

Original sponsor: Rules Committee by  
request of the Governor

Offered: 11/6/73  
Referred: Rules

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 3 *am*

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 38.35.010 is amended by adding a new subsection to read:

11 (b) The State of Alaska reserves unto itself all rights, powers,  
12 privileges and immunities not preempted by federal interstate commerce  
13 laws and regulations in the right-of-way leasing of any state lands  
14 for pipeline construction, transmission, or operation within its  
15 boundaries.

16 \* Sec. 2. AS 38.35.020 is amended to read:

17 Sec. 38.35.020. GRANT OF RIGHT-OF-WAY LEASE. (a) Rights-of-way  
18 on state [STATE-OWNED] land including rights-of-way [RIGHT-OF-WAY ON,]  
19 over, under, along, across, or upon the right-of-way of a public road  
20 or highway or the right-of-way of a railroad or other public utility,  
21 or [ON,] across, upon, over, or under a river or other body of water  
22 or land belonging to or administered by the state may be granted by  
23 noncompetitive lease by the commissioner for pipeline purposes for the  
24 transportation of oil, products or natural gas under those conditions  
25 prescribed by law and by administrative regulation. No person may  
26 engage in any construction [, ACQUISITION] or operation of any  
27 [, OR TRANSPORTATION, SERVICE, OR SALE BY THE WHOLE OR A] part of an  
28 oil, products, or natural gas pipeline, which in whole or in part is  
29 or is proposed to be on state [PUBLIC] land, except in conformity with

1 the terms of a right-of-way lease of that land, issued by the commis-  
2 sioner under this chapter [UNLESS THAT PERSON IS A CARRIER AND HAS  
3 OBTAINED FROM THE COMMISSIONER A RIGHT-OF-WAY LEASE OF THE LAND UNDER  
4 THIS CHAPTER AS WELL AS A CERTIFICATE THAT THE CONSTRUCTION, ACQUISSI-  
5 TION, OPERATION, TRANSPORTATION, SERVICE, OR SALE, IF SUBJECT TO THE  
6 LEASE, WILL BE IN ACCORDANCE WITH ITS TERMS].

7 (b) The commissioner may by regulation exempt the construction  
8 or operation of field gathering lines or any reasonable classification  
9 of them from the requirement of a right-of-way lease under this  
10 chapter.

11 \* Sec. 3. AS 38.35.030 is amended to read:

12 Sec. 38.35.030. ABANDONMENT, [OF OR] REDUCTION OR IMPAIRMENT OF  
13 SERVICE OF PIPELINE [BY LESSEE CARRIER]. No lessee [CARRIER] may  
14 abandon any portion of a pipeline that is [ON STATE PUBLIC LAND OR]  
15 subject to a [THE] lease granted under this chapter, or operation or  
16 transportation, service, or sale by it, or reduce or impair service,  
17 except in accordance with the terms of the lease or sec. 40 of this  
18 chapter [UNLESS THE CARRIER HAS FIRST APPLIED FOR AND THE COMMISSIONER  
19 HAS GRANTED A CERTIFICATE THAT THE ABANDONMENT, REDUCTION, OR IMPAIR-  
20 MENT IS IN ACCORDANCE WITH THE TERMS OF THE LEASE].

21 \* Sec. 4. AS 38.35.040 is amended to read:

22 Sec. 38.35.040. TEMPORARY OR EMERGENCY SERVICE OR TEMPORARY  
23 ABANDONMENT, REDUCTION OR IMPAIRMENT OF SERVICE BY LESSEE [CARRIER].  
24 The commissioner may, either upon a request made in the form he shall  
25 by regulation require, or upon his own motion without request, authorize  
26 or require temporary or emergency rendering of service or temporary  
27 or emergency abandonment, reduction or impairment of service by a  
28 pipeline of a lessee [CARRIER] without compliance with secs.  
29 50 - 100 of this chapter. Nothing in this section prevents a carrier

1 from temporarily suspending operations in the event of an emergency  
2 which threatens public health or safety; however, notice shall be given  
3 the commissioner as soon as possible.

4 \* Sec. 5. 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 engage in construction, acquisition or  
7 operation of a pipeline which is proposed to be located in whole or in  
8 part on state land, shall apply for a noncompetitive right-of-way lease  
9 of the state land under this chapter.

