

JAN 18 2013

S.B. NO. 371

A BILL FOR AN ACT

RELATING TO GEOTHERMAL RESOURCES.

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

1 SECTION 1. Chapter 205, Hawaii Revised Statutes, is
2 amended by adding three new sections to be appropriately
3 designated and to read as follows:
4 "§205-A Geothermal resource subzones. (a) Geothermal
5 resource subzones may be designated within the urban, rural,
6 agricultural, and conservation land use districts established
7 under section 205-2. Only those areas designated as geothermal
8 resource subzones may be utilized for geothermal development
9 activities in addition to those uses permitted in each land use
10 district under this chapter. Geothermal development activities
11 may be permitted within urban, rural, agricultural, and
12 conservation land use districts in accordance with this chapter.
13 "Geothermal development activities" means the exploration,
14 development, or production of electrical energy from geothermal
15 resources and direct use applications of geothermal resources;
16 provided that within the urban, rural, and agricultural land use
17 districts, direct use applications of geothermal resources are
18 permitted both within and outside of areas designated as



1 geothermal resource subzones pursuant to section 205-B if such
2 direct use applications are in conformance with all other
3 applicable state and county land use regulations and are in
4 conformance with this chapter.

5 (b) The board of land and natural resources shall have the
6 responsibility for designating areas as geothermal resource
7 subzones as provided under section 205-B; except that the total
8 area within an agricultural district which is the subject of a
9 geothermal mining lease approved by the board of land and
10 natural resources, any part or all of which area is the subject
11 of a special use permit issued by the county for geothermal
12 development activities, on or before May 25, 1984, is designated
13 as a geothermal resource subzone for the duration of the lease.
14 The designation of geothermal resource subzones shall be
15 governed exclusively by this section and section 205-B, except
16 as provided therein. The board shall adopt, amend, or repeal
17 rules related to its authority to designate and regulate the use
18 of geothermal resource subzones in the manner provided under
19 chapter 91.

20 The authority of the board to designate geothermal resource
21 subzones shall be an exception to those provisions of this
22 chapter and of section 46-4 authorizing the land use commission



1 and the counties to establish and modify land use districts and
2 to regulate uses therein. The provisions of this section shall
3 not abrogate nor supersede the provisions of chapters 182, 183,
4 and 183C.

5 (c) The use of an area for geothermal development
6 activities within a geothermal resource subzone shall be
7 governed by the board within the conservation district and,
8 except as herein provided, by state and county statutes,
9 ordinances, and rules not inconsistent herewith within
10 agricultural, rural, and urban districts, except that no land
11 use commission approval or special use permit procedures under
12 section 205-6 shall be required for the use of such subzones.
13 In the absence of provisions in the county general plan and
14 zoning ordinances specifically relating to the use and location
15 of geothermal development activities in an agricultural, rural,
16 or urban district, the appropriate county authority may issue a
17 geothermal resource permit to allow geothermal development
18 activities. "Appropriate county authority" means the county
19 planning commission unless some other agency or body is
20 designated by ordinance of the county council. Such uses as are
21 permitted by county general plan and zoning ordinances, by the
22 appropriate county authority, shall be deemed to be reasonable



1 and to promote the effectiveness and objectives of this chapter.
2 Chapters 177, 178, 182, 183, 183C, 205A, 226, 342, and 343 shall
3 apply as appropriate. If provisions in the county general plan
4 and zoning ordinances specifically relate to the use and
5 location of geothermal development activities in an
6 agricultural, rural, or urban district, the provisions shall
7 require the appropriate county authority to conduct a public
8 hearing on any application for a geothermal resource permit to
9 determine whether the use is in conformity with the criteria
10 specified in subsection (e) for granting geothermal resource
11 permits; provided that within the urban, rural, and agricultural
12 land use districts, direct use applications of geothermal
13 resources are permitted without any application for a geothermal
14 resource permit within and outside of areas designated as
15 geothermal resource subzones pursuant to section 205-B if such
16 direct use applications are in conformance with all other
17 applicable state and county land use regulations and are in
18 conformance with this chapter.

