

HB

215

<TARGET><BILL>HB 215</BILL><SUBJECT>HB
215</SUBJECT><COMM>HJUD27</COMM></TARGET>

Alaska State Legislature

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REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE HOUSE

MEMORANDUM

TO: Representative Carl Gatto, Chair
House Judiciary Committee

FROM: Representative Mike Chenault 
Speaker of the House

DATE: March 30, 2011

RE: Request for Hearing-House Bill 215

Please consider this request to schedule House Bill 215: *Judicial Review of Pipeline/ROW*, before your committee at your earliest possible convenience. Back-up for the legislation will be sent to your committee aide shortly.

Thank you for your consideration of my request.

Alaska State Legislature

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REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE HOUSE

SPONSOR STATEMENT HOUSE BILL 215

"An Act relating to judicial review of a right-of-lease or the development or construction of an oil or gas pipeline on state land."

The objective of House Bill 215 is to prohibit the filing of lawsuits that have the potential to delay construction of in-state gaslines. The provisions under House Bill 215 modify current statute and the provisions only apply to state land rights-of-way. Claims may be filed only by an applicant, a competing applicant or a person who has a direct financial interest affected by the lease of a right-of-way. The requests for judicial review must be filed within 60 days of the publication of notice for a right-of-way lease application. Judicial review may only be granted for claims challenging the validity of the statute or challenging a denial of rights under the state constitution. Any claim will be barred unless it is filed within the 60 day time frame.

All claims are to be filed in Alaska Superior Court which will have exclusive jurisdiction to determine the proceeding. The court will not have the jurisdiction to grant any injunctive relief with the exception of an issuance of a final judgment.

This legislation is modeled after the Trans-Alaska Pipeline legislation, 43 USC, Chapter 34, that was adopted by Congress in 1973 (43 USC, Chapter 43, Sec. 1652 (d).) Similar legislation to House Bill 215 was passed by the Alaska State Legislature in 1973, Senate Bill 3, related to the TAPS line.

27-LS0741N
Bullock
4/5/11

CS FOR HOUSE BILL NO. 215()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES CHENAULT, Neuman, Fairclough, Johnson, Hawker, Olson, Feige, Millett, Thompson

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the judicial review of a right-of-way lease or the development or**
2 **construction of an oil or gas pipeline on state land; and relating to the lease of a right-of-**
3 **way by the Alaska Housing Finance Corporation for a gas pipeline transportation**
4 **corridor."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 *** Section 1.** AS 38.34.050(c) is amended to read:

7 (c) Notwithstanding any contrary provision of law, the Department of Natural
8 Resources shall grant the Alaska Housing Finance Corporation a right-of-way lease
9 under AS 38.35 for the gas pipeline transportation corridor if

10 (1) the corporation submits a complete right-of-way lease application
11 under AS 38.35.050;

12 (2) the lease application is made the subject of notice and other
13 reasonable and appropriate publication requirements under AS 38.35.070; and

14 (3) except for the covenants in AS 38.35.120(a)(1), (2), and (5), the

1 corporation agrees to be bound by the right-of-way lease covenants set out in
2 AS 38.35.120; notwithstanding AS 38.35.120(b), a right-of-way lease subject to
3 this paragraph is valid and of legal effect.

4 * Sec. 2. AS 38.35.100(d) is amended to read:

5 (d) The commissioner shall include in a conditional lease each requirement
6 and condition of the covenants established under AS 38.35.120, except for covenants
7 that do not apply to a lease entered into under AS 38.34.050(c). The commissioner
8 may also require that the lessee agree to additional conditions that the commissioner
9 finds to be in the public interest. In place of the covenant established under
10 AS 38.35.120(a)(9), the commissioner shall require the lessee to agree that it will not
11 transfer, assign, pledge, or dispose of in any manner, directly or indirectly, its interest
12 in a conditional right-of-way lease or a pipeline subject to the conditional lease, unless
13 the commissioner, after considering the public interest and issuing written findings to
14 substantiate a decision to allow the transfer, authorizes the transfer. The commissioner
15 shall also require the lessee to agree not to allow the transfer of control of the lessee
16 without the approval of the commissioner; as used in this subsection, "transfer of
17 control of the lessee" means the transfer of 30 percent or more, in the aggregate, of
18 ownership interest in the lessee in one or more transactions to one or more persons by
19 one or more persons.

20 * Sec. 3. AS 38.35.120(a) is amended to read:

21 (a) Except as provided in AS 38.34.050(c), a [A] noncompetitive lease of
22 state land for a right-of-way for an oil or natural gas pipeline valued at \$1,000,000 or
23 more may be granted only upon the condition that the lessee expressly covenants in
24 the lease, in consideration of the rights acquired by it under the lease, that

25 (1) it assumes the status of and will perform all of its functions
26 undertaken under the lease as a common carrier and will accept, convey, and transport
27 without discrimination crude oil or natural gas, depending on the kind of pipeline
28 involved, delivered to it for transportation from fields in the vicinity of the pipeline
29 subject to the lease throughout its route both on state land obtained under the lease and
30 on the other land; it will accept, convey, and transport crude oil or natural gas without
31 unjust or unreasonable discrimination in favor of one producer or person, including

1 itself, as against another but will take the crude oil or natural gas, depending on the
2 kind of pipeline involved, delivered or offered, without unreasonable discrimination,
3 that the Regulatory Commission of Alaska shall, after a full hearing with due notice to
4 the interested parties and a proper finding of facts, determine to be reasonable in the
5 performance of its duties as a common carrier; however, a lessee that owns or operates
6 a natural gas pipeline

7 (A) subject to regulation either under the Natural Gas Act (15
8 U.S.C. 717 et seq.) of the United States or by the state or political subdivisions
9 with respect to rates and charges for the sale of natural gas, is, to the extent of
10 that regulation, exempt from the common carrier requirement in this
11 paragraph;

12 (B) that is a North Slope natural gas pipeline (i) is required to
13 operate as a common carrier only with respect to the intrastate transportation of
14 North Slope natural gas, as that term is defined in AS 42.06.630, and (ii) is not
15 required to operate as a common carrier as to a liquefied natural gas facility or
16 a marine terminal facility associated with the pipeline, and is not otherwise
17 required to perform its functions under the lease as a common carrier; for
18 purposes of this subparagraph, "North Slope natural gas pipeline" means all the
19 facilities of a total system of pipe, whether owned or operated under a contract,
20 agreement, or lease, used by a carrier for transportation of North Slope natural
21 gas, as defined by AS 42.06.630, for delivery, for storage, or for further
22 transportation, and including all pipe, pump, or compressor stations, station
23 equipment, tanks, valves, access roads, bridges, airfields, terminals and
24 terminal facilities, including docks and tanker loading facilities, operations
25 control centers for both the upstream part of the pipeline and the terminal,
26 tanker ballast treatment facilities, fire protection system, communication
27 system, and all other facilities used or necessary for an integral line of pipe,
28 taken as a whole, to carry out transportation, including an extension or
29 enlargement of the line;

30 (2) it will interchange crude oil or natural gas, depending on the kind
31 of pipeline involved, with each like common carrier and provide connections and

1 facilities for the interchange of crude oil or natural gas at every locality reached by
2 both pipelines when the necessity exists, subject to rates and regulations made by the
3 appropriate state or federal regulatory agency;

4 (3) it will maintain and preserve books, accounts, and records and will
5 make those reports that the state may prescribe by regulation or law as necessary and
6 appropriate for purposes of administration of this chapter;

7 (4) it will accord at all reasonable times to the state and its authorized
8 agents and auditors the right of access to its property and records, of inspection of its
9 property, and of examination and copying of records;

10 (5) it will provide connections, as determined by the Regulatory
11 Commission of Alaska under AS 42.06.340, to facilities on the pipeline subject to the
12 lease, both on state land and other land in the state, for the purpose of delivering crude
13 oil or natural gas, depending on the kind of pipeline involved, to persons (including
14 the state and its political subdivisions) contracting for the purchase at wholesale of
15 crude oil or natural gas transported by the pipeline when required by the public
16 interest;

17 (6) it shall, notwithstanding any other provision, provide connections
18 and interchange facilities at state expense at such places the state considers necessary
19 if the state determines to take a portion of its royalty or taxes in oil or natural gas;

20 (7) it will construct and operate the pipeline in accordance with
21 applicable state laws and lawful regulations and orders of the Regulatory Commission
22 of Alaska;

23 (8) it will, at its own expense, during the term of the lease,

24 (A) maintain the leasehold and pipeline in good repair;

25 (B) promptly repair or remedy any damage to the leasehold;

26 (C) promptly compensate for any damage to or destruction of
27 property for which the lessee is liable resulting from damage to or destruction
28 of the leasehold or pipeline;

29 (9) it will not transfer, assign, or dispose of in any manner, directly or
30 indirectly, or by transfer of control of the carrier corporation, its interest in a right-of-
31 way lease, or any rights under the lease or any pipeline subject to the lease to any

1 person other than another owner of the pipeline (including subsidiaries, parents, and
2 affiliates of the owners), except to the extent that the commissioner, after
3 consideration of the protection of the public interest (including whether the proposed
4 transferee is fit, willing, and able to perform the transportation or other acts proposed
5 in a manner that will reasonably protect the lives, property, and general welfare of the
6 people of Alaska), authorizes; the commissioner shall not unreasonably withhold
7 consent to the transfer, assignment, or disposal;

8 (10) it will file with the commissioner a written appointment of a
9 named permanent resident of the state to be its registered agent in the state and to
10 receive service of notices, regulations, decisions, and orders of the commissioner; if it
11 fails to appoint an agent for service, service may be made by posting a copy in the
12 office of the commissioner, filing a copy in the office of the lieutenant governor, and
13 mailing a copy to the lessee's last known address;

14 (11) the applicable law of this state will be used in resolving questions
15 of interpretation of the lease;

16 (12) the granting of the right-of-way lease is subject to the express
17 condition that the exercise of the rights and privileges granted under the lease will not
18 unduly interfere with the management, administration, or disposal by the state of the
19 land affected by the lease, and that the lessee agrees and consents to the occupancy
20 and use by the state, its grantees, permittees, or other lessees of any part of the right-
21 of-way not actually occupied or required by the pipeline for the full and safe
22 utilization of the pipeline, for necessary operations incident to land management,
23 administration, or disposal;

24 (13) it will be liable to the state for damages or injury incurred by the
25 state caused by the construction, operation, or maintenance of the pipeline and it will
26 indemnify the state for the liabilities or damages;

27 (14) it will procure and furnish liability and property damage insurance
28 from a company licensed to do business in the state or furnish other security or
29 undertaking upon the terms and conditions the commissioner considers necessary if
30 the commissioner finds that the net assets of the lessee are insufficient to protect the
31 public from damage for which the lessee may be liable arising out of the construction

1 or operation of the pipeline.

