

JAN 17 2014

A BILL FOR AN ACT

RELATING TO NATURAL RESOURCES.

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

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

4 "§182- Penalties, fees, and costs collected. All
5 penalties, fees, and costs established and collected by the
6 department pursuant to this chapter shall be deposited in the
7 special land and development fund 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 receive additional written comments on
20 the unresolved issues raised at the second public hearing from
21 any party. The board shall consider the comments at the second
22 hearing 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; and

11 (3) There are reasonable measures available to mitigate
12 the unreasonable adverse effects or burdens referred
13 to above, which the board shall have the authority to
14 prescribe as conditions for the proposed geothermal
15 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 receive additional written comments on the unresolved issues
3 raised at the second public hearing from any party.

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

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

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

19 (3) There are reasonable measures available to mitigate
20 the unreasonable adverse effects or burdens referred
21 to above, which the county authority may prescribe as



1 conditions for the proposed geothermal resources
2 development.

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

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



1 conference shall be held on the island where the public hearing
2 is held.

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

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

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

19 (2) Staff recommendations submitted to the members of the
20 agency in consideration of the application;

21 (3) Oral and written public testimony received at the
22 public hearings;



1 (4) Written transcripts of the proceedings at the public
2 hearings;

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

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

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

10 (g) For purposes of this section:

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

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

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

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

20 (1) Any producer or developer of electrical or thermal
21 energy produced by wind, solar energy, hydropower,
22 geothermal resources, landfill gas, waste-to-energy,



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

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



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

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

5 "Department" means the department of land and natural
6 resources."

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

9 "Geothermal resources" means the natural heat of the
10 earth, the energy, in whatever form, below the surface of the
11 earth present in, resulting from, or created by, or which may be
12 extracted from, such natural heat, and all minerals in solution
13 or other products obtained from naturally heated fluids, brines,
14 associated gases, and steam, in whatever form, found below the
15 surface of the earth, but excluding oil, hydrocarbon gas, or
16 other hydrocarbon substances [~~and any water, mineral in~~
17 solution, ~~or other product obtained from naturally heated~~
18 fluids, brines, associated gases, and steam, in whatever form,
19 found below the surface of the earth, having a temperature of
20 150 degrees Fahrenheit or less, and not used for electrical
21 power generation].



1 "Geothermal resources exploration" means either of the
2 following:

- 3 (1) Conducting non-invasive geophysical operations,
4 including geochemical operations, remote sensing, and
5 other similar techniques; or
6 (2) Drilling exploration wells for, but not limited to the
7 extraction and removal of minerals of types and
8 quantities;

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

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

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

20 "(a) All minerals in, on, or under state lands or reserved
21 lands ~~[which hereafter become state lands]~~ are reserved to the
22 State; provided that the board ~~[of land and natural resources]~~



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

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

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



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



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

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



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

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

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



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

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

21 "§182-6 **Exploration.** Any person wishing to conduct
22 geothermal resources exploration on state lands or reserved



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

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

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

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



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

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

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

17 Any interested party may, however, request that a mining
18 lease contain a research period under which the lessees shall be
19 required to expend money in research and development to
20 establish a method to make economical the mining and processing
21 of the [~~mineral deposits contained~~] minerals identified in the
22 lease. If the board determines that the research period would



1 be beneficial it shall fix the period of research and shall also
2 fix a minimum expenditure for labor performed or money spent by
3 the lessee [~~in~~] on research and development and the method by
4 which the lessee shall establish that such expenditure in fact
5 be made. In such leases, the obligation to commence mining
6 operations within three years shall not commence until the
7 expiration of the research period.

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



1 (f) The lessee may retain all minerals separated from the
2 land as a part of the process of mining the minerals specified
3 in the mining lease; provided that the lease may prescribe the
4 accounting and testing procedures by which the amount and
5 quality of such additional materials shall be determined for the
6 purpose of computing the excise tax thereon[-] and applicable
7 royalty that may be set by the board for the use of the
8 minerals."

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

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



1 deposit exceeds the first year's rental, the excess shall be
2 refunded. All rentals thereafter are payable in advance once a
3 year."

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

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

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

19 "§182-14 Rules [~~and regulations~~]. Subject to chapter 91,
20 the board [~~of land and natural resources~~] may [~~make, promulgate~~]
21 adopt and amend [~~such~~] rules [~~and regulations~~] as it deems
22 necessary to carry out this chapter and to perform its duties



1 thereunder, all commensurate with and for the purpose of
2 protecting the public interest. All [~~such~~] rules [~~and~~
3 ~~regulations~~] shall have the force and effect of law."

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

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

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

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



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

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

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

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

20 (c) Rural districts shall include activities or uses as
 21 characterized by low density residential lots of not more than
 22 one dwelling house per one-half acre, except as provided by



1 county ordinance pursuant to section 46-4(c), in areas where
2 "city-like" concentration of people, structures, streets, and
3 urban level of services are absent, and where small farms are
4 intermixed with low density residential lots except that within
5 a subdivision, as defined in section 484-1, the commission for
6 good cause may allow one lot of less than one-half acre, but not
7 less than eighteen thousand five hundred square feet, or an
8 equivalent residential density, within a rural subdivision and
9 permit the construction of one dwelling on such lot; provided
10 that all other dwellings in the subdivision shall have a minimum
11 lot size of one-half acre or 21,780 square feet. Such petition
12 for variance may be processed under the special permit
13 procedure. These districts may include contiguous areas which
14 are not suited to low density residential lots or small farms by
15 reason of topography, soils, and other related characteristics.
16 Rural districts shall also include golf courses, golf driving
17 ranges, and golf-related facilities.

