

Leg. Finance - House & Senate Finance Comte Files (1973-74) 8879

SB/HB 3 cont., 323

1 any liquid product or by-product derived from crude petroleum oil or
2 natural gas;

3 (9) "state land" means

4 (A) "state lands" as defined in AS 38.05.365;

5 (B) public land of the United States selected by the
6 state under sec. 6 of the Alaska Statehood Act of 1958 (PL 85-508;
7 72 Stat. 399), as amended, and real property of the United States
8 transferred to the state under secs. 21, 35 and 45 of the Alaska
9 Omnibus Act of 1959 (PL 86 - 70; 73 Stat. 141), as amended;

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

11 (10) "transportation" means the shipment or carriage by a
12 pipeline of crude oil, natural gas, or products from an upstream
13 terminus in one or more fields or points of production or supply of
14 the minerals to a downstream terminus in one or more points for
15 delivery of the minerals to a purchaser or consignee, for storage,
16 or for further carriage or shipment, including shipment or carriage
17 within the state that may be classified as interstate or foreign
18 transportation to the extent that the transportation may constitution-
19 ally be subjected to the provisions of this chapter, as well as all
20 services necessary to effectuate shipment or carriage, including,
21 among other things, the receipt, storage, processing, handling, trans-
22 fer in transit, forwarding, and delivery of the minerals.

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

24 Sec. 38.35.240. LEASE SAVINGS CLAUSE. A judicial finding that
25 any term or condition of a right-of-way lease issued under this
26 chapter is unlawful or invalid may not operate to invalidate the
27 lease or any other term or condition of the lease.

28 Sec. 38.35.250. BINDING EFFECT OF COVENANTS. By entering into
29 a lease under this chapter, the lessee is bound by all the covenants

1 provided for in the lease to the full extent of the power of the
2 state to impose those covenants under its authority as owner of the
3 land to be leased or under its police or regulatory powers or otherwise;
4 provided that the right of the lessee to challenge the power of the
5 state to require such a covenant as owner of the land to be leased
6 or under its police or regulatory powers or otherwise is preserved
7 until such time as action to enforce the covenant is taken by the state.

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

9 (12) [SUBJECT TO THE REQUIREMENTS OF THE ALASKA RIGHT-OF-
10 WAY LEASING ACT OF 1972 (AS 38.35),] for the location of pipelines
11 for gathering, transmitting, transporting, storing, or delivering
12 natural or artificial gas or oil or any liquid or gaseous hydrocarbons,
13 including, but not limited to, pumping stations, terminals, storage
14 tanks, or reservoirs, and related installations.

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

16 (1) granting leases of state [PUBLIC] land [AND ISSUING
17 CERTIFICATES] for pipeline right-of-way purposes;

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

19 (2) leasing, purchasing, or otherwise acquiring (including
20 condemning by declaration of taking), easements or other interests
21 in [ON PRIVATE OR FEDERAL] land in this state for the purpose of
22 utilizing or granting leases of the land, easements or interests for
23 pipeline right-of-way purposes;

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

25 (4) investigating any matters concerning any lessee
26 [CARRIER] with a view to assuring compliance by it with its right-of-
27 way lease, [CERTIFICATES ISSUED UNDER THAT LEASE,] this chapter, and
28 any other applicable state or federal law;

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

1 Sec. 38.05.330. PERMITS. The director, without the prior
2 approval of the commissioner, may issue permits, rights-of-way or
3 easements on state land for secondary roads, trails, ditches, field
4 gathering lines or transmission and distribution pipelines not
5 subject to AS 38.35, telephone and transmission lines, log storage,
6 oil well drilling sites and production facilities for the purposes
7 of recovering minerals from adjacent lands under valid lease, and
8 other similar uses or improvements, or for the limited personal use
9 of timber or materials. The commissioner, upon recommendation of
10 the director, shall establish a reasonable rate or fee schedule to
11 be charged for these uses. In the granting, suspension or revocation
12 of a permit or easement of lands, the director shall give preference
13 to that use of the land which will be of greatest economic benefit to
14 the state and the development of its resources. However, first
15 preference shall be granted to the upland owner for the use of a
16 tract of tideland, or tideland and contiguous submerged land, which
17 is seaward of the upland property of the upland owner and which is
18 needed by the upland owner for any of the purposes for which the use
19 may be granted.

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

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

27 * Sec. 30. The commissioner of natural resources shall submit to the
28 members of the Eighth Legislature not later than September 1, 1974 a full
29 report covering all lands conveyed under provisions of AS 38.05.063 and

1 38.05.076. The report shall contain a description of all parcels conveyed
2 under the Act including acreage (to include a detailed plat of each parcel),
3 land classification, appraised value, lease or sale value, proposed land
4 usage, and any other information the commissioner may feel necessary to an
5 understanding of the particular disposal.

6 * Sec. 31. AS 38.05.063 and 38.05.076 are repealed effective September 1,
7 1974.

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

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STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W — ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF — STATE CAPITOL

JUNEAU 99801

MEMORANDUM

TO: Honorable Tom Fink
Speaker
House of Representatives

DATE: October 17, 1973

FROM: Robert L. Grogan
Fiscal Analyst
Legislative Finance

SUBJ: Rights-of-Way Leasing
Amendment, Points of
Consideration

RIGHTS-OF-WAY LEASING

POINTS OF CONSIDERATION

1. Fiscal impact (see attachment).
2. Do the changes in Sec. 38.35.120, Item 10, relating to the wholesale purchase of crude oil, nullify the provision? By exempting the pipeline company from any cost or obligation, as the amendment language so states, would this economically prevent another firm from utilizing this provision? (Loss of terminal production alone, as a result of a sub-line installation, might exceed \$350,000 an hour.)
3. The bill makes repeated reference to "field gathering lines" as being exempt from additional leasing. A definition for field gathering lines is not provided.
4. The transfer of right-of-way leases will no longer be approved by the Commissioner of Natural Resources; the amendment calls for notification only.

Right-of-Way Leasing

The existing law provides for a right-of-way lease based on the higher of two formulas--one relating to pipeline assets, and the other to net earnings of the pipeline. According to the joint stipulations in the oil companies' suit against the State, the asset formula,

"AS 38.35.140(a), would require a minimum aggregate payment by the TAPS owners to the State of approximately \$72,739,800 (or \$2,078,280 per year), if TAPS were constructed for a throughput capacity of 2,000,000 barrels per day. The minimum aggregate rental payment would be approximately \$67,900,000 (or \$1,940,000 per year) if TAPS were constructed for a throughput capacity of 1,200,000 barrels per day."

Expected revenues under the net earnings formula depend on the manner in which net earnings are calculated. The joint stipulations anticipated three possible variations:

"(1) 'Proposed regulations' multiplies both 'net earnings' and 'total assets' (as those terms are used in AS 38.35.140(a)(2) by a term referred to as the Alaska Land Factor (ALF). The Alaska Land Factor is defined as the length of right-of-way over land in which the state has an ownership interest divided by the total length of the pipeline in the state. Such factor is 0.5181. This formula also provides that in determining 'net earnings', both the minimum rental under AS 38.35.140(a)(1) and the percentage rental under AS 38.35.140(a)(2) shall be deducted from gross revenues.

(2) 'Formula A' is identical to the formula described above except that the Alaska Land Factor is not used.

(3) 'Formula B' is identical to Formula A except that the percentage rental under AS 38.35.140(a)(2) is not deducted in calculating 'net earnings'."

Following these various approaches,

"the average annual aggregate amount of the rent payable to the state over the life of the pipeline by all TAPS owners will be approximately as follows, assuming different rates of return on Interstate Commerce Commission valuation of the pipeline property:

ICC Rate of Return	Using Proposed Regulations	Using Formula A	Using Formula E
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If Pipeline is Constructed for
1,200,000 bbl/day Throughput Capacity

2 per cent	\$ 6,700,000	\$20,300,000	\$ 39,300,000
4 per cent	16,300,000	52,400,000	103,500,000
5 per cent	23,500,000	75,900,000	150,800,000
7 per cent	40,500,000	129,300,000	258,600,000

If Pipeline is Constructed for
2,000,000 bb/day Throughput Capacity

2 per cent	\$ 7,100,000	\$21,500,000	\$ 41,700,000
4 per cent	17,200,000	55,400,000	109,500,000
5 per cent	24,900,000	80,300,000	159,600,000
7 per cent	42,900,000	127,000,000	274,100,000

Thus, in all the cases considered, under existing law, the net earnings formula would yield greater revenue and thus be in effect. There is some feeling that the 4% ICC rate of return is the one that oil companies would choose.

Governor Egan's proposal for right-of-way leasing would substitute a rental based on fair market value. According to the plaintiff's proposed stipulations of fact, the market value of State right-of-way (249 of the 789 miles) is between \$384,248 and \$467,612 assuming a value of \$87 - \$106 per acre. Thus, the revenue to be received under this approach can be expected to be rather small. A common practice in leasing by the Department of Natural Resources has been to charge an annual rental equivalent to 6% of the fair market value.

MEMORANDUM

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DATE:

FROM: Robert L. Grogan
Fiscal Analyst
Legislative Finance

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3. The bill makes repeated reference to "field gathering lines" as being exempt from additional leasing. A definition for field gathering lines is not provided.
4. The transfer of right-of-way leases will no longer be approved by the Commissioner of Natural Resources; the amendment calls for notification only.

MEMORANDUM

TO: Honorable Tom Fink
Speaker
House of Representatives

DATE: October 1793

FROM: V. Kent Dawson *KD*
Fiscal Analyst
Legislative Finance

SUBJ: Proposed Measure Replacing
Common Purchaser Provision
in the Right-of-Way Leasing
Act of 1972

In separating the common purchaser provisions from the Right-of-Way Leasing Act the Governor has greatly reduced the penalties for violation. Under the present statute the penalty for violation is a possible forfeiture of the right-of-way lease. The Governor's amendments reduce that penalty to a \$100 to \$1,000 fine for each day of violation.

Common Purchaser statutes exist primarily in acknowledgement of the principle that petroleum in place belongs to the overlying surface owners, and that those owners should be given a reasonable chance to recover and market what is theirs.

In terms of possible implications for the future, it could be that with a strong common purchaser statute on the books the State would find a greater number of producers (perhaps more smaller producers) taking part in future competitive bids for lease bonus sales. This then could lead to more competitive bidding and possibly higher returns from those sales to the State.

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH IV — ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF — STATE CAPITOL

JUNEAU 99801

MEMORANDUM

TO: Earl D. Hillstrand
Chairman
House Finance Committee

DATE: November 6, 1973

FROM: Jay H. Hogan
Director
Legislative Finance

SUBJ: Summary of Committee
Changes to CS HB 3

The following changes have been made to date by the House Finance Committee in the Judiciary Committee Substitute for House Bill No. 3. (All comments refer to pages and lines in the "Committee mark-up" version of the bill.)

1. Page 2, lines 28 and 29: The Committee amended language at the suggestion of the Attorney General to make it clear that the State could not impose service obligations upon lessees receiving rights-of-way permits under this Act that are not ordinarily imposable under existing State law. In other words, no specific temporary or emergency service abandonment, reduction or impairment powers are given State agencies by this provision.
2. Page 3, line 24: Regarding applications for rights-of-way, the Commissioner was given authority to hold a public hearing if he feels a public hearing is warranted. The remaining provisions relating to applications are not conditional and must be completed by the Commissioner. (The same is accomplished by changing "shall" to "may" on page 4, line 17.)
3. Page 8 and 9, beginning on line 24: In place of the option to purchase provision inserted by Judiciary, the Finance Committee included language granting the State right of first refusal for purchase of any available interest in the pipeline. However, contract obligations pertaining to sale of interests existing at the time the right-of-way lease is granted are protected.
4. Page 10, line 9: The phrase "subject to the lease" was struck from the bill at the suggestion of the Attorney General. The language was removed in an attempt to make clear that the provision for connections to the line was not a condition of any right-of-way.
5. Page 10, line 12: Language was added specifying that municipal corporations could contract for delivery and purchase of oil or gas transported by the pipeline.

6. Page 14, line 2-6: Language restricting the appraiser's judgment as to fair market value of leased land was removed by the Finance Committee.
7. Page 14, lines 24 and 25: The phrase "of the public interest, convenience, and necessity..." was removed at the suggestion of the Attorney General. It was pointed out that a concern of the oil companies lay in the area of State regulation of "economic matters". The language inserted by the Finance Committee restricts State surveillance of transfer of rights-of-way to judgments of whether the transferee is "fit, willing and able to perform..." and reasonably able to "protect the lives, property, and general welfare of the people...".
8. Page 15, line 29 and page 16, line 2: This change restricts judicial review of decisions of the Commissioner to rights-of-way applications under Section 100 of the chapter (Decisions On Application).
9. Page 17, line 22-28: The definition "subject to the lease" was included to cover the specific reference deleted by the Committee on page 10, line 9. With the phrase deleted, there is no need for the definition.

* Sec. 25. The Commissioner of Natural Resources shall submit to the Second Session of the Eighth Legislature not later than March 1, 1974 a full report covering all lands conveyed under provisions of Chapter_FSS-SLA 1973. 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 useage, and any other information the Commissioner may feel necessary to an understanding of the particular disposal.

* Sec. 26. Chapter_FSS-SLA 1973 is repealed effective March 1, 1974.

