

**CS FOR HOUSE BILL NO. 349(RES)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

**Offered:****Referred:****Sponsor(s): REPRESENTATIVE GROH****A BILL****FOR AN ACT ENTITLED**

1   **"An Act relating to feasibility licenses for and leases of state land for renewable energy**  
2   **projects; and providing for an effective date."**

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

4   \* **Section 1.** AS 38.05.035(a) is amended to read:

5       (a) The director shall

6               (1) have general charge and supervision of the division and may  
7               exercise the powers specifically delegated to the director; the director may employ and  
8               fix the compensation of assistants and employees necessary for the operations of the  
9               division; the director is the certifying officer of the division, with the consent of the  
10              commissioner, and may approve vouchers for disbursements of money appropriated to  
11              the division;

12               (2) manage, inspect, and control state land and improvements on it  
13              belonging to the state and under the jurisdiction of the division;

14               (3) execute laws, rules, regulations, and orders adopted by the

1                   commissioner;

2                   (4) prescribe application procedures and practices for the sale, lease, or  
3                   other disposition of available land, resources, property, or interest in them;

4                   (5) prescribe fees or service charges, with the consent of the  
5                   commissioner, for any public service rendered;

6                   (6) under the conditions and limitations imposed by law and the  
7                   commissioner, issue deeds, leases, or other conveyances disposing of available land,  
8                   resources, property, or any interests in them;

9                   (7) have jurisdiction over state land, except that land acquired by the  
10                   Alaska World War II Veterans Board and the Agricultural Loan Board or the  
11                   departments or agencies succeeding to their respective functions through foreclosure  
12                   or default; to this end, the director possesses the powers and, with the approval of the  
13                   commissioner, shall perform the duties necessary to protect the state's rights and  
14                   interest in state land, including the taking of all necessary action to protect and enforce  
15                   the state's contractual or other property rights;

16                   (8) maintain the records the commissioner considers necessary,  
17                   administer oaths, and do all things incidental to the authority imposed; the following  
18                   records and files shall be kept confidential upon request of the person supplying the  
19                   information:

20                   (A) the name of the person nominating or applying for the sale,  
21                   lease, or other disposal of land by competitive bidding;

22                   (B) before the announced time of opening, the names of the  
23                   bidders and the amounts of the bids;

24                   (C) all geological, geophysical, **hydrological, meteorological,**  
25                   and engineering data supplied, whether or not concerned with the extraction or  
26                   development of natural resources;

27                   (D) except as provided in AS 38.05.036, cost data and financial  
28                   information submitted in support of applications, bonds, leases, and similar  
29                   items;

30                   (E) applications for rights-of-way or easements;

31                   (F) requests for information or applications by public agencies

for land that is being considered for use for a public purpose;

**(G) the name of the person submitting a proposal, and**  
**information in the proposal submitted under AS 38.05.093;**

(9) account for the fees, licenses, taxes, or other money received in the administration of this chapter, including the sale or leasing of land, identify their source, and promptly transmit them to the proper fiscal department after crediting them to the proper fund; receipts from land application filing fees and charges for copies of maps and records shall be deposited immediately in the general fund of the state by the director;

(10) select and employ or obtain at reasonable compensation cadastral, appraisal, or other professional personnel the director considers necessary for the proper operation of the division;

(11) be the certifying agent of the state to select, accept, and secure by whatever action is necessary in the name of the state, by deed, sale, gift, devise, judgment, operation of law, or other means, any land, of whatever nature or interest, available to the state; and be the certifying agent of the state [,] to select, accept, or secure by whatever action is necessary in the name of the state any land, or title or interest to land, available, granted, or subject to being transferred to the state for any purpose;

(12) on request, furnish records, files, and other information related to the administration of AS 38.05.180 to the Department of Revenue for use in forecasting state revenue under or administering AS 43.55, whether or not those records, files, and other information are required to be kept confidential under (8) of this subsection; in the case of records, files, or other information required to be kept confidential under (8) of this subsection, the Department of Revenue shall maintain the confidentiality that the Department of Natural Resources is required to extend to records, files, and other information under (8) of this subsection;

