

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 CS HOUSE BILL NO. 3

3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 EIGHTH LEGISLATURE - FIRST SPECIAL SESSION

5 A BILL

6 For an Act entitled: "An Act relating to leases of rights-of-way over  
7 state land for the transportation of oil, products or  
8 natural gas; and providing for an effective date."

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

10 \* Section 1. AS 38.35.020 is amended to read:

11 Sec. 38.35.020. GRANT OF RIGHT-OF-WAY LEASE. (a) Rights-of-way  
12 on state [STATE-OWNED] land including rights-of-way [RIGHT-OF-WAY] on,  
13 over, under, along, across, or upon the right-of-way of a public  
14 road or highway or the right-of-way of a railroad or other public  
15 utility, or on, across, upon, over, or under a river or other body  
16 of water or land belonging to or administered by the state may be  
17 granted by noncompetitive lease by the commissioner for pipeline  
18 purposes for the transportation of oil, products or natural gas under  
19 those conditions prescribed by law and by administrative regulation.  
20 Except to the extent authorized by an oil and gas lease or unit  
21 agreement approved by the state, no person may engage in any  
22 construction [, ACQUISITION] or operation of any [, OR TRANSPORTATION,  
23 SERVICE, OR SALE BY THE WHOLE OR A] part of an oil, products, or  
24 natural gas pipeline, which in whole or in part is or is proposed to  
25 be on state [PUBLIC] land [,] unless that person [IS A CARRIER AND]  
26 has obtained from the commissioner a right-of-way lease of the land  
27 under this chapter [AS WELL AS A CERTIFICATE THAT THE CONSTRUCTION,  
28 ACQUISITION, OPERATION, TRANSPORTATION, SERVICE, OR SALE, IF SUBJECT  
29 TO THE LEASE, WILL BE IN ACCORDANCE WITH ITS TERMS].

1           (b) This chapter does not require a right-of-way lease for the  
2           construction or operation of field gathering lines.

3 \* Sec. 2. AS 38.35.030 - AS 38.35.040 are repealed.

4 \* Sec. 3. AS 38.35.050 is repealed and re-enacted to read:

5           Sec. 38.35.050. APPLICATIONS FOR RIGHT-OF-WAY LEASES. (a) A  
6           person or persons desiring to own a pipeline which is proposed to be  
7           located in whole or in part on state land, shall apply for a noncom-  
8           petitive right-of-way lease of the state land.

9           (b) Applications under (a) of this section shall be made in a  
10          form and manner prescribed by regulation.

11          (c) An amendment to an application filed under this section  
12          which constitutes a substantial change in the application is subject  
13          to the provisions of this section applying to an original application.

14 \* Sec. 4. AS 38.35.060 is repealed.

15 \* Sec. 5. AS 38.35.070 is repealed and re-enacted to read:

16          Sec. 38.35.070. NOTICE OF APPLICATION: HEARING. (a) Upon  
17          receiving an application under sec. 50 of this chapter, the  
18          commissioner shall promptly publish notice of it in a daily newspaper  
19          of general circulation published in the vicinity of the proposed  
20          pipeline and shall provide other publication and notice he considers  
21          reasonable and appropriate to inform the public of the application.  
22          The notice must generally describe the land involved and must include  
23          a summary of the substance of the application. If the commissioner  
24          decides that a public hearing is necessary, the notice shall also  
25          include the time and place of the public hearing.

26          (b) Any public hearing on the application shall be held no sooner  
27          than 20 days or more than 60 days after publication of notice under (a)  
28          of this section. At the hearing the applicant and other persons shall  
29          have the opportunity to present information relating to the application

1 and to the determination to be made under sec. 100 of this chapter.

2 (c) The provisions of the Administrative Procedure Act  
3 (AS 44.62) do not apply to hearings held under this section,

4 \* Sec. 6. AS 38.35.080 is repealed.

