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# A BILL FOR AN ACT

RELATING TO NATURAL RESOURCES.

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

1           SECTION 1. The legislature finds that the State's natural  
2 resources are critical to its economic stability, energy  
3 security, climate resilience, public health, safety, and  
4 cultural continuity. The legislature further finds that  
5 planning for the availability of water supplies, the siting of  
6 renewable energy infrastructure, accurate wildfire and landslide  
7 risk assessment, and response procedures designed for drought  
8 and contamination emergencies are among the fiduciary acts  
9 performed by the State in the best interests of the public. The  
10 legislature believes that such planning is best made when high-  
11 quality, site-specific surface and subsurface data is  
12 considered, including information on stratigraphy, permeability,  
13 groundwater levels, temperature gradients, gas composition, and  
14 other geological conditions.

15           The legislature further finds that the public trust  
16 doctrine dictates that the State must protect and manage public  
17 natural resources, including water, land, and forests, for



1 present and future generations while also providing for their  
2 "highest economic social benefits", necessitating the need to  
3 balance various, competing interests. Existing statutory and  
4 regulatory frameworks governing wells and mining were designed  
5 to manage the long-term production and viability of the State's  
6 water and mineral resources. However, these frameworks were  
7 implemented without consideration of the need to treat purely  
8 scientific, non-commercial, temporary subsurface investigations  
9 differently from commercial developments. Consequently, these  
10 statutory and regulatory frameworks hinder scientific  
11 investigation that produces findings often needed by regulatory  
12 agencies to identify and guide their management of those  
13 resources.

14 The legislature also finds that regulatory frameworks  
15 governing water and mineral resources do not preclude  
16 non-extractive scientific research that is necessary to identify  
17 and understand the State's natural resources. Furthermore, the  
18 State's environmental review framework authorizes agencies,  
19 subject to review of the environmental advisory council, to  
20 exempt actions that individually and cumulatively will, in all



1 probability, have minimal or no consequential effects on the  
2 environment from the environmental review process.

3       The legislature additionally finds that the university of  
4 Hawaii and other research institutions based in the State use  
5 non-destructive analytical field processes in the normal course  
6 of their work. Those processes may include the use of  
7 temporary, small-diameter boreholes used solely for the purpose  
8 of collecting scientific data that defines observable subsurface  
9 conditions. These activities are non-commercial in nature and  
10 are not intended to support ongoing water or geothermal  
11 production. Boreholes used for these purposes are designed to  
12 be sealed or otherwise decommissioned after data gathering is  
13 complete in a manner that protects post-study groundwater and  
14 surface environments.

15       The legislature additionally finds that without regulatory  
16 clarification, temporary boreholes used for scientific research  
17 will continue to be subjected to the same administrative  
18 scrutiny as commercial exploration for water production wells or  
19 mining operations which regularly require environmental  
20 assessments or impact statements. As a result, time-sensitive  
21 geological subsurface characterization activities that produce



1 useful scientific data are often delayed, which increases costs  
2 and often discourages data collection altogether.

3 Accordingly, the purpose of this Act is to:

4 (1) Authorize geological subsurface characterization  
5 activities conducted by a public research institution  
6 under certain conditions;

7 (2) Clarify that boreholes or test holes drilled for the  
8 purposes of geological subsurface characterization are  
9 distinct from water well exploration and geothermal or  
10 mineral exploration;

11 (3) Require the department of business, economic  
12 development, and tourism, to designate the Hawaii  
13 groundwater and geothermal resources center of the  
14 university of Hawaii, or a successor entity, as the  
15 repository for data collected from any geological  
16 subsurface characterization activity;

17 (4) Require the department of land and natural resources  
18 to amend its exemption list to be consistent with  
19 administrative rules adopted by the department,  
20 specifying that certain geological subsurface  
21 characterization activities shall be exempt from the



1 environmental review process or shall only require an  
2 exemption notice;

3 (5) Require the university of Hawaii to amend its  
4 exemption list to specify that certain geological  
5 subsurface characterization activities shall be exempt  
6 from the environmental review process or shall only  
7 require an exemption notice; and

8 (6) Require the department of health to amend its rules  
9 related to hazardous waste and hazardous waste  
10 management for consistency with Title 40, Code of  
11 Federal Regulations, Part 261, to specify that certain  
12 waste products generated by geological subsurface  
13 characterization activity are exempt from hazardous  
14 waste management requirements.