2 * **Sec. 4.** AS 38.35.120(b) is amended to read:

3 (b) **Except as provided in AS 38.34.050(c), for** [FOR] a right-of-way lease
4 granted under this chapter for an oil or natural gas pipeline valued at \$1,000,000 or
5 more to be valid and of legal effect, it must contain the terms required to be inserted
6 under the provisions of AS 38.35.110 - 38.35.140. **Except as provided in**
7 **AS 38.34.050(c), an** [AN] oil or natural gas pipeline right-of-way lease granted under
8 this chapter that does not contain the required terms is null and void and without legal
9 effect and does not vest any interest in state land or any authority in the carrier granted
10 the lease.

11 * **Sec. 5.** AS 38.35.200(a) is amended to read:

12 (a) **A person that is a** [AN APPLICANT OR] competing applicant or **that** [A
13 PERSON WHO] has a direct financial interest affected by the lease **of a right-of-way**
14 **under this chapter that** [WHO] raises **an objection** [OBJECTIONS] within **the later**
15 **of 60 days after the effective date of this Act or** [OF] the publication of notice under
16 AS 38.35.070 **and a person that is an applicant** are the only persons with standing to
17 seek judicial review of

18 (1) a decision of the commissioner under AS 38.35.100; **or**

19 (2) **an action described in (b) of this section.**

20 * **Sec. 6.** AS 38.35.200(b) is repealed and reenacted to read:

21 (b) Notwithstanding any contrary provision of law, an action or decision of the
22 commissioner or other state officer or agency concerning the issuance or approval of a
23 necessary right-of-way, permit, lease, certificate, license, or other authorization for the
24 development, construction, or initial operation of a natural gas pipeline that uses a
25 right-of-way subject to this chapter may not be subject to judicial review, except that a
26 claim alleging the invalidity of this section must be brought within 60 days after the
27 effective date of this Act, and a claim alleging that an action will deny rights under the
28 Constitution of the State of Alaska must be brought within 60 days following the date
29 of that action. A claim that is not filed within the limitations established in this
30 subsection is barred. A complaint under this subsection must be filed in superior court,
31 and the superior court has exclusive jurisdiction. Notwithstanding AS 22.10.020(c),

1 except in conjunction with a final judgment on a claim filed under this subsection, the
2 superior court may not grant injunctive relief, including a temporary restraining order,
3 preliminary injunction, permanent injunction, or stay against the issuance of a right-of-
4 way, permit, lease, certificate, license, or other authorization. In this section, "natural
5 gas pipeline" has the meaning given in AS 42.06.630.

6 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 REVISOR'S INSTRUCTION. The revisor of statutes shall change the catch line of
9 AS 38.35.200 from "Judicial review of decisions of commissioner on application" to "Judicial
10 review."

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.

History -

(Sec. 1 ch 72 SLA 1972; am Sec. 7 ch 3 FSSLA 1973)

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

(1) the proposed use of the right-of-way will unreasonably conflict with existing uses of the land involving a superior public interest;

(2) the applicant has the technical and financial capability to protect state and private property interests;

(3) the applicant has the technical and financial capability to take action to the extent reasonably practical to

(A) prevent any significant adverse environmental impact, including but not limited to erosion of the surface of the land and damage to fish and wildlife and their habitat;

(B) undertake any necessary restoration or revegetation; and

(C) protect the interests of individuals living in the general area of the right-of-way who rely on fish, wildlife, and biotic resources of the area for subsistence purposes;

(4) the applicant has the financial capability to pay reasonably foreseeable damages for which the applicant may become liable on claims arising from the construction, operation, maintenance, or termination of the pipeline;

(5) the applicant has agreed that in the construction and operation of a pipeline within the right-of-way the applicant will comply with, and require contractors and their subcontractors to comply with, applicable and valid laws and regulations regarding the hiring of residents of the state then in effect or that take effect subsequently.

(b) If the commissioner makes the determinations under (a) of this section favorably to the applicant, then the commissioner may grant the whole or part of the application. If the commissioner makes the determinations under (a)(1) - (5) of this section favorably to the applicant but determines that the applicant is not then fit, willing, and able to perform under the application, the commissioner may grant the application under a conditional lease subject to conditions established by the commissioner that will ensure that the applicant will, within a prescribed period of time not exceeding 10 years, establish that the applicant is fit, willing, and able, under (a) of this section, to perform the transportation or other acts that will be required by the present or future public interest. An applicant is not entitled to a notice or authorization to proceed to construction, or its equivalent, under a conditional lease until the commissioner determines in writing that the applicant has satisfactorily established that the applicant is then fit, willing, and able to perform under (a) of this section. Otherwise, the commissioner shall deny the application.

(c) The commissioner may offer the applicant a lease or a conditional lease under this section. If the applicant does not accept a lease offered under this section within 30 days, the lease offered is withdrawn.

(d) The commissioner shall include in a conditional lease each requirement and condition of the covenants established under AS 38.35.120. The commissioner may also require that the lessee agree to additional conditions that the commissioner finds to be in the public interest. In place of the covenant established under AS 38.35.120(a)(9), the commissioner shall require the lessee to agree that it will not transfer, assign, pledge, or dispose of in any manner, directly or indirectly, its interest in a conditional right-of-way lease or a pipeline subject to the conditional lease, unless the commissioner, after considering the public interest and issuing written findings

to substantiate a decision to allow the transfer, authorizes the transfer. The commissioner shall also require the lessee to agree not to allow the transfer of control of the lessee without the approval of the commissioner; as used in this subsection, "transfer of control of the lessee" means the transfer of 30 percent or more, in the aggregate, of ownership interest in the lessee in one or more transactions to one or more persons by one or more persons.

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

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

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

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

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

(g) If, during the term of a conditional lease, the commissioner determines under (a) of this section that 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, the commissioner may amend the conditional right-of-way lease to insert the covenant established in AS 38.35.120(a)(9) in place of the covenant against a transfer established under (d) and (e) of this section.

(h) The issuance of a conditional lease does not prevent the commissioner from issuing other conditional or unconditional leases for the same right-of-way. 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. An applicant or conditional lessee accrues no rights, including preference or priority rights, to a particular right-of-way until the commissioner makes a determination that the applicant or conditional lessee is then fit, willing, and able to perform the transportation or other acts proposed under (a) of this section.

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

History -

(Sec. 1 ch 72 SLA 1972; am Sec. 9 ch 3 FSSLA 1973; am Sec. 1, 2 ch 51 SLA 1987)

Sec. 38.35.200. Judicial review of decisions of commissioner on application.

(a) An applicant or competing applicant or a person who has a direct financial interest affected by the lease who raises objections within 60 days of the publication of notice under AS 38.35.070 are the only persons with standing to seek judicial review of a decision of the commissioner under AS 38.35.100.

(b) The only grounds for judicial review of a decision of the commissioner are

(1) failure to follow the procedures set out in this chapter; or

(2) abuse of discretion so capricious, arbitrary, or confiscatory as to constitute a denial of due process.

History -

(Sec. 1 ch 72 SLA 1972; am Sec. 19 ch 3 FSSLA 1973)

Sec. 42.06.630. Definitions.

In this chapter,

- (1) "affiliated interest" means any person or other entity that
 - (A) is controlled or owned, in whole or in part, by a pipeline carrier;
 - (B) is controlled or owned, in whole or in part, by an entity which controls or owns, in whole or in part, a pipeline carrier;
 - (C) is an agent, employee, contractor, or subcontractor of a pipeline carrier or any entity controlled or owned, in whole or in part, by a pipeline carrier; or
 - (D) controls or owns, in whole or in part, a pipeline carrier;
- (2) "capacity" means, with reference to a North Slope natural gas pipeline, the average daily volume throughput of the North Slope natural gas pipeline, calculated at the normal operating pressure of the North Slope natural gas pipeline as set out in the pipeline design;
- (3) "commission" means the Regulatory Commission of Alaska (AS 42.04.010);
- (4) "commissioner" means a member of the commission;
- (5) "duties" means duties, powers, obligations, and functions;
- (6) "firm transportation service" means service by a natural gas pipeline carrier that is not subject to a prior claim by another shipper or another class of service; service constitutes "firm transportation service" if the service receives the same priority as any other class of firm transportation service;
- (7) "gas" includes all natural gas and hydrocarbons produced at the wellhead and not defined as oil;
- (8) "interruptible transportation service" means service by a natural gas pipeline carrier in which the carrier's pipeline system capacity may be subject to a prior claim by another shipper or another class of service; a service constitutes "interruptible transportation service" if the service is given a lower priority than another class of service, resulting in noncontinuous service to a shipper of natural gas;
- (9) "intrastate," as applied to the transportation of North Slope natural gas, means the transportation of North Slope natural gas between any point within the state and another point within the state, for ultimate consumption of the North Slope natural gas within the state;
- (10) "natural gas pipeline" or "natural gas pipeline facility" means all the facilities of a total system of pipe, whether owned or operated by a natural gas pipeline carrier under a contract, agreement, or lease in this state used by a natural gas pipeline carrier for transportation of natural gas for delivery, storage, or further transportation, and including all pipe, pump and compressor stations, station equipment, and all other facilities used or necessary for an integral line of pipe to effectuate the transportation from point to point, excluding, however, gas processing plants, treaters, and separators;
- (11) "natural gas pipeline carrier" means the owner, including a corporation, company, or other entity organized under the laws of the United States or of any state, of a natural gas pipeline, as the term is defined in this section, or an interest in it, or any person, including a corporation, company, or other entity organized under the laws of the United States or of any state, authorized to construct or extend pipeline facilities under this chapter;
- (12) "North Slope natural gas" means gas that is produced from the area of Alaska lying north of 68 degrees North latitude and that, but for a pipeline subject to regulation under this chapter, had not been committed for sale and delivery in a commercial market due to the prevailing costs or price conditions;
- (13) "North Slope natural gas pipeline" or "North Slope natural gas pipeline facility" means all the facilities of a total system of pipe, whether owned or operated by a North Slope natural gas pipeline carrier under a contract, agreement, or lease, in this state used by a North Slope natural gas pipeline carrier for transportation of North Slope natural gas for delivery, storage, or further transportation, including all pipe, pump, and compressor stations, station equipment, gas processing plants, treaters,

separators, and all other facilities used or necessary for an integral line of pipe to carry out the transportation from point to point, but excluding marine terminal facilities and the integrated plant, facilities, and equipment, including pollution control equipment, used for conditioning, storage, handling, or processing of North Slope natural gas into liquefied natural gas;

(14) "North Slope natural gas pipeline carrier" means the owner, including a corporation, company, or other entity organized under the laws of the United States or of a state, of a North Slope natural gas pipeline, or an interest in it, or a person, including a corporation, company, or other entity, organized under the laws of the United States or of a state, authorized to construct, operate, or extend North Slope natural gas pipeline facilities under this chapter;

(15) "oil" includes crude oil, and other hydrocarbons regardless of gravity that are produced at the wellhead in liquid form, its products and liquid hydrocarbons, including the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas;

(16) "pipeline" or "pipeline facility" means all the facilities of a total system of pipe, whether owned or operated by a pipeline carrier under a contract, agreement, or lease, in this state used by a pipeline carrier for transportation, for hire and as a common carrier, of oil, gas, coal, or other mineral slurry for delivery, storage, or further transportation, and including all pipe, pump and compressor stations, station equipment, and all other facilities used or necessary for an integral line of pipe to effectuate the transportation from point to point, excluding, however, gas processing plants, treaters, and separators;

(17) "pipeline carrier" means the owner, including corporations organized under the laws of the United States or of any state, of any pipeline, as the term is defined in this section, or any interest in it, or any person, including corporations organized under the laws of the United States or of any state, authorized to construct or extend pipeline facilities under AS 42.06.240(a);

(18) "regulation" includes rules;

(19) "tariff" means a rate, charge, toll, rule, or regulation of an oil or gas pipeline facility relating to services furnished by the facility to the general public or other users for compensation.

