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Referred: Resources and  
Finance

BY THE RULES COMMITTEE BY REQUEST  
OF THE GOVERNOR AND THE JOINT  
PIPELINE IMPACT COMMITTEE

1 IN THE HOUSE

2 HOUSE BILL NO. 769

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Oil and Gas Transporta-  
7 tion Commission; and providing for an effective date."

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

9 \* Section 1. AS 42 is amended by adding a new chapter to read:

10 CHAPTER 6. ALASKA OIL AND GAS TRANSPORTATION

11 COMMISSION ACT.

12 ARTICLE 1. ESTABLISHMENT OF ALASKA OIL AND

13 GAS TRANSPORTATION COMMISSION.

14 Sec. 42.06.010. ALASKA OIL AND GAS TRANSPORTATION COMMISSION  
15 CREATED. There is created within the Department of Revenue the Alaska  
16 Oil and Gas Transportation Commission.

17 Sec. 42.06.020. COMPOSITION OF ALASKA OIL AND GAS TRANSPORTATION  
18 COMMISSION. (a) The Alaska Oil and Gas Transportation Commission con-  
19 sists of three members, appointed by the governor and confirmed by the  
20 legislature in joint session.

21 (b) The governor shall designate one member of the commission as  
22 chairman of the commission. This member shall serve as chairman for a  
23 term of four years, and may be appointed for successive terms.

24 Sec. 42.06.030. TERM OF OFFICE; VACANCY. (a) The term of office  
25 of each member is six years. The governor shall designate who among  
26 his initial appointees shall serve, respectively, for terms of two years,  
27 four years and six years. A commissioner, upon the expiration of his  
28 term, shall continue to hold office until his successor is appointed  
29 and qualifies.

1 (b) A vacancy arising in the office of commissioner shall be  
2 filled by appointment by the governor and confirmed by the legislature  
3 in joint session and an appointee selected to fill a vacancy holds  
4 office for the balance of the full term for which his predecessor on  
5 the commission was appointed.

6 (c) A vacancy in the commission does not impair the authority of  
7 a quorum of commissioners to exercise all the powers and perform all  
8 the duties of the commission.

9 Sec. 42.06.035. REMOVAL OF COMMISSIONERS. The governor may remove  
10 a commissioner from office by and with the consent of a majority of the  
11 legislature.

12 Sec. 42.06.040. QUALIFICATIONS OF MEMBERS. Members of the commis-  
13 sion shall be qualified as follows: one member shall be a graduate of  
14 an accredited school of law, preferably with experience in administra-  
15 tive or regulatory law; one member shall be a graduate of an accredited  
16 college or university with a major in land management, engineering, or  
17 economics, or have equivalent experience in the problems of oil or gas  
18 transportation; one member shall be a graduate of an accredited college  
19 or university with a major in finance, accounting, or if not otherwise  
20 represented, economics.

21 Sec. 42.06.071. QUORUM. Two members of the commission constitute  
22 a quorum for the transaction of business, for the performance of a duty,  
23 or for the exercise of a power of the commission.

24 Sec. 42.06.081. OATH OF OFFICE. Each commissioner and the execu-  
25 tive director of the commission, before entering upon the duties of his  
26 office, shall take and subscribe to the oath prescribed for principal  
27 officers of the state.

28 Sec. 42.06.091. COMPENSATION OF MEMBERS OF THE COMMISSION. Members  
29 of the commission are in the exempt service described in AS 39.25 and

1 receive an annual salary equal to that of a superior court judge, to be  
2 paid in 12 equal monthly installments.

3 Sec. 42.06.101. PRINCIPAL OFFICE; SEAL. (a) The commission  
4 shall establish a principal office and branch offices necessary to  
5 discharge its business. For the convenience of the public or of parties  
6 to a proceeding the commission may hold meetings, hearings or other  
7 proceedings at other locations.

8 (b) The commission shall have an official seal.

9 Sec. 42.06.111. LEGAL COUNSEL. (a) The attorney general is legal  
10 counsel for the commission. He shall advise the commission in legal  
11 matters arising in the discharge of its duties and represent the com-  
12 mission in actions to which it is a party. If, in the opinion of the  
13 commission, the public interest is not adequately represented by counsel  
14 in a proceeding, the attorney general, upon request of the commission,  
15 shall represent the public interest.

16 (b) The commission may employ temporary legal counsel from time  
17 to time in proceedings before the commission in which the attorney  
18 general is representing the public interest or a party before the com-  
19 mission.

20 Sec. 42.06.121. EMPLOYMENT OF COMMISSION PERSONNEL. (a) The  
21 commission may employ an executive director who shall have had at least  
22 five years of experience in oil or gas transportation, law, accounting  
23 or an allied field. The commission may employ engineers, hearing  
24 officers, experts, clerks, accountants, and other agents and assistants  
25 it considers necessary. The commission shall make maximum possible use  
26 of employees and experts available in departments of state government.  
27 The executive director shall be in the partially exempt service under  
28 AS 39.25, and all other employees and agents of the commission, other  
29 than legal counsel, are in the classified service under AS 39.25.

1 (b) In addition to its staff of regular employees, the commission  
2 may contract for and engage the services of consultants and experts the  
3 commission considers necessary.

4 Sec. 42.06.131. RESTRICTIONS ON MEMBERS AND EMPLOYEES. No member  
5 of the commission or an employee of the commission may have an official  
6 connection with, or hold stock or securities in, or have a pecuniary  
7 interest in any company engaged in oil or gas production or engaged  
8 in the transportation of oil or gas. No member or employee may act  
9 upon a matter in which his relationship with any person creates a  
10 conflict of interest.

