

## **CS HB 129(FIN)**

Department of Law response to questions raised in Senate Finance on April 11, 2013:

### **(1) Do the legislative findings misstate the court decision?**

The uncodified section includes accurate quotations from the Court's holdings.

### **(2) Will the recommended amendment in the attachment help meet the Court's ruling?**

AS 38.05.035(e)(1)(C) currently states that for a multi-phase oil and gas project, DNR must provide public notice and comment at the beginning of each phase. There is no statutory requirement for public notice of interim DNR approvals that occur in the midst of a phase. HB 129 does not alter the AS 38.05.035(e)(1)(C) statutory requirement for public notice and comment at the beginning of each phase. The bill's reference to AS 38.05.945 (the public notice statute) is to bring in those notice requirements without having to also amend AS 38.05.945.

In *REDOIL*, the Supreme Court held that the constitutional policy of making land and resources "available for maximum use consistent with the public interest" requires the State to take a continuing "hard look" at each phase, and that this continuing hard look "includ[es] analysis of cumulative impacts."

Ms. Weissler's suggested amendment goes beyond the Court's holding — which pertains to the AS 38.05.035(e)(1)(C) approvals at the beginning of each phase — and would require public notice of each plan of operations, where presently there is no statutory requirement for notice. The Court also did not specify any certain regulatory approval that must set forth a cumulative impacts analysis, only that such an analysis is required at the beginning of each phase. Ms. Weissler's amendment calls out plans of operations specifically as the approval that must be the "department[] approval" at the beginning of the phase, when there are a number of DNR approvals that otherwise satisfy AS 38.05.035(e)(1)(C) and can include the analysis to also satisfy the constitution. In addition, the amendment codifies certain aspects of plans of operations which are regulatory and contractual, but not statutory, requirements. Also, the statutory authority for DNR to require plans of operation does not come from AS 38.05.035, which is where the amendment seeks to place this new provision.