

JAN 23 2014

S.B. NO. 3021

A BILL FOR AN ACT

RELATING TO GEOTHERMAL RESOURCES.

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

PART I

SECTION 1. The legislature finds that Act 97, Session Laws of Hawaii 2012, repealed and amended certain statutory provisions relating to geothermal energy regulation.

The purpose of this part is to:

- (1) Re-establish procedures of the board of land and natural resources for the designation of geothermal resource subzones;
- (2) Authorize the board of land and natural resources and the counties to issue geothermal resources development permits under certain conditions without the requirement of mediation; and
- (3) Repeal certain statutory provisions enacted by Act 97 that replaced geothermal resource subzones with "geothermal resources exploration" and "geothermal resources development" designations as permissible uses in land use districts.



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

"PART . GEOTHERMAL RESOURCES

§205-A Definitions. As used in this part, unless the context clearly requires otherwise:

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

"Geothermal resources" has the same meaning as in section 182-1.

"Geothermal resources development" has the same meaning as in section 182-1.

§205-B 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 resources development activities, in addition to those uses permitted in each land use district under this chapter.

(b) Geothermal resources development may be permitted within urban, rural, agricultural, and conservation land use districts in accordance with this chapter; provided that within the urban, rural, and agricultural land use districts, direct



1 use applications of geothermal resources shall be permitted both
2 within and outside of areas designated as geothermal resource
3 subzones pursuant to section 205-F if the direct use
4 applications are in conformance with all other applicable state
5 and county land use regulations and this chapter.

6 (c) The board shall be responsible for designating areas
7 as geothermal resource subzones as provided under section 205-F;
8 except that the total area within an agricultural district that
9 is the subject of a geothermal mining lease approved by the
10 board, any part or all of which area is the subject of a special
11 use permit issued by the county for geothermal development
12 activities, on or before May 25, 1984, is designated as a
13 geothermal resource subzone for the duration of the lease. The
14 designation of geothermal resource subzones shall be governed
15 exclusively by this section and section 205-F, except as
16 provided therein. The board shall adopt, amend, or repeal rules
17 related to its authority to designate and regulate the use of
18 geothermal resource subzones in the manner provided under
19 chapter 91.

20 (d) The authority of the board to designate geothermal
21 resource subzones shall be an exception to those provisions of
22 this chapter and of section 46-4 authorizing the land use



1 commission and the counties to establish and modify land use
2 districts and to regulate uses therein. This section shall not
3 abrogate nor supersede chapters 182, 183, and 183C.

4 (e) The use of an area for geothermal resources
5 development within a geothermal resource subzone shall be
6 governed by the board within the conservation district and,
7 except as herein provided, by state and county statutes,
8 ordinances, and rules within agricultural, rural, and urban
9 districts, except that no land use commission approval or
10 special use permit procedures under section 205-6 shall be
11 required for the use of geothermal resource subzones.

12 **§205-C Geothermal resources development permits; general**
13 **requirements for applications.** (a) No geothermal resources
14 development activity may be undertaken without a geothermal
15 resources development permit issued pursuant to this part.

16 (b) To ensure that prospective geothermal resources
17 development activity will have the least detrimental
18 environmental impact, any application to obtain a geothermal
19 resources development permit from a government entity shall
20 provide, at a minimum, the following:



- 1 (1) An assessment of any potential geologic hazards
2 relating to geothermal production or use in the
3 proposed area;
- 4 (2) An assessment of any environmental, cultural, or
5 social impacts within the proposed area;
- 6 (3) An assessment of the compatibility of development and
7 utilization of geothermal resources with other allowed
8 uses within the proposed area or site and within the
9 surrounding area;
- 10 (4) A description of the proposed geothermal resources
11 development, including the potential for health,
12 safety, and nuisance impacts upon surrounding
13 properties and establishment of an appropriate buffer
14 zone between the proposed geothermal resources
15 development and abutting land;
- 16 (5) An assessment of whether the potential benefits to be
17 derived from the proposed geothermal resources
18 development and potential related industries in the
19 area are in the interests of the resident population,
20 the pertinent county, and the State; and
- 21 (6) An assessment of the potential for geothermal
22 resources development in the proposed area and the



1 known or likely prospect for utilization of new
2 electrical energy production in the area.

