117 SRES LAMONT - FEDERAL STATUTE NATURAL GAS

the state. What I'm saying is, this is not an independent private carrier, it must be regulated then by the state government or by the federal government if it is to serve the public interest.

Q from Senator Thomas: What would you say to the arguement though that we've been presented with ...

they just feel that unless they can assure the banking firms that they are going to not be bothered, they can maximize their profits in the legal sense, that they will not get money to build the thing in the first place.

Mr. Lamant:

In one of the markup sessions on the Taps right of way bill, Senator Haskell made a remark that I think (I can't quote him verbatim now) I can give you the substance of it-- he said, "Gentlemen: You have ten billion barrels of oil at this end, you have a hungry market at this end. The transportation business (the moving business) is there. You are giving to these people what amounts to a monopoly franchise. If you will instead give it to me I will gladly resign from the Senate and arrange the financing. In fact," he said, "If my labrador retriever couldn't do, I'd shoot him."

Q from Senator Palmer

Yes, Mr. Lamant, Are you saying then, that in order to have this public government, not public ownership, that ...

or total of our present regulatory bill—present regulatory act of 1972—gives us the kind of protection that we need?

Mr. Lamant:

I think it does.

Q from Senator Palmer:

Are you saying that the certification requirement that we've heard discussed so much is an integral part of that bill that should be retained?

Mr Lamant:

I think it is a most essential part of it and I think it does not create a concept of jurisdiction to the degree that it should be thrown out without some very very careful interpretation. In other words, I think there is no conflict.between the federal certification as done by the congress in the right of way bill and the certification requirements that you have. It supplements what they did. You do not impose an undue or discriminatory burden. You are simply saying that the interstate commerce (not transportation) which will flow over this line will in fact be more effectively unburdened if your certification power remains to require the input and output facilities which alone can make this an effective instrumentality of free interstate commerce.

Q from Senator Palmer: What in truth may be the situation is that the action of the pipeline owners may be more burdened but interstate commerce may be more unburdened. Is that true?

Mr. Lamant: Precisely.

Palmer: As far as land owners rights and abilities to do things because of the property right and contract right, that they may or they may not be able to under regulatory right--this has been one of the main issues here, I believe, in the litigation: The companies saying we're attempting to do by indirect means what we cannot do by direct means. You touched on that, I'm not sure exactly how you feel about that?

Mr. Lamant: Well, I think that in this area, rather than try to work out all the details, I would go back to what I said in general. You would be making a mistake if you did legislate I don't think that you did, you would be making a mistake if you did legislate or now legislate solely in terms of the leasing powers. I would think that the state of Alaska through its legislature could declare that whatever powers it has as a sovereign state in the commerce field, in the regulatory field in giving them public domain--I mean in the condemnation aspect and in the corresponding aspect reciprocal of allowing access to public lands that if it used all these powers and made it clear that it was using all these powers, it would eliminate a good deal of what rather complex arguements has been raised in that particular case. I've not had an opportunity to examine pleasings there. But this in general is my feeling. If you sought to use only leasing powers and nothing else that might be a valid arguement, it MIGHT be, but this state need not limit itself to using only those powers. Use all the powers which you have, and so declare.

PALMER: On another subject you have heard the discussion going back and forth on the Common Purchaser Provision. Would you comment on that?

LAMONT: Well, it is a little bit ambivalent. If you have absolute free access by any possible shipper to this line, you will have enough purchasers up here buying oil to ship that you will not worry about compelling those companies which are now in the business on the North Slope to be common purchasers. Moreover, if you compel them to be common purchasers, they will have an excuse for acting like monopolists with respect to the entire amount of oil. On the other hand, I was really very much amused to read in the Common Purchaser Bill of the proposed amendment here, that while it declares certain people to be common purchasers, on SB 7, Page 2, the provision about people who take only their own oil except for royalty oil, would mean in substance that your common purchaser enactment would apply only to anybody else and not to the people who will be doing business on the North Slope. It was a very interesting example of legal prestidigitation.

PALMER: I believe it was Mr. Spahr of SOHIO who indicated that any change in this package might result--would result in review by the companies on the agreement and may, possibly obstruct the beginning, and perhaps then a drop out of some of the smaller companies who are now a member of the consortium, and was very fearful that this would have an adverse impact--or could have an adverse impact--on the anti-trust suit or the consortium's position in that anti-trust suit, and that also the State's excercise of its 20% option could be a factor in this thing that could be adverse to the corsortium. Would you care to comment on this a little?

LAMONT: Well, to the extent of the smaller companies presence in the consortium was intended as an anti-trust defense -- well, it's simply ridiculous. They have very little to say about the line. They have almost no clout within the consortium. Here I must get a little bit cautious. I don't want to go into the underlying documents which would go into that, but I would simply say that in general their presence would not be a significant factor. If, in fact, they had to re-examine the organization of this line, and hopefully from your point of view, reorganize it in terms of a straight, independently owned corporate operation in which there will be a pipeline which accepts tenders -- not an undivided interest pipeline, but a pipeline which in itself is a common carrier, and not a complex bundle of common carriers each illegally sharing a portion of the capacity, I think, to be honest with you, it would substantially lessen the anti-trust problem--not create more, but the mere existance of the minority interest here was never an obstacle.

PALMER: On this 20% option, if I may and this will be the last one, our Attorney General says that even if the State exercises its option and became a 20% owner, or a partial owner of the pipeline, this would not give them access to the Board table, he, as Attorney General representing the State, would not be able to sit down with the other members and discuss policy, etc. Would you comment on that?

LAMONT: Well, you have a most complex corporate setup here. You have a operating company, Alyeska, which is a joint-venture company--this is public information--you have the pipeline itself/owned in undivided interest by individual pipeline companies, each of whom will set their own tariffs, operating practices, input and output points, assuming for example that they are left as interstate commerce act line. I do not know precisely to which your option referred. Was it an option to buy an interest in the line? An option to buy an interest in the company? An option to buy an interest in the companies which are actually operating the common carrier line? I think it probably is related only to the pipeline itself--the undivided interest in the line--the physical property, and possibly, an undivided interest in Alyeska, but since all Alyeska is is an operating agency obedient to the orders of it's owner, the states presence on the board of Alyeska would not be a terribly/important factor, in determining the operating practices of Exxon Pipeline Company. Which will be the Exxon, Arco, BP will be the actual operators, the actual parties shipping on the line.

Senator Thomas: I just wanted to ask mr. Lamont, what you think the odds are that there will be a suit against TAPS and what this could do in terms of further dealy?

Lamont: I really have no way of knowing - I opted out, of the discussion. I think there is a good likelihood that there will be a federal case on the entire proposition. Under the terms and conditions that I have indicated, it may or may not include the pipeline. The federal government will almost certainly, unless they have changed the course that we set the investigation in 1968, the federal government will almost certainly not ask to enjoin the pipeline. As to whether private interests may or may not, it depends, there is a tremendous lure of trouble damages when this line becomes operative. And then I think there might be a considerable possibility that there would be suits. As to whether the environmentalists and some of the consumer organizations, I think not the consumerists, if the environmentalists, some of the native groups, some fisheries, if these people really

END OF TAPE I

Again, you have to go before a Federal Court, before a Federal Judge and say that the creation of this pipeline on these terms is of such likelihood of damage, such likelihood of anti-competitive damage that it ought not to be built on these terms. The court might then grant a preliminary injunction, it might well not. Anybody in the anti-trust field who trys to guess what different federal courts will do on preliminary injunctions, is really a gambler.

Q. One of our main concerns here are the best interests for the State of Alaska. Where we should go from here. I recognize that __ ___ (tape inaudible)______ ___ ___ ___the laws have been challenged in the courts ___ ___ ___ ____________________ and the recommendation of the administration. From the standpoint any interest of Alaska, I recognize your comments and appreciate your comments on ___ ___ ___ ___ __ this line. What do you suggest to be out best course of action.

A. At the moment, I would say inaction. In other words, you have a statute on the books. You know its been challeneged. The people who are challenging it, incidentally, are the ones who have the most at stake in getting the line built. The companies who have this enormous deposit of oil and this enormous investment in drilling that they have made are rather anxious to begin realizing on it, particularly now, in the world crisis, with the prices of crude oil skyrocketing. If their litigation alone stands in the way of completing this pipeline, I do not think that litigation will stand long.

Q. From the standpoint of the best interests of Alaska it has been suggested that additional delays will result from inaction. I would appreciate it if you would look only from the standpoint of Alaska; would you still suggest then that even though there were delays from inaction that we persist in inaction.

A. If, in fact, there would be significant delays, its difficult for me to put myself in your position as a legislator. Thank God I don't have to think as far in the future. All I have to do is think about just a couple of more years and then I can put my feet up on the hob in front of the fire and say to heck with it. What I mean by inaction is this: You have a good regulatory framework set up. It is complex, it needed to be so. It was created after a long consideration--long and arduous deliberation. It may need some refinement here and there. I do not mean total inaction. But I'm saying simply do not exchange to the degree to which you are asked to change it, for the reasons that you were asked to change it. Because the changes proposed will risk more litigation and more delay than they will end--most of the changes proposed. The basic, the core ones. You may be able to refine it in some sense to further mitigate those chances, and I wish you well in your responsibility and thank God it isn't mine.

Q. Are you in any position to tell us, in any way, whether the Justice Department currently has an anti-trust claim against the owners of Alyeska (rest of question inaudible)

A. That I can answer and I can answer it very bluntly. They have had, by both voluntary production and civil investigative demand, a rather considerable body of documentation. As of the time I left, the case was still proceeding. About a month ago they called me in to talk with the new staff that had been assigned since that time. They are still proceeding. They will intend to proceed, I'm certain. If they don't, to be perfectly honest with you, I think I will do an awful lot of yelling. But what they are proceeding with respect to is not to stop the pipeline, but to stop a rather monopolistic control organization. Did you think, did you ever stop to think, that you have within three companies hands, operating in a very close joint venture, a greater degree of total control over the crude oil markets of the West Coast and indeed of the entire United States, than the State of Texas had in the years in which Texas held the umbrella over the industry and virtually controlled prices and supplies.

Q. Are you in a position to disclose, in any way. whether that proceeding would be on the basis that this was a joint venture pipeline, or is it from the monopolistic standpoint?

A. As I told you, earlier in the testimony, I said in substance that we viewed the pipeline as merely one supplementary aspect of the overall case. That this joint venture nature did give to the basic dominance of the companies of the North Slope a very considerable amount of additional combilatory power. But that existed only to the extent that their discretion to accept shipments or reject them was not controlled by public authority; and that if there were an effective public authority control, that would almost certainly become an extremely minor element of the case.

Q. Does the Justice Department, from a standpoint of Alaska, I assume that we're entitled to rely on the Justice Department's ability to prosecute and pursue these things. . .

A. In Boston about three weeks ago, I was on the rostrum with Bruce Wilson, who is the Deputy Assistant Attorney General. We played a rather peculiar Alphonse and Gaston act--he was my old boss. He is a very fine fellow and an extraordinarily active anti-truster. But we both made the same point--Anti-trust division has about, I've forgotten now, about a twelve--less than a twelve million dollars budget to police an economy which is rather considerably larger than that. The problem of allocation of staff becomes an extreme problem. When I was still in the Department, we were handling four pipeline cases, those which you have named with a total staff of four people. Like I said, its roughly like trying to clean Aegean stables with your left hand and dig the Panama Canal with your right. These are complicated matters and to do them justice they need more staff but Justice does not have more staff. You can rely on Justice to do what it sets out to do but you cannot rely on Justice to be able to police the entire economy. There will be a great deal that it cannot do and that which you can do for yourself, you should do.

Q. Is there any other way to finance a 4.5 billion dollar project than by joint venture of this type?

A. It is a very big project. There are a great many rather large companies which have been in the transportation business. One thing that has not come up for comment here is that you do have a number of independent pipeline carriers who are in the business of learning pipelines as a transportation business for the profit thats in it. Southern Pacific Railroad, for example--Union Pacific, Great Northern. These are transportation companies. Pennsylvania Railroad operates a buckeye company--the old Buckeye Pipeline which is a large and active system in areas in the East. Williams Brothers Pipeline Company runs a products pipeline that covers almost the entire mid-West. In other words, before you conclude that the size of this is so great that it couldn't otherwise be financed, look at it in terms of the size of the transportation business that exists so that a reasonable profit can be made on an independent basis by an independent company. I think the best of all possible worlds here, for you, as in the United States generally, would be if these carriers were in fact independent transportation companies in the business of hauling oil for profit for anybody who chose to bring it to them. And I might add, there are bills which, if enacted, would apply the commodities clause to pipelines, which are going to be undergoing active hearing before the Congress rather shortly. I think the Congress's interest in this area is extremely healthy because quite simply, I would just as soon General Motors didn't own the Pennsylvania Railroad or vice versa. I think my cars would be shipped cheaper and there would be more competition in automobile shipment as long as the automobile companies have a choice of independent carriers and they are making their profit off automobiles, not off transportation. And they are making their profit in competition with other people by making automobiles, not by controlling the means of shipment.

Q. We would have to wait for federal law to pass before we could proceed on that theory, if I understand you correctly.

A. If the companies say that applying your fair regulatory system means that they will have to rethink the project, perhaps, God willing, they might rethink it in terms of an independent carrier. In the course of the hearings which you read on Colonial, you will recall Congressman Contes extreme interest in the fact that this risk was so great and the investment was to great that the companies had to restrict ownership to themselves and had to say that--had to agree--that if any one of them wished to transfer it that ownership, they had to offer it to the others. And Congre. man Contes scratched his head and got a little bit bewildered and said, you mean to say that because of the risk involved you're not willing to share it with anybody else?

Q. (question by Sen. Silides completely inaudible)

A. I'm sorry sir, but I'm both not quite as familiar as I should be with the tax provisions and unfortunately I can remember rather distinctly some calculations that were made by some of the carriers here as to exactly what would happen there, and I would rather not comment on it.

Q. You think this would have an adverse affect.

A. Yes.

Q. Could you state who your first contact was in regard to coming to Alaska to testify.

A. I was called in California by Senator Croft to ask whether or not I would be available. I was then called in Washington by Mr. Elliott if I could come.

Q. Your comments on the pipeline and the ownership reminds me of the language of Senate Bill 3 on page 7 where we're talking about the 20% ownership; and the new language agreed to by the companies would afford the state an opportunity to negotiate

____ interest

in the pipeline, except for sales or transfer of interest in the pipeline among the owners of the pipeline. Is that reminiscent of the case you're talking about?

A. Yes, exactly. In the Colonial pipeline case, as is set out in the hearings that Congressman Smith held, it was a stockholders agreement. It said in substance, it set out precisely the shares of the owners in Colonial. It said before any owner can transfer any part of its share other than by reorganization or merger, it must offer it, it must say who's the buyer, what is the price and it must give the other owners a chance to buy that share or that interest proportionately. If, after a period of time, I think 90 days, all of the shares have not been opted for in a proportionate basis by the companies who have--the other owners of the company;

then there is a second round, in which it is again offered proportionately to each of the owners, dropping out the one who hadn't taken any shares the first time. If, at the end of that round, there were shares still left untaken, then they had to be offered to any one of the other owners who wished to take it. Only then, could that be sold to any outsider. I would presume, including the state, if this is that kind of an agreement. And I might add I have seen many of those agreements with respect to many pipelines.

Q. We have formed a bill dealing with the 480 acres, I believe, of onshore line in Valdez, along with the special offshore line and acreage for construction of the terminal facilities and loading facilities. The question is whether to sell this land in fee simple to the consortium or whether it would be in the State's interests to lease it. Would you comment on this as far as protection of the State's interests?

A. This gets a little bit into the complications of your reliance on the leasing power as well as the regulatory powers in the enactment in the 72 Legislation. I think it is, in fact, a tip off that the companies wish to buy this land in fee in order to have the tanks and loading terminals outside your jurisdiction if they can. Those tanks are an integral part of any kind of transportation system. The availability of common warehouse facilities at the end of the line would be an absolute essential if you were actually going to have a transportation business accepting shipments from outsiders for transport along the line. Because there will be some purchasers who, while they may wish to take oil in the field and ship it over the line on a regular basis, may not wish to make the multi-million dollar investment in tanks and facilities to accept that shipment at the terminal point. For example, those Williams Brothers and Pennsylvania Railroad, as well as Southern Pacific, offer common warehouse facilities, common terminals. I think the companies will not do that, and I think the fact they wish the land in fee simple is an attempt to get outside what they think is your principle regulatory effort in order to do so. I would say under the circumstances I would be very very wary of the problem.

Q. You've testified rather extensively on the anti-trust laws, but isn't it true that anti-trust laws dealing with joint ventures are really very Fuzzy ____ ___ _, isn't that . . .

A. No, sir it is not. Panollen pointed out that although in that particular situation there was not a violation of Section 7 that a joint venture was in effect a merger under Section 7. Here, however, you are dealing with something which in terms of size goes into Section 1 and Section 2 combinations. A joint venture is a combination beyond any plain adventure.

Q. When you and Mr. Wilson testified before the house committee, he made the statement, I believe, that finance was one area of the anti-trust law which is __ ___ ___________ ___ ___ __ in the area of joint ventures.

A. Mr. Wilson is entitled to his opinion. What I think he was speaking of there and that was one of the answers he --we had not previously discussed before we went to the testimony. I think he was speaking there of joint venture pipelines, but you see, he was talking in terms of a line, which though it is large and though it involves a substantial number of refiners and markers, does not come anywhere close to the proportion of market which you are dealing with here. And Mr. Wilson and no one else will tell you that there is any lack of clarity about a joint venture as a combination when it approaches Section 2 size.

Q. Was there any success in litigation on the basis of a joint venture pipeline?

A. There has not been. There have been at least four private cases that were based on our Gateway Glacier theories that were bought. All four of them were settled at the courthouse steps with some rather substantial payments. I think if I were to hazard a reason, I would say on the one hand Justic Department was not able to bring this litigation forth because of the application of massive political clout. The private individual who sues is apt to find a very nice settlement because the oil industry the larger integrated companies very much do not want a precedent on the books which will invite a multitude of treble damage suits, because their liabilities will be enormous.

Q. Do you know how many states have their own anti-trust laws?

A. I can't give you the exact number sir, but most.

Q. Unless I'm mistaken, Alaska does not have such. . .

A. Professor Witherspoon was talking to me about that last nigh ; I was not aware of the fact I think it is a very significant lack. There is a uniform anti-trust act, it is a good one, there is a great deal of effort been given to it. There is a wide area of intra-state commerce to which an anti-trust law could apply and it should.

Q. That fact that we don't have these laws, wouldn't that tend to make this strong regulatory commission all the more important?

A. Yes. I'm sorry I should have made the question before, because I think that is exactly the case.

Q. Do I gather that possibly Ralph Nader is considering an anti-trust suit in this case?

A. I do not think so. When I talked to him this morning, and again last night, the conversation was in terms of for the love of God, do not let the State of Alaska rely on the Interstate Commerce Commission as such. Now, I do not know, and I think I would know if Nader was considering a suit, because we have worked a time or two rather closely in the area of both legislation and other matters respecting anti-trust laws in oil.

Q. Would you think, then, if we were to change our laws, that Mr. Nader might rethink his position.

A. Mr. Nader might rethink it, but to be honest with you, you have a rather bewildering variety of environmentalists concerns who have probably more funds for this purpose than Mr. Nader does. He might think of it, I don't know. It certainly is an obvious possibility. But more obvious, are your arious environmentalists concerns who have made it very very clear that they don't want no pipeline nohow.

MR. CHAIRMAN: If there are no further question--then thank you very much for coming.

Comparisan—
Texas vs. SB3

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

November 7, 1973

MEMORANDUM

TO: Senator Croft

FROM: Ray Manning, Legislative Counsel

SUBJECT: Comparison between Texas regulatory and leasing law and SB 3 in both the Resources and Finance Committee Substitutes

Sections 1 and 26 of the Finance Committee Substitute assume that there is some indefinite degree of federal preemption, whereas Texas in its Revised Civil Statutes, Arts. 6018 and 6019, assumes regulatory jurisdiction over "any pipeline or any part of any pipeline within the State of Texas", or any transportation from any oil field within the state to any distributing, refining, marketing or reshipping point within the state.

With regard to the general question of what can and what cannot be done by the use of a right-of-way lease upon state land, see the Revised Civil Statutes of Texas in Art. 6020, 6020a, secs. 3 and 5.

In both CSSB 3 (Finance) sec. 2 and CSSB 3 (Resources) sec. 1, field gathering lines are not required to be covered under the Right-of-Way Leasing Act with regard to common carrier status, etc. Under the Texas Revised Civil Statutes, Art. 6049a, secs. 8aa and 8aaa, field gathering lines or systems which purchase any petroleum are made common purchasers and common carriers and are subject to rate and tariff regulations by the commission. A gathering system which transports crude petroleum for hire would be a common carrier pipeline under Art. 6018, sec. 1 of the Texas Revised Civil Statutes and would be subject to regulation as a common carrier.

In sec. 12 of the CSSB 3 (Finance), language which appears in the Resources Substitute has been deleted (p. 6, lines 20-25). There is no such limitation placed on the Texas definition of Common Carrier (see Art. 6048 T.R.C.S.) and could come back at a later date in the form of a showing of legislative intent as an indication that the legislature by striking this language showed it did not intend to have it applied to common carriers.

