
A BILL FOR AN ACT

RELATING TO NATURAL RESOURCES.

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

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

4 "§182- Penalties, fees, and costs collected. All
5 penalties, fees, and costs established and collected by the
6 department pursuant to this chapter shall be deposited in the
7 special land and development fund established under section
8 171-19."

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

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



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

3 (b) If geothermal resources development is proposed within
4 a conservation district in an application containing all
5 required data, the board shall conduct a public hearing and,
6 upon appropriate request for mediation from any party who
7 submitted written comments at the public hearing, the board
8 shall appoint a mediator within fourteen days. The board shall
9 require the parties to participate in mediation. The mediator
10 shall not be a member of the board or its staff. The mediation
11 period shall not extend beyond sixty days after the date
12 mediation starts, except by order of the board. Mediation shall
13 be confined to the issues raised at the public hearing by the
14 party requesting mediation.

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



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

5 (1) The desired uses would not:

6 (A) Have unreasonable adverse health, environmental,
7 or socio-economic effects on residents or
8 surrounding property; and

9 (B) Impose an unreasonable burden on public agencies
10 to provide roads and streets, sewers, water,
11 drainage, and police and fire protection; or

12 (2) Despite the unreasonable adverse effects or burdens
13 referred to in paragraph (1) (A) or (B), there are
14 reasonable measures available to mitigate the
15 unreasonable adverse effects or burdens, which the
16 board may prescribe as conditions for the proposed
17 geothermal resources development.

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



1 geothermal resources development in support of its findings,
2 except to the extent that the department of health and other
3 state and federal agencies have jurisdiction to regulate the
4 activities.

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



1 a second public hearing to receive additional comments related
2 to the unresolved mediation issues. Within ten days after the
3 second public hearing, the appropriate county authority may
4 receive additional written comments on the unresolved issues
5 raised at the second public hearing from any party.

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

14 (1) The desired uses would not:

15 (A) Have unreasonable adverse health, environmental,
16 or socio-economic effects on residents or
17 surrounding property; and

18 (B) Impose an unreasonable burden on public agencies
19 to provide roads and streets, sewers, water,
20 drainage, school improvements, and police and
21 fire protection; or



1 (2) Despite the unreasonable adverse effects or burdens
2 referred to in paragraph (1) (A) or (B), there are
3 reasonable measures available to mitigate the
4 unreasonable adverse effects or burdens, which the
5 county authority may prescribe as conditions for the
6 proposed geothermal resources development.

7 A decision shall be made on the application by the
8 appropriate county authority within six months of the date a
9 complete application is filed; provided that the time limit may
10 be extended by agreement between the applicant and the
11 appropriate county authority. The appropriate county authority
12 shall have exclusive authority to impose reasonable restrictions
13 and conditions upon the geothermal resources development in
14 support of its findings, except to the extent that the
15 department of health and other federal and state agencies have
16 jurisdiction to regulate the activities.

17 (d) Requests for mediation shall be received by the board
18 or appropriate county authority within five days after the close
19 of the initial public hearing. Any person submitting an
20 appropriate request for mediation shall be notified by the board
21 or appropriate county authority of the date, time, and place of
22 the mediation conference. The board or county authority shall



1 deposit the notice in the mail to the return address stated on
2 the request for mediation. The notice shall be mailed no later
3 than ten days before the start of the mediation conference. The
4 conference shall be held on the island where the public hearing
5 is held.

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

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

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



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

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

5 (4) Written transcripts of the proceedings at the public
6 hearings;

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

9 (6) The written decision of the agency issued in
10 connection with the application and public hearings;
11 and

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

14 (g) For purposes of this section:

15 "Appropriate county authority" means the county planning
16 commission or, if applicable, the respective county agency or
17 body designated by county charter or ordinance to issue
18 development permits.

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

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



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

- 3 (1) Any producer or developer of electrical or thermal
4 energy produced by wind, solar energy, hydropower,
5 geothermal resources, landfill gas, waste-to-energy,
6 ocean thermal energy conversion, cold seawater, wave
7 energy, biomass, including municipal solid waste,
8 biofuels or fuels derived from organic sources,
9 hydrogen fuels derived primarily from renewable
10 energy, or fuel cells where the fuel is derived
11 primarily from renewable sources that sell all of the
12 net power produced from the demised premises to an
13 electric utility company regulated under chapter 269
14 or that sells all of the thermal energy it produces to
15 customers of district cooling systems; provided that
16 up to twenty-five per cent of the power produced by a
17 renewable energy producer and sold to the utility or
18 to district cooling system customers may be derived
19 from fossil fuels; or
- 20 (2) Any grower or producer of plant or animal materials
21 used primarily for the production of biofuels or other
22 fuels; provided that nothing herein is intended to



1 prevent the waste product or byproduct of the plant or
2 animal material grown or produced for the production
3 of biofuel, other fuels, electrical energy, or thermal
4 energy, from being used for other useful purposes."