3 (c) Within ninety days of receiving the application, the
4 government entity shall determine whether the application is
5 complete and inform the applicant of any deficiency in the
6 application.

7 **§205-D Geothermal resources development permits;**
8 **agricultural, rural, and urban districts; county authority. (a)**

9 A permit for geothermal resources development within an
10 agricultural, rural, or urban district may be issued by the
11 appropriate county authority.

12 (b) In addition to the requirements of this part and the
13 powers pursuant to sections 46-1.5 and 46-4, each county may
14 adopt more stringent ordinances regarding geothermal resources
15 development permits within agricultural, rural, or urban
16 districts.

17 (c) After receipt of a properly filed and completed
18 application, including all supporting data required under
19 section 205-C, the appropriate county authority shall conduct a
20 public hearing.

21 (d) The public hearing shall be held on the island where
22 the geothermal resources development is proposed to occur and as



1 close as practicable to the area that would be affected by the
2 proposed geothermal resources development, to determine the
3 legal rights, duties, or privileges of affected parties.

4 (e) No later than twenty days prior to the hearing, the
5 appropriate county authority shall provide public notice of the
6 hearing to affected state agencies and owners of land within
7 three thousand feet of the proposed geothermal resources
8 development.

9 (f) Unless an extension is agreed to by the applicant and
10 the appropriate county authority, the appropriate county
11 authority shall issue a final decision no later than six months
12 after receipt of a properly filed and completed application
13 under section 205-C.

14 (g) A geothermal resources development permit may be
15 issued if the appropriate county authority finds that the
16 assessments provided by the applicant are reasonable, the
17 proposed geothermal resources development complies with the
18 county general plan and zoning ordinances, and the proposed
19 geothermal resources development would not:

- 20 (1) Have unreasonable adverse health, environmental, or
21 socioeconomic effects on residents and surrounding
22 property; and



(2) Unreasonably burden public agencies to provide roads, streets, sewers, water, drainage, school improvements, and police and fire protection; provided that the appropriate county authority may further prescribe mitigating actions to be taken by the applicant to address any effects or burdens, including the establishment of an appropriate buffer zone between the proposed geothermal resources development and abutting land, as a condition of the permit approval.

(h) For the purposes of this section, "appropriate county authority" means the county planning commission unless some other agency or body is designated by ordinance of the county council.

§205-E Geothermal resources development permits; conservation districts. (a) A permit for geothermal resources development within a conservation district may be issued by the board after receipt of a properly filed and completed application, including all supporting data required under section 205-C.

(b) Unless an extension is agreed to by the applicant and the board, the board shall issue a final decision no later than



1 six months after receipt of a properly filed and completed
2 application under section 205-C.

3 (c) The board shall conduct a public hearing on the
4 application and shall consider the comments raised at the
5 hearing before rendering its final decision. The board shall
6 then determine whether, pursuant to board rules, a conservation
7 district use permit shall be granted to authorize the geothermal
8 resources development described in the application. The board
9 may grant a conservation district use permit if it finds that
10 the applicant has demonstrated that the assessments provided by
11 the applicant are reasonable and the proposed geothermal
12 resources development would not:

13 (1) Have unreasonable adverse health, environmental, or
14 socioeconomic effects on residents and surrounding
15 property; and

16 (2) Unreasonably burden public agencies to provide roads,
17 streets, sewers, water, drainage, school improvements,
18 and police and fire protection;

19 provided that the board may further prescribe mitigating actions
20 to be taken by the applicant to address any effects or burdens,
21 including the establishment of an appropriate buffer zone



1 between the proposed geothermal resources development and
2 abutting land, as a condition of the permit approval.

