

Original sponsor: Rules Committee by
request of the Governor

11/9/73

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 the use of state lands 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 38.35.010 is amended by adding a new subsection to read:

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

15 * Sec. 2. AS 38.35.020 is amended to read:

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

1 be on state [PUBLIC] land [,] unless that person [IS A CARRIER AND]
2 has obtained from the commissioner a right-of-way lease of the land
3 under this chapter [AS WELL AS A CERTIFICATE THAT THE CONSTRUCTION,
4 ACQUISITION, OPERATION, TRANSPORTATION, SERVICE, OR SALE, IF SUBJECT
5 TO THE LEASE, WILL BE IN ACCORDANCE WITH ITS TERMS].

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

8 * Sec. 3. AS 38.35.030 is amended to read:

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

22 * Sec. 4. AS 38.35.040 is amended to read:

23 Sec. 38.35.040. TEMPORARY OR EMERGENCY SERVICE OR [TEMPORARY]
24 ABANDONMENT, REDUCTION OR IMPAIRMENT OF SERVICE BY LESSEE [CARRIER].
25 The commissioner may, either upon a request made in the form he
26 requires [SHALL] by regulation [REQUIRE], or upon his own motion
27 without request, authorize or require temporary or emergency rendering
28 of service or temporary or emergency abandonment, reduction or impair-
29 ment of service by a pipeline of a lessee [CARRIER] without compliance

1 with secs. 50 - 100 of this chapter. Nothing in this section prevents
2 a lessee [CARRIER] from temporarily suspending operations in the event
3 of an emergency which threatens public health or safety; however,
4 notice shall be given the commissioner as soon as possible. This
5 section does not impose any obligation upon the lessee which could not
6 constitutionally be imposed by a direct exercise of state regulation
7 or any obligation inconsistent with federal or other state law or
8 with regulations or rulings of a federal regulatory agency or the
9 Alaska Pipeline Commission.

10 * Sec. 5. AS 38.35.050 is repealed and re-enacted to read:

11 Sec. 38.35.050. APPLICATIONS FOR RIGHT-OF-WAY LEASES. (a) A
12 person or persons desiring to own a pipeline which is proposed to be
13 located in whole or in part on state land, shall apply for a noncom-
14 petitive right-of-waylease of the state land.

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

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

20 * Sec. 6. AS 38.35.060 is repealed.

21 * Sec. 7. AS 38.35.070 is amended to read:

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

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

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

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

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

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

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

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

9 * Sec. 8. AS 38.35.080 is amended to read:

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

11 (a) The commissioner shall, within a reasonable time after receiving
12 the application or notification, prepare an analysis of the application
13 or of the matter of which he was notified, including a proposal for
14 action if feasible; a proposed lease [OR CERTIFICATE OR BOTH] and a
15 general statement of his basis and purpose, if favorable action is
16 proposed; or, when a proposal for action is not feasible before a
17 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 or a matter of which he was notified under
21 sec. 30 of this chapter, the commissioner shall publish notice, and
22 make copies available as provided in sec. 70 of this chapter.

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

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

28 * Sec. 9. AS 38.35.100 is repealed and re-enacted to read:

29 Sec. 38.35.100. DECISION ON APPLICATION. (a) The commissioner

1 shall promptly determine, on an application filed with him under sec. 50
2 of this chapter whether the applicant is fit, willing and able to
3 perform the transportation or other acts proposed in a manner that will
4 reasonably protect the lives, property and general welfare of the
5 people of Alaska. In making a determination the commissioner shall
6 consider whether or not

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

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

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

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

17 (B) undertake any necessary restoration or revege-
18 tation; and

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

22 (4) the applicant has the financial capability to pay
23 reasonably foreseeable damages for which he may become liable on
24 claims rising from the construction, operation, maintenance or ter-
25 mination of the pipeline.

26 (b) If the commissioner determines that the applicant is not
27 fit, willing, and able to perform the transportation or other proposed
28 acts in a manner that will reasonably protect the lives, property
29 and general welfare of the people of Alaska, the commissioner shall

1 deny the application. If he determines that the applicant is fit,
2 willing, and able to perform, he shall promptly offer the applicant
3 a lease.

