ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE
March 6, 2015
1:02 p.m.

MEMBERS PRESENT

Representative Benjamin Nageak, Co-Chair
Representative David Talerico, Co-Chair
Representative Mike Hawker, Vice Chair
Representative Craig Johnson
Representative Kurt Olson
Representative Paul Seaton
Representative Andy Josephson
Representative Geran Tarr

MEMBERS ABSENT

Representative Bob Herron

COMMITTEE CALENDAR

HOUSE BILL NO. 132
"An Act relating to the support of the Alaska liquefied natural gas project by the Alaska Gasline Development Corporation."

- HEARD AND HELD

HOUSE BILL NO. 109
"An Act relating to the duties and powers of the attorney general with respect to certain settlements directly related to oil and gas leases; providing exceptions for certain tax and regulatory matters; and providing for an effective date."

- MOVED CSHB 109(RES) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 8
Urging the federal government to empower the state to protect the state's access to affordable and reliable electrical generation.

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 132
SHORT TITLE: AGDC SUPPORT OF NATURAL GAS PROJECTS

SPONSOR(s): REPRESENTATIVE(s) CHENAULT

03/02/15	(H)	READ THE FIRST TIME - REFERRALS
03/02/15	(H)	RES, L&C
03/06/15	(H)	RES AT 1:00 PM BARNES 124

BILL: HB 109
SHORT TITLE: OIL AND GAS LITIGATION SETTLEMENTS
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/13/15	(H)	READ THE FIRST TIME - REFERRALS
02/13/15	(H)	RES, L&C, JUD
03/06/15	(H)	RES AT 1:00 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE MIKE CHENAULT
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: As the sponsor, introduced HB 132.

RENA DELBRIDGE, Staff
Representative Mike Hawker
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During the hearing on HB 132, answered questions on behalf of Representative Chenault, prime sponsor.

MARY HUNTER GRAMLING, Assistant Attorney General
Oil, Gas & Mining Section
Civil Division (Juneau)
Department of Law (DOL)
Juneau, Alaska
POSITION STATEMENT: Assisted in introducing HB 109 on behalf of the administration, sponsor.

SUSAN POLLARD, Chief Assistant Attorney General
Legislation & Regulations Section
Civil Division (Juneau)
Department of Law (DOL)
Juneau, Alaska
POSITION STATEMENT: Assisted in introducing HB 109 on behalf of the administration, sponsor.

ACTION NARRATIVE

1:02:18 PM

CO-CHAIR BENJAMIN NAGEAK called the House Resources Standing Committee meeting to order at 1:02 p.m. Representatives Seaton, Johnson, Olson, Josephson, Hawker, Talerico, and Nageak were present at the call to order. Representative Tarr arrived as the meeting was in progress.

HB 132-AGDC SUPPORT OF NATURAL GAS PROJECTS

1:03:20 PM

CO-CHAIR NAGEAK announced that the first order of business is HOUSE BILL NO. 132, "An Act relating to the support of the Alaska liquefied natural gas project by the Alaska Gasline Development Corporation."

1:04:18 PM

REPRESENTATIVE MIKE CHENAULT, Alaska State Legislature, as the sponsor, introduced HB 132. He paraphrased from the following sponsor statement [original punctuation provided]:

> House Bill 132 affirms the policy direction for the Alaska Gasline Development Corporation (AGDC).
>
> The Legislature set this policy direction in 2013 when creating AGDC, and in 2014 when approving AGDC's involvement in the Alaska LNG [Liquefied Natural Gas] Project in conjunction with SB 138.
>
> HB 132 recognizes that AGDC is already engaged as a partner on behalf of the State in the Alaska LNG Project, which is the project most likely to deliver the greatest benefit to Alaskans.
>
> Because the Alaska LNG Project is most likely to deliver the greatest benefits to Alaskans, House Bill 132 ensures that AGDC maintains its commitment to this project and does not embark on a duplicative, competing project, until the future of the Alaska LNG Project is more certain. Per House Bill 132, AGDC would be free to pursue other projects at the earliest of three dates; 1) if a party to the Alaska LNG Project withdraws, 2) if the Alaska LNG Project proceeds into the Front-End Engineering and Design (FEED) phase, and 3), July 1, 2017.

The legislation further recognizes that the State is prudent to maintain its back-up plan, the ASAP [Alaska Stand Alone Pipeline] project, in case the State's partners in the Alaska LNG Project fail to commit to the next development phase, FEED. Should that occur, AGDC is poised to re-solicit gas buyers and gas sellers, and to upgrade the ASAP proposal as supported by the market.

To avoid a duplicative or competing project, the legislation prohibits use of the Instate Natural Gas Pipeline Fund to pay for work on a project that would export more gas than it would deliver instate. House Bill 132 also requires AGDC to have the written consent of a gas owner/controller before attempting to market that entity's gas to a third party.

Keys to megaproject success include the elimination of competing objectives, and the alignment of stakeholders along a single project. With the unprecedented momentum to date of the aligned Alaska LNG Project, contemplation of competing projects increases risk and uncertainty that threaten success.

This legislation ensures that AGDC retain the course set by the Legislature in creating AGDC and providing a framework for AGDC to advance the state's interests as a full participant in the Alaska LNG Project.

1:08:36 PM

REPRESENTATIVE JOSEPHSON said that in his review of the minutes for House Bill 4 [passed into law in 2013, Twenty-Eighth Alaska State Legislature], just about every hearing included reference to the Alaska Gasline Inducement Act (AGIA) and if the limits on AGIA were lifted. There was never any discussion of capping the amount that could be exported at a number equal to what would be consumed in Alaska. He asked whether this provision in HB 132 is a departure from what House Bill 4 intended.

REPRESENTATIVE CHENAULT deferred to Ms. Rena Delbridge to answer, saying she was one of the architects of House Bill 4.

RENA DELBRIDGE, Staff, Representative Mike Hawker, Alaska State Legislature, replied that House Bill 4 was specifically structured to comply with the AGIA limitations of 500 million

cubic feet per day (MMCF/day), but to also be cognizant that in the future the time would likely come at which that constraint was no longer there on the volume. Thus, in House Bill 4 under purpose, AGDC was told to pursue that 500 MMCF/day pipeline as described in AGDC's project plan, with modifications as necessary. Through testimony, "with modifications as necessary" was intended to give AGDC an opening should the AGIA limitations no longer apply to increase the volume of that in-state line. Secondly, in House Bill 4, the ASAP Project under AGDC was never contemplated as an LNG project. It was very narrowly a project to get gas to Alaskans because producers with the gas were working already on another project that at the time was a Lower 48 line, but also during that time was slowly transitioning into an LNG project. Therefore the backup plan was really for the legislature to consider the pressing needs of Alaskans in their communities in having a low cost, reliable, secure gas source and not concerned about export. While it was possible that there might be an export tenant at the end of that line, that was not part of the project.

1:11:20 PM

REPRESENTATIVE JOSEPHSON said it seems like HB 132 contemplates export, so what is being talked about is amount of export.

MS. DELBRIDGE responded HB 132 contemplates export in the sense of hope of avoiding a competing project to the Alaska LNG export project. Announcements indicate the governor desires to make that a pipeline that supports an LNG project that is not affiliated with the pipeline. To avoid creating that competing LNG project that in-state gas pipeline would be capped as to the amount of gas going through the line that could go to export.

1:12:12 PM

REPRESENTATIVE HAWKER said the dialogue behind this bill is whether it is advisable for the state to establish a state sanctioned pipeline project to compete with the Alaska LNG Project (AK LNG). The bill would put some significant constraints around [the state's] ability to compete with the Alaska LNG Project. He requested Ms. Delbridge to provide an explanation regarding the difference in the concepts behind a competing project and a backstop project.

MS. DELBRIDGE first clarified that while she is staff to Representative Hawker, she is working with Representative Chenault on HB 132. She answered that a backstop project is a

project that the legislature and state can go to in case the number one priority project that seems to deliver the greatest possible benefits fails to materialize, fails to meet milestones. It is something to turn back to in that event. A competing project is something that would likely run on parallel courses, perhaps almost in a time sensitive competition to a finish line to a point in time called the final investment decision. A competing project will compete to meet that finish line, as well as compete for resources, support, and focus. It is something that if there are competing projects, it is difficult potentially for a party such as the state that has two competing projects to fully commit to one or the other. It is of critical importance that all parties in a project be aligned and committed to following through on a given project.

REPRESENTATIVE HAWKER said HB 132 proposes to preserve the state's status quo for a certain period of time, which is that there are two projects. One would be characterized as the backstop project and the other as the main or priority project, the Alaska LNG Project. He asked Ms. Delbridge whether this is a fair characterization.

MS. DELBRIDGE agreed it is a fair characterization.

1:15:19 PM

REPRESENTATIVE HAWKER noted the state has a main project and a backstop project, but now the governor is introducing a third and competing project. He asked why the state would even want to have the backstop project to the Alaska LNG Project.