(13) when reasonably possible, give priority to and expedite the processing of an application for a lease or assignment of a lease of state land for development and operation of a gas storage facility, for a right-of-way to a gas storage facility, for a change to the allocation of production within a unit, and for a permit

1 necessary for the operation of a gas storage facility; in this paragraph, "gas storage  
2 facility" has the meaning given in AS 31.05.032;

3 (14) prepare and submit to the senate secretary and chief clerk of the  
4 house of representatives, on or before the first day of each regular session of the  
5 legislature, an annual report in electronic form concerning site lease applications  
6 submitted under AS 38.05.083; in preparing and submitting the report, the director  
7 shall

8 (A) include in the report

9 (i) a list of all applications pending with the department,  
10 including applications for a new lease and applications for renewal,  
11 amendment, and assignment of a lease, and the length of time each  
12 application has been pending with the department;

13 (ii) for an application that has not been granted, the  
14 reason the application has not been granted; and

15 (iii) the number of leases that the director elected not to  
16 renew under AS 38.05.070;

17 (B) notify the legislature that the report is available.

18 \* **Sec. 2.** AS 38.05.070(e) is amended to read:

19 (e) The director may renew a lease issued under this section, AS 38.05.075,  
20 38.05.083, **38.05.094**, or 38.05.810 upon its expiration if the lease is in good standing  
21 and the lease renewal is determined to be in the best interests of the state. A renewal  
22 issued under this subsection is not subject to AS 38.05.035(e). A lease under this  
23 section, AS 38.05.075, 38.05.083, or 38.05.810 may be renewed only once for a term  
24 not longer than the initial term of the lease. The director shall provide notice of the  
25 lease renewal decision.

26 \* **Sec. 3.** AS 38.05.075(a) is amended to read:

27 (a) Except as provided in AS 38.05.035, 38.05.070, 38.05.073, 38.05.081,  
28 38.05.082, 38.05.083, 38.05.087, **38.05.094**, 38.05.102, 38.05.565, 38.05.600,  
29 38.05.810, and this section, when competitive interest has been demonstrated or the  
30 commissioner determines that it is in the state's best interests, leasing shall be made at  
31 public auction or by sealed bid, at the discretion of the director, to the highest qualified

1 bidder as determined by the commissioner. A bidder may be represented by an  
2 attorney or agent at a public auction. In the public notice of a lease to be offered at  
3 public auction or by sealed bid, the commissioner shall specify a minimum acceptable  
4 bid and the lease compensation method. The lease compensation method shall be  
5 designed to maximize the return on the lease to the state and shall be a form of  
6 compensation set out in AS 38.05.073(m). An aggrieved bidder may appeal to the  
7 commissioner within five days for a review of the determination. The leasing shall be  
8 conducted by the commissioner, and the successful bidder shall deposit at the public  
9 auction or with the sealed bid the first year's rental or other lease compensation as  
10 specified by the commissioner, or that portion of it that the commissioner requires in  
11 accordance with the bid. The commissioner shall require, under AS 38.05.860,  
12 qualified bidders to deposit a sum equal to any survey or appraisal costs reasonably  
13 incurred by another qualified bidder acting in accordance with the regulations of the  
14 commissioner or incurred by the department under AS 38.04.045 and AS 38.05.840. If  
15 a bidder making a deposit of survey or appraisal costs is determined by the  
16 commissioner to be the highest qualified bidder under this subsection, the deposit shall  
17 be paid to the unsuccessful bidder who incurred those costs or to the department if the  
18 department incurred the costs. All costs for survey and appraisal shall be approved in  
19 advance in writing by the commissioner. The commissioner shall immediately issue a  
20 receipt containing a description of the land or interest leased, the price bid, and the  
21 terms of the lease to the successful qualified bidder. If the receipt is not accepted in  
22 writing by the bidder under this subsection, the commissioner may offer the land for  
23 lease again under this subsection. A lease, on a form approved by the attorney general,  
24 shall be signed by the successful bidder and by the commissioner.

