

Original sponsor: Rules Committee by request  
of the Joint Pipeline  
Impact Committee

Offered: 5/3/72  
Referred: Rules

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2

HOUSE CS FOR CS FOR SENATE BILL NO. 294

*FCC*

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 lease of rights-of-way over state  
7 land for the transportation of oil and gas within the  
8 state; and providing for an effective date."

9

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

10

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

11

CHAPTER 35. RIGHT-OF-WAY LEASING ACT OF 1972.

12

Sec. 38.35.010. 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 making a  
16 significant contribution to the general welfare of the people of this  
17 state. It is the policy of this state that the development, use, and  
18 control of a pipeline transportation system be directed to make the  
19 maximum contribution to the development of the human resources of this  
20 state, the increase in the standard of living for all of its residents,  
21 the advancement of existing and potential sectors of its economy, the  
22 strengthening of free competition in its private enterprise system, and  
23 the careful protection of its incomparable natural environment.

24

Sec. 38.35.020. GRANT OF RIGHT-OF-WAY LEASE. Rights-of-way on  
25 state owned lands including right-of-way on, over, under, along,  
26 across, or upon the right-of-way of a public road or highway or the  
27 right-of-way of a railroad or other public utility, or on, across,  
28 upon, over, or under a river or other body of water or land belonging  
29 to or administered by the state may be granted by lease by the commissioner

1 for pipeline purposes for the transportation of oil, products or natural  
2 gas under those conditions prescribed by law and by administrative  
3 regulations. No person shall engage in any construction, acquisition  
4 or operation of, or transportation, service, or sale by the whole or  
5 a part of an oil, products, or natural gas pipeline, which in whole or  
6 in part is or is proposed to be on state public land, unless that  
7 person is a carrier and has obtained from the commissioner a right-of-  
8 way lease of the land under this chapter as well as a certificate  
9 that the construction, acquisition, operation, transportation, service,  
10 or sale, if subject to the lease, will be in accordance with its terms.

11 Sec. 38.35.030. ABANDONMENT OF OR REDUCTION OR IMPAIRMENT OF  
12 SERVICE OF PIPELINE BY LESSEE CARRIER. No lessee carrier may abandon  
13 any portion of a pipeline that is on state public land or subject  
14 to the lease, or operation or transportation, service, or sale by it,  
15 or reduce or impair service, unless the carrier has first applied for  
16 and the commissioner has granted a certificate that the abandonment,  
17 reduction, or impairment is in accordance with the terms of the lease.

18 Sec. 38.35.040. TEMPORARY OR EMERGENCY SERVICE OR TEMPORARY  
19 ABANDONMENT, REDUCTION OR IMPAIRMENT OF SERVICE BY LESSEE CARRIER. The  
20 commissioner may, either upon a request made in the form he shall by  
21 regulation require, or upon his own motion without request, authorize  
22 or require temporary or emergency rendering of service or temporary  
23 or emergency abandonment, reduction or impairment of service by a pipe-  
24 line of a lessee carrier without compliance with secs. 50 - 140 of this  
25 chapter. Nothing in this section shall prevent a carrier from temporar-  
26 ily suspending operations in the event of an emergency which threatens  
27 public health or safety, provided, however, that notice shall be given  
28 the commissioner as soon as possible.

29 Sec. 38.35.050. APPLICATIONS FOR RIGHT-OF-WAY LEASES AND

1 CERTIFICATES. (a) A carrier desiring to engage in construction,  
2 acquisition or operation of, or transportation, service, or sale by the  
3 whole or a part of a pipeline, which in whole or part is or is proposed  
4 to be on state public land may apply for a right-of-way lease of this  
5 land and, as applicable, a certificate that the construction, acqui-  
6 sition, operation, transportation, service, or sale is in accordance with  
7 the lease. A lessee carrier desiring to engage, on other than state pub-  
8 lic land, in construction, acquisition, or operation of, or transporta-  
9 tion, service, or sale by a pipeline subject to the lease may apply for  
10 a certificate that the act or acts will be in accordance with that lease.