MS. DELBRIDGE replied the state backup, ASAP, is an in-state pipeline that would meet the needs of Alaskans. It would be able to meet supply and demand within Alaska and take care of things like getting reliable energy to Alaska's communities and industrial projects, such as large-scale mines that are looking for reasonably priced energy to continue with their planning operations, and providing potentially lower-cost energy to much of the state's population along the Railbelt and the pipeline route. Maintaining that backup option is wanted to have it ready to bring back on the table and ready to go. There are no guarantees that the Alaska LNG Project is going to be built, but everything is looking very favorable. A few weeks ago this committee heard testimony from the Alaska LNG Project sponsor group that talked about how optimistic the group is that things are on the right track and proceeding as needed. However, there are market realities and ensuring that the Alaska LNG Project

actually pencils out on a commercial basis once all of the engineering work is done. It must be made sure that buyers are lined up at a price that is acceptable to the project. So, it is good to preserve an option for Alaskans in case the Alaska LNG Project doesn't materialize commercially for the state and the producers.

1:17:21 PM

REPRESENTATIVE OLSON asked whether AGDC can statutorily do the liquefaction component.

MS. DELBRIDGE responded AGDC has the ability to participate in the liquefaction facility in conjunction with an Alaska natural gas pipeline project, an Alaska liquefied natural gas project. Right now AGDC's ability to do liquefaction pertains directly to a project that brings in the Prudhoe Bay and the Point Thomson gas; it was loosely defined as the Alaska LNG Project without having a proper project name to reference to. There is nothing that statutorily prohibits AGDC from participating in that for the Alaska LNG Project.

REPRESENTATIVE OLSON asked whether this would also be the case with the governor's proposed new plan.

MS. DELBRIDGE answered that, to her knowledge, statements made to date indicate that the administration doesn't intend to have AGDC participate in liquefaction in the new project. It is one of the many details that remains to be seen. She advised that Legislative Legal and Research Services should be consulted as to whether AGDC could do that in conjunction with an in-state natural gas pipeline.

REPRESENTATIVE OLSON said this begs the question then of who.

MS. DELBRIDGE replied she believes that statements made to date by the administration have indicated that a third party separate from the project would. Theoretically that could be anyone having title to the gas at the end of a pipeline and that also has the financial wherewithal to build, maintain, and operate a liquefaction facility. Presumably that party would then liquefy the gas, store it, and ship it to the party's end-user clients where they would get money for the LNG.

1:19:20 PM

REPRESENTATIVE SEATON noted that in its legislative updates AGDC has said there is no longer the constraint of 500 MMCF/day so the pipeline that AGDC is developing is for 1.6 billion cubic feet per day (BCF/day) through the existing pipe with the existing structure, which could be expanded to 2.5 BCF/day by changing the pipe material. He concluded that this backstop pipeline of 1.6 BCF/day means there would have to be export because there is not that much in-state usage. He asked whether HB 132 would therefore constrain AGDC from doing any work on this larger sized backstop project.

MS. DELBRIDGE responded the sponsors don't believe it does because currently AGDC is not pursuing the ASAP Project as part of an LNG project; AGDC is still working on engineering and design to take a project to an open season at which AGDC would determine who wants to sell gas and who wants to buy gas. At that point it would be known potentially if there is a customer for export that was larger than half the volume of the line. However, the legislature's intent with Senate Bill 138 was to encourage AGDC to slow down some of the work on the backup plan because, in passing Senate Bill 138, the legislature was essentially endorsing the state's participation as a priority in the Alaska LNG Project. So, yes, theoretically the line that AGDC is engineering without the AGIA limitations could carry a much larger volume; as well, it could carry the smaller volume. That volume ultimately would depend on who is there to buy the gas and who is there to sell the gas and at that point AGDC would know if a customer was intending it for export. It would not feed an export facility, though.

1:22:24 PM

REPRESENTATIVE SEATON expressed his concern that the wording in HB 132 could possibly constrain AGDC's work going forward on the current project should AGDC find that 500 MMCF/day is uneconomic and must therefore go to a project size of 1.6 or 2.2 BCF/day. Based on AGDC's reports to the legislature, he said he thinks the bill would prevent work on the current AGDC project. He urged the wording be looked at carefully to avoid any unintended consequences.

MS. DELBRIDGE answered that the sponsors will re-evaluate the wording. She offered her belief that from the sponsors' position part of this becomes a judgement call for the legislature as to whether it wants AGDC to proceed with another project that would involve liquefaction until it is known whether The Alaska LNG Project is going forward. That is why

that majority for export language prohibiting an increase in the size would go away at those points in time coming up when it is known what the future of the Alaska LNG Project will likely be. At that point in time the legislature would be able to have AGDC go ahead and upsize the backup plan to however big the market could support.

1:24:27 PM

REPRESENTATIVE HAWKER said Representative Seaton's question segues into his next concern as the committee talks about what AGDC was at the end of the last legislature and what this new third option is. He requested Ms. Delbridge to address what is known by the sponsors about this third and competing option.

MS. DELBRIDGE replied very little is known about this third and competing option announced [by Governor Walker]. To date, [the governor's] press releases are where things have been relayed. An opinion piece laid out an initial concept, followed by a press conference, and that is where the sponsors gleaned these details. Generally speaking it sounds like the third option would be taking the in-state ASAP line and increasing its size to one that would feed an independent non-affiliated export facility, thus creating an LNG project in which the state would only be involved in the midstream - the gas treatment processing and the pipeline - with third party separate ownership of the LNG export facility. The intent was clearly stated [by the governor] that these two would both proceed at the same time on parallel tracks and that whichever project is first to produce a solid plan and at conditions acceptable to the state will get the state's full support. Responding to Representative Hawker, she confirmed that this is a quote from the governor's opinion piece, and added that the governor gave a little more detail in some press conferences. It is unknown exactly how long the state would pursue both these competing trajectories, she said. At one point it was mentioned it would probably be until one reaches a final investment decision, which means it would go through FEED and involve a lot of permitting and people with gas committing gas to the projects.

1:27:04 PM

REPRESENTATIVE JOHNSON related he heard the governor say that he is going to wall off the two projects. However, he noted, part of the reason [the legislature] set things up the way they are is so that information could be shared and not be working competitively, and whoever ended up with the best deal would

share the information. He inquired whether costs would now be duplicated if the state goes through with competing lines.

MS. DELBRIDGE responded AGDC is the entity to ask about cost estimates given it is the most knowledgeable about what has been done to date that could be parlayed into a larger project feeding an LNG facility. She said the legislature has invested nearly $400 million in getting AGDC from its initial scoping and design concepts surrounding the 500 MMCB/day line. That money was intended to get AGDC just to open season where the commercial support needed for the project would be firmed up. Some level of redesign and potentially some reengineering would be needed to expand the amount of gas going through AGDC's line. If the line is 36 or 42 inches, additional compressors may be needed. The original ASAP line had only one compressor station. There may also need to be some reengineering on the gas treatment facility on the North Slope, potentially to handle LNG-grade instead of utility-grade gas. There might be some permitting and right-of-way complications if looking at additional compressors and land disturbance. Therefore, it is difficult to put a cost estimate on it. She surmised, however, that AGDC is working on that now.

1:29:11 PM

REPRESENTATIVE JOHNSON said he is not looking for a number as much as he is looking for the ability to share what has already been done. If the new project is walled off, he presumed, new information would have to be created that may already be had in-house. He asked whether the new project would have to start from scratch.

MS. DELBRIDGE offered her belief that quite a bit of what AGDC has accumulated, acquired, and built to date for ASAP could be used as a basis for amending ASAP into something larger. That said, the complications come related to the relationship between ASAP and the Alaska LNG Project where AGDC is concerned. When passing Senate Bill 138 last year the legislature was very careful that in having the state pursue partnership in the Alaska LNG Project that the state maintaining its backup plan would not be wasting money, duplicating, being redundant in resources, or growing government that way. Quite a few agreements were reached between the Alaska LNG Project and AGDC that would essentially govern what kind of information they can share with each other and on what terms. Some of AGDC's spending has been for work that would have to be done for the

ASAP Project but is also needed for the Alaska LNG Project, so there is some sharing and reimbursement related to that.

1:31:00 PM

REPRESENTATIVE JOSEPHSON, in regard to redundancy and walling off, said it seems like déjà vu from when the legislature previously looked at the same kinds of questions; for example, sharing of information, redundancy, and conflict between ASAP and the Alaska LNG Project.

MS. DELBRIDGE answered that legislators certainly had quite a few conversations in this committee and others related to that exact matter. The difference at that point was that the state was maintaining ASAP as a backup project that would not be in direct competition with the Alaska LNG Project.

REPRESENTATIVE JOSEPHSON noted that as recently as this year there has been an effort in committees to solicit testimony from AGDC that it is indeed marching forward with House Bill 4 and that that project is going just as strong as it otherwise would have had there not been Senate Bill 138. He requested Ms. Delbridge to respond in this regard.

