



LAWS OF ALASKA

1973

Source

Chapter No.

FSS-FCCS HCS CSSB 3

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AN ACT

Relating to pipelines; and providing for an effective date.

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

* Section 1. AS 38.35.010 is amended by adding a new subsection to read:

(b) The State of Alaska reserves unto itself all rights, powers, privileges and immunities not preempted by federal interstate commerce laws and regulations in the right-of-way leasing of any state lands for pipeline construction, transmission, or operation within its boundaries.

* Sec. 2. AS 38.35.020 is amended to read:

Sec. 38.35.020. GRANT OF RIGHT-OF-WAY LEASE. (a) Rights-of-way on state land including rights-of-way over, under, along, across, or upon the right-of-way of a public road or highway or the right-of-way of a railroad or other public utility, or across, upon, over, or under a river or other body of water or land belonging to or administered by the state may be granted by noncompetitive lease by the commissioner for pipeline purposes for the transportation of oil, products or natural gas under those conditions prescribed by law or by administrative regulation. Except to the extent authorized by an oil and gas lease or unit agreement approved by the state, no person may engage in any construction or operation of any part of an oil, products, or natural gas pipeline, which in whole or in part is or is proposed to be on state land unless that person has obtained from the commissioner a right-of-way lease of the land under this chapter.

(b) The commissioner may by regulation exempt the construction or operation of field gathering lines or any

reasonable classification of them from the requirement of a right-of-way lease under this chapter.

* Sec. 3. AS 38.35.030 is amended to read:

Sec. 38.35.030. ABANDONMENT, REDUCTION OR IMPAIRMENT OF SERVICE OF PIPELINE. No lessee may abandon any portion of a pipeline that is subject to a lease granted under this chapter, or operation or transportation, service, or sale by it, or reduce or impair service, except in accordance with the terms of the lease or sec. 40 of this chapter.

* Sec. 4. AS 38.35.040 is amended to read:

Sec. 38.35.040. TEMPORARY OR EMERGENCY SERVICE OR TEMPORARY ABANDONMENT, REDUCTION OR IMPAIRMENT OF SERVICE BY LESSEE. The commissioner may, either upon a request made in the form he shall by regulation require, or upon his own motion without request, authorize or require temporary or emergency rendering of service or temporary or emergency abandonment, reduction or impairment of service by a pipeline of a lessee without compliance with secs. 50 - 100 of this chapter. Nothing in this section prevents a carrier from temporarily suspending operations in the event of an emergency which threatens public health or safety; however, notice shall be given the commissioner as soon as possible.

* Sec. 5. AS 38.35.050 is repealed and re-enacted to read:

Sec. 38.35.050. APPLICATIONS FOR RIGHT-OF-WAY LEASES.

(a) A person or persons desiring to own a pipeline which is proposed to be located in whole or in part on state land, shall apply for a noncompetitive right-of-way lease of the state land.

(b) Applications under (a) of this section shall be made in a form and manner prescribed by regulation, and shall include any and all data, information, plans and exhibits which the commissioner determines are necessary to prepare the analysis required by sec. 80 of this chapter and to make a decision under sec. 100 of this chapter.

(c) Any amendment to an application filed under this section which constitutes a substantial change in the application is subject to all provisions of this chapter applying to an original application.

(d) All persons owning or planning to own an interest in a pipeline or proposed pipeline subject to a lease must join in the application under (a) of this section. Any person employed by the lessee in operating the pipeline is bound by the covenants of the lease applicable to functions within the scope of his employment as if he were an applicant under the lease and the state may enforce any breach of a covenant directly against an operator who is not in compliance with the covenant.

* Sec. 6. AS 38.35.060 is repealed.

