# ACT 97

S.B. NO. 3003

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 purpose of this Act is to address geothermal resources.

More specifically:

(1) Part II amends chapter 182, Hawaii Revised Statutes, relating to mining leases, by differentiating between "geothermal resources exploration" and "geothermal resources development";
(2) Part III amends chapter 183C, Hawaii Revised Statutes, relating to the conservation district, by designating "geothermal resources exploration" and "geothermal resources development" as permissible uses in all zones of the conservation district; and
(3) Part IV amends chapter 205, Hawaii Revised Statutes, relating to state land use districts, by repealing the geothermal resource subzone provisions and designating "geothermal resources exploration" and "geothermal resources development" as permissible uses in all districts.

PART II

SECTION 2. Section 182-1, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

""Geothermal resources development" means the development or production of electrical energy from geothermal resources and direct use application of geothermal resources. The term does not include "geothermal resources exploration".

"Geothermal resources exploration" means either of the following:

(1) Conducting non-invasive geophysical operations, including geochemical operations, remote sensing, and other similar techniques; or
(2) Drilling exploration wells for the extraction and removal of minerals of types and quantities;

that are reasonably required for testing and analysis to provide ground truth or determine the economic viability of geothermal resources. The term does not include "geothermal resources development"."

2. By amending the definitions of "mining lease" and "mining operations" to read:

""Mining lease" means a lease of the right to conduct mining operations, including geothermal resource exploration or development, on state lands and on lands sold or leased by the State or its predecessors in interest with a reservation of mineral rights to the State.

"Mining operations" means the process of excavation, extraction, and removal of minerals, and the exploration or development of any and all geothermal resources, from the ground, design engineering, other engineering, erection of transportation facilities and port facilities, erection of necessary plants, other necessary operations or development approved by the board preceding or connected with the actual extraction of minerals and the exploration or development of geothermal resources."

SECTION 3. Section 182-5, Hawaii Revised Statutes, is amended to read as follows:

**"§182-5 Mining leases on reserved lands.** If any mineral is discovered or known to exist on reserved lands, any interested person may notify the board of land and natural resources of the person's 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 may by regulation prescribe. The board may grant a mining lease on reserved lands in accordance with section 182-4, or the board may, by the vote of two-thirds of its members to which the board is entitled, without public auction, grant a mining lease on reserved lands to the occupier thereof. Such a mining lease may be granted to a person other than the occupier if the occupier has assigned the occupier's rights to apply for a mining lease to another person, in which case only such an assignee may be granted a mining lease. Any provisions to the contrary notwithstanding, if the board decides that it is appropriate to grant a geothermal mining lease on the reserved lands, the surface owner or the owner's assignee shall have the first right of refusal for a mining lease[~~; however, the granting of a geothermal mining lease does not create the presumption that a geothermal resource subzone will be designated, nor shall geothermal development activities occur on land within the geothermal mining lease until the area is designated a geothermal resource subzone~~]. If the occupier or the occupier's assignee of the right to obtain a mining lease should fail to apply for a mining lease within six months from the date of notice from the board of a finding by the board that it is in the public interest that the minerals on the reserved lands be mined, a mining lease shall be granted under section 182-4; provided that bidders at the public auction shall bid on an amount to be paid to the State for a mining lease granting to the lessee the right to exploit minerals reserved to the State."

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

"**§182-6 Exploration.** Any person wishing to conduct exploration on [~~such~~] state lands shall apply to the board of land and natural resources who shall issue exploration permits upon [~~such~~] terms and conditions as it shall by regulation prescribe. During and as a result of the exploration, no minerals of such types and quantity beyond that reasonably required for testing and analysis shall be extracted and removed from such state lands. Upon termination of the exploration permit, the drill logs and the results of the assays resulting from the exploration shall be turned over to the board and kept confidential by the board. If the person shall not make application for a mining lease of the lands within a period of six months from the date the information is turned over to the board, the board in its discretion need not keep the information confidential.

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

PART III

SECTION 5. Section 183C-4, Hawaii Revised Statutes, is amended to read as follows:

"**§183C-4 Zoning; amendments.** (a) The department, after notice and hearing as provided in this section, shall review and redefine the boundaries of the zones within the conservation district.

(b) The department shall adopt rules governing the use of land within the boundaries of the conservation district that are consistent with the conservation of necessary forest growth, the conservation and development of land and natural resources adequate for present and future needs, and the conservation and preservation of open space areas for public use and enjoyment. No use except a nonconforming use as defined in section 183C-5, shall be made within the conservation district unless the use is in accordance with a zoning rule.

(c) The department may allow a temporary variance from zoned use where good cause is shown and where the proposed temporary variance is for a use determined by the department to be in accordance with good conservation practices.

