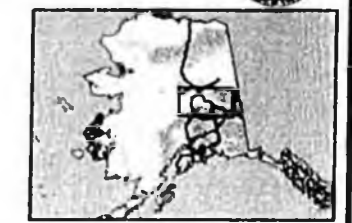
In 1996, the division updated the Tanana Valley State Forest Management Plan and established a citizens' advisory committee. The

12-member citizen's advisory committee, representing a variety of state forest users, actively participates in forest planning in the Tanana Basin. This entity has endorsed the recommendations on management of the forest and has carefully crafted the changes in a manner that resulted in support from all affected land users and owners.

SB 229 is supported by the Alaska State Forest Association, the Fairbanks Economic Development Corporation, hunting and recreation groups as well as all surrounding land owners.

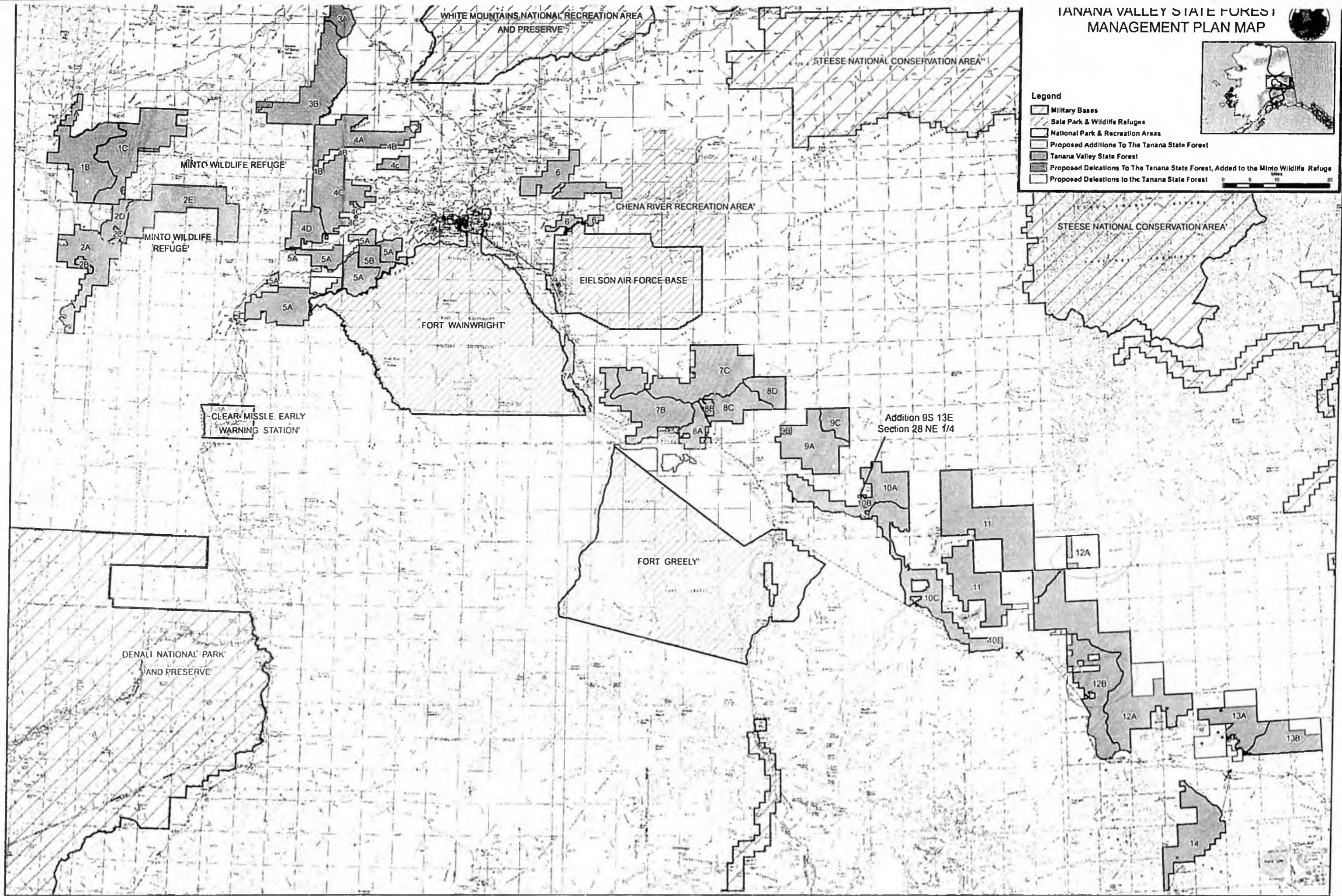
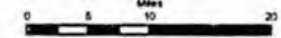
Please join me in amending the Tanana Valley State Forest to better align with its original intent and support the passage of Senate Bill 229.

