
A BILL FOR AN ACT

RELATING TO GEOTHERMAL RESOURCES.

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

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

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

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

12 "§205- Geothermal resource permits. (a) The use of an
13 area or site for geothermal resources development within the
14 conservation district shall be governed by the board. The
15 appropriate county authority may issue a geothermal resource
16 permit pursuant to subsection (c) to allow geothermal resources
17 development in an agricultural, rural, or urban district if the



1 geothermal resources development is not considered a permissible
2 use under the applicable county zoning ordinances or general
3 plan.

4 (b) If geothermal resources development is proposed within
5 a conservation district in an application containing all
6 required data, the board shall conduct a public hearing and,
7 upon appropriate request for mediation from any party who
8 submitted written comments at the public hearing, the board
9 shall appoint a mediator within fourteen days. The board shall
10 require the parties to participate in mediation. The mediator
11 shall not be a member of the board or its staff. The mediation
12 period shall not extend beyond sixty days after the date
13 mediation starts, except by order of the board. Mediation shall
14 be confined to the issues raised at the public hearing by the
15 party requesting mediation.

16 If there is no mediation agreement on all the issues raised
17 at the public hearing, the board may conduct a second public
18 hearing to receive additional comments related to the unresolved
19 mediation issues. Within ten days after the second public
20 hearing, the board may receive additional written comments on
21 the unresolved issues raised at the second public hearing from



1 any party. The board shall consider the comments at the second
2 hearing before rendering its final decision. The board shall
3 then determine whether a conservation district use permit shall
4 be granted to authorize the geothermal resources development
5 described in the application. The board shall grant a
6 conservation district use permit if it finds that:

7 (1) The desired uses would not:

8 (A) Have unreasonable adverse health, environmental,
9 or socio-economic effects on residents or
10 surrounding property; and

11 (B) Impose an unreasonable burden on public agencies
12 to provide roads and streets, sewers, water,
13 drainage, and police and fire protection; or

14 (2) Despite the unreasonable adverse effects or burdens
15 referred to in paragraph (1) (A) or (B), there are
16 reasonable measures available to mitigate the
17 unreasonable adverse effects or burdens, which the
18 board may prescribe as conditions for the proposed
19 geothermal resources development.

20 A decision shall be made by the board within six months of
21 the date a complete application is filed; provided that the time



1 limit may be extended by agreement between the applicant and the
2 board. The board shall have the exclusive authority to impose
3 reasonable conditions and restrictions upon the proposed
4 geothermal resources development in support of its findings,
5 except to the extent that the department of health and other
6 state and federal agencies have jurisdiction to regulate the
7 activities.

8 (c) If geothermal resources development is proposed within
9 agricultural, rural, or urban districts and the proposed
10 activities are not expressly permitted uses pursuant to the
11 applicable county general plan and zoning ordinances, then after
12 receipt of a properly filed and completed application including
13 all required supporting data, the appropriate county authority
14 shall conduct a public hearing. Upon appropriate request for
15 mediation from any party who submitted written comments at the
16 public hearing, the appropriate county authority shall appoint a
17 mediator within fourteen days. The appropriate county authority
18 shall require the parties to participate in mediation. The
19 mediator shall not be an employee of any county agency or its
20 staff. The mediation period shall not extend beyond sixty days
21 after mediation starts, except by order of the appropriate



1 county authority. Mediation shall be confined to the issues
2 raised at the public hearing by the party requesting mediation.
3 If there is no mediation agreement on the issues raised during
4 the public hearing, the appropriate county authority may conduct
5 a second public hearing to receive additional comments related
6 to the unresolved mediation issues. Within ten days after the
7 second public hearing, the appropriate county authority may
8 receive additional written comments on the unresolved issues
9 raised at the second public hearing from any party.