25 \* **Sec. 4.** AS 38.05 is amended by adding new sections to read:

26       **Sec. 38.05.091. Applicability; determination; regulations.** (a) Unless  
27 specifically provided otherwise in AS 38.05.091 - 38.05.094, the provisions of  
28 AS 38.05.005 - 38.05.037 and 38.05.920 - 38.05.990 apply to the issuance of  
29 feasibility licenses for renewable energy projects under AS 38.05.091 - 38.05.094.

30       (b) The commissioner shall conduct ongoing research to identify state land  
31 suitable for renewable energy projects.

(c) The commissioner shall make preliminary written determinations of the state land that may be subject to the provisions of AS 38.05.092. The determinations shall be given public notice using the methods described in AS 38.05.945(b). After completion of the comment period and evaluation of the comments received, the commissioner shall issue a written determination of the state land that is subject to the provisions of AS 38.05.092.

(d) The commissioner may adopt regulations necessary to implement AS 38.05.091 - 38.05.094.

(e) The commissioner may not issue feasibility licenses to a licensee so that, at any one time, the licensee holds feasibility licenses on more than 2,000,000 acres.

**Sec. 38.05.092. Feasibility licenses for renewable energy projects.** (a) To encourage energy production on state land, the commissioner may issue feasibility licenses.

(b) A feasibility license issued under this section gives the licensee

(1) the exclusive right to explore, for a term not to exceed 10 years, the surface estate on state land identified by the commissioner under AS 38.05.091(b) and described in the feasibility license to evaluate the land's potential for a renewable energy project, unless the feasibility license is terminated under (d)(1) of this section or the land is earlier relinquished, removed, or deleted under (d)(2) of this section; and

(2) unless the feasibility license is terminated under (d)(1) of this section, the option to convert the feasibility license for all or part of the state land, except the land that is deleted or removed from the land described in the feasibility license under (d)(2) of this section, into a lease of state land for a renewable energy project, upon fulfillment of the work commitments contained in the feasibility license.

(c) A feasibility license issued under this section

(1) may cover, subject to the maximum acreage limitation on feasibility licenses by one licensee under AS 38.05.091(e), an area of not more than 500,000 acres that must be reasonably compact and contiguous;

(2) must be conditioned on an obligation to perform a specified work commitment, in total for the term of the license, expressed in dollars of direct expenditures; the specified work commitment

(A) may include a provision that adjusts the total amount of work commitment, expressed in dollars of direct expenditures, to account for inflation;

(B) must include a requirement that the licensee complete at least 25 percent of the licensee's total specified work commitment by the fourth anniversary of the effective date of the issuance of the feasibility license;

(3) must be conditioned on the posting of a bond or other security acceptable to the commissioner, in favor of the state and subject to the following requirements:

(A) the bond or other security must be renewed annually;

(B) the annual bond or other security shall be calculated as the entire work commitment expressed in dollars, less the cumulative direct expenditures of the licensee as of the last day of the most recent project year, divided by the number of years remaining in the term of the feasibility license;

(C) the bond or other security must provide sufficient financial assurances to cover costs for the demolition and removal of project infrastructure and restoration of land affected by the feasibility licensee;

(4) is subject to an annual review and revocation if the commissioner determines that the licensee has failed to provide or maintain in effect the bond or other security required by (3) of this subsection; and

(5) must be conditioned on an agreement that direct expenditures are subject to audit by the commissioner.

(d) If, on the fourth anniversary of the effective date of the issuance of the feasibility license issued under this section,

(1) the licensee has not completed at least 25 percent of the licensee's total specified work commitment, as measured by the licensee's direct expenditures, the feasibility license terminates;

(2) the licensee has completed at least 25 percent but has not completed at least 50 percent of the licensee's total specified work commitment, as measured by the licensee's direct expenditures, the commissioner shall remove or delete, or shall require the licensee to relinquish, a portion of the area within the