MS. DELBRIDGE replied that over the past several months AGDC has slowed some spending on the ASAP backup plan in response to a requirement in an Administrative Order issued by the governor, but AGDC had already started to do so prior to that. The project is there and going well, but at this point it is not something AGDC is proceeding with to an open season, the next phase of that project. This is in part because the legislature directed AGDC to pursue the Alaska LNG Project as a primary objective until it is found out how that project went. She suggested AGDC be asked about what it is moving forward and at what rate.

1:33:16 PM

REPRESENTATIVE JOSEPHSON noted that some legislators think this isn't a third project, but rather the first project that's morphed with the lapsing of the AGIA limitation. He inquired whether it is potentially true that it would be in the state's best interest to have an alternative project for negotiating leverage when the producers seek concessions from the state later this year.

MS. DELBRIDGE responded that is potentially true in the sense that that is up to individuals and what they perceive as the state's competition and with whom the state will need negotiating leverage. The sponsors have thought at length about who the state's partners would be in an alternative LNG-geared project, particularly in light of the governor's comments that the state would need to bring in market as equity participants in the project. There is a school of thought that says the state is going to be negotiating against the producers on the Alaska LNG Project for terms - yes. There is also the school of thought that if the state brings into the project the people who it will be selling gas to and wanting to negotiate a good deal with, those people would then know the state's costs, goals, and priorities, which would basically be pulling back the curtains and may not be the course of action that is most prudent either. A lot of gas buyers, particularly in Asia and Japan, have been buying into LNG projects all around the world because it lets them understand the project better and lets them feel like they can negotiate greater reliability of supply as well as a better price for the gas that they are buying. There is also the question of who the state's competition really is in that context. The sponsors evaluated some of the governor's comments and realized it may not really be Exxon, BP, and Conoco that the state is competing with on an LNG project level, as in whether it is the British Columbia project that goes first or the Alaska project that goes first. It very well may be those buyers who have actually greater financial interest in the West Coast LNG projects than the producer companies in Alaska do. Of 18 projects currently being proposed for getting gas off of Western Canada, BP and Conoco have no interest in any of them, to her knowledge, and Exxon has interest in one project that is generally considered far down the list of the top three likely projects to move forward. The parties that do have financial ownership interest in those projects that are likely to move forward off the West Coast are actually some of the Japanese utility buyers and also some of the trading groups like Mitsubishi. So, there is some concern that the state might want to re-evaluate who it considers is its competition.

1:36:39 PM

REPRESENTATIVE HAWKER said a very clear statement was heard from the governor that it is the state's producer partners that the state would be competing with on the West Coast. He said he doesn't think that holds up when the facts are examined. He brought attention to a large notebook containing the minutes for the committee's hearings last year on Senate Bill 138, saying

[the size of the notebook] shows how much time was spent going over in detail all of the various aspects of where gas was going to come from, how it was going to come, and what the financial modeling would be. While going through the minutes, he said, it struck him that the state's North Slope gas has been committed to the Alaska LNG Project. He asked Ms. Delbridge whether that same gas can be committed to a competing project. Additionally, he pointed out, the U.S. Department of Energy (DOE) grants export license permits for LNG facilities. He further asked whether the DOE will allow the state to permit simultaneously two facilities. He also asked whether the state can really compete if it gets to the question of viability, or whether the state is just throwing good money after bad.

MS. DELBRIDGE answered she will take the third question as rhetorical. Regarding whether the state can commit North Slope gas to a competing project if it has already been committed to the Alaska LNG Project, she said the legislature probably cannot commit that gas to any project if it is gas that has been leased under contract to the North Slope producers; that will be up to the producers to commit to a project. She advised that the legislature will have to ask the producers as to what project phase they feel they will have firmly committed their gas to the project. She offered her understanding that if the producers enter into a FEED decision they are committing their gas to this project. The producers are working on marketing agreements and are getting ready to sign some serious long-term agreements that have implications. If their gas is committed to the Alaska LNG Project the legislature is left with the state's royalty gas, if the state in fact chooses to take royalty as gas. Given the royalty gas is 12-16 percent, she said she doesn't know whether that is enough to support another pipeline. As far as whether the DOE would grant two export licenses simultaneously, she said the Alaska LNG Project has applied to DOE for an export license. Some standards have to be met for that: the applicant must have gas that is being committed to the project; the project must have some certainty of happening in the eyes of DOE; and there needs to be an end site, land, for the LNG facility. Because export licenses require things like gas, she said she doesn't know that the legislature would be able to have another export license for a different project; that would be an issue for the DOE at some point.

1:40:46 PM

REPRESENTATIVE SEATON, in regard to having gas to sell, drew attention to the bill, page 3, lines 23-24, which state: "The

corporation may not market gas owned or controlled by an entity other than itself without express written consent from that entity." He inquired whether this language means the state has no gas because it hasn't committed to taking gas in-kind, and that the state cannot go to open season or solicit market sales.

MS. DELBRIDGE replied this language is in the bill to provide an important distinction. Under the ASAP and Alaska LNG projects it has never been conceived that AGDC ever takes control or ownership of the producers' gas or the state's gas. During the committee's discussions of Senate Bill 138, the Department of Natural Resources (DNR) and the prior administration were adamant that full control over the state's gas was retained by DNR; DNR is the resource manager and is responsible. So DNR, in conjunction with the commissioner of the Department of Revenue (DOR), would be making the decisions about what to do, how to manage, and how to sell or dispose of the state's royalty gas.

1:42:14 PM

REPRESENTATIVE SEATON understood Ms. Delbridge to be saying that the way the bill is written the state can go ahead and have an open season and market a project's gas as long as it is not AGDC marketing gas because AGDC will never own any gas.

MS. DELBRIDGE responded there are two different paths forward on that for the two different projects. Only the ASAP, the in-state pipeline, requires an open season. The Alaska LNG Project is viewed as a federally regulated feeder pipeline straight to an LNG facility. The committee heard extensive testimony about keeping the supply chain intact from production to treatment to pipe to facility, and the need to ensure there are no breaks in that chain. So, as an LNG project, the Alaska LNG Project has followed this format. For the ASAP Project, AGDC, with a transportation service company, would put forth a proposal via an open season to determine the demand for transportation service and who wants to move the gas. It could be the gas holder on the North Slope that wants to move the gas and then sell it to someone. Or it could be that someone wants to buy the gas on the North Slope from a producer and then pay AGDC to move it. So, AGDC would not really have a marketing role in that context, AGDC would simply be providing a transportation service. In the Alaska LNG Project, the state will have a significant amount of gas that it needs to do something with if it takes its royalty gas as gas, and particularly if it chooses to take its tax as gas. Senate Bill 138 specifically leaves that authority within DNR in consultation with DOR. There has

always been the possibility and the option for DNR and DOR to essentially contract with AGDC, which could then create a marketing subsidiary to market the state's gas. That said, nobody has stopped the state from marketing its gas. If the state believes it has gas because it foresees a royalty-in-kind decision or it assumes the Alaska LNG Project is moving forward and so the state will also have tax gas, the state can start marketing that gas today. To date the state has three memorandums of understanding (MOUs) related to marketing. The administration signed an agreement with the Japan Bank of International Cooperation (JBIC), a financing entity for utilities in Japan, to keep an open dialogue on what Alaska is doing in terms of an LNG project and what the opportunities may be. The former administration also signed an MOU with the Japanese government's Ministry of Economy, Trade and Industry (METI) to do the same thing. This administration signed a cooperative agreement with Resources Energy, Inc. (REI), a company that is looking to link Alaska's gas resource with Japanese buyers. So, while those dialogues have been opened, they only move forward as quickly as certainty is built in the project. Not until the state is prepared to actually commit to selling something through a project it is committed to building is it able to get buyers to commit to buying on certain terms.

1:46:00 PM

REPRESENTATIVE SEATON said those agreements were made before this would be a bill. He understood that if HB 132 was in place it would limit AGDC from being the marketer and the state could continue to market through the DOR and DNR.

MS. DELBRIDGE answered yes, unless AGDC receives the written consent of DNR and DOR to go market the state's gas. She said DNR currently has a one-year contract with consultant Audie Setters, an industry marketing expert, to help the state develop the infrastructure that will guide the state in how to market its gas as LNG to get the best possible returns to the state.

1:47:18 PM

REPRESENTATIVE OLSON asked why it is in Alaska's best interest to be first in the market on the state's gas rather than waiting for the producers to do it. That way, he said, instead of looking for somebody wanting to buy the gas at the cheapest price the state would have somebody marketing the gas that wants to get the highest price for it, which is in theirs as well as the state's best interest.

MS. DELBRIDGE replied the committee has heard from multiple experts talking about those kinds of consideration. There is a lot that is going to go into marketing decisions, but there is a lot built into Senate Bill 138 and the Heads of Agreement (HOA) that it triggered that give the state a lot of options. Under Representative Tarr's amendment to Senate Bill 138 last year, if the state agrees to modify a lease and take its royalty in-kind and adjust sliding scales, that producer, that leaseholder, must have agreed that it will take the state's share of gas from that lease and make available to the state the disposal of that gas on the same terms as the producer. So, a lot of neat things are built in, but Representative Olson is correct about being careful on how the marketing is phased in, time-wise, with the status of the project.

