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Referred: Commerce; Resources

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

1 IN THE SENATE

CS
2 SENATE BILL NO. 294

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act creating the Alaska Leasing Board within the
7 Department of Natural Resources."

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

9 * Section 1. AS 38 is amended by adding a new chapter to read:

10 CHAPTER 40. RIGHT-OF-WAY LEASING ACT.

11 ARTICLE 1. GENERAL PROVISIONS.

12 Sec. 38.40.010. LEGISLATIVE DECLARATION OF POLICY. The natural
13 resources of this state in crude oil and natural gas and in its land
14 for transportation of these resources and their products by pipeline
15 toward markets both in and out of the state are capable of being
16 developed to make the maximum contribution to the general welfare of
17 the people of this state. It is therefore declared to be the policy of
18 this state that the development, use, and control of a pipeline trans-
19 portation system be directed to make the maximum contribution to the
20 development of the human resources of this state, the increase in the
21 standard of living for all of its residents, the advancement of all
22 existing and potential sectors of its economy, the strengthening of
23 free competition in its private enterprise system, and the careful
24 protection of its incomparable natural environment.

25 Sec. 38.40.020. PURPOSE OF CHAPTER. It is the purpose of this
26 chapter to effectuate this legislative policy by establishing a program
27 under which state public land is leased for development, use, and con-
28 trol of a pipeline transportation system throughout the state by means
29 of the well-established device of commercial percentage leases. Under

1 this program a state agency is created, the Alaska Leasing Board, to
2 make prudent determinations concerning the content of percentage leases
3 of state public lands for pipeline right-of-way purposes, including
4 provisions with respect to proper pipeline carriers, pipeline routes
5 on both state public land and other land, design of facilities, modes
6 of construction, techniques of testing and inspection, modes of opera-
7 tion, employment policies, communities and economic sectors served,
8 phasing of construction and operation, and legal status and duties of
9 carriers and similar factors. This program is designed to

10 (1) promote the maximum economic return to the state from
11 the devotion of its land to this policy;

12 (2) promote and encourage the development of a pipeline
13 transportation system properly adapted to the present and future needs
14 of the domestic commerce of the state and the interstate and foreign
15 commerce of the United States;

16 (3) assure the state regular transportation at reasonable
17 rates and under reasonable conditions of crude oil, natural gas, and
18 products, owned by it or by others not owning or having access to
19 pipelines from producing areas to distributing, refining, or marketing
20 centers or reshipping points;

21 (4) promote increased job opportunities for all Alaskans,
22 achieve full employment, and relieve the extensive unemployment and
23 underemployment in the state as well as remedy the lack of adequate
24 production, industrial, and commercial skills among unemployed and
25 underemployed persons, such as by providing on-the-job training and
26 employment of these persons by carriers subject to this chapter;

27 (5) promote the establishment of basic manufacturing and
28 industrial enterprises necessary to permit adequate development of the
natural resources of the state and the balanced growth of its economy;

1 (6) assure maximum safety for both persons and the natural
2 environment in the construction and operation of and transportation by
3 pipeline of crude oil, natural gas, and products;

4 (7) promote full, free, and fair competition in the markets
5 of this state;

6 (8) promote the greatest practicable participation by the
7 general public, communities, business concerns, civic groups, and all
8 branches of local and state government in the investigations and hearings
9 of the Alaska Leasing Board to enable it to arrive at the wisest possible
10 judgments in its leasing of state public lands for pipeline right-of-way
11 purposes.

12 ARTICLE 2. ESTABLISHMENT OF ALASKA LEASING BOARD.

13 Sec. 38.40.040. ALASKA LEASING BOARD CREATED. There is created
14 within the Department of Natural Resources the Alaska Leasing Board.

15 Sec. 38.40.050. COMPOSITION OF BOARD; CHAIRMAN. (a) The board
16 consists of three members, to be known as commissioners, appointed by
17 the governor and confirmed by the legislature in joint session.

18 (b) The governor shall designate one of the appointed commissioners
19 as chairman of the board. This commissioner shall serve as chairman
20 for a term of two years but may be appointed for successive terms.

21 (c) The chairman may from time to time designate any other com-
22 missioner as acting chairman to act for him during his absence.

23 Sec. 38.40.060. TERM OF OFFICE; VACANCY. (a) The term of office
24 of each appointed commissioner is four years. The governor shall desig-
25 nate who, among his initial appointees, shall serve as commissioners,
26 respectively, for terms of 16 months, 32 months, and 48 months. A
27 commissioner, upon the expiration of his term, holds office until his
28 successor is appointed and qualified.

29 (b) A vacancy in the office of commissioner shall be filled by

1 appointment by the governor and confirmation by the legislature in
2 joint session. The appointee selected to fill a vacancy holds office
3 for the balance of the full term for which his predecessor on the board
4 was appointed.

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

8 (d) A vacancy in the office of commissioner occurs upon the death
9 or resignation of a commissioner, or upon his removal under sec. 160
10 of this chapter.

11 Sec. 38.40.070. QUALIFICATIONS OF A COMMISSIONER. The governor
12 in selecting commissioners shall consider a candidate's experience and
13 familiarity with the principles of state economic development or his
14 educational and experience background in the fields of pipeline trans-
15 portation, pipeline carrier regulation, law, business administration,
16 finance and accounting, or human relations.

17 Sec. 38.40.080. PRESIDING OFFICER; RESPONSIBILITY AND AUTHORITY
18 OF COMMISSIONER. (a) The chairman shall preside at all meetings of
19 the board.

20 (b) Each commissioner, including the chairman, has equal responsi-
21 bility and authority in decision making of the board, is entitled to
22 all information relating to discharge of the board's responsibilities,
23 and has one vote.

24 Sec. 38.40.090. QUORUM; OFFICIAL ACTION OF BOARD. (a) Two
25 commissioners constitute a quorum for the transaction of business, for
26 the performance of a duty, or for the exercise of a power of the board.

27 (b) Action of the board is taken by a majority vote of the com-
28 missioners present.

