
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 two new sections to be appropriately
3 designated and to read as follows:

4 "§205-A Geothermal resources exploration. (a) The use of
5 an area for non-invasive geothermal resources exploration shall
6 be permitted on reserved lands and within any land use district.

7 (b) The use of an area for invasive geothermal resources
8 exploration shall be governed by the board within the
9 conservation district and, except as herein provided, by state
10 and county statutes, ordinances, and rules not inconsistent
11 herewith on reserved lands and within agricultural, rural, and
12 urban districts.

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 resources exploration in an agricultural, rural,
16 or urban district, the appropriate county authority may issue
17 permits for invasive activities to support geothermal resources
18 exploration.



1 If the requested invasive geothermal resources exploration
2 has triggered an environmental assessment under chapter 343, the
3 environmental assessment shall be completed before application
4 for the necessary county permits. The environmental assessment
5 process shall satisfy all public hearings requirements for these
6 permits. No other public hearing shall be required by the
7 county to process the applicable permits.

8 (c) If invasive geothermal resources exploration is
9 proposed within a conservation district and has triggered an
10 environmental assessment, the environmental assessment shall be
11 completed before the application is submitted to the board of
12 land and natural resources. The environmental assessment
13 process shall satisfy all public hearings requirements for these
14 permits. No other public hearing shall be required by the
15 board. The board shall determine whether, pursuant to board
16 rules, a conservation district use permit shall be granted to
17 authorize the geothermal resource exploration described in the
18 application. The board shall grant a conservation district use
19 permit if it finds that the applicant has demonstrated that:

20 (1) The desired uses would not:



1 (A) Have unreasonable adverse health, environmental,
2 or socio-economic effects on residents or
3 surrounding property; or

4 (B) Unreasonably burden public agencies to provide
5 roads and streets, sewers, water, drainage, and
6 police and fire protection; or

7 (2) There are reasonable measures available to mitigate
8 any unreasonable adverse effects or burdens that may
9 result if a permit is granted.

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

14 §205-B Geothermal resources development. (a) The use of
15 an area for geothermal resources development shall be governed
16 by the board within the conservation district and, except as
17 herein provided, by state and county statutes, ordinances, and
18 rules not inconsistent herewith within agricultural, rural, and
19 urban districts.

20 In the absence of provisions in the county general plan and
21 zoning ordinances specifically relating to the use and location
22 of geothermal resources development in an agricultural, rural,



1 or urban district, the appropriate county authority may issue a
2 geothermal resource permit to allow geothermal resources
3 development. "Appropriate county authority" means the county
4 planning commission unless some other agency or body is
5 designated by ordinance of the county council. The uses
6 permitted by county general plan and zoning ordinances and by
7 the appropriate county authority shall be deemed to be
8 reasonable and to promote the effectiveness and objectives of
9 this chapter. Chapters 182, 183, 183C, 205A, 226, and 343 shall
10 apply as appropriate.

11 If provisions in the county general plan and zoning
12 ordinances specifically relate to the use and location of
13 geothermal resources development in an agricultural, rural, or
14 urban district, the provisions shall require the appropriate
15 county authority to conduct a public hearing on any application
16 for a geothermal resource permit to determine whether the use is
17 in conformity with the criteria specified in subsection (c) for
18 granting geothermal resource permits; provided that within the
19 urban, rural, and agricultural land use districts, direct use
20 applications of geothermal resources are permitted without any
21 application for a geothermal resource permit if the direct use
22 applications are in conformance with all other applicable state



1 and county land use regulations and are in conformance with this
2 chapter.

3 (b) If geothermal resources development is proposed within
4 a conservation district, with an application with all required
5 data, the board of land and natural resources shall conduct a
6 public hearing. Upon appropriate request for mediation from any
7 party who submitted comment at the public hearing, the board
8 shall appoint a mediator within fourteen days. The board shall
9 require the parties to participate in mediation. The mediator
10 shall not be a member of the board or its staff. The mediation
11 period shall not extend beyond sixty days after the date
12 mediation started, except by order of the board. Mediation
13 shall be confined to the issues raised at the public hearing by
14 the party requesting mediation. The mediator shall submit a
15 written recommendation to the board, based upon any mediation
16 agreement reached between the parties for consideration by the
17 board in its final decision.

18 If there is no mediation agreement, the board may conduct a
19 second public hearing to receive additional comment related to
20 the mediation issues. Within ten days after the second public
21 hearing, the board may receive additional written comment on the
22 issues raised at the second public hearing from any party. The



1 board shall consider the comments raised at the second hearing
2 before rendering its final decision.

