
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 resources development permits;
13 objectives. (a) The establishment and regulation of geothermal
14 permitting is intended to facilitate geothermal development
15 activities in those areas in which the potential benefits to be
16 derived from geothermal development and utilization in the
17 proposed area are in the best interest of the county or counties
18 involved and the State as a whole. The major objectives are to:



- 1 (1) Allow geothermal development activities to help
2 achieve the State's goal of energy self-sufficiency
3 and broaden the State's economic base through
4 development of a natural resource;
- 5 (2) Allow geothermal development activities in areas where
6 such activities would be of greater benefit to the
7 State than the existing or future use of such areas;
8 and
- 9 (3) Allow geothermal development activities in areas of
10 the State that best demonstrate an acceptable balance
11 among the criteria set forth in subsection (b).
- 12 (b) No geothermal resources development activity may be
13 undertaken without a geothermal resources development permit
14 issued pursuant to this section. To ensure that prospective
15 geothermal resources development activity has the least
16 detrimental environmental and social impact, any application to
17 obtain a geothermal resources development permit from a
18 government entity shall provide, at a minimum, the following:
- 19 (1) An assessment of any potential geologic hazards
20 relating to geothermal production or use in the
21 proposed area;



- 1 (2) An assessment of any environmental, cultural, or
2 social impacts within the proposed area;
- 3 (3) An assessment of the compatibility of development and
4 utilization of geothermal resources with other allowed
5 uses within the proposed area or site and within the
6 surrounding area;
- 7 (4) A description of the proposed geothermal resources
8 development, including the potential for health,
9 safety, and nuisance impacts upon surrounding
10 properties and establishment of an appropriate buffer
11 zone between the proposed geothermal resources
12 development and abutting land;
- 13 (5) An assessment of whether the potential benefits to be
14 derived from the proposed geothermal resources
15 development and potential related industries in the
16 area are in the interests of the resident population,
17 the pertinent county, and the State; and
- 18 (6) An assessment of the potential for geothermal
19 resources development in the proposed area and the
20 known or likely prospect for utilization of new
21 electrical energy production in the area.



1 Within 60 days of receiving the application, the government
2 entity shall determine whether the application is complete and
3 inform the applicant of any deficiency in the application.

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

12 (d) If geothermal resources development is proposed within
13 a conservation district in an application containing all
14 required data, the board shall conduct a public hearing on the
15 same island and in reasonably close proximity to the proposed
16 permit area that would be affected by the proposed geothermal
17 resources development, and publish a notice of the public
18 hearing setting forth:

19 (1) A description of the proposed project and area for
20 permitting;

21 (2) An invitation for public comment; and



1 (3) The date, time, and place of the public hearing where
2 written or oral testimony may be submitted or heard.

3 The notice shall be published on three separate days in a
4 newspaper of general circulation in the county in which the
5 public hearing is to be held. The first publication shall be not
6 less than twenty days before the date set for the hearing. The
7 notice shall also be mailed to all owners of land within three
8 thousand feet of the proposed geothermal resources development
9 not less than twenty days before the date set for the hearing.
10 Copies of the notice shall be submitted to the department of
11 land and natural resources, department of business, economic
12 development, and tourism, and the planning commission and
13 planning department of the county in which the proposed area is
14 located.

15 (e) At the close of the public hearing pursuant to
16 subsection (d), the board shall consider all the testimony and
17 after deliberation make a decision to approve or disapprove the
18 permit, or announce the date on which it will render its
19 decision. A decision shall be made by the board within six
20 months of the date a complete application is filed; provided
21 that the time limit may be extended by agreement between the
22 applicant and the board. The board shall have the authority to



1 impose reasonable conditions and restrictions upon the proposed
2 use in support of its findings. The board shall grant a
3 geothermal resources development permit in a conservation
4 district if it finds that:

5 (1) The area has potential for geothermal development
6 activities;

7 (2) There is a known or likely prospect for the
8 utilization of geothermal resources for electrical
9 energy production;

10 (3) Any potential geologic hazards to geothermal
11 production or use in the area are examined;

12 (4) Any environmental or social impacts of the development
13 of geothermal resources within the area be considered;

14 (5) The desired uses would not have unreasonable adverse
15 health, environmental, or socioeconomic effects on
16 residents or surrounding property;

17 (6) The compatibility of development and utilization of
18 geothermal resources within the area is considered
19 with other allowed uses within the area and within the
20 surrounding lands;



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

4 (8) There are reasonable measures available to mitigate
5 the unreasonable adverse effects or burdens referred
6 to in paragraphs (1) and (2), which the board shall
7 have the authority to prescribe as conditions for the
8 proposed geothermal resources development; and

9 (9) The potential benefits to be derived from geothermal
10 development and utilization in the proposed area be in
11 the interest of the county or counties involved and
12 the State as a whole.

13 Upon request, the board shall issue a concise statement of
14 its findings and the principal reasons for its decision to
15 approve a permit.