29 Sec. 38.40.100. OFFICIAL SPOKESMAN; RESPONSIBILITY FOR EXECUTION

1 OF BOARD POLICIES AND DECISIONS. (a) The chairman is the official
2 spokesman of the board in its relations with the legislature, government
3 agencies, persons, or the public.

4 (b) The chairman shall oversee the faithful execution of the
5 policies and decisions of the board, and shall report to the board from
6 time to time or as the board may direct on the discharge of its
7 responsibilities.

8 Sec. 38.40.110. COMPENSATION OF COMMISSIONERS. Commissioners are
9 in the exempt service and shall receive an annual salary equal to that
10 of a superior court judge, to be paid in 12 equal monthly installments.

11 Sec. 38.40.120. PRINCIPAL OFFICE; SEAL. (a) The board shall
12 establish a principal office and branch offices necessary to discharge
13 its business efficiently. For the convenience of the public or of
14 parties to a proceeding the board may hold meetings or hearings or
15 conduct other proceedings at locations other than its principal or
16 branch offices.

17 (b) The board shall have an official seal.

18 Sec. 38.40.130. EXECUTIVE DIRECTOR. (a) The board may employ
19 an executive director and fix his salary.

20 (b) To be eligible for the position of director, an individual
21 must have at least five years' experience in an executive administrative
22 capacity and possess qualifications similar to those prescribed for
23 commissioners in sec. 70 of this chapter.

24 (c) The director serves as the chief executive officer of the
25 board and performs duties under the board's supervision.

26 (d) The director is in the partially exempt service under
27 AS 39.25, and the board may remove him at any time.

28 (e) Before performing any duties for the board, the director shall
29 execute a \$150,000 corporate surety bond in compliance with AS 39.15.

1 The board shall pay the cost of the bond from its regular appropriation.

2 Sec. 38.40.140. BOARD EMPLOYEES AND CONSULTANTS. (a) The board
3 may employ professional and clerical personnel to assist in discharging
4 its responsibilities. The board may also contract with consultants
5 to assist it.

6 (b) All regular employees of the board, except the director and
7 legal counsel, if any, are in the classified service under AS 39.25.

8 Sec. 38.40.150. LEGAL COUNSEL. (a) The attorney general is legal
9 counsel for the board. He shall advise the board in legal matters
10 arising out of the discharge of its duties and represent the board in
11 actions to which it is a party. If, in the opinion of the board, the
12 public interest is not adequately represented by counsel in a proceed-
13 ing, the attorney general, upon request of the board, shall represent
14 the public interest.

15 (b) The board may employ temporary legal counsel from time to
16 time in proceedings before the board in which the attorney general is
17 representing the public interest or a party before the board.

18 Sec. 38.40.160. REMOVAL OF COMMISSIONER. (a) The governor may
19 suspend a commissioner from office for cause including but not limited
20 to incompetence, neglect of duty, misconduct in office, or commission
21 of a crime involving moral turpitude. A commissioner, to be suspended
22 for cause, shall be given a copy of the charges against him and the
23 governor shall afford him an opportunity to be publicly heard in per-
24 son or by counsel in his own defense upon not less than 10 days'
25 notice. If a commissioner is suspended for cause, the governor shall
26 file with the lieutenant governor a complete statement of all charges
27 made against the commissioner and his findings based on the charges,
28 together with a complete record of the proceedings. While suspended
29 a commissioner may not participate in board activities.

1 (b) A commissioner is removed from office 30 days after the
2 governor submits the suspension for review to the legislature in joint
3 session unless, during the 30 days after submission, the legislature
4 by majority vote in joint session sets aside the suspension. In com-
5 puting the 30-day period, days in which either house is not in session
6 because of adjournment for three or more days are excluded.

7 Sec. 38.40.170. RESTRICTIONS ON COMMISSIONERS AND EMPLOYEES.

8 (a) No commissioner, agent, or employee of the board may have an
9 official connection with, or hold stock or securities in, or have a
10 pecuniary interest in any lessee carrier. Membership in a cooperative
11 association is not a "pecuniary interest" within the meaning of this
12 section. If a commissioner, agent, or employee of the board becomes
13 the owner of such stocks or securities or becomes pecuniarily interested
14 in such a business or agency otherwise than voluntarily, his office
15 or employment shall become vacant unless within a reasonable time he
16 divests himself of the ownership or interest.

17 (b) No commissioner or employee may act upon a matter in which
18 his relationship with any person creates a conflict of interest.

19 (c) No commissioner may hold any other state government office,
20 whether or not for compensation, during his term of office as a commis-
21 sioner.

22 Sec. 38.40.180. DUTY TO COOPERATE WITH BOARD. Each state agency
23 shall cooperate fully with the board, lending it staff and logistical
24 assistance when feasible and furnishing it with information on reason-
25 able request.

26 ARTICLE 3. THE CENTRAL TASK, FUNCTIONS, POWERS,
27 AND DUTIES OF THE BOARD.

28 Sec. 38.40.190. CENTRAL TASK OF THE BOARD. The central task of
29 the board is to bring about the development, use, and control of a

1 pipeline transportation system within the state in the administration
2 of this chapter so as to effectuate the legislative policy and promote
3 the purposes set out in secs. 10 - 20 of this chapter. Performance
4 of this task calls for the board to promote the assembly and proper
5 direction of the maximum human and material resources within the entire
6 statewide community in the most effective ways so as to assure achieve-
7 ment of this policy and the purposes of this chapter.

