

**ACT 296**

**S.B. NO. 903**

**A Bill for an Act Relating to Geothermal Energy.**

***Be It Enacted by the Legislature of the State of Hawaii:***

**SECTION 1.** The legislature finds that the development and exploration of Hawaii's geothermal resources is of statewide concern, and that this interest must be balanced with interests in preserving Hawaii's unique social and natural environment. The purpose of this Act is to provide a policy that will assist in the location of geothermal resources development in areas of the lowest potential environmental impact.

SECTION 2. Section 182-4, Hawaii Revised Statutes, is amended to read as follows:

**"§182-4 Mining leases on state lands. (a)** If any mineral is discovered or known to exist on state lands, any interested person may notify the board of land and natural resources of his desire to apply for a mining lease. The notice shall be accompanied by a fee of \$100 together with a description of the land desired to be leased and the minerals involved and such information and maps as the board by regulation may prescribe. As soon as practicable thereafter, the board shall cause a notice to be published in a newspaper of general circulation in the county where the lands are located, at least once in each of three successive weeks, setting forth the description of the land, and the minerals desired to be leased. The board may hold the public auction of the mining lease within six months from the date of the first publication of notice or such further time as may be reasonably necessary. Whether or not the state land sought to be auctioned is then being utilized or put to some productive use, the board, after due notice of public hearing to all parties in interest, within six weeks from the date of the first publication of notice or such further time as may be reasonably necessary, shall determine whether the proposed mining operation or the existing or reasonably foreseeable future use of the land would be of greater benefit to the State. If the board determines that the existing or reasonably foreseeable future use would be of greater benefit to the State than the proposed mining use of the land, it shall disapprove the application for a mining lease of the land without putting the land to auction.

The board shall determine the area to be offered for lease and, after due notice of public hearing to all parties in interest, may modify the boundaries of the land areas. At least thirty days prior to the holding of any public auction, the board shall cause a notice to be published in a newspaper of general circulation in the State at least once in each of three successive weeks, setting forth the description of the land, the minerals to be leased, and the time and place of the auction. Bidders at the public auction may be required to bid on the amount of annual rental to be paid for the term of the mining lease based on an upset price fixed by the board, a royalty based on the gross proceeds or net profits, cash bonus, or any combination or other basis and under such terms and conditions as may be set by the board.

**(b)** Any provisions to the contrary notwithstanding, if the person who discovers the mineral discovers it as a result of exploration permitted under section 182-6, and if that person bids at the public auction on the mining lease for the right to mine the discovered mineral and is unsuccessful in obtaining such lease, that person shall be reimbursed by the person submitting the highest bid at public auction for the direct or indirect costs incurred in the exploration of the land, excluding salaries, attorney fee's and legal expenses. The department shall have the authority to review and approve all expenses and costs that may be reimbursed."

SECTION 3. Chapter 205, Hawaii Revised Statutes, is amended by adding new sections to be appropriately designated and to read as follows:

**"§205- Geothermal resource subzones. (a)** Geothermal resource subzones may be designated within each of the land use districts established under section 205-2. Only those areas designated as geothermal resource subzones may be utilized for the exploration, development, production, and distribution of electrical

energy from geothermal sources, in addition to those uses permitted in each land district under this chapter.

(b) The board of land and natural resources shall have the responsibility for designating areas as geothermal resource subzones as provided under section 205-

The designation of geothermal resource subzones shall be governed exclusively by this section and section 205- , except as provided therein. The board shall adopt, amend, or repeal rules related to its authority to designate and regulate the use of geothermal resource subzones in the manner provided under chapter 91.

The authority of the board to designate geothermal resource subzones shall be an exception to those provisions of this chapter and of section 46-4 authorizing the land use commission and the counties to establish and modify land use districts and to regulate uses therein.

