

Leg. Finance - House & Senate Finance Comte Files (1973-74) 8879  
SB/ HB 3 cont/. 326

Original sponsor: Rules Committee by  
request of the Governor

11 9 73 :

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE 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 the use of state lands for pipeline  
7 purposes; and providing for an effective date."

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

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

10 (b) The State of Alaska reserves unto itself all rights, powers,  
11 privileges and immunities not preempted by federal interstate commerce  
12 laws and regulations in the right -way leasing of any state lands  
13 for pipeline construction, transmission, or operation within its  
14 boundaries.

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

16 Sec. 38.35.020. GRANT OF RIGHT-OF-WAY LEASE. (a) Rights-of-way  
17 on state [STATE-OWNED] land including rights-of-way [RIGHT-OF-WAY ON,]  
18 over, under, along, across, or upon the right-of-way of a public road  
19 or highway or the right-of-way of a railroad or other public utility,  
20 or [ON,] across, upon, over, or under a river or other body of water  
21 or land belonging to or administered by the state may be granted by  
22 noncompetitive lease by the commissioner for pipeline purposes for  
23 the transportation of oil, products or natural gas under those con-  
24 ditions prescribed by law or [AND] by administrative regulation.  
25 Except to the extent authorized by an oil and gas lease or unit  
26 agreement approved by the state, no [NO] person may engage in any  
27 construction [, ACQUISITION] or operation of any [, OR TRANSPORTATION,  
28 SERVICE, OR SALE BY THE WHOLE OR A] part of an oil, products, or  
29 natural gas pipeline, which in whole or in part is or is proposed to

1 be on state [PUBLIC] land [,] unless that person [IS A CARRIER AND]  
2 has obtained from the commissioner a right-of-way lease of the land  
3 under this chapter [AS WELL AS A CERTIFICATE THAT THE CONSTRUCTION,  
4 ACQUISITION, OPERATION, TRANSPORTATION, SERVICE, OR SALE, IF SUBJECT  
5 TO THE LEASE, WILL BE IN ACCORDANCE WITH ITS TERMS].

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

8 \* Sec. 3. AS 38.35.030 is amended to read:

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

22 \* Sec. 4. AS 38.35.040 is amended to read:

23 Sec. 38.35.040. TEMPORARY OR EMERGENCY SERVICE OR [TEMPORARY]  
24 ABANDONMENT, REDUCTION OR IMPAIRMENT OF SERVICE BY LESSEE [CARRIER].  
25 The commissioner may, either upon a request made in the form he  
26 requires [SHALL] by regulation [REQUIRE], or upon his own motion  
27 without request, authorize or require temporary or emergency rendering  
28 of service or temporary or emergency abandonment, reduction or impair-  
29 ment of service by a pipeline of a lessee [CARRIER] without compliance

1 with secs. 50 - 100 of this chapter. Nothing in this section prevents  
2 a lessee [CARRIER] from temporarily suspending operations in the event  
3 of an emergency which threatens public health or safety; however,  
4 notice shall be given the commissioner as soon as possible. This  
5 section does not impose any obligation upon the lessee which could not  
6 constitutionally be imposed by a direct exercise of state regulation  
7 or any obligation inconsistent with federal or other state law or  
8 with regulations or rulings of a federal regulatory agency or the  
9 Alaska Pipeline Commission.

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

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

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

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

20 \* Sec. 6. AS 38.35.060 is repealed.

21 \* Sec. 7. AS 38.35.070 is amended to read:

22 Sec. 38.35.070. NOTICE OF APPLICATION. Upon receiving notifica-  
23 tion under sec. 30 or an application under sec. 50 [OR 60] of this  
24 chapter, the commissioner shall

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

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

29 (B) a summary of the substance of the application; and

1                   (C) if warranted, the time and place of public  
2                   hearing to be held on the application;

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

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

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

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

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

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

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

23                   (c) The commissioner may [SHALL] set all applications and matters  
24                   of which he was notified for public hearing as soon as practicable.

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

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

29                   Sec. 38.35.100. DECISION ON APPLICATION. (a) The commissioner

1 shall promptly determine, on an application filed with him under sec. 50  
2 of this chapter whether the applicant is fit, willing and able to  
3 perform the transportation or other acts proposed in a manner that will  
4 reasonably protect the lives, property and general welfare of the  
5 people of Alaska. In making a determination the commissioner shall  
6 consider whether or not

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

10 (2) the applicant has the technical and financial capa-  
11 bility to protect state and private property interests;

12 (3) the applicant has the technical and financial capa-  
13 bility to take action to the extent reasonably practical to

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

17 (B) undertake any necessary restoration or revege-  
18 tation; and

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

22 (4) the applicant has the financial capability to pay  
23 reasonably foreseeable damages for which he may become liable on  
24 claims rising from the construction, operation, maintenance or ter-  
25 mination of the pipeline.

26 (b) If the commissioner determines that the applicant is not  
27 fit, willing, and able to perform the transportation or other proposed  
28 acts in a manner that will reasonably protect the lives, property  
29 and general welfare of the people of Alaska, the commissioner shall

1 deny the application. If he determines that the applicant is fit,  
2 willing, and able to perform, he shall promptly offer the applicant  
3 a lease.

4 \* Sec. 10. AS 38.35.110 is repealed and re-enacted to read:

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

15 \* Sec. 11. AS 38.35.120 is amended to read:

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

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

22 [(1) IT WILL OBTAIN A CERTIFICATE OF COMPLIANCE WITH THE  
23 TERMS AND CONDITIONS OF THE LEASE BEFORE UNDERTAKING ANY CONSTRUCTION,  
24 ACQUISITION OR OPERATION OF OR TRANSPORTATION, SERVICE OR SALE BY THE  
25 WHOLE OR ANY PART OF A PIPELINE ON STATE PUBLIC LAND, INCLUDING THE  
26 PORTIONS OF THE PIPELINE NOT ON STATE PUBLIC LAND;

27 (2) IT WILL UNDERTAKE AND COMPLETE OR REGULARLY PERFORM  
28 WITHIN OR DURING THE TIME PERIOD AND IN ACCORDANCE WITH THE PROJECT  
29 DESCRIPTION CONTAINED IN THE LEASE OR CERTIFICATE, THROUGHOUT THE

