

JAN 24 2013

A BILL FOR AN ACT

RELATING TO MINERAL RESOURCES.

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

1 SECTION 1. Chapter 182, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§182- Penalties, fees, and costs collected. All
5 penalties, fees, and costs established and collected by the
6 department pursuant to this chapter shall be deposited in the
7 special land and development fund."

8 SECTION 2. Section 171-95, Hawaii Revised Statutes, is
9 amended by amending subsection (c) to read as follows:

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

12 (1) Any producer or developer of electrical or thermal
13 energy produced by wind, solar energy, hydropower,
14 geothermal resources, landfill gas, waste-to-energy,
15 ocean thermal energy conversion, cold seawater, wave
16 energy, biomass, including municipal solid waste,
17 biofuels or fuels derived from organic sources,
18 hydrogen fuels derived primarily from renewable

1 energy, or fuel cells where the fuel is derived
2 primarily from renewable sources that sell all of the
3 net power produced from the demised premises to an
4 electric utility company regulated under chapter 269
5 or that sells all of the thermal energy it produces to
6 customers of district cooling systems; provided that
7 up to twenty-five per cent of the power produced by a
8 renewable energy producer and sold to the utility or
9 to district cooling system customers may be derived
10 from fossil fuels; or

11 (2) Any grower or producer of plant or animal materials
12 used primarily for the production of biofuels or other
13 fuels; provided that nothing herein is intended to
14 prevent the waste product or byproduct of the plant or
15 animal material grown or produced for the production
16 of biofuel, other fuels, electrical energy, or thermal
17 energy, from being used for other useful purposes."

18 SECTION 3. Section 182-1, Hawaii Revised Statutes, is
19 amended as follows:

20 (1) By adding a new definition to be appropriately
21 inserted and to read as follows:

S.B. NO. 1163

1 "Department" means the department of land and natural
2 resources."

3 (2) By amending the definitions of "geothermal resources",
4 "geothermal resources exploration", and "mining lease" to read
5 as follows:

6 "Geothermal resources" means the natural heat of the
7 earth, the energy, in whatever form, below the surface of the
8 earth present in, resulting from, or created by, or which may be
9 extracted from, such natural heat, and all minerals in solution
10 or other products obtained from naturally heated fluids, brines,
11 associated gases, and steam, in whatever form, found below the
12 surface of the earth, but excluding oil, hydrocarbon gas, or
13 other hydrocarbon substances [~~, and any water, mineral in~~
14 ~~solution, or other product obtained from naturally heated~~
15 ~~fluids, brines, associated gases, and steam, in whatever form,~~
16 ~~found below the surface of the earth, having a temperature of~~
17 ~~150 degrees Fahrenheit or less, and not used for electrical~~
18 ~~power generation]~~.

19 "Geothermal resources exploration" means either of the
20 following:

1 (1) Conducting non-invasive geophysical operations,
2 including geochemical operations, remote sensing, and
3 other similar techniques; or

4 (2) Drilling exploration wells for, but not limited to,
5 the extraction and removal of minerals of types and
6 quantities;

7 that are reasonably required for testing and analysis to provide
8 ground truth or determine the economic viability of geothermal
9 resources. The term does not include "geothermal resources
10 development".

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

16 SECTION 4. Section 182-2, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) All minerals in, on, or under state lands or reserved
19 lands ~~[which hereafter become state lands]~~ are reserved to the
20 State; provided that the board ~~[of land and natural resources]~~
21 may release, cancel, or waive the reservation whenever it deems
22 the land use, other than mining, is of greater benefit to the

1 State as provided for in section 182-4. Such minerals are
2 reserved from sale or lease except as provided in this chapter.
3 A purchaser or lessee of any such lands shall acquire no right,
4 title, or interest in or to the minerals. The right of the
5 purchaser or lessee shall be subject to the reservation of all
6 the minerals and to the conditions and limitations prescribed by
7 law providing for the State and persons authorized by it to
8 prospect for, mine, and remove the minerals, and to occupy and
9 use so much of the surface of the land as may be required for
10 all purposes reasonably extending to the mining and removal of
11 the minerals therefrom by any means whatsoever."