10 (b) Applications under (a) of this section shall be made in a  
11 form and manner prescribed by regulation, and shall include any and all  
12 data, information, plans and exhibits which the commissioner determines  
13 are necessary to prepare the analysis required by sec. 80 of this  
14 chapter and to make a decision under sec. 100 of this chapter.

15 (c) The application filed under this section shall be incorporated  
16 into any right-of-way lease issued in response to it and shall become  
17 a part of the terms and conditions of the lease.

18 (d) Any amendment to an application filed under this section which  
19 constitutes a substantial change in the application is subject to all  
20 provisions of this chapter applying to an original application.

21 (e) All persons owning or planning to own an interest in a pipe-  
22 line or proposed pipeline subject to a lease must join in the application  
23 under (a) of this section. Any person employed in operating the pipeline  
24 is bound by the covenants of the lease applicable to functions within the  
25 scope of his employment as if he were an applicant under the lease and  
26 the state may enforce any breach of a covenant directly against an  
27 operator who is not in compliance with the covenant.

28 \* Sec. 6. AS 38.35.060 is repealed.

29 \* Sec. 7. AS 38.35.070 is amended to read:

1           Sec. 38.35.070. NOTICE OF APPLICATION. Upon receiving an application  
2 under sec. 50 [OR 60] of this chapter, the commissioner shall within 30 days

3           (1) cause notice of it to appear in a daily newspaper of gen-  
4 eral circulation published in the vicinity of the proposed pipeline;

5           (2) file copies of the application with the Departments of  
6 Labor, Highways, and Environmental Conservation, and the Alaska Pipeline  
7 Commission [EACH COORDINATE AGENCY]; and

8           (3) make copies available for public inspection [FURNISH  
9 AT COST COPIES OF A NOTICE OR APPLICATION TO PERSONS REQUESTING THEM].

10 \* Sec. 8. AS 38.35.080 is amended to read:

11           Sec. 38.35.080. ANALYSIS OF APPLICATION AND PUBLIC HEARING. (a) The  
12 commissioner shall, within 90 days [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 before a 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  
21 make copies available as provided in sec. 70 of this chapter.

22           (c) The commissioner shall hold a public hearing on an application  
23 within 120 days of receiving it [SET ALL APPLICATIONS FOR PUBLIC HEARING  
24 AS SOON AS PRACTICABLE].

25 \* Sec. 9. AS 38.35.100(a) is amended to read:

26           (a) The commissioner shall determine, on an application filed  
27 with him under sec. 50 of this chapter for a right-of-way lease of  
28 state [PUBLIC] land [OR FOR A CERTIFICATE] under a lease, whether the  
29 applicant is fit, willing, and able to perform the transportation or

1 other acts proposed and to conform to the provisions of the proposed  
2 right-of-way lease [OR CERTIFICATE,] and of this chapter, and whether  
3 the proposed construction, acquisition, or operation [OF OR TRANSPORTA-  
4 TION, SERVICE, OR SALE BY THE PIPELINE] is or will be required by  
5 the present or future public interest [AND NECESSITY]. If the commis-  
6 sioner makes these determinations favorably to the applicant, then  
7 he may grant the whole or part of the application. Otherwise, he  
8 shall deny the application. In order to grant the whole or part of  
9 the application the commissioner shall offer a lease [OR CERTIFICATE]  
10 to the applicant for its acceptance through signing of the lease [OR  
11 CERTIFICATE] and agreeing to comply with its terms, conditions, and  
12 obligations and with this chapter. Only upon proper acceptance of  
13 offered lease [OR CERTIFICATE] by the applicant within 30 days after  
14 its having been presented is the grant of the application consummated.

15 \* Sec. 10. AS 38.35.100(b) and (c) are repealed.

16 \* Sec. 11. AS 38.35.110 is amended to read:

17       Sec. 38.35.110. TERM OF LEASE. Each lease of state [PUBLIC]  
18 land for pipeline right-of-way purposes shall contain a provision that  
19 the lease shall run for a specified term of not greater than 30 [25]  
20 years, and shall be renewable for additional periods of up to 10 years  
21 each, so long as the lessee is in full compliance with all state law,  
22 including but not limited to state law pertaining to regulation and  
23 taxation of the pipeline facility, and is in compliance with all terms  
24 of the lease.