1 ENTIRE ROUTE OF THE PIPELINE IN THE STATE, BOTH ON STATE PUBLIC LAND  
2 OBTAINED UNDER THE LEASE AND ON OTHER LAND, ANY CONSTRUCTION OR  
3 ACQUISITION OR OTHER ACT REQUIRED TO BE PERFORMED IN CONJUNCTION WITH  
4 THE LEASE, OR OPERATION OF, OR TRANSPORTATION, SERVICE, OR SALE BY THE  
5 PIPELINE IN GOOD FAITH AND IN ACCORDANCE WITH THE LEASE AND CERTI-  
6 FICATES. THIS CHAPTER, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAW;]

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

1 COMMISSIONER AFTER PUBLIC HEARING DETERMINES THAT ASSUMPTION OF THIS  
2 STATUS IS REQUIRED IN ORDER TO SUBSERVE THE PUBLIC INTEREST, CONVENI-  
3 ENCE, AND NECESSITY;

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

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

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

27 (7) it will afford the state a first opportunity to negotiate  
28 for the purchase of any interest in the pipeline offered for sale by  
29 it on the same terms offered any other potential purchaser, provided

1 that this obligation will not interfere or supersede contract rights  
2 or obligations existing among the proposed owners of the pipeline at  
3 the time the right-of-way lease is granted [THE LESSEE GRANTS TO THE  
4 STATE THE RIGHT TO PURCHASE, UPON REASONABLE NOTICE, AN UNDIVIDED  
5 INTEREST IN THE ENTIRE LENGTH OF THE PIPELINE WITHIN THE STATE, NOT  
6 TO EXCEED 20 PER CENT; THE PURCHASE PRICE SHALL BE AT A REASONABLE  
7 FIGURE SET OUT IN THE LEASE AT THE TIME OF THE LEASE'S EXECUTION;  
8 PURCHASE OF THIS INTEREST MAY, AT THE OPTION OF THE STATE, BE MADE  
9 IN STAGES; EXERCISE OF AN OPTION TO PURCHASE AN INTEREST IN A PIPE-  
10 LINE PROJECT OR FACILITY IS SUBJECT TO THE APPROVAL OF THE LEGISLATURE;  
11 THE INCURRING OF ANY BONDED INDEBTEDNESS BY THE STATE TO IMPLEMENT  
12 THE EXERCISE OF ITS OPTION UNDER THIS PARAGRAPH IS SUBJECT TO  
13 VOTER APPROVAL];

14 (8) it will maintain and preserve books, accounts, and  
15 records [, PAPERS, AND CORRESPONDENCE AND OTHER RECORDS] and will make  
16 those reports that the state may prescribe by regulation or law as  
17 necessary and appropriate for purposes of administration of this  
18 chapter;

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

23 (10) it will provide, where economically feasible [AND  
24 CONSISTENT WITH THE PRIMARY FUNCTION OF THE LINE], connections [AND  
25 FACILITIES] on the pipeline [SUBJECT TO THE LEASE, BOTH ON STATE LAND  
26 AND OTHER LAND IN THE STATE,] for the purpose of delivering crude  
27 oil or natural gas, depending upon the kind of pipeline involved,  
28 to persons or municipal corporations contracting for the purchase at  
29 wholesale of crude oil or natural gas transported by the pipeline

1 [DESIRING TO PURCHASE WHO ARE LOCATED IN MUNICIPALITIES IN THE  
2 VICINITY OF THE PIPELINE];

3 (11) it will, at its own expense, during the term of the  
4 lease

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

7 (B) exercise the highest degree of care in using the  
8 leasehold and operating the pipeline [TO PREVENT A PIPELINE  
9 INCIDENT];

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

12 (D) promptly compensate for or remedy any damage to  
13 or destruction of public or private property resulting from  
14 damage to or destruction of the leasehold or pipeline regardless  
15 of fault, notwithstanding the limitations of AS 46.03.822(1)(B),  
16 (C) and (D), and 46.03.822(2):

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

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

1 lieutenant governor and by mailing a copy to lessee's last known  
2 address;

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

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

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

16 (17) it will not interfere with construction and operation  
17 of any oil or gas pipeline authorized by the commissioner for location  
18 on the right-of-way, subject to compensation of the prior lessee by  
19 the subsequent lessee for any damage to or interference with the  
20 operation of the prior pipeline caused by construction of the subse-  
21 quent pipeline.

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

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

27 (2) protect state and private property interests;

28 (3) prevent any significant adverse environmental impact,  
29 including but not limited to the erosion of the surface of the land,

1 and damage to fish and wildlife and their habitat;

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

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

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

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

15 \* Sec. 12. AS 38.35.130 is amended to read:

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

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

24 (2) THE STATE RESERVES TO ITSELF AND THE LESSEE GRANTS TO  
25 THE STATE THE SOLE RIGHT TO CONDEMN, BY DECLARATION OF TAKING, REAL  
26 PROPERTY FOR RIGHT-OF-WAY PURPOSES AND TO ACQUIRE TO THE EXTENT  
27 FEDERALLY PERMISSIBLE LEASES OF OR EASEMENTS OR RIGHTS-OF-WAY ON  
28 PUBLIC LANDS BELONGING TO THE UNITED STATES IN THIS STATE, INCLUDING  
29 "WITHDRAWN PUBLIC LANDS" AS THAT TERM IS DEFINED IN SECS. 3(e), 17(c)

1 AND (d)(3), AND 22(1) OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT  
2 (PL 92-203; 85 STAT. 688; 43 U.S.C. 1601 ET SEQ.), REQUIRED FOR RIGHT-  
3 OF- WAY PURPOSES FOR THE PIPELINE SUBJECT TO THE LEASE;

4 (3) THE CARRIER WILL], if the commissioner delegates the  
5 function to it, condemn, by declaration of taking, under AS 09.55.420 -  
6 09.55.450, real property and acquire leases of or easements or rights-  
7 of-way on [PUBLIC] lands in this state [BELONGING TO THE UNITED STATES,  
8 INCLUDING "WITHDRAWN PUBLIC LANDS"] required for right-of-way purposes  
9 for a [THE] pipeline subject to the lease on behalf of and as agent  
10 for the state in which title to or interest in the land shall vest.

