

**HB**

**164**

<target><bill>HB 164</bill><subject>HB  
164</subject><comm>HENE26</comm></target>

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES OFFICE OF THE COMMISSIONER

**SARAH PALIN, GOVERNOR**

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March 16, 2009

Representative Charisse Millett, Co-Chair  
House Special Committee on Energy  
Capitol Building, Room 412  
Juneau, Alaska 99801

Re: House Bill 164 – Relating to relating to noncompetitive leases of state land and for rights-of-way for oil or natural gas pipelines that originate and terminate within the state and to the regulation and certification of those pipelines.

Dear Representative Millett,

Please accept this request for your consideration to schedule HB 164 before the House Special Committee on Energy at your earliest convenience.

HB 164 proposes changes to the Right Of Way Leasing Act and the Pipeline Act addressing technical right-of-way issues for pipelines and clarifies oversight by the Regulatory Commission of Alaska. In conjunction with HB 163 which broadens the responsibilities of the Alaska Natural Gas Development Authority (ANGDA) HB 164 will allow the State to examine and pursue all options to supply Alaskans with affordable, clean-burning natural gas. These bills will facilitate and implement the plan to jump start work immediately on an instate gas pipeline.

This bill would allow common carriers the ability to offer firm transportation service that is not subject to prorated reductions which can stimulate pipeline development under certain circumstances. The assurance of unimpeded access to capacity is a strong inducement to shippers, and will anchor pipeline construction and expansion. Conversely, the lack of assurance to access may discourage development.

Taking action on these bills this Session will help facilitate the evaluation of options for in-state routes, gas resources and potential industrial and residential users; commencement of right of way and permitting work; preliminary engineering; undertaking a firm timetable for accomplishing this effort.

Attached are a Sectional Analysis, and zero fiscal notes. If you have any questions regarding the bill, or to make arrangements for department to respond to questions please feel free to contact Joe Balash, Special Assistant, 465-3500; or Harry Noah, at 269-8656.

Sincerely,



Thomas E. Irwin  
Commissioner

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### HB 164 Sectional Analysis

House Bill 164 - Relating to relating to noncompetitive leases of state land and for rights-of-way for oil or natural gas pipelines that originate and terminate within the state and to the regulation and certification of those pipelines.

Sections 1 and 2 of the bill are technical conforming amendments.

Section 3 of the bill would require that natural gas pipelines that originate and terminate in the state, and that require a state right-of-way lease, will meet conditions that favor expansion, and offer expansion rates that promote new entrants into the line. This section is modeled on many of the conditions required of applicants under AS 43.90.130 of the Alaska Gasline Inducement Act (AGIA). For example, lessees would have to commit to periodic binding open seasons, commit to expanding on commercially reasonable terms, and commit to rolled-in rates on expansions, subject to a ceiling of 15 percent of negotiated rates. Lessees would also have to agree to hire Alaska residents and contract with Alaska businesses to the extent permitted by law, and commit to negotiate a project labor agreement to the extent permitted by law.

Section 4 of the bill contains definitions of "commercially reasonable terms" and "reasonable engineering increment" in order to make more precise the expansion terms in sec. 3 of the bill.

Section 5 of the bill would clarify that the "open season" required of North Slope natural gas pipeline carriers by the Pipeline Act applies only to the extent that lease covenants under the Alaska Right-of-Way Leasing Act do not contain "open season" provisions. The RCA is already empowered under AS 42.06.140(a)(2) to enforce lease covenants, including those that contain an "open season" process, so compliance with the "open season" process in AS 42.06.240(f) would be redundant.

Section 6 of the bill would provide for conditional certification by the RCA for pipelines that are in the public interest, and that otherwise meet the requirements for granting a certificate of public convenience and necessity, but that have not yet obtained financing or do not possess firm transportation commitments, or both. This provision could, in some circumstances, provide greater predictability as to the timing and outcome of the regulatory process, and may reduce the cost and facilitate the development of a project by assuring potential shippers and financing partners of ultimate regulatory approval.

