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1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 634

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to pipelines for the transportation
7 of oil in the state."

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

9 * Section 1. AS 31 is amended by adding a new chapter to read:

10 CHAPTER 20. ALASKA OIL PIPELINE ACT OF 1970.

11 Sec. 31.20.010. APPLICATION OF CHAPTER. This chapter applies to
12 all land in the state lawfully subject to its police powers. It applies
13 to land of the United States, to land subject to the jurisdiction of
14 the United States, and to persons engaged in the transportation of oil
15 by pipeline or partly by pipeline only to the extent that control and
16 supervision of pipeline transportation of oil by the United States
17 fails to carry out the intent and purposes of this chapter and other-
18 wise applies so far as an officer of the United States having jurisdic-
19 tion, or his authorized representative, approves any of the provisions
20 of this chapter or regulations or orders of the department which affect
21 oil pipelines.

22 Sec. 31.20.020. STATEMENT OF PURPOSE. It is the purpose of this
23 chapter to provide for state regulation of the transportation of oil
24 by pipeline in the state, so as to protect and preserve the environ-
25 ment by means of adequate safety requirements and to ensure fair
26 and reasonable use and rates of oil pipelines, without unreasonable
27 discrimination. This chapter is appropriate and necessary
28 because of this state's unique environment, geographical remoteness
29 from other states, and vital economic interest in ensuring fair and

1 reasonable use and rates of oil pipelines wholly within this state.

2 Sec. 31.20.030. OIL PIPELINES. (a) Each pipeline operated in
3 this state by a person for the transportation of oil from any one point
4 in the territorial jurisdiction of this state to any other point in
5 the territorial jurisdiction of this state which (1) is located in
6 whole or in part along, across, upon, over or under the right of way
7 of a public road or highway or the right of way of a railroad or other
8 public utility, or across, upon, over or under a river or other body
9 of water or land belonging to or administered by this state, the depart-
10 ment, or any other agency of this state; or (2) is operated by a person
11 having the right of eminent domain or any part of the right of way for
12 which was acquired by exercise of the power of eminent domain, or is
13 operated under any type of governmental permit or license from the
14 federal government or an agency of the federal government, from this
15 state, from the department, or from any other agency of this state; or
16 (3) transports the oil of any person from or near the point of produc-
17 tion to a distributing, refining, marketing or shipping point in this
18 state or its territorial jurisdiction; or (4) is operated for hire
19 or is operated as, or is in fact, a public utility for the transporta-
20 tion of oil; is a common carrier oil pipeline and shall be constructed,
21 operated, maintained, enlarged, extended and abandoned, in whole or in
22 part, as provided in this chapter and under regulations and directives
23 adopted under this chapter.

24 (b) "Common carrier oil pipelines" does not include those oil pipe-
25 lines or portions of oil pipelines which have the same owner as the well
26 from which the oil is produced and which extend to the point where the
27 oil is first stored, measured or treated.

28 Sec. 31.20.040. POWERS AND DUTIES OF DEPARTMENT. (a) The
29 department has jurisdiction and authority over all persons and property,

1 public and private, necessary to carry out the purposes and intent of
2 this chapter.

3 (b) The department shall adopt regulations and orders and take
4 other appropriate action to carry out the purposes and intent of this
5 chapter.

6 (c) The department may

7 (1) require permits for the construction, enlargement in
8 size or operating capacity, extension, operation and abandonment of any
9 oil pipeline, subject to such reasonable terms, conditions and limita-
10 tions as may be required;

11 (2) promulgate reasonable regulations and directives for the
12 safe operation of oil pipelines, for the protection and preservation
13 in their natural state of the waters, fields and forests of this state
14 and marine life, birds and other wild life therein, for the conservation
15 and development of the natural resources of this state;

16 (3) require the fair and reasonable use of common carrier
17 oil pipelines and their facilities by all oil producers or purchasers
18 in the field served by them;

19 (4) prevent unreasonable discrimination in the use of common
20 carrier oil pipelines or in the rates and charges for their use;

21 (5) promulgate reasonable rates and charges for gathering,
22 transporting, and the receipt and delivery of oil by common carrier
23 oil pipelines, and for the use of storage and other facilities necessarily
24 incident to such transportation;

25 (6) promulgate and enforce regulations for the government
26 and control of common carrier oil pipelines and all persons owning,
27 operating, controlling and managing these pipelines;

28 (7) require a person operating a common carrier oil pipeline
29 to furnish and maintain in force a valid bond in an amount which may be

1 prescribed by regulation, for the benefit of the state, a political sub-
2 division of the state, and all persons damaged in any way by the pipeline,
3 with sufficient surety conditions for the performance of the provisions
4 of this chapter and regulations, orders and permits promulgated under
5 this chapter; and

6 (8) establish reasonable fees for the filing of an applica-
7 tion under this chapter the fee for which is not otherwise fixed, and
8 require payment of the fee at the time of filing.