History -

(Sec. 1 ch 139 SLA 1972; am Sec. 7, 8 ch 6 FSSLA 1973; am Sec. 12 - 14 ch 35 SLA 1977; am Sec. 14, 15, 20 ch 110 SLA 1981; am Sec. 88 ch 74 SLA 1985; am Sec. 19 ch 25 SLA 1999; am Sec. 8 ch 56 SLA 2000; am Sec. 2 - 4 ch 60 SLA 2003)

Revisors Notes -

Reorganized in 1983, 1998, and 2000 to alphabetize the defined terms.

Paragraphs (10) and (11) were enacted as (18) and (19). Renumbered in 2003, at which time paragraphs (10) - (17) were renumbered as (12) - (19).

Decisions -

"Its products" construed. - The legislature intended the phrase "its products" in paragraph (7) [now (15)] to include refined oil. *Tesoro Alaska Petro. Co. v. Kenai Pipe Line Co.*, 746 P.2d 896 (Alaska 1987).

"Pipeline facility" construed. - A marine terminal facility which was physically connected to the remainder of a carrier's pipeline system logically was within the definition of "pipeline facility" in paragraph (8) [now (16)] for the outward movement of crude oil, and thus was subject to the Alaska Public Utilities Commission's regulatory authority. *Tesoro Alaska Petro. Co. v. Kenai Pipe Line Co.*, 746 P.2d 896 (Alaska 1987).

"Transportation from point to point" construed. - It is not necessary that for "transportation from point to point" to fall within paragraph (8) [now (16)] one of the "points" must be a wellhead. Where incoming crude oil is "transported" from a tanker docked at the carrier's wharf, through marine

terminal lines, to the terminal storage tanks, this qualifies as "transportation from point to point."
Tesoro Alaska Petro. Co. v. Kenai Pipe Line Co., 746 P.2d 896 (Alaska 1987).

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
Bill Version HB215
() Publish Date _____

Identifier (file name) HB215-DNR-SPCO-04-01-11 Dept. Affected Natural Resources
Title JUDICIAL REVIEW OF PIPELINE PROJECT/ROW Appropriation Resource Development
Allocation Pipeline Coordinator's Office
Sponsor Rep. Chenault
Requester House Judiciary OMB Component Number 1191

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES							
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants							
Miscellaneous							
TOTAL OPERATING	0.0	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 (please identify)							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial version.

Prepared by Mike Thompson
Division Pipeline Coordinator's Office
Approved by Daniel S. Sullivan
Department of Natural Resources

Phone 257-1330
Date/Time 4/1/11 12:00 AM
Date 4/1/2011

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB215

Analysis

Current Alaska statutes limit challenges of pipeline right-of-way leasing decisions to lease applicants, competing applicants and persons with a direct financial interest who raise an objection within 60 days a right-of-way lease application is noticed; and restrict the grounds for judicial review to procedural errors. HB 215 would amend existing statutes to impose the same limits on judicial review, including the requirement to raise an objection within 60 days of notice of the initial lease application, to all permitting and licensing decisions associated with development and construction of a pipeline that uses a state right-of-way.

There would be no fiscal impact on the Department of Natural Resources.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
 Bill Version HB215
 () Publish Date _____

Identifier (file name) HB215-DOR-AHFC-04-01-11 Dept. Affected Revenue
 Title Judicial Review of Pipeline Project/ROW Appropriation Alaska Housing Finance Corp.
 Allocation AK Gasline Development Corp.
 Sponsor Representative Chenault
 Requester House Judiciary Committee OMB Component Number 2986

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES							
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES							
-----------------------------	--	--	--	--	--	--	--

CHANGE IN REVENUES							
---------------------------	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

initial version

Prepared by Cary Bolling, Officer Governmental Relations
 Division Alaska Housing Finance Corporation
 Approved by Dan Fauske, CEO
Alaska Housing Finance Corporation

Phone 907-350-2479
 Date/Time 4/1/11 11:00 AM
 Date 4/1/2011 1:30PM

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB215

Analysis

HB 215 relates to judicial review of a right-of-way lease or the development or construction of an oil or gas pipeline on state land. No additional resources or staff expected; therefore there is no anticipated fiscal impact to the corporation.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
Bill Version HB215 IM
() Publish Date _____

Identifier (file name): HB215-LAW-CIV-04-2-11
Title An Act relating to the judicial review of a right-of-way lease or the development or construction of an oil or gas pipeline on state land.
Sponsor REPRESENTATIVE(S) Chenault
Requester (H) Judiciary
Dept. Affected Law
Appropriation Civil
Allocation Oil, Gas and Mining
OMB Component Number 2091

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES							
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES							
-----------------------------	--	--	--	--	--	--	--

CHANGE IN REVENUES							
---------------------------	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2011) cost 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version.

Prepared by Eileen Donahue, Division Operations Manager
Division Administrative Services
Approved by John J. Burns, Attorney General
Department of Law

Phone 465-5427
Date/Time 4/2/11 9:00 PM
Date 4/2/2011

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB215 IM

Analysis

Current Alaska statutes limit challenges of pipeline right-of-way leasing decisions to lease applicants, competing applicants and persons with a direct financial interest who raise an objection within 60 days a right-of-way lease application is noticed; and restrict the grounds for judicial review to procedural errors. HB 215 would amend existing statutes to impose the same limits on judicial review, including the requirement to raise an objection within 60 days of notice of the initial lease application, to all permitting and licensing decisions associated with development and construction of a pipeline that uses a state right-of-way.



LAWS OF ALASKA

1973

Source

FSS-FCCS HCS CSSB 3

Chapter No.

3

AN ACT

Relating to pipelines; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 38.35.010 is amended by adding a new subsection to read:

(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 lands for pipeline construction, transmission, or operation within its boundaries.

* Sec. 2. AS 38.35.020 is amended to read:

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

Chapter 3

reasonable classification of them from the requirement of a right-of-way lease under this chapter.

- * Sec. 3. AS 38.35.030 is amended to read:

Sec. 38.35.030. ABANDONMENT, REDUCTION OR IMPAIRMENT OF SERVICE OF PIPELINE. No lessee may 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 sec. 40 of this chapter.

- * Sec. 4. AS 38.35.040 is amended to read:

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 he shall by regulation require, or upon his own motion 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 secs. 50 - 100 of this chapter. 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.

- * Sec. 5. AS 38.35.050 is repealed and re-enacted to read:

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 sec. 80 of this chapter and to make a decision under sec. 100 of this chapter.

(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 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 his employment as if he 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.

- * Sec. 6. AS 38.35.060 is repealed.

- * Sec. 7. AS 38.35.070 is amended to read:

Sec. 38.35.070. NOTICE OF APPLICATION. Upon receiving

an application under sec. 50 of this chapter, 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 he considers reasonable and appropriate to inform the public of the application.

* Sec. 8. AS 38.35.080 is amended to read:

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 he was notified, including a proposal for action if feasible; a proposed lease and a general statement of his basis and purpose, 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 sec. 70 of this chapter.

(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 sec. 70(a) of this chapter 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) Except to the extent specified in sec. 190(b) of this chapter, the provisions of the Administrative Procedure Act (AS 44.62) do not apply to hearings held under this section.

* Sec. 9. AS 38.35.100 is repealed and re-enacted to read:

Sec. 38.35.100. DECISION ON APPLICATION. (a) The commissioner shall promptly determine, on an application filed with him under sec. 50 of this chapter, whether the

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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

(1) the proposed use of the right-of-way will unreasonably conflict with existing uses of the land involving a superior public interest;

(2) the applicant has the technical and financial capability to protect state and private property interests;

(3) the applicant has the technical and financial capability to take action to the extent reasonably practical to

(A) prevent any significant adverse environmental impact, including but not limited to, erosion of the surface of the land and damage to fish and wildlife and their habitat;

(B) undertake any necessary restoration or revegetation; and

(C) protect the interests of individuals living in the general area of the right-of-way who rely on fish, wildlife and biotic resources of the area for subsistence purposes;

(4) the applicant has the financial capability to pay reasonably foreseeable damages for which he may become liable on claims arising from the construction, operation, maintenance or termination of the pipeline.

(b) If the commissioner makes these determinations favorably to the applicant, then he may grant the whole or part of the application. Otherwise, he shall deny the application. In order to grant the whole or part of the application the commissioner shall offer a lease to the applicant for its acceptance through signing of the lease and agreeing to comply with its terms, conditions, and obligations. Only upon proper acceptance of offered lease by the applicant within 30 days after its having been presented is the grant of the application consummated.

* Sec. 10. AS 38.35.110 is amended to read:

Sec. 38.35.110. TERM OF LEASE. Each lease of state land for pipeline right-of-way purposes shall contain a provision that the lease shall run for a specified term of not greater than 30 years, and shall be renewable for additional periods of up to 10 years each, so long as the lessee is in commercial operation and is in full compliance with all state law, including but not limited to state law pertaining to regulation and taxation of the pipeline facility, and is in compliance with all terms of the lease. In making this determination he shall take into consideration the cost of the proposed pipeline, its useful life, and the probable financing requirement for the proposed pipeline.

