

A Bill for an Act Relating to Land Resources.

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

SECTION 1. Section 171-95, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) For the purposes of this section, “renewable energy producer” means:

- (1) Any producer or developer of electrical or thermal energy produced by wind, solar energy, hydropower, geothermal resources, landfill gas, waste-to-energy, ocean thermal energy conversion, cold sea-water, wave energy, biomass, including municipal solid waste, bio-fuels or fuels derived from organic sources, hydrogen fuels derived primarily from renewable energy, or fuel cells where the fuel is derived primarily from renewable sources that sell all of the net power produced from the demised premises to an electric utility company regulated under chapter 269 or that sells all of the thermal energy it produces to customers of district cooling systems; provided that up to twenty-five per cent of the power produced by a renewable energy producer and sold to the utility or to district cooling system customers may be derived from fossil fuels; or
- (2) Any grower or producer of plant or animal materials used primarily for the production of biofuels or other fuels; provided that nothing herein is intended to prevent the waste product or byproduct of the plant or animal material grown or produced for the production of biofuel, other fuels, electrical energy, or thermal energy, from being used for other useful purposes.”

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

1. By adding a new definition to be appropriately inserted and to read: ““Department” means the department of land and natural resources.”

2. By amending the definition of “geothermal resources” to read: ““Geothermal resources” means the natural heat of the earth, the energy, in whatever form, below the surface of the earth present in, resulting from, or created by, or which may be extracted from, such natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases, and steam, in whatever form, found below the surface of the earth, but excluding oil, hydrocarbon gas, other hydrocarbon substances, and any water, mineral in solution, or other product obtained from naturally heated fluids, brines, associated gases, and steam, in whatever form, found below the surface of the earth, [~~having a temperature of 150 degrees Fahrenheit or less,~~] and not used for electrical power generation.”

3. By amending the definition of “geothermal resources exploration” to read:

““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 purposes including but not limited to 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”.”

4. By amending the definition of “mining lease” 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.] reserved lands.~~”

SECTION 3. Section 182-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All minerals in, on, or under state lands or reserved lands ~~[which hereafter become state lands]~~ are reserved to the State; provided that the board ~~[of land and natural resources]~~ may release, cancel, or waive the reservation whenever it deems the land use, other than mining, is of greater benefit to the State as provided for in section 182-4. ~~[Such]~~ The minerals are reserved from sale or lease except as provided in this chapter. A purchaser or lessee of ~~[any such]~~ the lands shall acquire no right, title, or interest in or to the minerals. The right of the purchaser or lessee shall be subject to the reservation of all the minerals and to the conditions and limitations prescribed by law providing for the State and persons authorized by it to prospect for, mine, and remove the minerals, and to occupy and use so much of the surface of the land as may be required for all purposes reasonably extending to the mining and removal of the minerals therefrom by any means whatsoever.”

SECTION 4. 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 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 any information and maps that the board by rule may prescribe. As soon as practicable thereafter, the board shall cause a public notice to be given 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 notice or any further time that 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 notice or any further time that 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 public notice to be given 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 any terms and conditions that 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 successful bid at public auction for the direct or indirect costs incurred in the exploration of the land, excluding salaries, ~~[attorneys]~~ attorney's fees, and legal expenses. The department ~~[shall have the authority to]~~ may review and approve all expenses and costs that may be reimbursed.

(c) Notwithstanding any other law to the contrary, an application for a mining lease submitted pursuant to this section may be granted by the board in accordance with the procedures set forth in section 171-95.3."

SECTION 5. 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]~~ rule 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]~~ the members to which the board is entitled, without public auction, may grant a mining lease on reserved lands to the occupier thereof. ~~[Such a]~~ 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. 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 6. Section 182-6, Hawaii Revised Statutes, is amended to read as follows:

"§182-6 Exploration. Any person wishing to conduct geothermal or mineral exploration on state lands or reserved lands shall apply to the board ~~[of land and natural resources who]~~, which shall issue exploration permits upon terms and conditions as it shall by ~~[regulation]~~ rule 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] the state lands[-] or reserved lands.~~ Upon termination of the exploration permit, all exploration data, including but not limited to 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]~~ does 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.”

SECTION 7. Section 182-7, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Prior to the public auction contemplated in section 182-4 or 182-5, or the granting of mining lease without public auction contemplated in section ~~182-4 or 182-5~~, the board ~~[of land and natural resources]~~ shall cause a mining lease for the land in question to be drawn. The lease shall describe the land and shall contain, in addition to such other provisions which the board may deem appropriate, specific provisions as provided in this section.”

2. By amending subsections (d) through (f) to read:

“(d) The lessee shall covenant and agree that the lessee shall commence mining operations upon the leased lands within three years from the date of execution of the lease; provided that so long as the lessee is actively and on a substantial scale engaged in mining operations on at least one such lease on the same minerals, the covenant shall be suspended as to all other leases held by the lessee.

Any interested party may~~[-however,]~~ request that a mining lease contain a research period under which the lessees shall be required to expend money in research and development to establish a method to make economical the mining and processing of the ~~[mineral deposits contained]~~ minerals identified in the lease. If the board determines that the research period would be beneficial, it shall fix the period of research and shall also fix a minimum expenditure for labor performed or money spent by the lessee ~~[in]~~ on research and development and the method by which the lessee shall establish that such expenditure in fact be made. In ~~[such]~~ these leases, the obligation to commence mining operations within three years shall not commence until the expiration of the research period.

(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 ~~[which]~~ 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 ~~[such]~~ 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 ~~[winning and]~~ processing of the minerals; provided that the lessee shall comply with all water and air pollution control laws, and rules of the State or its political subdivisions.

(f) The lessee may retain all minerals separated from the land as a part of the process of mining the minerals specified in the mining lease; provided that the lease may prescribe the accounting and testing procedures by which the amount and quality of ~~[such]~~ the additional materials shall be determined for the purpose of computing the excise tax thereon~~[-]~~ and the applicable royalty that may be set by the board for the use of the minerals.”

SECTION 8. Section 182-10, Hawaii Revised Statutes, is amended to read as follows:

“§182-10 Revocation of mining leases. A mining lease may be revoked if the lessee fails to pay rentals when due or if any of the terms of the lease or of law are not complied with, or if the lessee wholly ceases all mining operations for other than reasons of force majeure or the uneconomic operation of the mining lease for a period of one year without the written consent of the board ~~[of land and natural resources]~~; provided that the board shall give the lessee notice of any default and the lessee shall have six months or such other time limit as provided by the rules ~~[and regulations]~~ from the date of the notice to remedy the default.”

SECTION 9. Section 182-14, Hawaii Revised Statutes, is amended to read as follows:

“§182-14 Rules ~~[and regulations]~~. Subject to chapter 91, the board ~~[of land and natural resources]~~ may ~~[make, promulgate]~~ adopt and amend ~~[such]~~ rules ~~[and regulations]~~ as it deems necessary to carry out this chapter and to perform its duties thereunder, all commensurate with and for the purpose of protecting the public interest. All ~~[such]~~ rules ~~[and regulations]~~ shall have the force and effect of law.”

SECTION 10. Sections 182-3(a), 182-11, 182-13, and 182-15, Hawaii Revised Statutes, are amended by substituting the word “board” wherever the phrase “board of land and natural resources” appears, as the context requires.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect on July 1, 2016.

(Approved July 6, 2016.)