9 Sec. 31.20.050. REGULATIONS, PERMITS AND ORDERS. (a) The department
10 shall prescribe regulations governing practice and procedure before it under
11 this chapter in accordance with the Administrative Procedure Act (AS 44.62).

12 (b) All permits and orders issued by the department shall be in
13 writing, shall be entered in full and indexed in books kept by the
14 department for that purpose, and shall be public records open for inspec-
15 tion at all times during reasonable office hours. A copy of a permit
16 or order certified by the department shall be received in evidence in
17 all courts of the state with the same effect as the original.

18 Sec. 31.20.060. NOTICE. A notice required by this chapter shall
19 be given in accordance with the Administrative Procedure Act (AS 44.62).

20 Sec. 31.20.070. ACTION BY DEPARTMENT. The department may act
21 upon its own motion, or upon the petition of an interested person.
22 On the filing of a petition concerning a common carrier oil pipeline,
23 the department shall promptly fix a date for a hearing, and shall cause
24 notice of the hearing to be given. The hearing shall be held without
25 undue delay after the filing of the petition, and shall be held in
26 accordance with the Administrative Procedure Act (AS 44.62). Action
27 on a petition involving an oil pipeline which is not a common carrier
28 shall be in the manner provided in AS 31.05.060. The department shall
29 enter its order as soon as reasonably practical.

1 Sec. 31.20.080. PERMITS FOR OIL PIPELINES. (a) A person desiring
2 to construct or increase the size or operating capacity of an oil pipe-
3 line, or operate an oil pipeline, shall apply to the department.

4 (b) Each application under this section shall be in the form
5 and shall contain such information and accompanying exhibits relating
6 to the application as may be required by the regulations adopted under
7 this chapter.

8 (c) No application for a permit under this section may be denied,
9 in whole or in part, without prior notice and a public hearing at which
10 the applicant and all interested parties shall have the opportunity
11 to be heard.

12 (d) A permit shall be issued, upon such reasonable terms, conditions
13 and limitations as may be required by the department, if the department
14 finds that

15 (1) the applicant is a financially responsible person, is
16 fit, willing and able to perform the act for which authorization is
17 sought, and in connection therewith will comply with all applicable
18 laws and regulations;

19 (2) all facilities proposed to be constituted or operated
20 by the applicant are designed for safe and efficient operation, at the
21 pressures and under the operating conditions which may reasonably be
22 expected to be encountered or employed, and so as to avoid leaks or
23 accidents, and that they will be so operated; and

24 (3) if the applicant is, or upon commencement of operations
25 under the permit will be, a common carrier oil pipeline and has paid
26 a fee of \$50, there is a need for the service for which the pipeline
27 is applied for and that the granting of the permit is in the public
28 interest.

29 (e) The provisions of (d) of this section do not apply if the

1 common carrier oil pipeline for which an operating permit is applied
2 for was constructed and in operation on the effective date of this
3 chapter.

4 (f) Nothing in this section prevents the department from issuing,
5 without prior notice or hearing, temporary permits on terms and condi-
6 tions considered just and proper in an emergency or to further the
7 public interest, subject, however, to final order of the department.

8 Sec. 31.20.090. EXTENSIONS, ENLARGEMENTS AND ABANDONMENTS OF
9 COMMON CARRIER OIL PIPELINES. (a) After notice and public hearing
10 the department may require the extension or enlargement within any
11 field of any common carrier oil pipeline, on such terms as may be
12 found to be just, proper, and reasonable, if such extension or
13 enlargement will serve the public interest and the expense incurred
14 will not impair the ability of the common carrier oil pipeline to
15 perform its operations.