* Sec. 11. AS 38.35.120 is repealed and re-enacted to read:

Sec. 38.35.120. COVENANTS REQUIRED TO BE INCLUDED IN LEASE. (a) A noncompetitive lease of state land for a right-of-way for an oil or natural gas pipeline valued at \$1,000,000 or more may be granted only upon the condition that the lessee expressly covenants in the lease, in consideration of the rights acquired by it under the lease, that

(1) it assumes the status of and will perform all of its functions undertaken under the lease as a common carrier and will accept, convey, and transport without discrimination crude oil or natural gas, depending on the kind of pipeline involved, delivered to it for transportation from fields in the vicinity of the pipeline subject to the lease throughout its route both on state land obtained under the lease and on other land; however, a lessee who owns or operates a natural gas pipeline subject to regulation either (A) under the Natural Gas Act (15 U.S.C. 717 et. seq.) of the United States, or (B) by the state or political subdivisions with respect to rates and charges for the sale of natural gas, is, to the extent of that regulation, exempt from the common carrier requirement in this paragraph; it will accept, convey, and transport crude oil or natural gas without unjust or unreasonable discrimination in favor of one producer or person, including itself, as against another but will take the crude oil or natural gas, depending on the kind of pipeline involved, delivered or offered, without unreasonable discrimination, that the Alaska Pipeline Commission shall, after a full hearing with due notice to the interested parties and a proper finding of facts, determine to be reasonable in the performance of its duties as a common carrier;

(2) it will interchange crude oil or natural gas, depending on the kind of pipeline involved, with each like common carrier and provide connections and facilities for the interchange of crude oil or natural gas at every locality reached by both pipelines when the necessity exists, subject to rates and regulations made by the appropriate state or federal regulatory agency;

(3) it will maintain and preserve books, accounts, and records and will make those reports that the state may prescribe by regulation or law as necessary and appropriate for purposes of administration of this chapter;

(4) it will accord at all reasonable times to the state and its authorized agents and auditors the right of access to its property and records, of inspection of its property, and of examination and copying of records;

(5) it will provide connections, as determined by the Alaska Pipeline Commission under AS 42.06.340, to facilities on the pipeline subject to the lease, both on state land and other land in the state, for the purpose of delivering crude oil or natural gas, depending on the kind of pipeline involved, to persons (including the state and its political subdivisions) contracting for the purchase at wholesale of crude oil or natural gas transported by the pipeline when required by the public interest;

(6) it shall, notwithstanding any other

Chapter 3.

provision, provide connections and interchange facilities at state expense at such places the state considers necessary if the state determines to take a portion of its royalty or taxes in oil or natural gas;

(7) it will construct and operate the pipeline in accordance with applicable state laws and lawful regulations and orders of the Alaska Pipeline Commission;

(8) it will, at its own expense, during the term of the lease

(A) maintain the leasehold and pipeline in good repair;

(B) promptly repair or remedy any damage to the leasehold;

(C) promptly compensate for any damage to or destruction of property for which the lessee is liable resulting from damage to or destruction of the leasehold or pipeline;

(9) it will not transfer, assign, or dispose of in any manner, directly or indirectly, or by transfer of control of the carrier corporation, its interest in a right-of-way lease, or any rights under the lease or any pipeline subject to the lease to any person other than another owner of the pipeline (including subsidiaries, parents and affiliates of the owners), except to the extent that the commissioner, after consideration of the protection of the public interest (including whether the proposed transferee is fit, willing and able to perform the transportation or other acts proposed in a manner that will reasonably protect the lives, property and general welfare of the people of Alaska), authorizes; the commissioner shall not unreasonably withhold his consent to the transfer, assignment or disposal;

(10) it will file with the commissioner a written appointment of a named permanent resident of the state to be its registered agent in the state and to receive service of notices, regulations, decisions and orders of the commissioner; if it fails to appoint an agent for service, service may be made by posting a copy in the office of the commissioner and filing a copy of it in the office of the lieutenant governor and by mailing a copy to the lessee's last known address;

(11) the applicable law of this state will be used in resolving questions of interpretation of the lease;

(12) the granting of the right-of-way lease is subject to the express condition that the exercise of the rights and privileges granted under the lease will not unduly interfere with the management, administration, or disposal by the state of the land affected by the lease, and that the lessee agrees and consents to the occupancy and use by the state, its grantees, permittees, or other lessees of any part of the right-of-way not actually occupied or required by the pipeline for the full and safe utilization of the pipeline, for necessary operations

incident to land management, administration, or disposal;

(13) it will be liable to the state for damages or injury incurred by the state caused by the construction, operation or maintenance of the pipeline and it will indemnify the state for the liabilities or damages;

(14) it will procure and furnish liability and property damage insurance from a company licensed to do business in the state or furnish other security or undertaking upon the terms and conditions the commissioner considers necessary if the commissioner finds that the net assets of the lessee are insufficient to protect the public from damage for which the lessee may be liable arising out of the construction or operation of the pipeline.

(b) For a right-of-way lease granted under this chapter for an oil or natural gas pipeline valued at \$1,000,000 or more to be valid and of legal effect, it must contain the terms required to be inserted under the provisions of secs. 110 - 140 of this chapter. An oil or natural gas pipeline right-of-way lease granted under this chapter that does not contain the required terms is null and void and without legal effect and does not vest any interest in state land or any authority in the carrier granted the lease.

(c) The commissioner may insert in any right-of-way lease other reasonable provisions and conditions that he determines the public interest requires.

(d) The lease will also contain terms and conditions that are reasonably necessary to obligate the lessee, to the extent reasonably practicable, to

(1) prevent conflicts with other existing uses of the land involving a superior public interest;

(2) protect state and private property interests;

(3) prevent any significant adverse environmental impact, including but not limited to the erosion of the surface of the land, and damage to fish and wildlife and their habitat;

(4) restore and revegetate during the term and at termination of the lease; and

(5) protect the interests of individuals living in the general area of the right-of-way who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes.

(e) In the event the commissioner proposes to offer a lease or leases to two or more lessees for the same pipeline, the commissioner may include terms in the lease or leases which establish the limit of the obligations and liabilities of each lessee arising under this chapter or under the lease or leases.

(f) The commissioner may, at his discretion, include any or all of the terms set out in this section in leases

of state land for products pipeline right-of-way purposes.

- * Sec. 12. AS 38.35.130 is amended to read:

Sec. 38.35.130. RIGHT-OF-WAY EASEMENTS OR LEASES ACQUIRED FROM OTHERS. (a) The lessee may, if the commissioner delegates the function to it, condemn, by declaration of taking, under AS 09.55.420 - 09.55.450, real property and acquire leases of or easements or rights-of-way on lands in the state required for right-of-way purposes for a pipeline subject to the lease on behalf of and as agent for the state in which title to or interest in the land shall vest.

(b) The lease shall contain a covenant that the land, right-of-way, or easement acquired under this section is or will form part of the land leased to the lessee.

- * Sec. 13. AS 38.35.140 is repealed and re-enacted to read:

Sec. 38.35.140. PAYMENT OF RENTAL AND COSTS. (a) The lease price for a right-of-way lease shall be the annual fair market rental of the state lands included in the right-of-way based on the appraised fair market value of the land. The lease price is payable annually in advance on or before the anniversary of the lease. The appraised fair market rental value shall be adjusted periodically under the provisions of AS 38.05.105. Rental may not be charged for any land acquired by the lessee under sec. 130(b) of this chapter and conveyed without cost to the state.

(b) The lessee shall reimburse the state for all reasonable costs incurred in monitoring the construction of the pipeline on the right-of-way.

- * Sec. 14. AS 38.35.150 is repealed.

- * Sec. 15. AS 38.35.160 is repealed.

- * Sec. 16. AS 38.35.170 is repealed and re-enacted to read:

Sec. 38.35.170. FORFEITURE OF LEASE. Failure to begin construction of the pipeline facility within a reasonable time of the granting of a right-of-way lease under this chapter for reasons within the control of the lessee or failure of an owner of an interest in the granted right-of-way substantially to comply with the terms of the right-of-way shall be grounds for forfeiture of the right-of-way interest of the lessee or owner in an action brought by the commissioner in the superior court. Before the commencement of any action for forfeiture of an interest in a right-of-way under this section, the commissioner shall give the lessee or owner of the interest notice in writing of the alleged default and shall not commence the proceeding unless the lessee or owner of the interest has failed to initiate good faith efforts to cure the default within 60 days of the notice of the alleged default.

- * Sec. 17. AS 38.35.180(c) is amended to read:

(c) Neither this section nor the state's obtaining an injunction or recovering penalties extinguishes any civil

cause of action arising out of a violation of this chapter or the provisions of a right-of-way lease.

* Sec. 18. AS 38.35.190(b), (c) and (d) are repealed.

* Sec. 19. AS 38.35.200 is repealed and re-enacted to read:

Sec. 38.35.200. JUDICIAL REVIEW OF DECISIONS OF COMMISSIONER ON APPLICATION. (a) An applicant or competing applicant or a person who has a direct financial interest affected by the lease who raises objections within 60 days of the publication of notice under sec. 70 of this chapter are the only persons with standing to seek judicial review of a decision of the commissioner under sec. 100 of this chapter.

(b) The only grounds for judicial review of a decision of the commissioner are

(1) failure to follow the procedures set out in this chapter; or

(2) abuse of discretion so capricious, arbitrary or confiscatory as to constitute a denial of due process.

* Sec. 20. AS 38.35.210 is amended to read:

Sec. 38.35.210. DELEGATION OF COMMISSIONER'S AUTHORITY. The commissioner may delegate to an employee of the Department of Natural Resources or the Department of Law the authority granted under this chapter, except for the authority to execute leases.

* Sec. 21. AS 38.35.220(d) is repealed.