In covenant (4) of AS 38.35.120 of the FINANCE version, the language referring to throughput agreement transfers to the state has been deleted. The argument that the pipeline carrier-owners cannot transfer these because the banks will be holding them as collateral seems unconvincing since they obviously could not transfer what they do not have in the first place and the banks will not be holding these agreements as collateral forever. It would seem that when they become the sole property of the pipeline carrier they could and would be transferred to the state under the RESOURCES version of SB 3.

In covenant (7) of the FINANCE version, the addition of the language beginning with "provided" on page 8, line 4 could place the state in a position of having to bear costs of connections which it would not have to bear under the Texas statute. See Art. 6049a, sec. 7 which provides the language "...and required to be in the public interest and that the expense involved will not impair the ability of such common carrier...or perform its duty to the public." A new covenant (8) has been added in the FINANCE version which is supposed to permit the state to take its "royalty in kind" oil off the line at state expense. Covenant (8) in the RESOURCES version therefore becomes covenant (9) in the FINANCE version of SB 3.

In covenants (8) - (9) the FINANCE version deletes the language taken from the Texas statute found in Art. 6049a, sec. 7 and simply leaves it to the Public Interest test which exists in both versions.

In covenant (10) RESOURCES and (11) FINANCE (p. 9, line 2) the words "the protection of" have been added before the words "public interest". It is very difficult to determine whether or not this weakens the term of art "public interest" or not. If it does cast a cloud over whether or not the financial interests of the people are still covered or not, then it may not be good policy to have it remain in this covenant and in the FINANCE version (p. 13, line 18).

RM/sm

Art. 6018. Pipe line carriers

Every person, firm, corporation, limited partnership, joint stock association or association of any kind whatever;

1. Owning, operating or managing any pipe line or any part of any pipe line within the State of Texas for the transportation of crude petroleum to or for the public for hire, or engaged in the business of transporting crude petroleum by pipe line; or

2. Owning, operating or managing any pipe line or any part of any pipe line for the transportation of crude petroleum, to or for the public for hire, and which said pipe line is constructed or maintained upon, over or under any public road or highway, or in favor of whom the right of eminent domain exists; or

3. Owning, operating or managing any pipe line or any part of any pipe line or pipe lines for transportation to or for the public for hire, of crude petroleum, and which said pipe line or pipe lines is or may be constructed, operated or maintained across, upon, along, over or under the right of way of any railroad, corporation or other common carrier required by law to transport crude petroleum as a common carrier; or

4. Owning, operating or managing or participating in ownership, operation or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipe line or pipe lines, or part of any pipe line, for the transportation from any oil field or place of production within this State to any distributing, refining or marketing center or reshipping point thereof, within this State, of crude petroleum bought of others;

Is hereby declared to be a common carrier and subject to the provisions of this law. The provisions of this law shall not apply to those pipe lines which are limited in their use to the wells, stations, plants and refineries of the owner and which are not a part of the pipe line transportation system of any common carrier as above defined; nor shall such provisions apply to any property of such a common carrier which is not a part of or necessarily incident to its pipe line transportation system. Acts 1917, p. 48.

Art. 6019. Control of

It is declared that the operation of common carrier pipe lines is a business in which the public is interested, and is subject to regulation by law. The business of purchasing, or of purchasing and selling crude petroleum, using in connection with such business a pipe line of the class subject to this law to transport the crude petroleum so bought or sold, shall not be conducted, unless such pipe line so used is a common carrier within the purview of this law, and subject to the jurisdiction herein conferred upon the Railroad Commission. Id.

Art. 6020. Powers of carrier

The right to lay, maintain and operate pipe lines, together with telegraph and telephone lines incidental to and designed for use only in connection with the operation of such pipe lines along, across or under any public stream or highway in this State, is hereby conferred upon all said common carrier pipe lines. Any person, firm, limited partnership, joint stock association, or corporation may acquire such right by filing with said Commission a written acceptance of the provisions of this law expressly agreeing that in consideration of the rights so acquiring it shall be and become a common carrier pipe line, subject to the duties and obligations conferred or imposed by this law.

Art. 6020a. Telephone, telegraph, electric transmission and power lines; oil, gas and sulphur pipelines; irrigation canals and water pipelines; easements and rights of way over public lands and waters

Grants of right-of-way

Section 1. The Commissioner of the General Land Office may execute grants of all easements for right-of-ways for telephone, telegraph, electric transmission and power lines, for oil pipelines, gas pipelines, sulphur pipelines, and other electric and pipelines of whatsoever nature, and for irrigation canals, laterals, and water pipelines granted by this State, across all unsold Public Free School Land, and across all islands, salt-water lakes, bays, inlets, marshes and reefs owned by the State within tidewater limits, and across that portion of the Gulf of Mexico within the jurisdiction of Texas. The Board of Regents of the University of Texas may continue to execute, under authority heretofore granted, all right-of-way easements for telephone, telegraph, electric transmission and power lines, for oil pipelines, gas pipelines, sulphur pipelines, and other electric and pipelines of whatever nature, and for irrigation canals, laterals, and water pipelines across lands belonging to the State, and dedicated to the support and maintenance of the University of Texas. The Board of Regents of the University may continue to execute, under authority heretofore granted, easements or leases for the erection and maintenance of electric substations, pumping stations, loading racks, and tank farms on University Lands, and the Commissioner of the General Land Office may execute easements or leases for electric substations, for pumping stations, loading racks, and tank farms to be located on State Lands other than those owned by the University.

Approval of forms; recording and fees

Sec. 2. All easements granted under Section 1 of this Act shall be on forms approved by the Attorney General and shall be recorded in the office of the county clerk of the county in which the land lies. The recording fee shall be paid by the persons, firm, or corporation obtaining the easement or right-of-way who shall furnish a certificate of such recording to the Commissioner of the General Land Office.

Term of easement

Sec. 3. No right-of-way easement, electric substation, or tank farm, loading rack, or pumping station easement or lease of the character enumerated in Section 1 hereof may be granted for a longer term than ten (10) years, but any such easement may be renewed by the official or officials charged with the execution thereof, in his or their discretion.

includes pipelines

Privilege fee for right-of-way

Sec. 4. From and after the passage of this Act every person or corporation occupying or using any unsold Public Free School Land, any islands, salt-water lakes, bays, inlets, marshes and reefs owned by the State within tidewater limits, any portion of the Gulf of Mexico within the jurisdiction of Texas, and any unsold public land dedicated to the University of Texas, or any part thereof, as a telephone, telegraph, electric transmission and/or power line right-of-way, as an oil and/or gas pipeline right-of-way, or sulphur pipeline right-of-way, or irrigation canal, lateral, and water pipeline right-of-way, shall, as a condition to such further use or occupancy, pay annually in advance for such privileges, to the Commissioner of the General Land Office at the General Land Office in Austin, Texas a sum equal to two and one-half cents (2½c) per lineal rod per annum for each and every rod of telephone, telegraph, electric transmission and power line, oil pipeline and/or gas pipeline used, possessed, or maintained by any such person or corporation on any unsold Public Free School Land, on any islands, salt-water lakes, bays, inlets, marshes and reefs owned by the State within tidewater limits, on any portion of the Gulf of Mexico within the jurisdiction of Texas, and on any public land dedicated to the University of Texas. This annual privilege fee shall be paid by all such persons and corporations on all oil pipelines, gas pipelines, telephone, telegraph, electric transmission and/or power lines now existing and situated on public lands of the classes above mentioned which have not heretofore paid such fee. All amounts due shall be paid annually unless the easement granted provides otherwise.

Terms of easements fixed by Land Commissioner and Board of Regents of University

Sec. 5. Hereafter all telephone, telegraph, electric transmission, power lines, and/or all pipeline right-of-way easements and easements or right-of-ways for irrigation canals, laterals, and water pipelines shall be executed on terms to be fixed by the Land Commissioner and by the Board of Regents of the University of Texas, respectively, but no oil and/or gas pipeline right-of-way easement, or sulphur pipeline right-of-way easement, telephone, telegraph, electric transmission and/or power line right-of-way easement shall be granted which does not provide for an annual privilege fee of not less than two and one-half cents (2½c) per lineal rod per annum of oil and/or gas pipeline for which a right-of-way is sought. A higher fee may be fixed by contract between the officials named and any grantee of such easement.

Rentals for pumping stations, etc.

Sec. 6. The rental to be charged for an easement or lease for electric substation sites, pumping stations, loading racks, and tank farms shall be such as shall be agreed upon between the lessee and the Board of regents with respect to University lands, and the Commissioner of the General Land Office with respect to other State Lands.

Disposition of funds

Sec. 7. All income received by the Land Commissioner under this Act from Public School Land shall be credited to the Available School Fund; all income received by the Land Commissioner under this Act from University Lands shall be credited to the Available University Fund, and all income received by the Land Commissioner under this Act from the other lands herein set out shall be credited to the General Revenue Fund.

Interest on past due payments

Sec. 8. All past due payments under this Act shall bear interest at the rate of ten per centum (10%) per annum. In event the date of payment is not fixed by contract, or in event no written contract has been executed, all unpaid annual fees due shall bear interest at the rate of ten per centum (10%) calculated from the first day of January following the year for which such annual privilege fee was due.

Penalty for violations

Sec. 9. No person or corporation shall hereafter construct any telephone, telegraph, transmission and/or electric lines, pipeline, electric substation, tank farm, loading rack, and/or pumping station, irrigation canal, lateral, and water pipe line of the kind and character enumerated in Section 1 hereof across or on any section or part of a section of land of the character enumerated in Section 1 hereof and owned by the State of Texas, nor shall any person or corporation owning or possessing any telephone, telegraph, transmission, and/or electric lines, pipeline, electric substation, tank farm, loading rack, and/or pumping station, irrigation canal, lateral, and water pipeline of the kind and character enumerated in Section 1 hereof now lying and situated on or across any section or part of a section of land of the character enumerated in Section 1 hereof and owned by the State of Texas, who has not obtained a proper easement as herein provided for, continue in possession of any such lands without obtaining from the Commissioner of the General Land Office, or the Board of Regents of the University of Texas, respectively, a grant of a right-of-way easement or other easement across or on such lands where such telephone, telegraph, transmission and/or electric lines, pipeline, electric substation, tank farm, loading rack, or pumping station, irrigation canal, lateral, and water pipeline is to be constructed. Any person or corporation violating this section of this Act shall be liable for a penalty of One Hundred Dollars ($100) per day for each day of such violation, said penalty to be recovered by the Attorney General.

Venue of suits

Sec. 10. The venue of all suits by the State arising out of this Act, or for violation of any provision of this Act, is hereby fixed in Travis County. Acts 1933, 43rd Leg., p. 168, ch. 77; Acts 1943, 48th Leg., p. 275, ch. 147, § 1; Acts 1955, 54th Leg., p. 479, ch. 131, § 1.

Art. 6021. Injury to roads, etc.

The right to run pipe lines, telegraph and telephone lines along, across or over any public road or highway can only be exercised upon condition that the traffic thereon be not interfered with, and that such road or highway be promptly restored to its former condition of usefulness, and the restoration thereof to be subject also to the supervision of the commissioners court or other proper local authority. In the exercise of the privileges herein conferred, such pipe lines shall compensate the county or road district, respectively, for any damage done to such public road. Nothing herein shall be construed to grant any pipe line company the right to use any public street or alley of any incorporated or unincorporated city or town, except by express permission from the governing body thereof. Acts 1917, p. 48.

Art. 6022. Eminent domain

Every person, firm, corporation, limited partnership, joint stock association, or association of any kind whatsoever owning, operating or managing any pipe line, or any part of any pipe line within this State for the transportation of crude petroleum that is declared by this title to be a common carrier, shall have the right and power of eminent domain in the exercise of which he, it or they may enter upon and condemn the lands, rights of way, easements and property of any person or corporation necessary for the construction, maintenance or operation of his, its or their common carrier pipe line; and shall have the right to lay his, its or their pipes or pipe lines under any railroad, railroad right of way, street railroad, canal or stream in this State; and along and under any street or alley in any incorporated city or town in this State with the consent and under the direction of the governing body of such city or town; and across and under any public road, provided that no pipes or pipe lines shall be laid parallel with and on any public highway closer than fifteen feet from the improved section thereof except with the approval and under the direction of the commissioners court of the county in which such public highway is located; and such other rights in the matter of laying pipes and pipe lines as are conferred by Article 1197, subject to the conditions, limitations and restrictions therein stated. Acts 1919, p. 273.

Art. 6023. Jurisdiction

Power and authority are hereby conferred upon the Railroad Commission of Texas, over all common carrier pipe lines conveying oil or gas in Texas, and over all oil and gas wells in Texas, and over all persons, associations or corporations owning or operating pipe lines in Texas, and over all persons, associations and corporations owning or engaged in drilling or operating oil or gas wells in Texas; and all such persons, associations and corporations and their pipe lines, oil and gas wells are subject to the jurisdiction conferred by law upon the Commission, and the Commission is authorized and empowered to make all necessary rules and regulations for the government and regulation of such persons, associations and corporations and their operations, and the Attorney General shall enforce the provisions of this title by injunction or other adequate remedy and as otherwise provided by law. The word "Commission," as used in this title, shall mean the Railroad Commission of Texas. The word "Commissioner" shall mean any member of the Railroad Commission.

Art. 6024. Powers

In all matters pertaining to the discharge of its duties and the enforcement of its powers and authority as provided by the terms of this title, the Commission shall institute suits, hear and determine complaints, require the attendance of witnesses, pay their expenses out of the fund herein created, and sue out such writs and process as may be necessary for the enforcement of its orders, and punish for contempt or disobedience of its orders as the district court may do.

Art. 6025. Attendance of witnesses

If any witness fails or refuses to obey a subpoena from the Commission, or a Commissioner, the Commission or Commissioner may issue an attachment for such witness as in civil cases, and compel him to attend before the Commission or any Commissioner thereof, and give his testimony upon such matter as may be lawfully required of him, and to bring with him and produce on examination such records, books, vouchers, memoranda, true copies thereof, prints and such other matter as may be required, if any, in such subpoena.

Art. 6026. Criminating testimony

If a witness fails or refuses to attend on being summoned, or to answer any question propounded to him, or to produce any record or data required to be produced by such subpoena, the claim that any such testimony may tend to criminate the person giving it shall not excuse such witness from testifying or producing such records and data, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Art. 6027. Witness fees

Each witness who shall appear before the Commission or a Commissioner at a place outside the county of his residence shall receive for his attendance three dollars per day and three cents per mile traveled by the nearest practicable route, in going to and returning from the place of meeting of said Commission or Commissioner, which shall be ordered paid, upon the presentation of proper vouchers, sworn to by such witness and approved by the Commission or chairman thereof, provided, that no witness shall be entitled to any witness fees or mileage who is directly or indirectly interested in any public utility involved in or concerning which, in any way, the investigation or hearing on account of which he is summoned, shall relate, or who is in anywise interested in any stock, bond, mortgages, security or earnings of any such utility, or who shall be the agent, attorney or employee of such utility, or any officer thereof, when summoned at the instance of such utility. No witness furnished with free transportation shall receive pay for the distance he may have traveled on such free transportation.

Art. 6028. Officer's fees

The sheriff or constable executing any process issued by the Commission or any Commissioner thereof under the provisions of this title shall receive such compensation as the Commission may allow.

Art. 6029. Rules and regulations

The Commission shall make and enforce rules, regulations or orders for the conservation of crude petroleum oil and natural gas and to prevent the waste thereof, including rules, regulations or orders for the following purposes:

(1) To prevent the waste, as hereinbefore defined, of crude petroleum oil and natural gas in drilling and producing operations and in the storage, piping and distribution thereof.

(2) To require dry or abandoned wells to be plugged in such way as to confine crude petroleum oil, natural gas, and water in the strata in which they are found and to prevent them from escaping into other strata.

(3) For the drilling of wells and preserving a record thereof.

(4) To require wells to be drilled and operated in such manner as to prevent injury to adjoining property.

(5) To prevent crude petroleum oil and natural gas and water from escaping from the strata in which they are found into other strata.

(6) To establish rules and regulations for shooting wells and for separating crude petroleum oil from natural gas.

(7) To require records to be kept and reports made.

(8) It shall do all things necessary for the conservation of crude petroleum oil and natural gas and to prevent the waste thereof, and shall make and enforce such rules, regulations or orders as may be necessary to that end.

(9) To provide for the issuance of permits, tenders, and other evidences of permission when the issuance of such permits, tenders, or permission is necessary or incident to the enforcement of its rules, regulations, or orders for the prevention of waste. Acts 1919, p. 285; Acts 1931, 42nd Leg., 1st C.S., p. 46, ch. 26, § 15; Acts 1932, 42nd Leg., 4th C.S., p. 3, ch. 2, § 7; Acts 1935, 44th Leg., p. 180, ch. 76, § 4.

Art. 6029a. Rules and regulations; drilling exploratory wells and wells; abandoning wells; pollution prevention

The Railroad Commission shall also make and enforce rules, regulations and orders in connection with the drilling of exploratory wells and wells for oil or gas or any purpose in connection therewith; the production of oil or gas; and the operation, abandonment and proper plugging of such wells to prevent the pollution of the streams and public bodies of surface water of the State, and any sub-surface water strata that are capable of producing water suitable for domestic or livestock use, or for irrigation of crops or for industrial use, which would or might result from the escape or release of crude petroleum oil, salt water or other mineralized waters from any such well, or from operations in connection therewith.

In all cases where an application to drill a new well, or to redrill or deepen an old well, is made to the Railroad Commission of Texas, and in all cases where an application is filed with the Railroad Commission of Texas to authorize the connection of any producing well or wells to a pipe line or other outlet by any operator who has acquired said producing well or wells, and in all cases where a well potential form is filed by any operator who has reworked and brought into production any previously non-producing well and thereby makes application for an allowable for production of oil and/or gas therefrom, the Railroad Commission, prior to approving any such application, may require the applicant or applicants to execute and file with the Railroad Commission a bond in the penal sum of Five Thousand Dollars ($5,000) for any such well to be so drilled or operated, or in lieu of a separate bond for each such well, a blanket bond in the penal sum of Ten Thousand Dollars ($10,000) to cover all wells drilled, to be drilled, and/or operated in the State of Texas, conditioned that the operator will plug and abandon said well in accordance with the laws of the State of Texas and the rules, regulations, and orders of the Railroad Commission. Each of such bonds shall be executed by a corporate surety authorized to do business in Texas, and shall be renewed and be continued in effect until the aforesaid conditions have been complied with or release of same is authorized by the Railroad Commission. The discretion of the Railroad Commission in requiring a bond hereunder shall be final and not subject to appeal. In the event that any well covered by any such bond is transferred, sold, or assigned by its operator, a new bond covering said well or wells may be required by the Railroad Commission of the party acquiring same, and the bond of the prior operator shall remain in effect until the new bond is so provided or the filing of same is waived.

The Railroad Commission is hereby authorized and directed to employ such additional personnel as may be necessary to the administration and enforcement of this Act and related laws and orders, rules and regulations adopted by the Commission. Added Acts 1955, 54th Leg., p. 1097, ch. 406, § 1.

Art. 6030. Supervisor and employees

The Commission shall employ a Chief Supervisor of its Oil and Gas Division to aid the Commission in the enforcement of the provision of this Act and all Oil or Gas Conservation Laws of Texas, and all rules, regulations and orders of said Commission made thereunder. He shall also perform the duties placed upon the pipe line expert as set out in the pipe line statutes of this State. The Commission may also appoint a Chief Deputy Supervisor and such other Deputy Supervisors as may be necessary to assist in carrying out the provisions of this Act and related Statutes and shall employ such other assistants and clerical help as may be necessary for the same purpose. The salary of the Chief Supervisor and of Chief Deputy Supervisor and of the Deputy Supervisors shall be fixed by the Legislature in its appropriation bill for the Railroad Commission; provided such salaries shall not exceed the following amounts: That of the Chief Supervisor shall be Six Thousand ($6,000.00) dollars per annum, that of the Chief Deputy Supervisor shall be Five Thousand ($5,000.00) Dollars per annum, and that of the Deputy Supervisors shall be Thirty-six Hundred ($3,600.00) dollars each per annum. In addition to any other qualifications that may be required by the Commission, no one shall hereafter be appointed Chief Supervisor who has not had at least five years experience in some line of the oil or gas business, or in some other business or profession calculated to fit him for the performance of his duties. No one shall hereafter be appointed as Chief Deputy Supervisor who has not had at least three years experience in oil and gas field work, and no one shall hereafter be appointed deputy supervisor who has not had at least two years experience in oil and gas field work, a substantial portion of which shall be in the drilling or production department. All salaries and other expenses of every kind and character necessary in the administration and enforcement of this Act shall be paid out of the funds created in Chapter 30, Acts of 1917, being now Article 6032, Revised Civil Statutes of 1925, and in the manner therein provided. The Chief Supervisor, Chief Deputy Supervisor and all Deputy Supervisors and all other employees shall perform the duties prescribed by the Railroad Commission and in conformity to the rules and regulations of the Commission dealing with the production, transportation and conservation of crude oil and natural gas. As amended Acts 1929, 41st Leg., p. 694, ch. 313, § 3.

Art. 6031. Duties of supervisor

The supervisor and his deputies shall supervise the plugging of all abandoned wells and the shooting of wells and conform to the rules and regulations of the Commission, dealing with the production and conservation of oil and gas. The supervisor shall gather information, and assist the Commission in the performance of its duties under this title. Acts 1919, p. 285.