25 \* Sec. 12. AS 38.35.120 is repealed and re-enacted to read:

26       Sec. 38.35.120. COVENANTS REQUIRED TO BE INCLUDED IN LEASE. (a)  
27 A noncompetitive lease of state land for a right-of-way for an oil  
28 or natural gas pipeline valued at \$1,000,000 or more may be granted  
29 only upon the condition that the lessee expressly covenants in the

1 lease, in consideration of the rights acquired by it under the lease,  
2 that

3 (1) it assumes the status of and will perform all of its  
4 functions undertaken under the lease as a common carrier and will  
5 accept, convey, and transport without discrimination crude oil or  
6 natural gas, depending on the kind of pipeline involved, delivered  
7 to it for transportation from fields in the vicinity of the pipeline  
8 subject to the lease throughout its route both on state land obtained  
9 under the lease and on other land; however, a lessee who owns or  
10 operates a natural gas pipeline subject to regulation either (A) under  
11 the Natural Gas Act (15.U.S.C. 717 et. seq.) of the United States, or  
12 (B) by the state or political subdivisions with respect to rates and  
13 charges for the sale of natural gas, is, to the extent of that regula-  
14 tion, exempt from the common carrier requirement in this paragraph;  
15 it will accept, convey, and transport crude oil or natural gas without  
16 unjust or unreasonable discrimination in favor of one producer or  
17 person, including itself, as against another in the same field, and  
18 without unjust or unreasonable discrimination as between fields in the  
19 state but will take the crude oil or natural gas, depending on the  
20 kind of pipeline involved, delivered or offered in the proportion that  
21 the Alaska Pipeline Commission shall, after a full hearing with due  
22 notice to the interested parties and a proper finding of facts, determine  
23 to be reasonable;

24 (2) it will exchange crude oil or natural gas, depending  
25 upon the kind of pipeline involved, with each like common carrier and  
26 provide connections and facilities for the interchange of crude oil  
27 or natural gas at every locality reached by both pipelines when the  
28 necessity exists, subject to rates and regulations made by the appro-  
29 priate state or federal regulatory agency;

1 (3) the lessee grants the state the right to purchase, upon  
2 reasonable notice, an undivided interest in the entire length of the  
3 pipeline within the state, not to exceed 20 per cent; the purchase  
4 price shall be fair market value of the interest at the time the option  
5 is exercised; each lessee shall additionally agree not to sell, transfer  
6 or otherwise dispose of all or any part of a pipeline subject in any  
7 part to the lease except after offering such interest to the state,  
8 to which the lessee grants a preferential right to purchase such  
9 interest on the same terms offered by or to any bona fide, prospective  
10 purchaser who is ready, willing and able to purchase same; provided  
11 that this obligation will not unreasonably interfere with or supersede  
12 contractual rights or obligations existing on the effective date of this  
13 Act; exercise of an option to purchase an interest in a pipeline project  
14 or facility is subject to the approval of the legislature; the incurring  
15 of any bonded indebtedness by the state to implement the exercise of  
16 its option under this paragraph is subject to voter approval;

17 (4) the state shall provide for the repayment of the out-  
18 standing debt incurred by the lessee whose undivided interest share  
19 is acquired under (3) of this subsection, either by undertaking the  
20 debt directly if that is acceptable to the lender, or by discharging  
21 the applicable outstanding debt, including any penalties for prepay-  
22 ment, and undertaking its own debt;

23 (5) it will maintain and preserve books, accounts, and  
24 records and will make those reports that the state may require under  
25 AS 42.06.430;

26 (6) it will accord at all reasonable times to the state and  
27 its authorized agents and auditors the right of access to its property  
28 and records, of inspection of its property, and of examination and  
29 copying of records;

1 (7) it will provide, if the expense involved will not impair  
2 the ability of the lessee to perform its duty to the public as a  
3 common carrier, connections to facilities on the pipeline subject to  
4 the lease, both on state land and other land in the state, for the  
5 purpose of delivering crude oil or natural gas, depending upon the  
6 kind of pipeline involved, to persons (including the state and its  
7 political subdivisions) contracting for the exchange, delivery or  
8 purchase at wholesale of crude oil or natural gas transported by the  
9 pipeline;

10 (8) it shall, notwithstanding any other provision, provide  
11 connections and interchange facilities at state expense at such places  
12 the state considers necessary if the state determines to take a  
13 portion of its royalty or taxes in oil or natural gas;

14 (9) it will extend or enlarge the pipeline or storage  
15 facilities as determined by the Alaska Pipeline Commission to be in  
16 the public interest;

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

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

20 (B) promptly repair or remedy any damage to the lease-  
21 hold;

