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## A BILL FOR AN ACT

RELATING TO GEOTHERMAL RESOURCES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 205, Hawaii Revised Statutes, is  
2 amended by adding three new sections to be appropriately  
3 designated and to read as follows:  
4           "§205-A Geothermal resource subzones. (a) Geothermal  
5 resource subzones may be designated within the urban, rural,  
6 agricultural, and conservation land use districts established  
7 under section 205-2. Only those areas designated as geothermal  
8 resource subzones may be utilized for geothermal development  
9 activities in addition to those uses permitted in each land use  
10 district under this chapter. Geothermal development activities  
11 may be permitted within urban, rural, agricultural, and  
12 conservation land use districts in accordance with this chapter.  
13 "Geothermal development activities" means the exploration,  
14 development, or production of electrical energy from geothermal  
15 resources and direct use applications of geothermal resources;  
16 provided that within the urban, rural, and agricultural land use  
17 districts, direct use applications of geothermal resources are  
18 permitted both within and outside of areas designated as



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1 geothermal resource subzones pursuant to section 205-B if such  
2 direct use applications are in conformance with all other  
3 applicable state and county land use regulations and are in  
4 conformance with this chapter.

5 (b) The board of land and natural resources shall have the  
6 responsibility for designating areas as geothermal resource  
7 subzones as provided under section 205-B; except that the total  
8 area within an agricultural district which is the subject of a  
9 geothermal mining lease approved by the board of land and  
10 natural resources, any part or all of which area is the subject  
11 of a special use permit issued by the county for geothermal  
12 development activities, on or before May 25, 1984, is designated  
13 as a geothermal resource subzone for the duration of the lease.  
14 The designation of geothermal resource subzones shall be  
15 governed exclusively by this section and section 205-B, except  
16 as provided therein. The board shall adopt, amend, or repeal  
17 rules related to its authority to designate and regulate the use  
18 of geothermal resource subzones in the manner provided under  
19 chapter 91.

20 The authority of the board to designate geothermal resource  
21 subzones shall be an exception to those provisions of this  
22 chapter and of section 46-4 authorizing the land use commission

1 and the counties to establish and modify land use districts and  
2 to regulate uses therein. The provisions of this section shall  
3 not abrogate nor supersede the provisions of chapters 182, 183,  
4 and 183C.

5 (c) The use of an area for geothermal development  
6 activities within a geothermal resource subzone shall be  
7 governed by the board within the conservation district and,  
8 except as herein provided, by state and county statutes,  
9 ordinances, and rules not inconsistent herewith within  
10 agricultural, rural, and urban districts, except that no land  
11 use commission approval or special use permit procedures under  
12 section 205-6 shall be required for the use of such subzones.  
13 In the absence of provisions in the county general plan and  
14 zoning ordinances specifically relating to the use and location  
15 of geothermal development activities in an agricultural, rural,  
16 or urban district, the appropriate county authority may issue a  
17 geothermal resource permit to allow geothermal development  
18 activities. "Appropriate county authority" means the county  
19 planning commission unless some other agency or body is  
20 designated by ordinance of the county council. Such uses as are  
21 permitted by county general plan and zoning ordinances, by the  
22 appropriate county authority, shall be deemed to be reasonable



1 and to promote the effectiveness and objectives of this chapter.  
2 Chapters 177, 178, 182, 183, 183C, 205A, 226, 342, and 343 shall  
3 apply as appropriate. If provisions in the county general plan  
4 and zoning ordinances specifically relate to the use and  
5 location of geothermal development activities in an  
6 agricultural, rural, or urban district, the provisions shall  
7 require the appropriate county authority to conduct a public  
8 hearing on any application for a geothermal resource permit to  
9 determine whether the use is in conformity with the criteria  
10 specified in subsection (e) for granting geothermal resource  
11 permits; provided that within the urban, rural, and agricultural  
12 land use districts, direct use applications of geothermal  
13 resources are permitted without any application for a geothermal  
14 resource permit within and outside of areas designated as  
15 geothermal resource subzones pursuant to section 205-B if such  
16 direct use applications are in conformance with all other  
17 applicable state and county land use regulations and are in  
18 conformance with this chapter.

19 (d) If geothermal development activities are proposed  
20 within a conservation district, with an application with all  
21 required data, the board of land and natural resources shall  
22 conduct a public hearing and, upon appropriate request for



1 mediation from any party who submitted comment at the public  
2 hearing, the board shall appoint a mediator within five days.  
3 The board shall require the parties to participate in mediation.  
4 The mediator shall not be a member of the board or its staff.  
5 The mediation period shall not extend beyond thirty days after  
6 the date mediation started, except by order of the board.  
7 Mediation shall be confined to the issues raised at the public  
8 hearing by the party requesting mediation. The mediator will  
9 submit a written recommendation to the board, based upon any  
10 mediation agreement reached between the parties for  
11 consideration by the board in its final decision. If there is  
12 no mediation agreement, the board may have a second public  
13 hearing to receive additional comment related to the mediation  
14 issues. Within ten days after the second public hearing, the  
15 board may receive additional written comment on the issues  
16 raised at the second public hearing from any party.