Art. 6033. Certificate of compliance

Owners or operators of oil or gas wells shall, before connecting with any oil or gas pipe line, secure from the Commission a certificate showing compliance with the oil or gas conservation laws of the State and conservation rules, regulations and orders of the Commission. No operator of a pipe line or other carrier shall connect with any oil or gas well until the owner or operator of such well shall furnish a certificate from the Commission that such conservation laws and such rules, regulations and orders have been complied with; provided, this Section shall not prevent a temporary connection with any well in order to take care of production and prevent waste until opportunity shall have been given the owner or operator of such well to secure such certificate.

The Commission shall have the power to cancel any certificate of compliance issued under the provisions of this Section when it appears that the owner or operator of a well covered by the provisions of same has violated or is violating, in connection with the operation of said well or the production of oil or gas therefrom, any of the oil or gas conservation laws of this State or any of the rules, regulations or orders of the Commission promulgated thereunder. Upon notice from the Commission to the operator of any pipe line or other carrier connected to any such oil or gas well that the certificate of compliance with reference to such well has been cancelled by the Commission, the operator of such pipe line or other carrier shall disconnect from such well and it shall be unlawful for the operator of such pipe line or other carrier to transport oil therefrom until a new certificate of compliance has been issued by the Commission. Upon notice from the Commission that a certificate of compliance as to any oil or gas well has been cancelled by it as herein provided, it shall be unlawful for the owner or operator of such well to produce oil or gas therefrom until a new certificate of compliance covering such well has been issued by the Commission as herein provided. Acts 1919, p. 285; Acts 1935, 44th Leg., p. 180, ch. 76, § 11.

Art. 6034. Books and records

All owners and operators of oil and gas wells shall keep books, showing accurately the amount of stock sold and unsold and amount of promotion money paid, amount of oil and gas produced and disposed of, with the price for which the same was sold, together with the receipts from the sale or transfer of leases or other property, and the disbursements made in connection with or for the benefit of such business; which books shall be kept open for the inspection of the Commission or any accredited representative thereof, and of any stockholder or shareholder or royalty owner in said business, and shall report such information to the Commission for its information when required by the Commission to do so. Acts 1919, p. 287; Acts 2nd C.S.1919, p. 79.

Art. 6035. Report to Commission

Any person, firm, partnership, joint stock association, corporation or other organization, domestic or foreign, operating wholly or partially within this State, acting as principal or agent for another, for the purpose of drilling, owning or operating any oil or gas well, or owning or controlling leases of oil and mineral rights or the transportation of oil or gas by pipe line, shall immediately file with the Commission the name of the company or organization, giving the name and post-office address of the organization, the plan under which it was organized, and the names and post-office addresses of the trustee or trustees thereof, and the names and post-office addresses of the officers and directors. Id.

Art. 6036. Penalty

In addition to being subject to any forfeiture that may be provided for by law and to any penalty that may be imposed by the Commission for contempt for the violation of its rules, regulations, or orders, any person violating any of the provisions of this Act or of Title 102, Revised Civil Statutes of Texas, 1925, as amended, or violating any rule, regulation, or order of the Commission promulgated thereunder, shall be subject to a penalty of not more than One Thousand Dollars ($1000) for each and every day of such violation, and for each and every act of such violation, to be recovered in any Court of competent jurisdiction in Travis County, or in the county of the residence of the defendant or, if there be more than one defendant, in the county of the residence of any of them, or in the county in which the violation is alleged to have occurred, such suit by direction of the Commission to be instituted and conducted in the name of the State of Texas by the Attorney General or by the county or district attorney where such suit is brought. The recovery or payment of any such penalty shall not authorize the violation of any provision of this Act, or Title 102, Revised Civil Statutes of Texas, 1925, as amended, or of any rule, regulation, or order of the Commission promulgated thereunder.

Any person aiding or abetting any other person in the violation of this Act, or of Title 102, Revised Civil Statutes of Texas, 1925, as amended, or of any rule, regulation, or order of the Commission promulgated thereunder, shall be subject to the same penalties as are prescribed herein for violation thereof by any such other person. Acts 1919, p. 287; Acts 1929, 41st Leg., p. 694, ch. 313, § 4; Acts 1931, 42nd Leg., 1st C.S., p. 46, ch. 26, § 3; Acts 1934, 43rd Leg., 3rd C.S., p. 120, ch. 64, § 2; Acts 1935, 44th Leg., p. 180, ch. 76, § 12.

Art. 6036a. Notice of hearing

No rule, regulation or order shall be adopted by the Commission under the provisions of this Act or of Title 102 of the Revised Civil Statutes of Texas, 1925, as amended, dealing with the conservation of oil and gas and the prevention of the waste thereof, except after hearing upon at least ten (10) days notice given in the manner and form prescribed by the Commission; provided that in case an emergency is found by the Commission to exist which, in its judgment requires the making of a rule, regulation or order without notice and hearing, such emergency rule, regulation or order may be promulgated and shall have the same validity as if a hearing with respect to the same had been held after due notice. The emergency rule, regulation or order authorized herein shall remain in force no longer than fifteen (15) days from its effective date, and, in any event, it shall expire when the rule, regulation or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation or order becomes effective.

The Commission may, without prior notice, revoke any rule, regulation or order promulgated by it; and it may, without prior notice, amend the same, provided the subject matter of the amendment was considered at the hearing made the basis for such rule, regulation or order. The renewal or extension of any rule, regulation or order shall be based upon a hearing after proper notice, subject to the provisions of this Section with reference to emergency rules, regulations and orders. Acts 1929, 41st Leg., p. 694, ch. 313, § 5; Acts 1935, 44th Leg., p. 180, ch. 76, § 7.

Art. 6038. Hearing, notice

No order establishing or prescribing rates, rules and regulations shall be made except after hearing and at least ten days and not more than thirty days notice to the person, firm, corporation, partnership, joint stock association, or association, owning or controlling and operating the pipe line or pipe lines affected. Acts 1917, p. 48.

Art. 6039. Reimbursement, when

If any rate shall be filed by a pipe line and complaint against same or petition to reduce same shall be filed by a shipper, and such complaint be sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipe line shall have the right to

Art. 6040. Exchange of facilities

Every common carrier as above defined shall exchange crude petroleum tonnage with each like common carrier and the Commission is authorized to require such connections and facilities for the interchange of such tonnage to be made at every locality reached by both pipe lines whenever a necessity therefor exists and subject to such rates and regulations as may be made by the Commission; and any such common carrier under like rules and regulations shall be required to install and maintain facilities for the receipt and delivery of crude petroleum of patrons at all points on such pipe line. Id.

Art. 6041. Grades of oil carried

No carrier shall be required to receive or transport any crude petroleum except such as may be marketable under rules and regulations to be prescribed by the Commission, and the Commission shall make rules for the ascertainment of the amount of water and other foreign matter in oil tendered for transportation, and for deduction therefor and for the amount of deduction to be made for temperature, leakage and evaporation. Id.

Art. 6042. Powers not limited

Particular powers herein granted to the Commission shall not be construed to limit the general powers conferred by law, and until set aside or vacated by some order or decree of a court of competent jurisdiction, all orders of the Commission as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity. Id.

Art. 6043. Publication of tariffs

Such common carriers of crude petroleum shall make and publish their tariffs under such rules and regulations as the Commission may prescribe, and the Commission shall require them to make reports, and may investigate their books and records kept in connection with such business. Id.

Art. 6044. Monthly reports

The Commission shall require of such common carrier pipe lines duly verified monthly reports of the total quantities of crude petroleum owned by such pipe lines and of that held by them in storage for others, as also of their unfilled storage capacity, but no publicity shall be given by the Commission as to stock of crude petroleum on hand of any particular pipe line; but the Commission in its discretion may make public the aggregate amounts held by all pipe lines making such reports, and of their aggregate storage capacity. Id.

Art. 6045. Discrimination prohibited

No such common carrier in its operations as such shall discriminate between or against shippers in regard to facilities furnished or service rendered or rates charged under the same or similar circumstances in the transportation of crude petroleum; nor shall there be any discrimination in the transportation of crude petroleum produced or purchased by itself directly or indirectly. In this connection the pipe line shall be considered as a shipper of the crude petroleum produced or purchased by itself directly or indirectly and handled through its facilities. No such carrier in such operations shall directly or indirectly charge, demand, collect or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided, this shall not limit the right of the Commission to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine; nor shall any carrier be guilty of discrimination when obeying any order of the Commission. When there shall be offered for transportation more crude petroleum than can be immediately transported, the same shall be equitably apportioned. The Commission may make and enforce general or specific regulations in this regard. No such common carrier shall at any time be required to receive for shipment from any person, firm, corpora-

Art. 6046. Rules for prevention of waste

The Commission, when necessary, shall make and enforce rules and regulations either general in their nature or applicable to particular oil fields for the prevention of actual waste of oil or operations in the field dangerous to life or property. Id.

Art. 6047. Penalty

Any common carrier as herein defined who shall violate any provision of this law, or who shall fail to perform any duty herein imposed, or any valid order of the Commission when not stayed or suspended by order of court, shall be subject to a penalty of not less than one hundred nor more than one thousand dollars for each offense, recoverable in the name of the State. Such penalty may also be recovered by and for the use of any person, corporation or association of persons against whom there shall have been an unlawful discrimination as herein defined; such suit to be brought in the name of and for the use of the party aggrieved. Id.

Art. 6048. Transportation of crude petroleum

Subject to the provisions of the law and the rules or regulations which may be prescribed by the Commission, every such common carrier shall receive and transport crude petroleum delivered to it for transportation and shall so receive and transport same and perform its other duties with respect thereto without discrimination. Id.

Art. 6049. Salary of expert and other expenses

The salary of the expert for the Commission and all other employees shall be paid out of the fund created under Article 6032, by monthly warrants drawn by the Comptroller on the State Treasurer. All other expenses incurred in the administration and enforcement of the provisions of this subdivision shall be paid out of the same fund by like warrants issued upon duly verified statements of the persons entitled, with the approval of the chairman.

Art. 6049a. Regulating storage tanks for hire and pipe lines as public utilities

Public utilities, who declared

Sec. 1. Every person, association of persons, or corporation owning, operating or managing any crude petroleum storage tanks or storage facilities for the public for hire, either in connection with a pipe line, pipe lines, or otherwise, is hereby declared to be a public utility, subject to the provisions of this law.

Discrimination forbidden

Sec. 2. No such public utility in its operations as such shall discriminate between or against its patrons in regard to facilities furnished or services rendered, or rates charged under the same similar circumstances, in the storage of crude petroleum.

Bond required for conformity to regulations

Sec. 3. All such public utilities as herein defined shall within thirty days after this Act takes effect, or in case of persons, associations or corporations, hereafter engaging in such business, before they actually engage therein, file a bond which shall not exceed Twenty-five Thousand Dollars ($25,000.00), properly executed, payable to the State of Texas, the amount of such bond and the sureties thereon to be subject to the approval of the Railroad Commission of the State of Texas. The amount of such bond may be changed from time to time by order of the Railroad Commission, after notice and hearing as prescribed by Article 6028, Revised Civil Statutes, in accordance with the volume of business done, or to be done, by such public utility and such bond or securities in lieu thereof as provided by Article 836 of the Revised Civil Statutes of Texas, shall be approved by the Railroad Commission before it is filed. Such bond shall be conditioned that the utility will observe the provisions of this law and the rules of the Railroad Commission in so far as its business is regulated and controlled by such Commission, and that the utility will exercise ordinary care in the storage, preservation, handling and delivery of all petroleum products entrusted to it and shall guarantee the classification, measurements and grades made by such public utility, under its authority in conformity herewith. The bond shall be for the benefit of the patrons of such utility and their assignees as though they were named obligees therein and they shall severally have the right of suit thereon.

Regulations by Railroad Commission

Sec. 4. The Railroad Commission of Texas shall establish and enforce rules and regulations governing the character of facilities to be furnished by such utilities, the forms of receipts to be issued by them, the rates, charges and regulations for the storage of crude petroleum by such public utilities in respect to their storage facilities and for the inspection, grading, measurement, deductions for waste or deterioration, the delivery of such products, and it shall also exercise such power upon petition of any person showing a substantial interest in the subject matter thereof.

Lien for storage charges

Sec. 5. Any such public utility shall have a lien on the commodity in its possession to secure it in the payment of all proper storage charges against such commodity, and/or the transportation charges accrued to or paid or advanced by it, superior to all other liens thereon, except lien for taxes.

Monthly statements as to quantity of petroleum

Sec. 6. Every common carrier of crude petroleum within this State as defined by law and every public utility as defined herein shall on or before the twentieth day of each calendar month file with the Railroad Commission of Texas, and post in a conspicuous place, accessible to the general public, in each of its division offices, and in its principal office in this State, a statement, duly verified, containing the following information concerning its business during the preceding calendar month:

1. How much petroleum, crude or refined, was in the actual and immediate custody of such carrier or public utility at the beginning and close of such month, and where same was located or held, including the location and designation of each tank or place of deposit, and the name of its owner.

2. How much petroleum, crude or refined, was received by such carrier or public utility during such month.

3. How much petroleum, crude or refined, was delivered by such carrier or public utility during such month.

4. What quantity of such petroleum, crude or refined, is held by it for the account of itself or parent or affiliated organizations.

5. The available empty storage owned or controlled by it and where located.

6. The foregoing information shall be set out in each statement separately as to crude petroleum and each refined product thereof.

Rates established by Railroad Commission after hearings

Sec. 6a. The Commission shall establish and promulgate rates of charges and regulations for gathering, transporting, loading and delivering crude petroleum by such common carriers in this State, and for the use of storage facilities necessarily incident to such transportation, and prescribe and enforce rules and regulations for the government and control of such common carriers in respect to their pipe line and receiving, transferring and loading facilities. Such rates shall include both single and joint line transportation, deductions for evaporation and shrinkage, demurrage, storage, and overage, charges, and all other similar items. The basis of such rates shall be such as will provide a fair return upon the aggregate value of the property of any such carrier used and useful in the services performed after providing reasonable allowance for depreciation and other proper factors, and for reasonable operating expenses under honest, efficient and economical management, and provided further that the Commission shall have reasonable latitude in the establishment and adjustment of competitive rates.

Immediately after this Act shall become effective it shall be the duty of the Commission to hold hearings as to rates now charged and shall reset them on all existing and operating lines, in accordance with the preceding article, taking into consideration the past earnings of such carrier.

When any carrier makes application or files tariff to establish a new rate, either for a new or old line, a temporary rate may be placed into effect immediately upon filing said tariff with the Commission. If any rates shall be filed, shippers who have paid the rates so filed by the pipe line company shall have the right to reparation or reimbursement of all excess rates or transportation charges so paid over and above the rate as finally determined on all shipments. When any person or persons at interest hereafter file an application for a change in a rate or rates the Commission shall call a hearing or hearings and shall immediately thereafter establish and promulgate a rate or rates in accordance with the basis herein set out. The Commission, shall on its own motion or motion of any interested person, hold a hearing or hearings when it has reason to believe that any rate or rates do not conform to the basis herein set out, said hearings or hearing to be for the purpose of adjusting, establishing and promulgating a proper rate or rates, and said Commission shall hold a general hearing once each year for the purpose of adjusting all rates to conform to the basis of rates and charges as herein set out. Article 6037, Revised Civil Statutes, is hereby repealed.

No common carriers by pipe line within this State shall hereafter abandon any of its connections or lines except under authority of a permit granted by the Railroad Commission, or with written consent of the owner or duly authorized agent of the wells to which connections are made. Before granting any such permit the Railroad Commission shall issue notice and have a hearing as now provided for in Section 6038 of the Revised Civil Statutes of Texas for 1925.

Hearing by Commission as to enlargement or extension of facilities

Sec. 7. The Railroad Commission of Texas may, after hearing in a proceeding upon complaint by a party at interest, or upon its own initiative without complaint, and after notice and hearing as provided by Article 6058, Revised Civil Statutes of Texas, 1925, authorize or require by order any person, association of persons, or corporation owning or operating pipe lines in the State of Texas, which is a common carrier as defined by law, or owning, operating, or managing any crude petroleum storage tanks, or crude petroleum facilities for the public for hire, to extend or enlarge such pipe lines, or storage facilities, provided such extension or enlargement shall be found to be reasonable and required in the public interest and that the expense involved will not impair the ability of such common carrier or public utility to perform its duty to the public.

Common purchaser of petroleum defined; discrimination forbidden

Sec. 8. Every person, association of persons or corporation who purchases crude oil or petroleum in this State, which is affiliated through stock-ownership, common control, contract, or otherwise, with a common carrier by pipe line, as defined by law, or is itself such common carrier, shall be a common purchaser of such crude petroleum and shall purchase oil offered it for purchase without discrimination in favor of one producer or person as against another in the same field, and without unjust or unreasonable discrimination as between fields in this State; the question of justice or reasonableness to be determined by the Railroad Commission, taking into consideration the production and age of wells in respective fields and all other proper factors. It shall be unlawful for any such common purchaser to discriminate between or against crude oil or petroleum of a similar kind or quality in favor of its own production, or production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the purchase of crude oil or petroleum to be marketed, such production shall be taken in like manner as that of any other person or producer and shall be taken in the ratable proportion that such production bears to the total production offered for market in such field. The Railroad Commission of Texas shall have authority, however, to relieve any such common purchaser, after due notice and hearing as hereinafter provided, from the duty of purchasing petroleum of inferior quality or grade.

Purchases under regulations prescribed by Commission

Sec. 8a. That in order to further conserve the natural gas resources of this State every person, association of persons, joint stock company, limited co-partnership, partnership, corporation, gas pipe line company or gas purchaser now, or hereafter, claiming or exercising the right to carry or transport natural gas by pipe line, or pipe lines, for hire, compensation or otherwise within the limits of this State, or which is now engaged or shall hereafter engage in the business of purchasing, or taking, natural gas, or residue gas or casinghead gas shall be a common purchaser thereof, and shall purchase, or take, such gas under such rules or regulations as may be prescribed by the Commission, in the same manner, under the same inhibitions against discriminations and subject to the same provisions as are herein set out with respect to common purchasers of oil.

Additional persons as common purchasers; rates and charges

Sec. 8aa. In addition to persons enumerated in Section 8 hereof, any and all persons, associations of persons, or corporations operating any crude oil gathering system, whether by pipeline or by truck, other than persons, associations of persons, or corporations transporting only crude oil from properties in which any such person, association of persons, or corporation owns an operating interest, which may now or hereafter purchase crude oil or petroleum in this state, whether they be common carriers or affiliated with common carriers shall be a common purchaser of such crude oil or petroleum offered for purchase without discrimination in favor of one producer or person as against another in the same field and without unjust or unreasonable discrimination as between fields in this state as provided in Section 8 hereof. Such common purchasers shall be subject to the same regulation concerning rates and charges for gathering, transporting, loading and delivering crude petroleum as set out in Section 6a hereof. As amended Acts 1965, 59th Leg., p. 611, ch. 303, § 1.

Effective Aug. 30, 1965, 90 days after date of adjournment.

Operation of gathering systems for crude petroleum

Sec. 8aaa. It is declared that the operation of gathering systems for crude petroleum by pipeline or by truck in connection with the purchase, or purchase and sale of crude petroleum, is a business in the mode of the conduct of which the public is interested, and as such is subject to regulation by law; and accordingly it is provided that from and after the expiration of thirty (30) days from the time this law takes effect the business of purchasing, or of purchasing and selling crude petroleum by the use of a gathering system for crude petroleum, whether by pipeline or by truck, shall not be conducted, unless the person, association of persons or corporation operating such gathering system so used in connection with such business be a common purchaser within the purview of this law and subject to the jurisdiction herein conferred upon the Commission; provided, however, the operation of any crude oil gathering system by persons, association of persons or corporation transporting only crude oil from properties in which any such person, association of persons or corporation owns an operating interest, shall not be deemed to be in the business of purchasing, or of purchasing and selling crude petroleum within the meaning of this Article. Added Acts 1965, 59th Leg., p. 611, ch. 303, § 2.

Rules and regulations by Railroad Commission

Sec. 8b. It shall be the duty of the Railroad Commission of Texas to see that the provisions of this Act are fully complied with, and it shall have the power, after notice and hearing, to make rules, regulations and orders, defining the distance that extensions or gathering lines shall be made to all oil or gas wells; and such other rules, regulations or orders as may be necessary to carry out the provisions of this Act, and to prevent discrimination in purchases.

Anti-trust laws unaffected

Sec. 8bb. It is expressly provided that no provision of this Act shall be construed as in any wise modifying, limiting, changing, repealing, or affecting any part of the present laws of this State defining and regulating trusts, monopolies, and conspiracies in restraint of trade; and that no provision of this Act shall be construed as authorizing any agreement and/or combination of capital, skill, or acts and/or any combination or consolidation now prohibited by the Anti-trust Laws of this State and/or the laws of this State prohibiting trusts, monopolies, and/or conspiracies in restraint of trade; and that no provision of this Act is intended or shall be construed as authorizing any agreement, act, combination, consolidation, or otherwise, which is now prohibited under the Anti-trust Laws of this State and/or the laws prohibiting and defining trusts, monopolies and/or conspiracies in restraint of trade.

Restrictions as to oil transported

Sec. 8c. No person, association of persons or corporation, whether a common carrier or otherwise, shall be permitted to transport crude oil or petroleum in this State unless such crude oil or petroleum has been produced and or purchased in accordance with the laws of the State of Texas and/or any order, rule or regulation of the Railroad Commission made in pursuance thereof.

Enforcement by Railroad Commission

Sec. 9. The Railroad Commission of Texas shall have authority to make rules and regulations for the enforcement of the provisions of this Act.

