

Original sponsor: Coghill

1 IN THE SENATE BY THE LABOR AND COMMERCE COMMITTEE
2 HOUSE CS FOR CS FOR SENATE BILL NO. 108 (L&C)
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, in a written finding, on an application
13 filed under AS 38.35.050, whether the applicant is fit, willing, and
14 able to perform the transportation or other acts proposed in a manner
15 that will be required by the present or future public interest. In
16 making a determination the 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
10 comply with, applicable and valid laws and regulations regarding the
11 hiring of residents of the state then in effect or that take effect
12 subsequently.

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 under a conditional lease subject to con-
20 ditions established by the commissioner that will ensure that the
21 applicant will, within a prescribed period of time not exceeding 10
22 years, establish that the applicant is fit, willing, and able, under
23 (a) of this section, to perform the transportation or other acts that
24 will be required by the present or future public interest. An appli-
25 cant is not entitled to a notice or authorization to proceed to con-
26 struction, or its equivalent, under a conditional lease until the
27 commissioner determines in writing that the applicant has satisfac-
28 torily established that the applicant is then fit, willing, and able
29 to perform under (a) of this section. Otherwise, the commissioner

1 shall deny the application.

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5 withdrawn [IN ORDER TO GRANT THE WHOLE OR PART OF THE APPLICATION THE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

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

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

29 (e) The commissioner shall require a conditional lessee to agree

1 that

2 (1) in the absence of the approval of the commissioner, a
3 transfer may not relieve the lessee of an obligation assumed under the
4 lease;

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

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

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

18 (g) If, during the term of a conditional lease, the commissioner
19 determines under (a) of this section that the applicant is fit, will-
20 ing, and able to perform the transportation or other acts proposed in
21 a manner that will be required by the present or future public inter-
22 est, the commissioner may amend the conditional right-of-way lease to
23 insert the covenant established in AS 38.35.120(a)(9) in place of the
24 covenant against a transfer established under (d) and (e) of this
25 section.

26 (h) The issuance of a conditional lease does not prevent the
27 commissioner from issuing other conditional or unconditional leases
28 for the same right-of-way. A conditional lease may be revoked at any
29 time that the commissioner determines that the applicant or

1 conditional lessee will not be fit, willing, and able to perform
2 during the term of the lease or when another applicant or conditional
3 lessee is determined to be fit, willing, and able to perform under an
4 application or lease for all or part of the right-of-way. An appli-
5 cant or conditional lessee accrues no rights, including preference or
6 priority rights, to a particular right-of-way until the commissioner
7 makes a determination that the applicant or conditional lessee is then
8 fit, willing, and able to perform the transportation or other acts
9 proposed under (a) of this section.

10 (i) The commissioner shall insert a provision implementing the
11 requirements of (a)(5) of this section into each agreement entered
12 into by the commissioner for the construction and operation of a
13 pipeline within the state.