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## A BILL FOR AN ACT

RELATING TO GEOTHERMAL RESOURCES.

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

1           SECTION 1. The legislature finds that Act 97, Session Laws  
2 of Hawaii 2012, repealed section 205-5.1, Hawaii Revised  
3 Statutes, for the purposes of streamlining and expediting the  
4 development of geothermal resources.

5           The legislature also finds that the repeal of section 205-  
6 5.1, Hawaii Revised Statutes, also removed necessary safeguards  
7 for geothermal resource development on agricultural and rural  
8 land use districts that had been required by the county planning  
9 commission. As the law currently stands, a geothermal power  
10 plant, which is a major industrial facility, can be built  
11 anywhere in an agricultural or rural district and adjacent to  
12 residential neighborhoods without a county land use permit or a  
13 public hearing.

14           The purpose of this Act is restore the county authority to  
15 require reasonable safeguards for geothermal resource  
16 development in the agricultural and rural districts.



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

4 "§205- Geothermal resources development. (a) The use  
5 of an area for geothermal resources development shall be  
6 governed by the board of land and natural resources and, except  
7 as provided in this section, by state and county statutes,  
8 ordinances, and rules not inconsistent herewith within  
9 agricultural, rural, and urban districts; provided that no land  
10 use commission approval or special use permit procedures  
11 pursuant to section 205-6 shall be required. If provisions in  
12 the county general plan and zoning ordinances specifically  
13 relate to the use and location of geothermal resources  
14 development in an agricultural, rural, or urban district, the  
15 provisions shall require the appropriate county authority to  
16 conduct a public hearing on any application for a geothermal  
17 resource permit to determine whether the use is in conformity  
18 with the criteria specified in subsection (c) for granting  
19 geothermal resource permits; provided that within the urban,  
20 rural, and agricultural land use districts, direct use  
21 applications of geothermal resources are permitted without any



1 application for a geothermal resource permit if the direct use  
2 applications are in conformance with all other applicable state  
3 and county land use regulations and are in conformance with this  
4 chapter.

5 (b) If geothermal resources development is proposed within  
6 a conservation district in an application with all required  
7 data, the board of land and natural resources shall conduct a  
8 public hearing. The board shall then determine, pursuant to  
9 board rules, whether a conservation district use permit shall be  
10 granted to authorize the geothermal resources development  
11 described in the application. The board shall grant a  
12 conservation district use permit if it finds that the applicant  
13 has demonstrated that:

14 (1) The desired uses would not have unreasonable adverse  
15 health, environmental, or socio-economic effects on  
16 residents or surrounding property; and

17 (2) The desired uses would not place an unreasonable  
18 burden upon public agencies that provide roads and  
19 streets, sewers, water, drainage, and police and fire  
20 protection; or



1       (3) There are reasonable measures available to mitigate  
2           the unreasonable adverse effects or burdens referred  
3           to in paragraphs (1) and (2).

4       A decision shall be made by the board within six months of  
5       the date a complete application was filed; provided that the  
6       time limit may be extended by agreement between the applicant  
7       and the board.

8       (c) If geothermal resources development is proposed within  
9       an agricultural, a rural, or an urban district and the proposed  
10       activities are not permitted uses pursuant to county general  
11       plan and zoning ordinances, then after receipt of a properly  
12       filed and completed application, including all required  
13       supporting data, the appropriate county authority shall conduct  
14       a public hearing.

15       The county authority shall determine whether a geothermal  
16       resource permit shall be granted to authorize the geothermal  
17       resources development described in the application. The  
18       appropriate county authority shall grant a geothermal resource  
19       permit if it finds the applicant has demonstrated that:



1       (1) The desired uses would not have unreasonable adverse  
2       health, environmental, or socio-economic effects on  
3       residents or surrounding property;

4       (2) The desired uses would not place an unreasonable  
5       burden upon public agencies that provide roads and  
6       streets, sewers, water, drainage, school improvements,  
7       and police and fire protection; and

8       (3) That there are reasonable measures available to  
9       mitigate the unreasonable adverse effects or burdens  
10       referred to in paragraphs (1) and (2).