* Sec. 22. AS 38.35.230 is repealed and re-enacted to read:

Sec. 38.35.230. DEFINITIONS. In this chapter

(1) "commissioner" means the commissioner of natural resources;

(2) "coordinate agencies" includes Department of Labor, Department of Highways, Department of Environmental Conservation, and the Alaska Pipeline Commission;

(3) "lease" means the instrument or extension of an instrument issued under this chapter granting a leasehold interest in state land for pipeline right-of-way purposes to a person and authorizing the construction or operation of, or transportation, service or sale by a pipeline for crude oil, natural gas, or products;

(4) "lessee" means a person or persons holding a valid lease issued by the commissioner;

(5) "natural gas" includes all hydrocarbons produced at the wellhead not defined as oil;

(6) "oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons

known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas;

(7) "pipeline" or "pipeline facility" means all the facilities of a total system of pipe (whether owned or operated under a contract, agreement, or lease) used by a carrier for transportation of crude oil, natural gas, or products for delivery, for storage, or for further transportation, and including all pipe, pump or compressor stations, station equipment, tanks, valves, access roads, bridges, airfields, terminals and terminal facilities, including docks and tanker loading facilities, operations control center for both the upstream part of the pipeline and the terminal, tanker ballast treatment facilities, and fire protection system, communication system, and all other facilities used or necessary for an integral line of pipe, taken as a whole, to effectuate transportation, including an extension or enlargement of the line;

(8) "product" means refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha, distillate, gasoline, kerosene, benzine, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of petroleum and any liquid product or by-product derived from crude petroleum oil or natural gas;

(9) "state land" means

(A) "state lands" as defined in AS 38.05.-365;

(B) public land of the United States selected by the state under sec. 6 of the Alaska Statehood Act of 1958 (PL 85-508; 72 Stat. 399), as amended, and real property of the United States transferred to the state under secs. 21, 35 and 45 of the Alaska Omnibus Act of 1959 (PL 86-70; 73 Stat. 141), as amended;

(C) any interest owned by the state in land;

(10) "transportation" means the shipment or carriage by a pipeline of crude oil, natural gas, or products from an upstream terminus in one or more fields or points of production or supply of the minerals to a downstream terminus in one or more points for delivery of the minerals to a purchaser or consignee, for storage, or for further carriage or shipment, including shipment or carriage within the state that may be classified as interstate or foreign transportation to the extent that the transportation may constitutionally be subjected to the provisions of this chapter, as well as all services necessary to effectuate shipment or carriage, including, among other things, the receipt, storage, processing, handling, transfer in transit, forwarding, and delivery of the minerals.

* Sec. 23. AS 38.35 is amended by adding new sections to

read:

Sec. 38.35.205. LEASE SAVINGS CLAUSE. A judicial finding that any term or condition of a right-of-way lease issued under this chapter is unlawful or invalid may not operate to invalidate the lease or any other term or condition of the lease.

Sec. 38.35.225. BINDING EFFECT OF COVENANTS. By entering into a lease under this chapter, the lessee is bound by all the covenants provided for in the lease to the full extent of the power of the state to impose those covenants under its authority as owner of the land to be leased or under its police or regulatory powers or otherwise; provided that the right of the lessee to challenge the power of the state to require such a covenant as owner of the land to be leased or under its police or regulatory powers or otherwise is preserved until such time as action to enforce the covenant is taken by the state.

* Sec. 24. AS 09.55.240(a)(12) is amended to read:

(12) for the location of pipelines for gathering, transmitting, transporting, storing, or delivering natural or artificial gas or oil or any liquid or gaseous hydrocarbons, including, but not limited to, pumping stations, terminals, storage tanks, or reservoirs, and related installations.

* Sec. 25. AS 38.05.020(c)(1) is amended to read:

(1) granting leases of state land for pipeline right-of-way purposes;

* Sec. 26. AS 38.05.020(c)(2) is amended to read:

(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;

* Sec. 27. AS 38.05.020(c)(4) is amended to read:

(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;

* Sec. 28. AS 38.05.330 is amended to read:

Sec. 38.05.330. PERMITS. The director, without the prior approval of the commissioner, may issue permits, rights-of-way or easements on state land for secondary roads, trails, ditches, field gathering lines or transmission and distribution pipelines not subject to AS 38.35, telephone and transmission lines, log storage, oil well drilling sites and production facilities for the purposes of recovering minerals from adjacent lands under valid lease, and other similar uses or improvements, or for the limited personal use of timber or materials. The commissioner, upon recommendation of the director, shall

Chapter 3

establish a reasonable rate or fee schedule to be charged for these uses. In the granting, suspension or revocation of a permit or easement of lands, the director shall give preference to that use of the land which will be of greatest economic benefit to the state and the development of its resources. However, first preference shall be granted to the upland owner for the use of a tract of tideland, or tideland and contiguous submerged land, which is seaward of the upland property of the upland owner and which is needed by the upland owner for any of the purposes for which the use may be granted.

* Sec. 29. AS 42.06.310 is amended by adding a new subsection to read:

(c) Every common carrier shall, when ordered by the Alaska Pipeline Commission, extend or enlarge its pipeline or storage facilities provided the extension or enlargement shall be found to be reasonable and required in the public interest and that the expense involved will not impair the ability of the common carrier or public utility to perform its duty to the public.

* Sec. 30. The commissioner of natural resources shall submit to the members of the Eighth Legislature not later than September 1, 1974 a full report covering all lands conveyed under provisions of AS 38.05.063 and 38.05.076. The report shall contain a description of all parcels conveyed under the Act including acreage (to include a detailed plat of each parcel), land classification, appraised value, lease or sale value, proposed land usage, and any other information the commissioner may feel necessary to an understanding of the particular disposal.

* Sec. 31. AS 38.05.063 and 38.05.076 are repealed effective September 1, 1974.

* Sec. 32. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.

-CITE-

43 USC CHAPTER 34 - TRANS-ALASKA PIPELINE

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1651.

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- (a) Activities along or in vicinity of pipeline right-of-way; strict liability; limitation on liability; subrogation; emergency subsistence and other aid; exemption for State of Alaska.
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- (a) Penalty.
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-SECREP-

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 33 sections 2702, 2707, 2735; title 49 section 60130.

-End-

-CITE-

43 USC Sec. 1651

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-EXPCITE-

TITLE 43 - PUBLIC LANDS
CHAPTER 34 - TRANS-ALASKA PIPELINE

-HEAD-

Sec. 1651. Congressional findings and declaration

-STATUTE-

The Congress finds and declares that:

(a) The early development and delivery of oil and gas from Alaska's North Slope to domestic markets is in the national interest because of growing domestic shortages and increasing dependence upon insecure foreign sources.

(b) The Department of the Interior and other Federal agencies, have, over a long period of time, conducted extensive studies of the technical aspects and of the environmental, social, and economic impacts of the proposed trans-Alaska oil pipeline, including consideration of a trans-Canada pipeline.

(c) The earliest possible construction of a trans-Alaska oil pipeline from the North Slope of Alaska to Port Valdez in that State will make the extensive proven and potential reserves of low-sulfur oil available for domestic use and will best serve the national interest.

(d) A supplemental pipeline to connect the North Slope with a trans-Canada pipeline may be needed later and it should be studied now, but it should not be regarded as an alternative for a trans-Alaska pipeline that does not traverse a foreign country.

-SOURCE-

(Pub. L. 93-153, title II, Sec. 202, Nov. 16, 1973, 87 Stat. 584.)

-MISC1-

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-380, title VIII, Sec. 8001, Aug. 18, 1990, 104 Stat. 564, provided that: "This title [enacting sections 1642 and 1656 of this title, amending sections 1350 and 1653 of this title and section 3145 of Title 16, Conservation, and enacting provisions set out as notes under this section and section 1653 of this title] may be cited as the 'Trans-Alaska Pipeline System Reform Act of 1990'."

SHORT TITLE

Section 201 of title II of Pub. L. 93-153 provided that: "This title [enacting this chapter] may be cited as the 'Trans-Alaska Pipeline Authorization Act'."

SEPARABILITY

Section 411 of Pub. L. 93-153 provided that: "If any provision of this Act [enacting this chapter, section 1456a of this title, and section 3512 of Title 44, Public Printing and Documents, amending section 1608 of this title, sections 45, 46, 53, and 56 of Title 15, Commerce and Trade, section 185 of Title 30, Mineral Lands and Mining, section 3502 of Title 44, and section 391a of former Title 46, Shipping, and enacting provisions set out as notes under sections 1608 and 1651 of this title, section 1904 of Title 12, Banks and Banking, section 45 of Title 15, section 791a of Title 16, Conservation, and section 1221 of Title 33, Navigation and Navigable Waters] or the applicability thereof is held invalid the remainder of this Act shall not be affected thereby."

PRESIDENTIAL TASK FORCE

Pub. L. 101-380, title VIII, Sec. 8103, Aug. 18, 1990, 104 Stat. 567, established a Presidential Task Force on the Trans-Alaska Pipeline System, to conduct an audit of the Trans-Alaska Pipeline System and make recommendations to the President, Congress, and the Governor of Alaska, authorized appropriations for the Task Force, and required it to transmit its final report to the President, Congress, and the Governor no later than 2 years after the date on which funding was made available.

NORTH SLOPE CRUDE OIL; REPORT ON EQUITABLE ALLOCATION

Pub. L. 94-586, Sec. 18, Oct. 22, 1976, 90 Stat. 2916, directed that the President, within 6 months of Oct. 22, 1976, determine special expediting procedures necessary to insure the equitable allocation of North Slope crude oil to the Northern Tier States of Washington, Oregon, Idaho, Montana, Illinois, Indiana, and Idaho to carry out the provisions of section 410 of Pub. L. 93-153 [set out below], and to report his findings to Congress, such report to include a statement demonstrating the impact that the delivery system would have on reducing the dependency of New England and the Middle Atlantic States on foreign oil imports.

TRANS-CANADA PIPELINE; NEGOTIATIONS WITH CANADA; FEASIBILITY STUDY

Title III (Secs. 301-303) of Pub. L. 93-153 authorized the President to enter into negotiations with the Government of Canada to determine Canadian willingness to permit construction of pipelines or other transportation systems across its territory to bring gas and oil from Alaska's North Slope to the United States; the need for intergovernmental agreements to protect interests of any parties involved with construction, operation, and maintenance of such natural gas or oil transportation systems; terms and conditions for construction across Canadian territory; desirability of joint studies to insure environmental protection, reduce regulatory uncertainty, and insure meeting energy requirements; quantity of oil and gas for which Canada would guarantee transit; and acquisition of other energy sources so as to make unnecessary the shipment of oil from the Alaska pipeline by tanker into the Puget Sound area. The President was to report to Congress on actions taken and recommendations for further action. In addition, the Secretary of the Interior was to investigate, and to report to Congress within 2 years of Nov. 16, 1973, as to the feasibility of oil or gas pipelines from the North Slope of Alaska to connect with a pipeline through Canada that would deliver oil or gas to United States markets. Nothing in title III was to limit the authority of the Secretary or any other Federal official to grant a gas or oil pipeline right-of-way or permit, which that official was otherwise authorized by law to grant.

EXCLUSION OF PERSONS FROM TRANS-ALASKA PIPELINE ACTIVITIES ON BASIS OF RACE, CREED, COLOR, NATIONAL ORIGIN, OR SEX PROHIBITED

Section 403 of Pub. L. 93-153 provided that: "The Secretary of the Interior shall take such affirmative action as he deems necessary to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving, or participating in any activity conducted under, any permit, right-of-way, public land order, or other Federal authorization granted or issued under title II [this chapter]. The Secretary of the Interior shall promulgate such rules as he deems necessary to carry out the purposes of this subsection and may enforce this subsection, and any rules promulgated under this subsection, through agency and department provisions and rules which shall be similar to those established and in effect under title VI of the Civil Rights Act of 1964 [section 2000d et seq. of Title 42, The Public Health and Welfare]."