TANANA VALLEY STATE FOREST
MANAGEMENT PLAN MAP



Legend

- Military Bases
- State Park & Wildlife Refuges
- National Park & Recreation Areas
- Proposed Additions To The Tanana State Forest
- Tanana Valley State Forest
- Proposed Deletions To The Tanana State Forest, Added to the Minto Wildlife Refuge
- Proposed Deletions to the Tanana State Forest



SB

230

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: March 19, 2008

FURTHER REFERRALS:

Date of Committee Action: 4/7/08

The FINANCE Committee considered:

CSSSSB 230(FIN) am

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 230(FIN) am

FILM OFFICE/ FILM PRODUCTION TAX CREDIT

"An Act establishing the film office in the Department of Commerce, Community, and Economic Development; creating a transferable tax credit applicable to certain film production expenditures incurred in the state; and providing for an effective date."

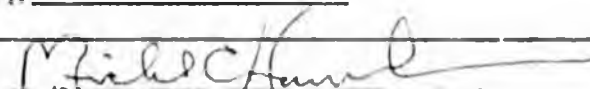
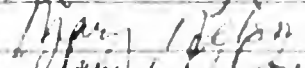
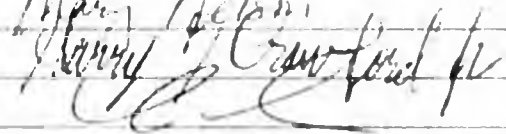
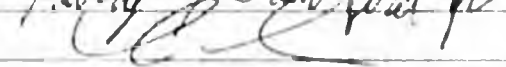
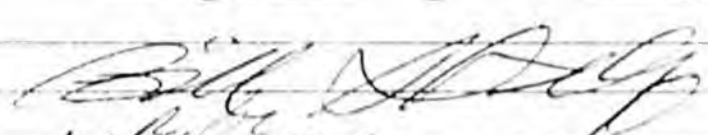


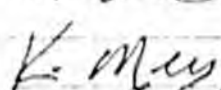

Recommends it be replaced with HCS or CS for CS SS SB 230 (FIN)
 For Senate Bills with new title: Technical Title New Title: HCR Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts:
 ADM
 CED
 COR
 CRT
 FED
 DEC
 DEG
 GOV
 HSS
 LWF
 LAW
 LEG
 MVA
 DNR
 DPS
 REV
 DOT
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
REV	3			
CED	4	✓		

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Hawkner			✗	
	Nelson	✓			
	CRAWFORD	✓			
	G. W. G. G.	✗			
	STOLTZ			✗	
	Gault	✗			
	Thomas	✓			
Chair: 	Meyer	✗			
Chair: 	Chisholm			✗	

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSSSSB 230(FIN)
(S) Publish Date: 2/29/08

Identifier (file name): CSSSSB230(LC)DOR-TAX-2-19-08 Dept. Affected: Revenue 04
Title: Film Office / Film Production Tax Credit RDU: Taxation and Treasury
Component: Taxation and Treasury
Sponsor: Senators Eilis, Stevens, Davis, Dyson
Requester: (S) Labor & Commerce Component Number: 2476

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required		Information				
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES							
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: Dan Skelton, Economist
Division: Tax
Approved by: Jerry Burnett
Department of Revenue

Phone: (907) 465-3279
Date/Time: 2/19/08 12:00 AM
Date: 2/19/2008

FISCAL NOTE # 3

STATE OF ALASKA
2008 LEGISLATIVE SESSION

BILL NO. CSSSSB 230(FIN)

