

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

Offered: 5/17/72

1 IN THE SENATE

BY THE FREE CONFERENCE COMMITTEE

2 FREE CONFERENCE CS FOR HOUSE CS FOR CS FOR 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 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 noncompetitive lease

1 by the commissioner for pipeline purposes for the transportation of oil,
2 products or natural gas under those conditions prescribed by law and by
3 administrative regulations. No person shall engage in any construction,
4 acquisition or operation of, or transportation, service, or sale by the
5 whole or a part of an oil, products, or natural gas pipeline, which in
6 whole or in part is or is proposed to be on state public land, unless
7 that person is a carrier and has obtained from the commissioner a right-
8 of-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 - 100 of this
25 chapter. Nothing in this section prevents a carrier from temporarily
26 suspending operations in the event of an emergency which threatens
27 public health or safety; however, notice shall be given the commissioner
28 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 noncompetitive right-of-way
5 lease of this land and, as applicable, a certificate that the construc-
6 tion, acquisition, operation, transportation, service, or sale is in
7 accordance with the lease. A lessee carrier desiring to engage, on
8 other than state public land, in construction, acquisition, or operation
9 of, or transportation, service, or sale by a pipeline subject to the
10 lease may apply for a certificate that the act or acts will be in
11 accordance with that lease.

12 (b) All carriers or lessee carriers owning or planning to own an
13 interest in a pipeline or proposed pipeline subject to a lease, and
14 every corporation or association employed or to be employed to operate
15 the pipeline, must 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 commissioner approves the joinder.

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

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

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

1 will be in accordance with the lease.

2 Sec. 38.35.070. NOTICE OF APPLICATION. Upon receiving an appli-
3 cation under sec. 50 or 60 of this chapter, the commissioner shall

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

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 persons requesting them.

11 Sec. 38.35.080. ANALYSIS OF APPLICATION AND PUBLIC HEARING.

12 (a) The commissioner shall, within a reasonable time after receiving
13 the application, prepare an analysis of the application, including a
14 proposal for action if feasible; a proposed lease or certificate or
15 both and a general statement of his basis and purpose, if favorable
16 action is proposed; or, when a proposal for action is not feasible
17 prior to hearing, a description of the subjects and issues involved.

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

22 (c) The commissioner shall set all applications for public hearing
23 as soon as practicable.

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

1 Sec. 38.35.100. DECISIONS UPON APPLICATIONS. (a) The com-
2 missioner shall determinè, on an application filed with him under
3 sec. 50 of this chapter for a right-of-way lease of state public land
4 or for a certificate under a lease, whether the applicant is fit,
5 willing, and able to perform the transportation or other acts proposed
6 and to conform to the provisions of the proposed right-of-way lease
7 or certificate, and of this chapter, and whether the proposed con-
8 struction, acquisition, or operation of or transportation, service, or
9 sale by the pipeline is or will be required by the present or future
10 public interest and necessity. If the commissioner makes these de-
11 terminations favorably to the applicant, then he may grant the whole
12 or part of the application. Otherwise, he shall deny the application.
13 In order to grant the whole or part of the application the commis-
14 sioner shall offer a lease or certificate to the applicant for its
15 acceptance through signing of the lease or certificate and agreeing
16 to comply with its terms, conditions, and obligations and with this
17 chapter. Only upon proper acceptance of offered lease or certificate
18 by the applicant within 30 days after its having been presented is
19 the grant of the application consummated.

20 (b) The commissioner, on application by a lessee carrier for
21 a certificate to abandon or diminish operation of, or transportation,
22 service, or sale by any portion of a pipeline that is subject to
23 its lease, shall determine whether the proposed abandonment or
24 diminution is or will be consistent with the present or future public
25 interest, convenience, and necessity. If the commissioner makes this
26 determination favorably to the applicant, he may grant the whole or a
27 part of the application. Otherwise, he shall deny the applica-
28 tion.

29 (c) For a right-of-way lease granted under this chapter for an oil

1 or natural gas pipeline valued at \$1,000,000 or more to be valid and of
2 legal effect, it must contain the terms required to be inserted under
3 the provisions of secs. 110 - 150 of this chapter. An oil or natural
4 gas pipeline right-of-way lease granted under this chapter that does
5 not contain the required terms is null and void and without legal effect
6 and does not vest any interest in state public land or any authority
7 in the carrier granted the lease.

