
A BILL FOR AN ACT

RELATING TO GEOTHERMAL.

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

1 SECTION 1. The legislature finds that the development and
2 regulation of geothermal energy development and production is a
3 matter of statewide concern. The legislature further finds that
4 regulations concerning the development of geothermal energy,
5 geothermal energy exploration, and geothermal mining operations
6 should be uniform throughout the State, and not subject to
7 restrictions imposed by the counties that are inconsistent with
8 or contrary to State laws, rules, or regulations.

9 The purpose of this Act is to:

- 10 (1) Clarify that regulation of geothermal resources
11 development and geothermal resources exploration shall
12 be exclusively reserved to the State unless delegated
13 to the counties by statute;
- 14 (2) Require the lessee of a mining lease to comply with
15 all water and air pollution control laws, relating to
16 building, grading, and flood control codes; and
- 17 (3) Require the rules of the board of land and natural
18 resources regarding mining operations, geothermal



1 resource development, and geothermal resource
2 exploration, including drilling conditions and
3 restrictions, to be uniform throughout the State.

4 SECTION 2. Section 46-1.5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§46-1.5 General powers and limitation of the counties.

7 Subject to general law, each county shall have the following
8 powers and shall be subject to the following liabilities and
9 limitations:

10 (1) Each county shall have the power to frame and adopt a
11 charter for its own self-government that shall
12 establish the county executive, administrative, and
13 legislative structure and organization, including but
14 not limited to the method of appointment or election
15 of officials, their duties, responsibilities, and
16 compensation, and the terms of their office;

17 (2) Each county shall have the power to provide for and
18 regulate the marking and lighting of all buildings and
19 other structures that may be obstructions or hazards
20 to aerial navigation, so far as may be necessary or



1 proper for the protection and safeguarding of life,
2 health, and property;

3 (3) Each county shall have the power to enforce all claims
4 on behalf of the county and approve all lawful claims
5 against the county, but shall be prohibited from
6 entering into, granting, or making in any manner any
7 contract, authorization, allowance payment, or
8 liability contrary to the provisions of any county
9 charter or general law;

10 (4) Each county shall have the power to make contracts and
11 to do all things necessary and proper to carry into
12 execution all powers vested in the county or any
13 county officer;

14 (5) Each county shall have the power to:

15 (A) Maintain channels, whether natural or artificial,
16 including their exits to the ocean, in suitable
17 condition to carry off storm waters;

18 (B) Remove from the channels, and from the shores and
19 beaches, any debris that is likely to create an
20 unsanitary condition or become a public nuisance;
21 provided that, to the extent any of the foregoing



- 1 work is a private responsibility, the
2 responsibility may be enforced by the county in
3 lieu of the work being done at public expense;
- 4 (C) Construct, acquire by gift, purchase, or by the
5 exercise of eminent domain, reconstruct, improve,
6 better, extend, and maintain projects or
7 undertakings for the control of and protection
8 against floods and flood waters, including the
9 power to drain and rehabilitate lands already
10 flooded;
- 11 (D) Enact zoning ordinances providing that lands
12 deemed subject to seasonable, periodic, or
13 occasional flooding shall not be used for
14 residence or other purposes in a manner as to
15 endanger the health or safety of the occupants
16 thereof, as required by the Federal Flood
17 Insurance Act of 1956 (chapter 1025, Public Law
18 1016); and
- 19 (E) Establish and charge user fees to create and
20 maintain any stormwater management system or
21 infrastructure;



- 1 (6) Each county shall have the power to exercise the power
2 of condemnation by eminent domain when it is in the
3 public interest to do so;
- 4 (7) Each county shall have the power to exercise
5 regulatory powers over business activity as are
6 assigned to them by chapter 445 or other general law;
- 7 (8) Each county shall have the power to fix the fees and
8 charges for all official services not otherwise
9 provided for;
- 10 (9) Each county shall have the power to provide by
11 ordinance assessments for the improvement or
12 maintenance of districts within the county;
- 13 (10) Except as otherwise provided, no county shall have the
14 power to give or loan credit to, or in aid of, any
15 person or corporation, directly or indirectly, except
16 for a public purpose;
- 17 (11) Where not within the jurisdiction of the public
18 utilities commission, each county shall have the power
19 to regulate by ordinance the operation of motor
20 vehicle common carriers transporting passengers within



1 the county and adopt and amend rules the county deems
2 necessary for the public convenience and necessity;