3 **§205-F Designation of areas as geothermal resource**

4 **subzones; assessment and updates; hearings.** (a) Beginning in
5 2014, the board shall conduct a county-by-county assessment of
6 areas with geothermal potential for the purpose of designating
7 geothermal resource subzones. The assessment shall be revised
8 or updated at the discretion of the board, but at least once
9 each five years beginning in 2019. Any property owner or person
10 with an interest in real property seeking to have an area
11 designated as a geothermal resource subzone may submit a
12 petition for a geothermal resource subzone designation in the
13 form and manner established by rules adopted by the board. An
14 environmental impact statement as defined in section 343-2 shall
15 not be required for the assessment of areas under this section.

16 (b) The board's assessment of each potential geothermal
17 resource subzone area shall examine factors to include:

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

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



- 1 (3) The geologic hazards that potential geothermal
2 projects would encounter;
- 3 (4) Cultural, social, and environmental impacts of the
4 proposed geothermal resources development, including
5 the potential for health, safety, and nuisance impacts
6 on surrounding land;
- 7 (5) The compatibility of geothermal resources development
8 and potentially related industries with present uses
9 of surrounding land and those uses permitted under the
10 general plan or land use policies of the county in
11 which the area is located;
- 12 (6) The potential economic benefits to be derived from
13 geothermal resources development and potentially
14 related industries; and
- 15 (7) The compatibility of geothermal development and
16 potential related industries with the uses permitted
17 under chapter 183C and section 205-2, where the area
18 falls within a conservation district.

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



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

4 (d) After the board has completed a county-by-county
5 assessment of all areas with geothermal potential or after any
6 subsequent update or review, the board shall compare all areas
7 showing geothermal potential within each county, and shall
8 propose areas for potential designation as geothermal resource
9 subzones based upon a preliminary finding that the areas are
10 those sites that best demonstrate an acceptable balance between
11 the factors set forth in subsection (b). When a proposal is
12 made, the board shall conduct public hearings as follows:

13 (1) Hearings shall be held at locations that are in close
14 proximity to those areas proposed for designation. A
15 public notice of hearing, including a description of
16 the proposed areas, an invitation for public comment,
17 and a statement of the date, time, and place where
18 persons may be heard shall be given and mailed no less
19 than twenty days before the hearing. The notice shall
20 be given on three separate days statewide and in the
21 county in which the hearing is to be held. Copies of
22 the notice shall be mailed to the department of



1 business, economic development, and tourism, to the
2 planning commission and planning department of the
3 county in which the proposed areas are located, and to
4 all owners of record of real estate within, and within
5 one thousand feet of, the area being proposed for
6 designation as a geothermal resource subzone. The
7 notification shall be mailed to the owners and
8 addresses as shown on the current real property tax
9 rolls at the county real property tax office. Upon
10 that action, the requirement for notification of
11 owners of land is completed. For the purposes of this
12 subsection, notice to one co-owner shall be sufficient
13 notice to all co-owners;

14 (2) The hearing shall be held before the board, and the
15 authority to conduct hearings shall not be delegated
16 to any agent or representative of the board. All
17 persons and agencies shall be afforded the opportunity
18 to submit data, views, and arguments either orally or
19 in writing. The department of business, economic
20 development, and tourism and the county planning
21 department shall be permitted to appear at every



1 hearing and make recommendations concerning each
2 proposal by the board; and

3 (3) At the close of the hearing, the board may designate
4 areas as geothermal resource subzones or announce the
5 date on which it will render its decision. The board
6 may designate areas as geothermal resource subzones
7 only upon finding that the areas are those sites that
8 best demonstrate an acceptable balance between the
9 factors set forth in subsection (b). Upon request,
10 the board shall issue a concise statement of its
11 findings and the principal reasons for its decision to
12 designate a particular area.

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



1 (f) This section shall not apply to any active
2 exploration, development, or production of electrical energy
3 from geothermal sources or direct use applications of geothermal
4 resources taking place on June 14, 1983, provided that this
5 section shall apply to any expansion of those activities.