EQUITABLE ALLOCATION OF NORTH SLOPE CRUDE OIL

Section 410 of Pub. L. 93-153 provided that: "The Congress declares that the crude oil on the North Slope of Alaska is an important part of the Nation's oil resources, and that the benefits of such crude oil should be equitably shared, directly or indirectly, by all regions of the country. The President shall use any authority he may have to insure an equitable allocation of available North Slope and other crude oil resources and petroleum products among all regions and all of the several States."

-End-

-CITE-

43 USC Sec. 1652

01/19/04

-EXPCITE-

TITLE 43 - PUBLIC LANDS
CHAPTER 34 - TRANS-ALASKA PIPELINE

-HEAD-

Sec. 1652. Authorizations for construction

-STATUTE-

(a) Congressional declaration of purpose

The purpose of this chapter is to insure that, because of the extensive governmental studies already made of this project and the national interest in early delivery of North Slope oil to domestic markets, the trans-Alaska oil pipeline be constructed promptly without further administrative or judicial delay or impediment. To accomplish this purpose it is the intent of the Congress to exercise its constitutional powers to the fullest extent in the authorizations and directions herein made and in limiting judicial review of the actions taken pursuant thereto.

(b) Issuance, administration, and enforcement of rights-of-way, permits, leases, and other authorizations

The Congress hereby authorizes and directs the Secretary of the Interior and other appropriate Federal officers and agencies to issue and take all necessary action to administer and enforce rights-of-way, permits, leases, and other authorizations that are necessary for or related to the construction, operation, and maintenance of the trans-Alaska oil pipeline system, including roads and airstrips, as that system is generally described in the Final Environmental Impact Statement issued by the Department of the Interior on March 20, 1972. The route of the pipeline may be modified by the Secretary to provide during construction greater environmental protection.

(c) Applicability of statutes governing rights-of-way for pipelines through Federal lands; other statutory terms and conditions; waiver of procedural requirements; supersedure of administrative authorizations for construction

Rights-of-way, permits, leases, and other authorizations issued pursuant to this chapter by the Secretary shall be subject to the provisions of section 185 of title 30, as amended by Pub. L. 93-153 (except the provisions of subsections (h)(1), (k), (q), (w)(2), and (x)); all authorizations issued by the Secretary and other Federal officers and agencies pursuant to this chapter shall include the terms and conditions required, and may include the terms and conditions permitted, by the provisions of law that would otherwise be applicable if this chapter had not been enacted, and they may waive any procedural requirements of law or regulation which they deem desirable to waive in order to accomplish the purposes of this chapter. The direction contained in subsection (b) of this section shall supersede the provisions of any law or regulation relating to an administrative determination as to whether the authorizations for construction of the trans-Alaska oil pipeline shall be issued.

(d) National Environmental Policy Act of 1969 bypassed; issuance of authorizations for construction and operation not to be subject to judicial review; time limits on charges of invalidity or unconstitutionality; jurisdiction; hearings; review

The actions taken pursuant to this chapter which relate to the construction and completion of the pipeline system, and to the applications filed in connection therewith necessary to the pipeline's operation at full capacity, as described in the Final

Environmental Impact Statement of the Department of the Interior, shall be taken without further action under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.]; and the actions of the Federal officers concerning the issuance of the necessary rights-of-way, permits, leases, and other authorizations for construction and initial operation at full capacity of said pipeline system shall not be subject to judicial review under any law except that claims alleging the invalidity of this section may be brought within sixty days following November 16, 1973, and claims alleging that an action will deny rights under the Constitution of the United States, or that the action is beyond the scope of authority conferred by this chapter, may be brought within sixty days following the date of such action. A claim shall be barred unless a complaint is filed within the time specified. Any such complaint shall be filed in a United States district court, and such court shall have exclusive jurisdiction to determine such proceeding in accordance with the procedures hereinafter provided, and no other court of the United States, of any State, territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any such claim whether in a proceeding instituted prior to or on or after November 16, 1973. Such court shall not have jurisdiction to grant any injunctive relief against the issuance of any right-of-way, permit, lease, or other authorization pursuant to this section except in conjunction with a final judgment entered in a case involving a claim filed pursuant to this section. An interlocutory or final judgment, decree, or order of such district court may be reviewed only upon petition for a writ of certiorari to the Supreme Court of the United States.

(e) Amendment or modification of rights-of-way, permits, leases, or other authorizations

The Secretary of the Interior and the other Federal officers and agencies are authorized at any time when necessary to protect the public interest, pursuant to the authority of this section and in accordance with its provisions, to amend or modify any right-of-way, permit, lease, or other authorization issued under this chapter.

-SOURCE-

(Pub. L. 93-153, title II, Sec. 203, Nov. 16, 1973, 87 Stat. 584; Pub. L. 98-620, title IV, Sec. 402(46), Nov. 8, 1984, 98 Stat. 3360; Pub. L. 100-352, Sec. 6(c), June 27, 1988, 102 Stat. 663.)

-REFTEXT-

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (d), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (section 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

-MISC1-

AMENDMENTS

1988 - Subsec. (d). Pub. L. 100-352 amended last sentence generally. Prior to amendment, last sentence read as follows: "Any review of an interlocutory or final judgment, decree, or order of such district court may be had only upon direct appeal to the Supreme Court of the United States."

1984 - Subsec. (d). Pub. L. 98-620 struck out provision that any such proceeding had to be assigned for hearing at the earliest possible date, had to take precedence over all other matters pending on the docket of the district court at that time, and had to be expedited in every way by such court.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100-352, set out as a note under section 1254 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1655 of this title; title 30 section 185; title 50 App. section 2406.

-End-

-CITE-

43 USC Sec. 1653

01/19/04

-EXPCITE-

TITLE 43 - PUBLIC LANDS
CHAPTER 34 - TRANS-ALASKA PIPELINE

-HEAD-

Sec. 1653. Liability for damages

-STATUTE-

(a) Activities along or in vicinity of pipeline right-of-way; strict liability; limitation on liability; subrogation; emergency subsistence and other aid; exemption for State of Alaska

(1) Except when the holder of the pipeline right-of-way granted pursuant to this chapter can prove that damages in connection with or resulting from activities along or in the vicinity of the proposed trans-Alaskan pipeline right-of-way were caused solely by an act of war or negligence of the United States, other government entity, or the damaged party, such holder shall be strictly liable to all damaged parties, public or private, without regard to fault for such damages, and without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or other natural resources relied upon by Alaska Natives, Native organizations, or others for subsistence or economic purposes. Claims for such injury or damages may be determined by arbitration or judicial proceedings.

(2) Liability under paragraph (1) of this subsection shall be limited to \$350,000,000 for any one incident, and the holders of the right-of-way or permit shall be liable for any claim allowed in proportion to their ownership interest in the right-of-way or permit. Liability of such holders for damages in excess of \$350,000,000 shall be in accord with ordinary rules of negligence.

(3) In any case where liability without fault is imposed pursuant to this subsection and the damages involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

(4) Upon order of the Secretary, the holder of a right-of-way or permit shall provide emergency subsistence and other aid to an affected Alaska Native, Native organization, or other person pending expeditious filing of, and determination of, a claim under

this subsection.

(5) Where the State of Alaska is the holder of a right-of-way or permit under this chapter, the State shall not be subject to the provisions of this subsection, but the holder of the permit or right-of-way for the trans-Alaska pipeline shall be subject to this subsection with respect to facilities constructed or activities conducted under rights-of-way or permits issued to the State to the extent that such holder engages in the construction, operation, maintenance, and termination of facilities, or in other activities under rights-of-way or permits issued to the State.

(b) Control and removal of pollutants at expense of right-of-way holder

If any area in the State of Alaska within or without the right-of-way or permit area granted under this chapter is polluted by any activities related to the Trans-Alaska Pipeline System, including operation of the terminal, conducted by or on behalf of the holder to whom such right-of-way or permit was granted, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and total removal of the pollutant shall be at the expense of such holder, including any administrative and other costs incurred by the Secretary or any other Federal or State officer or agency. Upon failure of such holder to adequately control and remove such pollutant, the Secretary, in cooperation with other Federal, State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of such holder.

-SOURCE-

(Pub. L. 93-153, title II, Sec. 204, Nov. 16, 1973, 87 Stat. 586; Pub. L. 101-380, title VIII, Secs. 8101, 8102(a)(1), (4), (b)-(e), Aug. 18, 1990, 104 Stat. 565-567.)

-MISC1-

AMENDMENTS

1990 - Subsec. (a)(1). Pub. L. 101-380, Sec. 8101(a), substituted "caused solely by" for "caused by".

Subsec. (a)(2). Pub. L. 101-380, Sec. 8101(b), substituted "\$350,000,000" for "\$50,000,000" in two places.

Subsec. (b). Pub. L. 101-380, Sec. 8101(c), inserted "in the State of Alaska" after "any area", "related to the Trans-Alaska Pipeline System, including operation of the terminal," after "any activities", and "or State" after "any other Federal".

Subsec. (c). Pub. L. 101-380, Sec. 8102(a)(1), struck out subsec. (c) which related to liability for discharges of oil loaded at terminal facilities and to establishment of Trans-Alaska Pipeline Liability Fund.

Subsec. (c)(2). Pub. L. 101-380, Sec. 8102(b), substituted "caused solely by" for "caused by".

Subsec. (c)(3). Pub. L. 101-380, Sec. 8102(d), inserted at end "The Fund shall expeditiously pay claims under this subsection, including such \$14,000,000, if the owner or operator of a vessel has not paid any such claim within 90 days after such claim has been submitted to such owner or operator. Upon payment of any such claim, the Fund shall be subrogated under applicable State and Federal laws to all rights of any person entitled to recover under this subsection. In any action brought by the Fund against an owner or operator or an affiliate thereof to recover amounts under this paragraph, the Fund shall be entitled to recover prejudgment interest, costs, reasonable attorney's fees, and, in the discretion of the court, penalties."

Subsec. (c)(4). Pub. L. 101-380, Sec. 8102(e), designated existing provisions as par. (A) and added pars. (B) and (C).

Subsec. (c)(5). Pub. L. 101-380, Sec. 8102(a)(4), inserted before

period at end of second sentence ", except that after August 18, 1990, the amount to be accumulated shall be \$100,000,000 or the amount determined by the trustees and certified to the Congress by the Comptroller General as necessary to pay claims arising from incidents occurring prior to August 18, 1990, and administrative costs, whichever is less".

Subsec. (c) (13), (14). Pub. L. 101-380, Sec. 8102(c), added pars. (13) and (14).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-380 applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L. 101-380, set out as an Effective Date note under section 2701 of Title 33, Navigation and Navigable Waters.

