

HOUSE BILL NO. 349

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE GROH

Introduced: 2/20/24

Referred: Resources, House Special Committee on Energy

A BILL

FOR AN ACT ENTITLED

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

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

4 *** Section 1.** AS 38.05.075(a) is amended to read:

5 (a) Except as provided in AS 38.05.035, 38.05.070, 38.05.073, 38.05.081,
6 38.05.082, 38.05.083, 38.05.084, 38.05.087, 38.05.102, 38.05.565, 38.05.600,
7 38.05.810, and this section, when competitive interest has been demonstrated or the
8 commissioner determines that it is in the state's best interests, leasing shall be made at
9 public auction or by sealed bid, at the discretion of the director, to the highest qualified
10 bidder as determined by the commissioner. A bidder may be represented by an
11 attorney or agent at a public auction. In the public notice of a lease to be offered at
12 public auction or by sealed bid, the commissioner shall specify a minimum acceptable
13 bid and the lease compensation method. The lease compensation method shall be
14 designed to maximize the return on the lease to the state and shall be a form of

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

20 * **Sec. 2.** AS 38.05 is amended by adding a new section to read:

21 **Sec. 38.05.084. Leases of state land for renewable energy projects.** (a) The
 22 commissioner may lease state land for renewable energy projects. A lease agreement
 23 under this section must include land use restrictions and authorizations consistent with
 24 the renewable energy project.

25 (b) A person may apply to lease land for a renewable energy project by
 26 submitting an application to the department. An application to lease land must include

27 (1) the specific location, description, and amount of land the applicant
 28 wants to lease;

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

31 (3) additional information and requirements established by the

1 department in regulation, including any application fees.

2 (c) The department shall solicit competitive interest by issuing a public notice
3 in the manner prescribed in AS 38.05.945. The notice must contain an announcement
4 seeking competitive interest.

5 (d) If the director receives two or more applications for the same land, the
6 director shall consider reasonable factors in awarding the lease, including proposed
7 monetary consideration, the value to the state, the potential revenue to the state, and
8 the qualifications of the applicant, including whether the applicant has previous
9 experience with renewable energy projects, the anticipated lease term, how the
10 proposed use would accommodate concurrent use of the land, consistency with
11 existing state area or management plans, and any additional requirement established
12 by the department in regulation. If one or more applicants have proposed different
13 renewable energy projects, the director shall consider each applicant's proposal and
14 determine which proposed use is more appropriate for the selected state land. An
15 application for a lease of state land under this section, including supporting
16 documentation submitted to the department for review, is a public record subject to
17 AS 40.25.110 - 40.25.220. An aggrieved applicant may appeal to the commissioner for
18 a review of the director's determination within 20 days after receiving notice of the
19 determination.

20 (e) A lease under this section shall be issued for an initial term of 10 years.
21 During the first 10 years, the lessee may engage in feasibility and other research to
22 determine whether the land is suitable for the renewable energy project. Following the
23 initial 10-year term, the lease is valid for the duration of commercial production of the
24 renewable energy project. Beginning 20 years after the initiation of commercial
25 production and at 10-year intervals thereafter, the commissioner may renegotiate the
26 rentals and royalties due on the renewable energy project lease.

27 (f) A lease under this section, including during the initial 10-year term, must
28 contain terms and conditions for performance, including benchmarks, and must
29 require the lessee to make progress toward development or continual maintenance of
30 the leased land sufficient to meet the renewable energy project purpose of the lease.
31 During the term of the lease, the commissioner shall terminate the lease if

1 (1) the commissioner determines that the land is not being used for the
2 renewable energy project approved by the commissioner; or

3 (2) the lessee fails to meet the requirements of the lease and, after
4 being given a reasonable opportunity by the commissioner to comply with the lease,
5 the commissioner determines that the lessee has still failed to comply with the lease.

6 (g) A lessee under this section is not entitled to a preference right to purchase
7 the leased land.

8 (h) Compensation for a lease under this section

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

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

12 (3) may be used by the legislature to make appropriations to the
13 department to carry out the purposes of this section.

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

16 (j) Before entering into a lease of land under this section, the director must

17 (1) evaluate information received during a solicitation of competitive
18 interest under (c) of this section; and

19 (2) find under AS 38.05.035(e) that leasing the land for the proposed
20 renewable energy project is in the best interests of the state; the findings must include

21 (A) reasonably foreseeable effects that a project may have on
22 the state or local economy, including potential effects on mining, timber, and
23 other resource development sectors;

24 (B) anticipated annual revenue that the lease will yield to the
25 state;

26 (C) an assessment and consideration of the known mineral
27 potential, including current claim status, within the project area;

28 (D) the proposed monetary consideration under the agreement,
29 the value to the state, and the potential revenue to the state; and

30 (E) a summary of public comments received in response to the
31 solicitation of competitive interest required under (c) of this section and the

1 department's response to those comments.

2 (k) State land used for a renewable energy project must, to the extent
3 practicable, remain open to

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

6 (2) other resource development, including mining.

7 (l) Notwithstanding AS 38.05.300, state land used for a renewable energy
8 project must remain open to mineral exploration and development, so long as the
9 exploration and development does not interfere with the renewable energy project. A
10 lease under this section does not constitute an exception to the requirements of
11 AS 38.05.300(a).

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

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

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

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

20 (B) the date the lease was executed;

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

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

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

24 (F) a summary of the compensation agreed on for the lease and
25 an explanation of how the amount was determined; and

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

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

31 (4) a description of the cumulative revenue received by the state from

1 leases, the revenue received by the state from leases during the preceding fiscal year,
2 and the anticipated revenue the state will receive from leases in the current fiscal year.

3 (n) The commissioner shall conduct ongoing research to identify state land
4 suitable for renewable energy projects.

5 * **Sec. 3.** AS 38.05.102 is amended to read:

6 **Sec. 38.05.102. Lessee preference.** Except for a lease under AS 38.05.081 **or**
7 **38.05.084**, if land within a leasehold created under AS 38.05.070 - 38.05.105 is
8 offered for sale or long-term lease at the termination of the existing leasehold, the
9 director may, upon a finding that it is in the best interest of the state, allow a holder in
10 good standing of the existing leasehold to purchase or lease the land for its appraised
11 fair market value at the time of the sale or long-term lease.

12 * **Sec. 4.** AS 38.05.945(a) is amended to read:

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

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

17 (2) zoning of land under applicable law;

18 (3) issuance of a

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

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

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

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

30 (6) a decision under AS 38.05.132 - 38.05.134 regarding the sale,
31 lease, or disposal of an interest in state land or resources;

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

2 (8) solicitation of competitive interest under AS 38.05.081(c) **and**

3 **38.05.084(c)**.

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

6 APPLICABILITY. AS 38.05.075(a), as amended by sec. 1 of this Act, AS 38.05.084,
7 added by sec. 2 of this Act, AS 38.05.102, as amended by sec. 3 of this Act, and
8 AS 38.05.945(a), as amended by sec. 4 of this Act, apply to a lease entered into on or after the
9 effective date of this Act.

10 * **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).