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# A BILL FOR AN ACT

RELATING TO GOVERNMENT.

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

1 **PART I**

2 SECTION 1. Chapter 10H, Hawaii Revised Statutes, is  
3 amended by adding a new section to be appropriately designated  
4 and to read as follows:

5 "§10H- Reports. The Native Hawaiian roll commission, in  
6 cooperation with the office of Hawaiian affairs, shall submit an  
7 annual report to the governor and the legislature no later than  
8 twenty days prior to the convening of each regular session,  
9 beginning with the regular session of 2014, on the status of the  
10 preparation of a roll of qualified Native Hawaiians,  
11 expenditures related to the responsibilities of the Native  
12 Hawaiian roll commission, and any concerns or recommendations as  
13 deemed appropriate by the Native Hawaiian roll commission."

14 SECTION 2. Section 10H-3, Hawaii Revised Statutes, is  
15 amended by amending subsection (a) to read as follows:

16 "(a) There is established a five-member Native Hawaiian  
17 roll commission within the office of Hawaiian affairs for



1 administrative purposes only. The Native Hawaiian roll  
2 commission shall be responsible for:

3 (1) Preparing and maintaining a roll of qualified Native  
4 Hawaiians;

5 (2) Certifying that the individuals on the roll of  
6 qualified Native Hawaiians meet the definition of  
7 qualified Native Hawaiians. For purposes of  
8 establishing the roll, a "qualified Native Hawaiian"  
9 means an individual [~~who~~] whom the commission  
10 determines has satisfied the following criteria and  
11 who makes a written statement certifying that the  
12 individual:

13 (A) Is:

14 (i) An individual who is a descendant of the  
15 aboriginal peoples who, prior to 1778,  
16 occupied and exercised sovereignty in the  
17 Hawaiian islands, the area that now  
18 constitutes the State of Hawaii; [~~or~~]

19 (ii) An individual who is one of the indigenous,  
20 native people of Hawaii and who was eligible  
21 in 1921 for the programs authorized by the  
22 Hawaiian Homes Commission Act, 1920, or a



1 direct lineal descendant of that individual;

2 or

3 (iii) An individual who meets the ancestry  
4 requirements of Kamehameha Schools or of any  
5 Hawaiian registry program of the office of  
6 Hawaiian affairs;

7 (B) Has maintained a significant cultural, social, or  
8 civic connection to the Native Hawaiian community  
9 and wishes to participate in the organization of  
10 the Native Hawaiian governing entity; and

11 (C) Is eighteen years of age or older; [~~and~~]

12 (3) Receiving and maintaining documents that verify  
13 ancestry; cultural, social, or civic connection to the  
14 Native Hawaiian community; and age from individuals  
15 seeking to be included in the roll of qualified Native  
16 Hawaiians. Notwithstanding any other law to the  
17 contrary, these verification documents shall be  
18 confidential[-]; and

19 (4) Notwithstanding any other law to the contrary,  
20 including in the roll of qualified Native Hawaiians  
21 all individuals already registered with the State as  
22 verified Hawaiians or Native Hawaiians through the



1 office of Hawaiian affairs and extending to those  
2 individuals all rights and recognitions conferred upon  
3 other members of the roll."

4 ,SECTION 3. Act 195, Session Laws of Hawaii 2011, is  
5 amended by amending section 3 to read as follows.

6 "SECTION 3. [~~The Hawaiian Homes Commission Act, 1920,~~  
7 ~~shall be amended, subject to approval by the United States~~  
8 ~~Congress, if necessary, to accomplish the purposes set forth in~~  
9 ~~this Act in a manner that is expeditious, timely, and consistent~~  
10 ~~with the current needs and requirements of the Native Hawaiian~~  
11 ~~people and the current beneficiaries of the Hawaiian Homes~~  
12 ~~Commission Act, 1920.] Repealed."~~

13 **PART II**

14 SECTION 4. Chapter 182, Hawaii Revised Statutes, is  
15 amended by adding a new section to be appropriately designated  
16 and to read as follows:

17 "§182- Penalties, fees, and costs collected. All  
18 penalties, fees, and costs established and collected by the  
19 department pursuant to this chapter shall be deposited in the  
20 special land and development fund established under section  
21 171-19.



1 SECTION 5. Chapter 205, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§205- Geothermal resource permits. (a) The use of an  
5 area or site for geothermal resources development within the  
6 conservation district shall be governed by the board; provided  
7 that the appropriate county authority may issue a geothermal  
8 resource permit pursuant to subsection (c) to allow geothermal  
9 resources development in an agricultural, rural, or urban  
10 district if the geothermal resources development is not  
11 considered a permissible use under the applicable county zoning  
12 ordinances or general plan.

13 (b) If geothermal resources development is proposed within  
14 a conservation district in an application containing all  
15 required data, the board shall conduct a public hearing, and  
16 upon appropriate request for mediation from any party who  
17 submitted written comment at the public hearing, the board shall  
18 appoint a mediator within fourteen days. The board shall  
19 require the parties to participate in mediation. The mediator  
20 shall not be a member of the board or its staff. The mediation  
21 period shall not extend beyond sixty days after the date  
22 mediation started, except by order of the board. Mediation



1 shall be confined to the issues raised at the public hearing by  
2 the party requesting mediation. If there is no mediation  
3 agreement on all the issues raised at the public hearing, the  
4 board may conduct a second public hearing to receive additional  
5 comments related to the mediation issues. Within ten days after  
6 the second public hearing, the board may receive additional  
7 written comments on the issues raised at the second public  
8 hearing from any party.