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

17       (d) Any decision made by an appropriate county authority  
18       or the board pursuant to a public hearing under this section may  
19       be appealed directly on the record to the intermediate court of  
20       appeals for final decision and shall not be subject to a  
21       contested case hearing. Sections 91-14(b) and (g) shall govern



1 the appeal, notwithstanding the lack of a contested case hearing  
2 on the matter. The appropriate county authority or the board  
3 shall provide a court reporter to produce a transcript of the  
4 proceedings at all public hearings under this section for  
5 purposes of an appeal.

6 (e) For the purposes of an appeal from a decision from a  
7 public hearing, the record shall include:

8 (1) The application for the permit and all accompanying  
9 supporting documents, including but not limited to  
10 reports, studies, affidavits, statements, and  
11 exhibits;

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

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

16 (4) Written transcripts of the proceedings at the public  
17 hearings;

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



- 1        (6) The written decision of the agency issued in  
2        connection with the application and public hearings;  
3        and  
4        (7) Other documents required by the board or county  
5        authority."

6        SECTION 3. Section 205-2, Hawaii Revised Statutes, is  
7 amended by amending subsections (d) and (e) to read as follows:

8        "(d) Agricultural districts shall include:

- 9        (1) Activities or uses as characterized by the cultivation  
10        of crops, crops for bioenergy, orchards, forage, and  
11        forestry;  
12        (2) Farming activities or uses related to animal husbandry  
13        and game and fish propagation;  
14        (3) Aquaculture, which means the production of aquatic  
15        plant and animal life within ponds and other bodies of  
16        water;  
17        (4) Wind generated energy production for public, private,  
18        and commercial use;  
19        (5) Biofuel production, as described in section  
20        205-4.5(a)(16), for public, private, and commercial  
21        use;



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





1 scale renewable energy systems producing energy solely  
2 for use in the agricultural activities of the fee or  
3 leasehold owner of the property, agricultural-energy  
4 facilities as defined in section 205-4.5(a)(17),  
5 hydroelectric facilities in accordance with section  
6 205-4.5(a)(23), vehicle and equipment storage areas,  
7 and plantation community subdivisions as defined in  
8 section 205-4.5(a)(12);

9 (8) Wind machines and wind farms;

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

16 (10) Agricultural parks;

17 (11) Agricultural tourism conducted on a working farm, or a  
18 farming operation as defined in section 165-2, for the  
19 enjoyment, education, or involvement of visitors;  
20 provided that the agricultural tourism activity is  
21 accessory and secondary to the principal agricultural



1 use and does not interfere with surrounding farm  
2 operations; and provided further that this paragraph  
3 shall apply only to a county that has adopted  
4 ordinances regulating agricultural tourism under  
5 section 205-5;

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

17 (13) Open area recreational facilities;

18 (14) Geothermal resources exploration and geothermal  
19 resources development, as defined under section 182-  
20 1[+], and geothermal resources development, as  
21 authorized by section 205- ; and



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



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

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

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

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



1 of value for recreational purposes; other related activities;  
2 and other permitted uses not detrimental to a multiple use  
3 conservation concept. Conservation districts shall also include  
4 areas for geothermal resources exploration and geothermal  
5 resources development, as defined under section 182-1[-], and  
6 geothermal resources development, as authorized by section 205-  
7 ."