12 SECTION 5. Section 182-3, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) Every lessee of a mining lease granted under this
15 chapter and every assignee thereof shall file with the board [~~of~~
16 ~~land and natural resources~~] a bond, in a form and in an amount
17 approved by the board, made payable to the State and which shall
18 be conditioned upon the faithful performance by the lessee of
19 all the requirements of this chapter and of the mining lease,
20 and also conditioned upon the full payment by the lessee of all
21 damages suffered by the occupiers hereinunder mentioned. If the

1 State sells or leases its mineral rights on land which it or its
2 predecessors in interest have granted or leased, or which it may
3 hereafter sell or lease, and the land thereof including any
4 crops or improvements is damaged by any mining or other
5 incidental operations, including exploratory work, or by the
6 failure of the lessee of the mining lease to properly restore
7 the land after termination of the operations, the occupier shall
8 be reimbursed the full extent of the damages caused by the
9 mining operations of the lessee to be allocated between the
10 lessee and the fee owner in accordance with the lease terms, if
11 any."

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

14 "**§182-4 Mining leases on state lands.** (a) If any mineral
15 is discovered or known to exist on state lands, any interested
16 person may notify the board [~~of land and natural resources~~] of
17 the person's desire to apply for a mining lease. The notice
18 shall be accompanied by [~~a fee of \$100~~] the required fees, as
19 established by the department, together with a description of
20 the land desired to be leased and the minerals involved and any
21 information and maps that the board by rule may prescribe. As
22 soon as practicable thereafter, the board shall cause a public

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

1 the State at least once in each of three successive weeks,
2 setting forth the description of the land, the minerals to be
3 leased, and the time and place of the auction. Bidders at the
4 public auction may be required to bid on the amount of annual
5 rental to be paid for the term of the mining lease based on an
6 upset price fixed by the board, a royalty based on the gross
7 proceeds or net profits, cash bonus, or any combination or other
8 basis and under any terms and conditions that may be set by the
9 board.

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

1 (c) Any proposed mining operations to be undertaken by a
2 renewable energy producer as defined in section 171-95, shall
3 require an application to the board for a mining lease on state
4 lands. Any provisions to the contrary notwithstanding, such
5 application for a mining lease on state lands may be granted by
6 the board in accordance with this section, or the board may, by
7 the vote of two-thirds of the members to which the board is
8 entitled, grant a mining lease to the renewable energy producer
9 without public auction."

10 SECTION 7. Section 182-5, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§182-5 Mining leases on reserved lands.** If any mineral
13 is discovered or known to exist on reserved lands, any
14 interested person may notify the board [~~of land and natural~~
15 ~~resources~~] of the person's desire to apply for a mining
16 lease. The notice shall be accompanied by [~~a fee of \$100~~] the
17 required fees, as established by the department, together with a
18 description of the land desired to be leased and the minerals
19 involved and such information and maps as the board may by
20 [~~regulation~~] rule prescribe. The board may grant a mining lease
21 on reserved lands in accordance with section 182-4, or the board
22 may, by the vote of two-thirds of [~~its~~] the members to which the

1 board is entitled, without public auction, grant a mining lease
2 on reserved lands to the occupier thereof. Such a mining lease
3 may be granted to a person other than the occupier if the
4 occupier has assigned the occupier's rights to apply for a
5 mining lease to another person, in which case only such an
6 assignee may be granted a mining lease. Any provisions to the
7 contrary notwithstanding, if the board decides that it is
8 appropriate to grant a geothermal mining lease on the reserved
9 lands, the surface owner or the owner's assignee shall have the
10 first right of refusal for a mining lease. If the occupier or
11 the occupier's assignee of the right to obtain a mining lease
12 should fail to apply for a mining lease within six months from
13 the date of notice from the board of a finding by the board that
14 it is in the public interest that the minerals on the reserved
15 lands be mined, a mining lease shall be granted under section
16 182-4; provided that bidders at the public auction shall bid on
17 an amount to be paid to the State for a mining lease granting to
18 the lessee the right to exploit minerals reserved to the State."