19 (d) If geothermal development activities are proposed
20 within a conservation district, with an application with all
21 required data, the board of land and natural resources shall
22 conduct a public hearing and, upon appropriate request for



1 mediation from any party who submitted comment at the public
2 hearing, the board shall appoint a mediator within five days.
3 The board shall require the parties to participate in mediation.
4 The mediator shall not be a member of the board or its staff.
5 The mediation period shall not extend beyond thirty days after
6 the date mediation started, except by order of the board.
7 Mediation shall be confined to the issues raised at the public
8 hearing by the party requesting mediation. The mediator will
9 submit a written recommendation to the board, based upon any
10 mediation agreement reached between the parties for
11 consideration by the board in its final decision. If there is
12 no mediation agreement, the board may have a second public
13 hearing to receive additional comment related to the mediation
14 issues. Within ten days after the second public hearing, the
15 board may receive additional written comment on the issues
16 raised at the second public hearing from any party.

17 The board shall consider the comments raised at the second
18 hearing before rendering its final decision. The board shall
19 then determine whether, pursuant to board rules, a conservation
20 district use permit shall be granted to authorize the geothermal
21 development activities described in the application. The board



1 shall grant a conservation district use permit if it finds that
2 the applicant has demonstrated that:

3 (1) The desired uses would not have unreasonable adverse
4 health, environmental, or socio-economic effects on
5 residents or surrounding property and would not
6 unreasonably burden public agencies to provide roads
7 and streets, sewers, water, drainage, and police and
8 fire protection; or

9 (2) There are reasonable measures available to mitigate
10 the unreasonable adverse effects or burdens referred
11 to above.

12 A decision shall be made by the board within six months of
13 the date a complete application was filed; provided that the
14 time limit may be extended by agreement between the applicant
15 and the board.

16 (e) If geothermal development activities are proposed
17 within agricultural, rural, or urban districts and such proposed
18 activities are not permitted uses pursuant to county general
19 plan and zoning ordinances, then after receipt of a properly
20 filed and completed application, including all required
21 supporting data, the appropriate county authority shall conduct
22 a public hearing. Upon appropriate request for mediation from



1 any party who submitted comment at the public hearing, the
2 county authority shall appoint a mediator within five days. The
3 county authority shall require the parties to participate in
4 mediation. The mediator shall not be an employee of any county
5 agency or its staff. The mediation period shall not extend
6 beyond thirty days after mediation started, except by order of
7 the county authority. Mediation shall be confined to the issues
8 raised at the public hearing by the party requesting mediation.
9 The mediator will submit a written recommendation to the county
10 authority, based upon any mediation agreement reached between
11 the parties for consideration by the county authority in its
12 final decision. If there is no mediation agreement, the county
13 authority may have a second public hearing to receive additional
14 comment related to the mediation issues. Within ten days after
15 the second public hearing, the county authority may receive
16 additional written comment on the issues raised at the second
17 public hearing from any party.

18 The county authority shall consider the comments raised at
19 the second hearing before rendering its final decision. The
20 county authority shall then determine whether a geothermal
21 resource permit shall be granted to authorize the geothermal
22 development activities described in the application. The



1 appropriate county authority shall grant a geothermal resource
2 permit if it finds that applicant has demonstrated that:

3 (1) The desired uses would not have unreasonable adverse
4 health, environmental, or socio-economic effects on
5 residents or surrounding property and would not
6 unreasonably burden public agencies to provide roads
7 and streets, sewers, water, drainage, school
8 improvements, and police and fire protection; or

9 (2) That there are reasonable measures available to
10 mitigate the unreasonable adverse effects or burdens
11 referred to above.

12 Unless there is a mutual agreement to extend, a decision
13 shall be made on the application by the appropriate county
14 authority within six months of the date a complete application
15 was filed; provided that the time limit may be extended by
16 agreement between the applicant and the appropriate county
17 authority.

18 (f) Requests for mediation shall be received by the board
19 or county authority within five days after the close of the
20 initial public hearing. Within five days thereafter, the board
21 or county authority shall appoint a mediator. Any person
22 submitting an appropriate request for mediation shall be

1 notified by the board or county authority of the date, time, and
2 place of the mediation conference by depositing such notice in
3 the mail to the return address stated on the request for
4 mediation. The notice shall be mailed no later than ten days
5 before the start of the mediation conference. The conference
6 shall be held on the island where the public hearing is held.

