

SB

121

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 121
 () Publish Date: _____
 Dept. Affected: Natural Resources
 BRU: Oil & Gas Development
 Component: Pipeline Coordinator
 Component Number: 1191

Revision Date/Time (Note if correction): _____
 Title: Right-of-Way Leasing Act
 Sponsor: Senator Leman
 Requester: S (RES)

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: none

Check this box (X) if funding for this bill is included in the Governor's FY2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The definition of 'substantial change' included in SB 121 may eliminate some required public notices under AS 38.35.050. The number of public notices eliminated is expected to be negligible. The cost to the state of all such public notices are reimbursed by the applicant pursuant to AS 38.35.140(b).

The definition of 'substantial change' may eliminate appeals and litigation related to the undefined term, and associated costs of such appeals and litigation. It is not possible to predict the magnitude of any such savings.

Prepared by: Bill Britt Phone 271-4304
 Division: State Pipeline Coordinator's Office Date/Time 15-Mar-01
 Approved by: Pat Pourchot Date 15-Mar-01
 Agency: Natural Resources

For distribution information, call the Governor's Legislative Office

AMENDMENT # 1

OFFERED IN THE SENATE
TO: SB 121

By Senator Torgerson

Page 1, line 13: Delete "or"

Page 2, line 2, following "application;"

Insert

"or

(C) a fundamental change proposed by the applicant in
the general route as set out in the original application."

Page 2, Line 5: Following "an amendment"

Delete "to"

Insert "of"

Page 2, Line 6: Following "way"

Delete "grant across federal land"

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Senator Loren Leman

Sponsor Statement SB 121: Right-of-Way Leases

Commercialization of North Slope gas is one of our legislative priorities. This technical amendment to Alaska's Right-of-Way Leasing Act will ensure less ambiguity for processing right-of-way applications.

SB 121 provides a statutory definition of "substantial change" as that term is used in AS 38.35.05(c). This section provides that "*any amendment to an application filed under this section which constitutes a substantial change in the application is subject to all provisions of this chapter applying to an original application.*" The statutes provide no guidance to applicants, the Department of Natural Resources or other interested parties as to what is or is not a substantial change.

The difficulty with the language as it exists is that any or all changes to an original pipeline right-of-way lease application could be argued to be *substantial*.

This legislation establishes that

- a 10 percent net increase in state acreage beyond what was in the original application (It is my understanding that this is consistent with existing department policy.), or
- using less effective environmental or safety mitigation measures than proposed in the original application

would be substantial enough to require restarting the entire administrative process for obtaining a right-of-way lease across state lands.

This legislation will not foreclose on opportunities for the public and affected agencies to review and comment on subsequent amendments to initial lease applications. It will, however, provide an increased measure of certainty and will minimize unnecessary challenges and delays in processing, approving and issuing right-of-way leases.



Senator Loren Leman

Sectional Analysis SB 121: Right-of-Way Leases

Section 1. Amends AS 38.35.050 to clarify that a person filing an amendment to an application under the Alaska Right-of-Way Leasing Act is subject to all of the chapter's provisions when the amendment:

- Proposes a net increase in the amount of state acreage leased for the right-of-way that is 10% greater than the original application
- Proposes changes to the design of the pipeline that would use less effective environmental or safety mitigation measures or less advanced technology than in the original application

When calculating whether or not additional state acreage must be part of the 10% calculation, the following must be excluded:

1. Acreage attributed to an amendment to an existing right-of-way lease across federal lands originally issued by the federal government, whether or not the state or the federal government administers the land. This land could be state-selected land that when conveyed to the state carries the encumbrances placed upon it by the lessor. The applicant may wish to change the width of the right-of-way to be consistent with its pipeline corridor. Typically, this would entail an amendment to change the width of the federal ROW grant from 30' for instance to 100', which would be consistent with the width of a state right-of-way lease. This acreage would not be considered part of the 10% increase.
2. Land under federal right-of-way grant which is then transferred to the state for its administration.

Section 2. Amends AS 38.35.080(b) to state clearly that if an application or an amendment to an application constitutes a substantial change in the application the commissioner follows the public notification process in AS 38.35.070.

subdivision, line, or corner contained in the official plats and field notes recorded, and in the event of a conflict the description by reference to the subdivision, line, or corner of the United States public land surveys prevails over the description by coordinates. (§ 1 ch 64 SLA 1965; am § 65 ch 152 SLA 1984)

Revisor's notes. — Minor word changes related to the recording of documents were made in this section in 1988 because of the enactment of ch. 161, SLA 1988.

Sec. 38.20.110. Use of system not required. Nothing in this chapter requires a purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Alaska Coordinate System of 1927 or the Alaska Coordinate System of 1983. (§ 1 ch 64 SLA 1965; am § 66 ch 152 SLA 1984)

Chapter 25. Historical Sites and Monuments.

