

Original sponsor: Rules Committee by
request of the Governor

Offered: 11/9/73
Referred: Rules

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE 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 rights-of-way for pipeline
7 purposes; and providing for an effective date."

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

9 * Section 1. AS 38.35.020 is amended to read:

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

29 (b) This chapter does not require a right-of-way lease for the

1 construction or operation of field gathering lines.

2 * Sec. 2. AS 38.35.030 is amended to read:

3 Sec. 38.35.030. ABANDONMENT, [OF OR] REDUCTION OR IMPAIRMENT OF
4 SERVICE OF PIPELINE BY LESSEE [CARRIER]. No lessee [CARRIER] may
5 abandon any portion of a pipeline that is [ON STATE PUBLIC LAND OR]
6 subject to a right-of-way [THE] lease, or abandon any operation,
7 [OR] transportation, service, or sale by it, or reduce or impair
8 service, unless the lessee [CARRIER] has first notified [APPLIED FOR
9 AND] the commissioner in the form and manner prescribed by regulation.
10 To the extent that this requirement would interfere with or would be
11 inconsistent with federal or other state law or with regulations or
12 rulings of a federal regulatory agency or the Alaska Pipeline Commis-
13 sion, it is inapplicable [HAS GRANTED A CERTIFICATE THAT THE ABANDON-
14 MENT, REDUCTION, OR IMPAIRMENT IS IN ACCORDANCE WITH THE TERMS OF THE
15 LEASE].

16 * Sec. 3. AS 38.35.040 is amended to read:

17 Sec. 38.35.040. TEMPORARY OR EMERGENCY SERVICE OR [TEMPORARY]
18 ABANDONMENT, REDUCTION OR IMPAIRMENT OF SERVICE BY LESSEE [CARRIER].
19 The commissioner may, either upon a request made in the form he
20 requires [SHALL] by regulation [REQUIRE], or upon his own motion
21 without request, authorize or require temporary or emergency rendering
22 of service or temporary or emergency abandonment, reduction or impair-
23 ment of service by a pipeline of a lessee [CARRIER] without compliance
24 with secs. 50 - 100 of this chapter. Nothing in this section prevents
25 a lessee [CARRIER] from temporarily suspending operations in the event
26 of an emergency which threatens public health or safety; however,
27 notice shall be given the commissioner as soon as possible. This
28 section does not impose any obligation upon the lessee which could not
29 constitutionally be imposed by a direct exercise of state regulation

1 or any obligation inconsistent with federal or other state law or
2 with regulations or rulings of a federal regulatory agency or the
3 Alaska Pipeline Commission.

4 * Sec. 4. 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. 5. AS 38.35.060 is repealed.

15 * Sec. 6. AS 38.35.070 is amended to read:

16 Sec. 38.35.070. NOTICE OF APPLICATION. Upon receiving notifica-
17 tion under sec. 30 or an application under sec. 50 [OR 60] of this
18 chapter, the commissioner shall

19 (1) cause notice of it to appear in a [THE] daily newspaper
20 of general circulation published in the vicinity of [NEAREST] the
21 location of the proposed pipeline, the notice to include:

22 (A) a general description of the land involved;

23 (B) a summary of the substance of the application; and

24 (C) if warranted, the time and place of public
25 hearing to be held on the application;

26 (2) file copies of the application with each coordinate
27 agency; [AND]

28 (3) furnish at cost copies of a notice or application to
29 persons requesting them; and

1 (4) provide other publication and notice he considers
2 reasonable and appropriate to inform the public of the application.

3 * Sec. 7. AS 38.35.080 is amended to read:

4 Sec. 38.35.080. ANALYSIS [OF APPLICATION] AND PUBLIC HEARING.

5 (a) The commissioner shall, within a reasonable time after receiving
6 the application or notification, prepare an analysis of the application
7 or of the matter of which he was notified, including a proposal for
8 action if feasible; a proposed lease [OR CERTIFICATE OR BOTH] and a
9 general statement of his basis and purpose, if favorable action is
10 proposed; or, when a proposal for action is not feasible before a
11 hearing, a description of the subjects and issues involved.