10 The appropriate county authority shall consider the
11 comments raised at the second hearing before rendering its final
12 decision. The appropriate county authority shall then determine
13 whether a geothermal resource permit shall be granted to
14 authorize the geothermal resources development described in the
15 application. The appropriate county authority shall grant a
16 geothermal resource permit if it finds that the applicant has
17 demonstrated that:

- 18 (1) The desired uses would not:
19 (A) Have unreasonable adverse health, environmental,
20 or socio-economic effects on residents or
21 surrounding property; and



1 (B) Impose an unreasonable burden on public agencies
2 to provide roads and streets, sewers, water,
3 drainage, school improvements, and police and
4 fire protection; or

5 (2) Despite the unreasonable adverse effects or burdens
6 referred to in paragraph (1) (A) or (B), there are
7 reasonable measures available to mitigate the
8 unreasonable adverse effects or burdens, which the
9 county authority may prescribe as conditions for the
10 proposed geothermal resources development.

11 A decision shall be made on the application by the
12 appropriate county authority within six months of the date a
13 complete application is filed; provided that the time limit may
14 be extended by agreement between the applicant and the
15 appropriate county authority. The appropriate county authority
16 shall have exclusive authority to impose reasonable restrictions
17 and conditions upon the geothermal resources development in
18 support of its findings, except to the extent that the
19 department of health and other federal and state agencies have
20 jurisdiction to regulate the activities.



1 (d) Requests for mediation shall be received by the board
2 or appropriate county authority within five days after the close
3 of the initial public hearing. Any person submitting an
4 appropriate request for mediation shall be notified by the board
5 or appropriate county authority of the date, time, and place of
6 the mediation conference. The board or county authority shall
7 deposit the notice in the mail to the return address stated on
8 the request for mediation. The notice shall be mailed no later
9 than ten days before the start of the mediation conference. The
10 conference shall be held on the island where the public hearing
11 is held.

12 (e) Any decision made by an appropriate county authority
13 or the board pursuant to a public hearing or hearings under this
14 section may be appealed directly on the record to the
15 intermediate appellate court for review and shall not be subject
16 to a contested case hearing. Section 91-14 shall apply to
17 judicial reviews, notwithstanding the lack of a contested case
18 hearing on the matter. The appropriate county authority or the
19 board shall provide a court reporter to produce a transcript of
20 the proceedings at all public hearings under this section for
21 purposes of an appeal.



1 (f) For the purposes of an appeal from a decision from a
2 public hearing, the record shall include:

3 (1) The application for the permit and all accompanying
4 supporting documents, including but not limited to
5 reports, studies, affidavits, statements, and
6 exhibits;

7 (2) Staff recommendations submitted to the members of the
8 agency in consideration of the application;

9 (3) Oral and written public testimony received at the
10 public hearings;

11 (4) Written transcripts of the proceedings at the public
12 hearings;

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

15 (6) The written decision of the agency issued in
16 connection with the application and public hearings;
17 and

18 (7) Any other documents as may be required by the board or
19 appropriate county authority.

20 (g) For purposes of this section:



1 "Appropriate county authority" means the county planning
2 commission or, if applicable, the respective county agency or
3 body designated by county charter or ordinance to issue
4 development permits.

5 "Board" means the board of land and natural resources."

6 SECTION 3. Section 171-95, Hawaii Revised Statutes, is
7 amended by amending subsection (c) to read as follows:

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

- 10 (1) Any producer or developer of electrical or thermal
11 energy produced by wind, solar energy, hydropower,
12 geothermal resources, landfill gas, waste-to-energy,
13 ocean thermal energy conversion, cold seawater, wave
14 energy, biomass, including municipal solid waste,
15 biofuels or fuels derived from organic sources,
16 hydrogen fuels derived primarily from renewable
17 energy, or fuel cells where the fuel is derived
18 primarily from renewable sources that sell all of the
19 net power produced from the demised premises to an
20 electric utility company regulated under chapter 269
21 or that sells all of the thermal energy it produces to



1 customers of district cooling systems; provided that
2 up to twenty-five per cent of the power produced by a
3 renewable energy producer and sold to the utility or
4 to district cooling system customers may be derived
5 from fossil fuels; or

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

13 SECTION 4. Section 182-1, Hawaii Revised Statutes, is
14 amended to read as follows:

15 1. By adding a new definition to be appropriately inserted
16 to read:

17 "Department" means the department of land and natural
18 resources."