[Repealed, § 2 ch 130 SLA 1971. For current law, see AS 41.35.]

Chapter 30. Alaska Native Claims State Settlement Act of 1968.

[Repealed, § 9 ch 70 SLA 1972.]

Chapter 35. Right-of-Way Leasing Act.

Section

- 10. Legislative declaration of policy
- 15. Powers of the commissioner
- 20. Grant of right-of-way lease
- 30. Abandonment, reduction, or impairment of service of pipeline
- 40. Temporary or emergency service or temporary abandonment, reduction, or impairment of service by lessee
- 50. Applications for right-of-way leases
- 70. Notice of application
- 80. Analysis and public hearing
- 90. Multiple applications for same lease
- 100. Decision on application
- 110. Term of lease
- 120. Covenants required to be included in lease

Section

- 122. Products pipeline leases
- 130. Right-of-way easements or leases acquired from others
- 140. Payment of rental and costs
- 170. Forfeiture of lease
- 180. Suits to enjoin or recover damages for defaults
- 190. Application of the Administrative Procedure Act
- 200. Judicial review of decisions of commissioner on application
- 205. Lease savings clause
- 210. Delegation of commissioner's authority
- 220. Continued operation of certain carriers
- 225. Binding effect of covenants
- 230. Definitions
- 260. Short title

Revisor's notes. — Through administrative reorganization, the Department of Natural Resources has eliminated the division of lands. Duties and responsibilities given to the division of lands under this chapter have been assigned to other divisions of the

department. Duties and responsibilities given to the director of the division of lands under this chapter have been assigned to the deputy commissioner for operations, who has been given the additional title "director of lands."

NOTES TO DECISIONS

Applied in *Arco Pipeline Co. v. 3.60 Acres, More or Less*, 539 P.2d 64 (Alaska 1975).

Sec. 38.35.010. Legislative declaration of policy. (a) The natural resources of this state in crude oil and natural gas and in its land for transportation of these resources and their products by pipeline toward markets both in and out of the state are capable of making a significant contribution to the general welfare of the people of this state. It is

the policy of this state that the system be directed to make the resources of this state, the improvement of existing and promotion of competition in its private enterprise, and the preservation of a favorable natural environment.

(b) The State of Alaska reserves its right to preempt by right-of-way leasing of any station within its boundaries. (§ 3 ch 127 SLA 1974)

Collateral references. — 63C Am. Lands, §§ 37, 53 to 55, 74, 111, 118 to 121

Sec. 38.35.015. Powers of commissioner. The commissioner shall have the necessary and proper powers to implement this chapter, as the exercise of such powers may be necessary for the convenience and necessity, including

- (1) granting leases of state land
- (2) leasing, purchasing, or otherwise acquiring (taking) easements or other interests in land
- (3) purchasing interests in private land for right-of-way leases;

(4) investigating any matter which may be brought before it with its right-of-way authority under federal law;

(5) developing from time to time a pipeline transportation development plan;

(6) developing and promoting a pipeline transportation service;

(7) coordinating the activities of pipeline transportation and other relevant agencies;

(8) constructing, extending, operating, and engaging in transportation, service, or other arrangements, contract, lease, or other arrangements, as may be necessary, convenient, or desirable.

Such powers shall not be limited to any carrier or any leasee carrier is not willing to accept, and to sell, lease, grant, or otherwise exercise of this power. (§ 3 ch 127 SLA 1974)

Revisor's notes. — Formerly AS 38.35.015, renumbered in 1984.

Construction of state lease providing right to grant right-of-way. — Where a lease issued by the State of Alaska, dividers expressly reserving the right to grant a right-of-way across the leased property

Sec. 38.35.020. Grant of right-of-way over, under, or across land.

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AS 41.35.]

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the policy of this state that the development, use, and control of a pipeline transportation system be directed to make the maximum contribution to the development of the human resources of this state, the increase in the standard of living for all of its residents, the advancement of existing and potential sectors of its economy, the strengthening of free competition in its private enterprise system, and the careful protection of its incomparable natural environment.

(b) The State of Alaska reserves unto itself all rights, powers, privileges, and immunities not preempted by federal interstate commerce laws and regulations in the right-of-way leasing of any state land for pipeline construction, transmission, or operation within its boundaries. (§ 1 ch 72 SLA 1972; am § 1 ch 3 FSSLA 1973)

Collateral references. — 63C Am. Jur. 2d, Public Lands, §§ 37, 53 to 55, 74, 111, 118 to 126. 73A C.J.S., Public Lands, §§ 68 to 70.