12 (b) Upon completion of the analysis but not less than 30 days
13 before the date set for hearing an application or a substantial amend-
14 ment to an application or a matter of which he was notified under
15 sec. 30 of this chapter, the commissioner shall publish notice, and
16 make copies available as provided in sec. 70 of this chapter.

17 (c) The commissioner may [SHALL] set all applications and matters
18 of which he was notified for public hearing as soon as practicable.

19 (d) Except to the extent specified in sec. 190(b) of this
20 chapter, the provisions of the Administrative Procedure Act (AS 44.62)
21 do not apply to hearings held under this section.

22 * Sec. 8. AS 38.35.100 is repealed and re-enacted to read:

23 Sec. 38.35.100. DECISION ON APPLICATION. (a) The commissioner
24 shall promptly determine, on an application filed with him under sec. 50
25 of this chapter whether the applicant is fit, willing and able to
26 perform the transportation or other acts proposed in a manner that will
27 reasonably protect the lives, property and general welfare of the
28 people of Alaska. In making a determination the commissioner shall
29 consider whether or not

1 (1) the proposed use of the right-of-way will unreasonably
2 conflict with existing uses of the land involving a superior public
3 interest;

4 (2) the applicant has the technical and financial capa-
5 bility to protect state and private property interests;

6 (3) the applicant has the technical and financial capa-
7 bility to take action to the extent reasonably practical to

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

11 (B) undertake any necessary restoration or revege-
12 tation; and

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

16 (4) the applicant has the financial capability to pay
17 reasonably foreseeable damages for which he may become liable on
18 claims arising from the construction, operation, maintenance or ter-
19 mination of the pipeline.

20 (b) If the commissioner determines that the applicant is not
21 fit, willing, and able to perform the transportation or other proposed
22 acts in a manner that will reasonably protect the lives, property
23 and general welfare of the people of Alaska, the commissioner shall
24 deny the application. If he determines that the applicant is fit,
25 willing, and able to perform, he shall promptly offer the applicant
26 a lease.

27 * Sec. 9. AS 38.35.110 is repealed and re-enacted to read:

28 Sec. 38.35.110. TERM OF LEASE. The commissioner shall determine
29 the term of the lease. In making this determination he shall take

1 into consideration the cost of the proposed pipeline, its useful life,
2 and the probable financing requirements for the proposed pipeline.

3 Thereafter, upon application of a lessee, the commissioner shall
4 extend the term of the lease for additional periods of time so long
5 as the proposed pipeline is used for the purposes for which the lease
6 was granted and is in compliance with all terms of the lease subject
7 to additional terms and conditions then reasonably required to protect
8 the lives, property and general welfare of the people of Alaska.

9 * Sec. 10. AS 38.35.120 is amended to read:

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

11 (a) A noncompetitive lease of state public land for a right-of-way
12 for an oil or natural gas pipeline valued at \$1,000,000 or more may
13 be granted only upon the condition that the lessee [CARRIER] expressly
14 covenants in the lease, in consideration of the rights acquired by it
15 under the lease, that

16 [(1) IT WILL OBTAIN A CERTIFICATE OF COMPLIANCE WITH THE
17 TERMS AND CONDITIONS OF THE LEASE BEFORE UNDERTAKING ANY CONSTRUCTION,
18 ACQUISITION OR OPERATION OF OR TRANSPORTATION, SERVICE OR SALE BY THE
19 WHOLE OR ANY PART OF A PIPELINE ON STATE PUBLIC LAND, INCLUDING THE
20 PORTIONS OF THE PIPELINE NOT ON STATE PUBLIC LAND;

21 (2) IT WILL UNDERTAKE AND COMPLETE OR REGULARLY PERFORM
22 WITHIN OR DURING THE TIME PERIOD AND IN ACCORDANCE WITH THE PROJECT
23 DESCRIPTION CONTAINED IN THE LEASE OR CERTIFICATE, THROUGHOUT THE
24 ENTIRE ROUTE OF THE PIPELINE IN THE STATE, BOTH ON STATE PUBLIC LAND
25 OBTAINED UNDER THE LEASE AND ON OTHER LAND, ANY CONSTRUCTION OR
26 ACQUISITION OR OTHER ACT REQUIRED TO BE PERFORMED IN CONJUNCTION WITH
27 THE LEASE, OR OPERATION OF, OR TRANSPORTATION, SERVICE, OR SALE BY
28 THE PIPELINE IN GOOD FAITH AND IN ACCORDANCE WITH THE LEASE AND CERTI-
29 FICATES, THIS CHAPTER, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAW;]

