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108

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 (1) 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.  
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# HOUSE COMMITTEE REPORT

(7)

Date referred: 5/13/87

FURTHER REFERRALS: Finance

DATE: 5/14/87  
CSSB 108(Res)

The Labor. & Commerce Committee has considered

"An Act relating to decisions of the commissioner of natural resources regarding the eligibility of an applicant for a pipeline right-of-right permit."

**RECOMMENDS:**

- replace with HCS CS SB 108(4c)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

**SIGNING OTHER RECOMMENDATIONS:**

\_\_\_\_\_

Cliff Davidson

W. Furrace

Mike Kozan

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

David Duley NOREC

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David Duley  
Chairman's signature

# HOUSE COMMITTEE REPORT

5/13  
Labor & Commerce

(9)

5/11/87

Date referred:

FURTHER REFERRALS:

Finance

(L&C added 5/12)

DATE: \_\_\_\_\_

The Resources Committee has considered CSSB 108 (Res)

"An Act relating to decisions of the commissioner of natural resources regarding the eligibility of an applicant for a pipeline right-of-way permit."

### RECOMMENDS:

- replace with \_\_\_\_\_  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

### ATTACHES NEW FISCAL NOTE(S):

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

### SIGNING DO PASS:

### SIGNING OTHER RECOMMENDATIONS:

Tom Hoffa  
Gene Vance  
Kevin Spry  
Cliff Davidson  
Mike Favano  
Dick Stutz  
Jan Cote

Adelheid Herrmann No Rec.

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

Jan Cote

Chairman's signature

# STATE OF ALASKA



SENATE

Letter of Intent

CSSB 108(RES)

The Judiciary committee, in considering SB-108, was made aware by a principal proponent of the bill (Yukon-Pacific Corporation) that in the corporation's project description and its scopeing document, it has signified its intention to encourage local hire at all "TAGS" facilities; to provide training for operation and maintenance personnel; to comply with State and Federal standards which are applicable or which will become applicable for the Alaska labor market and to use qualified Alaska labor in construction.

The committee welcomes these assurances. It is intended that in the administration of this chapter, the commissioner will encourage the utilization of qualified Alaska workers to the maximum possible extent.

Adopted May 9, 1987.

HOUSE RESOURCES COMMITTEE AMENDMENT TO CSSB 108 (Res)  
Adopted May 12, 1987

AMENDMENT ONE

To establish requirements for written findings related to conditional uses:

1. p. 1, line 12, after "determine,", insert:

in a written finding

2. p. 3, line 20, after "interest", insert:

and issuing written findings to substantiate a decision to allow the transfer

HOUSE RESOURCES COMMITTEE AMENDMENT TO CSSB 108 (Res)  
Adopted May 12, 1987

AMENDMENT TWO

To clarify some distinctions between conditional and regular leases:

1. p. 2, line 19, after "application", insert:

under a conditional lease

2. p. 3, line 1, after "lease", insert:

or a conditional lease

3. p. 4, line 16, after "If", insert:

during the term of a conditional lease

HOUSE RESOURCES COMMITTEE AMENDMENT TO CSSB 108 (Res)  
Adopted May 12, 1987

AMENDMENT THREE

To clarify that the conditional lease is revocable and carries no preference or priority rights

1. p. 4, line 25, after "right-of-way.", insert:

A conditional lease may be revoked at any time that the commissioner determines that the applicant or conditional lessee will not be fit, willing, and able to perform during the term of the lease or when another applicant or conditional lessee is determined to be fit, willing, and able to perform under an application or lease for all or part of the right-of-way.

2. p. 4, line 26, delete "priority" and insert after "rights":

, including preference or priority rights,

February 16, 1987

The Honorable Lloyd Jones  
Chairman  
Senate Transportation Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99801

Dear Senator Jones:

Subject: Senate Bill 108, relating to decisions on right-of-way lease applications.

Position: The Department of Natural Resource supports the amendment to the oil and gas pipeline right-of-way leasing statute (AS 38.35.100(b)) described in this bill.

Background: Senate Bill 108 would allow the commissioner to issue a conditional pipeline right-of-way lease even if the applicant is not presently "fit, willing and able."

