

HB

129

<TARGET><BILL>HB 129</BILL><SUBJECT>HB
129</SUBJECT><COMM>SFIN28</COMM></TARGET>

SENATE FINANCE COMMITTEE REPORT

DATE: 4/10/13

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Finance Committee considered CS FOR HOUSE BILL NO. 129(FIN)

HB 129-OIL & GAS EXPLORATION/DEVELOPMENT AREAS

"An Act relating to approval for oil and gas or gas only exploration and development in a geographical area; and providing for an effective date."

and recommends:

- [] be replaced with SCS _____ (_____) [] Same Title [] Technical Title Change
[] New Title/SCR No. _____
- [] adopt previous SCS _____ (_____) [] Same Title [] Technical Title Change
[] New Title/SCR No. _____
- [] attached amendment(s)
- [] adopt _____ Letter of Intent
- [] further referral to _____ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
DNR	✓			2

[] APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	Do PASS	Do NOT PASS	No REC	AMEND
<i>Michael J. Duffy</i>	Duffy	✓			
<i>Annal. Fairclough</i>	FAIRCLOUGH			X	
<i>Cliff Bishop</i>	BISHOP			X	
<i>John Hoffman</i>	Hoffman			X	
<i>Orson Meyer</i>	ORSON			✓	
SO-CHAIR: <i>K. Meyer</i>	Meyer	✓			
CO-CHAIR:					

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSHB 129(FIN)
Fiscal Note Number: 2
(H) Publish Date: 4/8/13

Identifier: HB129-DNR-DOG-3-25-13
Title: OIL & GAS EXPLORATION/DEVELOPMENT
AREAS
Sponsor: RLS BY REQUEST OF THE GOVERNOR
Requester: House Finance Committee

Department: Department of Natural Resources
Appropriation: Oil & Gas
Allocation: Oil & Gas
OMB Component Number: 439

Expenditures/Revenues

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

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services	80.0						
Travel	3.0						
Services	48.8						
Commodities	2.2						
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	134.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

1004 Gen Fund	134.0						
Total	134.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary	1.0						

Change in Revenues

--	--	--	--	--	--	--	--

Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 06/30/14

Why this fiscal note differs from previous version:

While the bill does not require regulations, after discussion and review in the House/Senate Resources Committees, the Department determined that regulations would be a useful tool in managing the decision-making process.

Prepared By: William C. Barron Phone: (907)269-8800
Division: Oil and Gas Date: 03/25/2013 11:00 AM
Approved By: Daniel S. Sullivan, Commissioner Date: 03/25/13
Department of Natural Resources