22 (C) promptly compensate for any damage to or destruction  
23 of property for which the lessee is liable resulting from damage  
24 to or destruction of the leasehold or pipeline;

25 (11) it will not transfer, assign, or dispose of in any  
26 manner, directly or indirectly, or by transfer of control of the  
27 carrier corporation, its interest in a right-of-way lease, or any  
28 rights under the lease or any pipeline subject to the lease to any  
29 person other than another owner of the pipeline (including subsidi-

1 aries, parents and affiliates of the owners), except to the extent  
2 that the commissioner, after consideration of the protection of the  
3 public interests, authorizes; the commissioner shall not unreasonably with-  
4 hold his consent to the transfer, assignment or disposal;

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

12 (13) the applicable law of this state will be used in  
13 resolving questions of interpretation of the lease;

14 (14) the granting of the right-of-way lease is subject to  
15 the express condition that the exercise of the rights and privileges  
16 granted under the lease will not unduly interfere with the management,  
17 administration, or disposal by the state of the land affected by  
18 the lease, and that the lessee agrees and consents to the occupancy  
19 and use by the state, its grantees, permittees, or other lessees of  
20 any part of the right-of-way not actually occupied or required by the  
21 pipeline for the full and safe utilization of the pipeline, for neces-  
22 sary operations incident to land management, administration, or dis-  
23 posal;

24 (15) it will be liable to the state for damages or  
25 injury incurred by the state caused by the construction, operation  
26 or maintenance of the pipeline and it will indemnify the state  
27 for the liabilities or damages;

28 (16) it will procure and furnish liability and  
29 property damage insurance from a company licensed to do business

1 in the state or furnish other security or undertaking upon the  
2 terms and conditions the commissioner considers necessary if  
3 the commissioner finds that the net assets of the lessee are  
4 insufficient to protect the public from damage for which the lessee  
5 may be liable arising out of the construction or operation of  
6 the pipeline;

7 (17) it will construct and operate the pipeline in accor-  
8 dance with applicable state laws and lawful regulations and orders  
9 of the Alaska Pipeline Commission; however, the terms of a right-  
10 of-way lease issued under this chapter shall not be considered  
11 to permit or require a lessee, the commissioner, or the Alaska  
12 Pipeline Commission to take any action that is prohibited by  
13 federal law or lawful regulations or orders of the Interstate  
14 Commerce Commission or the Federal Power Commission.

15 (b) For a right-of-way lease granted under this chapter  
16 for an oil or natural gas pipeline valued at \$1,000,000 or more  
17 to be valid and of legal effect, it must contain the terms required  
18 to be inserted under the provisions of secs. 110 - 150 of this  
19 chapter. An oil or natural gas pipeline right-of-way lease granted  
20 under this chapter that does not contain the required terms is  
21 null and void and without legal effect and does not vest any  
22 interest in state land or any authority in the carrier granted  
23 the lease.

24 (c) The commissioner may, at his discretion, include any or all  
25 of the terms set out in (a) of this section in leases of state land  
26 for products pipeline right-of-way purposes.

27 \* Sec. 13. AS 38.35.130 is amended to read:

28 Sec. 38.35.130. RIGHT-OF-WAY EASEMENTS OR LEASES ACQUIRED  
29 FROM OTHERS. (a) The lessee may [LEASE SHALL CONTAIN THE FURTHER

1 EXPRESS AGREEMENT BY THE CARRIER THAT

2 (1) IT WILL, UPON A DETERMINATION BY THE COMMISSIONER AND  
3 UPON REASONABLE CONDITIONS AND AT A JUST PRICE, CONVEY TO THE STATE  
4 ANY RIGHTS-OF-WAY, RIGHT-OF-WAY PERMITS, EASEMENTS, OR LEASES PREVIOUSLY  
5 ACQUIRED OR TO BE ACQUIRED FOR RIGHT-OF-WAY PURPOSES FOR THE PIPELINE  
6 SUBJECT TO THE LEASE;

