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SB/ HB 3 cont. , 324

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

13 * Sec. 15. AS 38.35.150 is repealed and re-enacted to read:

14 Sec. 38.35.150. ADDITIONAL PROVISIONS OF LEASE. (a) The com-
15 missioner may insert in any right-of-way lease other reasonable
16 provisions and conditions that he determines the public interest
17 requires.

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

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

23 (2) protect state and private property interests;

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

27 (4) restore and revegetate during the term and at termina-
28 tion of the lease; and

29 (5) protect the interests of individuals living in the

1 general area of the right-of-way who rely on the fish, wildlife, and
2 biotic resources of the area for subsistence purposes.

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

8 * Sec. 16. AS 38.35.160 is amended to read:

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

23 authorizes the transfer. The commissioner shall not unreasonably
24 withhold this authorization. The application shall be disposed of
25 as if the proposed transferee or assignee were making application
26 under secs. 50 - 100 of this chapter.

27 * Sec. 17. AS 38.35.170 is repealed and re-enacted to read:

28 Sec. 38.35.170. FORFEITURE OF LEASE. Failure to begin construc-
29 tion of the pipeline facility within a reasonable time of the granting

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

13 * Sec. 18. AS 38.35.180(c) is amended to read:

14 (c) Neither this section nor the state's obtaining an injunction
15 or recovering penalties extinguishes any civil cause of action or
16 criminal responsibility arising out of a violation of this chapter
17 or the provisions of [,] a r'ght-of-way lease [, OR CERTIFICATE UNDER
18 A LEASE]. A person obtaining a money judgment in an action arising
19 out of a violation is entitled to a reasonable attorney fee, fixed
20 by the court, to be taxed and collected as costs of the suit.

21 * Sec. 19. AS 38.35.190(b), (c) and (d) are repealed.

22 * Sec. 20. AS 38.35.200 is repealed and re-enacted to read:

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

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

1 commissioner are

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

4 (2) abuse of discretion so capricious, arbitrary or confisca-
5 tory as to constitute a denial of due process.

6 * Sec. 21. AS 38.35.210 is amended to read:

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

11 * Sec. 22. AS 38.35.220 is repealed and re-enacted to read:

12 Sec. 38.35.220. CONTINUED OPERATION OF EXISTING CARRIER. (a)
13 Persons holding easements, rights-of-way or permits for natural gas
14 pipelines on state land on May 20, 1972 are unaffected by this
15 chapter within the scope of their existing operations, normal expan-
16 sions and extensions of them so long as their original or present
17 purpose and function remains unchanged.

18 (b) Subject to (a) of this section if an existing right-of-way
19 is revocable or for a term of years, then upon revocation or expiration
20 this chapter applies.

21 (c) Applications for pipeline permits which have been filed
22 with the division of lands before May 20, 1972 shall be considered
23 as filed under this chapter but this does not otherwise restrict the
24 authority of the commissioner in acting on these applications under
25 this chapter; however, in the event the division of lands has, before
26 May 20, 1972, granted right-of-entry to an applicant or issued
27 a letter of no-objection to an applicant, and the applicant thereafter
28 fully complies with all of the terms and conditions originally speci-
29 fied by the division of lands or other agency, these applications are

1 an existing valid permit or easement on the effective date of this
2 chapter.

3 * Sec. 23. AS 38.35.230(2) and (3) are repealed.

4 * Sec. 24. AS 38.35.230(9) is amended to read:

5 (9) "lessee [CARRIER]" means a person or persons [CARRIER]
6 holding a valid lease [AND CERTIFICATES UNDER IT] issued by the commis-
7 sioner;

8 * Sec. 25. AS 38.35.230(17) is amended to read:

9 (17) "state [PUBLIC] land" means

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

11 (B) public land of the United States selected by the
12 state under sec. 6 of the Alaska Statehood Act of 1958 (PL 85-508;
13 72 Stat. 399), as amended, and real property of the United States
14 transferred to the state under secs. 21, 35 and 45 of the Alaska
15 Omnibus Act of 1959 (PL 86-70; 73 Stat. 141), as amended;

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

17 * Sec. 26. AS 38.35 is amended by adding new sections to read:

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

22 Sec. 38.35.250. FEDERAL PREEMPTION. To the extent that the
23 application of this chapter affects a pipeline carrier or a pipeline
24 subject to the Interstate Commerce Act (49 U.S.C. secs. 1 et. seq.)
25 or the Natural Gas Act (15 U.S.C. 717 et. seq.) this chapter may not
26 be applied so as to conflict with applicable federal laws and regula-
27 tions, rules, orders, or other requirements under which jurisdiction
28 has been expressly assumed by the federal commission or agency charged
29 with the administration of these federal Acts.

1 * Sec. 27. AS 09.55.240(a)(12) is amended to read:

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

8 * Sec. 28. AS 38.05.020(c)(1) is amended to read:

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

11 * Sec. 29. AS 38.05.020(c)(4) is amended to read:

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

16 * Sec. 30. AS 38.05.330 is amended to read:

17 Sec. 38.05.330. PERMITS. The director, without the prior
18 approval of the commissioner, may issue permits, rights-of-way or
19 easements on state land for secondary roads, trails, ditches, field
20 gathering lines or transmission and distribution pipelines not subject
21 to AS 38.35, telephone and transmission lines, log storage, oil well
22 drilling sites and production facilities for the purposes of recovering
23 minerals from adjacent lands under valid lease, and other similar
24 uses or improvements, or for the limited personal use of timber or
25 materials. The commissioner, upon recommendation of the director,
26 shall establish a reasonable rate or fee schedule to be charged for
27 these uses. In the granting, suspension or revocation of a permit or
28 easement of lands, the director shall give preference to that use of
29 the land which will be of greatest economic benefit to the state and

1 the development of its resources. However, first preference shall
2 be granted to the upland owner for the use of a tract of tideland, or
3 tideland and contiguous submerged land, which is seaward of the upland
4 property of the upland owner and which is needed by the upland owner
5 for any of the purposes for which the use may be granted.