17 The board shall consider the comments raised at the second  
18 hearing before rendering its final decision. The board shall  
19 then determine whether, pursuant to board rules, a conservation  
20 district use permit shall be granted to authorize the geothermal  
21 development activities described in the application. The board



1 shall grant a conservation district use permit if it finds that  
2 the applicant has demonstrated that:

3 (1) The desired uses would not have unreasonable adverse  
4 health, environmental, or socio-economic effects on  
5 residents or surrounding property and would not  
6 unreasonably burden public agencies to provide roads  
7 and streets, sewers, water, drainage, and police and  
8 fire protection; or

9 (2) There are reasonable measures available to mitigate  
10 the unreasonable adverse effects or burdens referred  
11 to above.

12 A decision shall be made by the board within six months of  
13 the date a complete application was filed; provided that the  
14 time limit may be extended by agreement between the applicant  
15 and the board.

16 (e) If geothermal development activities are proposed  
17 within agricultural, rural, or urban districts and such proposed  
18 activities are not permitted uses pursuant to county general  
19 plan and zoning ordinances, then after receipt of a properly  
20 filed and completed application, including all required  
21 supporting data, the appropriate county authority shall conduct  
22 a public hearing. Upon appropriate request for mediation from

1 any party who submitted comment at the public hearing, the  
2 county authority shall appoint a mediator within five days. The  
3 county authority shall require the parties to participate in  
4 mediation. The mediator shall not be an employee of any county  
5 agency or its staff. The mediation period shall not extend  
6 beyond thirty days after mediation started, except by order of  
7 the county authority. Mediation shall be confined to the issues  
8 raised at the public hearing by the party requesting mediation.  
9 The mediator will submit a written recommendation to the county  
10 authority, based upon any mediation agreement reached between  
11 the parties for consideration by the county authority in its  
12 final decision. If there is no mediation agreement, the county  
13 authority may have a second public hearing to receive additional  
14 comment related to the mediation issues. Within ten days after  
15 the second public hearing, the county authority may receive  
16 additional written comment on the issues raised at the second  
17 public hearing from any party.

18 The county authority shall consider the comments raised at  
19 the second hearing before rendering its final decision. The  
20 county authority shall then determine whether a geothermal  
21 resource permit shall be granted to authorize the geothermal  
22 development activities described in the application. The



1 appropriate county authority shall grant a geothermal resource  
2 permit if it finds that applicant has demonstrated that:

3 (1) The desired uses would not have unreasonable adverse  
4 health, environmental, or socio-economic effects on  
5 residents or surrounding property and would not  
6 unreasonably burden public agencies to provide roads  
7 and streets, sewers, water, drainage, school  
8 improvements, and police and fire protection; or

9 (2) That there are reasonable measures available to  
10 mitigate the unreasonable adverse effects or burdens  
11 referred to above.

12 Unless there is a mutual agreement to extend, a decision  
13 shall be made on the application by the appropriate county  
14 authority within six months of the date a complete application  
15 was filed; provided that the time limit may be extended by  
16 agreement between the applicant and the appropriate county  
17 authority.

18 (f) Requests for mediation shall be received by the board  
19 or county authority within five days after the close of the  
20 initial public hearing. Within five days thereafter, the board  
21 or county authority shall appoint a mediator. Any person  
22 submitting an appropriate request for mediation shall be





1 notified by the board or county authority of the date, time, and  
2 place of the mediation conference by depositing such notice in  
3 the mail to the return address stated on the request for  
4 mediation. The notice shall be mailed no later than ten days  
5 before the start of the mediation conference. The conference  
6 shall be held on the island where the public hearing is held.

7 (g) Any decision made by an appropriate county authority  
8 or the board pursuant to a public hearing or hearings under this  
9 section may be appealed directly on the record to the  
10 intermediate appellate court for final decision and shall not be  
11 subject to a contested case hearing. Sections 91-14(b) and (g)  
12 shall govern the appeal, notwithstanding the lack of a contested  
13 case hearing on the matter. The appropriate county authority or  
14 the board shall provide a court reporter to produce a transcript  
15 of the proceedings at all public hearings under this section for  
16 purposes of an appeal.

17 (h) For the purposes of an appeal from a decision from a  
18 public hearing, the record shall include:

19 (1) The application for the permit and all accompanying  
20 supporting documents, including but not limited to:  
21 reports, studies, affidavits, statements, and  
22 exhibits.



1        (2) Staff recommendations submitted to the members of the  
2        agency in consideration of the application.

3        (3) Oral and written public testimony received at the  
4        public hearings.

5        (4) Written transcripts of the proceedings at the public  
6        hearings.

7        (5) The written recommendation received by the agency from  
8        the mediator with any mediation agreement.

9        (6) A statement of relevant matters noticed by the agency  
10       members at the public hearings.

11       (7) The written decision of the agency issued in  
12       connection with the application and public hearings.

13       (8) Other documents required by the board or county  
14       authority.

15       §205-B Designation of areas as geothermal resource

16 subzones. (a) Beginning in 1983, the board of land and natural  
17 resources shall conduct a county-by-county assessment of areas  
18 with geothermal potential for the purpose of designating  
19 geothermal resource subzones. This assessment shall be revised  
20 or updated at the discretion of the board, but at least once  
21 each five years beginning in 1988. Any property owner or person  
22 with an interest in real property wishing to have an area



1 designated as a geothermal resource subzone may submit a  
2 petition for a geothermal resource subzone designation in the  
3 form and manner established by rules and regulations adopted by  
4 the board. An environmental impact statement as defined under  
5 chapter 343 shall not be required for the assessment of areas  
6 under this section.

