
A BILL FOR AN ACT

RELATING TO NATURAL RESOURCES.

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

1 PART I

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

5 "§182- Penalties, fees, and costs collected. All
6 penalties, fees, and costs established and collected by the
7 department pursuant to this chapter shall be deposited in the
8 special land and development fund established under section
9 171-19."

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

13 "§205- Geothermal resources development permits;
14 objectives. (a) The establishment and regulation of geothermal
15 permitting is intended to facilitate geothermal development
16 activities in those areas in which the potential benefits to be
17 derived from geothermal development and utilization in the



1 proposed area are in the best interest of the county or counties
2 involved and the State as a whole. The major objectives are to:

3 (1) Allow geothermal development activities to help
4 achieve the State's goal of energy self-sufficiency
5 and broaden the State's economic base through
6 development of a natural resource;

7 (2) Allow geothermal development activities in areas where
8 such activities would be of greater benefit to the
9 State than the existing or future use of such areas;
10 and

11 (3) Allow geothermal development activities in areas of
12 the State that best demonstrate an acceptable balance
13 among the criteria set forth in subsection (c).

14 (b) No geothermal resources development activity shall be
15 undertaken without a geothermal resources development permit
16 issued pursuant to this section. The use of an area or site for
17 geothermal resources development within a conservation district
18 shall be governed by the board. The appropriate county
19 authority may issue a geothermal resource permit to allow
20 geothermal resources development in an agricultural, rural, or
21 urban district regardless of whether the geothermal resources
22 development is considered a permissible use under the applicable



1 county zoning ordinances or general plan; provided that the
2 appropriate county authority complies with the requirements set
3 forth in this section.

4 (c) To ensure that prospective geothermal resources
5 development activity has the least detrimental environmental and
6 social impact, any application to obtain a geothermal resources
7 development permit from a government entity shall provide, at a
8 minimum, the following:

- 9 (1) An assessment of any potential geologic hazards
10 relating to geothermal production or use in the
11 proposed area;
- 12 (2) An assessment of any environmental, cultural, or
13 social impacts within the proposed area;
- 14 (3) An assessment of the compatibility of development and
15 utilization of geothermal resources with other allowed
16 uses within the proposed area or site and within the
17 surrounding area;
- 18 (4) A description of the proposed geothermal resources
19 development, including the potential for health,
20 safety, and nuisance impacts upon surrounding
21 properties; control of potentially impacted surface
22 lands or approval from potentially impacted surface



- 1 appropriate land owners; and establishment of an
2 appropriate buffer zone between the proposed
3 geothermal resources development and abutting land;
4 (5) An assessment of whether the potential benefits to be
5 derived from the proposed geothermal resources
6 development and potential related industries in the
7 area are in the interests of the resident population,
8 the pertinent county, and the State; and
9 (6) An assessment of the potential for geothermal
10 resources development in the proposed area and the
11 known or likely prospect for utilization of new
12 electrical energy production in the area.

13 Within 60 days of receiving the application, the government
14 entity shall determine whether the application is complete and
15 inform the applicant of any deficiency in the application.

16 (d) If geothermal resources development is proposed in an
17 application containing all required data, the board or
18 appropriate county authority shall conduct a public hearing on
19 the same island and in reasonably close proximity to the
20 proposed permit area that would be affected by the proposed
21 geothermal resources development, and publish a notice of the
22 public hearing setting forth:



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

3 (2) An invitation for public comment; and

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

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

18 (e) At the close of the public hearing pursuant to
19 subsection (d), the board or appropriate county authority shall
20 consider all the testimony and after deliberation make a
21 decision to approve or disapprove the permit, or announce the
22 date on which it will render its decision. A decision shall be



1 made by the board or appropriate county authority within six
2 months of the date a complete application is filed; provided
3 that the time limit may be extended by agreement between the
4 applicant and the board or appropriate county authority. The
5 board or appropriate county authority may impose reasonable
6 conditions and restrictions upon the permit in support of its
7 findings. The board or appropriate county authority shall grant
8 a geothermal resources development permit if it finds that:

9 (1) The area has potential for geothermal development
10 activities;

11 (2) There is a known or likely prospect for the
12 utilization of geothermal resources for electrical
13 energy production;

