
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 171-19, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) There is created in the department a special fund to
12 be designated as the "special land and development fund".
13 Subject to the Hawaiian Homes Commission Act of 1920, as
14 amended, and section 5(f) of the Admission Act of 1959, all
15 proceeds of sale of public lands, including interest on deferred
16 payments; all moneys collected under section 171-58 for mineral
17 and water rights; all rents from leases, licenses, and permits
18 derived from public lands; all moneys collected from lessees of



1 public lands within industrial parks; all fees, fines, and other
2 administrative charges collected under this chapter and chapter
3 183C; a portion of the highway fuel tax collected under chapter
4 243; all moneys collected by the department for the commercial
5 use of public trails and trail accesses under the jurisdiction
6 of the department; transient accommodations tax revenues
7 collected pursuant to section 237D-6.5(b)(2); all penalties,
8 fees, and costs collected for government mineral rights pursuant
9 to section 182- ; and private contributions for the
10 management, maintenance, and development of trails and accesses
11 shall be set apart in the fund and shall be used only as
12 authorized by the legislature for the following purposes:

- 13 (1) To reimburse the general fund of the State for
14 advances made that are required to be reimbursed from
15 the proceeds derived from sales, leases, licenses, or
16 permits of public lands;
- 17 (2) For the planning, development, management, operations,
18 or maintenance of all lands and improvements under the
19 control and management of the board, including but not
20 limited to permanent or temporary staff positions who
21 may be appointed without regard to chapter 76;



- 1 (3) To repurchase any land, including improvements, in the
2 exercise by the board of any right of repurchase
3 specifically reserved in any patent, deed, lease, or
4 other documents or as provided by law;
- 5 (4) For the payment of all appraisal fees; provided that
6 all fees reimbursed to the board shall be deposited in
7 the fund;
- 8 (5) For the payment of publication notices as required
9 under this chapter; provided that all or a portion of
10 the expenditures may be charged to the purchaser or
11 lessee of public lands or any interest therein under
12 rules adopted by the board;
- 13 (6) For the management, maintenance, and development of
14 trails and trail accesses under the jurisdiction of
15 the department;
- 16 (7) For the payment to private land developers who have
17 contracted with the board for development of public
18 lands under section 171-60;
- 19 (8) For the payment of debt service on revenue bonds
20 issued by the department, and the establishment of
21 debt service and other reserves deemed necessary by
22 the board;



1 (9) To reimburse the general fund for debt service on
2 general obligation bonds issued to finance
3 departmental projects, where the bonds are designated
4 to be reimbursed from the special land and development
5 fund;

6 (10) For the protection, planning, management, and
7 regulation of water resources under chapter 174C; and

8 (11) For other purposes of this chapter."

9 SECTION 3. 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,
19 hydrogen fuels derived primarily from renewable
20 energy, or fuel cells where the fuel is derived
21 primarily from renewable sources that sell all of the
22 net power produced from the demised premises to an



1 electric utility company regulated under chapter 269
2 or that sells all of the thermal energy it produces to
3 customers of district cooling systems; provided that
4 up to twenty-five per cent of the power produced by a
5 renewable energy producer and sold to the utility or
6 to district cooling system customers may be derived
7 from fossil fuels; or

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

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

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

19 "Department" means the department of land and natural
20 resources."

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



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

14 "Geothermal resources exploration" means either of the
15 following:

- 16 (1) Conducting non-invasive geophysical operations,
17 including geochemical operations, remote sensing, and
18 other similar techniques; or
- 19 (2) Drilling exploration wells for, but not limited to,
20 the extraction and removal of minerals of types and
21 quantities [~~+~~],



1 that are reasonably required for testing and analysis to provide
2 ground truth or determine the economic viability of geothermal
3 resources. The term does not include "geothermal resources
4 development".

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

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

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



1 law providing for the State and persons authorized by it to
2 prospect for, mine, and remove the minerals, and to occupy and
3 use so much of the surface of the land as may be required for
4 all purposes reasonably extending to the mining and removal of
5 the minerals therefrom by any means whatsoever."