15 SECTION 2. The Hawaii Revised Statutes is amended by  
16 adding a new chapter to be appropriately designated and to read  
17 as follows:

18 "CHAPTER

19 GEOLOGICAL SUBSURFACE CHARACTERIZATION

20 § -1 Purpose; applicability. (a) The purpose of this  
21 chapter is to clarify that any temporary, non-commercial,



1 geological subsurface characterization activity, including a  
2 borehole or test bore drilling activity:

3 (1) Shall not be treated as mining operations or  
4 geothermal resources exploration or development under  
5 chapter 182, when conducted solely for scientific data  
6 gathering purposes;

7 (2) Shall not be treated as wells for the purposes of well  
8 construction and pump installation permitting under  
9 part VII of chapter 174C; provided that the geological  
10 subsurface characterization activity is conducted  
11 pursuant to section -3; and

12 (3) May qualify as de minimis or otherwise exempt actions  
13 under chapter 343; provided that the geologic  
14 subsurface characterization activity does not violate  
15 any rule adopted under chapter 343.

16 (b) Nothing in this chapter shall be construed to exempt a  
17 person from obtaining a permit or approval required by law,  
18 including but not limited to conservation district use permits  
19 under chapter 183C, shoreline or special management area permits  
20 under chapter 205A, or county ordinance.



1 (c) This chapter shall apply to any geological subsurface  
2 characterization activity conducted by or under the direction of  
3 a public research institution on:

4 (1) State lands, including public lands, forest reserves,  
5 lands in the conservation district, and other lands  
6 under the jurisdiction of the department of land and  
7 natural resources and department of Hawaiian home  
8 lands;

9 (2) Lands under the jurisdiction of other state or county  
10 agencies; and

11 (3) Private parcels; provided that the owner of the parcel  
12 has provided written permission to the public research  
13 institution.

14 (d) Except as explicitly provided in this chapter, nothing  
15 in this chapter shall be construed to:

16 (1) Limit public trust water resources under article XI of  
17 the Hawaii State Constitution or chapter 174C;

18 (2) Alter the jurisdiction of the department of health  
19 over underground injection well control, hazardous  
20 waste management, or drinking water protection; or



1           (3) Diminish protections for any Native Hawaiian  
2           traditional and customary practice, historic property,  
3           or cultural resource, including protections provided  
4           by article XII, section 7, of the Hawaii State  
5           Constitution, and chapter 6E.

6           § -2 **Definitions.** For the purposes of this chapter:

7           "Borehole" means a temporary, artificial excavation,  
8           opening, or cored hole in the ground that is drilled, driven, or  
9           otherwise constructed solely for the purpose of geological  
10          subsurface characterization activities that is:

11          (1) Not equipped with permanent pumps or production  
12          equipment other than temporary or low-capacity  
13          equipment used for testing or sampling; and

14          (2) Abandoned, sealed, or converted to a monitoring or  
15          production well.

16          "Department" means the department of business, economic  
17          development, and tourism.

18          "Geological subsurface characterization activity" means any  
19          planned, temporary, non-commercial program of field activities  
20          executed or advised by a public research institution undertaken  
21          to collect scientific, engineering, or environmental data about



1 subsurface geologic, hydrologic, geochemical, geophysical,  
2 geothermal, or related geological conditions, in compliance with  
3 section -3. "Geological subsurface characterization  
4 activity" includes but is not limited to:

- 5 (1) Reflection seismology, refraction seismology,  
6 multichannel analysis of surfaces waves, electrical  
7 resistivity tomography, induced polarization,  
8 ground-penetrating radar, magnetotellurics, magnetic  
9 surveys, gravity surveys, and ground and airborne  
10 gamma spectrometry;
- 11 (2) Drilling, coring, or advancing small-diameter  
12 temporary boreholes;
- 13 (3) Collection of rock, soil, groundwater, gas, and  
14 temperature measurements and samples;
- 15 (4) Downhole logging, tracer testing, hydraulic or thermal  
16 response testing, and other measurements;
- 17 (5) Preparation, storage, and transmission of resulting  
18 data and samples; provided that the activity is not  
19 primarily intended to produce water, minerals,  
20 geothermal, heat, or other subsurface resources for  
21 sale, commercial use, or continuous operational use;



1 (6) Any extraction or injection that is limited in  
2 duration, volume, and pressure as reasonably necessary  
3 for data collection and testing; and

4 (7) Any activity necessary to seal or decommission a  
5 borehole.