9 The board shall consider the comments at the second hearing  
10 before rendering its final decision. The board shall then  
11 determine whether a conservation district use permit shall be  
12 granted to authorize the geothermal resources development  
13 described in the application. The board shall grant a  
14 conservation district use permit if it finds that:

- 15 (1) The desired uses would not have unreasonable adverse  
16 health, environmental, or socio-economic effects on  
17 residents or surrounding property;  
18 (2) The desired uses would not unreasonably burden public  
19 agencies to provide roads and streets, sewers, water,  
20 drainage, and police and fire protection; and  
21 (3) There are reasonable measures available to mitigate  
22 the unreasonable adverse effects or burdens referred



1 to above, which the board shall have the authority to  
2 prescribe as conditions for the proposed geothermal  
3 resources development.

4 A decision shall be made by the board within six months of  
5 the date a complete application is filed; provided that the time  
6 limit may be extended by agreement between the applicant and the  
7 board. The board shall have the exclusive authority to impose  
8 reasonable conditions and restrictions upon the proposed use in  
9 support of its findings, except to the extent that the  
10 department of health and other state and federal agencies have  
11 jurisdiction to regulate such activities.

12 (c) If geothermal resources development is proposed within  
13 agricultural, rural, or urban districts and the proposed  
14 activities are not expressly permitted uses pursuant to the  
15 applicable county general plan and zoning ordinances, then,  
16 after receipt of a properly filed and completed application  
17 including all required supporting data, the appropriate county  
18 authority shall conduct a public hearing. Upon appropriate  
19 request for mediation from any party who submitted written  
20 comments at the public hearing, the county authority shall  
21 appoint a mediator within fourteen days. The county authority  
22 shall require the parties to participate in mediation. The



1 mediator shall not be an employee of any county agency or its  
2 staff. The mediation period shall not extend beyond sixty days  
3 after mediation started, except by order of the county  
4 authority. Mediation shall be confined to the issues raised at  
5 the public hearing by the party requesting mediation. If there  
6 is no mediation agreement on the issues raised during the public  
7 hearing, the county authority may conduct a second public  
8 hearing to receive additional comments related to the mediation  
9 issues. Within ten days after the second public hearing, the  
10 county authority may receive additional written comments on the  
11 issues raised at the second public hearing from any party.

12 The county authority shall consider the comments raised at  
13 the second hearing before rendering its final decision. The  
14 county authority shall then determine whether a geothermal  
15 resource permit shall be granted to authorize the geothermal  
16 resources development described in the application. The  
17 appropriate county authority shall grant a geothermal resource  
18 permit if it finds that the applicant has demonstrated that:

19 (1) The desired uses would not have unreasonable adverse  
20 health, environmental, or socio-economic effects on  
21 residents or surrounding property;





1       (2) The desired uses would not unreasonably burden public  
2       agencies to provide roads and streets, sewers, water,  
3       drainage, school improvements, and police and fire  
4       protection; and

5       (3) There are reasonable measures available to mitigate  
6       the unreasonable adverse effects or burdens referred  
7       to above, which the county authority may prescribe as  
8       conditions for the proposed geothermal resources  
9       development.

10       Unless there is a mutual agreement to extend the  
11       proceeding, a decision shall be made on the application by the  
12       appropriate county authority within six months of the date a  
13       complete application was filed; provided that the time limit may  
14       be extended by agreement between the applicant and the  
15       appropriate county authority. The county authority shall have  
16       exclusive authority to impose reasonable restrictions and  
17       conditions for the geothermal development in support of its  
18       findings, except to the extent that the department of health and  
19       other federal and state agencies have jurisdiction to regulate  
20       such activities.

21       (d) Requests for mediation shall be received by the board  
22       or county authority within five days after the close of the



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

10 (e) Any decision made by an appropriate county authority  
11 or the board pursuant to a public hearing or hearings under this  
12 section may be appealed directly on the record to the  
13 intermediate appellate court for review and shall not be subject  
14 to a contested case hearing. Section 91-14 shall apply to  
15 judicial reviews, notwithstanding the lack of a contested case  
16 hearing on the matter. The appropriate county authority or the  
17 board shall provide a court reporter to produce a transcript of  
18 the proceedings at all public hearings under this section for  
19 purposes of an appeal.

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



- 1        (1) The application for the permit and all accompanying  
2        supporting documents, including but not limited to  
3        reports, studies, affidavits, statements, and  
4        exhibits;
- 5        (2) Staff recommendations submitted to the members of the  
6        agency in consideration of the application;
- 7        (3) Oral and written public testimony received at the  
8        public hearings;
- 9        (4) Written transcripts of the proceedings at the public  
10       hearings;
- 11       (5) A statement of relevant matters noticed by the agency  
12       members at the public hearings;
- 13       (6) The written decision of the agency issued in  
14       connection with the application and public hearings;  
15       and
- 16       (7) Other documents required by the board or county  
17       authority.
- 18       (g) For purposes of this section:
- 19       (1) "Appropriate county authority" means the county  
20       planning commission unless the respective county's  
21       agency or body is designated by applicable provisions



1           of the charter or by ordinance of the county council  
2           to issue development permits.

3           (2) "Board" means the board of land and natural  
4           resources."