6 * Sec. 31. This Act takes effect on the day after its passage and approval
7 or on the day it becomes law without approval.

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 [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

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;

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 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 OF 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
29

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 owners) 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 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:

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.

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

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

5 (2) abuse of discretion as 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, benzine, 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) "subject to the lease" means, in the context of a
23 reference to a pipeline, or the construction or operation of, or
24 transportation, service, or sale by it, that the pipeline or the
25 performance of these acts relative to it are specified in the lease
26 issued by the commissioner as being subjected to the jurisdiction
27 or coverage of that lease, this chapter, and any other applicable
28 state or federal law;

29 (9) "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

Introduced: 10/17/73
Referred: Resources,
Judiciary and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 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 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 - AS 38.35.040 are repealed.

4 * Sec. 3. 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. 4. AS 38.35.060 is repealed.

15 * Sec. 5. AS 38.35.070 is repealed and re-enacted to read:

16 Sec. 38.35.070. NOTICE OF APPLICATION: HEARING. (a) Upon
17 receiving an application under sec. 50 of this chapter, the
18 commissioner shall promptly publish notice of it in a daily newspaper
19 of general circulation published in the vicinity of the proposed
20 pipeline and shall provide other publication and notice he considers
21 reasonable and appropriate to inform the public of the application.
22 The notice must generally describe the land involved and must include
23 a summary of the substance of the application. If the commissioner
24 decides that a public hearing is necessary, the notice shall also
25 include the time and place of the public hearing.

26 (b) Any public hearing on the application shall be held no sooner
27 than 20 days or more than 60 days after publication of notice under (a)
28 of this section. At the hearing the applicant and other persons shall
29 have the opportunity to present information relating to the application

1 and to the determination to be made under sec. 100 of this chapter.

2 (c) The provisions of the Administrative Procedure Act
3 (AS 44.62) do not apply to hearings held under this section.

4 * Sec. 6. AS 38.35.080 is repealed.

5 * Sec. 7. AS 38.35.100 is repealed and re-enacted to read:

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

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

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

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

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

23 (B) undertake any necessary restoration or revege-
24 tation; and

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

29 (4) the applicant has the financial capability to pay

1 reasonably foreseeable damages for which he may become liable on
2 claims rising from the construction, operation, maintenance or
3 termination of the pipeline.

4 (b) If the commissioner determines that the applicant is
5 not fit, willing, and able to perform the transportation or other
6 proposed acts in a manner that will reasonably protect the lives,
7 property and general welfare of the people of Alaska, the com-
8 missioner shall deny the application. If he determines that the
9 applicant is fit, willing, and able to perform, he shall promptly
10 offer the applicant a lease.

11 * Sec. 8. AS 38.35.110 is repealed and re-enacted to read:

12 Sec. 38.35.110. TERM OF LEASE. The commissioner shall
13 determine the term of the lease. In making this determination he
14 shall take into consideration the cost of the proposed pipeline,
15 its useful life, and the probable financing requirements for the
16 proposed pipeline. Thereafter, upon application of a lessee, the
17 commissioner shall extend the term of the lease for additional
18 periods of time so long as the proposed pipeline is used for the
19 purposes for which the lease was granted and is in compliance with
20 all terms of the lease subject to additional terms and conditions
21 then reasonably required to protect the lives, property and general
22 welfare of the people of Alaska.

23 * Sec. 9. AS 38.35.120 is amended to read:

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

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

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

6 (2) IT WILL UNDERTAKE AND COMPLETE OR REGULARLY PERFORM
7 WITHIN OR DURING THE TIME PERIOD AND IN ACCORDANCE WITH THE PROJECT
8 DESCRIPTION CONTAINED IN THE LEASE OR CERTIFICATE, THROUGHOUT THE
9 ENTIRE ROUTE OF THE PIPELINE IN THE STATE, BOTH ON STATE PUBLIC
10 LAND OBTAINED UNDER THE LEASE AND ON OTHER LAND, ANY CONSTRUCTION
11 OR ACQUISITION OR OTHER ACT REQUIRED TO BE PERFORMED IN CONJUNC--
12 TION WITH THE LEASE, OR OPERATION OF, OR TRANSPORTATION, SERVICE,
13 OR SALE BY THE PIPELINE IN GOOD FAITH AND IN ACCORDANCE WITH THE
14 LEASE AND CERTIFICATES, THIS CHAPTER, AND ANY OTHER APPLICABLE
15 STATE OR FEDERAL LAW:]

16 (3) it will perform all of its functions under the lease,
17 as a common carrier, if the commissioner determines at the time
18 the lease is issued or if at any time after the execution of the
19 lease the commissioner after public hearing determines that
20 assumption of the status of common carrier is required in order
21 to serve the public interest; in performing as a common carrier it
22 will accept, convey and transport without discrimination crude oil
23 delivered to it for transportation throughout its route in
24 accordance with applicable statutes and tariffs; the imposition of
25 common carrier status does not require the lessee to accept tenders
26 of crude oil except at points where there exist pumping stations or
27 other facilities for the receipt of crude oil (unless the tender
28 includes an offer to bear all associated costs and liabilities), or
29 tenders of crude oil which are not good merchantable oil of gravity,