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

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

16 Sec. 38.35.140. PAYMENT OF RENTAL AND COSTS. (a) The lease  
17 price for a right-of-way lease shall be the annual fair market  
18 rental of the state lands included in the right-of-way based on the  
19 appraised fair market value of the land. The lease price is payable  
20 annually in advance on or before the anniversary of the lease. The  
21 appraised fair market rental value shall be adjusted periodically under  
22 the 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. 14. AS 38.35.150(b) and (c) are repealed.

27 \* Sec. 15. 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

1 of 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 [PUBLIC]  
3 land or other land in the state, either voluntarily or involuntarily,  
4 directly or indirectly, or by transfer of control of any corporation  
5 holding the lease [OR CERTIFICATE OR OWNING THE PIPELINE,] to any  
6 person other than another owner of the pipeline (including subsidiaries,  
7 parents and affiliates of the owners), except to the extent that the  
8 commissioner, after consideration whether the proposed transferee is  
9 fit, willing and able to perform the transportation or other acts  
10 proposed in a manner that will reasonably protect the lives, property  
11 and general welfare of the people of Alaska, [OF THE PUBLIC INTEREST,  
12 CONVENIENCE, AND NECESSITY,] b; order authorizes the transfer. The  
13 commissioner shall not unreasonably withhold this authorization. The  
14 application shall be disposed of as if the proposed transferee or  
15 assignee were making application under secs. 50 - 100 of this chapter.

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

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

1       alleged default.

2       \* Sec. 17. AS 38.35.180 is repealed and re-enacted to read:

3               Sec. 38.35.180. INJUNCTIONS. When in the judgment of the  
4       commissioner a person has violated or is about to violate a provision  
5       of this chapter or covenant, term or condition of a lease, the  
6       attorney general, on advice of the commissioner, may seek a  
7       prohibition or mandatory injunction from the superior court to remedy  
8       the violation.

9       \* Sec. 18. AS 38.35.190(c) and (d), AS 38.35.200 and 38.35.220(d) are  
10      repealed.

11      \* Sec. 19. AS 38.35 is amended by adding a new section to read:

12              Sec. 38.35.225. JUDICIAL REVIEW OF DECISIONS OF COMMISSIONER ON  
13      APPLICATION. (a) An applicant or competing applicant or a person  
14      who raises objections within 30 days after decision following the  
15      hearing or notice under sec. 80 of this chapter are the only persons  
16      with standing to seek judicial review of a decision of the commissioner  
17      under sec. 100 of this chapter.

18              (b) The only grounds for judicial review of a decision of the  
19      commissioner under sec. 100 of this chapter are

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

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

24      \* Sec. 20. AS 38.35.230 is repealed and re-enacted to read:

25              Sec. 38.35.230. DEFINITIONS. In this chapter

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

28                      (2) "lease" means the instrument or extension of an instru-  
29      ment issued under this chapter granting a leasehold interest in state

1 land for pipeline right-of-way purposes to a person and authorizing  
2 the construction or operation of, or transportation, service or sale  
3 by a pipeline for crude oil, natural gas, or products;

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

6 (4) "oil" includes crude petroleum oil and other hydrocarbons  
7 regardless of gravity which are produced at the wellhead in liquid  
8 form and the liquid hydrocarbons known as distillate or condensate  
9 recovered or extracted from gas, other than gas produced in associa-  
10 tion with oil and commonly known as casinghead gas;

11 (5) "pipeline" or "pipeline facility" means all the facili-  
12 ties of a total system of pipe (whether owned or operated under a  
13 contract, agreement, or lease) used by a carrier for transportation  
14 of crude oil, natural gas, or products for delivery, for storage, or  
15 for further transportation, and including all pipe, pump or compressor  
16 stations, station equipment, tanks, valves, access roads, bridges,  
17 airfields, terminals and terminal facilities, including docks and  
18 tanker loading facilities, operations control center for both the  
19 upstream part of the pipeline and the terminal, tanker ballast treat-  
20 ment facilities, and fire protection system, communication system,  
21 and all other facilities used or necessary for an integral line of  
22 pipe, taken as a whole, to effectuate transportation, including an  
23 extension or enlargement of the line;

24 (6) "product" means refined crude oil, crude tops,  
25 topped crude, processed crude petroleum, residue from crude petroleum,  
26 cracking stock, uncracked fuel oil, fuel oil, treated crude oil,  
27 residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha,  
28 distillate, gasoline, kerosene, benzine, wash oil, waste oil,  
29 blended gasoline, lubricating oil, blends or mix'ures of petroleum and

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

3 (7) "state land" means

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

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

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

22 \* Sec. 21. AS 09.55.240(a)(12) is amended to read:

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

29 \* Sec. 22. AS 38.05.020(c)(1) is amended to read:

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

3 \* Sec. 23. AS 38.05.020(c)(2) is amended to read:

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

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

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

14 \* Sec. 25. AS 38.05.330 is amended to read:

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

1 which is seaward of the upland property of the upland owner and which  
2 is needed by the upland owner for any of the purposes for which the use  
3 may be granted.

4 \* Sec. 26. The commissioner of natural resources shall submit to the  
5 Second Session of the Eighth Legislature not later than March 1, 1974 a full  
6 report covering all lands conveyed under provisions of AS 38.05.063 and  
7 38.05.076. The report shall contain a description of all parcels conveyed  
8 under the Act including acreage (to include a detailed plat of each parcel),  
9 land classification, appraised value, lease or sale value, proposed land  
10 useage, and any other information the commissioner may feel necessary to an  
11 understanding of the particular disposal.

12 \* Sec. 27. AS 38.05.063 and 38.05.076 are repealed effective March 1,  
13 1974.

14 \* Sec. 28. This Act takes effect on the day after its passage and approval  
15 or on the day it becomes law without approval.  
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Original sponsor: Rules Committee by  
request of the Governor

Offered: 11/9/73  
Referred: Rules

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE 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 rights-of-way for pipeline  
7 purposes; and providing for an effective date."

