
A BILL FOR AN ACT

RELATING TO GEOTHERMAL RESOURCE DEVELOPMENT.

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 established under section 171-
8 19."

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

12 "§205- Geothermal resource permits. (a) The use of an
13 area or site for geothermal resources development within the
14 conservation district shall be governed by the board; provided
15 that the appropriate county authority may issue a geothermal
16 resource permit pursuant to subsection (c) to allow geothermal
17 resources development in an agricultural, rural, or urban
18 district if the geothermal resources development is not



1 considered a permissible use under the applicable county zoning
2 ordinances or general plan.

3 (b) If geothermal resources development is proposed within
4 a conservation district in an application containing all
5 required data, the board shall conduct a public hearing, and
6 upon appropriate request for mediation from any party who
7 submitted written comments 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 starts, except by order of the board. Mediation shall
13 be confined to the issues raised at the public hearing by the
14 party requesting mediation.

15 If there is no mediation agreement on all the issues raised
16 at the public hearing, the board may conduct a second public
17 hearing to receive additional comments related to the unresolved
18 mediation issues. Within ten days after the second public
19 hearing, the board may continue to receive additional written
20 comments from any party on the unresolved issues raised at the
21 second public hearing. The board shall consider all such
22 comments before rendering its final decision. The board shall



1 then determine whether a conservation district use permit shall
2 be granted to authorize the geothermal resources development
3 described in the application. The board shall grant a
4 conservation district use permit if it finds that:

- 5 (1) The desired uses would not have unreasonable adverse
6 health, environmental, or socio-economic effects on
7 residents or surrounding property;
- 8 (2) The desired uses would not unreasonably burden public
9 agencies to provide roads and streets, sewers, water,
10 drainage, and police and fire protection; or
- 11 (3) There are reasonable measures available to mitigate
12 the unreasonable adverse effects or burdens referred
13 to in paragraphs (1) and (2), which the board shall
14 have the authority to prescribe as conditions for the
15 proposed geothermal resources development.

16 A decision shall be made by the board within six months of
17 the date a complete application is filed; provided that the time
18 limit may be extended by agreement between the applicant and the
19 board. The board shall have the exclusive authority to impose
20 reasonable conditions and restrictions upon the proposed use in
21 support of its findings, except to the extent that the



1 department of health and other state and federal agencies have
2 jurisdiction to regulate such activities.

3 (c) If geothermal resources development is proposed within
4 agricultural, rural, or urban districts and the proposed
5 activities are not expressly permitted uses pursuant to the
6 applicable county general plan and zoning ordinances, then after
7 receipt of a properly filed and completed application including
8 all required supporting data, the appropriate county authority
9 shall conduct a public hearing. Upon appropriate request for
10 mediation from any party who submitted written comments at the
11 public hearing, the appropriate county authority shall appoint a
12 mediator within fourteen days. The appropriate county authority
13 shall require the parties to participate in mediation. The
14 mediator shall not be an employee of any county agency or its
15 staff. The mediation period shall not extend beyond sixty days
16 after mediation starts, except by order of the appropriate
17 county authority. Mediation shall be confined to the issues
18 raised at the public hearing by the party requesting mediation.
19 If there is no mediation agreement on the issues raised during
20 the public hearing, the appropriate county authority may conduct
21 a second public hearing to receive additional comments related
22 to the unresolved mediation issues. Within ten days after the



1 second public hearing, the appropriate county authority may
2 continue to receive additional written comments from any party
3 on the unresolved issues raised at the second public hearing.

4 The appropriate county authority shall consider all such
5 comments before rendering its final decision. The appropriate
6 county authority shall then determine whether a geothermal
7 resource permit shall be granted to authorize the geothermal
8 resources development described in the application. The
9 appropriate county authority shall grant a geothermal resource
10 permit if it finds that the applicant has demonstrated that:

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

14 (2) The desired uses would not unreasonably burden public
15 agencies to provide roads and streets, sewers, water,
16 drainage, school improvements, and police and fire
17 protection; or

18 (3) There are reasonable measures available to mitigate
19 the unreasonable adverse effects or burdens referred
20 to in paragraphs (1) and (2), which the county
21 authority may prescribe as conditions for the proposed
22 geothermal resources development.