8 SECTION 4. Section 205-4.5, Hawaii Revised Statutes, is  
9 amended by amending subsection (a) to read as follows:

10 "(a) Within the agricultural district, all lands with soil  
11 classified by the land study bureau's detailed land  
12 classification as overall (master) productivity rating class A  
13 or B and for solar energy facilities, class B or C, shall be  
14 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



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



1 agricultural support buildings on land currently or  
2 formerly owned, leased, or operated by a sugar or  
3 pineapple plantation; provided that the existing  
4 structures may be used or rehabilitated for use, and  
5 new employee housing and agricultural support  
6 buildings may be allowed on land within the  
7 subdivision as follows:

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

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

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

17 (13) Agricultural tourism conducted on a working farm, or a  
18 farming operation as defined in section 165-2, for the  
19 enjoyment, education, or involvement of visitors;  
20 provided that the agricultural tourism activity is  
21 accessory and secondary to the principal agricultural





1 use and does not interfere with surrounding farm  
2 operations; and provided further that this paragraph  
3 shall apply only to a county that has adopted  
4 ordinances regulating agricultural tourism under  
5 section 205-5;

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

17 (15) Wind energy facilities, including the appurtenances  
18 associated with the production and transmission of  
19 wind generated energy; provided that the wind energy  
20 facilities and appurtenances are compatible with



1 agriculture uses and cause minimal adverse impact on  
2 agricultural land;  
3 (16) Biofuel processing facilities, including the  
4 appurtenances associated with the production and  
5 refining of biofuels that is normally considered  
6 directly accessory and secondary to the growing of the  
7 energy feedstock; provided that biofuel processing  
8 facilities and appurtenances do not adversely impact  
9 agricultural land and other agricultural uses in the  
10 vicinity.

11 For the purposes of this paragraph:

12 "Appurtenances" means operational infrastructure  
13 of the appropriate type and scale for economic  
14 commercial storage and distribution, and other similar  
15 handling of feedstock, fuels, and other products of  
16 biofuel processing facilities.

17 "Biofuel processing facility" means a facility  
18 that produces liquid or gaseous fuels from organic  
19 sources such as biomass crops, agricultural residues,  
20 and oil crops, including palm, canola, soybean, and  
21 waste cooking oils; grease; food wastes; and animal



1 residues and wastes that can be used to generate  
2 energy;

3 (17) Agricultural-energy facilities, including  
4 appurtenances necessary for an agricultural-energy  
5 enterprise; provided that the primary activity of the  
6 agricultural-energy enterprise is agricultural  
7 activity. To be considered the primary activity of an  
8 agricultural-energy enterprise, the total acreage  
9 devoted to agricultural activity shall be not less  
10 than ninety per cent of the total acreage of the  
11 agricultural-energy enterprise. The agricultural-  
12 energy facility shall be limited to lands owned,  
13 leased, licensed, or operated by the entity conducting  
14 the agricultural activity.

15 As used in this paragraph:

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

18 "Agricultural-energy enterprise" means an  
19 enterprise that integrally incorporates an  
20 agricultural activity with an agricultural-energy  
21 facility.



1            "Agricultural-energy facility" means a facility  
2            that generates, stores, or distributes renewable  
3            energy as defined in section 269-91 or renewable fuel  
4            including electrical or thermal energy or liquid or  
5            gaseous fuels from products of agricultural activities  
6            from agricultural lands located in the State.

7            "Appurtenances" means operational infrastructure  
8            of the appropriate type and scale for the economic  
9            commercial generation, storage, distribution, and  
10           other similar handling of energy, including equipment,  
11           feedstock, fuels, and other products of agricultural-  
12           energy facilities;

13        (18) Construction and operation of wireless communication  
14        antennas; provided that, for the purposes of this  
15        paragraph, "wireless communication antenna" means  
16        communications equipment that is either freestanding  
17        or placed upon or attached to an already existing  
18        structure and that transmits and receives  
19        electromagnetic radio signals used in the provision of  
20        all types of wireless communications services;  
21        provided further that nothing in this paragraph shall



1 be construed to permit the construction of any new  
2 structure that is not deemed a permitted use under  
3 this subsection;

4 (19) Agricultural education programs conducted on a farming  
5 operation as defined in section 165-2, for the  
6 education and participation of the general public;  
7 provided that the agricultural education programs are  
8 accessory and secondary to the principal agricultural  
9 use of the parcels or lots on which the agricultural  
10 education programs are to occur and do not interfere  
11 with surrounding farm operations. For the purposes of  
12 this section, "agricultural education programs" means  
13 activities or events designed to promote knowledge and  
14 understanding of agricultural activities and practices  
15 conducted on a farming operation as defined in section  
16 165-2;