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W — ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF — STATE CAPITOL

JUNEAU 99801

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Speaker
House of Representatives

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STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W — ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF — STATE CAPITOL

JUNEAU 99801

MEMORANDUM

TO: The Hon. Tom Fink, Speaker DATE: October 17, 1973
House of Representatives
Alaska State Legislature

FROM: Milt Barker SUBJ: Severance Tax
Fiscal Analyst
Legislative Finance

Severance Tax

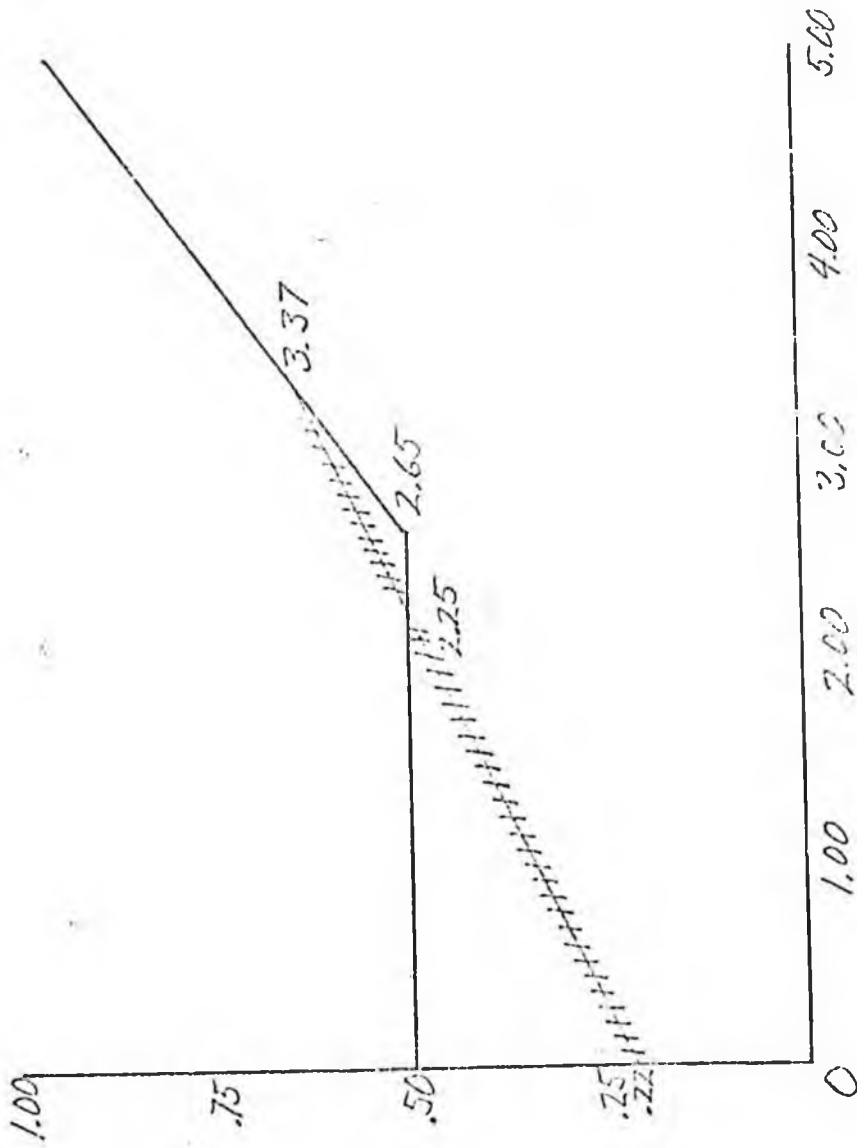
The accompanying charts depict the impact of the proposed change in severance taxation. In the existing North Slope situation, the cents per barrel tax with royalty credit would produce a constant 50¢ per barrel of revenue up to wellhead values of \$2.65; thereafter, the percentage (of wellhead value) severance tax portion of existing law would be in effect because it yields greater revenue (12.5% royalty and 6.4% severance tax after the royalty exemption for a total State take of 19%).

Under Governor Egan's proposed law, there would be a constant 25¢ per barrel severance tax (adding the 12.5% royalty produces the sloping line on the chart) up to a wellhead value of \$3.37; thereafter, the existing percentage severance tax schedule would be in effect because it yields greater revenue.

Thus, for wellhead values above \$3.37, the fiscal impact of either approach will be the same, while for wellhead values between \$3.37 and \$2.25, the proposed law would yield greater revenue. Below \$2.25, existing law is more advantageous. There is some expectation that wellhead values will be above \$3.37; and thus there would be no increment in revenue over the existing law although the Governor's press release claimed \$30 million of additional revenue for the proposed law.

The second chart shows the Cook Inlet situation. For most wells, the cents per barrel tax portion of existing law is not in effect because the wellhead values cause the percentage tax to yield greater revenue. In Cook Inlet, wellhead values now average \$3.53. At this price, the proposed severance tax would add 1¢ per barrel over existing law, bringing in an additional \$690,590 in revenue in FY 74.

North Slope

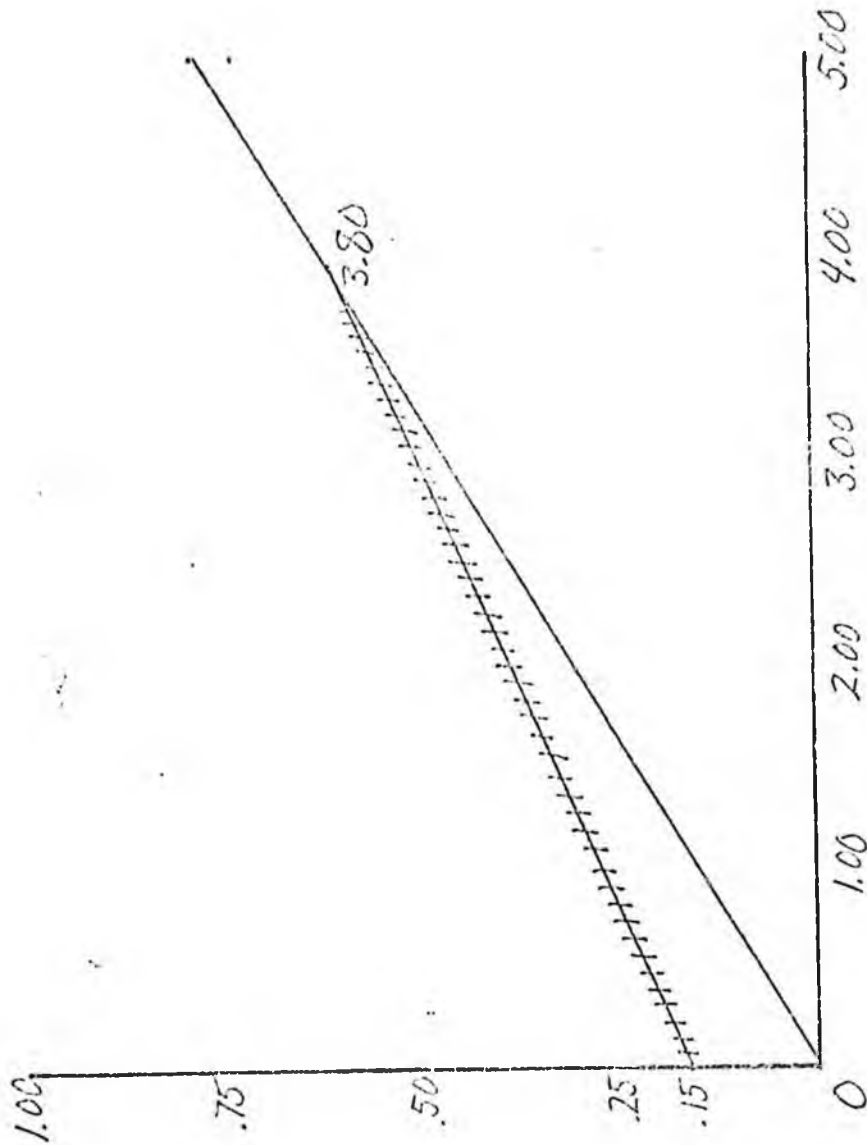


Tax + Royalty
(\$/bbl.)

Wellhead (\$/bbl.)

— Existing Law
----- Proposed by Egan

Cook Inlet



Tax + Royalty
(\$/bbl.)

Wellhead (\$/bbl.)

Existing Law
Proposed by Eq. 11

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W — ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF — STATE CAPITOL

JUNEAU 99801

MEMORANDUM

TO: Honorable Tom Fink
Speaker
House of Representatives

DATE: October 17, 1973

FROM: Milt Barker
Fiscal Analyst
Legislative Finance

SUBJ: Production Tax on
Oil--Basis of
Calculation

The Governor's proposal for a cents-per-barrel production tax would change the basis on which the tax is calculated from "average daily production for each well" to "average daily per well production" based upon the "total production from each lease or property". "Lease or property" is defined as "a lease or property including, but not limited to, a unitization or pooling agreement."

This means that the production from the entire Prudhoe field for which a unitization agreement is being sought could be divided by the number of wells in the field to determine average per well production. This has the effect of lowering the effective production tax rate.

For example, if two wells produce 1,000 BPD and 6,000 BPD, under the old method there would be a tax of 14.8¢ on 1,000 barrels and a tax of 23.3¢ on 6,000 barrels for an average tax of 22.1¢ on the 7,000 barrels. Under the proposed language, there would be an average production rate of 3,500 BPD on which the tax is 20.6¢.

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W — ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF — STATE CAPITOL

JUNEAU 99801

MEMORANDUM

TO: Honorable Tom Fink
Speaker
House of Representatives

DATE: October 17, 1973

FROM: Milt Barker
Fiscal Analyst
Legislative Finance

SUBJ: Ad Valorem Tax--
Assessed Value

There is more uncertainty surrounding the value at which the TAPS line will be assessed than has been publicly acknowledged. Although a \$4.5 billion figure is being quoted as the cost of the line, taxable assets will be no more than \$4.0 billion at most since capitalized interest, facilities transferred to the State, and perhaps some other costs will be excluded.

Even the valuation of the taxable assets is open to wide variation. Various methods or factors can be considered in arriving at assessed value including actual cost and the economic value or income stream the line is capable of producing. In instances where the recoverable reserves prove to be less than required to sustain full pipeline operation over its physical life, depreciation is to be accelerated.

Thus, the ad valorem tax as a source of revenue is not entirely insulated from political and economic uncertainties. One possible way to reduce some of these risks might be to set as a minimum assessed value that which the ICC determines as a base for allowed rate-of-return. The oil companies would ordinarily seek higher valuations for this purpose so as to increase their rate-of-return.

It may be of interest to note the relative advantages and disadvantages to the State of increased costs for the pipeline. The ICC allows a maximum return of 7% on investment. Thus, for every additional \$1 million in pipeline cost, TAPS could charge annually an additional \$76,600 in tariffs, assuming 35 years to recover principal and earnings of 7%. If there is a cents-per-barrel tax, the only detriment to the State at the wellhead, which is reduced by the amount of the pipeline tariff increase, is in the royalty. Thus, the State would suffer a loss of 12.5% of the \$76,600 in royalty receipts, or \$9,600. This would be a maximum and would be less if the oil companies sought a lesser rate-of-return on their pipeline operation.

AGO 787968

By comparison, if the State has a 20 mill ad valorem tax on the pipeline, every \$1 million of additional assessed value would bring in an additional \$20,000 to the State. This would result in \$13,000 to State government and \$7,000 to local governments if a full 7 mills were shared with local government.

STATE OF ALASKA

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BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W -- ALASKA OFFICE BUILDING

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JUNEAU 99801

M E M O R A N D U M

TO: Honorable Tom Fink
Speaker
House of Representatives

DATE: October 17, 1973

FROM: Robert L. Grogan
Fiscal Analyst
Legislative Finance

SUBJ: Rights-of-Way Leasing
Amendment, Points of
Consideration

RIGHTS-OF-WAY LEASING

POINTS OF CONSIDERATION

1. Fiscal impact (see attachment).
2. Do the changes in Sec. 38.35.120, Item 10, relating to the wholesale purchase of crude oil, nullify the provision? By exempting the pipeline company from any cost or obligation, as the amendment language so states, would this economically prevent another firm from utilizing this provision? (Loss of terminal production alone, as a result of a sub-line installation, might exceed \$350,000 an hour.)
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(2) 'Formula A' is identical to the formula described above except that the Alaska Land Factor is not used.

(3) 'Formula B' is identical to Formula A except that the percentage rental under AS 38.35.140(a)(2) is not deducted in calculating 'net earnings'."

Following these various approaches,

"the average annual aggregate amount of the rent payable to the state over the life of the pipeline by all TAPS owners will be approximately as follows, assuming different rates of return on Interstate Commerce Commission valuation of the pipeline property:

ICC Rate of Return	Using Proposed Regulations	Using Formula A	Using Formula B
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If Pipeline is Constructed for
1,200,000 bbl/day Throughput Capacity

2 per cent	\$ 6,700,000	\$20,300,000	\$ 39,300,000
4 per cent	16,300,000	52,400,000	103,500,000
5 per cent	23,500,000	75,900,000	150,600,000
7 per cent	40,500,000	129,300,000	258,600,000

If Pipeline is Constructed for
2,000,000 bb/day Throughput Capacity

2 per cent	\$ 7,100,000	\$21,500,000	\$ 41,700,000
4 per cent	17,200,000	40,000,000	109,500,000
5 per cent	24,900,000	300,000	159,600,000
7 per cent	42,900,000	500,000	274,100,000

Thus, in all the cases considered, under existing law, the new earnings formula would yield greater revenue and thus be in effect. There is some feeling that the 4% ICC rate of return is the one that oil companies would choose.

Governor Egan's proposal for right-of-way leasing would substitute a rental based on fair market value. According to the plaintiff's proposed stipulations of fact, the market value of State right-of-way (249 of the 789 miles) is between \$384,248 and \$467,612 assuming a value of \$87 - \$196 per acre. Thus, the revenue to be received under this approach can be expected to be rather small. A common practice in leasing by the Department of Natural Resources has been to charge an annual rental equivalent to 6% of the fair market value.

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AUDIT DIVISION
POUCH W — ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF — STATE CAPITOL

JUNEAU 99801

MEMORANDUM

TO: The Hon. Tom Fink, Speaker
House of Representatives
Alaska State Legislature

DATE: October 17, 1973

FROM: Robert L. Grogan
Fiscal Analyst

SUBJ: Sale or Lease
of Lands Bill

The reasoning to avoid land sale competitive bidding and speculation in an effort to maintain wellhead price for the state's benefit begs the question: why not simply give the land to the pipeline company, thereby reducing costs even further? In contrast, competitive bidding may have advantageous fiscal implications.

The pipeline company's maximum rate of annual profit is held at 7% by ICC regulation. In addition, the company also is allowed to recover the cost of the pipeline over an established depreciation period. These factors raise the pipeline tariff and thus lower wellhead value, reducing the state's royalty. The state's royalty rate amounts to 1/8 or 12 and 1/2 percent of this maximum. For each additional \$1 million of increased investment base, the state's portion is \$9,585 per annum (assuming a 35-year depreciation period and a maximum 7% rate of return by the pipeline company). This figure would be smaller if the company's rate of return should be lower, and slightly higher should the pipeline be depreciated over a shorter period of time.

If the state invested the \$1 million at 8% annual interest (a historic rate of return on Alaska's investments) the resulting investment income would be \$80,000. The state's annual loss (\$9,585) deducted from this annual gain leaves \$70,415 for a net annual gain. (See chart, page 2.)

If intermediate owner speculation did occur, the ultimate selling price to the pipeline company would have to be over eight times the original selling price to result in a loss to the state.