14 (3) Any potential geologic hazards to geothermal
15 production or use in the area have been examined;

16 (4) Any environmental or social impacts of the development
17 of geothermal resources within the area have been
18 considered;

19 (5) The proposed geothermal development would not have
20 unreasonable adverse health, environmental, or
21 socioeconomic effects on residents or surrounding
22 property;

1 (6) The compatibility of development and utilization of
2 geothermal resources within the area is considered
3 with other allowed uses within the area and within the
4 surrounding lands;

5 (7) The proposed geothermal development would not
6 unreasonably burden public agencies to provide roads
7 and streets, sewers, water, drainage, and police and
8 fire protection;

9 (8) There are reasonable measures available to mitigate
10 the adverse effects or burdens referred to in
11 paragraphs (3) and (4), which the board or appropriate
12 authority shall have the authority to prescribe as
13 conditions for the permit; and

14 (9) The potential benefits to be derived from geothermal
15 development and utilization in the proposed area are
16 in the interest of the county or counties involved and
17 the State as a whole.

18 Upon request, the board or appropriate county authority
19 shall issue a concise statement of its findings and the
20 principal reasons for its decision to approve or disapprove a
21 permit.



1 (f) Any decision made by the board or appropriate county
2 authority pursuant this section may be appealed directly on the
3 record to the intermediate court of appeals for review. The
4 appropriate county authority or the board shall provide a court
5 reporter to produce a transcript of the proceedings at all
6 public hearings under this section for purposes of an appeal.

7 (g) For the purposes of an appeal from a decision for a
8 geothermal resource development permit, the record shall
9 include:

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

14 (2) Staff recommendations submitted to the board or the
15 appropriate county authority in consideration of the
16 application;

17 (3) Oral and written public testimony received at the
18 public hearings;

19 (4) Written transcripts of the proceedings at the public
20 hearings;



1 (5) A statement of relevant matters noticed by the board
2 or appropriate county authority at the public
3 hearings;

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

6 (7) Any other documents as may be required by the board or
7 appropriate county authority for disposition of the
8 permit application.

9 (h) For purposes of this section:

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

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

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

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

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



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

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

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



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

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

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

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

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



1 (1) Conducting non-invasive geophysical operations,
2 including geochemical operations, remote sensing, and
3 other similar techniques; or
4 (2) Drilling exploration wells for, but not limited to,
5 the extraction and removal of minerals of types and
6 quantities;
7 that are reasonably required for testing and analysis to provide
8 ground truth or determine the economic viability of geothermal
9 resources. The term does not include "geothermal resources
10 development".

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

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

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



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

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

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



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



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

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



1 (c) Any proposed mining operations to be undertaken by a
2 renewable energy producer, as defined in section 171-95(c),
3 shall require an application to the board for a mining lease on
4 state lands. Any provisions to the contrary notwithstanding,
5 the application for a mining lease on state lands pursuant to
6 this subsection may be granted by the board in accordance with
7 this section, or the board, by the vote of two-thirds of the
8 members to which the board is entitled, may grant a mining lease
9 to the renewable energy producer 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



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

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



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

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

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



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

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

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

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

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



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

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



1 comply with all water and air pollution control laws, and rules
2 of the State or its political subdivisions.

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

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

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



1 bid by the board and the [~~\$500 deposit~~] required deposit, as
2 established by the department, shall be credited against [~~such~~]
3 the sum. If the deposit exceeds the first year's rental, the
4 excess shall be refunded. All rentals thereafter are payable in
5 advance once a year."

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

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

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

21 "**§182-14 Rules [~~and regulations~~].** Subject to chapter 91,
22 the board [~~of land and natural resources~~] may [~~make, promulgate~~]



1 adopt and amend [~~such~~] rules [~~and regulations~~] as it deems
2 necessary to carry out this chapter and to perform its duties
3 thereunder, all commensurate with and for the purpose of
4 protecting the public interest. All [~~such~~] rules [~~and~~
5 ~~regulations~~] shall have the force and effect of law."

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

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

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



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

3 (1) Set, charge, and collect administrative fines or bring
4 legal action to recover administrative fees and costs
5 as documented by receipts or affidavit, including
6 attorney's fees and costs; and

7 (2) Bring legal action to recover administrative fines,
8 fees, and costs, including attorney's fees and costs,
9 or payment for damages resulting from a violation of
10 this chapter or any rule adopted pursuant to this
11 chapter."

