

ACT 224

S.B. NO. 1810

A Bill for an Act Relating to a Natural Resource and Energy Authority.

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

SECTION 1. The legislature finds that the development and use of Hawaii's natural resources could result in the increased diversification of the State's economy. The legislature finds that an abundance of natural resources are available on the island of Hawaii and facilities have already been established which serve to promote the development of research and commercial uses for these natural resources. These facilities consist of state land with a research and technology park with energy and aquaculture research and demonstration projects using warm and cold sea water and solar insolation, an adjoining ocean science and technology park designed to attract commercialization projects in concert with the research facilitation activity, and a demonstration geothermal well with an attached research park for nonelectric uses of geothermal fluids.

Therefore, the legislature finds that it is in the best interest of the State to consolidate management of these facilities and activities under one administrative organization. To accomplish this, it is necessary to establish a new authority whose purpose is to manage and maintain these facilities located at Ke-ahole Point and in Puna on the island of Hawaii. These facilities were formerly known as the natural energy laboratory of Hawaii, and the Hawaii ocean science

technology park developed and managed by the high technology development corporation, both affiliated agencies of the department of business and economic development.

The intent of the legislature is to consolidate the management and organization of these facilities under one authority whose main purpose will be to manage and operate research facilities. It will also serve as a facilitator for the research and development process from fundamental and applied research to pilot commercial projects for developments, which utilize the natural resources available at Ke-ahole Point or Puna geothermal facilities. The facilities shall provide sites for research, development, demonstration, and commercialization of natural energy resources and other compatible scientific and technological investigations. The authority shall also maintain the physical structure of the facilities, provide facilities for lease to tenants who use the natural resources and energy or who support these projects and activities, and provide utilities and other support services to the tenants of those facilities.

To further derive benefits from established marketing programs, the authority may continue to promote the Hawaii ocean science and technology park.

SECTION 2. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1990-1991 to be exceeded by \$242,106, or 0.0095 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

SECTION 3. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
NATURAL ENERGY LABORATORY OF HAWAII
AUTHORITY**

§ -1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

“Authority” means the natural energy laboratory of Hawaii authority established by section -2.

“Board” means the board of directors of the authority established by section -2 and any successor thereto.

“Bonds” means special purpose bonds issued under this chapter and shall include notes, other instruments of indebtedness, and refunding bonds.

“Cost” means the total cost in carrying out all undertakings that the authority deems reasonable and necessary for the development of a project or research and technology park, including but not limited to the cost of studies, surveys, plans, and specifications, architectural, design, engineering, or any other special related services; the cost of site preparation and development, demolition, construction, reconstruction, rehabilitation, and improvement; the cost of financing the project or research and technology park from the date thereof to the estimated date of completion of the project or research and technology park as determined by the board; the cost of an allocable portion of the administrative and operating expenses of the authority related to the devel-

opment of the project or research and technology park; and the cost of indemnity and surety bonds, premiums on policies of insurance, legal fees, and fees and expenses of trustees, depositories, and paying agents for the bonds, and for the issuance of letters of credit or other banking arrangements whether for the authority credit or a qualified person; all as the authority shall deem necessary.

“Project” means any combination of land and buildings and other improvements thereon for use in, but not limited to research, development, demonstration, processing, or manufacturing activities or enterprises utilizing or in support of the utilization of natural resources and geothermal energy which are located in a research and technology park and acquired, constructed, reconstructed, rehabilitated, improved, altered, or repaired by or on behalf of the authority.

“Project agreement” means any lease, sublease, loan agreement, conditional sale agreement, or other similar financing contract or agreement, or any combination thereof entered into under this chapter by the authority, including the financing from the proceeds of bonds of a project or a research and technology park.

“Public agency” means any office, department, board, commission, bureau, division, public corporation, agency, or instrumentality of the federal, state, or county government.

“Qualified person” means any individual, partnership, corporation, public agency, or any combination or association of the foregoing, possessing the competence, expertise, experience, and resources, including financial, personnel, and tangible resources, required for the purposes of a project and other qualifications as may be deemed desirable by the authority in administering this chapter and that enters into a project agreement with the authority.

“Real property” means lands, structures, and interests therein, and natural resources including water, minerals, and all things connected with land, including lands under water and riparian rights, space rights, air rights, and any and all other things and rights usually included within the term. Real property also means any and all interests in property less than fee title, such as leasehold interests, easements, incorporeal hereditaments, and every estate, interest, or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages, or otherwise.