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

9 # Section 1. AS 38.35.020 is amended to read:

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

29 (b) This chapter does not require a right-of-way lease for the

1 construction or operation of field gathering lines.

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

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

16 \* Sec. 3. AS 38.35.040 is amended to read:

17       Sec. 38.35.040. TEMPORARY OR EMERGENCY SERVICE OR [TEMPORARY]  
18 ABANDONMENT, REDUCTION OR IMPAIRMENT OF SERVICE BY LESSEE [CARRIER].  
19 The commissioner may, either upon a request made in the form he  
20 requires [SHALL] by regulation [REQUIRE], or upon his own motion  
21 without request, authorize or require temporary or emergency rendering  
22 of service or temporary or emergency abandonment, reduction or impair-  
23 ment of service by a pipeline of a lessee [CARRIER] without compliance  
24 with secs. 50 - 100 of this chapter. Nothing in this section prevents  
25 a lessee [CARRIER] from temporarily suspending operations in the event  
26 of an emergency which threatens public health or safety; however,  
27 notice shall be given the commissioner as soon as possible. This  
28 section does not impose any obligation upon the lessee which could not  
29 constitutionally be imposed by a direct exercise of state regulation

1 or any obligation inconsistent with federal or other state law or  
2 with regulations or rulings of a federal regulatory agency or the  
3 Alaska Pipeline Commission.

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. Upon receiving notifica-  
17 tion under sec. 30 or an application under sec. 50 [OR 60] of this  
18 chapter, the commissioner shall

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

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

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

24 (C) if warranted, the time and place of public  
25 hearing to be held 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 purpose, if favorable action is  
10          proposed; or, when a proposal for action is not feasible before a  
11          hearing, a description of the subjects and issues involved.

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

17          (c) The commissioner may [SHALL] set all applications and matters  
18          of 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 commissioner  
24          shall promptly determine, on an application filed with him under sec. 50  
25          of this chapter whether the applicant is fit, willing and able to  
26          perform the transportation or other acts proposed in a manner that will  
27          reasonably protect the lives, property and general welfare of the  
28          people of Alaska. In making a determination the commissioner shall  
29          consider whether or not

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

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

6 (3) the applicant has the technical and financial capa-  
7 bility 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 in  
14 the general area of the right-of-way who rely on fish, wildlife  
15 and biotic resources of the area for subsistence purposes;

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

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

27 # Sec. 9. AS 38.35.110 is repealed and re-enacted to read:

28 Sec. 38.35.110. TERM OF LEASE. The commissioner shall determine  
29 the term of the lease. In making this determination he shall take

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

9 \* Sec. 10. AS 38.35.120 is amended to read:

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

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

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

21 (2) IT WILL UNDERTAKE AND COMPLETE OR REGULARLY PERFORM  
22 WITHIN OR DURING THE TIME PERIOD AND IN ACCORDANCE WITH THE PROJECT  
23 DESCRIPTION CONTAINED IN THE LEASE OR CERTIFICATE, THROUGHOUT THE  
24 ENTIRE ROUTE OF THE PIPELINE IN THE STATE, BOTH ON STATE PUBLIC LAND  
25 OBTAINED UNDER THE LEASE AND ON OTHER LAND, ANY CONSTRUCTION OR  
26 ACQUISITION OR OTHER ACT REQUIRED TO BE PERFORMED IN CONJUNCTION WITH  
27 THE LEASE, OR OPERATION OF, OR TRANSPORTATION, SERVICE, OR SALE BY  
28 THE PIPELINE IN GOOD FAITH AND IN ACCORDANCE WITH THE LEASE AND CERTI-  
29 FICATES, THIS CHAPTER, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAW;]

1           (3) it will perform all of its functions under the lease,  
2 as a common carrier; in performing as a common carrier it will accept,  
3 convey and transport without discrimination crude oil delivered to it  
4 for transportation throughout its route in accordance with applicable  
5 statutes and tariffs; the common carrier covenant required by this  
6 paragraph does not apply to products lines or to a natural gas pipeline  
7 owned or operated by a lessee which is subject to regulation under the  
8 Natural Gas Act (52 Stat. 821; 68 Stat. 36) or by a lessee which is  
9 subject to regulation by state or political subdivisions with juris-  
10 isdiction to regulate the rates and charges for sale of natural gas to  
11 consumers in the state [ASSUMES THE STATUS OF AND WILL PERFORM ALL OF  
12 ITS FUNCTIONS UNDERTAKEN UNDER THE LEASE AS A COMMON CARRIER AND WILL  
13 ACCEPT, CONVEY, AND TRANSPORT ALL CRUDE OIL OR NATURAL GAS, DEPENDING  
14 ON 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 TO  
19 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 STATUS  
21 OF AND SHALL PERFORM ALL OF ITS FUNCTIONS UNDERTAKEN UNDER THE LEASE  
22 AS A COMMON CARRIER AND SHALL PERFORM ALL OF THE ACTS DESCRIBED IN  
23 THIS PARAGRAPH WHEN AT ANY TIME AFTER THE EXECUTION OF THE LEASE THE  
24 COMMISSIONER AFTER PUBLIC HEARING DETERMINES THAT ASSUMPTION OF THIS  
25 STATUS IS REQUIRED IN ORDER TO SUBSERVE THE PUBLIC INTEREST, CONVENI-  
26 ENCE, 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 OR  
2 NATURAL GAS THAT IS OFFERED IT WHEN AT ANY TIME AFTER THE EXECUTION  
3 OF THE LEASE THE COMMISSIONER AFTER PUBLIC HEARING DETERMINES THAT  
4 ASSUMPTION OF THIS STAT'IS IS REQUIRED IN ORDER TO SUBSERVE THE PUBLIC  
5 INTEREST, CONVENIENCE, AND NECESSITY;