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

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

9 "Department" means the department of land and natural
10 resources."

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

13 "Geothermal resources" means the natural heat of the
14 earth, the energy, in whatever form, below the surface of the
15 earth present in, resulting from, or created by, or ~~which~~ that
16 may be extracted from, ~~such~~ the natural heat, and all minerals
17 in solution or other products obtained from naturally heated
18 fluids, brines, associated gases, and steam, in whatever form,
19 found below the surface of the earth, but excluding oil,
20 hydrocarbon gas, or other hydrocarbon substances~~[, and any~~
21 water, mineral in solution, or other product obtained from
22 naturally heated fluids, brines, associated gases, and steam, in



1 ~~whatever form, found below the surface of the earth, having a~~
2 ~~temperature of 150 degrees Fahrenheit or less, and not used for~~
3 ~~electrical power generation].~~

4 "Geothermal resources exploration" means either of the
5 following:

6 (1) Conducting non-invasive geophysical operations,
7 including geochemical operations, remote sensing, and
8 other similar techniques; or

9 (2) Drilling exploration wells for, but not limited to,
10 the extraction and removal of minerals of types and
11 quantities;

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

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

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



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

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

19 "**§182-4 Mining leases on state lands.** (a) If any mineral
20 is discovered or known to exist on state lands, any interested
21 person may notify the board [~~of land and natural resources~~] of
22 the person's desire to apply for a mining lease. The notice



1 shall be accompanied by [~~a fee of \$100~~] the required fees as
2 established by the department, together with a description of
3 the land desired to be leased [~~and~~], the minerals involved, and
4 any information and maps that the board by rule may prescribe.
5 As soon as practicable thereafter, the board shall cause a
6 public notice to be given in the county where the lands are
7 located, at least once in each of three successive weeks,
8 setting forth the description of the land, and the minerals
9 desired to be leased. The board may hold the public auction of
10 the mining lease within six months from the date of the first
11 notice or any further time that may be reasonably necessary.
12 Whether or not the state land sought to be auctioned is then
13 being utilized or put to some productive use, the board, after
14 due notice of public hearing to all parties in interest, within
15 six weeks from the date of the first notice or any further time
16 that may be reasonably necessary, shall determine whether the
17 proposed mining operation or the existing or reasonably
18 foreseeable future use of the land would be of greater benefit
19 to the State. If the board determines that the existing or
20 reasonably foreseeable future use would be of greater benefit to
21 the State than the proposed mining use of the land, it shall
22 disapprove the application for a mining lease of the land



1 without putting the land to auction. The board shall determine
2 the area to be offered for lease and, after due notice of public
3 hearing to all parties in interest, may modify the boundaries of
4 the land areas. At least thirty days prior to the holding of
5 any public auction, the board shall cause a public notice to be
6 given in the State at least once in each of three successive
7 weeks, setting forth the description of the land, the minerals
8 to be leased, and the time and place of the auction. Bidders at
9 the public auction may be required to bid on the amount of
10 annual rental to be paid for the term of the mining lease based
11 on an upset price fixed by the board, a royalty based on the
12 gross proceeds or net profits, cash bonus, or any combination or
13 other basis and under any terms and conditions that may be set
14 by the board.

15 (b) Any provisions to the contrary notwithstanding, if the
16 person who discovers the mineral discovers it as a result of
17 exploration permitted under section 182-6, and if that person
18 bids at the public auction on the mining lease for the right to
19 mine the discovered mineral and is unsuccessful in obtaining
20 such lease, that person shall be reimbursed by the person
21 submitting the highest successful bid at public auction for the
22 direct or indirect costs incurred in the exploration of the



1 land, excluding salaries, ~~[attorneys]~~ attorney's fees, and legal
2 expenses. The department ~~[shall have the authority to]~~ may
3 review and approve all expenses and costs that may be
4 reimbursed.

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

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

16 "**§182-5 Mining leases on reserved lands.** If any mineral
17 is discovered or known to exist on reserved lands, any
18 interested person may notify the board ~~[of land and natural~~
19 ~~resources]~~ of the person's desire to apply for a mining lease.
20 The notice shall be accompanied by ~~[a fee of \$100]~~ the required
21 fees, as established by the department, together with a
22 description of the land desired to be leased and the minerals



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



1 lease granting to the lessee the right to exploit minerals
2 reserved to the State."