“Research advisory committee” means the research committee that is advisory to the board and is established by section -4 and any successor thereto.

“Research and technology park” means a tract of real property determined by the board as being suitable for use as building sites for projects engaged in research, development, demonstration, processing, or manufacturing activities or enterprises utilizing natural resources or geothermal energy. This includes, but is not limited to, research, commercialization, training, technical analyses, pilot plant, or prototype product development, and may include the installation of improvements to tracts incidental to the use of real property as a research and technology park, such as water, sewer, sewage and waste disposal, and drainage facilities, sufficient to adequately service projects in the research and technology park, and provision of incidental transportation facilities, power distribution facilities, and communication facilities. Research and technology parks shall not include any buildings or structures of any kind except for buildings or structures incidental to improvements of the research and technology park.

§ -2 Natural energy laboratory of Hawaii authority; established. (a) There is established the natural energy laboratory of Hawaii authority, which

shall be a body corporate and politic and an instrumentality and agency of the State. The authority shall be placed within the department of business and economic development for administrative purposes, pursuant to section 26-35.

(b) The governing body of the authority shall consist of a board of directors having nine voting members. Three members from the general public shall be appointed by the governor for staggered terms pursuant to section 26-34, except that one of these members shall be a resident of the county of Hawaii. For the first term, one of these members shall be appointed from the board of the high technology development corporation. The members shall be selected on the basis of their knowledge, interest, and proven expertise in, but not limited to, one or more of the following fields: finance, commerce and trade, corporate management, marketing, economics, engineering, energy management, real estate development, property management, aquaculture, and ocean science. The chairperson and secretary of the research advisory committee shall serve on the board. The director of business and economic development, the chairperson of the board of land and natural resources, the president of the University of Hawaii, and the mayor of the county of Hawaii, or their designated representatives, shall serve as ex-officio, voting members of the board. The director of business and economic development shall serve as the chairperson until such time as a chairperson is elected by the board from the membership. The board shall elect other officers as it deems necessary.

(c) The members of the board appointed under subsection (b) shall serve without compensation, but may be reimbursed for expenses, including travel expenses, incurred in the performance of their duties.

(d) The board shall appoint an executive director, who shall serve at the pleasure of the board and shall be exempt from chapters 76 and 77. The board shall set the salary and duties of the executive director.

§ -3 Powers of the authority. The authority may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at its pleasure;
- (3) Promote the use of the geothermal energy and natural resources sites for the purposes provided by law;
- (4) Through its executive director appoint officers, agents and employees without regard to chapters 76 and 77 and to establish the salaries therefor;
- (5) Adopt rules under chapter 91 necessary to effectuate this chapter in connection with its operation, facilities, parks, properties, and projects;
- (6) Make, execute, enter into, amend, supplement, and carry out contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter with any private person, firm, partnership, association, company, or corporation only as it may be necessary in the conduct of its business and on such terms as it may deem appropriate; provided that the authority shall not obligate any funds of the State except as have been appropriated to it. Notwithstanding the foregoing, the authority may enter into and perform such contracts, leases, cooperative agreements, or other transactions with any agency or instrumentality of the United States, a foreign nation, a state, a territory, or a possession, or with any political subdivision thereof;
- (7) Accept, hold, or expend gifts or grants in any form from any public agency or private source, or from any other source;

- (8) Impose and collect fees pertaining to the use of properties and facilities of the authority;
- (9) Formulate budgets to provide for the operation of the facilities of the authority;
- (10) Submit an annual report to the governor and the legislature at least twenty days prior to the convening of each regular session;
- (11) Own, lease, hold, clear, improve, and rehabilitate real, personal, or mixed property and assign, exchange, transfer, convey, lease, sublease, or encumber any project including by way of easements;
- (12) Construct, reconstruct, rehabilitate, improve, alter, or repair, or provide for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project and designate a qualified person as its agent for this purpose, and own, hold, assign, transfer, convey, exchange, lease, sublease, or encumber any project;
- (13) Arrange or initiate appropriate action for the planning, replanning, opening, grading, or closing of streets, roads, roadways, alleys, easements, or other places, the furnishings or improvements, the acquisition of property or property rights, or the furnishing of property or services in connection with a research and technology park;
- (14) Prepare or cause to be prepared plans, specifications, designs, and estimates of cost for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project or research and technology park, and from time to time modify these plans, specifications, designs, or estimates;
- (15) Engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
- (16) Procure insurance against any loss in connection with its properties and other assets and operations in amounts and from insurers as it deems desirable;
- (17) Issue bonds pursuant to this chapter in principal amounts as may be authorized from time to time by law to finance the cost of a project, including the repair or addition to its parks and facilities as authorized by law and to provide for the security thereof as permitted by this chapter;
- (18) Lend or otherwise apply the proceeds of the bonds issued for a project or a research and technology park either directly or through a trustee or a qualified person for use and application in the acquisition, construction, installation, or modification of a project or research and technology park, or agree with the qualified person whereby any of these activities shall be undertaken or supervised by that qualified person or by a person designated by the qualified person;
- (19) With or without terminating a project agreement, exercise any and all rights provided by law for entry and re-entry upon or to take possession of a project at any time or from time to time upon breach or default by a qualified person under a project agreement; and
- (20) Do any or all other acts reasonably necessary to carry out the purposes of the authority.