5 \* Sec. 7. AS 38.35.100 is repealed and re-enacted to read:

6 Sec. 38.35.100. DECISION ON APPLICATION. (a) The commis-  
7 sioner shall promptly determine, on an application filed with  
8 him under sec. 50 of this chapter whether the applicant is fit,  
9 willing and able to perform the transportation or other acts  
10 proposed in a manner that will reasonably protect the lives,  
11 property and general welfare of the people of Alaska. In making  
12 a determination the commissioner shall consider whether or not

13 (1) the proposed use of the right-of-way will un-  
14 reasonably conflict with existing uses of the land involving a  
15 superior public interest;

16 (2) the applicant has the technical and financial  
17 capability to protect state and private property interests;

18 (3) the applicant has the technical and financial  
19 capability to take action to the extent reasonably practical to

20 (A) prevent any significant adverse environmental  
21 impact, including but not limited to, erosion of the surface  
22 of the land and damage to fish and wildlife and their habitat;

23 (B) undertake any necessary restoration or revege-  
24 tation; and

25 (C) protect the interests of individuals living  
26 in the general area of the right-of-way who rely on fish,  
27 wildlife and biotic resources of the area for subsistence  
28 purposes;

29 (4) the applicant has the financial capability to pay

1 reasonably foreseeable damages for which he may become liable on  
2 claims rising from the construction, operation, maintenance or  
3 termination of the pipeline.

4 (b) If the commissioner determines that the applicant is  
5 not fit, willing, and able to perform the transportation or other  
6 proposed acts in a manner that will reasonably protect the lives,  
7 property and general welfare of the people of Alaska, the com-  
8 missioner shall deny the application. If he determines that the  
9 applicant is fit, willing, and able to perform, he shall promptly  
10 offer the applicant a lease.

11 \* Sec. 8. AS 38.35.110 is repealed and re-enacted to read:

12 Sec. 38.35.110. TERM OF LEASE. The commissioner shall  
13 determine the term of the lease. In making this determination he  
14 shall take into consideration the cost of the proposed pipeline,  
15 its useful life, and the probable financing requirements for the  
16 proposed pipeline. Thereafter, upon application of a lessee, the  
17 commissioner shall extend the term of the lease for additional  
18 periods of time so long as the proposed pipeline is used for the  
19 purposes for which the lease was granted and is in compliance with  
20 all terms of the lease subject to additional terms and conditions  
21 then reasonably required to protect the lives, property and general  
22 welfare of the people of Alaska.

23 \* Sec. 9. AS 38.35.120 is amended to read:

24 Sec. 38.35.120. COVENANTS [REQUIRED] TO BE INCLUDED IN LEASE.

25 (a) A noncompetitive lease of state public land for a right-of-way  
26 for an oil or natural gas pipeline valued at \$1,000,000 or more may  
27 be granted only upon the condition that the lessee [CARRIER] ex-  
28 pressly covenants in the lease, in consideration of the rights  
29 acquired by it under the lease, that

1 [(1) IT WILL OBTAIN A CERTIFICATE OF COMPLIANCE WITH THE  
2 TERMS AND CONDITIONS OF THE LEASE BEFORE UNDERTAKING ANY CONSTRUC-  
3 TION, ACQUISITION OR OPERATION OF OR TRANSPORTATION, SERVICE OR  
4 SALE BY THE WHOLE OR ANY PART OF A PIPELINE ON STATE PUBLIC LAND,  
5 INCLUDING THE PORTIONS OF THE PIPELINE NOT ON STATE PUBLIC LAND;

6 (2) IT WILL UNDERTAKE AND COMPLETE OR REGULARLY PERFORM  
7 WITHIN OR DURING THE TIME PERIOD AND IN ACCORDANCE WITH THE PROJECT  
8 DESCRIPTION CONTAINED IN THE LEASE OR CERTIFICATE, THROUGHOUT THE  
9 ENTIRE ROUTE OF THE PIPELINE IN THE STATE, BOTH ON STATE PUBLIC  
10 LAND OBTAINED UNDER THE LEASE AND ON OTHER LAND, ANY CONSTRUCTION  
11 OR ACQUISITION OR OTHER ACT REQUIRED TO BE PERFORMED IN CONJUNC-  
12 TION WITH THE LEASE, OR OPERATION OF, OR TRANSPORTATION, SERVICE,  
13 OR SALE BY THE PIPELINE IN GOOD FAITH AND IN ACCORDANCE WITH THE  
14 LEASE AND CERTIFICATES, THIS CHAPTER, AND ANY OTHER APPLICABLE  
15 STATE OR FEDERAL LAW;]