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

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

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

20 (e) An amendment to an application filed under this section or  
21 sec. 60 of this chapter, other than to correct a typographical, compu-  
22 tational, or similar error, is subject to the regulations applying to  
23 an original application.

24 Sec. 38.35.060. APPLICATION FOR CERTIFICATE TO ABANDON OR DIMINISH  
25 SERVICE. A lessee carrier desiring to abandon or diminish operation of  
26 or transportation, service, or sales by all or a portion of a pipeline  
27 subject to its lease, shall apply, in the form and manner prescribed  
28 by regulation, for a certificate that the abandonment or diminution  
29 will be in accordance with the lease.

1           Sec. 38.35.070. NOTICE OF APPLICATION. Upon receiving an applica-  
2 tion under sec. 50 or 60 of this chapter, the commissioner shall

3           (1) cause notice of it to appear in the daily newspaper of  
4 general circulation published nearest the location of the proposed  
5 pipeline;

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

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

10          Sec. 38.35.080. ANALYSIS OF APPLICATION. (a) The commissioner  
11 shall, within a reasonable time after receiving the application, and  
12 after investigation and consultation with coordinate agencies, prepare  
13 an analysis of the application, including a proposal for action if  
14 feasible; a proposed lease or certificate or both and a general state-  
15 ment of his basis and purpose, if favorable action is proposed; or,  
16 when a proposal for action is not feasible prior to hearing, a descrip-  
17 tion of the subjects and issues involved.

18          (b) Upon completion of the analysis but not less than 30 days be-  
19 fore the date set for hearing an application or a substantial amendment  
20 to an application, the commissioner shall publish notice, mail copies to  
21 coordinate agencies, and make copies available as provided in sec. 70  
22 of this chapter.

23          Sec. 38.35.090. MULTIPLE APPLICATIONS FOR SAME LEASE. When the com-  
24 missioner receives within a 30-day period two or more applications re-  
25 lating to the same or substantially the same subject matter, he shall  
26 consider the applications upon a comparative basis. The commissioner  
27 may extend the time within which a carrier may submit an application for  
28 consideration upon a comparative basis with a previously filed applica-  
29 tion.

1           Sec. 38.35.100. SETTING OF PUBLIC HEARING. The commissioner shall  
2 set each application for public hearing as soon as practicable and give  
3 due notice of the hearing to coordinate agencies, interested persons,  
4 and other members of the public.

5           Sec. 38.35.110. CONDUCT OF PUBLIC HEARINGS. After giving notice  
6 required, the commissioner shall give the applicant, coordinate agencies,  
7 and other interested persons an opportunity to participate in the public  
8 hearing on the application through submission of written data, views, or  
9 arguments as well as presentation of testimony and oral arguments.

10           Sec. 38.35.120. DECISIONS UPON APPLICATIONS. (a) The commissioner  
11 shall determine, on an application filed with him under sec. 50 of this  
12 chapter for a right-of-way lease of state public land or for a certifi-  
13 cate under a lease, whether the applicant is fit, willing, and able to  
14 perform the transportation or other acts proposed and to conform to the  
15 provisions of the proposed right-of-way lease or certificate, and of  
16 this chapter, and whether the proposed construction, acquisition, or  
17 operation of or transportation, service, or sale by the pipeline is or  
18 will be required by the present or future public interest and necessity.  
19 If the commissioner makes these determinations favorably to the appli-  
20 cant, then he may grant the whole or part of the application. Other-  
21 wise, he shall deny the application. In order to grant the whole or  
22 part of the application the commissioner shall offer a lease or certifi-  
23 cate to the applicant for its acceptance through signing of the lease or  
24 certificate and agreeing to comply with its terms, conditions, and obli-  
25 gations and with this chapter. Only upon proper acceptance of offered  
26 lease or certificate by the applicant within 30 days after its having  
27 been presented is the grant of the application consummated.

