

SB

108

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.  
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SENATE COMMITTEE REPORT

FURTHER: FINANCE

DATE TURNED INTO OFFICE \_\_\_\_\_

Mr. President:

RESOURCES \_\_\_\_\_ Committee considered SB 108

relating to decisions on right-of-way lease applications.

and recommended:

replace with CS FOR SB 108 (Res) )  same title  
 or adopt \_\_\_\_\_ CS FOR \_\_\_\_\_ )  new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

letter of intent adopted \_\_\_\_\_

Committee  attached or  adopted fiscal note(s)

new  updated or  previous

zero  fiscal impact

MEMBERS SIGNING DO PASS

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

OTHER RECOMMENDATIONS

[Signature] - no Rec  
[Signature] - no Rec \*  
[Signature] - no Rec  
\* suggested Judiciary version

[Signature]  
Chairman signature and recommendation

Committee Backup Attached

# STATE OF ALASKA



## SENATE JUDICIARY COMMITTEE

4/14/87

SEN. JAY KERTTULA  
SEN. ARLISS STURGULEWSKI  
SEN. RICK HALFORD  
SEN. JOE JOSEPHSON  
SEN. PAT RODEY

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(907) 465-3771

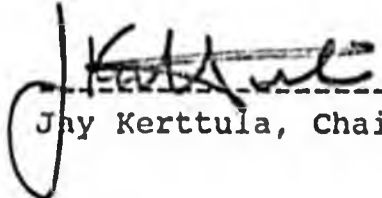
CSSB 108 (Judiciary)

Letter of Intent

*Bob Reference*

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 scoping 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.

  
-----  
Jay Kerttula, Chair Senate Judiciary

Senator John B. (Jack) Coghill  
Alaska State Legislature



Box V  
Juneau, Alaska 99811  
(907) 465-4797

Box 55028  
North Pole, Alaska 99705  
(907) 488-0802

MEMORANDUM

To: All Members of the Senate

From: Senator John B. Coghill

Re: 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."

Presently under AS 38.35.100 (b), the Commissioner of DNR must make the determination that the applicant is "fit, willing and able to perform the transportation" prior to issuance of a right-of-way lease permit.

Past interpretation of this standard has meant that any applicant must have the financial capability to go forth with the project which would utilize the right-of-way.

In today's world a right-of-way permit has a value all its own when negotiating financing. To make financing a condition of the ROW lease application hampers a project's chances of becoming a financial reality.

This bill amends the Right-of-Way Leasing Act so that the Commissioner can condition a grant of right-of-way so that the applicant can receive the right-of-way but must demonstrate that it is "fit, willing and able" prior to being allowed to start construction on that right-of-way.

The current standard of "fit, willing and able" is not circumvented but the finding is postponed to a later phase in the process.

This legislation applies to all right-of-way applicants equally and allows those who have been seeking a permit to benefit from these provisions.

I believe it is important in these times to allow modifications in our statutes that assist industry in the real world, without lifting our standards.

A sectional analysis is attached.

Senator John B. (Jack) Coghill  
Alaska State Legislature

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Juneau, Alaska 99811  
(907) 465-4931

Box 55028  
North Pole, Alaska 99705  
(907) 488-0862



March 23, 1987

MEMORANDUM

To: Members of the Senate  
Committee on the Judiciary

From: Senator John B. Coghill

Re: SB 108, "Decisions on ROW Lease Applications"

Presently under AS 38.35.100(b), the Commissioner of DNR must make the determination that the applicant is "fit, willing and able to perform the transportation" prior to issuing a right-of-way lease.

Past interpretation of this standard has meant that any applicant must have the financial capability to go forth with the project which would utilize the right-of-way.

In today's world a right-of-way permit has a value all its own when negotiating financing. To make financing a condition of the ROW lease application hampers a project's chances of becoming a financial reality.

This bill amends the Right-of-Way Leasing Act so that the Commissioner can condition a grant of right-of-way so that the applicant can receive the right-of-way but must demonstrate that it is "fit, willing and able" prior to being allowed to start construction on that right-of-way.

The current standard of "fit, willing and able" is not circumvented but the finding is postponed to a later phase in the process.

This legislation applies to all right-of-way applicants equally and allows those who have been seeking a permit to benefit from these provisions. Invested time, effort and financial input can now show results instead of stagnation.

I believe it is important in these times to allow modifications in our statutes that assist industry in the real world, without lifting our standards.

# STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

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

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

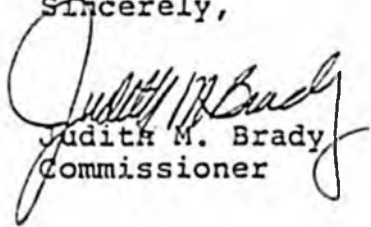
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February 16, 1987

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						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE						
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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

Phone: 465-2400

Division: Commissioner's Office

Date: 2/16/87

Approved by Commissioner: *Walter M. B...*

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

# MMS plans to revamp gas royalty valuation regs

The U.S. Minerals Management Service has proposed revised royalty valuation regulations for natural gas production from federal and Indian land.

