

JAN 20 2017

A BILL FOR AN ACT

RELATING TO LAND RESOURCES.

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

1 SECTION 1. The legislature finds that the development and
2 regulation of geothermal energy development and production is a
3 matter of statewide concern. The legislature further finds that
4 rules adopted by the department of land and natural resources
5 concerning geothermal well permits and geothermal well drilling
6 operations should be exclusive and uniform throughout the State,
7 and not subject to restrictions imposed by the counties that are
8 inconsistent with or contrary to such laws and rules.

9 The purpose of this Act is to:

- 10 (1) Clarify that the regulation of geothermal well permits
11 and drilling operations in support of geothermal
12 resources development and geothermal resources
13 exploration shall be exclusively reserved to the
14 State; and
- 15 (2) Continue to require the lessee of a mining lease to
16 comply with all water and air pollution control laws,
17 and rules of the State or its political subdivisions



1 not in conflict with board of land and natural
2 resources rules regarding geothermal mining
3 operations, geothermal resource development, and
4 geothermal resource exploration, involving drilling
5 conditions and restrictions, which shall be exclusive
6 and uniform throughout the State.

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

9 **"§46-1.5 General powers and limitation of the counties.**

10 Subject to general law, each county shall have the following
11 powers and shall be subject to the following liabilities and
12 limitations:

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

20 (2) Each county shall have the power to provide for and
21 regulate the marking and lighting of all buildings and



1 other structures that may be obstructions or hazards
2 to aerial navigation, so far as may be necessary or
3 proper for the protection and safeguarding of life,
4 health, and property;

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

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

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

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

20 (B) Remove from the channels, and from the shores and
21 beaches, any debris that is likely to create an



1 unsanitary condition or become a public nuisance;
2 provided that, to the extent any of the foregoing
3 work is a private responsibility, the
4 responsibility may be enforced by the county in
5 lieu of the work being done at public expense;

6 (C) Construct, acquire by gift, purchase, or by the
7 exercise of eminent domain, reconstruct, improve,
8 better, extend, and maintain projects or
9 undertakings for the control of and protection
10 against floods and flood waters, including the
11 power to drain and rehabilitate lands already
12 flooded;

13 (D) Enact zoning ordinances providing that lands
14 deemed subject to seasonable, periodic, or
15 occasional flooding shall not be used for
16 residence or other purposes in a manner as to
17 endanger the health or safety of the occupants
18 thereof, as required by the Federal Flood
19 Insurance Act of 1956 (chapter 1025, Public Law
20 1016); and



(E) Establish and charge user fees to create and maintain any stormwater management system or infrastructure;

(6) Each county shall have the power to exercise the power of condemnation by eminent domain when it is in the public interest to do so;

(7) Each county shall have the power to exercise regulatory powers over business activity as are assigned to them by chapter 445 or other general law;

(8) Each county shall have the power to fix the fees and charges for all official services not otherwise provided for;

(9) Each county shall have the power to provide by ordinance assessments for the improvement or maintenance of districts within the county;

(10) Except as otherwise provided, no county shall have the power to give or loan credit to, or in aid of, any person or corporation, directly or indirectly, except for a public purpose;

(11) Where not within the jurisdiction of the public utilities commission, each county shall have the power



1 to regulate by ordinance the operation of motor
2 vehicle common carriers transporting passengers within
3 the county and adopt and amend rules the county deems
4 necessary for the public convenience and necessity;

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



1 property owner with the opportunity to contest the
2 summary action and to recover the owner's property;

3 (13) Each county shall have the power to enact ordinances
4 deemed necessary to protect health, life, and
5 property, and to preserve the order and security of
6 the county and its inhabitants on any subject or
7 matter not inconsistent with, or tending to defeat,
8 the intent of any state statute where the statute
9 ~~[does not disclose]~~ discloses an express or implied
10 intent that the statute shall be exclusive or uniform
11 throughout the State; provided that such ordinances
12 shall not conflict or interfere with the rules of the
13 board of land and natural resources related to the
14 issuance of geothermal well and drilling permits in
15 support of geothermal resources development and
16 geothermal resources exploration, as those terms are
17 defined in section 182-2;

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

19 (A) Make and enforce within the limits of the county
20 all necessary ordinances covering all:

21 (i) Local police matters;



(ii) Matters of sanitation;

(iii) Matters of inspection of buildings;

(iv) Matters of condemnation of unsafe structures, plumbing, sewers, dairies, milk, fish, and morgues; and