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

21



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

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

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



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

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

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

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



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

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

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



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



1 the public auction may be required to bid on the amount of
2 annual rental to be paid for the term of the mining lease based
3 on an upset price fixed by the board, a royalty based on the
4 gross proceeds or net profits, cash bonus, or any combination or
5 other basis and under any terms and conditions that may be set
6 by the board.

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

19 (c) Any proposed mining operations to be undertaken by a
20 renewable energy producer, as defined in section 171-95(c),
21 shall require an application to the board for a mining lease on



1 state lands. Any provisions to the contrary notwithstanding,
2 the application for a mining lease on state lands may be granted
3 by the board in accordance with this section, or the board, by
4 the vote of two-thirds of the members to which the board is
5 entitled, may grant a mining lease to the renewable energy
6 producer without public auction."

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

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



1 a] A mining lease may be granted to a person other than the
2 occupier if the occupier has assigned the occupier's rights to
3 apply for a mining lease to another person, in which case only
4 [~~sueh~~] an assignee may be granted a mining lease. Any
5 provisions to the contrary notwithstanding, if the board decides
6 that it is appropriate to grant a geothermal mining lease on the
7 reserved lands, the surface owner or the owner's assignee shall
8 have the first right of refusal for a mining lease. If the
9 occupier or the occupier's assignee of the right to obtain a
10 mining lease should fail to apply for a mining lease within six
11 months from the date of notice from the board of a finding by
12 the board that it is in the public interest that the minerals on
13 the reserved lands be mined, a mining lease shall be granted
14 under section 182-4; provided that bidders at the public auction
15 shall bid on an amount to be paid to the State for a mining
16 lease granting to the lessee the right to exploit minerals
17 reserved to the State."

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

20 "§182-6 Exploration. Any person wishing to conduct
21 geothermal resources exploration on state lands or reserved



1 lands shall apply to the board [~~of land and natural resources~~
2 ~~who~~], which shall issue exploration permits upon terms and
3 conditions as it shall by [~~regulation~~] rule prescribe. During
4 and as a result of the exploration, no minerals of [~~such~~] types
5 and quantity beyond that reasonably required for testing and
6 analysis shall be extracted and removed from [~~such~~] state
7 lands[-] or reserved lands. Upon termination of the exploration
8 permit, all exploration data, including but not limited to the
9 drill logs and the results of the assays resulting from the
10 geothermal resources exploration, shall be turned over to the
11 board and kept confidential by the board. If the person shall
12 not make application for a mining lease of the lands within a
13 period of six months from the date the information is turned
14 over to the board, the board in its discretion need not keep the
15 information confidential.

16 This section shall be construed as authorizing the board to
17 issue an exploration permit for geothermal resources as well as
18 minerals."

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

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



1 "(a) Prior to the public auction contemplated in section
2 182-4 or 182-5, or the granting of mining lease without public
3 auction contemplated in section 182-4 or 182-5, the board [~~of~~
4 ~~land and natural resources~~] shall cause a mining lease for the
5 land in question to be drawn. The lease shall describe the land
6 and shall contain, in addition to such other provisions which
7 the board may deem appropriate, specific provisions as provided
8 in this section."

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

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

17 Any interested party may [~~however,~~] request that a mining
18 lease contain a research period under which the lessees shall be
19 required to expend money in research and development to
20 establish a method to make economical the mining and processing
21 of the [~~mineral deposits contained~~] minerals identified in the



1 lease. If the board determines that the research period would
2 be beneficial, it shall fix the period of research and shall
3 also fix a minimum expenditure for labor performed or money
4 spent by the lessee [~~in~~] on research and development and the
5 method by which the lessee shall establish that such expenditure
6 in fact be made. In [~~such~~] these leases, the obligation to
7 commence mining operations within three years shall not commence
8 until the expiration of the research period.