8 (d) The commissioner may, at his discretion, include the terms
9 set out in secs. 110 - 150 of this chapter in leases of state public
10 land for products pipeline right-of-way purposes.

11 Sec. 38.35.110. TERM OF LEASE. Each lease of state public land
12 for pipeline right-of-way purposes shall contain a provision that the
13 lease shall run for a specified term of not greater than 25 years, and
14 shall be renewable for additional periods of up to 10 years each, so
15 long as the lessee is in full compliance with all state law, including
16 but not limited to state law pertaining to regulation and taxation of
17 the pipeline facility, and is in compliance with all terms of the
18 lease.

19 Sec. 38.35.120. COVENANTS REQUIRED TO BE INCLUDED IN LEASE. A
20 noncompetitive lease of state public land for a right-of-way for an oil
21 or natural gas pipeline valued at \$1,000,000 or more may be granted only
22 upon the condition that the lessee carrier expressly covenants in the
23 lease, in consideration of the rights acquired by it under the lease,
24 that:

25 (1) it will obtain a certificate of compliance with the terms
26 and conditions of the lease before undertaking any construction, acqui-
27 sition or operation of or transportation, service or sale by the whole
28 or any part of a pipeline on state public land, including the portions
29 of the pipeline not on state public land;

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

10 (3) it assumes the status of and will perform all of its
11 functions undertaken under the lease as a common carrier and will
12 accept, convey, and transport all crude oil or natural gas, depending
13 on the kind of pipeline involved, delivered to it for transportation
14 from fields in the vicinity of the pipeline subject to the lease
15 throughout its route both on state public land obtained under the lease
16 and on other land; however, where the lessee carrier operates a natural
17 gas pipeline and is subject by virtue of this operation to regulation
18 under the Natural Gas Act of the United States (52 Stat. 821, 68 Stat.
19 36), it will assume the status of and shall perform all of its func-
20 tions undertaken under the lease as a common carrier and shall perform
21 all of the acts described in this paragraph when at any time subse-
22 quent to the execution of the lease the commissioner after public
23 hearing determines that assumption of this status is required in
24 order to subserve the public interest, convenience, and necessity;

25 (4) it will assume the status of and shall be a common
26 purchaser of crude oil and natural gas, depending upon the kind of
27 pipeline involved, that is produced from fields in the vicinity of the
28 pipeline subject to the lease and shall purchase crude oil or natural
29 gas that is offered it when at any time subsequent to the execution of

1 the lease the commissioner after public hearing determines that assump-
2 tion of this status is required in order to subserve the public interest,
3 convenience, and necessity;

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

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

19 (7) the lessee grants to the state the right to purchase,
20 upon reasonable notice, an undivided interest in the entire length
21 within the state of the pipeline, not to exceed 20 per cent. The
22 purchase price shall be at a reasonable figure set out in the lease at
23 the time of the lease's execution; purchase of this interest may, at the
24 option of the state, be made in stages; exercise of an option to purchase
25 an interest in a pipeline project or facility shall be subject to the
26 approval of the legislature. The incurring of any bonded indebtedness
27 by the state to implement the exercise of its option under this para-
28 graph shall be subject to voter approval;

29 (8) it will maintain and preserve books, accounts, records,

1 papers, and correspondence and other records and will make those reports
2 that the state may prescribe by regulation or law as necessary and ap-
3 propriate for purposes of administration of this chapter;

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

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

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

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

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

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

21 (D) promptly remedy any damage to or destruction of
22 property resulting from damage to or destruction of the leasehold
23 or pipeline;

24 (12) it will not transfer, assign, or dispose of in any manner,
25 directly or indirectly, or by transfer of control of the carrier corpora-
26 tion, its interest in a right-of-way lease, or any rights under the
27 lease, or any pipeline subject to the lease, except as authorized by
28 the commissioner, upon application by the carrier; the commissioner
29 shall not unreasonably withhold his consent to the transfer, assignment

1 or disposal;

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

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

11 Sec. 38.35.130. RIGHT-OF-WAY EASEMENTS OR LEASES ACQUIRED FROM
12 OTHERS. (a) The lease shall contain the further express agreement by
13 the carrier that

14 (1) it will, upon a determination by the commissioner and
15 upon reasonable conditions and at a just price, convey to the state
16 any rights-of-way, right-of-way permits, easements, or leases previously
17 acquired or to be acquired for right-of-way purposes for the pipeline
18 subject to the lease;