28           (b) The commissioner, on application by a lessee carrier for a  
29 certificate to abandon or diminish operation of, or transportation,

1 service, or sale by any portion of a pipeline that is subject to its  
2 lease, shall determine whether the proposed abandonment or diminution  
3 is or will be consistent with the present or future public interest,  
4 convenience, and necessity. If the commissioner makes this determina-  
5 tion favorably to the applicant, he may grant the whole or a part of  
6 the application. Otherwise, he shall deny the application.

7 (c) For a right-of-way lease granted under this chapter for an oil  
8 or natural gas pipeline valued at \$10,000 or more to be valid and of  
9 legal effect, it must contain the terms required to be inserted under  
10 the provisions of secs. 130 - 170 of this chapter. An oil or natural  
11 gas pipeline right-of-way lease granted under this chapter that does  
12 not contain the required terms is null and void and without legal effect  
13 and does not vest any interest in state public land or any authority  
14 in the carrier granted the lease.

15 (d) The commissioner may, at his discretion, include the terms  
16 set out in secs. 130 - 170 of this chapter in leases of state public  
17 land for products pipeline right-of-way purposes.

18 Sec. 38.35.130. TERM OF LEASE. Each lease of state public land  
19 for pipeline right-of-way purposes shall contain a provision that the  
20 lease shall run for a specified term not greater than 10 years, and shall  
21 be renewable for an additional period of up to 10 years, so long as  
22 the lessee is in full compliance with all state law, including but not  
23 limited to state law pertaining to regulation and taxation of the pipe-  
24 line facility, and is in compliance with all terms of the lease.

25 Sec. 38.35.140. COVENANTS REQUIRED TO BE INCLUDED IN LEASE. A  
26 lease of state public land for a right-of-way for an oil or natural gas  
27 pipeline valued at \$10,000 or more may be granted only upon the condition  
28 that the lessee carrier expressly covenants in the lease, in consideration  
29

1 of the rights acquired by it under the lease, that:

2 (1) it will obtain a certificate of compliance with the terms  
3 and conditions of the lease before undertaking any construction,  
4 acquisition or operation of or transportation, service or sale by the  
5 whole or any part of a pipeline on state public land, including the  
6 portions of the pipeline not on state public land;

7 (2) it will undertake and complete or regularly perform  
8 within or during the time period and in accordance with the project  
9 description contained in the lease or certificate, throughout the  
10 entire route of the pipeline in the state, both on state public land  
11 obtained under the lease and on other land, any construction or acqui-  
12 sition or other act required to be performed in conjunction with the  
13 lease, or operation of, or transportation, service, or sale by the  
14 pipeline in good faith and in accordance with the lease and certificates,  
15 this chapter, and any other applicable state or federal law;

16 (3) it assumes the status of and will perform all of its  
17 functions undertaken under the lease as a common carrier and will  
18 accept, convey, and transport all crude oil or natural gas, depending  
19 on the kind of pipeline involved, delivered to it for transportation  
20 from fields in the vicinity of the pipeline subject to the lease  
21 throughout its route both on state public land obtained under the lease  
22 and on other land; however, the common carrier provision of this section  
23 shall not apply to a natural gas pipeline operated by a person subject  
24 to regulation under the Natural Gas Act of the United States (52 Stat.  
25 821, 68 Stat. 36);

26 (4) it assumes the status of and shall be a common purchaser  
27 of crude oil and natural gas, depending upon the kind of pipeline  
28 involved, that is produced from fields in the vicinity of the pipeline  
29 subject to the lease and shall purchase crude oil or natural gas that

1 is offered it;

2 (5) it will accept, convey, and transport or purchase  
3 crude oil or natural gas without unjust or unreasonable discrimination  
4 in favor of one producer or person, including itself, as against another  
5 in the same field, and without unjust or unreasonable discrimination  
6 as between fields in the state but will take the crude oil or natural  
7 gas, depending on the kind of pipeline involved, delivered or offered  
8 in the proportion that the commission shall, after a full hearing with  
9 due notice to the interested parties and a proper finding of facts,  
10 determine to be reasonable;

11 (6) it will exchange crude oil or natural gas, depending upon  
12 the kind of pipeline involved, with each like common carrier and pro-  
13 vide connections and facilities for the interchange of crude oil or  
14 natural gas at every locality reached by both pipelines when the neces-  
15 sity exists, subject to rates and regulations made by the appropriate  
16 state or federal regulatory agency;