7 (b) The board's assessment of each potential geothermal  
8 resource subzone area shall examine factors to include, but not  
9 be limited to:

10 (1) The area's potential for the production of geothermal  
11 energy;

12 (2) The prospects for the utilization of geothermal energy  
13 in the area;

14 (3) The geologic hazards that potential geothermal  
15 projects would encounter;

16 (4) Social and environmental impacts;

17 (5) The compatibility of geothermal development and  
18 potential related industries with present uses of  
19 surrounding land and those uses permitted under the  
20 general plan or land use policies of the county in  
21 which the area is located;



1       (6) The potential economic benefits to be derived from  
2       geothermal development and potential related  
3       industries; and

4       (7) The compatibility of geothermal development and  
5       potential related industries with the uses permitted  
6       under chapter 183C and section 205-2, where the area  
7       falls within a conservation district.

8       In addition, the board shall consider, if applicable,  
9       objectives, policies, and guidelines set forth in part I of  
10       chapter 205A, and chapter 226.

11       (c) Methods for assessing the factors in subsection (b)  
12       shall be left to the discretion of the board and may be based on  
13       currently available public information.

14       (d) After the board has completed a county-by-county  
15       assessment of all areas with geothermal potential or after any  
16       subsequent update or review, the board shall compare all areas  
17       showing geothermal potential within each county, and shall  
18       propose areas for potential designation as geothermal resource  
19       subzones based upon a preliminary finding that the areas are  
20       those sites which best demonstrate an acceptable balance between  
21       the factors set forth in subsection (b). Once a proposal is  
22       made, the board shall conduct public hearings pursuant to this



1 subsection, notwithstanding any contrary provision related to  
2 public hearing procedures. Contested case procedures are not  
3 applicable to these hearings.

4 (1) Hearings shall be held at locations which are in close  
5 proximity to those areas proposed for designation. A  
6 public notice of hearing, including a description of  
7 the proposed areas, an invitation for public comment,  
8 and a statement of the date, time, and place where  
9 persons may be heard shall be given and mailed no less  
10 than twenty days before the hearing. The notice shall  
11 be given on three separate days statewide and in the  
12 county in which the hearing is to be held. Copies of  
13 the notice shall be mailed to the department of  
14 business, economic development, and tourism, to the  
15 planning commission and planning department of the  
16 county in which the proposed areas are located, and to  
17 all owners of record of real estate within, and within  
18 one thousand feet of, the area being proposed for  
19 designation as a geothermal resource subzone. The  
20 notification shall be mailed to the owners and  
21 addresses as shown on the current real property tax  
22 rolls at the county real property tax office. Upon



1           that action, the requirement for notification of  
2           owners of land is completed. For the purposes of this  
3           subsection, notice to one co-owner shall be sufficient  
4           notice to all co-owners;

5       (2) The hearing shall be held before the board, and the  
6           authority to conduct hearings shall not be delegated  
7           to any agent or representative of the board. All  
8           persons and agencies shall be afforded the opportunity  
9           to submit data, views, and arguments either orally or  
10          in writing. The department of business, economic  
11          development, and tourism and the county planning  
12          department shall be permitted to appear at every  
13          hearing and make recommendations concerning each  
14          proposal by the board; and

15       (3) At the close of the hearing, the board may designate  
16          areas as geothermal resource subzones or announce the  
17          date on which it will render its decision. The board  
18          may designate areas as geothermal resource subzones  
19          only upon finding that the areas are those sites which  
20          best demonstrate an acceptable balance between the  
21          factors set forth in subsection (b). Upon request,  
22          the board shall issue a concise statement of its



1           findings and the principal reasons for its decision to  
2           designate a particular area.

3           (e) The designation of any geothermal resource subzone may  
4           be withdrawn by the board of land and natural resources after  
5           proceedings conducted pursuant to chapter 91. The board shall  
6           withdraw a designation only upon finding by a preponderance of  
7           the evidence that the area is no longer suited for designation;  
8           provided that the designation shall not be withdrawn for areas  
9           in which active exploration, development, production or  
10           distribution of electrical energy from geothermal sources or  
11           direct use applications of geothermal resources are taking  
12           place.

13           (f) This Act shall not apply to any active exploration,  
14           development or production of electrical energy from geothermal  
15           sources or direct use applications of geothermal resources  
16           taking place on June 14, 1983, provided that any expansion of  
17           such activities shall be carried out in compliance with its  
18           provisions.

19           §205-C Exploratory wells. Notwithstanding section 205-A  
20           (a), (d), and (e), or any other provision of law, any  
21           exploratory well drilled for scientific purposes or to determine  
22           the economic viability of a geothermal resource, may be



1 permitted outside of a designated geothermal resource subzone,  
2 regardless of land use classification, provided that the  
3 activity is limited to exploration only. All applicable state  
4 and county permits shall be required to drill such exploratory  
5 wells which shall not be exempt from the requirements of the  
6 environmental impact statement law, chapter 343."

