



GOV. MSG. NO. 1198

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

April 30, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

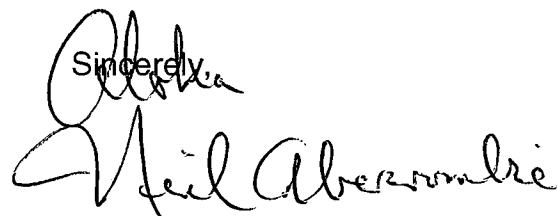
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on April 30, 2012, the following bill was signed into law:

SB3003 SD1 HD2

RELATING TO GEOTHERMAL RESOURCES.
Act 097 (12)

Sincerely,

NEIL ABERCROMBIE
Governor, State of Hawaii

A BILL FOR AN ACT

RELATING TO GEOTHERMAL RESOURCES.

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

1 PART I

2 SECTION 1. The purpose of this Act is to address
3 geothermal resources.

4 More specifically:

5 (1) Part II amends chapter 182, Hawaii Revised Statutes,
6 relating to mining leases, by differentiating between
7 "geothermal resources exploration" and "geothermal
8 resources development";

9 (2) Part III amends chapter 183C, Hawaii Revised Statutes,
10 relating to the conservation district, by designating
11 "geothermal resources exploration" and "geothermal
12 resources development" as permissible uses in all
13 zones of the conservation district; and

14 (3) Part IV amends chapter 205, Hawaii Revised Statutes,
15 relating to state land use districts, by repealing the
16 geothermal resource subzone provisions and designating
17 "geothermal resources exploration" and "geothermal



1 resources development" as permissible uses in all
2 districts.

3 PART II

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

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

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

12 "Geothermal resources exploration" means either of the
13 following:

14 (1) Conducting non-invasive geophysical operations,
15 including geochemical operations, remote sensing, and
16 other similar techniques; or

17 (2) Drilling exploration wells for the extraction and
18 removal of minerals of types and quantities;
19 that are reasonably required for testing and analysis to provide
20 ground truth or determine the economic viability of geothermal
21 resources. The term does not include "geothermal resources
22 development".



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

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

8 "\"Mining operations\" means the process of excavation,
9 extraction, and removal of minerals, and the exploration or
10 development of any and all geothermal resources, from the
11 ground, design engineering, other engineering, erection of
12 transportation facilities and port facilities, erection of
13 necessary plants, other necessary operations or development
14 approved by the board preceding or connected with the actual
15 extraction of minerals and the exploration or development of
16 geothermal resources."

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

19 "**§182-5 Mining leases on reserved lands.** If any mineral
20 is discovered or known to exist on reserved lands, any
21 interested person may notify the board of land and natural
22 resources of the person's desire to apply for a mining lease.



1 The notice shall be accompanied by a fee of \$100 together with a
2 description of the land desired to be leased and the minerals
3 involved and such information and maps as the board may by
4 regulation prescribe. The board may grant a mining lease on
5 reserved lands in accordance with section 182-4, or the board
6 may, by the vote of two-thirds of its members to which the board
7 is entitled, without public auction, grant a mining lease on
8 reserved lands to the occupier thereof. Such a mining lease may
9 be granted to a person other than the occupier if the occupier
10 has assigned the occupier's rights to apply for a mining lease
11 to another person, in which case only such an assignee may be
12 granted a mining lease. Any provisions to the contrary
13 notwithstanding, if the board decides that it is appropriate to
14 grant a geothermal mining lease on the reserved lands, the
15 surface owner or the owner's assignee shall have the first right
16 of refusal for a mining lease[~~, however, the granting of a~~
17 ~~geothermal mining lease does not create the presumption that a~~
18 ~~geothermal resource subzone will be designated, nor shall~~
19 ~~geothermal development activities occur on land within the~~
20 ~~geothermal mining lease until the area is designated a~~
21 ~~geothermal resource subzone]. If the occupier or the occupier's
22 assignee of the right to obtain a mining lease should fail to~~



1 apply for a mining lease within six months from the date of
2 notice from the board of a finding by the board that it is in
3 the public interest that the minerals on the reserved lands be
4 mined, a mining lease shall be granted under section 182-4;
5 provided that bidders at the public auction shall bid on an
6 amount to be paid to the State for a mining lease granting to
7 the lessee the right to exploit minerals reserved to the State."

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

10 "**§182-6 Exploration.** Any person wishing to conduct
11 exploration on [such] state lands shall apply to the board of
12 land and natural resources who shall issue exploration permits
13 upon [such] terms and conditions as it shall by regulation
14 prescribe. During and as a result of the exploration, no
15 minerals of such types and quantity beyond that reasonably
16 required for testing and analysis shall be extracted and removed
17 from such state lands. Upon termination of the exploration
18 permit, the drill logs and the results of the assays resulting
19 from the exploration shall be turned over to the board and kept
20 confidential by the board. If the person shall not make
21 application for a mining lease of the lands within a period of
22 six months from the date the information is turned over to the



1 board, the board in its discretion need not keep the information
2 confidential.