The existing "fit, willing and able" standard requires the applicant to be nearly ready to begin construction before a right-of-way lease can be issued. In other words, financing has to be reasonably assured, gas sale contracts and markets in place, and construction designs substantially completed.

The commissioner currently has only one alternative to finding an applicant "fit, willing and able," and that is to deny the application. This bill would provide the commissioner with an additional alternative; the ability to issue a conditional right-of-way lease, subject to conditions that ensure the applicant will become "fit, willing and able."

This bill would have a positive effect on the economic development of pipeline projects in Alaska and would not reduce the "fit, willing and able" standards an applicant would be required to meet prior to actual construction of a pipeline.

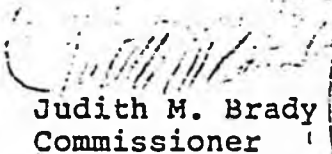
The Honorable Lloyd Jones -2-

February 16, 1987

Recommendation: To ensure that the applicant is required to become "fit, willing and able" within a reasonable period of time, add the words "within a prescribed amount of time" to line 15, after the word able.

Please let me know if you would like additional information.

Sincerely,



Judith M. Brady  
Commissioner

cc: Committee members.  
Governor's Legislative Liaison

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

REQUEST: \_\_\_\_\_

Bill Version: SB 108

Publish Date: \_\_\_\_\_

Revision Date: February 16, 1987

Agency Affected: Natural Resources

Title: Right-of-way Lease Decisions

BRU: Land and Water Management

Sponsor: Senator Cochill

Components: \_\_\_\_\_

Requestor: Senate Transportation

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	0	0	0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Carol J. Wilson Phone: 465-2400  
 Division: Commissioner's Office Date: 2/16/87

Approved by Commissioner: *Walt Cochill* Date: 2/16/87  
 Agency: Natural Resources

- Distribution (by preparer):
- Legislative Finance
  - Legislative Sponsor
  - Requestor
  - Office of Management and Budget
  - Impacted Agency(ies)
  - Senate Secretary

# STATE OF ALASKA

SB108

STEVE COWPER, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400

March 26, 1987

The Honorable Jay Kerttula  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Senator Kerttula:

The purpose of this letter is to provide an explanation of how the proposed change in the right-of-way leasing statute (SB 108) will affect the processing of oil and gas pipeline applications.

Under the existing statute, before an application is accepted by the department, it must be complete. That is, it must contain any and all data, information, plans, and exhibits deemed necessary by the commissioner to accomplish the pre-public hearing analysis, and the final decision to issue or deny, which follows the public hearing. A major element of the final decision is the commissioner's determination that the applicant is "fit, willing, and able" to perform in a manner consistent with the public interest.

The "fit, willing, and able" determination is an in-depth analysis of the applicant's financial and technical capability to perform as expected. Some considerations addressed under the "fit, willing, and able" standard include:

1. The status of financing arrangements;
2. Whether there will be oil or gas sales contracts dedicated in sufficient quantities to support the project; and
3. Whether the extent of preparation shows that this applicant can build the project as planned.

If the commissioner decides favorably for the applicant with regards to the "fit; willing, and able" determination, a right-of-way lease can then be offered. However, a negative determination results in an outright denial.

The proposed statutory amendment (SB 108) would provide an additional option by allowing the commissioner to issue a conditional right-of-way lease. What follows is the state's understanding of how the adjudication process will work with the passage of SB 108.

Project review, adjudication, and monitoring will take place in five stages. Those stages are:

1. Pre-application, application, and conditional right-of-way issuance.
2. Preconstruction (including field programs).
3. Construction (including rehabilitation).
4. Maintenance and operations monitoring.
5. Abandonment.