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

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

19 (1) The application for the permit and all accompanying
20 supporting documents, including but not limited to:
21 reports, studies, affidavits, statements, and
22 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) The written recommendation received by the agency from
8 the mediator with any mediation agreement.
- 9 (6) A statement of relevant matters noticed by the agency
10 members at the public hearings.
- 11 (7) The written decision of the agency issued in
12 connection with the application and public hearings.
- 13 (8) Other documents required by the board or county
14 authority.

15 **§205-B Designation of areas as geothermal resource**
16 **subzones.** (a) Beginning in 1983, the board of land and natural
17 resources shall conduct a county-by-county assessment of areas
18 with geothermal potential for the purpose of designating
19 geothermal resource subzones. This assessment shall be revised
20 or updated at the discretion of the board, but at least once
21 each five years beginning in 1988. Any property owner or person
22 with an interest in real property wishing to have an area



1 designated as a geothermal resource subzone may submit a
2 petition for a geothermal resource subzone designation in the
3 form and manner established by rules and regulations adopted by
4 the board. An environmental impact statement as defined under
5 chapter 343 shall not be required for the assessment of areas
6 under this section.

7 (b) The board's assessment of each potential geothermal
8 resource subzone area shall examine factors to include, but not
9 be limited to:

10 (1) The area's potential for the production of geothermal
11 energy;

12 (2) The prospects for the utilization of geothermal energy
13 in the area;

14 (3) The geologic hazards that potential geothermal
15 projects would encounter;

16 (4) Social and environmental impacts;

17 (5) The compatibility of geothermal development and
18 potential related industries with present uses of
19 surrounding land and those uses permitted under the
20 general plan or land use policies of the county in
21 which the area is located;



1 (6) The potential economic benefits to be derived from
2 geothermal development and potential related
3 industries; and

4 (7) The compatibility of geothermal development and
5 potential related industries with the uses permitted
6 under chapter 183C and section 205-2, where the area
7 falls within a conservation district.

8 In addition, the board shall consider, if applicable,
9 objectives, policies, and guidelines set forth in part I of
10 chapter 205A, and chapter 226.

11 (c) Methods for assessing the factors in subsection (b)
12 shall be left to the discretion of the board and may be based on
13 currently available public information.

14 (d) After the board has completed a county-by-county
15 assessment of all areas with geothermal potential or after any
16 subsequent update or review, the board shall compare all areas
17 showing geothermal potential within each county, and shall
18 propose areas for potential designation as geothermal resource
19 subzones based upon a preliminary finding that the areas are
20 those sites which best demonstrate an acceptable balance between
21 the factors set forth in subsection (b). Once a proposal is
22 made, the board shall conduct public hearings pursuant to this



1 subsection, notwithstanding any contrary provision related to
2 public hearing procedures. Contested case procedures are not
3 applicable to these hearings.

4 (1) Hearings shall be held at locations which are in close
5 proximity to those areas proposed for designation. A
6 public notice of hearing, including a description of
7 the proposed areas, an invitation for public comment,
8 and a statement of the date, time, and place where
9 persons may be heard shall be given and mailed no less
10 than twenty days before the hearing. The notice shall
11 be given on three separate days statewide and in the
12 county in which the hearing is to be held. Copies of
13 the notice shall be mailed to the department of
14 business, economic development, and tourism, to the
15 planning commission and planning department of the
16 county in which the proposed areas are located, and to
17 all owners of record of real estate within, and within
18 one thousand feet of, the area being proposed for
19 designation as a geothermal resource subzone. The
20 notification shall be mailed to the owners and
21 addresses as shown on the current real property tax
22 rolls at the county real property tax office. Upon



1 that action, the requirement for notification of
2 owners of land is completed. For the purposes of this
3 subsection, notice to one co-owner shall be sufficient
4 notice to all co-owners;

5 (2) The hearing shall be held before the board, and the
6 authority to conduct hearings shall not be delegated
7 to any agent or representative of the board. All
8 persons and agencies shall be afforded the opportunity
9 to submit data, views, and arguments either orally or
10 in writing. The department of business, economic
11 development, and tourism and the county planning
12 department shall be permitted to appear at every
13 hearing and make recommendations concerning each
14 proposal by the board; and

15 (3) At the close of the hearing, the board may designate
16 areas as geothermal resource subzones or announce the
17 date on which it will render its decision. The board
18 may designate areas as geothermal resource subzones
19 only upon finding that the areas are those sites which
20 best demonstrate an acceptable balance between the
21 factors set forth in subsection (b). Upon request,
22 the board shall issue a concise statement of its



1 findings and the principal reasons for its decision to
2 designate a particular area.