8 Sec. 38.40.200. BASIC FUNCTIONS OF THE BOARD. (a) The board
9 shall perform the following basic functions:

10 (1) exercise sole jurisdiction over all state public land
11 for the purpose of carrying out the provisions of this chapter;

12 (2) lease or acquire easements on land belonging to the
13 United States in this state, including "withdrawn public lands" as that
14 term is defined in secs. 3(k) and 16(b) of the Alaska Native Claims
15 Act of 1971, P. L. 92-203, for the purpose of itself utilizing the land
16 or easements or leasing the land or easements to carriers under this
17 chapter for pipeline right-of-way;

18 (3) in the event of controversy between the state and the
19 United States or other person as to whether or not lands are state
20 public lands subject to the provisions of this chapter, negotiate and
21 enter into agreements with the United States or other person respecting
22 the grant of right-of-way leases and certificates thereunder pending
23 the settlement or adjudication of the controversy;

24 (4) receive and investigate applications for and grant
25 leases of state public land for pipeline right-of-way;

26 (5) receive and investigate applications for certificates
27 for authority under leases previously granted by the board for con-
28 struction or acquisition and operation of or transportation or service
29 or sale by pipeline, subject to such lease, whether the applications

1 relate to state public or other land;

2 (6) conduct upon reasonable notice public hearings on
3 applications for leases and certificates;

4 (7) grant leases of state public land and issue certificates
5 thereunder for pipeline right-of-way;

6 (8) with legislative approval, purchase, if the board in its
7 reasoned discretion determines that public interest, convenience and
8 necessity are best served, an interest in any pipeline subject to this
9 chapter throughout its length both on state public and other land within
10 the state not to exceed that percentage of the total interest in the
11 pipeline that the state's and the United States' shares in production of
12 crude oil or natural gas in the field or fields served by the pipeline
13 bear to the total production thereof, the percentage to be calculated at
14 the time the state enters into the lease agreement by adding to the
15 royalty interests owned by the state and the United States in such
16 field or fields the average expected effective rate of the oil and gas
17 production tax as estimated by the division of oil and gas;

18 (9) investigate actions or omissions to act by lessee
19 carriers and endeavor to assure compliance with their leases, their
20 certificates, this chapter, and any other applicable state or federal
21 law; and, for this purpose, receive and investigate complaints from
22 any person or government agency concerning action of carriers;

23 (10) negotiate with lessee carriers to induce them to under-
24 take various additional actions in the construction, acquisition, or
25 operation of or transportation, service, or sale by pipeline either
26 for the public good or in consideration of various benefits such as the
27 partial and temporary waiver of percentage rentals, exercise of the
28 board's ownership of any interest, whether undivided or otherwise, in
29 a pipeline, granting of additional rights on state public land, or

1 securing desired state action;

2 (11) develop and propose new legislation and governmental
3 programs under existing law for dealing with any problem encountered
4 in developing a pipeline transportation system properly adapted to
5 subserving the policy of this chapter;

6 (12) promote continuing discussion and negotiation between
7 and cooperative action by lessee carriers, governmental agencies,
8 business and industrial groups, employee groups, Native regional and
9 other associations, and political subdivisions for the solution of
10 problems relating to the effectuation of the policy and purposes of
11 this chapter;

12 (13) disseminate useful information concerning the develop-
13 ment of the pipeline transportation system in the state to all
14 interested persons, businesses, government agencies, employee groups,
15 Native associations, and political subdivisions;

16 (14) provide or stimulate others to provide various services
17 to residents of this state with respect to employment, job training,
18 business, and other opportunities growing out of the development of a
19 pipeline transportation system in the state;

20 (15) submit to the governor and the legislature in January
21 of each year, a report concerning the activities of the board, includ-
22 ing within it such recommendations for additional legislation and
23 administrative action as the board considers necessary or desirable
24 concerning state policies on pipelines, oil and natural gas leasing
25 and any other matters related to development and exploitation of the
26 state's nonrenewable energy resources;

27 (16) deposit in the general fund all money received under
28 this chapter.

29 (b) The board shall perform the functions enumerated in (a) of

1 this section in accordance with the provisions of this chapter so as
2 to subserve, as the board in the exercise of its reasoned discretion
3 determines, the public interest, convenience, and necessity.

4 (c) The board shall consider the public interest, convenience,
5 and necessity as including the promotion of the legislative policy and
6 purposes of this chapter set out in secs. 10 - 20 of this chapter.

7 Sec. 38.40.210. IMPLEMENTAL AUTHORITY AND DUTIES OF THE BOARD.

8 In the performance of its functions under this chapter the board is
9 authorized to

10 (1) promulgate reasonable rules and regulations necessary
11 to carry out the policy, purposes, and provisions of this chapter;

12 (2) study, investigate, and hold hearings as necessary or
13 proper to assist it in carrying out the policy, purposes, and provisions
14 of this chapter;

15 (3) subpoena witnesses or tangible evidence or both, and
16 administer oaths or affirmations to witnesses;

17 (4) with the consent of the agency concerned, utilize or
18 employ the services or personnel of any government agency or local
19 government, or voluntary or uncompensated personnel, to perform such
20 functions on its behalf as may appear desirable;

21 (5) delegate to the director or another employee of the
22 board any of the functions assigned to it under this chapter except
23 the function of deciding whether or not to grant an application for a
24 lease or a certificate under sec. 200(4), (5) and (7) of this chapter
25 or the conducting of public hearings under secs. 200(6) or 310 of this
26 chapter;

27 (6) establish advisory groups to consult with and make
28 recommendations to the board on legislation, policies, administration,
29 research, and other matters, and promulgate regulations setting out

1 the scope, procedure, and limitations of the authority of the advisory
2 groups;

3 (7) enter into agreements, including interstate compacts,
4 which it considers necessary to carry out the policy, purposes, and
5 provisions of this chapter, including agreements with federal, state,
6 and local government agencies;

7 (8) coordinate its activities with those of other state
8 agencies;

9 (9) apply for and accept from the United States or other
10 public or private sources gifts or grants-in-aid to carry out the
11 policy, purposes, and provisions of this chapter;

12 (10) perform any other activities necessary or proper to
13 carry out the policy, purposes, and provisions of this chapter.