17 (7) the lessee grants to the state the right to purchase,  
18 upon reasonable notice, an undivided interest in the entire length  
19 within the state of the pipeline, not to exceed the percentage owned  
20 by the state and the United States of the production of crude oil or  
21 natural gas in the field or fields served by the pipeline, the percentage  
22 to be calculated at the time the state enters into the lease agreement  
23 by adding the royalty interests owned by the state and the United States  
24 in the field or fields to the average expected effective rate of oil and  
25 gas production tax as estimated by the director of the division of oil  
26 and gas of the Department of Natural Resources; the oil and gas produc-  
27 tion tax schedule in effect at the time the lease is executed shall be  
28 used in calculating the average expected effective tax rate; the purchase  
29 price shall be at a reasonable figure set out in the lease or according

1 to a reasonable formula set out in the lease at the time of the lease's  
2 execution; purchase of this interest may, at the option of the state,  
3 be made in stages;

4 (8) it will maintain and preserve books, accounts, records,  
5 papers, and correspondence and other records and will make those reports  
6 that the state may prescribe by regulation or law as necessary and ap-  
7 propriate for purposes of administration of this chapter;

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

12 (10) it will provide, where economically feasible and consis-  
13 tent with the primary function of the line, connections and facilities  
14 on the pipeline subject to the lease, both on state land and other land  
15 in the state, for the purpose of delivering crude oil or natural gas, de-  
16 pending upon the kind of pipeline involved, to persons desiring to purchase  
17 who are located in municipalities in the vicinity of the pipeline;

18 (11) it will, at its own expense, during the term of the lease

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

20 (B) exercise the highest degree of care in using the  
21 leasehold and operating the pipeline to prevent a pipeline incident;

22 (C) promptly repair or remedy any damage to or destruc-  
23 tion of the leasehold or pipeline;

24 (D) promptly remedy any damage to or destruction of  
25 property resulting from damage to or destruction of the leasehold  
26 or pipeline;

27 (12) it will not transfer, assign, or dispose of in any manner,  
28 directly or indirectly, or by transfer of control of the carrier corpora-  
29 tion, its interest in a right-of-way lease, or any rights under the

1 lease, or any pipeline subject to the lease, except as authorized by  
2 the commissioner, upon application by the carrier; the commissioner shall  
3 not unreasonably withhold his consent to the transfer, assignment or  
4 disposal;

5 (13) it will file with the commissioner a written appoint-  
6 ment of a named permanent resident of the state to be its registered  
7 agent in the state and to receive service of notices, regulations,  
8 decisions and orders of the commissioner, if it fails to appoint an  
9 agent for service, service may be made by posting a copy in the office  
10 of the commissioner and filing a copy of it in the office of the  
11 lieutenant governor;

12 (14) the applicable law of this state will be used in re-  
13 solving questions of interpretation of the lease.

14 Sec. 38.35.150. RIGHT-OF-WAY EASEMENTS OR LEASES ACQUIRED FROM  
15 OTHERS. (a) The lease shall contain the further express agreement  
16 by the carrier that

17 (1) it will, upon reasonable conditions and at a just price,  
18 convey to the state any rights-of-way, right-of-way permits, easements,  
19 or leases previously acquired or to be acquired for right-of-way pur-  
20 poses for the pipeline subject to the lease;

21 (2) the state reserves to itself and the lessee grants to  
22 the state the sole right to condemn, by declaration of taking real  
23 property for right-of-way purposes and to acquire to the extent federally  
24 permissible leases of or easements or rights-of-way on public lands  
25 belonging to the United States in this state, including "withdrawn  
26 public lands" as that term is defined in secs. 3(k) and 16(b) of  
27 the Alaska Native Claims Act of 1971 (85 Stat. 688), required for  
28 right-of-way purposes for the pipeline subject to the lease;

29 (3) the carrier will, if the commissioner delegates the

1 function to it, condemn, by declaration of taking, real property  
2 and acquire leases of or easements or rights-of-way on public lands  
3 in this state belonging to the United States, including "withdrawn  
4 public lands" required for right-of-way purposes for the pipeline  
5 subject to the lease on behalf of and as agent for the board in whom  
6 title to or interest in the land shall vest.