ANALYSIS CONTINUATION

Bill Language:

This bill will create a tax credit, applicable against corporate income tax liability, for certain film production activities in the state of Alaska. Features of the credit include:

- Base tax credit equal to 30% of qualified production expenditures
- An additional 10% credit for qualified wages paid to Alaska residents
- An additional 2% credit for qualified expenditures made in a rural area
- An additional 2% credit for qualified expenditures made between October 1 and March 30
- Unused credits may be transferred or carried forward for future liability

The credit is available only if certain conditions are met: the film producer must have over \$50,000 in qualified expenditures in Alaska, and the production must be approved by the Film Office of the Department of Commerce, Community and Economic Development. The credit is targeted by way of excluding several categories of film production. The following categories of film production would not be eligible for the credit: News, weather and current events programming; financial, talk or game shows; productions intended primarily for industrial, corporate, institutional or internal purposes; sports events or programs; gala presentations or awards shows; infomercials and productions that solicit funds, political advertisements; and sexually explicit productions.

Alaska will join a growing number of states that have a film production tax credit. According to an April 2007 article in "The Hollywood Reporter," there were 31 states with film production tax credits at that time, with several others considering the credits.

Film production tax credits vary between states, with the most generous as of April 2007 being Connecticut's 30% transferable credit on all production expenses over \$50,000 with no cap on the amount of the credit. Like Connecticut's credit, Alaska's proposed credit would be transferable, requires \$50,000 in eligible expenses, and has no cap. Alaska's 30% base tax credit can be augmented by the additional 10% credit for Alaska resident payroll, 2% credit for rural expenditures and 2% credit for off-season production. Alaska's credit will therefore be one of the most generous in the nation in terms of the percent of qualified production expenditures.

Revenues:

While the revenue impact of this bill is indeterminate, we believe that it is likely that the revenue impact will be negative to the state. It is not possible to estimate the amount of liability that could be generated or offset by this credit because we do not know the value of current eligible film production expenditures in the state, the amount of new eligible expenditures that might be attracted to the state, or the ownership of the companies that will be producing films in the state.

Based on our discussions with film industry groups and other states, production expenses are typically incurred by a Limited Liability Corporation (LLC) formed for the purpose of film production, with profits flowing to the owners of the LLC. Under Alaska state law, LLCs are treated as partnerships and not subject to corporate income tax. Income or loss will flow through to the LLC's owners. Owners of LLCs can include C corporations, S corporations, partnerships and individuals. Under Alaska law, S corporations, partnerships and individuals are not subject to state income taxation. To the extent the eligible LLC passes income through to these non-taxable entities, Alaska will receive no compensating tax revenue. Similarly, to the extent the LLC incurs losses, Alaska would receive no compensating tax revenue. To the extent that C corporations hold an ownership interest in the LLC, these corporations will pay Alaska tax. However, it is likely that the LLCs will be organized to minimize the overall tax liability.

Corporate income tax is paid in four quarterly installments throughout the tax year, plus a payment with return in March of the following year. We anticipate that eligible companies will adjust their payments beginning in FY 2009 to account for the impact of the new film production tax credit.

Expenditures:

We anticipate that this credit can be implemented in the Department of Revenue using existing staff and resources. Most of the work related to credit approval and determinations will be made by the Department of Commerce, Community and Economic Development.

FISCAL NOTE

2008 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: CSSSSB 230(FIN)
 (S) Publish Date: 2/29/08

Identifier (file name): SB230SSCS(FIN)-CED-OED-02-28-08 Dept. Affected: DCCED
 Title Film Office/Film RDU Comm Assist & Ec Dev (405)
Production Tax Credit Component Office of Economic Development
 Sponsor ELLIS, Stevens
 Requester Senate Labor & Commerce Component Number 2743

