

**CS FOR HOUSE BILL NO. 277(RES)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 5/13/03

Referred: Labor and Commerce

Sponsor(s): REPRESENTATIVES DAHLSTROM, Kohring

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the authority of the commissioner of natural resources concerning  
2 the investigation of certain leases issued by the state; relating to the powers and  
3 jurisdiction of the Regulatory Commission of Alaska in regard to intrastate pipeline  
4 transportation services, pipeline facilities, and pipeline carriers; relating to the rate of  
5 interest for funds to be paid by pipeline shippers or carriers at the end of a suspension of  
6 tariff filing; relating to the duties and powers of the attorney general regarding pipeline  
7 tariff matters and proceedings, and to the application of orders affecting rates of  
8 regulated pipeline carriers; and providing for an effective date."

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

10 \* **Section 1.** AS 38.05.020(b) is amended to read:

11 (b) The commissioner may

12 (1) establish reasonable procedures and adopt reasonable regulations

1 necessary to carry out this chapter and, whenever necessary, issue directives or orders  
 2 to the director to carry out specific functions and duties; regulations adopted by the  
 3 commissioner shall be adopted under AS 44.62 (Administrative Procedure Act);  
 4 orders by the commissioner classifying land, issued after January 3, 1959, are not  
 5 required to be adopted under AS 44.62 (Administrative Procedure Act);

6 (2) enter into agreements considered necessary to carry out the  
 7 purposes of this chapter, including agreements with federal and state agencies;

8 (3) review any order or action of the director;

9 (4) exercise the powers and do the acts necessary to carry out the  
 10 provisions and objectives of this chapter;

11 (5) notwithstanding the provisions of any other section of this chapter,  
 12 grant an extension of the time within which payments due on any exploration license,  
 13 lease, or sale of state land, minerals, or materials may be made, including payment of  
 14 rental and royalties, on a finding that compliance with the requirements is or was  
 15 prevented by reason of war, riots, or acts of God;

16 (6) classify tracts for agricultural uses;

17 (7) after consulting with the Board of Agriculture and Conservation  
 18 (AS 03.09.010), waive, postpone, or otherwise modify the development requirements  
 19 of a contract for the sale of agricultural land if

20 (A) the land is inaccessible by road; or

21 (B) transportation, marketing, and development costs render  
 22 the required development uneconomic;

23 (8) reconvey or relinquish land or an interest in land to the federal  
 24 government if

25 (A) the land is described in an amended application for an  
 26 allotment under 43 U.S.C. 1617; and

27 (B) the reconveyance or relinquishment is

28 (i) for the purposes provided in 43 U.S.C. 1617; and

29 (ii) in the best interests of the state;

30 **(9) lead and coordinate the investigation of the performance of**  
 31 **obligations under and in compliance with the terms of leases issued by the state**

1 **under this title, including obligations with respect to the dismantlement, removal,**  
 2 **and restoration of a pipeline or pipeline facility.**

3 \* **Sec. 2.** AS 42.06.140(a) is amended to read:

4 (a) The commission

5 (1) shall regulate pipelines and pipeline carriers in the state;

6 (2) may investigate, upon complaint or its own motion, the rates,  
 7 classifications, rules, regulations, prices, services, practices, and facilities of pipeline  
 8 carriers [, AND THE PERFORMANCE OF OBLIGATIONS UNDER AND  
 9 COMPLIANCE WITH THE TERMS OF LEASES ISSUED BY THE STATE];

10 (3) may make, prescribe, or require just, fair, and reasonable rates,  
 11 classifications, regulations, practices, services, and facilities for pipeline carriers;

12 (4) may require pipeline carriers and affiliated interests to file with the  
 13 commission reports and other information and data required or permitted to be  
 14 required by other provisions of this chapter;

15 (5) may adopt regulations that are necessary and proper to the  
 16 performance of its duties under this chapter, including regulations governing practices  
 17 and procedures of the commission; the regulations may not be inconsistent with state  
 18 law;

19 (6) shall, during normal business hours, have access to and may  
 20 designate any of its employees, agents, or consultants to inspect and examine the  
 21 accounts, financial and property records, books, maps, inventories, appraisals,  
 22 valuations, and related reports kept by a pipeline carrier, or kept for it by others, that  
 23 directly affect the interests of the state and directly relate to pipelines located in the  
 24 state;

25 (7) may initiate, intervene in, and appear personally or by counsel and  
 26 offer evidence in and participate in [,] any proceedings involving a pipeline carrier [,]  
 27 and affecting the interests of the state, before any officer, department, board,  
 28 commission, or court of this state;

29 (8) shall require permits for the construction, enlargement in size or  
 30 operating capacity, extension, connection and interconnection, **or** operation [OR  
 31 ABANDONMENT] of any oil or gas pipeline facility or facilities, subject to necessary

1 and reasonable terms, conditions, and limitations;

2 (9) may prescribe the system of accounts and regulate the service of an  
3 oil or gas pipeline facility;

4 (10) shall provide all reasonable assistance to the Department of Law  
5 in intervening in, offering evidence in, and participating in proceedings involving a  
6 pipeline carrier or affiliated interest and affecting the interests of the state, before an  
7 officer, department, board, commission, or court of another state or the United States.