14 ARTICLE 4. REQUIREMENT OF RIGHT-OF-WAY LEASES

15 AND CERTIFICATIONS FOR PIPELINES

16 LOCATED ON STATE PUBLIC LAND.

17 Sec. 33.40.220. REQUIREMENT OF RIGHT-OF-WAY LEASES AND CERTIFICA-
18 TIONS FOR PIPELINES ON STATE PUBLIC LANDS. No person shall engage in
19 any construction, acquisition or operation of or transportation,
20 service, or sale by the whole or any part of any pipeline, which
21 whole or part is or is proposed to be on state public land, unless
22 that person is a carrier and has obtained from the board a right-of-way
23 lease of such land under this chapter as well as a certificate that
24 such construction, acquisition, operation, transportation, service, or
25 sale, if subject to said lease, will be in accordance with its terms.
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1 acquisition or operation of, or transportation, service, or sale by
2 the whole on any part of any pipeline, which whole or part is or is
3 proposed to be on state public land may apply for a right-of-way lease
4 of this land and, as applicable, a certificate that the construction,
5 acquisition, operation, transportation, service, or sale is in accor-
6 dance with the lease. A lessee carrier desiring to engage in any
7 construction, acquisition, or operation of, or transportation, service,
8 or sale by the whole or part of any pipeline subject to the lease on
9 other than state public land may apply for a certificate that the act
10 or acts will be in accordance with that lease.

11 (b) All carriers or lessee carriers owning or planning to own any
12 interest in a proposed pipeline or pipeline subject to a lease, and
13 every corporation or association employed or to be employed by the
14 owners to design, construct, operate, or maintain the pipeline, must
15 join in the application under (a) of this section.

16 (c) A carrier other than one described in (a) or (b) of this
17 section may join in an application under (a) or (b) of this section if
18 the board approves the joinder under rules prescribed by the board.

19 (d) Applications under (a), (b), or (c) of this section shall be
20 made in a form and manner prescribed by board rule.

21 (e) An amendment to an application filed under this section or
22 sec. 260 of this chapter, other than to correct a typographical, com-
23 putational, or similar error, is subject to the same requirements
24 prescribed by board rule for an original application.

25 Sec. 38.40.260. APPLICATION FOR CERTIFICATE TO ABANDON OR
26 DIMINISH SERVICE. A lessee carrier desiring to abandon or diminish
27 operation of or transportation, service, or sales by all or any portion
28 of a pipeline subject to its lease, shall apply for a certificate in
29 the form and manner prescribed by board rule that the abandonment or

1 diminution will be in accordance with the lease.

2 Sec. 38.40.270. NOTICE OF APPLICATION. Upon receiving an appli-
3 cation under secs. 250 or 260 of this chapter, the board shall

4 (1) publish notice of it in the newspaper of general circu-
5 lation and the trade or industry publication which it prescribes by
6 rule;

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

9 (3) furnish at cost copies of a notice or application to
10 anyone requesting them.

11 Sec. 38.40.280. BOARD ANALYSIS OF APPLICATION. (a) Upon
12 receiving an application under sec. 250 of this chapter, the board
13 shall prepare, within a reasonable time, after investigation and con-
14 sultation with coordinate agencies, an analysis of the application
15 including a proposal for action thereon, if feasible; a proposed lease
16 or certificate or both and a general statement of its basis and purpose,
17 if favorable action is tentatively contemplated; or, where a proposal
18 for action is not feasible prior to hearing, a description of the
19 subjects and issues involved.

20 (b) Upon completion of the analysis but not less than 30 days
21 before any date set for hearing such application, or of any substantial
22 amendment thereof, the board shall publish notice, mail copies to
23 coordinate agencies, and make copies thereof available to anyone as
24 provided in sec. 270 of this chapter.

25 (c) The board, upon receiving an application under sec. 260 of
26 this chapter, shall follow a procedure similar to that provided in
27 (a) and (b) of this section.

28 Sec. 38.40.290. MULTIPLE APPLICATIONS FOR SAME LEASE. When the
29 board receives two or more applications relating to the same or

1 substantially the same subject matter, the latter of which is received
2 within 30 days of the date the last of the former was received, it shall
3 consider the applications upon a comparative basis. However, the
4 board may extend the time within which a carrier may submit an applica-
5 tion for consideration upon a comparative basis with a previously filed
6 application.

7 Sec. 38.40.300. SETTING OF PUBLIC HEARING. The board shall set
8 each application for public hearing as soon as practicable and give
9 due notice thereof to coordinate agencies, interested persons, and other
10 members of the public.

11 Sec. 38.40.310. CONDUCT OF PUBLIC HEARINGS. After giving notice
12 required, the board shall give the applicant, coordinate agencies, and
13 other agencies, municipalities, and any interested person an opportunity
14 to participate in a public hearing by the board of the application
15 through submission of written data, views, or arguments as well as
16 presentation of testimony and oral arguments.

17 Sec. 38.40.320. DECISIONS UPON APPLICATIONS. (a) In the case
18 of each application properly filed with it for a right-of-way lease of
19 state public land or certificate thereunder by a carrier seeking to
20 engage in any construction, acquisition, or operation of, or transporta-
21 tion, service, or sale, whether on state public or other land, by any
22 pipeline, the whole or part of which is or is proposed to be on state
23 public land, the board shall determine whether the applicant is fit,
24 willing, and able properly to perform the transportation or other acts
25 proposed and to conform to the provisions of the proposed right-of-way
26 lease or certificate thereunder, and of this chapter, and whether the
27 proposed construction, acquisition, or operation of or transportation,
28 service, or sale by the pipeline is or will be required by the present
29 or future public interest and necessity. If the board makes these

1 determinations favorably to the applicant, then it may grant the whole
2 or any part of the application. Otherwise, it shall deny the applica-
3 tion. A similar process shall be followed by the board in passing upon
4 an application properly filed with it by a lessee carrier for the
5 purpose of engaging in any construction, acquisition, or operation of,
6 or transportation, service, or sale by pipeline subject to the lease on
7 other than state land. The process of granting the whole or any part
8 of the application shall be initiated by the board presenting a lease
9 or certificate to the applicant for its acceptance through signing of
10 the lease or certificate and thereby agreeing to comply with its terms,
11 conditions, and obligations and with this chapter. Only upon proper
12 acceptance of proffered lease or certificate by the applicant within
13 30 days after its having been presented is the grant of the application
14 consummated.

15 (b) In the case of an application properly filed with it for a
16 certificate by a lessee carrier to abandon or diminish operation of,
17 or transportation, service, or sale by any portion of a pipeline that
18 is subject to its lease, the board shall determine whether the proposed
19 abandonment or diminution is or will be consistent with the present or
20 future public interest, convenience, and necessity. If the board makes
21 this determination favorably to the applicant, then it may grant the
22 whole or any part of the application. Otherwise, it shall deny the
23 application.