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	150.0	25.0	175.0	175.0	175.0	175.0	175.0	175.0
Travel	20.0	3.0	23.0	23.0	23.0	23.0	23.0	23.0
Contractual	100.0	5.0	105.0	105.0	105.0	105.0	105.0	105.0
Supplies	5.0		5.0	5.0	5.0	5.0	5.0	5.0
Equipment	15.0		15.0	15.0	15.0	15.0	15.0	15.0
Land & Structures								
Grants & Claims								
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	290.0	33.0	323.0	323.0	323.0	323.0	323.0	323.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES (1004)	**	**	**	**	**	**	**	**
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	290.0	33.0	323.0	323.0	323.0	323.0	323.0	323.0
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	290.0	33.0	323.0	323.0	323.0	323.0	323.0	323.0

Estimate of any current year (FY2008) cost: 00

POSITIONS

Full-time	2 00	0 25	2 25	2 25	2 25	2 25	2 25
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This legislation would create a transferable tax credit to be applied to certain film production expenditures made in Alaska and establishes a film office in the Department. The base tax credit would be 30% of qualified expenditures with an additional 10% of qualified expenditures that are Alaska wages, an additional 2% for expenditures made in a rural area, and an additional 2% for expenditures made in the state between October 1 through March 30. The minimum spending amount would be set at \$100.0 within a 24 month period. There would be no maximum amount of credit that can be taken. The tax credit provisions sunset on July 1, 2013.

Prepared by Jan Austerman, Manager
 Division Office of Economic Development
 Approved by Erin R. Noff, Commissioner
Commerce, Community, and Economic Development

Phone 907 269 4568
 Date/Time 2/28/08 5:50 PM
 Date 2/28/2008

FISCAL NOTE # 4

STATE OF ALASKA
2008 LEGISLATIVE SESSION

BILL NO. CSSSSB 230(FIN)

ANALYSIS CONTINUATION

Duties of the office would include: Cooperating with the private sector to expand the film production industry; promoting Alaska as a film location; providing production assistance through connecting filmmakers with Alaska location scouts, services and contractors; certifying and promoting a production internship training program in ; administering the incentive program; and preparing an annual report to the legislature.

To fulfill the duties established in the bill, the Department would keep the one-quarter existing position in the Office of Economic Development to supervise staff, prepare annual marketing and business plans, and help promote the incentive and intern programs. The Department would hire a Development Specialist to fulfill the duties assigned by the legislation and an Administrative Assistant to handle the administrative work associated with implementing the incentive program. As specified in the legislation, the Commissioner of the Department will consider the recommendations of the Alaska Film Group in the selection process. Travel costs are estimated to cover in-state, out-of-state, and international travel for trade shows, visits to production companies, producer familiarization tours, training, meetings with in-state film industry and communities, and to provide production assistance (connecting filmmakers to Alaska contractors). Contractual expenditures would include web site development, marketing plan development, photo purchases, development of a production guide, promotional materials, limited advertising creative and placement, printing, workshops, training, memberships, subscriptions and other film related services.

Change in Revenue: The department is not able to determine the impact the transferable tax credit would have on the general fund. Unknown are the number of productions that would apply for the transferable tax credit and the amount that qualified producers would spend in the state.

Adopted

5/7/08

AMENDMENT 1

OFFERED IN THE HOUSE

BY REPRESENTATIVE MEYER

TO: HCS CS SS SB 230 (), Version 25-LS1275\F

- 1 Page 3, line 10
- 2 After "that"
- 3 Delete "the award of a tax credit to"
- 4
- 5 Page 3, line 13
- 6 After "whether"
- 7 Delete "the award of a tax credit to"
- 8
- 9
- 10
- 11
- 12
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- 17
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- 24

CA Hawker AMENDMENT 2

5/7/08

ev

OFFERED IN THE HOUSE

BY REPRESENTATIVE HAWKER

TO: HCS CSSSSB 230 (), Version 25-LS1275\F

1 Page 9, lines 10-12

2 Delete all material

3 Insert "NOTIFICATION: When the combined amount of tax credits issued and the
4 estimated amount of tax credits that can be claimed in the future based on notices of
5 qualifications that have been issued equals \$150,000,000 the commissioner shall notify the
6 presiding officers of each house of the legislature and the revisor of statutes in writing"

