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STATE OF ALASKA



SENATE

Letter of Intent

CSSE 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.

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.

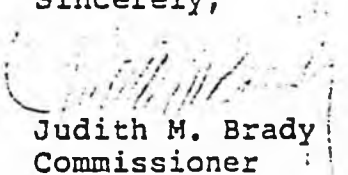
The Honorable Lloyd Jones -2-

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: State 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						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Carol J. Wilson
Division: Commissioner's Office

Phone: 465-2400
Date: 2/16/87

Approved by Commissioner: *Walter R. Bredt*
Agency: Natural Resources

Date: 2/16/87

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

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

SB108
STEVE COWPER, GOVERNOR

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.

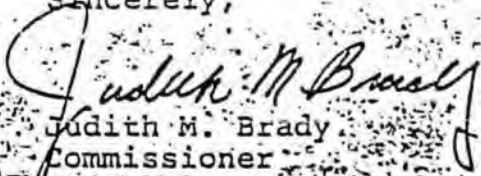
Stage 2 will culminate with the commissioner's "fit, willing, and able" determination, and the issuance of the Authorization to Construct.

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 application 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

AMENDMENT

from
NW Pipeline

TO: CS for SENATE BILL NO. 108 (Resources)

Page 2, lines 16 and 17, after "section":

Delete: (favorably to the applicant)

Page 2, line 16, after "section":

Insert: that the applicant can be reasonably expected in
the future to be fit, willing, and able to perform
under the application,

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 findings to substantiate a decision to
allow the transfer

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

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 will not be fit, willing, and able to perform during the term of the lease or when an unconditional lease is issued 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.

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:

(ard issuing ^{written} findings to substantiate a decision to
allow the transfer)

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during the term of a conditional lease

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 [an unconditional lease] is issued 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.

1
OC ✓)
10

when another applicant
or conditional lessee
is determined to be F.W.
to prefer under an
applicant or lease,

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 ^{and} 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, ^{issues findings} 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 ^{denying them} 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.

incl pref or priority

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.

or a conditional lease

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 ^{conditional} 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, ^{and issuing findings to substantiate a} authorizes the trans-
21 fer. The commissioner shall also require ^(conditional) 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

*amended
app i
transfer
pipeline?*

*decision to
allow the
transfer.*

Sam - The amendment of (h) as below would clarify that the conditional lease is revocable and that it gives no preference or priority.

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.

insert the term of conditional lease

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 ^{and issue a lease for the right-of-way in accordance w/ AS 38.35.1}

23 (h) The issuance of a conditional lease does not prevent the
24 commissioner from issuing other conditional or unconditional leases ^{may be revocable}
25 for the same right-of-way. ~~A conditional lease is revocable at any time that the commissioner determines that the applicant or conditional lessee accrues~~
26 no ~~priority~~ ^{including preference or 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.

then ^{the commissioner determines that the applicant is fit, willing and able during the term of the lease or when another lease is issued for all or part of the right-of-way.}

