

JAN 20 2012

A BILL FOR AN ACT

RELATING TO PUBLIC LAND.

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

PART I

PUBLIC LAND DEVELOPMENT CORPORATION

SECTION 1. Section 171C-6, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

"[~~§~~§171C-6[~~§~~] **Public lands optimization and geothermal development projects; development plans.**"

2. By amending subsection (a) to read:

"(a) The corporation may develop and implement public lands optimization projects where appropriate public lands may be developed or managed to create revenue-generating centers or where, through detailed analysis, opportunities exist to exploit potential local, national, and international markets[~~[-]~~]; provided that the corporation shall work with the department of land and natural resources to:

(1) Identify public trust land with the potential for geothermal resource development; and



(2) Assess the potential for geothermal resource development on public trust land including the following:

(A) Maui. Tax map key parcels numbers _____, _____, and _____; and

(B) Hawaii. Tax map key parcels numbers _____, _____, and _____."

PART II

GEOTHERMAL RESOURCE SUBZONES

SECTION 2. Section 182-5, Hawaii Revised Statutes, is amended to read as follows:

"§182-5 Mining leases on reserved lands. If any mineral is discovered or known to exist on reserved lands, any interested person may notify the board of land and natural resources of the person's desire to apply for a mining lease. The notice shall be accompanied by a fee of \$100 together with a description of the land desired to be leased and the minerals involved and such information and maps as the board may by regulation prescribe. The board may grant a mining lease on reserved lands in accordance with section 182-4, or the board may, by the vote of two-thirds of its members to which the board is entitled, without public auction, grant a mining lease on



1 reserved lands to the occupier thereof. Such a mining lease may
2 be granted to a person other than the occupier if the occupier
3 has assigned the occupier's rights to apply for a mining lease
4 to another person, in which case only such an assignee may be
5 granted a mining lease. Any provisions to the contrary
6 notwithstanding, if the board decides that it is appropriate to
7 grant a geothermal mining lease on the reserved lands, the
8 surface owner or the owner's assignee shall have the first right
9 of refusal for a mining lease[~~-, however, the granting of a~~
10 ~~geothermal mining lease does not create the presumption that a~~
11 ~~geothermal resource subzone will be designated, nor shall~~
12 ~~geothermal development activities occur on land within the~~
13 ~~geothermal mining lease until the area is designated a~~
14 ~~geothermal resource subzone)]. If the occupier or the occupier's
15 assignee of the right to obtain a mining lease should fail to
16 apply for a mining lease within six months from the date of
17 notice from the board of a finding by the board that it is in
18 the public interest that the minerals on the reserved lands be
19 mined, a mining lease shall be granted under section 182-4;
20 provided that bidders at the public auction shall bid on an
21 amount to be paid to the State for a mining lease granting to
22 the lessee the right to exploit minerals reserved to the State."~~



SECTION 3. Section 205-5.1, Hawaii Revised Statutes, is repealed.

~~["§205-5.1 Geothermal resource subzones. (a) Geothermal resource subzones may be designated within 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 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 and direct use applications of geothermal resources, provided that within the urban, rural, and agricultural land use districts, direct use applications of geothermal resources are permitted both within and outside of areas designated as geothermal resource subzones pursuant to section 205-5.2 if such direct use applications are in conformance with all other applicable state and county land use regulations and are in conformance with this chapter.~~



~~(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 May 25, 1984, is 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, 183, and 183C.~~



~~(c) The use of an area for geothermal development activities within a geothermal resource subzone shall be governed by the board within the conservation district and, except as herein provided, by state and county statutes, ordinances, and rules not inconsistent herewith within 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. 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, 183C, 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 on any application for a geothermal resource permit to determine whether the use is in conformity with the criteria specified in subsection (c) for granting geothermal resource permits; provided that within the urban, rural, and agricultural land use districts, direct use applications of geothermal resources are permitted without any application for a geothermal resource permit both within and outside of areas designated as geothermal resource subzones pursuant to section 205-5.2 if such direct use applications are in conformance with all other applicable state and county land use regulations and are in conformance with this chapter.~~

~~(d) If geothermal development activities are proposed within a conservation district, with an application with all required data, the board of land and natural resources shall conduct a public hearing and, upon appropriate request for mediation from any party who submitted comment at the public hearing, the board shall appoint a mediator within five days. The board shall require the parties to participate in mediation. The mediator shall not be a member of the board or its staff.~~



~~The mediation period shall not extend beyond thirty days after the date mediation started, except by order of the board. Mediation shall be confined to the issues raised at the public hearing by the party requesting mediation. The mediator will submit a written recommendation to the board, based upon any mediation agreement reached between the parties for consideration by the board in its final decision. If there is no mediation agreement, the board may have a second public hearing to receive additional comment related to the mediation issues. Within ten days after the second public hearing, the board may receive additional written comment on the issues raised at the second public hearing from any party.~~

