

A Bill for an Act Relating to Geothermal Energy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the rights of lessees holding geothermal mining leases issued by the state or geothermal developers holding

exploratory and/or development permits from either the state or county government need to be clarified. The legislature finds that the respective roles of the state and county governments in connection with the control of geothermal development within geothermal resource subzones need to be clarified also. The purpose of this Act is to provide such further clarification.

SECTION 2. Section 205-5.1, Hawaii Revised Statutes, is amended to read as follows:

“[]§205-5.1[] Geothermal resource subzones. (a) Geothermal resource subzones may be designated within [each of] the urban, rural, agricultural and conservation land use districts established under section 205-2. Only those areas designated as geothermal resource subzones may be utilized for [the exploration, development, production, and distribution of electrical energy from geothermal sources,] geothermal development activities in addition to those uses permitted in each land use district under this chapter. Geothermal development activities may be permitted within urban, rural, agricultural, and conservation land use districts in accordance with this chapter. “Geothermal development activities” means the exploration, development or production of electrical energy from geothermal resources.

(b) The board of land and natural resources shall have the responsibility for designating areas as geothermal resource subzones as provided under section 205-5.2[.]; except that the total area within an agricultural district which is the subject of a geothermal mining lease approved by the board of land and natural resources, any part or all of which area is the subject of a special use permit issued by the county for geothermal development activities, on or before the effective date of this Act is hereby designated as a geothermal resource subzone for the duration of the lease. The designation of geothermal resource subzones shall be governed exclusively by this section and section 205-5.2, except as provided therein. The board shall adopt, amend, or repeal rules related to its authority to designate and regulate the use of geothermal resource subzones in the manner provided under chapter 91.

The authority of the board to designate geothermal resource subzones shall be an exception to those provisions of this chapter and of section 46-4 authorizing the land use commission and the counties to establish and modify land use districts and to regulate uses therein. The provisions of this section shall not abrogate nor supersede the provisions of chapters 182 and 183.

(c) The use of an area for [the exploration,] geothermal development[, production and/or distribution of electrical energy from geothermal sources] activities within a geothermal resource subzone shall be governed by the board within the conservation district and, except as herein provided, by [existing] state and county statutes, ordinances, and rules not inconsistent herewith within [the] agricultural, rural, and urban districts, except that no land use commission

approval or special use permit procedures under section 205-6 shall be required for the use of such subzones. [The board and/or appropriate county agency shall, upon request, conduct a contested case hearing pursuant to chapter 91 prior to the issuance of a geothermal resource permit relating to the exploration, development, production, and distribution of electrical energy from geothermal resources. The standard for determining the weight of the evidence in a contested case proceeding shall be by a preponderance of evidence.] In the absence of provisions in the county general plan and zoning ordinances specifically relating to the use and location of geothermal development activities in an agricultural, rural, or urban district, the appropriate county authority may issue a geothermal resource permit to allow geothermal development activities. "Appropriate county authority" means the county planning commission unless some other agency or body is designated by ordinance of the county council. Such uses as are permitted by county general plan and zoning ordinances, by the appropriate county authority, shall be deemed to be reasonable and to promote the effectiveness and objectives of this chapter. Chapters 177, 178, 182, 183, 205A, 226, 342, and 343 shall apply as appropriate. If provisions in the county general plan and zoning ordinances specifically relate to the use and location of geothermal development activities in an agricultural, rural, or urban district, the provisions shall require the appropriate county authority to conduct a public hearing and, upon appropriate request, a contested case hearing pursuant to chapter 91, on any application for a geothermal resource permit to determine whether the use is in conformity with the criteria specified in section 205-5.1(e) for granting geothermal resource permits.

(d) If geothermal development activities are proposed within a conservation district, then, after receipt of a properly filed and completed application, the board of land and natural resources shall conduct a public hearing and, upon appropriate request, a contested case hearing pursuant to chapter 91 to determine whether, pursuant to board regulations, a conservation district use permit shall be granted to authorize the geothermal development activities described in the application.

(e) If geothermal development activities are proposed within agricultural, rural, or urban districts and such proposed activities are not permitted uses pursuant to county general plan and zoning ordinances, then after receipt of a properly filed and completed application, the appropriate county authority shall conduct a public hearing and, upon appropriate request, a contested case hearing pursuant to chapter 91 to determine whether a geothermal resource permit shall be granted to authorize the geothermal development activities described in the application. The appropriate county authority shall grant a geothermal resource permit if it finds that applicant has demonstrated by a preponderance of the evidence that:

- (1) The desired uses would not have unreasonable adverse health, environmental, or socio-economic effects on residents or surrounding property; and
- (2) The desired uses would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection; and
- (3) That there are reasonable measures available to mitigate the unreasonable adverse effects or burdens referred to above.

Unless there is a mutual agreement to extend, a decision shall be made on the application by the appropriate county authority within six months of the date a complete application was filed; provided that if a contested case hearing is held, the final permit decision shall be made within nine months of the date a complete application was filed.”

SECTION 3. Notwithstanding the provisions of section 205-5.2, Hawaii Revised Statutes, regarding county-by-county assessment of areas with geothermal potential, the board of land and natural resources shall separately conduct an assessment of the area described on maps attached to the board of land and natural resources decision and order, dated February 25, 1983, which was the subject of a conservation district use permit. The assessment shall be in accordance with all provisions of Act 296, Session Laws of Hawaii 1983, regarding the procedures and standards for designation of an area as a geothermal resource subzone. The board of land and natural resources shall make its determination regarding the designation of all or any portion of the abovementioned area, as a geothermal resource subzone, on or before December 31, 1984.

SECTION 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 25, 1984.)