(v) Matters of the collection and disposition of rubbish and garbage;

(B) Provide exemptions for homeless facilities and any other program for the homeless authorized by part XVII of chapter 346, for all matters under this paragraph;

(C) Appoint county physicians and sanitary and other inspectors as necessary to carry into effect ordinances made under this paragraph, who shall have the same power as given by law to agents of the department of health, subject only to limitations placed on them by the terms and conditions of their appointments; and

(D) Fix a penalty for the violation of any ordinance, which penalty may be a misdemeanor, petty



1 misdemeanor, or violation as defined by general
2 law;

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

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

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

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

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



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(17) Each county shall have the power to provide by charter for the prosecution of all offenses and to prosecute for offenses against the laws of the State under the authority of the attorney general of the State;

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

(A) Community promotion and public celebrations;

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

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

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

(19) Each county shall have the power to:

(A) Construct, purchase, take on lease, lease, sublease, or in any other manner acquire, manage, maintain, or dispose of buildings for county



1 purposes, sewers, sewer systems, pumping
2 stations, waterworks, including reservoirs,
3 wells, pipelines, and other conduits for
4 distributing water to the public, lighting
5 plants, and apparatus and appliances for lighting
6 streets and public buildings, and manage,
7 regulate, and control the same;

8 (B) Regulate and control the location and quality of
9 all appliances necessary to the furnishing of
10 water, heat, light, power, telephone, and
11 telecommunications service to the county;

12 (C) Acquire, regulate, and control any and all
13 appliances for the sprinkling and cleaning of the
14 streets and the public ways, and for flushing the
15 sewers; and

16 (D) Open, close, construct, or maintain county
17 highways or charge toll on county highways;
18 provided that all revenues received from a toll
19 charge shall be used for the construction or
20 maintenance of county highways;



1 (20) Each county shall have the power to regulate the
2 renting, subletting, and rental conditions of property
3 for places of abode by ordinance;

4 (21) Unless otherwise provided by law, each county shall
5 have the power to establish by ordinance the order of
6 succession of county officials in the event of a
7 military or civil disaster;

8 (22) Each county shall have the power to sue and be sued in
9 its corporate name;

10 (23) Each county shall have the power to establish and
11 maintain waterworks and sewer works; to collect rates
12 for water supplied to consumers and for the use of
13 sewers; to install water meters whenever deemed
14 expedient; provided that owners of premises having
15 vested water rights under existing laws appurtenant to
16 the premises shall not be charged for the installation
17 or use of the water meters on the premises; to take
18 over from the State existing waterworks systems,
19 including water rights, pipelines, and other
20 appurtenances belonging thereto, and sewer systems,
21 and to enlarge, develop, and improve the same;



1 (24) (A) Each county may impose civil fines, in addition
2 to criminal penalties, for any violation of
3 county ordinances or rules after reasonable
4 notice and requests to correct or cease the
5 violation have been made upon the violator. Any
6 administratively imposed civil fine shall not be
7 collected until after an opportunity for a
8 hearing under chapter 91. Any appeal shall be
9 filed within thirty days from the date of the
10 final written decision. These proceedings shall
11 not be a prerequisite for any civil fine or
12 injunctive relief ordered by the circuit court;
13 (B) Each county by ordinance may provide for the
14 addition of any unpaid civil fines, ordered by
15 any court of competent jurisdiction, to any
16 taxes, fees, or charges, with the exception of
17 fees or charges for water for residential use and
18 sewer charges, collected by the county. Each
19 county by ordinance may also provide for the
20 addition of any unpaid administratively imposed
21 civil fines, which remain due after all judicial



1 review rights under section 91-14 are exhausted,
2 to any taxes, fees, or charges, with the
3 exception of water for residential use and sewer
4 charges, collected by the county. The ordinance
5 shall specify the administrative procedures for
6 the addition of the unpaid civil fines to the
7 eligible taxes, fees, or charges and may require
8 hearings or other proceedings. After addition of
9 the unpaid civil fines to the taxes, fees, or
10 charges, the unpaid civil fines shall not become
11 a part of any taxes, fees, or charges. The
12 county by ordinance may condition the issuance or
13 renewal of a license, approval, or permit for
14 which a fee or charge is assessed, except for
15 water for residential use and sewer charges, on
16 payment of the unpaid civil fines. Upon
17 recordation of a notice of unpaid civil fines in
18 the bureau of conveyances, the amount of the
19 civil fines, including any increase in the amount
20 of the fine which the county may assess, shall
21 constitute a lien upon all real property or