16 (b) No common carrier oil pipeline may abandon any of its facili-
17 ties or services rendered except as authorized by order of the depart-
18 ment after notice and public hearing, based upon a finding that

19 (1) there is no need for the facility or service and that
20 the continued operation of the facility or rendering of the service
21 is not in the public interest; or

22 (2) the expense of continued operation of the facility or
23 rendering of the service will impair the ability of the common carrier
24 to perform other reasonably necessary operations.

25 (c) Nothing in this section prevents the department from issuing,
26 without prior notice or hearing, authority to temporarily abandon a
27 facility or cease rendering a service, on terms considered just and
28 proper, subject, however, to final order of the department after
29 notice and public hearing.

1 Sec. 31.20.100. COMMON CARRIER OIL PIPELINE RATES AND CHARGES.

2 (a) Within 90 days after the effective date of regulations authorized
3 by this chapter, each existing common carrier oil pipeline, and within
4 90 days before commencing operations in this state, every other common
5 carrier oil pipeline, shall make application to the department for
6 approval of its existing or proposed rates and charges, and any classi-
7 fications, practices and regulations applicable to them, and shall pay
8 a filing fee in the amount of \$50.

9 (b) Each application under this section shall be in the form and
10 shall contain such information and accompanying exhibits relating to
11 the application as may be required by the regulations adopted under
12 this chapter.

13 (c) The rates and charges applied for by existing common carrier
14 oil pipelines as required by this section shall be effective as the
15 initial operating rates and charges, subject, however, to final action
16 by the department.

17 (d) The rates and charges applied for by a common carrier oil
18 pipeline not operating upon the effective date of this chapter become
19 effective only when so ordered by the department.

20 (e) Applications for changes in effective rates and charges of
21 common carrier oil pipelines may be filed as provided for initial
22 applications under (a) and (b) of this section, and the changed rates
23 and charges may be effective not earlier than 30 days after the filing
24 of the application or such longer period as may be specified in the
25 application, subject, however, to final action of the department.

26 (f) The rates and charges of common carrier oil pipelines shall
27 include both single and joint line transportation, deductions for
28 evaporation and shrinkage, demurrage, storage, overage and underage
29 and all other proper items. The basis of the rates and charges shall

1 be such as will provide a fair return and no more upon the aggregate
2 value of the property of the common carrier oil pipeline used and useful
3 in the services performed after providing reasonable allowance for
4 depreciation and other proper factors and for reasonable operating
5 expenses under honest, efficient and economical management.

6 (g) The department may at any time, either on its own motion or at
7 the request of an interested party, approve, revise or modify the applied
8 for or existing rates or charges or classifications or practices proposed
9 by a common carrier oil pipeline. Such action by the department is
10 effective as of the date of filing of the relevant application or motion,
11 except that an increase in rate or charge ordered is effective upon the
12 effective date of the order, and that a decrease in rate or charge
13 ordered is effective as of the effective date of the order. Should a
14 rate or charge paid to a common carrier oil pipeline before the
15 effective date of the department's order be reduced, the person paying
16 it is entitled to a refund of the excess rate or charge so paid together
17 with interest on it at the rate of six per cent a year from the date
18 of payment until the date of refund.

19 (h) A true copy of all contracts and agreements of any nature made by
20 any common carrier oil pipeline with any other person or governmental
21 agency or department relating in any manner to the services of the common
22 carrier oil pipeline or its rates or charges or a classification or prac-
23 tice in connection with it shall be filed with the department within 30
24 days after the contract or agreement is made. All such contracts and
25 agreements shall be subject to terms of this chapter, and to the regula-
26 tions and orders of the department under this chapter.

27 Sec. 31.20.110. DISCRIMINATION BY COMMON CARRIER OIL PIPELINES
28 PROHIBITED. (a) No common carrier oil pipeline may unreasonably
29 discriminate either in favor of or against a user of its services or