4 * Sec. 10. AS 38.35.110 is repealed and re-enacted to read:

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

15 * Sec. 11. AS 38.35.120 is amended to read:

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

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

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

27 (2) IT WILL UNDERTAKE AND COMPLETE OR REGULARLY PERFORM
28 WITHIN OR DURING THE TIME PERIOD AND IN ACCORDANCE WITH THE PROJECT
29 DESCRIPTION CONTAINED IN THE LEASE OR CERTIFICATE, THROUGHOUT THE

1 ENTIRE ROUTE OF THE PIPELINE IN THE STATE, BOTH ON STATE PUBLIC LAND
2 OBTAINED UNDER THE LEASE AND ON OTHER LAND, ANY CONSTRUCTION OR
3 ACQUISITION OR OTHER ACT REQUIRED TO BE PERFORMED IN CONJUNCTION WITH
4 THE LEASE, OR OPERATION OF, OR TRANSPORTATION, SERVICE, OR SALE BY THE
5 PIPELINE IN GOOD FAITH AND IN ACCORDANCE WITH THE LEASE AND CERTI-
6 FICATES, THIS CHAPTER, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAW;]

7 (3) it will perform all of its functions under the lease,
8 as a common carrier; in performing as a common carrier it will accept,
9 convey and transport without discrimination crude oil delivered to it
10 for transportation throughout its route in accordance with applicable
11 statutes and tariffs; the common carrier covenant required by this
12 paragraph does not apply to products lines or to a natural gas pipeline
13 owned or operated by a lessee which is subject to regulation under the
14 Natural Gas Act (52 Stat. 821; 68 Stat. 36) or by a lessee which is
15 subject to regulation by state or political subdivisions with juris-
16 isdiction to regulate the rates and charges for sale of natural gas to
17 consumers in the state [ASSUMES THE STATUS OF AND WILL PERFORM ALL OF
18 ITS FUNCTIONS UNDERTAKEN UNDER THE LEASE AS A COMMON CARRIER AND WILL
19 ACCEPT, CONVEY, AND TRANSPORT ALL CRUDE OIL OR NATURAL GAS, DEPENDING
20 ON THE KIND OF PIPELINE INVOLVED, DELIVERED TO IT FOR TRANSPORTATION
21 FROM FIELDS IN THE VICINITY OF THE PIPELINE SUBJECT TO THE LEASE
22 THROUGHOUT ITS ROUTE BOTH ON STATE PUBLIC LAND OBTAINED UNDER THE
23 LEASE AND ON OTHER LAND; HOWEVER, WHERE THE LESSEE CARRIER OPERATES
24 A NATURAL GAS PIPELINE AND IS SUBJECT BY VIRTUE OF THIS OPERATION TO
25 REGULATION UNDER THE NATURAL GAS ACT OF THE UNITED STATES (52 STAT.
26 821; 68 STAT. 36; 15 U.S.C. 717 ET. SEQ.), IT WILL ASSUME THE STATUS
27 OF AND SHALL PERFORM ALL OF ITS FUNCTIONS UNDERTAKEN UNDER THE LEASE
28 AS A COMMON CARRIER AND SHALL PERFORM ALL OF THE ACTS DESCRIBED IN
29 THIS PARAGRAPH WHEN AT ANY TIME AFTER THE EXECUTION OF THE LEASE THE

1 COMMISSIONER AFTER PUBLIC HEARING DETERMINES THAT ASSUMPTION OF THIS
2 STATUS IS REQUIRED IN ORDER TO SUBSERVE THE PUBLIC INTEREST, CONVENI-
3 ENCE, AND NECESSITY;

4 (4) IT WILL ASSUME THE STATUS OF AND SHALL BE A COMMON
5 PURCHASER OF CRUDE OIL AND NATURAL GAS, DEPENDING UPON THE KIND OF
6 PIPELINE INVOLVED, THAT IS PRODUCED FROM FIELDS IN THE VICINITY OF
7 THE PIPELINE SUBJECT TO THE LEASE AND SHALL PURCHASE CRUDE OIL OR
8 NATURAL GAS THAT IS OFFERED IT WHEN AT ANY TIME AFTER THE EXECUTION
9 OF THE LEASE THE COMMISSIONER AFTER PUBLIC HEARING DETERMINES THAT
10 ASSUMPTION OF THIS STATUS IS REQUIRED IN ORDER TO SUBSERVE THE PUBLIC
11 INTEREST, CONVENIENCE, AND NECESSITY;

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

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

27 (7) it will afford the state a first opportunity to negotiate
28 for the purchase of any interest in the pipeline offered for sale by
29 it on the same terms offered any other potential purchaser, provided

1 that this obligation will not interfere or supersede contract rights
2 or obligations existing among the proposed owners of the pipeline at
3 the time the right-of-way lease is granted [THE LESSEE GRANTS TO THE
4 STATE THE RIGHT TO PURCHASE, UPON REASONABLE NOTICE, AN UNDIVIDED
5 INTEREST IN THE ENTIRE LENGTH OF THE PIPELINE WITHIN THE STATE, NOT
6 TO EXCEED 20 PER CENT; THE PURCHASE PRICE SHALL BE AT A REASONABLE
7 FIGURE SET OUT IN THE LEASE AT THE TIME OF THE LEASE'S EXECUTION;
8 PURCHASE OF THIS INTEREST MAY, AT THE OPTION OF THE STATE, BE MADE
9 IN STAGES; EXERCISE OF AN OPTION TO PURCHASE AN INTEREST IN A PIPE-
10 LINE PROJECT OR FACILITY IS SUBJECT TO THE APPROVAL OF THE LEGISLATURE;
11 THE INCURRING OF ANY BONDED INDEBTEDNESS BY THE STATE TO IMPLEMENT
12 THE EXERCISE OF ITS OPTION UNDER THIS PARAGRAPH IS SUBJECT TO
13 VOTER APPROVAL];

