
A BILL FOR AN ACT

RELATING TO MINERAL RESOURCES.

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

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

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

9 (1) Fees shall be charged in accordance with a schedule
10 approved by the board;

11 (2) The proposed fee schedule shall be posted on the
12 department's website at least forty-five days prior to
13 the board meeting at which adoption will be
14 considered;

15 (3) The board shall consider and adopt the fee schedule at
16 a regular meeting after taking public testimony; and

17 (4) Setting of fees shall not be subject to chapter 91."



1 SECTION 2. 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
19 renewable energy producer and sold to the utility or
20 to district cooling system customers may be derived
21 from fossil fuels; or



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

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

10 1. By adding a new definition to be appropriately
11 inserted and to read:

12 "Department" means the department of land and natural
13 resources."

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

16 "Geothermal resources" means the natural heat of the
17 earth, the energy, in whatever form, below the surface of the
18 earth present in, resulting from, or created by, or which may be
19 extracted from, such natural heat, and all minerals in solution
20 or other products obtained from naturally heated fluids, brines,
21 associated gases, and steam, in whatever form, found below the



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

8 "Geothermal resources exploration" means either of the
9 following:

- 10 (1) Conducting non-invasive geophysical operations,
11 including geochemical operations, remote sensing, and
12 other similar techniques; or
13 (2) Drilling exploration wells for purposes including, but
14 not limited to, the extraction and removal of minerals
15 of types and quantities;

16 that are reasonably required for testing and analysis to provide
17 ground truth or determine the economic viability of geothermal
18 resources. The term does not include "geothermal resources
19 development".

20 "Mining lease" means a lease of the right to conduct mining
21 operations, including geothermal resource exploration or



1 development, on state lands and [~~on lands sold or leased by the~~
2 ~~State or its predecessors in interest with a reservation of~~
3 ~~mineral rights to the State.~~] reserved lands."

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

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



1 the mining and removal of the minerals therefrom by any means
2 whatsoever."

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

5 "§182-4 Mining leases on state lands. (a) If any mineral
6 is discovered or known to exist on state lands, any interested
7 person may notify the board [~~of land and natural resources~~] of
8 the person's desire to apply for a mining lease. The notice
9 shall be accompanied by [~~a fee of \$100~~] the required fees as
10 established by the board, together with a description of the
11 land desired to be leased [~~and~~], the minerals involved, and any
12 information and maps that the board by rule may prescribe. As
13 soon as practicable thereafter, the board shall cause a public
14 notice to be given in the county where the lands are located, at
15 least once in each of three successive weeks, setting forth the
16 description of the land, and the minerals desired to be leased.
17 The board may hold the public auction of the mining lease within
18 six months from the date of the first notice or any further time
19 that may be reasonably necessary. Whether or not the state land
20 sought to be auctioned is then being utilized or put to some
21 productive use, the board, after due notice of public hearing to



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



1 or any combination or other basis and under any terms and
2 conditions that may be set by the board.

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

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



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

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

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



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

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

15 "§182-6 Exploration. Any person wishing to conduct
16 exploration on state lands or reserved lands shall apply to the
17 board [~~of land and natural resources who~~], which shall issue
18 exploration permits upon terms and conditions as it shall by
19 [~~regulation~~] rule prescribe. During and as a result of the
20 exploration, no minerals of [~~such~~] types and quantity beyond
21 that reasonably required for testing and analysis shall be



1 extracted and removed from [~~such~~] state lands[-] or reserved
 2 lands. Upon termination of the exploration permit, all
 3 exploration data, including but not limited to the drill logs
 4 and the results of the assays resulting from the exploration,
 5 shall be turned over to the board and kept confidential by the
 6 board. If the person shall not make application for a mining
 7 lease of the lands within a period of six months from the date
 8 the 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 to
 11 issue an exploration permit for geothermal resources as well as
 12 minerals."

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

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

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



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

3 2. By amending subsections (d) through (f) to read as
4 follows:

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

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



1 in fact be made. In [~~such~~] these leases, the obligation to
2 commence mining operations within three years shall not commence
3 until the expiration of the research period.

4 (e) For the period of the lease, the lessee shall have the
5 exclusive right of possession of the minerals leased and the
6 exclusive rights to mine and remove the minerals by means
7 [~~which~~] that shall be reasonable and satisfactory to the board
8 and to occupy and use so much of the surface of the land as may
9 reasonably be required, subject to the provisions of section
10 182-3. The right to use the surface shall include the right to
11 erect transportation facilities thereon, construct plants for
12 beneficiating, drying, and processing the minerals for electric
13 power generation and transmission and [~~such~~] other uses as may
14 be approved by the board. The other uses may include but need
15 not be limited to uses necessary or convenient to the [winning
16 and] processing of the minerals; provided that the lessee shall
17 comply with all water and air pollution control laws, and rules
18 of the State or its political subdivisions.

