

**CS FOR HOUSE BILL NO. 215(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/9/11

Referred: Today's Calendar

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

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the judicial review of a right-of-way lease or the development or**  
2 **construction of an oil or gas pipeline on state land; and relating to the lease of a right-of-**  
3 **way by the Alaska Housing Finance Corporation for a gas pipeline transportation**  
4 **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 Housing Finance Corporation a right-of-way lease  
9 under AS 38.35 for the gas pipeline transportation corridor if

10 (1) the corporation submits a complete right-of-way lease application  
11 under AS 38.35.050;

12 (2) the lease application is made the subject of notice and other  
13 reasonable and appropriate publication requirements under AS 38.35.070; and

14 (3) **except for the covenants in AS 38.35.120(a)(1), (2), and (5),** the

1 corporation agrees to be bound by the right-of-way lease covenants set out in  
 2 AS 38.35.120; **notwithstanding AS 38.35.120(b), a right-of-way lease subject to**  
 3 **this paragraph is valid and of legal effect.**

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

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

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

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

25 (1) it assumes the status of and will perform all of its functions  
 26 undertaken under the lease as a common carrier and will accept, convey, and transport  
 27 without discrimination crude oil or natural gas, depending on the kind of pipeline  
 28 involved, delivered to it for transportation from fields in the vicinity of the pipeline  
 29 subject to the lease throughout its route both on state land obtained under the lease and  
 30 on the other land; it will accept, convey, and transport crude oil or natural gas without  
 31 unjust or unreasonable discrimination in favor of one producer or person, including

1 itself, as against another but will take the crude oil or natural gas, depending on the  
2 kind of pipeline involved, delivered or offered, without unreasonable discrimination,  
3 that the Regulatory Commission of Alaska shall, after a full hearing with due notice to  
4 the interested parties and a proper finding of facts, determine to be reasonable in the  
5 performance of its duties as a common carrier; however, a lessee that owns or operates  
6 a natural gas pipeline

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

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

30 (2) it will interchange crude oil or natural gas, depending on the kind  
31 of pipeline involved, with each like common carrier and provide connections and

1 facilities for the interchange of crude oil or natural gas at every locality reached by  
2 both pipelines when the necessity exists, subject to rates and regulations made by the  
3 appropriate state or federal regulatory agency;

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

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

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

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

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

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

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

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

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

29 (9) it will not transfer, assign, or dispose of in any manner, directly or  
30 indirectly, or by transfer of control of the carrier corporation, its interest in a right-of-  
31 way lease, or any rights under the lease or any pipeline subject to the lease to any

1 person other than another owner of the pipeline (including subsidiaries, parents, and  
2 affiliates of the owners), except to the extent that the commissioner, after  
3 consideration of the protection of the public interest (including whether the proposed  
4 transferee is fit, willing, and able to perform the transportation or other acts proposed  
5 in a manner that will reasonably protect the lives, property, and general welfare of the  
6 people of Alaska), authorizes; the commissioner shall not unreasonably withhold  
7 consent to the transfer, assignment, or disposal;

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

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

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

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

27 (14) it will procure and furnish liability and property damage insurance  
28 from a company licensed to do business in the state or furnish other security or  
29 undertaking upon the terms and conditions the commissioner considers necessary if  
30 the commissioner finds that the net assets of the lessee are insufficient to protect the  
31 public from damage for which the lessee may be liable arising out of the construction

1 or operation of the pipeline.

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

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

11 \* **Sec. 5.** AS 38.35.200(a) is amended to read:

12 (a) **A person that is a** [AN APPLICANT OR] competing applicant or **that** [A  
 13 PERSON WHO] has a direct financial interest affected by the lease **of a right-of-way**  
 14 **under this chapter that** [WHO] raises **an objection** [OBJECTIONS] within **the later**  
 15 **of 60 days after the effective date of this Act or** [OF] the publication of notice under  
 16 AS 38.35.070 **and a person that is an applicant** are the only persons with standing to  
 17 seek judicial review of

18 (1) a decision of the commissioner under AS 38.35.100; **or**

19 (2) **an action described in (c) of this section.**

20 \* **Sec. 6.** AS 38.35.200(b) is amended by adding new subsections to read:

21 (c) Notwithstanding any contrary provision of law, an action or decision of the  
 22 commissioner or other state officer or agency concerning the issuance or approval of a  
 23 necessary right-of-way, permit, lease, certificate, license, or other authorization for the  
 24 development, construction, or initial operation of a natural gas pipeline that uses a  
 25 right-of-way subject to this chapter may not be subject to judicial review, except that a  
 26 claim alleging the invalidity of this section must be brought within 60 days after the  
 27 effective date of this Act, and a claim alleging that an action will deny rights under the  
 28 Constitution of the State of Alaska must be brought within 60 days following the date  
 29 of that action. A claim that is not filed within the limitations established in this  
 30 subsection is barred. A complaint under this subsection must be filed in superior court,  
 31 and the superior court has exclusive jurisdiction. Notwithstanding AS 22.10.020(c),

1           except in conjunction with a final judgment on a claim filed under this subsection, the  
2           superior court may not grant injunctive relief, including a temporary restraining order,  
3           preliminary injunction, permanent injunction, or stay against the issuance of a right-of-  
4           way, permit, lease, certificate, license, or other authorization. In this section, "natural  
5           gas pipeline" has the meaning given in AS 42.06.630.

6           (d) An appeal of a permitting decision by the Department of Environmental  
7           Conservation under AS 46.03 or AS 46.14 that is made under authority delegated to  
8           the Department of Environmental Conservation by the United States Environmental  
9           Protection Agency is not

10                           (1) subject to the limitation in (a)(2) of this section;

11                           (2) included in the actions or decisions described in (c) of this section.

12       \* **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to  
13 read:

14           REVISOR'S INSTRUCTION. The revisor of statutes shall change the catch line of  
15 AS 38.35.200 from "Judicial review of decisions of commissioner on application" to "Judicial  
16 review."