19 SECTION 8. Section 182-6, Hawaii Revised Statutes, is
20 amended to read as follows:

1 "§182-6 **Exploration.** Any person wishing to conduct
2 geothermal resources exploration on state or reserved lands
3 shall apply to the board [~~of land and natural resources~~] who
4 shall issue exploration permits upon terms and conditions as it
5 shall by [~~regulation~~] rule prescribe. During and as a result of
6 the exploration, no minerals of such types and quantity beyond
7 that reasonably required for testing and analysis shall be
8 extracted and removed from such state lands[-] or reserved
9 lands. Upon termination of the exploration permit, all
10 exploration data, including, but not limited to, the drill logs
11 and the results of the assays resulting from the geothermal
12 resources exploration, shall be turned over to the board and
13 kept confidential by the board. If the person shall not make
14 application for a mining lease of the lands within a period of
15 six months from the date the information is turned over to the
16 board, the board in its discretion need not keep the information
17 confidential.

18 This section shall be construed as authorizing the board to
19 issue an exploration permit for geothermal resources as well as
20 minerals."

21 SECTION 9. Section 182-7, Hawaii Revised Statutes, is
22 amended to read as follows:

1 "§182-7 Lease. (a) Prior to the public auction
2 contemplated in section 182-4 or 182-5, or the granting of
3 mining lease without public auction contemplated in section
4 182-4 or 182-5, the board [~~of land and natural resources~~] shall
5 cause a mining lease for the land in question to be drawn. The
6 lease shall describe the land and shall contain, in addition to
7 such other provisions which the board may deem appropriate,
8 specific provisions as provided in this section.

9 (b) The term of the lease shall be sixty-five years or for
10 a lesser period at the discretion of the board.

11 (c) The payments to the State as fixed by the board shall
12 be specified; provided that:

13 (1) In the case of bauxite, bauxitic clay, gibbsite,
14 diaspore, boehmite, and all ores of aluminum, the
15 amount of royalties for each long dry ton of ore as
16 beneficiated shall not be less than twenty-five cents
17 or the equivalent of the price of one pound of virgin
18 pig aluminum, whichever is higher, nor shall it exceed
19 the equivalent of the price of three pounds of virgin
20 pig aluminum;

21 (2) The rate of royalty for ore processed into aluminous
22 oxide in the State shall be set at eighty per cent of

1 the rate of royalty for ore not processed to aluminous
2 oxide in the State; and

3 (3) The royalty shall be fixed at a rate which will tend
4 to encourage the establishment and continuation of the
5 mining industry in the State.

6 The prices of virgin pig aluminum for the purpose of
7 determining the royalties under this section shall be the basic
8 price on the mainland United States market for virgin pig, not
9 refined, f.o.b. factory. The royalties shall be in lieu of any
10 severance or other similar tax on the extracting, producing,
11 winning, beneficiating, handling, storing, treating, or
12 transporting of the mineral or any product into which it may be
13 processed in the State, and shall not be subject to reopening or
14 renegotiating for and during the first twenty years of the lease
15 term.

16 In the event the lessee desires to mine other minerals, the
17 lessee, before mining the minerals, shall so notify the board in
18 writing, and the board and the lessee shall negotiate and fix
19 the royalties for the minerals.

20 Any other law to the contrary notwithstanding, thirty per
21 cent of all royalties received by the State from geothermal
22 resources shall be paid to the county in which mining operations

1 covered under a state geothermal resource mining lease are
2 situated.

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

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

1 (e) For the period of the lease the lessee shall have the
2 exclusive right of possession of the minerals leased and the
3 exclusive rights to mine and remove the minerals by means which
4 shall be reasonable and satisfactory to the board and to occupy
5 and use so much of the surface of the land as may reasonably be
6 required, subject to the provisions of section 182-3. The right
7 to use the surface shall include the right to erect
8 transportation facilities thereon, construct plants for
9 beneficiating, drying, and processing the minerals for electric
10 power generation and transmission and such other uses as may be
11 approved by the board. Such other uses may include, but not be
12 limited to, uses necessary or convenient to the [winning and]
13 processing of the minerals; provided that the lessee shall
14 comply with all water and air pollution control laws, and rules
15 of the State or its political subdivisions.

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

1 royalty that may be set by the board for the use of such
2 minerals."

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

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

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

1 **"§182-10 Revocation of mining leases.** A mining lease may
2 be revoked if the lessee fails to pay rentals when due or if any
3 of the terms of the lease or of law are not complied with, or if
4 the lessee wholly ceases all mining operations for other than
5 reasons of force majeure or the uneconomic operation of the
6 mining lease for a period of one year without the written
7 consent of the board [~~of land and natural resources~~]; provided
8 that the board shall give the lessee notice of any default and
9 the lessee shall have six months or such other time limit as
10 provided by the rules and regulations from the date of the
11 notice to remedy the default."