7 (b) The lease covenant required by this section shall be accom-  
8 panied by a provision that the land, right-of-way, or easement acquired  
9 under this section is or will form part of the lands leased to the  
10 lessee carrier.

11 Sec. 38.35.160. PAYMENT OF PERCENTAGE RENTAL. (a) The carrier  
12 shall agree in the lease, as a condition for obtaining the lease of  
13 state public land for pipeline right-of-way, that it will pay  
14 annually to the state as rent for the premises demised not less than  
15 the larger of the two amounts calculated by the following formulas:

16 (1)  $.04C \frac{As}{At} \left( \frac{.1}{1-(1.1)^{-n}} \right)$  where:

17 (A) C = the total cost of that portion of the pipeline  
18 facility located within the state less the value to the state  
19 of facilities, such as roads and airports, which will be available  
20 to and used by the general public for purposes not related to  
21 pipeline operations;

22 (B) As = the length of the pipeline on right-of-way  
23 within the state in which the state has an ownership or permit  
24 interest;

25 (C) At = the total length of the pipeline within the  
26 state; and

27 (D) n = the pipeline facility's expected useful life in  
28 years;

29 (E) the amount of the total facility cost and the

1 useful life of the facility shall be determined by the commis-  
2 sioner; this calculation shall be made but once unless capital  
3 expenditures in any year exceed depreciation charges in that year,  
4 in which case the excess shall be added to C and the annual  
5 rental recalculated;

6 (2) four per cent of that portion of annual net earnings  
7 less than two per cent of total assets; 25 per cent of that portion  
8 of annual net earnings between two per cent and four per cent of total  
9 assets; and 50 per cent of that portion of annual net earnings greater  
10 than four per cent of total assets; net earnings shall be determined  
11 before deduction of income taxes but after deduction of the amounts  
12 calculated in the formula provided in (a)(1) of this section; the  
13 depreciation schedules, the determination of total assets, and other  
14 accounting rules that are to be applied in calculating net earnings  
15 shall be specified in the right-of-way lease.

16 (b) The lease shall provide for payment of the annual rental  
17 either on a monthly, quarterly, biannual, or annual basis and  
18 shall provide that any installment of rent not paid when due shall  
19 bear interest at the rate of 10 per cent per year.

20 (c) The lease may provide for payment of a reasonable percen-  
21 tage rental in excess of the minimum provided for in (a) of this  
22 section.

23 (d) When the commissioner determines that the costs of adminis-  
24 tration involved in calculating the rental payments due under the  
25 formula in (a)(2) of this section are likely to exceed the benefits  
26 accruing to the state from them, he may, after public notice of this  
27 determination as provided in sec. 70 of this chapter and compliance  
28 with the other provisions of this chapter, issue a right-of-way lease  
29 without the covenant to pay rental under (a)(2) of this section.

1 (e) Each lease of state public land for pipeline right-of-way  
2 shall provide that all money and other sums which shall become due to  
3 the state by reason of any provision of the lease is and shall always  
4 be a valid and first lien upon the buildings and improvements on the  
5 demised property, and upon all of the interests of the lessee carrier  
6 in the lease and in the property of the carrier transported by the  
7 pipeline subject to the lease and paramount to any mortgage which the  
8 carrier may execute on them, or any lien caused by the carrier.

9 Sec. 38.35.170. ADDITIONAL PROVISIONS OF LEASE. (a) The commis-  
10 sioner may insert in any right-of-way lease other reasonable provisions  
11 and conditions that he determines the public interest, convenience and  
12 necessity requires; provided, however, that these other reasonable  
13 provisions and conditions shall relate to the primary function of the  
14 lease and the land involved.

