

HB

109

<TARGET><BILL>HB 109</BILL><SUBJECT>HB
109</SUBJECT><COMM>HRES29</COMM></TARGET>

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Governor Bill Walker
STATE OF ALASKA

February 12, 2015

The Honorable Mike Chenault
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Chenault:

Under the authority of Article III, Section 18 of the Alaska Constitution, I am transmitting a bill relating to the powers and duties of the Attorney General to approve settlements related to matters involving disputes over oil and gas resources.

The bill would protect the public interest by requiring that, before approving a settlement on a matter related to the settlement of an action directly related to oil and gas lease matters under AS 38.05.005 - 38.05.990 (Alaska Land Act), the Attorney General must determine that the proposed settlement is limited to issues necessary to settle the action, does not settle unrelated matters, and does not alter constitutional, statutory, or regulatory procedures required by law.

This would not apply to settlements of oil and gas pipeline tariff matters, tax matters, or matters where the Department of Law performs the function of public advocate for regulatory affairs in matters before the Regulatory Commission of Alaska.

My proposal would safeguard the public's interest in the development of our oil and gas resources and assure that our State's tremendous resources are developed fairly and without harmful compromise.

I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in blue ink that reads "Bill Walker".

Bill Walker
Governor

Enclosure

An Act relating to the duties and powers of the attorney general with respect to certain settlement directly related to oil and gas leases; providing exceptions for certain tax and regulatory matters; and providing for an effective date.

**SECTIONAL ANALYSIS
HB 109**

FOR THE HOUSE RESOURCES COMMITTEE February 2015

Section 1 amends AS 43.05.070, related to compromise of a tax or penalty, adding a new subsection (c) to clarify that new AS 44.23.020(i) would not apply to the approval of the attorney general for compromise of a tax or penalty. The ability of the attorney general to approve a compromise of a tax or penalty under AS 43.05.070 would be unchanged by this bill.

Section 2 amends AS 44.23.020(d), related to the powers and duties of the attorney general to settle, to provide conforming language that would make new subsection (i) an exception to the attorney general's general ability to settle.

Section 3 amends AS 44.23.020, related to the powers and duties of the attorney general, by adding new subsections (i), (j), and (k).

Subsection (i) would require the attorney general to determine that a settlement 1) is limited to necessary issues; 2) excludes unrelated matters; and 3) does not alter constitutional, statutory, or regulatory procedures required by law. The attorney general would be required to make that determination before finalizing a settlement on a civil action directly related to an oil and gas lease under the Alaska Land Act (AS 38.05.005-38.05.990). The ability of the attorney general to settle a criminal action related to activity on an oil and gas lease would be unchanged by this bill.

Subsection (j) clarifies that the requirement for a determination in new subsection (i) would not apply to the attorney general in matters under AS 44.23.020(e), related to the function of the Department of Law and participation of the attorney general as a party in a matter before the Regulatory Commission of Alaska. This section also clarifies that the requirement for a determination in new subsection (i) would not apply to the attorney general in matters related to an oil and gas pipeline or a products pipeline under the

jurisdiction of the Regulatory Commission of Alaska or another regulatory agency. For example, the ability of the attorney general to settle a matter before the Federal Energy Regulatory Commission would be unchanged by this bill.

Subsection (k) references the definition of “oil and gas lease” found in the definition statute for the Oil and Gas Production Tax and Oil Surcharge, AS 43.55.900. This section would clarify that the term “oil and gas lease” as used in new subsection (i) includes an oil and gas lease, a gas only lease, and an oil only lease.

Section 4 adds an applicability section to clarify that the changes in sections 2 and 3 of the bill would apply to settlements entered into by the attorney general on and after the effective date of the bill. The requirement for a determination in new AS 44.23.020(i) would not apply retroactively. Due to its temporary character, the applicability section would be in uncodified law.

Section 5 provides an immediate effective date for the bill.

Prepared by the Department of Law.

Fiscal Note

State of Alaska
2015 Legislative Session

Bill Version:	HB 109
Fiscal Note Number:	1
(H) Publish Date:	2/13/2015

Identifier: LL0126-DNR-DOG-02-11-15
 Title: OIL AND GAS LITIGATION SETTLEMENTS
 Sponsor: RLS BY REQUEST OF THE GOVERNOR
 Requester: Governor

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)

	FY2016 Appropriation Requested	Included in Governor's FY2016 Request	Out-Year Cost Estimates					
			FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues

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Estimated SUPPLEMENTAL (FY2015) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2016) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
 If yes, by what date are the regulations to be adopted, amended or repealed? N/A

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Paul Decker, Acting Director	Phone:	(907)269-8791
Division:	Oil and Gas	Date:	02/11/2015 05 00 PM
Approved By:	Mark Myers, Commissioner	Date:	02/11/15
Agency:	Department of Natural Resources		

COMMITTEE COPY

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2015 LEGISLATIVE SESSION

Analysis

There is no fiscal impact to DNR associated with this legislation.

LEGAL SERVICES

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MEMORANDUM

February 20, 2015

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

TO: Representative David Talerico
Attn: Julie Morris

FROM: Emily Nauman
Legislative Counsel



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

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

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

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

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

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

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

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

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

2. Will the bill delay oil and gas projects?

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

If I may be of further assistance, please advise.

ELN:dla
15-097.dla

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