16 (3) it will perform all of its functions under the lease,  
17 as a common carrier, if the commissioner determines at the time  
18 the lease is issued or if at any time after the execution of the  
19 lease the commissioner after public hearing determines that  
20 assumption of the status of common carrier is required in order  
21 to serve the public interest; in performing as a common carrier it  
22 will accept, convey and transport without discrimination crude oil  
23 delivered to it for transportation throughout its route in  
24 accordance with applicable statutes and tariffs; the imposition of  
25 common carrier status does not require the lessee to accept tenders  
26 of crude oil except at points where there exist pumping stations or  
27 other facilities for the receipt of crude oil (unless the tender  
28 includes an offer to bear all associated costs and liabilities), or  
29 tenders of crude oil which are not good merchantable oil of gravity,

1 viscosity and other characteristics which make it readily transportable  
2 through the pipeline facility without materially adversely affecting  
3 the quality of the commingled stream of crude oil of other shippers  
4 and without adversely affecting the lessee's pipeline facilities;  
5 the common carrier covenant required by this paragraph does not  
6 apply to a natural gas pipeline owned or operated by a lessee  
7 which is subject to regulation under the Natural Gas Act (52 Stat.  
8 821; 68 Stat. 36) or by a lessee which is subject to regulation  
9 by state or political subdivisions with jurisdiction to regulate  
10 the rates and charges for sale of natural gas to consumers in the  
11 state [ASSUMES THE STATUS OF AND WILL PERFORM ALL OF ITS FUNCTIONS  
12 UNDERTAKEN UNDER THE LEASE AS A COMMON CARRIER AND WILL ACCEPT,  
13 CONVEY, AND TRANSPORT ALL CRUDE OIL OR NATURAL GAS, DEPENDING ON  
14 THE KIND OF PIPELINE INVOLVED, DELIVERED TO IT FOR TRANSPORTATION  
15 FROM FIELDS IN THE VICINITY OF THE PIPELINE SUBJECT TO THE LEASE  
16 THROUGHOUT ITS ROUTE BOTH ON STATE PUBLIC LAND OBTAINED UNDER THE  
17 LEASE AND ON OTHER LAND; HOWEVER, WHERE THE LESSEE CARRIER OPERATES  
18 A NATURAL GAS PIPELINE AND IS SUBJECT BY VIRTUE OF THIS OPERATION  
19 TO REGULATION UNDER THE NATURAL GAS ACT OF THE UNITED STATES (52 STAT.  
20 821; 68 STAT. 36; 15 U.S.C. 717 ET SEQ.), IT WILL ASSUME THE  
21 STATUS OF AND SHALL PERFORM ALL OF ITS FUNCTIONS UNDERTAKEN UNDER  
22 THE LEASE AS A COMMON CARRIER AND SHALL PERFORM ALL OF THE ACTS  
23 DESCRIBED IN THIS PARAGRAPH WHEN AT ANY TIME AFTER THE EXECUTION  
24 OF THE LEASE THE COMMISSIONER AFTER PUBLIC HEARING DETERMINES  
25 THAT ASSUMPTION OF THIS STATUS IS REQUIRED IN ORDER TO SUBSERVE THE  
26 PUBLIC INTEREST, CONVENIENCE, AND NECESSITY];

27 [(4) IT WILL ASSUME THE STATUS OF AND SHALL BE A COMMON  
28 PURCHASER OF CRUDE OIL AND NATURAL GAS, DEPENDING UPON THE KIND OF  
29 PIPELINE INVOLVED, THAT IS PRODUCED FROM FIELDS IN THE VICINITY OF

1 THE PIPELINE SUBJECT TO THE LEASE AND SHALL PURCHASE CRUDE OIL  
2 OR NATURAL GAS THAT IS OFFERED IT WHEN AT ANY TIME AFTER THE  
3 EXECUTION OF THE LEASE THE COMMISSIONER AFTER PUBLIC HEARING  
4 DETERMINES THAT ASSUMPTION OF THIS STATUS IS REQUIRED IN ORDER TO  
5 SUBSERVE THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY;