6 (5) IT WILL ACCEPT, CONVEY, AND TRANSPORT OR PURCHASE  
7 CRUDE OIL OR NATURAL GAS WITHOUT UNJUST OR UNREASONABLE DISCRIMINATION  
8 IN FAVOR OF ONE PRODUCER OR PERSON, INCLUDING ITSELF, AS AGAINST  
9 ANOTHER IN THE SAME FIELD, AND WITHOUT UNJUST OR UNREASONABLE DIS-  
10 CRIMINATION AS BETWEEN FIELDS IN THE STATE BUT WILL TAKE THE CRUDE  
11 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 AND  
17 PROVIDE CONNECTIONS AND FACILITIES FOR THE INTERCHANGE OF CRUDE OIL  
18 OR NATURAL GAS AT EVERY LOCALITY REACHED BY BOTH PIPELINES WHEN THE  
19 NECESSITY EXISTS, SUBJECT TO RATES AND REGULATIONS MADE BY THE  
20 APPROPRIATE STATE OR FEDERAL REGULATORY AGENCY];

21 (7) it will afford the state a first opportunity to negotiate  
22 for the purchase of any interest in the pipeline offered for sale by  
23 it on the same terms offered any other potential purchaser, provided  
24 that this obligation will not interfere or supersede contract rights  
25 or obligations existing among the proposed owners of the pipeline at  
26 the time the right-of-way lease is granted [THE LESSEE GRANTS TO THE  
27 STATE THE RIGHT TO PURCHASE, UPON REASONABLE NOTICE AN UNDIVIDED  
28 INTEREST IN THE ENTIRE LENGTH OF THE PIPELINE WITHIN THE STATE, NOT  
29 TO EXCEED 20 PER CENT; THE PURCHASE PRICE SHALL BE AT A REASONABLE

1 FIGURE SET OUT IN THE LEASE AT THE TIME OF THE LEASE'S EXECUTION;  
2 PURCHASE OF THIS INTEREST MAY, AT THE OPTION OF THE STATE, BE MADE  
3 IN STAGES; EXERCISE OF AN OPTION TO PURCHASE AN INTEREST IN A PIPE-  
4 LINE PROJECT OR FACILITY IS SUBJECT TO THE APPROVAL OF THE LEGISLA-  
5 TURE; THE INCURRING OF ANY BONDED INDEBTEDNESS BY THE STATE TO  
6 IMPLEMENT THE EXERCISE OF ITS OPTION UNDER THIS PARAGRAPH IS SUBJECT  
7 TO VOTER APPROVAL];

8 (8) it will maintain and preserve books, accounts, and  
9 records [, PAPERS, AND CORRESPONDENCE AND OTHER RECORDS] and will make  
10 those reports that the state may prescribe by regulation or law as  
11 necessary and appropriate for purposes of administration of this  
12 chapter;

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

17 (10) it will provide, where economically feasible [AND  
18 CONSISTENT WITH THE PRIMARY FUNCTION OF THE LINE], connections [AND  
19 FACILITIES] on the pipeline [SUBJECT TO THE LEASE, BOTH ON STATE LAND  
20 AND OTHER LAND IN THE STATE,] for the purpose of delivering crude  
21 oil or natural gas, depending upon the kind of pipeline involved,  
22 to persons or municipal corporations contracting for the purchase at  
23 wholesale of crude oil or natural gas transported by the pipeline  
24 [DESIRING TO PURCHASE WHO ARE LOCATED IN MUNICIPALITIES IN THE  
25 VICINITY OF THE PIPELINE];

26 (11) it will, at its own expense, during the term of the  
27 lease

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

1 (B) exercise the highest degree of care in using the  
2 leasehold and operating the pipeline [TO PREVENT A PIPELINE  
3 INCIDENT];

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

6 (D) promptly compensate for or remedy any damage to  
7 or destruction of public or private property resulting from  
8 damage to or destruction of the leasehold or pipeline regardless  
9 of fault, notwithstanding the limitations of AS 46.03.822(1)(B),  
10 (C) and (D), and 46.03.822(2);

11 [(12) IT WILL NOT TRANSFER, ASSIGN, OR DISPOSE OF IN ANY  
12 MANNER, DIRECTLY OR INDIRECTLY, OR BY TRANSFER OF CONTROL OF THE  
13 CARRIER CORPORATION, ITS INTEREST IN A RIGHT-OF-WAY LEASE, OR ANY  
14 RIGHTS UNDER THE LEASE, OR ANY PIPELINE SUBJECT TO THE LEASE, EXCEPT  
15 AS AUTHORIZED BY THE COMMISSIONER, UPON APPLICATION BY THE CARRIER;  
16 THE COMMISSIONER SHALL NOT UNREASONABLY WITHHOLD HIS CONSENT TO THE  
17 TRANSFER, ASSIGNMENT OR DISPOSAL;]

18 (13) it will file with the commissioner a written appoint-  
19 ment of a named permanent resident of the state to be its registered  
20 agent in the state and to receive service of notices, regulations,  
21 decisions and orders of the commissioner; if it fails to appoint an  
22 agent for service, service may be made by posting a copy in the office  
23 of the commissioner and filing a copy of it in the office of the  
24 lieutenant governor and by mailing a copy to lessee's last known  
25 address;

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

28 (15) it will be liable to the state for damages or injury  
29 incurred by the state caused by the construction, operation or

1 maintenance of the pipeline and it will indemnify the state for the  
2 liabilities or damages;

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

10 (17) it will not interfere with construction and operation  
11 of any oil or gas pipeline authorized by the commissioner for location  
12 on the right-of-way, subject to compensation of the prior lessee by  
13 the subsequent lessee for any damage to or interference with the  
14 operation of the prior pipeline caused by construction of the subse-  
15 quent pipeline.