1 viscosity and other characteristics which make it readily transportable
2 through the pipeline facility without materially adversely affecting
3 the quality of the commingled stream of crude oil of other shippers
4 and without adversely affecting the lessee's pipeline facilities;
5 the common carrier covenant required by this paragraph does not
6 apply to a natural gas pipeline owned or operated by a lessee
7 which is subject to regulation under the Natural Gas Act (52 Stat.
8 821; 68 Stat. 36) or by a lessee which is subject to regulation
9 by state or political subdivisions with jurisdiction to regulate
10 the rates and charges for sale of natural gas to consumers in the
11 state [ASSUMES THE STATUS OF AND WILL PERFORM ALL OF ITS FUNCTIONS
12 UNDERTAKEN UNDER THE LEASE AS A COMMON CARRIER AND WILL ACCEPT,
13 CONVEY, AND TRANSPORT ALL CRUDE OIL OR NATURAL GAS, DEPENDING ON
14 THE KIND OF PIPELINE INVOLVED, DELIVERED TO IT FOR TRANSPORTATION
15 FROM FIELDS IN THE VICINITY OF THE PIPELINE SUBJECT TO THE LEASE
16 THROUGHOUT ITS ROUTE BOTH ON STATE PUBLIC LAND OBTAINED UNDER THE
17 LEASE AND ON OTHER LAND; HOWEVER, WHERE THE LESSEE CARRIER OPERATES
18 A NATURAL GAS PIPELINE AND IS SUBJECT BY VIRTUE OF THIS OPERATION
19 TO REGULATION UNDER THE NATURAL GAS ACT OF THE UNITED STATES (52 STAT.
20 821; 68 STAT. 36; 15 U.S.C. 717 ET SEQ.), IT WILL ASSUME THE
21 STATUS OF AND SHALL PERFORM ALL OF ITS FUNCTIONS UNDERTAKEN UNDER
22 THE LEASE AS A COMMON CARRIER AND SHALL PERFORM ALL OF THE ACTS
23 DESCRIBED IN THIS PARAGRAPH WHEN AT ANY TIME AFTER THE EXECUTION
24 OF THE LEASE THE COMMISSIONER AFTER PUBLIC HEARING DETERMINES
25 THAT ASSUMPTION OF THIS STATUS IS REQUIRED IN ORDER TO SUBSERVE THE
26 PUBLIC INTEREST, CONVENIENCE, AND NECESSITY];

27 [(4) IT WILL ASSUME THE STATUS OF AND SHALL BE A COMMON
28 PURCHASER OF CRUDE OIL AND NATURAL GAS, DEPENDING UPON THE KIND OF
29 PIPELINE INVOLVED, THAT IS PRODUCED FROM FIELDS IN THE VICINITY OF

1 THE PIPELINE SUBJECT TO THE LEASE AND SHALL PURCHASE CRUDE OIL
2 OR NATURAL GAS THAT IS OFFERED IT WHEN AT ANY TIME AFTER THE
3 EXECUTION OF THE LEASE THE COMMISSIONER AFTER PUBLIC HEARING
4 DETERMINES THAT ASSUMPTION OF THIS STATUS IS REQUIRED IN ORDER TO
5 SUBSERVE THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY;

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

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

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: [THE LESSEE GRANTS TO THE

1 STATE THE RIGHT TO PURCHASE, UPON REASONABLE NOTICE, AN UNDIVIDED
2 INTEREST IN THE ENTIRE LENGTH OF THE PIPELINE WITHIN THE STATE, NOT TO
3 EXCEED 20 PER CENT; THE PURCHASE PRICE SHALL BE AT A REASONABLE
4 FIGURE SET OUT IN THE LEASE AT THE TIME OF THE LEASE'S EXECUTION;
5 PURCHASE OF THIS INTEREST MAY, AT THE OPTION OF THE STATE, BE MADE IN
6 STAGES; EXERCISE OF AN OPTION TO PURCHASE AN INTEREST IN A PIPELINE
7 PROJECT OR FACILITY IS SUBJECT TO THE APPROVAL OF THE LEGISLATURE; THE
8 INCURRING OF ANY BONDED INDEBTEDNESS BY THE STATE TO IMPLEMENT THE
9 EXERCISE OF ITS OPTION UNDER THIS PARAGRAPH IS SUBJECT TO VOTER
10 APPROVAL;]

11 (8) it will maintain and preserve books, accounts, and
12 records [, PAPERS, AND CORRESPONDENCE AND OTHER RECORDS] and will make
13 those reports that the state may require under AS 42.06.430 [PRESCRIBE
14 BY REGULATION OR LAW AS NECESSARY AND APPROPRIATE FOR PURPOSES OF
15 ADMINISTRATION OF THIS CHAPTER];

16 (9) it will accord at all reasonable times to the state
17 and its authorized agents and auditors the right of access to its
18 property and records, of inspection of its property, and of examination
19 and copying of records under AS 42.06.440;

20 (10) it will provide, where economically feasible and
21 consistent with the primary function of the pipeline [LINE], connections
22 [AND FACILITIES] on the land [PIPELINE] subject to the lease, [BOTH
23 ON STATE LAND AND OTHER LAND IN THE STATE,] for the purpose of
24 delivering crude oil or natural gas, depending on the kind of
25 pipeline involved, to persons contracting for the purchase at whole-
26 sale of crude oil or natural gas transported by the pipeline; in
27 order to meet the requirements of this covenant the lessee shall not
28 be required to enlarge the pipeline system, extend the pipeline,
29 acquire additional rights-of-way, incur any additional obligation

1 or incur any costs or liabilities associated with the connection or
2 connected facilities, or assume any obligation inconsistent with
3 applicable federal law [DESIRING TO PURCHASE WHO ARE LOCATED IN
4 MUNICIPALITIES IN THE VICINITY OF THE PIPELINE];

5 (11) it will, at its own expense, during the term of the
6 lease

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

9 (B) exercise the [HIGHEST] degree of care required by
10 law in using the leasehold and operating the pipeline [TO PREVENT
11 A PIPELINE INCIDENT];

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

14 (D) promptly compensate for [REMEDY] any damage to
15 or destruction of property for which the carrier is liable
16 resulting from damage to or destruction of the leasehold or
17 pipeline;