5           SECTION 6. Section 171-95, Hawaii Revised Statutes, is  
6 amended by amending subsection (c) to read as follows:

7           "(c) For the purposes of this section, "renewable energy  
8 producer" means:

9           (1) Any producer or developer of electrical or thermal  
10 energy produced by wind, solar energy, hydropower,  
11 geothermal resources, landfill gas, waste-to-energy,  
12 ocean thermal energy conversion, cold seawater, wave  
13 energy, biomass, including municipal solid waste,  
14 biofuels or fuels derived from organic sources,  
15 hydrogen fuels derived primarily from renewable  
16 energy, or fuel cells where the fuel is derived  
17 primarily from renewable sources that sell all of the  
18 net power produced from the demised premises to an  
19 electric utility company regulated under chapter 269  
20 or that sells all of the thermal energy it produces to  
21 customers of district cooling systems; provided that  
22 up to twenty-five per cent of the power produced by a



1 renewable energy producer and sold to the utility or  
2 to district cooling system customers may be derived  
3 from fossil fuels; or

4 (2) Any grower or producer of plant or animal materials  
5 used primarily for the production of biofuels or other  
6 fuels; provided that nothing herein is intended to  
7 prevent the waste product or byproduct of the plant or  
8 animal material grown or produced for the production  
9 of biofuel, other fuels, electrical energy, or thermal  
10 energy, from being used for other useful purposes."

11 SECTION 7. Section 182-1, Hawaii Revised Statutes, is  
12 amended as follows:

13 1. By adding a new definition to be appropriately inserted  
14 and to read:

15 "Department" means the department of land and natural  
16 resources."

17 2. By amending the definitions of "geothermal resources",  
18 "geothermal resources exploration", and "mining lease" to read:

19 "Geothermal resources" means the natural heat of the  
20 earth, the energy, in whatever form, below the surface of the  
21 earth present in, resulting from, or created by, or which may be  
22 extracted from, such natural heat, and all minerals in solution

1 or other products obtained from naturally heated fluids, brines,  
2 associated gases, and steam, in whatever form, found below the  
3 surface of the earth, but excluding oil, hydrocarbon gas, or  
4 other hydrocarbon substances [~~and any water, mineral in~~  
5 ~~solution, or other product obtained from naturally heated~~  
6 ~~fluids, brines, associated gases, and steam, in whatever form,~~  
7 ~~found below the surface of the earth, having a temperature of~~  
8 ~~150 degrees Fahrenheit or less, and not used for electrical~~  
9 ~~power generation]~~.

10 "Geothermal resources exploration" means either of the  
11 following:

- 12 (1) Conducting non-invasive geophysical operations,  
13 including geochemical operations, remote sensing, and  
14 other similar techniques; or  
15 (2) Drilling exploration wells for, but not limited to,  
16 the extraction and removal of minerals of types and  
17 quantities;

18 that are reasonably required for testing and analysis to provide  
19 ground truth or determine the economic viability of geothermal  
20 resources. The term does not include "geothermal resources  
21 development".



1 "Mining lease" means a lease of the right to conduct mining  
2 operations, including geothermal resource exploration or  
3 development, on state lands [~~and on lands sold or leased by the~~  
4 ~~State or its predecessors in interest with a reservation of~~  
5 ~~mineral rights to the State]~~."

6 3. By deleting the definition of "reserved lands".

7 [~~"Reserved lands" means those lands owned or leased by any~~  
8 ~~person in which the State or its predecessors in interest has~~  
9 ~~reserved to itself expressly or by implication the minerals or~~  
10 ~~right to mine minerals, or both."~~]

11 SECTION 8. Section 182-2, Hawaii Revised Statutes, is  
12 amended by amending subsection (a) to read as follows:

13 "(a) All minerals in, on, or under state lands or lands  
14 which hereafter become state lands are reserved to the State;  
15 provided that the board [~~of land and natural resources]~~ may  
16 release, cancel, or waive the reservation whenever it deems the  
17 land use, other than mining, is of greater benefit to the State  
18 as provided for in section 182-4. Such minerals are reserved  
19 from sale or lease except as provided in this chapter. A  
20 purchaser or lessee of any such lands shall acquire no right,  
21 title, or interest in or to the minerals. The right of the  
22 purchaser or lessee shall be subject to the reservation of all



1 the minerals and to the conditions and limitations prescribed by  
2 law providing for the State and persons authorized by it to  
3 prospect for, mine, and remove the minerals, and to occupy and  
4 use so much of the surface of the land as may be required for  
5 all purposes reasonably extending to the mining and removal of  
6 the minerals therefrom by any means whatsoever."

7 SECTION 9. Section 182-3, Hawaii Revised Statutes, is  
8 amended by amending subsection (a) to read as follows:

9 "(a) Every lessee of a mining lease granted under this  
10 chapter and every assignee thereof shall file with the board [~~of~~  
11 ~~land and natural resources~~] a bond, in a form and in an amount  
12 approved by the board, made payable to the State and which shall  
13 be conditioned upon the faithful performance by the lessee of  
14 all the requirements of this chapter and of the mining lease,  
15 and also conditioned upon the full payment by the lessee of all  
16 damages suffered by the occupiers hereinunder mentioned. If the  
17 State sells or leases its mineral rights on land which it or its  
18 predecessors in interest have granted or leased, or which it may  
19 hereafter sell or lease, and the land thereof including any  
20 crops or improvements is damaged by any mining or other  
21 incidental operations, including exploratory work, or by the  
22 failure of the lessee of the mining lease to properly restore





1 the land after termination of the operations, the occupier shall  
2 be reimbursed the full extent of the damages caused by the  
3 mining operations of the lessee to be allocated between the  
4 lessee and the fee owner in accordance with the lease terms, if  
5 any."