Example

Land selling price	\$1,000,000
Increased investment base for pipeline tariff (times maximum allowance rate of return, plus annual depreciation of principal)	$\$1,000,000 \times 7\% =$ $\$76,680$
State royalty percentage	$\$76,680 \times 12 \text{ and } 1/2\% = \$9,585$
Annual state loss	\$9,585
Receipt of sale invested at 8%	$\$1,000,000 \times 8\% = \$80,000$
Amount of annual gain	\$80,000
Annual state loss deducted from annual gain	$\$80,000 - \$9,585 = \$70,415$
Net annual gain	\$70,415

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W — ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF — STATE CAPITOL

JUNEAU 99801

MEMORANDUM

TO: Honorable Tom Fink
Speaker
House of Representatives

DATE: October 17, 1973

FROM: V. Kent Dawson
Fiscal Analyst
Legislative Finance

SUBJ: Governor's Proposed
Amendments - Pipeline
Legislation

The most significant change brought about by the Governor's proposed amendments to the Alaska Pipeline Commission Act would be the switch from State to Federal economic legislation of interstate pipelines. From nearly every quarter, testimony in the past has indicated a reluctance on the part of the Interstate Commerce Commission to regulate pipeline tariffs.

For example, in March of 1972 Mr. Peter Temple of Temple, Barker and Sloane, when testifying as an administration witness before the hearings on proposed pipeline legislation before the Alaska State Senate and House State Affairs Joint Committee stated, "...there's not been a single hearing with regard to pipeline rates before the ICC since 1940 and that was not an ICC hearing". He went on to say, "...if the ICC isn't exactly moribund in pipeline regulation it at least is inert".

The use of the wellhead value as a basis for royalty revenues indicates a considerable state interest in those matters which can affect it. Remembering the now familiar formula: refinery sales price less transportation costs = wellhead value, it is conceivable that if not adequately regulated the industry people in pursuit of their own interests could raise transportation costs (both pipeline and tanker) to the point where the wellhead value and correspondingly State royalties are unreasonably low.

Is the ICC Changing?

The Governor in his cover letter states that there are "clear indications that the ICC may well already be re-examining its role". The only immediately available indication of such a re-evaluation is the reported move in Congress to make additional appropriations to the ICC due to the impact of the Alaska Pipeline. Historically, the ICC has found it difficult to obtain funds from Congress for pipeline regulation. It is possible that the funding situation will now be changed somewhat.

Data Collection

Under the Governor's amendments reports would be made to the Pipeline Commission "on an individual pipeline basis for any pipeline located wholly or in part in the State". A point that could be of importance would be the method of reporting the marine (tanker) portion of the transportation costs. Will the tanker owners be allowed to consolidate Alaskan oil transportation costs with their tanker costs elsewhere when reporting? If so, the Pipeline Commission's job of determining the reasonableness of transportation costs could be greatly complicated.

In the proposed amendments to AS 42.06.430(6) on page three it appears that by removal of the wording "where considered practicable by the Commission" we may be locking ourselves into the federal system of accounting which might not in all instances be the system most suited to the State's interests.

What About Litigation as an Alternative?

If it can be determined that leaving the Alaska Pipeline Commission on the books in its existing role as a regulator of interstate pipelines would not slow pipeline construction, it could become a feasible alternative to the Governor's approach. There are indications that the non-contiguity issue as regards federal pre-emption may be more significant than at first realized. Assuming no danger of construction slow-down, adequate time may conceivably exist for settlement of jurisdictional disputes between the State and the federal regulatory agencies. It is still possible that the State as an interstate pipeline regulator would survive litigation.

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W — ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF — STATE CAPITOL

JUNEAU 99801

MEMORANDUM

TO: Honorable Tom Fink
Speaker
House of Representatives

DATE: October 17, 1973

FROM: Robert L. Grogan
Fiscal Analyst
Legislative Finance

SUBJ: Sale or Lease
of Lands Bill

SALE OR LEASE OF LANDS BILL

POINTS OF CONSIDERATION

1. Have all possible land uses been included in the amendment? (secs. 1 & 2.)
2. Is the determination of what land is "necessary" and what are "reasonable needs" and what is "fair market value" to be made only by the director of the Division of Lands? (sec. 2, 14b).
3. What procedure will be used to ascertain fair market value of these lands and what would be the terms of such sales?
4. What specific parcels are to be sold? Might it be more advantageous to lease these lands?
5. Could the state be setting a poor precedent by allowing these purchases to be exempt of the competitive bid procedure?

M E M O R A N D U M

TO:

DATE:

FROM: Robert L. Grogan *RLG*
Fiscal Analyst
Legislative Finance

SUBJ: Right-of-Way Leasing
Substantive Changes

1. Addition of Sec. 38.35.250 binding effect of covenants. Provides lessee with the right to challenge the power of the state to require covenants.
2. Deletion of ownership option. All provisions for state purchase of a pipeline were removed.
3. Substitution of a purchase price provision, based on fair market value, in place of prior method based on a production formula (see attachment).
4. Addition of section relating to sale or lease of lands bill creates a repealer for the bill. The section also provides for reporting of the sale or lease transactions. Under the new section, the sale or lease of lands bill will be repealed effective September 1, 1974.

Right-of-Way Leasing

The existing law provides for a right-of-way lease based on the higher of two formulas--one relating to pipeline assets, and the other to net earnings of the pipeline. According to the joint stipulations in the oil companies' suit against the State, the asset formula,

"AS 38.35.140(a), would require a minimum aggregate payment by the TAPS owners to the State of approximately \$72,739,800 (or \$2,078,280 per year), if TAPS were constructed for a throughput capacity of 2,000,000 barrels per day. The minimum aggregate rental payment would be approximately \$67,900,000 (or \$1,940,000 per year) if TAPS were constructed for a throughput capacity of 1,200,000 barrels per day."

Expected revenues under the net earnings formula depend on the manner in which net earnings are calculated. The joint stipulations anticipated three possible variations:

"(1) 'Proposed regulations' multiplies both 'net earnings' and 'total assets' (as those terms are used in AS 38.35.140(a)(2) by a term referred to as the Alaska Land Factor (ALF). The Alaska Land Factor is defined as the length of right-of-way over land in which the state has an ownership interest divided by the total length of the pipeline in the state. Such factor is 0.3181. This formula also provides that in determining 'net earnings', both the minimum rental under AS 38.35.140(a)(1) and the percentage rental under AS 38.35.140(a)(2) shall be deducted from gross revenues.

(2) 'Formula A' is identical to the formula described above except that the Alaska Land Factor is not used.

(3) 'Formula B' is identical to Formula A except that the percentage rental under AS 38.35.140(a)(2) is not deducted in calculating 'net earnings'."

Following these various approaches,

"the average annual aggregate amount of the rent payable to the state over the life of the pipeline by all TAPS owners will be approximately as follows, assuming different rates of return on Interstate Commerce Commission valuation of the pipeline property:

ICC Rate of Return	Using Proposed Regulations	Using Formula A	Using Formula E
-----------------------	-------------------------------	-----------------	-----------------

If Pipeline is Constructed for
1,200,000 bbl/day Throughput Capacity

2 per cent	\$ 6,700,000	\$20,300,000	\$ 39,300,000
4 per cent	16,300,000	52,400,000	103,500,000
5 per cent	23,500,000	75,900,000	150,800,000
7 per cent	40,500,000	129,300,000	258,600,000

If Pipeline is Constructed for
2,000,000 bb/day Throughput Capacity

2 per cent	\$ 7,100,000	\$21,500,000	\$ 41,700,000
4 per cent	17,200,000	55,400,000	109,500,000
5 per cent	24,900,000	80,300,000	159,600,000
7 per cent	42,900,000	127,000,000	274,100,000

Thus, in all the cases considered, under existing law, the net earnings formula would yield greater revenue and thus be in effect. There is some feeling that the 4% ICC rate of return is the one that oil companies would choose.

Governor Egan's proposal for right-of-way leasing would substitute a rental based on fair market value. According to the plaintiff's proposed stipulations of fact, the market value of State right-of-way (249 of the 789 miles) is between \$384,248 and \$467,612 assuming a value of \$87 - \$196 per acre. Thus, the revenue to be received under this approach can be expected to be rather small. A common practice in leasing by the Department of Natural Resources has been to charge an annual rental equivalent to 6% of the fair market value.

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Thus, in all the cases considered, under existing law, the new earnings formula would yield greater revenue and thus be in effect. There is some feeling that the 4% ICC rate of return is the one that oil companies would choose.

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A M E N D M E N T

OFFERED IN THE HOUSE:

BY: FINANCE COMMITTEE

TO: HCS for CS HOUSE BILL No. _____

SENATE BILL No. 3

PAGE: 1

LINE: 6

Change the title to read "An Act relating to the use of state lands for pipeline purposes; and providing for an effective date."

Page 1, between Lines 10 and 11, insert a new Section 1 to read: "*Section 1. AS 30.35.010 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."

Renumber all sections accordingly.

Page 15, Line 27, after the word "hearing", insert the words "or notice".

Original sponsor: Rules Committee by
request of the Governor

~~Effective: 11/31/71~~
~~Referred: Finance~~

1 SENATE
2 IN THE HOUSE

HCS for CS for SENATE BILL 3
~~CS FOR HOUSE BILL 10-3~~

FINANCE COMMITTEE
BY THE JUDICIARY COMMITTEE

3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 EIGHTH LEGISLATURE - FIRST SPECIAL SESSION

5 A BILL

6 For an Act entitled: "An Act relating to ~~leases-of-rights-of-way-over~~ ^{rights-of-way for pipeline}
7 ~~state-land-for-the-transportation-of-oil,-products-of~~ ^{purposes;}
8 ~~natural-gas;~~ and providing for an effective date."

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

10 * Section 1. AS 38.35.020 is amended to read:

11 Sec. 38.35.020. GRANT OF RIGHT-OF-WAY LEASE. (a) Rights-of-way
12 on state [STATE-OWNED] land including rights-of-way [RIGHT-OF-WAY ON,]
13 over, under, along, across, or upon the right-of-way of a public
14 road or highway or the right-of-way of a railroad or other public
15 utility, or [ON,] across, upon, over, or under a river or other body
16 of water or land belonging to or administered by the state may be
17 granted by noncompetitive lease by the commissioner for pipeline
18 purposes for the transportation of oil, products or natural gas under
19 those conditions prescribed by law or [AND] by administrative regulation
20 Except to the extent authorized by an oil and gas lease or unit
21 agreement approved by the state, no person may engage in any
22 construction [, ACQUISITION] or operation of any [, OR TRANSPORTATION,
23 SERVICE, OR SALE BY THE WHOLE OR A] part of an oil, products, or
24 natural gas pipeline, which in whole or in part is or is proposed to
25 be on state [PUBLIC] land [,] unless that person [IS A CARRIER AND]
26 has obtained from the commissioner a right-of-way lease of the land
27 under this chapter [AS WELL AS A CERTIFICATE THAT THE CONSTRUCTION,
28 ACQUISITION, OPERATION, TRANSPORTATION, SERVICE, OR SALE, IF SUBJECT
29 TO THE LEASE, WILL BE IN ACCORDANCE WITH ITS TERMS].

1 (b) This chapter does not require a right-of-way lease for the
2 construction or operation of field gathering lines.

3 * Sec. 2. AS 38.35.030 is amended to read:

4 Sec. 38.35.030. ABANDONMENT, [OF OR] REDUCTION OR IMPAIRMENT OF
5 SERVICE OF PIPELINE BY LESSEE [CARRIER]. No lessee [CARRIER] may
6 abandon any portion of a pipeline that is [ON STATE PUBLIC LAND OR]
7 subject to a right-of-way [THE] lease, or abandon any operation,
8 [OR] transportation, service, or sale by it, or reduce or impair
9 service, unless the lessee [CARRIER] has first notified [APPLIED FOR
10 AND] the commissioner in the form and manner prescribed by regulation.
11 To the extent that this requirement would interfere with or would be
12 inconsistent with federal or other state law or with regulations or
13 rulings of a federal regulatory agency or the Alaska Pipeline Commis-
14 sion, it is inapplicable [HAS GRANTED A CERTIFICATE THAT THE ABANDON-
15 MENT, REDUCTION, OR IMPAIRMENT IS IN ACCORDANCE WITH THE TERMS OF THE
16 LEASE].

17 * Sec. 3. AS 38.35.040 is amended to read:

18 Sec. 38.35.040. TEMPORARY OR EMERGENCY SERVICE OR [TEMPORARY]
19 ABANDONMENT, REDUCTION OR IMPAIRMENT OF SERVICE BY LESSEE [CARRIER].
20 The commissioner may, either upon a request made in the form he
21 requires [SHALL] by regulation [REQUIRE], or upon his own motion
22 without request, authorize or require temporary or emergency rendering
23 of service or temporary or emergency abandonment, reduction or impair-
24 ment of service by a pipeline of a lessee [CARRIER] without compliance
25 with secs. 50 - 100 of this chapter. Nothing in this section prevents
26 a lessee [CARRIER] from temporarily suspending operations in the
27 event of an emergency which threatens public health or safety; however,
28 notice shall be given the commissioner as soon as possible. To the
29 extent that a provision of this section would interfere with or be

CSHB 3 -2- This section does not impose any obligation upon the lessee which could not con-
stitutionally be imposed by a direct exercise of state regulation or any obligation

1 inconsistent with federal or other state law or with regulations or
2 rulings of a federal regulatory agency or the Alaska Pipeline Commis-
3 sion. ~~it is inapplicable.~~

4 * Sec. 4. AS 38.35.050 is repealed and re-enacted to read:

5 Sec. 38.35.050. APPLICATIONS FOR RIGHT-OF-WAY LEASES. (a) A
6 person or persons desiring to own a pipeline which is proposed to be
7 located in whole or in part on state land, shall apply for a noncom-
8 petitive right-of-way lease of the state land.

9 (b) Applications under (a) of this section shall be made in a
10 form and manner prescribed by regulation.

11 (c) An amendment to an application filed under this section
12 which constitutes a substantial change in the application is subject
13 to the provisions of this section applying to an original application.

14 * Sec. 5. AS 38.35.060 is repealed.

15 * Sec. 6. AS 38.35.070 is amended to read:

16 Sec. 38.35.070. NOTICE OF APPLICATION. (a) Upon receiving
17 notification under sec. 30 or an application under sec. 50 [OR 60]
18 of this chapter, the commissioner shall

19 (1) cause notice of it to appear in a [THE] daily newspaper
20 of general circulation published in the vicinity of [NEAREST] the
21 location of the proposed pipeline, the notice to include:

22 (A) a general description of the land involved;

23 (B) a summary of the substance of the application; and
24 if warranted

24 (C) ~~the time and place of public hearing to be held~~

25 on the application;

26 (2) file copies of the application with each coordinate
27 agency; [AND]

28 (3) furnish at cost copies of a notice or application to
29 persons requesting them; and

1 (4) provide other publication and notice he considers
2 reasonable and appropriate to inform the public of the application.

3 * Sec. 7. AS 38.35.080 is amended to read:

4 Sec. 38.35.080. ANALYSIS [OF APPLICATION] AND PUBLIC HEARING.

5 (a) The commissioner shall, within a reasonable time after receiving
6 the application or notification, prepare an analysis of the application
7 or of the matter of which he was notified, including a proposal for
8 action if feasible; a proposed lease [OR CERTIFICATE OR BOTH] and a
9 general statement of his basis and purposes, if favorable action is
10 proposed; or, when a proposal for action is not feasible before a
11 hearing, a description of the subjects and issues involved.