* Sec. 7. AS 38.35.070 is amended to read:

Sec. 38.35.070. NOTICE OF APPLICATION. Upon receiving

an application under sec. 50 of this chapter, the commissioner shall

(1) cause notice of it to appear in a daily newspaper of general circulation published in the vicinity of the location of the proposed pipeline, the notice to include:

(A) a general description of the land involved;

(B) a summary of the substance of the application;

(2) file copies of the application with each coordinate agency;

(3) furnish at cost copies of a notice or application to persons requesting them; and

(4) provide other publication and notice he considers reasonable and appropriate to inform the public of the application.

* Sec. 8. AS 38.35.080 is amended to read:

Sec. 38.35.080. ANALYSIS AND PUBLIC HEARING. (a) The commissioner shall, within a reasonable time after receiving the application, prepare an analysis of the application or of the matter of which he was notified, including a proposal for action if feasible; a proposed lease and a general statement of his basis and purpose, if favorable action is proposed; or, when a proposal for action is not feasible before a hearing, a description of the subjects and issues involved.

(b) Upon completion of the analysis but not less than 30 days before the date set for hearing an application or a substantial amendment to an application, the commissioner shall publish notice, and make copies available as provided in sec. 70 of this chapter.

(c) The commissioner shall set all applications for public hearing as soon as practicable, if a public hearing on an application is requested by any person within 30 days of publication of notice under sec. 70(a) of this chapter or if the proposed action being considered involves a substantial public interest. The commissioner shall set the application for public hearing and publish notice of the time and place of the public hearing at least 30 days before the hearing.

(d) Except to the extent specified in sec. 190(b) of this chapter, the provisions of the Administrative Procedure Act (AS 44.62) do not apply to hearings held under this section.

* Sec. 9. AS 38.35.100 is repealed and re-enacted to read:

Sec. 38.35.100. DECISION ON APPLICATION. (a) The commissioner shall promptly determine, on an application filed with him under sec. 50 of this chapter, whether the

applicant is fit, willing and able to perform the transportation or other acts proposed in a manner that will be required by the present or future public interest. In making a determination the commissioner shall consider whether or not

(1) the proposed use of the right-of-way will unreasonably conflict with existing uses of the land involving a superior public interest;

(2) the applicant has the technical and financial capability to protect state and private property interests;

(3) the applicant has the technical and financial capability to take action to the extent reasonably practical to

(A) prevent any significant adverse environmental impact, including but not limited to, erosion of the surface of the land and damage to fish and wildlife and their habitat;

(B) undertake any necessary restoration or revegetation; and

(C) protect the interests of individuals living in the general area of the right-of-way who rely on fish, wildlife and biotic resources of the area for subsistence purposes;

(4) the applicant has the financial capability to pay reasonably foreseeable damages for which he may become liable on claims arising from the construction, operation, maintenance or termination of the pipeline.

(b) If the commissioner makes these determinations favorably to the applicant, then he may grant the whole or part of the application. Otherwise, he shall deny the application. In order to grant the whole or part of the application the commissioner shall offer a lease to the applicant for its acceptance through signing of the lease and agreeing to comply with its terms, conditions, and obligations. Only upon proper acceptance of offered lease by the applicant within 30 days after its having been presented is the grant of the application consummated.

* Sec. 10. AS 38.35.110 is amended to read:

Sec. 38.35.110. TERM OF LEASE. Each lease of state land for pipeline right-of-way purposes shall contain a provision that the lease shall run for a specified term of not greater than 30 years, and shall be renewable for additional periods of up to 10 years each, so long as the lessee is in commercial operation and is in full compliance with all state law, including but not limited to state law pertaining to regulation and taxation of the pipeline facility, and is in compliance with all terms of the lease. In making this determination he shall take into consideration the cost of the proposed pipeline, its useful life, and the probable financing requirement for the proposed pipeline.