6 SECTION 10. Section 182-4, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "**§182-4 Mining leases on state lands.** (a) If any mineral  
9 is discovered or known to exist on state lands, any interested  
10 person may notify the board [~~of land and natural resources~~] of  
11 the person's desire to apply for a mining lease. The notice  
12 shall be accompanied by [~~a fee of \$100~~] the required fees, as  
13 established by the department, together with a description of  
14 the land desired to be leased [~~and~~], the minerals involved, and  
15 any information and maps that the board by rule may prescribe.  
16 As soon as practicable thereafter, the board shall cause a  
17 public notice to be given in the county where the lands are  
18 located, at least once in each of three successive weeks,  
19 setting forth the description of the land, and the minerals  
20 desired to be leased. The board may hold the public auction of  
21 the mining lease within six months from the date of the first  
22 notice or any further time that may be reasonably necessary.



1 Whether or not the state land sought to be auctioned is then  
2 being utilized or put to some productive use, the board, after  
3 due notice of public hearing to all parties in interest, within  
4 six weeks from the date of the first notice or any further time  
5 that may be reasonably necessary, shall determine whether the  
6 proposed mining operation or the existing or reasonably  
7 foreseeable future use of the land would be of greater benefit  
8 to the State. If the board determines that the existing or  
9 reasonably foreseeable future use would be of greater benefit to  
10 the State than the proposed mining use of the land, it shall  
11 disapprove the application for a mining lease of the land  
12 without putting the land to auction. The board shall determine  
13 the area to be offered for lease and, after due notice of public  
14 hearing to all parties in interest, may modify the boundaries of  
15 the land areas. At least thirty days prior to the holding of  
16 any public auction, the board shall cause a public notice to be  
17 given in the State at least once in each of three successive  
18 weeks, setting forth the description of the land, the minerals  
19 to be leased, and the time and place of the auction. Bidders at  
20 the public auction may be required to bid on the amount of  
21 annual rental to be paid for the term of the mining lease based  
22 on an upset price fixed by the board, a royalty based on the



1 gross proceeds or net profits, cash bonus, or any combination or  
2 other basis and under any terms and conditions that may be set  
3 by the board.

4 (b) Any provisions to the contrary notwithstanding, if the  
5 person who discovers the mineral discovers it as a result of  
6 exploration permitted under section 182-6, and if that person  
7 bids at the public auction on the mining lease for the right to  
8 mine the discovered mineral and is unsuccessful in obtaining  
9 such lease, that person shall be reimbursed by the person  
10 submitting the highest successful bid at public auction for the  
11 direct or indirect costs incurred in the exploration of the  
12 land, excluding salaries, [~~attorneys~~] attorney's fees, and legal  
13 expenses. The department shall have the authority to review and  
14 approve all expenses and costs that may be reimbursed.

15 (c) Any proposed mining operations to be undertaken by a  
16 renewable energy producer, as defined in section 171-95, shall  
17 require an application to the board for a mining lease on state  
18 lands. Any provisions to the contrary notwithstanding, such  
19 application for a mining lease on state lands may be granted by  
20 the board in accordance with this section, or the board may, by  
21 the vote of two-thirds of the members to which the board is



1 entitled, grant a mining lease to the renewable energy producer  
2 without public auction."

3 SECTION 11. 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~~] the required  
10 fees, as established by the department, together with a  
11 description of the land desired to be leased and the minerals  
12 involved and such information and maps as the board may by  
13 [~~regulation~~] rule prescribe. The board may grant a mining lease  
14 on [~~reserved~~] state lands in accordance with section 182-4, or  
15 the board may, by the vote of two-thirds of [~~its~~] the members to  
16 which the board is entitled, without public auction, grant a  
17 mining lease on [~~reserved~~] lands to the occupier thereof. Such  
18 a mining lease may be granted to a person other than the  
19 occupier if the occupier has assigned the occupier's rights to  
20 apply for a mining lease to another person, in which case only  
21 such an assignee may be granted a mining lease. Any provisions  
22 to the contrary notwithstanding, if the board decides that it is



1 appropriate to grant a geothermal mining lease on the [~~reserved~~]  
2 lands, the surface owner or the owner's assignee shall have the  
3 first right of refusal for a mining lease. If the occupier or  
4 the occupier's assignee of the right to obtain a mining lease  
5 should fail to apply for a mining lease within six months from  
6 the date of notice from the board of a finding by the board that  
7 it is in the public interest that the minerals on the [~~reserved~~]  
8 lands be mined, a mining lease shall be granted under section  
9 182-4; provided that bidders at the public auction shall bid on  
10 an amount to be paid to the State for a mining lease granting to  
11 the lessee the right to exploit minerals reserved to the State."

12 SECTION 12. Section 182-6, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "**§182-6 Exploration.** Any person wishing to conduct  
15 geothermal resources exploration on state lands shall apply to  
16 the board [~~of land and natural resources who~~], which shall issue  
17 exploration permits upon terms and conditions as it shall by  
18 [~~regulation~~] rule prescribe. During and as a result of the  
19 exploration, no minerals of such types and quantity beyond that  
20 reasonably required for testing and analysis shall be extracted  
21 and removed from such state lands. Upon termination of the  
22 exploration permit, all exploration data, including the drill



1 logs and the results of the assays resulting from the geothermal  
2 resources exploration, shall be turned over to the board and  
3 kept confidential by the board. If the person shall not make  
4 application for a mining lease of the lands within a period of  
5 six months from the date the information is turned over to the  
6 board, the board in its discretion need not keep the information  
7 confidential.