6 "Groundwater" means any water found beneath the surface of  
7 the earth, whether in perched supply, dike confined, flowing, or  
8 percolating in underground channels or streams, under artesian  
9 pressure or not, or otherwise.

10 "Hazardous waste" means any material designated under Title  
11 40, Code of Federal Regulations, Part 261.

12 "Injection well" means a well into which the subsurface  
13 disposal of a fluid or fluids occurs or is intended to occur by  
14 means of injection.

15 "Investigative-derived waste" means drill cuttings,  
16 drilling muds and fluids, purge water, development water, used  
17 tracers, and other materials generated during geological  
18 subsurface characterization borehole drilling, testing,  
19 sampling, and decommissioning.

20 "Non-commercial purpose" means an activity that is not  
21 conducted for the primary purpose of generating profit from the



1 sale or use of water, geothermal heat, minerals, or other  
2 subsurface resources. "Non-commercial purpose" includes the  
3 receipt of grants, contracts, or research funding or  
4 cost-sharing arrangements with private entities.

5 "Public research institution" means a regionally accredited  
6 university or college, a state or federal research agency, or  
7 their contractors or subgrantees acting under written direction  
8 and control of the institution or agency.

9 "Scientific data-gathering" means the systematic process of  
10 collecting, measuring, and recording information, including  
11 observations, measurements, or existing records, using  
12 established methods to answer research questions, test  
13 hypotheses, and draw valid, reliable conclusions to ensure  
14 accuracy and integrity for analysis and informed  
15 decision-making.

16 "Test bore" or "test boring" means any excavation or  
17 drilled hole whose purpose is the immediate determination of  
18 subsurface geologic, hydrologic, or contaminated conditions in  
19 the unsaturated zone above the groundwater level. "Test bore"  
20 or "test boring" includes borings for foundation, underground  
21 storage tanks, and environmental monitoring under the purview of



1 other government agencies and hazardous waste remediation that  
2 is not intended for the purpose of conversion to a production  
3 well.

4 "Well" has the same meaning as defined in section 174C-3.

5 § -3 **Geological subsurface characterization activity;**  
6 **authorized; requirements.** (a) A public research institution  
7 may conduct geological subsurface characterization activities;  
8 provided that any geological subsurface characterization  
9 activity shall be for a non-commercial purpose.

10 (b) Any borehole or test bore drilled for the purposes of  
11 a geological subsurface characterization activity shall:

12 (1) Be designed, constructed, and decommissioned in  
13 accordance with rules adopted by the department and  
14 best management practices, including appropriate  
15 casing, cementing, blowout prevention, and sealing;

16 (2) Avoid direct hydraulic connection between distinct  
17 aquifers or between contaminated and uncontaminated  
18 zones, to the extent practicable; and

19 (3) Be sealed or otherwise decommissioned not more than  
20 three years from the date that drilling is completed;



1 provided that the department may grant an extension  
2 for the purpose of ongoing data gathering.

3 (c) Any pumping, flowing, or injection to or from a  
4 borehole drilled for a geological subsurface characterization  
5 activity shall:

6 (1) Be limited to the minimum volumes and durations  
7 reasonably necessary to perform hydraulic, thermal, or  
8 tracer testing or to collect representative samples;

9 (2) Not provide a continuous supply of groundwater or  
10 geothermal fluids for off-site use; and

11 (3) Not measurably and adversely affect any existing legal  
12 use of water or protected resources.

13 (d) A public research institution conducting geological  
14 subsurface characterization activity shall ensure that:

15 (1) The geological subsurface characterization activity  
16 shall not harm known cultural sites or burials or  
17 impede any Native Hawaiian traditional or customary  
18 practice;

19 (2) The geological subsurface characterization activity  
20 shall not pose any significant risk of groundwater  
21 contamination, subsidence, or induced hazards; and



1           (3) The geological subsurface characterization activity  
2           shall be in compliance with any applicable state and  
3           federal requirements relating to endangered species,  
4           historic preservation, and cultural resources.

5           § -4 **Investigative-derived waste; hazardous waste;**  
6 **management.** (a) Investigative-derived waste generated by  
7 geological subsurface characterization activity shall be managed  
8 in accordance with Title 40, Code of Federal Regulations, Part  
9 261; provided that investigative-derived waste that does not  
10 constitute hazardous waste, including drill cuttings and fluids,  
11 or are excluded from hazardous waste management under Title 40,  
12 Code of Federal Regulations, Section 261.4(b), shall not be  
13 managed in accordance with Title 40, Code of Federal  
14 Regulations, Part 261, solely because the investigative-derived  
15 waste was generated by a geological subsurface characterization  
16 activity.