15 (b) The commissioner shall require the lessee carrier to procure  
16 and file liability and property damage insurance from a company licensed  
17 to write insurance in the state or deposit security for the limits of  
18 liability upon the terms and conditions the commissioner determines  
19 necessary for the protection of the public against damage and injury  
20 for which the lessee carrier may be liable by reason of the operation  
21 of the pipeline.

22 (c) The commissioner shall require the lessee carrier to submit  
23 a security or bond in a reasonable amount conditioned for the construc-  
24 tion and completion of the facility together with the payment of rent,  
25 taxes, assessments and other obligations under the lease until the  
26 construction and completion of the facility, after which the bond shall  
27 be cancelled or the securities returned. The agreement as to the  
28 securities and the bond shall provide that if the carrier fails to  
29 construct the facility specified in the project description, a

1 reasonable amount of the securities or bond shall be held payable to  
2 the state as damages for failure to construct and complete the  
3 facility.

4 Sec. 38.35.180. TRANSFER OF RIGHT-OF-WAY LEASE, CERTIFICATES,  
5 OR PIPELINE. No lessee carrier may transfer, assign, or dispose of in  
6 any manner its right-of-way lease, or any rights under the lease, or  
7 any pipeline subject to the lease, whether on state public land or  
8 other land in the state, either voluntarily or involuntarily, directly  
9 or indirectly, or by transfer of control of any corporation holding the  
10 lease or certificate or owning the pipeline, to any person, except to  
11 the extent that the commissioner, after consideration of the public  
12 interest, convenience, and necessity, by order authorizes the transfer.  
13 The commissioner shall not unreasonably withhold this authorization.  
14 The application shall be disposed of as if the proposed transferee or  
15 assignee were making application under secs. 50 - 120 of this chapter.

16 Sec. 38.35.190. FORFEITURE OF LEASE. A determination, after due  
17 notice and an adequate hearing, that the carrier has failed to comply  
18 with the provisions of this chapter or the provisions of the lease  
19 agreement shall be grounds for the forfeiture of the grant of the  
20 right-of-way lease, as well as grounds for the remedies provided in  
21 sec. 200 of this chapter. The commissioner may not forfeit a right-of-  
22 way lease until 60 days has elapsed after giving notice of intent  
23 to cancel or until judicial review of the commissioner's proposed  
24 action has commenced, whichever occurs earlier. The commissioner may  
25 insert in each lease of state public land for pipeline right-of-way  
26 additional reasonable provisions regarding default that he considers  
27 necessary and desirable.

28 Sec. 38.35.200. SUITS TO ENJOIN OR RECOVER DAMAGES FOR DEFAULTS.  
29 (a) When in the judgment of the commissioner a person has violated

1 or is about to violate a provision of this chapter or an obligation,  
2 condition, or provision of a right-of-way lease, the attorney general,  
3 on advice of the commissioner, shall seek a prohibition or mandatory  
4 injunction from the superior court to remedy the violation.

5 (b) A penalty imposed by the provisions of a right-of-way lease  
6 issued under this chapter may be enforced in the superior court by  
7 proceedings in personam against the lessee carrier, or, in the case  
8 of a lien, by proceedings in rem against any of the lessee carrier's  
9 property.

10 (c) Neither this section nor the state's obtaining an injunction  
11 or recovering penalties extinguishes any civil cause of action or  
12 criminal responsibility arising out of a violation of this chapter, a  
13 right-of-way lease, or certificate under a lease. A person obtaining  
14 a money judgment in an action arising out of a violation is entitled  
15 to a reasonable attorney fee, fixed by the court, to be taxed and  
16 collected as costs of the suit.

17 Sec. 38.35.210. APPLICATION OF THE ADMINISTRATIVE PROCEDURE ACT.

18 (a) AS 44.62.010 - 44.62.320, 44.62.640 and 44.62.650 apply to regu-  
19 lations adopted by the commissioner under the authority of this chapter.

20 (b) AS 44.62.430 - 44.62.440 and 44.62.590 apply to actions of  
21 the commissioner under this chapter.