8 This section shall be construed as authorizing the board to  
9 issue an exploration permit for geothermal resources as well as  
10 minerals."

11 SECTION 13. Section 182-7, Hawaii Revised Statutes, is  
12 amended as follows:

13 1. By amending subsection (a) to read:

14 "(a) Prior to the public auction contemplated in section  
15 182-4 or 182-5, or the granting of mining lease without public  
16 auction contemplated in section 182-4 or 182-5, the board [~~of~~  
17 ~~land and natural resources~~] shall cause a mining lease for the  
18 land in question to be drawn. The lease shall describe the land  
19 and shall contain, in addition to such other provisions which  
20 the board may deem appropriate, specific provisions as provided  
21 in this section."

22 2. By amending subsections (d) to (f) to read:



1           "(d) The lessee shall covenant and agree that the lessee  
2 shall commence mining operations upon the leased lands within  
3 three years from the date of execution of the lease; provided  
4 that so long as the lessee is actively and on a substantial  
5 scale engaged in mining operations on at least one such lease on  
6 the same minerals, the covenant shall be suspended as to all  
7 other leases held by the lessee.

8           Any interested party may, however, request that a mining  
9 lease contain a research period under which the lessees shall be  
10 required to expend money in research and development to  
11 establish a method to make economical the mining and processing  
12 of the [~~mineral deposits contained~~] minerals identified in the  
13 lease. If the board determines that the research period would  
14 be beneficial, it shall fix the period of research and shall  
15 also fix a minimum expenditure for labor performed or money  
16 spent by the lessee [~~in~~] on research and development and the  
17 method by which the lessee shall establish that such expenditure  
18 in fact be made. In such leases, the obligation to commence  
19 mining operations within three years shall not commence until  
20 the expiration of the research period.

21           (e) For the period of the lease the lessee shall have the  
22 exclusive right of possession of the minerals leased and the



1 exclusive rights to mine and remove the minerals by means which  
2 shall be reasonable and satisfactory to the board and to occupy  
3 and use so much of the surface of the land as may reasonably be  
4 required, subject to the provisions of section 182-3. The right  
5 to use the surface shall include the right to erect  
6 transportation facilities thereon, construct plants for  
7 beneficiating, drying, and processing the minerals for electric  
8 power generation and transmission and such other uses as may be  
9 approved by the board. Such other uses may include uses  
10 necessary or convenient to the [~~winning and~~] processing of the  
11 minerals; provided that the lessee shall comply with all water  
12 and air pollution control laws, and rules of the State or its  
13 political subdivisions.

14 (f) The lessee may retain all minerals separated from the  
15 land as a part of the process of mining the minerals specified  
16 in the mining lease; provided that the lease may prescribe the  
17 accounting and testing procedures by which the amount and  
18 quality of such additional materials shall be determined for the  
19 purpose of computing the excise tax thereon[-] and applicable  
20 royalty that may be set by the board for the use of such  
21 minerals."





1 SECTION 14. Section 182-9, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§182-9 **Deposit; first year's rental.** All bidders shall,  
4 prior to the date of public auction, post with the board [of  
5 ~~land and natural resources a deposit of \$500.~~] the required  
6 deposit, as established by the department. The board shall  
7 refund to unsuccessful bidders such amount within two days after  
8 the auction. All bidders, prior to the auction, shall satisfy  
9 the board of their financial ability to conduct mining  
10 operations and of their capability to develop a mine. The  
11 successful bidder shall pay to the board the amount of the first  
12 year's rental within two days after the acceptance of the bid by  
13 the board and the [~~\$500 deposit~~] required deposit, as  
14 established by the department, shall be credited against such  
15 sum. If the deposit exceeds the first year's rental, the excess  
16 shall be refunded. All rentals thereafter are payable in  
17 advance once a year."

18 SECTION 15. Section 182-10, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "§182-10 **Revocation of mining leases.** A mining lease may  
21 be revoked if the lessee fails to pay rentals when due or if any  
22 of the terms of the lease or of law are not complied with, or if



1 the lessee wholly ceases all mining operations for other than  
2 reasons of force majeure or the uneconomic operation of the  
3 mining lease for a period of one year without the written  
4 consent of the board [~~of land and natural resources~~]; provided  
5 that the board shall give the lessee notice of any default and  
6 the lessee shall have six months or such other time limit as  
7 provided by the rules [~~and regulations~~] from the date of the  
8 notice to remedy the default."

9 SECTION 16. Section 182-11, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "**§182-11 Assignment.** Any mining lease may be assigned in  
12 whole or in part, subject to the approval of the board [~~of land  
13 and natural resources~~], to an assignee who shall have the same  
14 qualifications as any bidder for a mining lease. The assignee  
15 shall be bound by the terms of the lease to the extent as if the  
16 assignee were the original lessee. The approval of the  
17 assignment by the board shall release the assignor from any  
18 liabilities or duties under the mining lease as to the portion  
19 thereof assigned except for any liability or duty which arose  
20 prior to the approval of the assignment by the board and which  
21 remains unsatisfied or unperformed."