11 Sec. 42.06.135. DIVISION OF JURISDICTION. The commission has  
12 jurisdiction over pipeline carriers to carry out the purposes of this  
13 chapter except

14 (1) when the Alaska Public Utilities Commission has juris-  
15 diction over the oil or gas transportation facilities as provided in  
16 AS 42.05 because the carrier is selling oil or gas or both for resale  
17 for ultimate consumption, the commission's jurisdiction shall not over-  
18 rule the specific areas of jurisdiction of the Alaska Public Utilities  
19 Commission;

20 (2) an oil or gas transportation facility regulated under  
21 the Interstate Commerce Act of 1906, as amended, 34 Stat. 485, or the  
22 Natural Gas Act of 1938, as amended, 52 Stat. 821, shall be regulated  
23 by the commission with respect to the activities of the facility which  
24 are not regulated under the Interstate Commerce Act of 1906 or the  
25 Natural Gas Act of 1938 only to the extent not preempted by those Acts;

26 (3) when the Interstate Commerce Act of 1906 or the Natural  
27 Gas Act of 1938 applies, the commission shall have jurisdiction under  
28 secs. 291 - 531 of this chapter only to the extent that exercise of its  
29 power is not inconsistent with federal law;

1 (4) the commission shall regulate state owned or operated  
2 oil or gas transportation facilities to the extent permitted in the  
3 covenant between bond purchasers and the state or agency of the state  
4 which owns or operates the oil or gas transportation facility; the  
5 covenant is a valid and enforceable contract which may not be overruled  
6 by the commission.

7 ARTICLE 2. POWERS AND DUTIES OF THE COMMISSION.

8 Sec. 42.06.141. GENERAL POWERS AND DUTIES OF THE COMMISSION. The  
9 Alaska Oil and Gas Transportation Commission shall

10 (1) regulate every oil or gas transportation facility engaged  
11 or proposing to engage in business in the state;

12 (2) require permits for the construction, enlargement in  
13 size or operating capacity, extension, operation or abandonment of any  
14 oil or gas transportation facility, subject to necessary and reasonable  
15 terms, conditions and limitations;

16 (3) investigate, upon complaint or upon its own motion, the  
17 rates, classifications, rules, regulations, practices, services and  
18 facilities of an oil or gas transportation facility and hold hearings  
19 on them;

20 (4) make or require just, fair and reasonable rates, classi-  
21 fications, regulations, practices, services and facilities for an oil  
22 or gas transportation facility;

23 (5) prescribe the system of accounts and regulate the service  
24 and safety of operations of an oil or gas transportation facility;

25 (6) require an oil or gas transportation facility to file  
26 reports and other information and data to the extent the commission  
27 considers the information relevant or considers that it may lead to the  
28 discovery of relevant information;

29 (7) appear personally or by counsel and represent the

1 interest and welfare of the state in all matters and proceedings  
2 involving an oil or gas transportation facility pending before an  
3 officer, department, board, commission or court of the state or of  
4 another state or the United States and to intervene in, protest, resist,  
5 or advocate the granting, denial or modification of any petition,  
6 application, complaint or other proceeding;

7 (8) examine witnesses and offer evidence in any proceeding  
8 affecting the state and initiate or participate in judicial proceedings  
9 to the extent necessary to protect and promote the interests of the  
10 state;

11 (9) investigate upon complaint or its own motion, rates,  
12 prices, services, or practices of pipeline carriers under this chapter  
13 and performance of obligations under leases issued under the Right-of-  
14 Way Leasing Act of 1972 (AS 38.35).

15 Sec. 42.06.143. POWERS AND DUTIES WITH RESPECT TO FEDERALLY  
16 REGULATED CARRIERS. Sec. 141 of this chapter applies to oil and gas  
17 transportation facilities regulated under the Interstate Commerce Act  
18 of 1906, or the Natural Gas Act of 1938, only to the extent not pre-  
19 empted under those federal Acts.

20 Sec. 42.06.151. ADMINISTRATIVE AUTHORITY OF COMMISSION; REGULA-  
21 TIONS AND HEARING PROCEDURES. (a) The commission may adopt regulations,  
22 not inconsistent with the law, necessary or proper to exercise its  
23 powers and to perform its duties under this chapter.

24 (b) The commission shall adopt regulations governing practice and  
25 procedure, consistent with due process of law, including the conduct  
26 of formal and informal investigations, prehearing conferences, hearings  
27 and proceedings, and the handling of procedural motions by a single  
28 commissioner. Technical rules of evidence need not apply to investiga-  
29 tions, prehearing conferences, hearings and proceedings before the

1 commission. The commission shall provide for representation by out-  
2 of-state attorneys substantially in accordance with Civil Rule 81.

3 (c) The commission, a commissioner or an employee authorized by  
4 the commission may administer oaths, certify to all official acts, and  
5 issue subpoenas, subpoenas duces tecum and other process to compel the  
6 attendance of witnesses and the production of testimony, records, papers,  
7 accounts and documents in any inquiry, investigation, hearing or pro-  
8 ceeding before the commission in the state. Each commissioner is  
9 authorized to issue orders on procedural motions. The commission may  
10 petition a court of this state to enforce its subpoenas, subpoenas duces  
11 tecum and other process.

12 Sec. 42.06.161. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. (a)  
13 The administrative adjudication procedures of the Administrative Proce-  
14 dure Act (AS 44.62) do not apply to adjudicatory proceedings of the  
15 commission except that final administrative determinations by the com-  
16 mission are subject to judicial review under that Act as provided in  
17 sec. 551(a) of this chapter.

18 (b) The Administrative Procedure Act applies to regulations  
19 adopted by the commission.