22 (c) AS 44.62.320 applies to right-of-way leases provided the  
23 legislature acts within 30 days after the board submits the lease for  
24 review to the legislature. In computing the 30-day period, days in  
25 which either house is not in session because of adjournment for three  
26 or more days are excluded.

27 (d) AS 44.62.630 applies to all functions and decisions of the  
28 commissioner.

29 Sec. 38.35.220. JUDICIAL REVIEW OF ACTION TO CANCEL LEASE. A

1 lessee carrier complaining of proposed action to be taken by the  
2 commissioner under sec. 190 of this chapter may have the commissioner's  
3 action reviewed by filing a petition for review in the superior court  
4 within 60 days after notice of the proposed action.

5 Sec. 38.35.230. DELEGATION OF COMMISSIONER'S AUTHORITY. The  
6 commissioner may delegate to an employee of the Department of Natural  
7 Resources or the Department of Law the authority granted under this  
8 chapter, except for the authority to execute leases and certificates.

9 Sec. 38.35.240. CONTINUED OPERATION OF EXISTING CARRIER. (a)  
10 Existing easements or rights-of-way for pipelines on state public land  
11 existing on the effective date of this chapter are unaffected by the  
12 provisions of this chapter.

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

15 (c) Applications for pipeline permits which have been filed with  
16 the division of lands before the effective date of this chapter shall  
17 be considered as filed under this chapter but this does not otherwise  
18 restrict the authority of the commissioner in acting on these applica-  
19 tions under this chapter.

20 (d) An applicant or competing applicant or a person who raises  
21 objections within 60 days of the filing of an application for a right-  
22 of-way are the only persons having standing to contest the commissioner's  
23 decisions in court.

24 Sec. 38.35.250. DEFINITIONS. In this chapter, unless the context  
25 otherwise requires,

26 (1) "association" means

27 (A) a trust or partnership, whether created or operated  
28 for profit or not for profit, or

29 (B) a group or organization of two or more individuals

1           having a joint or common economic interest or jointly or commonly  
2           promoting their individual economic interests, whether or not the  
3           group or organization was created or is operated for profit or  
4           not for profit;

5           (2) "carrier" means a person who undertakes, whether directly  
6           or indirectly or by a lease or any other arrangement, to engage in  
7           operation of or transportation, service, or sale by pipeline for  
8           crude oil, natural gas, or products;

9           (3) "certificate" means the instrument of authorization  
10          required by this chapter of a carrier before it can engage in construc-  
11          tion, acquisition, or operation of or transportation, service, or sale  
12          by a pipeline on state public land or on other land subject to a lease;

13          (4) "commission" means the Alaska Oil and Gas Transportation  
14          Commission;

15          (5) "commissioner" means the commissioner of natural  
16          resources;

17          (6) "coordinate agencies" includes the Department of Labor,  
18          Department of Highways, Department of Environmental Conservation, and  
19          the Alaska Oil and Gas Transportation Commission;

20          (7) "corporation" includes a nonprofit corporation, joint-  
21          stock company, and professional association, but shall not include a  
22          municipality;

23          (8) "crude oil" or "oil" means crude petroleum oil in its  
24          natural state as produced and crude petroleum oil from which only the  
25          basic sediment and water and/or solution gas have been removed;

26          (9) "lease" means the instrument or extension of an instru-  
27          ment issued under this chapter granting a leasehold interest in state  
28          public land for pipeline right-of-way purposes to a carrier and  
29          authorizing upon issuance of certificates the construction, acquisition,

1 or operation of, or transportation, service or sale by a pipeline for  
2 crude oil, natural gas, or products;

3 (10) "lessee carrier" means a carrier holding a valid lease  
4 and certificates thereunder issued by the commissioner;

5 (11) "municipality" includes all classes of organized boroughs  
6 and cities whether home rule or otherwise;

7 (12) "natural gas" or "gas" means natural gas, including  
8 bradenhead gas, casinghead gas, and gas produced from an oil or gas  
9 well, or any mixture of natural and artificial gas;

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

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

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

8 (16) "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 USC, as amended, and Title 30, sec. 185, USC, as amended;

11 (17) "right-of-way" means the land covered by a lease;

