

HOUSE BILL NO. 74

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/15/23

Referred: House Special Committee on Energy, Resources

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to geothermal resources; relating to the definition of 'geothermal
2 resources'; and providing for an effective date."

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

4 * **Section 1.** AS 31.05.030(h) is amended to read:

5 (h) The commission may take all actions necessary to allow the state to
6 acquire primary enforcement responsibility under 42 U.S.C. 300h-1 and 42 U.S.C.
7 300h-4 (Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f - 300j-26), for
8 the control of underground injection related to the recovery and production of oil and
9 natural gas, [AND] the control of underground injection in Class I wells, **and the**
10 **control of underground injection in Class V wells associated with the recovery of**
11 **geothermal energy for heating, aquaculture, and production of electric power for**
12 **commercial or industrial uses,** as defined in 40 C.F.R. 144.6, as amended.

13 * **Sec. 2.** AS 31.05.030(m) is amended to read:

14 (m) The commission has jurisdiction and authority over all persons and

1 property, public and private, necessary to carry out the purposes and intent of
 2 AS 41.06 [, EXCEPT FOR PROVISIONS IN AS 41.06 FOR WHICH THE
 3 DEPARTMENT OF NATURAL RESOURCES HAS JURISDICTION].

4 * **Sec. 3.** AS 38.05.181(a) is amended to read:

5 (a) The commissioner may, under regulations adopted by the commissioner,
 6 grant prospecting **licenses** [PERMITS] and leases to a qualified person to explore for,
 7 develop, or use geothermal resources. **A prospecting license or lease is not required**
 8 **under this section to explore for, develop, or use geothermal resources if the**
 9 **geothermal resource is intended for domestic, noncommercial, or small-scale**
 10 **industrial use** [WHEN TITLE TO THE SURFACE PARCEL IS HELD BY A
 11 PERSON OTHER THAN THE STATE, THAT PERSON SHALL HAVE A
 12 PREFERENTIAL RIGHT TO A GEOTHERMAL PROSPECTING PERMIT OR
 13 LEASE FOR THE AREA UNDERLYING THE SURFACE PARCEL. THE
 14 SURFACE OWNER MUST EXERCISE THE PREFERENCE RIGHT WITHIN 30
 15 DAYS AFTER RECEIVING NOTICE OF THE APPLICATION FOR A PERMIT,
 16 OR BY AGREEING TO MEET THE TERMS OF A BID WITHIN 60 DAYS AFTER
 17 RECEIVING NOTICE OF THE ACCEPTANCE OF THE BID FOR A LEASE].

18 * **Sec. 4.** AS 38.05.181(c) is amended to read:

19 (c) On state land that has not been declared a competitive geothermal area or
 20 withdrawn from geothermal prospecting, the commissioner may issue a prospecting
 21 **license** [PERMIT] to the first qualified applicant. The **license** [PERMIT] conveys an
 22 exclusive right, for a period of **five** [TWO] years, to prospect for geothermal resources
 23 on state land included under the **license** [PERMIT]. The commissioner has discretion
 24 to renew the **license** [PERMIT] for an additional one-year term. A holder of a
 25 prospecting **license** [PERMIT] has the right, **after completion of an agreed-upon**
 26 **work commitment** [UPON THE SHOWING OF A DISCOVERY OF
 27 GEOTHERMAL RESOURCES IN COMMERCIAL QUANTITIES] and the
 28 submission of **an exploration** [A DEVELOPMENT] plan acceptable to the
 29 commissioner, to convert the **license** [PERMIT] to a noncompetitive lease at a royalty
 30 rate under (g) of this section. The conversion privilege must be exercised not later than
 31 30 days after the expiration of the **license** [PERMIT]. If the land included within the

1 **license** [PERMIT] is designated a competitive geothermal area during the **license**
 2 [PERMIT] term, the **licensee** [PERMITTEE] must apply for a noncompetitive lease
 3 within 30 days after notification of the designation or forfeit the conversion privileges
 4 and the exclusive right to prospect.

5 * **Sec. 5.** AS 38.05.181(d) is amended to read:

6 (d) On state land that is designated a competitive geothermal area and is not
 7 subject to an existing prospecting **license** [PERMIT], the commissioner may issue
 8 geothermal leases to the highest bidder by competitive bidding procedures established
 9 by regulations adopted by the commissioner. At the discretion of the commissioner,
 10 competitive lease sales may be by oral or sealed bid, on the basis of a cash bonus,
 11 profit share, or royalty share.