~~The board shall consider the comments raised at the second hearing before rendering its final decision. The board shall then determine whether, pursuant to board rules, a conservation district use permit shall be granted to authorize the geothermal development activities described in the application. The board shall grant a conservation district use permit if it finds that the applicant has demonstrated that:~~

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



1 ~~(2) The desired uses would not unreasonably burden public~~
2 ~~agencies to provide roads and streets, sewers, water,~~
3 ~~drainage, and police and fire protection; or~~

4 ~~(3) There are reasonable measures available to mitigate~~
5 ~~the unreasonable adverse effects or burdens referred~~
6 ~~to above.~~

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

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



~~beyond thirty days after mediation started, except by order of the county authority. Mediation shall be confined to the issues raised at the public hearing by the party requesting mediation. The mediator will submit a written recommendation to the county authority, based upon any mediation agreement reached between the parties for consideration by the county authority in its final decision. If there is no mediation agreement, the county authority may have a second public hearing to receive additional comment related to the mediation issues. Within ten days after the second public hearing, the county authority may receive additional written comment on the issues raised at the second public hearing from any party.~~

~~The county authority shall consider the comments raised at the second hearing before rendering its final decision. The county authority shall then 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 that:~~

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



~~(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 the time limit may be extended by agreement between the applicant and the appropriate county authority.~~

~~(f) Requests for mediation shall be received by the board or county authority within five days after the close of the initial public hearing. Within five days thereafter, the board or county authority shall appoint a mediator. Any person submitting an appropriate request for mediation shall be notified by the board or county authority of the date, time, and place of the mediation conference by depositing such notice in the mail to the return address stated on the request for mediation. The notice shall be mailed no later than ten days~~



~~1 before the start of the mediation conference. The conference~~
~~2 shall be held on the island where the public hearing is held.~~

~~3 (g) Any decision made by an appropriate county authority~~
~~4 or the board pursuant to a public hearing or hearings under this~~
~~5 section may be appealed directly on the record to the~~
~~6 intermediate appellate court for final decision and shall not be~~
~~7 subject to a contested case hearing. Sections 91-14(b) and (g)~~
~~8 shall govern the appeal, notwithstanding the lack of a contested~~
~~9 case hearing on the matter. The appropriate county authority or~~
~~10 the board shall provide a court reporter to produce a transcript~~
~~11 of the proceedings at all public hearings under this section for~~
~~12 purposes of an appeal.~~

~~13 (h) For the purposes of an appeal from a decision from a~~
~~14 public hearing, the record shall include:~~

~~15 (1) The application for the permit and all accompanying~~
~~16 supporting documents, including but not limited to:~~
~~17 reports, studies, affidavits, statements, and~~
~~18 exhibits.~~

~~19 (2) Staff recommendations submitted to the members of the~~
~~20 agency in consideration of the application.~~

~~21 (3) Oral and written public testimony received at the~~
~~22 public hearings.~~



1 ~~(4) Written transcripts of the proceedings at the public~~
2 ~~hearings.~~

3 ~~(5) The written recommendation received by the agency from~~
4 ~~the mediator with any mediation agreement.~~

5 ~~(6) A statement of relevant matters noticed by the agency~~
6 ~~members at the public hearings.~~

7 ~~(7) The written decision of the agency issued in~~
8 ~~connection with the application and public hearings.~~

9 ~~(8) Other documents required by the board or county~~
10 ~~authority."]~~

11 SECTION 4. Section 205-5.2, Hawaii Revised Statutes, is
12 repealed.

13 ~~["**§205-5.2 Designation of areas as geothermal resource**~~
14 ~~**subzones.**—(a) Beginning in 1983, the board of land and natural~~
15 ~~resources shall conduct a county by county assessment of areas~~
16 ~~with geothermal potential for the purpose of designating~~
17 ~~geothermal resource subzones. This assessment shall be revised~~
18 ~~or updated at the discretion of the board, but at least once~~
19 ~~each five years beginning in 1988. Any property owner or person~~
20 ~~with an interest in real property wishing to have an area~~
21 ~~designated as a geothermal resource subzone may submit a~~
22 ~~petition for a geothermal resource subzone designation in the~~



~~form and manner established by rules and regulations adopted by the board. An environmental impact statement as defined under chapter 343 shall not be required for the assessment of areas under this section.~~

~~(b) The board's assessment of each potential geothermal resource subzone area shall examine factors to include, but not be limited to:~~

~~(1) The area's potential for the production of geothermal energy;~~

~~(2) The prospects for the utilization of geothermal energy in the area;~~

~~(3) The geologic hazards that potential geothermal projects would encounter;~~

~~(4) Social and environmental impacts;~~

~~(5) The compatibility of geothermal development and potential related industries with present uses of surrounding land and those uses permitted under the general plan or land use policies of the county in which the area is located;~~