7

Adopted

~~WITHDRAWN~~

AMENDMENT 3

OFFERED IN THE HOUSE

BY REPRESENTATIVE HAWKER

TO: HCS CSSSSB 230 (), Version 25-LS1275\F

Am #3, part 2

1-3, 9-11

- 1 Page 2, line 8, following "exceed"
- 2 Delete "\$150,000,000"
- 3 Insert "\$50,000,000"
- 4
- 5 Page 4, line 19, following "equal to"
- 6 Delete "30"
- 7 Insert "20"
- 8
- 9 Page 9, line 11, following "equals"
- 10 Delete "\$150,000,000"
- 11 Insert "\$50,000,000"
- 12

17, 23 TO CAP FOR TICS

Am #3 part 1, 5-7

Failed 4/7/08 5/4

Chenault
25%

[Signature]

Am. #to Am, pt 2 passes
to 100 million
cap

Am. 3, part 2 as amended
Passed 5/4

2007 HOUSE FINANCE COMMITTEE VOTE SHEET

DATE: 4/7/08

Amendment: #3, Part 1 25%
SB 230

MEMBER

Favor

Oppose

MEMBER	Favor	Oppose
THOMAS	X	
CRAWFORD		X
FOSTER		
GARA		X
HAWKER	X	
JOULE		X
KELLY		
NELSON		X
STOLTZE		X
CHENAULT	X	
MEYER	X	

Yea 4

Nay 5

2007 HOUSE FINANCE COMMITTEE VOTE SHEET

DATE: 4/7/08

Amendment: Amd. # 3, part 2
Amend 1, \$100 million cap

MEMBER

Favor

Oppose

CRAWFORD		X
FOSTER		
GARA		X
HAWKER	X	
JOULE		X
KELLY		
NELSON		X
STOLTZE	X	
THOMAS	X	
CHENAULT	X	
MEYER	X	

Passes

Yea 5

Nay 4

2007 HOUSE FINANCE COMMITTEE VOTE SHEET

passed

DATE: 4/7/08

Amendment: Amendment to
#230 Amendment #3, part 2

MEMBER

Favor

Oppose

FOSTER		
GARA		X
HAWKER	X	
JOULE		X
KELLY		
NELSON		X
STOLTZE	X	
THOMAS	X	
CRAWFORD		X
MEYER	X	
CHENAULT	X	

Yea 5

Nay 4

Deleted

Hawker + Gara #4

5/7/08

Conceptual Assessment _____

P. 7 line 14 - Delete all languages
and re-number or
~~re-number~~ or re-letter accordingly.

Amended on pg 7 Adopted 5/07/08

25-LS1275\F
Bullard
4/6/08

HOUSE CS FOR CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 230()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS ELLIS, Stevens, Davis

REPRESENTATIVES Kerttula, Buch, Olson, Ramras, Gardner, Gara

A BILL

FOR AN ACT ENTITLED

1 **"An Act establishing the film office in the Department of Commerce, Community, and**
2 **Economic Development; creating a transferable tax credit applicable to certain film**
3 **production expenditures incurred in the state; and providing for an effective date."**

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

5 *** Section 1.** AS 43.98 is amended by adding a new section to read:

6 **Sec. 43.98.030. Film production tax credit.** (a) In cooperation with the film
7 office in the Department of Commerce, Community, and Economic Development, the
8 department shall provide a transferable film production tax credit to a producer, as
9 defined in AS 44.33.239, for qualified production expenditures under AS 44.33.231 -
10 44.33.239.

11 (b) A tax credit provided under (a) of this section may be sold, assigned,
12 exchanged, conveyed, or otherwise transferred in whole or in part.

13 (c) A taxpayer acquiring a transferable credit may use the credit or a portion of
14 the credit to offset taxes imposed under AS 43.20 (Alaska Net Income Tax Act). Any
15 portion of the credit not used may be used at a later period or transferred under (b) of

1 this section.

2 (d) The department shall adopt regulations necessary for the administration of
3 this section.

4 (e) A credit provided under (a) of this section, whether sold, assigned,
5 exchanged, conveyed, or otherwise transferred, in whole or in part, must be used
6 within three years after being provided by the department.

7 (f) The number of tax credits provided in the aggregate under this section may
8 not exceed \$150,000,000.