7 SECTION 2. Section 182-1, Hawaii Revised Statutes, is  
8 amended by amending the definitions of "mining lease" and  
9 "mining operations" to read as follows:

10 "Mining lease" means a lease of the right to conduct  
11 mining operations, including geothermal resource [~~exploration~~  
12 ~~or~~] development, on state lands and on lands sold or leased by  
13 the State or its predecessors in interest with a reservation of  
14 mineral rights to the State.

15 "Mining operations" means the process of excavation,  
16 extraction, and removal of minerals, and the [~~exploration-or~~]  
17 development of any and all geothermal resources, from the  
18 ground, design engineering, other engineering, erection of  
19 transportation facilities and port facilities, erection of  
20 necessary plants, other necessary operations or development  
21 approved by the board preceding or connected with the actual





1 extraction of minerals and the ~~[exploration or]~~ development of  
2 geothermal resources."

3 SECTION 3. Section 182-1, Hawaii Revised Statutes, is  
4 amended by deleting the definition of "geothermal resources  
5 development".

6 ~~["Geothermal resources development" means the development  
7 or production of electrical energy from geothermal resources and  
8 direct use application of geothermal resources. The term does  
9 not include "geothermal resources exploration"."]~~

10 SECTION 4. Section 182-1, Hawaii Revised Statutes, is  
11 amended by deleting the definition of "geothermal resources  
12 exploration".

13 ~~["Geothermal resources exploration" means either of the  
14 following:~~

- 15 ~~(1) Conducting non-invasive geophysical operations,  
16 including geochemical operations, remote sensing, and  
17 other similar techniques; or~~
- 18 ~~(2) Drilling exploration wells for the extraction and  
19 removal of minerals of types and quantities;  
20 that are reasonably required for testing and analysis to provide  
21 ground truth or determine the economic viability of geothermal~~



1 resources. ~~The term does not include "geothermal resources~~  
2 ~~development".~~"]

3 SECTION 5. Section 182-5, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§182-5 Mining leases on reserved lands.** If any mineral  
6 is discovered or known to exist on reserved lands, any  
7 interested person may notify the board of land and natural  
8 resources of the person's desire to apply for a mining lease.  
9 The notice shall be accompanied by a fee of \$100 together with a  
10 description of the land desired to be leased and the minerals  
11 involved and such information and maps as the board may by  
12 regulation prescribe. The board may grant a mining lease on  
13 reserved lands in accordance with section 182-4, or the board  
14 may, by the vote of two-thirds of its members to which the board  
15 is entitled, without public auction, grant a mining lease on  
16 reserved lands to the occupier thereof. Such a mining lease may  
17 be granted to a person other than the occupier if the occupier  
18 has assigned the occupier's rights to apply for a mining lease  
19 to another person, in which case only such an assignee may be  
20 granted a mining lease. Any provisions to the contrary  
21 notwithstanding, if the board decides that it is appropriate to  
22 grant a geothermal mining lease on the reserved lands, the



1 surface owner or the owner's assignee shall have the first right  
2 of refusal for a mining lease[-]; provided that the granting of  
3 a geothermal mining lease does not create the presumption that a  
4 geothermal resource subzone will be designated; provided further  
5 that geothermal development activities shall not occur on land  
6 within the geothermal mining lease until the area is designated  
7 a geothermal resource subzone. If the occupier or the  
8 occupier's assignee of the right to obtain a mining lease should  
9 fail to apply for a mining lease within six months from the date  
10 of notice from the board of a finding by the board that it is in  
11 the public interest that the minerals on the reserved lands be  
12 mined, a mining lease shall be granted under section 182-4;  
13 provided that bidders at the public auction shall bid on an  
14 amount to be paid to the State for a mining lease granting to  
15 the lessee the right to exploit minerals reserved to the State."

16 SECTION 6. Section 182-6, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "§182-6 **Exploration.** Any person wishing to conduct  
19 exploration on state lands shall apply to the board of land and  
20 natural resources who shall issue exploration permits upon terms  
21 and conditions as it shall by regulation prescribe. During and  
22 as a result of the exploration, no minerals of such types and



1 quantity beyond that reasonably required for testing and  
2 analysis shall be extracted and removed from such state lands.  
3 Upon termination of the exploration permit, the drill logs and  
4 the results of the assays resulting from the exploration shall  
5 be turned over to the board and kept confidential by the board.  
6 If the person shall not make application for a mining lease of  
7 the lands within a period of six months from the date the  
8 information is turned over to the board, the board in its  
9 discretion need not keep the information confidential.

10 ~~[This section shall be construed as authorizing the board~~  
11 ~~to issue an exploration permit for geothermal resources as well~~  
12 ~~as minerals.]"~~

13 SECTION 7. Section 183C-4, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "**§183C-4 Zoning; amendments.** (a) The department, after  
16 notice and hearing as provided in this section, shall review and  
17 redefine the boundaries of the zones within the conservation  
18 district.

19 (b) The department shall adopt rules governing the use of  
20 land within the boundaries of the conservation district that are  
21 consistent with the conservation of necessary forest growth, the  
22 conservation and development of land and natural resources



1 adequate for present and future needs, and the conservation and  
2 preservation of open space areas for public use and enjoyment.  
3 No use except a nonconforming use as defined in section 183C-5,  
4 shall be made within the conservation district unless the use is  
5 in accordance with a zoning rule.

6 (c) The department may allow a temporary variance from  
7 zoned use where good cause is shown and where the proposed  
8 temporary variance is for a use determined by the department to  
9 be in accordance with good conservation practices.