Commission's jurisdiction to hear complaints

Sec. 10. Any person, association of persons or corporation, or the Attorney General of Texas on behalf of the State, may institute proceedings before the Railroad Commission, or apply for a hearing before said Commission, upon any question relating to the enforcement of this Act, and jurisdiction is hereby conferred upon said Commission to hear and determine the same after the notice provided by Article 6038, Revised Civil Statutes of Texas. The Commission shall not make any order establishing, prescribing or modifying rates, rules or regulations, as herein provided, except upon like notice and hearing as provided in said Article 6038.

Penalty for violations

Sec. 11. For the violation of any provision of this Act, or for the violation of any valid rule or regulation promulgated hereunder or any order passed by the Railroad Commission in pursuance of any such provision, rule or regulation, such person, association of persons, or corporation shall be subject to a penalty of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1000.00) for each offense recoverable in the name of the State in any District Court in Travis County, Texas, and each day of such violation shall constitute a separate offense. One half of such penalty may be recovered by and for the use of any person, association of persons or corporation against whom there shall have been an unlawful discrimination as herein defined, such suit to be brought in the name of and for the use of the party or parties aggrieved.

Attorney General may institute proceedings for forfeiture of charter for violations

Sec. 11a. For any violation of any provision of this Act, or for the violation of any valid rule or regulation promulgated hereunder by the Railroad Commission, in pursuance of such provision, by any domestic corporation, which is a common purchaser as defined herein, the Attorney General may bring suit in the District Court of Travis County, Texas, for the purpose of forfeiting the charter of such corporation, and enjoining and forever prohibiting such corporation from doing business in this State, and if adjudged guilty by the Court before whom the action is brought, the charter of such corporation may be forfeited and the injunction may be granted, provided said forfeiture and injunction shall be in addition to all other penalties.

Forfeiture of charters of foreign corporations

Sec. 11b. For any violation of any provision of this Act, or for the violation of any valid rule or regulation promulgated hereunder by the Railroad Commission in pursuance of such provision, by any foreign corporation, which is a common purchaser as defined herein, the Attorney General may bring suit in the District Court of Travis County for the purpose of cancelling the permit of such corporation and of enjoining and forever prohibiting such corporation from doing business in this State, and if adjudged guilty by the Court before whom the action is brought, the permit may be cancelled and the injunction may be granted, provided said cancellation and injunction shall be in addition to all other penalties.

Actions for damages for discriminations

Sec. 11c. When any person, persons, association or corporation is discriminated against by a common purchaser as defined herein in favor of the production of said common purchaser, a cause of action for damages, when such has occurred, shall lie against said common purchaser and said person, persons, association or corporation may bring suit for same in any court of competent jurisdiction in the county in which the damage occurred.

Prevention of discrimination

Sec. 11d. The Railroad Commission shall make inquiry in each field concerning the connections of the various producers and when discrimination is found to be practiced by any common purchaser as defined in this Act the said Railroad Commission shall issue an order to such common purchaser to make such reasonable extensions of their lines, such reasonable connections and such ratable purchases as will prevent such discrimination. The Commission may issue a show cause order to any common purchaser requesting it to appear and show cause why it should not purchase the allowable production of any producer so discriminated against. As amended Acts 1965, 59th Leg., p. 611, ch. 303, § 3.

Effective Aug. 30, 1965, 90 days after date of adjournment.

Duties and responsibilities of common purchasers, purchasers, gatherers or transporters

Sec. 11dd. Notwithstanding the provisions of any Statute or law, including Article 6049a, Revised Civil Statutes, 1925, as amended, none of the provisions of this Act[1] shall increase or decrease the duties or responsibilities of any common purchaser, purchaser, gatherer or transporter of natural gas, residue gas, or casinghead gas. Added Acts 1965, 59th Leg., p. 611, ch. 303, § 4.

Injunction by Attorney General to prevent discrimination

Sec. 11e. The Railroad Commission shall, upon information that discrimination is practiced in its purchases by any common purchaser, request the Attorney General to bring a mandatory injunction suit against said common purchaser to compel such reasonable extensions as are necessary to prevent discrimination.

Receiver at instance of Commission for violation of regulations

Sec. 11f. Whenever, any order, rule or regulation promulgated by the Commission pursuant to this Act has been finally adjudged to be valid, in whole or in part, in any suit to which the Commission is a party, and thereafter any party to the suit or other proceedings in which such matter has been so adjudged, shall violate such rule, regulation, order or judgment, or shall suffer any property owned or controlled by him to be used in violation of any such rule, regulation, order or judgment, the Commission shall have the power, and it shall be its duty, to make, application to the Judge of the trial court,

ceiver of the property involved or made the subject of such regu-
lation, order, or judgment, and shall fix a proper bond for such receiver. As soon as such receiver has qualified, he shall take possession of such property, and such receiver thereafter shall perform his duties as receiver of such property under the orders of said court, strictly observing such rule, regulation, order or judgment. Any party whose property has been so placed in the hands of a receiver may move to dissolve such receivership and discharge the receiver only upon showing that such party has not wilfully violated nor suffered property owned or controlled by him to be used in violating such rule, regulation, order or judgment or upon other good cause shown. In its discretion such court may, before dissolving such receivership or discharging such receiver, require the party applying for such dissolution or discharge to give bond with good and sufficient sureties in an amount to be fixed by the court, sufficient reasonably to indemnify all persons who may suffer damage by reason of the violation of the rule, regulation or order so adjudged to be valid. In determining the amount of such bond, the judge shall take into consideration all of the facts and circumstances surrounding the parties which he may deem necessary to determine the reasonableness of the amount of such bond and any bond so executed, if made by any bonding or surety company, shall be by some company authorized to do business in Texas. Such bond shall be made payable to, and be approved by, the judge of said court and shall be for the use and benefit of, and may be sued on, by all persons who may suffer damage by reason of any further violation by the party giving the bond of the rule, regulation or order so adjudged to be valid, and who may bring suit thereon. From time to time on motion the court may increase or decrease the amount of such bond, and may require new or additional sureties as the facts may warrant or justify.

Discrimination as to royalty oil forbidden

Sec. 11g. Any common purchaser of oil or gas as herein defined shall, in making purchases of royalty oil, comply with all the provisions of this Act, and shall not discriminate between royalty and/or land owners in making such purchases. Neither shall said common purchaser unreasonably delay payments to said land and/or royalty owner for said oil or gas purchased. For violation whereof in addition to the other penalties herein set out, the land and royalty owner or owners damaged thereby shall have a cause of action against said common purchaser for damages and may file suit for same in any court of competent jurisdiction in the county where the royalty lies.

Provisions applicable to enforcement

Sec. 11h. All the provisions of Title 102 of the Revised Civil Statutes as amended shall apply in the enforcement of this Act.

ALASKA
PIPELINE
FEDERAL
CONFERENCE

93D CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPORT No. 93-617

AMENDING SECTION 28 OF THE MINERAL LEASING ACT OF 1920, AND TO AUTHORIZE THE TRANS-ALASKA PIPELINE

OCTOBER 31, 1973.—Ordered to be printed

Mr. MELCHER, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 1081]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1081) to authorize the Secretary of the Interior to grant rights-of-way across Federal lands where the use of such rights-of-way is in the public interest and the applicant for the right-of-way demonstrates the financial and technical capability to use the right-of-way in a manner which will protect the environment, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows::

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

TITLE I

SECTION 101. Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), is further amended to read as follows:

"Grant of Authority

"SEC. 28. (a) Rights-of-way through any Federal lands may be granted by the Secretary of the Interior or appropriate agency head for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom to any applicant possessing the qualifications provided in section 1 of this Act, as amended, in accordance with the provisions of this section.

"Definitions

"(b)(1) For the purposes of this section 'Federal lands' means all lands owned by the United States except lands in the National Park

System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf. A right-of-way through a Federal reservation shall not be granted if the Secretary or agency head determines that it would be inconsistent with the purposes of the reservation.

"(2) *'Secretary' means the Secretary of the Interior.*

"(3) *'Agency head' means the head of any Federal department or independent Federal office or agency, other than the Secretary of the Interior, which has jurisdiction over Federal lands.*

"Inter-Agency Coordination

"(c)(1) *Where the surface of all of the Federal lands involved in a proposed right-of-way or permit is under the jurisdiction of one Federal agency, the agency head, rather than the Secretary, is authorized to grant or renew the right-of-way or permit for the purposes sets forth in this section.*

"(2) *Where the surface of the Federal lands involved is administered by the Secretary or by two or more Federal agencies, the Secretary is authorized, after consultation with the agencies involved, to grant or renew rights-of-way or permits through the Federal lands involved. The Secretary may enter into interagency agreements with all other Federal agencies having jurisdiction over Federal lands for the purpose of avoiding duplication, assigning responsibility, expediting review of rights-of-way or permit applications, issuing joint regulations, and assuring a decision based upon a comprehensive review of all factors involved in any right-of-way or permit application. Each agency head shall administer and enforce the provisions of this section, appropriate regulations, and the terms and conditions of rights-of-way or permits insofar as they involve Federal lands under the agency head's jurisdiction.*

"Width Limitations

"(d) *The width of a right-of-way shall not exceed fifty feet plus the ground occupied by the pipeline (that is, the pipe and its related facilities) unless the Secretary or agency head finds, and records the reasons for his finding, that in his judgment a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety. Related facilities include but are not limited to valves, pump stations, supporting structures, bridges, monitoring and communication devices, surge and storage tanks, terminals, roads, airstrips and campsites, and they need not necessarily be connected or contiguous to the pipe and may be the subjects of separate rights-of-way.*

"Temporary Permits

"(e) *A right-of-way may be supplemented by such temporary permits for the use of Federal lands in the vicinity of the pipeline as the Secretary or agency head finds are necessary in connection with construction, operation, maintenance, or termination of the pipeline, or to protect the natural environment or public safety.*

"Regulatory Authority

"(*f*) *Rights-of-way or permits granted or renewed pursuant to this section shall be subject to regulations promulgated in accord with the provisions of this section and shall be subject to such terms and conditions as the Secretary or agency head may prescribe regarding extent, duration, survey, location, construction, operation, maintenance, use, and termination.*

"Pipeline Safety

"(*g*) *The Secretary or agency head shall impose requirements for the operation of the pipeline and related facilities in a manner that will protect the safety of workers and protect the public from sudden ruptures and slow degradation of the pipeline.*

"Environmental Protection

"(*h*) (*1*) *Nothing in this section shall be construed to amend, repeal, modify, or change in any way the requirements of section 102(2)(C) or any other provision of the National Environmental Policy Act of 1969* (*Public Law 91–190, 83 Stat. 852*).

"(*2*) *The Secretary or agency head, prior to granting a right-of-way or permit pursuant to this section for a new project which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation for such right-of-way or permit which shall comply with this section. The Secretary or agency head shall issue regulations or impose stipulations which shall include, but shall not be limited to:* (*A*) *requirements for restoration, revegetation, and curtailment of erosion of the surface of the land;* (*B*) *requirements to insure that activities in connection with the right-of-way or permit will not violate applicable air and water quality standards nor related facility siting standards established by or pursuant to law;* (*C*) *requirements designed to control or prevent* (*i*) *damage to the environment* (*including damage to fish and wildlife habitat*), (*ii*) *damage to public or private property, and* (*iii*) *hazards to public health and safety; and* (*D*) *requirements to protect the interests of individuals living in the general area of the right-of-way or permit who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes. Such regulations shall be applicable to every right-of-way or permit granted pursuant to this section, and may be made applicable by the Secretary or agency head to existing rights-of-way or permits, or rights-of-way or permits to be renewed pursuant to this section.*

"Disclosure

"(*i*) *If the applicant is a partnership, corporation, association, or other business entity, the Secretary or agency head shall require the applicant to disclose the identity of the participants in the entity. Such disclosure shall include where applicable* (*1*) *the name and address of each partner,* (*2*) *the name and address of each shareholder* *owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote, and (3) the name and address of each affiliate of the entity together with in the case of an affiliate controlled by the entity the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.*

"*Technical and Financial Capability*

"(*j*) *The Secretary or agency head shall grant or renew a right-of-way or permit under this section only when he is satisfied that the applicant has the technical and financial capability to construct, operate, maintain, and terminate the project for which the right-of-way or permit is requested in accordance with the requirements of this section.*

"*Public Hearings*

"(*k*) *The Secretary or agency head by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local government agencies and the public adequate notice and an opportunity to comment upon right-of-way applications filed after the date of enactment of this subsection.*

"*Reimbursement of Costs*

"(*l*) *The applicant for a right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application, and the holder of a right-of-way or permit shall reimburse the United States for the costs incurred in monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities on such right-of-way or permit area and shall pay annually in advance the fair market rental value of the right-of-way or permit, as determined by the Secretary or agency head.*

"*Bonding*

"(*m*) *Where he deems it appropriate the Secretary or agency head may require a holder of a right-of-way or permit to furnish a bond, or other security, satisfactory to the Secretary or agency head to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or permit or by any rule or regulation of the Secretary or agency head.*

"*Duration of grant*

"(*n*) *Each right-of-way or permit granted or renewed pursuant to this section shall be limited to a reasonable term in light of all circumstances concerning the project, but in no event more than thirty years. In determining the duration of a right-of-way the Secretary or agency head shall, among other things, take into consideration the cost of the facility, its useful life, and any public purpose it serves. The Secre-*

tary or agency head shall renew any right-of-way, in accordance with the provisions of this section, so long as the project is in commercial operation and is operated and maintained in accordance with all of the provisions of this section.

"Suspension or Termination of Right-of-Way

"(o)(1) Abandonment of a right-of-way or noncompliance with any provision of this section may be grounds for suspension or termination of the right-of-way if (A) after due notice to the holder of the right-of-way, (B) a reasonable opportunity to comply with this section, and (C) an appropriate administrative proceeding pursuant to title 5, United States Code, section 554, the Secretary or agency head determines that any such ground exists and that suspension or termination is justified. No administrative proceeding shall be required where the right-of-way by its terms provides that it terminates on the occurrence of a fixed or agreed upon condition, event, or time.

"(2) If the Secretary or agency head determines that an immediate temporary suspension of activities within a right-of-way or permit area is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding.

"(3) Deliberate failure of the holder to use the right-of-way for the purpose for which it was granted or renewed for any continuous two-year period shall constitute a rebuttable presumption of abandonment of the right-of-way: Provided, That where the failure to use the right-of-way is due to circumstances not within the holder's control the Secretary or agency head is not required to commence proceedings to suspend or terminate the right-of-way.

"Joint Use of Rights-of-Way

"(p) In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way across Federal lands, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary or agency head the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way or permit area granted pursuant to this section.

"Statutes

"(q) No rights-of-way for the purposes provided for in this section shall be granted or renewed across Federal lands except under and subject to the provisions, limitations, and conditions of this section. Any application for a right-of-way filed under any other law prior to the effective date of this provision may, at the applicant's option, be considered as an application under this section. The Secretary or agency head may require the applicant to submit any additional information he deems necessary to comply with the requirements of this section.

"Common Carriers

"(r)(1) Pipelines and related facilities authorized under this section shall be constructed, operated, and maintained as common carriers.

"(2)(A) *The owners or operators of pipelines subject to this section shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands.*

"(B) *In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported or purchased.*

"(3)(A) *The common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within th: State or municipality.*

"(B) *Where natural gas not subject to State regulatory or conservation laws governing its purchase by pipelines is offered for sale, each such pipeline shall purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline.*

"(4) *The Government shall in express terms reserve and shall provide in every lease of oil lands under this Act that the lessee, assignee, or beneficiary, if owner or operator of a controlling interest in any pipeline or of any company operating the pipeline which may be operated accessible to the oil derived from lands under such lease, sh ll at reasonable rates and without discrimination accept and convey the oil of the Government or of any citizen or company not the owner of any pipeline operating a lease or purchasing gas or oil under the provisions of this Act.*

"(5) *Whenever the Secretary has reason to believe that any owner or operator subject to this section is not operating any oil or gas pipeline in complete accord with its obligations as a common carrier hereunder, he may request the Attorney General to prosecute an appropriate proceeding before the Interstate Commerce Commission or Federal Power Commission or any appropriate State agency or the United States district court for the district in which the pipeline or any part thereof is located, to enforce such obligation or to impose any penalty provided therefor, or the Secretary may, by proceeding as provided in this section, suspend or terminate the said grant of right-of-way for noncompliance with the provisions of this section.*

"(6) *The Secretary or agency head shall require, prior to granting or renewing a right-of-way, that the applicant submit and disclose all plans, contracts, agreements, or other information or material which he deems necessary to determine whether a right-of-way shall be granted or renewed and the terms and conditions which should be included in the right-of-way. Such information may include, but is not limited to: (A) conditions for, and agreements among owners or operators, regarding the addition of pumping facilities, looping, or otherwise increasing the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand; (B) conditions for adding or abandoning intake, offtake, or storage points or facilities; and (C) minimum shipment or purchase tenders.*

"*Right-of-Way Corridors*

"(s) *In or'er to minimize adverse environmental impacts and to prevent th proliferation of separate rights-of-way across Federal* *lands, the Secretary shall, in consultation with other Federal and State agencies, review the need for a national system of transportation and utility corridors across Federal lands and submit a report of his findings and recommendations to the Congress and the President by July 1, 1975.*

"*Existing Rights-of-Way*

"(*t*) *The Secretary or agency head may ratify and confirm any right-of-way or permit for an oil or gas pipeline or related facility that was granted under any provision of law before the effective date of this subsection, if it is modified by mutual agreement to comply to the extent practical with the provisions of this section. Any action taken by the Secretary or agency head pursuant to this subsection shall not be considered a major Federal action requiring a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1970 (Public Law 90–190; 42 U.S.C. 4321).*

"*Limitations on Export*

"(*u*) *Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to section 28 of the Mineral Leasing Act of 1920, except such crude oil which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1969 (Act of December 30, 1969; 83 Stat. 841) and, in addition, before any crude oil subject to this section may be exported under the limitations and licensing requirements and penalty and enforcement provisions of the Export Administration Act of 1969 the President must make and publish an express finding that such exports will not diminish the total quantity or quality of petroleum available to the United States, and are in the national interest and are in accord with the provisions of the Export Administration Act of 1969: Provided, That the President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within this time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to the aforementioned Presidential findings shall cease.*

"*State Standards*

"(*v*) *The Secretary or agency head shall take into consideration and to the extent practical comply with State standards for right-of-way construction, operation, and maintenance.*

"*Reports*

"(*w*)(*1*) *The Secretary and other appropriate agency heads shall report to the House and Senate Committees on Interior and Insular*

Affairs annually on the administration of this section and on the safety and environmental requirements imposed pursuant thereto.

"(2) *The Secretary or agency head shall notify the House and Senate Committees on Interior and Insular Affairs promptly upon receipt of an application for a right-of-way for a pipeline twenty-four inches or more in diameter, and no right-of-way for such a pipeline shall be granted until sixty days (not counting days on which the House of Representatives or the Senate has adjourned for more than three days) after a notice of intention to grant the right-of-way, together with the Secretary's or agency head's detailed findings as to terms and conditions he proposes to impose, has been submitted to such committees, unless each committee by resolution waives the wating period.*

"(3) *Periodically, but at least once a year, the Secretary of the Department of Transportation shall cause the examination of all pipelines and associated facilities on Federal lands and shall cause the prompt reporting of any potential leaks or safety problems.*

"(4) *The Secretary of the Department of Transportation shall report annually to the President, the Congress, the Secretary of the Interior, and the Interstate Commerce Commission any potential dangers of or actual explosions, or potential or actual spillage on Federal lands and shall include in such report a statement of corrective action taken to prevent such explosion or spillage.*

"*Liability*

"(x) (1) *The Secretary or agency head shall promulgate regulations and may impose stipulations specifying the extent to which holders of rights-of-way and permits under this Act shall be liable to the United States for damage or injury incurred by the United States in connection with the right-of-way or permit. Where the right-of-way or permit involves lands which are under the exclusive jurisdiction of the Federal Government, the Secretary or agency head shall promulgate regulations specifying the extent to which holders shall be liable to third parties for injuries incurred in connection with the right-of-way or permit.*

"(2) *The Secretary or agency head may, by regulation or stipulation, impose a standard of strict liability to govern activities taking place on a right-of-way or permit area which the Secretary or agency head determines, in his discretion, to present a foreseeable hazard or risk of danger to the United States.*

"(3) *Regulations and stipulations pursuant to this subsection shall not impose strict liability for damage or injury resulting from (A) an act of war, or (B) negligence of the United States.*

"(4) *Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. Any liability for damage or injury in excess of this amount shall be determined by ordinary rules of negligence.*

"(5) *The regulations and stipulations shall also specify the extent to which such holders shall indemnify or hold harmless the United States for liability, damage, or claims arising in connection with the right-of-way or permit.*

"(6) Any regulation or stipulation promulgated or imposed pursuant to this section shall provide that all owners of any interest in, and all affiliates or subsidiaries of any holder of, a right-of-way or permit shall be liable to the United States in the event that a claim for damage or injury cannot be collected from the holder.

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

"Antitrust Laws

"(y) The grant of a right-of-way or permit pursuant to this section shall grant no immunity from the operation of the Federal antitrust laws."

TITLE II

SHORT TITLE

SEC. 201. This title may be cited as the "Trans-Alaska Pipeline Authorization Act".

CONGRESSIONAL FINDINGS

SEC. 202. The Congress finds and declares that:

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

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

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

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

CONGRESSIONAL AUTHORIZATION

SEC. 203. (a) The purpose of this title is to insure that, because of the extensive governmental studies already made of this project and the national interest in early delivery of North Slope oil to domestic markets, the trans-Alaska oil pipeline be constructed promptly without further administrative or judicial delay or impediment. To accomplish this purpose it is the intent of the Congress to exercise its constitutional powers to the fullest extent in the authorizations and directions herein made and in limiting judicial review of the actions taken pursuant thereto.