* Sec. 11. AS 38.35.120 is repealed and re-enacted to read:

Sec. 38.35.120. COVENANTS REQUIRED TO BE INCLUDED IN LEASE. (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 subject to the lease throughout its route both on state land obtained under the lease and on other land; however, a lessee who owns or operates a natural gas pipeline subject to regulation either (A) under the Natural Gas Act (15 U.S.C. 717 et. seq.) of the United States, or (B) by the state or political subdivisions with respect to rates and charges for the sale of natural gas, is, to the extent of that regulation, exempt from the common carrier requirement in this paragraph; it will accept, convey, and transport crude oil or natural gas without unjust or unreasonable discrimination in favor of one producer or person, including itself, as against another but will take the crude oil or natural gas, depending on the kind of pipeline involved, delivered or offered, without unreasonable discrimination, that the Alaska Pipeline Commission shall, after a full hearing with due notice to the interested parties and a proper finding of facts, determine to be reasonable in the performance of its duties as a common carrier;

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

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

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

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

(6) it shall, notwithstanding any other

provision, provide connections and interchange facilities at state expense at such places the state considers necessary if the state determines to take a portion of its royalty or taxes in oil or natural gas;

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

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

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

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

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

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

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

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

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

incident to land management, administration, or disposal;

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

(14) it will procure and furnish liability and property damage insurance 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.

(b) 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 secs. 110 - 140 of this chapter. 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.

(c) The commissioner may insert in any right-of-way lease other reasonable provisions and conditions that he determines the public interest requires.

(d) The lease will also contain terms and conditions that are reasonably necessary to obligate the lessee, to the extent reasonably practicable, to

(1) prevent conflicts with other existing uses of the land involving a superior public interest;

(2) protect state and private property interests;

(3) prevent any significant adverse environmental impact, including but not limited to the erosion of the surface of the land, and damage to fish and wildlife and their habitat;

(4) restore and revegetate during the term and at termination of the lease; and

(5) protect the interests of individuals living in the general area of the right-of-way who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes.

(e) In the event the commissioner proposes to offer a lease or leases to two or more lessees for the same pipeline, the commissioner may include terms in the lease or leases which establish the limit of the obligations and liabilities of each lessee arising under this chapter or under the lease or leases.

(f) The commissioner may, at his discretion, include any or all of the terms set out in this section in leases

of state land for products pipeline right-of-way purposes.

- * Sec. 12. AS 38.35.130 is amended to read:

Sec. 38.35.130. RIGHT-OF-WAY EASEMENTS OR LEASES ACQUIRED FROM OTHERS. (a) The lessee may, if the commissioner delegates the function to it, condemn, by declaration of taking, under AS 09.55.420 - 09.55.450, real property and acquire leases of or easements or rights-of-way on lands in the state required for right-of-way purposes for a pipeline subject to the lease on behalf of and as agent for the state in which title to or interest in the land shall vest.

(b) The lease shall contain a covenant that the land, right-of-way, or easement acquired under this section is or will form part of the land leased to the lessee.

- * Sec. 13. AS 38.35.140 is repealed and re-enacted to read:

Sec. 38.35.140. PAYMENT OF RENTAL AND COSTS. (a) The lease price for a right-of-way lease shall be the annual fair market rental of the state lands included in the right-of-way based on the appraised fair market value of the land. The lease price is payable annually in advance on or before the anniversary of the lease. The appraised fair market rental value shall be adjusted periodically under the provisions of AS 38.05.105. Rental may not be charged for any land acquired by the lessee under sec. 130(b) of this chapter and conveyed without cost to the state.

(b) The lessee shall reimburse the state for all reasonable costs incurred in monitoring the construction of the pipeline on the right-of-way.

- * Sec. 14. AS 38.35.150 is repealed.

- * Sec. 15. AS 38.35.160 is repealed.

- * Sec. 16. AS 38.35.170 is repealed and re-enacted to read:

Sec. 38.35.170. FORFEITURE OF LEASE. Failure to begin construction of the pipeline facility within a reasonable time of the granting of a right-of-way lease under this chapter for reasons within the control of the lessee or failure of an owner of an interest in the granted right-of-way substantially to comply with the terms of the right-of-way shall be grounds for forfeiture of the right-of-way interest of the lessee or owner in an action brought by the commissioner in the superior court. Before the commencement of any action for forfeiture of an interest in a right-of-way under this section, the commissioner shall give the lessee or owner of the interest notice in writing of the alleged default and shall not commence the proceeding unless the lessee or owner of the interest has failed to initiate good faith efforts to cure the default within 60 days of the notice of the alleged default.