1 (3) it will perform all of its functions under the lease,
2 as a common carrier; in performing as a common carrier it will accept,
3 convey and transport without discrimination crude oil delivered to it
4 for transportation throughout its route in accordance with applicable
5 statutes and tariffs; the common carrier covenant required by this
6 paragraph does not apply to products lines or to a natural gas pipeline
7 owned or operated by a lessee which is subject to regulation under the
8 Natural Gas Act (52 Stat. 821; 68 Stat. 36) or by a lessee which is
9 subject to regulation by state or political subdivisions with juris-
10 isdiction to regulate the rates and charges for sale of natural gas to
11 consumers in the state [ASSUMES THE STATUS OF AND WILL PERFORM ALL OF
12 ITS FUNCTIONS UNDERTAKEN UNDER THE LEASE AS A COMMON CARRIER AND WILL
13 ACCEPT, CONVEY, AND TRANSPORT ALL CRUDE OIL OR NATURAL GAS, DEPENDING
14 ON 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 TO
19 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 STATUS
21 OF AND SHALL PERFORM ALL OF ITS FUNCTIONS UNDERTAKEN UNDER THE LEASE
22 AS A COMMON CARRIER AND SHALL PERFORM ALL OF THE ACTS DESCRIBED IN
23 THIS PARAGRAPH WHEN AT ANY TIME AFTER THE EXECUTION OF THE LEASE THE
24 COMMISSIONER AFTER PUBLIC HEARING DETERMINES THAT ASSUMPTION OF THIS
25 STATUS IS REQUIRED IN ORDER TO SUBSERVE THE PUBLIC INTEREST, CONVENI-
26 ENCE, 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 OR
2 NATURAL GAS THAT IS OFFERED IT WHEN AT ANY TIME AFTER THE EXECUTION
3 OF THE LEASE THE COMMISSIONER AFTER PUBLIC HEARING DETERMINES THAT
4 ASSUMPTION OF THIS STATUS IS REQUIRED IN ORDER TO SUBSERVE THE PUBLIC
5 INTEREST, CONVENIENCE, AND NECESSITY;

6 (5) IT WILL ACCEPT, CONVEY, AND TRANSPORT OR PURCHASE
7 CRUDE OIL OR NATURAL GAS WITHOUT UNJUST OR UNREASONABLE DISCRIMINATION
8 IN FAVOR OF ONE PRODUCER OR PERSON, INCLUDING ITSELF, AS AGAINST
9 ANOTHER IN THE SAME FIELD, AND WITHOUT UNJUST OR UNREASONABLE DIS-
10 CRIMINATION AS BETWEEN FIELDS IN THE STATE BUT WILL TAKE THE CRUDE
11 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 AND
17 PROVIDE CONNECTIONS AND FACILITIES FOR THE INTERCHANGE OF CRUDE OIL
18 OR NATURAL GAS AT EVERY LOCALITY REACHED BY BOTH PIPELINES WHEN THE
19 NECESSITY EXISTS, SUBJECT TO RATES AND REGULATIONS MADE BY THE
20 APPROPRIATE STATE OR FEDERAL REGULATORY AGENCY];

21 (7) it will afford the state a first opportunity to negotiate
22 for the purchase of any interest in the pipeline offered for sale by
23 it on the same terms offered any other potential purchaser, provided
24 that this obligation will not interfere or supersede contract rights
25 or obligations existing among the proposed owners of the pipeline at
26 the time the right-of-way lease is granted [THE LESSEE GRANTS TO THE
27 STATE THE RIGHT TO PURCHASE, UPON REASONABLE NOTICE, AN UNDIVIDED
28 INTEREST IN THE ENTIRE LENGTH OF THE PIPELINE WITHIN THE STATE, NOT
29 TO EXCEED 20 PER CENT; THE PURCHASE PRICE SHALL BE AT A REASONABLE