18 [(12) IT WILL NOT TRANSFER, ASSIGN, OR DISPOSE OF IN ANY
19 MANNER, DIRECTLY OR INDIRECTLY, OR BY TRANSFER OF CONTROL OF THE
20 CARRIER CORPORATION, ITS INTEREST IN A RIGHT-OF-WAY LEASE, OR ANY
21 RIGHTS UNDER THE LEASE, OR ANY PIPELINE SUBJECT TO THE LEASE, EXCEPT
22 AS AUTHORIZED BY THE COMMISSIONER, UPON APPLICATION BY THE CARRIER;
23 THE COMMISSIONER SHALL NOT UNREASONABLY WITHHOLD HIS CONSENT TO THE
24 TRANSFER, ASSIGNMENT OR DISPOSAL:]

25 (13) it will file with the commissioner a written appoint-
26 ment of a named permanent resident of the state to be its registered
27 agent in the state and to receive service of notices, regulations,
28 decisions and orders of the commissioner; if it fails to appoint an
29 agent for service, service may be made by posting a copy in the

1 office of the commissioner and filing a copy of it in the office
2 of the lieutenant governor and by mailing a copy to lessee's last
3 known address;

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

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

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

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

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

22 (2) protect state and private property interests;

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

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

28 (5) protect the interests of individuals living in the
29 general area of the right-of-way who rely on the fish, wildlife, and

1 biotic resources of the area for subsistence purposes.

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

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

10 * Sec. 10. AS 38.35.130 is amended to read:

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

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

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

28 (3) THE CARRIER WILL], if the commissioner delegates the
29 function to it, condemn, by declaration of taking, under

1 AS 09.55.420 - 09.55.450, real property and acquire leases of or
2 easements or rights-of-way on [PUBLIC] lands in the state [BELONGING TO
3 THE UNITED STATES, INCLUDING "WITHDRAWN PUBLIC LANDS"] required for
4 right-of-way purposes for a [THE] pipeline subject to the lease, on
5 behalf of and as agent for the state, in which title to or interest
6 in the land shall vest.

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

11 * Sec. 11. AS 38.35.140 is repealed and re-enacted to read:

12 Sec. 38.35.140. PAYMENT OF RENTAL AND COSTS. (a) The lease
13 price for a right-of-way lease shall be the annual fair market
14 rental of the state lands included in the right-of-way based on the
15 appraised fair market value of the land. The appraised fair market
16 value of the land leased for right-of-way shall be determined
17 without regard to any enhancement in value attributable solely to the
18 construction of pipeline facilities on the land or the use of the land
19 for pipeline purposes. The lease price is payable annually in
20 advance on or before the anniversary of the lease. The appraised
21 fair market rental value shall be adjusted periodically under the
22 provisions of AS 38.05.105.

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

26 * Sec. 12. AS 38.35.150 is repealed.

27 * Sec. 13. AS 38.35.160 is amended to read:

28 Sec. 38.35.160. TRANSFER OF RIGHT-OF-WAY LEASE [, CERTIFICATES,]
29 OR PIPELINE. No lessee [CARRIER] may transfer [, ASSIGN.] or dispose of

1 in any manner its right-of-way lease, or any rights under the
2 lease, [OR ANY PIPELINE] subject to the lease, whether on state
3 [PUBLIC] land or other land in the state, either voluntarily or
4 involuntarily, directly or indirectly, or by transfer of control of any
5 corporation holding the lease [OR CERTIFICATE OR OWNING THE PIPELINE,]
6 to any person, without notifying the commissioner [EXCEPT TO THE
7 EXTENT THAT THE COMMISSIONER, AFTER CONSIDERATION OF THE PUBLIC INTEREST
8 CONVENIENCE, AND NECESSITY, BY ORDER AUTHORIZES THE TRANSFER. THE
9 COMMISSIONER SHALL NOT UNREASONABLY WITHHOLD THIS AUTHORIZATION. THE
10 APPLICATION SHALL BE DISPOSED OF AS IF THE PROPOSED TRANSFEREE OR
11 ASSIGNEE WERE MAKING APPLICATION UNDER SECS. 50 - 100 OF THIS CHAPTER].

12 * Sec. 14. AS 38.35.170 is repealed and re-enacted to read:

13 Sec. 38.35.170. FORFEITURE OF LEASE. Failure to begin con-
14 struction of the pipeline facility within a reasonable time of the
15 granting of a right-of-way lease under this chapter for reasons within
16 the control of the lessee or failure of an owner of an interest
17 in the granted right-of-way substantially to comply with the terms
18 of the right-of-way shall be grounds for forfeiture of the right-of-way
19 interest of the lessee or owner in an action brought by the commis-
20 sioner in the superior court. Before the commencement of any action for
21 forfeiture of an interest in a right-of-way under this section,
22 the commissioner shall give the lessee or owner of the interest notice
23 in writing of the alleged default and shall not commence the proceeding
24 unless the lessee or owner of the interest has failed to initiate good
25 faith efforts to cure the default within 60 days of the notice of the
26 alleged default.

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

28 Sec. 38.35.180. INJUNCTIONS. When in the judgment of the
29 commissioner a person has violated or is about to violate a provision

1 of this chapter or covenant, term or condition of a lease, the
2 attorney general, on advice of the commissioner, may seek a
3 prohibition or mandatory injunction from the superior court to remedy
4 the violation.

5 * Sec. 16. AS 38.35.190(b), (c) and (d), AS 38.35.200 and AS 38.35.220(d)
6 are repealed.

7 * Sec. 17. AS 38.35 is amended by adding a new section to read:

8 Sec. 38.35.225. JUDICIAL REVIEW OF DECISIONS OF COMMISSIONER ON
9 APPLICATION. (a) An applicant or competing applicant or a person
10 who raises objections within 60 days of the publication of notice under
11 sec. 70 of this chapter are the only persons with standing to seek
12 judicial review of a decision of the commissioner.