20 Sec. 42.06.171. FORMAL HEARINGS. A formal hearing which the  
21 commission has power to hold may be held by or before two or more com-  
22 missioners designated for the purpose by the commission. The testimony  
23 and evidence in a formal hearing may be taken by the commissioners to  
24 whom the hearing has been assigned. A commissioner who has not heard  
25 the testimony, including the argument, may not participate in making a  
26 decision of the commission. In determining the place of a hearing the  
27 commission shall give preference to holding the hearing at a place most  
28 convenient for those interested in the subject of the hearing.

29 Sec. 42.06.181. FINAL ORDERS OF THE COMMISSION. No final order

1 of the commission compelling affirmative action, denying a right or  
2 privilege, or granting a right or privilege over protest of the oil  
3 or gas transportation facility or any party of record may be entered  
4 without giving the interested party reasonable notice and an opportunity  
5 to be heard.

6 Sec. 42.06.191. FORMAT OF ORDERS. Formal orders of the commission  
7 shall be based upon the facts of record. An order entered pursuant to  
8 a hearing shall state the commission's findings, the basis of its  
9 findings and conclusions, together with its decision. These orders  
10 shall be entered of record and a copy of them shall be served on all  
11 parties of record in the proceeding.

12 Sec. 42.06.201. PUBLICATION OF REPORTS, ORDERS, DECISIONS AND  
13 REGULATIONS. All reports, orders, decisions and regulations of the  
14 commission shall be in writing. The commission shall apprise all  
15 affected operators of oil or gas transportation facilities and inter-  
16 ested parties of these reports, orders, decisions, and regulations as  
17 they are issued and adopted, and, when appropriate to do so, shall  
18 publish them in a manner that will reasonably inform the public or the  
19 affected consumers of the services of any oil or gas transportation  
20 facility. The commission may set charges for costs of printing or  
21 reproducing and furnishing copies of its reports, orders, decisions and  
22 regulations. The publication requirement, as it pertains to regulations,  
23 does not supersede the requirements of the Administrative Procedure Act  
24 (AS 44.62).

25 Sec. 42.06.211. ANNUAL REPORT. The commission shall publish an  
26 annual report reviewing its work and submit it to the legislature by  
27 February 15 of each year. The report shall contain information and  
28 data which bear a significant relationship to the development and regu-  
29 lation of oil or gas transportation facilities in the state and include

1 an outline of the commission's program for the development and regula-  
2 tion of oil or gas transportation facilities in the forthcoming year.

3 ARTICLE 3. CERTIFICATE OF CONVENIENCE  
4 AND NECESSITY.

5 Sec. 42.06.221. CERTIFICATES REQUIRED. (a) No oil or gas trans-  
6 portation facility may operate and receive compensation for providing  
7 transportation service after January 1, 1973 without first having  
8 obtained from the commission under this chapter a certificate of con-  
9 venience and necessity declaring that efficient production and marketing  
10 of oil or gas requires or will require the service and the service can  
11 be provided without an undue adverse effect on the public health or  
12 welfare. A certificate shall describe the nature and extent of the  
13 authority granted in it, including, as appropriate for the services  
14 involved, a description of the authorized area and scope of operation  
15 of the oil or gas transportation facility.

16 (b) In an area where the commission determines that two or more  
17 oil or gas transportation facilities are competing or are planning to  
18 compete to offer identical oil or gas transportation service, and this  
19 competition is not in the public interest, the commission shall take  
20 appropriate action to eliminate or not allow the competition and  
21 undesirable duplication of facilities.

22 (c) The commission may attach to certificates of convenience and  
23 necessity terms and conditions and require issuance of securities it  
24 considers necessary for the protection of the environment and for the  
25 best interest of the oil or gas transportation facility and the general  
26 public.

27 (d) The commission may employ professional consultants to assist  
28 it in administering the provisions of this section and may apportion  
29 the expenses relating to this administration among the competing oil or

1 gas transportation facilities involved.

2 (e) The requirement for a certificate shall not operate to impose  
3 state regulation which has been preempted under the Interstate Commerce  
4 Act of 1906 or the Natural Gas Act of 1938. When federal law has  
5 preempted state regulation the commission must accept the findings made  
6 under the federal scheme of regulation.

7 Sec. 42.06.231. APPLICATION; ENVIRONMENTAL STATEMENT. An applica-  
8 tion for a certificate of convenience and necessity shall be in writing  
9 and shall be in the form and contain the information required by the  
10 commission by regulation. The application shall include a statement  
11 of the environmental impact of the proposed transportation facility  
12 in sufficient detail to enable assessment of the long-term social costs  
13 of possible environmental degradation resulting from the proposed  
14 facility. A statement of a facility's environmental impact meeting the  
15 requirements of the National Environmental Policy Act of 1969, 83 Stat.  
16 853, may be submitted with the application in satisfaction of the  
17 impact statement requirements of this section.

18 Sec. 42.06.233. PUBLIC HEARINGS. At least 30 days before issuing  
19 a certificate of convenience and necessity, the commission shall hold  
20 a public hearing on the application. Copies of the completed application  
21 including the environmental impact statement shall be made available  
22 to the public at least 10 days before the public hearing date. A  
23 transcript of the public hearing shall be included in the permanent  
24 record of agency action on that application, and copies of the public  
25 hearing transcripts shall be available to the public.

26 Sec. 42.06.235. INSURANCE OR DEPOSIT OF SECURITY. (a) In granting  
27 a certificate of convenience and necessity the commission shall require  
28 the oil or gas transportation facility to either procure and file  
29 liability and property damage insurance from a company licensed to write

1 insurance in the state or deposit security for the limits of liability  
2 upon the terms and conditions the commission determines necessary for  
3 the reasonable protection of the public against damage and injury for  
4 which the owner or operator of the oil or gas transportation facility  
5 may be liable by reason of the operation of an oil or gas transportation  
6 facility.

7 (b) In fixing the amount of insurance or security, the commission  
8 shall give consideration to the character and amount of traffic, the  
9 number of persons affected and the degree of danger which the proposed  
10 operation involves.