Section 8102(a) (5) (A) of Pub. L. 101-380 provided that: "The repeal by paragraph (1) [repealing subsec. (c) of this section] shall be effective 60 days after the date on which the Comptroller General of the United States certifies to the Congress [certified July 5, 2000] that -

"(i) all claims arising under section 204(c) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)) have been resolved,

"(ii) all actions for the recovery of amounts subject to section 204(c) of the Trans-Alaska Pipeline Authorization Act have been resolved, and

"(iii) all administrative expenses reasonably necessary for and incidental to the implementation of section 204(c) of the Trans-Alaska Pipeline Authorization Act have been paid."

SAVINGS PROVISION

Section 8102(a) (3) of Pub. L. 101-380 provided that: "The repeal made by paragraph (1) [repealing subsec. (c) of this section] shall have no effect on any right to recover or responsibility that arises from incidents subject to section 204(c) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)) occurring prior to the date of enactment of this Act [Aug. 18, 1990]."

BULK FUEL STORAGE TANKS

Pub. L. 105-277, div. A, Sec. 101(g) [title III, Sec. 329(a), (b)], Oct. 21, 1998, 112 Stat. 2681-439, 2681-470, provided that:

"(a) Transfer of Funds. - Notwithstanding any other provision of law, the remainder of the balance in the Trans-Alaska Pipeline Liability Fund that is transferred and deposited into the Oil Spill Liability Trust Fund under section 8102(a) (2) (B) (ii) of the Oil Pollution Act of 1990 (43 U.S.C. 1653 note) after June 16, 1998 shall be used in accordance with this section.

"(b) Use of Interest Only. - The interest produced from the investment of the Trans-Alaska Pipeline Liability Fund balance that is transferred and deposited into the Oil Spill Liability Trust Fund under section 8102(a) (2) (B) (ii) of the Oil Pollution Act of 1990 [Pub. L. 101-380] (43 U.S.C. 1653 note) after June 16, 1998 shall be transferred annually by the National Pollution Funds Center to the Denali Commission for a program, to be developed in consultation with the Coast Guard, to repair or replace bulk fuel storage tanks in Alaska which are not in compliance with federal law, including the Oil Pollution Act of 1990 [33 U.S.C. 2701 et seq.], or State law."

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

DISPOSITION OF FUND BALANCE

Section 8102(a)(2) of Pub. L. 101-380, as amended by Pub. L. 105-277, div. A, Sec. 101(g) [title III, Sec. 329(c)], Oct. 21, 1998, 112 Stat. 2681-439, 2681-471, provided that:

"(A) Reservation of amounts. - The trustees of the Trans-Alaska Pipeline Liability Fund (hereafter in this subsection referred to as the 'TAPS Fund') shall reserve the following amounts in the TAPS Fund -

"(i) necessary to pay claims arising under section 204(c) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)); and

"(ii) administrative expenses reasonably necessary for and incidental to the implementation of section 204(c) of that Act.

"(B) Disposition of the balance. - After the Comptroller General of the United States certifies that the requirements of subparagraph (A) have been met, the trustees of the TAPS Fund shall dispose of the balance in the TAPS Fund after the reservation of amounts are made under subparagraph (A) by -

"(i) rebating the pro rata share of the balance to the State of Alaska for its contributions as an owner of oil, which, except as otherwise provided under article IX, section 15, of the Alaska Constitution, shall be used for the remediation of above-ground storage tanks; and then

"(ii) transferring and depositing the remainder of the balance into the Oil Spill Liability Trust Fund established under section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509).

"(C) Disposition of the reserved amounts. - After payment of all claims arising from an incident for which funds are reserved under subparagraph (A) and certification by the Comptroller General of the United States that the claims arising from that incident have been paid, the excess amounts, if any, for that incident shall be disposed of as set forth under subparagraphs (A) and (B).

"(D) Authorization. - The amounts transferred and deposited in the Fund shall be available for the purposes of section 1012 of the Oil Pollution Act of 1990 [33 U.S.C. 2712] after funding sections 5001 [33 U.S.C. 2731] and 8103 [43 U.S.C. 1651 note] to the extent that funds have not otherwise been provided for the purposes of such sections."

LIABILITIES OF TRUSTEES OF TAPS FUND

Section 8102(a)(5)(B) of Pub. L. 101-380 provided that: "Upon the effective date of the repeal pursuant to subparagraph (A) [see Effective Date of 1990 Amendment note above], the trustees of the TAPS Fund shall be relieved of all responsibilities under section 204(c) of the Trans-Alaska Pipeline Authorization Act [43 U.S.C. 1653(c)], but not any existing legal liability."

PRESERVATION OF RIGHTS AND REMEDIES OF CONTRIBUTORS TO TAPS FUND

Section 8102(a)(6) provided that: "This subsection [amending this section and enacting provisions set out as notes above] is intended expressly to preserve any and all rights and remedies of contributors to the TAPS Fund under section 1491 of title 28, United States Code (commonly referred to as the 'Tucker Act')."

-SECF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 9509.

-End-

-CITE-

-EXPCITE-

TITLE 43 - PUBLIC LANDS
CHAPTER 34 - TRANS-ALASKA PIPELINE

-HEAD-

Sec. 1654. Antitrust laws

-STATUTE-

The grant of a right-of-way, permit, lease, or other authorization pursuant to this chapter shall grant no immunity from the operation of the Federal anti-trust laws.

-SOURCE-

(Pub. L. 93-153, title II, Sec. 205, Nov. 16, 1973, 87 Stat. 588.)

-REFTEXT-

REFERENCES IN TEXT

The Federal antitrust laws, referred to in text, are classified generally to chapter 1 (Sec. 1 et seq.) of Title 15, Commerce and Trade.

-End-

-CITE-

43 USC Sec. 1655

01/19/04

-EXPCITE-

TITLE 43 - PUBLIC LANDS
CHAPTER 34 - TRANS-ALASKA PIPELINE

-HEAD-

Sec. 1655. Roads and airports

-STATUTE-

A right-of-way, permit, lease, or other authorization granted under section 1652(b) of this title for a road or airstrip as a related facility of the trans-Alaska pipeline may provide for the construction of a public road or airstrip.

-SOURCE-

(Pub. L. 93-153, title II, Sec. 206, Nov. 16, 1973, 87 Stat. 588.)

-End-

-CITE-

43 USC Sec. 1656

01/19/04

-EXPCITE-

TITLE 43 - PUBLIC LANDS
CHAPTER 34 - TRANS-ALASKA PIPELINE

-HEAD-

Sec. 1656. Civil penalties

-STATUTE-

(a) Penalty

Except as provided in subsection (c)(4) of this section, the Secretary of the Interior may assess and collect a civil penalty under this section with respect to any discharge of oil -

(1) in transit from fields or reservoirs supplying oil to the

trans-Alaska pipeline; or

(2) during transportation through the trans-Alaska pipeline or handling at the terminal facilities, that causes damage to, or threatens to damage, natural resources or public or private property.

(b) Persons liable

In addition to the person causing or permitting the discharge, the owner or owners of the oil at the time the discharge occurs shall be jointly, severally, and strictly liable for the full amount of penalties assessed pursuant to this section, except that the United States and the several States, and political subdivisions thereof, shall not be liable under this section.

(c) Amount

(1) The amount of the civil penalty shall not exceed \$1,000 per barrel of oil discharged.

(2) In determining the amount of civil penalty under this section, the Secretary shall consider the seriousness of the damages from the discharge, the cause of the discharge, any history of prior violations of applicable rules and laws, and the degree of success of any efforts by the violator to minimize or mitigate the effects of such discharge.

(3) The Secretary may reduce or waive the penalty imposed under this section if the discharge was solely caused by an act of war, act of God, or third party action beyond the control of the persons liable under this section.

(4) No civil penalty assessed by the Secretary pursuant to this section shall be in addition to a penalty assessed pursuant to section 1321(b) of title 33.

(d) Procedures

A civil penalty may be assessed and collected under this section only after notice and opportunity for a hearing on the record in accordance with section 554 of title 5. In any proceeding for the assessment of a civil penalty under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures. Any person who requested a hearing with respect to a civil penalty under this subsection and who is aggrieved by an order assessing the civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

(e) State law

(1) Nothing in this section shall be construed or interpreted as preempting any State or political subdivision thereof from imposing any additional liability or requirements with respect to the discharge, or threat of discharge, of oil or other pollution by oil.

(2) Nothing in this section shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to discharges of oil.

-SOURCE-

(Pub. L. 93-153, title II, Sec. 207, as added Pub. L. 101-380, title VIII, Sec. 8202, Aug. 18, 1990, 104 Stat. 571.)

-MISC1-

EFFECTIVE DATE

Section applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L. 101-380, set out as a note under section 2701 of Title 33, Navigation and Navigable Waters.

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 9509.

-End-

-HEAD-

AMENDMENT

OFFERED IN THE HOUSE

BY

TO: CSHB 215(), Draft Version "I"

1 Page 6, line 19:

2 Delete "**(b)**"

3 Insert "**(c)**"

4

5 Page 6, line 20:

6 Delete all material and insert:

7 "* **Sec. 6.** AS 38.35.200 is amended by adding a new subsection to read:"

8

9 Page 6, line 21:

10 Delete "(b)"

11 Insert "(c)"

AMENDMENT

OFFERED IN THE HOUSE

BY

TO: CSHB 215(), Draft Version "I"

1 Page 1, line 2:

2 Delete "and"

3

4 Page 1, line 4, following "corridor":

5 Insert "; and providing for an effective date"

6

7 Page 7, following line 10:

8 Insert a new bill section to read:

9 **** Sec. 8.** This Act takes effect immediately under AS 01.10.070(c)."

AMENDMENT

OFFERED IN THE HOUSE

BY _____

TO: CSHB 215(), Draft Version "I"

1 Page 6, line 21, following "law":

2 Insert "and except for an action described in (c) of this section"

3

4 Page 7, following line 5:

5 Insert a new bill section to read:

6 **"* Sec. 7.** AS 38.35.200 is amended by adding a new subsection to read:

7 (c) An appeal of a permitting decision by the Department of Environmental
8 Conservation under AS 46.03 or AS 46.14 that is made under authority delegated to
9 the Department of Environmental Conservation by the United States Environmental
10 Protection Agency is not

11 (1) subject to the limitation in (a)(2) of this section;

12 (2) included in the actions described in (b) of this section."