8 \* **Sec. 3.** AS 42.06.230 is amended by adding a new subsection to read:

9 (c) Notwithstanding any other provision of this chapter, the commission does  
10 not have jurisdiction over a pipeline carrier with respect to the dismantlement,  
11 removal, and restoration of any part of a pipeline facility, or over any amount  
12 collected or held by a pipeline carrier for performing dismantlement, removal, and  
13 restoration except amounts included in a pipeline carrier's intrastate rates.

14 \* **Sec. 4.** AS 42.06.245 is amended to read:

15 **Sec. 42.06.245. Federally regulated carriers.** The requirements of this  
16 chapter pertaining to permits and certificates of public convenience and necessity do  
17 not apply to the construction of a pipeline facility exclusively subject to federal  
18 jurisdiction or to the interstate portion of the business of a pipeline or pipeline carrier  
19 [EXCLUSIVELY] subject to federal jurisdiction, **including rates, tariffs, charges,**  
20 **classification, rules, regulations, terms, and conditions pertaining to the interstate**  
21 **portion of the business subject to federal jurisdiction.** However, the requirements  
22 of this chapter for permits and certificates of public convenience and necessity do  
23 apply to [ALL] the intrastate portion of the business of a pipeline or pipeline carrier  
24 subject to federal jurisdiction **to the extent the pipeline or pipeline carrier is**  
25 **engaged** [WHENEVER IT ENGAGES] in intrastate commerce, **including rates,**  
26 **tariffs, charges, classification, rules, regulations, terms, and conditions pertaining**  
27 **solely to the intrastate portion of the business. The commission may not base**  
28 **intrastate rates on revenue collected on interstate transportation.** However,  
29 nothing **in this section** limits the powers of the commission **to consider both**  
30 **interstate and intrastate pipeline revenue requirements as needed to determine**  
31 **what costs may be recovered by a pipeline carrier through intrastate rates** [SET

1 OUT IN THIS CHAPTER EXCEPT TO THE EXTENT THEY ARE PREEMPTED  
2 BY FEDERAL LAW].

3 \* **Sec. 5.** AS 42.06.290(a) is amended to read:

4 (a) A pipeline carrier may not abandon, [OR] permanently reduce capacity,  
5 [DISCONTINUE USE OF ALL OR ANY PORTION OF A PIPELINE OR  
6 ABANDON] or discontinue any service rendered by means of a pipeline that is the  
7 subject of a certificate of convenience and necessity [,] without the permission and  
8 approval of the commission, after due notice and hearing, and a finding by the  
9 commission that continued service is not required by public convenience and  
10 necessity. Any interested person may file with the commission a protest or  
11 memorandum of opposition to or in support of discontinuance, [OR] abandonment, or  
12 reduction in transportation services. The commission may authorize temporary  
13 suspension of a service or part of a service.

14 \* **Sec. 6.** AS 42.06.400(b) is amended to read:

15 (b) An order suspending a tariff filing may be vacated if, after investigation,  
16 the commission finds that it is, in all respects, proper. Otherwise, the commission  
17 shall hold a hearing on the suspended filing and issue its order, before the end of the  
18 suspension period, granting, denying, or modifying the suspended tariff in whole or in  
19 part. If an initial tariff is suspended, the commission shall establish a reasonable  
20 temporary tariff. The commission may allow the collection of the filed initial tariff, or  
21 it may require collection of the temporary tariff. If the commission allows collection  
22 of the filed initial tariff, it shall require the pipeline carrier to place the revenue  
23 representing the difference between the filed tariff and the temporary tariff in escrow  
24 in a financial institution approved by the commission, and keep accurate accounts of  
25 all amounts received, specifying by whom and in whose behalf the amounts are paid.  
26 At the end or vacation of the suspension period, the amount, if any, owing to the  
27 pipeline carrier from the difference between the temporary tariff and the permanent  
28 tariff shall be paid to the pipeline carrier. The surplus, if any, shall be refunded to the  
29 persons in whose behalf the amounts were paid into escrow. Funds may not be  
30 released from escrow without the commission's prior written consent and instructions  
31 to the escrow agent. The commission may allow the pipeline carrier, at the carrier's

