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# 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 the activities would be of greater benefit to the  
9 State than the existing or future use of the 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 resources development permit to  
20 allow geothermal resources development in an agricultural,  
21 rural, or urban district regardless of whether the geothermal  
22 resources development is considered a permissible use under the



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

4 (c) To ensure that a 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  
16 permissible uses within the proposed area or site and  
17 within the 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 the landowners of the



1 potentially impacted surface lands; and establishment  
2 of an 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 applicable 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 sixty days of receiving the application, the  
14 government entity shall determine whether the application is  
15 complete and inform the applicant of any deficiency in the  
16 application.

17 (d) If an application for proposed geothermal resources  
18 development contains all required information, the board or  
19 appropriate county authority shall conduct a public hearing on  
20 the same island and in reasonably close proximity to the  
21 proposed permit area that would be affected by the proposed

1 geothermal resources development, and publish a notice of the  
2 public hearing setting forth:

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

5 (2) An invitation for public comment; and

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

8 The notice shall be published on three separate days in a  
9 newspaper of general circulation in the county in which the  
10 public hearing is to be held. The first publication shall be not  
11 less than twenty days prior to the date set for the hearing.

12 The notice shall also be mailed to all owners of land within  
13 three thousand feet of the proposed geothermal resources  
14 development not less than twenty days before the date set for  
15 the hearing. Copies of the notice shall be submitted to the  
16 department of land and natural resources, the department of  
17 business, economic development, and tourism, and the planning  
18 commission and planning department of the county in which the  
19 proposed permit area is located.

20 (e) At the close of the public hearing pursuant to  
21 subsection (d), the board or appropriate county authority shall  
22 consider all the testimony and after deliberation make a



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

- 11     (1) The proposed area has potential for geothermal  
12         development activities;
- 13     (2) There is a known or likely prospect for the  
14         utilization of geothermal resources for electrical  
15         energy production;
- 16     (3) Any potential geologic hazards to geothermal  
17         production or use in the area have been examined;
- 18     (4) Any environmental or social impacts of the development  
19         of geothermal resources within the proposed area have  
20         been considered;
- 21     (5) The proposed geothermal development would not have  
22         unreasonable adverse health, environmental, or



1 socioeconomic effects on residents or surrounding  
2 property, except as provided in paragraph (8);

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

7 (7) The proposed geothermal development would not  
8 unreasonably burden public agencies to provide roads  
9 and streets, sewers, water, drainage, and police and  
10 fire protection, except as provided in paragraph (8);

11 (8) There are reasonable measures available to mitigate  
12 the adverse effects or burdens referred to in  
13 paragraphs (5) and (7), which the board or appropriate  
14 authority shall have the authority to prescribe as  
15 conditions for the permit; and

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

20 Upon request, the board or appropriate county authority  
21 shall issue a concise statement of its findings and the



1 principal reasons for its decision to approve or disapprove a  
2 permit.

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

9 (g) For the purposes of an appeal from a decision for a  
10 geothermal resources development permit, the record shall  
11 include:

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

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

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

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





1       (5) A statement of relevant matters noticed by the 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 the  
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 "~~[+]§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 resources development permit may be required





1 for geothermal resources development in accordance with section  
2 205- .

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



1 In addition to the uses listed in this subsection, rural  
2 districts shall include geothermal resources exploration and  
3 geothermal resources development, as defined under section  
4 182-1, as permissible uses[-]; provided that a geothermal  
5 resources development permit may be required for geothermal  
6 resources development in accordance with section 205- .