12 * **Sec. 6.** AS 38.05.181(e) is amended to read:

13 (e) Prospecting **licenses** [PERMITS] and geothermal leases granted under this
 14 section must [, EXCEPT IN THE CASE OF PARCELS SUBJECT TO A
 15 PREFERENCE RIGHT UNDER (b) OF THIS SECTION,] be issued for at least 40
 16 acres but not more than 2,560 acres. A person may not own, or hold an interest in,
 17 geothermal leases covering more than **100,000** [51,200] acres. However, geothermal
 18 leases in commercial production, individually or under a unit operation or well spacing
 19 or pooling arrangement, do not count against the acreage limitation. All prospecting
 20 **licenses** [PERMITS] and geothermal leases are subject to an annual rental **fee**
 21 **established by the department in regulation and** [,] payable in advance [, OF \$3
 22 PER ACRE]. The rental for a year shall be credited against royalties accruing for that
 23 year.

24 * **Sec. 7.** AS 38.05.181(f) is amended to read:

25 (f) A geothermal lease shall be issued for a primary term of 10 years and may
 26 be renewed for an additional term of five years if the lessee is actively engaged in
 27 drilling operations. A geothermal lease is valid for the duration of commercial
 28 production. [BEGINNING 20 YEARS AFTER THE INITIATION OF
 29 COMMERCIAL PRODUCTION AND AT 10-YEAR INTERVALS THEREAFTER,
 30 THE COMMISSIONER MAY RENEGOTIATE THE RENTALS AND
 31 ROYALTIES DUE ON A GEOTHERMAL LEASE.]

1 * **Sec. 8.** AS 38.05.181 is amended by adding new subsections to read:

2 (i) The commissioner may require a lessee of a geothermal resource to operate
3 under a unit agreement that prescribes the conditions under which the lessee must
4 operate. A unit agreement must adequately protect all parties in interest, including the
5 state. Except as provided in (j) of this section, the commissioner may not reduce the
6 royalty on a geothermal lease issued under this section in, or in connection with, a unit
7 agreement.

8 (j) When determined by the commissioner to be in the public interest, the
9 commissioner may authorize a lessee and the lessee's representative, together with
10 each other or jointly or severally with another lessee, to collectively adopt or operate
11 under a unit agreement. The commissioner may, with the consent of the involved
12 lessees, establish, change, or revoke the drilling, producing, and royalty requirements
13 of the leases.

14 (k) A geothermal lease and a unit agreement approved under this section must
15 specify that the lease and unit agreement are subject to applicable statutes and
16 regulations in force at the time the lease or unit agreement is entered into and to future
17 amendments to those statutes and regulations.

18 * **Sec. 9.** AS 38.05.965(6) is repealed and reenacted to read:

19 (6) "geothermal resources" means the natural heat of the earth and
20 energy, in whatever form, below the surface of the earth present in, resulting from,
21 created by, or that may be extracted from the natural heat, and all minerals in solution
22 or other products obtained from naturally heated fluids, brines, associated gases, and
23 steam, in whatever form, found below the surface of the earth that may be produced
24 for a commercial use; "geothermal resources" does not include oil, hydrocarbon gases,
25 or other hydrocarbon substances;

26 * **Sec. 10.** AS 41.06.020(e) is amended to read:

27 (e) Nothing in this chapter limits the authority of the department

28 [(1)] over geothermal resources under AS 38.05.181, **including the**
29 **authority** [; OR

30 (2)] to approve and manage geothermal units or operations that include
31 state land.

1 * **Sec. 11.** AS 41.06.020 is amended by adding a new subsection to read:

2 (f) The commission may, when consistent with the purpose and intent of this
3 chapter, exempt from this chapter a domestic, noncommercial, or small-scale
4 industrial use of geothermal resources.

5 * **Sec. 12.** AS 41.06 is amended by adding a new section to read:

6 **Sec. 41.06.057. Penalties.** (a) In addition to the penalties in (b) - (d) of this
7 section, a person who violates a provision of this chapter, a regulation adopted under
8 this chapter, or an order, stipulation, or term of a permit issued by the commission is
9 liable for a civil penalty of not more than \$100,000 for the initial violation and not
10 more than \$10,000 for each day thereafter on which the violation continues.

11 (b) A person who knowingly commits an act specified in AS 11.46.630(a) for
12 the purpose of evading a provision of this chapter, a regulation adopted under this
13 chapter, or an order, stipulation, or term of a permit issued by the commission is guilty
14 of a class A misdemeanor.

15 (c) A person who knowingly aids or abets another person in the violation of a
16 provision of this chapter, a regulation adopted under this chapter, or an order,
17 stipulation, or term of a permit issued by the commission is subject to the same
18 penalty as that prescribed in this chapter for the violation by the other person.

19 (d) A person who knowingly violates a provision of this chapter, a regulation
20 adopted under this chapter, or an order, stipulation, or term of a permit issued by the
21 commission is guilty of a misdemeanor punishable by a fine of not more than \$10,000
22 a day for each day of violation.