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

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

21 (2) protect state and private property interests;

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

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

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

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

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

9 \* Sec. 11. AS 38.35.130 is amended to read:

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

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

18           (2) THE STATE RESERVES TO ITSELF AND THE LESSEE GRANTS TO  
19 THE STATE THE SOLE RIGHT TO CONDEMN, BY DECLARATION OF TAKING, REAL  
20 PROPERTY FOR RIGHT-OF-WAY PURPOSES AND TO ACQUIRE TO THE EXTENT  
21 FEDERALLY PERMISSIBLE LEASES OF OR EASEMENTS OR RIGHTS-OF-WAY ON  
22 PUBLIC LANDS BELONGING TO THE UNITED STATES IN THIS STATE, INCLUDING  
23 "WITHDRAWN PUBLIC LANDS" AS THAT TERM IS DEFINED IN SECS. 3(e), 17(c)  
24 AND (d)(3), AND 22(1) OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT  
25 (PL 92-203; 85 STAT. 688; 43 U.S.C. 1601 ET SEQ.), REQUIRED FOR RIGHT-  
26 OF-WAY PURPOSES FOR THE PIPELINE SUBJECT TO THE LEASE:

27           (3) THE CARRIER WILL], if the commissioner delegates the  
28 function to it, condemn, by declaration of taking, under AS 09.55.420 --  
29 09.55.450, real property and acquire leases of or easements or rights-

1 of-way on [PUBLIC] lands in this state [BELONGING TO THE UNITED STATES,  
2 INCLUDING "WITHDRAWN PUBLIC LANDS"] required for right-of-way purposes  
3 for a [THE] pipeline subject to the lease on behalf of and as agent  
4 for the state in which title to or interest in the land shall vest.

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

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

10 Sec. 38.35.140. PAYMENT OF RENTAL AND COSTS. (a) The lease  
11 price for a right-of-way lease shall be the annual fair market  
12 rental of the state lands included in the right-of-way based on the  
13 appraised fair market value of the land. The lease price is payable  
14 annually in advance on or before the anniversary of the lease. The  
15 appraised fair market rental value shall be adjusted periodically under  
16 the provisions of AS 38.05.105.

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

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

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

22 Sec. 38.35.160. TRANSFER OF RIGHT-OF-WAY LEASE [, CERTIFICATES,]  
23 OR PIPELINE. No lessee [CARRIER] may transfer [, ASSIGN,] or dispose  
24 of in any manner its right-of-way lease, or any rights under the  
25 lease, or any pipeline subject to the lease, whether on state [PUBLIC]  
26 land or other land in the state, either voluntarily or involuntarily,  
27 directly or indirectly, or by transfer of control of any corporation  
28 holding the lease [OR CERTIFICATE OR OWNING THE PIPELINE,] to any  
29 person other than another owner of the pipeline (including subsidiaries,

1 parents and affiliates of the owners), except to the extent that the  
2 commissioner, after consideration whether the proposed transferee is  
3 fit, willing and able to perform the transportation or other acts  
4 proposed in a manner that will reasonably protect the lives, property  
5 and general welfare of the people of Alaska, [OF THE PUBLIC INTEREST,  
6 CONVENIENCE, AND NECESSITY,] by order authorizes the transfer. The  
7 commissioner shall not unreasonably withhold this authorization. The  
8 application shall be disposed of as if the proposed transferee or  
9 assignee were making application under secs. 50 - 100 of this chapter.

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

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

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

26       Sec. 38.35.180. INJUNCTIONS. When in the judgment of the  
27 commissioner a person has violated or is about to violate a provision  
28 of this chapter or covenant, term or condition of a lease, the  
29 attorney general, on advice of the commissioner, may seek a

1 prohibition or mandatory injunction from the superior court to remedy  
2 the violation.

3 \* Sec. 17. AS 38.35.190(c) and (d), AS 38.35.200 and 38.35.220(d) are  
4 repealed.

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

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

12 (b) The only grounds for judicial review of a decision of the  
13 commissioner under sec. 100 of this chapter are

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

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

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

19 Sec. 38.35.230. DEFINITIONS. In this chapter

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

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

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

29 (4) "oil" includes crude petroleum oil and other hydrocarbons

1 regardless of gravity which are produced at the wellhead in liquid  
2 form and the liquid hydrocarbons known as distillate or condensate  
3 recovered or extracted from gas, other than gas produced in associa-  
4 tion with oil and commonly known as casinghead gas;

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

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

26 (7) "state land" means

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

28 (B) public land of the United States selected by the  
29 state under sec. 6 of the Alaska Statehood Act of 1958 (PL 85-508;

1 72 Stat. 399), as amended, and real property of the United States  
2 transferred to the state under secs. 21, 35 and 45 of the Alaska  
3 Omnibus Act of 1959 (PL 36 - 70; 73 Stat. 141), as amended;

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

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

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

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

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

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

27 (2) leasing, purchasing, or otherwise acquiring (including  
28 condemning by declaration of taking), easements or other interests in  
29 [ON PRIVATE OR FEDERAL] land in this state for the purpose of utilizing

1 or granting leases of the land, easements or interests for pipeline  
2 right-of-way purposes;

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

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

8 \* Sec. 24. AS 38.05.330 is amended to read:

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

27 \* Sec. 25. The commissioner of natural resources shall submit to the  
28 Second Session of the Eighth Legislature not later than March 1, 1974 a full  
29 report covering all lands conveyed under provisions of AS 38.05.063 and

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

6 \* Sec. 26. AS 38.05.063 and 38.05.076 are repealed effective March 1,  
7 1974.

8 \* Sec. 27. This Act takes effect on the day after its passage and approval  
9 or on the day it becomes law without approval.

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1 IN THE SENATE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 SENATE 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], conduits  
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 materials. 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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Original sponsor: Rules Committee by  
request of the Governor

Offered: 11/2/73  
Referred: Finance

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE 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 road  
14 or highway or the right-of-way of a railroad or other public utility,  
15 or [ON,] across, upon, over, or under a river or other body of water  
16 or land belonging to or administered by the state may be granted by  
17 noncompetitive lease by the commissioner for pipeline purposes for the  
18 transportation of oil, products or natural gas under those conditions  
19 prescribed by law and by administrative regulation. No person may  
20 engage in any construction [, ACQUISITION] or operation of any  
21 [, OR TRANSPORTATION, SERVICE, OR SALE BY THE WHOLE OR A] part of an  
22 oil, products, or natural gas pipeline, which in whole or in part is  
23 or is proposed to be on state [PUBLIC] land, except in conformity with  
24 the terms of a right-of-way lease of that land, issued by the commis-  
25 sioner under this chapter [UNLESS THAT PERSON IS A CARRIER AND HAS  
26 OBTAINED FROM THE COMMISSIONER A RIGHT-OF-WAY LEASE OF THE LAND UNDER  
27 THIS CHAPTER AS WELL AS A CERTIFICATE THAT THE CONSTRUCTION, ACQUISITION  
28 OPERATION, TRANSPORTATION, SERVICE, OR SALE, IF SUBJECT TO THE LEASE,  
29 WILL BE IN ACCORDANCE WITH ITS TERMS].