7 (2) THE STATE RESERVES TO ITSELF AND THE LESSEE GRANTS TO  
8 THE STATE THE SOLE RIGHT TO CONDEMN, BY DECLARATION OF TAKING, REAL  
9 PROPERTY FOR RIGHT-OF-WAY PURPOSES AND TO ACQUIRE TO THE EXTENT  
10 FEDERALLY PERMISSIBLE LEASES OF OR EASEMENTS OR RIGHTS-OF-WAY ON  
11 PUBLIC LANDS BELONGING TO THE UNITED STATES IN THIS STATE, INCLUDING  
12 "WITHDRAWN PUBLIC LANDS" AS THAT TERM IS DEFINED IN SECS. 3(e), 17(c)  
13 AND (d)(3), AND 22 (i) OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT  
14 (PL 92-203; 85 STAT. 688; 43 U.S.C. 1601 ET SEQ.), REQUIRED FOR RIGHT-  
15 OF-WAY PURPOSES FOR THE PIPELINE SUBJECT TO THE LEASE;

16 (3) THE CARRIER WILL], if the commissioner delegates the  
17 function to it, condemn by eminent domain under AS 09.55.240 - 09.55.410,  
18 and by declaration of taking, under AS 09.55.420 - 09.55.450, real  
19 property and acquire leases of or easements or rights-of-way on [PUBLIC]  
20 lands in the state [BELONGING TO THE UNITED STATES, INCLUDING "WITHDRAWN  
21 PUBLIC LANDS"] required for right-of-way purposes for a [THE] pipeline  
22 subject to the lease, on behalf of and as agent for the state, in which  
23 title to or interest in the land shall vest.

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

28 \* Sec. 14. AS 38.35.140 is repealed and re-enacted to read:

29 Sec. 38.35.140. PAYMENT OF RENTAL AND COSTS. (a) The lease

1 price for a right-of-way lease shall be the annual fair market rental  
2 of the state lands included in the right-of-way based on the appraised  
3 fair market value of the land. The appraised fair market value of  
4 the land leased for right-of-way shall be determined without regard  
5 to any enhancement in value attributable solely to the construction  
6 of pipeline facilities on the land or the use of the land for pipe-  
7 line purposes. The lease price is payable annually in advance on or  
8 before the anniversary of the lease. The appraised fair market  
9 rental value shall be adjusted periodically under the provisions of  
10 AS 38.05.105.

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

14 \* Sec. 15. AS 38.35.150 is repealed and re-enacted to read:

15 Sec. 38.35.150. ADDITIONAL PROVISIONS OF LEASE. (a) The com-  
16 missioner may insert in any right-of-way lease other reasonable  
17 provisions and conditions that he determines the public interest  
18 requires.

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

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

24 (2) protect state and private property interests;

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

28 (4) restore and revegetate during the term and at termina-  
29 tion of the lease; and

1 (5) protect the interests of individuals living in the  
2 general area of the right-of-way who rely on the fish, wildlife, and  
3 biotic resources of the area for subsistence purposes.

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

9 \* Sec. 16. AS 38.35.170 is repealed and re-enacted to read:

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

24 \* Sec. 17. AS 38.35.180 (c) is amended to read:

25 (c) Neither this section nor the state's obtaining an injunction  
26 or recovering penalties extinguishes any civil cause of action or  
27 criminal responsibility arising out of a violation of this chapter  
28 or the provisions of [,] a right-of-way lease [, OR CERTIFICATE UNDER  
29 A LEASE]. A person obtaining a money judgment in an action arising

1 out of a violation is entitled to a reasonable attorney fee, fixed  
2 by the court, to be taxed and collected as costs of the suit.

3 \* Sec. 18. AS 38.35.190(b), (c) and (d) are repealed.

4 \* Sec. 19. AS 38.35.200 is repealed and re-enacted to read:

5 Sec. 38.35.200. JUDICIAL REVIEW OF DECISIONS OF COMMISSIONER ON  
6 APPLICATION. (a) An applicant or competing applicant or a person who  
7 has a direct financial interest affected by the lease who raises objec-  
8 tions within 60 days of the publication of notice under sec. 70 of this  
9 chapter are the only persons with standing to seek judicial review of  
10 a decision of the commissioner.

11 (b) The only grounds for judicial review of a decision of the  
12 commissioner are

13 (1) failure to follow the procedures set out in this chapter;  
14 or

15 (2) abuse of discretion so capricious, arbitrary or confisca-  
16 tory as to constitute a denial of due process.

17 \* Sec. 20. AS 38.35.210 is amended to read:

18 Sec. 38.35.210. DELEGATION OF COMMISSIONER'S AUTHORITY. The  
19 commissioner may delegate to an employee of the Department of Natural  
20 Resources or the Department of Law the authority granted under this  
21 chapter, except for the authority to execute leases [AND CERTIFICATES].