1:49:02 PM

REPRESENTATIVE HAWKER requested Ms. Delbridge to provide the sponsors' position in regard to criticism that HB 132 would take away the state's negotiating powers and is unconstitutional.

MS. DELBRIDGE responded the sponsors don't understand how HB 132 would diminish the state's negotiating powers. Is the state negotiating with the producers and so it needs a competing project? It is difficult to fully understand what is intended when people are saying that. Additional feedback has been solicited to try to understand this new approach so that the sponsors can have greater clarity on that. If it's negotiating powers in relation to being able to market the state's gas or someone else's gas, then, yes, the bill makes sure that AGDC can only market gas that it has permission to market. The sponsors don't believe that that curtails the state's powers to negotiate terms with a project. As far as being unconstitutional, she understood there is concern that HB 132 would prohibit Alaska from developing its resources for the greatest benefit of Alaskans. She said the bill directs AGDC to continue on the two courses that the legislature has already seen fit to commit the state to after hours of testimony and process. The number one purpose of AGDC in pursuing any project is to do so in a manner that generates the greatest possible benefits for Alaskans. It further encourages AGDC to do projects that bring economic benefit and that maximize the value of the state's gas back to the treasury.

1:51:32 PM

REPRESENTATIVE HAWKER said the bill is trying to find clarity and interpretation. Earlier this week the sponsors heard horrific criticisms of HB 132, he related. After the administration announced its competing project the sponsors of the bill approached the administration and requested in writing some clarity on these positions so this sort of confusion could be avoided. However, he continued, the response to this request did not provide any clarity.

REPRESENTATIVE CHENAULT confirmed that on February 20, 2015, the sponsors sent a letter to Governor Walker in which a number of questions were asked in regard to the project. The March 2, 2015, response did not answer any of the questions. He said the committee has the ability to put these letters on the record.

MS. DELBRIDGE stated she will provide the aforementioned letters to the committee after today's hearing.

1:53:29 PM

REPRESENTATIVE TARR addressed the date of July 1, 2017, included in the bill, saying she is concerned with including a hard date in case there is any slippage in the timeline.

MS. DELBRIDGE answered the dates are in there for a reason and the sponsors struggled with what is the right date and how long to wait before moving forward on the state's backup. She explained that by July 1, 2017, it will be known what is happening with the Alaska LNG Project and whether there is any dissolution. Provisions within the agreements under which the parties are working today allow for how to dissolve and what to do with assets developed by the project. Then the state could move forward. If the parties enter the FEED decision, which is expected as early as first quarter 2016, then it is known what is happening with the Alaska LNG Project and it seems reasonable that AGDC's options going forward would not be curtailed at that point; the horse will have been picked. July 1, 2017, is the ultimate backstop in case things get drawn out. If time is needed beyond first quarter 2016, the agreements give the parties up to a year to iron out any lingering issues that are going to be the deciding factor for them to invest into FEED. During that time, finalizing or bringing to the next level a preliminary marketing agreement may be wanted so it is known what is needed to make that next commitment. Therefore that sounded like a reasonable time period that went past the second quarter 2017 when that drop deadline seems to be.

REPRESENTATIVE TARR recalled that some advance funding was given and July 1, 2017, would be the 2018 fiscal year (FY). She asked whether that date coincides with when the previously allocated funds would run out.

MS. DELBRIDGE replied she does not know when the Alaska LNG Project funding runs out. She offered to get that information to the committee. For the ASAP Project, she said the appropriations simply went to the in-state natural gas pipeline fund and AGDC can draw on that fund as needed, aside from the current Administrative Order that curtails some of that.

1:57:25 PM

REPRESENTATIVE JOHNSON related that the question he most gets asked is a competing line versus a backstop. The administration has proposed a competing project, he said, while his conception of the ASAP Project is that it is a backup plan. He requested Ms. Delbridge to discuss the difference between a competitive project and a backstop project.

MS. DELBRIDGE responded:

> Your backstop is something where you're essentially saying if X happens or if X does not happen, then I have Y to move forward on. It's an either or, you're looking for one to be successful or not, for some sort of point to be reached before you go to your fallback. The fallback in this case was conceived as strictly a line that gets gas to Alaskans. It had to have an open season, which means it would be financed on the backs of the long-term commitments from sellers and buyers and shippers of gas rather than on a state subsidy or a state equity infusion. A competing project ... is something that you're looking to move forward on parallel tracks. That you're looking to see whose [project] you can push forward farthest. You're looking for advantage, you're looking to see which one turns up something optimal to you in the end. What that is defined as right now, as in what ends up being the "best project," we don't really know. There is certainly concern from the sponsors that the state competing with this other private sector project that the state is a partner in, there is ... an understanding that we've invested state resources in advancing one project and wanting to protect the progress of that project in that context

and also protect the value of those state resources that have been invested in it to date. Competing could deter from that in some ways, in the sponsors' eyes.

REPRESENTATIVE JOHNSON noted the state is partners in the Alaska LNG Project.

MS. DELBRIDGE said the state is a 25 percent partner from the gas treatment plant (GTP) through the pipeline midstream all the way to the liquefaction, with TransCanada as the state's agent in the midstream.

REPRESENTATIVE JOHNSON maintained what the governor is proposing is that the state is competing against itself.

MS. DELBRIDGE stated, "In a partial project ... that's the way that it's been portrayed."

2:00:20 PM

REPRESENTATIVE HAWKER said the state has equity in the Alaska LNG Project. He asked whether the statement that the state has a minority position in the Alaska LNG Project is an accurate statement.

MS. DELBRIDGE answered the state is a full 25 percent owner with three other 25 percent owners. The only way to conceive of the state as a minority partner is to lump together as one entity the other three partners, Exxon, BP, and Conoco. Those familiar with the industry understand that those three companies have very divergent interests and don't always agree on things and are not acting as one entity in this project, but as three very distinct and separate entities, some absolutely with their own unique circumstances in the Alaska LNG Project related to where gas comes from when.

REPRESENTATIVE HAWKER suspected that collusion by those three entities would involve a certain amount of fair trade concerns and anti-competitiveness.

MS. DELBRIDGE replied she imagines so, particularly when it comes to the interaction with the marketplace.

2:01:51 PM

REPRESENTATIVE HAWKER said that under the Alaska LNG Project the state has 25 percent in the GTP, the pipeline, and the liquefaction facility. As best as can be understood, the competing project concept is to have the GTP up north, the pipe, and then let a third party own all of the LNG facilities. Referring to last year's arguments in favor of the Alaska LNG Project, he noted that an LNG facility is where very low-value gas is converted to high-value LNG. Even if the state were to embark on a competing project, he continued, the question is why the state would give up the component of the project that makes the most money.

MS. DELBRIDGE replied that is the crux of which the sponsors are having a difficult time trying to figure out. It was very clear through Senate Bill 138 testimony that that liquefaction facility and the state's participation as a 25 percent owner commensurate with the amount of gas the state was able to move in this project of its own was truly the place to increase and build on the value of the state's gas. To provide that gas to someone else to do from there would be the state potentially not maximizing the value. Because so many details are missing [about the competing project], it is difficult to make absolute statements in that context. The third party ownership coupled with the concerns of bringing market buyers in as equity owners in the entire GTP and pipeline and the discussion of potentially selling them part of the state's gas share is going to have implications on what the state ultimately reaps from its gas from a project.

2:04:16 PM

CO-CHAIR TALERICO remarked that at some juncture the state will get to a level where it cannot try to sell the same gas through three different projects. There needs to be a clear path to move forward, he said. He surmised there is a big advantage to people that already have a vested interest and substantial investment to be part of a partnership, rather than to pursue someone that doesn't have that vested interest at this point.

MS. DELBRIDGE responded the sponsors believe that is correct in that context. Senate Bill 138 provided the structure for the state's participation in the Alaska LNG Project. The state was able to work together with the companies that have a vested interest in working long term in Alaska in a framework that allowed everyone, through a lot of negotiation, to get what they need out of things with the mutual goal of getting Alaska's gas into market and having returns to both the companies and the

state. The alternative is to partner with people who have money to pay for the infrastructure and want to buy gas or LNG, but their tie to Alaska would not be necessarily that long-term vested interest in additional North Slope development and leaseholds except for through their current participation in the project.

2:06:24 PM

REPRESENTATIVE JOSEPHSON stated that if he had the Senate Bill 138 vote before him again he would again vote yes and he would vote yes tomorrow as well. He recalled that enalytica, the consulting firm hired by the legislature for its expertise, has said many times that half of these projects will fail. He also noted that yesterday's lead article in Larry Persily's daily download of worldwide LNG activity stated that British Columbia will not be exporting LNG for 40 years because of various problems. He inquired as to what to tell his constituents if they say the state isn't creating a bonafide alternative as allowed by House Bill 4 when it freed the state from AGIA, and that the state is relying on something and its only fallback is 500 MMCF/day, which gets the state closer to a state income tax or a state sales tax because the state must have the revenue shown by enalytica and DOR, which is somewhere over $3 billion.