12 (b) Upon completion of the analysis but not less than 30 days
13 before the date set for hearing an application or a substantial amend-
14 ment to an application or a matter of which he was notified under
15 sec. 30 of this chapter, the commissioner shall publish notice, and
16 make copies available as provided in sec. 70 of this chapter.

17 (c) The commissioner ^{may}~~shall~~ set all applications and matters of
18 which he was notified for public hearing as soon as practicable.

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

22 * Sec. 8. AS 38.35.100 is repealed and re-enacted to read:

23 Sec. 38.35.100. DECISION ON APPLICATION. (a) The commis-
24 sioner shall promptly determine, on an application filed with
25 him under sec. 50 of this chapter whether the applicant is fit,
26 willing and able to perform the transportation or other acts
27 proposed in a manner that will reasonably protect the lives,
28 property and general welfare of the people of Alaska. In making
29 a determination the commissioner shall consider whether or not

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

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

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

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

11 (B) undertake any necessary restoration or revege-
12 tation; and

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

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

21 (b) If the commissioner determines that the applicant is
22 not fit, willing, and able to perform the transportation or other
23 proposed acts in a manner that will reasonably protect the lives,
24 property and general welfare of the people of Alaska, the com-
25 missioner shall deny the application. If he determines that the
26 applicant is fit, willing, and able to perform, he shall promptly
27 offer the applicant a lease.

28 * Sec. 9. AS 38.35.110 is repealed and re-enacted to read:

29 Sec. 38.35.110. TERM OF LEASE. The commissioner shall

1 determine the term of the lease. In making this determination he
2 shall take into consideration the cost of the proposed pipeline,
3 its useful life, and the probable financing requirements for the
4 proposed pipeline. Thereafter, upon application of a lessee, the
5 commissioner shall extend the term of the lease for additional
6 periods of time so long as the proposed pipeline is used for the
7 purposes for which the lease was granted and is in compliance with
8 all terms of the lease subject to additional terms and conditions
9 then reasonably required to protect the lives, property and general
10 welfare of the people of Alaska.

11 * Sec. 10. AS 38.35.120 is amended to read:

12 Sec. 38.35.120. COVENANTS [REQUIRED] TO BE INCLUDED IN LEASE.

13 (a) A noncompetitive lease of state public land for a right-of-way
14 for an oil or natural gas pipeline valued at \$1,000,000 or more may
15 be granted only upon the condition that the lessee [CARRIER] ex-
16 pressly covenants in the lease, in consideration of the rights
17 acquired by it under the lease, that

18 [(1) IT WILL OBTAIN A CERTIFICATE OF COMPLIANCE WITH THE
19 TERMS AND CONDITIONS OF THE LEASE BEFORE UNDERTAKING ANY CONSTRUC-
20 TION, ACQUISITION OR OPERATION OF OR TRANSPORTATION, SERVICE OR
21 SALE BY THE WHOLE OR ANY PART OF A PIPELINE ON STATE PUBLIC LAND,
22 INCLUDING THE PORTIONS OF THE PIPELINE NOT ON STATE PUBLIC LAND;

23 (2) IT WILL UNDERTAKE AND COMPLETE OR REGULARLY PERFORM
24 WITHIN OR DURING THE TIME PERIOD AND IN ACCORDANCE WITH THE PROJECT
25 DESCRIPTION CONTAINED IN THE LEASE OR CERTIFICATE, THROUGHOUT THE
26 ENTIRE ROUTE OF THE PIPELINE IN THE STATE, BOTH ON STATE PUBLIC
27 LAND OBTAINED UNDER THE LEASE AND ON OTHER LAND, ANY CONSTRUCTION
28 OR ACQUISITION OR OTHER ACT REQUIRED TO BE PERFORMED IN CONJUNC-
29 TION WITH THE LEASE, OR OPERATION OF, OR TRANSPORTATION, SERVICE,

1 OR SALE BY THE PIPELINE IN GOOD FAITH AND IN ACCORDANCE WITH THE
2 LEASE AND CERTIFICATES, THIS CHAPTER, AND ANY OTHER APPLICABLE
3 STATE OR FEDERAL LAW;]

4 (3) it will perform all of its functions under the lease,
5 as a common carrier; in performing as a common carrier it will accept,
6 convey and transport without discrimination crude oil delivered to it
7 for transportation throughout its route in accordance with applicable
8 statutes and tariffs; the common carrier covenant required by this
9 paragraph does not apply to products lines or to a natural gas pipeline
10 owned or operated by a lessee which is subject to regulation under the
11 Natural Gas Act (52 Stat. 821; 68 Stat. 36) or by a lessee which is
12 subject to regulation by state or political subdivisions with juris-
13 isdiction to regulate the rates and charges for sale of natural gas to
14 consumers in the state [ASSUMES THE STATUS OF AND WILL PERFORM ALL OF
15 ITS FUNCTIONS UNDERTAKEN UNDER THE LEASE AS A COMMON CARRIER AND WILL
16 ACCEPT, CONVEY, AND TRANSPORT ALL CRUDE OIL OR NATURAL GAS, DEPENDING ON
17 THE KIND OF PIPELINE INVOLVED, DELIVERED TO IT FOR TRANSPORTATION
18 FROM FIELDS IN THE VICINITY OF THE PIPELINE SUBJECT TO THE LEASE
19 THROUGHOUT ITS ROUTE BOTH ON STATE PUBLIC LAND OBTAINED UNDER THE
20 LEASE AND ON OTHER LAND; HOWEVER, WHERE THE LESSEE CARRIER OPERATES
21 A NATURAL GAS PIPELINE AND IS SUBJECT BY VIRTUE OF THIS OPERATION
22 TO REGULATION UNDER THE NATURAL GAS ACT OF THE UNITED STATES (52 STAT.
23 821; 68 STAT. 36; 15 U.S.C. 717 (1) SEQ.), IT WILL ASSUME THE
24 STATUS OF AND SHALL PERFORM ALL OF ITS FUNCTIONS UNDERTAKEN UNDER
25 THE LEASE AS A COMMON CARRIER AND SHALL PERFORM ALL OF THE ACTS
26 DESCRIBED IN THIS PARAGRAPH WHEN AT ANY TIME AFTER THE EXECUTION
27 OF THE LEASE THE COMMISSIONER AFTER PUBLIC HEARING DETERMINES
28 THAT ASSUMPTION OF THIS STATUS IS REQUIRED IN ORDER TO SUBSERVE THE
29 PUBLIC INTEREST, CONVENIENCE, AND NECESSITY];

1 [(4) IT WILL ASSUME THE STATUS OF AND SHALL BE A COMMON
2 PURCHASER OF CRUDE OIL AND NATURAL GAS, DEPENDING UPON THE KIND OF
3 PIPELINE INVOLVED, THAT IS PRODUCED FROM FIELDS IN THE VICINITY OF
4 THE PIPELINE SUBJECT TO THE LEASE AND SHALL PURCHASE CRUDE OIL
5 OR NATURAL GAS THAT IS OFFERED IT WHEN AT ANY TIME AFTER THE
6 EXECUTION OF THE LEASE THE COMMISSIONER AFTER PUBLIC HEARING
7 DETERMINES THAT ASSUMPTION OF THIS STATUS IS REQUIRED IN ORDER TO
8 SUBSERVE THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY;

9 (5) IT WILL ACCEPT, CONVEY, AND TRANSPORT OR PURCHASE
10 CRUDE OIL OR NATURAL GAS WITHOUT UNJUST OR UNREASONABLE DISCRIMINA-
11 TION IN FAVOR OF ONE PRODUCER OR PERSON, INCLUDING ITSELF, AS AGAINST
12 ANOTHER IN THE SAME FIELD, AND WITHOUT UNJUST OR UNREASONABLE
13 DISCRIMINATION AS BETWEEN FIELDS IN THE STATE BUT WILL TAKE THE
14 CRUDE OIL OR NATURAL GAS, DEPENDING ON THE KIND OF PIPELINE INVOLVED,
15 DELIVERED OR OFFERED IN THE PROPORTION THAT THE COMMISSIONER SHALL,
16 AFTER A FULL HEARING WITH DUE NOTICE TO THE INTERESTED PARTIES AND
17 A PROPER FINDING OF FACTS, DETERMINE TO BE REASONABLE;

18 (6) IT WILL EXCHANGE CRUDE OIL OR NATURAL GAS, DEPENDING
19 UPON THE KIND OF PIPELINE INVOLVED, WITH EACH LIKE COMMON CARRIER
20 AND PROVIDE CONNECTIONS AND FACILITIES FOR THE INTERCHANGE OF CRUDE OIL
21 OR NATURAL GAS AT EVERY LOCALITY REACHED BY BOTH PIPELINES WHEN
22 THE NECESSITY EXISTS, SUBJECT TO RATES AND REGULATIONS MADE BY THE
23 APPROPRIATE STATE OR FEDERAL REGULATORY AGENCY;]

24 ~~(7) The lessee grants the state the right to purchase,~~
25 ~~upon reasonable notice, an undivided interest in the entire~~
26 ~~length of the pipeline within the state, not to exceed five~~
27 ~~per cent; the purchase price shall be calculated on the~~
28 ~~basis of the total value of gasland property as defined by~~

4 (7) it will afford the state a first opportunity to nego-
5 tiate for the purchase of any interest in the pipeline offered for
6 sale by it on the same terms offered any other potential purchaser,
7 provided that this obligation will not interfere or supersede contract
8 rights or obligations existing among the proposed owners of the pipe-
9 line at the time the right-of-way lease is granted.

1 ~~the Interstate Commerce Commission uniform system of accounts, plus~~
2 ~~accumulated interest during construction and less depreciation after~~
3 ~~commencement of operations; interest during construction shall be~~
4 ~~calculated at an annual rate equivalent to 125 per cent of the best~~
5 ~~interest rate offered during the year by the First National City Bank~~
6 ~~of New York on 90-day loans to substantial and responsible commercial~~
7 ~~borrowers; the lessee shall additionally agree not to sell, transfer~~
8 ~~or otherwise dispose of (to a person other than another owner of the~~
9 ~~pipeline, including subsidiaries, parents, and affiliates of the~~
10 ~~owner) all or any part of a pipeline subject in any part to the lease~~
11 ~~except after offering that interest to the state, to which the lessee~~
12 ~~grants a preferential right to purchase the interest on the same terms~~
13 ~~offered by or to any bona fide prospective purchaser who is ready,~~
14 ~~willing and able to purchase it; but the state may not acquire more~~
15 ~~than a total undivided interest of five per cent in the entire length~~
16 ~~of the pipeline within the state. [THE LESSEE GRANTS TO THE STATE~~
17 THE RIGHT TO PURCHASE, UPON REASONABLE NOTICE, AN UNDIVIDED INTEREST
18 IN THE ENTIRE LENGTH OF THE PIPELINE WITHIN THE STATE, NOT TO EXCEED
19 20 PER CENT; THE PURCHASE PRICE SHALL BE AT A REASONABLE FIGURE SET
20 OUT IN THE LEASE AT THE TIME OF THE LEASE'S EXECUTION; PURCHASE OF
21 THIS INTEREST MAY, AT THE OPTION OF THE STATE, BE MADE IN STAGES;
22 EXERCISE OF AN OPTION TO PURCHASE AN INTEREST IN A PIPELINE PROJECT
23 OR FACILITY IS SUBJECT TO THE APPROVAL OF THE LEGISLATURE; THE
24 INCURRING OF ANY BONDED INDEBTEDNESS BY THE STATE TO IMPLEMENT THE
25 EXERCISE OF ITS OPTION UNDER THIS PARAGRAPH IS SUBJECT TO VOTER
26 APPROVAL];

27 (8) it will maintain and preserve books, accounts, and
28 records [, PAPERS, AND CORRESPONDENCE AND OTHER RECORDS] and will make
29 those reports that the state may prescribe by regulation or law as

1 necessary and appropriate for purposes of administration of this
2 chapter;

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

7 (10) it will provide, where economically feasible [AND
8 CONSISTENT WITH THE PRIMARY FUNCTION OF THE LINE], connections [AND
9 FACILITIES] on the pipeline ~~subject to the lease~~, [BOTH ON STATE
10 LAND AND OTHER LAND IN THE STATE,] for the purpose of delivering
11 crude oil or natural gas, depending on the kind of pipeline involved,
12 to persons/^{or municipal corporations}contracting for the purchase at wholesale of crude oil
13 or natural gas transported by the pipeline [DESIRING TO PURCHASE WHO
14 ARE LOCATED IN MUNICIPALITIES IN THE VICINITY OF THE PIPELINE];

15 (11) it will, at its own expense, during the term of the
16 lease

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

19 (B) exercise the highest degree of care in using the
20 leasehold and operating the pipeline [TO PREVENT A PIPELINE
21 INCIDENT];

22 (C) promptly repair or remedy any damage to [OR
23 DESTRUCTION OF] the leasehold [OR PIPELINE];

24 (D) promptly compensate for or remedy any damage to
25 or destruction of public or private property resulting from
26 damage to or destruction of the leasehold or pipeline regardless
27 of fault, notwithstanding the limitations of AS 46.03.822(1)(B),
28 (C) and (D), and 46.03.822(2);

29 [(12) IT WILL NOT TRANSFER, ASSIGN, OR DISPOSE OF IN ANY

1 MANNER, DIRECTLY OR INDIRECTLY, OR BY TRANSFER OF CONTROL OF THE
2 CARRIER CORPORATION, ITS INTEREST IN A RIGHT-OF-WAY LEASE, OR ANY
3 RIGHTS UNDER THE LEASE, OR ANY PIPELINE SUBJECT TO THE LEASE, EXCEPT
4 AS AUTHORIZED BY THE COMMISSIONER, UPON APPLICATION BY THE CARRIER;
5 THE COMMISSIONER SHALL NOT UNREASONABLY WITHHOLD HIS CONSENT TO THE
6 TRANSFER, ASSIGNMENT OR DISPOSAL;]

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

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

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

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

28 (17) it will not interfere with construction and operation of
29 any oil or gas pipeline authorized by the commissioner for location on the

1 right-of-way, subject to compensation of the prior lessee by the subse-
2 quent lessee for any damage to or interference with the operation of the
3 prior pipeline caused by construction of the subsequent pipeline.

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

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

9 (2) protect state and private property interests;

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

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

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

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

23 (d) The lease may contain other terms and conditions that will
24 reasonably protect the lives, property and general welfare of the
25 people of Alaska.