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA
2013 LEGISLATIVE SESSION

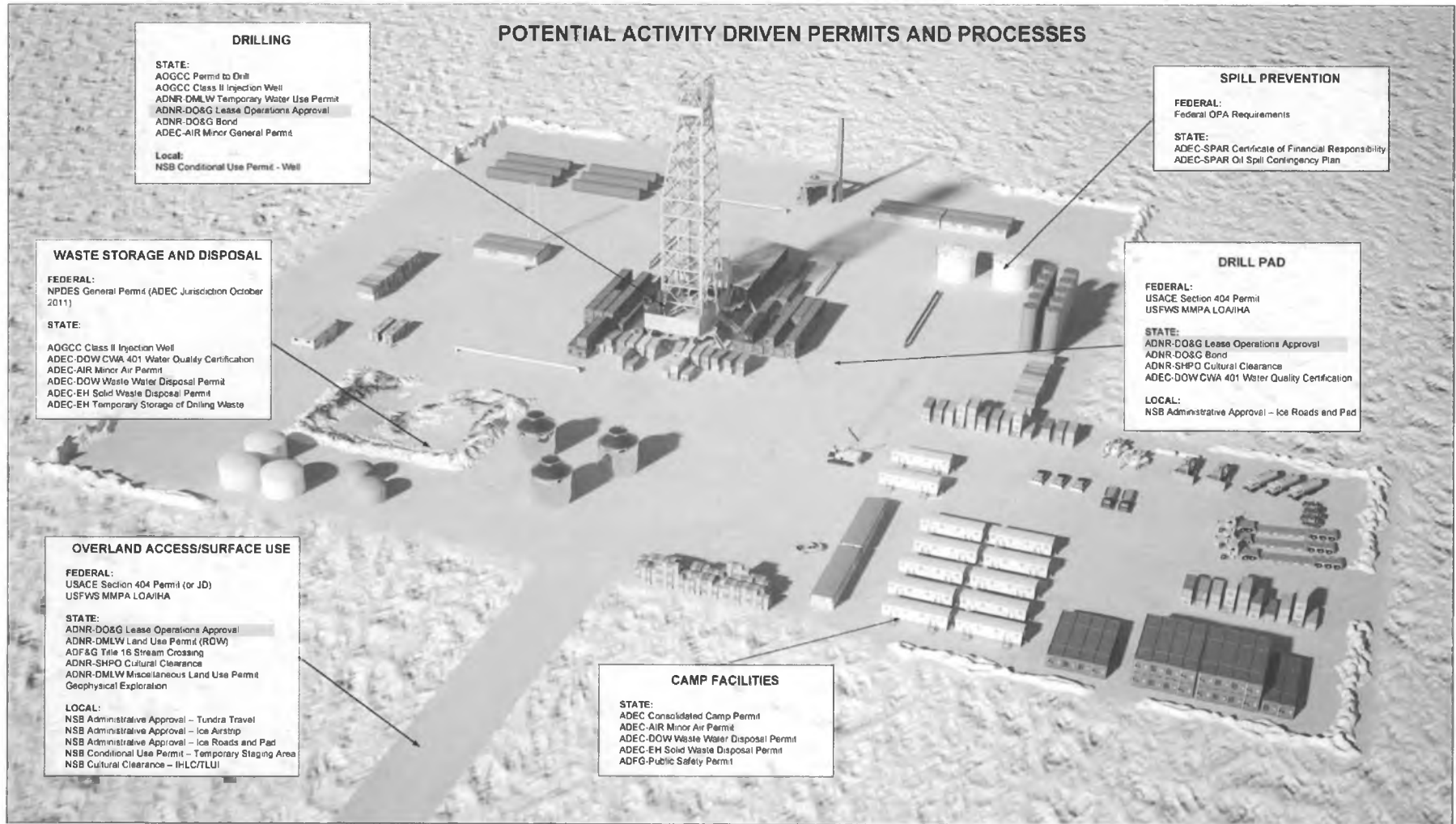
BILL NO. CSHB 129(FIN)

Analysis

This bill will allow the Department of Natural Resources to approve oil and gas exploration and development for a geographic area, without regard to individual lease boundaries.

To implement this bill would require one non-permanent position (Natural Resource Specialist III) to draft regulations and prepare exploration approvals for existing oil and gas lease sale areas. Contractual services would be for legal support, public outreach and notice, and travel for public meetings. On-going exploration and development approvals would be accomplished using existing staff as a result of efficiencies gained through implementing this bill.

The department plans to adopt regulations to facilitate implementation of this statute by June 30, 2014.



LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

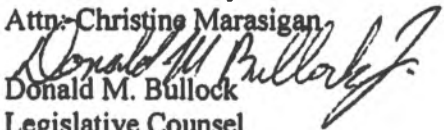
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 12, 2013

SUBJECT: Legislative findings in CSHB 129(FIN); proposed amendment
(Work Order No. 28-GH1970\U)

TO: Senator Kevin Meyer
Attn: Christine Marasigan

FROM: 
Donald M. Bullock
Legislative Counsel

You asked whether the legislative findings misstate the court decision and whether the recommended amendment you provided would satisfy the level of analysis required to be done by the Department of Natural Resources (DNR) in the decision of the Alaska Supreme Court in *Sullivan v. Resisting Environmental Destruction on Indigenous Lands (REDOIL)*, Case No. 3-14216, Decision NO. 6769, ___ P.3d ___ (Alaska, March 29, 2013).

Unfortunately, I do not have the luxury of time to thoroughly review the court's decision in *REDOIL*, so I am unable to advise you concerning the accuracy of the legislative findings in sec. 1 of the bill. There seems to be disagreement concerning the accuracy of the facts set forth in the findings. However, I suggest omitting the findings from the bill under the guidance of the *Manual of Legislative Drafting*.