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

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



1 This section shall be construed as authorizing the board to
2 issue an exploration permit for geothermal resources as well as
3 minerals."

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

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

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

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

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



1 Any interested party may~~[, however,]~~ request that a mining
2 lease contain a research period under which the lessees shall be
3 required to expend money in research and development to
4 establish a method to make economical the mining and processing
5 of the ~~[mineral deposits contained]~~ minerals identified in the
6 lease. If the board determines that the research period would
7 be beneficial, it shall fix the period of research and shall
8 also fix a minimum expenditure for labor performed or money
9 spent by the lessee ~~[in]~~ on research and development and the
10 method by which the lessee shall establish that such expenditure
11 in fact be made. In ~~[such]~~ these leases, the obligation to
12 commence mining operations within three years shall not commence
13 until the expiration of the research period.

14 (e) For the period of the lease the lessee shall have the
15 exclusive right of possession of the minerals leased and the
16 exclusive rights to mine and remove the minerals by means
17 ~~[which]~~ that shall be reasonable and satisfactory to the board
18 and to occupy and use so much of the surface of the land as may
19 reasonably be required, subject to the provisions of section
20 182-3. The right to use the surface shall include the right to
21 erect transportation facilities thereon, construct plants for
22 beneficiating, drying, and processing the minerals for electric



1 power generation and transmission and [~~such~~] other uses as may
2 be approved by the board. The other uses may include but need
3 not be limited to uses necessary or convenient to the [winning
4 and] processing of the minerals; provided that the lessee shall
5 comply with all water and air pollution control laws, and rules
6 of the State or its political subdivisions.

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

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

17 "**§182-9 Deposit; first year's rental.** All bidders
18 [~~shall~~], prior to the date of public auction, shall post with
19 the board [~~of land and natural resources a deposit of \$500.~~] the
20 required deposit, as established by the department. The board
21 shall refund to unsuccessful bidders [~~such~~] the amount within
22 two days after the auction. All bidders, prior to the auction,



1 shall satisfy the board of their financial ability to conduct
2 mining operations and of their capability to develop a mine.
3 The successful bidder shall pay to the board the amount of the
4 first year's rental within two days after the acceptance of the
5 bid by the board and the [~~\$500 deposit~~] required deposit, as
6 established by the department, shall be credited against [~~such~~]
7 the sum. If the deposit exceeds the first year's rental, the
8 excess shall be refunded. All rentals thereafter are payable in
9 advance once a year."

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

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



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

3 "~~§182-14 Rules [and regulations]~~. Subject to chapter 91,
4 the board [~~of land and natural resources~~] may [~~make, promulgate~~]
5 adopt and amend [~~such~~] rules [~~and regulations~~] as it deems
6 necessary to carry out this chapter and to perform its duties
7 thereunder, all commensurate with and for the purpose of
8 protecting the public interest. All [~~such~~] rules [~~and~~
9 ~~regulations~~] shall have the force and effect of law."

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

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



1 There shall be a fine of not more than [~~\$500~~] \$5,000 for each
2 additional violation.

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

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

8 (1) Set, charge, and collect administrative fines or bring
9 legal action to recover administrative fees and costs
10 as documented by receipts or affidavit, including
11 attorney's fees and costs; and

12 (2) Bring legal action to recover administrative fines,
13 fees, and costs, including attorney's fees and costs,
14 or payment for damages resulting from a violation of
15 this chapter or any rule adopted pursuant to this
16 chapter."

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

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



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

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



1 lots or small farms by reason of topography, soils, and other
2 related characteristics. Rural districts shall also include
3 golf courses, golf driving ranges, and golf-related facilities.

4 In addition to the uses listed in this subsection, rural
5 districts shall include geothermal resources exploration and
6 geothermal resources development, as defined under section
7 182-1, as permissible uses[-]; provided that a geothermal
8 resource permit may be required for geothermal resources
9 development in accordance with section 205- .

10 (d) [~~Agricultural~~] Permissible uses in agricultural
11 districts shall include:

- 12 (1) Activities or uses as characterized by the cultivation
13 of crops, crops for bioenergy, orchards, forage, and
14 forestry;
- 15 (2) Farming activities or uses related to animal husbandry
16 and game and fish propagation;
- 17 (3) Aquaculture, which means the production of aquatic
18 plant and animal life within ponds and other bodies of
19 water;
- 20 (4) Wind generated energy production for public, private,
21 and commercial use;



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



1 scale renewable energy systems producing energy solely
2 for use in the agricultural activities of the fee or
3 leasehold owner of the property, agricultural-energy
4 facilities as defined in section 205-4.5(a)(17),
5 vehicle and equipment storage areas, and plantation
6 community subdivisions as defined in section
7 205-4.5(a)(12);