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



1 comply with all water and air pollution control laws, and rules
2 of the State or its political subdivisions.

3 (f) The lessee may retain all minerals separated from the
4 land as a part of the process of mining the minerals specified
5 in the mining lease; provided that the lease may prescribe the
6 accounting and testing procedures by which the amount and
7 quality of [such] the additional materials shall be determined
8 for the purpose of computing the excise tax thereon[-] and
9 applicable royalty that may be set by the board for the use of
10 the minerals."

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

13 "§182-9 **Deposit; first year's rental.** All bidders
14 [~~shall~~], prior to the date of public auction, shall post with
15 the board [~~of land and natural resources a deposit of \$500.~~] the
16 required deposit, as established by the department. The board
17 shall refund to unsuccessful bidders [such] the amount within
18 two days after the auction. All bidders, prior to the auction,
19 shall satisfy the board of their financial ability to conduct
20 mining operations and of their capability to develop a mine.
21 The successful bidder shall pay to the board the amount of the



1 first year's rental within two days after the acceptance of the
2 bid by the board and the [~~\$500-deposit~~] required deposit, as
3 established by the department, shall be credited against [~~such~~]
4 the sum. If the deposit exceeds the first year's rental, the
5 excess shall be refunded. All rentals thereafter are payable in
6 advance once a year."

7 SECTION 11. Section 182-10, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§182-10 Revocation of mining leases.** A mining lease may
10 be revoked if the lessee fails to pay rentals when due or if any
11 of the terms of the lease or of law are not complied with, or if
12 the lessee wholly ceases all mining operations for other than
13 reasons of force majeure or the uneconomic operation of the
14 mining lease for a period of one year without the written
15 consent of the board [~~of land and natural resources~~]; provided
16 that the board shall give the lessee notice of any default and
17 the lessee shall have six months or such other time limit as
18 provided by the rules [~~and regulations~~] from the date of the
19 notice to remedy the default."

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



1 "~~§182-14~~ Rules [~~and regulations~~]. Subject to chapter 91,
2 the board [~~of land and natural resources~~] may [~~make, promulgate~~]
3 adopt and amend [~~such~~] rules [~~and regulations~~] as it deems
4 necessary to carry out this chapter and to perform its duties
5 thereunder, all commensurate with and for the purpose of
6 protecting the public interest. All [~~such~~] rules [~~and~~
7 ~~regulations~~] shall have the force and effect of law."

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

10 "~~[+]§182-17[+]~~ **Penalty for violation.** (a) Any person who
11 violates any provision of this chapter, or any [~~regulation~~] rule
12 adopted pursuant [~~hereto, shall be fined not more than \$500 for~~
13 ~~each offense.~~] to this chapter, shall be subject to a fine
14 imposed by the board; provided that the fine shall not exceed
15 \$5,000 per violation. If any person after receiving written
16 notice for a violation fails to cure [~~such~~] the violation within
17 [~~such~~] the time and under [~~such~~] conditions as determined by
18 [~~the rules and regulations,~~] the board, [~~such~~] the person shall
19 be subject to a citation for a new and separate violation.
20 There shall be a fine of not more than [~~\$500~~] \$5,000 for each
21 additional violation.



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

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

6 (1) Set, charge, and collect administrative fines or bring
7 legal action to recover administrative fees and costs
8 as documented by receipts or affidavit, including
9 attorney's fees and costs; and

10 (2) Bring legal action to recover administrative fines,
11 fees, and costs, including attorney's fees and costs,
12 or payment for damages resulting from a violation of
13 this chapter or any rule adopted pursuant to this
14 chapter."

15 SECTION 14. Section 205-2, Hawaii Revised Statutes, is
16 amended by amending subsections (b) through (d) to read as
17 follows:

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



1 In addition, urban districts shall include geothermal
2 resources exploration and geothermal resources development, as
3 defined under section 182-1, as permissible uses[-]; provided
4 that a geothermal resource permit may be required for geothermal
5 resources development in accordance with section 205- .