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

8 "**§182-4 Mining leases on state lands.** (a) If any mineral
9 is discovered or known to exist on state lands, any interested
10 person may notify the board [~~of land and natural resources~~] of
11 the person's desire to apply for a mining lease. The notice
12 shall be accompanied by [~~a fee of \$100~~] the required fees, as
13 established by the department, together with a description of
14 the land desired to be leased [~~and~~], the minerals involved, and
15 any information and maps that the board by rule may prescribe.
16 As soon as practicable thereafter, the board shall cause a
17 public notice to be given in the county where the lands are
18 located, at least once in each of three successive weeks,
19 setting forth the description of the land, and the minerals
20 desired to be leased. The board may hold the public auction of
21 the mining lease within six months from the date of the first
22 notice or any further time that may be reasonably necessary.



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



1 gross proceeds or net profits, cash bonus, or any combination or
2 other basis and under any terms and conditions that may be set
3 by the board.

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

16 (c) Any proposed mining operations to be undertaken by a
17 renewable energy producer, as defined in section 171-95(c),
18 shall require an application to the board for a mining lease on
19 state lands. Any provisions to the contrary notwithstanding, an
20 application for a mining lease on state lands may be granted by
21 the board in accordance with this section, or the board, by the
22 vote of two-thirds of the members to which the board is



1 entitled, may grant a mining lease to the renewable energy
2 producer without public auction."

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

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



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

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

15 "**§182-6 Exploration.** Any person wishing to conduct
 16 geothermal resources and mineral exploration on state or
 17 reserved lands shall apply to the board [~~of land and natural~~
 18 ~~resources who~~], which shall issue exploration permits upon terms
 19 and conditions as it shall by [~~regulation~~] rule prescribe.

20 During and as a result of the exploration, no minerals of [~~such~~]
 21 types and quantity beyond that reasonably required for testing
 22 and analysis shall be extracted and removed from [~~such~~] state



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

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

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

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

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



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

3 2. By amending subsections (d) through (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
9 on 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~~] the
21 expenditure in fact be made. In [~~such~~] these leases, the



1 obligation to commence mining operations within three years
2 shall not commence until 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
6 [~~which~~] that shall be reasonable and satisfactory to the board
7 and to occupy and use so much of the surface of the land as may
8 reasonably be required, subject to the provisions of section
9 182-3. The right to use the surface shall include the right to
10 erect 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
13 be approved by the board. Other uses may include uses necessary
14 or convenient to the [~~winning and~~] processing of the minerals;
15 provided that the lessee shall comply with all water and air
16 pollution control laws, and rules of the State or its political
17 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~~] the additional materials shall be determined



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

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

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

21 SECTION 11. 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 12. 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~~] that 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 13. Section 182-17, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "~~[f]§182-17[f]~~ **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. The fine shall not exceed \$5,000 per violation.
6 If any person after receiving written notice for a violation
7 fails to cure ~~[such]~~ the violation within ~~[such]~~ the time and
8 under ~~[such]~~ the conditions as determined by ~~[the rules and~~
9 ~~regulations, such]~~ the board, the person shall be subject to a
10 citation for a new and separate violation. There shall be a
11 fine of not more than [~~\$500~~] \$5,000 for each additional
12 violation.

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

16 (c) Except as otherwise provided by law, the board or its
17 authorized representative by proper delegation may set, charge,
18 and collect administrative fines or bring legal action to
19 recover administrative fees and costs as documented by receipts
20 or affidavit, including attorney's fees and costs; or bring
21 legal action to recover administrative fines, fees, and costs,
22 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 14. 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 15. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 16. This Act shall take effect on July 1, 2050.



Report Title:

Energy Resources; Natural Resources

Description:

Requires that all penalties, fees, and costs established and collected by the DLNR pursuant to chapter 182, HRS, be deposited in the special land and development fund. Includes geothermal resources within the definition of a renewable energy producer. Clarifies the permitting procedures for regulators and renewable energy developers considering geothermal development. Effective 7/1/2050. (SD2)

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