26 * Sec. 11. AS 38.35.130 is amended to read:

27 Sec. 38.35.130. RIGHT-OF-WAY EASEMENTS OR LEASES
28 ACQUIRED FROM OTHERS. (a) The lessee may [LEASE SHALL CONTAIN THE
29 FURTHER EXPRESS AGREEMENT BY THE CARRIER THAT

1 (1) IT WILL, UPON A DETERMINATION BY THE COMMISSIONER AND
2 UPON REASONABLE CONDITIONS AND AT A JUST PRICE, CONVEY TO THE STATE
3 ANY RIGHTS-OF-WAY, RIGHT-OF-WAY PERMITS, EASEMENTS, OR LEASES PREVIOUSLY
4 ACQUIRED OR TO BE ACQUIRED FOR RIGHT-OF-WAY PURPOSES FOR THE PIPELINE
5 SUBJECT TO THE LEASE;

6 (2) THE STATE RESERVES TO ITSELF AND THE LESSEE GRANTS TO
7 THE STATE THE SOLE RIGHT TO CONDEMN, BY DECLARATION OF TAKING, REAL
8 PROPERTY FOR RIGHT-OF-WAY PURPOSES AND TO ACQUIRE TO THE EXTENT
9 FEDERALLY PERMISSIBLE LEASES OF OR EASEMENTS OR RIGHTS-OF-WAY ON
10 PUBLIC LANDS BELONGING TO THE UNITED STATES IN THIS STATE, INCLUDING
11 "WITHDRAWN PUBLIC LANDS" AS THAT TERM IS DEFINED IN SECS. 3(E), 17(C)
12 AND (D)(3), AND 22(I) OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT
13 (PL 92-203; 85 STAT. 688; 43 U.S.C. 1601 ET SEQ.), REQUIRED FOR RIGHT-
14 OF-WAY PURPOSES FOR THE PIPELINE SUBJECT TO THE LEASE;

15 (3) THE CARRIER WILL], if the commissioner delegates the
16 function to it, condemn, by declaration of taking, under
17 AS 09.55.420 - 09.55.450, real property and acquire leases of or
18 easements or rights-of-way on [PUBLIC] lands in the state [BELONGING TO
19 THE UNITED STATES, INCLUDING "WITHDRAWN PUBLIC LANDS"] required for
20 right-of-way purposes for a [THE] pipeline subject to the lease, on
21 behalf of and as agent for the state, in which title to or interest
22 in the land shall vest.

23 (b) The lease shall contain a covenant [REQUIRED BY THIS SECTION
24 SHALL BE ACCOMPANIED BY A PROVISION] that the land, right-of-way,
25 or easement acquired under this section is or will form part of the
26 land leased to the lessee [CARRIER].

27 * Sec. 12. AS 38.35.140 is repealed and re-enacted to read:

28 Sec. 38.35.140. PAYMENT OF RENTAL AND COSTS. (a) The lease
29 price for a right-of-way lease shall be the annual fair market

1 rental of the state lands included in the right-of-way based on the
2 appraised fair market value of the land. ~~The appraised fair market~~
3 ~~value of the land leased for right-of-way shall be determined~~
4 ~~without regard to any enhancement in value attributable solely to the~~
5 ~~construction of pipeline facilities on the land or the use of the land~~
6 ~~for pipeline purposes.~~ The lease price is payable annually in
7 advance on or before the anniversary of the lease. The appraised
8 fair market rental value shall be adjusted periodically under the
9 provisions of AS 38.05.105.

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

13 * Sec. 13. AS 38.35.150(b) and (c) are repealed.

14 * Sec. 14. AS 38.35.160 is amended to read:

15 Sec. 38.35.160. TRANSFER OF RIGHT-OF-WAY LEASE [, CERTIFICATES,]
16 OR PIPELINE. No lessee [CARRIER] may transfer [, ASSIGN,] or dispose
17 of in any manner its right-of-way lease, or any rights under the
18 lease, or any pipeline subject to the lease, whether on state [PUBLIC]
19 land or other land in the state, either voluntarily or involuntarily,
20 directly or indirectly, or by transfer of control of any corporation
21 holding the lease [OR CERTIFICATE OR OWNING THE PIPELINE,] to any
22 person other than another owner of the pipeline (including subsidiaries,
23 parents and affiliates of the owners), except to the extent that the
24 commissioner, after consideration* ~~of the public interest, convenience,~~
25 ~~and necessity,~~ by order authorizes the transfer. The commissioner
26 shall not unreasonably withhold this authorization. The application
27 shall be disposed of as if the proposed transferee or assignee were
28 making application under secs. 50 - 100 of this chapter.

29 * Sec. 15. AS 38.35.170 is repealed and re-enacted to read:

CSHB 3 * 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,

1 Sec. 38.35.170. FORFEITURE OF LEASE. Failure to begin con-
2 struction of the pipeline facility within a reasonable time of the
3 granting of a right-of-way lease under this chapter for reasons within
4 the control of the lessee or failure of an owner of an interest
5 in the granted right-of-way substantially to comply with the terms
6 of the right-of-way are grounds for forfeiture of the right-of-way
7 interest of the lessee or owner in an action brought by the commis-
8 sioner in the superior court. Before the commencement of an action for
9 forfeiture of an interest in a right-of-way under this section,
10 the commissioner shall give the lessee or owner of the interest notice
11 in writing of the alleged default and shall not commence the proceeding
12 unless the lessee or owner of the interest has failed to initiate good
13 faith efforts to cure the default within 60 days of the notice of the
14 alleged default.

15 * Sec. 16. AS 38.35.180 is repealed and re-enacted to read:

16 Sec. 38.35.180. INJUNCTIONS. When in the judgment of the
17 commissioner a person has violated or is about to violate a provision
18 of this chapter or covenant, term or condition of a lease, the
19 attorney general, on advice of the commissioner, may seek a
20 prohibition or mandatory injunction from the superior court to remedy
21 the violation.

22 * Sec. 17. AS 38.35.190(c) and (d), AS 38.35.200 and AS 38.35.220(d)
23 are repealed.

24 * Sec. 18. AS 38.35 is amended by adding a new section to read:

25 Sec. 38.35.225. JUDICIAL REVIEW OF DECISIONS OF COMMISSIONER ON
26 APPLICATION. (a) An applicant or competing applicant or a person
27 who raises objections within 30 days after decision following the hearing
28 under sec. 80 of this chapter are the only persons with standing to seek
29 judicial review of a decision of the commissioner/ under Sec. 100 of this chapter

1 (b) The only grounds for judicial review of a decision of the
2 under Sec. 100 of this chapter
commissioner/are

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

5 (2) abuse of discretion so capricious, arbitrary or con-
6 fiscatory as to constitute a denial of due process.

7 * Sec. 19. AS 38.35.230 is repealed and re-enacted to read:

8 Sec. 38.35.230. DEFINITIONS. In this chapter

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

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

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

18 (4) "oil" includes crude petroleum oil and other hydrocarbons
19 regardless of gravity which are produced at the wellhead in liquid
20 form and the liquid hydrocarbons known as distillate or condensate
21 recovered or extracted from gas, other than gas produced in association
22 with oil and commonly known as casinghead gas;

23 (5) "pipeline" or "pipeline facility" means all the facili-
24 ties of a total system of pipe (whether owned or operated under a
25 contract, a reement, or lease) used by a carrier for transportation
26 of crude oil, natural gas, or products for delivery, for storage, or
27 for further transportation, and including all pipe, pump or compressor
28 stations, station equipment, tanks, valves, access roads, bridges,
29 airfields, terminals and terminal facilities, including docks and

1 tanker loading facilities, operations control center for both the
2 upstream part of the pipeline and the terminal, tanker ballast treat-
3 ment facilities, and fire protection system, communication system,
4 and all other facilities used or necessary for an integral line of
5 pipe, taken as a whole, to effectuate transportation, including an
6 extension or enlargement of the line;

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

15 (7) "state land" means

16 (A) "state lands" as defined in AS 38.05.365;

17 (B) public land of the United States selected by the

18 state under sec. 6 of the Alaska Statehood Act of 1958 (PL 85-508;
19 72 Stat. 399), as amended, and real property of the United States
20 transferred to the state under sec. 21, 35 and 45 of the Alaska
21 Omnibus Act of 1959 (PL 86 - 70; 73 Stat. 141), as amended;

22 ~~(8) "transportation" means the movement or carriage by a~~
23 ~~reference to a pipeline, or the movement or carriage of, or~~
24 ~~transportation, service by, or the movement or carriage~~
25 ~~reference of, or the movement or carriage of, or the~~
26 ~~issued by the state or the movement or carriage of, or the~~
27 ~~of property, or the movement or carriage of, or the~~
28 ~~state or the movement or carriage of, or the~~

29 (8) "transportation" means the movement or carriage by a

30 by a pipeline

1 pipeline of crude oil, natural gas, or products from an upstream
2 terminus in one or more fields or points of production or supply of
3 the minerals to a downstream terminus in one or more points for
4 delivery of the minerals to a purchaser or consignee, for storage,
5 or for further carriage or shipment, including shipment or carriage
6 within the state that may be classified as interstate or foreign
7 transportation to the extent that the transportation may constitution-
8 ally be subjected to the provisions of this chapter, as well as all
9 services necessary to effectuate shipment or carriage, including,
10 among other things, the receipt, storage, processing, handling, trans-
11 fer in transit, forwarding, and delivery of the minerals.

12 * Sec. 20. AS 09.55.240(a)(12) is amended to read:

13 (12) [SUBJECT TO THE REQUIREMENTS OF THE ALASKA RIGHT-OF-WAY
14 LEASING ACT OF 1972 (AS 38.35),] for the location of pipelines for
15 gathering, transmitting, transporting, storing, or delivering natural
16 or artificial gas or oil or any liquid or gaseous hydrocarbons,
17 including, but not limited to, pumping stations, terminals, storage
18 tanks, or reservoirs, and related installations.

19 * Sec. 21. AS 38.05.020(c)(1) is amended to read:

20 (1) granting leases of state [PUBLIC] land [AND ISSUING
21 CERTIFICATES] for pipeline right-of-way purposes;

22 * Sec. 22. AS 38.05.020(c)(2) is amended to read:

23 (2) leasing, purchasing, or otherwise acquiring (including
24 condemning by declaration of taking), easements or other interests in
25 [ON PRIVATE OR FEDERAL] land in this state for the purpose of utilizing
26 or granting leases of the land, easements or interests for pipeline
27 right-of-way purposes;

28 * Sec. 23. AS 38.05.020(c)(4) is amended to read:

29 (4) investigating any matters concerning any lessee

1 [CARRIER] with a view to assuring compliance by it with its
2 right-of-way lease, [CERTIFICATES ISSUED UNDER THAT LEASE,] this
3 chapter, and any other applicable state or federal law;

4 * Sec. 24. AS 38.05.330 is amended to read:

5 Sec. 38.05.330. PERMITS. The director, without the prior
6 approval of the commissioner, may issue permits, rights-of-way or
7 easements on state land for secondary roads, trails, ditches, field
8 gathering lines or transmission and distribution pipelines not
9 subject to AS 38.35, telephone and transmission lines, log storage,
10 oil well drilling sites and production facilities for the purposes
11 of recovering minerals from adjacent lands under valid lease, and
12 other similar uses or improvements, or for the limited personal use
13 of timber or materials. The commissioner, upon recommendation of the
14 director, shall establish a reasonable rate or fee schedule to be
15 charged for these uses. In the granting, suspension or revocation of
16 a permit or easement of lands, the director shall give preference to
17 that use of the land which will be of greatest economic benefit to the
18 state and the development of its resources. However, first preference
19 shall be granted to the upland owner for the use of a tract of tideland,
20 or tideland and contiguous submerged land, which is seaward of the
21 upland property of the upland owner and which is needed by the upland
22 owner for any of the purposes for which the use may be granted.

27 [**See following page for Sec.'s 25 & 26.]

23 * Sec. ~~25~~ This Act takes effect on the day after its passage and
24 approval or on the day it becomes law without approval.

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* Sec. 25. The Commissioner of Natural Resources shall submit to the Second Session of the Eighth Legislature not later than March 1, 1974 a full report covering all lands conveyed under provisions of AS 38.05.063 and .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 useage, and any other information the Commissioner may feel necessary to an understanding of the particular disposal.

* Sec. 26. AS 38.05.063 and .076 are repealed effective March 1, 1974.

Final draft copy -

E. Haugen

Original sponsor: Rules Committee by
request of the Governor

Offered: 10/31/73
Referred: Finance

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 3

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - FIRST SPECIAL SESSION

5 A BILL

6 For an Act entitled: "An Act relating to leases of rights-of-way over
7 state land for the transportation of oil, products or
8 natural gas; and providing for an effective date."

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

10 * Section 1. AS 38.35.020 is amended to read:

11 Sec. 38.35.020. GRANT OF RIGHT-OF-WAY LEASE. (a) Rights-of-way
12 on state [STATE-OWNED] land including rights-of-way [RIGHT-OF-WAY ON,]
13 over, under, along, across, or upon the right-of-way of a public
14 road or highway or the right-of-way of a railroad or other public
15 utility, or [ON,] across, upon, over, or under a river or other body
16 of water or land belonging to or administered by the state may be
17 granted by noncompetitive lease by the commissioner for pipeline
18 purposes for the transportation of oil, products or natural gas under
19 those conditions prescribed by law or [AND] by administrative regulation
20 Except to the extent authorized by an oil and gas lease or unit
21 agreement approved by the state, no person may engage in any
22 construction [, ACQUISITION] or operation of any [, OR TRANSPORTATION,
23 SERVICE, OR SALE BY THE WHOLE OR A] part of an oil, products, or
24 natural gas pipeline, which in whole or in part is or is proposed to
25 be on state [PUBLIC] land [,] unless that person [S A CARRIER AND]
26 has obtained from the commissioner a right-of-way lease of the land
27 under this chapter [AS WELL AS A CERTIFICATE THAT THE CONSTRUCTION,
28 ACQUISITION, OPERATION, TRANSPORTATION, SERVICE, OR SALE, IN SUBJECT
29 TO THE LEASE, WILL BE IN ACCORDANCE WITH ITS TERMS].

1 inconsistent with federal or other state law or with regulations or
2 rulings of a federal regulatory agency or the Alaska Pipeline Commis-
3 sion. It is inapplicable.

4 * Sec. 4. AS 38.35.050 is repealed and re-enacted to read:

5 Sec. 38.35.050. APPLICATIONS FOR RIGHT-OF-WAY LEASES. (a) A
6 person or persons desiring to own a pipeline which is proposed to be
7 located in whole or in part on state land, shall apply for a noncom-
8 petitive right-of-way lease of the state land.

9 (b) Applications under (a) of this section shall be made in a
10 form and manner prescribed by regulation.

11 (c) An amendment to an application filed under this section
12 which constitutes a substantial change in the application is subject
13 to the provisions of this section applying to an original application.