(d) The department shall establish zones within the conservation district, which shall be restricted to certain uses. The department, by rules, may specify the land uses permitted therein which may include, but are not limited to, farming, flower gardening, operation of nurseries or orchards, growth of commercial timber, grazing, recreational or hunting pursuits, or residential use. The rules may control the extent, manner, and times of the uses, and may specifically prohibit unlimited cutting of forest growth, soil mining, or other activities detrimental to good conservation practices.

(e) Notwithstanding this section or any other law to the contrary, geothermal resources exploration and geothermal resources development, as defined under section 182-1, shall be permissible uses in all zones of the conservation district. The rules required under subsection (b) governing the use of land within the boundaries of the conservation district shall be deemed to include the provisions of this section without necessity of formal adoption by the department.

[~~(e)~~] (f) Whenever any landowner or government agency whose property will be directly affected makes an application to change the boundaries or land uses of any zone, or to establish a zone with certain land uses, or where the department proposes to make the change or changes itself, the change or changes shall be put in the form of a proposed rule by the applicant and the department shall then give public notice thereof during three successive weeks statewide and in the county in which the property is located. The notice shall be given not less than thirty days prior to the date set for the hearing, and shall state the time and place of the hearing and the changes proposed. Any proposed rules and the necessary maps shall be made available for inspection by interested members of the public. The hearing shall be held in the county in which the land is located and may be delegated to an agent or representative of the board as may otherwise be provided by law and in accordance with rules adopted by the board. For the purpose of its public hearing or hearings, the board may summon witnesses, administer oaths, and require the giving of testimony."

## PART IV

SECTION 6. Section 205-2, Hawaii Revised Statutes, is amended by amending subsections (b), (c), (d), and (e) to read as follows:

"(b) Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated.

In addition, urban districts shall include geothermal resources exploration and geothermal resources development, as defined under section 182-1, as permissible uses.

(c) Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low density residential lots except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot of less than one-half acre, but not less than [~~18,500~~] eighteen thousand five hundred square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot[~~,~~]; provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,780 square feet. Such petition for

variance may be processed under the special permit procedure. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics. Rural districts shall also include golf courses, golf driving ranges, and golf-related facilities.

In addition to the uses listed in this subsection, rural districts shall include geothermal resources exploration and geothermal resources development, as defined under section 182-1, as permissible uses.

(d) Agricultural districts shall include:

(1) Activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage, and forestry;

(2) Farming activities or uses related to animal husbandry and game and fish propagation;

(3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;

(4) Wind generated energy production for public, private, and commercial use;

(5) Biofuel production, as described in section 205-4.5(a)(15), for public, private, and commercial use;

(6) Solar energy facilities; provided that:

(A) This paragraph shall apply only to land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B, C, D, or E; and

(B) Solar energy facilities placed within land with soil classified as overall productivity rating class B or C shall not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser;

(7) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, regardless of whether conducted on the same premises as the agricultural activities to which they are accessory, including farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, agricultural-energy facilities as defined in section 205-4.5(a)(16), vehicle and equipment storage areas, roadside stands for the sale of products grown on the premises, and plantation community subdivisions as defined in section 205-4.5(a)(12);

(8) Wind machines and wind farms;

(9) Small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land; provided that these facilities shall not be used as or equipped for use as living quarters or dwellings;

(10) Agricultural parks;

(11) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5; [~~and~~]

(12) Open area recreational facilities[~~.~~]; and

(13) Geothermal resources exploration and geothermal resources development, as defined under section 182-1.

Agricultural districts shall not include golf courses and golf driving ranges, except as provided in section 205-4.5(d). Agricultural districts include areas that are not used for, or that are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.

(e) Conservation districts shall include areas necessary for protecting watersheds and water sources; preserving scenic and historic areas; providing park lands, wilderness, and beach reserves; conserving indigenous or endemic plants, fish, and wildlife, including those which are threatened or endangered; preventing floods and soil erosion; forestry; open space areas whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities, or would maintain or enhance the conservation of natural or scenic resources; areas of value for recreational purposes; other related activities; and other permitted uses not detrimental to a multiple use conservation concept. Conservation districts shall also include areas for geothermal resources exploration and geothermal resources development, as defined under section 182-1."