1 Unless there is a mutual agreement to extend the
2 proceeding, a decision shall be made on the application by the
3 appropriate county authority within six months of the date a
4 complete application is filed; provided that the time limit may
5 be extended by agreement between the applicant and the
6 appropriate county authority. The appropriate county authority
7 shall have exclusive authority to impose reasonable restrictions
8 and conditions for the geothermal development in support of its
9 findings, except to the extent that the department of health and
10 other federal and state agencies have jurisdiction to regulate
11 such activities.

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



1 (e) Any decision made by an appropriate county authority
2 or the board pursuant to a public hearing or hearings under this
3 section may be appealed directly on the record to the
4 intermediate appellate court for review and shall not be subject
5 to a contested case hearing. Section 91-14 shall apply to
6 judicial reviews, notwithstanding the lack of a contested case
7 hearing on the matter. The appropriate county authority or the
8 board shall provide a court reporter to produce a transcript of
9 the proceedings at all public hearings under this section for
10 purposes of an appeal.

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

13 (1) The application for the permit and all accompanying
14 supporting documents, including but not limited to
15 reports, studies, affidavits, statements, and
16 exhibits;

17 (2) Staff recommendations submitted to the members of the
18 agency in consideration of the application;

19 (3) Oral and written public testimony received at the
20 public hearings;

21 (4) Written transcripts of the proceedings at the public
22 hearings;



1 (5) A statement of relevant matters noticed by the agency
2 members at the public hearings;

3 (6) The written decision of the agency issued in
4 connection with the application and public hearings;
5 and

6 (7) Any other documents as may be required by the board or
7 appropriate county authority.

8 (g) For purposes of this section:

9 "Appropriate county authority" means the county planning
10 commission or, if applicable, the respective county agency or
11 body designated by county charter or ordinance to issue
12 development permits.

13 "Board" means the board of land and natural resources."

14 SECTION 3. Section 171-95, Hawaii Revised Statutes, is
15 amended by amending subsection (c) to read as follows:

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

18 (1) Any producer or developer of electrical or thermal
19 energy produced by wind, solar energy, hydropower,
20 geothermal resources, landfill gas, waste-to-energy,
21 ocean thermal energy conversion, cold seawater, wave
22 energy, biomass, including municipal solid waste,



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

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

20 SECTION 4. Section 182-1, Hawaii Revised Statutes, is
21 amended as follows:



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

3 "Department" means the department of land and natural
4 resources."

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

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

20 "Geothermal resources exploration" means either of the
21 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 the
5 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 5. 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 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
21 any information and maps that the board by rule may prescribe.
22 As soon as practicable thereafter, the board shall cause a



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



1 given in the State at least once in each of three successive
2 weeks, setting forth the description of the land, the minerals
3 to be leased, and the time and place of the auction. Bidders at
4 the public auction may be required to bid on the amount of
5 annual rental to be paid for the term of the mining lease based
6 on an upset price fixed by the board, a royalty based on the
7 gross proceeds or net profits, cash bonus, or any combination or
8 other basis and under any terms and conditions that may be set
9 by the 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] attorney's fees, and legal
19 expenses. The department shall have the authority to review and
20 approve all expenses and costs that may be reimbursed.

21 (c) Any proposed mining operations to be undertaken by a
22 renewable energy producer, as defined in section 171-95, shall



1 require an application to the board for a mining lease on state
2 lands. Any provisions to the contrary notwithstanding, the
3 application for a mining lease on state lands may be granted by
4 the board in accordance with this section, or the board, by the
5 vote of two-thirds of the members to which the board is
6 entitled, may grant a mining lease to the renewable energy
7 producer without public auction."

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

10 "**§182-5 Mining leases on reserved lands.** If any mineral
11 is discovered or known to exist on reserved lands, any
12 interested person may notify the board [~~of land and natural~~
13 ~~resources~~] of the person's desire to apply for a mining lease.
14 The notice shall be accompanied by [~~a fee of \$100~~] the required
15 fees, as established by the department, together with a
16 description of the land desired to be leased and the minerals
17 involved and such information and maps as the board may by
18 [~~regulation~~] rule prescribe. The board may grant a mining lease
19 on reserved lands in accordance with section 182-4, or the board
20 may, by the vote of two-thirds of [~~its~~] the members to which the
21 board is entitled, without public auction, grant a mining lease
22 on reserved lands to the occupier thereof. Such a mining lease



1 may be granted to a person other than the occupier if the
2 occupier has assigned the occupier's rights to apply for a
3 mining lease to another person, in which case only such an
4 assignee may be granted a mining lease. Any provisions to the
5 contrary notwithstanding, if the board decides that it is
6 appropriate to grant a geothermal mining lease on the reserved
7 lands, the surface owner or the owner's assignee shall have the
8 first right of refusal for a mining lease. If the occupier or
9 the occupier's assignee of the right to obtain a mining lease
10 should fail to apply for a mining lease within six months from
11 the date of notice from the board of a finding by the board that
12 it is in the public interest that the minerals on the reserved
13 lands be mined, a mining lease shall be granted under section
14 182-4; provided that bidders at the public auction shall bid on
15 an amount to be paid to the State for a mining lease granting to
16 the lessee the right to exploit minerals reserved to the State."