10 (d) The department shall establish zones within the  
11 conservation district, which shall be restricted to certain  
12 uses. The department, by rules, may specify the land uses  
13 permitted therein which may include, but are not limited to,  
14 farming, flower gardening, operation of nurseries or orchards,  
15 growth of commercial timber, grazing, recreational or hunting  
16 pursuits, or residential use. The rules may control the extent,  
17 manner, and times of the uses, and may specifically prohibit  
18 unlimited cutting of forest growth, soil mining, or other  
19 activities detrimental to good conservation practices.

20 ~~[(e) Notwithstanding this section or any other law to the~~  
21 ~~contrary, geothermal resources exploration and geothermal~~  
22 ~~resources development, as defined under section 182-1, shall be~~



1 ~~permissible uses in all zones of the conservation district. The~~  
2 ~~rules required under subsection (b) governing the use of land~~  
3 ~~within the boundaries of the conservation district shall be~~  
4 ~~deemed to include the provisions of this section without~~  
5 ~~necessity of formal adoption by the department.~~

6       ~~(f)]~~ (e) Whenever any landowner or government agency whose  
7 property will be directly affected makes an application to  
8 change the boundaries or land uses of any zone, or to establish  
9 a zone with certain land uses, or where the department proposes  
10 to make the change or changes itself, the change or changes  
11 shall be put in the form of a proposed rule by the applicant and  
12 the department shall then give public notice thereof during  
13 three successive weeks statewide and in the county in which the  
14 property is located. The notice shall be given not less than  
15 thirty days prior to the date set for the hearing, and shall  
16 state the time and place of the hearing and the changes  
17 proposed. Any proposed rules and the necessary maps shall be  
18 made available for inspection by interested members of the  
19 public. The hearing shall be held in the county in which the  
20 land is located and may be delegated to an agent or  
21 representative of the board as may otherwise be provided by law  
22 and in accordance with rules adopted by the board. For the



1 purpose of its public hearing or hearings, the board may summon  
2 witnesses, administer oaths, and require the giving of  
3 testimony."

4 SECTION 8. Section 205-2, Hawaii Revised Statutes, is  
5 amended by amending subsections (b), (c), (d), and (e) to read  
6 as follows:

7 "(b) Urban districts shall include activities or uses as  
8 provided by ordinances or regulations of the county within which  
9 the urban district is situated.

10 ~~[In addition, urban districts shall include geothermal~~  
11 ~~resources exploration and geothermal resources development, as~~  
12 ~~defined under section 182-1, as permissible uses.]~~

13 (c) Rural districts shall include activities or uses as  
14 characterized by low density residential lots of not more than  
15 one dwelling house per one-half acre, except as provided by  
16 county ordinance pursuant to section 46-4(c), in areas where  
17 "city-like" concentration of people, structures, streets, and  
18 urban level of services are absent, and where small farms are  
19 intermixed with low density residential lots except that within  
20 a subdivision, as defined in section 484-1, the commission for  
21 good cause may allow one lot of less than one-half acre, but not  
22 less than eighteen thousand five hundred square feet, or an



1 equivalent residential density, within a rural subdivision and  
2 permit the construction of one dwelling on such lot; provided  
3 that all other dwellings in the subdivision shall have a minimum  
4 lot size of one-half acre or 21,780 square feet. Such petition  
5 for variance may be processed under the special permit  
6 procedure. These districts may include contiguous areas which  
7 are not suited to low density residential lots or small farms by  
8 reason of topography, soils, and other related characteristics.  
9 Rural districts shall also include golf courses, golf driving  
10 ranges, and golf-related facilities.

11 ~~[In addition to the uses listed in this subsection, rural~~  
12 ~~districts shall include geothermal resources exploration and~~  
13 ~~geothermal resources development, as defined under section~~  
14 ~~182-1, as permissible uses.]~~

15 (d) Agricultural districts shall include:

16 (1) Activities or uses as characterized by the cultivation  
17 of crops, crops for bioenergy, orchards, forage, and  
18 forestry;

19 (2) Farming activities or uses related to animal husbandry  
20 and game and fish propagation;





- 1           (3)   Aquaculture, which means the production of aquatic  
2                    plant and animal life within ponds and other bodies of  
3                    water;
- 4           (4)   Wind generated energy production for public, private,  
5                    and commercial use;
- 6           (5)   Biofuel production, as described in section  
7                    205-4.5(a)(16), for public, private, and commercial  
8                    use;
- 9           (6)   Solar energy facilities; provided that:
  - 10                   (A)   This paragraph shall apply only to land with soil  
11                           classified by the land study bureau's detailed  
12                           land classification as overall (master)  
13                           productivity rating class B, C, D, or E; and
  - 14                   (B)   Solar energy facilities placed within land with  
15                           soil classified as overall productivity rating  
16                           class B or C shall not occupy more than ten per  
17                           cent of the acreage of the parcel, or twenty  
18                           acres of land, whichever is lesser;
- 19           (7)   Bona fide agricultural services and uses that support  
20                    the agricultural activities of the fee or leasehold  
21                    owner of the property and accessory to any of the  
22                    above activities, regardless of whether conducted on