3 (12) Each county shall have the power to enact and enforce
4 ordinances necessary to prevent or summarily remove
5 public nuisances and to compel the clearing or removal
6 of any public nuisance, refuse, and uncultivated
7 undergrowth from streets, sidewalks, public places,
8 and unoccupied lots. In connection with these powers,
9 each county may impose and enforce liens upon the
10 property for the cost to the county of removing and
11 completing the necessary work where the property
12 owners fail, after reasonable notice, to comply with
13 the ordinances. The authority provided by this
14 paragraph shall not be self-executing, but shall
15 become fully effective within a county only upon the
16 enactment or adoption by the county of appropriate and
17 particular laws, ordinances, or rules defining "public
18 nuisances" with respect to each county's respective
19 circumstances. The counties shall provide the
20 property owner with the opportunity to contest the
21 summary action and to recover the owner's property;



- 1 (13) Each county shall have the power to enact ordinances
2 deemed necessary to protect health, life, and
3 property, and to preserve the order and security of
4 the county and its inhabitants on any subject or
5 matter not inconsistent with, or tending to defeat,
6 the intent of any state statute where the statute does
7 not disclose an express or implied intent that the
8 statute shall be exclusive or uniform throughout the
9 State; provided that the regulation of geothermal
10 resources development and geothermal resources
11 exploration, as those terms are defined in section
12 182-1, shall be reserved to the State unless delegated
13 to the counties by statute;
- 14 (14) Each county shall have the power to:
- 15 (A) Make and enforce within the limits of the county
16 all necessary ordinances covering all:
- 17 (i) Local police matters;
- 18 (ii) Matters of sanitation;
- 19 (iii) Matters of inspection of buildings;



- 1 (iv) Matters of condemnation of unsafe
- 2 structures, plumbing, sewers, dairies, milk,
- 3 fish, and morgues; and
- 4 (v) Matters of the collection and disposition of
- 5 rubbish and garbage;
- 6 (B) Provide exemptions for homeless facilities and
- 7 any other program for the homeless authorized by
- 8 part XVII of chapter 346, for all matters under
- 9 this paragraph;
- 10 (C) Appoint county physicians and sanitary and other
- 11 inspectors as necessary to carry into effect
- 12 ordinances made under this paragraph, who shall
- 13 have the same power as given by law to agents of
- 14 the department of health, subject only to
- 15 limitations placed on them by the terms and
- 16 conditions of their appointments; and
- 17 (D) Fix a penalty for the violation of any ordinance,
- 18 which penalty may be a misdemeanor, petty
- 19 misdemeanor, or violation as defined by general
- 20 law;



1 (15) Each county shall have the power to provide public
2 pounds; to regulate the impounding of stray animals
3 and fowl, and their disposition; and to provide for
4 the appointment, powers, duties, and fees of animal
5 control officers;

6 (16) Each county shall have the power to purchase and
7 otherwise acquire, lease, and hold real and personal
8 property within the defined boundaries of the county
9 and to dispose of the real and personal property as
10 the interests of the inhabitants of the county may
11 require, except that:

12 (A) Any property held for school purposes may not be
13 disposed of without the consent of the
14 superintendent of education;

15 (B) No property bordering the ocean shall be sold or
16 otherwise disposed of; and

17 (C) All proceeds from the sale of park lands shall be
18 expended only for the acquisition of property for
19 park or recreational purposes;

20 (17) Each county shall have the power to provide by charter
21 for the prosecution of all offenses and to prosecute



1 for offenses against the laws of the State under the
2 authority of the attorney general of the State;

3 (18) Each county shall have the power to make
4 appropriations in amounts deemed appropriate from any
5 moneys in the treasury, for the purpose of:

6 (A) Community promotion and public celebrations;

7 (B) The entertainment of distinguished persons as may
8 from time to time visit the county;

9 (C) The entertainment of other distinguished persons,
10 as well as, public officials when deemed to be in
11 the best interest of the community; and

12 (D) The rendering of civic tribute to individuals
13 who, by virtue of their accomplishments and
14 community service, merit civic commendations,
15 recognition, or remembrance;

16 (19) Each county shall have the power to:

17 (A) Construct, purchase, take on lease, lease,
18 sublease, or in any other manner acquire, manage,
19 maintain, or dispose of buildings for county
20 purposes, sewers, sewer systems, pumping
21 stations, waterworks, including reservoirs,



- 1 wells, pipelines, and other conduits for
2 distributing water to the public, lighting
3 plants, and apparatus and appliances for lighting
4 streets and public buildings, and manage,
5 regulate, and control the same;
- 6 (B) Regulate and control the location and quality of
7 all appliances necessary to the furnishing of
8 water, heat, light, power, telephone, and
9 telecommunications service to the county;
- 10 (C) Acquire, regulate, and control any and all
11 appliances for the sprinkling and cleaning of the
12 streets and the public ways, and for flushing the
13 sewers; and
- 14 (D) Open, close, construct, or maintain county
15 highways or charge toll on county highways;
16 provided that all revenues received from a toll
17 charge shall be used for the construction or
18 maintenance of county highways;
- 19 (20) Each county shall have the power to regulate the
20 renting, subletting, and rental conditions of property
21 for places of abode by ordinance;