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



1 action, to procure a lien on land registered in
2 land court under chapter 501. After the unpaid
3 civil fines are added to the taxes, fees, or
4 charges as specified by county ordinance, the
5 unpaid civil fines shall be deemed immediately
6 due, owing, and delinquent and may be collected
7 in any lawful manner. The procedure for
8 collection of unpaid civil fines authorized in
9 this paragraph shall be in addition to any other
10 procedures for collection available to the State
11 and county by law or rules of the courts;

12 (C) Each county may impose civil fines upon any
13 person who places graffiti on any real or
14 personal property owned, managed, or maintained
15 by the county. The fine may be up to \$1,000 or
16 may be equal to the actual cost of having the
17 damaged property repaired or replaced. The
18 parent or guardian having custody of a minor who
19 places graffiti on any real or personal property
20 owned, managed, or maintained by the county shall
21 be jointly and severally liable with the minor



1 for any civil fines imposed hereunder. Any such
2 fine may be administratively imposed after an
3 opportunity for a hearing under chapter 91, but
4 such a proceeding shall not be a prerequisite for
5 any civil fine ordered by any court. As used in
6 this subparagraph, "graffiti" means any
7 unauthorized drawing, inscription, figure, or
8 mark of any type intentionally created by paint,
9 ink, chalk, dye, or similar substances;

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

20 (i) The nature and egregiousness of the
21 violation;



- 1 (ii) The duration of the violation;
- 2 (iii) The number of recurring and other similar
- 3 violations;
- 4 (iv) Any effort taken by the violator to correct
- 5 the violation;
- 6 (v) The degree of involvement in causing or
- 7 continuing the violation;
- 8 (vi) Reasons for any delay in the completion of
- 9 the appeal; and
- 10 (vii) Other extenuating circumstances.

11 The civil fine that is imposed by administrative

12 order after this review is completed and the

13 violation is corrected shall be subject to

14 judicial review, notwithstanding any provisions

15 for administrative review in county charters;

- 16 (E) After completion of a review of the amount of
- 17 accrued civil fine by the county agency that
- 18 imposed the fine, the amount of the civil fine
- 19 determined appropriate, including both the
- 20 initial civil fine and any accrued daily civil
- 21 fine, shall immediately become due and



1 collectible following reasonable notice to the
2 violator. If no review of the accrued civil fine
3 is requested, the amount of the civil fine, not
4 to exceed the total accrual of civil fine prior
5 to correcting the violation, shall immediately
6 become due and collectible following reasonable
7 notice to the violator, at the completion of all
8 appeal proceedings;

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

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



ordinances to regulate and grant the exemptions
granted by this paragraph;

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

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

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

"(e) For the period of the lease the lessee shall have the
exclusive right of possession of the minerals leased and the
exclusive rights to mine and remove the minerals by means that
shall be reasonable and satisfactory to the board and to occupy
and use so much of the surface of the land as may reasonably be
required, subject to the provisions of section 182-3. The right
to use the surface shall include the right to erect
transportation facilities thereon, construct plants for
beneficiating, drying, and processing the minerals for electric
power generation and transmission and other uses as may be
approved by the board. The other uses may include but need not
be limited to uses necessary or convenient to the processing of
the minerals; provided that the lessee shall comply with all



1 water and air pollution control laws, [and] rules of the State
2 ~~[or]~~, and other laws of its political subdivisions[-]; provided
3 further that notwithstanding any other law to the contrary, the
4 rules of the board relating to geothermal mining operations and
5 geothermal well permits in support of geothermal resources
6 development and geothermal resources exploration, including
7 drilling conditions and restrictions, shall be exclusive and
8 uniform throughout the State."

9 SECTION 4. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 5. This Act shall take effect on July 1, 2017.

12 INTRODUCED BY:

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Report Title:

Land Resource Development and Exploration; Drilling; County Authority

Description:

Clarifies that county ordinances shall not conflict or interfere with DLNR rules related to the issuance of permits in support of geothermal resources development and geothermal resources exploration. Requires the lessee of a mining lease to comply with all water and air pollution control laws. Requires the rules of the board of land and natural resources regarding mining operations, geothermal resource development, and geothermal resource exploration, including drilling conditions and restrictions, to be uniform throughout the State.

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