

LEGAL SERVICES

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MEMORANDUM

February 20, 2015

SUBJECT: Settlement of Oil and Gas Lease Disputes
(HB 109; Work Order No. 29-GH1126\A)

TO: Representative David Talerico
Attn: Julie Morris

FROM: Emily Nauman 
Legislative Counsel

You asked two questions related to HB 109, requiring the attorney general to make certain findings before settling claims relating to oil and gas leases. Note that it is sometimes difficult to predict the potential consequences of proposed language, especially in a bill drafted as broadly as HB 109. If you would like an opinion based on a specific set of facts, please let me know.

1. What impact will HB 109 have on negotiations over an oil and gas lease settlement?

HB 109 has the effect of limiting the authority of the attorney general to finalize a civil action related to an oil or gas lease under AS 38.05.005 - 38.05.990 (Alaska Land Act). It does this in two ways.

First, the bill requires the attorney general to make certain findings before lawfully finalizing a settlement agreement. Currently, the attorney general is given broad authority to settle actions related to oil and gas leases. AS 44.23.020(d) states "the attorney general may, subject to the power of the legislature to enact laws and make appropriations, settle actions, cases, and offenses under (b) of this section." HB 108, at proposed sec. 44.23.020(i), limits this authority by requiring the attorney general to determine that a settlement (1) is limited to issues necessary to settle the action, (2) does not include matters unrelated to the action, and (3) does not alter constitutional, statutory, or regulatory procedures required by law. In other words, in order to finalize a settlement, the attorney general must make the three above-listed findings. It is possible that the determination required by the attorney general could delay a settlement. However, the findings listed are broad and do not appear to require long term studies or detailed factual bases. Because the findings are largely within the discretion of the attorney general, I, at the moment, do not see how such determinations could cause a significant delay in a settlement agreement.

The second way the bill reduces the authority of the attorney general to settle civil actions related to oil and gas leases is by, impliedly, requiring that the settlement meet the second and third requirements of proposed sec. 44.23.020(i), that the settlement not, (2) include

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matters unrelated to the action, or (3) alter constitutional, statutory, or regulatory procedures required by law.¹

The requirement that the settlement not include actions unrelated to the action, limits the types of incentives or penalties the attorney general may bargain with. For instance, if the cause of the underlying action was breach of an oil and gas lease for failure to meet the development requirements of a lease, the attorney general *may* not be able to change or offer to change the royalty rate on that lease during the settlement, assuming the attorney general determines that the royalty amount is unrelated to the underlying action.

The requirement that the settlement does not alter constitutional, statutory, or regulatory procedures is likely largely symbolic. A settlement agreement may not, even without proposed sec. 44.23.020(i), operate as a violation of the constitution or statutory law. I'm unsure if it is possible for the attorney general to obligate the state to at least attempt to change a regulation during settlement negotiations.

Note that the scope of this bill is actually fairly narrow; it covers only oil and gas litigation and is further limited to civil actions related to oil and gas leases under AS 38.05.005 - 38.05.990 (Alaska Land Act), does not cover other types of oil and gas cases, and expressly excludes (1) settlement agreements related to an oil or gas pipeline or a products pipeline under the jurisdiction of the Regulatory Commission of Alaska or another regulatory agency, (2) matters where the attorney general appears before the Regulatory Commission of Alaska for in a public advocacy function, (3) to the compromise of a tax penalty under AS 43.05.070(a) or (b), and (4) settlements entered into by the attorney general before the bill takes effect.

2. Will the bill delay oil and gas projects?

Probably not. Oil or gas pipelines and products pipelines under the jurisdiction of the Regulatory Commission of Alaska or another regulatory agency are specifically excluded from the bill. Without a specific case in mind, it is difficult to predict the effect of this bill on projects governed by a lease. The bill has a small chance of delaying the finalization of a settlement while the attorney general makes the determinations required by proposed sec. 44.23.020(i), but there is also the possibility that removing matters unrelated to the action from the table in a settlement negotiation may narrowly focus, and thereby speed up, the settlement process.

If I may be of further assistance, please advise.

ELN:dla
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¹ The first finding required of the attorney general, that the settlement is "limited to issues necessary to settle the action," is so general it likely will not constrain, in any meaningful way, the terms under which an attorney general may settle.