The *Manual of Legislative Drafting* addresses legislative findings at pages 14 - 15:

Although legislative findings relevant to the need for a bill are presumably contained in the record of committee hearings and debate on the bill, there are some instances in which the findings are deemed necessary and should be set out in the bill and enacted as a part of the bill. This may be particularly true if the bill proposes to enact law that is likely to be challenged on constitutional grounds. The findings enacted as a part of that law may provide justification for upholding the validity of the law. The drafter should work closely with the requester to ensure that the legislative history of the bill, particularly the record of the committee hearings, provides a basis for the findings. In cases where the findings are not necessary for placement in the bill text, the drafter should work closely with the requestor to prepare intent text that can be specifically entered into the legislative history of the bill, particularly the record of the committee hearings.

Findings are often combined with statements of purpose, set out as a separate subsection within the first section of a bill. As mentioned in connection with statements of purpose, it is important that the findings not be used to make up for poor drafting or to close gaps in the substantive provisions of the bill.

The bill referenced above adds a new subsection to AS 38.05.035, the section that describes the powers and duties of the director of the division of lands. AS 38.05.035(o) in sec. 2 of the bill authorizes the director to approve "exploration or development for all or part of an area previously approved for oil and gas or gas only leasing under [AS 38.05.035(e)]." However, the new subsection does not address the court's holding on page 20 of the slip opinion:

*DNR argues, citing **Greenpeace, Inc. v. State, Office of Management and Budget, Division of Governmental Coordination and Alaska Coastal Policy**, that we have previously held that a review of cumulative impacts is only a statutory requirement rather than a constitutional one. REDOIL argues the Alaska Constitution requires cumulative impacts of a project to be considered, even after the lease sale stage. DNR's interpretation of our prior case law is incorrect. **We hold that consideration of cumulative impacts is constitutionally required throughout all the phases of a project.***

(Emphasis added; citations omitted.)

The proposed AS 38.05.035(o) does not address the "consideration of cumulative impacts." However, the language offered by Lisa Weissler in the proposed amendment emphasizes the analysis and consideration of cumulative impacts, consistent with the constitutional requirement as stated by the court.

In conclusion, the findings in sec. 1 may be unnecessary. If the language in the substantive law is clear, the findings are unnecessary. The language in the proposed amendment seems to be consistent with the court's finding of a constitutional requirement to consider cumulative impacts in all phases of a project.

CS HB 129(FIN)

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

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

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

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

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

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

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

CSHB129(FIN): OIL & GAS EXPLORATION/DEVELOPMENT AREAS

BRIEFING PAPER

APRIL 10, 2013

CSHB129(FIN) will consolidate the Department of Natural Resources' exploration and development approvals, while still protecting the environment and providing for public participation. The right to explore and develop oil and gas is granted through a lease that has been through an extensive public disposal process. A lease is subject to mitigation measures, multiple agency permits, and plans of operations approval. Exploration and development approvals are made in conjunction with individual plans of operations for a lease or project and include a separate public notice for each approval. Many approvals are repetitive, subject to the same mitigation measures, and within the same geographical area.

CSHB129(FIN) will allow the department to comprehensively evaluate oil and gas exploration and development in a geographical area and define the criteria by which specific projects are evaluated and approved. The initial comprehensive review of a geographical area gives the public, government agencies and industry an opportunity to participate and identify exploration and development considerations for all subsequent projects. Projects may then move forward within the defined parameters and subject to the lease mitigation measures without additional public notice following the geographical area approval process, saving time and resources for both the state and lessee when approving subsequent plans of operations.

Approvals covering a broader area would both create efficiencies in the exploration and development review process and provide for the department and the public to look at the overall effects of exploration and development across multiple leases. This bill will still protect the public interest by requiring public notice and an opportunity to comment under AS 38.05.945. Further, it provides certainty to the oil and gas industry that exploration and development projects may proceed within defined parameters.

This bill will:

- Create efficiencies by streamlining the oil and gas exploration and development approval processes;
- Protect the public interests by requiring public notice and the opportunity to comment during the approval process for a geographical area;
- Enable a review of the effects of exploration and development across multiple leases;
- Allow exploration or development approvals to be consolidated into a comprehensive decision at the beginning of the process; and,
- Provide certainty to oil and gas operators, industry and the public when approval is granted.