11 Sec. 42.06.241. CONDITIONS OF ISSUANCE. No certificate of con-  
12 venience and necessity may be issued unless the commission finds that  
13 the applicant is fit, willing and able to provide the oil or gas  
14 transportation services applied for and that the services are required  
15 for the efficient production and marketing of oil or gas. The commis-  
16 sion may issue a certificate of convenience and necessity granting an  
17 application in whole or in part and attach to the grant of it the terms  
18 and conditions it considers necessary to protect and promote the public  
19 interest including the condition that the applicant may or shall serve  
20 an area or provide a necessary service not contemplated by the applicant  
21 or the condition that the service will begin or end at a prescribed  
22 point. The commission may, for good cause, deny an application with  
23 or without prejudice.

24 Sec. 42.06.261. DISCONTINUANCE, SUSPENSION OR ABANDONMENT OF  
25 CERTIFICATED SERVICE. (a) Except as otherwise provided in this section,  
26 no oil or gas transportation facility may discontinue or abandon a  
27 service for which a certificate has been issued by the commission unless  
28 upon the application of the oil or gas transportation facility and if,  
29 after notice and opportunity for hearing, the commission finds that the

1 continued service is not required by convenience and necessity or for  
2 the efficient production or marketing of oil or gas. Any interested  
3 person may file with the commission a protest or memorandum of opposi-  
4 tion to or in support of discontinuance or abandonment. The commission  
5 may authorize temporary suspension of a service or of part of a service.

6 (b) Upon complaint or upon its own motion, the commission may  
7 reinvestigate a previously authorized discontinuance, abandonment or  
8 suspension of a service of an operating oil or gas transportation  
9 facility. If, after providing notice and an opportunity for a hearing,  
10 the commission finds that the efficient removal and marketing of oil  
11 or gas requires the service to be resumed, it may order the operator or  
12 owner of the oil or gas transportation facility to again provide the  
13 service.

14 Sec. 42.06.271. MODIFICATION, SUSPENSION OR REVOCATION OF CERTIFI-  
15 CATES. Upon complaint or upon its own motion the commission, after  
16 notice and opportunity for hearing and for good cause shown, may amend,  
17 modify, suspend, or revoke a certificate of convenience and necessity,  
18 in whole or in part. Good cause for amendment, modification, suspension  
19 or revocation of a certificate includes

- 20 (1) the requirements of public convenience and necessity;  
21 (2) the requirements of efficient production and marketing  
22 of oil and gas;  
23 (3) misrepresentation of a material fact in obtaining the  
24 certificate;  
25 (4) unauthorized discontinuance or abandonment of all or part  
26 of the oil or gas transportation facility service;  
27 (5) wilful failure to comply with the provisions of this  
28 chapter or the rules, regulations or orders of the commission; or  
29 (6) wilful failure to comply with a term, condition or

1 limitation of the certificate.

2 Sec. 42.06.281. TRANSFER OF CERTIFICATE. A certificate of  
3 convenience and necessity may not be sold or leased, rented, transferred  
4 or inherited without the prior approval of the commission.

5 ARTICLE 4. SERVICES AND FACILITIES.

6 Sec. 42.06.291. STANDARDS OF SERVICE AND FACILITIES. (a) Each  
7 oil or gas transportation facility shall furnish and maintain adequate,  
8 efficient and safe service and facilities. This service shall be  
9 reasonably continuous and without unreasonable interruption or delay.

10 (b) If the commission, upon its own motion or upon complaint,  
11 after providing reasonable notice and opportunity for hearing, finds  
12 that the service or facilities of an oil or gas transportation facility  
13 are unreasonable, unsafe, inadequate, insufficient, or unreasonably  
14 discriminatory, or otherwise in violation of this chapter, the commis-  
15 sion shall prescribe by regulation or order, the reasonable, safe,  
16 adequate, sufficient service or facilities to be observed, furnished,  
17 enforced, or employed, including all repairs, changes, alterations,  
18 extensions, substitutions, or improvements in facilities that are  
19 reasonably necessary and proper for the safety, accommodation, and  
20 convenience of the public and the users.

21 (c) The commission shall promulgate regulations designed to ensure  
22 safe operation of pipelines. For natural gas pipelines regulated under  
23 the Natural Gas Act of 1938, the regulations issued under this sub-  
24 section shall be consistent with the Natural Gas Pipeline Safety Act of  
25 1968, 82 Stat. 720.

26 Sec. 42.06.301. DISCRIMINATION IN SERVICE. No oil or gas trans-  
27 portation facility may, as to service, make or grant an unreasonable  
28 preference or advantage to any person or subject any person to an  
29 unreasonable prejudice or disadvantage. No oil or gas transportation

1 facility which is owned by more than one owner may require that users  
2 make separate requests of each separate owner in order to obtain a  
3 reasonable share of the service provided by the oil or gas transporta-  
4 tion facility.

5 Sec. 42.06.311. POWER OF COMMISSION TO ALLOCATE USAGE. If the  
6 commission, upon its own motion or upon complaint, after providing  
7 reasonable notice and opportunity for hearing, finds that an oil or gas  
8 transportation facility is making or granting an unreasonable preference  
9 or advantage to any person or subjecting any person to an unreasonable  
10 prejudice or discrimination, the commission may prescribe rules to end  
11 the discrimination or the commission may itself manage the allocation  
12 of the service until it determines the discrimination can be avoided  
13 by appropriate rules or agreements. The commission shall be compensated  
14 by the oil or gas transportation facility for its reasonable costs  
15 during the time it manages the allocation of services.