1 FIGURE SET OUT IN THE LEASE AT THE TIME OF THE LEASE'S EXECUTION;
2 PURCHASE OF THIS INTEREST MAY, AT THE OPTION OF THE STATE, BE MADE
3 IN STAGES; EXERCISE OF AN OPTION TO PURCHASE AN INTEREST IN A PIPE-
4 LINE PROJECT OR FACILITY IS SUBJECT TO THE APPROVAL OF THE LEGISLA-
5 TURE; THE INCURRING OF ANY BONDED INDEBTEDNESS BY THE STATE TO
6 IMPLEMENT THE EXERCISE OF ITS OPTION UNDER THIS PARAGRAPH IS SUBJECT
7 TO VOTER APPROVAL];

8 (8) it will maintain and preserve books, accounts, and
9 records [, PAPERS, AND CORRESPONDENCE AND OTHER RECORDS] and will make
10 those reports that the state may prescribe by regulation or law as
11 necessary and appropriate for purposes of administration of this
12 chapter;

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

17 (10) it will provide, where economically feasible [AND
18 CONSISTENT WITH THE PRIMARY FUNCTION OF THE LINE], connections [AND
19 FACILITIES] on the pipeline [SUBJECT TO THE LEASE, BOTH ON STATE LAND
20 AND OTHER LAND IN THE STATE,] for the purpose of delivering crude
21 oil or natural gas, depending upon the kind of pipeline involved,
22 to persons or municipal corporations contracting for the purchase at
23 wholesale of crude oil or natural gas transported by the pipeline
24 [DESIRING TO PURCHASE WHO ARE LOCATED IN MUNICIPALITIES IN THE
25 VICINITY OF THE PIPELINE];

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

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

1 (B) exercise the highest degree of care in using the
2 leasehold and operating the pipeline [TO PREVENT A PIPELINE
3 INCIDENT];

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

6 (D) promptly compensate for or remedy any damage to
7 or destruction of public or private property resulting from
8 damage to or destruction of the leasehold or pipeline regardless
9 of fault, notwithstanding the limitations of AS 46.03.822(1)(B),
10 (C) and (D), and 46.03.822(2);

11 [(12) IT WILL NOT TRANSFER, ASSIGN, OR DISPOSE OF IN ANY
12 MANNER, DIRECTLY OR INDIRECTLY, OR BY TRANSFER OF CONTROL OF THE
13 CARRIER CORPORATION, ITS INTEREST IN A RIGHT-OF-WAY LEASE, OR ANY
14 RIGHTS UNDER THE LEASE, OR ANY PIPELINE SUBJECT TO THE LEASE, EXCEPT
15 AS AUTHORIZED BY THE COMMISSIONER, UPON APPLICATION BY THE CARRIER;
16 THE COMMISSIONER SHALL NOT UNREASONABLY WITHHOLD HIS CONSENT TO THE
17 TRANSFER, ASSIGNMENT OR DISPOSAL;]

18 (13) it will file with the commissioner a written appoint-
19 ment of a named permanent resident of the state to be its registered
20 agent in the state and to receive service of notices, regulations,
21 decisions and orders of the commissioner; if it fails to appoint an
22 agent for service, service may be made by posting a copy in the office
23 of the commissioner and filing a copy of it in the office of the
24 lieutenant governor and by mailing a copy to lessee's last known
25 address;

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

28 (15) it will be liable to the state for damages or injury
29 incurred by the state caused by the construction, operation or

1 maintenance of the pipeline and it will indemnify the state for the
2 liabilities or damages;

3 (16) it will procure and furnish liability and property
4 damage insurance from a company licensed to do business in the state
5 or furnish other security or undertaking upon the terms and conditions
6 the commissioner considers necessary if the commissioner finds that
7 the net assets of the lessee are insufficient to protect the public
8 from damage for which the lessee may be liable arising out of the
9 construction or operation of the pipeline;

10 (17) it will not interfere with construction and operation
11 of any oil or gas pipeline authorized by the commissioner for location
12 on the right-of-way, subject to compensation of the prior lessee by
13 the subsequent lessee for any damage to or interference with the
14 operation of the prior pipeline caused by construction of the subse-
15 quent pipeline.