MS. DELBRIDGE replied that Representative Josephson will answer his constituents as he sees fit with what he believes from all of the body of evidence before him and Mr. Persily's oil and gas briefings. The sponsors' concern is that if industry is unable to make the Alaska LNG Project commercially viable, then the state probably isn't going to be able to either. If the producers cannot make it economic and commercial and do this project, the state could consider it, but the state may end up in a difficult position. If the state wants to do this so badly, what gives would the state have to make to make this project happen that diminish the value that the state gets back from it? That's why the backup plan looked to an in-state-only line. People in Alaska need lower cost reliable energy that will also let economies grow and industry start. That is why to date the state hasn't taken ASAP into an LNG project backup type scheme. If the Alaska LNG Project doesn't work economically and commercially in its current component, might industry and the partners decide that they need to downsize it somewhat? Maybe. Might they decide that the market simply isn't there at the price required to pay for the $45-$65 billion in infrastructure to get the gas to the markets? It's possible. And at that point it would be hard to imagine a scenario in which the state

could change those dynamics in a meaningful way without giving up the value that the state needs in return.

2:09:34 PM

REPRESENTATIVE OLSON said he thinks the small diameter line would be reliable, but asked whether it would be affordable.

MS. DELBRIDGE responded it depends on who is using the gas from that line, what they are paying now, and what they expect to be paying in the future. The ASAP line started truly coming together when House Bill 369 passed in 2010. That bill told this group to study an in-state line to see if it could be done economically. Fairbanks [still] has tremendously high prices and at the time Southcentral was looking at some real supply concerns, to the point that utilities were in a working group to talk about how to import LNG to Southcentral. At the time the direction to this team under House Bill 369 was essentially that it has to be economic. Can it beat the anticipated cost of importing LNG to Southcentral Alaska? That estimated cost in 2011 was $16 or more at the burner tip; the cost that customers of ENSTAR Natural Gas Company were paying was around $9. This line could get gas to Southcentral at $9-$11 depending on the engineering features, which seemed to be in the realm of economic. The benefits to Fairbanks were potentially more significant given their burner tip cost was around $23. She said AGDC has upgraded some of those estimates and while she doesn't know what the current estimates are she thinks the price of gas in that small line has increased a little bit over time, which is to be expected because of the several hundred million dollars a year of inflation on project costs for every year waited. She offered her belief that the legislature was convinced in passing House Bill 4 that a small line would never be built unless it was economic because buyers and sellers were needed to make the line happen.

2:12:09 PM

REPRESENTATIVE SEATON recalled that when House Bill 138 was before the committee he proposed an amendment that would have provided the state with access to all the information that was developed should the Alaska LNG Project not proceed on time. He said he offered the amendment because he was worried that if the producers decided not to go forward and yet never made a cancellation decision, the state would be stopped and unable to go forward. While the administration then negotiated to get that same thing, it negotiated that any party has access to all

the information for free if that goes forward. That's been one of the problems with AGDC working on information that would be available to the Alaska LNG Project - AGDC is 100 percent state funded and yet the information would all flow to the Alaska LNG Project. He surmised that what is being done now is that AGDC is only doing those things for the project for which it is under contract and being reimbursed such that the state is only putting in its 25 percent of the costs. He requested Ms. Delbridge to address why it is being said it would be redundant work if any work is done "on planning AGDC."

MS. DELBRIDGE answered AGDC is currently doing some mutually beneficial work for which it is being reimbursed by the Alaska LNG Project. Less than $10 million of work is going on that way and is generally geared toward gathering data along the right-of-way that is necessary to support the filings with the Federal Energy Regulatory Commission (FERC). The sponsors' current concern with redundancy is their fear that if ASAP becomes something other than an in-state backstop, and thus somewhat of a competing project, the state's partners in the Alaska LNG Project may require additional firewalls and regulations governing what data can be shared, how, and on what terms to avoid their data on the Alaska LNG Project paid for by them being used by the state via AGDC on a competing project. So, if what is being developed via the Alaska LNG Project cannot be used by the state, even though the state is paying for that as a partner, the state would be forced to also develop it on its own if the state is going to be using it for a competing project, unless there is some agreement that can be hammered out between AGDC and the Alaska LNG Project partners allowing AGDC to work on a competing project.

2:15:35 PM

REPRESENTATIVE SEATON brought attention to page 2, lines 30-31, of the bill which state that the corporation may not plan or take any step to develop an in-state gas pipeline that intends to export more than 50 percent of the gas. He understood Ms. Delbridge to be saying that AGDC could still work on the current pipeline of 1.6 BCF/day because that pipeline according to AGDC is uneconomic without export of most of that volume. He asked whether it is being said that [legislators] will kind of hide from this and work will continue on that pipeline pretending it is somehow economic if none of the gas is exported.

MS. DELBRIDGE offered her belief that AGDC has all along said export or some other large-scale industrial end anchor. Export

of LNG out of Cook Inlet is an obvious answer as an end anchor, but other things could be significant anchors, such as customers like a large mining operation or the reopening of Agrium. She said [the sponsors] will want to follow up on the concern with AGDC and with attorneys because the sponsors' intent is that ASAP, an in-state line as big as mandated by supply and demand, is still on the back burner.

2:17:31 PM

REPRESENTATIVE JOHNSON recalled the governor saying in the press conferences that the market came to Alaska in 2012. He said he would like some clarity on why the market came to Alaska in 2012 but a pipeline isn't being built.

MS. DELBRIDGE replied she will provide a brief overview, but noted there is a limit as to what is publically available about that event. She said TransCanada was the state's licensee under AGIA and per the statute held an open season in 2010 that was ultimately unsuccessful. According to TransCanada's Tony Palmer there were significant, but not sufficient, bids to move forward. Under AGIA, TransCanada was required, up to a certain point in the project process, to hold a re-solicitation of the market every two years. A formal open season wasn't required, but TransCanada had to open a nonbinding window where people could express interest. So, in 2012 TransCanada held one of those solicitations of interest. At the same time, however, plans were already kind of shifting to an LNG option. In late 2011 the former governor asked the parties - TransCanada, Exxon, BP, and Conoco - to start working together and to look at an LNG option. So, when TransCanada held that 2012 solicitation of interest, it put out two options in its advertising all over the world. One asked about interest in a Lower 48 pipeline, which was supported by at least three years of Exxon's and TransCanada's work; it had a tariff, route design, and volume. The other asked about interest in an LNG export project in Alaska; it had no tariff, no design, and no volume. She related that she heard from TransCanada that the Lower 48 option had no more interest, but there was some market interest from the producers and from potential buyers in looking at an LNG alternative. Governor Walker has said that he, working through the Alaska Gasline Port Authority (AGPA), submitted a letter, presumably representing clients in the marketplace, that had interest in a certain level of capacity should TransCanada go with that LNG line. She offered her belief that to date that letter has never been released and is confidential and therefore it is unknown who the players were, how formal of an agreement

they were interested in entering into, and the volumes, terms, and price. She understood that outside of what was involved in that AGPA letter, there were some others that floated interest but said they wanted to be involved but didn't have gas and that to get involved they would need to find a gas supply.

2:21:41 PM

REPRESENTATIVE TARR noted that the state is a partner in the Alaska LNG Project, that ASAP is different, and that this third option is being described as the merchant model and is bringing in the buyers to help with the financing. However, the third option, she said, is a bit different than what Ms. Delbridge was talking about in regard to pulling back the curtains, but it may have some of the same challenges in that financing mechanism. She requested Ms. Delbridge to compare the financing mechanism of the third option to the other two options and the strengths and weaknesses among the three.

MS. DELBRIDGE said she will briefly discuss the three different options, but for the relative strengths and weaknesses she must defer to expert analysts. She said the Alaska LNG Project model, with four owners and four pieces of pipe so to speak, would each be generally able to finance their share of the project as the owners individually saw fit providing they were bringing to the project what was needed. As currently contemplated, the owners of the gas would own a slice of the project commensurate with the amount of gas that each planned to ship in it. In the ASAP Project, AGDC was strictly providing a transportation option, like a railroad that provides shipping for customers. In that case AGDC would be able to sign on shippers in long-term firm commitments promising to pay for that pipeline space whether or not they shipped, and then AGDC would be able to take that to the market and finance based on those long-term commitments. Regarding the third concept, she said not much is yet known. What has been heard is that [the state] would bring in the market for equity in the project and also sell them gas; the parties would be brought in and would own a piece, similar to the Alaska LNG Project where Exxon, BP, Conoco, and the state are owning a piece of the project. In a way the state is doing that right now with TransCanada on the midstream in the Alaska LNG Project - Alaska is giving up a little piece of its ownership in exchange for something provided. If Mitsubishi was brought in, for example, an ownership percentage would be given up in exchange for Mitsubishi providing additional capital for that piece of the project. She said there are different levels around the world

for most projects. Utilities are buying what she has heard described as "slivers" of ownership, just enough to be part of a project and understand what is going on, not a voting share. There are instances where utility consortiums, Mitsubishi, or co-ventures have bought more than just slivers, maybe 16 percent or higher, and in those cases she said she thinks the terms of each individual deal would disclose how much of an actual working partner they end up being.