16 Sec. 42.06.321. FAILURE TO AGREE UPON JOINT USE OR INTERCONNECTION.  
17 When there is failure to agree upon the joint use or interconnection of  
18 oil or gas transportation facilities or the conditions or compensation  
19 for joint use or interconnections, any interested person may apply to  
20 the commission for an order requiring the interconnection. If, after  
21 investigation and opportunity for hearing, the commission finds that  
22 public convenience and necessity require the joint use or connection,  
23 and that the use or connection will not result in substantial injury  
24 to the oil or gas transportation facility or its customers, or in  
25 substantial detriment to the services furnished by the oil or gas trans-  
26 portation facility, or in the creation of safety hazards, it shall

- 27 (1) order that the use be permitted;  
28 (2) prescribe reasonable conditions and compensation for the  
29 joint use;

- 1 (3) order the interconnection to be made;  
2 (4) determine the time and manner of the interconnection;  
3 (5) determine the apportionment of costs and responsibility  
4 for operation and maintenance of the interconnection.

5 ARTICLE 5. RATES AND RATE SCHEDULES.

6 Sec. 42.06.361. TARIFFS, CONTRACTS, FILING AND PUBLIC INSPECTION.

7 (a) Under such regulations as the commission shall prescribe, every  
8 intrastate oil or gas transportation facility shall file with the  
9 commission, within the time and in the form designated by the commission,  
10 all rates, tariffs, charges, classifications, rules, regulations, terms,  
11 and conditions pertaining to service provided under the certificate,  
12 and shall maintain copies on file at its principal business office and  
13 at places designated by the commission, available to, and subject to  
14 inspection by, the general public on demand.

15 (b) The commission may reject the filing of all or part of a  
16 tariff which does not comply with the form or filing regulations of  
17 the commission or which is not consistent with this chapter or the  
18 regulations of the commission. A tariff or provision so rejected is  
19 void.

20 Sec. 42.06.371. ADHERENCE TO TARIFFS. The terms and conditions  
21 under which an intrastate oil or gas transportation facility offers  
22 its services and facilities to the public shall be governed strictly  
23 by the provisions of its current tariffs. If more than one tariff rate  
24 or charge can reasonably be applied for billing purposes the one most  
25 advantageous to the person billed shall be used.

26 Sec. 42.06.381. RATES TO BE JUST AND REASONABLE. (a) All rates  
27 demanded or received by an intrastate oil or gas transportation facility,  
28 or by any two or more intrastate oil or gas transportation facilities  
29 jointly for a service furnished or to be furnished shall be just and

1 reasonable. In determining just and reasonable rates the commission  
2 shall permit the transportation facility to recover the costs of  
3 efficient operation and to earn a reasonable return on the capital  
4 invested to provide the service.

5 (b) Additional regulations and rules governing determination of  
6 a reasonable tariff shall be published by the commission.

7 Sec. 42.06.391. DISCRIMINATION IN RATES. (a) No intrastate oil  
8 or gas transportation facility may, as to rates, grant an unreasonable  
9 preference or advantage to any customer served under the certificate,  
10 or subject the customer to an unreasonable prejudice or disadvantage  
11 or maintain an unreasonable difference as to rates, either as between  
12 localities served or between classes of service provided under the  
13 certificate.

14 (b) No intrastate oil or gas transportation facility may directly  
15 or indirectly refund, rebate or remit in any manner, or by any device,  
16 any portion of the rates and charges or charge, for service provided  
17 under the certificate, nor demand or receive a greater or lesser compen-  
18 sation for its services, than is specified in its effective tariff,  
19 nor extend to any customer served under the certificate any form of  
20 contract, agreement, inducement, privilege or facility, or apply any  
21 rule, regulation or condition of service except those extended or  
22 applied to all customers under like circumstances.

23 Sec. 42.06.421. SUSPENSION OF TARIFF FILING. (a) When a tariff  
24 filing is made containing a new or revised rate, classification, rule,  
25 regulation, practice or condition of service the commission may, either  
26 upon written complaint or upon its own motion, after reasonable notice,  
27 conduct a hearing to determine the reasonableness and propriety of the  
28 filing. Pending such a hearing the commission may, by order stating  
29 the reasons for its action, suspend the operation of the tariff filing

1 for an initial period not longer than six months beyond the time when  
2 it would otherwise go into effect.

3 (b) An order suspending a tariff filing may be vacated if, after  
4 investigation, the commission finds that it is in all respects proper.  
5 Otherwise the commission shall hold a hearing on the suspended filing  
6 and issue its order, before the end of the suspension period, granting,  
7 denying or modifying the suspended tariff in whole or in part.

8 (c) When an intrastate oil or gas transportation facility proposes  
9 to increase rates, the commission may by order require the interested  
10 facility to place in escrow in a financial institution approved by the  
11 commission and keep accurate account of all amounts received by reason  
12 of the increase, specifying by whom and in whose behalf the amounts are  
13 paid. Upon completion of the hearing and decision the commission may by  
14 order require the oil or gas transportation facility to refund to the  
15 persons in whose behalf the amounts were paid, that portion of the  
16 increased rates which was found to be unreasonable or unlawful. No  
17 funds shall be released from escrow without the commission's prior  
18 written consent and the escrow agent shall be so instructed by the oil  
19 or gas transportation facility, in writing, with a copy to the commis-  
20 sion. The oil or gas transportation facility may, at its expense,  
21 substitute a bond in lieu of the escrow requirement.

22 (d) One who initiates a change in existing tariffs bears the  
23 burden of proving the reasonableness of the change.

