

JAN 28 2015

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# 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 geothermal development in Hawaii was formerly regulated in state and local jurisdictions by using a system of subzones and permitting that was initially established by Act 296, Session Laws of Hawaii 1983. The system of geothermal regulation using subzones was repealed by Act 97, Session Laws of Hawaii 2012.

The legislature further finds that the county of Hawaii completed a *Geothermal Public Health Assessment*, and on March 17, 2014, Attorney General Opinion No. 14-1, "Management and Disposition of Geothermal Resources on DHHL Lands", concluded that the department of Hawaiian home lands is entitled to 100 per cent of geothermal royalties from its lands.

The legislature further finds that there is a need for an appropriate frame work to regulate geothermal development, and that such regulation in state and local jurisdictions should be based on former regulatory methods and the various experiences of



1 geothermal operations in the county of Hawaii during the past  
2 several decades and additional contemporary considerations.

3 The purpose of this Act is to:

4 (1) Establish a geothermal resources development permits  
5 procedure;

6 (2) Prohibit hydraulic fracturing; and

7 (3) Encourage the counties to implement the  
8 recommendations of the final report of the geothermal  
9 public health assessment working group.

10 SECTION 2. Chapter 196D, Hawaii Revised Statutes, is  
11 amended by adding a new section to be appropriately designated  
12 and to read as follows:

13 **"§196D- Geothermal resources development permits. (a) A**  
14 **permit for geothermal resources development within an urban,**  
15 **rural, or agricultural district, as provided under section 205-2,**  
16 **may be issued by the appropriate county authority.**

17 **(b) A permit for geothermal resources development within a**  
18 **conservation district may be issued by the board.**

19 **(c) A permit for geothermal resources development within**  
20 **the Hawaiian home lands may be issued by the commission, in**  
21 **technical consultation with the board.**



1        (d) In addition to the requirements of this section, each  
2        county may adopt ordinances and rules to enhance protection to  
3        the environment and to public health and safety.

4        (e) After accepting a duly filed and completed application  
5        on forms to be furnished by the appropriate county authority, as  
6        well as supporting data as may be required by the appropriate  
7        county authority, the permitting entity shall conduct a public  
8        hearing on the island where the geothermal resources development  
9        is proposed; provided that the public hearing shall be conducted  
10       in geographic proximity to the area that may be affected by the  
11       proposed geothermal development. For purposes of the public  
12       hearing:

13       (1) The permitting authority may summon witnesses, compel  
14       discovery and disclosure of evidence, administer  
15       oaths, and require testimony from witnesses;

16       (2) The notice of public hearing shall be published on  
17       three separate days in a newspaper of general  
18       circulation in the county where the public hearing is  
19       held; provided that the first publication of notice  
20       shall be not less than twenty days prior to the date  
21       set for the hearing. The notice shall be mailed to



1       all owners of land within three thousand feet of the  
2       proposed geothermal resources development. Copies of  
3       the notice shall be submitted to the department of  
4       land and natural resources, department of business,  
5       economic development, and tourism, department of  
6       Hawaiian home lands, and planning commission and  
7       planning department of the county in which the  
8       proposed geothermal development is located;

9       (3) Unless an extension is agreed to by the applicant and  
10       the permitting authority, the permitting authority  
11       shall issue a final decision not later than six months  
12       after the conclusion of the public hearing. If the  
13       decision is appealed, a contested case proceeding  
14       under section 91-9 shall be initiated.

15       (f) An applicant for a geothermal resources development  
16       permit shall be required to satisfy the environmental review  
17       process of chapter 343 and shall include a detailed analysis of  
18       the following:

19       (1) The potential for the production of geothermal energy  
20       in the area proposed by the applicant;



- 1        (2) The prospects of the utilization of geothermal energy  
2            in the area;
- 3        (3) The potential geologic hazards posed by the proposed  
4            development;
- 5        (4) Cultural, social, and economic impacts of the proposed  
6            development;
- 7        (5) Health, safety, and nuisance impacts on the  
8            surrounding land;
- 9        (6) The compatibility of geothermal development and  
10           potentially related industries with present uses of  
11           surrounding land;
- 12       (7) The compatibility of geothermal development with the  
13           county general plan and county land use policies in  
14           the county where the proposed development is located;
- 15       (8) The potential economic benefits to the State and  
16           county anticipated to be derived from the proposed  
17           development;
- 18       (9) Alternative methods of electricity development in the  
19           same proposed quantity and area, including the  
20           comparative impacts and benefits; and



1        (10) Emission monitoring and emergency response measures  
2                that are appropriate for the area and surrounding  
3                properties in which the proposed development is  
4                located.

