

Introduced: 2/1/72
Referred: Commerce; Resources;
Finance

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 313

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. CONDITIONS AND REGULATIONS FOR GRANT OF RIGHT-
13 OF-WAY LEASE. Rights-of-way on state owned lands including right-of-
14 way on, over, under, along, across, or upon the right-of-way of a
15 public road or highway or the right-of-way of a railroad or other public
16 utility, or on, across, upon, over, or under a river or other body of
17 water or land belonging to or administered by the state, the Department
18 of Natural Resources or any other agency of the state may be granted
19 by lease by the commissioner for pipeline purposes for the transporta-
20 tion of oil or natural gas under those regulations and conditions as to
21 survey, location, application, and use that may be prescribed by the
22 commissioner and upon the expressed condition that the pipeline will
23 be constructed, operated, and maintained as a common carrier and will
24 be subject to regulation by the Alaska Oil and Gas Transportation
25 Commission.

26 Sec. 38.35.020. LEASE PROVISIONS. A lease for a right-of-way, as
27 described in sec. 10 of this chapter shall contain the following
28 provisions, to the extent not preempted by federal law:

29 (1) the lessee shall agree to the jurisdiction of state

1 courts with regard to interpretation of the lease or resolution of
2 disputes concerning these provisions;

3 (2) the lessee shall agree to operate the facility as a
4 common carrier;

5 (3) the lessee shall agree that failure to comply with any
6 provision of the lease shall subject the lease to forfeiture or to
7 lesser penalties that the commissioner may determine to be appropriate,
8 including but not limited to the assessment of penalty charges, or
9 cessation of operation on the leasehold;

10 (4) the lessee shall as a condition of the lease agree to
11 accept the jurisdiction of the Alaska Oil and Gas Transportation
12 Commission;

13 (5) as a condition of the lease the lessee shall agree to
14 construct, within a given period of time, a specified facility over
15 a route which shall be specified in its entirety, including the
16 portions owned or controlled by others;

17 (6) the lessee shall agree that the books, accounts, records,
18 income tax returns, and any other information which is under the
19 control of the lessee relevant to pipeline operations shall be open to
20 inspection by the state;

21 (7) the lessee shall agree to comply with any reporting
22 requirements that the Alaska Oil and Gas Transportation Commission may
23 impose;

24 (8) the lessee shall agree that the right-of-way lease is
25 not transferable except with the consent of the state;

26 (9) the lessee shall agree that title to the entire facility,
27 including the portions built on non-state land shall be vested in the
28 lessee and not be transferred or encumbered without written consent
29 of the commissioner;

1 (10) the lease shall run for a specified term not greater
2 than five years;

3 (11) the lessee shall agree that the state will have an
4 option to purchase an ownership interest in the entire facility
5 (including the portions on non-state lands) equal to the expected
6 ownership interest of the state in oil and gas that the facility is
7 expected to transport. This ownership percentage shall be calculated
8 by adding the average expected effective rate of the oil and gas
9 production tax as estimated by the division of oil and gas to the
10 royalty interest owned by the federal government and the state, and;

11 (12) minimum annual right-of-way lease rental payments
12 shall be equal to 1/20th of gross revenues plus a fixed fee per foot
13 of state land leased determined as follows:

14 (A) for pipes less than seven inches outside diameter
15 \$0.05 per foot per year,

16 (B) for pipes from seven inches but less than 13 inches
17 outside diameter \$0.10 per foot per year,

18 (C) for pipes from 13 inches but less than 26 inches
19 outside diameter \$0.20 per foot per year,

20 (D) for pipes from 26 inches but less than 52 inches
21 outside diameter \$0.80 per foot per year,

22 (E) for pipes over 52 inches or more outside diameter
23 \$1.60 per foot per year.

24 Sec. 38.35.025. PROCEEDS. The proceeds from the right-of-way
25 lease rental payments shall be paid into the general fund.