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

(c) Rights-of-way, permits, leases, and other authorizations issued pursuant to this title by the Secretary shall be subject to the provisions of section 28 of the Mineral Leasing Act of 1920, as amended by title I of this Act (except the provisions of subsections (h)(1), (k), (q), (w)(2), and (x)); all authorizations issued by the Secretary and other Federal officers and agencies pursuant to this title shall include the terms and conditions required, and may include the terms and conditions permitted, by the provisions of law that would otherwise be applicable if this title had not been enacted, and they may waive any procedural requirements of law or regulation which they deem desirable to waive in order to accomplish the purposes of this title. The direction contained in section 203(b) shall supersede the provisions of any law or regulation relating to an administrative determination as to whether the authorizations for construction of the trans-Alaska oil pipeline shall be issued.

(d) The actions taken pursuant to this title which relate to the construction and completion of the pipeline system, and to the applications filed in connection therewith necessary to the pipeline's operation at full capacity, as described in the Final Environmental Impact Statement of the Department of the Interior, shall be taken without further action under the National Environmental Policy Act of 1969; and the actions of the Federal officers concerning the issuance of the necessary rights-of-way, permits, leases, and other authorizations for construction and initial operation at full capacity of said pipeline system shall not be subject to judicial review under any law except that claims alleging the invalidity of this section may be brought within sixty days following its enactment, and claims alleging that an action will deny rights under the Constitution of the United States, or that the action is beyond the scope of authority conferred by this title, may be brought within sixty days following the date of such action. A claim shall be barred unless a complaint is filed within the time specified. Any such complaint shall be filed in a United States district court, and such court shall have exclusive jurisdiction to determine such proceeding in accordance with the procedures hereinafter provided, and no other court of the United States, of any State, territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any such claim whether in a proceeding instituted prior to or on or after the date of the enactment of this Act. Any such proceeding shall be assigned for hearing at the earliest possible date, shall take precedence over all other matters pending on the docket of the district court at that time, and shall be expedited in every way by such court. Such court shall not have

jurisdiction to grant any injunctive relief against the issuance of any right-of-way, permit, lease, or other authorization pursuant to this section except in conjunction with a final judgment entered in a case involving a claim filed pursuant to this section. Any review of an interlocutory or final judgment, decree, or order of such district court may be had only upon direct appeal to the Supreme Court of the United States.

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

LIABILITY

SEC. 204. (a)(1) Except when the holder of the pipeline right-of-way granted pursuant to this title can prove that damages in connection with or resulting from activities along or in the vicinity of the proposed trans-Alaskan pipeline right-of-way were caused by an act of war or negligence of the United States, other government entities, or the damaged party, such holder shall be strictly liable to all damaged parties, public or private, without regard to fault for such damages, and without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or other natural resources relied upon by Alaska Natives, Native organizations, or others for subsistence or economic purposes. Claims for such injury or damages may be determined by arbitration or judicial proceedings.

(2) Liability under paragraph (1) of this subsection shall be limited to $50,000,000 for any one incident, and the holders of the right-of-way or permit shall be liable for any claim allowed in proportion to their ownership interest in the right-of-way or permit. Liability of such holders for damages in excess of $50,000,000 shall be in accord with ordinary rules of negligence.

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

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

(5) Where the State of Alaska is the holder of a right-of-way or permit under this title, the State shall not be subject to the provisions of subsection 204(a), but the holder of the permit or right-of-way for the trans-Alaska pipeline shall be subject to that subsection with respect to facilities constructed or activities conducted under rights-of-way or permits issued to the State to the extent that such holder engages in the construction, operation, maintenance, and termination of facilities, or in other activities under rights-of-way or permits issued to the State.

(b) If any area within or without the right-of-way or permit area granted under this title is polluted by any activities conducted by

or on behalf of the holder to whom such right-of-way or permit was granted, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and total removal of the pollutant shall be at the expense of such holder, including any administrative and other costs incurred by the Secretary or any other Federal officer or agency. Upon failure of such holder to adequately control and remove such pollutant, the Secretary, in cooperation with other Federal, State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of such holder.

(c)(1) Notwithstanding the provisions of any other law, if oil that has been transported through the trans-Alaska pipeline is loaded on a vessel at the terminal facilities of the pipeline, the owner and operator of the vessel (jointly and severally) and the Trans-Alaska Pipeline Liability Fund established by this subsection, shall be strictly liable without regard to fault in accordance with the provisions of this subsection for all damages, including clean-up costs, sustained by any person or entity, public or private, including residents of Canada, as the result of discharges of oil from such vessel.

(2) Strict liability shall not be imposed under this subsection if the owner or operator of the vessel, or the Fund, can prove that the damages were caused by an act of war or by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under this subsection with respect to the claim of a damaged party if the owner or operator of the vessel, or the Fund, can prove that the damage was caused by the negligence of such party.

(3) Strict liability for all claims arising out of any one incident shall not exceed $100,000,000. The owner and operator of the vessel shall be jointly and severally liable for the first $14,000,000 of such claims that are allowed. Financial responsibility for $14,000,000 shall be demonstrated in accordance with the provisions of section 311(p) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(p) before the oil is loaded. The Fund shall be liable for the balance of the claims that are allowed up to $100,000,000. If the total claims allowed exceed $100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or state law.

(4) The Trans-Alaska Pipeline Liability Fund is hereby established as a non-profit corporate entity that may sue and be sued in its own name. The Fund shall be administered by the holders of the trans-Alaska pipeline right-of-way under regulations prescribed by the Secretary. The Fund shall be subject to an annual audit by the Comptroller General, and a copy of the audit shall be submitted to the Congress.

(5) The operator of the pipeline shall collect from the owner of the oil at the time it is loaded on the vessel a fee of five cents per barrel. The collection shall cease when $100,000,000 has been accumulated in the Fund, and it shall be resumed when the accumulation in the Fund falls below $100,000,000.

(6) The collections under paragraph (5) shall be delivered to the Fund. Costs of administration shall be paid from the money paid to the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested prudently in income-producing securi-

ties approved by the Secretary. Income from such securities shall be added to the principal of the Fund.

(7) The provisions of this subsection shall apply only to vessels engaged in transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States. Strict liability under this subsection shall cease when the oil has first been brought ashore at a port under the jurisdiction of the United States.

(8) In any case where liability without regard to fault is imposed pursuant to this subsection and the damages involved were caused by the unseaworthiness of the vessel or by negligence, the owner and operator of the vessel, and the Fund, as the case may be, shall be subrogated under applicable State and Federal laws to the rights under said laws of any person entitled to recovery hereunder. If any subrogee brings an action based on unseaworthiness of the vessel or negligence of its owner or operator, it may recover from any affiliate of the owner or operator, if the respective owner or operator fails to satisfy any claim by the subrogee allowed under this paragraph.

(9) This subsection shall not be interpreted to preempt the field of strict liability or to preclude any State from imposing additional requirements.

(10) If the Fund is unable to satisfy a claim asserted and finally determined under this subsection, the Fund may borrow the money needed to satisfy the claim from any commercial credit source, at the lowest available rate of interest, subject to approval of the Secretary.

(11) For purposes of this subsection only, the term "affiliate" includes—

(A) Any person owned or effectively controlled by the vessel owner or operator; or

(B) Any person that effectively controls or has the power effectively to control the vessel owner or operator by—

(i) stock interest, or

(ii) representation on a board of directors or similar body, or

(iii) contract or other agreement with other stockholders, or

(iv) otherwise; or

(C) Any person which is under common ownership or control with the vessel owner or operator.

(12) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization.

ANTITRUST LAWS

SEC. 205. The grant of a right-of-way, permit, lease, or other authorization pursuant to this title shall grant no immunity from the operation of the Federal anti-trust laws.

ROADS AND AIRPORTS

SEC. 206. A right-of-way, permit, lease, or other authorization granted under section 203(b) for a road or airstrip as a related facility of the trans-Alaska pipeline may provide for the construction of a public road or airstrip.

TITLE III—NEGOTIATIONS WITH CANADA

SEC. 301. The President of the United States is authorized and requested to enter into negotiations with the Government of Canada to determine—

(a) the willingness of the Government of Canada to permit the construction of pipelines or other transportation systems across Canadian territory for the transport of natural gas and oil from Alaska's North Slope to markets in the United States, including the use of tankers by way of the Northwest Passage;

(b) the need for intergovernmental understandings, agreements, or treaties to protect the interests of the Governments of Canada and the United States and any party or parties involved with the construction, operation, and maintenance of pipelines or other transportation systems for the transport of such natural gas or oil;

(c) the terms and conditions under which pipelines or other transportation systems could be constructed across Canadian territory;

(d) the desirability of undertaking joint studies and investigations designed to insure protection of the environment, reduce legal and regulatory uncertainty, and insure that the respective energy requirements of the people of Canada and of the United States are adequately met;

(e) the quantity of such oil and natural gas from the North Slope of Alaska for which the Government of Canada would guarantee transit; and

(f) the feasibility, consistent with the needs of other sections of the United States, of acquiring additional energy from other sources that would make unnecessary the shipment of oil from the Alaskian pipeline by tanker into the Puget Sound area.

The President shall report to the House and Senate Committees on Interior and Insular Affairs the actions taken, the progress achieved, the areas of disagreement, and the matters about which more information is needed, together with his recommendations for further action.

SEC. 302. (a) The Secretary of the Interior is authorized and directed to investigate the feasibility of one or more oil or gas pipelines from the North Slope of Alaska to connect with a pipeline through Canada that will deliver oil or gas to United States markets.

(b) All costs associated with making the investigations authorized by subsection (a) shall be charged to any future applicant who is granted a right-of-way for one of the routes studied. The Secretary shall submit to the House and Senate Committees on Interior and Insular Affairs periodic reports of his investigation, and the final report of the Secretary shall be submitted within two years from the date of this Act.

SEC. 303. Nothing in this title shall limit the authority of the Secretary of the Interior or any other Federal official to grant a gas or oil pipeline right-of-way or permit which he is otherwise authorized by law to grant.

TITLE IV—MISCELLANEOUS

VESSEL CONSTRUCTION STANDARDS

SEC. 401. Section 4417a of the Revised Statutes of the United States (46 U.S.C. 391a), as amended by the Ports and Waterways Safety Act *of 1972 (86 Stat. 424, Public Law 92–340), is hereby amended as follows:*

"(C) Rules and regulations published pursuant to subsection (7)(A) shall be effective not earlier than January 1, 1974, with respect to foreign vessels and United States-flag vessels operating in the foreign trade, unless the Secretary shall earlier establish rules and regulations consonant with international treaty, convention, or agreement, which generally address the regulation of similar topics for the protection of the marine environment. In absence of the promulgation of such rules and regulations consonant with international treaty, convention, or agreement, the Secretary shall establish an effective date not later than January 1, 1976, with respect to foreign vessels and United States-flag vessels operating in the foreign trade, for rules and regulations previously published pursuant to this subsection (7) which he then deems appropriate. Rules and regulations published pursuant to subsection (7)(A) shall be effective not later than June 30, 1974, with respect to United States-flag vessels engaged in the coastwise trade.".

VESSEL TRAFFIC CONTROL

SEC. 402. The Secretary of the Department in which the Coast Guard is operating is hereby directed to establish a vessel traffic control system for Prince William Sound and Valdez, Alaska, pursuant to authority contained in title I of the Ports and Waterways Safety Act of 1972 (86 Stat. 424, Public Law 92–340).

CIVIL RIGHTS

SEC. 403. The Secretary of the Interior shall take such affirmative action as he deems necessary to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving, or participating in any activity conducted under, any permit, right-of-way, public land order, or other Federal authorization granted or issued under title II. The Secretary of the Interior shall promulgate such rules as he deems necessary to carry out the purposes of this subsection and may enforce this subsection, and any rules promulgated under this subsection, through agency and department provisions and rules which shall be similar to those established and in effect under title VI of the Civil Rights Act of 1964.

CONFIRMATION OF THE DIRECTOR OF THE ENERGY POLICY OFFICE

SEC. 404. The Director of the Energy Policy Office in the Executive Office of the President shall be appointed by the President, by and with the advice and consent of the Senate: Provided, That if any individual who is serving in this office on the date of enactment of this Act is nominated for such position, he may continue to act unless and until such nomination shall be disapproved by the Senate.

CONFIRMATION OF THE HEAD OF THE MINING ENFORCEMENT AND SAFETY ADMINISTRATION

SEC. 405. The head of the Mining Enforcement and Safety Administration established pursuant to Order Numbered 2953 of the Secretary of the Interior issued in accordance with the authority provided by section 2 of Reorganization Plan Numbered 3 of 1950 (64 Stat. 1262) shall be appointed by the President, by and with the advice and con-

sent of the Senate: Provided, That if any individual who is serving in this office on the date of enactment of this Act is nominated for such position, he may continue to act unless and until such nomination shall be disapproved by the Senate.

EXEMPTION OF FIRST SALE OF CRUDE OIL AND NATURAL GAS OF CERTAIN LEASES FROM PRICE RESTRAINTS AND ALLOCATION PROGRAMS

SEC. 406. (a) The first sale of crude oil and natural gas liquids produced from any lease whose average daily production of such substances for the preceding calendar month does not exceed ten barrels per well shall not be subject to price restraints established pursuant to the Economic Stabilization Act of 1970, as amended, or to any allocation program for fuels or petroleum established pursuant to that Act or to any Federal law for the allocation of fuels or petroleum.

(b) To qualify for the exemption under this section, a lease must be operating at the maximum feasible rate of production and in accord with recognized conservation practices.

(c) The agency designated by the President or by law to implement any such fuels or petroleum allocation program is authorized to conduct inspections to insure compliance with this section and shall promulgate and cause to be published regulations implementing the provisions of this section.

ADVANCE PAYMENTS TO ALASKA NATIVES

SEC. 407. (a) In view of the delay in construction of a pipeline to transport North Slope crude oil, the sum of $5,000,000 is authorized to be appropriated from the United States Treasury into the Alaska Native Fund every six months of each fiscal year beginning with the fiscal year ending June 30, 1976, as advance payments chargeable against the revenues to be paid under section 9 of the Alaska Native Claims Settlement Act, until such time as the delivery of North Slope crude oil to a pipeline is commenced.

(b) Section 9 of the Alaskan Native Claims Settlement Act is amended by striking the language in subsection (g) thereof and substituting the following language: "The payments required by this section shall continue only until a sum of $500,000,000 has been paid into the Alaska Native Fund less the total of advance payments paid into the Alaska Native Fund pursuant to section 407 of the Trans-Alaska Pipeline Authorization Act. Thereafter, payments which would otherwise go into the Alaska Native Fund will be made to the United States Treasury as reimbursement for the advance payments authorized by section 407 of the Trans-Alaskan Pipeline Authorization Act. The provisions of this section shall no longer apply, and the reservation required in patents under this section shall be of no further force and effect, after a total sum of $500,000,000 has been paid to the Alaska Native Fund and to the United States Treasury pursuant to this subsection.".

FEDERAL TRADE COMMISSION AUTHORITY

SEC. 408. (a)(1) The Congress hereby finds that the investigative and law enforcement responsibilities of the Federal Trade Commission have been restricted and hampered because of inadequate legal authority to enforce subpenas and to seek preliminary injunctive relief to avoid unfair competitive practices.

(2) The Congress further finds that as a direct result of this inadequate legal authority significant delays have occurred in a major investigation into the legality of the structure, conduct, and activities of the petroleum industry, as well as in other major investigations designed to protect the public interest.

(b) It is the purpose of this Act to grant the Federal Trade Commission the requisite authority to insure prompt enforcement of the laws the Commission administers by granting statutory authority to directly enforce subpenas issued by the Commission and to seek preliminary injunctive relief to avoid unfair competitive practices.

(c) Section 5(l) of the Federal Trade Commission Act (15 U.S.C. 45(l)) is amended by striking subsection (l) and inserting in lieu thereof:

"(l) Any person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Attorney General of the United States. Each separate violation of such an order shall be a separate offense, except that in the case of a violation through continuing failure to obey or neglect to obey a final order of the Commission, each day of continuance of such failure or neglect shall be deemed a separate offense. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission."

(d) Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) is amended by adding at the end thereof the following new subsection:

"(m) The Commission shall have the power to initiate, prosecute, defend, or appeal any court action in the name of the Commission for the purpose of enforcing the laws subject to its jurisdiction through its own legal representative, after formally notifying and consulting with and giving the Attorney General 10 days to take the action proposed by the Commission."

(e) Section 6 of the Federal Trade Commission Act (15 U.S.C. 46), is amended by adding at the end thereof the following proviso: "Provided, That the exception of 'banks and common carriers subject to the Act to regulate commerce' from the Commission's powers defined in clauses (a) and (b) of this section, shall not be construed to limit the Commission's authority to gather and compile information, to investigate, or to require reports or answers from, any such corporation to the extent that such action is necessary to the investigation of any corporation, group of corporations, or industry which is not engaged or is engaged only incidentally in banking or in business as a common carrier subject to the Act to regulate commerce."

(f) Section 13 of the Federal Trade Commission Act (15 U.S.C. 53) is amended by redesignating "(b)" as "(c)" and inserting the following new subsection:

"(b) Whenever the Commission has reason to believe—

"(1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and

"(2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by

> *the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public—*

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond: Provided, however, That if a complaint is not filed within such period (not exceeding 20 days) as may be specified by the court after issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect: Provided further, That in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction. Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business."

(g) Section 16 of the Federal Trade Commission Act (15 U.S.C. 56) is amended to read as follows:

"Sec. 16. Whenever the Federal Trade Commission has reason to believe that any person, partnership, or corporation is liable to a penalty under section 14 or under subsection (l) of section 5 of this Act, it shall—

> *"(a) certify the facts to the Attorney General, whose duty it shall be to cause appropriate proceedings to be brought for the enforcement of the provisions of such section or subsection; or*
>
> *"(b) after compliance with the requirements with Section 5(m), itself cause such appropriate proceedings to be brought."*

GENERAL ACCOUNTING OFFICE AUTHORITY

Sec. 409. (a) Section 3502 of title 44, United States Code is amended by inserting in the first paragraph defining "Federal agency" after the words "the General Accounting Office" and before the words "nor the governments" the words "independent Federal regulatory agencies.".

(b) Chapter 35 of title 44, United States Code, is amended by adding after section 3511 the following new section:

"§ 3512. Information for independent regulatory agencies

"(a) The Comptroller General of the United States shall review the collection of information required by independent Federal regulatory agencies described in section 3502 of this chapter to assure that information required by such agencies is obtained with a minimum burden upon business enterprises, especially small business enterprises, and other persons required to furnish the information. Unnecessary duplication of efforts in obtaining information already filed with other Federal agencies or departments through the use of reports, questionnaires, and other methods shall be eliminated as rapidly as practicable. Information collected and tabulated by an independent regulatory agency shall, as far as is expedient, be tablulated in a manner to maximize the usefulness of the information to other Federal agencies and the public.

"(b) *In carrying out the policy of this section, the Comptroller General shall review all existing information gathering practices of independent regulatory agencies as well as requests for additional information with a view toward—*

"(1) *avoiding duplication of effort by independent regulatory agencies, and*

"(2) *minimizing the compliance burden on business enterprises and other persons.*

"(c) *In complying with this section, an independent regulatory agency shall not conduct or sponsor the collection of information upon an identical item from ten or more persons, other than Federal employees, unless, in advance of adoption or revision of any plans or forms to be used in the collection—*

"(1) *the agency submitted to the Comptroller General the plans or forms, together with the copies of pertinent regulations and of other related materials as the Comptroller General has specified; and*

"(2) *the Comptroller General has advised that the information is not presently available to the independent agency from another source within the Federal Government and has determined that the proposed plans or forms are consistent with the provision of this section. The Comptroller General shall maintain facilities for carrying out the purposes of this section and shall render such advice to the requestive independent regulatory agency within forty-five days.*

"(d) *While the Comptroller General shall determine the availability from other Federal sources of the information sought and the appropriateness of the forms for the collection of such information, the independent regulatory agency shall make the final determination as to the necessity of the information in carrying out its statutory responsibilities and whether to collect such information. If no advice is received from the Comptroller General within forty-five days, the independent regulatory agency may immediately proceed to obtain such information.*

"(e) *Section 3508(a) of this chapter dealing with unlawful disclosure of information shall apply to the use of information by independent regulatory agencies.*

"(f) *The Comptroller General may promulgate rules and regulations necessary to carry out this chapter.*"

EQUITABLE ALLOCATION OF NORTH SLOPE CRUDE OIL

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

SEPARABILITY

SEC. 411. If any provision of this Act or the applicability thereof is held invalid the remainder of this Act shall not be affected thereby.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the amendment of the House to the title of the bill insert the following:

"To amend section 28 of the Mineral Leasing Act of 1920, and to authorize a trans-Alaska oil pipeline, and for other purposes".

And the House agree to the same.

JAMES A. HALEY,
JOHN MELCHER,
HAROLD T. JOHNSON,
MORRIS K. UDALL,
JOHN P. SAYLOR,
SAM STEIGER,
DON YOUNG,
Managers on the Part of the House.

HENRY M. JACKSON,
ALAN BIBLE,
J. BENNETT JOHNSTON, Jr.,
FLOYD K. HASKELL,
PAUL J. FANNIN,
CLIFFORD P. HANSEN,
MARK O. HATFIELD,
Managers on the Part of the Senate.