6 (5) IT WILL ACCEPT, CONVEY, AND TRANSPORT OR PURCHASE  
7 CRUDE OIL OR NATURAL GAS WITHOUT UNJUST OR UNREASONABLE DISCRIMINA-  
8 TION IN FAVOR OF ONE PRODUCER OR PERSON, INCLUDING ITSELF, AS AGAINST  
9 ANOTHER IN THE SAME FIELD, AND WITHOUT UNJUST OR UNREASONABLE  
10 DISCRIMINATION AS BETWEEN FIELDS IN THE STATE BUT WILL TAKE THE  
11 CRUDE OIL OR NATURAL GAS, DEPENDING ON THE KIND OF PIPELINE INVOLVED,  
12 DELIVERED OR OFFERED IN THE PROPORTION THAT THE COMMISSIONER SHALL,  
13 AFTER A FULL HEARING WITH DUE NOTICE TO THE INTERESTED PARTIES AND  
14 A PROPER FINDING OF FACTS, DETERMINE TO BE REASONABLE;

15 (6) IT WILL EXCHANGE CRUDE OIL OR NATURAL GAS, DEPENDING  
16 UPON THE KIND OF PIPELINE INVOLVED, WITH EACH LIKE COMMON CARRIER  
17 AND PROVIDE CONNECTIONS AND FACILITIES FOR THE INTERCHANGE OF CRUDE OIL  
18 OR NATURAL GAS AT EVERY LOCALITY REACHED BY BOTH PIPELINES WHEN  
19 THE NECESSITY EXISTS, SUBJECT TO RATES AND REGULATIONS MADE BY THE  
20 APPROPRIATE STATE OR FEDERAL REGULATORY AGENCY;]

21 (7) it will afford the state an opportunity to negotiate  
22 for the purchase of any interest in the pipeline offered for sale by it  
23 except for sales or transfers of interests in the pipeline among the  
24 owners of the pipeline (including their subsidiaries, parents and  
25 affiliates) or sales or transfers resulting from mergers or reorganiza-  
26 tions, provided the sale to the state will not interfere with existing  
27 contract rights or obligations among the owners of the pipeline or with  
28 any other third parties, and provided the terms of the offer for sale  
29 are solely at the discretion of the lessee; [THE LESSEE GRANTS TO THE

1 STATE THE RIGHT TO PURCHASE, UPON REASONABLE NOTICE, AN UNDIVIDED  
2 INTEREST IN THE ENTIRE LENGTH OF THE PIPELINE WITHIN THE STATE, NOT TO  
3 EXCEED 20 PER CENT; THE PURCHASE PRICE SHALL BE AT A REASONABLE  
4 FIGURE SET OUT IN THE LEASE AT THE TIME OF THE LEASE'S EXECUTION;  
5 PURCHASE OF THIS INTEREST MAY, AT THE OPTION OF THE STATE, BE MADE IN  
6 STAGES; EXERCISE OF AN OPTION TO PURCHASE AN INTEREST IN A PIPELINE  
7 PROJECT OR FACILITY IS SUBJECT TO THE APPROVAL OF THE LEGISLATURE; THE  
8 INCURRING OF ANY BONDED INDEBTEDNESS BY THE STATE TO IMPLEMENT THE  
9 EXERCISE OF ITS OPTION UNDER THIS PARAGRAPH IS SUBJECT TO VOTER  
10 APPROVAL;]

11 (8) it will maintain and preserve books, accounts, and  
12 records [, PAPERS, AND CORRESPONDENCE AND OTHER RECORDS] and will make  
13 those reports that the state may require under AS 42.06.430 [PRESCRIBE  
14 BY REGULATION OR LAW AS NECESSARY AND APPROPRIATE FOR PURPOSES OF  
15 ADMINISTRATION OF THIS CHAPTER];

16 (9) it will accord at all reasonable times to the state  
17 and its authorized agents and auditors the right of access to its  
18 property and records, of inspection of its property, and of examination  
19 and copying of records under AS 42.06.440;

20 (10) it will provide, where economically feasible and  
21 consistent with the primary function of the pipeline [LINE], connections  
22 [AND FACILITIES] on the land [PIPELINE] subject to the lease, [BOTH  
23 ON STATE LAND AND OTHER LAND IN THE STATE,] for the purpose of  
24 delivering crude oil or natural gas, depending on the kind of  
25 pipeline involved, to persons contracting for the purchase at whole-  
26 sale of crude oil or natural gas transported by the pipeline; in  
27 order to meet the requirements of this covenant the lessee shall not  
28 be required to enlarge the pipeline system, extend the pipeline,  
29 acquire additional rights-of-way, incur any additional obligation