1 feasibility license; relinquishment, removal, or deletion of an area from the state land  
2 described in the feasibility license terminates the licensee's rights under AS 38.05.091  
3 - 38.05.094 in the area that is relinquished, removed, or deleted; a relinquishment,  
4 removal, or deletion of a portion of the area described in the feasibility license must be  
5 in areas that are reasonably compact and contiguous; the areas relinquished from the  
6 state land described in the feasibility license must be areas identified by the licensee  
7 but, if the licensee fails to identify sufficient area, the commissioner may identify any  
8 additional acreage required to be removed or deleted from the area under license to  
9 meet the requirements of this subsection; within the area described in the feasibility  
10 license issued under (a) - (c) of this section,

11 (A) 25 percent must be relinquished, removed, or deleted not  
12 later than the fourth anniversary of the effective date of the issuance of the  
13 feasibility license;

14 (B) an additional 10 percent of the acreage remaining after  
15 relinquishment, removal, or deletion of acreage required by (A) of this  
16 paragraph and by previous relinquishments, removals, or deletions under this  
17 paragraph must be removed or deleted on each of the succeeding anniversaries  
18 of the effective date of the issuance of the feasibility license;

19 (C) the cumulative total of the acreage relinquished, removed,  
20 or deleted under (A) and (B) of this paragraph may not be required to exceed  
21 50 percent of the area described in the original feasibility license area.

22 (e) If, immediately before the beginning of the period for annual renewal of  
23 the bond or other security under (c)(3)(A) of this section, the licensee fails to provide  
24 or maintain in effect the bond or other security required by (c) of this section for the  
25 period covered by the annual renewal and the commissioner revokes the feasibility  
26 license, the bond or other security then in effect for the licensee's obligations under the  
27 feasibility license is forfeited to the state.

28 (f) Land and water included within an area subject to a feasibility license  
29 under this section must, to the extent practicable, remain open to

30 (1) the public for access, hunting, fishing, and other generally allowed  
31 uses as determined by the department; and

(2) other resource development, including mining.

(g) Notwithstanding AS 38.05.300, state land subject to a feasibility license must remain open to mineral exploration and development, so long as the mineral exploration and development does not interfere with the licensee's feasibility evaluation. Issuance of a license under AS 38.05.091 - 38.05.094 does not constitute an exception to the requirements of AS 38.05.300(a).

(h) In this section,

### (1) "direct expenditure"

(A) means cash expenses undertaken in the performance of a specified work commitment under the provisions of AS 38.05.091 - 38.05.094 and necessarily incurred by the licensee in the permitting, mobilization, conducting, demobilization, and evaluation of geological, hydrological, meteorological, or other surveys, in determining the feasibility of a renewable energy project;

(B) does not include noncash expenses, including depreciation and reserves, interest or other costs of borrowed funds, return on investment, overhead, insurance or bond premiums, or any other expense that is unreasonable or that the licensee has not incurred to satisfy the licensee's work commitment;

(2) "work commitment" includes the gathering of data from activities described in (1) of this subsection.

**Sec. 38.05.093. License procedures.** (a) The procedures in this section apply to the issuance of a feasibility license under AS 38.05.092.

(b) The licensing process is initiated by the commissioner preparing, or a prospective licensee submitting to the commissioner, a proposal that identifies a specific area to be subject to the feasibility license, proposes specific minimum work commitments, and states the minimum qualifications for a licensee as established by regulations adopted by the commissioner. A prospective licensee may initiate the licensing process by submitting a proposal to the department. The proposal must include

(1) the specific location, description, and amount of land the

1 prospective licensee wants included in a feasibility license;

2 (2) a detailed summary of the proposed purpose the land will be used  
3 for; and

4 (3) additional information and requirements established by the  
5 department in regulation, including any application fees.

6 (c) If the commissioner initiates the licensing process under (b) of this section,  
7 the commissioner shall publish notice of the commissioner's proposal in order to  
8 solicit comments and competing proposals.

9 (d) Within 30 days after receiving a proposal from a prospective licensee  
10 under (b) of this section, the commissioner shall either reject the proposal in a written  
11 decision or give public notice of the intent to evaluate the acceptability of the  
12 proposal. The commissioner shall solicit comments on a proposal for which public  
13 notice is given under this subsection and shall request competing proposals.