24 (c) In order for a lease or certificate granted by the board
25 under this chapter and having reference to construction, acquisition,
26 or operation of, or transportation, service, or sale by a crude oil,
27 natural gas, or products pipeline, to be valid and of legal effect, it
28 must contain the terms required to be inserted therein by the board
29 under the provisions of secs. 330 - 440 of this chapter. Any lease or

1 certificate granted by the board under this chapter that does not con-
2 tain the required terms is null and void and without legal effect and
3 does not vest any interest in state public land or any authority in
4 the carrier granted the lease.

5 ARTICLE 6. PROVISIONS OF RIGHT-OF-WAY LEASES
6 AND CERTIFICATES.

7 Sec. 38.40.330. TERM OF LEASE: RENEWAL; MODIFICATION. The board
8 shall insert in each lease of state public land for pipeline right-of-
9 way the following provisions:

10 (1) that the term thereof shall be for 10 years unless the
11 board finds, in the exercise of its reasoned discretion, that the public
12 interest, convenience, and necessity warrant a longer term which,
13 however, may not exceed an additional 10 years for a maximum of 20
14 years in all;

15 (2) that the lessee carrier may apply in the final six
16 months of, but not later than 90 days before the end of the term of an
17 existing right-of-way lease for its renewal for a term not to exceed
18 10 years. Ordinarily, such application will be granted if the carrier
19 has regularly and fully complied with the provisions of the lease and
20 certificates thereunder, this chapter, and other applicable state and
21 federal law.

22 Sec. 38.40.340. COVENANT TO PERFORM ACTS SPECIFIED IN LEASE PRO-
23 JECT DESCRIPTION. (a) The board may grant a lease of state public
24 land and certificates thereunder for pipeline right-of-way only upon
25 the condition that the carrier expressly covenants therein, in con-
26 sideration of the rights acquired by it thereunder, that it will under-
27 take and complete or regularly perform within or throughout the time
28 therein specified throughout the route of the pipeline within the
29 state, both on state public land obtained under the lease and on other

1 land and as specified in the project description contained therein, any
2 construction or acquisition of and any other act required to be per-
3 formed in conjunction therewith, or any operation of, or transportation,
4 service, or sale by any pipeline in good faith and in accordance with
5 the lease and certificates thereunder, this chapter, and any other
6 applicable state or federal law.

7 (b) Each lease and certificate issued thereunder, as appropriate,
8 shall contain a concise description of the projected construction,
9 acquisition, or operation of, or transportation, service, or sale by
10 pipeline, for which the lease is issued and for which, as appropriate,
11 certificates thereunder are to be issued subsequently.

12 Sec. 38.40.350. COVENANT TO ASSUME COMMON CARRIER. (a) The
13 board may grant a lease of state public land and certificates there-
14 under for pipeline right-of-way only upon the condition that the
15 carrier expressly covenants therein, in consideration of the rights
16 acquired by it thereunder, that

17 (1) it assumes the status of and will perform all of its
18 functions undertaken under the lease and certificates thereunder as
19 a common carrier and will accept, convey, and transport all crude oil,
20 natural gas, and products depending on the kind of pipeline involved,
21 delivered to it for transportation from fields in the vicinity of the
22 pipeline subject to the lease throughout its route both on state public
23 land obtained under the lease and on other land;

24 (2) as a common carrier, it accepts the regulatory juris-
25 diction of the Alaska Transportation Commission, in the case of a crude
26 oil pipeline, or of the Alaska Public Utility Commission, in the case
27 of a natural gas pipeline;

28 (3) it will exchange crude oil, natural gas, or products,
29 depending upon the kind of pipeline involved, with each like common

1 carrier and provide such connections and facilities for the inter-
2 change of such crude oil, natural gas, or products at every locality
3 reached by both pipelines whenever a necessity therefor exists
4 subject to such rates and regulations as may be made by the appropri-
5 ate regulatory commission.

6 (b) The common carrier provision of this section shall not
7 apply to any natural gas pipeline operated by any person subject to
8 regulation under the Natural Gas Act of the United States (52 Stat.
9 821, 68 Stat. 36).

10 Sec. 38.40.360. COVENANT TO CONVEY, SELL, AND TRANSFER AN
11 UNDIVIDED INTEREST IN PIPELINE. The board may grant a lease of
12 state public land and certificates thereunder for pipeline right-of-
13 way only upon the condition that the carrier expressly agrees
14 therein, in consideration of the rights acquired by it thereunder,
15 that there is reserved to the board the right to purchase at any
16 time upon reasonable notice of intent to so purchase an undivided
17 interest according to the formula under sec. 200(8) of this
18 chapter in any pipeline subject to the lease. The purchase price
19 shall be per a figure set forth in the lease or arrived at
20 according to a formula set forth in the lease at the time of the
21 lease's execution.

22 Sec. 38.40.370. COVENANT TO PAY PERCENTAGE RENTAL; LIEN FOR
23 MONEY DUE UNDER LEASE. (a) The board may grant a lease of state
24 public land and certificates thereunder for pipeline right-of-way
25 only upon the condition that the carrier expressly covenants and
26 agrees therein, in consideration of the rights acquired by it
27 thereunder, that it will pay the board as rent for the premises
28 demised not less than the larger of the two amounts calculated by
29 the following formulas:

1 (1) $.04(C_{\text{total}} - 1/2 C_{\text{row}}) \left[\frac{.1}{1 - (1.1)^{-n}} \right]$

2 where C_{total} = total pipeline facility cost;

3 C_{row} = cost of acquiring nonstate right-of-way;

4 and n = the pipeline facility's useful life in years;

5 the amount of the total facility cost and the useful life of the
6 facility shall be determined by the board; this calculation shall be
7 made but once unless capital expenditures in any year exceed deprecia-
8 tion charges in that year, in which case the excess shall be added to
9 C and the annual rental recalculated;

10 (2) four per cent of that portion of annual net earnings
11 less than 10 per cent of equity investment; 25 per cent of that
12 portion of annual net earnings between 10 per cent and 20 per cent of
13 equity investment; and 50 per cent of that portion of annual net
14 earnings greater than 20 per cent of equity investment; net earnings
15 shall be determined before deduction of income taxes but after deduc-
16 tion of the amounts calculated in the formula provided in (a)(1) of
17 this section; the depreciation schedules, the determination of equity
18 investment, and other accounting rules that are to be applied in cal-
19 culating net earnings shall be specified in the right-of-way lease.