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

19 "§182-6 Exploration. Any person wishing to conduct
20 geothermal resources exploration on state lands or reserved
21 lands shall apply to the board [~~of land and natural resources~~
22 ~~who~~], which shall issue exploration permits upon terms and



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

14 This section shall be construed as authorizing the board to
15 issue an exploration permit for geothermal resources as well as
16 minerals."

17 SECTION 9. Section 182-7, Hawaii Revised Statutes, is
18 amended as follows:

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

20 "(a) Prior to the public auction contemplated in section
21 182-4 or 182-5, or the granting of mining lease without public
22 auction contemplated in section 182-4 or 182-5, the board [ef



1 ~~land and natural resources]~~ shall cause a mining lease for the
2 land in question to be drawn. The lease shall describe the land
3 and shall contain, in addition to such other provisions which
4 the board may deem appropriate, specific provisions as provided
5 in this section."

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

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

14 Any interested party may, however, request that a mining
15 lease contain a research period under which the lessees shall be
16 required to expend money in research and development to
17 establish a method to make economical the mining and processing
18 of the ~~[mineral deposits contained]~~ minerals identified in the
19 lease. If the board determines that the research period would
20 be beneficial it shall fix the period of research and shall also
21 fix a minimum expenditure for labor performed or money spent by
22 the lessee ~~[in]~~ on research and development and the method by



1 which the lessee shall establish that such expenditure in fact
2 be made. In such leases, the obligation to commence mining
3 operations within three years shall not commence until the
4 expiration of the research period.

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

20 (f) The lessee may retain all minerals separated from the
21 land as a part of the process of mining the minerals specified
22 in the mining lease; provided that the lease may prescribe the



1 accounting and testing procedures by which the amount and
2 quality of such additional materials shall be determined for the
3 purpose of computing the excise tax thereon[-] and applicable
4 royalty that may be set by the board for the use of the
5 minerals."

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

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



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

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

14 SECTION 12. Section 182-14, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§182-14 Rules [~~and regulations~~]. Subject to chapter 91,
17 the board [~~of land and natural resources~~] may [~~make, promulgate~~]
18 adopt and amend [~~such~~] rules [~~and regulations~~] as it deems
19 necessary to carry out this chapter and to perform its duties
20 thereunder, all commensurate with and for the purpose of
21 protecting the public interest. All [~~such~~] rules [~~and~~
22 ~~regulations~~] shall have the force and effect of law."



1 SECTION 13. 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.~~] to this chapter, shall be subject to a fine
7 imposed by the board; provided that the fine shall not exceed
8 \$5,000 per violation. If any person after receiving written
9 notice for a violation fails to cure such violation within such
10 time and under such conditions as determined by [~~the rules and~~
11 ~~regulations, such~~] the board, the person shall be subject to a
12 citation for a new and separate violation. There shall be a
13 fine of not more than [~~\$500~~] \$5,000 for each additional
14 violation.

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

18 (c) Except as otherwise provided by law, the board or its
19 authorized representative by proper delegation may:

20 (1) Set, charge, and collect administrative fines or bring
21 legal action to recover administrative fees and costs



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

8 SECTION 14. Section 205-2, Hawaii Revised Statutes, is
 9 amended by amending subsections (b) through (d) to read as
 10 follows:

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

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

19 (c) Rural districts shall include activities or uses as
 20 characterized by low density residential lots of not more than
 21 one dwelling house per one-half acre, except as provided by
 22 county ordinance pursuant to section 46-4(c), in areas where



1 "city-like" concentration of people, structures, streets, and
2 urban level of services are absent, and where small farms are
3 intermixed with low density residential lots except that within
4 a subdivision, as defined in section 484-1, the commission for
5 good cause may allow one lot of less than one-half acre, but not
6 less than eighteen thousand five hundred square feet, or an
7 equivalent residential density, within a rural subdivision and
8 permit the construction of one dwelling on such lot; provided
9 that all other dwellings in the subdivision shall have a minimum
10 lot size of one-half acre or 21,780 square feet. Such petition
11 for variance may be processed under the special permit
12 procedure. These districts may include contiguous areas which
13 are not suited to low density residential lots or small farms by
14 reason of topography, soils, and other related characteristics.
15 Rural districts shall also include golf courses, golf driving
16 ranges, and golf-related facilities.