24 Sec. 42.06.431. POWER OF COMMISSION TO FIX RATES. When the com-  
25 mission, after an investigation and hearing, finds that a rate, classi-  
26 fication, rule, regulation, practice, or contract affecting the rate,  
27 is unjust, unreasonable, unduly discriminatory or preferential, the  
28 commission shall determine a just and reasonable rate, classification,  
29 rule, regulation, practice, or contract to be observed or allowed and

1 shall, to the extent of the commission's jurisdiction, establish it by  
2 order. The state or a political subdivision of the state may covenant  
3 with bond purchasers regarding rates of a publicly owned or operated  
4 oil or gas transportation facility, and the covenant is valid and  
5 enforceable and is considered to be a contract with the holders of the  
6 bonds.

7 Sec. 42.06.441. VALUATION OF PROPERTY OF AN OIL OR GAS TRANSPOR-  
8 TATION FACILITY. The commission may, after providing reasonable notice  
9 and opportunity to be heard, ascertain and set the fair value of the  
10 whole or any part of the property of an oil or gas transportation  
11 facility, insofar as it is material to the exercise of the jurisdiction  
12 of the commission. The commission may make revaluations from time to  
13 time and ascertain the fair value of all new construction, extensions,  
14 and additions to the property of a certificated oil or gas transportation  
15 facility.

16 ARTICLE 6. ACCOUNTS, RECORDS AND REPORTS.

17 Sec. 42.06.451. SYSTEM OF ACCOUNTS AND REPORTS. (a) The commis-  
18 sion may classify oil or gas transportation facilities under its juris-  
19 diction and prescribe a uniform system of accounts for each class and  
20 the manner in which the accounts and supporting records shall be kept.  
21 The commission may determine a system of accounts which best represents  
22 and clearly reveals the operations of the facility. The commission may  
23 require the owner or operator of an undivided interest in an oil or  
24 gas transportation facility to maintain accounts showing clearly the  
25 revenue and costs pertaining only to that facility and consolidating  
26 the revenue and costs of each individual undivided interest.

27 (b) Accounts shall be maintained on a calendar year basis unless  
28 specifically authorized by the commission to maintain its accounts on  
29 a fiscal year basis. Within 90 days after the close of its authorized

1 annual accounting period, or additional time granted upon a showing of  
2 good cause, each oil or gas transportation facility shall file with the  
3 commission a verified annual report of its operations during the period  
4 reported, on forms prescribed by the commission.

5 Sec. 42.06.461. CONTINUING PROPERTY RECORDS. The commission may  
6 require an oil or gas transportation facility to establish, provide,  
7 and maintain as a part of its system of accounts, continuing property  
8 records segregated by the year of placement in service, showing the  
9 current location of the property units by definite reference to the  
10 specific land parcels upon which the units are located or stored. The  
11 commission may require an oil or gas transportation facility to keep  
12 accounts and records in a manner which shows, currently, the original  
13 cost of the property, and the related reserve for depreciation. Each  
14 oil or gas transportation facility with annual revenue exceeding  
15 \$100,000 shall keep continuing property records.

16 Sec. 42.06.471. DEPRECIATION RATES. To provide for the loss in  
17 service value of its property, not restored by current maintenance,  
18 every oil or gas transportation facility shall charge adequate depreci-  
19 ation expense for each major class of facility property used. From  
20 time to time the commission shall determine the proper and adequate  
21 rates of depreciation for each major class of property of an oil or gas  
22 transportation facility.

23 Sec. 42.06.481. SUBSIDIARY BUSINESS ACCOUNTS. An oil or gas  
24 transportation facility engaged, directly or indirectly, in another  
25 business, including another oil or gas transportation facility business,  
26 or a subsidiary business, shall keep separate accounts relating to that  
27 business. Except as the commission provides, no property, expense or  
28 revenue used in or derived from the other business may be considered  
29 in establishing the rates and charges of the facility.

1           Sec. 42.06.491. RECORDS AND ACCOUNTS TO BE KEPT IN STATE. An  
2 oil or gas transportation facility shall keep the original books,  
3 accounts, papers and records, or certified copies, required by the  
4 commission in an office in this state and may not remove them from the  
5 state, except upon the terms and conditions that may be prescribed by  
6 the commission.

7           Sec. 42.06.501. INSPECTION OF BOOKS AND RECORDS BY COMMISSION.  
8 Subject to AS 31.05.035(c), the commission shall at all reasonable times  
9 have access to, and may designate any of its employees, agents or con-  
10 sultants to inspect and examine, the accounts, records, books, maps,  
11 inventories, appraisals, valuations, or other reports and documents,  
12 kept by an oil or gas transportation facility or its affiliated inter-  
13 ests, or prepared or kept for it by others, which relate to any con-  
14 tract or transaction between them. The commission may require an oil  
15 or gas transportation facility or its affiliated interest to file with  
16 the commission, copies of any or all of these accounts, records, books,  
17 maps, inventories, appraisals, valuations, or other reports and docu-  
18 ments.

19           ARTICLE 7. FINANCIAL AND MANAGEMENT REGULATION.

20           Sec. 42.06.511. UNREASONABLE MANAGEMENT PRACTICES. (a) The  
21 commission may investigate the management of an oil or gas transporta-  
22 tion facility for the purpose of determining inefficient or unreasonable  
23 practices which adversely affect the cost or quality of service pro-  
24 vided by the oil or gas transportation facility.

25           (b) When inefficient or unreasonable practices are found to exist,  
26 the commission may, after providing reasonable notice and opportunity  
27 for hearing, take appropriate action to insure that neither the direct  
28 nor the indirect costs of the practices are borne by the public.

29           (c) In a rate proceeding the oil or gas transportation facility

1 has the burden of proving that any written or unwritten contract or  
2 arrangement it may have with any of its affiliated interests for the  
3 furnishing of any services or for the purchase, sale, lease or exchange  
4 of any property is necessary and consistent with the public interest  
5 and that the payment made for it, or consideration given, is reasonably  
6 based, in part, upon the submission of satisfactory proof as to the  
7 cost to the affiliated interest of furnishing the service or property  
8 and, in part, upon the estimated cost the oil or gas transportation  
9 facility would have incurred if it furnished the service or property  
10 with its own personnel and capital.