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

19 (9) it will accord at all reasonable times to the state
20 and its authorized agents and auditors the right of access to its
21 property and records, of inspection of its property, and of examination
22 and copying of records;

23 (10) it will provide, where economically feasible [AND
24 CONSISTENT WITH THE PRIMARY FUNCTION OF THE LINE], connections [AND
25 FACILITIES] on the pipeline [SUBJECT TO THE LEASE, BOTH ON STATE LAND
26 AND OTHER LAND IN THE STATE,] for the purpose of delivering crude
27 oil or natural gas, depending upon the kind of pipeline involved,
28 to persons or municipal corporations contracting for the purchase at
29 wholesale of crude oil or natural gas transported by the pipeline

1 [DESIRING TO PURCHASE WHO ARE LOCATED IN MUNICIPALITIES IN THE
2 VICINITY OF THE PIPELINE];

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

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

7 (B) exercise the highest degree of care in using the
8 leasehold and operating the pipeline [TO PREVENT A PIPELINE
9 INCIDENT];

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

12 (D) promptly compensate for or remedy any damage to
13 or destruction of public or private property resulting from
14 damage to or destruction of the leasehold or pipeline regardless
15 of fault, notwithstanding the limitations of AS 46.03.822(1)(B),
16 (C) and (D), and 46.03.822(2);

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

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

1 lieutenant governor and by mailing a copy to lessee's last known
2 address;

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

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

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

16 (17) it will not interfere with construction and operation
17 of any oil or gas pipeline authorized by the commissioner for location
18 on the right-of-way, subject to compensation of the prior lessee by
19 the subsequent lessee for any damage to or interference with the
20 operation of the prior pipeline caused by construction of the subse-
21 quent pipeline.

22 (b) The lease will also contain terms and conditions that are
23 reasonably necessary to obligate the lessee, to the extent reasonably
24 practicable, to

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

27 (2) protect state and private property interests;

28 (3) prevent any significant adverse environmental impact,
29 including but not limited to the erosion of the surface of the land,

1 and damage to fish and wildlife and their habitat;

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

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

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

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

15 * Sec. 12. AS 38.35.130 is amended to read:

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

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

24 (2) THE STATE RESERVES TO ITSELF AND THE LESSEE GRANTS TO
25 THE STATE THE SOLE RIGHT TO CONDEMN, BY DECLARATION OF TAKING, REAL
26 PROPERTY FOR RIGHT-OF-WAY PURPOSES AND TO ACQUIRE TO THE EXTENT
27 FEDERALLY PERMISSIBLE LEASES OF OR EASEMENTS OR RIGHTS-OF-WAY ON
28 PUBLIC LANDS BELONGING TO THE UNITED STATES IN THIS STATE, INCLUDING
29 "WITHDRAWN PUBLIC LANDS" AS THAT TERM IS DEFINED IN SECS. 3(e), 17(c)

1 AND (d)(3), AND 22(1) OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT
2 (PL 92-203; 85 STAT. 688; 43 U.S.C. 1601 ET SEQ.), REQUIRED FOR RIGHT-
3 OF- WAY PURPOSES FOR THE PIPELINE SUBJECT TO THE LEASE;

4 (3) THE CARRIER WILL], if the commissioner delegates the
5 function to it, condemn, by declaration of taking, under AS 09.55.420 -
6 09.55.450, real property and acquire leases of or easements or rights-
7 of-way on [PUBLIC] lands in this state [BELONGING TO THE UNITED STATES,
8 INCLUDING "WITHDRAWN PUBLIC LANDS"] required for right-of-way purposes
9 for a [THE] pipeline subject to the lease on behalf of and as agent
10 for the state in which title to or interest in the land shall vest.

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

15 * Sec. 13. AS 38.35.140 is repealed and re-enacted to read:

16 Sec. 38.35.140. PAYMENT OF RENTAL AND COSTS. (a) The lease
17 price for a right-of-way lease shall be the annual fair market
18 rental of the state lands included in the right-of-way based on the
19 appraised fair market value of the land. The lease price is payable
20 annually in advance on or before the anniversary of the lease. The
21 appraised fair market rental value shall be adjusted periodically under
22 the 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. 14. AS 38.35.150(b) and (c) are repealed.