6 **§205-G Exploratory wells.** Any exploratory well drilled
7 for scientific purposes or to determine the economic viability
8 of a geothermal resource may be permitted outside of a
9 designated geothermal resource subzone, regardless of land use
10 classification, provided that the activity is limited to
11 exploration only. All applicable state and county permits shall
12 be required to drill the exploratory wells, which shall not be
13 exempt from the requirements of chapter 343."

14 SECTION 3. Section 165-2, Hawaii Revised Statutes, is
15 amended by amending the definition of "farming operation" to
16 read as follows:

17 "'Farming operation" means a commercial agricultural,
18 silvicultural, or aquacultural facility or pursuit conducted, in
19 whole or in part, including the care and production of livestock
20 and livestock products, poultry and poultry products, apiary
21 products, and plant and animal production for nonfood uses; the
22 planting, cultivating, harvesting, and processing of crops; and



1 the farming or ranching of any plant or animal species in a
2 controlled salt, brackish, or freshwater environment. "Farming
3 operation" includes but shall not be limited to:

- 4 (1) Agricultural-based commercial operations as described
5 in section [~~205-2(d)(15)]~~; 205-2(d)(14);
- 6 (2) Noises, odors, dust, and fumes emanating from a
7 commercial agricultural or an aquacultural facility or
8 pursuit;
- 9 (3) Operation of machinery and irrigation pumps;
- 10 (4) Ground and aerial seeding and spraying;
- 11 (5) The application of chemical fertilizers, conditioners,
12 insecticides, pesticides, and herbicides; and
- 13 (6) The employment and use of labor.

14 A farming operation that conducts processing operations or salt,
15 brackish, or freshwater aquaculture operations on land that is
16 zoned for industrial, commercial, or other nonagricultural use
17 shall not, by reason of that zoning, fall beyond the scope of
18 this definition; provided that those processing operations form
19 an integral part of operations that otherwise meet the
20 requirements of this definition."

21 SECTION 4. Section 183C-4, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "**§183C-4 Zoning; amendments.** (a) The department, after
2 notice and hearing as provided in this section, shall review and
3 redefine the boundaries of the zones within the conservation
4 district.

5 (b) The department shall adopt rules governing the use of
6 land within the boundaries of the conservation district that are
7 consistent with the conservation of necessary forest growth, the
8 conservation and development of land and natural resources
9 adequate for present and future needs, and the conservation and
10 preservation of open space areas for public use and enjoyment.

11 No use except a nonconforming use as defined in section 183C-5,
12 shall be made within the conservation district unless the use is
13 in accordance with a zoning rule.

14 (c) The department may allow a temporary variance from
15 zoned use where good cause is shown and where the proposed
16 temporary variance is for a use determined by the department to
17 be in accordance with good conservation practices.

18 (d) The department shall establish zones within the
19 conservation district, which shall be restricted to certain
20 uses. The department, by rules, may specify the land uses
21 permitted therein which may include, but are not limited to,
22 farming, flower gardening, operation of nurseries or orchards,



1 growth of commercial timber, grazing, recreational or hunting
2 pursuits, or residential use. The rules may control the extent,
3 manner, and times of the uses, and may specifically prohibit
4 unlimited cutting of forest growth, soil mining, or other
5 activities detrimental to good conservation practices.

6 ~~[(e) Notwithstanding this section or any other law to the~~
7 ~~contrary, geothermal resources exploration and geothermal~~
8 ~~resources development, as defined under section 182-1, shall be~~
9 ~~permissible uses in all zones of the conservation district. The~~
10 ~~rules required under subsection (b) governing the use of land~~
11 ~~within the boundaries of the conservation district shall be~~
12 ~~deemed to include the provisions of this section without~~
13 ~~necessity of formal adoption by the department.~~

14 ~~(f)]~~ (e) Whenever any landowner or government agency whose
15 property will be directly affected makes an application to
16 change the boundaries or land uses of any zone, or to establish
17 a zone with certain land uses, or where the department proposes
18 to make the change or changes itself, the change or changes
19 shall be put in the form of a proposed rule by the applicant and
20 the department shall then give public notice thereof during
21 three successive weeks statewide and in the county in which the
22 property is located. The notice shall be given not less than



1 thirty days prior to the date set for the hearing, and shall
2 state the time and place of the hearing and the changes
3 proposed. Any proposed rules and the necessary maps shall be
4 made available for inspection by interested members of the
5 public. The hearing shall be held in the county in which the
6 land is located and may be delegated to an agent or
7 representative of the board as may otherwise be provided by law
8 and in accordance with rules adopted by the board. For the
9 purpose of its public hearing or hearings, the board may summon
10 witnesses, administer oaths, and require the giving of
11 testimony."