3 The board shall thereafter determine whether, pursuant to
4 board rules, a conservation district use permit shall be granted
5 to authorize the geothermal resources development described in
6 the application. The board shall grant a conservation district
7 use permit if it finds that the applicant has demonstrated that:

8 (1) The desired uses would not:

9 (A) Have unreasonable adverse health, environmental,
10 or socio-economic effects on residents or
11 surrounding property; or

12 (B) Unreasonably burden public agencies to provide
13 roads and streets, sewers, water, drainage, and
14 police and fire protection; or

15 (2) There are reasonable measures available to mitigate
16 any unreasonable adverse effects or burdens that may
17 result if a permit is granted.

18 A decision shall be made by the board within six months of
19 the date a complete application was filed; provided that the
20 time limit may be extended by agreement between the applicant
21 and the board.



1 (c) If geothermal resources development is proposed within
2 agricultural, rural, or urban districts and the proposed
3 development is not a permitted use pursuant to county general
4 plan and zoning ordinances, then after receipt of a properly
5 filed and completed application, including all required
6 supporting data, the appropriate county authority shall conduct
7 a public hearing. Upon appropriate request for mediation from
8 any party who submitted comment at the public hearing, the
9 county authority shall appoint a mediator within fourteen days.
10 The county authority shall require the parties to participate in
11 mediation. The mediator shall not be an employee of any county
12 agency or its staff. The mediation period shall not extend
13 beyond sixty days after mediation started, except by order of
14 the county authority. Mediation shall be confined to the issues
15 raised at the public hearing by the party requesting mediation.
16 The mediator shall submit a written recommendation to the county
17 authority, based upon any mediation agreement reached between
18 the parties for consideration by the county authority in its
19 final decision.

20 If there is no mediation agreement, the county authority
21 may conduct a second public hearing to receive additional
22 comment related to the mediation issues. Within ten days after



1 the second public hearing, the county authority may receive
2 additional written comment on the issues raised at the second
3 public hearing from any party. The county authority shall
4 consider the comments raised at the second hearing before
5 rendering its final decision.

6 The county authority shall thereafter determine whether a
7 geothermal resource permit shall be granted to authorize the
8 geothermal resources development described in the application.
9 The appropriate county authority shall grant a geothermal
10 resource permit if it finds that the applicant has demonstrated
11 that:

- 12 (1) The desired uses would not:
 - 13 (A) Have unreasonable adverse health, environmental,
 - 14 or socio-economic effects on residents or
 - 15 surrounding property; and
 - 16 (B) Unreasonably burden public agencies to provide
 - 17 roads and streets, sewers, water, drainage,
 - 18 school improvements, and police and fire
 - 19 protection; or
- 20 (2) If unreasonable adverse effects or burdens referred to
21 in paragraph (1) may result if a permit is granted,

1 there are reasonable measures available to mitigate
2 the unreasonable adverse effects or burdens.

3 A decision shall be made on the application by the
4 appropriate county authority within six months of the date a
5 complete application was filed; provided that the time limit may
6 be extended by agreement between the applicant and the
7 appropriate county authority.

8 (d) Requests for mediation shall be received by the board
9 or county authority within five days after the close of the
10 initial public hearing. Within fourteen days thereafter, the
11 board or county authority shall appoint a mediator. Any person
12 submitting an appropriate request for mediation shall be
13 notified by the board or county authority of the date, time, and
14 place of the mediation conference by depositing the notice in
15 the mail to the return address stated on the request for
16 mediation. The notice shall be mailed no later than ten days
17 before the start of the mediation conference. The conference
18 shall be held on the island where the public hearing is held.

19 (e) Any decision made by an appropriate county authority
20 or the board pursuant to a public hearing under this section may
21 be appealed directly on the record to the intermediate appellate
22 court for final decision and shall not be subject to a contested



1 case hearing. Section 91-14(b) and (g) shall govern the appeal,
2 notwithstanding the lack of a contested case hearing on the
3 matter. The appropriate county authority or the board shall
4 provide a court reporter to produce a transcript of the
5 proceedings at all public hearings under this section for
6 purposes of an appeal.