8 (8) Wind machines and wind farms;
9 (9) Small-scale meteorological, air quality, noise, and
10 other scientific and environmental data collection and
11 monitoring facilities occupying less than one-half
12 acre of land; provided that these facilities shall not
13 be used as or equipped for use as living quarters or
14 dwellings;

15 (10) Agricultural parks;

16 (11) Agricultural tourism conducted on a working farm, or a
17 farming operation as defined in section 165-2, for the
18 enjoyment, education, or involvement of visitors;
19 provided that the agricultural tourism activity is
20 accessory and secondary to the principal agricultural
21 use and does not interfere with surrounding farm
22 operations; and provided further that this paragraph



1 shall apply only to a county that has adopted
2 ordinances regulating agricultural tourism under
3 section 205-5;

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

15 (13) Open area recreational facilities;

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

21 [†](15)[†] Agricultural-based commercial operations, including:



- 1 (A) A roadside stand that is not an enclosed
2 structure, owned and operated by a producer for
3 the display and sale of agricultural products
4 grown in Hawaii and value-added products that
5 were produced using agricultural products grown
6 in Hawaii;
 - 7 (B) Retail activities in an enclosed structure owned
8 and operated by a producer for the display and
9 sale of agricultural products grown in Hawaii,
10 value-added products that were produced using
11 agricultural products grown in Hawaii, logo items
12 related to the producer's agricultural
13 operations, and other food items; and
 - 14 (C) A retail food establishment owned and operated by
15 a producer and permitted under [‡]title 11, [‡]
16 chapter 12 of the rules of the department of
17 health that prepares and serves food at retail
18 using products grown in Hawaii and value-added
19 products that were produced using agricultural
20 products grown in Hawaii.
- 21 The owner of an agricultural-based commercial
22 operation shall certify, upon request of an officer or



1 agent charged with enforcement of this chapter under
2 section 205-12, that the agricultural products
3 displayed or sold by the operation meet the
4 requirements of this paragraph.

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

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

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

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

16 (1) Cultivation of crops, including crops for bioenergy,
17 flowers, vegetables, foliage, fruits, forage, and
18 timber;

19 (2) Game and fish propagation;

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



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



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



1 pineapple plantation; provided that the existing
2 structures may be used or rehabilitated for use, and
3 new employee housing and agricultural support
4 buildings may be allowed on land within the
5 subdivision as follows:

6 (A) The employee housing is occupied by employees or
7 former employees of the plantation who have a
8 property interest in the land;

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

12 (C) The agricultural support buildings shall be
13 rented or leased to agricultural business
14 operators or agricultural support services;

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



1 ordinances regulating agricultural tourism under
2 section 205-5;

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

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

20 (16) Biofuel processing facilities, including the
21 appurtenances associated with the production and
22 refining of biofuels that is normally considered



1 directly accessory and secondary to the growing of the
2 energy feedstock; provided that biofuel processing
3 facilities and appurtenances do not adversely impact
4 agricultural land and other agricultural uses in the
5 vicinity.

6 For the purposes of this paragraph:

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

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

19 (17) Agricultural-energy facilities, including
20 appurtenances necessary for an agricultural-energy
21 enterprise; provided that the primary activity of the
22 agricultural-energy enterprise is agricultural



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

9 As used in this paragraph:

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

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

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



1 "Appurtenances" means operational infrastructure
2 of the appropriate type and scale for the economic
3 commercial generation, storage, distribution, and
4 other similar handling of energy, including equipment,
5 feedstock, fuels, and other products of agricultural-
6 energy facilities;

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

19 (19) Agricultural education programs conducted on a farming
20 operation as defined in section 165-2, for the
21 education and participation of the general public;
22 provided that the agricultural education programs are



1 accessory and secondary to the principal agricultural
2 use of the parcels or lots on which the agricultural
3 education programs are to occur and do not interfere
4 with surrounding farm operations. For the purposes of
5 this section, "agricultural education programs" means
6 activities or events designed to promote knowledge and
7 understanding of agricultural activities and practices
8 conducted on a farming operation as defined in section
9 165-2;

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

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



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

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

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

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

21 SECTION 17. Sections 182-3(a), 182-11, 182-13, and 182-15,
22 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 SECTION 18. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 19. This Act shall take effect on July 1, 2050.



Report Title:

BLNR; Mineral Resources; Geothermal Resources

Description:

Establishes a framework to regulate geothermal resources development through a permitting process administered by the BLNR and the appropriate county authority. Requires penalties, fees, and costs collected pursuant to chapter 182, HRS, to be deposited into the special land and development fund. Effective 7/1/2050. (SD2)

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