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

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

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



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

21 In addition to the uses listed in this subsection, rural
22 districts shall include geothermal resources exploration and



1 geothermal resources development, as defined under section
2 182-1, as permissible uses[-]; provided that a geothermal
3 resource permit may be required for geothermal resources
4 development in accordance with section 205- .

5 (d) [~~Agricultural~~] Permissible uses in agricultural
6 districts shall include:

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

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

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

15 (4) Wind generated energy production for public, private,
16 and commercial use;

17 (5) Biofuel production, as described in section
18 205-4.5(a)(16), for public, private, and commercial
19 use;

20 (6) Solar energy facilities; provided that:

21 (A) This paragraph shall apply only to land with soil
22 classified by the land study bureau's detailed



1 land classification as overall (master)
2 productivity rating class B, C, D, or E; and
3 (B) Solar energy facilities placed within land with
4 soil classified as overall productivity rating
5 class B or C shall not occupy more than ten per
6 cent of the acreage of the parcel, or twenty
7 acres of land, whichever is lesser;
8 (7) Bona fide agricultural services and uses that support
9 the agricultural activities of the fee or leasehold
10 owner of the property and accessory to any of the
11 above activities, regardless of whether conducted on
12 the same premises as the agricultural activities to
13 which they are accessory, including farm dwellings as
14 defined in section 205-4.5(a)(4), employee housing,
15 farm buildings, mills, storage facilities, processing
16 facilities, photovoltaic, biogas, and other small-
17 scale renewable energy systems producing energy solely
18 for use in the agricultural activities of the fee or
19 leasehold owner of the property, agricultural-energy
20 facilities as defined in section 205-4.5(a)(17),
21 vehicle and equipment storage areas, and plantation



- 1 community subdivisions as defined in section
2 205-4.5(a)(12);
- 3 (8) Wind machines and wind farms;
- 4 (9) Small-scale meteorological, air quality, noise, and
5 other scientific and environmental data collection and
6 monitoring facilities occupying less than one-half
7 acre of land; provided that these facilities shall not
8 be used as or equipped for use as living quarters or
9 dwellings;
- 10 (10) Agricultural parks;
- 11 (11) Agricultural tourism conducted on a working farm, or a
12 farming operation as defined in section 165-2, for the
13 enjoyment, education, or involvement of visitors;
14 provided that the agricultural tourism activity is
15 accessory and secondary to the principal agricultural
16 use and does not interfere with surrounding farm
17 operations; and provided further that this paragraph
18 shall apply only to a county that has adopted
19 ordinances regulating agricultural tourism under
20 section 205-5;
- 21 (12) Agricultural tourism activities, including overnight
22 accommodations of twenty-one days or less, for any one



1 stay within a county; provided that this paragraph
 2 shall apply only to a county that includes at least
 3 three islands and has adopted ordinances regulating
 4 agricultural tourism activities pursuant to section
 5 205-5; provided further that the agricultural tourism
 6 activities coexist with a bona fide agricultural
 7 activity. For the purposes of this paragraph, "bona
 8 fide agricultural activity" means a farming operation
 9 as defined in section 165-2;

10 (13) Open area recreational facilities;

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

16 (15) Agricultural-based commercial operations, including:

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



1 (B) Retail activities in an enclosed structure owned
2 and operated by a producer for the display and
3 sale of agricultural products grown in Hawaii,
4 value-added products that were produced using
5 agricultural products grown in Hawaii, logo items
6 related to the producer's agricultural
7 operations, and other food items; and

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

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

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



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

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

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

- 10 (1) Cultivation of crops, including crops for bioenergy,
11 flowers, vegetables, foliage, fruits, forage, and
12 timber;
- 13 (2) Game and fish propagation;
- 14 (3) Raising of livestock, including poultry, bees, fish,
15 or other animal or aquatic life that are propagated
16 for economic or personal use;
- 17 (4) Farm dwellings, employee housing, farm buildings, or
18 activities or uses related to farming and animal
19 husbandry. "Farm dwelling", as used in this
20 paragraph, means a single-family dwelling located on
21 and used in connection with a farm, including clusters
22 of single-family farm dwellings permitted within