14 * Sec. 5. AS 38.35.060 is repealed.

15 * Sec. 6. AS 38.35.070 is amended to read:

16 Sec. 38.35.070. NOTICE OF APPLICATION. (a) Upon receiving
17 notification under sec. 30 or an application under sec. 50 [OR 60]
18 of this chapter, the commissioner shall

19 (1) cause notice of it to appear in a [THE] daily newspaper
20 of general circulation published in the vicinity of [NEAREST] the
21 location of the proposed pipeline, the notice to include:

22 (A) a general description of the land involved;

23 (B) a summary of the substance of the application; and
24 if warranted

(C) the time and place of public hearing to be held

25 on the application;

26 (2) file copies of the application with each coordinate
27 agency; [AND]

28 (3) furnish at cost copies of a notice or application to
29 persons requesting them; and

1 (4) provide other publication and notice he considers
2 reasonable and appropriate to inform the public of the application.

3 * Sec. 7. AS 38.35.080 is amended to read:

4 Sec. 38.35.080. ANALYSIS [OF APPLICATION] AND PUBLIC HEARING.

5 (a) The commissioner shall, within a reasonable time after receiving
6 the application or notification, prepare an analysis of the application
7 or of the matter of which he was notified, including a proposal for
8 action if feasible; a proposed lease [OR CERTIFICATE OR BOTH] and a
9 general statement of his basis and purposes, if favorable action is
10 proposed; or, when a proposal for action is not feasible before a
11 hearing, a description of the subjects and issues involved.

12 (b) Upon completion of the analysis but not less than 30 days
13 before the date set for hearing an application or a substantial amend-
14 ment to an application or a matter of which he was notified under
15 sec. 30 of this chapter, the commissioner shall publish notice, and
16 make copies available as provided in sec. 70 of this chapter.

17 (c) The commissioner ^{may}~~shall~~ set all applications and matters of
18 which he was notified for public hearing as soon as practicable.

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

22 * Sec. 8. AS 38.35.100 is repealed and re-enacted to read:

23 Sec. 38.35.100. DECISION ON APPLICATION. (a) The commis-
24 sioner shall promptly determine, on an application filed with
25 him under sec. 50 of this chapter whether the applicant is fit,
26 willing and able to perform the transportation or other acts
27 proposed in a manner that will reasonably protect the lives,
28 property and general welfare of the people of Alaska. In making
29 a determination the commissioner shall consider whether or not

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

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

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

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

11 (B) undertake any necessary restoration or revege-
12 tation; and

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

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

21 (b) If the commissioner determines that the applicant is
22 not fit, willing, and able to perform the transportation or other
23 proposed acts in a manner that will reasonably protect the lives,
24 property and general welfare of the people of Alaska, the com-
25 missioner shall deny the application. If he determines that the
26 applicant is fit, willing, and able to perform, he shall promptly
27 offer the applicant a lease.

28 * Sec. 9. AS 38.35.110 is repealed and re-enacted to read:

29 Sec. 38.35.110. TERM OF LEASE. The commissioner shall

1 determine the term of the lease. In making this determination he
2 shall take into consideration the cost of the proposed pipeline,
3 its useful life, and the probable financing requirements for the
4 proposed pipeline. Thereafter, upon application of a lessee, the
5 commissioner shall extend the term of the lease for additional
6 periods of time so long as the proposed pipeline is used for the
7 purposes for which the lease was granted and is in compliance with
8 all terms of the lease subject to additional terms and conditions
9 then reasonably required to protect the lives, property and general
10 welfare of the people of Alaska.

11 * Sec. 10. AS 38.35.120 is amended to read:

12 Sec. 38.35.120. COVENANTS [REQUIRED] TO BE INCLUDED IN LEASE.

13 (a) A noncompetitive lease of state public land for a right-of-way
14 for an oil or natural gas pipeline valued at \$1,000,000 or more may
15 be granted only upon the condition that the lessee [CARRIER] ex-
16 pressly covenants in the lease, in consideration of the rights
17 acquired by it under the lease, that

18 [(1) IT WILL OBTAIN A CERTIFICATE OF COMPLIANCE WITH THE
19 TERMS AND CONDITIONS OF THE LEASE BEFORE UNDERTAKING ANY CONSTRUC-
20 TION, ACQUISITION OR OPERATION OF OR TRANSPORTATION, SERVICE OR
21 SALE BY THE WHOLE OR ANY PART OF A PIPELINE ON STATE PUBLIC LAND,
22 INCLUDING THE PORTIONS OF THE PIPELINE NOT ON STATE PUBLIC LAND;

23 (2) IT WILL UNDERTAKE AND COMPLETE OR REGULARLY PERFORM
24 WITHIN OR DURING THE TIME PERIOD AND IN ACCORDANCE WITH THE PROJECT
25 DESCRIPTION CONTAINED IN THE LEASE OR CERTIFICATE, THROUGHOUT THE
26 ENTIRE ROUTE OF THE PIPELINE IN THE STATE, BOTH ON STATE PUBLIC
27 LAND OBTAINED UNDER THE LEASE AND ON OTHER LAND, ANY CONSTRUCTION
28 OR ACQUISITION OR OTHER ACT REQUIRED TO BE PERFORMED IN CONJUNC-
29 TION WITH THE LEASE, OR OPERATION OF, OR TRANSPORTATION, SERVICE,

1 OR SALE BY THE PIPELINE IN GOOD FAITH AND IN ACCORDANCE WITH THE
2 LEASE AND CERTIFICATES, THIS CHAPTER, AND ANY OTHER APPLICABLE
3 STATE OR FEDERAL LAW;]

4 (3) it will perform all of its functions under the lease,
5 as a common carrier; in performing as a common carrier it will accept,
6 convey and transport without discrimination crude oil delivered to it
7 for transportation throughout its route in accordance with applicable
8 statutes and tariffs; the common carrier covenant required by this
9 paragraph does not apply to products lines or to a natural gas pipeline
10 owned or operated by a lessee which is subject to regulation under the
11 Natural Gas Act (52 Stat. 821; 68 Stat. 36) or by a lessee which is
12 subject to regulation by state or political subdivisions with juris-
13 isdiction to regulate the rates and charges for sale of natural gas to
14 consumers in the state [ASSUMES THE STATUS OF AND WILL PERFORM ALL OF
15 ITS FUNCTIONS UNDERTAKEN UNDER THE LEASE AS A COMMON CARRIER AND WILL
16 ACCEPT, CONVEY, AND TRANSPORT ALL CRUDE OIL OR NATURAL GAS, DEPENDING ON
17 THE KIND OF PIPELINE INVOLVED, DELIVERED TO IT FOR TRANSPORTATION
18 FROM FIELDS IN THE VICINITY OF THE PIPELINE SUBJECT TO THE LEASE
19 THROUGHOUT ITS ROUTE BOTH ON STATE PUBLIC LAND OBTAINED UNDER THE
20 LEASE AND ON OTHER LAND; HOWEVER, WHERE THE LESSEE CARRIER OPERATES
21 A NATURAL GAS PIPELINE AND IS SUBJECT BY VIRTUE OF THIS OPERATION
22 TO REGULATION UNDER THE NATURAL GAS ACT OF THE UNITED STATES (52 STAT.
23 821; 68 STAT. 36; 15 U.S.C. 717 ET SEQ.), IT WILL ASSUME THE
24 STATUS OF AND SHALL PERFORM ALL OF ITS FUNCTIONS UNDERTAKEN UNDER
25 THE LEASE AS A COMMON CARRIER AND SHALL PERFORM ALL OF THE ACTS
26 DESCRIBED IN THIS PARAGRAPH WHEN AT ANY TIME AFTER THE EXECUTION
27 OF THE LEASE THE COMMISSIONER AFTER PUBLIC HEARING DETERMINES
28 THAT ASSUMPTION OF THIS STATUS IS REQUIRED IN ORDER TO SUBSERVE THE
29 PUBLIC INTEREST, CONVENIENCE, AND NECESSITY];

1 [(4) IT WILL ASSUME THE STATUS OF AND SHALL BE A COMMON
2 PURCHASER OF CRUDE OIL AND NATURAL GAS, DEPENDING UPON THE KIND OF
3 PIPELINE INVOLVED, THAT IS PRODUCED FROM FIELDS IN THE VICINITY OF
4 THE PIPELINE SUBJECT TO THE LEASE AND SHALL PURCHASE CRUDE OIL
5 OR NATURAL GAS THAT IS OFFERED IT WHEN AT ANY TIME AFTER THE
6 EXECUTION OF THE LEASE THE COMMISSIONER AFTER PUBLIC HEARING
7 DETERMINES THAT ASSUMPTION OF THIS STATUS IS REQUIRED IN ORDER TO
8 SUBSERVE THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY;

9 (5) IT WILL ACCEPT, CONVEY, AND TRANSPORT OR PURCHASE
10 CRUDE OIL OR NATURAL GAS WITHOUT UNJUST OR UNREASONABLE DISCRIMINA-
11 TION IN FAVOR OF ONE PRODUCER OR PERSON, INCLUDING ITSELF, AS AGAINST
12 ANOTHER IN THE SAME FIELD, AND WITHOUT UNJUST OR UNREASONABLE
13 DISCRIMINATION AS BETWEEN FIELDS IN THE STATE BUT WILL TAKE THE
14 CRUDE OIL OR NATURAL GAS, DEPENDING ON THE KIND OF PIPELINE INVOLVED,
15 DELIVERED OR OFFERED IN THE PROPORTION THAT THE COMMISSIONER SHALL,
16 AFTER A FULL HEARING WITH DUE NOTICE TO THE INTERESTED PARTIES AND
17 A PROPER FINDING OF FACTS, DETERMINE TO BE REASONABLE;

18 (6) IT WILL EXCHANGE CRUDE OIL OR NATURAL GAS, DEPENDING
19 UPON THE KIND OF PIPELINE INVOLVED, WITH EACH LIKE COMMON CARRIER
20 AND PROVIDE CONNECTIONS AND FACILITIES FOR THE INTERCHANGE OF CRUDE OIL
21 OR NATURAL GAS AT EVERY LOCALITY REACHED BY BOTH PIPELINES WHEN
22 THE NECESSITY EXISTS, SUBJECT TO RATES AND REGULATIONS MADE BY THE
23 APPROPRIATE STATE OR FEDERAL REGULATORY AGENCY;]

24 ~~(7) The lessee grants the state the right to purchase,~~
25 ~~upon reasonable notice, an undivided interest in the entire~~
26 ~~length of the pipeline within the state, not to exceed five~~
27 ~~per cent; the purchase price shall be calculated on the~~
28 ~~basis of the total value of carrier property as defined by~~

21 (7) it will afford the state an opportunity to negotiate
22 for the purchase of any interest in the pipeline offered for sale by it
23 except for sales or transfers of interests in the pipeline among the
24 owners of the pipeline (including their subsidiaries, parents and
25 affiliates) or sales or transfers resulting from mergers or reorganiza-
26 tions, provided the sale to the state will not interfere with existing
27 contract rights or obligations among the owners of the pipeline or with
28 any other third parties, and provided the terms of the offer for sale
29 are solely at the discretion of the lessee;

1 ~~the Interstate Commerce Commission uniform system of accounts, plus~~
2 ~~accumulated interest during construction and less depreciation after~~
3 ~~commencement of operations; interest during construction shall be~~
4 ~~calculated at an annual rate equivalent to 125 per cent of the best~~
5 ~~interest rate offered during the year by the First National City Bank~~
6 ~~of New York on 90-day loans to substantial and responsible commercial~~
7 ~~borrowers; the lessee shall additionally agree not to sell, transfer~~
8 ~~or otherwise dispose of (to a person other than another owner of the~~
9 ~~pipeline, including subsidiaries, parents, and affiliates of the~~
10 ~~owner) all or any part of a pipeline subject in any part to the lease~~
11 ~~except after offering that interest to the state, to which the lessee~~
12 ~~grants a preferential right to purchase the interest on the same terms~~
13 ~~offered by or to any bona fide prospective purchaser who is ready,~~
14 ~~willing and able to purchase it; but the state may not acquire more~~
15 ~~than a total undivided interest of five per cent in the entire length~~
16 ~~of the pipeline within the state. [THE LESSEE GRANTS TO THE STATE~~
17 THE RIGHT TO PURCHASE, UPON REASONABLE NOTICE, AN UNDIVIDED INTEREST
18 IN THE ENTIRE LENGTH OF THE PIPELINE WITHIN THE STATE, NOT TO EXCEED
19 20 PER CENT; THE PURCHASE PRICE SHALL BE AT A REASONABLE FIGURE SET
20 OUT IN THE LEASE AT THE TIME OF THE LEASE'S EXECUTION; PURCHASE OF
21 THIS INTEREST MAY, AT THE OPTION OF THE STATE, BE MADE IN STAGES;
22 EXERCISE OF AN OPTION TO PURCHASE AN INTEREST IN A PIPELINE PROJECT
23 OR FACILITY IS SUBJECT TO THE APPROVAL OF THE LEGISLATURE; THE
24 INCURRING OF ANY BONDED INDEBTEDNESS BY THE STATE TO IMPLEMENT THE
25 EXERCISE OF ITS OPTION UNDER THIS PARAGRAPH IS SUBJECT TO VOTER
26 APPROVAL];

27 (3) it will maintain and preserve books, accounts, and
28 records [, PAPERS, AND CORRESPONDENCE AND OTHER RECORDS] and will make
29 those reports that the state may prescribe by regulation or law as

1 necessary and appropriate for purposes of administration of this
2 chapter;

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

7 (10) it will provide, where economically feasible [AND
8 CONSISTENT WITH THE PRIMARY FUNCTION OF THE LINE], connections [AND
9 FACILITIES] on the pipeline subject to the lease, [BOTH ON STATE
10 LAND AND OTHER LAND IN THE STATE,] for the purpose of delivering
11 crude oil or natural gas, depending on the kind of pipeline involved,
12 to persons/or municipal corporations
13 contracting for the purchase at wholesale of crude oil
14 or natural gas transported by the pipeline [DESIRING TO PURCHASE WHO
15 ARE LOCATED IN MUNICIPALITIES IN THE VICINITY OF THE PIPELINE];

16 (11) it will, at its own expense, during the term of the
17 lease

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

20 (B) exercise the highest degree of care in using the
21 leasehold and operating the pipeline [TO PREVENT A PIPELINE
22 INCIDENT];

23 (C) promptly repair or remedy any damage to [OR
24 DESTRUCTION OF] the leasehold [OR PIPELINE];

25 (D) promptly compensate for or remedy any damage to
26 or destruction of public or private property resulting from
27 damage to or destruction of the leasehold or pipeline regardless
28 of fault, notwithstanding the limitations of AS 46.03.822(1)(B),
29 (C) and (D), and 46.03.822(2);

[(12) IT WILL NOT TRANSFER, ASSIGN, OR DISPOSE OF IN ANY

1 MANNER, DIRECTLY OR INDIRECTLY, OR BY TRANSFER OF CONTROL OF THE
2 CARRIER CORPORATION, ITS INTEREST IN A RIGHT-OF-WAY LEASE, OR ANY
3 RIGHTS UNDER THE LEASE, OR ANY PIPELINE SUBJECT TO THE LEASE, EXCEPT
4 AS AUTHORIZED BY THE COMMISSIONER, UPON APPLICATION BY THE CARRIER;
5 THE COMMISSIONER SHALL NOT UNREASONABLY WITHHOLD HIS CONSENT TO THE
6 TRANSFER, ASSIGNMENT OR DISPOSAL;]

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

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

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

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

28 (17) it will not interfere with construction and operation of
29 any oil or gas pipeline authorized by the commissioner for location on the

1 right-of-way, subject to compensation of the prior lessee by the subse-
2 quent lessee for any damage to or interference with the operation of the
3 prior pipeline caused by construction of the subsequent pipeline.