1 anyone desiring to use its services in regard to facilities furnished,
2 service rendered or rates charged in the transportation or storage of
3 oil owned by the common carrier oil pipeline or an affiliate of it.
4 No common carrier oil pipeline may directly or indirectly charge,
5 demand, collect or receive from a person a greater or less compensation
6 for a service rendered than from any other person for a like and con-
7 temporaneous service; however, nothing in this section limits the right
8 of the department to approve or prescribe rates, charges or regulations
9 for transportation, storage or other service from, to or at some place
10 different from the rates, charges or regulations for transportation,
11 storage or other service from, to or at another place as the department
12 may determine is just and reasonable under the particular facts and
13 circumstances, or from prescribing just and reasonable classifica-
14 tions for rates, services, and practices. When a common carrier oil
15 pipeline is offered more oil than it can immediately transport or
16 store, its transportation or storage facilities shall be equitably
17 apportioned among the persons using them or desiring to use them,
18 including itself as a user, in a manner required by the regulations and
19 orders of the department, and if there is no such regulation or order
20 then in effect, then in such manner as is just, reasonable and nondis-
21 criminatory under the circumstances. No common carrier oil pipeline
22 is considered guilty of unlawful discrimination under this section when
23 acting in accordance with a regulation or order of the department
24 before the final judgment of a court of competent jurisdiction adjudi-
25 cating the regulation or order to be invalid.

26 (b) When a person is unlawfully discriminated against by a common
27 carrier oil pipeline, a cause of action for all damages to that person
28 arising from the discrimination shall lie against the common carrier
29 oil pipeline in favor of the person suffering the discrimination. An

1 action may be brought in the superior court and no prior administrative
2 finding of the department of any such discrimination is a prerequisite to
3 it.

4 (c) No common carrier oil pipeline shall be required to provide ser-
5 vices to anyone except on a proportionate and equitable basis with all
6 other common carrier oil pipelines similarly situated.

7 Sec. 31.20.120. DESIGNATION OF SERVICE AGENTS. Each person subject
8 to the provisions of this chapter shall file with the department a writing
9 designating and appointing a named permanent resident of the state and
10 maintaining a registered agent in this state, as such person's agent upon
11 whom service on all notices, regulations, decisions and orders of the de-
12 partment, and any process may be made for and in behalf of or on such per-
13 son; specifying in the designation and appointment an address in Alaska of
14 the designated agent, which address may be changed at any time by the
15 filing by the person with the department of another address in Alaska for
16 the agent. Service of a notice, regulation, decision or order of the de-
17 partment and of process authorized by this chapter may be made upon any
18 person subject to this chapter by personal service upon such person or upon
19 such person's designated agent or by mailing or delivery of it to the
20 office or usual place of business or address last specified for such person
21 or his or its agent with the same effect as if personally served upon the
22 person subject to this chapter. If a person at any time fails to have a
23 designated agent for service, service of a notice, regulation, decision or
24 order of the department and of process authorized by this chapter may be
25 made by posting it in an office of the department and filing a copy of it
26 in the office of the secretary of state.

27 Sec. 31.20.130. PENALTIES. (a) A person who wilfully violates a pro-
28 vision of this chapter, or a regulation or order of the department adopted
29 under this chapter is subject to a penalty of not more than \$1,000 for

1 each act of violation and for each day the violation continues, unless the
2 penalty for violation is otherwise provided for and made exclusive in this
3 chapter.

4 (b) If a person, for the purpose of evading this chapter, or a regu-
5 lation or order of the department adopted under this chapter, wilfully
6 makes or has made a false entry in a record, account or memorandum required
7 by this chapter, or by a regulation or order, or wilfully omits, or causes
8 to be omitted, from a record, account or memorandum, full, true and cor-
9 rect entries as required by this chapter, or by a regulation or order, or
10 removes from the state or destroys, mutilates, alters or falsifies such
11 a record, account or memorandum, the person is guilty of a misdemeanor,
12 and upon conviction is punishable by a fine of not more than \$5,000, or
13 by imprisonment in jail for not more than six months, or by both.

14 (c) A person who knowingly aids or abets another person in the viola-
15 tion of a provision of this chapter, or a regulation or order of the
16 department adopted under this chapter is subject to the same penalty as
17 that prescribed by this chapter for the violation by the other person.

18 (d) The penalties provided in this section are recoverable in an
19 action filed by the attorney general in the name and on behalf of the
20 department in the superior court in the judicial district in which the
21 defendant resides or in which any defendant resides, if there is more
22 than one defendant, or in the superior court of the judicial district
23 in which the violation occurs. The payment of a penalty does not relieve
24 a person on whom the penalty is imposed from liability to any other
25 person for damages arising out of the violation.

26 (e) The penalties provided for in (a) of this section shall not be
27 imposed upon any person during any period in which such person is dili-
28 gently seeking a judicial determination of the validity of this chapter
29 or any regulation, rule, or order of the department adopted under this

1 chapter.