- 1 agricultural parks developed by the State, or where
2 agricultural activity provides income to the family
3 occupying the dwelling;
- 4 (5) Public institutions and buildings that are necessary
5 for agricultural practices;
- 6 (6) Public and private open area types of recreational
7 uses, including day camps, picnic grounds, parks, and
8 riding stables, but not including dragstrips,
9 airports, drive-in theaters, golf courses, golf
10 driving ranges, country clubs, and overnight camps;
- 11 (7) Public, private, and quasi-public utility lines and
12 roadways, transformer stations, communications
13 equipment buildings, solid waste transfer stations,
14 major water storage tanks, and appurtenant small
15 buildings such as booster pumping stations, but not
16 including offices or yards for equipment, material,
17 vehicle storage, repair or maintenance, treatment
18 plants, corporation yards, or other similar
19 structures;
- 20 (8) Retention, restoration, rehabilitation, or improvement
21 of buildings or sites of historic or scenic interest;



- 1 (9) Agricultural-based commercial operations as described
- 2 in section [†]205-2(d)(15)[†];
- 3 (10) Buildings and uses, including mills, storage, and
- 4 processing facilities, maintenance facilities,
- 5 photovoltaic, biogas, and other small-scale renewable
- 6 energy systems producing energy solely for use in the
- 7 agricultural activities of the fee or leasehold owner
- 8 of the property, and vehicle and equipment storage
- 9 areas that are normally considered directly accessory
- 10 to the above-mentioned uses and are permitted under
- 11 section 205-2(d);
- 12 (11) Agricultural parks;
- 13 (12) Plantation community subdivisions, which as used in
- 14 this chapter means an established subdivision or
- 15 cluster of employee housing, community buildings, and
- 16 agricultural support buildings on land currently or
- 17 formerly owned, leased, or operated by a sugar or
- 18 pineapple plantation; provided that the existing
- 19 structures may be used or rehabilitated for use, and
- 20 new employee housing and agricultural support
- 21 buildings may be allowed on land within the
- 22 subdivision as follows:



- 1 (A) The employee housing is occupied by employees or
- 2 former employees of the plantation who have a
- 3 property interest in the land;
- 4 (B) The employee housing units not owned by their
- 5 occupants shall be rented or leased at affordable
- 6 rates for agricultural workers; or
- 7 (C) The agricultural support buildings shall be
- 8 rented or leased to agricultural business
- 9 operators or agricultural support services;
- 10 (13) Agricultural tourism conducted on a working farm, or a
- 11 farming operation as defined in section 165-2, for the
- 12 enjoyment, education, or involvement of visitors;
- 13 provided that the agricultural tourism activity is
- 14 accessory and secondary to the principal agricultural
- 15 use and does not interfere with surrounding farm
- 16 operations; and provided further that this paragraph
- 17 shall apply only to a county that has adopted
- 18 ordinances regulating agricultural tourism under
- 19 section 205-5;
- 20 (14) Agricultural tourism activities, including overnight
- 21 accommodations of twenty-one days or less, for any one
- 22 stay within a county; provided that this paragraph



1 shall apply only to a county that includes at least
2 three islands and has adopted ordinances regulating
3 agricultural tourism activities pursuant to section
4 205-5; provided further that the agricultural tourism
5 activities coexist with a bona fide agricultural
6 activity. For the purposes of this paragraph, "bona
7 fide agricultural activity" means a farming operation
8 as defined in section 165-2;

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

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



1 For the purposes of this paragraph:

2 "Appurtenances" means operational infrastructure
3 of the appropriate type and scale for economic
4 commercial storage and distribution, and other similar
5 handling of feedstock, fuels, and other products of
6 biofuel processing facilities.

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

14 (17) Agricultural-energy facilities, including
15 appurtenances necessary for an agricultural-energy
16 enterprise; provided that the primary activity of the
17 agricultural-energy enterprise is agricultural
18 activity. To be considered the primary activity of an
19 agricultural-energy enterprise, the total acreage
20 devoted to agricultural activity shall be not less
21 than ninety per cent of the total acreage of the
22 agricultural-energy enterprise. The agricultural-



1 energy facility shall be limited to lands owned,
2 leased, licensed, or operated by the entity conducting
3 the agricultural activity.