27 * Sec. 15. 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

1 of 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 [PUBLIC]
3 land or other land in the state, either voluntarily or involuntarily,
4 directly or indirectly, or by transfer of control of any corporation
5 holding the lease [OR CERTIFICATE OR OWNING THE PIPELINE,] to any
6 person other than another owner of the pipeline (including subsidiaries,
7 parents and affiliates of the owners), except to the extent that the
8 commissioner, after consideration whether the proposed transferee is
9 fit, willing and able to perform the transportation or other acts
10 proposed in a manner that will reasonably protect the lives, property
11 and general welfare of the people of Alaska, [OF THE PUBLIC INTEREST,
12 CONVENIENCE, AND NECESSITY,] by order authorizes the transfer. The
13 commissioner shall not unreasonably withhold this authorization. The
14 application shall be disposed of as if the proposed transferee or
15 assignee were making application under secs. 50 - 100 of this chapter.

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

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

1 alleged default.

2 * Sec. 17. AS 38.35.180 is repealed and re-enacted to read:

3 Sec. 38.35.180. INJUNCTIONS. When in the judgment of the
4 commissioner a person has violated or is about to violate a provision
5 of this chapter or covenant, term or condition of a lease, the
6 attorney general, on advice of the commissioner, may seek a
7 prohibition or mandatory injunction from the superior court to remedy
8 the violation.

9 * Sec. 18. AS 38.35.190(c) and (d), AS 38.35.200 and 38.35.220(d) are
10 repealed.

11 * Sec. 19. AS 38.35 is amended by adding a new section to read:

12 Sec. 38.35.225. JUDICIAL REVIEW OF DECISIONS OF COMMISSIONER ON
13 APPLICATION. (a) An applicant or competing applicant or a person
14 who raises objections within 30 days after decision following the
15 hearing or notice under sec. 80 of this chapter are the only persons
16 with standing to seek judicial review of a decision of the commissioner
17 under sec. 100 of this chapter.

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

20 (1) failure to follow the procedures set out in this
21 chapter; or

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

24 * Sec. 20. AS 38.35.230 is repealed and re-enacted to read:

25 Sec. 38.35.230. DEFINITIONS. In this chapter

26 (1) "commissioner" means the commissioner of natural
27 resources;

28 (2) "lease" means the instrument or extension of an instru-
29 ment issued under this chapter granting a leasehold interest in state

1 land for pipeline right-of-way purposes to a person and authorizing
2 the construction or operation of, or transportation, service or sale
3 by a pipeline for crude oil, natural gas, or products;

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

6 (4) "oil" includes crude petroleum oil and other hydrocarbons
7 regardless of gravity which are produced at the wellhead in liquid
8 form and the liquid hydrocarbons known as distillate or condensate
9 recovered or extracted from gas, other than gas produced in associa-
10 tion with oil and commonly known as casinghead gas;

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

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

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

3 (7) "state land" means

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

5 (B) public land of the United States selected by the
6 state under sec. 6 of the Alaska Statehood Act of 1958 (PL 85-508;
7 72 Stat. 399), as amended, and real property of the United States
8 transferred to the state under secs. 21, 35 and 45 of the Alaska
9 Omnibus Act of 1959 (PL 86 - 70; 73 Stat. 141), as amended;

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

22 * Sec. 21. AS 09.55.240(a)(12) is amended to read:

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

29 * Sec. 22. AS 38.05.020(c)(1) is amended to read:

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

3 * Sec. 23. AS 38.05.020(c)(2) is amended to read:

4 (2) leasing, purchasing, or otherwise acquiring (including
5 condemning by declaration of taking), easements or other interests in
6 [ON PRIVATE OR FEDERAL] land in this state for the purpose of utilizing
7 or granting leases of the land, easements or interests for pipeline
8 right-of-way purposes;

9 * Sec. 24. AS 38.05.020(c)(4) is amended to read:

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

14 * Sec. 25. AS 38.05.330 is amended to read:

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

1 which is seaward of the upland property of the upland owner and which
2 is needed by the upland owner for any of the purposes for which the use
3 may be granted.

4 * Sec. 26. The commissioner of natural resources shall submit to the
5 Second Session of the Eighth Legislature not later than March 1, 1974 a full
6 report covering all lands conveyed under provisions of AS 38.05.063 and
7 38.05.076. The report shall contain a description of all parcels conveyed
8 under the Act including acreage (to include a detailed plat of each parcel),
9 land classification, appraised value, lease or sale value, proposed land
10 useage, and any other information the commissioner may feel necessary to an
11 understanding of the particular disposal.

12 * Sec. 27. AS 38.05.063 and 38.05.076 are repealed effective March 1,
13 1974.

14 * Sec. 28. This Act takes effect on the day after its passage and approval
15 or on the day it becomes law without approval.
16
17
18
19
20
21
22
23
24
25
26
27
28
29