6 (c) Rural districts shall include activities or uses as
7 characterized by low density residential lots of not more than
8 one dwelling house per one-half acre, except as provided by
9 county ordinance pursuant to section 46-4(c), in areas where
10 "city-like" concentration of people, structures, streets, and
11 urban level of services are absent, and where small farms are
12 intermixed with low density residential lots except that within
13 a subdivision, as defined in section 484-1, the commission for
14 good cause may allow one lot of less than one-half acre, but not
15 less than eighteen thousand five hundred square feet, or an
16 equivalent residential density, within a rural subdivision and
17 permit the construction of one dwelling on [~~such~~] the lot;
18 provided that all other dwellings in the subdivision shall have
19 a minimum lot size of one-half acre or 21,780 square feet.
20 [~~Such~~] The petition for variance may be processed under the
21 special permit procedure. These districts may include



1 contiguous areas which are not suited to low density residential
2 lots or small farms by reason of topography, soils, and other
3 related characteristics. Rural districts shall also include
4 golf courses, golf driving ranges, and golf-related facilities.

5 In addition to the uses listed in this subsection, rural
6 districts shall include geothermal resources exploration and
7 geothermal resources development, as defined under section
8 182-1, as permissible uses[-]; provided that a geothermal
9 resource permit may be required for geothermal resources
10 development in accordance with section 205-_____.

11 (d) Agricultural districts shall include:

12 (1) Activities or uses as characterized by the cultivation
13 of crops, crops for bioenergy, orchards, forage, and
14 forestry;

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

17 (3) Aquaculture, which means the production of aquatic
18 plant and animal life within ponds and other bodies of
19 water;

20 (4) Wind generated energy production for public, private,
21 and commercial use;



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



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

11 (8) Wind machines and wind farms;

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

18 (10) Agricultural parks;

19 (11) Agricultural tourism conducted on a working farm, or a
20 farming operation as defined in section 165-2, for the
21 enjoyment, education, or involvement of visitors;



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

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

19 (13) Open area recreational facilities;

20 (14) Geothermal resources exploration and geothermal
21 resources development, as defined under section 182-1;



1 provided that a geothermal resource permit may be
2 required for geothermal resources development in
3 accordance with section 205- ; and

4 (15) Agricultural-based commercial operations, including:

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

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

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



1 grown in Hawaii and value-added products that
2 were produced using agricultural products grown
3 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 SECTION 15. Section 205-4.5, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) Within the agricultural district, all lands with soil
18 classified by the land study bureau's detailed land
19 classification as overall (master) productivity rating class A
20 or B and for solar energy facilities, class B or C, shall be
21 restricted to the following permitted uses:



- 1 (1) Cultivation of crops, including crops for bioenergy,
2 flowers, vegetables, foliage, fruits, forage, and
3 timber;
- 4 (2) Game and fish propagation;
- 5 (3) Raising of livestock, including poultry, bees, fish,
6 or other animal or aquatic life that are propagated
7 for economic or personal use;
- 8 (4) Farm dwellings, employee housing, farm buildings, or
9 activities or uses related to farming and animal
10 husbandry. "Farm dwelling", as used in this
11 paragraph, means a single-family dwelling located on
12 and used in connection with a farm, including clusters
13 of single-family farm dwellings permitted within
14 agricultural parks developed by the State, or where
15 agricultural activity provides income to the family
16 occupying the dwelling;
- 17 (5) Public institutions and buildings that are necessary
18 for agricultural practices;
- 19 (6) Public and private open area types of recreational
20 uses, including day camps, picnic grounds, parks, and
21 riding stables, but not including dragstrips,