19 (2) the state reserves to itself and the lessee grants to
20 the state the sole right to condemn, by declaration of taking real
21 property for right-of-way purposes and to acquire to the extent federally
22 permissible leases of or easements or rights-of-way on public lands
23 belonging to the United States in this state, including "withdrawn
24 public lands" as that term is defined in secs. 3(e), 17(c), (d)(3) and
25 22(i) of the Alaska Native Claims Settlement Act (PL 92-203; 85 stat.688),
26 required for right-of-way purposes for the pipeline subject to the
27 lease;

28 (3) the carrier will, if the commissioner delegates the
29 function to it, condemn, by declaration of taking, real property and

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

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

10 Sec. 38.35.140. PAYMENT OF PERCENTAGE RENTAL. (a) The carrier
11 shall agree in the lease, as a condition for obtaining the lease of
12 state public land for pipeline right-of-way, that it will pay annually
13 to the state as rent for the premises demised not less than the larger
14 of the two amounts calculated by the following formulas:

15 (1) $.02C \frac{As}{At} \left(\frac{.1}{1-(1.1)^{-n}} \right)$ where:

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

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

23 (C) At = the total length of the pipeline within the
24 state; and

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

27 (E) the amount of the total facility cost and the
28 useful life of the facility shall be determined by the commissioner;
29 this calculation shall be made but once unless subsequent

1 cumulative capital expenditures exceed subsequent cumulative
2 depreciation charges at which time the excess shall be added to
3 C and the annual rental recalculated;

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

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

18 (c) The lease may provide for payment of a reasonable percentage
19 rental in excess of the minimum provided for in (a) of this
20 section.

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

28 (e) Each lease of state public land for pipeline right-of-way
29 shall provide that all money and other sums which shall become due to

1 the state by reason of any provision of the lease is and shall always
2 be a valid and first lien upon the buildings and improvements on the
3 demised property, and upon all of the interests of the lessee carrier
4 in the lease and in the property of the carrier transported by the
5 pipeline subject to the lease and paramount to any mortgage which the
6 carrier may execute on them, or any lien caused by the carrier.

7 Sec. 38.35.150. ADDITIONAL PROVISIONS OF LEASE. (a) The commis-
8 sioner may insert in any right-of-way lease other reasonable provisions
9 and conditions that he determines the public interest, convenience and
10 necessity requires; provided, however, that these other reasonable
11 provisions and conditions shall relate to the primary function of the
12 lease and the land involved.

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

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

1 facility.

2 Sec. 38.35.160. TRANSFER OF RIGHT-OF-WAY LEASE, CERTIFICATES,
3 OR PIPELINE. No lessee carrier may transfer, assign, or dispose of in
4 any manner its right-of-way lease, or any rights under the lease, or
5 any pipeline subject to the lease, whether on state public land or
6 other land in the state, either voluntarily or involuntarily, directly
7 or indirectly, or by transfer of control of any corporation holding the
8 lease or certificate or owning the pipeline, to any person, except to
9 the extent that the commissioner, after consideration of the public
10 interest, convenience, and necessity, by order authorizes the transfer.
11 The commissioner shall not unreasonably withhold this authorization.
12 The application shall be disposed of as if the proposed transferee or
13 assignee were making application under secs. 50 - 100 of this chapter.

14 Sec. 38.35.170. FORFEITURE OF LEASE. A determination, after due
15 notice and an adequate hearing, that the carrier has failed to comply
16 with the provisions of this chapter or the provisions of the lease
17 agreement shall be grounds for the forfeiture of the grant of the
18 right-of-way lease, as well as grounds for the remedies provided in
19 sec. 180 of this chapter. The commissioner may not forfeit a right-of-
20 way lease until 60 days has elapsed after giving notice of intent
21 to cancel or until judicial review of the commissioner's proposed
22 action has commenced, whichever occurs earlier. The commissioner may
23 insert in each lease of state public land for pipeline right-of-way
24 additional reasonable provisions regarding default that he considers
25 necessary and desirable.

26 Sec. 38.35.180. SUITS TO ENJOIN OR RECOVER DAMAGES FOR DEFAULTS.
27 (a) When in the judgment of the commissioner a person has violated
28 or is about to violate a provision of this chapter or an obligation,
29 condition, or provision of a right-of-way lease, the attorney general,

1 on advice of the commissioner, shall seek a prohibition or mandatory
2 injunction from the superior court to remedy the violation.

