

JAN 17 2014

A BILL FOR AN ACT

RELATING TO NATURAL RESOURCES.

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

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

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

9 SECTION 2. Section 171-95, Hawaii Revised Statutes, is
10 amended by amending subsection (c) to read as follows:

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

13 (1) Any producer or developer of electrical or thermal
14 energy produced by wind, solar energy, hydropower,
15 geothermal resources, landfill gas, waste-to-energy,
16 ocean thermal energy conversion, cold seawater, wave
17 energy, biomass, including municipal solid waste,
18 biofuels or fuels derived from organic sources,



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

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

19 SECTION 3. Section 182-1, Hawaii Revised Statutes, is
20 amended as follows:

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



1 "Department" means the department of land and natural
2 resources."

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

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

18 "Geothermal resources exploration" means either of the
19 following:

- 20 (1) Conducting non-invasive geophysical operations,
21 including geochemical operations, remote sensing, and
22 other similar techniques; or



1 (2) Drilling exploration wells for, but not limited to,
2 the extraction and removal of minerals of types and
3 quantities;
4 that are reasonably required for testing and analysis to provide
5 ground truth or determine the economic viability of geothermal
6 resources. The term does not include "geothermal resources
7 development".

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

13 SECTION 4. Section 182-2, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) All minerals in, on, or under state lands or reserved
16 lands [~~which hereafter become state lands~~] are reserved to the
17 State; provided that the board [~~of land and natural resources~~]
18 may release, cancel, or waive the reservation whenever it deems
19 the land use, other than mining, is of greater benefit to the
20 State as provided for in section 182-4. Such minerals are
21 reserved from sale or lease except as provided in this chapter.
22 A purchaser or lessee of any such lands shall acquire no right,



1 title, or interest in or to the minerals. The right of the
2 purchaser or lessee shall be subject to the reservation of all
3 the minerals and to the conditions and limitations prescribed by
4 law providing for the State and persons authorized by it to
5 prospect for, mine, and remove the minerals, and to occupy and
6 use so much of the surface of the land as may be required for
7 all purposes reasonably extending to the mining and removal of
8 the minerals therefrom by any means whatsoever."

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

11 **"§182-4 Mining leases on state lands.** (a) If any mineral
12 is discovered or known to exist on state lands, any interested
13 person may notify the board [~~of land and natural resources~~] of
14 the person's desire to apply for a mining lease. The notice
15 shall be accompanied by [~~a fee of \$100~~] the required fees, as
16 established by the department, together with a description of
17 the land desired to be leased [~~and~~], the minerals involved, and
18 any information and maps that the board by rule may prescribe.
19 As soon as practicable thereafter, the board shall cause a
20 public notice to be given in the county where the lands are
21 located, at least once in each of three successive weeks,
22 setting forth the description of the land, and the minerals



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



1 the public auction may be required to bid on the amount of
2 annual rental to be paid for the term of the mining lease based
3 on an upset price fixed by the board, a royalty based on the
4 gross proceeds or net profits, cash bonus, or any combination or
5 other basis and under any terms and conditions that may be set
6 by the board.

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

18 (c) Any proposed mining operations to be undertaken by a
19 renewable energy producer, as defined in section 171-95, shall
20 require an application to the board for a mining lease on state
21 lands. Any provisions to the contrary notwithstanding, such
22 application for a mining lease on state lands may be granted by



1 the board in accordance with this section, or the board may, by
2 the vote of two-thirds of the members to which the board is
3 entitled, grant a mining lease to the renewable energy producer
4 without public auction."

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

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



1 assignee may be granted a mining lease. Any provisions to the
2 contrary notwithstanding, if the board decides that it is
3 appropriate to grant a geothermal mining lease on the reserved
4 lands, the surface owner or the owner's assignee shall have the
5 first right of refusal for a mining lease. If the occupier or
6 the occupier's assignee of the right to obtain a mining lease
7 should fail to apply for a mining lease within six months from
8 the date of notice from the board of a finding by the board that
9 it is in the public interest that the minerals on the reserved
10 lands be mined, a mining lease shall be granted under section
11 182-4; provided that bidders at the public auction shall bid on
12 an amount to be paid to the State for a mining lease granting to
13 the lessee the right to exploit minerals reserved to the State."