11 ARTICLE 8. JUDICIAL REVIEW, PENALTIES AND ENFORCEMENT.

12 Sec. 42.06.531. DESIGNATION OF SERVICE AGENTS. Each oil or gas  
13 transportation facility shall file with the commission a written  
14 appointment of a named permanent resident of the state as its registered  
15 agent in the state. The agent so appointed is the person upon whom  
16 service of all notices, regulations, decisions and orders of the  
17 commission may be made. The appointment shall specify an address in  
18 Alaska of the appointed agent. The address may be changed at any  
19 time by filing a new Alaska address with the commission. If an oil or  
20 gas transportation facility fails to appoint an agent for service,  
21 service of a notice, regulation, decision or order of the commission  
22 authorized by this chapter may be made by posting it in an office of  
23 the commission and filing a copy of it in the office of the lieutenant  
24 governor.

25 Sec. 42.06.541. EFFECT OF REGULATIONS. Regulations adopted and  
26 issued by the commission in accordance with this chapter have the  
27 effect of law.

28 Sec. 42.06.551. REVIEW AND ENFORCEMENT. (a) All final orders  
29 of the commission are subject to judicial review in accordance with

1 AS 44.62.560 - 44.62.570.

2 (b) If an appeal is not taken from a final order of the commis-  
3 sion, the commission may apply to the superior court for enforcement of  
4 this chapter, the regulations adopted under it and the orders of the  
5 commission. The court shall enforce the order by injunction or other  
6 process.

7 Sec. 42.06.556. CRIMINAL PENALTIES. (a) A person who wilfully  
8 violates a provision of this chapter, or a regulation or order of the  
9 commission adopted under this chapter is subject to a penalty of not  
10 more than \$10,000 for each act of violation and for each day the  
11 violation continues, unless the penalty for violation is otherwise  
12 provided for and made exclusive in this chapter.

13 (b) If a person, for the purpose of evading this chapter, or a  
14 regulation or order of the commission adopted under this chapter,  
15 wilfully makes a false entry in a record, account or memorandum  
16 required by this chapter, or by a regulation or order, or wilfully  
17 omits, or causes to be omitted, from the record, account or memorandum,  
18 full, true and correct entries as required by this chapter, or by a  
19 regulation or order, or removes from the state or destroys, mutilates,  
20 alters or falsifies a record, account or memorandum, the person is  
21 guilty of a misdemeanor, and upon conviction is punishable by a fine  
22 of not more than \$5,000, or by imprisonment in jail for not more than  
23 six months, or by both.

24 (c) A person who knowingly aids or abets another person in the  
25 violation of a provision of this chapter, or a regulation or order of  
26 the commission adopted under this chapter, is subject to the same  
27 penalty as that prescribed by this chapter for the violation by the  
28 other person.

29 (d) The penalties provided in this section are recoverable in an

1 action filed by the attorney general in the name and on behalf of the  
2 commission in the superior court in the judicial district in which the  
3 defendant resides or in which any defendant resides, if there is more  
4 than one defendant, or in the superior court of the judicial district  
5 in which the violation occurs. The payment of a penalty does not  
6 relieve a person on whom the penalty is imposed from liability to any  
7 other person for damages arising out of the violation.

8 Sec. 42.06.561. INJUNCTIVE AND MONETARY SANCTIONS. (a) The  
9 full amount of damages determined by a civil action may be compromised  
10 by the commission. In determining the amount of the penalty, or the  
11 amount agreed upon in compromise, the appropriateness of the penalty  
12 to the size of the business of the person charged, the gravity of the  
13 violation, and the good faith of the person charged in attempting to  
14 achieve compliance, after notification of a violation, shall be con-  
15 sidered. The amount of the penalty, when finally determined, or the  
16 amount agreed upon in compromise, may be deducted from any sums owing  
17 by the state to the person charged or may be recovered in a civil action  
18 in the state courts.

19 (b) A person may be enjoined by the superior court from committing  
20 a violation mentioned in this section.

21 Sec. 42.06.571. CIVIL PENALTIES. (a) In addition to all other  
22 penalties and remedies provided by law, every person subject to the  
23 provisions of this chapter, together with their officers, managers,  
24 agents or employees that either violates or procures, aids, or abets  
25 the violation of any provision of this chapter, or of an order, rule,  
26 regulation or written requirement of the commission is subject to a  
27 maximum penalty of \$500 for each violation.

28 (b) No penalty may be assessed unless the commission first issues  
29 an order to show cause why the penalty should not be levied. The order

1 shall describe the violation with reasonable particularity and designate  
2 the maximum penalty which may be assessed for the violation. The  
3 order shall be served on the alleged violator named in the order. The  
4 order shall state a time and place for the hearing.

5 (c) After a hearing the commission shall enter its findings of  
6 fact and final order which shall state when the penalties, if any, are  
7 payable.

8 Sec. 42.06.581. EACH VIOLATION A SEPARATE OFFENSE. Each violation  
9 of a provision of this chapter or of an order, decision, regulation  
10 or written requirement of the commission is a separate and distinct  
11 offense and in case of a continuing violation each day the violation  
12 continues constitutes a separate offense.

13 Sec. 42.06.601. ACTIONS TO RECOVER PENALTIES; DISPOSITION. (a)  
14 Actions to recover penalties under this chapter shall be brought by the  
15 attorney general in a court of competent jurisdiction.

16 (b) All penalties recovered under the provisions of this chapter  
17 shall be paid to the commission and deposited by it in the general fund  
18 of the state.