23 (e) The commission may assess the civil penalties provided in this section,
24 and, if not paid, the penalties are recoverable by suit filed by the attorney general in
25 the name and on behalf of the commission in the superior court. The payment of a
26 penalty does not relieve a person on whom the penalty is imposed from liability to any
27 other person for damages arising out of the violation.

28 (f) In determining the amount of a penalty assessed under (a) of this section,
29 the commission shall consider

30 (1) the extent to which the person committing the violation was acting
31 in good faith in attempting to comply;

1 (2) the extent to which the person committing the violation acted in a
2 wilful or knowing manner;

3 (3) the extent and seriousness of the violation and the actual or
4 potential threat to public health or the environment;

5 (4) the injury to the public resulting from the violation;

6 (5) the benefits derived by the person committing the violation from
7 the violation;

8 (6) the history of compliance or noncompliance by the person
9 committing the violation with the provisions of this chapter, the regulations adopted
10 under this chapter, and the orders, stipulations, or terms of permits issued by the
11 commission;

12 (7) the need to deter similar behavior by the person committing the
13 violation and others similarly situated at the time of the violation or in the future;

14 (8) the effort made by the person committing the violation to correct
15 the violation and prevent future violations; and

16 (9) other factors considered relevant to the assessment that are adopted
17 by the commission in regulation.

18 * **Sec. 13.** AS 41.06.060(4) is amended to read:

19 (4) "geothermal fluid" means liquids, **brines, water, gases, or** [AND]
20 steam [AT TEMPERATURES GREATER THAN 120 DEGREES CELSIUS OR
21 ANY COMMERCIAL USE OF LIQUIDS AND STEAM] naturally **or artificially**
22 present in a geothermal system **that may be produced for a commercial use;**
23 **"geothermal fluid" does not include oil, hydrocarbon gases, or other**
24 **hydrocarbon substances** [AT TEMPERATURES LESS THAN 120 DEGREES
25 CELSIUS];

26 * **Sec. 14.** AS 41.06.060(5) is repealed and reenacted to read:

27 (5) "geothermal resources" means the natural heat of the earth and
28 energy, in whatever form, below the surface of the earth present in, resulting from,
29 created by, or that may be extracted from the natural heat, and all minerals in solution
30 or other products obtained from naturally heated fluids, brines, associated gases, and
31 steam, in whatever form, found below the surface of the earth that may be produced

1 for a commercial use; "geothermal resources" does not include oil, hydrocarbon gases,
2 or other hydrocarbon substances;

3 * **Sec. 15.** AS 41.06.005(b) and 41.06.030 are repealed.

4 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 APPLICABILITY. (a) Except as provided in (b) of this section, this Act applies to a
7 license or lease for a geothermal resource granted or entered into on or after the effective date
8 of secs. 1 - 11 and 13 - 15 of this Act.

9 (b) An application made under AS 38.05.181(c), as that subsection read before the
10 effective date of sec. 4 of this Act, that is pending with the Department of Natural Resources
11 on the effective date of sec. 4 of this Act is considered to be an application under
12 AS 38.05.181(c), as amended by sec. 4 of this Act.

13 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 TRANSITION: CONVERSION OF AN EXISTING PROSPECTING PERMIT TO A
16 PROSPECTING LICENSE. A permittee with a valid permit issued under AS 38.05.181(c), as
17 that subsection read before the effective date of sec. 4 of this Act, may request in writing that
18 the commissioner of natural resources convert the prospecting permit into a prospecting
19 license under AS 38.05.181, as amended by this Act. The Department of Natural Resources
20 shall give public notice of a request for conversion under this section. In this section, the
21 legislature finds that conversion of a prospecting permit under this section into a prospecting
22 license under AS 38.05.181, as amended by this Act, will best serve the interests of the state.
23 The commissioner of natural resources is not required to make a written finding under
24 AS 38.05.035 to approve a request to convert a prospecting permit into a prospecting license.
25 The expiration date of a prospecting license converted under this section may not be later than
26 five years from the date the prospecting permit was issued under AS 38.05.181(c), as that
27 subsection read before the effective date of sec. 4 of this Act.

28 * **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 TRANSITION: REGULATIONS. The Department of Natural Resources and the
31 Alaska Oil and Gas Conservation Commission may adopt regulations to implement the

1 changes made by this Act. The regulations take effect under AS 44.62 (Administrative
2 Procedure Act) but not before the effective date of the law implemented by the regulation.

3 * **Sec. 19.** Section 18 of this Act takes effect immediately under AS 01.10.070(c).

4 * **Sec. 20.** Except as provided in sec. 19 of this Act, this Act takes effect July 1, 2023.