20 (b) The board may provide for payment of the annual percentage
21 rental either on a monthly, quarterly, biannual, or annual basis and
22 shall provide that any installment of rent not paid when due shall
23 bear interest at the rate of 10 per cent per annum.

24 (c) The board may provide for payment of a percentage rental in
25 excess of the minimum provided for in (a) of this section.

26 (d) The board shall insert in each lease of state public land
27 for pipeline right-of-way a provision that all money and other sums
28 which shall become due to the board thereunder by reason of any provi-
29 sion of the lease is and shall always be a valid and first lien upon

1 the buildings and improvements on the demised property, and upon all of
2 the interests of the lessee carrier in the lease and in the property of
3 the carrier transported by the pipeline subject to the lease and para-
4 mount to any mortgage which the carrier may execute thereon, or any
5 lien caused by the carrier.

6 Sec. 38.40.380. COVENANT CONCERNING RECORDS AND REPORTS. The
7 board may grant a lease of state public land for pipeline right-of-way
8 only upon the condition that the carrier expressly agrees therein, in
9 consideration of the rights acquired by it thereunder, that

10 (1) it will make, keep, and preserve any books, accounts,
11 records, papers, and correspondence and other records and will make any
12 reports that from time to time the board may prescribe by regulations
13 as necessary and appropriate for purposes of administration of this
14 chapter or that the legislature may impose upon it; and

15 (2) it will accord at all reasonable times to the board and
16 its authorized agents and auditors the right of access to its property
17 and records, of inspection of its property, and of examination and
18 copying of records.

19 Sec. 38.40.390. TRANSFER OR ENCUMBRANCE OF RIGHT-OF-WAY LEASE,
20 CERTIFICATES, OR PIPELINE. (a) No lessee carrier shall transfer,
21 assign, or dispose of in any manner its right-of-way lease, certificates
22 thereunder, any rights thereunder, or any pipeline subject thereto,
23 whether on state public land or other land in the state, either volun-
24 tarily or involuntarily, directly or indirectly, or by transfer of
25 control of any corporation holding the lease or certificate or owning
26 the pipeline, to any person, unless and until, and then only to the
27 extent that, upon application by the carrier, the board finds that the
28 public interest, convenience, and necessity will be served thereby and
29 by order authorizes the transfer. The application shall be disposed of

1 as if the proposed transferee or assignee were making application under
2 secs. 250 - 320 of this chapter.

3 (b) The board may grant a lease of state public land and certifi-
4 cates thereunder for pipeline right-of-way only upon the condition that
5 the carrier expressly covenants therein, in consideration of the rights
6 acquired by it thereunder, that it will not transfer, assign, or dis-
7 pose of in any manner, directly or indirectly, or by transfer of
8 control of the carrier corporation, its interest in a right-of-way
9 lease, certificates thereunder, any rights thereunder, or any pipeline
10 subject thereto, unless and until, and then only to the extent that,
11 upon application by the carrier, the board by order authorizes the
12 transfer.

13 (c) No lessee carrier shall issue any bond or other evidence of
14 interest in or indebtedness of the carrier with respect to its lease-
15 hold interest or the pipeline facility subject to the lease, unless
16 and until, and then only to the extent that, upon application by the
17 carrier and after investigation by the board of the purposes and uses
18 of the proposed issue and the proceeds thereof, the board finds that
19 the public interest, convenience and necessity will be served thereby
20 and by order authorizes the transaction.

21 (d) The board may grant a lease of state public land and certifi-
22 cates thereunder for pipeline right-of-way only upon the condition
23 that the carrier expressly covenants therein, in consideration of the
24 rights acquired by it thereunder, that it will not issue any bond or
25 other evidence of interest or indebtedness of the carrier with respect
26 to its leasehold interest thereunder or the pipeline facility subject
27 to the lease, unless and until, and then only to the extent that, upon
28 application by the carrier, the board by order authorizes the issue.

29 (e) The provisions of this section do not apply to the state's

1 exercise of its option to acquire an interest in a pipeline facility.

2 Sec. 38.40.400. DEFAULT BY LESSEE. The board shall insert in
3 each lease of state public land for pipeline right-of-way those provisions
4 that the board considers necessary and desirable in the public interest
5 regarding default.

6 Sec. 38.40.410. COVENANT TO SUBMIT TO JURISDICTION OF STATE
7 COURTS. The board may grant a lease of state public land and certifi-
8 cates thereunder for pipeline right-of-way only upon the condition that
9 the carrier expressly covenants therein, in consideration of the rights
10 acquired by it thereunder, that it will submit to the jurisdiction of
11 or resort to the courts of this state for the purpose of obtaining
12 resolution of any question of interpretation or dispute concerning a
13 provision of the lease or certificate that arises between the parties
14 and is not settled between them by agreement or arbitration.

15 Sec. 38.40.420. COVENANT TO PROVIDE CONNECTIONS AND FACILITIES FOR
16 SERVICE. The board may grant a lease of state public land and certifi-
17 cates thereunder for pipeline right-of-way only upon the condition that
18 the carrier expressly covenants therein, in consideration of the rights
19 acquired by it thereunder, that it will provide such connections and
20 facilities as specified in this lease on the pipeline subject to the
21 lease, both on state land and other land in the state, for the purpose
22 of delivering crude oil, natural gas, or products, depending upon the
23 kind of pipeline involved, to persons desiring to purchase who are
24 located in municipalities in the vicinity of the pipeline.