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

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

15 Sec. 38.35.190. APPLICATION OF THE ADMINISTRATIVE PROCEDURE ACT.

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

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

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

25 (d) AS 44.62.630 applies to all functions and decisions of the
26 commissioner.

27 Sec. 38.35.200. JUDICIAL REVIEW OF ACTION TO CANCEL LEASE. A
28 lessee carrier complaining of proposed action to be taken by the
29 commissioner under sec. 170 of this chapter may have the commissioner's

1 action reviewed by filing a petition for review in the superior court
2 within 60 days after notice of the proposed action.

3 Sec. 38.35.210. DELEGATION OF COMMISSIONER'S AUTHORITY. The
4 commissioner may delegate to an employee of the Department of Natural
5 Resources or the Department of Law the authority granted under this
6 chapter, except for the authority to execute leases and certificates.

7 Sec. 38.35.220. CONTINUED OPERATION OF EXISTING CARRIER.

8 (a) Natural gas carriers holding easements, rights-of-way or permits
9 for pipelines on state public lands on the effective date of this
10 chapter are unaffected by this chapter within the scope of their
11 existing operations, normal expansions and extensions thereof so
12 long as their original or present purpose and function remains un-
13 changed.

14 (b) Subject to (a) of this section if an existing right-of-
15 way is revocable or for a term of years, then upon revocation or
16 expiration this chapter applies.

17 (c) Applications for pipeline permits which have been filed
18 with the division of lands before the effective date of this chapter
19 shall be considered as filed under this chapter but this does not
20 otherwise restrict the authority of the commissioner in acting on these
21 applications under this chapter; however, in the event the division of
22 lands has, prior to the effective date of this chapter, granted right-
23 of-entry to an applicant or issued a letter of no-objection to an appli-
24 cant, and the applicant thereafter fully complies with all of the terms
25 and conditions originally specified by the division of lands or other
26 agency, these applications are an existing valid permit or easement on
27 the effective date of this chapter.

28 (d) An applicant or competing applicant or a person who raises
29 objections within 60 days of the filing of an application for a

1 right-of-way are the only persons having standing to contest the com-
2 missioner's decisions in court.

3 Sec. 38.35.230. DEFINITIONS. In this chapter, unless the context
4 otherwise requires,

5 (1) "association" means

6 (A) a trust or partnership, whether created or operated
7 for profit or not for profit, or

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

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

17 (3) "certificate" means the instrument of authorization
18 required by this chapter of a carrier before it can engage in
19 construction, acquisition, or operation of or transportation, service,
20 or sale by a pipeline on state public land or on other land subject
21 to a lease;

22 (4) "commissioner" means the commissioner of natural re-
23 sources;

24 (5) "coordinate agencies" includes the Department of Labor,
25 Department of Highways, Department of Environmental Conservation, and
26 the Alaska Oil and Gas Transportation Commission;

27 (6) "corporation" includes a nonprofit corporation, joint-
28 stock company, and professional association, but shall not include a
29 municipality;

1 (7) "crude oil" or "oil" means crude petroleum oil in its
2 natural state as produced and crude petroleum oil from which only the
3 basic sediment and water and/or solution gas have been removed;

4 (8) "lease" means the instrument or extension of an instru-
5 ment issued under this chapter granting a leasehold interest in state
6 public land for pipeline right-of-way purposes to a carrier and
7 authorizing upon issuance of certificates the construction, acquisition,
8 or operation of, or transportation, service or sale by a pipeline for
9 crude oil, natural gas, or products;

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

12 (10) "municipality" includes all classes of organized boroughs
13 and cities whether home rule or otherwise;

14 (11) "natural gas" or "gas" means natural gas, including
15 bradenhead gas, casinghead gas, and gas produced from an oil or gas
16 well, or any mixture of natural and artificial gas;

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

1 (13) "pipeline incident" means any occurrence, including
2 an extraordinary pipeline occurrence, within the state causing, within
3 or outside the state, bodily injury, sickness, disease, or death, or
4 loss of or damage to property, or loss of use of property, or damage
5 to the natural environment, arising out of or resulting from the toxic,
6 explosive, or other hazardous properties of a pipeline operation or of
7 the crude oil, natural gas, or products carried by the pipeline;