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- 1 airports, drive-in theaters, golf courses, golf
2 driving ranges, country clubs, and overnight camps;
- 3 (7) Public, private, and quasi-public utility lines and
4 roadways, transformer stations, communications
5 equipment buildings, solid waste transfer stations,
6 major water storage tanks, and appurtenant small
7 buildings such as booster pumping stations, but not
8 including offices or yards for equipment, material,
9 vehicle storage, repair or maintenance, treatment
10 plants, corporation yards, or other similar
11 structures;
- 12 (8) Retention, restoration, rehabilitation, or improvement
13 of buildings or sites of historic or scenic interest;
- 14 (9) Agricultural-based commercial operations as described
15 in section 205-2(d)(15);
- 16 (10) Buildings and uses, including mills, storage, and
17 processing facilities, maintenance facilities,
18 photovoltaic, biogas, and other small-scale renewable
19 energy systems producing energy solely for use in the
20 agricultural activities of the fee or leasehold owner
21 of the property, and vehicle and equipment storage



1 areas that are normally considered directly accessory
2 to the above-mentioned uses and are permitted under
3 section 205-2(d);

4 (11) Agricultural parks;

5 (12) Plantation community subdivisions, which as used in
6 this chapter means an established subdivision or
7 cluster of employee housing, community buildings, and
8 agricultural support buildings on land currently or
9 formerly owned, leased, or operated by a sugar or
10 pineapple plantation; provided that the existing
11 structures may be used or rehabilitated for use, and
12 new employee housing and agricultural support
13 buildings may be allowed on land within the
14 subdivision as follows:

15 (A) The employee housing is occupied by employees or
16 former employees of the plantation who have a
17 property interest in the land;

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



1 (C) The agricultural support buildings shall be
2 rented or leased to agricultural business
3 operators or agricultural support services;
4 (13) Agricultural tourism conducted on a working farm, or a
5 farming operation as defined in section 165-2, for the
6 enjoyment, education, or involvement of visitors;
7 provided that the agricultural tourism activity is
8 accessory and secondary to the principal agricultural
9 use and does not interfere with surrounding farm
10 operations; and provided further that this paragraph
11 shall apply only to a county that has adopted
12 ordinances regulating agricultural tourism under
13 section 205-5;
14 (14) Agricultural tourism activities, including overnight
15 accommodations of twenty-one days or less, for any one
16 stay within a county; provided that this paragraph
17 shall apply only to a county that includes at least
18 three islands and has adopted ordinances regulating
19 agricultural tourism activities pursuant to section
20 205-5; provided further that the agricultural tourism
21 activities coexist with a bona fide agricultural



1 activity. For the purposes of this paragraph, "bona
2 fide agricultural activity" means a farming operation
3 as defined in section 165-2;

4 (15) Wind energy facilities, including the appurtenances
5 associated with the production and transmission of
6 wind generated energy; provided that the wind energy
7 facilities and appurtenances are compatible with
8 agriculture uses and cause minimal adverse impact on
9 agricultural land;

10 (16) Biofuel processing facilities, including the
11 appurtenances associated with the production and
12 refining of biofuels that is normally considered
13 directly accessory and secondary to the growing of the
14 energy feedstock; provided that biofuel processing
15 facilities and appurtenances do not adversely impact
16 agricultural land and other agricultural uses in the
17 vicinity.

18 For the purposes of this paragraph:

19 "Appurtenances" means operational infrastructure
20 of the appropriate type and scale for economic
21 commercial storage and distribution, and other similar



1 handling of feedstock, fuels, and other products of
2 biofuel processing facilities.

3 "Biofuel processing facility" means a facility
4 that produces liquid or gaseous fuels from organic
5 sources such as biomass crops, agricultural residues,
6 and oil crops, including palm, canola, soybean, and
7 waste cooking oils; grease; food wastes; and animal
8 residues and wastes that can be used to generate
9 energy;

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



1 As used in this paragraph:

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

4 "Agricultural-energy enterprise" means an
5 enterprise that integrally incorporates an
6 agricultural activity with an agricultural-energy
7 facility.

8 "Agricultural-energy facility" means a facility
9 that generates, stores, or distributes renewable
10 energy as defined in section 269-91 or renewable fuel
11 including electrical or thermal energy or liquid or
12 gaseous fuels from products of agricultural activities
13 from agricultural lands located in the State.