4 As used in this paragraph:

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

7 "Agricultural-energy enterprise" means an
8 enterprise that integrally incorporates an
9 agricultural activity with an agricultural-energy
10 facility.

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

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



1 (18) Construction and operation of wireless communication
2 antennas; provided that, for the purposes of this
3 paragraph, "wireless communication antenna" means
4 communications equipment that is either freestanding
5 or placed upon or attached to an already existing
6 structure and that transmits and receives
7 electromagnetic radio signals used in the provision of
8 all types of wireless communications services;
9 provided further that nothing in this paragraph shall
10 be construed to permit the construction of any new
11 structure that is not deemed a permitted use under
12 this subsection;

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



1 understanding of agricultural activities and practices
2 conducted on a farming operation as defined in section
3 165-2;

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

11 [+](21)[+] Geothermal resources exploration and geothermal
12 resources development, as defined under section
13 182-1[-]; provided that a geothermal resource permit
14 may be required for geothermal resources development
15 in accordance with section 205- ."

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

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

- 21 (1) Low density residential uses;
- 22 (2) Agricultural uses;



1 (3) Golf courses, golf driving ranges, and golf-related
2 facilities;

3 (4) Public, quasi-public, and public utility facilities;
4 and

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

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

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

18 PART II

19 SECTION 18. The Hawaii Revised Statutes is amended by
20 adding a new chapter to be appropriately designated and to read
21 as follows:



1 "CHAPTER
2 HYDRAULIC FRACTURING

3 § -1 Definitions. As used in this chapter, unless the
4 context otherwise requires:

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

6 "Fluid" means any material or substance which flows or
7 moves whether in semi-solid, liquid, sludge, gas, or any other
8 form or state.

9 "Hydraulic fracturing" means a drilling operation into an
10 underground geologic formation and the injection of fluids,
11 gases, chemicals, sand, or any other substance with the
12 intention to cause or enhance fractures in the geologic
13 formation for the purpose of instigating or increasing the
14 porosity or permeability of the geologic formation to initiate
15 or increase the production of a desired commodity from a well;
16 provided that this definition shall not include a drilling
17 operation into an underground geologic formation for the purpose
18 of obtaining drinking water. Hydraulic fracturing is also known
19 as "fracking", "hydro-fracking", "hydro-fracturing", "hydro-
20 shearing", "hydraulic shearing", "hydro-stimulation", or
21 "enhanced geothermal drilling".



1 **§ -2 Hydraulic fracturing; prohibited.** (a) It shall be
2 unlawful for any person, corporation, or other business entity
3 to engage in hydraulic fracturing within the State.

4 (b) It shall be unlawful for any person, corporation, or
5 other business entity to collect, transport, store, process, or
6 discharge waste fluid from hydraulic fracturing within the State
7 without first obtaining a permit to do so.

8 **§ -3 Penalty; injunction.** Any person, corporation, or
9 other entity that violates section -2 shall be fined not more
10 than \$100,000 for every violation.

11 Any person, corporation, or other entity that violates
12 section -2 may also be enjoined by the circuit court from
13 continuing the violation.

14 The penalty and remedy provided by this section shall be in
15 addition to any criminal or civil penalty provided by any other
16 law.

17 **§ -4 Enforcement.** The board or its authorized
18 representative is authorized to charge and collect the fines set
19 forth pursuant to section -3 and bring legal action to enjoin
20 conduct prohibited by this chapter."



1 SECTION 19. This part does not affect rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun before its effective date.

4 PART III

5 SECTION 20. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 21. This Act shall take effect on July 1, 2050;
8 provided that part II shall be repealed on July 1, 2025.



Report Title:

BLNR; Mineral Resources; Geothermal Resources; Hydraulic Fracturing

Description:

Establishes a permitting process for geothermal resources development by the BLNR and the appropriate county authorities. Deposits penalties, fees, and costs related to mineral rights into the special land and development fund. Prohibits hydraulic fracturing and disposition within the State of wastewater from hydraulic fracturing through July 1, 2025. Provides for penalties and enforcement. Effective July 1, 2050. (SB2663 HD1)

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