3 (e) The designation of any geothermal resource subzone may
4 be withdrawn by the board of land and natural resources after
5 proceedings conducted pursuant to chapter 91. The board shall
6 withdraw a designation only upon finding by a preponderance of
7 the evidence that the area is no longer suited for designation;
8 provided that the designation shall not be withdrawn for areas
9 in which active exploration, development, production or
10 distribution of electrical energy from geothermal sources or
11 direct use applications of geothermal resources are taking
12 place.

13 (f) This Act shall not apply to any active exploration,
14 development or production of electrical energy from geothermal
15 sources or direct use applications of geothermal resources
16 taking place on June 14, 1983, provided that any expansion of
17 such activities shall be carried out in compliance with its
18 provisions.

19 §205-C Exploratory wells. Notwithstanding section 205-A
20 (a), (d), and (e), or any other provision of law, any
21 exploratory well drilled for scientific purposes or to determine
22 the economic viability of a geothermal resource, may be



1 permitted outside of a designated geothermal resource subzone,
2 regardless of land use classification, provided that the
3 activity is limited to exploration only. All applicable state
4 and county permits shall be required to drill such exploratory
5 wells which shall not be exempt from the requirements of the
6 environmental impact statement law, chapter 343."

7 SECTION 2. Section 182-1, Hawaii Revised Statutes, is
8 amended by amending the definitions of "mining lease" and
9 "mining operations" to read as follows:

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

15 "Mining operations" means the process of excavation,
16 extraction, and removal of minerals, and the [~~exploration or~~]
17 development of any and all geothermal resources, from the
18 ground, design engineering, other engineering, erection of
19 transportation facilities and port facilities, erection of
20 necessary plants, other necessary operations or development
21 approved by the board preceding or connected with the actual



1 extraction of minerals and the [~~exploration or~~] development of
2 geothermal resources."

3 SECTION 3. Section 182-1, Hawaii Revised Statutes, is
4 amended by deleting the definition of "geothermal resources
5 development".

6 [~~"Geothermal resources development" means the development
7 or production of electrical energy from geothermal resources and
8 direct use application of geothermal resources. The term does
9 not include "geothermal resources exploration".~~"]

10 SECTION 4. Section 182-1, Hawaii Revised Statutes, is
11 amended by deleting the definition of "geothermal resources
12 exploration".

13 [~~"Geothermal resources exploration" means either of the
14 following:~~

- 15 ~~(1) Conducting non-invasive geophysical operations,
16 including geochemical operations, remote sensing, and
17 other similar techniques; or~~
- 18 ~~(2) Drilling exploration wells for the extraction and
19 removal of minerals of types and quantities,
20 that are reasonably required for testing and analysis to provide
21 ground truth or determine the economic viability of geothermal~~



1 resources. ~~The term does not include "geothermal resources~~
2 ~~development".~~"]

3 SECTION 5. 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 together with a
10 description of the land desired to be leased and the minerals
11 involved and such information and maps as the board may by
12 regulation prescribe. The board may grant a mining lease on
13 reserved lands in accordance with section 182-4, or the board
14 may, by the vote of two-thirds of its members to which the board
15 is entitled, without public auction, grant a mining lease on
16 reserved lands to the occupier thereof. Such a mining lease may
17 be granted to a person other than the occupier if the occupier
18 has assigned the occupier's rights to apply for a mining lease
19 to another person, in which case only such an assignee may be
20 granted a mining lease. Any provisions to the contrary
21 notwithstanding, if the board decides that it is appropriate to
22 grant a geothermal mining lease on the reserved lands, the



1 surface owner or the owner's assignee shall have the first right
2 of refusal for a mining lease[-]; provided that the granting of
3 a geothermal mining lease does not create the presumption that a
4 geothermal resource subzone will be designated; provided further
5 that geothermal development activities shall not occur on land
6 within the geothermal mining lease until the area is designated
7 a geothermal resource subzone. If the occupier or the
8 occupier's assignee of the right to obtain a mining lease should
9 fail to apply for a mining lease within six months from the date
10 of notice from the board of a finding by the board that it is in
11 the public interest that the minerals on the reserved lands be
12 mined, a mining lease shall be granted under section 182-4;
13 provided that bidders at the public auction shall bid on an
14 amount to be paid to the State for a mining lease granting to
15 the lessee the right to exploit minerals reserved to the State."