1 the same premises as the agricultural activities to  
2 which they are accessory, including farm dwellings as  
3 defined in section 205-4.5(a)(4), employee housing,  
4 farm buildings, mills, storage facilities, processing  
5 facilities, photovoltaic, biogas, and other small-  
6 scale renewable energy systems producing energy solely  
7 for use in the agricultural activities of the fee or  
8 leasehold owner of the property, agricultural-energy  
9 facilities as defined in section 205-4.5(a)(17),  
10 vehicle and equipment storage areas, and plantation  
11 community subdivisions as defined in section  
12 205-4.5(a)(12);

- 13 (8) Wind machines and wind farms;
- 14 (9) Small-scale meteorological, air quality, noise, and  
15 other scientific and environmental data collection and  
16 monitoring facilities occupying less than one-half  
17 acre of land; provided that these facilities shall not  
18 be used as or equipped for use as living quarters or  
19 dwellings;
- 20 (10) Agricultural parks;
- 21 (11) Agricultural tourism conducted on a working farm, or a  
22 farming operation as defined in section 165-2, for the

1           enjoyment, education, or involvement of visitors;  
2           provided that the agricultural tourism activity is  
3           accessory and secondary to the principal agricultural  
4           use and does not interfere with surrounding farm  
5           operations; and provided further that this paragraph  
6           shall apply only to a county that has adopted  
7           ordinances regulating agricultural tourism under  
8           section 205-5;

9           (12) Agricultural tourism activities, including overnight  
10          accommodations of twenty-one days or less, for any one  
11          stay within a county; provided that this paragraph  
12          shall apply only to a county that includes at least  
13          three islands and has adopted ordinances regulating  
14          agricultural tourism activities pursuant to section  
15          205-5; provided further that the agricultural tourism  
16          activities coexist with a bona fide agricultural  
17          activity. For the purposes of this paragraph, "bona  
18          fide agricultural activity" means a farming operation  
19          as defined in section 165-2;

20          (13) Open area recreational facilities; and



1 ~~[(14)] Geothermal resources exploration and geothermal~~  
2 ~~resources development, as defined under section 182-1;~~  
3 ~~and~~

4 ~~[(15)]~~ (14) Agricultural-based commercial operations,  
5 including:

6 (A) A roadside stand that is not an enclosed  
7 structure, owned and operated by a producer for  
8 the display and sale of agricultural products  
9 grown in Hawaii and value-added products that  
10 were produced using agricultural products grown  
11 in Hawaii;

12 (B) Retail activities in an enclosed structure owned  
13 and operated by a producer for the display and  
14 sale of agricultural products grown in Hawaii,  
15 value-added products that were produced using  
16 agricultural products grown in Hawaii, logo items  
17 related to the producer's agricultural  
18 operations, and other food items; and

19 (C) A retail food establishment owned and operated by  
20 a producer and permitted under [title 11,]  
21 chapter 12 of the rules of the department of  
22 health that prepares and serves food at retail



1           using products grown in Hawaii and value-added  
2           products that were produced using agricultural  
3           products grown in Hawaii.

4           The owner of an agricultural-based commercial  
5           operation shall certify, upon request of an officer or  
6           agent charged with enforcement of this chapter under  
7           section 205-12, that the agricultural products  
8           displayed or sold by the operation meet the  
9           requirements of this paragraph.

10          Agricultural districts shall not include golf courses and golf  
11          driving ranges, except as provided in section 205-4.5(d).

12          Agricultural districts include areas that are not used for, or  
13          that are not suited to, agricultural and ancillary activities by  
14          reason of topography, soils, and other related characteristics.

15          (e) Conservation districts shall include areas necessary  
16          for protecting watersheds and water sources; preserving scenic  
17          and historic areas; providing park lands, wilderness, and beach  
18          reserves; conserving indigenous or endemic plants, fish, and  
19          wildlife, including those which are threatened or endangered;  
20          preventing floods and soil erosion; forestry; open space areas  
21          whose existing openness, natural condition, or present state of  
22          use, if retained, would enhance the present or potential value



1 of abutting or surrounding communities, or would maintain or  
2 enhance the conservation of natural or scenic resources; areas  
3 of value for recreational purposes; other related activities;  
4 and other permitted uses not detrimental to a multiple use  
5 conservation concept. [~~Conservation districts shall also~~  
6 ~~include areas for geothermal resources exploration and~~  
7 ~~geothermal resources development, as defined under section~~  
8 ~~182-1.] "~~

9 SECTION 9. Section 205-4.5, Hawaii Revised Statutes, is  
10 amended by amending subsection (a) to read as follows:

11 "(a) Within the agricultural district, all lands with soil  
12 classified by the land study bureau's detailed land  
13 classification as overall (master) productivity rating class A  
14 or B shall be restricted to the following permitted uses:

- 15 (1) Cultivation of crops, including crops for bioenergy,  
16 flowers, vegetables, foliage, fruits, forage, and  
17 timber;
- 18 (2) Game and fish propagation;
- 19 (3) Raising of livestock, including poultry, bees, fish,  
20 or other animal or aquatic life that are propagated  
21 for economic or personal use;



