
A BILL FOR AN ACT

RELATING TO LAND RESOURCES.

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

1 SECTION 1. Section 171-95, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

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

5 (1) Any producer or developer of electrical or thermal
6 energy produced by wind, solar energy, hydropower,
7 geothermal resources, landfill gas, waste-to-energy,
8 ocean thermal energy conversion, cold seawater, wave
9 energy, biomass, including municipal solid waste,
10 biofuels or fuels derived from organic sources,
11 hydrogen fuels derived primarily from renewable
12 energy, or fuel cells where the fuel is derived
13 primarily from renewable sources that sell all of the
14 net power produced from the demised premises to an
15 electric utility company regulated under chapter 269
16 or that sells all of the thermal energy it produces to
17 customers of district cooling systems; provided that
18 up to twenty-five per cent of the power produced by a



1 renewable energy producer and sold to the utility or
2 to district cooling system customers may be derived
3 from fossil fuels; or

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

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

13 1. By adding a new definition to be appropriately inserted
14 and to read:

15 "Department" means the department of land and natural
16 resources."

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

19 "Geothermal resources" means the natural heat of the
20 earth, the energy, in whatever form, below the surface of the
21 earth present in, resulting from, or created by, or which may be



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

11 "Geothermal resources exploration" means either of the
12 following:

- 13 (1) Conducting non-invasive geophysical operations,
14 including geochemical operations, remote sensing, and
15 other similar techniques; or
- 16 (2) Drilling exploration wells for purposes including, but
17 not limited to the extraction and removal of minerals
18 of types and quantities;
19 that are reasonably required for testing and analysis to provide
20 ground truth or determine the economic viability of geothermal



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

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

8 SECTION 3. Section 182-2, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

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



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

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

7 "**§182-4 Mining leases on state lands.** (a) If any mineral
8 is discovered or known to exist on state lands, any interested
9 person may notify the board [~~of land and natural resources~~] of
10 the person's desire to apply for a mining lease. The notice
11 shall be accompanied by a fee of \$100 together with a
12 description of the land desired to be leased [~~and~~], the minerals
13 involved, and any information and maps that the board by rule
14 may prescribe. As soon as practicable thereafter, the board
15 shall cause a public notice to be given in the county where the
16 lands are located, at least once in each of three successive
17 weeks, setting forth the description of the land, and the
18 minerals desired to be leased. The board may hold the public
19 auction of the mining lease within six months from the date of
20 the first notice or any further time that may be reasonably
21 necessary. Whether or not the state land sought to be auctioned



1 is then being utilized or put to some productive use, the board,
2 after due notice of public hearing to all parties in interest,
3 within six weeks from the date of the first notice or any
4 further time that may be reasonably necessary, shall determine
5 whether the proposed mining operation or the existing or
6 reasonably foreseeable future use of the land would be of
7 greater benefit to the State. If the board determines that the
8 existing or reasonably foreseeable future use would be of
9 greater benefit to the State than the proposed mining use of the
10 land, it shall disapprove the application for a mining lease of
11 the land without putting the land to auction. The board shall
12 determine the area to be offered for lease and, after due notice
13 of public hearing to all parties in interest, may modify the
14 boundaries of the land areas. At least thirty days prior to the
15 holding of any public auction, the board shall cause a public
16 notice to be given in the State at least once in each of three
17 successive weeks, setting forth the description of the land, the
18 minerals to be leased, and the time and place of the auction.
19 Bidders at the public auction may be required to bid on the
20 amount of annual rental to be paid for the term of the mining
21 lease based on an upset price fixed by the board, a royalty



1 based on the gross proceeds or net profits, cash bonus, or any
2 combination or other basis and under any terms and conditions
3 that may be set 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 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 SECTION 5. Section 182-5, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§182-5 Mining leases on reserved lands.** If any mineral
19 is discovered or known to exist on reserved lands, any
20 interested person may notify the board [~~of land and natural~~
21 ~~resources~~] of the person's desire to apply for a mining lease.



1 The notice shall be accompanied by a fee of \$100 together with a
2 description of the land desired to be leased and the minerals
3 involved and [~~such~~] information and maps as the board may by
4 [~~regulation~~] rule prescribe. The board may grant a mining lease
5 on reserved lands in accordance with section 182-4, or the board
6 [~~may~~] by the vote of two-thirds of [~~its~~] the members to which
7 the board is entitled, without public auction, may grant a
8 mining lease on reserved lands to the occupier thereof. [~~Such~~
9 a] A mining lease may be granted to a person other than the
10 occupier if the occupier has assigned the occupier's rights to
11 apply for a mining lease to another person, in which case only
12 [~~such~~] an assignee may be granted a mining lease. Any
13 provisions to the contrary notwithstanding, if the board decides
14 that it is appropriate to grant a geothermal mining lease on the
15 reserved lands, the surface owner or the owner's assignee shall
16 have the first right of refusal for a mining lease. If the
17 occupier or the occupier's assignee of the right to obtain a
18 mining lease should fail to apply for a mining lease within six
19 months from the date of notice from the board of a finding by
20 the board that it is in the public interest that the minerals on
21 the reserved lands be mined, a mining lease shall be granted



1 under section 182-4; provided that bidders at the public auction
2 shall bid on an amount to be paid to the State for a mining
3 lease granting to the lessee the right to exploit minerals
4 reserved to the State."

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

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



1 board, the board in its discretion need not keep the information
2 confidential.

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

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

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

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

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

18 "(d) The lessee shall covenant and agree that the lessee
19 shall commence mining operations upon the leased lands within
20 three years from the date of execution of the lease; provided
21 that so long as the lessee is actively and on a substantial



1 scale engaged in mining operations on at least one such lease on
2 the same minerals, the covenant shall be suspended as to all
3 other leases held by the lessee.

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

17 (e) For the period of the lease the lessee shall have the
18 exclusive right of possession of the minerals leased and the
19 exclusive rights to mine and remove the minerals by means
20 ~~[which]~~ that shall be reasonable and satisfactory to the board
21 and to occupy and use so much of the surface of the land as may



1 reasonably be required, subject to the provisions of section
2 182-3. The right to use the surface shall include the right to
3 erect transportation facilities thereon, construct plants for
4 beneficiating, drying, and processing the minerals for electric
5 power generation and transmission and [~~such~~] other uses as may
6 be approved by the board. The other uses may include but need
7 not be limited to uses necessary or convenient to the [winning
8 and] processing of the minerals; provided that the lessee shall
9 comply with all water and air pollution control laws, and rules
10 of the State or its political subdivisions.

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

19 SECTION 8. Section 182-10, Hawaii Revised Statutes, is
20 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 9. 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."



1 SECTION 10. Sections 182-3(a), 182-11, 182-13, and 182-15,
2 Hawaii Revised Statutes, are amended by substituting the word
3 "board" wherever the phrase "board of land and natural
4 resources" appears, as the context requires.

5 SECTION 11. Sections 182-9.5, 182-16, and 182-18, Hawaii
6 Revised Statutes, are amended by eliminating superfluous
7 brackets and enclosing the section numbers, as the context
8 requires.

9 SECTION 12. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 13. This Act shall take effect on July 1, 2016.



Report Title:

Board of Land and Natural Resources; Mineral Resources

Description:

Revises statutory provisions relating to the regulation of mineral resources under chapters 171 and 182, Hawaii Revised Statutes, to provide clarity and consistency. (SD1)

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