7 (d) [~~Agricultural~~] Permissible uses in agricultural  
8 districts shall include:

- 9 (1) Activities or uses as characterized by the cultivation  
10 of crops, crops for bioenergy, orchards, forage, and  
11 forestry;
- 12 (2) Farming activities or uses related to animal husbandry  
13 and game and fish propagation;
- 14 (3) Aquaculture, which means the production of aquatic  
15 plant and animal life within ponds and other bodies of  
16 water;
- 17 (4) Wind generated energy production for public, private,  
18 and commercial use;
- 19 (5) Biofuel production, as described in section  
20 205-4.5(a)(16), for public, private, and commercial  
21 use;
- 22 (6) Solar energy facilities; provided that:



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



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



1           (12) Agricultural tourism activities, including overnight  
2 accommodations of twenty-one days or less, for any one  
3 stay within a county; provided that this paragraph  
4 shall apply only to a county that includes at least  
5 three islands and has adopted ordinances regulating  
6 agricultural tourism activities pursuant to section  
7 205-5; provided further that the agricultural tourism  
8 activities coexist with a bona fide agricultural  
9 activity. For the purposes of this paragraph, "bona  
10 fide agricultural activity" means a farming operation  
11 as defined in section 165-2;

12           (13) Open area recreational facilities;

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

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

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



1                   were produced using agricultural products grown  
2                   in Hawaii;

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

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

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



1 Agricultural districts shall not include golf courses and golf  
2 driving ranges, except as provided in section 205-4.5(d).  
3 Agricultural districts include areas that are not used for, or  
4 that are not suited to, agricultural and ancillary activities by  
5 reason of topography, soils, and other related characteristics."

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

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

12 (1) Cultivation of crops, including crops for bioenergy,  
13 flowers, vegetables, foliage, fruits, forage, and  
14 timber;

15 (2) Game and fish propagation;

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

19 (4) Farm dwellings, employee housing, farm buildings, or  
20 activities or uses related to farming and animal  
21 husbandry. "Farm dwelling", as used in this  
22 paragraph, means a single-family dwelling located on



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





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



1 buildings may be allowed on land within the  
2 subdivision as follows:

3 (A) The employee housing is occupied by employees or  
4 former employees of the plantation who have a  
5 property interest in the land;

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

9 (C) The agricultural support buildings shall be  
10 rented or leased to agricultural business  
11 operators or agricultural support services;

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



1           (14) Agricultural tourism activities, including overnight  
2 accommodations of twenty-one days or less, for any one  
3 stay within a county; provided that this paragraph  
4 shall apply only to a county that includes at least  
5 three islands and has adopted ordinances regulating  
6 agricultural tourism activities pursuant to section  
7 205-5; provided further that the agricultural tourism  
8 activities coexist with a bona fide agricultural  
9 activity. For the purposes of this paragraph, "bona  
10 fide agricultural activity" means a farming operation  
11 as defined in section 165-2;

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

18           (16) Biofuel processing facilities, including the  
19 appurtenances associated with the production and  
20 refining of biofuels that is normally considered  
21 directly accessory and secondary to the growing of the  
22 energy feedstock; provided that biofuel processing



1 facilities and appurtenances do not adversely impact  
2 agricultural land and other agricultural uses in the  
3 vicinity.

4 For the purposes of this paragraph:

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

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

17 (17) Agricultural-energy facilities, including  
18 appurtenances necessary for an agricultural-energy  
19 enterprise; provided that the primary activity of the  
20 agricultural-energy enterprise is agricultural  
21 activity. To be considered the primary activity of an  
22 agricultural-energy enterprise, the total acreage



1 devoted to agricultural activity shall be not less  
2 than ninety per cent of the total acreage of the  
3 agricultural-energy enterprise. The agricultural-  
4 energy facility shall be limited to lands owned,  
5 leased, licensed, or operated by the entity conducting  
6 the agricultural activity.

7 As used in this paragraph:

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

10 "Agricultural-energy enterprise" means an  
11 enterprise that integrally incorporates an  
12 agricultural activity with an agricultural-energy  
13 facility.