14 (e) The commissioner may make a written request to a prospective licensee for  
15 additional information on the prospective licensee's proposal. The commissioner shall  
16 keep confidential information described in AS 38.05.035(a)(8) that is voluntarily  
17 provided if the prospective licensee has made a written request that the information  
18 remain confidential.

19 (f) After considering proposals not rejected under (d) of this section and public  
20 comment on those proposals, the commissioner shall issue a written finding  
21 addressing the qualifications of a prospective licensee, including whether the  
22 prospective licensee has previous experience with renewable energy projects, how the  
23 proposed project would accommodate concurrent use of the land, consistency with  
24 existing state area or management plans, and all matters set out in AS 38.05.035(e). If  
25 the finding concludes that the state's best interests would be served by issuing a  
26 feasibility license, the finding must describe the limitations, stipulations, conditions, or  
27 changes from the initiating proposal or competing proposals that are required to make  
28 the issuance of the feasibility license conform to the best interests of the state and, if  
29 only one proposal was submitted, identify the prospective licensee whom the  
30 commissioner finds should be issued the feasibility license. The commissioner shall  
31 attach to the finding a copy of the feasibility license to be issued and the form of lease

1 that will be used for any portion of the feasibility license area subsequently converted  
2 to a lease under AS 38.05.094. The commissioner may not issue a feasibility license  
3 under this section unless the written findings under AS 38.05.035(e) include

4 (1) reasonably foreseeable effects that a renewable energy project may  
5 have on the state or local economy, including potential effects on mining, timber, and  
6 other resource development sectors;

7 (2) anticipated annual revenue that the renewable energy project may  
8 yield to the state;

9 (3) an assessment and consideration of the known mineral potential,  
10 including current claim status, within the feasibility license area;

11 (4) the renewable energy project's value to the state and potential  
12 revenue to the state; and

13 (5) a summary of public comments received in response to the  
14 solicitation under (c) or (d) of this section and the department's response to those  
15 comments.

16 (g) If only one prospective licensee submits a proposal and the commissioner's  
17 finding under (f) of this section concludes that a feasibility license should be issued to  
18 that prospective licensee, the prospective licensee has 30 days after issuance of the  
19 finding within which to accept or reject the issuance of the feasibility license, as  
20 limited or conditioned by the terms contained in the finding. The feasibility license to  
21 be issued and the form of lease that will be used must be attached to that finding. The  
22 prospective licensee must accept or reject the issuance of the feasibility license in  
23 writing.

24 (h) If competing proposals are submitted and the commissioner's finding  
25 under (f) of this section concludes that a feasibility license should be issued, the  
26 commissioner shall issue a request for competitive sealed bids, under procedures  
27 adopted by the commissioner by regulation, to determine which prospective licensee  
28 should be issued the feasibility license. The finding provided to the prospective  
29 licensees and to the public under (f) of this section must contain notice that (1) the  
30 commissioner intends to request competitive sealed bids; (2) a prospective licensee  
31 who intends to participate in the bidding must notify the commissioner in writing by

the date specified in the notice; and (3) a prospective licensee's notice of intent to participate in the bidding constitutes acceptance of issuance of the feasibility license, as limited or conditioned by the terms contained in the finding and by the feasibility license to be issued and the form of lease to be used that have been attached to that finding, if the prospective licensee is the successful bidder. The successful bidder is the prospective licensee who submits the highest bid in terms of the minimum work commitment dollar amount.

(i) In this section, "work commitment" has the meaning given in AS 38.05.092(h).

**Sec. 38.05.094. Conversion to lease.** (a) If the licensee requests and the commissioner determines that the work commitment obligation set out in a feasibility license issued under AS 38.05.092 has been met, the commissioner shall convert to one or more leases all or part, as the licensee may indicate, of the area described in the feasibility license that remains after the relinquishments, removals, or deletions required by AS 38.05.092(d)(2). A lease agreement must include land use restrictions and authorizations consistent with the requirements of AS 38.05.092(f) relating to multiple use and mineral exploration, the purpose of the lease, and other conditions and obligations that are specified in the lease.