17           (b) The department, in consultation with the department of  
18 health, may, by rule or guidance, specify a presumptive  
19 non-hazardous management option for common categories of  
20 investigative-derived waste, including:

21           (1) On-site or nearby land application of clean cuttings;



1 (2) Contained storage and evaporation of non-hazardous  
2 fluids; and

3 (3) Disposal at permitted solid waste facilities.

4 **§ -5 Registration with department; proposal;**

5 **requirements.** (a) Notwithstanding sections 174C-83 and  
6 174C-84, a public research institution shall register any  
7 geological subsurface characterization activity with the  
8 department.

9 (b) Before drilling a borehole for any geological  
10 subsurface characterization activity a public research  
11 institution shall submit to the department a geological  
12 subsurface characterization activity proposal and register the  
13 proposed project with the department. A geological subsurface  
14 characterization activity proposal shall include, at minimum,  
15 the:

16 (1) Project name;

17 (2) Contact information, including a telephone number,  
18 mailing address, and email address of the project  
19 manager;

20 (3) Proposed location or locations, including the tax map  
21 key or keys of the location or locations;



- 1           (4) Anticipated geological subsurface characterization  
2           activities, testing types, durations, and maximum  
3           pumping or injection rates;
- 4           (5) Proposed timeline for drilling, testing, and  
5           decommissioning;
- 6           (6) Proposed measures to prevent cross-contamination and  
7           protect groundwater; and
- 8           (7) A declaration of non-commercial purpose and intended  
9           data products.
- 10          (c) The department may reject or condition a geological  
11 subsurface characterization activity proposal; provided that the  
12 department determines that:
- 13          (1) The geological subsurface characterization activity  
14          proposal does not meet the requirements of subsection  
15          (b);
- 16          (2) The proposed geological subsurface characterization  
17          activity poses an unreasonable risk to groundwater  
18          resources, public trust purposes, or an existing legal  
19          use of water; or
- 20          (3) A borehole to be drilled for the geological subsurface  
21          characterization activity will be:



1 (A) Used to supply water or geothermal fluids for  
2 ongoing operational use beyond testing;

3 (B) Equipped with permanent pumping or production  
4 equipment; and

5 (C) Maintained beyond the time limit established  
6 under section -3 without decommissioning or  
7 conversion to a monitoring or production well.

8 (d) If the department does not reject a geological  
9 subsurface characterization activity proposal within forty-five  
10 days from the receipt of the proposal, the public research  
11 institution conducting the geological subsurface  
12 characterization may proceed with the project.

13 **§ -6 Reports; data collection and sharing; required.**

14 (a) A public research institution conducting geological  
15 subsurface characterization activity shall submit a report to  
16 the department for each borehole drilled for the purposes  
17 geological subsurface characterization activity. The report  
18 shall include the final location, depth, basic construction  
19 details, and decommissioning status of each borehole; provided  
20 that the borehole has been converted to a well.



1 (b) A public research institution conducting any  
2 geological subsurface characterization activity on state lands  
3 or with funding provided by the State shall, within days  
4 after completion of data analysis, submit a report to a  
5 repository designated by the department detailing:

6 (1) Borehole locations, depths, and basic construction  
7 details;

8 (2) Stratigraphic and lithologic descriptions;

9 (3) Groundwater, temperature, and geophysical logs, as  
10 applicable; and

11 (4) Other non-proprietary data the department may require  
12 by rule.

13 (c) The department, in consultation with the department of  
14 land and natural resources, department of Hawaiian home lands,  
15 and other involved agencies may authorize reasonable protections  
16 for information a state or county agency deems culturally  
17 sensitive or site-specific data, including generalizing public  
18 location data for these sites, consistent with public trust and  
19 public interest considerations.

20 § -7 **Rules.** The department, in consultation with the  
21 department of land and natural resources, department of health,



1 and university of Hawaii shall adopt rules pursuant to chapter  
2 91 for the purposes of this section, including:

- 3 (1) Technical standards for geological subsurface  
4 characterization activities, including borehole  
5 diameter, depth, design, construction, and  
6 decommissioning;
- 7 (2) Registration procedures, forms, and timelines;
- 8 (3) Standards determining whether a borehole drilled for  
9 geological subsurface characterization activities  
10 becomes a well that requires a permit pursuant to  
11 chapter 174C;
- 12 (4) Requirements for monitoring and reporting, including  
13 completion reports under section -6; and
- 14 (5) Enforcement mechanisms, including orders to cease  
15 operations, undertake corrective actions, or seal  
16 boreholes."