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

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

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

19 * Sec. 18. AS 38.35.230 is repealed and re-enacted to read:

20 Sec. 38.35.230. DEFINITIONS. In this chapter

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

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

25 (3) "oil" includes crude petroleum oil and other hydrocarbons
26 regardless of gravity which are produced at the wellhead in liquid
27 form and the liquid hydrocarbons known as distillate or condensate
28 recovered or extracted from gas, other than gas produced in association
29 with oil and commonly known as casinghead gas;

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

9 (5) "state land" means

10 (A) "state lands" as defined in AS 38.05.365:

11 (B) public land of the United States selected by the
12 state under sec. 6 of the Alaska Statehood Act of 1958 (PL 85-508;
13 72 Stat. 399), as amended, and real property of the United
14 States transferred to the state under secs. 21, 35 and 45 of the
15 Alaska Omnibus Act of 1959 (PL 86 - 70; 73 Stat. 141), as
16 amended.

17 * Sec. 19. AS 09.55.240(a)(12) is amended to read:

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

24 * Sec. 20 AS 38.05.020(c)(1) is amended to read:

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

27 * Sec. 21. AS 38.05.020(c)(2) is amended to read:

28 (2) leasing, purchasing, or otherwise acquiring (including
29 condemning by declaration of taking), easements or other interests in

1 [ON PRIVATE OR FEDERAL] land in this state for the purpose of utilizing
2 or granting leases of the land, easements or interests for pipeline
3 right-of-way purposes;

4 * Sec. 22. AS 38.05.020(c)(3) is repealed.

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

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

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

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

29 * Sec. 25. This Act takes effect on the day after its passage and

1 approval or on the day it becomes law without approval.

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October 17, 1973

The Honorable Tom Fink
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99801

Dear Mr. Speaker:

Pursuant to the Uniform Rules of the Alaska Legislature I am transmitting a bill entitled "An Act relating to leases of rights-of-way over state lands for the transportation of oil, products or natural gas; and providing for an effective date." This bill amends the Right-of-Way Leasing Act of 1972.

The Alaska Pipeline Commission Act (Ch. 139 SLA 1972) established a comprehensive plan for the economic regulation of pipelines in Alaska. But as a practical matter direct regulation of most pipelines in Alaska would seem to have been preempted by the federal constitutional interest in assuring the free flow of commerce among the states and by congressional action in adopting federal regulatory systems through the Interstate Commerce Act and the Natural Gas Act.

Considering the uniquely urgent interest of Alaska in the economic decisions of major Alaskan pipelines, the 1972 Legislature determined that the state's ownership interest in the land over which such pipelines must cross might offer a way to greatly expand control over the economic decision-making of pipeline companies by requiring state participation as a condition of use of the land by contract. Thus, the Right-of-Way Leasing Act was primarily viewed as a supplemental tool for economic regulation.

Under the role I am proposing for the Pipeline Commission, when the economic conduct of pipeline companies does not conform to the needs of Alaskans through administrative direction, the state will assert its concerns regarding the conduct of interstate pipelines through the quasi-judicial forums provided under federal law. Provisions in the Right-of-Way Leasing Act relating to economic regulation and more properly belonging to the Alaska Pipeline Commission or the

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federal government are eliminated. The Right-of-Way Leasing Act now becomes a vehicle for protecting the property interests of the state and its people as they might be affected by pipeline activity both on rights-of-way and off.

Thus, a list of new requirements has been added to the bill to establish that the applicant for a right-of-way 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, and requiring that the Commissioner insert provisions in any lease which can accomplish this. New requirements specifically include findings by the state that no superior land use is jeopardized; that the applicants have adequate financial and technical capability; that adverse environmental effects are prevented; that subsistence interests along the line be protected and that the land be restored upon abandonment of the line.

The Right-of-Way Leasing Act of 1972 provided for a rental based upon a percentage of the profits from the transportation of oil or gas. Changes being proposed in the production tax and the new conservation and property taxes more than compensate for the revenue that would be raised under the percentage rental. The rental charged under the proposed amendments can be based on the fair market value of the land. In turning from the lease rental as a revenue source, a possible entanglement with the pending federal Right-of-Way Act is also avoided. If the state percentage rental had determined the "fair market rental value" of the two-thirds of the line traversing federal lands, then twice as much rental would be charged by the federal government, diminishing the state's oil revenues.

The proposed amendments to the Right-of-Way Leasing Act reflect the intensive effort undertaken by the Congress to establish sound public policy in the design of the federal Right-of-Way Act now in the last stages of adoption.

The common purchaser requirement imposed by the original Right-of-Way Leasing Act, we feel, is really a question that should be dealt with separately, and accordingly, a separate act is being proposed.

A number of provisions have been amended simply to provide clarification. For instance, it appeared likely that it was not the Legislature's intent to require the extensive procedures applicable to pipeline right-of-way leasing to

October 17, 1973

apply to field gathering lines which could continue to be handled under the summary procedure provided under prior law. The procedures for processing applications, including hearings, public notice and judicial review, have been reorganized.

The 1972 law provided that as a condition of receiving a lease for any length of right-of-way, any pipeline company investing over \$1,000,000 in value would be required to grant the state an option to purchase up to 20 per cent of the value of the entire length of the line. The probability that the provision would ever be of any practical use to the state was small. At the same time, the limitation on the extent of ownership was unsatisfactory from the point of view of the state administration in that a wholly owned pipeline might be of interest to the state. The provision substituted requires the owners to negotiate in good faith with the state in the event that any disposition of any interest in the pipeline is considered by any owner either voluntarily or under economic or legal compulsion.