- * Sec. 17. AS 38.35.180(c) is amended to read:

(c) Neither this section nor the state's obtaining an injunction or recovering penalties extinguishes any civil

cause of action arising out of a violation of this chapter or the provisions of a right-of-way lease.

- * Sec. 18. AS 38.35.190(b), (c) and (d) are repealed.
- * Sec. 19. AS 38.35.200 is repealed and re-enacted to read:

Sec. 38.35.200. JUDICIAL REVIEW OF DECISIONS OF COMMISSIONER ON APPLICATION. (a) An applicant or competing applicant or a person who has a direct financial interest affected by the lease who raises objections within 60 days of the publication of notice under sec. 70 of this chapter are the only persons with standing to seek judicial review of a decision of the commissioner under sec. 100 of this chapter.

(b) The only grounds for judicial review of a decision of the commissioner are

(1) failure to follow the procedures set out in this chapter; or

(2) abuse of discretion so capricious, arbitrary or confiscatory as to constitute a denial of due process.

- * Sec. 20. AS 38.35.210 is amended to read:

Sec. 38.35.210. DELEGATION OF COMMISSIONER'S AUTHORITY. The commissioner may delegate to an employee of the Department of Natural Resources or the Department of Law the authority granted under this chapter, except for the authority to execute leases.

- * Sec. 21. AS 38.35.220(d) is repealed.
- * Sec. 22. AS 38.35.230 is repealed and re-enacted to read:

Sec. 38.35.230. DEFINITIONS. In this chapter

(1) "commissioner" means the commissioner of natural resources;

(2) "coordinate agencies" includes Department of Labor, Department of Highways, Department of Environmental Conservation, and the Alaska Pipeline Commission;

(3) "lease" means the instrument or extension of an instrument issued under this chapter granting a leasehold interest in state land for pipeline right-of-way purposes to a person and authorizing the construction or operation of, or transportation, service or sale by a pipeline for crude oil, natural gas, or products;

(4) "lessee" means a person or persons holding a valid lease issued by the commissioner;

(5) "natural gas" includes all hydrocarbons produced at the wellhead not defined as oil;

(6) "oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons

known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas;

(7) "pipeline" or "pipeline facility" means all the facilities of a total system of pipe (whether owned or operated under a contract, agreement, or lease) used by a carrier for transportation of crude oil, natural gas, or products for delivery, for storage, or for further transportation, and including all pipe, pump or compressor stations, station equipment, tanks, valves, access roads, bridges, airfields, terminals and terminal facilities, including docks and tanker loading facilities, operations control center for both the upstream part of the pipeline and the terminal, tanker ballast treatment facilities, and fire protection system, communication system, and all other facilities used or necessary for an integral line of pipe, taken as a whole, to effectuate transportation, including an extension or enlargement of the line;

(8) "product" means refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha, distillate, gasoline, kerosene, benzine, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of petroleum and any liquid product or by-product derived from crude petroleum oil or natural gas;

(9) "state land" means

(A) "state lands" as defined in AS 38.05.-365;

(B) public land of the United States selected by the state under sec. 6 of the Alaska Statehood Act of 1958 (PL 85-508; 72 Stat. 399), as amended, and real property of the United States transferred to the state under secs. 21, 35 and 45 of the Alaska Omnibus Act of 1959 (PL 86-70; 73 Stat. 141), as amended;

(C) any interest owned by the state in land;

(10) "transportation" means the shipment or carriage by a pipeline of crude oil, natural gas, or products from an upstream terminus in one or more fields or points of production or supply of the minerals to a downstream terminus in one or more points for delivery of the minerals to a purchaser or consignee, for storage, or for further carriage or shipment, including shipment or carriage within the state that may be classified as interstate or foreign transportation to the extent that the transportation may constitutionally be subjected to the provisions of this chapter, as well as all services necessary to effectuate shipment or carriage, including, among other things, the receipt, storage, processing, handling, transfer in transit, forwarding, and delivery of the minerals.