Section 7 of the bill would clarify that the RCA can require an exclusively in-state natural gas pipeline carrier to extend or enlarge its facilities under standards found in the Alaska Right-of-Way Leasing Act. This would enable the RCA to enforce access to pipeline facilities for all prospective shippers as required by DNR in the leasing process.

Section 9 of the bill would modify the definition of "common carrier" as it pertains to natural gas pipelines to include firm transportation service and interruptible transportation service. Coupled with sec. 8 of the bill, which would redefine "firm transportation service," this provision would allow, but would not require, natural gas pipeline carriers to offer, and shippers to arrange, for firm transportation service that would not be subject to curtailment except in the case of reduced pipeline capacity. Currently, common carriers may offer firm transportation service, but if total tendered shipments exceed pipeline capacity, shipments by all shippers must be curtailed pro rata.

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## Sponsor Statement HB 164

Relating to noncompetitive leases of state land and for rights-of-way for oil or natural gas pipelines that originate and terminate within the state and to the regulation and certification of those pipelines; relating to conditional certification for certain new natural gas pipelines; relating to definitions of "common carrier" and "firm transportation service" in the Pipeline Act.

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill relating to noncompetitive leases of state land and for rights-of-way for oil or natural gas pipelines that originate and terminate within the state and to the regulation and certification of those pipelines; relating to conditional certification for certain new natural gas pipelines; and relating to definitions of "common carrier," and "firm transportation service" in the Pipeline Act, AS 42.06. The major provisions of the bill relate to covenants attached to state right-of-way leases by the Department of Natural Resources (DNR), certification by the Regulatory Commission of Alaska (RCA), and expanding the definition of "common carrier" with respect to North Slope natural gas pipelines to include carriers that offer both firm and interruptible transportation service.

Under current law, natural gas pipelines that cross state land, and require a state right-of-way under the Alaska Right-of-Way Leasing Act, AS 38.35, are subject to the covenants listed in AS 38.35.120. The covenants include a requirement that those pipelines operate as "common carriers." Generally, common carrier pipelines must accommodate all shippers upon reasonable request, may not show undue preference or discrimination among similarly situated shippers, and, if shippers' requests for service exceed the capacity of the pipeline, must prorate shipper nominations. These requirements can foreclose pipeline carriers and shippers from fashioning long-term capacity commitments.

Allowing common carriers to offer firm transportation service that is not subject to prorated reductions can stimulate pipeline development under certain circumstances. The assurance of unimpeded access to capacity is a strong inducement to shippers, and will anchor pipeline construction and expansion. Conversely, the lack of assurance to access may discourage development.

This proposed legislation, together with HB 163, which broadens the responsibilities of the Alaska Natural Gas Development Authority (ANGDA), will form the initial statutory framework for the development of in state gasline for use by Alaskans. Additionally, the key action to bring a long term stable supply of

*"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."*

Alaska gas to Alaska consumers will be an action plan, and the people that implement that plan to jump start work immediately on an instate gas pipeline including the evaluation of options for routes, gas resources and potential industrial and residential users; commencement of right of way and permitting work; preliminary engineering; and a firm timetable for accomplishing this work.

# FISCAL NOTE

STATE OF ALASKA  
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: HB 164  
(H) Publish Date: 3/2/09

Identifier (file name): 0052-CED-RCA-03-02-09 Dept. Affected: DCCED  
Title: Natural Gas Pipelines RDU: Regulatory Commission of Alaska  
Component: Regulatory Commission of Alaska  
Sponsor: Rules Committee by Request  
Requester: Governor Component Number: 2417

**Expenditures/Revenues** (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>								
<b>CHANGE IN REVENUES ( )</b>								

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2009) cost: \_\_\_\_\_

**POSITIONS**

Full-time								
Part-time								
Temporary								

**ANALYSIS:** (Attach a separate page if necessary)

This legislation would revise carriage requirements for natural gas pipelines originating and terminating within Alaska, allowing a carrier seeking to obtain a noncompetitive right-of-way lease to provide either common or contract carriage. The legislation would revise certification requirements for natural gas pipelines, establishing a conditional certificate that allows the carrier to become certificated before it obtains or commits financing or receives firm commitments to transport natural gas. The legislation would also allow the carrier to provide firm and interruptible carriage under tariff, contract, or both.

