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Nauman/Bullock
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SENATE CS FOR CS FOR HOUSE BILL NO. 215()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES CHENAULT, Neuman, Fairclough, Johnson, Hawker, Olson, Feige, Millett, Thompson, Pruitt, Saddler, Tammie Wilson, Dick, Costello

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the judicial review of a right-of-way lease or other authorization for
2 the development, construction, or initial operation, of an oil or gas pipeline on state
3 land; and relating to the lease of a right-of-way by the Alaska Gasline Development
4 Corporation for a gas pipeline transportation corridor."

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 * Section 1. AS 38.34.050(c) is amended to read:

7 (c) Notwithstanding any contrary provision of law, the Department of Natural
8 Resources shall grant the Alaska Gasline Development Corporation, a subsidiary
9 of the Alaska Housing Finance Corporation created under AS 18.56.086,
10 [ALASKA HOUSING FINANCE CORPORATION] a right-of-way lease under
11 AS 38.35 for the gas pipeline transportation corridor at no cost or rental fee if

12 (1) [THE CORPORATION SUBMITS] a complete right-of-way lease
13 application under AS 38.35.050 is submitted;

14 (2) the lease application is made the subject of notice and other

reasonable and appropriate publication requirements under AS 38.35.070; and

(3) the Alaska Gasline Development Corporation [CORPORATION] agrees to be bound by the right-of-way lease covenants set out in AS 38.35.120, except for the covenants in AS 38.35.120(a)(1), (2), (5), and (7); notwithstanding AS 38.35.120(b), a right-of-way lease subject to this paragraph is valid and of legal effect.

* Sec. 2. AS 38.35.100(d) is amended to read:

(d) The commissioner shall include in a conditional lease each requirement and condition of the covenants established under AS 38.35.120, except that, for a lease entered into under AS 38.34.050(c), the covenants in AS 38.35.120(a)(1), (2), (5), and (7) may not be included. The commissioner may also require that the lessee agree to additional conditions that the commissioner finds to be in the public interest. In place of the covenant established under AS 38.35.120(a)(9), the commissioner shall require the lessee to agree that it will not transfer, assign, pledge, or dispose of in any manner, directly or indirectly, its interest in a conditional right-of-way lease or a pipeline subject to the conditional lease, unless the commissioner, after considering the public interest and issuing written findings to substantiate a decision to allow the transfer, authorizes the transfer. The commissioner shall also require the lessee to agree not to allow the transfer of control of the lessee without the approval of the commissioner; as used in this subsection, "transfer of control of the lessee" means the transfer of 30 percent or more, in the aggregate, of ownership interest in the lessee in one or more transactions to one or more persons by one or more persons.

* Sec. 3. AS 38.35.120(a) is amended to read:

(a) Except as provided in AS 38.34.050(c), a [A] noncompetitive lease of state land for a right-of-way for an oil or natural gas pipeline valued at \$1,000,000 or more may be granted only upon the condition that the lessee expressly covenants in the lease, in consideration of the rights acquired by it under the lease, that

(1) it assumes the status of and will perform all of its functions undertaken under the lease as a common carrier and will accept, convey, and transport without discrimination crude oil or natural gas, depending on the kind of pipeline involved, delivered to it for transportation from fields in the vicinity of the pipeline

1 subject to the lease throughout its route both on state land obtained under the lease and
2 on the other land; it will accept, convey, and transport crude oil or natural gas without
3 unjust or unreasonable discrimination in favor of one producer or person, including
4 itself, as against another but will take the crude oil or natural gas, depending on the
5 kind of pipeline involved, delivered or offered, without unreasonable discrimination,
6 that the Regulatory Commission of Alaska shall, after a full hearing with due notice to
7 the interested parties and a proper finding of facts, determine to be reasonable in the
8 performance of its duties as a common carrier; however, a lessee that owns or operates
9 a natural gas pipeline

10 (A) subject to regulation either under the Natural Gas Act (15
11 U.S.C. 717 et seq.) of the United States or by the state or political subdivisions
12 with respect to rates and charges for the sale of natural gas, is, to the extent of
13 that regulation, exempt from the common carrier requirement in this
14 paragraph;