12 SECTION 5. Section 205-2, Hawaii Revised Statutes, is
13 amended by amending subsections (b), (c), (d), and (e) to read
14 as follows:

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

18 ~~[In addition, urban districts shall include geothermal~~
19 ~~resources exploration and geothermal resources development, as~~
20 ~~defined under section 182-1, as permissible uses.]~~

21 (c) Rural districts shall include activities or uses as
22 characterized by low density residential lots of not more than



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

19 ~~[In addition to the uses listed in this subsection, rural~~
20 ~~districts shall include geothermal resources exploration and~~
21 ~~geothermal resources development, as defined under section~~
22 ~~182-1, as permissible uses.]~~



(d) Agricultural districts shall include:

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

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

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

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

(5) Biofuel production, as described in section 205-4.5(a)(16), for public, private, and commercial use;

(6) Solar energy facilities; provided that:

(A) This paragraph shall apply only to land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B, C, D, or E; and

(B) Solar energy facilities placed within land with soil classified as overall productivity rating class B or C shall not occupy more than ten per



1 cent of the acreage of the parcel, or twenty
2 acres of land, whichever is lesser;

3 (7) Bona fide agricultural services and uses that support
4 the agricultural activities of the fee or leasehold
5 owner of the property and accessory to any of the
6 above activities, regardless of whether conducted on
7 the same premises as the agricultural activities to
8 which they are accessory, including farm dwellings as
9 defined in section 205-4.5(a)(4), employee housing,
10 farm buildings, mills, storage facilities, processing
11 facilities, photovoltaic, biogas, and other small-
12 scale renewable energy systems producing energy solely
13 for use in the agricultural activities of the fee or
14 leasehold owner of the property, agricultural-energy
15 facilities as defined in section 205-4.5(a)(17),
16 vehicle and equipment storage areas, and plantation
17 community subdivisions as defined in section
18 205-4.5(a)(12);

19 (8) Wind machines and wind farms;

20 (9) Small-scale meteorological, air quality, noise, and
21 other scientific and environmental data collection and
22 monitoring facilities occupying less than one-half



1 acre of land; provided that these facilities shall not
2 be used as or equipped for use as living quarters or
3 dwellings;

4 (10) Agricultural parks;

5 (11) Agricultural tourism conducted on a working farm, or a
6 farming operation as defined in section 165-2, for the
7 enjoyment, education, or involvement of visitors;
8 provided that the agricultural tourism activity is
9 accessory and secondary to the principal agricultural
10 use and does not interfere with surrounding farm
11 operations; and provided further that this paragraph
12 shall apply only to a county that has adopted
13 ordinances regulating agricultural tourism under
14 section 205-5;

15 (12) Agricultural tourism activities, including overnight
16 accommodations of twenty-one days or less, for any one
17 stay within a county; provided that this paragraph
18 shall apply only to a county that includes at least
19 three islands and has adopted ordinances regulating
20 agricultural tourism activities pursuant to section
21 205-5; provided further that the agricultural tourism
22 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 (13) Open area recreational facilities; and

5 ~~[(14)] Geothermal resources exploration and geothermal~~
6 ~~resources development, as defined under section 182-1;~~

7 and

8 ~~[(15)]~~ (14) Agricultural-based commercial operations,

9 including:

10 (A) A roadside stand that is not an enclosed
11 structure, owned and operated by a producer for
12 the display and sale of agricultural products
13 grown in Hawaii and value-added products that
14 were produced using agricultural products grown
15 in Hawaii;

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



1 (C) A retail food establishment owned and operated by
2 a producer and permitted under [title 11,]
3 chapter 12 of the rules of the department of
4 health that prepares and serves food at retail
5 using products grown in Hawaii and value-added
6 products that were produced using agricultural
7 products grown in Hawaii.