26 Sec. 38.35.030. IMPLEMENTAL AUTHORITY AND DUTIES OF THE DEPART-
27 MENT. In the performance of its functions under this chapter the
28 department is authorized to

29 (1) promulgate reasonable rules and regulations necessary

1 to carry out the provisions of this chapter;

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

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

6 (4) with the consent of the agency concerned, employ the
7 services or personnel of any government agency or local government, or
8 voluntary or uncompensated personnel, to perform those functions on
9 its behalf as may appear desirable;

10 (5) establish advisory groups to consult with and make
11 recommendations to the department on legislation, policies, administra-
12 tion, research, and other matters, and promulgate regulations setting
13 out the scope, procedure, and limitations of the authority of the
14 advisory groups;

15 (6) enter into agreements which it considers necessary to
16 carry out the policy, purposes, and provisions of this chapter,
17 including agreements with federal, state and local government agencies;

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

20 (8) apply for and accept from the United States or other
21 public or private sources gifts or grants-in-aid to carry out the
22 provisions of this chapter;

23 (9) perform any other activities necessary or proper to
24 carry out the provisions of this chapter.

25 Sec. 38.35.040. FORFEITURE OF LEASE. Failure to comply with the
26 provisions of this chapter or the regulations and conditions prescribed
27 by the commissioner of natural resources or the provisions of the lease
28 agreement shall be grounds for the forfeiture of the grant of the
29 right-of-way lease, as well as grounds for the remedies provided in

1 sec. 50 of this chapter.

2 Sec. 38.35.050. SUITS TO ENJOIN OR RECOVER DAMAGES FOR DEFAULTS.

3 (a) Whenever in the judgment of the commissioner 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, the
6 commissioner shall request the attorney general to seek on its behalf
7 a prohibition or mandatory injunction from the superior court to
8 remedy the violation.

9 (b) Any penalty imposed by the provisions of a right-of-way
10 lease may be enforced in the superior court by proceedings either
11 against the lessee carrier, or, in the case of a lien, by proceedings
12 against any of the lessee carrier's property.

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

20 Sec. 38.35.060. DEFINITIONS. When used in this chapter

21 (1) "carrier" means any person who undertakes, whether
22 directly or indirectly by a lease or other arrangement, to engage in
23 operation of or transportation, service or sale by pipeline for crude
24 oil, natural gas, or products;

25 (2) "chapter" includes rules and regulations or orders
26 promulgated under this chapter;

27 (3) "commissioner" means the commissioner of natural
28 resources;

29 (4) "crude oil" or "oil" means crude petroleum oil in its

1 natural state as produced and crude petroleum oil from which only the
2 basic sediment and water have been removed;

3 (5) "department" means the Department of Natural Resources;

4 (6) "lease" means the instrument or extension of the
5 instrument issued by the commissioner under this chapter granting a
6 leasehold interest in state public land for pipeline right-of-way
7 purposes to a carrier;

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

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

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

24 (10) "product" means refined crude oil, crude tops, topped
25 crude, processed crude petroleum, residue from crude petroleum,
26 cracking stock, uncracked fuel oil, fuel oil, treated crude oil,
27 residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha,
28 distillate, gasoline, kerosene, benzine, wash oil, waste oil, blended
29 gasoline, lubricating oil, blends or mixtures of petroleum and any

1 liquid products or by-product derived from crude petroleum oil or
2 natural gas;

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

4 (12) "state owned lands" means

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

6 (B) public land of the United States selected by the
7 state under sec. 6 of the Alaska Statehood Act of 1958, 72 Stat.
8 399, as amended, and real property of the United States trans-
9 ferred to the state under secs. 21, 35, and 45 of the Alaska
10 Omnibus Act of 1959, 73 Stat. 141, as amended;

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

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

24 * Sec. 2. This Act takes effect on the day after its passage and
25 approval or on the day it becomes law without approval.
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