- 1           (4) Farm dwellings, employee housing, farm buildings, or  
2           activities or uses related to farming and animal  
3           husbandry. "Farm dwelling", as used in this  
4           paragraph, means a single-family dwelling located on  
5           and used in connection with a farm, including clusters  
6           of single-family farm dwellings permitted within  
7           agricultural parks developed by the State, or where  
8           agricultural activity provides income to the family  
9           occupying the dwelling;
- 10          (5) Public institutions and buildings that are necessary  
11          for agricultural practices;
- 12          (6) Public and private open area types of recreational  
13          uses, including day camps, picnic grounds, parks, and  
14          riding stables, but not including dragstrips,  
15          airports, drive-in theaters, golf courses, golf  
16          driving ranges, country clubs, and overnight camps;
- 17          (7) Public, private, and quasi-public utility lines and  
18          roadways, transformer stations, communications  
19          equipment buildings, solid waste transfer stations,  
20          major water storage tanks, and appurtenant small  
21          buildings such as booster pumping stations, but not  
22          including offices or yards for equipment, material,



- 1 vehicle storage, repair or maintenance, treatment  
2 plants, corporation yards, or other similar  
3 structures;
- 4 (8) Retention, restoration, rehabilitation, or improvement  
5 of buildings or sites of historic or scenic interest;
- 6 (9) Agricultural-based commercial operations as described  
7 in section [†] 205-2(d)(15) [†];
- 8 (10) Buildings and uses, including mills, storage, and  
9 processing facilities, maintenance facilities,  
10 photovoltaic, biogas, and other small-scale renewable  
11 energy systems producing energy solely for use in the  
12 agricultural activities of the fee or leasehold owner  
13 of the property, and vehicle and equipment storage  
14 areas that are normally considered directly accessory  
15 to the above-mentioned uses and are permitted under  
16 section 205-2(d);
- 17 (11) Agricultural parks;
- 18 (12) Plantation community subdivisions, which as used in  
19 this chapter means an established subdivision or  
20 cluster of employee housing, community buildings, and  
21 agricultural support buildings on land currently or  
22 formerly owned, leased, or operated by a sugar or





1 pineapple plantation; provided that the existing  
2 structures may be used or rehabilitated for use, and  
3 new employee housing and agricultural support  
4 buildings may be allowed on land within the  
5 subdivision as follows:

6 (A) The employee housing is occupied by employees or  
7 former employees of the plantation who have a  
8 property interest in the land;

9 (B) The employee housing units not owned by their  
10 occupants shall be rented or leased at affordable  
11 rates for agricultural workers; or

12 (C) The agricultural support buildings shall be  
13 rented or leased to agricultural business  
14 operators or agricultural support services;

15 (13) Agricultural tourism conducted on a working farm, or a  
16 farming operation as defined in section 165-2, for the  
17 enjoyment, education, or involvement of visitors;  
18 provided that the agricultural tourism activity is  
19 accessory and secondary to the principal agricultural  
20 use and does not interfere with surrounding farm  
21 operations; and provided further that this paragraph  
22 shall apply only to a county that has adopted



1           ordinances regulating agricultural tourism under  
2           section 205-5;

3           (14) Agricultural tourism activities, including overnight  
4           accommodations of twenty-one days or less, for any one  
5           stay within a county; provided that this paragraph  
6           shall apply only to a county that includes at least  
7           three islands and has adopted ordinances regulating  
8           agricultural tourism activities pursuant to section  
9           205-5; provided further that the agricultural tourism  
10          activities coexist with a bona fide agricultural  
11          activity. For the purposes of this paragraph, "bona  
12          fide agricultural activity" means a farming operation  
13          as defined in section 165-2;

14          (15) Wind energy facilities, including the appurtenances  
15          associated with the production and transmission of  
16          wind generated energy; provided that the wind energy  
17          facilities and appurtenances are compatible with  
18          agriculture uses and cause minimal adverse impact on  
19          agricultural land;

20          (16) Biofuel processing facilities, including the  
21          appurtenances associated with the production and  
22          refining of biofuels that is normally considered



1 directly accessory and secondary to the growing of the  
2 energy feedstock; provided that biofuels processing  
3 facilities and appurtenances do not adversely impact  
4 agricultural land and other agricultural uses in the  
5 vicinity.

6 For the purposes of this paragraph:

7 "Appurtenances" means operational infrastructure  
8 of the appropriate type and scale for economic  
9 commercial storage and distribution, and other similar  
10 handling of feedstock, fuels, and other products of  
11 biofuel processing facilities.

12 "Biofuel processing facility" means a facility  
13 that produces liquid or gaseous fuels from organic  
14 sources such as biomass crops, agricultural residues,  
15 and oil crops, including palm, canola, soybean, and  
16 waste cooking oils; grease; food wastes; and animal  
17 residues and wastes that can be used to generate  
18 energy;

19 (17) Agricultural-energy facilities, including  
20 appurtenances necessary for an agricultural-energy  
21 enterprise; provided that the primary activity of the  
22 agricultural-energy enterprise is agricultural



1 activity. To be considered the primary activity of an  
2 agricultural-energy enterprise, the total acreage  
3 devoted to agricultural activity shall be not less  
4 than ninety per cent of the total acreage of the  
5 agricultural-energy enterprise. The agricultural-  
6 energy facility shall be limited to lands owned,  
7 leased, licensed, or operated by the entity conducting  
8 the agricultural activity.

9 As used in this paragraph:

10 "Agricultural activity" means any activity  
11 described in paragraphs (1) to (3) of this subsection.