1 SECTION 17. Section 182-13, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§182-13 Surrender of mining leases. Any lessee of a  
4 mining lease, who has complied fully with all the terms,  
5 covenants, and conditions of the existing lease, may, with the  
6 consent of the board [~~of land and natural resources~~], surrender  
7 at any time and from time to time all or any part of a mining  
8 lease or the land contained therein upon payments as  
9 consideration therefor two years' rent prorated upon the portion  
10 of the lease or land surrendered. The lessee shall thereupon be  
11 relieved of any further liability or duty with respect to the  
12 land or lease so surrendered; provided that nothing herein  
13 contained shall constitute a waiver of any liability or duty the  
14 lessee may have with respect to the land or lease surrendered as  
15 a result of any previous activities conducted on the land or  
16 under the lease. Upon the termination, cancellation, or  
17 surrender of any mining lease or any portion thereof, the lessee  
18 shall have the right to remove any and all equipment, buildings,  
19 and plants placed on the land surrendered by the holder of the  
20 mining lease. A mining lease may also be surrendered if as a  
21 result of a final determination by a court of competent  
22 jurisdiction, the lessee is found to have acquired no rights in



1 or to the minerals on [~~reserved~~] lands, nor the right to exploit  
2 the same, pursuant to the lease, and, in such event, the lessee  
3 shall be reimbursed for rentals paid to the State pursuant to  
4 the lease."

5 SECTION 18. Section 182-14, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "~~§182-14 Rules [and regulations]~~. Subject to chapter 91,  
8 the board [~~of land and natural resources~~] may make, promulgate,  
9 and amend such rules [~~and regulations~~] as it deems necessary to  
10 carry out this chapter and to perform its duties thereunder, all  
11 commensurate with and for the purpose of protecting the public  
12 interest. All such rules [~~and regulations~~] shall have the force  
13 and effect of law."

14 SECTION 19. Section 182-15, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "~~§182-15 Other use of surface of state lands~~. Where  
17 mining leases are granted on state lands, the board [~~of land and~~  
18 ~~natural resources~~] may reserve to the State the right to lease,  
19 sell, or otherwise dispose of the surface of the lands embraced  
20 within the lease. The lease, sale, or other disposal of the  
21 surface, if made, shall be subject to the rights of the holder  
22 of the mining lease."



1 SECTION 20. Section 182-17, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "~~[§]182-17[§]~~ **Penalty for violation.** (a) Any person who  
4 violates any provision of this chapter, or any ~~[regulation]~~ rule  
5 adopted pursuant hereto, ~~[shall be fined not more than \$500 for~~  
6 ~~each offense.]~~ may be subject to a fine imposed by the board.  
7 Such fine shall not exceed \$5,000 per violation. If any person  
8 after receiving written notice for a violation fails to cure  
9 such violation within such time and under such conditions as  
10 determined by ~~[the rules and regulations,]~~ the board, such  
11 person shall be subject to a citation for a new and separate  
12 violation. There shall be a fine of not more than ~~[\$500]~~ \$5,000  
13 for each additional violation.

14 (b) No provision of this chapter shall bar the right of  
15 any injured person to seek other legal or equitable relief  
16 against a violator of this chapter.

17 (c) Except as otherwise provided by law, the board or its  
18 authorized representative by proper delegation may set, charge,  
19 and collect administrative fines or bring legal action to  
20 recover administrative fees and costs as documented by receipts  
21 or affidavit, including attorney's fees and costs; or bring  
22 legal action to recover administrative fines, fees, and costs,



1 including attorney's fees and costs, or payment for damages  
2 resulting from a violation of this chapter or any rule adopted  
3 pursuant to this chapter."

4 SECTION 21. Section 205-2, Hawaii Revised Statutes, is  
5 amended by amending subsections (b) to (d) to read as follows:

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

9 In addition, urban districts shall include geothermal  
10 resources exploration and geothermal resources development, as  
11 defined under section 182-1, as permissible uses[-]; provided  
12 that a geothermal resource permit may be required for geothermal  
13 resources development in accordance with section 205- .

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



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

12 In addition to the uses listed in this subsection, rural  
13 districts shall include geothermal resources exploration and  
14 geothermal resources development, as defined under section  
15 182-1, as permissible uses[-]; provided that a geothermal  
16 resource permit may be required for geothermal resources  
17 development in accordance with section 205- .

18 (d) [~~Agricultural~~] Permissible uses in agricultural  
19 districts shall include:

20 (1) Activities or uses as characterized by the cultivation  
21 of crops, crops for bioenergy, orchards, forage, and  
22 forestry;



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





1 owner of the property and accessory to any of the  
2 above activities, regardless of whether conducted on  
3 the same premises as the agricultural activities to  
4 which they are accessory, including farm dwellings as  
5 defined in section 205-4.5(a)(4), employee housing,  
6 farm buildings, mills, storage facilities, processing  
7 facilities, photovoltaic, biogas, and other small-  
8 scale renewable energy systems producing energy solely  
9 for use in the agricultural activities of the fee or  
10 leasehold owner of the property, agricultural-energy  
11 facilities as defined in section 205-4.5(a)(17),  
12 vehicle and equipment storage areas, and plantation  
13 community subdivisions as defined in section  
14 205-4.5(a)(12);

15 (8) Wind machines and wind farms;

16 (9) Small-scale meteorological, air quality, noise, and  
17 other scientific and environmental data collection and  
18 monitoring facilities occupying less than one-half  
19 acre of land; provided that these facilities shall not  
20 be used as or equipped for use as living quarters or  
21 dwellings;

22 (10) Agricultural parks;