25 Sec. 38.40.430. COVENANT TO MAINTAIN LEASEHOLD AND PIPELINE. The
26 board may grant a lease of state public land for pipeline right-of-way
27 and certificates thereunder only upon the condition that the carrier
28 expressly agrees therein, in consideration of the rights acquired by it
29 thereunder, that during the term of the lease the lessee carrier at its

1 own expense will

2 (1) maintain the leasehold and pipeline in good repair;

3 (2) exercise the highest degree of care in using the lease-
4 hold and operating the pipeline to prevent a pipeline incident;

5 (3) promptly repair or remedy any damage to or destruction
6 of the leasehold or pipeline;

7 (4) promptly remedy any damage to or destruction of property
8 resulting from damage to or destruction of the leasehold or pipeline.

9 Sec. 38.40.440. ADDITIONAL PROVISIONS OF LEASE OR CERTIFICATES.

10 (a) The board may insert in any right-of-way lease or certificates
11 thereunder as an attachment to the exercise of the rights granted there-
12 under other reasonable provisions and conditions that it determines the
13 public interest, convenience and necessity requires.

14 (b) It is the sense of the legislature that the board consider
15 additional lease provisions relating to

16 (1) means whereby the state may increase job opportunities
17 for all of its residents, achieve full employment, and relieve the exten-
18 sive unemployment and underemployment in the state as well as the lack
19 of adequate production, industrial, and commercial skills among unem-
20 ployed and underemployed persons, such as provisions relating to on-the-
21 job training and employment of these persons by carriers;

22 (2) the attainment of maximum safety for both persons and the
23 natural environment in the construction and operation of and transporta-
24 tion, service, and sales by pipeline of crude oil, natural gas, and
25 products.

26 (c) The board shall in formulating additional lease terms consult
27 and advise in the fullest way with the appropriate agencies of local,
28 state and federal governments and give the fullest consideration to their
29 recommendations.

1 ARTICLE 7. ENFORCEMENT AND MISCELLANEOUS PROVISIONS.

2 Sec. 38.40.450. SUITS BY BOARD TO ENJOIN OR RECOVER DAMAGES FOR
3 DEFAULTS. (a) Whenever in the judgment of the board any person has
4 violated or is about to violate any provision of this chapter or any
5 obligation, condition, or provision of any right-of-way lease or certi-
6 ficate thereunder, the board shall request the attorney general to seek
7 on its behalf a prohibition or mandatory injunction from the superior
8 court to remedy the violation. Upon a showing by the board that the
9 person has committed or is about to commit a violation, the court shall
10 permanently enjoin the violation.

11 (b) Any penalty imposed by the provisions of a right-of-way lease
12 or certificate thereunder may be enforced in the superior court by
13 proceedings in personam against the lessee carrier, or, in the case of
14 a lien, by proceedings in rem against any of the lessee carrier's
15 property.

16 (c) Neither this section nor the board's obtaining an injunction
17 or recovering penalties extinguishes any civil cause of action or
18 criminal responsibility arising out of a violation of this chapter, a
19 right-of-way lease, or a certificate thereunder. A person obtaining
20 a money judgment in a suit upon a cause of action arising out of a
21 violation is entitled to a reasonable attorney's fee, fixed by the
22 court, to be taxed and collected as costs of the suit.

23 Sec. 38.40.460. APPLICATION OF THE ADMINISTRATIVE PROCEDURE ACT.

24 (a) AS 44.62.10 - 320, 44.62.640 and 44.62.650 apply to regulations
25 adopted by the board.

26 (b) AS 44.62.430 - 440 and 44.62.590 apply to actions of the
27 board under sec. 210 of this chapter.

28 (c) AS 44.62.320 applies to right-of-way leases provided the
29 legislature acts within 30 days after the board submits the lease for

1 review to the legislature. In computing the 30-day period, days in
2 which either house is not in session because of adjournment for three
3 or more days are excluded.

4 (d) AS 44.62.630 applies to all functions and decisions of the
5 board.

6 Sec. 38.40.470. JUDICIAL REVIEW OF CANCELLATION OF LEASE. Any
7 lessee carrier complaining of action taken by the board under sec. 400
8 of this chapter may have the board's action reviewed by filing a peti-
9 tion for review in the superior court within 60 days after the action
10 takes effect.

11 ARTICLE 8. TRANSITIONAL PROVISIONS.

12 Sec. 38.40.480. CONTINUED OPERATION OF EXISTING CARRIER. (a)
13 Existing easements or rights-of-way for pipelines on state public land
14 existing on the effective date of this chapter are unaffected by the
15 provisions of this chapter.

16 (b) If the existing right-of-way is revocable or for a term of
17 years, then upon revocation or expiration this chapter applies.

18 (c) Applications for pipeline permits which have been filed with
19 the division of lands before the effective date of this chapter shall
20 be considered as filed before the board but this does not otherwise
21 restrict the authority of the board in acting on these applications
22 under this chapter.

23 (d) An applicant or competing applicant or a person who raises
24 objections within one year of the filing of an application for a permit
25 are the only persons having standing to contest the board's decisions
26 in court.

27 ARTICLE 9. DEFINITIONS AND SHORT TITLE.

28 Sec. 38.40.500. DEFINITIONS. When used in this chapter, unless
29 the context otherwise requires,

1 (1) "association" means

2 (A) a trust or partnership, whether created or operated
3 for profit or not for profit, or

4 (B) a group or organization of two or more individuals
5 having a joint or common economic interest or jointly or commonly
6 promoting their individual economic interests, whether or not the
7 group or organization was created or is operated for profit or
8 not for profit;

9 (2) "board" means the Alaska Leasing Board;

10 (3) "carrier" means any citizen of the United States who
11 undertakes, whether directly or indirectly or by a lease or any other
12 arrangement, to engage in operation of or transportation, service, or
13 sale by pipeline for crude oil, natural gas, or products;

14 (4) "certificate" means the instrument of authorization
15 required by this chapter of a carrier before it can engage in construc-
16 tion, acquisition, or operation of or transportation, service, or sale
17 by a pipeline on state public land or on other land subject to a
18 lease;

19 (5) "chairman" includes the acting chairman in the chairman's
20 absence;