15 (B) that is a North Slope natural gas pipeline (i) is required to
16 operate as a common carrier only with respect to the intrastate transportation of
17 North Slope natural gas, as that term is defined in AS 42.06.630, and (ii) is not
18 required to operate as a common carrier as to a liquefied natural gas facility or
19 a marine terminal facility associated with the pipeline, and is not otherwise
20 required to perform its functions under the lease as a common carrier; for
21 purposes of this subparagraph, "North Slope natural gas pipeline" means all the
22 facilities of a total system of pipe, whether owned or operated under a contract,
23 agreement, or lease, used by a carrier for transportation of North Slope natural
24 gas, as defined by AS 42.06.630, for delivery, for storage, or for further
25 transportation, and including all pipe, pump, or compressor stations, station
26 equipment, tanks, valves, access roads, bridges, airfields, terminals and
27 terminal facilities, including docks and tanker loading facilities, operations
28 control centers for both the upstream part of the pipeline and the terminal,
29 tanker ballast treatment facilities, fire protection system, communication
30 system, and all other facilities used or necessary for an integral line of pipe,
31 taken as a whole, to carry out transportation, including an extension or

1 enlargement of the line;

2 (2) it will interchange crude oil or natural gas, depending on the kind
3 of pipeline involved, with each like common carrier and provide connections and
4 facilities for the interchange of crude oil or natural gas at every locality reached by
5 both pipelines when the necessity exists, subject to rates and regulations made by the
6 appropriate state or federal regulatory agency;

7 (3) it will maintain and preserve books, accounts, and records and will
8 make those reports that the state may prescribe by regulation or law as necessary and
9 appropriate for purposes of administration of this chapter;

10 (4) it will accord at all reasonable times to the state and its authorized
11 agents and auditors the right of access to its property and records, of inspection of its
12 property, and of examination and copying of records;

13 (5) it will provide connections, as determined by the Regulatory
14 Commission of Alaska under AS 42.06.340, to facilities on the pipeline subject to the
15 lease, both on state land and other land in the state, for the purpose of delivering crude
16 oil or natural gas, depending on the kind of pipeline involved, to persons (including
17 the state and its political subdivisions) contracting for the purchase at wholesale of
18 crude oil or natural gas transported by the pipeline when required by the public
19 interest;

20 (6) it shall, notwithstanding any other provision, provide connections
21 and interchange facilities at state expense at such places the state considers necessary
22 if the state determines to take a portion of its royalty or taxes in oil or natural gas;

23 (7) it will construct and operate the pipeline in accordance with
24 applicable state laws and lawful regulations and orders of the Regulatory Commission
25 of Alaska;

26 (8) it will, at its own expense, during the term of the lease,

27 (A) maintain the leasehold and pipeline in good repair;

28 (B) promptly repair or remedy any damage to the leasehold;

29 (C) promptly compensate for any damage to or destruction of
30 property for which the lessee is liable resulting from damage to or destruction
31 of the leasehold or pipeline;

1 (9) it will not transfer, assign, or dispose of in any manner, directly or
2 indirectly, or by transfer of control of the carrier corporation, its interest in a right-of-
3 way lease, or any rights under the lease or any pipeline subject to the lease to any
4 person other than another owner of the pipeline (including subsidiaries, parents, and
5 affiliates of the owners), except to the extent that the commissioner, after
6 consideration of the protection of the public interest (including whether the proposed
7 transferee is fit, willing, and able to perform the transportation or other acts proposed
8 in a manner that will reasonably protect the lives, property, and general welfare of the
9 people of Alaska), authorizes; the commissioner shall not unreasonably withhold
10 consent to the transfer, assignment, or disposal;

11 (10) it will file with the commissioner a written appointment of a
12 named permanent resident of the state to be its registered agent in the state and to
13 receive service of notices, regulations, decisions, and orders of the commissioner; if it
14 fails to appoint an agent for service, service may be made by posting a copy in the
15 office of the commissioner, filing a copy in the office of the lieutenant governor, and
16 mailing a copy to the lessee's last known address;

17 (11) the applicable law of this state will be used in resolving questions
18 of interpretation of the lease;

19 (12) the granting of the right-of-way lease is subject to the express
20 condition that the exercise of the rights and privileges granted under the lease will not
21 unduly interfere with the management, administration, or disposal by the state of the
22 land affected by the lease, and that the lessee agrees and consents to the occupancy
23 and use by the state, its grantees, permittees, or other lessees of any part of the right-
24 of-way not actually occupied or required by the pipeline for the full and safe
25 utilization of the pipeline, for necessary operations incident to land management,
26 administration, or disposal;

27 (13) it will be liable to the state for damages or injury incurred by the
28 state caused by the construction, operation, or maintenance of the pipeline and it will
29 indemnify the state for the liabilities or damages;

30 (14) it will procure and furnish liability and property damage insurance
31 from a company licensed to do business in the state or furnish other security or

undertaking upon the terms and conditions the commissioner considers necessary if the commissioner finds that the net assets of the lessee are insufficient to protect the public from damage for which the lessee may be liable arising out of the construction or operation of the pipeline.