~~(6) The potential economic benefits to be derived from geothermal development and potential related industries; and~~



~~(7) The compatibility of geothermal development and potential related industries with the uses permitted under chapter 183C and section 205-2, where the area falls within a conservation district.~~

~~In addition, the board shall consider, if applicable, objectives, policies, and guidelines set forth in part I of chapter 205A, and chapter 226.~~

~~(c) Methods for assessing the factors in subsection (b) shall be left to the discretion of the board and may be based on currently available public information.~~

~~(d) After the board has completed a county by county assessment of all areas with geothermal potential or after any subsequent update or review, the board shall compare all areas showing geothermal potential within each county, and shall propose areas for potential designation as geothermal resource subzones based upon a preliminary finding that the areas are those sites which best demonstrate an acceptable balance between the factors set forth in subsection (b). Once a proposal is made, the board shall conduct public hearings pursuant to this subsection, notwithstanding any contrary provision related to public hearing procedures. Contested case procedures are not applicable to these hearings.~~



~~(1) Hearings shall be held at locations which are in close proximity to those areas proposed for designation. A public notice of hearing, including a description of the proposed areas, an invitation for public comment, and a statement of the date, time, and place where persons may be heard shall be given and mailed no less than twenty days before the hearing. The notice shall be given on three separate days statewide and in the county in which the hearing is to be held. Copies of the notice shall be mailed to the department of business, economic development, and tourism, to the planning commission and planning department of the county in which the proposed areas are located, and to all owners of record of real estate within, and within one thousand feet of, the area being proposed for designation as a geothermal resource subzone. The notification shall be mailed to the owners and addresses as shown on the current real property tax rolls at the county real property tax office. Upon that action, the requirement for notification of owners of land is completed. For the purposes of this~~



1 ~~subsection, notice to one co-owner shall be sufficient~~
2 ~~notice to all co-owners;~~

3 ~~(2) The hearing shall be held before the board, and the~~
4 ~~authority to conduct hearings shall not be delegated~~
5 ~~to any agent or representative of the board. All~~
6 ~~persons and agencies shall be afforded the opportunity~~
7 ~~to submit data, views, and arguments either orally or~~
8 ~~in writing. The department of business, economic~~
9 ~~development, and tourism and the county planning~~
10 ~~department shall be permitted to appear at every~~
11 ~~hearing and make recommendations concerning each~~
12 ~~proposal by the board; and~~

13 ~~(3) At the close of the hearing, the board may designate~~
14 ~~areas as geothermal resource subzones or announce the~~
15 ~~date on which it will render its decision. The board~~
16 ~~may designate areas as geothermal resource subzones~~
17 ~~only upon finding that the areas are those sites which~~
18 ~~best demonstrate an acceptable balance between the~~
19 ~~factors set forth in subsection (b). Upon request,~~
20 ~~the board shall issue a concise statement of its~~
21 ~~findings and the principal reasons for its decision to~~
22 ~~designate a particular area.~~



~~(e) The designation of any geothermal resource subzone may be withdrawn by the board of land and natural resources after proceedings conducted pursuant to chapter 91. The board shall withdraw a designation only upon finding by a preponderance of the evidence that the area is no longer suited for designation, provided that the designation shall not be withdrawn for areas in which active exploration, development, production or distribution of electrical energy from geothermal sources or direct use applications of geothermal resources are taking place.~~

~~(f) This Act shall not apply to any active exploration, development or production of electrical energy from geothermal sources or direct use applications of geothermal resources taking place on June 14, 1983, provided that any expansion of such activities shall be carried out in compliance with its provisions."~~

SECTION 5. Section 205-5.3, Hawaii Revised Statutes, is repealed.

~~["~~§205-5.3~~ **Exploratory wells.** Notwithstanding section 205-5.1(a), (d), and (e), or any other provision of law, any exploratory well drilled for scientific purposes or to determine the economic viability of a geothermal resource, may be~~



1 ~~permitted outside of a designated geothermal resource subzone,~~
2 ~~regardless of land use classification, provided that the~~
3 ~~activity is limited to exploration only. All applicable state~~
4 ~~and county permits shall be required to drill such exploratory~~
5 ~~wells which shall not be exempt from the requirements of the~~
6 ~~environmental impact statement law, chapter 343."]~~

7 **PART III**

8 **MISCELLANEOUS PROVISIONS**

9 SECTION 6. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 7. This Act shall take effect upon its approval.

12
INTRODUCED BY: 



S.B. NO. 2325

Report Title:

Public Land Development Corporation; Geothermal Resource Subzone

Description:

Requires the PLDC to work with DLNR to develop and implement geothermal development projects on public trust land, including certain unspecified tax map key parcels on Maui and Hawaii islands. Repeals the authority to designate and procedure for designating geothermal resource subzones and authority to drill exploratory wells for geothermal resources.

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