7 (f) For the purposes of an appeal from a decision from a
8 public hearing, the record shall include:

9 (1) The application for the permit and all accompanying
10 supporting documents, including but not limited to
11 reports, studies, affidavits, statements, and
12 exhibits;

13 (2) Staff recommendations submitted to the members of the
14 agency in consideration of the application;

15 (3) Oral and written public testimony received at the
16 public hearings;

17 (4) Written transcripts of the proceedings at the public
18 hearings;

19 (5) The written recommendation received by the agency from
20 the mediator with any mediation agreement;

21 (6) A statement of relevant matters noticed by the agency
22 members at the public hearings;



- 1 (7) The written decision of the agency issued in
- 2 connection with the application and public hearings;
- 3 and
- 4 (8) Other documents required by the board or county
- 5 authority."

6 SECTION 2. Section 205-2, Hawaii Revised Statutes, is
7 amended by amending subsection (d) to read as follows:

8 "(d) Agricultural districts shall include:

- 9 (1) Activities or uses as characterized by the cultivation
- 10 of crops, crops for bioenergy, orchards, forage, and
- 11 forestry;
- 12 (2) Farming activities or uses related to animal husbandry
- 13 and game and fish propagation;
- 14 (3) Aquaculture, which means the production of aquatic
- 15 plant and animal life within ponds and other bodies of
- 16 water;
- 17 (4) Wind generated energy production for public, private,
- 18 and commercial use;
- 19 (5) Biofuel production, as described in section
- 20 [‡]205-4.5(a)(16)[‡], for public, private, and
- 21 commercial use;
- 22 (6) Solar energy facilities; provided that:



1 (A) This paragraph shall apply only to land with soil
2 classified by the land study bureau's detailed
3 land classification as overall (master)
4 productivity rating class B, C, D, or E; and
5 (B) Solar energy facilities placed within land with
6 soil classified as overall productivity rating
7 class B or C shall not occupy more than ten per
8 cent of the acreage of the parcel, or twenty
9 acres of land, whichever is lesser;

10 (7) Bona fide agricultural services and uses that support
11 the agricultural activities of the fee or leasehold
12 owner of the property and accessory to any of the
13 above activities, regardless of whether conducted on
14 the same premises as the agricultural activities to
15 which they are accessory, including farm dwellings as
16 defined in section 205-4.5(a)(4), employee housing,
17 farm buildings, mills, storage facilities, processing
18 facilities, photovoltaic, biogas, and other small-
19 scale renewable energy systems producing energy solely
20 for use in the agricultural activities of the fee or
21 leasehold owner of the property, agricultural-energy
22 facilities as defined in section [†]205-4.5(a)(17)[†],



1 vehicle and equipment storage areas, and plantation
2 community subdivisions as defined in section
3 205-4.5(a)(12);

4 (8) Wind machines and wind farms;

5 (9) Small-scale meteorological, air quality, noise, and
6 other scientific and environmental data collection and
7 monitoring facilities occupying less than one-half
8 acre of land; provided that these facilities shall not
9 be used as or equipped for use as living quarters or
10 dwellings;

11 (10) Agricultural parks;

12 (11) Agricultural tourism conducted on a working farm, or a
13 farming operation as defined in section 165-2, for the
14 enjoyment, education, or involvement of visitors;
15 provided that the agricultural tourism activity is
16 accessory and secondary to the principal agricultural
17 use and does not interfere with surrounding farm
18 operations; and provided further that this paragraph
19 shall apply only to a county that has adopted
20 ordinances regulating agricultural tourism under
21 section 205-5;



- 1 (12) Agricultural tourism activities, including overnight
2 accommodations of twenty-one days or less, for any one
3 stay within a county; provided that this paragraph
4 shall apply only to a county that includes at least
5 three islands and has adopted ordinances regulating
6 agricultural tourism activities pursuant to section
7 205-5; provided further that the agricultural tourism
8 activities coexist with a bona fide agricultural
9 activity. For the purposes of this paragraph, "bona
10 fide agricultural activity" means a farming operation
11 as defined in section 165-2;
- 12 (13) Open area recreational facilities;
- 13 (14) Geothermal resources exploration and geothermal
14 resources development, as defined under section 182-
15 1[+], and subject to sections 205-A and 205-B; and
- 16 (15) Agricultural-based commercial operations, including:
17 (A) A roadside stand that is not an enclosed
18 structure, owned and operated by a producer for
19 the display and sale of agricultural products
20 grown in Hawaii and value-added products that
21 were produced using agricultural products grown
22 in Hawaii;



1 (B) Retail activities in an enclosed structure owned
2 and operated by a producer for the display and
3 sale of agricultural products grown in Hawaii,
4 value-added products that were produced using
5 agricultural products grown in Hawaii, logo items
6 related to the producer's agricultural
7 operations, and other food items; and

8 (C) A retail food establishment owned and operated by
9 a producer and permitted under chapter 12 of the
10 rules of the department of health that prepares
11 and serves food at retail using products grown in
12 Hawaii and value-added products that were
13 produced using agricultural products grown in
14 Hawaii.