* Sec. 4. AS 38.35.120(b) is amended to read:

(b) Except as provided in AS 38.34.050(c), for [FOR] a right-of-way lease granted under this chapter for an oil or natural gas pipeline valued at \$1,000,000 or more to be valid and of legal effect, it must contain the terms required to be inserted under the provisions of AS 38.35.110 - 38.35.140. Except as provided in AS 38.34.050(c), an [AN] oil or natural gas pipeline right-of-way lease granted under this chapter that does not contain the required terms is null and void and without legal effect and does not vest any interest in state land or any authority in the carrier granted the lease.

* Sec. 5. AS 38.35.200 is amended by adding new subsections to read:

(c) Except as provided for an applicant under (a) of this section, notwithstanding any contrary provision of law, an action or decision of the commissioner or other state officer or agency concerning the issuance or approval of a necessary right-of-way, permit, lease, certificate, license, or other authorization for the development, construction, or initial operation of a natural gas pipeline by the Alaska Gasline Development Corporation, a subsidiary created by the Alaska Housing Finance Corporation under AS 18.56.086, that uses a right-of-way subject to this chapter may not be subject to judicial review, except that a claim alleging the invalidity of this subsection must be brought within 60 days after the effective date of this Act, and a claim alleging that an action will deny rights under the Constitution of the State of Alaska must be brought within 60 days following the date of that action. A claim that is not filed within the limitations established in this subsection is barred. A complaint under this subsection must be filed in superior court, and the superior court has exclusive jurisdiction. Notwithstanding AS 22.10.020(c), except in conjunction with a final judgment on a claim filed under this subsection, the superior court may not grant injunctive relief, including a temporary restraining order, preliminary injunction, permanent injunction, or stay against the issuance of a necessary right-of-

1 way, permit, lease, certificate, license, or other authorization for the development,
2 construction, or initial operation of a natural gas pipeline by the Alaska Gasline
3 Development Corporation, a subsidiary created by the Alaska Housing Finance
4 Corporation under AS 18.56.086. In this subsection, "natural gas pipeline" means all
5 the facilities of a total system of pipe for transportation of natural gas for treatment or
6 conditioning, delivery, storage, or further transportation, and including all pipe, pump
7 and compressor stations, station equipment, and all other facilities used or necessary
8 for an integral line of pipe to carry out the transportation of the gas.

9 (d) An appeal of a permitting decision by the Department of Environmental
10 Conservation under AS 46.03 or AS 46.14 that is made under authority delegated to
11 the Department of Environmental Conservation by the United States Environmental
12 Protection Agency is not included in the actions or decisions described in (c) of this
13 section.

14 * Sec. 6. The uncoded law of the State of Alaska is amended by adding a new section to
15 read:

16 TRANSITION AND LEGISLATIVE INTENT. It is the intent of the legislature that a
17 right-of-way lease subject to AS 38.34.050(c), as amended by sec. 1 of this Act,
18 AS 38.35.100(d), as amended by sec. 2 of this Act, AS 38.35.120(a), as amended by sec. 3 of
19 this Act, and AS 38.35.120(b), as amended by sec. 4 of this Act, that is entered into between
20 the commissioner of natural resources and the Alaska Gasline Development Corporation, a
21 subsidiary of the Alaska Housing Finance Corporation created under AS 18.56.086, before the
22 effective dates of secs. 1 - 4 of this Act be amended as soon as practicable after the effective
23 dates of secs. 1 - 4 of this Act to conform to the requirements of AS 38.34.050(c), as amended
24 by sec. 1 of this Act, AS 38.35.100(d), as amended by sec. 2 of this Act, AS 38.35.120(a), as
25 amended by sec. 3 of this Act, and AS 38.35.120(b), as amended by sec. 4 of this Act.

26 * Sec. 7. The uncoded law of the State of Alaska is amended by adding a new section to
27 read:

28 REVISOR'S INSTRUCTIONS. The revisor of statutes shall change the catch lines of

29 (1) AS 38.34.050 from "Cooperation and access to information" to
30 "Cooperation; information sharing; permits, use of state resources, and leases"; and

31 (2) AS 38.35.200 from "Judicial review of decisions of commissioner on

1 application" to "Judicial review."