19 (f) The lessee may retain all minerals separated from the
20 land as a part of the process of mining the minerals specified
21 in the mining lease; provided that the lease may prescribe the



1 accounting and testing procedures by which the amount and
2 quality of [~~such~~] the additional materials shall be determined
3 for the purpose of computing the excise tax thereon[~~-~~] and the
4 applicable royalty that may be set by the board for the use of
5 the minerals."

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

8 "§182-9 Deposit; first year's rental. All bidders shall,
9 prior to the date of public auction, post with the board [~~of~~
10 ~~land and natural resources a deposit of \$500.~~] the required
11 deposit, as established by the board, provided that:

12 (1) The proposed deposit shall be posted on the
13 department's website at least forty-five days prior to
14 the board meeting at which adoption will be
15 considered;

16 (2) The board shall consider and adopt the proposed
17 deposit at a regular meeting after taking public
18 testimony; and

19 (3) Setting of the deposit shall not be subject to chapter
20 91.



1 The board shall refund to unsuccessful bidders [~~such~~] the amount
2 within two days after the auction. All bidders, prior to the
3 auction, shall satisfy the board of their financial ability to
4 conduct mining operations and of their capability to develop a
5 mine. The successful bidder shall pay to the board the amount
6 of the first year's rental within two days after the acceptance
7 of the bid by the board and the [~~\$500~~] required deposit, as
8 established by the board, shall be credited against [~~such~~] the
9 sum. If the deposit exceeds the first year's rental, the excess
10 shall be refunded. All rentals thereafter are payable in
11 advance once a year."

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

14 "§182-10 Revocation of mining leases. A mining lease may
15 be revoked if the lessee fails to pay rentals when due or if any
16 of the terms of the lease or of law are not complied with, or if
17 the lessee wholly ceases all mining operations for other than
18 reasons of force majeure or the uneconomic operation of the
19 mining lease for a period of one year without the written
20 consent of the board [~~of land and natural resources~~]; provided
21 that the board shall give the lessee notice of any default and



1 the lessee shall have six months or such other time limit as
2 provided by the rules [~~and regulations~~] from the date of the
3 notice to remedy the default."

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

6 "§182-14 Rules [~~and regulations~~]. Subject to chapter 91,
7 the board [~~of land and natural resources~~] may [~~make, promulgate~~]
8 adopt and amend [~~such~~] rules [~~and regulations~~] as it deems
9 necessary to carry out this chapter and to perform its duties
10 thereunder, all commensurate with and for the purpose of
11 protecting the public interest. All [~~such~~] rules [~~and~~
12 ~~regulations~~] shall have the force and effect of law."

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

15 "[~~f~~]§182-17 [~~t~~] Penalty for violation. (a) Any person who
16 violates any provision of this chapter, or any [~~regulation~~] rule
17 adopted pursuant [~~hereto, shall be fined not more than \$500 for~~
18 ~~each offense.~~] to this chapter, shall be subject to a fine
19 imposed by the board; provided that the fine shall not exceed
20 \$5,000 per violation. If any person after receiving written
21 notice for a violation fails to cure [~~such~~] the violation within



1 ~~[such]~~ the time and under ~~[such]~~ conditions as determined by
2 ~~[the rules and regulations, such]~~ the board, the person shall be
3 subject to a citation for a new and separate violation. There
4 shall be a fine of not more than ~~[\$500]~~ \$5,000 for each
5 additional violation.

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

9 (c) Except as otherwise provided by law, the board or its
10 authorized representative by proper delegation may:

11 (1) Set, charge, and collect administrative fines or bring
12 legal action to recover administrative fees and costs
13 as documented by receipts or affidavit, including
14 attorney's fees and costs; and

15 (2) Bring legal action to recover administrative fines,
16 fees, and costs, including attorney's fees and costs,
17 or payment for damages resulting from a violation of
18 this chapter or any rule adopted pursuant to this
19 chapter."

20 SECTION 13. Sections 182-3(a), 182-11, 182-13, and 182-15,
21 Hawaii Revised Statutes, are amended by substituting the word



1 "board" wherever the phrase "board of land and natural
2 resources" appears, as the context requires.

3 SECTION 14. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

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

6

INTRODUCED BY:

A handwritten signature in black ink, appearing to be "B. J. ...", is written over a horizontal line.

JAN 22 2016



H.B. NO. 2057

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.

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