5        (g) A geothermal resources development permit may be  
6        issued if the permitting entity finds that:

7                (1) The environmental review required under subsection (f)  
8                is complete and satisfactory;

9                (2) Applicable zoning ordinances and county plans are  
10                complied with; and

11                (3) The proposed geothermal resources development would  
12                not:

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

16                (B) Unreasonably burden public agencies in providing  
17                roads, streets, sewers, water, drainage, school  
18                improvements, and police and fire protection;

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



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

3 SECTION 3. Chapter 344, Hawaii Revised Statutes, is  
4 amended by adding a new section to be appropriately designated  
5 and to read as follows:

6 **"§344- Hydraulic fracturing prohibited. Hydraulic**  
7 **fracturing is prohibited."**

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

10 **"§182-6 Exploration.** Any person wishing to conduct  
11 exploration on state lands shall apply to the [~~board of land and~~  
12 ~~natural resources who~~] appropriate county authority, as defined  
13 in section 196D- , which shall issue exploration permits [upon  
14 ~~terms and conditions as it shall by regulation prescribe.] in~~  
15 accordance with section 196D- . During and as a result of the  
16 exploration, no minerals of such types and quantity beyond that  
17 reasonably required for testing and analysis shall be extracted  
18 and removed from such state lands. Upon termination of the  
19 exploration permit, the drill logs and the results of the assays  
20 resulting from the exploration shall be turned over to the board  
21 and kept confidential by the board. If the person shall not



1 make application for a mining lease of the lands within a period  
2 of six months from the date the information is turned over to  
3 the board, the board in its discretion need not keep the  
4 information confidential.

5 This section shall be construed as authorizing the board to  
6 issue an exploration permit for geothermal resources as well as  
7 minerals."

8 SECTION 5. Section 196D-3, Hawaii Revised Statutes, is  
9 amended by adding six new definitions to be appropriately  
10 inserted and to read as follows:

11 "Appropriate county authority" means the county planning  
12 commission unless another agency or body is designated by  
13 ordinance of the county council.

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

15 "Commission" means the Hawaiian homes commission.

16 "Geothermal resources" shall have the same meaning as in  
17 section 182-1.

18 "Geothermal resources development" shall have the same  
19 meaning as in section 182-1.





1       "Permitting entity" means the appropriate county authority  
2       issuing a permit for geothermal resources development under  
3       section 196D- ."

4       SECTION 6. Section 196D-4, Hawaii Revised Statutes, is  
5       amended by amending subsection (a) to read as follows:

6       "(a) The department is designated as the lead agency for  
7       geothermal development on state lands, as defined in section  
8       182-1, the purposes of this chapter and, in addition to its  
9       existing functions, shall establish and administer the  
10      consolidated permit application and review process provided for  
11      in this chapter, except as provided under section 196D- , which  
12      shall incorporate the permitting functions of those agencies  
13      involved in the development of the project which are transferred  
14      by section 196D-10 to the department to effectuate the purposes  
15      of this chapter."

16      SECTION 7. Section 196D-5, Hawaii Revised Statutes, is  
17      amended by amending subsection (a) to read as follows:

18      "(a) [~~The~~] Except as provided in section 196D- , the  
19      department shall serve as the lead agency for the consolidated  
20      permit application and review process established pursuant to  
21      section 196D-4(b) and as set forth in this section for the



1 project. All agencies whose permitting functions are not  
2 transferred by section 196D-10 to the department for the  
3 purposes of the project are required to participate in the  
4 consolidated permit application and review process."