Stage 1 is characterized by the identification of issues, scoping, and development of work programs. A great deal of time is devoted to coordination with federal, state, and local government agencies to develop a consistent approach to the development of lease language, the administration of lands within the corridor, and a joint monitoring and surveillance program. Examples of Stage 1 tasks are presented below:

1. Identification of key technical personnel needed to resolve resource related issues. Included is the development of agency budget needs for Stages 2 and 3 of the project.
2. Development of a State Administrative Order to establish the roles of the participating state agencies, and their relationship to each other, and to establish appropriate authority.
3. Expedited resolution of general route issues.
4. Extensive coordination with the appropriate federal agencies to develop the following:
  - (a) Consistent language (terms and conditions) between the state right-of-way lease and the federal right-of-way grant.
  - (b) A joint agreement on the administration of lands along the pipeline corridor; and

- (c) A joint monitoring and surveillance agreement to cover the entire life of the pipeline project.
5. Expedited review and comment on the draft and final environmental impact statements, the Corps of Engineers Section 10/404 permits, and coastal zone consistency determinations on various aspects of the project.
  6. Development of list of issues and concerns that must be resolved prior to issuance of the Authorization to Construct. Included are the procedures necessary to implement the program. This work essentially sets the work plan for Stage 2.
  7. Identification of special technical studies that must be completed prior to final design approval. Such studies include, but are not limited to, stream crossings, cold or hot pipe effects on surface or subsurface waters, air and water quality monitoring, and pipeline integrity.
  8. Review the permitting strategy provided by the applicant. This information is incorporated in the lease terms and conditions and used as milestones to be accomplished prior to issuance of Authorization to Proceed.
  9. Establish a conceptual agreement with the applicant about facilities use, maintenance, and repair. This agreement forms the basis for reimbursement to the state for repair or reconstruction of roads, airports, or other state facilities.
  10. Establish procedures for preventing conflicts between existing and proposed facilities, including but not limited to, ANGTS, TAPS, and state highways.

To protect the various state interests, the lease would be conditioned in such a way that the commissioner's "fit, willing, and able" determination would be made during Stage 2. In any case, the determination will be made prior to the issuance of the Authorization to Construct. A process and schedule will be established through the terms and conditions to establish explicit deadlines for resolving issues and making the necessary determination. The overall intent is to ensure that issues are resolved well in advance of actual construction.

Stage 2 involves a high level of involvement of agency personnel. Depending on the size and scope of the project it is appropriate to consider establishing a State Pipeline

March 26, 1987

Office. This office would be staffed by personnel from participating state agencies having the responsibility to collect data (fish and wildlife, habitat, air and water quality, geotechnical, hydrological, etc.) necessary for final design approval, and will authorize the beginning of construction. Baseline studies will be conducted, and review of design concepts, criteria, and specifications will be conducted.

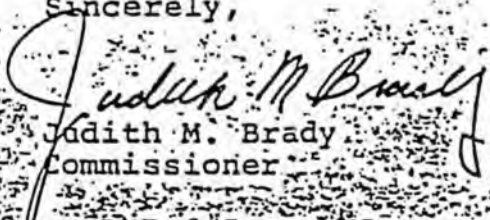
Stage 2 will culminate with the commissioner's "fit, willing, and able" determination, and the issuance of the Authorization to Construct.

Stages 3, 4, and 5 will proceed normally, unaffected by the statutory change represented in SB 108.

Under AS 38.35.140(b) the lessee is obligated to "reimburse the state for all reasonable costs incurred in processing an application filed under AS 38.35.050 and in monitoring the construction of the pipeline on the right-of-way." Accordingly, state agencies such as the Alaska Departments of Law, Natural Resources, Fish and Game, Environmental Conservation, and Transportation and Public Facilities expect to enter into a reimbursement agreement with any applicant. A reimbursable services agreement shall include, but not be limited to, pre and post application stages, pre-construction and construction, and maintenance and operation monitoring. Pre and post application activities include inter-agency negotiations and review of relevant documents. Agencies may require the lessee to provide direct services, such as transportation and lodging, in lieu of reimbursement.

The Department of Natural Resources supports SB 108. Passage of the bill into law will likely result in an increase in applications for pipeline rights-of-way and a corresponding work load. I believe it is in the state's interest to do so as it introduces a higher level of consistency to the department's adjudication process, encourages the participation of smaller companies while not discouraging participation of larger ones, and provides protection against speculation by incorporating terms and conditions requiring performance standards, which if not met, could void the lease.

Sincerely,

  
Judith M. Brady  
Commissioner

cc: Rod Swope, Governor's Office  
George Sullivan, Governor's Office