* Sec. 23. AS 38.35 is amended by adding new sections to

read:

Sec. 38.35.205. LEASE SAVINGS CLAUSE. A judicial finding that any term or condition of a right-of-way lease issued under this chapter is unlawful or invalid may not operate to invalidate the lease or any other term or condition of the lease.

Sec. 38.35.225. BINDING EFFECT OF COVENANTS. By entering into a lease under this chapter, the lessee is bound by all the covenants provided for in the lease to the full extent of the power of the state to impose those covenants under its authority as owner of the land to be leased or under its police or regulatory powers or otherwise; provided that the right of the lessee to challenge the power of the state to require such a covenant as owner of the land to be leased or under its police or regulatory powers or otherwise is preserved until such time as action to enforce the covenant is taken by the state.

* Sec. 24. AS 09.55.240(a)(12) is amended to read:

(12) for the location of pipelines for gathering, transmitting, transporting, storing, or delivering natural or artificial gas or oil or any liquid or gaseous hydrocarbons, including, but not limited to, pumping stations, terminals, storage tanks, or reservoirs, and related installations.

* Sec. 25. AS 38.05.020(c)(1) is amended to read:

(1) granting leases of state land for pipeline right-of-way purposes;

* Sec. 26. AS 38.05.020(c)(2) is amended to read:

(2) leasing, purchasing, or otherwise acquiring (including condemning by declaration of taking), easements or other interests in land in this state for the purpose of utilizing or granting leases of the land, easements or interests for pipeline right-of-way purposes;

* Sec. 27. AS 38.05.020(c)(4) is amended to read:

(4) investigating any matters concerning any lessee with a view to assuring compliance by it with its right-of-way lease, this chapter, and any other applicable state or federal law;

* Sec. 28. AS 38.05.330 is amended to read:

Sec. 38.05.330. PERMITS. The director, without the prior approval of the commissioner, may issue permits, rights-of-way or easements on state land for secondary roads, trails, ditches, field gathering lines or transmission and distribution pipelines not subject to AS 38.35, telephone and transmission lines, log storage, oil well drilling sites and production facilities for the purposes of recovering minerals from adjacent lands under valid lease, and other similar uses or improvements, or for the limited personal use of timber or materials. The commissioner, upon recommendation of the director, shall

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establish a reasonable rate or fee schedule to be charged for these uses. In the granting, suspension or revocation of a permit or easement of lands, the director shall give preference to that use of the land which will be of greatest economic benefit to the state and the development of its resources. However, first preference shall be granted to the upland owner for the use of a tract of tideland, or tideland and contiguous submerged land, which is seaward of the upland property of the upland owner and which is needed by the upland owner for any of the purposes for which the use may be granted.

* Sec. 29. AS 42.06.310 is amended by adding a new subsection to read:

(c) Every common carrier shall, when ordered by the Alaska Pipeline Commission, extend or enlarge its pipeline or storage facilities provided the extension or enlargement shall be found to be reasonable and required in the public interest and that the expense involved will not impair the ability of the common carrier or public utility to perform its duty to the public.

* Sec. 30. The commissioner of natural resources shall submit to the members of the Eighth Legislature not later than September 1, 1974 a full report covering all lands conveyed under provisions of AS 38.05.063 and 38.05.076. The report shall contain a description of all parcels conveyed under the Act including acreage (to include a detailed plat of each parcel), land classification, appraised value, lease or sale value, proposed land usage, and any other information the commissioner may feel necessary to an understanding of the particular disposal.

* Sec. 31. AS 38.05.063 and 38.05.076 are repealed effective September 1, 1974.

* Sec. 32. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.