1 or incur any costs or liabilities associated with the connection or  
2 connected facilities, or assume any obligation inconsistent with  
3 applicable federal law [DESIRING TO PURCHASE WHO ARE LOCATED IN  
4 MUNICIPALITIES IN THE VICINITY OF THE PIPELINE];

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

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

9 (B) exercise the [HIGHEST] degree of care required by  
10 law in using the leasehold and operating the pipeline [TO PREVENT  
11 A PIPELINE INCIDENT];

12 (C) promptly repair or remedy any damage to [OR  
13 DESTRUCTION OF] the leasehold [OR PIPELINE];

14 (D) promptly compensate for [REMEDY] any damage to  
15 or destruction of property for which the carrier is liable  
16 resulting from damage to or destruction of the leasehold or  
17 pipeline;

18 [(12) IT WILL NOT TRANSFER, ASSIGN, OR DISPOSE OF IN ANY  
19 MANNER, DIRECTLY OR INDIRECTLY, OR BY TRANSFER OF CONTROL OF THE  
20 CARRIER CORPORATION, ITS INTEREST IN A RIGHT-OF-WAY LEASE, OR ANY  
21 RIGHTS UNDER THE LEASE, OR ANY PIPELINE SUBJECT TO THE LEASE, EXCEPT  
22 AS AUTHORIZED BY THE COMMISSIONER, UPON APPLICATION BY THE CARRIER;  
23 THE COMMISSIONER SHALL NOT UNREASONABLY WITHHOLD HIS CONSENT TO THE  
24 TRANSFER, ASSIGNMENT OR DISPOSAL;]

25 (13) it will file with the commissioner a written appoint-  
26 ment of a named permanent resident of the state to be its registered  
27 agent in the state and to receive service of notices, regulations,  
28 decisions and orders of the commissioner; if it fails to appoint an  
29 agent for service, service may be made by posting a copy in the

1 office of the commissioner and filing a copy of it in the office  
2 of the lieutenant governor and by mailing a copy to lessee's last  
3 known address;

4 (14) the applicable law of this state will be used in  
5 resolving questions of interpretation of the lease;

6 (15) it will be liable to the state for damages or  
7 injury incurred by the state caused by the construction, operation  
8 or maintenance of the pipeline and it will indemnify the state for  
9 the liabilities or damages;

10 (16) it will procure and furnish liability and property  
11 damage insurance from a company licensed to do business in the state  
12 or furnish other security or undertaking upon the terms and conditions  
13 the commissioner considers necessary if the commissioner finds that  
14 the net assets of the lessee are insufficient to protect the public  
15 from damage for which the lessee may be liable arising out of the  
16 construction or operation of the pipeline.

17 (b) The lease will also contain terms and conditions that are  
18 reasonably necessary to obligate the lessee, to the extent reasonably  
19 practicable, to

20 (1) prevent conflicts with other existing uses of the land  
21 involving a superior public interest;

22 (2) protect state and private property interests;

23 (3) prevent any significant adverse environmental impact,  
24 including but not limited to the erosion of the surface of the land,  
25 and damage to fish and wildlife and their habitat;

26 (4) restore and revegetate during the term and at termination  
27 of the lease; and

28 (5) protect the interests of individuals living in the  
29 general area of the right-of-way who rely on the fish, wildlife, and

1 biotic resources of the area for subsistence purposes.

2 (c) In the event the commissioner proposes to offer a lease or  
3 leases to two or more lessees for the same pipeline, the commissioner  
4 may include terms in the lease or leases which establish the limit  
5 of the obligations and liabilities of each lessee arising under this  
6 chapter or under the lease or leases.

7 (d) The lease may contain other terms and conditions that will  
8 reasonably protect the lives, property and general welfare of the  
9 people of Alaska.