17 In addition to the uses listed in this subsection, rural
18 districts shall include geothermal resources exploration and
19 geothermal resources development, as defined under section
20 182-1, as permissible uses [-]; provided that a geothermal
21 resource permit may be required for geothermal resources
22 development in accordance with section 205- .



- 1 (d) [~~Agricultural~~] Permissible uses in agricultural
2 districts shall include:
- 3 (1) Activities or uses as characterized by the cultivation
4 of crops, crops for bioenergy, orchards, forage, and
5 forestry;
- 6 (2) Farming activities or uses related to animal husbandry
7 and game and fish propagation;
- 8 (3) Aquaculture, which means the production of aquatic
9 plant and animal life within ponds and other bodies of
10 water;
- 11 (4) Wind generated energy production for public, private,
12 and commercial use;
- 13 (5) Biofuel production, as described in section
14 205-4.5(a)(16), for public, private, and commercial
15 use;
- 16 (6) Solar energy facilities; provided that:
- 17 (A) This paragraph shall apply only to land with soil
18 classified by the land study bureau's detailed
19 land classification as overall (master)
20 productivity rating class B, C, D, or E; and
- 21 (B) Solar energy facilities placed within land with
22 soil classified as overall productivity rating



1 class B or C shall not occupy more than ten per
2 cent of the acreage of the parcel, or twenty
3 acres of land, whichever is lesser;

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

20 (8) Wind machines and wind farms;

21 (9) Small-scale meteorological, air quality, noise, and
22 other scientific and environmental data collection and



1 monitoring facilities occupying less than one-half
2 acre of land; provided that these facilities shall not
3 be used as or equipped for use as living quarters or
4 dwellings;

5 (10) Agricultural parks;

6 (11) Agricultural tourism conducted on a working farm, or a
7 farming operation as defined in section 165-2, for the
8 enjoyment, education, or involvement of visitors;

9 provided that the agricultural tourism activity is
10 accessory and secondary to the principal agricultural
11 use and does not interfere with surrounding farm
12 operations; and provided further that this paragraph
13 shall apply only to a county that has adopted
14 ordinances regulating agricultural tourism under
15 section 205-5;

16 (12) Agricultural tourism activities, including overnight
17 accommodations of twenty-one days or less, for any one
18 stay within a county; provided that this paragraph
19 shall apply only to a county that includes at least
20 three islands and has adopted ordinances regulating
21 agricultural tourism activities pursuant to section
22 205-5; provided further that the agricultural tourism



1 activities coexist with a bona fide agricultural
2 activity. For the purposes of this paragraph, "bona
3 fide agricultural activity" means a farming operation
4 as defined in section 165-2;

5 (13) Open area recreational facilities;

6 [-] (14) [+] Geothermal resources exploration and geothermal
7 resources development, as defined under section 182-1;
8 provided that a geothermal resource permit may be
9 required for geothermal resources development in
10 accordance with section 205- ; and

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

12 (A) A roadside stand that is not an enclosed
13 structure, owned and operated by a producer for
14 the display and sale of agricultural products
15 grown in Hawaii and value-added products that
16 were produced using agricultural products grown
17 in Hawaii;

18 (B) Retail activities in an enclosed structure owned
19 and operated by a producer for the display and
20 sale of agricultural products grown in Hawaii,
21 value-added products that were produced using
22 agricultural products grown in Hawaii, logo items



1 related to the producer's agricultural
2 operations, and other food items; and

3 (C) A retail food establishment owned and operated by
4 a producer and permitted under [H]title 11, [H]
5 chapter 12 of the rules of the department of
6 health that prepares and serves food at retail
7 using products grown in Hawaii and value-added
8 products that were produced using agricultural
9 products grown in Hawaii.