The regulations are similar to those MMS recently issued for crude oil and coal production (OGJ, Feb. 2, p. 16). The gas valuation rules will be issued in final form about Aug. 15.

The proposed rules generally declare royalty values to be equal to the "gross proceeds" the lessee receives for production under a contract signed as a result of arm's length bargaining.

**What's proposed.** Royalties will be due on gas avoidably lost or wasted but not gas used in lease equipment on unitized leases.

Royalties also will be required on all residue gas and gas plant products resulting from processed gas, less a processing allowance determined by MMS.

MMS will allow royalty free use of a

reasonable volume of residue gas for operation of the processing plant.

A deduction will be allowed for transportation costs but will be limited to half the value of the transported gas unless the lessee submits data to MMS that shows a higher allowance is warranted.

The rules require that processing costs be allocated among all gas plant products and a processing allowance determined for each product. MMS will limit that allowance to 66.6% of the value of each gas plant product at the tailgate of the plant, although greater allowances can be approved if warranted.

MMS will not require lessees to obtain prior approval before using a valuation basis or allowance, but the methods will be subject to review and audit.

It acknowledged the high costs of some offshore operations and exten-

sive facilities needed to process deep, sour gas.

MMS asked for comments on whether final regulations should provide that unusual or unconventional production costs be allowed as a deduction in determining royalty values regardless of whether those costs are incurred on or off the lease.

**Definitions.** The agency defined arm's length contracts as those between nonaffiliated entities. It will consider two parties affiliated if one owns an interest in the other.

If a product is not sold under an arm's length contract, MMS will set royalty values by comparing the production with gross proceeds from other production in another field.

Gross proceeds will be defined as money paid to the lessee or money the lessee is entitled to receive, including take or pay payments and reimbursements.

## Canadian Arctic gas line seen a decade away

Plans are still alive for a Canadian Arctic gas pipeline, but it likely won't be in place for more than a decade, says Esso Resources Canada Ltd.

The company believes the earliest date for operation of an export-oriented line is in the late 1990s, even if a construction decision is made soon.

Esso said there has been no commitment to build, and discussions on Arctic gas with the National Energy Board (NEB) have been limited to how northern gas will fit into the overall export picture.

Esso and partners hold substantial gas reserves on the Mackenzie Delta and in the Beaufort Sea. There also are large reserves farther north in the Arctic Islands, discovered by a group led by Panarctic Oils Ltd.

Esso said in-house work on an Arctic pipeline has been limited to preliminary cost estimates and the outlook for gas markets in the U.S.

A U.S. company executive told a Canadian parliamentary committee the U.S. gas surplus will end between 1988 and 1993, and U.S. customers will want gas supplies from the Canadian Arctic.

Dick Snyder, planning director of Tennessee Gas Transmission, Houston, told the committee in Ottawa the gas bubble will end by 1993 at the latest.

Snyder said there is "considerable

urgency" at this time to proceed with planning for connection of Canada's frontier resources.

Tennessee Gas is a member of the Polar Gas group, which includes TransCanada PipeLines Ltd., Panarctic, and Petro-Canada. Polar Gas proposes to lay a gas line from the Beaufort Sea via the Mackenzie Valley to connect with systems in northern Alberta (OGJ, Jan. 6, 1986, p. 76).

Polar Gas estimates the cost of its line at \$3.4 billion and says it would be economical at a price of about \$3/Mcf. Current export prices are about one-third lower than that.

**Export policies.** Meanwhile, NEB plans to begin hearings Apr. 13 in

Ottawa on Canada's gas export policies. The board has received notice from 66 parties that they want to appear at the hearings.

NEB will examine whether current surplus tests will be appropriate after full deregulation of gas markets and what alternatives are available.

The board wants to hear arguments on whether reliance on market forces to balance gas supply and demand in Canada would be an acceptable substitute for the surplus test. The test requires a 15 year supply of gas to be reserved for domestic markets before additional shipments to the U.S., Canada's only export customer, are authorized.

## Chevron switches to midgrade in Florida

Chevron Corp. has become the latest U.S. major oil company to drop leaded regular for an unleaded midgrade.

The Chevron Plus midgrade (89 R + M/2) was introduced at nearly 220 stations in eight South Florida counties covering Miami, Fort Lauderdale, West Palm Beach, and Fort Pierce.

Chevron has about 800 outlets in Florida selling 536 million gal/year of gasoline, about 10.5% of the total Florida market. The midgrade con-

tains Chevron's proprietary detergent additive Techrolene. Chevron's nearest refinery is its 295,000 b/cd Pasca-goula, Miss., plant.

The company described its move as a "market introduction," not a test as some other oil companies have called their introduction of midgrades. The move allows Chevron to meet mid-grade competition from Amoco Oil Co., which last year launched its mid-grade sales in Florida.