1 expense, to substitute a bond or letter of credit in lieu of the escrow requirement. If  
 2 the commission requires collection of the temporary tariff, it shall require the shipper  
 3 to place the revenue representing the difference between the filed initial tariff and the  
 4 temporary tariff in escrow in a financial institution approved by the commission, and  
 5 require that accurate accounts similar to those specified above in this section be kept  
 6 by the carrier and the shipper. The person owing shall pay the person owed to the  
 7 satisfaction of the commission within 30 days after the commission order allowing or  
 8 setting a permanent tariff. The amount, if any, by which the permanent tariff exceeds  
 9 the temporary tariff shall be paid by the shipper to the carrier, or, if the temporary  
 10 tariff exceeds the permanent tariff, the difference shall be paid by the carrier to the  
 11 shipper, and, in either event such payment shall be made with interest calculated on  
 12 the balance due at the end of each calendar month. **The applicable rate of interest is**  
 13 **five percentage points above the 12th Federal Reserve District discount rate in**  
 14 **effect on January 2 of each year for which payments are due and for which the**  
 15 **interest is being computed, unless the parties have agreed in writing that another**  
 16 **rate of interest applies** [AT THE LEGAL RATE, AS DEFINED IN  
 17 AS 45.45.010(a)]. The commission may allow the shipper, at the shipper's expense, to  
 18 substitute a bond or letter of credit in place of the escrow requirement.

19 \* **Sec. 7.** AS 42.06.410(a) is amended to read:

20 (a) When the commission, after an investigation and hearing, finds that a rate  
 21 demanded, observed, charged, or collected by a pipeline carrier for a service, subject  
 22 to the jurisdiction of the commission, or that a classification, rule, regulation, practice,  
 23 or contract affecting the rate, is unjust, unreasonable, unduly discriminatory, or  
 24 preferential, the commission shall determine a just and reasonable rate, classification,  
 25 rule, regulation, practice, or contract to be observed or allowed and shall establish it by  
 26 order. **An order setting rates under this subsection may not affect rates in effect**  
 27 **before the date the protest was filed, the date the complaint was filed, or the date**  
 28 **of the commission action that initiated the investigation or hearing, whichever is**  
 29 **earliest.**

30 \* **Sec. 8.** AS 44.23.020(b) is amended to read:

31 (b) The attorney general shall

1 (1) defend the Constitution of the State of Alaska and the Constitution  
2 of the United States of America;

3 (2) bring, prosecute, and defend all necessary and proper actions in the  
4 name of the state for the collection of revenue;

5 (3) represent the state in all civil actions in which the state is a party;

6 (4) prosecute all cases involving violation of state law, and file  
7 informations and prosecute all offenses against the revenue laws and other state laws  
8 where there is no other provision for their prosecution;

9 (5) administer state legal services, including the furnishing of written  
10 legal opinions to the governor, the legislature, and all state officers and departments as  
11 the governor directs; and give legal advice on a law, proposed law, or proposed  
12 legislative measure upon request by the legislature or a member of the legislature;

13 (6) draft legal instruments for the state;

14 (7) make available a report to the legislature, through the governor, at  
15 each regular legislative session

16 (A) of the work and expenditures of the office; and

17 (B) on needed legislation or amendments to existing law;

18 (8) perform all other duties required by law or which usually pertain to  
19 the office of attorney general in a state; [AND]

20 (9) prepare, publish, and revise as it becomes useful or necessary to do  
21 so an information pamphlet on landlord and tenant rights and the means of making  
22 complaints to appropriate public agencies concerning landlord and tenant rights; the  
23 contents of the pamphlet and any revision shall be approved by the Department of  
24 Law, division of consumer protection, before publication; **and**

25 **(10) consult with affected agencies regarding pipeline tariff**  
26 **matters, and participate in a pipeline tariff proceeding on behalf of the state,**  
27 **when, in the attorney general's discretion, it is in the best interests of the state or**  
28 **the public interest to do so.**

29 \* **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to  
30 read:

31 **APPLICABILITY.** (a) Sections 1 - 5 and 7 - 8 of this Act apply to matters pending

1 before the Regulatory Commission of Alaska on or after the effective date of this Act.

2 (b) Section 6 of this Act applies only to matters filed before the Regulatory  
3 Commission of Alaska on or after the effective date of this Act.

4 (c) The changes made by this Act do not apply to

5 (1) an order of the Regulatory Commission of Alaska that is on appeal  
6 to the court on the effective date of this Act;

7 (2) a matter that is

8 (A) included in an order of the Regulatory Commission of  
9 Alaska that is on appeal to the court on the effective date of this Act; and

10 (B) remanded to the Regulatory Commission of Alaska by the  
11 court.

12 \* **Sec. 10.** This Act takes effect immediately under AS 01.10.070(c).