1 (11) Agricultural tourism conducted on a working farm, or a  
2 farming operation as defined in section 165-2, for the  
3 enjoyment, education, or involvement of visitors;  
4 provided that the agricultural tourism activity is  
5 accessory and secondary to the principal agricultural  
6 use and does not interfere with surrounding farm  
7 operations; and provided further that this paragraph  
8 shall apply only to a county that has adopted  
9 ordinances regulating agricultural tourism under  
10 section 205-5;

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

22 (13) Open area recreational facilities;

1    [+] (14) [+] Geothermal resources exploration and geothermal  
2           resources development, as defined under section 182-1;  
3           provided that a geothermal resource permit may be  
4           required for geothermal resources development in  
5           accordance with section 205-   ; and

6    [+] (15) [+] Agricultural-based commercial operations, including:

- 7           (A) A roadside stand that is not an enclosed  
8           structure, owned and operated by a producer for  
9           the display and sale of agricultural products  
10          grown in Hawaii and value-added products that  
11          were produced using agricultural products grown  
12          in Hawaii;
- 13          (B) Retail activities in an enclosed structure owned  
14          and operated by a producer for the display and  
15          sale of agricultural products grown in Hawaii,  
16          value-added products that were produced using  
17          agricultural products grown in Hawaii, logo items  
18          related to the producer's agricultural  
19          operations, and other food items; and
- 20          (C) A retail food establishment owned and operated by  
21          a producer and permitted under [+] title 11, [+]  
22          chapter 12 of the rules of the department of



1 health that prepares and serves food at retail  
2 using products grown in Hawaii and value-added  
3 products that were produced using agricultural  
4 products grown in Hawaii.

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

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

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

16 SECTION 22. Section 205-4.5, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

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



- 1           (1) Cultivation of crops, including crops for bioenergy,  
2           flowers, vegetables, foliage, fruits, forage, and  
3           timber;
- 4           (2) Game and fish propagation;
- 5           (3) Raising of livestock, including poultry, bees, fish,  
6           or other animal or aquatic life that are propagated  
7           for economic or personal use;
- 8           (4) Farm dwellings, employee housing, farm buildings, or  
9           activities or uses related to farming and animal  
10          husbandry. "Farm dwelling", as used in this  
11          paragraph, means a single-family dwelling located on  
12          and used in connection with a farm, including clusters  
13          of single-family farm dwellings permitted within  
14          agricultural parks developed by the State, or where  
15          agricultural activity provides income to the family  
16          occupying the dwelling;
- 17          (5) Public institutions and buildings that are necessary  
18          for agricultural practices;
- 19          (6) Public and private open area types of recreational  
20          uses, including day camps, picnic grounds, parks, and  
21          riding stables, but not including dragstrips,



- 1 airports, drive-in theaters, golf courses, golf  
2 driving ranges, country clubs, and overnight camps;
- 3 (7) Public, private, and quasi-public utility lines and  
4 roadways, transformer stations, communications  
5 equipment buildings, solid waste transfer stations,  
6 major water storage tanks, and appurtenant small  
7 buildings such as booster pumping stations, but not  
8 including offices or yards for equipment, material,  
9 vehicle storage, repair or maintenance, treatment  
10 plants, corporation yards, or other similar  
11 structures;
- 12 (8) Retention, restoration, rehabilitation, or improvement  
13 of buildings or sites of historic or scenic interest;
- 14 (9) Agricultural-based commercial operations as described  
15 in section [4]205-2(d)(15)[4];
- 16 (10) Buildings and uses, including mills, storage, and  
17 processing facilities, maintenance facilities,  
18 photovoltaic, biogas, and other small-scale renewable  
19 energy systems producing energy solely for use in the  
20 agricultural activities of the fee or leasehold owner  
21 of the property, and vehicle and equipment storage  
22 areas that are normally considered directly accessory



1 to the above-mentioned uses and are permitted under  
2 section 205-2(d);

3 (11) Agricultural parks;

4 (12) Plantation community subdivisions, which as used in  
5 this chapter means an established subdivision or  
6 cluster of employee housing, community buildings, and  
7 agricultural support buildings on land currently or  
8 formerly owned, leased, or operated by a sugar or  
9 pineapple plantation; provided that the existing  
10 structures may be used or rehabilitated for use, and  
11 new employee housing and agricultural support  
12 buildings may be allowed on land within the  
13 subdivision as follows:

14 (A) The employee housing is occupied by employees or  
15 former employees of the plantation who have a  
16 property interest in the land;

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

20 (C) The agricultural support buildings shall be  
21 rented or leased to agricultural business  
22 operators or agricultural support services;



- 1           (13) Agricultural tourism conducted on a working farm, or a  
2           farming operation as defined in section 165-2, for the  
3           enjoyment, education, or involvement of visitors;  
4           provided that the agricultural tourism activity is  
5           accessory and secondary to the principal agricultural  
6           use and does not interfere with surrounding farm  
7           operations; and provided further that this paragraph  
8           shall apply only to a county that has adopted  
9           ordinances regulating agricultural tourism under  
10          section 205-5;
- 11          (14) Agricultural tourism activities, including overnight  
12          accommodations of twenty-one days or less, for any one  
13          stay within a county; provided that this paragraph  
14          shall apply only to a county that includes at least  
15          three islands and has adopted ordinances regulating  
16          agricultural tourism activities pursuant to section  
17          205-5; provided further that the agricultural tourism  
18          activities coexist with a bona fide agricultural  
19          activity. For the purposes of this paragraph, "bona  
20          fide agricultural activity" means a farming operation  
21          as defined in section 165-2;





1           (15) Wind energy facilities, including the appurtenances  
2           associated with the production and transmission of  
3           wind generated energy; provided that the wind energy  
4           facilities and appurtenances are compatible with  
5           agriculture uses and cause minimal adverse impact on  
6           agricultural land;

7           (16) Biofuel processing facilities, including the  
8           appurtenances associated with the production and  
9           refining of biofuels that is normally considered  
10          directly accessory and secondary to the growing of the  
11          energy feedstock; provided that biofuels processing  
12          facilities and appurtenances do not adversely impact  
13          agricultural land and other agricultural uses in the  
14          vicinity.