8 The owner of an agricultural-based commercial
9 operation shall certify, upon request of an officer or
10 agent charged with enforcement of this chapter under
11 section 205-12, that the agricultural products
12 displayed or sold by the operation meet the
13 requirements of this paragraph.

14 Agricultural districts shall not include golf courses and golf
15 driving ranges, except as provided in section 205-4.5(d).

16 Agricultural districts include areas that are not used for, or
17 that are not suited to, agricultural and ancillary activities by
18 reason of topography, soils, and other related characteristics.

19 (e) Conservation districts shall include areas necessary
20 for protecting watersheds and water sources; preserving scenic
21 and historic areas; providing park lands, wilderness, and beach
22 reserves; conserving indigenous or endemic plants, fish, and



1 wildlife, including those which are threatened or endangered;
2 preventing floods and soil erosion; forestry; open space areas
3 whose existing openness, natural condition, or present state of
4 use, if retained, would enhance the present or potential value
5 of abutting or surrounding communities, or would maintain or
6 enhance the conservation of natural or scenic resources; areas
7 of value for recreational purposes; other related activities;
8 and other permitted uses not detrimental to a multiple use
9 conservation concept. [~~Conservation districts shall also~~
10 ~~include areas for geothermal resources exploration and~~
11 ~~geothermal resources development, as defined under section 182-~~
12 ~~1-.]"~~

13 SECTION 6. Section 205-4.5, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) Within the agricultural district, all lands with soil
16 classified by the land study bureau's detailed land
17 classification as overall (master) productivity rating class A
18 or B shall be restricted to the following permitted uses:

19 (1) Cultivation of crops, including crops for bioenergy,
20 flowers, vegetables, foliage, fruits, forage, and
21 timber;

22 (2) Game and fish propagation;



- 1 (3) Raising of livestock, including poultry, bees, fish,
2 or other animal or aquatic life that are propagated
3 for economic or personal use;
- 4 (4) Farm dwellings, employee housing, farm buildings, or
5 activities or uses related to farming and animal
6 husbandry. "Farm dwelling", as used in this
7 paragraph, means a single-family dwelling located on
8 and used in connection with a farm, including clusters
9 of single-family farm dwellings permitted within
10 agricultural parks developed by the State, or where
11 agricultural activity provides income to the family
12 occupying the dwelling;
- 13 (5) Public institutions and buildings that are necessary
14 for agricultural practices;
- 15 (6) Public and private open area types of recreational
16 uses, including day camps, picnic grounds, parks, and
17 riding stables, but not including dragstrips,
18 airports, drive-in theaters, golf courses, golf
19 driving ranges, country clubs, and overnight camps;
- 20 (7) Public, private, and quasi-public utility lines and
21 roadways, transformer stations, communications
22 equipment buildings, solid waste transfer stations,



1 major water storage tanks, and appurtenant small
2 buildings such as booster pumping stations, but not
3 including offices or yards for equipment, material,
4 vehicle storage, repair or maintenance, treatment
5 plants, corporation yards, or other similar
6 structures;

7 (8) Retention, restoration, rehabilitation, or improvement
8 of buildings or sites of historic or scenic interest;

9 (9) Agricultural-based commercial operations as described
10 in section [~~205-2(d)(15)~~]; 205-2(d)(14);

11 (10) Buildings and uses, including mills, storage, and
12 processing facilities, maintenance facilities,
13 photovoltaic, biogas, and other small-scale renewable
14 energy systems producing energy solely for use in the
15 agricultural activities of the fee or leasehold owner
16 of the property, and vehicle and equipment storage
17 areas that are normally considered directly accessory
18 to the above-mentioned uses and are permitted under
19 section 205-2(d);

20 (11) Agricultural parks;