9 * Sec. 2. AS 44.33 is amended by adding new sections to read:

10 **Article 2A. Film Office.**

11 **Sec. 44.33.231. Duties.** (a) There is created a film office in the Department of
12 Commerce, Community, and Economic Development. The film office shall

13 (1) cooperate with organizations in the private sector for the expansion
14 and development of film production industries in the state;

15 (2) promote Alaska as an appropriate location for film production;

16 (3) provide production assistance through connecting film directors,
17 makers, and producers with Alaska location scouts and contractors, including
18 contractors providing assistance with permit applications;

19 (4) certify Alaska film production internship training programs and
20 promote the employment of program interns by eligible productions; and

21 (5) in cooperation with the Department of Revenue, administer the
22 Alaska film production incentive program.

23 (b) The film office shall make available to the legislature, within 30 days after
24 the start of each regular session, a report of the activities conducted by the film office
25 under AS 43.33.231 - 43.33.239. The report must include

26 (1) the number of applications received under AS 44.33.234;

27 (2) the number of applications approved by the film office; and

28 (3) the number of, and amount of, tax credits disbursed under
29 AS 44.33.232.

30 (c) The commissioner shall appoint a director to oversee the film office and
31 carry out its duties under AS 44.43.231 - 44.43.239.

1 **Sec. 44.33.232. Alaska film production incentive program.** Subject to
2 appropriations for the purpose, the film office shall administer in cooperation with the
3 Department of Revenue the Alaska film production incentive program to provide a tax
4 credit under AS 43.98.030 for certain film production expenditures incurred in the
5 state.

6 **Sec. 44.33.233. Eligibility.** (a) A film production is eligible for a tax credit
7 under AS 43.98.030, if the

8 (1) producer has \$100,000 or more in qualified expenditures in a
9 consecutive 24-month period under AS 44.33.236;

10 (2) film office determines that the award of a tax credit to the
11 production is not contrary to the best interests of the state; and

12 (3) production is approved by the film office.

13 (b) In determining under (a) of this section whether the award of a tax credit to
14 a production is not contrary to the best interests of the state, the film office may
15 consider

16 (1) the effect of the production on both the immediate and long-term
17 prospects for the film industry in Alaska;

18 (2) the effect of the production on the employment of Alaska residents;
19 and

20 (3) the effect of the production on the economy of the state.

21 (c) The following productions are not eligible, regardless of the production
22 costs:

23 (1) news, weather, or current events programming;

24 (2) a production produced primarily for industrial, corporate, or
25 institutional purposes, and for internal use;

26 (3) an advertisement, infomercial, or any other production that solicits
27 funds, except for a commercial television advertisement produced for national
28 distribution;

29 (4) a political advertisement; or

30 (5) a production that is determined by the film office to contain
31 sexually explicit conduct as defined in 18 U.S.C. 2256.

1 **Sec. 44.33.234. Qualification for film production tax credit.** (a) A film
2 producer may apply for the film production tax credit under AS 43.98.030 by
3 submitting an application to the film office on a form provided by the film office. The
4 application must include

- 5 (1) a script or synopsis of the production;
- 6 (2) the names of the producer, director, and proposed cast;
- 7 (3) estimated start, completion, and filming dates; and
- 8 (4) other information the film office may require to determine the
9 producer's eligibility for a credit and the estimated amount of the credit.

10 (b) If the film office approves an application submitted under (a) of this
11 section, the film office shall issue a notice of qualification to the producer. The notice
12 of qualification must include a determination by the film office of the estimated film
13 production tax credit for which the production qualifies.

14 **Sec. 44.33.235. Award of film production tax credit.** (a) Subject to
15 AS 43.98.030(f), the film office, in cooperation with the Department of Revenue, shall
16 determine the amount of the tax credit under AS 43.98.030 available to a producer
17 who has obtained a notice of qualification under AS 43.33.234(b), based on the
18 qualified expenditures of the production under AS 44.33.236.

19 (b) The base amount of a tax credit awarded under this section is equal to 30
20 percent of the qualified expenditures of the production.