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

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

21 (2) protect state and private property interests;

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

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

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

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

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

9 * Sec. 11. AS 38.35.130 is amended to read:

10 Sec. 38.35.130. RIGHT-OF-WAY EASEMENTS OR LEASES ACQUIRED FROM
11 OTHERS. (a) The lessee may [LEASE SHALL CONTAIN THE FURTHER EXPRESS
12 AGREEMENT BY THE CARRIER THAT

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

18 (2) THE STATE RESERVES TO ITSELF AND THE LESSEE GRANTS TO
19 THE STATE THE SOLE RIGHT TO CONDEMN, BY DECLARATION OF TAKING, REAL
20 PROPERTY FOR RIGHT-OF-WAY PURPOSES AND TO ACQUIRE TO THE EXTENT
21 FEDERALLY PERMISSIBLE LEASES OF OR EASEMENTS OR RIGHTS-OF-WAY ON
22 PUBLIC LANDS BELONGING TO THE UNITED STATES IN THIS STATE, INCLUDING
23 "WITHDRAWN PUBLIC LANDS" AS THAT TERM IS DEFINED IN SECS. 3(e), 17(c)
24 AND (d)(3), AND 22(1) OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT
25 (PL 92-203; 85 STAT. 688; 43 U.S.C. 1601 ET SEQ.), REQUIRED FOR RIGHT-
26 OF-WAY PURPOSES FOR THE PIPELINE SUBJECT TO THE LEASE:

27 (3) THE CARRIER WILL], if the commissioner delegates the
28 function to it, condemn, by declaration of taking, under AS 09.55.420 -
29 09.55.450, real property and acquire leases of or easements or rights-

1 of-way on [PUBLIC] lands in this state [BELONGING TO THE UNITED STATES,
2 INCLUDING "WITHDRAWN PUBLIC LANDS"] required for right-of-way purposes
3 for a [THE] pipeline subject to the lease on behalf of and as agent
4 for the state in which title to or interest in the land shall vest.

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

9 * Sec. 12. AS 38.35.140 is repealed and re-enacted to read:

10 Sec. 38.35.140. PAYMENT OF RENTAL AND COSTS. (a) The lease
11 price for a right-of-way lease shall be the annual fair market
12 rental of the state lands included in the right-of-way based on the
13 appraised fair market value of the land. The lease price is payable
14 annually in advance on or before the anniversary of the lease. The
15 appraised fair market rental value shall be adjusted periodically under
16 the provisions of AS 38.05.105.

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

20 * Sec. 13. AS 38.35.150(b) and (c) are repealed.

21 * Sec. 14. AS 38.35.160 is amended to read:

22 Sec. 38.35.160. TRANSFER OF RIGHT-OF-WAY LEASE [, CERTIFICATES,]
23 OR PIPELINE. No lessee [CARRIER] may transfer [, ASSIGN,] or dispose
24 of in any manner its right-of-way lease, or any rights under the
25 lease, or any pipeline subject to the lease, whether on state [PUBLIC]
26 land or other land in the state, either voluntarily or involuntarily,
27 directly or indirectly, or by transfer of control of any corporation
28 holding the lease [OR CERTIFICATE OR OWNING THE PIPELINE,] to any
29 person other than another owner of the pipeline (including subsidiaries,

1 parents and affiliates of the owners), except to the extent that the
2 commissioner, after consideration whether the proposed transferee is
3 fit, willing and able to perform the transportation or other acts
4 proposed in a manner that will reasonably protect the lives, property
5 and general welfare of the people of Alaska, [OF THE PUBLIC INTEREST,
6 CONVENIENCE, AND NECESSITY,] by order authorizes the transfer. The
7 commissioner shall not unreasonably withhold this authorization. The
8 application shall be disposed of as if the proposed transferee or
9 assignee were making application under secs. 50 - 100 of this chapter.