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

20 "Appurtenances" means operational infrastructure  
21 of the appropriate type and scale for the economic  
22 commercial generation, storage, distribution, and



1 other similar handling of energy, including equipment,  
2 feedstock, fuels, and other products of agricultural-  
3 energy facilities;

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

16 (19) Agricultural education programs conducted on a farming  
17 operation as defined in section 165-2, for the  
18 education and participation of the general public;  
19 provided that the agricultural education programs are  
20 accessory and secondary to the principal agricultural  
21 use of the parcels or lots on which the agricultural  
22 education programs are to occur and do not interfere



1 with surrounding farm operations. For the purposes of  
2 this section, "agricultural education programs" means  
3 activities or events designed to promote knowledge and  
4 understanding of agricultural activities and practices  
5 conducted on a farming operation as defined in section  
6 165-2;

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

14 [†](21)[†] Geothermal resources exploration and geothermal  
15 resources development, as defined under section  
16 182-1[-]; provided that a geothermal resources  
17 development permit may be required for geothermal  
18 resources development in accordance with section 205-  
19 \_\_\_\_\_."

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



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

- 4           (1) Low density residential uses;
- 5           (2) Agricultural uses;
- 6           (3) Golf courses, golf driving ranges, and golf-related  
7           facilities;
- 8           (4) Public, quasi-public, and public utility facilities;  
9           and
- 10          (5) Geothermal resources exploration and geothermal  
11          resources development, as defined under section  
12          182-1[-]; provided that a geothermal resources  
13          development permit may be required for geothermal  
14          resources development in accordance with section 205-  
15          \_\_\_\_\_.

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

20           SECTION 17. Sections 182-3(a), 182-11, 182-13, and 182-15,  
21 Hawaii Revised Statutes, are amended by substituting the word



1 "board" wherever the phrase "board of land and natural  
2 resources" appears, as the context requires.

3 PART II

4 SECTION 18. The Hawaii Revised Statutes is amended by  
5 adding a new chapter to be appropriately designated and to read  
6 as follows:

7 "CHAPTER

8 HYDRAULIC FRACTURING

9 § -1 **Definitions.** As used in this chapter, unless the  
10 context otherwise requires:

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

12 "Fluid" means any material or substance that flows or moves  
13 whether in semi-solid, liquid, sludge, gas, or any other form or  
14 state.

15 "Hydraulic fracturing" means a drilling operation into an  
16 underground geologic formation and the injection of fluids,  
17 gases, chemicals, sand, or any other substance with the  
18 intention to cause or enhance fractures in the geologic  
19 formation for the purpose of instigating or increasing the  
20 porosity or permeability of the geologic formation to initiate  
21 or increase the production of a desired commodity from a well;  
22 provided that this term shall not include a drilling operation



1 into an underground geologic formation for the purpose of  
2 obtaining drinking water. Hydraulic fracturing is also known as  
3 "fracking", "hydro-fracking", "hydro-fracturing", "hydro-  
4 shearing", "hydraulic shearing", "hydro-stimulation", or  
5 "enhanced geothermal drilling".

6       **§ -2 Hydraulic fracturing; prohibited.** (a) It shall be  
7 unlawful for any person, corporation, or other business entity  
8 to engage in hydraulic fracturing within the State.

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

13       **§ -3 Penalty; injunction.** Any person, corporation, or  
14 other entity that violates section -2 shall be fined not more  
15 than \$100,000 for every violation.

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

19 The penalty and remedy provided by this section shall be in  
20 addition to any criminal or civil penalty provided by any other  
21 law.



1           **§ -4 Enforcement.** The board or its authorized  
2 representative may charge and collect the fines set forth  
3 pursuant to section -3 and bring legal action to enjoin  
4 conduct prohibited by this chapter."

5           SECTION 19. This part does not affect rights and duties  
6 that matured, penalties that were incurred, and proceedings that  
7 were begun before its effective date.

8   PART III

9           SECTION 20. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11          SECTION 21. This Act shall take effect on July 1, 2014;  
12 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. (SB2663 HD2)

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