12 "Agricultural-energy enterprise" means an  
13 enterprise that integrally incorporates an  
14 agricultural activity with an agricultural-energy  
15 facility.

16 "Agricultural-energy facility" means a facility  
17 that generates, stores, or distributes renewable  
18 energy as defined in section 269-91 or renewable fuel  
19 including electrical or thermal energy or liquid or  
20 gaseous fuels from products of agricultural activities  
21 from agricultural lands located in the State.



1 "Appurtenances" means operational infrastructure  
2 of the appropriate type and scale for the economic  
3 commercial generation, storage, distribution, and  
4 other similar handling of energy, including equipment,  
5 feedstock, fuels, and other products of agricultural-  
6 energy facilities;

7 (18) Construction and operation of wireless communication  
8 antennas; provided that, for the purposes of this  
9 paragraph, "wireless communication antenna" means  
10 communications equipment that is either freestanding  
11 or placed upon or attached to an already existing  
12 structure and that transmits and receives  
13 electromagnetic radio signals used in the provision of  
14 all types of wireless communications services;  
15 provided further that nothing in this paragraph shall  
16 be construed to permit the construction of any new  
17 structure that is not deemed a permitted use under  
18 this subsection;

19 (19) Agricultural education programs conducted on a farming  
20 operation as defined in section 165-2, for the  
21 education and participation of the general public;  
22 provided that the agricultural education programs are



1           accessory and secondary to the principal agricultural  
2           use of the parcels or lots on which the agricultural  
3           education programs are to occur and do not interfere  
4           with surrounding farm operations. For the purposes of  
5           this section, "agricultural education programs" means  
6           activities or events designed to promote knowledge and  
7           understanding of agricultural activities and practices  
8           conducted on a farming operation as defined in section  
9           165-2; or

10          (20) Solar energy facilities that do not occupy more than  
11           ten per cent of the acreage of the parcel, or twenty  
12           acres of land, whichever is lesser; provided that this  
13           use shall not be permitted on lands with soil  
14           classified by the land study bureau's detailed land  
15           classification as overall (master) productivity rating  
16           class A [~~7~~ ~~or~~

17          ~~{(21)} Geothermal resources exploration and geothermal~~  
18           ~~resources development, as defined under section~~  
19           ~~182-1]."~~

20          SECTION 10. Section 205-5, Hawaii Revised Statutes, is  
21          amended by amending subsection (c) to read as follows:



1           "(c) Unless authorized by special permit issued pursuant  
2 to this chapter, only the following uses shall be permitted  
3 within rural districts:

- 4           (1) Low density residential uses;
- 5           (2) Agricultural uses;
- 6           (3) Golf courses, golf driving ranges, and golf-related  
7           facilities; and
- 8           (4) Public, quasi-public, and public utility facilities [~~7~~  
9           and
- 10          ~~(5) Geothermal resources exploration and geothermal~~  
11          ~~resources development, as defined under section~~  
12          ~~182-1].~~

13           In addition, the minimum lot size for any low density  
14 residential use shall be one-half acre and there shall be but  
15 one dwelling house per one-half acre, except as provided for in  
16 section 205-2."

17           SECTION 11. Act 97, Session Laws of Hawaii 2012, is  
18 amended by repealing section 12.

19           ~~["SECTION 12. The provisions of this Act that repeal the~~  
20 ~~laws that previously authorized geothermal resources subzones~~  
21 ~~under chapter 205, Hawaii Revised Statutes, shall not affect any~~  
22 ~~geothermal resources producer who operates within the area of~~



# H.B. NO. 106

1 ~~the subzone as of the effective date of this Act. The~~  
 2 ~~geothermal resources producer shall continue to operate in~~  
 3 ~~accordance with the producer's lease with the board of land and~~  
 4 ~~natural resources."]~~

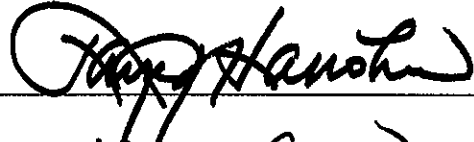
5 SECTION 12. In codifying this Act, the revisor shall  
 6 substitute appropriate section numbers for the letter  
 7 designations used in section 1 of this Act.

8 SECTION 13. Statutory material to be repealed is bracketed  
 9 and stricken. New statutory material is underscored.

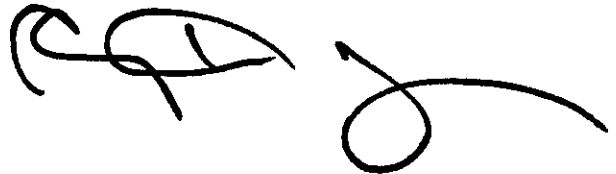
10 SECTION 14. This Act shall take effect upon its approval.

11

INTRODUCED BY:

  
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JAN 17 2013





# H.B. NO. 106

**Report Title:**

Geothermal Resources; Exploration; Subzones

**Description:**

Repeals Act 97, SLH 2012, relating to geothermal resources which differentiates between "geothermal resources exploration" and "geothermal resources development". Designates "geothermal resources exploration" and "geothermal resources development" as permissible uses in all state land use districts and certain conservation district zones in accordance with chapter 205, HRS. Enacts geothermal resource subzones, designation of areas as geothermal resources subzones, and exploratory wells, which were repealed by Act 97.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