17 (20) Solar energy facilities that do not occupy more than  
18 ten per cent of the acreage of the parcel, or twenty  
19 acres of land, whichever is lesser or for which a  
20 special use permit is granted pursuant to section 205-  
21 6; provided that this use shall not be permitted on



1 lands with soil classified by the land study bureau's  
2 detailed land classification as overall (master)  
3 productivity rating class A unless the solar energy  
4 facilities are:

5 (A) Located on a paved or unpaved road in existence  
6 as of December 31, 2013, and the parcel of land  
7 upon which the paved or unpaved road is located  
8 has a valid county agriculture tax dedication  
9 status or a valid agricultural conservation  
10 easement;

11 (B) Placed in a manner that still allows vehicular  
12 traffic to use the road; and

13 (C) Granted a special use permit by the commission  
14 pursuant to section 205-6;

15 (21) Solar energy facilities on lands with soil classified  
16 by the land study bureau's detailed land  
17 classification as overall (master) productivity rating  
18 B or C for which a special use permit is granted  
19 pursuant to section 205-6; provided that:

20 (A) The area occupied by the solar energy facilities  
21 is also made available for compatible



1 agricultural activities at a lease rate that is  
2 at least fifty per cent below the fair market  
3 rent for comparable properties;

4 (B) Proof of financial security to decommission the  
5 facility is provided to the satisfaction of the  
6 appropriate county planning commission prior to  
7 date of commencement of commercial generation;  
8 and

9 (C) Solar energy facilities shall be decommissioned  
10 at the owner's expense according to the following  
11 requirements:

12 (i) Removal of all equipment related to the  
13 solar energy facility within twelve months  
14 of the conclusion of operation or useful  
15 life; and

16 (ii) Restoration of the disturbed earth to  
17 substantially the same physical condition as  
18 existed prior to the development of the  
19 solar energy facility.



1 For the purposes of this paragraph, "agricultural  
2 activities" means the activities described in  
3 paragraphs (1) to (3);

4 (22) Geothermal resources exploration and geothermal  
5 resources development, as defined under section  
6 182-1 [7], and geothermal resources development, as  
7 authorized by section 205- ; or

8 (23) Hydroelectric facilities, including the appurtenances  
9 associated with the production and transmission of  
10 hydroelectric energy, subject to section 205-2;  
11 provided that the hydroelectric facilities and their  
12 appurtenances:

13 (A) Have a hydroelectric generating capacity of not  
14 more than five hundred kilowatts;

15 (B) Comply with the state water code, chapter 174C;

16 (C) Are accessory to agricultural activities on  
17 agricultural land for agricultural use only; and

18 (D) Do not adversely impact or impede the use of  
19 agricultural land or the availability of surface  
20 or ground water for all uses on all parcels that  
21 are served by the ground water sources or streams





1                   for which hydroelectric facilities are  
2                   considered."

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

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

- 8           (1) Low density residential uses;
- 9           (2) Agricultural uses;
- 10          (3) Golf courses, golf driving ranges, and golf-related  
11           facilities;
- 12          (4) Public, quasi-public, and public utility facilities;
- 13          and
- 14          (5) Geothermal resources exploration and geothermal  
15           resources development, as defined under section 182-  
16           1[-], and geothermal resources development, as  
17           authorized by section 205- .

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



# H.B. NO. 1732

1 SECTION 6. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect upon its approval;  
4 provided that the amendments made to section 205-4.5(a), Hawaii  
5 Revised Statutes, shall not be repealed when that section is  
6 repealed and reenacted on June 30, 2019, by Act 52, Session Laws  
7 of Hawaii 2014.  
8

INTRODUCED BY: Nivole E. Lowen

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# H.B. NO. 1732

**Report Title:**

Geothermal Resources Development; Geothermal Resource Permit

**Description:**

Restores the review process for proposed geothermal resources development projects.

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