8 (14) "product" means refined crude oil, crude tops, topped
9 crude, processed crude petroleum, residue from crude petroleum, cracking
10 stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas
11 oil, casinghead gasoline, natural gas gasoline, naphtha, distillate,
12 gasoline, kerosene, benzine, wash oil, waste oil, blended gasoline,
13 lubricating oil, blends or mixtures of petroleum and any liquid pro-
14 ducts or by-product derived from crude petroleum oil or natural gas;

15 (15) "public land of the United States" means the land owned
16 by the United States as defined in Title 43, secs. 2, 931a, and 931c,
17 USC, as amended, and Title 30, sec. 185, USC, as amended;

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

19 (17) "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 transferred
24 to the state under secs. 21, 35 and 45 of the Alaska Omnibus Act
25 of 1959, 73 Stat. 141, as amended;

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

27 (18) "subject to the lease" means, in the context of a refer-
28 ence to a pipeline, or the construction, acquisition, or operation of,
29 or transportation, service, or sale by it, that the pipeline or the

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

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

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

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

20 (12) subject to the requirements of the Alaska Right-of-Way
21 Leasing Act of 1972 (AS 38.35), for the location of pipelines for
22 gathering, transmitting, transporting, storing, or delivering natural
23 or artificial gas or oil or any liquid or gaseous hydrocarbons,
24 including, but not limited to, pumping stations, terminals, storage
25 tanks, or reservoirs, and related installations.

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

27 (c) The commissioner shall have all powers necessary and proper
28 to implement the policy, purposes, and provisions of the Alaska Right-
29 of-Way Leasing Act of 1972, AS 38.35, so as to subserve, as he in the

1 exercise of his reasoned discretion determines, the public interest,
2 convenience and necessity, including but not limited to

3 (1) granting leases of state public land and issuing certi-
4 ficates for pipeline right-of-way purposes;

5 (2) leasing, purchasing, or otherwise acquiring (including
6 condemning by declaration of taking), easements or other interests on
7 private or federal land in this state for the purpose of utilizing or
8 granting leases of the land, easements or interests for pipeline
9 right-of-way purposes;

10 (3) purchasing interests in pipelines in accordance with
11 options included in right-of-way leases as provided in AS 38.35.120(7);

12 (4) investigating any matters concerning any lessee carrier
13 with a view to assuring compliance by it with its right-of-way lease,
14 certificates issued under that lease, this chapter, and any other
15 applicable state or federal law;

16 (5) developing from time to time and maintaining a compre-
17 hensive master plan for pipeline transportation development;

18 (6) developing and promoting programs to foster efficient,
19 economical, and safe pipeline transportation services in the state;

20 (7) coordinating the activities of the commissioner under
21 this Act with the transportation and other relevant activities of
22 other public agencies and authorities;

23 (8) constructing, extending, enlarging, improving, repair-
24 ing, acquiring, operating, or engaging in transportation, service, or
25 sale by any pipeline or providing for these by contract, lease, or
26 other arrangement on those terms that the commissioner may consider
27 necessary, convenient or desirable with any agency, corporation, or
28 person, including but not limited to any carrier or any state agency,
29 when the commissioner determines that a lessee carrier is not willing

1 to undertake and complete the action within a reasonable time, and to
2 sell, lease, grant, and dispose of any property constructed or acquired
3 in the exercise of this power.

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

5 Sec. 38.05.330. PERMITS. The director, without the prior
6 approval of the commissioner, may issue permits, rights-of-way or ease-
7 ments on state lands for secondary roads, trails, ditches, transmis-
8 sion and distribution pipelines not subject to AS 38.35 [PIPELINES,]
9 telephone and transmission lines, log storage, oil well drilling sites
10 and production facilities for the purposes of recovering minerals
11 from adjacent lands under valid lease, and other similar uses or im-
12 provements, or for the limited personal use of timber or materials.
13 The commissioner, upon recommendation of the director, shall establish
14 a reasonable rate or fee schedule to be charged for these uses. In the
15 granting, suspension or revocation of a permit or easement of lands,
16 the director shall give preference to that use of the land which will
17 be of greatest economic benefit to the state and the development of
18 its resources. However, first preference shall be granted to the
19 upland owner for the use of a tract of tideland, or tideland and
20 contiguous submerged land, which is seaward of the upland property of
21 the upland owner and which is needed by the upland owner for any of
22 the purposes for which the use may be granted.

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