2:25:13 PM

REPRESENTATIVE TARR said that raises a challenge in that the state cannot force the producers to sell their gas and so the state would be limited to its roughly 25 percent share. She inquired whether that has enough potential given there would be many fewer slivers to sell under that and how the state might force a situation that would make that other gas available for sale. She said she cannot picture how the alignment would work in terms of getting enough gas to have a project.

MS. DELBRIDGE replied she thinks the sponsors would agree with aforementioned. In particular, the gas must have been committed to the project in order to have the sellers involved in contracts that allow any individual owner to provide the capital and the financing and everything else that goes into making a project happen. The state's share on its own is not even 25 percent unless industry elects to pay its tax as gas for certain leases, so the state could have as little as half of that at its disposal. The sponsors agree it would be difficult to support another project based on only the state's share of gas.

2:26:50 PM

REPRESENTATIVE OLSON asked whether he heard Ms. Delbridge correctly that the results of the responses to the AGPA open season were never released to the public.

MS. DELBRIDGE explained it was a TransCanada solicitation of interest in which Governor Walker, through AGPA in his capacity as AGPA's counsel, she believes, submitted a letter voicing interest. To her knowledge, that actual letter has not been made available.

REPRESENTATIVE OLSON inquired whether the committee could get a copy of this letter, given this period of transparency.

MS. DELBRIDGE answered that the sponsors or the committee can make that request.

REPRESENTATIVE CHENAULT stated the committee co-chair can request a copy and, if received, can distribute it to members.

CO-CHAIR NAGEAK directed staff to request the information.

REPRESENTATIVE JOHNSON commented that the committee could save itself a lot of time if the administration is in possession of a letter that would finance the pipeline. He said he would like to see the letter and whether there is a market.

2:29:21 PM

CO-CHAIR NAGEAK held over HB 132.

The committee took an at-ease from 2:29 p.m. to 2:31 p.m.

HB 109-OIL AND GAS LITIGATION SETTLEMENTS

2:31:41 PM

CO-CHAIR NAGEAK announced that the next order of business is HOUSE BILL NO. 109, "An Act relating to the duties and powers of the attorney general with respect to certain settlements directly related to oil and gas leases; providing exceptions for certain tax and regulatory matters; and providing for an effective date."

2:31:52 PM

MARY HUNTER GRAMLING, Assistant Attorney General, Oil, Gas & Mining Section, Civil Division (Juneau), Department of Law (DOL), on behalf of the administration, sponsor, thanked the committee for hearing HB 109.

SUSAN POLLARD, Chief Assistant Attorney General, Legislation & Regulations Section, Civil Division (Juneau), Department of Law (DOL), said the governor submitted HB 109 for the legislature's consideration due to his concerns over development of oil and gas leases. The bill relates to the authorities and the powers and duties of the attorney general (AG) with regard to civil litigation related to oil and gas leases under the Alaska National Interest Lands Conservation Act (ANILCA). In the instances where a development oil and gas lease gets to civil litigation, the bill would place in statute requirements that

the attorney general make determinations that any settlement is necessary to the issues at litigation. This excludes unrelated matters and does not alter other procedures required by the law.

2:33:55 PM

MS. HUNTER GRAMLING noted the bill has a zero fiscal note. She provided a sectional analysis, explaining Section 1 of the bill amends AS 43.05.070, related to the compromise of a tax or penalty. She explained that AS 43.05.070 is found within the Department of Revenue (DOR) statutes for the administration of tax. This statute generally provides that before the Department of Revenue may compromise a tax or penalty, the approval of the attorney general is required. Section 1 adds a new subsection (c) to clarify that the requirements set forth later in the bill in AS 44.23.020(i) would not apply to the attorney general's approval of a compromise of a tax or penalty. This provision is necessary to clarify that the existing ability of the attorney general on approval of a compromise of a tax or penalty is unchanged. Section 2 of the bill amends AS 44.23.020(d). This is the section of statute relating to the Department of Law and the general powers and duties of the attorney general. Section 2 provides conforming language to indicate that the attorney general has the existing broad settlement powers except as otherwise provided in the new subsection (i), which is in Section 3 of the bill. Section 3 amends AS 44.23.020 by adding new subsections (i), (j), and (k). New subsection (i) would require the attorney general before finalizing a settlement directly related to an oil and gas lease under ANILCA to make three determinations: 1) that the settlement before the attorney general is limited to matters necessary to settle the action; 2) excludes matters unrelated to the action; and 3) does not alter constitutional, statutory, or regulatory procedures required by law. New subsection (j) clarifies that the requirement for a determination in new subsection (i) would not apply to the attorney general in matters related to the function of the Department of Law and the attorney general as a party before the Regulatory Commission of Alaska (RCA). Subsection (j) also clarifies that the requirements in new subsection (i) would not apply to the attorney general in matters related to an oil and gas pipeline or products pipeline under the Regulatory Commission of Alaska or another regulatory agency. She noted that "the Regulatory Commission of Alaska or another regulatory agency" is a term of art here because that language is found in the production tax statutes as well; "another regulatory agency" is generally interpreted to mean the Federal Energy Regulatory Commission (FERC). Subsection (j) clarifies that the authority

of the attorney general to settle matters before the Regulatory Commission of Alaska and the Federal Energy Regulatory Commission would be unchanged by HB 109. New subsection (k) adds a definition for oil and gas lease and references the definition found in the production tax statutes at AS 43.55.900. This definition was chosen so it is clear that when HB 109 in Section 3 references oil and gas leases it means an oil and gas lease and potentially a gas-only lease. Section 4 adds an applicability section that would be in uncodified law. Section 4 clarifies that the determinations in new subsection (i) would apply prospectively and would not have any retroactive effect. Section 5 provides for an immediate effective date of the bill. She pointed out that Section 3, subsection (i), is the meat of the bill. The other sections primarily give additional clarity of what the bill does not do. It does not relate any criminal matters arising out of an oil and gas lease. It does not relate to any tariff litigation or tax issues. It is a narrowly targeted bill to address primarily the governor's concerns about oil and gas lease development cases.

2:39:30 PM

REPRESENTATIVE JOSEPHSON asked why the demarcation of concern with oil and gas lease cases and not all sorts of cases.

MS. POLLARD replied it is limited to oil and gas leases in recognition of the vital importance of oil and gas leasing to the state and the reality that the state is a leaseholder with the lessees. Because it is a long-term relationship the state will be having lease discussions 40 years from now. Some issues, particularly the oil and gas development issue, are capable of continuing because the state will be in the process of managing the development. The Department of Natural Resources will need to continue to assure that leases are developed in accord with the lease terms. Due to the great public importance of this, and that much of the leasing is a fairly well-known public process within that competitive bid and findings for leases, the administration thinks it is wise to limit it to just oil and gas leases because the potential issue here is that the administration wants to recognize the importance of that issue to the state. The administration also recognizes that this is, for the Department of Law, somewhat of a limitation on the attorney general's authority. It is saying in statute for the attorney general in a settlement negotiation, and a settlement with typically very, very broad authority, to take a pause and to really consider when entering these settlements the three issues brought up in the bill.

2:41:26 PM

REPRESENTATIVE JOSEPHSON concluded that in effect the governor is asking to surrender some power here to other policy makers and to the people.

MS. POLLARD responded she is not sure she would put it quite in those [words], but that might be a conclusion that folks would make. The way the administration has described it internally is that it is just a pause, "just a recognition that in the oil and gas world, ... particularly at the time this bill applies, because ... the provisions of this bill don't come into effect unless you are already in litigation, you are already in a civil action by just trying to settle this and ... settlements themselves are difficult anyway." The administration feels that while this pause and consideration is being put in the statute to emphasize the importance of oil and gas development, it does so in a way that is not overly limiting or that would delay projects in any way.

2:42:35 PM

REPRESENTATIVE HAWKER agreed the entire substance of the bill is really involved in Section 3 which basically imposes three findings. The word in in this section is "determine" that it is limited to certain issues, does not include anything unrelated, and does not alter constitutional, statutory, or regulatory procedures required by law. He inquired whether these are the only criteria that are relevant. He said he doesn't see anything that says the attorney ought to determine that the settlement is in the best interest of the state, and inquired whether that is irrelevant.

MS. HUNTER GRAMLING replied it isn't an irrelevant consideration but said that that general provision is probably found elsewhere in AS 44.23.020. The attorney general is already to defend the state constitution and the constitution of the U.S. The general legal requirements for the attorney general to follow are laid out in statute, this is just additional instruction particular for oil and gas lease litigation.

2:44:11 PM

REPRESENTATIVE HAWKER opined that these are extremely broad and are things already in statute. He asked whether this bill really does anything that isn't already provided for as part of

the attorney general's responsibilities in reviewing state settlements. He said he would be surprised to find that the attorney general would not take into consideration whether something alters constitutional, statutory, or regulatory procedures, or looking to see that the settlement related to the issues necessary to settle it, and didn't already make sure that the settlement didn't go to things that had no nexus to the settlement. He further asked whether he is missing something.