21 (12) Plantation community subdivisions, which as used in
22 this chapter means an established subdivision or



1 cluster of employee housing, community buildings, and
2 agricultural support buildings on land currently or
3 formerly owned, leased, or operated by a sugar or
4 pineapple plantation; provided that the existing
5 structures may be used or rehabilitated for use, and
6 new employee housing and agricultural support
7 buildings may be allowed on land within the
8 subdivision as follows:

9 (A) The employee housing is occupied by employees or
10 former employees of the plantation who have a
11 property interest in the land;

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

15 (C) The agricultural support buildings shall be
16 rented or leased to agricultural business
17 operators or agricultural support services;

18 (13) Agricultural tourism conducted on a working farm, or a
19 farming operation as defined in section 165-2, for the
20 enjoyment, education, or involvement of visitors;
21 provided that the agricultural tourism activity is
22 accessory and secondary to the principal agricultural



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

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

17 (15) Wind energy facilities, including the appurtenances
18 associated with the production and transmission of
19 wind generated energy; provided that the wind energy
20 facilities and appurtenances are compatible with
21 agriculture uses and cause minimal adverse impact on
22 agricultural land;



1 (16) Biofuel processing facilities, including the
2 appurtenances associated with the production and
3 refining of biofuels that is normally considered
4 directly accessory and secondary to the growing of the
5 energy feedstock; provided that biofuel processing
6 facilities and appurtenances do not adversely impact
7 agricultural land and other agricultural uses in the
8 vicinity.

9 For the purposes of this paragraph:

10 "Appurtenances" means operational infrastructure
11 of the appropriate type and scale for economic
12 commercial storage and distribution, and other similar
13 handling of feedstock, fuels, and other products of
14 biofuel processing facilities.

15 "Biofuel processing facility" means a facility
16 that produces liquid or gaseous fuels from organic
17 sources such as biomass crops, agricultural residues,
18 and oil crops, including palm, canola, soybean, and
19 waste cooking oils; grease; food wastes; and animal
20 residues and wastes that can be used to generate
21 energy;



1 (17) Agricultural-energy facilities, including
2 appurtenances necessary for an agricultural-energy
3 enterprise; provided that the primary activity of the
4 agricultural-energy enterprise is agricultural
5 activity. To be considered the primary activity of an
6 agricultural-energy enterprise, the total acreage
7 devoted to agricultural activity shall be not less
8 than ninety per cent of the total acreage of the
9 agricultural-energy enterprise. The agricultural-
10 energy facility shall be limited to lands owned,
11 leased, licensed, or operated by the entity conducting
12 the agricultural activity.

13 As used in this paragraph:

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

16 "Agricultural-energy enterprise" means an
17 enterprise that integrally incorporates an
18 agricultural activity with an agricultural-energy
19 facility.

20 "Agricultural-energy facility" means a facility
21 that generates, stores, or distributes renewable
22 energy as defined in section 269-91 or renewable fuel



1 including electrical or thermal energy or liquid or
2 gaseous fuels from products of agricultural activities
3 from agricultural lands located in the State.

4 "Appurtenances" means operational infrastructure
5 of the appropriate type and scale for the economic
6 commercial generation, storage, distribution, and
7 other similar handling of energy, including equipment,
8 feedstock, fuels, and other products of agricultural-
9 energy facilities;

10 (18) Construction and operation of wireless communication
11 antennas; provided that, for the purposes of this
12 paragraph, "wireless communication antenna" means
13 communications equipment that is either freestanding
14 or placed upon or attached to an already existing
15 structure and that transmits and receives
16 electromagnetic radio signals used in the provision of
17 all types of wireless communications services;
18 provided further that nothing in this paragraph shall
19 be construed to permit the construction of any new
20 structure that is not deemed a permitted use under
21 this subsection;



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

14 (20) Solar energy facilities that do not occupy more than
15 ten per cent of the acreage of the parcel, or twenty
16 acres of land, whichever is lesser; provided that this
17 use shall not be permitted on lands with soil
18 classified by the land study bureau's detailed land
19 classification as overall (master) productivity rating
20 class A[~~+~~or].