AS 38.35.120(a)(10) was amended to make it clear that interconnection to a line for the purpose of taking delivery could be required at any location, not just near a municipality, but that a person taking delivery through an interconnection must be prepared to share the connection thereby assuring that a number of inefficient connections would not be required. Though the requirement that connection be made on federal land was removed to avoid possible conflict with federal law, as a practical matter state land is so well mixed in along the line that no difficulty is foreseen in finding a convenient location.

Provisions regarding the transfer of all federal right-of-way interest to the state, since they relate to a regulatory effort now proposed to be conducted differently, have been eliminated and a modified form of eminent domain has been restored so that construction of pipelines may proceed promptly.

Sincerely,

William A. Egan
Governor

POOR COPY

ALASKA STATE LEGISLATURE
 EIGHTH Legislature SPECIAL Session

HOUSE BILL NO. 3
 BY RULES COMMITTEE BY REQUEST OF THE GOVERNOR

"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."

CSHB 3 BY JUDICIARY COMMITTEE
 offered: 10/31/73
 referred: Finance

Leases of rights-of-way over state land for transp. of oil

Introduced in the House Oct. 17 73, 19

HISTORY IN THE HOUSE

19 73	
10 17	Read first time and referred to Committee on Resources, Judiciary & Finance
10 31	<i>Judiciary heard with CS HB 3 & 20 passed</i>
10 25	<i>Reported back with recommendation that no pass on HB 3</i>
	Read second time and
	Read third time and
	PASS : Yeas : Nays : Absent : Excused
	Effective Date
	PASS : Yeas : Nays : Absent : Excused
	Reported correctly engrossed Signed by Speaker Sent to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19	
	Read first time and referred to Committee on
	Reported back with recommendation that
	Read second time and
	Read third time and
	PASS : Yeas : Nays : Absent : Excused
	Effective Date
	PASS : Yeas : Nays : Absent : Excused
	Reported correctly engrossed Signed by President Returned to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19	
	Received from Senate
	Reported correctly enrolled
	Sent to Governor
	By Governor
	Filed with Secy. State
	Chapter No.

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.

October 17, 1973

The Honorable Tom Fink
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99801

Dear Mr. Speaker:

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Considering the uniquely urgent interest of Alaska in the economic decisions of major Alaskan pipelines, the 1972 Legislature determined that the state's ownership interest in the land over which such pipelines must cross might offer a way to greatly expand control over the economic decision-making of pipeline companies by requiring state participation as a condition of use of the land by contract. Thus, the Right-of-Way Leasing Act was primarily viewed as a supplemental tool for economic regulation.

Under the role I am proposing for the Pipeline Commission, when the economic conduct of pipeline companies does not conform to the needs of Alaskans through administrative direction, the state will assert its concerns regarding the conduct of interstate pipelines through the quasi-judicial forums provided under federal law. Provisions in the Right-of-Way Leasing Act relating to economic regulation and more properly belonging to the Alaska Pipeline Commission or the

federal government are eliminated. The Right-of-Way Leasing Act now becomes a vehicle for protecting the property interests of the state and its people as they might be affected by pipeline activity both on rights-of-way and off.

Thus, a list of new requirements has been added to the bill to establish that the applicant for a right-of-way 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, and requiring that the Commissioner insert provisions in any lease which can accomplish this. New requirements specifically include findings by the state that no superior land use is jeopardized; that the applicants have adequate financial and technical capability; that adverse environmental effects are prevented; that subsistence interests along the line be protected and that the land be restored upon abandonment of the line.

The Right-of-Way Leasing Act of 1972 provided for a rental based upon a percentage of the profits from the transportation of oil or gas. Changes being proposed in the production tax and the new conservation and property taxes more than compensate for the revenue that would be raised under the percentage rental. The rental charged under the proposed amendments can be based on the fair market value of the land. In turning from the lease rental as a revenue source, a possible entanglement with the pending federal Right-of-Way Act is also avoided. If the state percentage rental had determined the "fair market rental value" of the two-thirds of the line traversing federal lands, then twice as much rental would be charged by the federal government, diminishing the state's oil revenues.

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The common purchaser requirement imposed by the original Right-of-Way Leasing Act, we feel, is really a question that should be dealt with separately, and accordingly, a separate act is being proposed.

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October 17, 1973

apply to field gathering lines which could continue to be handled under the summary procedure provided under prior law. The procedures for processing applications, including hearings, public notice and judicial review, have been reorganized.

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Provisions regarding the transfer of all federal right-of-way interest to the state, since they relate to a regulatory effort now proposed to be conducted differently, have been eliminated and a modified form of eminent domain has been restored so that construction of pipelines may proceed promptly.

Sincerely,

William A. Egan
Governor

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 [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

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;

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 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
29

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 owners) 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 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, ^{not nec. to delete} 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:

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.

1 (b) The only grounds for judicial review of a decision of the
2 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, benzine, 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) "subject to the lease" means, in the context of a
23 reference to a pipeline, or the construction or operation of, or
24 transportation, service, or sale by it, that the pipeline or the
25 performance of these acts relative to it are specified in the lease
26 issued by the commissioner as being subjected to the jurisdiction
27 or coverage of that lease, this chapter, and any other applicable
28 state or federal law;

29 (9) "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 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 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 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 - AS 38.35.040 are repealed.

4 * Sec. 3. 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. 4. AS 38.35.060 is repealed.

15 * Sec. 5. AS 38.35.070 is repealed and re-enacted to read:

16 Sec. 38.35.070. NOTICE OF APPLICATION: HEARING. (a) Upon
17 receiving an application under sec. 50 of this chapter, the
18 commissioner shall promptly publish notice of it in a daily newspaper
19 of general circulation published in the vicinity of the proposed
20 pipeline and shall provide other publication and notice he considers
21 reasonable and appropriate to inform the public of the application.
22 The notice must generally describe the land involved and must include
23 a summary of the substance of the application. If the commissioner
24 decides that a public hearing is necessary, the notice shall also
25 include the time and place of the public hearing.