22 \* Sec. 21. AS 38.35.220 is repealed and re-enacted to read:

23 Sec. 38.35.220. CONTINUED OPERATION OF EXISTING CARRIER. (a)  
24 Persons holding easements, rights-of-way or permits for natural gas  
25 pipelines on state land on May 20, 1972 are unaffected by this  
26 chapter within the scope of their existing operations, normal expan-  
27 sions and extensions of them so long as their original or present  
28 purpose and function remains unchanged.

29 (b) Subject to (a) of this section if an existing right-of-way

1 is revocable or for a term of years, then upon revocation or expiration  
2 this chapter applies.

3 (c) Applications for pipeline permits which have been filed  
4 with the division of lands before May 20, 1972 shall be considered  
5 as filed under this chapter but this does not otherwise restrict the  
6 authority of the commissioner in acting on these applications under  
7 this chapter; however, in the event the division of lands has, before  
8 May 20, 1972, granted right-of-entry to an applicant or issued  
9 a letter of no-objection to an applicant, and the applicant thereafter  
10 fully complies with all of the terms and conditions originally speci-  
11 fied by the division of lands or other agency, these applications are  
12 an existing valid permit or easement on the effective date of this  
13 chapter.

14 \* Sec. 22. AS 38.35.230(2) and (3) are repealed;

15 \* Sec. 23. AS 38.35.230(9) is amended to read:

16 (9) "Lessee [CARRIER]" means a person or persons [CARRIER]  
17 holding a valid lease [AND CERTIFICATES UNDER IT] issued by the commis-  
18 sioner;

19 \* Sec. 24. AS 38.35.230(17) is amended to read:

20 (17) "State [PUBLIC] land" means

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

22 (B) public land of the United States selected by the  
23 state under sec. 6 of the Alaska Statehood Act of 1958 (PL 85-508;  
24 72 Stat. 399), as amended, and real property of the United States  
25 transferred to the state under secs. 21,35 and 45 of the Alaska  
26 Omnibus Act of 1959 (PL 86-70; 73 Stat. 141), as amended;

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

28 \* Sec. 25. AS 38.35 is amended by adding new sections to read:

29 Sec. 38.35.240. LEASE SAVINGS CLAUSE. A judicial finding that

1 any term or condition of a right-of-way lease issued under this  
2 chapter is unlawful or invalid may not operate to invalidate the lease  
3 or any other term or condition of the lease.

4 Sec. 38.35.250. FEDERAL PREEMPTION. To the extent that the  
5 application of this chapter affects a pipeline carrier or a pipeline  
6 subject to the Interstate Commerce Act (49.U.S.C. secs. 1 et.seq.)  
7 or the Natural Gas Act (15. U.S.C. 717 et. seq.) this chapter may not  
8 be applied so as to conflict with applicable federal laws and regula-  
9 tions, rules, orders, or other requirements under which jurisdiction  
10 has been expressly assumed by the federal commission or agency charged  
11 with the administration of these federal Acts.

12 \* Sec. 26. AS 38.05.020(c)(1) is amended to read:

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

15 \* Sec. 27. AS 38.05.020(c)(4) is amended to read:

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

20 \* Sec. 28. AS 38.05.330 is amended to read:

21 Sec. 38.05.330. PERMITS. The director, without the prior  
22 approval of the commissioner, may issue permits, rights-of-way or  
23 easements on state land for secondary roads, trails, ditches, field  
24 gathering lines or transmission and distribution pipelines not subject  
25 to AS 38.35, telephone and transmission lines, log storage, oil well  
26 drilling sites and production facilities for the purposes of recovering  
27 minerals from adjacent lands under valid lease, and other similar  
28 uses or improvements, or for the limited personal use of timber or  
29 materials. The commissioner, upon recommendation of the director,

1 shall establish a reasonable rate or fee schedule to be charged for  
2 these uses. In the granting, suspension or revocation of a permit or  
3 easement of lands, the director shall give preference to that use of  
4 the land which will be of greatest economic benefit to the state and  
5 the development of its resources. However, first preference shall  
6 be granted to the upland owner for the use of a tract of tideland, or  
7 tideland and contiguous submerged land, which is seaward of the upland  
8 property of the upland owner and which is needed by the upland owner  
9 for any of the purposes for which the use may be granted.

10 \* Sec. 29. This Act takes effect on the day after its passage and  
11 approval or on the day it becomes law without approval.  
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