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

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

9 (2) protect state and private property interests;

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

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

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

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

23 (d) The lease may contain other terms and conditions that will
24 reasonably protect the lives, property and general welfare of the
25 people of Alaska.

26 * Sec. 11. AS 38.35.130 is amended to read:

27 Sec. 38.35.130. RIGHT-OF-WAY EASEMENTS OR LEASES
28 ACQUIRED FROM OTHERS. (a) The lessee may [LEASE SHALL CONTAIN THE
29 FURTHER EXPRESS AGREEMENT BY THE CARRIER THAT

1 (1) IT WILL, UPON A DETERMINATION BY THE COMMISSIONER AND
2 UPON REASONABLE CONDITIONS AND AT A JUST PRICE, CONVEY TO THE STATE
3 ANY RIGHTS-OF-WAY, RIGHT-OF-WAY PERMITS, EASEMENTS, OR LEASES PREVIOUSLY
4 ACQUIRED OR TO BE ACQUIRED FOR RIGHT-OF-WAY PURPOSES FOR THE PIPELINE
5 SUBJECT TO THE LEASE;

6 (2) THE STATE RESERVES TO ITSELF AND THE LESSEE GRANTS TO
7 THE STATE THE SOLE RIGHT TO CONDEMN, BY DECLARATION OF TAKING, REAL
8 PROPERTY FOR RIGHT-OF-WAY PURPOSES AND TO ACQUIRE TO THE EXTENT
9 FEDERALLY PERMISSIBLE LEASES OF OR EASEMENTS OR RIGHTS-OF-WAY ON
10 PUBLIC LANDS BELONGING TO THE UNITED STATES IN THIS STATE, INCLUDING
11 "WITHDRAWN PUBLIC LANDS" AS THAT TERM IS DEFINED IN SECS. 3(E), 17(C)
12 AND (D)(3), AND 22(I) OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT
13 (PL 92-203; 85 STAT. 688; 43 U.S.C. 1601 ET SEQ.), REQUIRED FOR RIGHT-
14 OF-WAY PURPOSES FOR THE PIPELINE SUBJECT TO THE LEASE;

15 (3) THE CARRIER WILL], if the commissioner delegates the
16 function to it, condemn, by declaration of taking, under
17 AS 09.55.420 - 09.55.450, real property and acquire leases of or
18 easements or rights-of-way on [PUBLIC] lands in the state [BELONGING TO
19 THE UNITED STATES, INCLUDING "WITHDRAWN PUBLIC LANDS"] required for
20 right-of-way purposes for a [THE] pipeline subject to the lease, on
21 behalf of and as agent for the state, in which title to or interest
22 in the land shall vest.

23 (b) The lease shall contain a covenant [REQUIRED BY THIS SECTION
24 SHALL BE ACCOMPANIED BY A PROVISION] that the land, right-of-way,
25 or easement acquired under this section is or will form part of the
26 land leased to the lessee [CARRIER].

27 * Sec. 12. AS 38.35.140 is repealed and re-enacted to read:

28 Sec. 38.35.140. PAYMENT OF RENTAL AND COSTS. (a) The lease
29 price for a right-of-way lease shall be the annual fair market

1 rental of the state lands included in the right-of-way based on the
2 appraised fair market value of the land. The appraised fair market
3 value of the land leased for right-of-way shall be determined
4 without regard to any enhancement in value attributable solely to the
5 construction of pipeline facilities on the land or the use of the land
6 for pipeline purposes. The lease price is payable annually in
7 advance on or before the anniversary of the lease. The appraised
8 fair market rental value shall be adjusted periodically under the
9 provisions of AS 38.05.105.

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

13 * Sec. 13. AS 38.35.150(b) and (c) are repealed.

14 * Sec. 14. AS 38.35.160 is amended to read:

15 Sec. 38.35.160. TRANSFER OF RIGHT-OF-WAY LEASE [, CERTIFICATES,]
16 OR PIPELINE. No lessee [CARRIER] may transfer [, ASSIGN,] or dispose
17 of in any manner its right-of-way lease, or any rights under the
18 lease, or any pipeline subject to the lease, whether on state [PUBLIC]
19 land or other land in the state, either voluntarily or involuntarily,
20 directly or indirectly, or by transfer of control of any corporation
21 holding the lease [OR CERTIFICATE OR OWNING THE PIPELINE,] to any
22 person other than another owner of the pipeline (including subsidiaries,
23 parents and affiliates of the owners), except to the extent that the
24 commissioner, after consideration*~~of the public interest, convenience,~~
25 ~~and necessity,~~ by order authorizes the transfer. The commissioner
26 shall not unreasonably withhold this authorization. The application
27 shall be disposed of as if the proposed transferee or assignee were
28 making application under secs. 50 - 100 of this chapter.

29 * Sec. 15. AS 38.35.170 is repealed and re-enacted to read:

CSHB 3 * 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;

14

1 Sec. 38.35.170. FORFEITURE OF LEASE. Failure to begin con-
2 struction of the pipeline facility within a reasonable time of the
3 granting of a right-of-way lease under this chapter for reasons within
4 the control of the lessee or failure of an owner of an interest
5 in the granted right-of-way substantially to comply with the terms
6 of the right-of-way are grounds for forfeiture of the right-of-way
7 interest of the lessee or owner in an action brought by the commis-
8 sioner in the superior court. Before the commencement of any action for
9 forfeiture of an interest in a right-of-way under this section,
10 the commissioner shall give the lessee or owner of the interest notice
11 in writing of the alleged default and shall not commence the proceeding
12 unless the lessee or owner of the interest has failed to initiate good
13 faith efforts to cure the default within 60 days of the notice of the
14 alleged default.

15 * Sec. 16. AS 38.35.180 is repealed and re-enacted to read:

16 Sec. 38.35.180. INJUNCTIONS. When in the judgment of the
17 commissioner a person has violated or is about to violate a provision
18 of this chapter or covenant, term or condition of a lease, the
19 attorney general, on advice of the commissioner, may seek a
20 prohibition or mandatory injunction from the superior court to remedy
21 the violation.

22 * Sec. 17. AS 38.35.190(c) and (d), AS 38.35.200 and AS 38.35.220(d)
23 are repealed.

24 * Sec. 18. AS 38.35 is amended by adding a new section to read:

25 Sec. 38.35.225. JUDICIAL REVIEW OF DECISIONS OF COMMISSIONER ON
26 APPLICATION. (a) An applicant or competing applicant or a person
27 who raises objections within 30 days after decision following the hearing
28 under sec. 80 of this chapter are the only persons with standing to seek
29 judicial review of a decision of the commissioner. under Sec. 100 of this chapter

1 (b) The only grounds for judicial review of a decision of the
2 under Sec. 100 of this chapter
commissioner/are

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

5 (2) abuse of discretion so capricious, arbitrary or con-
6 fiscatory as to constitute a denial of due process.

7 * Sec. 19. AS 38.35.230 is repealed and re-enacted to read:

8 Sec. 38.35.230. DEFINITIONS. In this chapter

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

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

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

18 (4) "oil" includes crude petroleum oil and other hydrocarbons
19 regardless of gravity which are produced at the wellhead in liquid
20 form and the liquid hydrocarbons known as distillate or condensate
21 recovered or extracted from gas, other than gas produced in association
22 with oil and commonly known as casinghead gas;

23 (5) "pipeline" or "pipeline facility" means all the facili-
24 ties of a total system of pipe (whether owned or operated under a
25 contract, agreement, or lease) used by a carrier for transportation
26 of crude oil, natural gas, or products for delivery, for storage, or
27 for further transportation, and including all pipe, pump or compressor
28 stations, station equipment, tanks, valves, access roads, bridges,
29 airfields, terminals and terminal facilities, including docks and

1 tanker loading facilities, operations control center for both the
2 upstream part of the pipeline and the terminal, tanker ballast treat-
3 ment facilities, and fire protection system, communication system,
4 and all other facilities used or necessary for an integral line of
5 pipe, taken as a whole, to effectuate transportation, including an
6 extension or enlargement of the line;

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

15 (7) "state land" means

16 (A) "state lands" as defined in AS 38.05.365;

17 (B) public land of the United States selected by the
18 state under sec. 6 of the Alaska Statehood Act of 1958 (PL 85-508;
19 72 Stat. 399), as amended, and real property of the United States
20 transferred to the state under secs. 21, 35 and 45 of the Alaska
21 Omnibus Act of 1959 (PL 86 -- 70; 73 Stat. 141), as amended;

22 ~~(8) "land" as the term is used in this regulation shall mean a~~
23 ~~reference to a particular tract of land, whether owned by the~~
24 ~~transportation authority or by any other person, that is subject to the~~
25 ~~provisions of this regulation and is specified in the lease~~
26 ~~issued by the transportation authority subject to the jurisdiction~~
27 ~~of the state, the federal government, and any other applicable~~
28 ~~state or federal law.~~

29 (8) "transportation" means the shipment or carriage by a

1 pipeline of crude oil, natural gas, or products from an upstream
2 terminus in one or more fields or points of production or supply of
3 the minerals to a downstream terminus in one or more points for
4 delivery of the minerals to a purchaser or consignee, for storage,
5 or for further carriage or shipment, including shipment or carriage
6 within the state that may be classified as interstate or foreign
7 transportation to the extent that the transportation may constitution-
8 ally be subjected to the provisions of this chapter, as well as all
9 services necessary to effectuate shipment or carriage, including,
10 among other things, the receipt, storage, processing, handling, trans-
11 fer in transit, forwarding, and delivery of the minerals.

12 * Sec. 20. AS 09.55.240(a)(12) is amended to read:

13 (12) [SUBJECT TO THE REQUIREMENTS OF THE ALASKA RIGHT-OF-WAY
14 LEASING ACT OF 1972 (AS 38.35),] for the location of pipelines for
15 gathering, transmitting, transporting, storing, or delivering natural
16 or artificial gas or oil or any liquid or gaseous hydrocarbons,
17 including, but not limited to, pumping stations, terminals, storage
18 tanks, or reservoirs, and related installations.

19 * Sec. 21. AS 38.05.020(c)(1) is amended to read:

20 (1) granting leases of state [PUBLIC] land [AND ISSUING
21 CERTIFICATES] for pipeline right-of-way purposes;

22 * Sec. 22. AS 38.05.020(c)(2) is amended to read:

23 (2) leasing, purchasing, or otherwise acquiring (including
24 condemning by declaration of taking), easements or other interests in
25 [ON PRIVATE OR FEDERAL] land in this state for the purpose of utilizing
26 or granting leases of the land, easements or interests for pipeline
27 right-of-way purposes;

28 * Sec. 23. AS 38.05.020(c)(4) is amended to read:

29 (4) investigating any matters concerning any lessee

1 [CARRIER] with a view to assuring compliance by it with its
2 right-of-way lease, [CERTIFICATES ISSUED UNDER THAT LEASE,] this
3 chapter, and any other applicable state or federal law;

4 * Sec. 24. AS 38.05.330 is amended to read:

5 Sec. 38.05.330. PERMITS. The director, without the prior
6 approval of the commissioner, may issue permits, rights-of-way or
7 easements on state land for secondary roads, trails, ditches, field
8 gathering lines or transmission and distribution pipelines not
9 subject to AS 38.35, telephone and transmission lines, log storage,
10 oil well drilling sites and production facilities for the purposes
11 of recovering minerals from adjacent lands under valid lease, and
12 other similar uses or improvements, or for the limited personal use
13 of timber or materials. The commissioner, upon recommendation of the
14 director, shall establish a reasonable rate or fee schedule to be
15 charged for these uses. In the granting, suspension or revocation of
16 a permit or easement of lands, the director shall give preference to
17 that use of the land which will be of greatest economic benefit to the
18 state and the development of its resources. However, first preference
19 shall be granted to the upland owner for the use of a tract of tideland,
20 or tideland and contiguous submerged land, which is seaward of the
21 upland property of the upland owner and which is needed by the upland
22 owner for any of the purposes for which the use may be granted.

23 * Sec. 25. This Act takes effect on the day after its passage and
24 approval or on the day it becomes law without approval.
25
26
27
28
29

Original sponsor: Rules Committee by
request of the Governor

Offered: 11/6/73
Referred: Rules

IN THE SENATE

BY THE FINANCE COMMITTEE

CS FOR SENATE BILL NO. 3

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTH LEGISLATURE - FIRST SPECIAL SESSION

A BILL

For an Act entitled: "An Act relating to leases of rights-of-way over
state land for the transportation of oil, products or
natural gas; and providing for an effective date."

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

* Section 1. AS 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 [STATE-OWNED] land including rights-of-way [RIGHT-OF-WAY ON,
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 [ON,] across, upon, over, or under a river or other body of water
or land belonging to or administered by the state may 'e 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 and by administrative regulation. No person may
engage in any construction [, ACQUISITION] or operation of any
[, OR TRANSPORTATION, SERVICE, OR SALE BY THE WHOLE OR A] part of an
oil, products, or natural gas pipeline, which in whole or in part is
or is proposed to be on state [PUBLIC] land, except in conformity with

1 the terms of a right-of-way lease of that land, issued by the commis-
2 sioner under this chapter [UNLESS THAT PERSON IS A CARRIER AND HAS
3 OBTAINED FROM THE COMMISSIONER A RIGHT-OF-WAY LEASE OF THE LAND UNDER
4 THIS CHAPTER AS WELL AS A CERTIFICATE THAT THE CONSTRUCTION, ACQUI-
5 TION, OPERATION, TRANSPORTATION, SERVICE, OR SALE, IF SUBJECT TO THE
6 LEASE, WILL BE IN ACCORDANCE WITH ITS TERMS].

