

Original sponsor: Coghill

1 IN THE SENATE BY THE RESOURCES COMMITTEE  
2 CS FOR SENATE BILL NO. 108 (Resources)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - FIRST SESSION  
5 A BILL  
6 For an Act entitled: "An Act relating to decisions of the commissioner of  
7 natural resources regarding the eligibility of an  
8 applicant for a pipeline right-of-way permit."  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
10 \* Section 1. AS 38.35.100 is amended to read:  
11 Sec. 38.35.100. DECISION ON APPLICATION. (a) The commissioner  
12 shall promptly determine, on an application filed under AS 38.35.050,  
13 whether the applicant is fit, willing, and able to perform the trans-  
14 portation or other acts proposed in a manner that will be required by  
15 the present or future public interest. In making a determination the  
16 commissioner shall consider whether or not  
17 (1) the proposed use of the right-of-way will unreasonably  
18 conflict with existing uses of the land involving a superior public  
19 interest;  
20 (2) the applicant has the technical and financial capabil-  
21 ity to protect state and private property interests;  
22 (3) the applicant has the technical and financial capabil-  
23 ity to take action to the extent reasonably practical to  
24 (A) prevent any significant adverse environmental  
25 impact, including but not limited to, erosion of the surface of  
26 the land and damage to fish and wildlife and their habitat;  
27 (B) undertake any necessary restoration or revegeta-  
28 tion; and  
29 (C) protect the interests of individuals living in the

1           general area of the right-of-way who rely on fish, wildlife, and  
2           biotic resources of the area for subsistence purposes;

3           (4) the applicant has the financial capability to pay  
4           reasonably foreseeable damages for which the applicant may become  
5           liable on claims arising from the construction, operation, mainte-  
6           nance, or termination of the pipeline;

7           (5) the applicant has agreed that in the construction and  
8           operation of a pipeline within the right-of-way the applicant will  
9           comply with and require contractors and their subcontractors to comply  
10           with applicable and valid laws and regulations regarding the hiring of  
11           residents of the state then in effect or that take effect subsequent-  
12           ly.

13           (b) If the commissioner makes the [THESE] determinations under  
14           (a) of this section favorably to the applicant, then the commissioner  
15           may grant the whole or part of the application. If the commissioner  
16           makes the determinations under (a)(1) - (5) of this section favorably  
17           to the applicant but determines that the applicant is not then fit,  
18           willing, and able to perform under the application, the commissioner  
19           may grant the application subject to conditions established by the  
20           commissioner that will ensure that the applicant will, within a pre-  
21           scribed period of time not exceeding 10 years, establish that the  
22           applicant is fit, willing, and able, under (a) of this section, to  
23           perform the transportation or other acts that will be required by the  
24           present or future public interest. An applicant is not entitled to a  
25           notice or authorization to proceed to construction, or its equivalent,  
26           under a conditional lease until the commissioner determines in writing  
27           that the applicant has satisfactorily established that the applicant  
28           is then fit, willing, and able to perform under (a) of this section.  
29           Otherwise, the commissioner shall deny the application.

1           (c) The commissioner may offer the applicant a lease under this  
2           section. If the applicant does not accept a lease offered under this  
3           section within 30 days, the lease offered is withdrawn [IN ORDER TO  
4           GRANT THE WHOLE OR PART OF THE APPLICATION THE COMMISSIONER SHALL  
5           OFFER A LEASE TO THE APPLICANT FOR ITS ACCEPTANCE THROUGH SIGNING OF  
6           THE LEASE AND AGREEING TO COMPLY WITH ITS TERMS, CONDITIONS, AND  
7           OBLIGATIONS. ONLY UPON PROPER ACCEPTANCE OF OFFERED LEASE BY THE  
8           APPLICANT WITHIN 30 DAYS AFTER ITS HAVING BEEN PRESENTED IS THE GRANT  
9           OF THE APPLICATION CONSUMMATED].

10       \* Sec. 2. AS 38.35.100 is amended by adding new subsections to read:

11           (d) The commissioner shall include in a conditional lease each  
12           requirement and condition of the covenants established under AS 38.-  
13           35.120. The commissioner may also require that the lessee agree to  
14           additional conditions that the commissioner finds to be in the public  
15           interest. In place of the covenant established under AS 38.35.-  
16           120(a)(9), the commissioner shall require the lessee to agree that it  
17           will not transfer, assign, pledge, or dispose of in any manner, di-  
18           rectly or indirectly, its interest in a conditional right-of-way lease  
19           or a pipeline subject to the conditional lease, unless the commis-  
20           sioner, after considering the public interest, authorizes the trans-  
21           fer. The commissioner shall also require the lessee to agree not to  
22           allow the transfer of control of the lessee without the approval of  
23           the commissioner; as used in this subsection, "transfer of control of  
24           the lessee" means the transfer of 30 percent or more, in the aggre-  
25           gate, of ownership interest in the lessee in one or more transactions  
26           to one or more persons by one or more persons.

27           (e) The commissioner shall require a conditional lessee to agree  
28           that

29           (1) in the absence of the approval of the commissioner, a

1 transfer may not relieve the lessee of an obligation assumed under the  
2 lease;

3 (2) a transfer, including the transfer of lessee, that  
4 occurs without the approval of the commissioner is ineffective to  
5 transfer interests in and obligations under the lease; and

6 (3) a transfer constitutes a default under the lease.

7 (f) In an application for the approval under (d) of this section  
8 of a transfer of an interest, the commissioner shall consider whether  
9 the proposed transferee will be fit, willing, and able to perform the  
10 transportation or other acts proposed under the conditions established  
11 in the conditional lease and whether the transfer is in the public  
12 interest. In approving the transfer of an interest under (d) of this  
13 section and this subsection, the commissioner may impose any condition  
14 on the transfer that the commissioner considers in the public inter-  
15 est.

16 (g) If the commissioner determines under (a) of this section  
17 that the applicant is fit, willing, and able to perform the transpor-  
18 tation or other acts proposed in a manner that will be required by the  
19 present or future public interest, the commissioner may amend the  
20 conditional right-of-way lease to insert the covenant established in  
21 AS 38.35.120(a)(9) in place of the covenant against a transfer estab-  
22 lished under (d) and (e) of this section.

23 (h) The issuance of a conditional lease does not prevent the  
24 commissioner from issuing other conditional or unconditional leases  
25 for the same right-of-way. An applicant or conditional lessee accrues  
26 no priority rights to a particular right-of-way until the commissioner  
27 makes a determination that the applicant or conditional lessee is then  
28 fit, willing, and able to perform the transportation or other acts  
29 proposed under (a) of this section.

1           (i) The commissioner shall insert a provision implementing the  
2 requirements of (a)(5) of this section into each agreement entered  
3 into by the commissioner for the construction and operation of a  
4 pipeline within the state.