15 The owner of an agricultural-based commercial
16 operation shall certify, upon request of an officer or
17 agent charged with enforcement of this chapter under
18 section 205-12, that the agricultural products
19 displayed or sold by the operation meet the
20 requirements of this paragraph.

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



1 Agricultural districts include areas that are not used for, or
2 that are not suited to, agricultural and ancillary activities by
3 reason of topography, soils, and other related characteristics."

4 SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

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

- 10 (1) Cultivation of crops, including crops for bioenergy,
11 flowers, vegetables, foliage, fruits, forage, and
12 timber;
- 13 (2) Game and fish propagation;
- 14 (3) Raising of livestock, including poultry, bees, fish,
15 or other animal or aquatic life that are propagated
16 for economic or personal use;
- 17 (4) Farm dwellings, employee housing, farm buildings, or
18 activities or uses related to farming and animal
19 husbandry. "Farm dwelling", as used in this
20 paragraph, means a single-family dwelling located on
21 and used in connection with a farm, including clusters
22 of single-family farm dwellings permitted within



- 1 agricultural parks developed by the State, or where
2 agricultural activity provides income to the family
3 occupying the dwelling;
- 4 (5) Public institutions and buildings that are necessary
5 for agricultural practices;
- 6 (6) Public and private open area types of recreational
7 uses, including day camps, picnic grounds, parks, and
8 riding stables, but not including dragstrips,
9 airports, drive-in theaters, golf courses, golf
10 driving ranges, country clubs, and overnight camps;
- 11 (7) Public, private, and quasi-public utility lines and
12 roadways, transformer stations, communications
13 equipment buildings, solid waste transfer stations,
14 major water storage tanks, and appurtenant small
15 buildings such as booster pumping stations, but not
16 including offices or yards for equipment, material,
17 vehicle storage, repair or maintenance, treatment
18 plants, corporation yards, or other similar
19 structures;
- 20 (8) Retention, restoration, rehabilitation, or improvement
21 of buildings or sites of historic or scenic interest;



- 1 (9) Agricultural-based commercial operations as described
- 2 in section [‡]205-2(d)(15) [‡];
- 3 (10) Buildings and uses, including mills, storage, and
- 4 processing facilities, maintenance facilities,
- 5 photovoltaic, biogas, and other small-scale renewable
- 6 energy systems producing energy solely for use in the
- 7 agricultural activities of the fee or leasehold owner
- 8 of the property, and vehicle and equipment storage
- 9 areas that are normally considered directly accessory
- 10 to the above-mentioned uses and are permitted under
- 11 section 205-2(d);
- 12 (11) Agricultural parks;
- 13 (12) Plantation community subdivisions, which as used in
- 14 this chapter means an established subdivision or
- 15 cluster of employee housing, community buildings, and
- 16 agricultural support buildings on land currently or
- 17 formerly owned, leased, or operated by a sugar or
- 18 pineapple plantation; provided that the existing
- 19 structures may be used or rehabilitated for use, and
- 20 new employee housing and agricultural support
- 21 buildings may be allowed on land within the
- 22 subdivision as follows:



- 1 (A) The employee housing is occupied by employees or
2 former employees of the plantation who have a
3 property interest in the land;
- 4 (B) The employee housing units not owned by their
5 occupants shall be rented or leased at affordable
6 rates for agricultural workers; or
- 7 (C) The agricultural support buildings shall be
8 rented or leased to agricultural business
9 operators or agricultural support services;
- 10 (13) Agricultural tourism conducted on a working farm, or a
11 farming operation as defined in section 165-2, for the
12 enjoyment, education, or involvement of visitors;
13 provided that the agricultural tourism activity is
14 accessory and secondary to the principal agricultural
15 use and does not interfere with surrounding farm
16 operations; and provided further that this paragraph
17 shall apply only to a county that has adopted
18 ordinances regulating agricultural tourism under
19 section 205-5;
- 20 (14) Agricultural tourism activities, including overnight
21 accommodations of twenty-one days or less, for any one
22 stay within a county; provided that this paragraph