19 Sec. 42.06.611. PENALTIES CUMULATIVE. (a) All penalties imposed  
20 under this chapter are cumulative and an action for the recovery of a  
21 civil penalty is not a bar to any criminal prosecution; a criminal  
22 prosecution is not a bar to an action for the recovery of a civil  
23 penalty.

24 (b) Neither a criminal prosecution nor an action to recover a  
25 civil penalty is a bar to an enforcement proceeding to require compli-  
26 ance, or to any other remedy provided by this chapter.

27 Sec. 42.06.621. JOINDER OF ACTIONS. Under the applicable court  
28 rules, appeals from orders of the commission, applications for enforce-  
29 ment of commission orders and actions for recovery of a penalty may be

1 joined. The court may in the interests of justice separate the actions.

2 ARTICLE 9. MISCELLANEOUS PROVISIONS.

3 Sec. 42.06.631. EMINENT DOMAIN. An oil or gas transportation  
4 facility may exercise the power of eminent domain for facility uses  
5 except that eminent domain shall not apply to state land. An oil or  
6 gas transportation facility must first request approval of the Depart-  
7 ment of Natural Resources before exercising the power of eminent  
8 domain and, if the state wishes to take the land and lease it to the  
9 facility under the provisions of AS 38.35, the state has a prior right  
10 to purchase the property. The state has 120 days after receiving the  
11 request or notice of the actual purchase by an oil or gas transporta-  
12 tion facility in which to exercise its prior right to purchase the  
13 property and in the event the oil or gas transportation facility has  
14 already purchased the property the state may acquire it by paying the  
15 fair value of the property on the date of notification to the state of  
16 the oil company's intention to purchase or the date of purchase of the  
17 property by the oil or gas transportation facility, whichever is later.  
18 This payment shall be to the owner of the property at the time the  
19 state chooses to exercise its right to purchase. This section does not  
20 authorize the use of a declaration of taking, nor does it authorize  
21 the avoidance of any requirements set by the state for the leasing of  
22 rights-of-way over state land, nor does it restrict the right of the  
23 state to acquire an interest in rights-of-way as provided in AS 38.35.-  
24 150.

25 Sec. 42.06.641. REGULATION BY MUNICIPALITY. The commission's  
26 jurisdiction and authority extend to an oil or gas transportation  
27 facility operating in a city or borough, whether home rule or other-  
28 wise. If a conflict between a certificate, order, decision or regula-  
29 tion of the commission and a charter, permit, franchise, ordinance,

1 rule or regulation of such a local governmental entity occurs, the  
2 certificate, order, decision or regulation of the commission prevails.

3 Sec. 42.06.651. EXPENSES OF INVESTIGATION OR HEARING. After  
4 completion of a hearing or investigation held under this chapter, the  
5 commission shall allocate the costs of the hearing or investigation  
6 among the parties, including the commission, as is just under the  
7 circumstances. In allocating costs, the commission may consider the  
8 results, ability to pay, evidence of good faith, other relevant factors  
9 and mitigating circumstances. The costs allocated may include the  
10 costs of any time devoted to the investigation or hearing by hired  
11 consultants, whether or not the consultants appear as witnesses or  
12 participants. The costs allocated may also include any out-of-pocket  
13 expenses incurred by the commission in the particular proceeding. The  
14 commission shall provide an opportunity for any person objecting to an  
15 allocation to be heard before the allocation becomes final.

16 Sec. 42.06.661. APPLICATION FEES. The commission may establish  
17 reasonable fees to cover the costs of initial processing of applications  
18 for certificates or amendments to certificates.

19 Sec. 42.06.671. PUBLIC DISCLOSURE OF INFORMATION. Facts and  
20 information in the possession of the commission are public, and reports,  
21 files, books, accounts and papers of every nature in its possession  
22 except records which by regulation are designated to be of a nonpublic  
23 or privileged nature are open to public inspection at reasonable times.  
24 However, a person may make written objections to the public disclosure  
25 of information contained in an application, report or document filed  
26 under the provisions of this chapter or of information obtained by the  
27 commission under the provisions of this chapter, stating the grounds  
28 for the objection. When an objection is made, the commission shall  
29 order the information withheld from the public if disclosure would

1 adversely affect the interest of that person and if no public interest  
2 would be served by release of the information.

3 Sec. 42.06.691. CLASSIFICATION. The commission may by regulation  
4 provide for the classification of oil or gas transportation facilities  
5 based upon differences in annual revenue, assets, nature of ownership  
6 and other appropriate distinctions and as between these classifications,  
7 by regulation, provide for different reporting, accounting and other  
8 regulatory requirements.

9 ARTICLE 10. GENERAL PROVISIONS.

10 Sec. 42.06.701. DEFINITIONS. In this chapter

11 (1) "commission" means the Alaska Oil and Gas Transportation  
12 Commission;

13 (2) "intrastate oil and gas transportation facility" means  
14 an oil or gas transportation facility or part of an oil or gas trans-  
15 portation facility not regulated as to fair and reasonable tariffs under  
16 the Interstate Commerce Act of 1906 or the Natural Gas Act of 1938;

17 (3) "oil or gas transportation facility" includes every  
18 corporation (whether public, cooperative, or otherwise), company,  
19 individual, or association of individuals, their lessees, trustees, or  
20 receivers appointed by a court, that owns, operates, manages or controls  
21 a pipeline or system for transporting oil, gas or petroleum product;

22 (4) "tariff" means a rate, charge, toll, rule or regulation  
23 of an oil or gas transportation facility relating to services furnished  
24 by the facility to the general public or other users for compensation.

25 Sec. 42.06.721. SHORT TITLE. This chapter may be cited as the  
26 Alaska Oil and Gas Transportation Commission Act.

27 \* Sec. 2. This Act takes effect on the day after its passage and approval  
28 or on the day it becomes law without approval.  
29