JOINT STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1081) to authorize the Secretary of the Interior to grant rights-of-way across Federal lands where the use of such rights-of-way is in the public interest and the applicant for the right-of-way demonstrates the financial and technical capability to use the right-of-way in a manner which will protect the environment, submit this joint statement in explanation of the effect of the language agreed upon by the managers and recommended in the accompanying conference report.

I. Major Provisions

The language agreed upon by the Conference Committee differs from the bill enacted by the Senate and the amendment enacted by the House in the following respects:

1. The Senate bill enacted a completely new system for granting rights-of-way across Federal lands. It applied to rights-of-way for many different purposes.

The House amendment applied only to rights-of-way for oil and gas pipelines. It took the form of an amendment to section 28 of the Mineral Leasing Act of 1920, which is the principal authority for granting oil and gas pipeline rights-of-way across public lands.

The Conferees adopted the House approach, but expanded it to include pipelines for oil, gas, synthetic liquid or gaseous fuels and refined products therefrom in anticipation of developments in coal gasification and liquification, oil shale, and tar sands. It is the understanding of the Conferees, however, that the House will consider broader right-of-way legislation in connection with other bills that are presently pending.

2. The Senate bill applied to all lands owned by the United States except five specified categories. The House amendment retained the present language of the Mineral Leasing Act of 1920, which applies to "public lands, including forest reserves." The meaning of this phrase is not completely clear, but it clearly does not apply to lands acquired by the United States, as distinguished from the public domain.

The Conferees adopted the Senate approach, but excluded three categories rather than five categories of land. The three categories excluded are the National Park System, the Outer Continental Shelf, and Indian lands. The two categories of land that were not excluded are the National Wildlife Refuge System and the National Wilderness Preservation System, both of which are presently subject to the Mineral Leasing Act. The Conferees provided, however, that rights-of-way through reserved areas may not be granted if they would be inconsistent with the purposes of the reservation.

3. The Conferees combined and adopted the guidelines governing the grant of rights-of-way that were contained in the Senate bill and in the House amendment. The two sets of guidelines, while different in some respects, are compatible, and both are intended to spell out in greater statutory detail policies that were formerly left to administrative determination. None of the House guidelines was omitted.

4. Both the Senate bill and the House amendment provided for the immediate grant of a Trans-Alaska oil pipeline right-of-way without further proceedings under the National Environmental Protection Act and with only a limited right of judicial review. The Conferees merged the provisions of the two Houses without making major substantive changes.

5. Both the Senate bill and the House amendment provided for further study and negotiations with respect to possible additional oil and gas pipelines from the North Slope of Alaska, through Canada, to the Midwest. The Conferees merged the provisions of the two Houses without making substantial changes. The results of the negotiations and investigations are intended to serve as comparative information in the evaluation of the best possible methods for future transportation of North Slope energy resources to United States markets, and the bill is not intended to confer any special status on a trans-Canada route in the selection process for future pipelines.

6. The Senate bill had a number of miscellaneous provisions that were not directly related to oil pipeline rights-of-way. The House amendment had no comparable provisions. The Conferees' action was as follows:

(a) The Senate provision amending the Ports and Waterways Safety Act of 1972 with respect to vessel construction standards, and the provision directing the Coast Guard to exercise its present authority to establish a vessel traffic control system for the Valdez area, were adopted.

(b) The provisions requiring Senate confirmation of the Director of the Energy Policy Office in the Executive Office of the President, and the head of the Mining Enforcement and Safety Administration, were adopted.

(c) The provision exempting the first sale of oil and gas from stripper wells from the price restraints of the Economic Stabilization Act of 1970, and from any allocation program, was adopted. A stripper well is defined as a well with an average daily production during the preceding month of not more than ten barrels. In order to qualify for the exemption the lease must be operating at a maximum feasible rate of production and in accord with recognized conservation practices.

(d) The provision amending the Alaska Native Claims Settlement Act and providing for advance payments to Natives was adopted, after reducing the amount of the advance payments from $7,500,000 each six months to $5,000,000, after delaying the starting time for the payments from the beginning of fiscal year 1975 to the beginning of fiscal year 1976, and after deleting the provision making the advance payments a gift if transportation of oil through the pipeline does not commence by December 31, 1976.

(e) The provision amending the Federal Trade Commission Act was adopted, with amendments. It increased the civil penalty for violating a final order of the Commission, gave the Commission broader authority to initiate injunction actions and enforce subpoenas, and gave the Commission authority to represent itself in court if the Attorney General failed to do so after ten days notice.

(f) The provision amending the Federal Reports Act was adopted. It substituted the Comptroller General for the Office of Management and Budget in reviewing questionnaires proposed to be issued by independent Federal regulatory agencies. The regulatory agency will determine whether it needs the information, but it may not send its questionnaire if the Comptroller General determines that the information is already available from another source within the Federal Government.

(g) The provision giving the President broad authority to take any action necessary to insure an equitable allocation of crude oil and petroleum products among the various regions and States was adopted after it was amended to require the President to use his existing authority to accomplish that objective.

7. The House amendment contained (a) a provision prohibiting any form of discrimination in connection with any activity on the trans-Alaska pipeline, (b) a provision limiting the employment of foreign nationals for work on the trans-Alaska pipeline, and (c) a "buy-American" provision for the construction, operation, and maintenance of the trans-Alaska pipeline. The Senate bill had no comparable provisions. The Conferees adopted the first provision and dropped the second and third.

8. The Senate bill and the House amendment had different provisions regarding the liability of the owner or operator of an oil pipeline for damages resulting from its construction and operation. The Senate bill had one provision which related to pipelines on rights-of-way granted under the general law, and which applied only to damages incurred by the United States. The Senate had another provision which related to damages incurred by Alaska Natives in connection with the trans-Alaska pipeline. The House amendment had three provisions which related only to the trans-Alaska oil pipeline. One related to damages to anyone that were caused by the activities of the pipeline owner along the route of the pipeline. A second provision related to damages to anyone from discharges of oil from vessels owned or controlled by the pipeline owner in violation of the Federal Water Pollution Control Act. A third provision related to damages sustained by Alaska Natives.

The Conferees adopted modified versions of all of these provisions. One provision is of general application and appears in section 28(x). It requires the Secretary or agency head to specify the extent to which the holder of a right-of-way or permit shall be liable to the United States for damage or injury incurred in connection with the right-of-way. Joint regulations by the agencies involved, as authorized in section 28(e), are contemplated by the Conferees. Strict liability without regard to fault may be imposed, but a maximum dollar limitation must be stated, and liability in excess of this amount may be determined under ordinary rules of negligence.

The second provision is in section 204. It relates only to the trans-Alaska pipeline, and is in three parts. Subsection (a) imposes on the holder of the right-of-way or permit strict liability without regard to fault, and without regard to ownership of the land or resource involved if the land or resource is relied upon for subsistenc or economic purposes, for damages or injury in connection with or resulting from activities along or in the vicinity of the pipeline right-of-way. Strict liability is limited to $50,000,000 for any one incident, and liability for damages in excess of that amount will be determined in accordance with ordinary rules of negligence.

Subsection (b) imposes on the holder of a right-of-way or permit liability for the full cost of control and removal of the pollutant of any area that is polluted by operations of the holder.

Subsection (c) imposes on the owner or operator of a vessel that is loaded with any oil from the trans-Alaska pipeline strict liability without regard to fault for damages sustained by any person as the result of discharges of oil from such vessel. Strict liability is limited to $100,000,000 for any one incident. The owner or operator is liable for the first $14,000,000. A Trans-Alaska Pipeline Liability Fund, which is created by the bill, is liable for the balance of the allowed claims up to $100,000,000. The portion of any valid claim not payable by the Fund may be asserted and adjudicated under other applicable Federal or State law.

The Fund will accumulate and maintain not less than $100,000,000 derived from the collection of a fee of five cents per barrel at the time the oil is loaded on the vessel, from income from invested funds, and from borrowed money if needed.

Strict liability under subsection (c) will cease when the oil is first brought ashore at a port under the jurisdiction of the United States, and the subsection applies only to vessels engaged in coastwise transportation, including transportation to and beyond deepwater ports.

9. Both the Senate bill and the House amendment contained provisions limiting the export of crude oil and making such exports subject to congressional oversight. The Senate bill applied only to oil from the North Slope of Alaska. The House amendment applied to all oil transported over rights-of-way through Federal lands. The Conferees adopted the House language.

The Senate bill provided for disapproval of proposed exports by joint resolution of the Congress. The House amendment prohibited proposed exports unless affirmatively authorize' by a concurrent resolution of the Congress. The Conferees adopte the Senate language after changing "joint resolution" to "concurren. resolution."

The Conferees also adopted an exception intended to take care of oil exchanges and transportation involving Canada and Mexico.

II. Comments Regarding Specific Provisions

1. Section 28(e), which authorizes the grant of temporary permits for the use of Federal lands "in the vicinity of the pipeline" is not intended to restrict unnecessarily the placement of temporary construction or maintenance facilities such as construction camps, storage areas, communications sites and soil disposal areas, but to permit them to be placed wherever convenient to construction activities.

The term "temporary" relates to duration and imposes no limitation on the type of facility or activity which may be allowed. Thus, slope cuts and fills, berm construction, access facilities and other permanent changes in terrain are permissible. The Secretary or agency head may require, as a condition of such temporary permits, removal of structures and rehabilitation of the area.

This section will overcome an interpretation of the United States Court of Appeals for the District of Columbia in the case of *Wilderness Society* v. *Morton* (Feb. 9, 1973).

2. Section 28(f) contemplates that general regulations governing the grant of rights-of-way or permits will be issued by the Secretary or agency head. This does not preclude the grant of rights-of-way or permits in advance of the issuance of the regulations and the inclusion of appropriate conditions and stipulations to carry out the purposes of the Act.

3. Section 28(g), relating to pipeline safety, is not intended to require the Secretary or agency head to impose safety requirements that would duplicate requirements of the Secretary of Labor or the Secretary of Transportation under other law.

4. Section 28(h), relating to environmental protection, does not require the plan for construction, operation, and rehabilitation of the right-of-way or permit area to be a final one, since all details and conditions cannot be known at the time of application. However, the plan should be a description in as much detail as the state of the planning for the particular project will permit and must be adequate enough for the Secretary or agency head to make an informed judgment on the application and on the need for imposing any special terms and conditions which the public interest may require. Information called for pursuant to this section which is already on file with respect to applications pending on the date of enactment need not be refiled.

5. Section 28(k) does not require public hearings that would duplicate the public participation procedures required by the National Environmental Policy Act. It also permits a public hearing to cover all aspects of a pipeline proposal, regardless of whether one or more rights-of-way or permits, or whether one or more agencies, are involved.

6. Section 28(l) requires reimbursement of costs incurred in processing an application. These costs include the cost of preparing an environmental impact statement. It also requires payment annually in advance of the fair market rental value of the right-of-way or permit. This value can be based on any combination of factors that might reasonably be considered by a landowner in a free market, when determining the price to be asked for the right to use or cross his land.

7. Section 28(m) authorizes the Secretary or agency head to require a right-of-way or permit holder to furnish a bond or other satisfactory security. The term "security" is not used in a technical sense but may include any undertaking which gives adequate assurance that all obligations of the grantee will be met. Such flexibility is needed because some grantees may not be legally able to post such security, and in other cases a requirement of technical security may be impossible or unnecessary to comply with. Flexibility also permits the Secretary or agency head to require more than one type of security.

8. Section 28(p), relating to joint uses of a right-of-way, gives the Secretary or agency head sufficient control to prevent any hazardous or technologically inoperable placement of various facilities.

9. Section 28(t) permits the Secretary or agency head to ratify and confirm the validity of existing rights-of-way for oil or gas regardless of the statutory authority under which they were granted. It is needed because of the possible application of the decision of the United States Court of Appeals in *The Wilderness Society, et al.* v. *Morton, et al.*

The conferees expect that previously granted rights-of-way should be confirmed only after careful study and the fullest possible compliance with the provisions of Section 28 as amended by this Act.

10. Section 28(v), relating to State standards, is included because rights-of-way frequently cross from State or private land into Federal land and back into State or private land. Different construction, operation, and maintenance standards may apply. This section is intended to assure that the Secretary or agency head will carefully consider State standards and comply with them in the interest of uniform practice throughout the State where such compliance is practical in the judgment of the Secretary or agency head. The section is not intended to require that those standards be followed in every case.

11. Section 203(b) provides new and independent statutory authorization and direction for the issuance, administration and enforcement of all rights-of-way, permits, leases and other authorizations necessary for or related to construction, operation and maintenance of the trans-Alaska pipeline system as generally described in the Final Environmental Impact Statement of the Department of the Interior dated March 20, 1972. It is a plenary grant of authority to the appropriate Federal agencies. All grants of rights-of-way, leases, permits, and other authorizations for the use of Federal lands shall be made under the authority of this subsection, rather than under other provisions of law.

After years of delay and protracted litigation on this matter, Congress has determined that the national interest requires a clear-cut and unequivocal policy decision on the pipeline. Congress has decided that an oil pipeline is necessary to move North Slope oil to domestic markets in the lower forty-eight States. This title implements that national policy decision.

In adopting this title, Congress intends to exercise its constitutional powers to the fullest extent necessary to achieve the objective of this title and to make this policy binding upon the Executive Branch and on the Federal courts.

Congress has decided, as a matter of national policy, that the appropriate Federal authorizations shall be issued. The Secretary and other Federal officials have no discretion in this matter. Congress does, however, require that applicable standards of substantive law be followed in connection with these authorizations, and vests liberal discretion in the Executive Branch to determine the conditions and stipulations to be incorporated into the necessary authorizations and the specific facilities to be authorized.

This subsection also identifies the "trans-Alaska oil pipeline system" as that system is generally described in the Secretary of the Interior's Final Environmental Impact Statement of March 20, 1972. The subject of that statement was a 48-inch diameter pipeline system with an ultimate capacity of 2 million barrels a day throughput for which a right-of-way and other permit applications were filed by a number of oil companies which had purchased leases on the North Slope of Alaska. This provision is intended to generally specify the facilities to be authorized and their general location. This provision is not, however, to be narrowly construed. If environmental conditions or new technological developments warrant, new facilities or changes in route or in location of proposed facilities are authorized so long as they are required or appropriate for the construction and operation at full capacity of the trans-Alaska pipeline system as generally described in the impact statement.

The route of the trans-Alaska pipeline will cross lands under the jurisdiction of more than one Federal agency. The Congress intends in Title II that the Secretary of the Interior will issue the right-of-way over all such Federal lands.

12. Section 203(c) provides that, if under any other statute a Federal agency could have issued an authorization relating to the construction of the trans-Alaska pipeline system, the agency shall still issue such authorization, but it shall act under the authority of subsection 203(b) of this Title and not under the authority of the other statute. Authorizations issued under subsection 203(b) shall contain all those provisions that the supplanted statute would have required, and may include any provisions which were authorized but not required by the supplanted statute.

Authorizations issued by the Secretary of the Interior shall follow the applicable provisions of Section 28 of the Mineral Leasing Act, as it is amended by Title I of this Act, except as provided in subsection 203(c). Not all of the Section 28 provisions will be applicable. The determination of applicability is left to the Secretary's judgment.

13. Section 203(d) provides for construction and completion of the pipeline system without further proceedings under National Environmental Policy Act of 1969. Section 202(d) of the House amendment and section 502(d) of the Senate bill contained a declaration that the actions of the Secretary of Interior heretofore taken with respect to the proposed trans-Alaska pipeline shall be regarded as satisfactory compliance with the provisions of the National Environmental Policy Act of 1969. Section 502(d) of the Senate bill also applied to the actions of other Federal agencies and officers, and referred not only to the National Environmental Policy Act of 1969, but also to "all other applicable laws." The Conferees did not adopt this declaration because they considered it as unnecessary and subject to misinterpretation. Inasmuch as section 203(d) of the Conference Report directs that the actions necessary for construction and completion of the trans-Alaska pipeline system shall be taken without further action under the National Environmental Policy Act, a declaration with respect to the effect to be accorded prior actions was not regarded as necessary or material.

Section 203(d) also limits the grounds for judicial review of Federal actions relating to issuance and implementation of all rights-of-way, permits, leases and other authorizations necessary or appropriate for completion of construction of the trans-Alaska pipeline, and its initial operation at full capacity of 2,000,000 barrels throughput per day (i.e., actions under 203(b) and 203(c)).

The permissible grounds for judicial review are limited to constitutional questions and questions of federal actions beyond the scope of authority conferred by Title II. Congress intended such grounds to be construed very narrowly, in keeping with the purpose stated in 203(a). This purpose also underlies the jurisdictional and procedural provisions in Section 203(d), which are designed to assure the most prompt possible resolution of any case involving the trans-Alaska pipeline, and to assure that issuance of the rights-of-way, permits, leases or other authorizations cannot be enjoined except pursuant to a final judgment.

14. Section 204(c) provides, for vessels that transport North Slope oil in the coastal trade, liability standards that are much stricter than those that apply to vessels that transport other oil in the coastal or foreign trade.

It is expected that tankers as large as 250,000 deadweight tons will transport North Slope crude to ports on the West Coast of the United States and elsewhere. Oil discharges from vessels of this size could result in extremely high damages to property and natural resources, including fisheries and amenities, especially if the mishap occurred close to a populated shoreline area.

Under the Limitation of Liability Act of 1851 (46 U.S.C. 183), the owner of a vessel is entitled to limit his liability for property damage caused by the vessel to the value of the vessel and its cargo. The value determination is made *after* the incident causing the damage. It is therefore quite possible for injured parties to go uncompensated if a vessel and its cargo are totally lost.

In the Water Quality Improvement Act of 1970 (33 U.S.C. 1161 et seq.), Congress expanded the liability of a vessel carrying oil to cover Federal government cleanup costs up to the lesser of $100 per ton or $14 million. Under that Act, damages are imposed without regard to the fault of the owner or operator, thereby creating a strict liability to United States Government for cleanup costs. However, State governments and private parties are still obliged to proceed under maritime law, subject to the limits of liability contained in that body of law.

The Conferees concluded that existing maritime law would not provide adequate compensation to all victims, including residents of Canada, in the event of the kind of catastrophe which might occur. Consequently, the Conferees established a rule of strict liability for damages from discharges of the oil transported through the trans-Alaska Pipeline up to $100,000,000.

Strict liability is primarily a question of insurance. The fundamental reason for the limits placed on liability in the Federal Water Quality Improvement Act stemmed from the availability, or non-availability, of marine insurance. Without a readily available commercial source of insurance, liability without a dollar limitation would be meaningless and many independent owners could not operate their vessels. Since the world-wide maritime insurance industry claimed $14 million was the limit of the risk they would assume, this was the limit provided for in the Federal Water Quality Improvement Act. There has been no indication that this level has since increased.

Accordingly, the Conferees adopted a liability plan which would make the owner or operator strictly liable for all claims (for both clean-up costs and damages to public and private parties) up to $14 million. This limit would provide an incentive to the owner or operator to operate the vessel with due care and would not create too heavy an insurance burden for independent vessel owners lacking the means to self-insure.

Financial responsibility up to this limit would have to be demonstrated before the vessel could be loaded with oil. Since the Federal Water Quality Improvement Act has an existing mechanism for establishing proof of financial responsibility, reference was made to the appropriate provision (13 U.S.C. 1321(p)). Such provision would be used to the extent it is consistent with the purposes of this Act; for example, references to tonnage limitations would not apply. Claims for clean-up costs would take precedence over other claims thereby preserving the provisions of the Federal Water Quality Improvement Act.

All claims over $14 million up to the $100 million ceiling would be asserted against the Trans-Alaska Pipeline Liability Fund established by the bill.

The owners of oil loaded onto tankers at Valdez will pay the Fund five cents per barrel until there is $100 million in the Fund. Payments would resume at any time the Fund fell below $100 million. (The Fund is described in more detail under Major Provisions.) Thus, the owners of the oil would have an incentive to select carefully vessels to carry their oil. Moreover, such owners would then share the risk associated with transporting the oil on water.

The Fund is not precluded from proceeding against the owner or operator of the vessel or other third parties, if either or both were negligent or caused the discharged.

The States are expressly not precluded from setting higher limits or from legislating in any manner not inconsistent with the provisions of this Act.

The Conferees hope that the appropriate committees of the House and Senate which are considering the more general subject of marine liability will harmonize the liability provisions of the Trans-Alaska Pipeline Authorization Act and the liability provisions of any general legislaton that may be developed.

15. Section 406, relating to stripper oil wells, was a Senate floor amendment to S. 1081. The Conferees have adopted the general concept of the floor amendment, but have added new provisions to insure that the exemption is narrowly defined and prudently administered, and to insure that the incentive being granted is properly limited in accord with congressional intent.

The purpose of exempting small stripper wells—wells whose average daily production does not exceed ten barrels per well—from the price restraints of the Economic Stabilization Act (now in Phase IV) and from any system of mandatory fuel allocation is to insure that direct or indirect price ceilings do not have the effect of resulting in any loss of domestic crude oil production from the premature shutdown of stripper wells for economic reasons.

As of January 1, 1973, there were 350,000 stripper wells producing ten barrels a day or less. Stripper wells account for 71 percent of all of the oil wells in this country, but produce an average of only 3.6

barrels per day, or only 13 percent of total U.S. domestic crude production.