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

18 "**§182-6 Exploration.** Any person wishing to conduct
19 exploration on state lands shall apply to the board of land and
20 natural resources who shall issue exploration permits upon terms
21 and conditions as it shall by regulation prescribe. During and
22 as a result of the exploration, no minerals of such types and



1 quantity beyond that reasonably required for testing and
2 analysis shall be extracted and removed from such state lands.
3 Upon termination of the exploration permit, the drill logs and
4 the results of the assays resulting from the exploration shall
5 be turned over to the board and kept confidential by the board.
6 If the person shall not make application for a mining lease of
7 the lands within a period of six months from the date the
8 information is turned over to the board, the board in its
9 discretion need not keep the information confidential.

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

13 SECTION 7. Section 183C-4, Hawaii Revised Statutes, is
14 amended to read as follows:

15 **"§183C-4 Zoning; amendments.** (a) The department, after
16 notice and hearing as provided in this section, shall review and
17 redefine the boundaries of the zones within the conservation
18 district.

19 (b) The department shall adopt rules governing the use of
20 land within the boundaries of the conservation district that are
21 consistent with the conservation of necessary forest growth, the
22 conservation and development of land and natural resources



1 adequate for present and future needs, and the conservation and
2 preservation of open space areas for public use and enjoyment.
3 No use except a nonconforming use as defined in section 183C-5,
4 shall be made within the conservation district unless the use is
5 in accordance with a zoning rule.

6 (c) The department may allow a temporary variance from
7 zoned use where good cause is shown and where the proposed
8 temporary variance is for a use determined by the department to
9 be in accordance with good conservation practices.

10 (d) The department shall establish zones within the
11 conservation district, which shall be restricted to certain
12 uses. The department, by rules, may specify the land uses
13 permitted therein which may include, but are not limited to,
14 farming, flower gardening, operation of nurseries or orchards,
15 growth of commercial timber, grazing, recreational or hunting
16 pursuits, or residential use. The rules may control the extent,
17 manner, and times of the uses, and may specifically prohibit
18 unlimited cutting of forest growth, soil mining, or other
19 activities detrimental to good conservation practices.

20 ~~[(e) Notwithstanding this section or any other law to the~~
21 ~~contrary, geothermal resources exploration and geothermal~~
22 ~~resources development, as defined under section 182-1, shall be~~



1 ~~permissible uses in all zones of the conservation district. The~~
2 ~~rules required under subsection (b) governing the use of land~~
3 ~~within the boundaries of the conservation district shall be~~
4 ~~deemed to include the provisions of this section without~~
5 ~~necessity of formal adoption by the department.~~

6 ~~(f)]~~ (e) Whenever any landowner or government agency whose
7 property will be directly affected makes an application to
8 change the boundaries or land uses of any zone, or to establish
9 a zone with certain land uses, or where the department proposes
10 to make the change or changes itself, the change or changes
11 shall be put in the form of a proposed rule by the applicant and
12 the department shall then give public notice thereof during
13 three successive weeks statewide and in the county in which the
14 property is located. The notice shall be given not less than
15 thirty days prior to the date set for the hearing, and shall
16 state the time and place of the hearing and the changes
17 proposed. Any proposed rules and the necessary maps shall be
18 made available for inspection by interested members of the
19 public. The hearing shall be held in the county in which the
20 land is located and may be delegated to an agent or
21 representative of the board as may otherwise be provided by law
22 and in accordance with rules adopted by the board. For the



1 purpose of its public hearing or hearings, the board may summon
2 witnesses, administer oaths, and require the giving of
3 testimony."