1 shall apply only to a county that includes at least
2 three islands and has adopted ordinances regulating
3 agricultural tourism activities pursuant to section
4 205-5; provided further that the agricultural tourism
5 activities coexist with a bona fide agricultural
6 activity. For the purposes of this paragraph, "bona
7 fide agricultural activity" means a farming operation
8 as defined in section 165-2;

9 (15) Wind energy facilities, including the appurtenances
10 associated with the production and transmission of
11 wind generated energy; provided that the wind energy
12 facilities and appurtenances are compatible with
13 agriculture uses and cause minimal adverse impact on
14 agricultural land;

15 (16) Biofuel processing facilities, including the
16 appurtenances associated with the production and
17 refining of biofuels that is normally considered
18 directly accessory and secondary to the growing of the
19 energy feedstock; provided that biofuel processing
20 facilities and appurtenances do not adversely impact
21 agricultural land and other agricultural uses in the
22 vicinity.



1 For the purposes of this paragraph:

2 "Appurtenances" means operational infrastructure
3 of the appropriate type and scale for economic
4 commercial storage and distribution, and other similar
5 handling of feedstock, fuels, and other products of
6 biofuel processing facilities.

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

14 (17) Agricultural-energy facilities, including
15 appurtenances necessary for an agricultural-energy
16 enterprise; provided that the primary activity of the
17 agricultural-energy enterprise is agricultural
18 activity. To be considered the primary activity of an
19 agricultural-energy enterprise, the total acreage
20 devoted to agricultural activity shall be not less
21 than ninety per cent of the total acreage of the
22 agricultural-energy enterprise. The agricultural-



1 energy facility shall be limited to lands owned,
2 leased, licensed, or operated by the entity conducting
3 the agricultural activity.

4 As used in this paragraph:

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

7 "Agricultural-energy enterprise" means an
8 enterprise that integrally incorporates an
9 agricultural activity with an agricultural-energy
10 facility.

11 "Agricultural-energy facility" means a facility
12 that generates, stores, or distributes renewable
13 energy as defined in section 269-91 or renewable fuel
14 including electrical or thermal energy or liquid or
15 gaseous fuels from products of agricultural activities
16 from agricultural lands located in the State.

17 "Appurtenances" means operational infrastructure
18 of the appropriate type and scale for the economic
19 commercial generation, storage, distribution, and
20 other similar handling of energy, including equipment,
21 feedstock, fuels, and other products of agricultural-
22 energy facilities;



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

13 (19) Agricultural education programs conducted on a farming
14 operation as defined in section 165-2, for the
15 education and participation of the general public;
16 provided that the agricultural education programs are
17 accessory and secondary to the principal agricultural
18 use of the parcels or lots on which the agricultural
19 education programs are to occur and do not interfere
20 with surrounding farm operations. For the purposes of
21 this section, "agricultural education programs" means
22 activities or events designed to promote knowledge and



1 understanding of agricultural activities and practices
2 conducted on a farming operation as defined in section
3 165-2;

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

11 [†] (21) [†] Geothermal resources exploration and geothermal
12 resources development, as defined under section
13 182-1[†], and subject to sections 205-A and 205-B."

14 SECTION 4. Section 205-5, Hawaii Revised Statutes, is
15 amended by amending subsection (c) to read as follows:

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

- 19 (1) Low density residential uses;
- 20 (2) Agricultural uses;
- 21 (3) Golf courses, golf driving ranges, and golf-related
22 facilities;



- 1 (4) Public, quasi-public, and public utility facilities;
2 and
3 (5) Geothermal resources exploration and geothermal
4 resources development, as defined under section
5 182-1[-], and subject to sections 205-A and 205-B.

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

10 SECTION 5. In codifying the new sections added by section
11 1 of this Act, the revisor of statutes shall substitute
12 appropriate section numbers for the letters used in designating
13 the new sections in this Act.

14 SECTION 6. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 7. This Act shall take effect on July 1, 2013.
17

INTRODUCED BY: Denny Coffman

JAN 24 2013



H.B. NO. 1235

Report Title:

Geothermal Resources; Exploration; Development

Description:

Requires that the use of an area for invasive geothermal resources exploration or geothermal resources development shall be governed by BLNR within the conservation district and by state and county statutes, ordinances, and rules within agricultural, rural, and urban districts. Authorizes appropriate county authorities to issue geothermal resource permits.

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