12 (18) "state public land" means

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

14 (B) public land of the United States selected by the  
15 state under sec. 6 of the Alaska Statehood Act of 1958, 72 Stat.  
16 399, as amended, and real property of the United States transferred  
17 to the state under secs. 21, 35 and 45 of the Alaska Omnibus Act  
18 of 1959, 73 Stat. 141, as amended;

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

20 (19) "subject to the lease" means, in the context of a refer-  
21 ence to a pipeline, or the construction, acquisition, or operation of,  
22 or transportation, service, or sale by it, that the pipeline or the  
23 performance of the above acts relative to it are specified in the lease  
24 or certificate issued by the commissioner as being subjected to the  
25 jurisdiction or coverage of that lease, certificates, this chapter,  
26 and any other applicable state or federal law;

27 (20) "transportation" means the shipment or carriage by a  
28 pipeline of crude oil, natural gas, or products from an upstream ter-  
29 minus in one or more fields or points of production or supply of the

1 minerals to a downstream terminus in one or more points for delivery  
2 of the minerals to a purchaser or consignee, for storage, or for  
3 further carriage or shipment, including shipment or carriage within the  
4 state that may be classified as interstate or foreign transportation  
5 to the extent that the transportation may constitutionally be subjected  
6 to the provisions of this chapter, as well as all services necessary  
7 to effectuate shipment or carriage including, among other things, the  
8 receipt, storage, processing, handling, transfer in transit, forwarding,  
9 and delivery of the minerals.

10 Sec. 38.35.260. SHORT TITLE. This chapter may be cited as the  
11 Alaska Right-of-Way Leasing Act of 1972.

12 \* Sec. 2. AS 09.55.240(a)(12) is amended to read:

13 (12) subject to the requirements of the Alaska Right-of-Way  
14 Lease Act of 1972 (AS 38,35), for the location of pipelines for  
15 gathering, transmitting, transporting, storing, or delivering natural  
16 or artificial gas or oil or any liquid or gaseous hydrocarbons, in-  
17 cluding, but not limited to, pumping stations, terminals, storage  
18 tanks, or reservoirs, and related installations.

19 \* Sec. 3. AS 38.05.020 is amended by adding a new subsection to read:

20 (c) The commissioner shall have all powers necessary and proper  
21 to implement the policy and powers of the Alaska Right-of-Way Lease  
22 Act of 1972, AS 38.35, including but not limited to:

23 (1) granting leases of state public land and issuing  
24 certificates for pipeline right-of-way purposes;

25 (2) leasing, purchasing or acquiring easements on private  
26 or federal land in this state for the purpose of utilizing or granting  
27 leases of the land or easements for pipeline right-of-way purposes;

28 (3) purchasing interests in pipelines in accordance with  
29 options included in right-of-way leases as provided in AS 38.35.140(7).

1 \* Sec. 4. AS 38.05.330 is amended to read:

2           Sec. 38.05.330. PERMITS. The director, without the prior ap-  
3           proval of the commissioner, may issue permits, rights-of-way or ease-  
4           ments on state lands for secondary roads, trails, ditches, [PIPELINES,]  
5           telephone and transmission lines, log storage, oil well drilling sites  
6           and production facilities for the purposes of recovering minerals  
7           from adjacent lands under valid lease, and other similar uses or im-  
8           provements, or for the limited personal use of timber or materials.  
9           The commissioner, upon recommendation of the director, shall establish  
10          a reasonable rate or fee schedule to be charged for these uses. In  
11          the granting, suspension or revocation of a permit or easement of lands,  
12          the director shall give preference to that use of the land which  
13          will be of greatest economic benefit to the state and the development  
14          of its resources. However, first preference shall be granted to the  
15          upland owner for the use of a tract of tideland, or tideland and  
16          contiguous submerged land, which is seaward of the upland property of  
17          the upland owner and which is needed by the upland owner for any of  
18          the purposes for which the use may be granted.

19 \* Sec. 5. This Act takes effect on the day after its passage and approval  
20 or on the day it becomes law without approval.  
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