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

16 "**§182-6 Exploration.** Any person wishing to conduct
17 geothermal resources exploration on state or reserved lands
18 shall apply to the board [~~of land and natural resources who~~],
19 which shall issue exploration permits upon terms and conditions
20 as it shall by [~~regulation~~] rule prescribe. During and as a
21 result of the exploration, no minerals of such types and
22 quantity beyond that reasonably required for testing and



1 analysis shall be extracted and removed from such state lands[~~-~~]
2 or reserved lands. Upon termination of the exploration permit,
3 all exploration data, including the drill logs and the results
4 of the assays resulting from the geothermal resources
5 exploration, shall be turned over to the board and kept
6 confidential by the board. If the person shall not make
7 application for a mining lease of the lands within a period of
8 six months from the date the information is turned over to the
9 board, the board in its discretion need not keep the information
10 confidential.

11 This section shall be construed as authorizing the board to
12 issue an exploration permit for geothermal resources as well as
13 minerals."

14 SECTION 8. Section 182-7, Hawaii Revised Statutes, is
15 amended as follows:

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

17 "(a) Prior to the public auction contemplated in section
18 182-4 or 182-5, or the granting of mining lease without public
19 auction contemplated in section 182-4 or 182-5, the board [~~of~~
20 ~~land and natural resources~~] shall cause a mining lease for the
21 land in question to be drawn. The lease shall describe the land
22 and shall contain, in addition to such other provisions which



1 the board may deem appropriate, specific provisions as provided
2 in this section."

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

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

11 Any interested party may, however, request that a mining
12 lease contain a research period under which the lessees shall be
13 required to expend money in research and development to
14 establish a method to make economical the mining and processing
15 of the [~~mineral deposits contained~~] minerals identified in the
16 lease. If the board determines that the research period would
17 be beneficial, it shall fix the period of research and shall
18 also fix a minimum expenditure for labor performed or money
19 spent by the lessee [~~in~~] on research and development and the
20 method by which the lessee shall establish that such expenditure
21 in fact be made. In such leases, the obligation to commence



1 mining operations within three years shall not commence until
2 the expiration of the research period.

3 (e) For the period of the lease the lessee shall have the
4 exclusive right of possession of the minerals leased and the
5 exclusive rights to mine and remove the minerals by means which
6 shall be reasonable and satisfactory to the board and to occupy
7 and use so much of the surface of the land as may reasonably be
8 required, subject to the provisions of section 182-3. The right
9 to use the surface shall include the right to erect
10 transportation facilities thereon, construct plants for
11 beneficiating, drying, and processing the minerals for electric
12 power generation and transmission and such other uses as may be
13 approved by the board. Such other uses may include uses
14 necessary or convenient to the [~~winning and~~] processing of the
15 minerals; provided that the lessee shall comply with all water
16 and air pollution control laws, and rules of the State or its
17 political subdivisions.

18 (f) The lessee may retain all minerals separated from the
19 land as a part of the process of mining the minerals specified
20 in the mining lease; provided that the lease may prescribe the
21 accounting and testing procedures by which the amount and
22 quality of such additional materials shall be determined for the



1 purpose of computing the excise tax thereon[~~-~~] and applicable
2 royalty that may be set by the board for the use of such
3 minerals."

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

6 **"§182-9 Deposit; first year's rental.** All bidders shall,
7 prior to the date of public auction, post with the board [~~of~~
8 ~~land and natural resources a deposit of \$500-~~] the required
9 deposit, as established by the department. The board shall
10 refund to unsuccessful bidders such amount within two days after
11 the auction. All bidders, prior to the auction, shall satisfy
12 the board of their financial ability to conduct mining
13 operations and of their capability to develop a mine. The
14 successful bidder shall pay to the board the amount of the first
15 year's rental within two days after the acceptance of the bid by
16 the board and the [~~\$500 deposit~~] required deposit, as
17 established by the department, shall be credited against such
18 sum. If the deposit exceeds the first year's rental, the excess
19 shall be refunded. All rentals thereafter are payable in
20 advance once a year."