1 ~~[{(21)} Geothermal resources exploration and geothermal~~
2 ~~resources development, as defined under section~~
3 ~~182-1.] "~~

4 SECTION 7. Section 205-5, Hawaii Revised Statutes, is
5 amended by amending subsection (c) to read as follows:

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

9 (1) Low density residential uses;

10 (2) Agricultural uses;

11 (3) Golf courses, golf driving ranges, and golf-related
12 facilities; and

13 (4) Public, quasi-public, and public utility facilities[~~7~~
14 and

15 ~~(5) Geothermal resources exploration and geothermal~~
16 ~~resources development, as defined under section 182-~~
17 ~~1].~~

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



PART II

SECTION 8. The legislature finds that geothermal resources development can affect public health, safety, and well-being.

In its final report dated September 9, 2013, the geothermal public health assessment study group developed a set of recommendations about the priorities and preferred methods for future scientific and monitoring studies that will assist government authorities in making informed decisions that protect the long-term health of the neighboring communities that surround geothermal energy development on Hawaii Island. The final report provides specific recommendations that include the use of baseline studies to establish the magnitude of potential health effects from geothermal resources development. The final report also notes the need for monitoring systems and protocols for the prevention of air and water pollution and excessive noise resulting from geothermal development.

The legislature finds that establishing competent monitoring systems pursuant to the recommendations of the final report would help protect the health and welfare of citizens. Further, geothermal development may affect water wells downstream from the development area as well as the coastal basal brackish groundwater and the ocean near the geothermal



1 plant. By establishing a baseline using the methodology from
2 the final report recommendations, future water studies can more
3 easily establish the environmental impact from geothermal
4 development. The final report also suggests that the county
5 should require future geothermal developers to fund and conduct
6 baseline studies prior to development.

7 The purpose of this part is to protect communities located
8 in the vicinity of geothermal resources development by requiring
9 the board of land and natural resources and each county to:

10 (1) Implement, as applicable, the recommendations of the
11 2013 final report of the geothermal public health
12 assessment study group, including the creation of
13 baseline studies as well as competent monitoring
14 resources and protocols, prior to issuing new
15 geothermal resources development permits under this
16 Act; and

17 (2) Ensure that permitted noise for geothermal resources
18 development does not exceed levels that are
19 appropriate in view of nearby residential properties
20 and zoning.

21 SECTION 9. The board of land and natural resources and
22 each county shall:



(1) To the extent applicable, implement the specific recommendations of the geothermal public health assessment study group as set forth in part V of its final report dated September 9, 2013; and

(2) Establish limits on permitted noise levels for geothermal resources development activities to ensure that noise levels are appropriate for residential properties and residential zoning located in or near the area where the activity will occur.

No geothermal resources development permit shall be issued under this Act until the board or the pertinent county, as the case may be, has fully complied with this section.

PART III

SECTION 10. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect upon its approval; provided that section 2 shall apply retroactively to April 30, 2012, with regard to any geothermal resource subzone:



(1) Previously designated by the board of land and natural resources pursuant to section 205-5.2, Hawaii Revised Statutes, as that section read at the time of each designation; and

(2) In existence on April 29, 2012; provided further that any such geothermal resource subzone shall be reinstated retroactively to April 29, 2012, such that each subzone shall be deemed to have been in effect for a continuous period from the time the subzone was last designated prior to April 30, 2012, through the effective date of this Act.

INTRODUCED BY:

Pratt R. R.
Mike Gabbard
Erzanne Chun Akaka
John H.



Report Title:

Geothermal Resources Development; Subzones; Public Health Assessments

Description:

Restores, amends, and repeals certain statutory provisions relating to geothermal energy production that were repealed or enacted by Act 97, SLH 2012, including the restoration of geothermal resource subzones. Establishes a permitting process for geothermal resources development. Requires BLNR and the counties to implement the recommendations of the 2013 Final Report of the Geothermal Public Health Assessment Study Group prior to issuing permits for future geothermal development.

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