2 Sec. 31.20.140. INJUNCTIVE RELIEF. Whenever it appears that a
3 person is violating or threatening to violate a provision of this
4 chapter, or a regulation or order of the department, the department
5 shall bring an action against that person in the superior court in the
6 judicial district where the violation occurs or is threatened, to
7 restrain the person from continuing the violation or from carrying out
8 the threat of violation. In the action, the court has jurisdiction to
9 grant to the department, without bond or otherwise undertaking, such
10 prohibitory and mandatory injunctions as the facts warrant.

11 Sec. 31.20.150. DEFINITIONS. In this chapter, unless the context
12 otherwise requires

13 (1) "affiliate" of a particular person means:

14 (A) a corporation a majority of the capital stock
15 (entitled to be voted for director or similar governing officers)
16 of which is legally or beneficially owned, directly or indirectly,
17 by that particular person;

18 (B) a person or group of persons which, legally or
19 beneficially, either directly or indirectly, owns a majority of
20 the capital stock (entitled to be voted for directors or similar
21 governing officers) of that particular person;

22 (C) a corporation a majority of the capital stock
23 (entitled to be voted for directors or similar governing officers)
24 of which is legally or beneficially owned, directly or indirectly,
25 by a person or group of persons which owns, legally or beneficially,
26 directly or indirectly, a majority of the capital stock of that
27 particular person, or

28 (D) a noncorporate person controlled directly or in-
29 directly by that particular person, and in any event, a noncorporate

1 person is considered to be controlled by that particular person if
2 the latter owns, legally or beneficially, directly or indirectly,
3 a majority interest therein or in fact has control of the non-
4 corporate person under its articles, charter, or other basic
5 organization, such as, but not limited to, being the general partner
6 of a limited partnership or acting in any general representative
7 capacity for that particular person;

8 (2) "department" means the Department of Natural Resources;

9 (3) "existing common carrier oil pipeline" means a pipeline
10 which is classified as a common carrier oil pipeline by this chapter
11 and was engaged in pipeline operations in this state on the effective
12 date of this chapter;

13 (4) "field" means a general area which is underlain or appears
14 to be underlain by at least one pool, and includes the underground
15 reservoir containing oil or gas; and the words "pool" and "field" mean
16 the same thing when only one underground reservoir is involved, but
17 "field" unlike "pool" may relate to two or more pools;

18 (5) "oil" means crude petroleum oil and other hydrocarbons
19 regardless of gravity which are produced at the wellhead in liquid form
20 or extracted from gas, other than gas produced in association with oil
21 and commonly known as casinghead gas;

22 (6) "oil pipeline" means a pipeline or system of pipes,
23 lines, mains, laterals, conduits, feeders, regulators, compression
24 facilities, valves, heaters, meters, fixtures, connections, attachments
25 and other personal property, fixtures and equipment, or any of them
26 used or designed for the purpose of transporting oil within the limits
27 of the territorial jurisdiction of this state, whether laid or to be
28 laid on or below the surface of land or water or on, in or below any
29 lake, river, stream, bay, inlet or estuary, and any storage tanks,

1 treating, shipping, loading or other facilities used in connection with
2 the transportation facilities for the transportation, storage, treat-
3 ment, loading, handling, shipment or reshipment of oil;

4 (7) "person" means any natural or artificial person or entity
5 whatever, including but not limited to corporations, joint stock or
6 other companies or associations, partnerships of any nature, any such
7 person acting as a trustee, fiduciary, personal representative, agent
8 or in a judicially appointed representative capacity for another person
9 or his or its person or estate, and any group or combination of any of
10 the foregoing; however, the term does not include a federal, state,
11 borough or municipal government, other federal or state political sub-
12 division, or a department, agency, or governmental officer or repre-
13 sentative of any of them when acting in behalf of a government or
14 governmental department or agency;

15 (8) when the context so requires, "common carrier oil pipe-
16 line" shall include the owner or operator of such common carrier oil
17 pipeline.

18 Sec. 31.20.160. CONFLICT WITH OTHER LAWS. In the event of a
19 conflict between this Act and any other law of this state, the provisions
20 of this Act shall govern and shall supersede any such other law.

21 * Sec. 2. AS 44.62.330(18) is amended to read:

22 (18) Department of Natural Resources, as to functions relat-
23 ing to the conservation of oil and gas and common carrier oil pipelines.
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