5 SECTION 8. Section 196D-10, Hawaii Revised Statutes, is  
6 amended by amending subsection (a) to read as follows:

7 "(a) Those functions identified in paragraphs (1) and (2)  
8 insofar as they relate to the permit application, review,  
9 processing, issuance, and monitoring of laws, and rules and to  
10 the enforcement of terms, conditions, and stipulations of  
11 permits and other authorizations issued by agencies with respect  
12 to the development, construction, installation, operation,  
13 maintenance, repair, and replacement of the project, or any  
14 portion or portions thereof, are transferred to the  
15 ~~[department.]~~ counties under section 196D- . With respect to  
16 each of the statutory authorities cited in paragraphs (1) and  
17 (2), the transferred functions include all enforcement functions  
18 of the agencies or their officials under the statute cited as  
19 may be related to the enforcement of the terms, conditions, and  
20 stipulations of permits, including but not limited to the  
21 specific sections of the statute cited. "Enforcement", for



1 purposes of this transfer of functions, includes monitoring and  
2 any other compliance or oversight activities reasonably related  
3 to the enforcement process. These transferred functions  
4 include:

- 5 (1) Such functions of the land use commission related to:  
6 district boundary amendments as set forth in section  
7 205-3.1 et seq.; and changes in zoning as set forth in  
8 section 205-5; and  
9 (2) The permit approval and enforcement functions of the  
10 director of transportation or other appropriate  
11 official or entity in the department of transportation  
12 related to permits or approvals issued for the use of  
13 or commercial activities in or affecting the ocean  
14 waters and shores of the State under chapter 266."

15 SECTION 9. Section 343-5, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

17 "(a) Except as otherwise provided, an environmental  
18 assessment shall be required for actions that:

- 19 (1) Propose the use of state or county lands or the use of  
20 state or county funds, other than funds to be used for  
21 feasibility or planning studies for possible future



1 programs or projects that the agency has not approved,  
2 adopted, or funded, or funds to be used for the  
3 acquisition of unimproved real property; provided that  
4 the agency shall consider environmental factors and  
5 available alternatives in its feasibility or planning  
6 studies; provided further that an environmental  
7 assessment for proposed uses under section  
8 205-2(d)(11) or 205-4.5(a)(13) shall only be required  
9 pursuant to section 205-5(b);

10 (2) Propose any use within any land classified as a  
11 conservation district by the state land use commission  
12 under chapter 205;

13 (3) Propose any use within a shoreline area as defined in  
14 section 205A-41;

15 (4) Propose any use within any historic site as designated  
16 in the National Register or Hawaii Register, as  
17 provided for in the Historic Preservation Act of 1966,  
18 Public Law 89-665, or chapter 6E;

19 (5) Propose any use within the Waikiki area of Oahu, the  
20 boundaries of which are delineated in the land use



ordinance as amended, establishing the "Waikiki  
Special District";

(6) Propose any amendments to existing county general  
plans where the amendment would result in designations  
other than agriculture, conservation, or preservation,  
except actions proposing any new county general plan  
or amendments to any existing county general plan  
initiated by a county;

(7) Propose any reclassification of any land classified as  
a conservation district by the state land use  
commission under chapter 205;

(8) Propose the construction of new or the expansion or  
modification of existing helicopter facilities within  
the State, that by way of their activities, may  
affect:

(A) Any land classified as a conservation district by  
the state land use commission under chapter 205;

(B) A shoreline area as defined in section 205A-41;  
or

(C) Any historic site as designated in the National  
Register or Hawaii Register, as provided for in



1 the Historic Preservation Act of 1966, Public Law  
2 89-665, or chapter 6E; or until the statewide  
3 historic places inventory is completed, any  
4 historic site that is found by a field  
5 reconnaissance of the area affected by the  
6 helicopter facility and is under consideration  
7 for placement on the National Register or the  
8 Hawaii Register of Historic Places; and

9 (9) Propose any:

- 10 (A) Wastewater treatment unit, except an individual  
11 wastewater system or a wastewater treatment unit  
12 serving fewer than fifty single-family dwellings  
13 or the equivalent;
- 14 (B) Waste-to-energy facility;
- 15 (C) Landfill;
- 16 (D) Oil refinery; [~~or~~]
- 17 (E) Power-generating facility[~~-~~]; or
- 18 (F) Geothermal resources development, pursuant to  
19 section 196D- (f) ."