Sec. 38.35.015. Powers of the commissioner. The commissioner has all powers necessary and proper to implement the policy, purposes, and provisions of this chapter, so as to subserve, as the exercise of reasoned discretion determines, the public interest, convenience and necessity, including but not limited to

- (1) granting leases of state land for pipeline right-of-way purposes;
- (2) leasing, purchasing, or otherwise acquiring (including condemning by declaration of taking) easements or other interests in land in this state for the purpose of utilizing or granting leases of the land, easements, or interests for pipeline right-of-way purposes;
- (3) purchasing interests in pipelines in accordance with options included in right-of-way leases;
- (4) investigating any matters concerning any lessee with a view to assuring compliance by it with its right-of-way lease, this chapter, and any other applicable state or federal law;
- (5) developing from time to time and maintaining a comprehensive master plan for pipeline transportation development;
- (6) developing and promoting programs to foster efficient, economical, and safe pipeline transportation services in the state;
- (7) coordinating the activities of the commissioner under this chapter with the transportation and other relevant activities of other public agencies and authorities;
- (8) constructing, extending, enlarging, improving, repairing, acquiring, operating, or engaging in transportation, service, or sale by any pipeline or providing for these by contract, lease, or other arrangement on those terms that the commissioner may consider necessary, convenient, or desirable with any agency, corporation, or person, including but not limited to any carrier or any state agency, when the commissioner determines that a lessee carrier is not willing to undertake and complete the action within a reasonable time, and to sell, lease, grant, and dispose of any property constructed or acquired in the exercise of this power. (§ 3 ch 72 SLA 1972; am §§ 25 — 27 ch 3 FSSLA 1973; am § 38 ch 127 SLA 1974)

Revisor's notes. — Formerly AS 38.05.020(c). Renumbered in 1984.

NOTES TO DECISIONS

Construction of state lease provision reserving right to grant right-of-way. — Provision in a lease issued by the State of Alaska, division of lands, expressly reserving the right to grant an easement or right-of-way across the leased property was construed

to include an interagency transfer of a right-of-way to the Department of Transportation and Public Facilities. *Wessells v. State, Dep't of Hwys.*, 562 P.2d 1042 (Alaska 1977).

Sec. 38.35.020. Grant of right-of-way lease. (a) Rights-of-way on state land including rights-of-way over, under, along, across, or upon the right-of-way of a public road

or highway or the right-of-way of a railroad or other public utility, or across, upon, over, or under a river or other body of water or land belonging to or administered by the state may be granted by noncompetitive lease by the commissioner for pipeline purposes for the transportation of oil, products, or natural gas under those conditions prescribed by law or by administrative regulation. Except to the extent authorized by an oil and gas lease or unit agreement approved by the state, no person may engage in any construction or operation of any part of an oil, products, or natural gas pipeline, which in whole or in part is or is proposed to be on state land unless that person has obtained from the commissioner a right-of-way lease of the land under this chapter.

(b) The commissioner may by regulation exempt the construction or operation of field gathering lines or any reasonable classification of them from the requirement of a right-of-way lease under this chapter.

(c) The commissioner may provide in a lease issued under this section that a lessee may, with the approval of the commissioner, use materials from state land when necessary to protect state land and resources from the dangers or hazards resulting from damage caused by a pipeline disaster or emergency. If the commissioner approves the use of state materials under this subsection, the materials remain the property of the state until the material is sold to the lessee in accordance with the provisions of the lease. However, the approval does not transfer responsibility for clean up of the materials to the state. (§ 1 ch 72 SLA 1972; am § 2 ch 3 FSSLA 1973; am § 2 ch 119 SLA 1986)

Opinions of attorney general. — The lease conversion provisions enacted by 1977 legislation (§§ 12, 13, ch. 138, SLA 1977, as amended by § 21, ch. 182, SLA 1978) applied only to those leases entered into under the substantive statutory provisions which were amended by the 1977 legislation. Hence, substantive amendments to AS 38.05 could not be applied

to a lease which was not authorized by the leasing provisions of AS 38.05, but rather by the leasing provisions of this chapter, and the state was not estopped from challenging the validity of the terms of a wrongfully converted lease. December 10, 1985, Op. Att'y Gen.