CSHB129(FIN): OIL & GAS EXPLORATION/DEVELOPMENT AREAS

SECTIONAL ANALYSIS

APRIL 10, 2013

Section 1 of CSHB129(FIN) amends the uncodified law of Alaska by adding Legislative Findings in response to the Sullivan v. Resisting Environmental Destruction on Indigenous Lands (REDOIL) decision issued on March 29, 2013.

The REDOIL decision acknowledged the legislature's authority to limit the best interest finding to the leasing (disposal) phase, but also held that Department of Natural Resources (DNR) had a constitutional duty to "continue to analyze and consider all factors material and relevant to what is in the public interest after the lease sale phase, including the cumulative impacts of the project."

DNR already conducts extensive analysis for each oil and gas exploration and development approval and provides timely public notice. DNR also already takes a "continuing hard look at new information and changing circumstances" in the annual call for new information for areawide lease sale best interest findings.

Section 1 clarifies and reaffirms that the Legislature expressly grants the DNR the ability to create, by regulation, procedures necessary to meet the constitutional duty created by the Alaska Supreme Court to take a "continuing hard look at new information and changing circumstances" in subsequent phases of an oil and gas project.

Section 2 of CSHB129(FIN) adds a new subsection (o) to AS 38.05.035 that allows the director to approve exploration or development for all or part of an area previously approved for oil and gas or gas only leasing under best interest findings as required under AS 38.05.035(e).

This section preserves the right for the public to comment by requiring the Department of Natural Resources to provide public notice under AS 38.05.945.

If the approval is granted, exploration and development activities would be valid for a period of up to 10 years as specified by the director and the lessee can begin exploration or development only after it receives other authorizations as required by local, state or federal law. After exploration or development has begun on a lease, the approval for exploration or development under this subsection remains valid for the term of the lease.

Section 3 of CSHB129(FIN) establishes an immediate effective date.

CSHB129(FIN): OIL & GAS EXPLORATION/DEVELOPMENT AREAS

SUMMARY OF CHANGES

APRIL 10, 2013

This document summarizes the changes between HB 129 (28-GH1970\A) and CS HB129(FIN) Work Draft (28-GH1970\U).

CSHB 129(FIN) amends HB 129 by adding a new section.

Section 1 in Version U amends the uncodified law of Alaska with Legislative Findings in response to the March 29, 2013 Alaska Supreme Court decision in *Sullivan v. Resisting Environmental Destruction on Indigenous Lands (REDOIL)*. This section sets forth the procedural history regarding a dispute over whether the Alaska Constitution (Art. 8, sec. 2) requires a Best Interest Finding at each oil and gas phase (leasing, exploration, production, and transportation).

With the insertion of this section, all the following sections were renumbered accordingly.

Section 2 of Version U makes a few edits to existing language in Section 1 of Version A.

References below are to Version A, unless otherwise indicated:

- Page 1, line 7 – deleted the words “without regard to individual lease boundaries” as the language was deemed superfluous because this bill seeks to implement *areawide* exploration and development – not specific to an individual lease. Furthermore, any geographical area approval would conform to lease sale area tract boundaries, and would not, for example, bisect an existing lease whereby only one half of the lease would fall within a geographical area approval.
- Page 1, lines 7-9 – revised the sentence beginning “An approval under this subsection...” based on recommendation by Legislative Legal that the intent needed to be clarified and is revised to “an approval applies to exploration or development commencing during a period for up to 10 years” in Version U (page 3, lines 9-10).
- Page 1, lines 13– modified “specified period” in Version A to “period specified in the approval” in Version U (page 3, line 14) and Version U adds “local” (page 3, line 15) to the list of agencies that may have authorizations required for exploration or development.
- Page 2, line 1 – added “or group of leases” following the word “lease” (page 3, line 16-17 in Version U) as a lessee may perform exploration or development activities on more than one lease within the geographical area approval.
- Page 2, lines 5-7 – deleted the sentence as “area” is already defined in the first sentence of the Section as “...an area previously approved for oil and gas or gas only leasing under (e) of this section” (page 1, lines 5-6 and page 3, lines 7-8 in Version U).