10 \* Sec. 10. AS 38.35.130 is amended to read:

11 Sec. 38.35.130. RIGHT-OF-WAY EASEMENTS OR LEASES  
12 ACQUIRED FROM OTHERS. (a) The lessee may [LEASE SHALL CONTAIN THE  
13 FURTHER EXPRESS AGREEMENT BY 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  
22 FEDERALLY PERMISSIBLE LEASES OF OR EASEMENTS OR RIGHTS-OF-WAY ON  
23 PUBLIC LANDS BELONGING TO THE UNITED STATES IN THIS STATE, INCLUDING  
24 "WITHDRAWN PUBLIC LANDS" AS THAT TERM IS DEFINED IN SECS. 3(E), 17(C)  
25 AND (D)(3), AND 22(I) OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT  
26 (PL 92-203; 85 STAT. 688; 43 U.S.C. 1601 ET SEQ.), REQUIRED FOR RIGHT-  
27 OF-WAY PURPOSES FOR THE PIPELINE SUBJECT TO THE LEASE;

28 (3) THE CARRIER WILL], if the commissioner delegates the  
29 function to it, condemn, by declaration of taking, under

1 AS 09.55.420 - 09.55.450, real property and acquire leases of or  
2 easements or rights-of-way on [PUBLIC] lands in the state [BELONGING TO  
3 THE UNITED STATES, INCLUDING "WITHDRAWN PUBLIC LANDS"] required for  
4 right-of-way purposes for a [THE] pipeline subject to the lease, on  
5 behalf of and as agent for the state, in which title to or interest  
6 in the land shall vest.

7 (b) The lease shall contain a covenant [REQUIRED BY THIS SECTION  
8 SHALL BE ACCOMPANIED BY A PROVISION] that the land, right-of-way,  
9 or easement acquired under this section is or will form part of the  
10 land leased to the lessee [CARRIER].

11 \* Sec. 11. AS 38.35.140 is repealed and re-enacted to read:

12 Sec. 38.35.140. PAYMENT OF RENTAL AND COSTS. (a) The lease  
13 price for a right-of-way lease shall be the annual fair market  
14 rental of the state lands included in the right-of-way based on the  
15 appraised fair market value of the land. The appraised fair market  
16 value of the land leased for right-of-way shall be determined  
17 without regard to any enhancement in value attributable solely to the  
18 construction of pipeline facilities on the land or the use of the land  
19 for pipeline purposes. The lease price is payable annually in  
20 advance on or before the anniversary of the lease. The appraised  
21 fair market rental value shall be adjusted periodically under the  
22 provisions of AS 38.05.105.

23 (b) The lessee shall reimburse the state for all reasonable  
24 costs incurred in monitoring the construction of the pipeline on  
25 the right-of-way.

26 \* Sec. 12. AS 38.35.150 is repealed.

27 \* Sec. 13. AS 38.35.160 is amended to read:

28 Sec. 38.35.160. TRANSFER OF RIGHT-OF-WAY LEASE [, CERTIFICATES,]  
29 OR PIPELINE. No lessee [CARRIER] may transfer [, ASSIGN,] or dispose of

1 in any manner its right-of-way lease, or any rights under the  
2 lease, [OR ANY PIPELINE] subject to the lease, whether on state  
3 [PUBLIC] land or other land in the state, either voluntarily or  
4 involuntarily, directly or indirectly, or by transfer of control of any  
5 corporation holding the lease [OR CERTIFICATE OR OWNING THE PIPELINE,]  
6 to any person, without notifying the commissioner [EXCEPT TO THE  
7 EXTENT THAT THE COMMISSIONER, AFTER CONSIDERATION OF THE PUBLIC INTEREST  
8 CONVENIENCE, AND NECESSITY, BY ORDER AUTHORIZES THE TRANSFER. THE  
9 COMMISSIONER SHALL NOT UNREASONABLY WITHHOLD THIS AUTHORIZATION. THE  
10 APPLICATION SHALL BE DISPOSED OF AS IF THE PROPOSED TRANSFEREE OR  
11 ASSIGNEE WERE MAKING APPLICATION UNDER SECS. 50 - 100 OF THIS CHAPTER].

12 \* Sec. 14. AS 38.35.170 is repealed and re-enacted to read:

13       Sec. 38.35.170. FORFEITURE OF LEASE. Failure to begin con-  
14 struction of the pipeline facility within a reasonable time of the  
15 granting of a right-of-way lease under this chapter for reasons within  
16 the control of the lessee or failure of an owner of an interest  
17 in the granted right-of-way substantially to comply with the terms  
18 of the right-of-way shall be grounds for forfeiture of the right-of-way  
19 interest of the lessee or owner in an action brought by the commis-  
20 sioner in the superior court. Before the commencement of any action for  
21 forfeiture of an interest in a right-of-way under this section,  
22 the commissioner shall give the lessee or owner of the interest notice  
23 in writing of the alleged default and shall not commence the proceeding  
24 unless the lessee or owner of the interest has failed to initiate good  
25 faith efforts to cure the default within 60 days of the notice of the  
26 alleged default.