14 "Appurtenances" means operational infrastructure
15 of the appropriate type and scale for the economic
16 commercial generation, storage, distribution, and
17 other similar handling of energy, including equipment,
18 feedstock, fuels, and other products of agricultural-
19 energy facilities;

20 (18) Construction and operation of wireless communication
21 antennas; provided that, for the purposes of this



1 paragraph, "wireless communication antenna" means
2 communications equipment that is either freestanding
3 or placed upon or attached to an already existing
4 structure and that transmits and receives
5 electromagnetic radio signals used in the provision of
6 all types of wireless communications services;
7 provided further that nothing in this paragraph shall
8 be construed to permit the construction of any new
9 structure that is not deemed a permitted use under
10 this subsection;

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



1 conducted on a farming operation as defined in section
2 165-2;

3 (20) Solar energy facilities that do not occupy more than
4 ten per cent of the acreage of the parcel, or twenty
5 acres of land, whichever is lesser or for which a
6 special use permit is granted pursuant to section 205-
7 6; provided that this use shall not be permitted on
8 lands with soil classified by the land study bureau's
9 detailed land classification as overall (master)
10 productivity rating class A unless the solar energy
11 facilities are:

12 (A) Located on a paved or unpaved road in existence
13 as of December 31, 2013, and the parcel of land
14 upon which the paved or unpaved road is located
15 has a valid county agriculture tax dedication
16 status or a valid agricultural conservation
17 easement;

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

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

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

6 (A) The area occupied by the solar energy facilities
7 is also made available for compatible
8 agricultural activities at a lease rate that is
9 at least fifty per cent below the fair market
10 rent for comparable properties;

11 (B) Proof of financial security to decommission the
12 facility is provided to the satisfaction of the
13 appropriate county planning commission prior to
14 date of commencement of commercial generation;
15 and

16 (C) Solar energy facilities shall be decommissioned
17 at the owner's expense according to the following
18 requirements:

19 (i) Removal of all equipment related to the
20 solar energy facility within twelve months



1 of the conclusion of operation or useful
2 life; and

3 (ii) Restoration of the disturbed earth to
4 substantially the same physical condition as
5 existed prior to the development of the
6 solar energy facility.

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

10 (22) Geothermal resources exploration and geothermal
11 resources development, as defined under section
12 182-1[-]; provided that a geothermal resource permit
13 may be required for geothermal resources development
14 in accordance with section 205- ."

15 SECTION 16. Section 205-5, Hawaii Revised Statutes, is
16 amended by amending subsection (c) to read as follows:

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

- 20 (1) Low density residential uses;
- 21 (2) Agricultural uses;



- 1 (3) Golf courses, golf driving ranges, and golf-related
- 2 facilities;
- 3 (4) Public, quasi-public, and public utility facilities;
- 4 and
- 5 (5) Geothermal resources exploration and geothermal
- 6 resources development, as defined under section
- 7 182-1[-]; provided that a geothermal resource permit
- 8 may be required for geothermal resources development
- 9 in accordance with section 205- .

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

14 SECTION 17. Sections 182-3(a), 182-11, 182-13, and 182-15,
15 Hawaii Revised Statutes, are amended by substituting the word
16 "board" wherever the phrase "board of land and natural
17 resources" appears, as the context requires.

18 SECTION 18. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.




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1 SECTION 19. This Act shall take effect on July 1, 2015;
2 provided that the amendments made to section 205-4.5, Hawaii
3 Revised Statutes, by this Act shall not be repealed when that
4 section is reenacted on June 30, 2019, by section 3, of Act 52,
5 Session Laws of Hawaii 2014.

6

INTRODUCED BY:



Cindy Evans

Clara

JAN 27 2015



H.B. NO. 996

Report Title:

BLNR; Mineral Resources; Geothermal Resources

Description:

Establishes a framework to regulate geothermal resources development through a permitting process administered by the BLNR and the appropriate county authority. Requires penalties, fees, and costs collected pursuant to chapter 182, HRS, to be deposited into the special land and development fund.

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