18 In addition to the uses listed in this subsection, rural
19 districts shall include geothermal resources exploration and
20 geothermal resources development, as defined under section
21 182-1, as permissible uses [-]; provided that a geothermal



1 resource permit may be required for geothermal resources
2 development in accordance with section 205- .

3 (d) ~~[Agricultural]~~ Permissible uses in agricultural
4 districts shall include:

5 (1) Activities or uses as characterized by the cultivation
6 of crops, crops for bioenergy, orchards, forage, and
7 forestry;

8 (2) Farming activities or uses related to animal husbandry
9 and game and fish propagation;

10 (3) Aquaculture, which means the production of aquatic
11 plant and animal life within ponds and other bodies of
12 water;

13 (4) Wind generated energy production for public, private,
14 and commercial use;

15 (5) Biofuel production, as described in section
16 205-4.5(a)(16), for public, private, and commercial
17 use;

18 (6) Solar energy facilities; provided that:

19 (A) This paragraph shall apply only to land with soil
20 classified by the land study bureau's detailed
21 land classification as overall (master)
22 productivity rating class B, C, D, or E; and



1 (B) Solar energy facilities placed within land with
2 soil classified as overall productivity rating
3 class B or C shall not occupy more than ten per
4 cent of the acreage of the parcel, or twenty
5 acres of land, whichever is lesser;

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

22 (8) Wind machines and wind farms;



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

7 (10) Agricultural parks;

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

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



1 agricultural tourism activities pursuant to section
2 205-5; provided further that the agricultural tourism
3 activities coexist with a bona fide agricultural
4 activity. For the purposes of this paragraph, "bona
5 fide agricultural activity" means a farming operation
6 as defined in section 165-2;

7 (13) Open area recreational facilities;

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

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

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

20 (B) Retail activities in an enclosed structure owned
21 and operated by a producer for the display and
22 sale of agricultural products grown in Hawaii,



1 value-added products that were produced using
2 agricultural products grown in Hawaii, logo items
3 related to the producer's agricultural
4 operations, and other food items; and

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

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

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

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



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

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

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

10 (2) Game and fish propagation;

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

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



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



1 photovoltaic, biogas, and other small-scale renewable
2 energy systems producing energy solely for use in the
3 agricultural activities of the fee or leasehold owner
4 of the property, and vehicle and equipment storage
5 areas that are normally considered directly accessory
6 to the above-mentioned uses and are permitted under
7 section 205-2(d);

8 (11) Agricultural parks;

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

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



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

4 (C) The agricultural support buildings shall be
5 rented or leased to agricultural business
6 operators or agricultural support services;

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

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



1 205-5; provided further that the agricultural tourism
2 activities coexist with a bona fide agricultural
3 activity. For the purposes of this paragraph, "bona
4 fide agricultural activity" means a farming operation
5 as defined in section 165-2;

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

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

20 For the purposes of this paragraph:

21 "Appurtenances" means operational infrastructure
22 of the appropriate type and scale for economic



1 commercial storage and distribution, and other similar
2 handling of feedstock, fuels, and other products of
3 biofuel processing facilities.

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

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



1 As used in this paragraph:
2 "Agricultural activity" means any activity
3 described in paragraphs (1) to (3) of this subsection.

4 "Agricultural-energy enterprise" means an
5 enterprise that integrally incorporates an
6 agricultural activity with an agricultural-energy
7 facility.

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

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

20 (18) Construction and operation of wireless communication
21 antennas; provided that, for the purposes of this
22 paragraph, "wireless communication antenna" means



1 communications equipment that is either freestanding
2 or placed upon or attached to an already existing
3 structure and that transmits and receives
4 electromagnetic radio signals used in the provision of
5 all types of wireless communications services;
6 provided further that nothing in this paragraph shall
7 be construed to permit the construction of any new
8 structure that is not deemed a permitted use under
9 this subsection;

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



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

8 [H] (21) [H] Geothermal resources exploration and geothermal
9 resources development, as defined under section
10 182-1[-]; provided that a geothermal resource permit
11 may be required for geothermal resources development
12 in accordance with section 205- ."

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

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

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



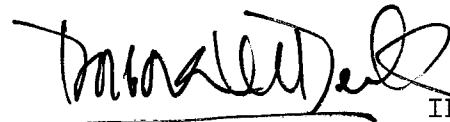
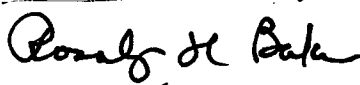

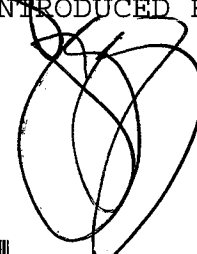
- 1 (4) Public, quasi-public, and public utility facilities;
- 2 and
- 3 (5) Geothermal resources exploration and geothermal
- 4 resources development, as defined under section 182-
- 5 1[-]; provided that a geothermal resource permit may
- 6 be required for geothermal resources development in
- 7 accordance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

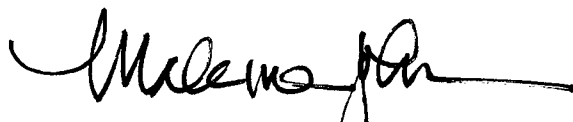
8 In addition, the minimum lot size for any low density
 9 residential use shall be one-half acre and there shall be but
 10 one dwelling house per one-half acre, except as provided for in
 11 section 205-2."


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

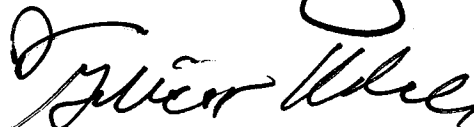
16 SECTION 18. Statutory material to be repealed is bracketed
 17 and stricken. New statutory material is underscored.

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

19 
 INTRODUCED BY:










S.B. NO. 2663

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.

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