13

14 Renumber the following bill section accordingly.

Alaska State Legislature

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REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE HOUSE SECTIONAL ANALYSIS

HOUSE BILL 215: *"An Act relating to the judicial review of a right-of-way lease or the development or construction of an oil or gas pipeline on state land; and relating to the lease of a right-of-way by the Alaska Housing finance Corporation for a gas pipeline transportation corridor."*

Section 1: Amends AS 38.34.050(c), Cooperation and access to information. Adds language that excludes covenants found in AS 38.35.120(a) (1), (2) and (5) from the covenants required to be included in the lease. These covenants refer to a common carrier pipeline which is not applicable to the AGDC (Alaska Gasline Development Corporation) proposal. The AGDC gas pipeline proposal is to be that of a contract carrier. Without the removal of the specific covenants, AGDC will be impacted in its ability to finance the project.

Also adds language that a right-of-way lease is valid and of legal effect notwithstanding AS 38.35.120(b). This allows AGDC to continue its work through the summer under the assumption that AGDC has the ability to operate under this take or pay approach.

Section 2: Amends AS 38.35.100(d), Decision on application. Conforming language to note the changes found in Section 1.

Section 3: Amends AS 38.35.120(a), Covenants required to be included in lease. Conforming language to note the changes found in Section 1.

Section 4: Amends AS 38.35.120(b), Covenants required to be included in lease. Conforming language to note the changes found in Section 1.

Section 5: Amends AS 38.35.200(a), Judicial review of decisions of commissioner on application. Adds language that is intended to limit the ability of those with objections to natural gas pipeline construction to stop necessary projects. Allows a competing applicant or a person with a direct financial interest affected by the lease of a right-of-way to raise an objection within 60 days of the application or 60 days after the effective date of this legislation. Allows an applicant standing to seek judicial review anytime in the process.

Section 6: Adds a new subsection to AS 38.35.200, Judicial review of decisions of commissioner on application. This subsection (c) is modeled after the Trans-Alaska Pipeline Authorization Act provision to foreclose lawsuits against any phase of development and/or construction. This subsection only allows those who have standing to bring about an action alleging that an action will deny rights under the state Constitution or challenging the invalidity of this section. The complaint must be filed in a state Superior Court and the court may not grant injunctive relief with the exception of a final judgment.

Section 7: Amends uncodified law by adding a new section for Revisor's Instructions. Changes the catch line of AS 38.35.200 from "Judicial review of decisions of commissioner on application" to "Judicial review."

April 8, 2011

TO: Representative Gatto
Chairman of Alaska House Judiciary Committee

Dear Chairman Gatto:

This note is in follow-up to my brief testimony on Wednesday (April 6, 2011) before the House Judiciary Committee concerning the original version of HB 215 (available thru BASIS).

Version I of HB 215 that was introduced at the Committee hearing (still not available on the Bill Status portion of BASIS) is different than the Bill package I was asked to review. In addition to the earlier provisions that modify the judicial review restrictions, the bill would exempt the AHFC gas pipeline from the rights-of-way covenants addressing common carriage, pipeline interconnection, and availability of delivery points.

I myself and ANGDA are not involved with, nor do we have any information on, the in-state bullet line project ("ASAP") of AHFC's subsidiary AGDC. Since the Committee Substitute Bill focuses entirely on and affects only the AHFC in-state gas pipeline, I don't believe I have any comments to offer to supplement Mr. Fauske's testimony.

As I indicated to you ANGDA obtained a "conditional" State Rights-Of-Way for a gas spur pipeline between Glennallen and Palmer. Our experience under the ROW Leasing Act was a positive one, and in

particular, the public process involved improved several aspects of the pipeline design and alignment.

In 2006 ANGDA worked with the RCA to draft revisions of the Alaska Pipeline Act's (AS 42.06) open season provisions. The "unworkable" nature of this detailed portion of AS 42.06.240(f) was first highlighted in the remarks of former Alaska Attorney Generals Charlie Cole before the July 28, 2004, LB&A hearing on stranded gas. A summary of the issues and history is contained in the RCA letter to then Governor Murkowski dated February 28, 2006. Ultimately, the framework for conducting a gas pipeline open season is the decisive element in providing open access and consumer benefits. Initially ANGDA proposed that rather than repeal the problematic sections, that public corporations be exempted from the provisions, in reliance on the fact that public corporations of the State act in the public interest by their very nature. To my knowledge no change in statute has been made.

I do not wish to testify at the hearing this afternoon, but I can be available for questions if the Committee wishes.

Harold Heinze
CEO of ANGDA

LEGAL SERVICES

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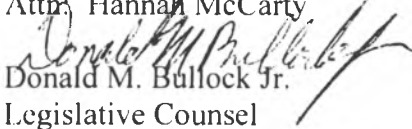
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 7, 2011

SUBJECT: Judicial review of a right-of-way lease in HB 215
(Work Order No. 27-LS0741\M)

TO: Representative Beth Kerttula
Attn: Hannah McCarty

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

You asked whether the limitations on the judicial review of a right-of-way lease under AS 38.35 by the amendment to AS 38.35.200 in HB 215 are constitutional under art. VIII, sec. 2, Constitution of the State of Alaska, with respect to the disposal of public land.

You also asked whether the bill compromises the Alaska Pollutant Discharge Elimination System (APDES) primacy under the Clean Water Act. You wrote that the Clean Water Act (CWA) requires states to have judicial review of water permits in order to qualify for primacy in handling CWA permits.

As a preliminary note, the statute that is amended in HB 215 was enacted in 1973 and apparently has never been the subject of litigation or addressed in an opinion by the attorney general.

In its current form, AS 38.35.200(a) limits standing to object to a right-of-way lease application decision by the commissioner of natural resources (commissioner) to an applicant, competing applicant, or a person that has a financial interest affected by the lease. The subsection also limits the period for raising the objection to 60 days after the commissioner files the notice stating that an application for a right-of-way lease has been received. In its current form, AS 38.35.200(b) limits the grounds for judicial review to the failure to follow the procedures in AS 38.35 or "abuse of discretion so capricious, arbitrary, or confiscatory as to constitute a denial of due process."

Applicability of art. VIII, sec. 10 of the Alaska constitution

The amendment to AS 38.35.200(a) in sec. 1 of HB 215 makes editorial changes, but not substantive changes to the designation of the persons that may raise an objection. The 60-day period following publication of the notice under AS 38.05.070 for raising an objection to a right-of-way application decision continues for a notice published after the

effective date of the Act. However, the language "within **the later of** 60 days **after the effective date of this Act or** [OF] the publication of notice" could be interpreted to extend a 60-day period that began before the effective date of the Act until 60 days after the effective date, or to add a 60-day period to a period that expired before the effective date. I do not know from the language of the bill what the intent is. Perhaps the "**the later of**" language may have been intended to be "**the earlier of.**" You may wish to clarify the intent of the timing provision with the sponsor.

Article VIII, sec. 10, Constitution of the State of Alaska, prohibits leases of state lands "without prior public notice and other safeguards of the public interest as may be prescribed by law." AS 38.35.020 authorizes the commissioner to grant a noncompetitive right-of-way lease. The requirements that must be met to be eligible for a right-of-way lease are within AS 38.35, as well as the process for applying. A person seeking a right-of-way lease begins the process by filing an application¹ that is followed by the publication of a notice stating that an application has been received.² It is the publication of this notice that starts the 60-day period for raising an objection.

Consistent with the requirements in art. VIII, sec. 10 of the constitution, the legislature required prior public notice before the approval of a lease application. However, although the notice is public, only a person that applied for the lease, a competing applicant, or a person with financial interest affected by the lease has standing to object. I do not know whether a court would find that adequate safeguards of the public interest are present in this process. However, considering the narrow scope of AS 38.35, the legislative declaration of policy in AS 38.35.010, the limited number of persons that qualify to apply and be granted a lease, and the policy to encourage the development of the state's resources in art. VIII, sec. 1, Constitution of the State of Alaska, I expect the court would defer to the legislature and the discretion of the commissioner so far as the amendment to AS 38.35.200 in HB 215 applies to the grant of a right-of-way.

The limitations applicable to the challenge of an approval, permit, license, certificate, or other authority

The issues raised by the limitation on the judicial review of an approval, lease, license, or other authority in AS 38.35.200(a)(2), as added by HB 215, are different from the land issues. AS 38.35 addresses rights-of-way on state land for construction of an oil or gas pipeline and the policy expressed in that chapter, as noted above, is to encourage the development of the state's resources. There is a certain logic when considering the impact of a right-of-way application to limit objections to those raised by the persons identified in AS 38.35.200(a), both in current law and as amended in HB 215. The persons identified have a direct interest in the grant of a lease, either because each is attempting to receive a lease or because the person has a financial interest directly affected by the lease. However, the impacts of the authorizations in AS 38.35.200(a)(2)

AS 38.35.050.

AS 38.35.010

that are added by HB 215 are broader. Whereas the policy decision to limit objections to the right-of-way may be limited because of the policy to develop resources, the environmental impacts are broader and may directly affect many more persons.

You expressed concern that limiting the review of approvals, leases, licenses, or other authorizations to those identified in AS 38.35.200(a) as it currently reads and as amended by HB 215 may compromise the state's primacy under the Clean Water Act to administer the APDES. Under 40 C.F.R. 123.27, a state must have remedies available for violations of state program requirements related to water programs. The requirements in 40 C.F.R. 123.27 relevant to AS 38.35.200 as amended in HB 215 are as follows:

(a) Any State agency administering a program shall have available the following remedies for violations of State program requirements:

(1) *To restrain immediately and effectively any person by order or by suit in State court* from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment;

Note: Paragraph (a)(1) requires that States have a mechanism (e.g., an administrative cease and desist order or the ability to seek a temporary restraining order) to stop any unauthorized activity endangering public health or the environment.

(2) *To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation* of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit[.]

...

(d) Any State administering a program shall provide for public participation in the State enforcement process by providing either:

(1) *Authority which allows intervention as of right in any civil or administrative action* to obtain remedies specified in paragraphs (a)(1), (2) or (3) of this section by any citizen having an interest which is or may be adversely affected; or

(2) Assurance that the State agency or enforcement authority will:

(i) Investigate and provide written responses to all citizen complaints submitted pursuant to the procedures specified in § 123.26(b)(4);

(ii) *Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation;* and

Representative Beth Kerttula

April 7, 2011

Page 4

(iii) Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

(Emphasis added.)

Based on the federal requirements for a state National Pollutant Discharge Elimination System (NPDES) program, such the APDES, it is likely that the amendment to AS 38.35.200 in HB 215 would be in conflict with the requirements for a state program because of the limitations on who may bring an action under AS 38.35.200 and the limited subject matter of that language. In other words, the standing and other limitations in the amendments to AS 28.35.200 in HB 215 could compromise APDES primacy to the extent they are inconsistent with the federal requirements for a state program.

If I may be of further assistance, please advise.

DMB:ljw

11-231.ljw