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

5 \* Sec. 2. AS 38.35.030 is amended to read:

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

15 \* Sec. 3. AS 38.35.040 is amended to read:

16           Sec. 38.35.040. TEMPORARY OR EMERGENCY SERVICE OR TEMPORARY  
17 ABANDONMENT, REDUCTION OR IMPAIRMENT OF SERVICE BY LESSEE [CARRIER].  
18 The commissioner may, either upon a request made in the form he shall  
19 by regulation require, or upon his own motion without request, authorize  
20 or require temporary or emergency rendering of service or temporary  
21 or emergency abandonment, reduction or impairment of service by a  
22 pipeline of a lessee [CARRIER] without compliance with secs. 30 and  
23 50 - 100 of this chapter. Nothing in this section prevents a carrier  
24 from temporarily suspending operations in the event of an emergency  
25 which threatens public health or safety; however, notice shall be  
26 given the commissioner as soon as possible.

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

28           Sec. 38.35.050. APPLICATIONS FOR RIGHT-OF-WAY LEASES. (a) A  
29 person or persons desiring to engage in construction, acquisition or

1 operation of a pipeline which is proposed to be located in whole or  
2 in part on state land, shall apply for a noncompetitive right-of-way  
3 lease of the state land under this chapter.

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

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

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

15 (e) All persons owning or planning to own interest in a pipeline  
16 or proposed pipeline subject to a lease, and every corporation or  
17 association employed or to be employed to operate the pipeline, must  
18 join in the application under (a) of this section.

19 \* Sec. 5. AS 38.35.060 is repealed.

20 \* Sec. 6. AS 38.35.070 is amended to read:

21 Sec. 38.35.070. NOTICE OF APPLICATION. Upon receiving an applica-  
22 tion under sec. 50 [OR 60] of this chapter, the commissioner shall  
23 within 30 days

24 (1) cause notice of it to appear in the daily newspaper  
25 of general circulation published nearest the location of the proposed  
26 pipeline;

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

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

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

4 Sec. 38.35.080. ANALYSIS OF APPLICATION AND PUBLIC HEARING. (a)  
5 The commissioner shall, within 90 days [A REASONABLE TIME] after  
6 receiving the application, prepare an analysis of the application,  
7 including a proposal for action if feasible; a proposed lease [OR  
8 CERTIFICATE OR BOTH] and a general statement of his basis and purpose,  
9 if favorable action is proposed; or, when a proposal for action is  
10 not feasible before a hearing, a description of the subjects and issues  
11 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, the commissioner shall publish notice, and  
15 make copies available as provided in sec. 70 of this chapter.

16 (c) The commissioner shall hold a public hearing on an applica-  
17 tion within 120 days of receiving it [SET ALL APPLICATIONS FOR PUBLIC  
18 HEARING AS SOON AS PRACTICABLE].

19 \* Sec. 8. AS 38.35.090 is amended to read:

20 Sec. 38.35.090. MULTIPLE APPLICATIONS FOR SAME LEASE. When the  
21 commissioner receives within a 30-day period two or more applications  
22 relating to the same or substantially the same subject matter, he  
23 shall consider the applications upon a comparative basis. [THE  
24 COMMISSIONER MAY EXTEND THE TIME WITHIN WHICH A CARRIER MAY SUBMIT  
25 AN APPLICATION FOR CONSIDERATION UPON A COMPARATIVE BASIS WITH A  
26 PREVIOUSLY FILED APPLICATION.]

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

28 (a) The commissioner shall determine, on an application filed  
29 with him under sec. 50 of this chapter for a right-of-way lease of

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

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

18 \* Sec. 11. AS 38.35.110 is amended to read:

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

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

28 Sec. 38.35.120. COVENANTS REQUIRED TO BE INCLUDED IN LEASE. (a)  
29 A noncompetitive lease of state land for a right-of-way for an oil

1 or natural gas pipeline valued at \$1,000,000 or more may be granted  
2 only upon the condition that the lessee expressly covenants in the  
3 lease, in consideration of the rights acquired by it under the lease,  
4 that

5 (1) it assumes the status of and will perform all of its  
6 functions undertaken under the lease as a common carrier and will  
7 accept, convey, and transport without discrimination crude oil or  
8 natural gas, depending on the kind of pipeline involved, delivered  
9 to it for transportation from fields in the vicinity of the pipeline  
10 subject to the lease throughout its route both on state land obtained  
11 under the lease and on other land; however, a lessee who owns or  
12 operates a natural gas pipeline subject to regulation either (A) under  
13 the Natural Gas Act (15 U.S.C. 717 et. seq.) of the United States, or  
14 (B) by the state or political subdivisions with respect to rates and  
15 charges for the sale of natural gas, is, to the extent of that regula-  
16 tion, exempt from the common carrier requirement in this paragraph;  
17 it will accept, convey, and transport crude oil or natural gas without  
18 unjust or unreasonable discrimination in favor of one producer or  
19 person, including itself, as against another in the same field, and  
20 without unjust or unreasonable discrimination as between fields in the  
21 state but will take the crude oil or natural gas, depending on the  
22 kind of pipeline involved, delivered or offered in the proportion that  
23 the Alaska Pipeline Commission shall, after a full hearing with due  
24 notice to the interested parties and a proper finding of facts, deter-  
25 mine to be reasonable;

26 (2) it will exchange crude oil or natural gas, depending  
27 upon the kind of pipeline involved, with each like common carrier and  
28 provide connections and facilities for the interchange of crude oil  
29 or natural gas at every locality reached by both pipelines when the

1 necessity exists, subject to rates and regulations made by the appro-  
2 priate state or federal regulatory agency;