4 SECTION 8. Section 205-2, Hawaii Revised Statutes, is
5 amended by amending subsections (b), (c), (d), and (e) to read
6 as follows:

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

10 ~~[In addition, urban districts shall include geothermal~~
11 ~~resources exploration and geothermal resources development, as~~
12 ~~defined under section 182-1, as permissible uses.]~~

13 (c) Rural districts shall include activities or uses as
14 characterized by low density residential lots of not more than
15 one dwelling house per one-half acre, except as provided by
16 county ordinance pursuant to section 46-4(c), in areas where
17 "city-like" concentration of people, structures, streets, and
18 urban level of services are absent, and where small farms are
19 intermixed with low density residential lots except that within
20 a subdivision, as defined in section 484-1, the commission for
21 good cause may allow one lot of less than one-half acre, but not
22 less than eighteen thousand five hundred square feet, or an



1 equivalent residential density, within a rural subdivision and
2 permit the construction of one dwelling on such lot; provided
3 that all other dwellings in the subdivision shall have a minimum
4 lot size of one-half acre or 21,780 square feet. Such petition
5 for variance may be processed under the special permit
6 procedure. These districts may include contiguous areas which
7 are not suited to low density residential lots or small farms by
8 reason of topography, soils, and other related characteristics.
9 Rural districts shall also include golf courses, golf driving
10 ranges, and golf-related facilities.

11 ~~[In addition to the uses listed in this subsection, rural~~
12 ~~districts shall include geothermal resources exploration and~~
13 ~~geothermal resources development, as defined under section~~
14 ~~182-1, as permissible uses.]~~

15 (d) Agricultural districts shall include:

16 (1) Activities or uses as characterized by the cultivation
17 of crops, crops for bioenergy, orchards, forage, and
18 forestry;

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



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



1 the same premises as the agricultural activities to
2 which they are accessory, including farm dwellings as
3 defined in section 205-4.5(a)(4), employee housing,
4 farm buildings, mills, storage facilities, processing
5 facilities, photovoltaic, biogas, and other small-
6 scale renewable energy systems producing energy solely
7 for use in the agricultural activities of the fee or
8 leasehold owner of the property, agricultural-energy
9 facilities as defined in section 205-4.5(a)(17),
10 vehicle and equipment storage areas, and plantation
11 community subdivisions as defined in section
12 205-4.5(a)(12);

13 (8) Wind machines and wind farms;

14 (9) Small-scale meteorological, air quality, noise, and
15 other scientific and environmental data collection and
16 monitoring facilities occupying less than one-half
17 acre of land; provided that these facilities shall not
18 be used as or equipped for use as living quarters or
19 dwellings;

20 (10) Agricultural parks;

21 (11) Agricultural tourism conducted on a working farm, or a
22 farming operation as defined in section 165-2, for the



1 enjoyment, education, or involvement of visitors;
2 provided that the agricultural tourism activity is
3 accessory and secondary to the principal agricultural
4 use and does not interfere with surrounding farm
5 operations; and provided further that this paragraph
6 shall apply only to a county that has adopted
7 ordinances regulating agricultural tourism under
8 section 205-5;

9 (12) Agricultural tourism activities, including overnight
10 accommodations of twenty-one days or less, for any one
11 stay within a county; provided that this paragraph
12 shall apply only to a county that includes at least
13 three islands and has adopted ordinances regulating
14 agricultural tourism activities pursuant to section
15 205-5; provided further that the agricultural tourism
16 activities coexist with a bona fide agricultural
17 activity. For the purposes of this paragraph, "bona
18 fide agricultural activity" means a farming operation
19 as defined in section 165-2;

20 (13) Open area recreational facilities; and



1 ~~[(14)] Geothermal resources exploration and geothermal~~
2 ~~resources development, as defined under section 182-1,~~
3 ~~and~~

4 ~~[(15)]~~ (14) Agricultural-based commercial operations,
5 including:

6 (A) A roadside stand that is not an enclosed
7 structure, owned and operated by a producer for
8 the display and sale of agricultural products
9 grown in Hawaii and value-added products that
10 were produced using agricultural products grown
11 in Hawaii;

12 (B) Retail activities in an enclosed structure owned
13 and operated by a producer for the display and
14 sale of agricultural products grown in Hawaii,
15 value-added products that were produced using
16 agricultural products grown in Hawaii, logo items
17 related to the producer's agricultural
18 operations, and other food items; and

19 (C) A retail food establishment owned and operated by
20 a producer and permitted under [title 11,]
21 chapter 12 of the rules of the department of
22 health that prepares and serves food at retail



1 using products grown in Hawaii and value-added
2 products that were produced using agricultural
3 products grown in Hawaii.

