

CS FOR SENATE BILL NO. 104(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 5/5/21

Referred: Finance

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

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(m) is amended to read:

5 (m) The commission has jurisdiction and authority over all persons and
6 property, public and private, necessary to carry out the purposes and intent of
7 AS 41.06 [, EXCEPT FOR PROVISIONS IN AS 41.06 FOR WHICH THE
8 DEPARTMENT OF NATURAL RESOURCES HAS JURISDICTION].

9 *** Sec. 2.** AS 38.05.181(a) is amended to read:

10 (a) The commissioner may, under regulations adopted by the commissioner,
11 grant prospecting **licenses** [PERMITS] and leases to a qualified person to explore for,
12 develop, or use geothermal resources. **A prospecting license or lease is not required**
13 **under this section to explore for, develop, or use geothermal resources if the**
14 **geothermal resource is intended for domestic, noncommercial, or small-scale**

1 **industrial use** [WHEN TITLE TO THE SURFACE PARCEL IS HELD BY A
 2 PERSON OTHER THAN THE STATE, THAT PERSON SHALL HAVE A
 3 PREFERENTIAL RIGHT TO A GEOTHERMAL PROSPECTING PERMIT OR
 4 LEASE FOR THE AREA UNDERLYING THE SURFACE PARCEL. THE
 5 SURFACE OWNER MUST EXERCISE THE PREFERENCE RIGHT WITHIN 30
 6 DAYS AFTER RECEIVING NOTICE OF THE APPLICATION FOR A PERMIT,
 7 OR BY AGREEING TO MEET THE TERMS OF A BID WITHIN 60 DAYS AFTER
 8 RECEIVING NOTICE OF THE ACCEPTANCE OF THE BID FOR A LEASE].

9 * **Sec. 3.** AS 38.05.181(c) is amended to read:

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 11 withdrawn from geothermal prospecting, the commissioner may issue a prospecting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

27 * **Sec. 4.** AS 38.05.181(d) is amended to read:

28 (d) On state land that is designated a competitive geothermal area and is not
 29 subject to an existing prospecting **license** [PERMIT], the commissioner may issue
 30 geothermal leases to the highest bidder by competitive bidding procedures established
 31 by regulations adopted by the commissioner. At the discretion of the commissioner,

1 competitive lease sales may be by oral or sealed bid, on the basis of a cash bonus,
2 profit share, or royalty share.

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

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

15 * **Sec. 6.** AS 38.05.181 is amended by adding new subsections to read:

16 (i) The commissioner may require a lessee of a geothermal resource to operate
17 under a unit agreement that prescribes the conditions under which the lessee shall
18 operate. A unit agreement must adequately protect all parties in interest, including the
19 state. Except as provided in (f) and (j) of this section, the commissioner may not
20 reduce the royalty on a geothermal lease issued under this section in, or in connection
21 with, a unit agreement.

22 (j) When the commissioner determines a geothermal lease to be in the public
23 interest, the commissioner may approve a lessee and the lessee's representative,
24 together with each other or jointly or severally with another lessee, to collectively
25 adopt or operate under a unit agreement. The commissioner may, with the consent of
26 the involved lessees, establish, change, or revoke the drilling, producing, and royalty
27 requirements of the leases.

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

1 * **Sec. 7.** AS 38.05.965(6) is repealed and reenacted to read:

2 (6) "geothermal resources" means the natural heat of the earth and
3 energy, in whatever form, below the surface of the earth present in, resulting from,
4 created by, or that may be extracted from the natural heat, and all minerals in solution
5 or other products obtained from naturally heated fluids, brines, associated gases, and
6 steam, in whatever form, found below the surface of the earth; "geothermal resources"
7 does not include oil, hydrocarbon gases, or other hydrocarbon substances;

8 * **Sec. 8.** AS 41.06.020(e) is amended to read:

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

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

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

14 * **Sec. 9.** AS 41.06.020 is amended by adding a new subsection to read:

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

18 * **Sec. 10.** 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; **"geothermal fluid" does not include oil,**
23 **hydrocarbon gases, or other hydrocarbon substances** [AT TEMPERATURES
24 LESS THAN 120 DEGREES CELSIUS];

25 * **Sec. 11.** AS 41.06.060(5) is repealed and reenacted to read:

26 (5) "geothermal resources" means the natural heat of the earth and
27 energy, in whatever form, below the surface of the earth present in, resulting from,
28 created by, or that may be extracted from the natural heat, and all minerals in solution
29 or other products obtained from naturally heated fluids, brines, associated gases, and
30 steam, in whatever form, found below the surface of the earth; "geothermal resources"
31 does not include oil, hydrocarbon gases, or other hydrocarbon substances;

1 * **Sec. 12.** AS 41.06.005(b) and 41.06.030 are repealed.

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

4 APPLICABILITY. (a) Except as provided in (b) of this section, this Act applies to a
5 license or lease for a geothermal resource issued on or after the effective date of secs. 1 - 12
6 of this Act.

7 (b) An application made under AS 38.05.181(c), as that subsection read before the
8 effective date of sec. 3 of this Act, that is pending with the Department of Natural Resources
9 on March 1, 2021, is considered to be an application under AS 38.05.181(c), as amended by
10 sec. 3 of this Act.

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

13 TRANSITIONAL PROVISIONS: REGULATIONS. The Department of Natural
14 Resources and the Alaska Oil and Gas Conservation Commission may adopt regulations to
15 implement the changes made by this Act. The regulations take effect under AS 44.62
16 (Administrative Procedure Act) but not before the effective date of the law implemented by
17 the regulation.

18 * **Sec. 15.** Section 14 of this Act takes effect immediately under AS 01.10.070(c).

19 * **Sec. 16.** Except as provided in sec. 15 of this Act, this Act takes effect July 1, 2021.