Sec. 38.35.030. Abandonment, reduction, or impairment of service of pipeline. A lessee may not abandon any portion of a pipeline that is subject to a lease granted under this chapter, or operation or transportation, service, or sale by it, or reduce or impair service, except in accordance with the terms of the lease or AS 38.35.040. (§ 1 ch 72 SLA 1972; am § 3 ch 3 FSSLA 1973)

Sec. 38.35.040. Temporary or emergency service or temporary abandonment, reduction, or impairment of service by lessee. The commissioner may, either upon a request made in the form required by regulation, or in the exercise of discretion without request, authorize or require temporary or emergency rendering of service or temporary or emergency abandonment, reduction, or impairment of service by a pipeline of a lessee without compliance with AS 38.35.050 — 38.35.100. Nothing in this section prevents a carrier from temporarily suspending operations in the event of an emergency which threatens public health or safety; however, notice shall be given the commissioner as soon as possible. (§ 1 ch 72 SLA 1972; am § 4 ch 3 FSSLA 1973)

Sec. 38.35.050. Applications for right-of-way leases. (a) A person or persons desiring to own a pipeline which is proposed to be located in whole or in part on state land, shall apply for a noncompetitive right-of-way lease of the state land.

(b) Applications under (a) of this section shall be made in a form and manner prescribed by regulation, and shall include any and all data, information, plans, and exhibits which the commissioner determines are necessary to prepare the analysis required by AS 38.35.080 and to make a decision under AS 38.35.100.

(c) Any amendment to an application filed under this section which constitutes a substantial change in the application is subject to all provisions of this chapter applying to an original application.

(d) All persons owning subject to a lease must employed by the lessee in applicable to functions w under the lease and the s operator who is not in cor FSSLA 1973)

Sec. 38.35.060. Applic § 6 ch 3 FSSLA 1973.]

Sec. 38.35.070. Notice 38.35.050, the commissio

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**Sec. 38.35.080. Analy reasonable time after rece of the matter of which th feasible; a proposed leas commissioner, if favorable before a hearing, a descri
(b) Upon completion of hearing an application or shall publish notice, and
(c) The commissioner sl ble, if a public hearing on publication of notice unde involves a substantial pu public hearing and publi days before the hearing.
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Sec. 38.35.090. Multip receives within a 30-day substantially the same sul upon a comparative basis. may submit an application filed application. (§ 1 ch 7

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(d) All persons owning or planning to own an interest in a pipeline or proposed pipeline subject to a lease must join in the application under (a) of this section. Any person employed by the lessee in operating the pipeline is bound by the covenants of the lease applicable to functions within the scope of employment as if the person were an applicant under the lease and the state may enforce any breach of a covenant directly against an operator who is not in compliance with the covenant. (§ 1 ch 72 SLA 1972; am § 5 ch 3 FSSLA 1973)

Sec. 38.35.060. Application for certificate to abandon or diminish service. [Repealed, § 6 ch 3 FSSLA 1973.]

Sec. 38.35.070. Notice of application. Upon receiving an application under AS 38.35.050, the commissioner shall

(1) cause notice of it to appear in a daily newspaper of general circulation published in the vicinity of the location of the proposed pipeline, the notice to include:

- (A) a general description of the land involved;
- (B) a summary of the substance of the application;
- (2) file copies of the application with each coordinate agency;
- (3) furnish at cost copies of a notice or application to persons requesting them; and
- (4) provide other publication and notice the commissioner considers reasonable and appropriate to inform the public of the application. (§ 1 ch 72 SLA 1972; am § 7 ch 3 FSSLA 1973)

Sec. 38.35.080. Analysis and public hearing. (a) The commissioner shall, within a reasonable time after receiving the application, prepare an analysis of the application or of the matter of which the commissioner was notified, including a proposal for action if feasible; a proposed lease and a general statement of the basis and purpose of the commissioner, if favorable action is proposed; or, when a proposal for action is not feasible before a hearing, a description of the subjects and issues involved.

(b) Upon completion of the analysis but not less than 30 days before the date set for hearing an application or a substantial amendment to an application, the commissioner shall publish notice, and make copies available as provided in AS 38.35.070.

(c) The commissioner shall set all applications for public hearing as soon as practicable, if a public hearing on an application is requested by any person within 30 days of publication of notice under AS 38.35.070(1) or if the proposed action being considered involves a substantial public interest. The commissioner shall set the application for public hearing and publish notice of the time and place of the public hearing at least 30 days before the hearing.

(d) The provisions of the Administrative Procedure Act (AS 44.62) do not apply to hearings held under this section. (§ 1 ch 72 SLA 1972; am § 8 ch 3 FSSLA 1973)

Sec. 38.35.090. Multiple applications for same lease. When the commissioner receives within a 30-day period two or more applications relating to the same or substantially the same subject matter, the commissioner shall consider the applications upon a comparative basis. The commissioner may extend the time within which a carrier may submit an application for consideration upon a comparative basis with a previously filed application. (§ 1 ch 72 SLA 1972)

Sec. 38.35.100. Decision on application. (a) The commissioner shall promptly determine, in a written finding, on an application filed under AS 38.35.050, whether the applicant is fit, willing, and able to perform the transportation or other acts proposed in a manner that will be required by the present or future public interest. In making a determination the commissioner shall consider whether or not