27 \* Sec. 15. AS 38.35.180 is repealed and re-enacted to read:

28       Sec. 38.35.180. INJUNCTIONS. When in the judgment of the  
29 commissioner a person has violated or is about to violate a provision

1 of this chapter or covenant, term or condition of a lease, the  
2 attorney general, on advice of the commissioner, may seek a  
3 prohibition or mandatory injunction from the superior court to remedy  
4 the violation.

5 \* Sec. 16. AS 38.35.190(b), (c) and (d), AS 38.35.200 and AS 38.35.220(d)  
6 are repealed.

7 \* Sec. 17. AS 38.35 is amended by adding a new section to read:

8 Sec. 38.35.225. JUDICIAL REVIEW OF DECISIONS OF COMMISSIONER ON  
9 APPLICATION. (a) An applicant or competing applicant or a person  
10 who raises objections within 60 days of the publication of notice under  
11 sec. 70 of this chapter are the only persons with standing to seek  
12 judicial review of a decision of the commissioner.

13 (b) The only grounds for which judicial review of a decision  
14 of the commissioner are

15 (1) failure to follow the procedures set out in this  
16 chapter; or

17 (2) abuse of discretion so capricious, arbitrary  
18 or confiscatory as to constitute a denial of due process.

19 \* Sec. 18. AS 38.35.230 is repealed and re-enacted to read:

20 Sec. 38.35.230. DEFINITIONS. In this chapter

21 (1) "commissioner" means the commissioner of natural  
22 resources;

23 (2) "natural gas" includes all hydrocarbons produced at  
24 the wellhead not defined as oil;

25 (3) "oil" includes crude petroleum oil and other hydrocarbons  
26 regardless of gravity which are produced at the wellhead in liquid  
27 form and the liquid hydrocarbons known as distillate or condensate  
28 recovered or extracted from gas, other than gas produced in association  
29 with oil and commonly known as casinghead gas;

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

9 (5) "state land" means

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

11 (B) public land of the United States selected by the  
12 state under sec. 6 of the Alaska Statehood Act of 1958 (PL 85-508;  
13 72 Stat. 399), as amended, and real property of the United  
14 States transferred to the state under secs. 21, 35 and 45 of the  
15 Alaska Omnibus Act of 1959 (PL 86 - 70; 73 Stat. 141), as  
16 amended.

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

18 (12) [SUBJECT TO THE REQUIREMENTS OF THE ALASKA RIGHT-OF-WAY  
19 LEASING ACT OF 1972 (AS 38.35),] for the location of pipelines for  
20 gathering, transmitting, transporting, storing, or delivering natural  
21 or artificial gas or oil or any liquid or gaseous hydrocarbons,  
22 including, but not limited to, pumping stations, terminals, storage  
23 tanks, or reservoirs, and related installations.

24 \* Sec. 20 AS 38.05.020(c)(1) is amended to read:

25 (1) granting leases of state [PUBLIC] land [AND ISSUING  
26 CERTIFICATES] for pipeline right-of-way purposes;

27 \* Sec. 21. AS 38.05.020(c)(2) is amended to read:

28 (2) leasing, purchasing, or otherwise acquiring (including  
29 condemning by declaration of taking), easements or other interests in

1 [ON PRIVATE OR FEDERAL] land in this state for the purpose of utilizing  
2 or granting leases of the land, easements or interests for pipeline  
3 right-of-way purposes;

4 \* Sec. 22. AS 38.05.020(c)(3) is repealed.

5 \* Sec. 23. AS 38.05.020(c)(4) is amended to read:

6 (4) investigating any matters concerning any lessee  
7 [CARRIER] with a view to assuring compliance by it with its  
8 right-of-way lease, [CERTIFICATES ISSUED UNDER THAT LEASE,] this  
9 chapter, and any other applicable state or federal law;

10 \* Sec. 24. AS 38.05.330 is amended to read:

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

29 \* Sec. 25. This Act takes effect on the day after its passage and

1 approval or on the day it becomes law without approval.

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