26 (b) Any public hearing on the application shall be held no sooner
27 than 20 days or more than 60 days after publication of notice under (a)
28 of this section. At the hearing the applicant and other persons shall
29 have the opportunity to present information relating to the application

1 and to the determination to be made under sec. 100 of this chapter.

2 (c) The provisions of the Administrative Procedure Act
3 (AS 44.62) do not apply to hearings held under this section.

4 * Sec. 6. AS 38.35.080 is repealed.

5 * Sec. 7. AS 38.35.100 is repealed and re-enacted to read:

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

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

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

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

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

23 (B) undertake any necessary restoration or revege-
24 tation; and

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

29 (4) the applicant has the financial capability to pay

1 reasonably foreseeable damages for which he may become liable on
2 claims rising from the construction, operation, maintenance or
3 termination of the pipeline.

4 (b) If the commissioner determines that the applicant is
5 not fit, willing, and able to perform the transportation or other
6 proposed acts in a manner that will reasonably protect the lives,
7 property and general welfare of the people of Alaska, the com-
8 missioner shall deny the application. If he determines that the
9 applicant is fit, willing, and able to perform, he shall promptly
10 offer the applicant a lease.

11 * Sec. 8. AS 38.35.110 is repealed and re-enacted to read:

12 Sec. 38.35.110. TERM OF LEASE. The commissioner shall
13 determine the term of the lease. In making this determination he
14 shall take into consideration the cost of the proposed pipeline,
15 its useful life, and the probable financing requirements for the
16 proposed pipeline. Thereafter, upon application of a lessee, the
17 commissioner shall extend the term of the lease for additional
18 periods of time so long as the proposed pipeline is used for the
19 purposes for which the lease was granted and is in compliance with
20 all terms of the lease subject to additional terms and conditions
21 then reasonably required to protect the lives, property and general
22 welfare of the people of Alaska.

23 * Sec. 9. AS 38.35.120 is amended to read:

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

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

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

7 (2) IT WILL UNDERTAKE AND COMPLETE OR REGULARLY PERFORM
8 WITHIN OR DURING THE TIME PERIOD AND IN ACCORDANCE WITH THE PROJECT
9 DESCRIPTION CONTAINED IN THE LEASE OR CERTIFICATE, THROUGHOUT THE
10 ENTIRE ROUTE OF THE PIPELINE IN THE STATE, BOTH ON STATE PUBLIC
11 LAND OBTAINED UNDER THE LEASE AND ON OTHER LAND, ANY CONSTRUCTION
12 OR ACQUISITION OR OTHER ACT REQUIRED TO BE PERFORMED IN CONJUNC-
13 TION WITH THE LEASE, OR OPERATION OF, OR TRANSPORTATION, SERVICE,
14 OR SALE BY THE PIPELINE IN GOOD FAITH AND IN ACCORDANCE WITH THE
15 LEASE AND CERTIFICATES, THIS CHAPTER, AND ANY OTHER APPLICABLE
16 STATE OR FEDERAL LAW;]

17 (3) it will perform all of its functions under the lease,
18 as a common carrier, if the commissioner determines at the time
19 the lease is issued or if at any time after the execution of the
20 lease the commissioner after public hearing determines that
21 assumption of the status of common carrier is required in order
22 to serve the public interest; in performing as a common carrier it
23 will accept, convey and transport without discrimination crude oil
24 delivered to it for transportation throughout its route in
25 accordance with applicable statutes and tariffs; the imposition of
26 common carrier status does not require the lessee to accept tenders
27 of crude oil except at points where there exist pumping stations or
28 other facilities for the receipt of crude oil (unless the tender
29 includes an offer to bear all associated costs and liabilities), or
tenders of crude oil which are not good merchantable oil of gravity,

1 viscosity and other characteristics which make it readily transportable
2 through the pipeline facility without materially adversely affecting
3 the quality of the commingled stream of crude oil of other shippers
4 and without adversely affecting the lessee's pipeline facilities;
5 the common carrier covenant required by this paragraph does not
6 apply to a natural gas pipeline owned or operated by a lessee
7 which is subject to regulation under the Natural Gas Act (52 Stat.
8 821; 68 Stat. 36) or by a lessee which is subject to regulation
9 by state or political subdivisions with jurisdiction to regulate
10 the rates and charges for sale of natural gas to consumers in the
11 state [ASSUMES THE STATUS OF AND WILL PERFORM ALL OF ITS FUNCTIONS
12 UNDERTAKEN UNDER THE LEASE AS A COMMON CARRIER AND WILL ACCEPT,
13 CONVEY, AND TRANSPORT ALL CRUDE OIL OR NATURAL GAS, DEPENDING ON
14 THE KIND OF PIPELINE INVOLVED, DELIVERED TO IT FOR TRANSPORTATION
15 FROM FIELDS IN THE VICINITY OF THE PIPELINE SUBJECT TO THE LEASE
16 THROUGHOUT ITS ROUTE BOTH ON STATE PUBLIC LAND OBTAINED UNDER THE
17 LEASE AND ON OTHER LAND; HOWEVER, WHERE THE LESSEE CARRIER OPERATES
18 A NATURAL GAS PIPELINE AND IS SUBJECT BY VIRTUE OF THIS OPERATION
19 TO REGULATION UNDER THE NATURAL GAS ACT OF THE UNITED STATES (52 STAT.
20 821; 68 STAT. 36; 15 U.S.C. 717 ET SEQ.), IT WILL ASSUME THE
21 STATUS OF AND SHALL PERFORM ALL OF ITS FUNCTIONS UNDERTAKEN UNDER
22 THE LEASE AS A COMMON CARRIER AND SHALL PERFORM ALL OF THE ACTS
23 DESCRIBED IN THIS PARAGRAPH WHEN AT ANY TIME AFTER THE EXECUTION
24 OF THE LEASE THE COMMISSIONER AFTER PUBLIC HEARING DETERMINES
25 THAT ASSUMPTION OF THIS STATUS IS REQUIRED IN ORDER TO SUBSERVE THE
26 PUBLIC INTEREST, CONVENIENCE, AND NECESSITY];