§ -4 **Research advisory committee.** The authority shall appoint a research advisory committee for the purpose of obtaining expert and specialized counsel and advice on matters relating to scientific research and may include as

members of the committee officers and employees of any government department or agency or members of the scientific community; provided that at least two members of the board shall be appointed to the committee. Members of the advisory committee shall elect the chairperson and secretary of the committee, who shall serve as members of the board. The authority may assign its own staff to aid and assist the committee and may reimburse any member of the committee for necessary expenses incurred in the performance of the member's work for the authority.

§ -5 **Special fund.** There is established in the state treasury a fund to be known as the natural energy laboratory of Hawaii authority special fund, into which shall be deposited all moneys and fees from tenants or other users of the authority's parks, projects, other leased facilities, and other services and publications. All moneys in the fund are appropriated for the purposes of and shall be expended by the authority for the operation, maintenance, and management of its parks, projects, facilities, services, and publications.

§ -6 **Meetings of the board.** (a) The meetings of the board shall be open to the public as provided in section 92-3, except that when it is necessary for the board to receive information that is proprietary to a particular enterprise that seeks entry into or use of one of its facilities or the disclosure of which might be harmful to the business interest of the enterprise, the board may enter into an executive meeting that is closed to the public.

(b) The board shall be subject to the procedural requirements of 92-4, and this authorization shall be in addition to the exceptions listed in section 92-5, to enable the authority to respect the proprietary requirements of enterprises with which it has business dealings.

§ -7 **Exemption of authority from taxation and competitive bidding.** (a) All revenues and receipts derived by the authority from any project or research and technology park or under a project agreement or other agreement pertaining thereto shall be exempt from all state taxation. Any right, title, and interest of the authority in any project or research and technology park shall also be exempt from all state taxation. Except as otherwise provided by law, the interest of a qualified person or other user of a project or research and technology park under a project agreement or other agreements related to a project or research and technology park shall not be exempt from taxation to a greater extent than it would be if the costs of the project or research and technology park were directly financed by the qualified person or user.

(b) The authority shall not be subject to any requirement of law for competitive bidding, including the requirements of section 103-22 and 103-42, for project agreements, construction contracts, or other contracts unless a project agreement with respect to a project or research and technology park shall require otherwise.

§ -8 **Assistance by state and county agencies.** Every state or county agency may render services to the authority upon request of the authority.

§ -9 **Court proceedings; preferences.** Any action or proceeding to which the authority, the State, or a county may be a party, in which any question arises as to the validity of this chapter, shall be preferred over all other civil causes, except election cases, without respect to position on the calendar. The same preference shall be given upon application of counsel for the authority in any

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action or proceeding questioning the validity of this chapter in which the authority has duly intervened.”

SECTION 4. Chapter 227, Hawaii Revised Statutes, is repealed.

SECTION 5. In the event that an officer or employee of the natural energy laboratory of Hawaii is hired as an employee of the State or its agencies, the officer or employee shall not suffer the loss of prior service credit, accrued vacation, or sick leave, or other employee benefits or privileges which may accrue.

SECTION 6. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the natural energy laboratory of Hawaii, and by the high technology development corporation relating to the functions of the Hawaii ocean science and technology park, shall be transferred by this Act to the natural energy laboratory of Hawaii authority with the functions to which they relate.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii, the sum of \$242,106, or so much thereof as may be necessary for fiscal year 1990-1991, for research, operation and maintenance, miscellaneous services to tenants, and salaries and office expenses of the authority's staff.

SECTION 8. The sum appropriated shall be expended by the department of business and economic development for the purposes of this Act.

SECTION 9. This Act shall take effect on July 1, 1990.

(Approved June 25, 1990.)