21 (c) In determining the amount of the tax credit, the percentage provided by (b)
22 of this section shall be increased by the film office based on the following criteria:

- 23 (1) an additional 10 percent of qualified expenditures that are wages
24 paid to Alaska residents;
- 25 (2) an additional two percent of qualified expenditures made in a rural
26 area; and
- 27 (3) an additional two percent of qualified expenditures made in the
28 state between October 1 and March 30.

29 (d) After completion of the production, the producer shall provide the film
30 office with a production cost report detailing the qualified expenditures of the
31 production, with verification by an independent certified public accountant approved

1 by the film office that the costs claimed in the report are qualified expenditures under
2 AS 44.33.236.

3 (e) Subject to (g) of this section, the film office, in cooperation with the
4 Department of Revenue, shall determine the amount of the tax credit based on the
5 information provided by the producer under (d) of this section and shall award a tax
6 credit in cooperation with the Department of Revenue under AS 43.98.030 if the
7 producer has satisfied all requirements under AS 44.33.231 - 44.33.239.

8 (f) The award of a tax credit under this section is conditioned on the
9 producer's and the production's full compliance with all applicable state laws and
10 regulations. At the request of the film office, a producer shall provide any information
11 necessary for the film office to determine the producer's and production's compliance
12 with this subsection.

13 (g) In determining the amount of a tax credit awarded under this section, the
14 film office may reduce the amount of the tax credit by any amount the film office
15 considers necessary to allow the state, or a political subdivision of the state, to recover
16 the cost of any damages caused by any act or omission of the producer or production.

17 (h) The film office, in cooperation with the Department of Revenue, may
18 withhold the award of a tax credit under this section if the office determines that there
19 are filed, but unresolved, legal actions in the state involving the producer or
20 production.

21 **Sec. 44.33.236. Determination of qualified expenditures.** (a) Expenditures
22 made by a production company in connection with a film production approved by the
23 film office that shall be considered qualified expenditures must be directly related to
24 the production and be incurred in the state. Only expenditures that are ordinary,
25 reasonable, and not in excess of fair market value and that are for real or tangible
26 property, fees, services, or state or municipal taxes shall be considered. Expenditures
27 may include

- 28 (1) costs of set construction and operation;
29 (2) costs of wardrobes, make-up, accessories, and related services;
30 (3) costs associated with photography and sound synchronization;
31 (4) costs of lighting and related services and materials;

- 1 (5) costs of editing and related services;
- 2 (6) rental of facilities and equipment;
- 3 (7) leasing of vehicles;
- 4 (8) costs of food and lodging;
- 5 (9) costs of digital or tape editing, film processing, transfer of film to
- 6 tape or digital format, sound mixing, and special and visual effects;
- 7 (10) the total aggregate payroll for services performed in Alaska,
- 8 including all salaries, wages, compensation, and related benefits provided to
- 9 producers, directors, writers, actors, and other personnel that are directly attributable
- 10 to services performed in Alaska;
- 11 (11) the costs of the use of an Alaska business for processing qualified
- 12 payroll and related expenditures;
- 13 (12) costs of music, if performed, composed, or recorded by an Alaska
- 14 musician, or released or published by an Alaska business;
- 15 (13) costs of intrastate travel, if provided by an Alaska business;
- 16 (14) costs relating to the design, construction, improvement, or repair
- 17 of a film, video, television, or digital production or postproduction facility or related
- 18 property, infrastructure, or equipment, except commercial exhibition facilities, as
- 19 determined by the film office;
- 20 (15) costs of state or municipal taxes levied in Alaska on the lease or
- 21 rental of passenger or recreational vehicles or the rental of rooms or other lodging; or
- 22 (16) other similar production expenditures as determined by the film
- 23 office in cooperation with the Department of Revenue.
- 24 (b) Production costs that may not be considered qualified expenditures include
- 25 (1) costs related to the acquisition, determination, transfer, or use of a
- 26 film production tax credit under AS 43.98.030;
- 27 (2) postproduction expenditures for marketing and distribution;
- 28 (3) production financing, depreciation, and amortization costs, and
- 29 other costs that are not cash or cash equivalent expenditures directly attributable to
- 30 production costs incurred in the state;
- 31 (4) amounts that are later reimbursed or reasonably anticipated to be