27 [(4) IT WILL ASSUME THE STATUS OF AND SHALL BE A COMMON
28 PURCHASER OF CRUDE OIL AND NATURAL GAS, DEPENDING UPON THE KIND OF
29 PIPELINE INVOLVED, THAT IS PRODUCED FROM FIELDS IN THE VICINITY OF

1 THE PIPELINE SUBJECT TO THE LEASE AND SHALL PURCHASE CRUDE OIL
2 OR NATURAL GAS THAT IS OFFERED IT WHEN AT ANY TIME AFTER THE
3 EXECUTION OF THE LEASE THE COMMISSIONER AFTER PUBLIC HEARING
4 DETERMINES THAT ASSUMPTION OF THIS STATUS IS REQUIRED IN ORDER TO
5 SUBSERVE THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY;

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

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

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; [THE LESSEE GRANTS TO THE

1 STATE THE RIGHT TO PURCHASE, UPON REASONABLE NOTICE, AN UNDIVIDED
2 INTEREST 1.) THE ENTIRE LENGTH OF THE PIPELINE WITHIN THE STATE, NOT TO
3 EXCEED 20 PER CENT; THE PURCHASE PRICE SHALL BE AT A REASONABLE
4 FIGURE SET OUT IN THE LEASE AT THE TIME OF THE LEASE'S EXECUTION;
5 PURCHASE OF THIS INTEREST MAY, AT THE OPTION OF THE STATE, BE MADE IN
6 STAGES; EXERCISE OF AN OPTION TO PURCHASE AN INTEREST IN A PIPELINE
7 PROJECT OR FACILITY IS SUBJECT TO THE APPROVAL OF THE LEGISLATURE; THE
8 INCURRING OF ANY BONDED INDEBTEDNESS BY THE STATE TO IMPLEMENT THE
9 EXERCISE OF ITS OPTION UNDER THIS PARAGRAPH IS SUBJECT TO VOTER
10 APPROVAL;]

11 (8) it will maintain and preserve books, accounts, and
12 records [, PAPERS, AND CORRESPONDENCE AND OTHER RECORDS] and will make
13 those reports that the state may require under AS 42.06.430 [PRESCRIBE
14 BY REGULATION OR LAW AS NECESSARY AND APPROPRIATE FOR PURPOSES OF
15 ADMINISTRATION OF THIS CHAPTER];

16 (9) it will accord at all reasonable times to the state
17 and its authorized agents and auditors the right of access to its
18 property and records, of inspection of its property, and of examination
19 and copying of records under AS 42.06.440;

20 (10) it will provide, where economically feasible and
21 consistent with the primary function of the pipeline [LINE], connections
22 [AND FACILITIES] on the land [PIPELINE] subject to the lease, [BOTH
23 ON STATE LAND AND OTHER LAND IN THE STATE,] for the purpose of
24 delivering crude oil or natural gas, depending on the kind of
25 pipeline involved, to persons contracting for the purchase at whole-
26 sale of crude oil or natural gas transported by the pipeline; in
27 order to meet the requirements of this covenant the lessee shall not
28 be required to enlarge the pipeline system, extend the pipeline,
29 acquire additional rights-of-way, incur any additional obligation

1 or incur any costs or liabilities associated with the connection or
2 connected facilities, or assume any obligation inconsistent with
3 applicable federal law [DESIRING TO PURCHASE WHO ARE LOCATED IN
4 MUNICIPALITIES IN THE VICINITY OF THE PIPELINE];

5 (11) it will, at its own expense, during the term of the
6 lease

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

9 (B) exercise the [HIGHEST] degree of care required by
10 law in using the leasehold and operating the pipeline [TO PREVENT
11 A PIPELINE INCIDENT];

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

14 (D) promptly compensate for [REMEDY] any damage to
15 or destruction of property for which the carrier is liable
16 resulting from damage to or destruction of the leasehold or
17 pipeline;

18 [(12) IT WILL NOT TRANSFER, ASSIGN, OR DISPOSE OF IN ANY
19 MANNER, DIRECTLY OR INDIRECTLY, OR BY TRANSFER OF CONTROL OF THE
20 CARRIER CORPORATION, ITS INTEREST IN A RIGHT-OF-WAY LEASE, OR ANY
21 RIGHTS UNDER THE LEASE, OR ANY PIPELINE SUBJECT TO THE LEASE, EXCEPT
22 AS AUTHORIZED BY THE COMMISSIONER, UPON APPLICATION BY THE CARRIER;
23 THE COMMISSIONER SHALL NOT UNREASONABLY WITHHOLD HIS CONSENT TO THE
24 TRANSFER, ASSIGNMENT OR DISPOSAL;]

25 (13) it will file with the commissioner a written appoint-
26 ment of a named permanent resident of the state to be its registered
27 agent in the state and to receive service of notices, regulations,
28 decisions and orders of the commissioner; if it fails to appoint an
29 agent for service, service may be made by posting a copy in the

1 office of the commissioner and filing a copy of it in the office
2 of the lieutenant governor and by mailing a copy to lessee's last
3 known address;

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

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

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

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

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

22 (2) protect state and private property interests;

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

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

28 (5) protect the interests of individuals living in the
29 general area of the right-of-way who rely on the fish, wildlife, and

1 biotic resources of the area for subsistence purposes.

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

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

10 * Sec. 10. AS 38.35.130 is amended to read:

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

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

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

28 (3) THE CARRIER WILL], if the commissioner delegates the
29 function to it, condemn, by declaration of taking, under