SECTION 7. Section 205-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

(1) Cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;
(2) Game and fish propagation;
(3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
(4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. "Farm dwelling", as used in this paragraph, means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;
(5) Public institutions and buildings that are necessary for agricultural practices;
(6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
(7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants, corporation yards, or other similar structures;
(8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;
(9) Roadside stands for the sale of agricultural products grown on the premises;
(10) Buildings and uses, including mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment storage areas that

are normally considered directly accessory to the above-mentioned uses and are permitted under section 205-2(d);

(11) Agricultural parks;

(12) Plantation community subdivisions, which as used in this chapter means an established subdivision or cluster of employee housing, community buildings, and agricultural support buildings on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation; provided that the existing structures may be used or rehabilitated for use, and new employee housing and agricultural support buildings may be allowed on land within the subdivision as follows:

(A) The employee housing is occupied by employees or former employees of the plantation who have a property interest in the land;

(B) The employee housing units not owned by their occupants shall be rented or leased at affordable rates for agricultural workers; or

(C) The agricultural support buildings shall be rented or leased to agricultural business operators or agricultural support services;

(13) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;

(14) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that the wind energy facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land;

(15) Biofuel processing facilities, including the appurtenances associated with the production and refining of biofuels that is normally considered directly accessory and secondary to the growing of the energy feedstock; provided that [~~biofuels~~] biofuel processing facilities and appurtenances do not adversely impact agricultural land and other agricultural uses in the vicinity.

For the purposes of this paragraph:

"Appurtenances" means operational infrastructure of the appropriate type and scale for economic commercial storage and distribution, and other similar handling of feedstock, fuels, and other products of [~~biofuels~~] biofuel processing facilities.

"Biofuel processing facility" means a facility that produces liquid or gaseous fuels from organic sources such as biomass crops, agricultural residues, and oil crops, including palm, canola, soybean, and waste cooking oils; grease; food wastes; and animal residues and wastes that can be used to generate energy;

(16) Agricultural-energy facilities, including appurtenances necessary for an agricultural-energy enterprise; provided that the primary activity of the agricultural-energy enterprise is agricultural activity. To be considered the primary activity of an agricultural-energy enterprise, the total acreage devoted to agricultural activity shall be not less

than ninety per cent of the total acreage of the agricultural-energy enterprise. The agricultural-energy facility shall be limited to lands owned, leased, licensed, or operated by the entity conducting the agricultural activity.

As used in this paragraph:

"Agricultural activity" means any activity described in paragraphs (1) to (3) of this subsection.

"Agricultural-energy enterprise" means an enterprise that integrally incorporates an agricultural activity with an agricultural-energy facility.

"Agricultural-energy facility" means a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

"Appurtenances" means operational infrastructure of the appropriate type and scale for the economic commercial generation, storage, distribution, and other similar handling of energy, including equipment, feedstock, fuels, and other products of agricultural-energy facilities;

(17) Construction and operation of wireless communication antennas; provided that, for the purposes of this paragraph, "wireless communication antenna" means communications equipment that is either freestanding or placed upon or attached to an already existing structure and that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services; provided further that nothing in this paragraph shall be construed to permit the construction of any new structure that is not deemed a permitted use under this subsection;

(18) Agricultural education programs conducted on a farming operation as defined in section 165-2, for the education and participation of the general public; provided that the agricultural education programs are accessory and secondary to the principal agricultural use of the parcels or lots on which the agricultural education programs are to occur and do not interfere with surrounding farm operations. For the purposes of this section, "agricultural education programs" means activities or events designed to promote knowledge and understanding of agricultural activities and practices conducted on a farming operation as defined in section 165-2; [~~or~~]

(19) Solar energy facilities that do not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser; provided that this use shall not be permitted on lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A[~~,~~]; or

(20) Geothermal resources exploration and geothermal resources development, as defined under section 182-1."

SECTION 8. Section 205-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Unless authorized by special permit issued pursuant to this chapter, only the following uses shall be permitted within rural districts:

(1) Low density residential uses;

(2) Agricultural uses;

(3) Golf courses, golf driving ranges, and golf-related facilities; [~~and~~]

(4) Public, quasi-public, and public utility facilities[-]; and
(5) Geothermal resources exploration and geothermal resources development, as defined under section 182-1.

In addition, the minimum lot size for any low density residential use shall be one-half acre and there shall be but one dwelling house per one-half acre, except as provided for in section 205-2."

SECTION 9. Section 205-5.1, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 205-5.2, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 205-5.3, Hawaii Revised Statutes, is repealed.

PART V

SECTION 12. The provisions of this Act that repeal the laws that previously authorized geothermal resources subzones under chapter 205, Hawaii Revised Statutes, shall not affect any geothermal resources producer who operates within the area of the subzone as of the effective date of this Act. The geothermal resources producer shall continue to operate in accordance with the producer's lease with the board of land and natural resources.

SECTION 13. Statutory material to be repealed is bracketed and stricken.[1] New statutory material is underscored.

SECTION 14. This Act shall take effect upon its approval.

(Approved April 30, 2012.)

**Note**

1. Edited pursuant to HRS §23G-16.5.