10 * Sec. 15. AS 38.35.170 is repealed and re-enacted to read:

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

25 * Sec. 16. AS 38.35.180 is repealed and re-enacted to read:

26 Sec. 38.35.180. INJUNCTIONS. When in the judgment of the
27 commissioner a person has violated or is about to violate a provision
28 of this chapter or covenant, term or condition of a lease, the
29 attorney general, on advice of the commissioner, may seek a

1 prohibition or mandatory injunction from the superior court to remedy
2 the violation.

3 * Sec. 17. AS 38.35.190(c) and (d), AS 38.35.200 and 38.35.220(d) are
4 repealed.

5 * Sec. 18. AS 38.35 is amended by adding a new section to read:

6 Sec. 38.35.225. JUDICIAL REVIEW OF DECISIONS OF COMMISSIONER ON
7 APPLICATION. (a) An applicant or competing applicant or a person
8 who raises objections within 30 days after decision following the
9 hearing under sec. 80 of this chapter are the only persons with
10 standing to seek judicial review of a decision of the commissioner
11 under sec. 100 of this chapter.

12 (b) The only grounds for judicial review of a decision of the
13 commissioner under sec. 100 of this chapter are

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

16 (2) abuse of discretion so capricious, arbitrary or con-
17 fiscatory as to constitute a denial of due process.

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

19 Sec. 38.35.230. DEFINITIONS. In this chapter

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

22 (2) "lease" means the instrument or extension of an instru-
23 ment issued under this chapter granting a leasehold interest in state
24 land for pipeline right-of-way purposes to a person and authorizing
25 the construction or operation of, or transportation, service or sale
26 by a pipeline for crude oil, natural gas, or products;

27 (3) "natural gas" includes all hydrocarbons produced at
28 the wellhead not defined as oil;

29 (4) "oil" includes crude petroleum oil and other hydrocarbons

1 regardless of gravity which are produced at the wellhead in liquid
2 form and the liquid hydrocarbons known as distillate or condensate
3 recovered or extracted from gas, other than gas produced in associa-
4 tion with oil and commonly known as casinghead gas;

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

18 (6) "product" means refined crude oil, crude tops,
19 topped crude, processed crude petroleum, residue from crude petroleum,
20 cracking stock, uncracked fuel oil, fuel oil, treated crude oil,
21 residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha,
22 distillate, gasoline, kerosene, benzine, wash oil, waste oil,
23 blended gasoline, lubricating oil, blends or mixtures of petroleum and
24 any liquid product or by-product derived from crude petroleum oil or
25 natural gas;

26 (7) "state land" means

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

28 (B) public land of the United States selected by the
29 state under sec. 6 of the Alaska Statehood Act of 1958 (PL 85-508;

1 72 Stat. 399), as amended, and real property of the United States
2 transferred to the state under secs. 21, 35 and 45 of the Alaska
3 Omnibus Act of 1959 (PL 86 - 70; 73 Stat. 141), as amended;

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

16 * Sec. 20. AS 09.55.240(a)(12) is amended to read:

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

23 * Sec. 21. AS 38.05.020(c)(1) is amended to read:

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

26 * Sec. 22. AS 38.05.020(c)(2) is amended to read:

27 (2) leasing, purchasing, or otherwise acquiring (including
28 condemning by declaration of taking), easements or other interests in
29 [ON PRIVATE OR FEDERAL] land in this state for the purpose of utilizing

1 or granting leases of the land, easements or interests for pipeline
2 right-of-way purposes;

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

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

8 * Sec. 24. AS 38.05.330 is amended to read:

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

27 * Sec. 25. The commissioner of natural resources shall submit to the
28 Second Session of the Eighth Legislature not later than March 1, 1974 a full
29 report covering all lands conveyed under provisions of AS 38.05.063 and

1 38.05.076. The report shall contain a description of all parcels conveyed
2 under the Act including acreage (to include a detailed plat of each parcel),
3 land classification, appraised value, lease or sale value, proposed land
4 useage, and any other information the commissioner may feel necessary to an
5 understanding of the particular disposal.

6 * Sec. 26. AS 38.05.063 and 38.05.076 are repealed effective March 1,
7 1974.

8 * Sec. 27. This Act takes effect on the day after its passage and approval
9 or on the day it becomes law without approval.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29