15                       For the purposes of this paragraph:

16                       "Appurtenances" means operational infrastructure  
17                       of the appropriate type and scale for economic  
18                       commercial storage and distribution, and other similar  
19                       handling of feedstock, fuels, and other products of  
20                       biofuel processing facilities.

21                       "Biofuel processing facility" means a facility  
22                       that produces liquid or gaseous fuels from organic



1 sources such as biomass crops, agricultural residues,  
2 and oil crops, including palm, canola, soybean, and  
3 waste cooking oils; grease; food wastes; and animal  
4 residues and wastes that can be used to generate  
5 energy;

6 (17) Agricultural-energy facilities, including  
7 appurtenances necessary for an agricultural-energy  
8 enterprise; provided that the primary activity of the  
9 agricultural-energy enterprise is agricultural  
10 activity. To be considered the primary activity of an  
11 agricultural-energy enterprise, the total acreage  
12 devoted to agricultural activity shall be not less  
13 than ninety per cent of the total acreage of the  
14 agricultural-energy enterprise. The agricultural-  
15 energy facility shall be limited to lands owned,  
16 leased, licensed, or operated by the entity conducting  
17 the agricultural activity.

18 As used in this paragraph:

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

21 "Agricultural-energy enterprise" means an  
22 enterprise that integrally incorporates an



1 agricultural activity with an agricultural-energy  
2 facility.

3 "Agricultural-energy facility" means a facility  
4 that generates, stores, or distributes renewable  
5 energy as defined in section 269-91 or renewable fuel  
6 including electrical or thermal energy or liquid or  
7 gaseous fuels from products of agricultural activities  
8 from agricultural lands located in the State.

9 "Appurtenances" means operational infrastructure  
10 of the appropriate type and scale for the economic  
11 commercial generation, storage, distribution, and  
12 other similar handling of energy, including equipment,  
13 feedstock, fuels, and other products of agricultural-  
14 energy facilities;

15 (18) Construction and operation of wireless communication  
16 antennas; provided that, for the purposes of this  
17 paragraph, "wireless communication antenna" means  
18 communications equipment that is either freestanding  
19 or placed upon or attached to an already existing  
20 structure and that transmits and receives  
21 electromagnetic radio signals used in the provision of  
22 all types of wireless communications services;



1 provided further that nothing in this paragraph shall  
2 be construed to permit the construction of any new  
3 structure that is not deemed a permitted use under  
4 this subsection;

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

18 (20) Solar energy facilities that do not occupy more than  
19 ten per cent of the acreage of the parcel, or twenty  
20 acres of land, whichever is lesser; provided that this  
21 use shall not be permitted on lands with soil  
22 classified by the land study bureau's detailed land



1 classification as overall (master) productivity rating  
2 class A; or  
3 ~~[+]~~ (21) ~~[+]~~ Geothermal resources exploration and geothermal  
4 resources development, as defined under section  
5 182-1~~[-]~~; provided that a geothermal resource permit  
6 may be required for geothermal resources development  
7 in accordance with section 205- ."

8 SECTION 23. Section 205-5, Hawaii Revised Statutes, is  
9 amended by amending subsection (c) to read as follows:

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

- 13 (1) Low density residential uses;
- 14 (2) Agricultural uses;
- 15 (3) Golf courses, golf driving ranges, and golf-related  
16 facilities;
- 17 (4) Public, quasi-public, and public utility facilities;  
18 and
- 19 (5) Geothermal resources exploration and geothermal  
20 resources development, as defined under section  
21 182-1~~[-]~~; provided that a geothermal resource permit





**Report Title:**

Native Hawaiians; Recognition; Native Hawaiian Roll Commission; BLNR; Native Hawaiian Traditional and Customary Practice; Mineral Resources; Geothermal Resources

**Description:**

Requires annual reports from the Native Hawaiian Roll Commission. Amends the definition of "qualified Native Hawaiian" to include individuals who meet certain expanded ancestry requirements. Establishes that the Native Hawaiian roll commission is responsible for including in the roll all individuals already registered as Hawaiians or Native Hawaiians through the office of Hawaiian affairs. Repeals directive to amend the Hawaiian Homes Commission Act. Effective July 1, 2013 (part I). Promotes renewable energy in Hawaii by: (1) providing that all penalties, fees, and costs established and collected by the Department of Land and Natural Resources pursuant to Chapter 182, Hawaii Revised Statutes, be deposited in the Special Land and Development Fund; (2) including geothermal resources within the definition of a renewable energy producer; and (3) clarifying the permitting procedures for regulators and renewable energy developers considering geothermal development. Requires the use of an area or site within the conservation district for geothermal resources development to be governed by the board of land and natural resources. Authorizes certain county authorities to issue geothermal resource permits to allow geothermal resources development in an agricultural, rural, or urban district if the development is not considered a permissible use under the applicable county zoning ordinances or general plan. Repeals definition of and deletes references to "reserved lands" in chapter 182, Hawaii Revised Statutes. Effective upon approval (part II). (SD1).

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