Many stripper wells are of only marginal economic value. When the costs of their operation exceed the value of their production, they are shut in, and a known and developed crude oil reserve is lost to U.S. production. Removing Phase IV price restraints from these marginal stripper wells has the effect of increasing the value of the crude oil they produce by about $1.30 per barrel (the difference between $4.02, the current per-barrel ceiling average under Phase IV, and $5.32, the per-barrel average price for "new" domestic crude oil production which is not subject to Phase IV). This price incentive will encourage owners and operators of stripper wells to maintain production and to keep these wells in operation for longer periods of time than would be possible if the value of their crude oil production were determined under Phase IV price ceilings. This increased incentive will, it is anticipated, permit stripper well operators to make new investments in the eligible wells and improve the gathering and other facilities for moving this oil to market.

The words "first sale" in Section 406(a) refer to the initial sale from the producer to a refiner, oil broker or other party. Thereafter, the exemption expires and any applicable provision of the Economic Stabilization Act or any mandatory allocation program may apply.

The exemption also runs only to "crude oil and natural gas liquids." It does not run to natural gas produced by these wells. Natural gas production and pricing continue to be regulated by the Federal or State agency having jurisdiction over the particular wells involved.

The Congress intends that the provisions of this section will be strictly enforced and regulated by the administering agency to insure that the limited exemption of this class of wells for the express purposes described above is not in any way broadened. To achieve this, Congress authorizes on-site inspections to insure compliance. Congress also directs that the administering agency shall promulgate regulations to implement the provisions of this section before it becomes operative. The Conferees expect the administering agency to utilize State data regarding production volumes, and to provide by regulation safeguards against the manipulation or gerrymandering of lease units in a manner that evades the price control and allocation programs.

These regulations shall be so designed as to provide safeguards against any abuse, over-reaching or altering of normal patterns of operations to achive a benefit under this section which would not otherwise be available. Congress specifically intends that the regulations shall, among other things, prevent any "gerrymandering" of leases to average down high production wells with a number of low production stripper wells to remove the high production wells from price ceilings. The *sole* purpose and objective of this Section 406 is to keep stripper wells—those producing less than ten barrels per day—in production and to insure that the crude oil they produce continues to be available for U.S. refineries and U.S. consumers. It is not intended to confer any benefit on the owners and operators of wells producing in excess of ten barrels per day.

The Congress also intends that the regulations provide appropriate limitations and provisions in the definition of "lease" to insure that an administratively workable system is established which does not permit abuse.

16. Section 408(f) relates to the standard of proof to be met by the Federal Trade Commission for the issuance of a temporary restraining order or a preliminary injunction. It is not intended in any way to impose a totally new standard of proof different from that which is now required of the Commission. The intent is to maintain the statutory or "public interest" standard which is now applicable, and *not* to impose the traditional "equity" standard of irreparable damage, probability of success on the merits, and that the balance of equities favors the petitioner. This latter standard derives from common law and is appropriate for litigation between private parties. It is not, however, appropriate for the implementation of a Federal statute by an independent regulatory agency where the standards of the public interest measure the propriety and the need for injunctive relief.

The inclusion of this new language is to define the duty of the courts to exercise independent judgment on the propriety of issuance of a temporary restraining order or a preliminary injunction. This new language is intended to codify the decisional law of *Federal Trade Commission* v. *National Health Aids*, 108 F. Supp. 340, and *Federal Trade Commission* v. *Sterling Drug, Inc.*, 317 F.2d 669, and similar cases which have defined the judicial role to include the exercise of such independent judgment. The conferees did not intend, nor do they consider it appropriate, to burden the Commission with the requirements imposed by the traditional equity standard which the common law applies to private litigants.

17. Section 409(a) exempts "independent Federal regulatory agencies" from the provisions of the Federal Reporting Services Act. In general, the Reporting Services Act provides that Federal agencies may not collect information from ten or more persons without having first obtained the advance approval and clearance of the Office of Management and Budget. The term "Federal agencies" has been construed to include the independent Federal regulatory agencies for the purposes of the Reporting Services Act.

The purpose of Section 409(a) is to preserve the independence of the regulatory agencies to carry out the quasi-judicial functions which have been entrusted to them by the Congress. The intent of this section is not to encourage a proliferation of detailed questionnaires to industry, small business or other persons which could result in unnecessary and unreasonable expense. Any legitimate need for information in carrying out the statutory responsibilities of these agencies would, however, be carried out even though responses may entail some expense and inconvenience.

The purpose of this section is to insure that the existing clearance procedure for questionnaires or requests for data does not become, inadvertently or otherwise, a device for delaying or obstructing the investigations and data collection necessary to carry out the important regulatory functions assigned to the independent agencies by the Congress.

The Congress intends the term "independent Federal regulatory agencies" as used in Section 409(a) to include, but not necessarily be limited to, the following agencies:

Civil Aeronautics Board,
Federal Communications Commission,
Atomic Energy Commission (insofar as its regulatory and adjudicative functions are concerned),
Federal Trade Commission,
Interstate Trade Commission,
Securities and Exchange Commission, and
Federal Power Commission.

Subsection 409(b) provides a procedure for advance review which is designed to insure that information required by independent Federal regulatory agencies is obtained with a minimum burden upon business enterprises, especially small businesses, and other persons required to furnish such information.

The Comptroller General of the General Accounting Office is charged with the review responsibility. Since this will be a new function for the General Accounting Office, the Comptroller General has informed the Congress that he will need until July 1, 1974 to enable him to obtain the staff which will be required to carry out the full responsibilities provided for in Section 409(b). This is satisfactory to the Congress so long as appropriate interim arrangements are made to carry out the Section 409(b) review of the Federal agencies which should not or cannot be delayed until July 1, 1974.

James A. Haley,
Harold T. Johnson,
Morris K. Udall,
John Melcher,
John P. Saylor,
Sam Steiger,
Don Young,
Managers on the Part of the House.

Henry M. Jackson,
Alan Bible,
J. Bennett Johnston, Jr.,
Floyd K. Haskell,
Paul J. Fannin,
Clifford P. Hansen,
Mark O. Hatfield,
Managers on the Part of the Senate.

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ALASKA
PIPELINE
COMMISSION

ACT OF 1972

LAWS OF ALASKA

1972

Source | **Chapter No.**

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AN ACT

Relating to oil and gas pipelines and to the creation of the Alaska Pipeline Commission; and providing for an effective date.

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

* Section 1. AS 42 is amended by adding a new chapter to read:

CHAPTER 6. ALASKA PIPELINE COMMISSION ACT.

ARTICLE 1. DECLARATION OF POLICY.

Sec. 42.06.010. LEGISLATIVE DECLARATION OF POLICY. The transportation of oil or gas by pipeline in this state is a business involved with the public interest. It is the purpose of this chapter to

(1) promote and oversee the development of an oil and gas pipeline transportation system in this state properly adapted to the present and future needs of the domestic commerce of the state and of the interstate and foreign commerce of the United States;

(2) promote and ensure, in conjunction with the Alaska Public Utilities Commission within its jurisdiction, nondiscriminatory, efficient, and economical oil and gas pipeline transportation at reasonable rates.

ARTICLE 2. ESTABLISHMENT OF ALASKA PIPELINE COMMISSION.

Sec. 42.06.020. ALASKA PIPELINE COMMISSION CREATED. There is created within the Department of Commerce the Alaska Pipeline Commission, as a commission to regulate pipeline facilities and pipeline carriers, to regulate the access of information concerning pipeline facilities and carriers to this state, and to represent the interests of the state in any proceedings relating to them as provided for in this chapter.

Sec. 42.06.030. COMPOSITION OF ALASKA PIPELINE COMMISSION. (a) The Alaska Pipeline Commission consists of three members, appointed by the governor and confirmed by a majority of the members of the legislature in joint session.

(b) The governor shall designate one member of the commission as chairman of the commission. This member shall serve as chairman for a term of two years, and may be appointed for successive terms.

Sec. 42.06.040. TERM OF OFFICE; VACANCY. (a) The members of the commission shall be appointed for terms of six years, except that of the members first appointed to the commission, one shall be appointed for a term of two years, one for a term of four years, and one for a term of six years. Commissioners may be appointed to successive terms. A commissioner, upon the expiration of his term, shall continue to hold office until his successor is appointed and qualified.

(b) A vacancy arising on the commission shall be filled by appointment by the governor and confirmation by a majority of the members of the legislature in joint session, and an appointee to fill a vacancy shall hold office for the balance of the term for which his predecessor on the commission was appointed.

(c) A vacancy in the commission does not impair the authority of a quorum of commissioners to exercise all the powers and perform all the duties of the commission.

Sec. 42.06.050. REMOVAL OF COMMISSIONERS. The governor may remove a commissioner from office by and with the consent of a majority of the legislature.

Sec. 42.06.060. QUALIFICATIONS OF COMMISSIONERS. Members of the commission shall be qualified as follows: one member shall be an attorney duly admitted to practice law in this state, and preferably having experience in administrative or regulatory law; one member shall be a graduate of an accredited university with a major or a degree in land management, civil engineering or transportation economics, preferably with experience in oil and gas transportation; one member shall be a graduate of an accredited university with a major or a degree in finance, accounting, or, if not otherwise represented on the commission, transportation economics. A member of the commission may not hold any other state or federal office, position or employment, either elective or appointive, except as a member of the armed forces of the United States or of this state.

Sec. 42.06.070. QUORUM. Two members of the commission constitute a quorum for the transaction of business, for the performance of a duty, or for the exercise of a power of the commission.

Sec. 42.06.080. OATH OF OFFICE. Each commissioner and the executive director of the commission, before entering upon the duties of his office, shall take and subscribe to the oath prescribed for principal officers of the state.

Sec. 42.06.090. COMPENSATION OF MEMBERS OF THE COMMISSION. Members of the commission are in the exempt service described in AS 39.25 and receive an annual salary equal to that of a superior court judge, to be paid in 12 equal monthly installments.

Sec. 42.06.100. PRINCIPAL OFFICE; SEAL. (a) The commission shall establish a principal office, and may establish branch offices at locations in this state necessary or convenient to the discharge of its duties. For the convenience of the public or of other interested persons the commission may hold meetings, hearings or other proceedings at any of its offices or at other locations in this state.

(b) The commission shall have an official seal.

Sec. 42.06.110. LEGAL COUNSEL. (a) The attorney general is legal counsel for the commission. He shall advise the commission in legal matters arising in the discharge of its duties and represent the commission in actions to which it is a party. If, in the opinion of the commission, the public interest is not adequately represented by counsel in a proceeding, the attorney general, upon request of the commission, shall represent the public interest.

(b) The commission may employ temporary legal counsel from time to time in matters in which the commission is involved.

Sec. 42.06.120. EMPLOYMENT OF COMMISSION PERSONNEL. (a) The commission may employ an executive director who shall have had at least five years of experience in oil or gas transportation, management, law, accounting, or an allied field. The executive director may not be one of the commissioners.

(b) The commission may, as it considers necessary for the purpose of performing its duties under this chapter, employ or contract for the services of hearing officers, engineers, experts, clerks, accountants, and other consultants, agents and assistants. The commission shall make the maximum possible use of employees and experts available in the various departments and agencies of state government.

(c) The executive director, his deputy, and his secretary, shall be in the partially exempt service described in AS 39.25. All other employees of the commission, other than legal counsel, are in the classified service under AS 39.25.

Sec. 42.06.130. RESTRICTIONS ON COMMISSIONERS AND EMPLOYEES. No member or employee of the commission may have an official connection with, or hold stock or securities in, or have a pecuniary interest in, any corporation, company or association engaged in the production or the transportation of oil or gas. No member or employee may act upon a matter in which his relationship with any person creates a conflict of interest.

ARTICLE 3. POWERS AND DUTIES OF COMMISSION.

Sec. 42.06.140. POWERS AND DUTIES OF THE COMMISSION. As provided in this chapter, the commission

(1) shall regulate pipelines and pipeline carriers in this state;

(2) may investigate upon complaint or its own motion, the rates, classifications, rules, regulations, prices, services, practices and facilities of pipeline carriers, and the performance of obligations under and compliance with the terms of leases issued by the state;

(3) may make, prescribe or require just, fair and reasonable rates, classifications, regulations, practices, services and facilities for pipeline carriers;

(4) may require pipeline carriers to file with the commission reports and other information and data required or permitted to be required by other provisions of this chapter;

(5) may adopt regulations that are necessary and proper to the performance of its duties under this chapter, including regulations governing practices and procedures of the commission, which regulations shall not be inconsistent with state law;

(6) shall during normal business hours have access to and may designate any of its employees, agents or consultants to inspect and examine, the accounts, financial and property records, books, maps, inventories, appraisals, valuations, and related reports kept by a pipeline carrier, or kept for it by others, which directly affect the interests of the state and directly relate and pertain to pipelines located in this state;

(7) may initiate, intervene in, and appear personally or by counsel and offer evidence in and participate in, any proceedings involving a pipeline carrier, and affecting the interests of the state, before any officer, department, board, commission or court of this state or of another state or of the United States;

(8) shall require permits for the construction, enlargement in size or operating capacity, extension, operation or abandonment of any oil or gas pipeline facility, subject to necessary and reasonable terms, conditions and limitations;

(9) may prescribe the system of accounts and regulate the service of an oil or gas pipeline facility.

Sec. 42.06.150. POWERS AND DUTIES WITH RESPECT TO FEDERALLY REGULATED CARRIERS. Sec. 140 of this chapter applies to oil and gas pipeline carriers regulated under the Interstate Commerce Act of 1906, or the Natural Gas Act of 1938, only to the extent not preempted under those federal Acts.

Sec. 42.06.160. ADMINISTRATIVE AUTHORITY OF COMMISSION; REGULATIONS AND HEARING PROCEDURES. (a) The commission may adopt regulations, not inconsistent with the law, necessary or proper to exercise its powers and to perform its duties under this chapter.

(b) The commission shall adopt regulations governing practice and procedure, consistent with due process of law, including the conduct of formal and informal investigations, prehearing conferences, hearings and proceedings, and the handling of procedural motions by a single commissioner. Technical rules of evidence need not apply to investigations, prehearing conferences, hearings and proceedings before the commission. The commission shall provide for representation by out-of-state attorneys substantially in accordance with Civil Rule 81.

(c) The commission, a commissioner or an employee authorized by the commission may administer oaths, certify to all official acts, and issue subpoenas, subpoenas duces tecum and other process to compel the attendance of witnesses and the production of testimony, records, papers, accounts and documents in any inquiry, investigation, hearing or proceeding before the commission in the state. Each commissioner is authorized to issue orders on procedural motions. The commission may petition a court of this state to enforce its subpoenas, subpoenas duces tecum and other process.

Sec. 42.06.170. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. (a) The administrative adjudication procedures of the Administrative Procedure Act (AS 44.62) do not apply to adjudicatory proceedings of the commission except that final administrative determinations by the commission are subject to judicial review under that Act as provided in sec. 551(a) of this chapter.

(b) The Administrative Procedure Act applies to regulations adopted by the commission.

Sec. 42.06.180. FORMAL HEARINGS. A formal hearing which the commission has power to hold may be held by or before two or more commissioners designated for the purpose by the commission. The testimony and evidence in a formal hearing may be taken by the commissioners to whom the hearing has been assigned. A commissioner who has not heard the testimony, including the argument, may not participate in making a decision of the commission. In determining the place of a hearing the commission shall give preference to holding the hearing at a place most convenient for those interested in the subject of the hearing.

Sec. 42.06.190. FINAL ORDERS OF THE COMMISSION. No final order of the commission compelling affirmative action, denying a right or privilege, or granting a right or privilege over protest of the oil or gas pipeline facility or any party of record may be entered without giving the interested party reasonable notice and an opportunity to be heard.

Sec. 42.06.200. FORMAT OF ORDERS. Formal orders of the commission shall be based upon the facts of record. An order entered pursuant to a hearing shall state the commission's findings, the basis of its findings and conclusions, together with its decision. These orders shall be entered of record and a copy of them shall be served on all parties of record in the proceeding.

Sec. 42.06.210. PUBLICATION OF REPORTS, ORDERS, DECISIONS AND REGULATIONS. All reports, orders, decisions and regulations of the commission shall be in writing. The commission shall apprise all affected operators of oil or gas pipeline facilities and interested parties of these reports, orders, decisions, and regulations as they are issued and adopted, and, when appropriate to do so, shall publish them in a manner that will reasonably inform the public or the affected consumers of the services of any oil or gas pipeline facility. The commission may set charges for costs of printing or reproducing and furnishing copies of its reports, orders, decisions and regulations. The publication requirement, as it pertains to regulations, does not supersede the requirements of the Administrative Procedure Act (AS 44.62).

Sec. 42.06.220. ANNUAL REPORT. The commission shall publish an annual report reviewing its work and submit it to the legislature by February 15 of each year. The report shall contain information and data which bear a significant relationship to the development and regulation of oil or gas pipeline facilities in the state and include an outline of the commission's program for the development and regulation of oil or gas pipeline facilities in the forthcoming year.

Sec. 42.06.230. JURISDICTION OF COMMISSION. Except as otherwise provided in this chapter or hereafter otherwise expressly provided by law, and except as to any concurrent jurisdiction with the Alaska Public Utilities Commission under ch. 5 of this title as to a public utility described in AS 42.05.701(2)(D) and (E), the jurisdiction and authority over the subject matters of this chapter shall be exclusively in the commission. To the extent that the performance of any duties of the commission affect a pipeline carrier or a pipeline subject to the Interstate Commerce Act or the Natural Gas Act, the performance of its duties shall not, as to that pipeline carrier or pipeline, conflict with applicable federal laws, regulations, rules, orders, or other requirements.

Sec. 42.06.240. CERTIFICATE REQUIRED. (a) After January 1, 1973 no pipeline carrier, or person which will be a pipeline carrier upon completion of any proposed construction or extension, shall engage in the transportation of oil or gas by pipeline subject to the jurisdiction of the commission, or undertake the construction or extension of any pipeline facilities for that purpose, or acquire or operate any pipeline facilities or extensions, unless there is in force with respect to that pipeline carrier a certificate of public convenience and necessity issued by the commission authorizing those acts or operations. A certificate shall describe the nature and extent of the authority granted in it, including, as appropriate for the services involved, a description of the authorized area and scope of operation of the oil or gas pipeline facility.

(b) If any person or predecessor in interest was engaged in transportation of oil or gas by pipeline subject to the jurisdiction of the commission on or before January 1, 1973, over the route or routes for which application is made, the commission shall issue the certificate without requiring further proof that public convenience and necessity will be served by the operation, and without further proceedings, if application for the certificate is made to the commission before January 1, 1973; pending the determination of the application, the continued operation of the pipeline or pipelines is lawful.

(c) In an area where the commission determines that two or more oil or gas pipeline facilities are competing or are planning to compete to offer identical oil or gas pipeline service, and this competition is not in the public interest, the commission shall take appropriate action to eliminate or not allow the competition and undesirable duplication of facilities.

(d) The commission may attach to certificates of convenience and necessity terms and conditions and require issuance of securities it considers necessary for the protection of the environment and for the best interest of the oil or gas pipeline facility and the general public.

(e) The requirement for a certificate shall not operate to impose state regulation which has been preempted under the Interstate Commerce Act of 1906 or the Natural Gas Act of 1938. When federal law has preempted state regulation the commission must accept the findings made under the federal scheme of regulation.

Sec. 42.06.250. APPLICATION. Application for certificate shall be made in writing to the commission, verified under oath, and shall be in the form, and contain the information, and notice of the application shall be served upon the interested parties and in the manner, that the commission by regulation requires.

Sec. 42.06.260. PUBLIC HEARINGS. At least 30 days before issuing a certificate of convenience and necessity, the commission shall hold a public hearing on the application. Copies of the completed application shall be made available to the public at least 10 days before the public hearing date. A transcript of the public hearing shall be included in the permanent record of agency action on that application, and copies of the public hearing transcripts shall be available to the public. The commission may, without notice of hearing and pending the determination of an application for a certificate, issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

Sec. 42.06.270. GRANT OR DENIAL OF APPLICATION. (a) Unless governed by sec. 240(b) of this chapter, a certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operation, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the commission, and that the proposed service, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise the application shall be denied.

(b) The commission, after a hearing had upon its own motion or upon application, may determine the gathering areas, or the routes over which, the fixed termini between which, and the intermediate and off route points, if any, to which each authorization under this section is to be limited.

(c) Nothing contained in this chapter shall be construed as a limitation upon the power of the commission to grant certificates of public convenience and necessity for service of an area, or routes, already being served by another pipeline.

Sec. 42.06.280. INSURANCE OR DEPOSIT OF SECURITY. (a) In granting a certificate of convenience and necessity the commission shall require the oil or gas pipeline carrier to either procure and file liability and property damage insurance from a company licensed to write insurance in the state or deposit security for the limits of liability upon the terms and conditions the commission determines necessary for the reasonable protection of the public against damage and injury for which the owner or operator of the oil or gas pipeline facility may be liable by reason of the operation of an oil or gas pipeline facility.

(b) In fixing the amount of insurance or security, the commission shall give consideration to the character and amount of traffic, the number of persons affected and the degree of danger which the proposed operation involves.

Sec. 42.06.290. ABANDONMENT. (a) No pipeline carrier may abandon or permanently discontinue use of all or any portion of a pipeline or abandon or discontinue any service rendered by means of a pipeline that is the subject of a certificate of convenience and necessity, without the permission and approval of the commission after due notice and hearing, and a finding by the commission that continued service is not required by public convenience and necessity. Any interested person may file with the commission a protest or memorandum of opposition to or in support of discontinuance or abandonment. The commission may authorize temporary suspension of a service or of part of a service.