(b) Compensation for a lease under this section

(1) shall be designed to maximize the return to the state and be a form of compensation provided under AS 38.05.073(m);

(2) shall be separately accounted for under AS 37.05.142; and

(3) may be used by the legislature to make appropriations to the department to carry out the purposes of AS 38.05.091 - 38.05.094.

(c) The provisions of AS 38.05.070 and 38.05.095 concerning subleasing, assignment, lease renewals, and lease extensions apply to leasing under this section.

(d) By February 1 of each year, the commissioner shall prepare a report on the lease agreements entered into under this section, transmit the report to the senate secretary and the chief clerk of the house of representatives, and notify the legislature that the report is available. The report must contain the following information:

(1) the number of total leases entered into each fiscal year;

(2) a complete list of lease information for each ongoing lease that includes

(A) a general description of the location of the lease;

(B) the date the lease was executed;

(C) the identity of each person on the lease;

(D) a summary of the underlying renewable energy project;

(E) the current status of the renewable energy project;

(F) a summary of the compensation agreed on for the lease and

an explanation of how the amount was determined; and

(G) the identity of each individual having an ownership interest in an entity on the lease;

(3) a complete list of leases that expired or were terminated during the preceding or current fiscal year and the reason the lease expired or was terminated; and

(4) a description of the cumulative revenue received by the state from leases, the revenue received by the state from leases during the preceding fiscal year, and the anticipated revenue the state will receive from leases in the current fiscal year.

(e) In this section, "work commitment" has the meaning given in AS 38.05.092(h).

\* **Sec. 5.** AS 38.05.102 is amended to read:

**Sec. 38.05.102. Lessee preference.** Except for a lease under AS 38.05.081 **or** **38.05.094**, if land within a leasehold created under AS 38.05.070 - 38.05.105 is offered for sale or long-term lease at the termination of the existing leasehold, the director may, upon a finding that it is in the best interest of the state, allow a holder in good standing of the existing leasehold to purchase or lease the land for its appraised fair market value at the time of the sale or long-term lease.

\* **Sec. 6.** AS 38.05.945(a) is amended to read:

(a) This section establishes the requirements for notice given by the department for the following actions:

(1) classification or reclassification of state land under AS 38.05.300 and the closing of land to mineral leasing or entry under AS 38.05.185;

(2) zoning of land under applicable law;

(3) issuance of a

(A) preliminary written finding under AS 38.05.035(e)(5)(A) regarding the sale, lease, or disposal of an interest in state land or resources for oil and gas, or for gas only, subject to AS 38.05.180(b);

(B) written finding for the sale, lease, or disposal of an interest in state land or resources under AS 38.05.035(e)(6), except a lease sale described in AS 38.05.035(e)(6)(F) for which the director must provide opportunity for public comment under the provisions of that subparagraph;

(4) a competitive disposal of an interest in state land or resources after final decision under AS 38.05.035(e);

(5) a preliminary finding under AS 38.05.035(e) concerning sites for aquatic farms and related hatcheries;

(6) a decision under AS 38.05.091 - 38.05.094 or 38.05.131 - 38.05.134 [AS 38.05.132 - 38.05.134] regarding the sale, lease, or disposal of an interest in state land or resources;

(7) an exchange of state land under AS 38.50;

(8) solicitation of competitive interest under AS 38.05.081(c).

\* Sec. 7. AS 38.05.945(e) is amended to read:

(e) Except for a feasibility license issued under AS 38.05.091 - 38.05.094,

**notice** [NOTICE] is not required under this section for a permit or other authorization revocable by the department.

\* **Sec. 8.** AS 38.05.965 is amended by adding a new paragraph to read:

(29) "renewable energy project" means an indoor or outdoor facility that

(A) requires industrial infrastructure and maintenance; and

(B) produces energy that

- (i) is from a resource that naturally replenishes over a human, not a geological, time frame;

(ii) is derived from solar power, water power, or wind power, or from thermal inertia of the earth; and

(iii) minimizes the output of toxic material in the conversion of the energy.

3 \* Sec. 9. This Act takes effect immediately under AS 01.10.070(c).