MS. POLLARD responded she doesn't believe Representative Hawker is missing anything. She said the question is typical of the few questions the administration has been getting about this bill. In regard to Representative Hawker's earlier statement about the best interest of the state, she said that the topic sentence of what the chief legal officer of the state does is always in the best interest of the state. The bill would then bring it down to this subset of items that are not currently in statute. The administration's desire is to have something that is within the statute to make clear that in these particular kinds of settlements in such an important area, that the attorney make a determination. It doesn't say "written determination," it's "determination" - a pause, a consideration, a checking off of the boxes that all of these conditions are considered in entering that settlement.

2:46:18 PM

REPRESENTATIVE HAWKER maintained that this legislation was inspired by the administration's concern that the Point Thomsen settlement had been entered into illegally, that it did not meet all the necessary requirements for a proper settlement. Until starting discussion on this bill, it had been the position of the Department of Law that the Point Thomson settlement did not violate the constitution or any state law. He asked whether the Department of Law has changed any of its previous positions on the legality of the Point Thomson settlement, given it is now presenting this bill.

MS. POLLARD answered the department sees this bill as a going forward bill for how potential settlements will be handled. Regarding the aforementioned 2012 settlement, there is currently no issue related to that settlement and the Department of Law typically wouldn't comment on something like that if there were litigation. She said the Department of Law did defend the settlement and the Department of Law would defend settlements entered in by the attorney general on behalf of state agencies.

2:48:09 PM

REPRESENTATIVE HAWKER stated there is no longer any challenge or litigation related to that settlement so it seems to him there would be the freedom to discuss it. He noted that Ms. Pollard said the department defended the settlement, but didn't say the department still held the position talking about going forward. He again asked whether the Department of Law still believes that the Point Thomson settlement was legitimate. He further asked whether there is concern at the Department of Law that there has been a practice of the attorney general entering into settlements that violate the law and so this bill is needed.

MS. POLLARD replied yes, the administration believes there is a need for this bill and it has been crafted in a way that provides the protections and the indications in the statutes that will help in future settlements assure that everything is considered, and, in particular, when talking about these long-term types of settlements or issues with oil and gas leases.

REPRESENTATIVE HAWKER said, "We are talking circles here because if you do believe that there was no problem with the Point Thomson settlement and there has been no practice in the past of the AG entering into settlements that violate state law, I fail to see a need for the bill." However, he added, the legislature often does things that it doesn't see a need for. He said the House Judiciary Standing Committee will be able to sort this out much better than he can.

2:50:08 PM

REPRESENTATIVE JOHNSON said he sees circular logic in what the administration is saying here. The administration is saying it wants everything to be considered, but certain things are being taken off the table to not be considered. The administration is saying everything should be considered but then saying that this is to limit the powers of the attorney general to some extent. When talking in his office it was said that a settlement does not set any type of precedent and so [the state] is not locked into doing the same thing again in the future for any other settlements. Settlements are agreements between two parties and are not like a court case where there is a ruling. He asked whether this is accurate.

MS. POLLARD responded that in describing the bill it is hard to describe exactly because a balance is trying to be found between recognizing the need for great care in entering into settlements

related to oil and gas matters. She said she realized as the words came out of her mouth that limiting the attorney general was incorrect; it isn't really limiting and she was trying to find the best word for this. The administration is attempting to strengthen the statutes in this oil and gas litigation area so that future settlements related to oil and gas development on state land don't bypass any legal obligation.

MS. HUNTER GRAMLING added that HB 109 recognizes there are different approaches to settlement negotiation and that generally the attorney general does have broad powers to settle and, if needed, enter into more global-type settlement agreements. However, HB 109 reflects policy decision that some more sideboards are needed for civil litigation of oil and gas lease issues. There is potential that it could speed up negotiation when it is known ahead of time what the limits of authority are.

2:53:05 PM

REPRESENTATIVE JOHNSON remarked that when dealing with the producers the state is dealing with the most "lawyered-up companies on the planet" and he therefore doesn't understand why the state would want to take anything off the table or put on sideboards when negotiating. He said he would think the state would want to be able to approach that with the full force of law, the full power of the attorney general using every tool in the state's toolbox, as opposed to putting sideboards on it. He said the sideboards might have the opposite effect of slowing down the process knowing there is only a narrow window for a settlement as opposed to the state having all of its power to be brought forward. He said he doesn't think there has been any real justification for doing this, but he won't hold up the bill because the House Judiciary Standing Committee is the best place to handle the bill.

2:54:33 PM

REPRESENTATIVE OLSON returned to Representative Josephson's first comments, and said he can see situations where this could apply to the telecommunications industry, the mineral industry, fishery issues, and utilities. He inquired as to why not make this applicable across the board.

MS. HUNTER GRAMLING answered the administration submitted this bill to address a particular policy concern that it had. She said she thinks the Department of Law would generally be opposed

to expanding it to apply to other areas, not that those other areas aren't important but there may be unintended consequences.

REPRESENTATIVE OLSON said another situation that comes to mind is the Trans-Alaska Pipeline System balancing. He said he doesn't feel comfortable with the bill in its current form. He noted that some time ago the committee requested that one of the attorney generals who had handled the state's defense come give the committee a wrap-up, but a different person came who didn't address the issues that the committee was looking for.

2:55:57 PM

REPRESENTATIVE JOSEPHSON stated that relative to Point Thomson, constitutionality, and the governor's opinion, he understood that the governor as a civilian opposed the settlement while the previous administration found it acceptable. He surmised this is well known.

MS. POLLARD replied that if Representative Josephson is saying the governor did not support the settlement, she cannot speak about the litigation.

MS. HUNTER GRAMLING stated she thinks it fair to say that attorneys can have good faith differing interpretations. This bill isn't to address that, it is to look at going forward. It may be that going forward, if this bill were to pass, different attorneys general would take different interpretations of when a determination is required, but this is the particular policy choice at this time.

REPRESENTATIVE JOSEPHSON said he is reminded of Rule of Evidence 408 which talks about what is shared in settlement. He surmised Rule 408 would apply relative to the question about whether a current administration thinks something was proper or improper. The nature of the settlement is immaterial at this point, the settlement is over and any lawsuit has been withdrawn, and DOL is looking to a new day.

MS. HUNTER GRAMLING believed Rule of Evidence 408 is more targeted towards admitting settlement negotiations as evidence in litigation, so HB 109 doesn't impact that court rule at all.

REPRESENTATIVE JOSEPHSON said the spirit of the rule is that discussions in settlement are for the settling parties and, in that sense, answering the merits or demerits of that settlement is beyond the scope of this bill.

MS. POLLARD responded she would agree with that as a general matter. As a specific matter, she noted that Ms. Gramling was not with the Department of Law at the time of the settlement.

2:58:45 PM

REPRESENTATIVE SEATON said that as a legislator he appreciates HB 109 because he doesn't think that the attorney general, when faced with a case, should reach out and change other statutes because the settling party wanted to come in and change something else. If the state does that in a settlement, that is overriding the legislature's authority to create statutes. The same applies to regulatory processes that weren't part of the settlement, because then it would be having the attorney general override legislative authority as well as the authorities of regulatory bodies. However, he continued, he is more concerned with broadening this out, given "the Ketchikan lawsuit," a current civil suit. Unless the attorney general is constrained to the portions of the lawsuit, the attorney general might get in and determine to change the funding formula to make this settlement work with this settling party. He said he wants to ensure that this is more like a limited conference where it can be settled between the two parties' positions and cannot reach out beyond and pull in new things, which is what he thinks this accomplishes for oil and gas. He offered his hope that the House Judiciary Standing Committee will broaden this so that the attorney general in settlements of lawsuits can only function within the parameters of the state's position and the litigant's position and cannot be leveraged or encouraged to change other factors. While he thinks that should be the attorney general's constraint right now, it isn't because a law doesn't have to be violated in a settlement to change another law because the law isn't being violated, it is just making the exception to that law for that lawsuit. Therefore, these are extremely valuable determinations for the legislature to ensure that this applies to all settlements because otherwise the attorney general and the administration could be preempting legislative authority. He said he thinks the context of HB 109 is right in looking at going forward and not looking back at past settlements. He again urged that the House Judiciary Standing Committee broaden this authority to look at other civil litigations and ensure settlements do not go beyond the boundaries or sideboards of the settlement. He said he does not look at the bill as constraining the state's ability to settle but as a sideboard to settle within the bounds of the lawsuit and not reach out and change other statutes or regulatory processes. He inquired

whether there is anything in his aforementioned statements that the Department of Law would like to dispute.

MS. POLLARD answered that often litigation is because people have a disagreement over a statutory interpretation. So, care must be taken about any kind of broadening because oftentimes the parties are going to do the best they can within the settlement so that everybody can go forward. The judgement in there is that that's less of a risk than continuing on with the settlement. She reiterated that the Department of Law doesn't think this would be as manageable in other areas as is being done here with the limiting to oil and gas lease issues that the Department of Natural Resources is handling. This is in part because going forward it is more predictable types of issues happening for future settlements, where in other areas it is very difficult to actually tell what is going to end up being within litigation.