16 (f) Any decision made by an appropriate county authority
17 or the board pursuant to a public hearing or hearings under this
18 section may be appealed directly on the record to the
19 intermediate appellate court for review and shall not be subject
20 to a contested case hearing. Section 91-14 shall apply to
21 judicial reviews, notwithstanding the lack of a contested case
22 hearing on the matter. The appropriate county authority or the



1 board shall provide a court reporter to produce a transcript of
2 the proceedings at all public hearings under this section for
3 purposes of an appeal.

4 (g) For the purposes of an appeal from a decision from a
5 public hearing, the record shall include:

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

10 (2) Staff recommendations submitted to the members of the
11 agency in consideration of the application;

12 (3) Oral and written public testimony received at the
13 public hearings;

14 (4) Written transcripts of the proceedings at the public
15 hearings;

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

18 (6) The written decision of the agency issued in
19 connection with the application and public hearings;
20 and

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



1 (h) For purposes of this section:

2 "Appropriate county authority" means the county planning
3 commission or, if applicable, the respective county agency or
4 body designated by county charter or ordinance to issue
5 geothermal resources development permits.

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

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

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

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



1 customers of district cooling systems; provided that
 2 up to twenty-five per cent of the power produced by a
 3 renewable energy producer and sold to the utility or
 4 to district cooling system customers may be derived
 5 from fossil fuels; or

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

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

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

17 "Department" means the department of land and natural
 18 resources."

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

21 "Geothermal resources" means the natural heat of the
 22 earth, the energy, in whatever form, below the surface of the



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

12 "Geothermal resources exploration" means either of the
13 following:

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

20 that are reasonably required for testing and analysis to provide
21 ground truth or determine the economic viability of geothermal



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

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

8 SECTION 5. Section 182-2, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

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



1 use so much of the surface of the land as may be required for
2 all purposes reasonably extending to the mining and removal of
3 the minerals therefrom by any means whatsoever."

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

6 "**§182-4 Mining leases on state lands.** (a) If any mineral
7 is discovered or known to exist on state lands, any interested
8 person may notify the board [~~of land and natural resources~~] of
9 the person's desire to apply for a mining lease. The notice
10 shall be accompanied by [~~a fee of \$100~~] the required fees as
11 established by the department, together with a description of
12 the land desired to be leased [~~and~~], the minerals involved, and
13 any information and maps that the board by rule may prescribe.
14 As soon as practicable thereafter, the board shall cause a
15 public notice to be given in the county where the lands are
16 located, at least once in each of three successive weeks,
17 setting forth the description of the land, and the minerals
18 desired to be leased. The board may hold the public auction of
19 the mining lease within six months from the date of the first
20 notice or any further time that may be reasonably necessary.
21 Whether or not the state land sought to be auctioned is then
22 being utilized or put to some productive use, the board, after



1 due notice of public hearing to all parties in interest, within
2 six weeks from the date of the first notice or any further time
3 that may be reasonably necessary, shall determine whether the
4 proposed mining operation or the existing or reasonably
5 foreseeable future use of the land would be of greater benefit
6 to the State. If the board determines that the existing or
7 reasonably foreseeable future use would be of greater benefit to
8 the State than the proposed mining use of the land, it shall
9 disapprove the application for a mining lease of the land
10 without putting the land to auction. The board shall determine
11 the area to be offered for lease and, after due notice of public
12 hearing to all parties in interest, may modify the boundaries of
13 the land areas. At least thirty days prior to the holding of
14 any public auction, the board shall cause a public notice to be
15 given in the State at least once in each of three successive
16 weeks, setting forth the description of the land, the minerals
17 to be leased, and the time and place of the auction. Bidders at
18 the public auction may be required to bid on the amount of
19 annual rental to be paid for the term of the mining lease based
20 on an upset price fixed by the board, a royalty based on the
21 gross proceeds or net profits, cash bonus, or any combination or



1 other basis and under any terms and conditions that may be set
2 by the board.

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

14 (c) Any proposed mining operations to be undertaken by a
15 renewable energy producer, as defined in section 171-95, shall
16 require an application to the board for a mining lease on state
17 lands. Any provisions to the contrary notwithstanding, the
18 application for a mining lease on state lands may be granted by
19 the board in accordance with this section, or the board, by the
20 vote of two-thirds of the members to which the board is
21 entitled, may grant a mining lease to the renewable energy
22 producer without public auction."