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

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

12 Sec. 38.35.030. ABANDONMENT, [OF OR] REDUCTION OR IMPAIRMENT OF
13 SERVICE OF PIPELINE [BY LESSEE CARRIER]. No lessee [CARRIER] may
14 abandon any portion of a pipeline that is [ON STATE PUBLIC LAND OR]
15 subject to a [THE] lease granted under this chapter, or operation or
16 transportation, service, or sale by it, or reduce or impair service,
17 except in accordance with the terms of the lease or sec. 40 of this
18 chapter [UNLESS THE CARRIER HAS FIRST APPLIED FOR AND THE COMMISSIONER
19 HAS GRANTED A CERTIFICATE THAT THE ABANDONMENT, REDUCTION, OR IMPAIR-
20 MENT IS IN ACCORDANCE WITH THE TERMS OF THE LEASE].

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

22 Sec. 38.35.040. TEMPORARY OR EMERGENCY SERVICE OR TEMPORARY
23 ABANDONMENT, REDUCTION OR IMPAIRMENT OF SERVICE BY LESSEE [CARRIER].
24 The commissioner may, either upon a request made in the form he shall
25 by regulation require, or upon his own motion without request, authorize
26 or require temporary or emergency rendering of service or temporary
27 or emergency abandonment, reduction or impairment of service by a
28 pipeline of a lessee [CARRIER] without compliance with secs.
29 50 - 100 of this chapter. Nothing in this section prevents a carrier

1 from temporarily suspending operations in the event of an emergency
2 which threatens public health or safety; however, notice shall be given
3 the commissioner as soon as possible.

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

5 Sec. 38.35.050. APPLICATIONS FOR RIGHT-OF-WAY LEASES. (a) A
6 person or persons desiring to engage in construction, acquisition or
7 operation of a pipeline which is proposed to be located in whole or in
8 part on state land, shall apply for a noncompetitive right-of-way lease
9 of the state land under this chapter.

10 (b) Applications under (a) of this section shall be made in a
11 form and manner prescribed by regulation, and shall include any and all
12 data, information, plans and exhibits which the commissioner determines
13 are necessary to prepare the analysis required by sec. 80 of this
14 chapter and to make a decision under sec. 100 of this chapter.

15 (c) The application filed under this section shall be incorporated
16 into any right-of-way lease issued in response to it and shall become
17 a part of the terms and conditions of the lease.

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

21 (e) All persons owning or planning to own an interest in a pipe-
22 line or proposed pipeline subject to a lease must join in the application
23 under (a) of this section. Any person employed in operating the pipeline
24 is bound by the covenants of the lease applicable to functions within the
25 scope of his employment as if he were an applicant under the lease and
26 the state may enforce any breach of a covenant directly against an
27 operator out of compliance.

28 * Sec. 6. AS 38.35.060 is repealed.

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

1 Sec. 38.35.070. NOTICE OF APPLICATION. Upon receiving an application
2 under sec. 50 [OR 60] of this chapter, the commissioner shall within 30 days

3 (1) cause notice of it to appear in a daily newspaper of gen-
4 eral circulation published in the vicinity of the proposed pipeline;

5 (2) file copies of the application with the Departments of
6 Labor, Highways, and Environmental Conservation, and the Alaska Pipeline
7 Commission [EACH COORDINATE AGENCY]; and

8 (3) make copies available for public inspection [FURNISH
9 AT COST COPIES OF A NOTICE OR APPLICATION TO PERSONS REQUESTING THEM].

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

11 Sec. 38.35.080. ANALYSIS OF APPLICATION AND PUBLIC HEARING. (a) The
12 commissioner shall, within 90 days [A REASONABLE TIME] after receiving
13 the application, prepare an analysis of the application, including a
14 proposal for action if feasible; a proposed lease [OR CERTIFICATE OR
15 BOTH] and a general statement of his basis and purpose, if favorable
16 action is proposed; or, when a proposal for action is not feasible
17 before a hearing, a description of the subjects and issues involved.

18 (b) Upon completion of the analysis but not less than 30 days
19 before the date set for hearing an application or a substantial amend-
20 ment to an application, the commissioner shall publish notice, and
21 make copies available as provided in sec. 70 of this chapter.

22 (c) The commissioner shall hold a public hearing on an application
23 within 120 days of receiving it [SET ALL APPLICATIONS FOR PUBLIC HEARING
24 AS SOON AS PRACTICABLE].

25 * Sec. 9. AS 38.35.100(a) is amended to read:

26 (a) The commissioner shall determine, on an application filed
27 with him under sec. 50 of this chapter for a right-of-way lease of
28 state [PUBLIC] land [OR FOR A CERTIFICATE] under a lease, whether the
29 applicant is fit, willing, and able to perform the transportation or

1 other acts proposed and to conform to the provisions of the proposed
2 right-of-way lease [OR CERTIFICATE,] and of this chapter, and whether
3 the proposed construction, acquisition, or operation [OF OR TRANSPORTA-
4 TION, SERVICE, OR SALE BY THE PIPELINE] is or will be required by
5 the present or future public interest [AND NECESSITY]. If the commis-
6 sioner makes these determinations favora to the applicant, then
7 he may grant the whole or part of the application. Otherwise, he
8 shall deny the application. In order to grant the whole or part of
9 the application the commissioner shall offer a lease [OR CERTIFICATE]
10 to the applicant for its acceptance through signing of the lease [OR
11 CERTIFICATE] and agreeing to comply with its terms, conditions, and
12 obligations and with this chapter. Only upon proper acceptance of
13 offered lease [OR CERTIFICATE] by the applicant within 30 days after
14 its having been presented is the grant of the application consummated.

15 * Sec. 10. AS 38.35.100(b) and (c) are repealed.

16 * Sec. 11. AS 38.35.110 is amended to read:

17 Sec. 38.35.110. TERM OF LEASE. Each lease of state [PUBLIC]
18 land for pipeline right-of-way purposes shall contain a provision that
19 the lease shall run for a specified term of not greater than 30 [25]
20 years, and shall be renewable for additional periods of up to 10 years
21 each, so long as the lessee is in full compliance with all state law,
22 including but not limited to state law pertaining to regulation and
23 taxation of the pipeline facility, and is in compliance with all terms
24 of the lease.

25 * Sec. 12. AS 38.35.120 is repealed and re-enacted to read:

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

1 lease, in consideration of the rights acquired by it under the lease,
2 that

3 (1) it assumes the status of and will perform all of its
4 functions undertaken under the lease as a common carrier and will
5 accept, convey, and transport without discrimination crude oil or
6 natural gas, depending on the kind of pipeline involved, delivered
7 to it for transportation from fields in the vicinity of the pipeline
8 subject to the lease throughout its route both on state land obtained
9 under the lease and on other land; however, a lessee who owns or
10 operates a natural gas pipeline subject to regulation either (A) under
11 the Natural Gas Act (15 U.S.C. 717 et. seq.) of the United States, or
12 (B) by the state or political subdivisions with respect to rates and
13 charges for the sale of natural gas, is, to the extent of that regula-
14 tion, exempt from the common carrier requirement in this paragraph;
15 it will accept, convey, and transport crude oil or natural gas without
16 unjust or unreasonable discrimination in favor of one producer or
17 person, including itself, as against another in the same field, and
18 without unjust or unreasonable discrimination.

19 (2) it will exchange crude oil or natural gas, depending
20 upon the kind of pipeline involved, with each like common carrier and
21 provide connections and facilities for the interchange of crude oil
22 or natural gas at every locality reached by both pipelines when the
23 necessity exists, subject to rates and regulations made by the appro-
24 priate state or federal regulatory agency;

25 (3) the lessee grants the state the right to purchase, upon
26 reasonable notice, an undivided interest in the entire length of the
27 pipeline within the state, not to exceed 20 per cent; the purchase
28 price shall be fair market value of the interest at the time the option
29 is exercised; each lessee shall additionally agree not to sell, transfer

1 or otherwise dispose of all or any part of a pipeline subject in any
2 part to the lease except after offering such interest to the state,
3 to which the lessee grants a preferential right to purchase such
4 interest on the same terms offered by or to any bona fide, prospective
5 purchaser who is ready, willing and able to purchase same; provided
6 that this obligation will not interfere with or supersede contractual
7 rights or obligations existing on the effective date of this Act;
8 exercise of an option to purchase an interest in a pipeline project
9 or facility is subject to the approval of the legislature; the incurring
10 of any bonded indebtedness by the state to implement the exercise of
11 its option under this paragraph is subject to voter approval;

12 (4) the state shall provide for the repayment of the out-
13 standing debt incurred by the lessee whose undivided interest share
14 is acquired under (3) of this subsection, either by undertaking the
15 debt directly if that is acceptable to the lender, or by discharging
16 the applicable outstanding debt, including any penalties for prepay-
17 ment, and undertaking its own debt;

18 (5) it will maintain and preserve books, accounts, and
19 records and will make those reports that the state may require under
20 AS 42.06.430;

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

25 (7) it will provide, if the expense involved will not impair
26 the ability of the lessee to perform its duty to the public as a
27 common carrier, connections to facilities on the pipeline subject to
28 the lease, both on state land and other land in the state, for the
29 purpose of delivering crude oil or natural gas, depending upon the

1 kind of pipeline involved, to persons (including the state and its
2 political subdivisions) contracting for the exchange, delivery or
3 purchase at wholesale of crude oil or natural gas transported by the
4 pipeline; provided, that if the connection is not economically feasible
5 but the commissioner believes that the connection is required in the
6 public interest, the state may require that the connection be made and
7 the cost difference shall be met at state expense subject to such
8 arrangements for recovery of the expense from buyers or sellers of oil
9 or gas as may be made by the state;

10 (8) it shall, notwithstanding any other provision, provide
11 connections and interchange facilities at state expense at such places
12 on state lands the state considers necessary if the state determines
13 to take a portion of its royalty or taxes in oil or natural gas;

14 (9) it will extend or enlarge the pipeline or storage
15 facilities as determined by the Alaska Pipeline Commission to be in
16 the public interest;

17 (10) it will, at its own expense, during the term of the
18 lease

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

20 (B) promptly repair or remedy any damage to the lease-
21 hold;

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

25 (11) it will not transfer, assign, or dispose of in any
26 manner, directly or indirectly, or by transfer of control of the
27 carrier corporation, its interest in a right-of-way lease, or any
28 rights under the lease or any pipeline subject to the lease to any
29 person other than another owner of the pipeline (including subsidi-

1 aries, parents and affiliates of the owners), except to the extent
2 that the commissioner, after consideration of the protection of the
3 public interests, authorizes; the commissioner shall not unreasonably with-
4 hold his consent to the transfer, assignment or disposal;

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

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

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

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

28 (16) it will procure and furnish liability and
29 property damage insurance from a company licensed to do business

1 in the state or furnish other security or undertaking upon the
2 terms and conditions the commissioner considers necessary if
3 the commissioner finds that the net assets of the lessee are
4 insufficient to protect the public from damage for which the lessee
5 may be liable arising out of the construction or operation of
6 the pipeline;

7 (17) it will construct and operate the pipeline in accor-
8 dance with applicable state laws and lawful regulations and orders
9 of the Alaska Pipeline Commission; however, the terms of a right-
10 of-way lease issued under this chapter shall not be considered
11 to permit or require a lessee, the commissioner, or the Alaska
12 Pipeline Commission to take any action that is in conflict with
13 federal law or with lawful regulations or orders of the Interstate
14 Commerce Commission or the Federal Power Commission.

15 (b) For a right-of-way lease granted under this chapter
16 for an oil or natural gas pipeline valued at \$1,000,000 or more
17 to be valid and of legal effect, it must contain the terms required
18 to be inserted under the provisions of secs. 110 - 150 of this
19 chapter. An oil or natural gas pipeline right-of-way lease granted
20 under this chapter that does not contain the required terms is
21 null and void and without legal effect and does not vest any
22 interest in state land or any authority in the carrier granted
23 the lease.

24 (c) The commissioner may, at his discretion, include any or all
25 or the terms set out in (a) of this section in leases of state land
26 for products pipeline right-of-way purposes.

27 * Sec. 13. AS 38.35.130 is amended to read:

28 Sec. 38.35.130. RIGHT-OF-WAY EASEMENTS OR LEASES ACQUIRED
29 FROM OTHERS. (a) The lessee may [LEASE SHALL CONTAIN THE FURTHER

1 EXPRESS AGREEMENT BY THE CARRIER THAT

2 (1) IT WILL, UPON A DETERMINATION BY THE COMMISSIONER AND
3 UPON REASONABLE CONDITIONS AND AT A JUST PRICE, CONVEY TO THE STATE
4 ANY RIGHTS-OF-WAY, RIGHT-OF-WAY PERMITS, EASEMENTS, OR LEASES PREVIOUSLY
5 ACQUIRED OR TO BE ACQUIRED FOR RIGHT-OF-WAY PURPOSES FOR THE PIPELINE
6 SUBJECT TO THE LEASE;

7 (2) THE STATE RESERVES TO ITSELF AND THE LESSEE GRANTS TO
8 THE STATE THE SOLE RIGHT TO CONDEMN, BY DECLARATION OF TAKING, REAL
9 PROPERTY FOR RIGHT-OF-WAY PURPOSES AND TO ACQUIRE TO THE EXTENT
10 FEDERALLY PERMISSIBLE LEASES OF OR EASEMENTS OR RIGHTS-OF-WAY ON
11 PUBLIC LANDS BELONGING TO THE UNITED STATES IN THIS STATE, INCLUDING
12 "WITHDRAWN PUBLIC LANDS" AS THAT TERM IS DEFINED IN SECS. 3(e), 17(c)
13 AND (d)(3), AND 22 (1) OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT
14 (PL 92-207; 85 STAT. 688; 43 U.S.C. 1601 ET SEQ.), REQUIRED FOR RIGHT-
15 OF-WAY PURPOSES FOR THE PIPELINE SUBJECT TO THE LEASE;

16 (3) THE CARRIER WILL], if the commissioner delegates the
17 function to it, condemn, by declaration of taking, under AS 09.55.420 -
18 09.55.450, real property and acquire leases of or easements or rights-
19 of-way on [PUBLIC] lands in the state [BELONGING TO THE UNITED STATES,
20 INCLUDING "WITHDRAWN PUBLIC LANDS"] required for right-of-way purposes
21 for a [THE] pipeline subject to the lease, on behalf of and as agent
22 for the state, in which title to or interest in the land shall vest.

23 (b) The lease shall contain a covenant [REQUIRED BY THIS SECTION
24 SHALL BE ACCOMPANIED BY A PROVISION] that the land, right-of-way,
25 or easement acquired under this section is or will form part of the
26 land leased to the lessee [CARRIER].

27 # Sec. 14. AS 38.35.140 is repealed and re-enacted to read:

28 Sec. 38.35.140. PAYMENT OF RENTAL AND COSTS. (a) The lease
29 price for a right-of-way lease shall be the annual fair market rental