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



1 **"§182-10 Revocation of mining leases.** A mining lease may
2 be revoked if the lessee fails to pay rentals when due or if any
3 of the terms of the lease or of law are not complied with, or if
4 the lessee wholly ceases all mining operations for other than
5 reasons of force majeure or the uneconomic operation of the
6 mining lease for a period of one year without the written
7 consent of the board [~~of land and natural resources~~]; provided
8 that the board shall give the lessee notice of any default and
9 the lessee shall have six months or such other time limit as
10 provided by the rules [~~and regulations~~] from the date of the
11 notice to remedy the default."

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

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

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



1 "~~+~~§182-17~~+~~ **Penalty for violation.** (a) Any person who
2 violates any provision of this chapter, or any ~~[regulation]~~ rule
3 adopted pursuant hereto~~[, shall be fined not more than \$500 for~~
4 ~~each offense.]~~ to this chapter may be subject to a fine imposed
5 by the board. Such fine shall not exceed \$5,000 per violation.

6 If any person after receiving written notice for a violation
7 fails to cure such violation within such time and under such
8 conditions as determined by ~~[the rules and regulations,]~~ the
9 board, such person shall be subject to a citation for a new and
10 separate violation. There shall be a fine of not more than
11 ~~[\$500]~~ \$5,000 for each additional violation.

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

15 (c) Except as otherwise provided by law, the board or its
16 authorized representative by proper delegation may set, charge,
17 and collect administrative fines or bring legal action to
18 recover administrative fees and costs as documented by receipts
19 or affidavit, including attorney's fees and costs; or bring
20 legal action to recover administrative fines, fees, and costs,
21 including attorney's fees and costs, or payment for damages



1 resulting from a violation of this chapter or any rule adopted
2 pursuant to this chapter."

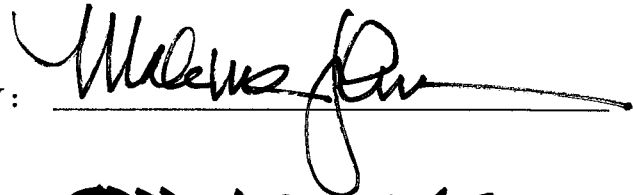
3 SECTION 13. Sections 182-3(a), 182-11, 182-13, and 182-15,
4 Hawaii Revised Statutes, are amended by substituting the word
5 "board" wherever the phrase "board of land and natural
6 resources" appears, as the context requires.

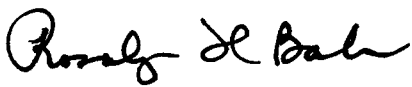
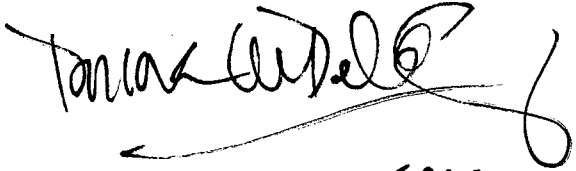

7 SECTION 14. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

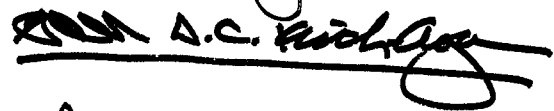
9 SECTION 15. This Act shall take effect upon its approval.

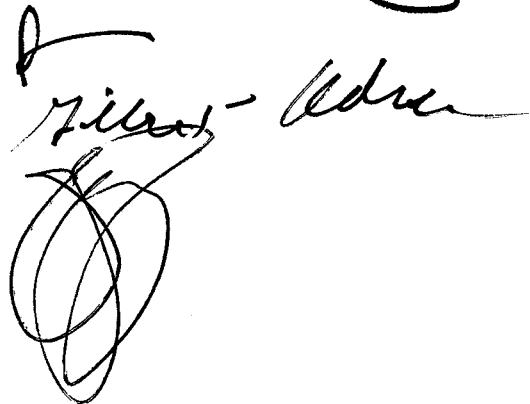
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INTRODUCED BY:



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Report Title:

Energy Resources; Natural Resources

Description:

Promotes renewable energy in Hawaii by: (1) providing that all penalties, fees, and costs established and collected by the Department of Land and Natural Resources pursuant to Chapter 182, Hawaii Revised Statutes, be deposited in the Special Land and Development Fund; (2) including geothermal resources within the definition of a renewable energy producer; and (3) clarifying the permitting procedures for regulators and renewable energy developers considering geothermal development.

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