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

3 "§182-5 Mining leases on reserved lands. If any mineral
4 is discovered or known to exist on reserved lands, any
5 interested person may notify the board [~~of land and natural~~
6 ~~resources~~] of the person's desire to apply for a mining lease.
7 The notice shall be accompanied by [~~a fee of \$100~~] the required
8 fees, as established by the department, together with a
9 description of the land desired to be leased and the minerals
10 involved and such information and maps as the board may by
11 [~~regulation~~] rule prescribe. The board may grant a mining lease
12 on reserved lands in accordance with section 182-4, or the board
13 may, by the vote of two-thirds of [~~its~~] the members to which the
14 board is entitled, without public auction, grant a mining lease
15 on reserved lands to the occupier thereof. Such a mining lease
16 may be granted to a person other than the occupier if the
17 occupier has assigned the occupier's rights to apply for a
18 mining lease to another person, in which case only such an
19 assignee may be granted a mining lease. Any provisions to the
20 contrary notwithstanding, if the board decides that it is
21 appropriate to grant a geothermal mining lease on the reserved
22 lands, the surface owner or the owner's assignee shall have the



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

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

12 "**§182-6 Exploration.** Any person wishing to conduct
 13 geothermal resources exploration on state lands or reserved
 14 lands shall apply to the board [~~of land and natural resources~~
 15 ~~who~~], which shall issue exploration permits upon terms and
 16 conditions as it shall by [~~regulation~~] rule prescribe. During
 17 and as a result of the exploration, no minerals of such types
 18 and quantity beyond that reasonably required for testing and
 19 analysis shall be extracted and removed from [~~such~~] state
 20 lands[~~-~~] or reserved lands. Upon termination of the exploration
 21 permit, all exploration data, including but not limited to the
 22 drill logs and the results of the assays resulting from the



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

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

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

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

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

21 2. By amending subsections (d) through (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 also
15 fix a minimum expenditure for labor performed or money spent by
16 the lessee [~~in~~] on research and development and the method by
17 which the lessee shall establish that such expenditure in fact
18 be made. In such leases, the obligation to commence mining
19 operations within three years shall not commence until the
20 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. The other uses may include but need not
10 be limited to uses necessary or convenient to the [winning and]
11 processing of the minerals; provided that the lessee shall
12 comply with all water and air pollution control laws, and rules
13 of the State or its 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 the
21 minerals."



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

18 SECTION 11. 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 12. Section 182-14, Hawaii Revised Statutes, is
 10 amended to read as follows:

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

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

20 "~~[†]~~**§182-17**~~[†]~~ **Penalty for violation.** (a) Any person who
 21 violates any provision of this chapter, or any [~~regulation~~] rule
 22 adopted pursuant [~~hereto, shall be fined not more than \$500 for~~



1 ~~each offense.]~~ to this chapter, shall be subject to a fine
2 imposed by the board; provided that the fine shall not exceed
3 \$5,000 per violation. If any person after receiving written
4 notice for a violation fails to cure such violation within such
5 time and under such conditions as determined by [~~the rules and~~
6 ~~regulations, such]~~ the board, the person shall be subject to a
7 citation for a new and separate violation. There shall be a
8 fine of not more than [~~\$500~~] \$5,000 for each additional
9 violation.

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

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

15 (1) Set, charge, and collect administrative fines or bring
16 legal action to recover administrative fees and costs
17 as documented by receipts or affidavit, including
18 attorney's fees and costs; and

19 (2) Bring legal action to recover administrative fines,
20 fees, and costs, including attorney's fees and costs,
21 or payment for damages resulting from a violation of



1 this chapter or any rule adopted pursuant to this
2 chapter."

3 SECTION 14. Section 205-2, Hawaii Revised Statutes, is
4 amended by amending subsections (b) through (d) to read as
5 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 resources development permit may be required
13 for geothermal resources development in accordance with section
14 205- .

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

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

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

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



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



1 cent of the acreage of the parcel, or twenty
2 acres of land, whichever is lesser;

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

19 (8) Wind machines and wind farms;

20 (9) Small-scale meteorological, air quality, noise, and
21 other scientific and environmental data collection and
22 monitoring facilities occupying less than one-half



1 acre of land; provided that these facilities shall not
2 be used as or equipped for use as living quarters or
3 dwellings;

4 (10) Agricultural parks;

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

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



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

4 (13) Open area recreational facilities;

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

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

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

17 (B) Retail activities in an enclosed structure owned
18 and operated by a producer for the display and
19 sale of agricultural products grown in Hawaii,
20 value-added products that were produced using
21 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 [†]title 11, [†]
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 resources
8 development permit may be required for geothermal
9 resources development in accordance with section 205-
10 _____."

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

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

- 16 (1) Low density residential uses;
- 17 (2) Agricultural uses;
- 18 (3) Golf courses, golf driving ranges, and golf-related
19 facilities;
- 20 (4) Public, quasi-public, and public utility facilities;
- 21 and



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

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

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

14 SECTION 18. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 19. This Act shall take effect on January 28,
17 2878.



Report Title:

BLNR; Mineral Resources; Geothermal Resources

Description:

Establishes the framework to regulate geothermal development activities through a permitting process administered by the Board of Land and Natural Resources; provided that the appropriate county authority may issue a geothermal resource permit under certain circumstances. Effective January 28, 2878.
(HB2639 HD2)

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