(b) Upon complaint or upon its own motion, the commission may reinvestigate a previously authorized discontinuance, abandonment or suspension of a service described in (a) of this section. If, after due notice and hearing, the commission finds that the public convenience and necessity requires the service to be resumed, and that there has not been detrimental reliance on the previous authorization, it may order the operator or owner of the oil or gas pipeline facility to again provide the service.

Sec. 42.06.300. MODIFICATION, SUSPENSION OR REVOCATION OF CERTIFICATES. Upon complaint or upon its own motion the commission, after due notice and hearing and for good cause shown, may amend, modify, suspend, or revoke a certificate, in whole or in part. Good cause for amendment, modification, suspension or revocation of a certificate shall be

(1) the requirements of public convenience and necessity;

(2) misrepresentation of a material fact in obtaining the certificate;

(3) unauthorized discontinuance or abandonment of all or part of a service that is the subject of such certificate;

(4) wilful failure to comply with the provisions of this chapter, or the rules, regulations or orders of the commission; or

(5) wilful failure to comply with a term, condition, or limitation of the certificate.

Sec. 42.06.305. TRANSFER OF CERTIFICATE. A certificate may not be sold or leased, rented or transferred without the prior approval of the commission; the transfer of a certificate not involving a substantial change of ownership shall be summarily approved.

Sec. 42.06.310. STANDARDS OF SERVICE AND FACILITIES. (a) Each oil or gas pipeline facility shall furnish and maintain adequate, efficient and safe service and facilities. This service shall be reasonably continuous and without unreasonable interruption or delay.

(b) If the commission, upon its own motion or upon complaint, after providing reasonable notice and opportunity for hearing, finds that the service or facilities of an oil or gas pipeline facility are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of this chapter, the commission shall prescribe by regulation or order, the reasonable, safe, adequate, sufficient service or facilities to be observed, furnished, enforced, or employed, including all repairs, changes, alterations, extensions, substitutions, or improvements in facilities that are reasonably necessary and proper for the safety, accommodation, and convenience of the public and the users. Regulations or orders issued under this subsection shall conform to accepted industry standards and practices.

Sec. 42.06.320. DISCRIMINATION IN SERVICE. No oil or gas pipeline carrier may, as to service, make or grant an unreasonable preference or advantage to any person or subject any person to an unreasonable prejudice or disadvantage. No oil or gas pipeline facility which is owned by more than one owner may require that users make separate requests of each separate owner in order to obtain a reasonable share of the service provided by the oil or gas pipeline facility.

Sec. 42.06.330. POWER OF COMMISSION TO ALLOCATE USAGE. If the commission, upon its own motion or upon complaint, after providing reasonable notice and opportunity for hearing, finds that an oil or gas pipeline facility is making or granting an unreasonable preference or advantage to any person or subjecting any person to an unreasonable prejudice or discrimination, the commission may prescribe rules to end the discrimination or the commission may itself prescribe the allocation of the service until it determines the discrimination can be avoided by appropriate rules or agreements.

Sec. 42.06.340. ORDER FOR JOINT USE OR CONNECTION. When there is failure to agree upon the joint use or interconnection of oil or gas pipeline facilities or the conditions or compensation for joint use or interconnections, any interested person may apply to the commission for an order requiring the interconnection. If, after investigation and opportunity for hearing, the commission finds that public convenience and necessity require the joint use or connection, and that the use or connection will not result in substantial injury to the oil or gas pipeline facility or its customers, or in substantial detriment to the services furnished by the oil or gas pipeline facility, or in the creation of safety hazards, it shall

(1) order that the use be permitted;

(2) prescribe reasonable conditions and compensation for the joint use;

(3) order the interconnection to be made;

(4) determine the time and manner of the interconnection;

(5) determine the apportionment of costs and responsibility for operation and maintenance of the interconnection.

Sec. 42.06.350. TARIFFS, CONTRACTS, FILING AND PUBLIC INSPECTION. (a) Under such regulations as the commission shall prescribe, every intrastate oil or gas pipeline carrier shall file with the commission, within the time and in the form designated by the commission, all rates, tariffs, charges, classifications, rules, regulations, terms, and conditions pertaining to service provided under the certificate, and shall maintain copies on file at its principal business office and at places designated by the commission, available to, and subject to inspection by, the general public on demand.

(b) The commission may reject the filing of all or part of a tariff which does not comply with the form or filing regulations of the commission or which is not consistent with this chapter or the regulations of the commission. A tariff or provision so rejected is void.

Sec. 42.06.360. ADHERENCE TO TARIFFS. The terms and conditions under which a pipeline carrier offers its services and facilities to the public shall be governed strictly by the provisions of its currently effective tariffs. No legally filed and effective tariff rate, charge, rule, regulation or condition of service may be changed except in the manner provided in this chapter. If more than one tariff rate or charge can reasonably be applied for billing purposes the one most advantageous to the customer shall be used.

Sec. 42.06.370. RATES TO BE JUST AND REASONABLE. (a) All rates demanded or received by a pipeline carrier, or by any two or more pipeline carriers jointly, for a service furnished or to be furnished shall be just and reasonable.

(b) Additional regulations and rules governing determination of a reasonable tariff shall be published by the commission.

Sec. 42.06.380. DISCRIMINATION IN RATES. (a) No pipeline carrier may, as to rates, grant a preference or advantage to any customer or subject a customer to an unreasonable prejudice or disadvantage. No pipeline carrier may establish or maintain an unreasonable difference as to rates, either as between localities served or between classes of service provided under the certificate.

(b) No pipeline carrier may directly or indirectly refund, rebate or remit in any manner, or by any device, any portion of the rates and charges or charge, demand or receive a greater or lesser compensation for service than is specified in its effective tariff nor extend to any customer served under the certificate any form of contract, agreement, inducement, privilege or facility, or apply any rule, regulation or condition of service except as are extended or applied to all customers under like circumstances.

Sec. 42.06.390. NEW OR REVISED TARIFFS. (a) No pipeline carrier may establish or place in effect any new or revised rates, charges, rules, regulations, conditions of service or practices except after 30 days notice to the commission and to the public. Notice shall be given by filing with the commission and keeping open for public inspection the revised tariff provisions which shall plainly indicate the changes to be made in the schedules then in force and the time when the changes will go into effect. The commission may prescribe additional means of giving notice. The commission, for good cause shown, may allow changes to take effect on less than 30 days notice under conditions the commission prescribes.

(b) New and revised tariffs shall be filed in the manner provided in sec. 350 of this chapter.

Sec. 42.06.400. SUSPENSION OF TARIFF FILING. (a) When a tariff filing is made containing a new or revised rate, classification, rule, regulation, practice, or condition of service the commission may, either upon written complaint or upon its own motion, after reasonable notice, conduct a hearing to determine the reasonableness and propriety of the filing. Pending a hearing the commission may, by order stating the reasons for its action, suspend the operation of the tariff filing for an initial period not longer than six months beyond the time when it would otherwise go into effect.

(b) An order suspending a tariff filing may be vacated if, after investigation, the commission finds that it is in all respects proper. Otherwise the commission shall hold a hearing on the suspended filing and issue its order, before the end of the suspension period, granting, denying or modifying the suspended tariff in whole or in part.

(c) In the case of a proposed increased rate, the commission may by order require the interested pipeline carrier to place in escrow in a financial institution approved by the commission and keep accurate account of all amounts received by reason of the increase, specifying by whom and in whose behalf the amounts are paid. Upon completion of the hearing and decision the commission may by order require the pipeline carrier to refund to the persons in whose behalf the amounts were paid, that portion of the increase in rates which was found to be unreasonable or unlawful. No funds may be released from escrow without the commission's prior written consent and the escrow agent shall be so instructed by the pipeline carrier, in writing, with a copy to the commission. The pipeline carrier, at its expense, may substitute a bond in lieu of the escrow requirement.

(d) One who initiates a change in existing tariffs bears the burden of proving the reasonableness of the change.

Sec. 42.06.410. POWER OF COMMISSION TO FIX RATES. When the commission, after an investigation and hearing, finds that a rate demanded, observed, charged or collected by a pipeline carrier for a service, subject to the jurisdiction of the commission, or that a classification, rule, regulation, practice, or contract affecting the rate, is unjust, unreasonable, unduly discriminatory or preferential, the commission shall determine a just and reasonable rate, classification, rule, regulation, practice, or contract to be observed or allowed and shall establish it by order.

Sec. 42.06.420. VALUATION OF PROPERTY OF A PIPELINE CARRIER. The commission may, after providing reasonable notice and opportunity to be heard, ascertain and set the fair value of the whole or any part of the property of a pipeline carrier, insofar as it is material to the exercise of the jurisdiction of the commission. The commission may make revaluations from time to time and ascertain the fair value of all new construction, extensions, and additions to the property of a pipeline carrier.

Sec. 42.06.430. GENERAL PROVISIONS AS TO ACCOUNTS, RECORDS AND REPORTS. To the extent necessary to the performance of the duties of the commission as provided in this chapter:

(1) The commission by regulation shall, for the purposes of this section, classify pipeline facilities, and may designate the pipeline facilities or groups of pipeline facilities within this state that constitute a pipeline system for the purposes of this section.

(2) The commission may by regulation prescribe a uniform system of accounts for any classification of pipeline facilities which best represents and clearly reveals the investment, revenues, direct operating costs and other expenses of the subject classification of facilities, and may prescribe the manner in which the accounts and supporting records are kept in order to clearly show the investment, revenues and costs pertaining to the subject facilities or to a pipeline system constituting a part of it. Accounts shall be maintained on a calendar year basis unless the commission specifically authorizes the maintenance of accounts on the basis of a fiscal year other than the calendar year.

(3) The commission may by regulation require a pipeline carrier to establish and maintain as part of its system of accounts continuing property records showing, as to property units in this state, the year of placement in service, original cost and current location, and, as to a pipeline system, accounts and records in a manner showing, on a current basis, the original cost of the system in this state and related reserves for depreciation. From time to time the commission shall determine the proper and adequate rates of depreciation for each major class of property of an oil or gas pipeline facility.

(4) The pipeline carrier shall keep its accounts for its pipeline facilities located in this state separate from any accounts relating to any other business (including another pipeline facilities business, or a subsidiary business) it engages in, directly or indirectly. Except as the commission provides, no property, expense or revenue used in or derived from the other business may be considered in establishing the rates and charges of the facility.

(5) The pipeline carrier shall keep books, accounts, papers and records required by this chapter or by regulations adopted by the commission under this chapter in an office in this state and may not remove them from the state except upon written authority by the commission.

(6) For pipelines subject to the Interstate Commerce Act or the Natural Gas Act, the uniform system of accounts and manner of maintaining the same and the property records kept and maintained under this section shall, wherever considered practicable by the commission, be the same as required under regulations prescribed by the applicable federal agency.

(7) Within 90 days after the close of its authorized annual accounting period, or within additional time granted by the commission for good cause shown, a pipeline carrier shall file a verified annual report with

the commission. This annual report shall consist of,

(A) for a pipeline subject to the Interstate Commerce Act or the Natural Gas Act, a copy of the annual report as filed with the appropriate federal agency pursuant to the applicable Act, and for other pipelines a report of general corporation information and financial statements in the same general format as the report of pipelines of the same classification subject to the jurisdiction of the appropriate federal agency; and

(B) in the same general format as the report referred to in (7)(A) of this section, a statement of income and investment applicable to pipelines in this state, and a statement of investment, revenues, direct operating costs and other expenses, detailed in accordance with the uniform system of accounts to be applied under this chapter, for each pipeline system designated by the commission under (1) of this section; and

(C) such additional accounts and information as may be required under (2) of this section.

Sec. 42.06.440. INSPECTION OF RECORDS. Subject to AS 31.05.035(c), the commission shall at all reasonable times have access to, and may designate any of its employees, agents or consultants to inspect and examine, the accounts, records, books, maps, inventories, appraisals, valuations, or other reports and documents, kept by an oil or gas pipeline carrier or its affiliated interests, or prepared or kept for it by others, which relate to any contract or transaction between them. The commission may require an oil or gas pipeline carrier or its affiliated interest to file with the commission copies of any or all of these accounts, records, books, maps, inventories, appraisals, valuations, or other reports and documents.

Sec. 42.06.450. INVESTIGATION OF MANAGEMENT PRACTICES. (a) The commission may investigate the management practices of a pipeline carrier to determine how they affect the cost or quality of its transportation in this state of oil or gas or both or other related service. The commission's investigation may include, but is not limited to, staffing patterns, compensation policies and practices, investment policy and practice, purchasing and billing practices, accounting, record keeping, and reporting practices, and relations with affiliates.

(b) When unreasonable practices are found to exist, the commission may, after providing reasonable notice and opportunity for hearing, take appropriate action to insure that neither the direct nor the indirect costs of the practices are borne by the public.

(c) In a rate proceeding the oil or gas pipeline carrier has the burden of proving that any written or unwritten contract or arrangement it may have with any of its affiliated interests for the furnishing of any services or for the purchase, sale, lease or exchange of any property is necessary and consistent with the public interest and that the payment made for it, or consideration given, is reasonably based, in part, upon the submission of satisfactory proof as to the cost to the affiliated interest of furnishing the service or property and, in part, upon the estimated cost the oil or gas pipeline carrier would have incurred if it furnished the service or property with its own personnel and capital.

Sec. 42.06.460. DESIGNATION OF SERVICE AGENTS. Each pipeline carrier shall file with the commission a written appointment of a named permanent resident (which may be a corporation) of this state as its registered agent in this state upon whom service of all notices, regulations, and requests of the commission may be made. The appointment shall specify an address in this state of such appointed agent, which address may be changed from time to time by filing a new Alaskan address with the commission. If a pipeline carrier fails to appoint an agent, service of notices, regulations and requests may be made by posting a copy in the main office of the commission and filing a copy in the office of the lieutenant governor.

Sec. 42.06.470. EFFECT OF REGULATIONS. Regulations adopted and issued by the commission in accordance with this chapter have the effect of law.

Sec. 42.06.480. REVIEW AND ENFORCEMENT. (a) All final orders of the commission are subject to judicial review in accordance with AS 44.62.560 - 44.62.570.

(b) If an appeal is not taken from a final order of the commission, the commission may apply to the superior court for enforcement of this chapter, the regulations adopted under it and the orders of the commission. The court shall enforce the order by injunction or other process.

Sec. 42.06.490. COMPLAINT AGAINST PIPELINE CARRIER. (a) Any person (including a commissioner or employee of the commission) may file a complaint with the commission under AS 44.62.360 alleging that a rate, price, service, practice or action of a pipeline carrier violates this chapter or regulations hereunder, or that a pipeline carrier has not complied with the certificate issued under this chapter.

(b) The content, service, and amendment requirements of a complaint filed with the commission under this section shall be as specified in AS 44.62.360, 44.62.380 and 44.62.400.

Sec. 42.06.500. ADJUDICATION BY COMMISSION UNDER ADMINISTRATIVE PROCEDURE ACT. The commission shall adjudicate and decide cases initiated by complaint filed under sec. 490 of this chapter in accordance with AS 44.62.330 - 44.62.630.

Sec. 42.06.510. PUBLIC RECORDS. The records, including the facts and information in them, of and in the possession of the commission, except records which by law or by regulation of the commission are designated to be a nonpublic or privileged nature, are public records open to public inspection at reasonable times; however, any documents filed with the commission and relating to the finances or operations of a pipeline subject to the Interstate Commerce Act or the Natural Gas Act and being in addition to or other than copies of documents required to be filed with the appropriate federal agency, shall be open to inspection only by appropriate officers and officials of the state for relevant purposes of the state. A person may make written objections to the public disclosure of any information filed with or obtained by the commission under the provisions of this chapter, stating the grounds for the objection; when an objection is made, the commission shall order the information withheld from public disclosure if in the judgment of the commission the information could adversely affect the interest of that person and is not required in the interest of the public. Any commissioner, and the executive director, may certify as to all official acts and records of the commission.

Sec. 42.06.520. APPLICATION FEES. The commission may establish reasonable fees to cover the costs of initial processing of applications for certificates or amendments to certificates.

Sec. 42.06.530. INJUNCTIVE AND MONETARY SANCTIONS. (a) The full amount of damages determined by a civil action may be compromised by the commission. In determining the amount of the damages, or the amount agreed upon in compromise, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the damages, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the state to the person charged or may be recovered in a civil action in the state courts.

(b) A person may be enjoined by the superior court from committing a violation mentioned in this section.

Sec. 42.06.540. CIVIL PENALTIES. (a) In addition to all other penalties and remedies provided by law, every person subject to the provisions of this chapter, together with their officers, managers, agents or employees that either violates or procures, aids, or abets the violation of any provision of this chapter, or of an order, rule, regulation or written requirement of the commission is subject to a maximum penalty of $500 for each violation.

(b) No penalty may be assessed unless the commission first issues an order to show cause why the penalty should not be levied. The order shall describe the violation with reasonable particularity and designate the maximum penalty which may be assessed for the violation. The order shall be served on the alleged violator named in the order. The order shall state a time and place for the hearing.

(c) After a hearing the commission shall enter its findings of fact and final order which shall state when the penalties, if any, are payable.

Sec. 42.06.550. EACH VIOLATION A SEPARATE OFFENSE. Each violation of a provision of this chapter or of an order, decision, regulation or written requirement of the commission is a separate and distinct offense and in case of a continuing violation each day the violation continues constitutes a separate offense.

Sec. 42.06.560. ACTIONS TO RECOVER DAMAGES AND PENALTIES; DISPOSITION. (a) Actions to recover damages and penalties under this chapter shall be brought by the attorney general in a court of competent jurisdiction.

(b) All damages and penalties recovered under the provisions of this chapter shall be paid to the commission and deposited by it in the general fund of the state.

Sec. 42.06.570. PENALTIES CUMULATIVE. (a) All penalties imposed under this chapter are cumulative.

(b) An action to recover a civil penalty is not a bar to an enforcement proceeding to require compliance, or to any other remedy provided by this chapter.

Sec. 42.06.580. JOINDER OF ACTIONS. Under the applicable court rules, appeals from orders of the commission, applications for enforcement of commission orders and actions for recovery of damages or penalties may be joined. The court may in the interests of justice separate the actions.

Sec. 42.06.590. PRIVATE CAUSE OF ACTION. (a) A person subjected to an unlawful rate, price, service, or practice, in violation of this chapter, may sue in a state court of appropriate jurisdiction for damages resulting from the unlawful rate, price, service, or practice.

(b) If the violation described in (a) of this section resulted in the overcharge of rate or price, the person paying the unlawful rate or price is entitled to recover as damages at least double the amount of the overcharge.

(c) A person recovering damages under this section is entitled to a reasonable attorney fee, fixed by the court, to be taxed and collected as costs of the suit.

Sec. 42.06.600. REGULATION BY MUNICIPALITY. The commission's jurisdiction and authority extend to an oil or gas pipeline facility operating in a city or borough, whether home rule or otherwise. If a conflict between a certificate, order, decision or regulation of the commission and a charter, permit, franchise, ordinance, rule or regulation of such a local governmental entity occurs, the certificate, order, decision or regulation of the commission prevails.

Sec. 42.06.610. EXPENSES OF INVESTIGATION OR HEARING. After completion of a hearing or investigation held under this chapter, the commission shall allocate the costs of the hearing or investigation among the parties, including the commission, as is just under the circumstances. The costs allocated may include the costs of any time devoted to the investigation or hearing by hired consultants, whether or not the consultants appear as witnesses or participants. The commission shall provide an opportunity for any person objecting to an allocation to be heard before the allocation becomes final.

Sec. 42.06.620. CLASSIFICATION. The commission may by regulation provide for the classification of oil or gas pipeline facilities based upon differences in annual revenue, assets, nature of ownership and other appropriate distinctions and as between these classifications, by regulation, provide for different reporting, accounting and other regulatory requirements.

Sec. 42.06.630. DEFINITIONS. As used in this chapter

(1) "commission" means the Alaska Pipeline Commission;

(2) "commissioner" means a member of the commission;

(3) "duties" means duties, powers, obligations and functions;

(4) "gas" means natural gas, including bradenhead gas, casinghead gas, gas produced from an oil or gas well, and any mixture of natural and artificial gas, and includes liquid products and by-products of gas;

(5) "Interstate Commerce Act" means the Interstate Commerce Act of 1906, 34 Stat. 584, as amended;

(6) "municipality" means an organized borough or incorporated city;

(7) "Natural Gas Act" means the Natural Gas Act of 1938, 52 Stat. 821, as amended;

(8) "oil" means crude petroleum oil in its natural state, and crude petroleum oil from which only basic sediment and water have been removed;

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

(10) "pipeline carrier" means the owner, including corporations organized under the laws of the United States or of other states, of any pipeline, as said term is defined in this section, or any interest therein;

(11) "regulation" includes rules;

AGO 533971

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

Sec. 42.06.640. SHORT TITLE. This chapter may be cited as the Alaska Pipeline Commission Act.

* Sec. 2. Notwithstanding the provisions of AS 42.06.030 - 42.06.040, until July 1, 1973 the duties and functions of the Alaska Pipeline Commission under AS 42.06 may, by executive order of the governor, be carried out by a single commissioner appointed and paid pursuant to the provisions of AS 42.06 and two temporary commissioners who shall be appointed for terms expiring July 1, 1973. Temporary commissioners shall receive no compensation except per diem and travel authorized by law for other state boards and commissions and shall not be subject to the provisions of AS 42.06.060.

* Sec. 3. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.

Approved by governor: June 20, 1972
Actual effective date: June 21, 1972

AGO 533972

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