- 1 (21) Unless otherwise provided by law, each county shall
2 have the power to establish by ordinance the order of
3 succession of county officials in the event of a
4 military or civil disaster;
- 5 (22) Each county shall have the power to sue and be sued in
6 its corporate name;
- 7 (23) Each county shall have the power to establish and
8 maintain waterworks and sewer works; to collect rates
9 for water supplied to consumers and for the use of
10 sewers; to install water meters whenever deemed
11 expedient; provided that owners of premises having
12 vested water rights under existing laws appurtenant to
13 the premises shall not be charged for the installation
14 or use of the water meters on the premises; to take
15 over from the State existing waterworks systems,
16 including water rights, pipelines, and other
17 appurtenances belonging thereto, and sewer systems,
18 and to enlarge, develop, and improve the same;
- 19 (24) (A) Each county may impose civil fines, in addition
20 to criminal penalties, for any violation of
21 county ordinances or rules after reasonable



1 notice and requests to correct or cease the
2 violation have been made upon the violator. Any
3 administratively imposed civil fine shall not be
4 collected until after an opportunity for a
5 hearing under chapter 91. Any appeal shall be
6 filed within thirty days from the date of the
7 final written decision. These proceedings shall
8 not be a prerequisite for any civil fine or
9 injunctive relief ordered by the circuit court;

10 (B) Each county by ordinance may provide for the
11 addition of any unpaid civil fines, ordered by
12 any court of competent jurisdiction, to any
13 taxes, fees, or charges, with the exception of
14 fees or charges for water for residential use and
15 sewer charges, collected by the county. Each
16 county by ordinance may also provide for the
17 addition of any unpaid administratively imposed
18 civil fines, which remain due after all judicial
19 review rights under section 91-14 are exhausted,
20 to any taxes, fees, or charges, with the
21 exception of water for residential use and sewer



1 charges, collected by the county. The ordinance
2 shall specify the administrative procedures for
3 the addition of the unpaid civil fines to the
4 eligible taxes, fees, or charges and may require
5 hearings or other proceedings. After addition of
6 the unpaid civil fines to the taxes, fees, or
7 charges, the unpaid civil fines shall not become
8 a part of any taxes, fees, or charges. The
9 county by ordinance may condition the issuance or
10 renewal of a license, approval, or permit for
11 which a fee or charge is assessed, except for
12 water for residential use and sewer charges, on
13 payment of the unpaid civil fines. Upon
14 recordation of a notice of unpaid civil fines in
15 the bureau of conveyances, the amount of the
16 civil fines, including any increase in the amount
17 of the fine which the county may assess, shall
18 constitute a lien upon all real property or
19 rights to real property belonging to any person
20 liable for the unpaid civil fines. The lien in
21 favor of the county shall be subordinate to any



1 lien in favor of any person recorded or
2 registered prior to the recordation of the notice
3 of unpaid civil fines and senior to any lien
4 recorded or registered after the recordation of
5 the notice. The lien shall continue until the
6 unpaid civil fines are paid in full or until a
7 certificate of release or partial release of the
8 lien, prepared by the county at the owner's
9 expense, is recorded. The notice of unpaid civil
10 fines shall state the amount of the fine as of
11 the date of the notice and maximum permissible
12 daily increase of the fine. The county shall not
13 be required to include a social security number,
14 state general excise taxpayer identification
15 number, or federal employer identification number
16 on the notice. Recordation of the notice in the
17 bureau of conveyances shall be deemed, at such
18 time, for all purposes and without any further
19 action, to procure a lien on land registered in
20 land court under chapter 501. After the unpaid
21 civil fines are added to the taxes, fees, or



1 charges as specified by county ordinance, the
2 unpaid civil fines shall be deemed immediately
3 due, owing, and delinquent and may be collected
4 in any lawful manner. The procedure for
5 collection of unpaid civil fines authorized in
6 this paragraph shall be in addition to any other
7 procedures for collection available to the State
8 and county by law or rules of the courts;

9 (C) Each county may impose civil fines upon any
10 person who places graffiti on any real or
11 personal property owned, managed, or maintained
12 by the county. The fine may be up to \$1,000 or
13 may be equal to the actual cost of having the
14 damaged property repaired or replaced. The
15 parent or guardian having custody of a minor who
16 places graffiti on any real or personal property
17 owned, managed, or maintained by the county shall
18 be jointly and severally liable with the minor
19 for any civil fines imposed hereunder. Any such
20 fine may be administratively imposed after an
21 opportunity for a hearing under chapter 91, but