3 (3) the lessee grants the state the right to purchase, upon  
4 reasonable notice, an undivided interest in the entire length of the  
5 pipeline within the state, not to exceed 20 per cent; the purchase  
6 price shall be calculated on the basis of the total value of carrier  
7 property as defined by the ICC uniform system of accounts, plus  
8 accumulated interest during construction and less depreciation after  
9 commencement of operations; interest during construction shall be  
10 calculated at an annual rate equivalent to 125 per cent of the best  
11 interest rate offered during the year by the First National City Bank  
12 of New York on 90-day loans to substantial and responsible commercial  
13 borrowers; each lessee shall additionally agree not to sell, transfer  
14 or otherwise dispose of all or any part of a pipeline subject in any  
15 part to the lease except after offering such interest to the state,  
16 to which the lessee grants a preferential right to purchase such  
17 interest on the same terms offered by or to any bona fide, prospective  
18 purchaser who is ready, willing and able to purchase same; exercise  
19 of an option to purchase an interest in a pipeline project or facility  
20 is subject to the approval of the legislature; the incurring of any  
21 bonded indebtedness by the state to implement the exercise of its  
22 option under this paragraph is subject to voter approval;

23 (4) the lessee shall transfer to the state any throughput  
24 guarantees corresponding to the undivided interest acquired under  
25 (3) of this subsection; the state shall provide for the repayment of  
26 the outstanding debt incurred by the lessee whose undivided interest  
27 share is acquired under (3) of this subsection, either by undertaking  
28 the debt directly if that is acceptable to the lender, or by dis-  
29 charging the applicable outstanding debt, including any penalties for

1 prepayment, and undertaking its own debt;

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

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

9 (7) it will provide, if the expense involved will not impair  
10 the ability of the lessee to perform its duty to the public as a  
11 common carrier, connections to facilities on the pipeline subject to  
12 the lease, both on state land and other land in the state, for the  
13 purpose of delivering crude oil or natural gas, depending upon the  
14 kind of pipeline involved, to persons (including the state and its  
15 political subdivisions) contracting for the delivery or purchase at  
16 wholesale or exchange of crude oil or natural gas transported by the  
17 pipeline;

18 (8) it will extend or enlarge the pipeline or storage  
19 facilities if the expense involved will not impair the ability of the  
20 lessee to perform its duty to the public as a common carrier and such  
21 extension or enlargement is determined by the Alaska Pipeline Commis-  
22 sion to be in the public interest;

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

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

26 (B) promptly repair or remedy any damage to the lease-  
27 hold;

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

1 to or destruction of the leasehold or pipeline;

2 (10) it will not transfer, assign, or dispose of in any  
3 manner, directly or indirectly, or by transfer of control of the  
4 carrier corporation, its interest in a right-of-way lease, or any  
5 rights under the lease or any pipeline subject to the lease to any  
6 person other than another owner of the pipeline (including subsidi-  
7 aries, parents and affiliates of the owners), except to the extent  
8 that the commissioner, after consideration of the public interest,  
9 authorizes; the commissioner shall not unreasonably withhold his  
10 consent to the transfer, assignment or disposal;

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

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

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

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

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

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

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

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

4 \* Sec. 13. AS 38.35.130 is repealed and re-enacted to read:

5 Sec. 38.35.130. CONDEMNATION FOR RIGHT-OF-WAY PURPOSES. The  
6 lease shall contain the further express agreement that the state  
7 reserves to itself and the lessee grants to the state the sole right  
8 to condemn real property for right-of-way purposes.

9 \* Sec. 14. AS 38.35.140 is repealed and re-enacted to read:

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

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

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

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

29 (b) The lease will also contain terms and conditions that are

1 reasonably necessary to obligate the lessee, to the extent reasonably  
2 practicable, to

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

5 (2) protect state and private property interests;

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

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

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

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

19 \* Sec. 16. AS 38.35.160 is amended to read:

20 Sec. 38.35.160. TRANSFER OF RIGHT-OF-WAY LEASE [, CERTIFICATES,]  
21 OR PIPELINE. No lessee [CARRIER] may transfer, assign, or dispose of  
22 in any manner its right-of-way lease, or any rights under the lease,  
23 or any pipeline subject to the lease, whether on state [PUBLIC] land  
24 or other land in the state, either voluntarily or involuntarily,  
25 directly or indirectly, or by transfer of control of any corporation  
26 holding the lease [OR CERTIFICATE] or owning the pipeline, to any  
27 person other than another owner of the pipeline (including subsidiaries,  
28 parents and affiliates of the owners), except to the extent that the  
29 commissioner, after consideration of the public interest by order

1 authorizes the transfer. The commissioner shall not unreasonably  
2 withhold this authorization. The application shall be disposed of  
3 as if the proposed transferee or assignee were making application  
4 under secs. 50 - 100 of this chapter.

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

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

20 \* Sec. 18. AS 35.38.180(c) is amended to read:

21 (c) Neither this section nor the state's obtaining an injunction  
22 or recovering penalties extinguishes any civil cause of action or  
23 criminal responsibility arising out of a violation of this chapter  
24 or the provisions of [,] a right-of-way lease [, OR CERTIFICATE UNDER  
25 A LEASE]. A person obtaining a money judgment in an action arising  
26 out of a violation is entitled to a reasonable attorney fee, fixed  
27 by the court, to be taxed and collected as costs of the suit.

28 \* Sec. 19. AS 35.38.190(c) and (d) are repealed.

29 \* Sec. 20. AS 35.38.200 is repealed and re-enacted to read:

1           Sec. 35.38.200. JUDICIAL REVIEW. An applicant or competing  
2 applicant or a person who raises objections within 60 days of the filing  
3 of an application for a right-of-way lease under this chapter are the  
4 only persons having standing to contest the commissioner's decisions  
5 in court.

6 \* Sec. 21. AS 35.38.210 is amended to read:

7           Sec. 35.38.210. 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 35.38.220 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 38.05.020(c)(1) is amended to read:

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

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

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

9 \* Sec. 29. AS 38.05.330 is amended to read:

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

28 \* Sec. 30. This Act takes effect on the day after its passage and approval  
29 or on the day it becomes law without approval.

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 (e) 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