4 The owner of an agricultural-based commercial
5 operation shall certify, upon request of an officer or
6 agent charged with enforcement of this chapter under
7 section 205-12, that the agricultural products
8 displayed or sold by the operation meet the
9 requirements of this paragraph.

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

12 Agricultural districts include areas that are not used for, or
13 that are not suited to, agricultural and ancillary activities by
14 reason of topography, soils, and other related characteristics.

15 (e) Conservation districts shall include areas necessary
16 for protecting watersheds and water sources; preserving scenic
17 and historic areas; providing park lands, wilderness, and beach
18 reserves; conserving indigenous or endemic plants, fish, and
19 wildlife, including those which are threatened or endangered;
20 preventing floods and soil erosion; forestry; open space areas
21 whose existing openness, natural condition, or present state of
22 use, if retained, would enhance the present or potential value



1 of abutting or surrounding communities, or would maintain or
2 enhance the conservation of natural or scenic resources; areas
3 of value for recreational purposes; other related activities;
4 and other permitted uses not detrimental to a multiple use
5 conservation concept. [~~Conservation districts shall also~~
6 ~~include areas for geothermal resources exploration and~~
7 ~~geothermal resources development, as defined under section~~
8 ~~182-1.] "~~

9 SECTION 9. Section 205-4.5, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

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

- 15 (1) Cultivation of crops, including crops for bioenergy,
16 flowers, vegetables, foliage, fruits, forage, and
17 timber;
- 18 (2) Game and fish propagation;
- 19 (3) Raising of livestock, including poultry, bees, fish,
20 or other animal or aquatic life that are propagated
21 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 biofuels 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; or

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 [~~7-07~~

17 ~~{(21)} Geothermal resources exploration and geothermal~~
 18 ~~resources development, as defined under section~~
 19 ~~182-1]."~~

20 SECTION 10. Section 205-5, Hawaii Revised Statutes, is
 21 amended by amending subsection (c) to read as follows:

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

4 (1) Low density residential uses;

5 (2) Agricultural uses;

6 (3) Golf courses, golf driving ranges, and golf-related
7 facilities; and

8 (4) Public, quasi-public, and public utility facilities [~~r~~
9 and

10 ~~(5) Geothermal resources exploration and geothermal~~
11 ~~resources development, as defined under section~~
12 ~~182-1].~~

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

17 SECTION 11. Act 97, Session Laws of Hawaii 2012, is
18 amended by repealing section 12.

19 ~~["SECTION 12. The provisions of this Act that repeal the~~
20 ~~laws that previously authorized geothermal resources subzones~~
21 ~~under chapter 205, Hawaii Revised Statutes, shall not affect any~~
22 ~~geothermal resources producer who operates within the area of~~



1 ~~the subzone as of the effective date of this Act. The~~
2 ~~geothermal resources producer shall continue to operate in~~
3 ~~accordance with the producer's lease with the board of land and~~
4 ~~natural resources."]~~

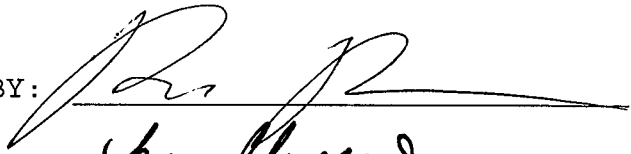

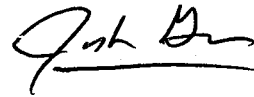


5 SECTION 12. In codifying this Act, the revisor shall
6 substitute appropriate section numbers for the letter
7 designations used in section 1 of this Act.

8 SECTION 13. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 14. This Act shall take effect upon its approval.

11

INTRODUCED BY:



S.B. NO. 371

Report Title:

Geothermal Resources; Exploration; Subzones

Description:

Repeals Act 97, SLH 2012, relating to geothermal resources which differentiates between "geothermal resources exploration" and "geothermal resources development". Designates "geothermal resources exploration" and "geothermal resources development" as permissible uses in all state land use districts and certain conservation district zones in accordance with chapter 205, HRS. Enacts geothermal resource subzones, designation of areas as geothermal resources subzones, and exploratory wells, which were repealed by Act 97.

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