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

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

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

21 SECTION 15. Section 205-4.5, Hawaii Revised Statutes, is
22 amended by amending subsection (a) to read as follows:



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

5 (1) Cultivation of crops, including crops for bioenergy,
6 flowers, vegetables, foliage, fruits, forage, and
7 timber;

8 (2) Game and fish propagation;

9 (3) Raising of livestock, including poultry, bees, fish,
10 or other animal or aquatic life that are propagated
11 for economic or personal use;

12 (4) Farm dwellings, employee housing, farm buildings, or
13 activities or uses related to farming and animal
14 husbandry. "Farm dwelling", as used in this
15 paragraph, means a single-family dwelling located on
16 and used in connection with a farm, including clusters
17 of single-family farm dwellings permitted within
18 agricultural parks developed by the State, or where
19 agricultural activity provides income to the family
20 occupying the dwelling;

21 (5) Public institutions and buildings that are necessary
22 for agricultural practices;



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



1 agricultural activities of the fee or leasehold owner
2 of the property, and vehicle and equipment storage
3 areas that are normally considered directly accessory
4 to the above-mentioned uses and are permitted under
5 section 205-2(d);

6 (11) Agricultural parks;

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

17 (A) The employee housing is occupied by employees or
18 former employees of the plantation who have a
19 property interest in the land;

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



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



1 fide agricultural activity" means a farming operation
2 as defined in section 165-2;

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

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

17 For the purposes of this paragraph:

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



1 "Biofuel processing facility" means a facility
2 that produces liquid or gaseous fuels from organic
3 sources such as biomass crops, agricultural residues,
4 and oil crops, including palm, canola, soybean, and
5 waste cooking oils; grease; food wastes; and animal
6 residues and wastes that can be used to generate
7 energy;

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

20 As used in this paragraph:

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



1 "Agricultural-energy enterprise" means an
2 enterprise that integrally incorporates an
3 agricultural activity with an agricultural-energy
4 facility.

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

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

17 (18) Construction and operation of wireless communication
18 antennas; provided that, for the purposes of this
19 paragraph, "wireless communication antenna" means
20 communications equipment that is either freestanding
21 or placed upon or attached to an already existing
22 structure and that transmits and receives



1 electromagnetic radio signals used in the provision of
2 all types of wireless communications services;
3 provided further that nothing in this paragraph shall
4 be construed to permit the construction of any new
5 structure that is not deemed a permitted use under
6 this subsection;

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

20 (20) Solar energy facilities that do not occupy more than
21 ten per cent of the acreage of the parcel, or twenty
22 acres of land, whichever is lesser; provided that this



1 use shall not be permitted on lands with soil
2 classified by the land study bureau's detailed land
3 classification as overall (master) productivity rating
4 class A; or
5 ~~[+]~~ (21) ~~[+]~~ Geothermal resources exploration and geothermal
6 resources development, as defined under section
7 182-1~~[-]~~; provided that a geothermal resource permit
8 may be required for geothermal resources development
9 in accordance with section 205- ."

10 SECTION 16. Section 205-5, Hawaii Revised Statutes, is
11 amended by amending subsection (c) to read as follows:

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

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



1 1[-]; provided that a geothermal resource permit may
2 be required for geothermal resources development in
3 accordance with section 205- .

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

8 SECTION 17. Sections 182-3(a), 182-11, 182-13, and 182-15,
9 Hawaii Revised Statutes, are amended by substituting the word
10 "board" wherever the phrase "board of land and natural
11 resources" appears, as the context requires.

12 SECTION 18. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 19. This Act shall take effect on July 1, 2014.



Report Title:

BLNR; Mineral Resources; Geothermal Resources

Description:

Requires all penalties, fees, and costs established and collected by the DLNR pursuant to chapter 182, HRS, to be deposited in the special land and development fund. Includes geothermal resources within the definition of a renewable energy producer. Clarifies 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 BLNR. Authorizes certain county authorities to issue geothermal resource permits to allow geothermal resources development in an agricultural, rural, or urban district even if the development is not considered a permissible use under the applicable county zoning ordinances or general plan. Redefines "mining lease" to include lease of the right to conduct mining operations on reserved lands. Reserves all minerals in, on, or under reserved lands to the State. Requires persons wishing to conduct geothermal resources exploration on reserved lands to apply to BLNR for exploration permits. Increases maximum amount of fees for violations of chapter 182, HRS, or any rules adopted pursuant thereto. Authorizes BLNR or its authorized representative to set, charge, and collect administrative fines or bring legal action to recover damages arising from violations of chapter 182, HRS. (HB2639 HD1)

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