(Continued on Page 2)

Prepared by: Bob Pickett, Chairman  
Division: \_\_\_\_\_  
Approved by: Emil Notti, Commissioner  
Department of Commerce, Community and Economic Development

Phone 907-276-6222  
Date/Time 03/02/09 9:00am  
Date 3/2/2009

FISCAL NOTE #1

STATE OF ALASKA  
2009 LEGISLATIVE SESSION

BILL NO. HB 164

**ANALYSIS CONTINUATION**

(Continued from Page 1)

The Regulatory Commission of Alaska (RCA) receives and processes certificate applications for natural gas pipelines that originate and terminate within Alaska, and regulates the rates of those natural gas pipeline carriers.

Since this legislation does not change the RCA's authority or duty to certificate instate natural gas pipelines, the RCA should not incur additional work based on the passage of this legislation.

# FISCAL NOTE

**STATE OF ALASKA**  
**2009 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: HB 164  
 (H) Publish Date: 3/2/09

Identifier (file name): 0052-DNR-OGD-02-26-09 Dept. Affected: Natural Resources  
 Title Natural Gas Pipelines that Originate and Terminate In-State RDU Resource Development  
 Component Oil and Gas Development  
 Sponsor Rules Committee  
 Requester Governor Component Number 439

**Expenditures/Revenues** (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
<b>OPERATING EXPENDITURES</b>							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>							
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<b>CHANGE IN REVENUES ( )</b>							
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**FUND SOURCE** (Thousands of Dollars)

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
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Other Interagency Receipts						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2009) cost: \_\_\_\_\_

**POSITIONS**

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill would amend the Alaska Right-of-Way Leasing Act to require intra-state natural gas pipelines, which are over a certain value and require a state right-of-way lease, to offer expansion and expansion rates that promote new entrants into the line. It would also clarify the relationship of common carriage and firm transportation within the Pipeline Act.

These amendments are expected to increase commercial and regulatory predictability, ensure access to gas pipeline capacity, and promote additional industry activity in Alaska resulting in additional state revenues.

Prepared by: Kevin Banks, Director Phone 269-8802  
 Division Oil and Gas Date/Time February 26, 2009  
 Approved by: Tom Irwin, Commissioner Date February 26, 2009  
Natural Resources

# FISCAL NOTE

**STATE OF ALASKA**  
**2009 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: HB 164  
 (H) Publish Date: 3/2/09

Identifier (file name): 0052-DNR-OGD-02-26-09 Dept. Affected: Natural Resources  
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 Component Oil and Gas Development  
 Sponsor Rules Committee  
 Requester Governor Component Number 439

**Expenditures/Revenues** (Thousands of Dollars)

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Equipment							
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Grants & Claims							
Miscellaneous							
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<b>CAPITAL EXPENDITURES</b>							
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<b>CHANGE IN REVENUES ( )</b>							
-------------------------------	--	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

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Prepared by: Kevin Banks, Director  
 Division Oil and Gas  
 Approved by: Tom Irwin, Commissioner  
Natural Resources

Phone 269-8802  
 Date/Time February 26, 2009  
 Date February 26, 2009

#2

Conceptual amendment to HB 164

Sec. 2 P. 2, l. 2-16

Amending AS 38.35.100 dealing with conditional leases.

The amendment would allow the commissioner to consider the public interest in allowing the transfer – as the statute is written – and issue written findings to substantiate a decision to allow the transfer of interest in the right of way,

but then we would amend this section, or amend the statute at the appropriate section, so that the final authority for the decision to authorize the transfer would rest with the legislature.