21 (6) "chapter" includes rules and regulations or orders
22 promulgated under this chapter;

23 (7) "citizen of the United States" means

24 (A) an individual who is a citizen of the United States
25 or one of its territories or possessions, or

26 (B) an association of which each member is such an
27 individual, or

28 (C) a corporation created or organized under the laws
29 of the United States or of any state, territory, or possession of

1 the United States;

2 (8) "commissioner" means a member of the board;

3 (9) "coordinate agencies" includes the Department of Labor,
4 the Department of Environmental Conservation, and any other department
5 or agency that is designated by rules and regulations of the board;

6 (10) "corporation" includes a nonprofit corporation, joint-
7 stock company, and professional association, but shall not include a
8 municipality;

9 (11) "crude oil" or "oil" means crude petroleum oil in its
10 natural state as produced and crude petroleum oil from which only the
11 basic sediment and water have been removed;

12 (12) "extraordinary pipeline occurrence" means any event
13 causing a discharge or dispersal on or off the right-of-way of crude
14 oil, natural gas, or products from the pipeline in amounts which the
15 board determines to be substantial, and which discharge or dispersal
16 the board determines has resulted or will probably result in substan-
17 tial damages to persons, the natural environment, or property on or
18 off the right-of-way;

19 (13) "financial protection" means the ability to respond in
20 damages for public liability and to meet the costs of investigating,
21 settling and defending damage claims and suits;

22 (14) "lease" means the instrument or extension thereof issued
23 by the board under this chapter granting a leasehold interest in state
24 public land for pipeline right-of-way purposes to a carrier and
25 authorizing upon issuance of certificates thereunder the construction,
26 acquisition, or operation of, or transportation, service or sale by a
27 pipeline for crude oil, natural gas, or products;

28 (15) "lessee carrier" means a carrier holding a valid lease
29 and certificates thereunder issued by the board;

1 (16) "municipality" means an organized borough or an incor-
2 porated city outside an organized borough, and includes all classes of
3 boroughs and cities whether home rule or otherwise and all political
4 subdivisions;

5 (17) "natural gas" or "gas" means natural gas, including
6 bradenhead gas, casinghead gas, and gas produced from an oil or gas
7 well, or any mixture of natural and artificial gas;

8 (18) "on" means on, across, over, under, or through;

9 (19) "pipeline" or "pipeline facility" means all the instru-
10 mentalities and facilities of a total system of pipe, whether owned or
11 operated under a contract, agreement, or lease, used by a carrier for
12 transportation of crude oil, natural gas, or products for delivery,
13 for storage, or for further transportation, and including all pipe,
14 pump or compressor stations, station equipment, tanks, valves, access
15 roads, bridges, airfields, terminal and all terminal facilities,
16 including docks and tanker loading facilities, operations control
17 center for both the upstream part of the pipeline and the terminal,
18 tanker ballast treatment facilities, and fire protection system, com-
19 munication system, and all other facilities of every kind used or
20 necessary for an integral line of pipe, taken as a whole, to effectuate
21 such transportation, including an extension or enlargement of the line;

22 (20) "pipeline incident" means any occurrence, including an
23 extraordinary pipeline occurrence, within the state causing, within or
24 outside the state, bodily injury, sickness, disease, or death, or loss
25 of or damage to property, or loss of use of property, or damage to the
26 natural environment, arising out of or resulting from the toxic, explo-
27 sive, or other hazardous properties of a pipeline operation or of the
28 crude oil, natural gas, or products carried by the pipeline;

29 (21) "product" means refined crude oil, crude tops, topped

1 crude, processed crude petroleum, residue from crude petroleum,
2 cracking stock, uncracked fuel oil, fuel oil, treated crude oil,
3 residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha,
4 distillate, gasoline, kerosene, benzine, wash oil, waste oil, blended
5 gasoline, lubricating oil, blends or mixtures of petroleum and any
6 liquid products or by-product derived from crude petroleum oil or
7 natural gas;

8 (22) "public land of the United States" means the land owned
9 by the United States as defined in Title 43, secs. 2, 931a, and 931c,
10 USCA, as amended, and Title 30, sec. 185, USCA, as amended;

11 (23) "public liability" means any legal liability arising
12 out of a pipeline incident, except

13 (A) claims under state or federal workmen's compensa-
14 tion acts of employees of persons who are employed at the site of
15 and in connection with the activity where the pipeline incident
16 occurs; and

17 (B) claims arising out of an act of war;

18 (24) "right-of-way" means the land covered by a lease;

19 (25) "state public land" means

20 (A) "state lands", as defined in AS 38.05.365;

21 (B) public land of the United States selected by the
22 state under sec. 6 of the Alaska Statehood Act of 1958, 72 Stat.
23 399, as amended, and real property of the United States trans-
24 ferred to the state under secs. 21, 35, and 45 of the Alaska
25 Omnibus Act of 1959, 73 Stat. 141, as amended;

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

27 (26) "subject to the lease" means, in the context of a
28 reference to a pipeline, or the construction, acquisition, or operation
29 thereof, or transportation, service, or sale thereby, that the pipeline

1 or the performance of the above acts relative to it are specified in
2 the lease or certificate thereunder issued by the board as being sub-
3 jected to the jurisdiction or coverage of that lease, certificates
4 thereunder, this chapter, and any other applicable state or federal
5 law;

6 (27) "transportation" means the shipment or carriage by a
7 pipeline of crude oil, natural gas, or products from an upstream ter-
8 minus in one or more fields or points of production or supply of such
9 minerals to a downstream terminus in one or more points for delivery
10 of such minerals to a purchaser or consignee, for storage, or for
11 further carriage or shipment, including shipment or carriage within the
12 state that may be classified as interstate or foreign transportation
13 to the extent that such transportation may constitutionally be sub-
14 jected to the provisions of this chapter, as well as all services
15 necessary to effectuate such shipment or carriage including, among other
16 things, the receipt, storage, processing, handling, transfer in transit,
17 forwarding, and delivery of such minerals.

18 Sec. 38.40.510. SHORT TITLE. This chapter may be cited as the
19 Alaska Right-of-Way Leasing Act.
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