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

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

1 prior to the approval of the assignment by the board and which
2 remains unsatisfied or unperformed."

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

5 "§182-13 **Surrender of mining leases.** Any lessee of a
6 mining lease, who has complied fully with all the terms,
7 covenants, and conditions of the existing lease, may, with the
8 consent of the board [~~of land and natural resources~~], surrender
9 at any time and from time to time all or any part of a mining
10 lease or the land contained therein upon payments as
11 consideration therefor two years' rent prorated upon the portion
12 of the lease or land surrendered. The lessee shall thereupon be
13 relieved of any further liability or duty with respect to the
14 land or lease so surrendered; provided that nothing herein
15 contained shall constitute a waiver of any liability or duty the
16 lessee may have with respect to the land or lease surrendered as
17 a result of any previous activities conducted on the land or
18 under the lease. Upon the termination, cancellation, or
19 surrender of any mining lease or any portion thereof, the lessee
20 shall have the right to remove any and all equipment, buildings,
21 and plants placed on the land surrendered by the holder of the
22 mining lease. A mining lease may also be surrendered if as a

1 result of a final determination by a court of competent
2 jurisdiction, the lessee is found to have acquired no rights in
3 or to the minerals on reserved lands, nor the right to exploit
4 the same, pursuant to the lease, and, in such event, the lessee
5 shall be reimbursed for rentals paid to the State pursuant to
6 the lease."

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

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

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

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

1 surface, if made, shall be subject to the rights of the holder
2 of the mining lease."

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

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

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

19 (c) Except as otherwise provided by law, the board or its
20 authorized representative by proper delegation may set, charge,
21 and collect administrative fines or bring legal action to

S.B. NO. 1163


1 recover administrative fees and costs as documented by receipts
2 or affidavit, including attorneys' fees and costs; or bring
3 legal action to recover administrative fines, fees, and costs,
4 including attorneys' fees and costs, or payment for damages
5 resulting from a violation of this chapter or any rule adopted
6 pursuant to this chapter."

7 SECTION 17. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 18. This Act shall take effect upon its approval.

10

11

INTRODUCED BY: 

12

BY REQUEST

Report Title:

Mineral Resources

Description:

Revises statutory provisions relating to the regulation of mineral resources under chapters 171 and 182, Hawaii Revised Statutes, to include geothermal within the definition of a "renewable energy producer" and to provide clarity, eliminate ambiguities, and incorporate technical, nonsubstantive changes in accordance with Act 97, Session Laws of Hawaii 2012.

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

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO MINERAL RESOURCES.

PURPOSE: To revise statutory provisions relating to the regulation of mineral resources under chapters 171 and 182, Hawaii Revised Statutes (HRS), to include geothermal within the definition of a "renewable energy producer", and to provide clarity, eliminate ambiguities, and incorporate technical, nonsubstantive changes in accordance with Act 97, Session Laws of Hawaii (SLH) 2012.

MEANS: Add a new section to chapter 182, HRS, and amend sections 171-95(c), 182-1, 182-2(a), 182-3(a), 182-4, 182-5, 182-6, 182-7, 182-9, 182-10, 182-11, 182-13, 182-14, 182-15, and 182-17, HRS.

JUSTIFICATION: Current statutes do not classify geothermal resources as part of the definition of "renewable energy producer". Also, statutes pertaining to the regulation and management of mineral resources are in need of update to provide clarity, reduce ambiguities, and to correlate changes in accordance with Act 97, SLH 2012.

The identification and elimination of conflicts in statutory language and procedures would reduce barriers that could pose potential delays to geothermal exploration and development. Clarification and update will assist the Department in working toward meeting goals of the Hawaii Clean Energy Initiative and the Administration's New Day Plan regarding renewable energy development.

Impact on the public: This bill will reduce barriers that could pose potential delays to geothermal exploration and development.

Impact on the department and other agencies:
Clarifications and consistent language will eliminate ambiguities and facilitate the disposition and regulation of the use and management of mineral resources.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 101 and LNR 141.

OTHER AFFECTED
AGENCIES: Department of Business, Economic
Development, and Tourism.

EFFECTIVE DATE: Upon approval.