3:04:22 PM

REPRESENTATIVE SEATON appreciated Ms. Pollard's answer, but said in looking at the Ketchikan school lawsuit, if it would be easier to settle by going over and changing things in the foundation formula, that should be the legislature's prerogative to create and change that and he would not like to see the state get into the situation where those kinds of expansions are allowed. He added he is not saying that the current attorney general would do that, but it is a going forward thing that is important and he is glad it is being brought forward.

REPRESENTATIVE JOHNSON disagreed with Representative Seaton, saying this is the appropriate committee to introduce the amendment given that many of the leases are regarding land and water. If the House Judiciary Standing Committee disagrees with the amendment, he continued, it can take the amendment out. He said he has a problem with singling out a single industry. If the legislature is going to treat regulations and settlements, the legislature should be consistent. He agreed with Representative Seaton that the legislature doesn't want the attorney general circumventing the statute or the constitution. He urged the committee to make the amendment today or bring it before the committee on another day.

3:06:47 PM

CO-CHAIR NAGEAK opened public testimony on HB 109, then closed it after ascertaining no one wished to testify.

3:08:13 PM

REPRESENTATIVE HAWKER moved to adopt Amendment 1, labeled 29-GH1126\A.1, Nauman, 3/5/15, which read:

Page 1, line 2:
Delete "**directly related to oil and gas leases**"

Page 1, lines 13 - 14:
Delete "directly related to an oil and gas lease under AS 38.05.005 - 38.05.990 (Alaska Land Act)"

Page 2, line 7:
Delete "related to an oil and gas pipeline or products pipeline"

Page 2, lines 9 - 10:
Delete all material.

REPRESENTATIVE SEATON objected for purposes of discussion.

3:08:55 PM

REPRESENTATIVE HAWKER explained Amendment 1, saying he thinks all of the committee members have the concern that the state needs to treat all of its resource settlements similarly. He said he is not comfortable with the sponsor's characterization that the bill was being limited to oil and gas because of the importance of the oil and gas industry and that the oil and gas industry involves long-term relationships. He said long-term relationships occur in the geothermal, mining, and timber industries. Mining is an industry that has the potential for a lot of settlements that could be very material to the State of Alaska, the Pebble Mine being an example. The spirit of Amendment 1 is that it leaves the same requirement that the attorney general make findings. The amendment leaves Section 3 intact except it makes this legislation applicable to all settlements that come under the purview of the attorney general. He said this committee is making decisions based on resource concerns and the House Judiciary Standing Committee is the proper place for the discussion of the legal details.

3:11:30 PM

REPRESENTATIVE SEATON drew attention to lines 8-9 of Amendment 1 relating to page 2, line 7, of the bill. He pointed out that

this subsection of the bill is an exception that it does not apply to certain things, and said he is therefore unsure that is a deletion the committee really wants to make.

The committee took a brief at-ease.

3:12:49 PM

REPRESENTATIVE SEATON moved to adopt Amendment 1 to Amendment 1 to delete lines 8-9. There being no objection, Amendment 1 to Amendment 1 was adopted.

3:13:27 PM

REPRESENTATIVE SEATON requested an explanation of lines 11-12 of Amendment 1, which propose to delete all material on page 2, lines 9-10, of the bill.

REPRESENTATIVE HAWKER replied that this is a new section of statute and these lines in the bill state, "For the purpose of this section, 'oil and gas lease' has the meaning given in AS 43.55.900." He explained that since the term "oil and gas lease" is being eliminated from the bill it doesn't need to be defined.

3:14:08 PM

CO-CHAIR NAGEAK inquired whether there is any further discussion. There being no further discussion, Co-Chair Nageak stated that Amendment 1 has been amended.

3:14:25 PM

REPRESENTATIVE JOSEPHSON noted that the Department of Law earlier stated its position in this regard, but requested that DOL be invited to comment on the amendment and again explain its position.

MS. POLLARD stated DOL does not support Amendment 1 and believes it is premature. When DOL drafted this bill it was done in conjunction with discussions with the Department of Natural Resources; it was felt that the bill was limited and spoken about with the agency that it would affect. She suggested this amendment could have unintended consequences and said it has not been discussed in a general matter with anybody else in the Department of Law.

3:16:25 PM

REPRESENTATIVE HAWKER said he understands the concern of the sponsor, but said the amendment is offered as a House Resources Standing Committee jurisdictional item, one that is a matter of policy statement. In supporting this amendment he said he wants to make the policy statement that all resource settlements are of equal concern and magnitude and deserve equal consideration by the attorney general. For example, a mining settlement related to Pebble Mine should not be less important than an oil and gas settlement. He further noted that this should also be looked at by the House Judiciary Standing Committee.

MS. POLLARD understood what Representative Hawker is saying, but stated she has not been able to vet these potential changes and therefore it is premature for her to say that this amendment would be acceptable to the Department of Law.

3:18:18 PM

REPRESENTATIVE SEATON drew attention to language in the bill on page 1, lines 1-2, which states, "with respect to certain settlements". He inquired whether the word "certain" should be deleted now that "directly related to oil and gas leases" has been removed.

REPRESENTATIVE HAWKER replied he is comfortable with leaving that sort of detail to Representative Gruenberg [of the House Judiciary Standing Committee].

3:19:04 PM

REPRESENTATIVE SEATON understood, then, that as the bill is being looked at now the specification to "certain" is not still restrictive to oil and gas.

REPRESENTATIVE HAWKER responded that this is for settlements that the attorney general is settling; certain settlements as opposed to the universe of all settlements in the world. The word "certain" here is not overly restrictive nor overly permissive. He added that the bill would still retain the concern that it does not involve settlements under the jurisdiction of the Regulatory Commission of Alaska, so "certain" is a limitation indicating that it is not the entire universe of all possible settlements that exist in the world.

3:20:19 PM

CO-CHAIR NAGEAK announced the committee has dispensed with the amendment. [Amendment 1, as amended, was treated as adopted.]

3:20:31 PM

REPRESENTATIVE HAWKER moved to report HB 109, as amended, out of committee with individual recommendations and the accompanying zero fiscal note.

REPRESENTATIVE JOSEPHSON objected, recalling that when the governor came before the committee the governor said he was going to file this bill. Although there is litigation on all sorts of subjects, the Point Thomson matter lasted years, he pointed out. There were 23 years when requests to develop the field were made and ignored. Many Alaskans believed that what was achieved was no different than what should have been achieved decades before. Incorporated in that settlement was tax and other issues that were arguably extraneous to developing the field. He said he thinks this could be a step too far to enable the attorney general the job he or she is allowed to do, particularly in a strong governor model like Alaska's. For all he knows, the state could need another 20 attorneys general if HB 109 is passed. Therefore, given his uncertainty, he must object.

3:22:58 PM

REPRESENTATIVE SEATON said the meat of the bill on page 2 states that a settlement: is to be limited to issues necessary to settle the action, does not include matters unrelated to the action, and does not alter constitutional, statutory, or regulatory procedures required by law. He opined that all three of those things need to be there for every settlement. If a settlement is going to do any of those three, then it should be a settlement that is proposed to the legislature and should get legislative approval if it is altering statute or altering constitutional or regulatory procedures. He said he doesn't think it limits the authority of the attorney general to propose a settlement, but if it is going beyond the confines of what the action is, then it should have to come back to the legislature. That is why, he continued, he will be supporting this.

3:25:06 PM

REPRESENTATIVE JOSEPHSON stated that if all of the settlements were reviewed by a court of law he wouldn't be particularly

concerned because no court can adjust the rules of court up to a point or the statutes or constitution. A court will come as close as it can but it will not cross the line. He said he thinks this will also impede the DNR commissioner's authority because the DNR commissioner plays a pivotal role as essentially an adjudicator of some of these disputes, and the committee has not vetted what that means to the job of the attorney general and to the DNR commissioner. He maintained his objection.

CO-CHAIR TALERICO agreed with Representative Seaton and said rather than seeing more attorneys general he fears the legislature would be doing legislation eventually for each and every industry in the state to level this playing field and make this consistent. This will provide a level of consistency that would stretch throughout all of the industries in the state. He said he therefore supports this amendment.

3:27:15 PM

REPRESENTATIVE JOHNSON said this conversation raises flags to him because he is wondering what settlements have been contrary to statute, constitution, or regulation given he didn't know that could even be an option. He said this goes back to his original statement that he is unsure this law is needed, but he thinks this amendment is needed if this law is to go forward. He offered his strong support for the amendment and the legislation.

REPRESENTATIVE JOSEPHSON maintained his objection.

3:27:46 PM

CO-CHAIR NAGEAK requested a roll call vote on reporting HB 109, as amended.

A roll call vote was taken. Representatives Hawker, Johnson, Olson, Seaton, Talerico, and Nageak voted in favor of reporting HB 109, as amended. Representative Josephson voted against it. Therefore, CSHB 109(RES) was reported out of the House Resources Standing Committee by a vote of 6-1.

3:28:53 PM

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:29 p.m.