17 SECTION 3. Section 182-1, Hawaii Revised Statutes, is  
18 amended by amending the definition of "mining operations" to  
19 read as follows:

20 ""Mining operations" means the process of excavation,  
21 extraction, and removal of minerals, and the exploration or



1 development of any and all geothermal resources, from the  
2 ground, design engineering, other engineering, erection of  
3 transportation facilities and port facilities, erection of  
4 necessary plants, other necessary operations or development  
5 approved by the board preceding or connected with the actual  
6 extraction of minerals and the exploration or development of  
7 geothermal resources. "Mining operations" does not include a  
8 geological subsurface characterization activity as that term is  
9 defined in section -2."

10 SECTION 4. The department of business, economic  
11 development, and tourism shall designate the Hawaii groundwater  
12 and geothermal resources center, or a successor entity, as the  
13 repository for data collected from any geological subsurface  
14 characterization activity to support planning for water  
15 resources, geothermal potential, hazard mitigation, and other  
16 public purposes.

17 SECTION 5. (a) The department of land and natural  
18 resources shall amend its exemption list to include geological  
19 subsurface characterization activities in part one of its  
20 exemption list where appropriate, specifying that certain



1 geological subsurface characterization activities shall be  
2 exempt from the environmental review process.

3 (b) The department of land and natural resources shall  
4 amend its exemption list to include geological subsurface  
5 characterization activities in part two of its exemption list  
6 where appropriate, specifying that certain geological subsurface  
7 characterization activities shall only require the preparation  
8 and submission of an exemption notice.

9 SECTION 6. (a) The university of Hawaii shall amend its  
10 exemption list to include geological subsurface characterization  
11 activities in part one of its exemption list where appropriate,  
12 specifying that certain geological subsurface characterization  
13 activities shall be exempt from the environmental review  
14 process.

15 (b) The university of Hawaii shall amend its exemption  
16 list to include geological subsurface characterization  
17 activities in part two of its exemption list where appropriate,  
18 specifying that certain geological subsurface characterization  
19 activities shall only require the preparation and submission of  
20 an exemption notice.



# S.B. NO. 3223

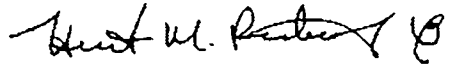
1           SECTION 7. The department of health shall amend its  
2 administrative rules relating to hazardous waste, hazardous  
3 waste management, and underground injection control for  
4 consistency with Title 40, Code of Federal Regulations, Part  
5 261, to specify that certain investigative-derived waste  
6 products generated by geological subsurface characterization  
7 activity are exempt from hazardous waste management  
8 requirements.

9           SECTION 8. If any provision of this Act, or the  
10 application thereof to any person or circumstance, is held  
11 invalid, the invalidity does not affect other provisions or  
12 applications of the Act that can be given effect without the  
13 invalid provision or application, and to this end the provisions  
14 of this Act are severable.

15           SECTION 9. New statutory material is underscored.

16           SECTION 10. This Act shall take effect upon its approval.

17

INTRODUCED BY: 



# S.B. NO. 3223

**Report Title:**

DBEDT; DLNR; DOH; UH; Hawaii Groundwater and Geothermal Resources Center; Geological Subsurface Characterization; Natural Resources; Groundwater; Geothermal Resources; Hazardous Waste; Exemptions; Administrative Rules

**Description:**

Authorizes geological subsurface characterization activities conducted by a public research institution under certain conditions. Clarifies that boreholes or test holes drilled for the purposes of geological subsurface characterization are distinct from water well exploration and geothermal or mineral exploration. Requires the Department of Business, Economic Development, and Tourism, to designate the Hawaii Groundwater and Geothermal Resources Center of the University of Hawaii, or a successor entity, as the repository for data collected from any geological subsurface characterization activity. Requires the Department of Land and Natural Resources to amend its exemption list to specify that certain geological subsurface characterization activities shall be exempt from the environmental review process or shall only require an exemption notice. Requires the University of Hawaii to amend its exemption list to specify that certain geological subsurface characterization activities shall be exempt from the environmental review process or shall only require an exemption notice. Requires the Department of Health to amend its rules related to hazardous waste and hazardous waste management for consistency with federal regulations to specify that certain waste products generated by geological subsurface characterization activity are exempt from hazardous waste management requirements.

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