(c) The use of an area for the exploration, development, production and/or distribution of electrical energy from geothermal sources within a geothermal resource subzone shall be governed by the board within the conservation district and by existing state and county statutes, ordinances, and rules within the agricultural, rural, and urban districts, except that no land use commission approval shall be required for the use of subzones. The board and/or appropriate county agency shall, upon request, conduct a contested case hearing pursuant to chapter 91 prior to the issuance of a geothermal resource permit relating to the exploration, development, production, and distribution of electrical energy from geothermal resources. The standard for determining the weight of the evidence in a contested case proceeding shall be by a preponderance of evidence. Chapters 183, 205A, 226, and 343 shall apply as appropriate.

**§205- Designation of areas as geothermal resource subzones.** (a) Beginning in 1983, the board of land and natural resources shall conduct a county-by-county assessment of areas with geothermal potential for the purpose of designating geothermal resource subzones. This assessment shall be revised or updated at the discretion of the board, but at least once each five years beginning in 1988. Any property owner or person with an interest in real property wishing to have an area designated as a geothermal resource subzone may submit a petition for a geothermal resource subzone designation in the form and manner established by rules and regulations adopted by the board. An environmental impact statement as defined under chapter 343 shall not be required for the assessment of areas under this section.

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

- (1) The area's potential for the production of geothermal energy;
- (2) The prospects for the utilization of geothermal energy in the area;
- (3) The geologic hazards that potential geothermal projects would encounter;
- (4) Social and environmental impacts;
- (5) The compatibility of geothermal development and potential related industries with present uses of surrounding land and those uses permitted under the general plan or land use policies of the county in which the area is located;

- (6) The potential economic benefits to be derived from geothermal development and potential related industries; and
- (7) The compatibility of geothermal development and potential related industries with the uses permitted under sections 183-41 and 205-2, where the area falls within a conservation district.

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

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

(d) After the board has completed a county-by-county assessment of all areas with geothermal potential or after any subsequent update or review, the board shall compare all areas showing geothermal potential within each county, and shall propose areas for potential designation as geothermal resource subzones based upon a preliminary finding that the areas are those sites which best demonstrate an acceptable balance between the factors set forth in subsection (b). Once such a proposal is made, the board shall conduct public hearings pursuant to this subsection, notwithstanding any contrary provision related to public hearing procedures.

- (1) Hearings shall be held at locations which are in close proximity to those areas proposed for designation. A public notice of hearing, including a description of the proposed areas, an invitation for public comment, and a statement of the date, time, and place where persons may be heard shall be published and mailed no less than twenty days before the hearing. The notice shall be published on three separate days in a newspaper of general circulation state-wide and in the county in which the hearing is to be held. Copies of the notice shall be mailed to the department of planning and economic development, and the planning commission and planning department of the county in which the proposed areas are located.
- (2) The hearing shall be held before the board, and the authority to conduct hearings shall not be delegated to any agent or representative of the board. All persons and agencies shall be afforded the opportunity to submit data, views, and arguments either orally or in writing. The department of planning and economic development and the county planning department shall be permitted to appear at every hearing and make recommendations concerning each proposal by the board.
- (3) At the close of the hearing, the board may designate areas as geothermal resource subzones or announce the date on which it will render its decision. The board may designate areas as a geothermal resource subzones only upon finding that the areas are those sites which best demonstrate an acceptable balance between the factors set forth in subsection (b). Upon request, the board shall issue a concise statement of its findings and the principal reasons for its decision to designate a particular area.

(e) The designation of any geothermal resource subzone may be withdrawn by the board of land and natural resources after proceedings conducted pursuant to the provisions of chapter 91. The board shall withdraw a designation

only upon finding by a preponderance of the evidence that the area is no longer suited for designation, provided that the designation shall not be withdrawn for areas in which active exploration, development, production or distribution of electrical energy from geothermal sources is taking place.

(f) This Act shall not apply to any active exploration, development or production of electrical energy from geothermal sources taking place on the effective date of the Act, provided that any expansion of such activities shall be carried out in compliance with its provisions.”

**SECTION 4.** Statutory material to be repealed is bracketed. New material is underscored.<sup>1</sup>

**SECTION 5.** If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

**SECTION 6.** This Act shall take effect upon its approval.

(Approved June 14, 1983.)

**Note**

1. No bracketed material. Edited pursuant to HRS §23G-16.5.