20 **PART II**



1       SECTION 10. The legislature finds that geothermal  
2 resources development can affect public health, safety, and  
3 well-being. The county of Hawaii funded a study of geothermal-  
4 related issues that resulted in a Geothermal Public Health  
5 Assessment Study Group's *Final Report, Geothermal Public Health*  
6 *Assessment* (2013). By preparing baseline studies that measure  
7 the parameters explored and described in the text and  
8 recommendations of the *Final Report*, future studies can more  
9 easily establish the magnitude of such effects.

10       The *Final Report* refers to the prevention of air and water  
11 pollution and excessive noise from geothermal development and  
12 states that related monitoring systems and protocols must be  
13 competent. Establishing competent monitoring systems and  
14 emergency response plans will help assure that the health and  
15 welfare of citizens will be protected.

16       Further, geothermal development may affect water wells  
17 downstream from the development area as well as the coastal  
18 basal brackish groundwater and the ocean near the geothermal  
19 plant. By establishing a baseline pursuant to recommendations  
20 of the *Final Report*, future water studies should be able to



1 establish the magnitude and possible responsibility for  
2 environmental impacts from geothermal development.

3 Recommendation 8 of the *Final Report* is that the county  
4 should require future geothermal developers to fund and assure  
5 baseline studies prior to development.

6 The purpose of this part is to recommend and encourage each  
7 permitting entity to implement, by its rules or otherwise,  
8 certain recommendations of the *Final Report*, such as the  
9 creation of baseline studies as well as competent monitoring  
10 resources and protocols, prior to new geothermal drilling or  
11 development, that the permitting entity finds appropriate for  
12 its jurisdiction. Further, because geothermal resources  
13 development and exploration may present industrial levels of  
14 noise in or adjacent to residential areas, the permitting  
15 entities also are urged to assure that any permitted noise does  
16 not exceed levels that are appropriate in view of nearby  
17 residential properties and zoning.

18 SECTION 11. This Act shall apply to any geothermal  
19 resources producer operating within the jurisdiction of a  
20 permitting entity as of the effective date of this Act. The  
21 geothermal resources producer may continue to operate pursuant





1 to existing permits until ninety days after a permitting entity  
2 with jurisdiction adopts rules governing geothermal resources  
3 development pursuant to this Act and chapter 91, Hawaii Revised  
4 Statutes. If, during the ninety-day period, the geothermal  
5 resources producer submits an application to the permitting  
6 entity in compliance with this Act and the rules, the geothermal  
7 resources producer may continue to operate within the limits of  
8 existing permits until action on the application has been  
9 completed.

10 **PART III**

11 SECTION 12. Pursuant to article VIII, section 5, of the  
12 Constitution of the State of Hawaii, there is appropriated out  
13 of the general revenues of the State of Hawaii the sum of  
14 \$ or so much thereof as may be necessary for fiscal  
15 year 2015-2016 and the same sum or so much thereof as may be  
16 necessary for fiscal year 2016-2017 for expenses of the county  
17 of Hawaii to administer geothermal resources development permits  
18 pursuant to this Act.

19 The sums appropriated shall be expended by the department  
20 of land and natural resources for the purposes of this Act.

21 **PART IV**



1       SECTION 13. This Act does not affect rights and duties  
2 that matured, penalties that were incurred, and proceedings that  
3 were begun before its effective date.

4       SECTION 14. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6       SECTION 15. This Act shall take effect on July 1, 2015.

7  
INTRODUCED BY: *Paul E. Pelt*



# S.B. NO. 1197

**Report Title:**

Geothermal; Permits; Appropriation

**Description:**

Establishes a geothermal resources development permit system. Prohibits hydraulic fracturing. Makes appropriation to county of Hawaii.

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