1 such a proceeding shall not be a prerequisite for
2 any civil fine ordered by any court. As used in
3 this subparagraph, "graffiti" means any
4 unauthorized drawing, inscription, figure, or
5 mark of any type intentionally created by paint,
6 ink, chalk, dye, or similar substances;

7 (D) At the completion of an appeal in which the
8 county's enforcement action is affirmed and upon
9 correction of the violation if requested by the
10 violator, the case shall be reviewed by the
11 county agency that imposed the civil fines to
12 determine the appropriateness of the amount of
13 the civil fines that accrued while the appeal
14 proceedings were pending. In its review of the
15 amount of the accrued fines, the county agency
16 may consider:

- 17 (i) The nature and egregiousness of the
18 violation;
- 19 (ii) The duration of the violation;
- 20 (iii) The number of recurring and other similar
21 violations;



- 1 (iv) Any effort taken by the violator to correct
- 2 the violation;
- 3 (v) The degree of involvement in causing or
- 4 continuing the violation;
- 5 (vi) Reasons for any delay in the completion of
- 6 the appeal; and
- 7 (vii) Other extenuating circumstances.

8 The civil fine that is imposed by administrative
9 order after this review is completed and the
10 violation is corrected shall be subject to
11 judicial review, notwithstanding any provisions
12 for administrative review in county charters;

13 (E) After completion of a review of the amount of
14 accrued civil fine by the county agency that
15 imposed the fine, the amount of the civil fine
16 determined appropriate, including both the
17 initial civil fine and any accrued daily civil
18 fine, shall immediately become due and
19 collectible following reasonable notice to the
20 violator. If no review of the accrued civil fine
21 is requested, the amount of the civil fine, not



1 to exceed the total accrual of civil fine prior
2 to correcting the violation, shall immediately
3 become due and collectible following reasonable
4 notice to the violator, at the completion of all
5 appeal proceedings;

6 (F) If no county agency exists to conduct appeal
7 proceedings for a particular civil fine action
8 taken by the county, then one shall be
9 established by ordinance before the county shall
10 impose the civil fine;

11 (25) Any law to the contrary notwithstanding, any county
12 mayor, by executive order, may exempt donors, provider
13 agencies, homeless facilities, and any other program
14 for the homeless under part XVII of chapter 346 from
15 real property taxes, water and sewer development fees,
16 rates collected for water supplied to consumers and
17 for use of sewers, and any other county taxes,
18 charges, or fees; provided that any county may enact
19 ordinances to regulate and grant the exemptions
20 granted by this paragraph;



1 (26) Any county may establish a captive insurance company
2 pursuant to article 19, chapter 431; and

3 (27) Each county shall have the power to enact and enforce
4 ordinances regulating towing operations."

5 SECTION 3. Section 182-7, Hawaii Revised Statutes, is
6 amended by amending subsection (e) to read as follows:

7 "(e) For the period of the lease the lessee shall have the
8 exclusive right of possession of the minerals leased and the
9 exclusive rights to mine and remove the minerals by means which
10 shall be reasonable and satisfactory to the board and to occupy
11 and use so much of the surface of the land as may reasonably be
12 required, subject to the provisions of section 182-3. The right
13 to use the surface shall include the right to erect
14 transportation facilities thereon, construct plants for
15 beneficiating, drying, and processing the minerals for electric
16 power generation and transmission and such other uses as may be
17 necessary or convenient to the winning and processing of the
18 minerals; provided that the lessee shall comply with all water
19 and air pollution control laws, [~~and~~] rules of the State [~~or~~],
20 and other laws of its political subdivisions[-] relating to
21 building, grading, and flood control codes; provided further



1 that notwithstanding any other law to the contrary, the rules of
2 the board regarding mining operations, geothermal resources
3 development, and geothermal resources exploration, including
4 drilling conditions and restrictions, shall be uniform
5 throughout the State."

6 SECTION 4. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 5. This Act shall take effect on January 1, 2050.



Report Title:

Geothermal Resources Exploration; Drilling; County Authority

Description:

Clarifies that the regulation of geothermal resources development and geothermal resources exploration is reserved to the State unless delegated to the counties by statute. Requires the lessee of a mining lease to comply with all water and air pollution control laws, relating to building, grading, and flood control codes. Requires the rules of the board of land and natural resources regarding mining operations, geothermal resource development, and geothermal resource exploration, including drilling conditions and restrictions, to be uniform throughout the State. Effective 1/1/2050. (SD2)

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