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

6 PART III

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

9 "**§183C-4 Zoning; amendments.** (a) The department, after
10 notice and hearing as provided in this section, shall review and
11 redefine the boundaries of the zones within the conservation
12 district.

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



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

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

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



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



1 PART IV

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

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

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

11 (c) Rural districts shall include activities or uses as
12 characterized by low density residential lots of not more than
13 one dwelling house per one-half acre, except as provided by
14 county ordinance pursuant to section 46-4(c), in areas where
15 "city-like" concentration of people, structures, streets, and
16 urban level of services are absent, and where small farms are
17 intermixed with low density residential lots except that within
18 a subdivision, as defined in section 484-1, the commission for
19 good cause may allow one lot of less than one-half acre, but not
20 less than ~~[18,500]~~ eighteen thousand five hundred square feet,
21 or an equivalent residential density, within a rural subdivision
22 and permit the construction of one dwelling on such lot[7];



1 provided that all other dwellings in the subdivision shall have
2 a minimum lot size of one-half acre or 21,780 square feet. Such
3 petition for variance may be processed under the special permit
4 procedure. These districts may include contiguous areas which
5 are not suited to low density residential lots or small farms by
6 reason of topography, soils, and other related characteristics.
7 Rural districts shall also include golf courses, golf driving
8 ranges, and golf-related facilities.

9 In addition to the uses listed in this subsection, rural
10 districts shall include geothermal resources exploration and
11 geothermal resources development, as defined under section
12 182-1, as permissible uses.

13 (d) Agricultural districts shall include:

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

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

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



- 1 (4) Wind generated energy production for public, private,
2 and commercial use;
- 3 (5) Biofuel production, as described in section
4 205-4.5(a)(15), for public, private, and commercial
5 use;
- 6 (6) Solar energy facilities; provided that:
 - 7 (A) This paragraph shall apply only to land with soil
8 classified by the land study bureau's detailed
9 land classification as overall (master)
10 productivity rating class B, C, D, or E; and
 - 11 (B) Solar energy facilities placed within land with
12 soil classified as overall productivity rating
13 class B or C shall not occupy more than ten per
14 cent of the acreage of the parcel, or twenty
15 acres of land, whichever is lesser;
- 16 (7) Bona fide agricultural services and uses that support
17 the agricultural activities of the fee or leasehold
18 owner of the property and accessory to any of the
19 above activities, regardless of whether conducted on
20 the same premises as the agricultural activities to
21 which they are accessory, including farm dwellings as
22 defined in section 205-4.5(a)(4), employee housing,



- 1 farm buildings, mills, storage facilities, processing
2 facilities, agricultural-energy facilities as defined
3 in section 205-4.5(a)(16), vehicle and equipment
4 storage areas, roadside stands for the sale of
5 products grown on the premises, and plantation
6 community subdivisions as defined in section
7 205-4.5(a)(12);
- 8 (8) Wind machines and wind farms;
- 9 (9) Small-scale meteorological, air quality, noise, and
10 other scientific and environmental data collection and
11 monitoring facilities occupying less than one-half
12 acre of land; provided that these facilities shall not
13 be used as or equipped for use as living quarters or
14 dwellings;
- 15 (10) Agricultural parks;
- 16 (11) Agricultural tourism conducted on a working farm, or a
17 farming operation as defined in section 165-2, for the
18 enjoyment, education, or involvement of visitors;
19 provided that the agricultural tourism activity is
20 accessory and secondary to the principal agricultural
21 use and does not interfere with surrounding farm
22 operations; and provided further that this paragraph



1 shall apply only to a county that has adopted
2 ordinances regulating agricultural tourism under
3 section 205-5; [~~and~~]

4 (12) Open area recreational facilities[-]; and

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

7 Agricultural districts shall not include golf courses and golf
8 driving ranges, except as provided in section 205-4.5(d).

9 Agricultural districts include areas that are not used for, or
10 that are not suited to, agricultural and ancillary activities by
11 reason of topography, soils, and other related characteristics.

12 (e) Conservation districts shall include areas necessary
13 for protecting watersheds and water sources; preserving scenic
14 and historic areas; providing park lands, wilderness, and beach
15 reserves; conserving indigenous or endemic plants, fish, and
16 wildlife, including those which are threatened or endangered;
17 preventing floods and soil erosion; forestry; open space areas
18 whose existing openness, natural condition, or present state of
19 use, if retained, would enhance the present or potential value
20 of abutting or surrounding communities, or would maintain or
21 enhance the conservation of natural or scenic resources; areas
22 of value for recreational purposes; other related activities;



1 and other permitted uses not detrimental to a multiple use
2 conservation concept. Conservation districts shall also include
3 areas for geothermal resources exploration and geothermal
4 resources development, as defined under section 182-1."

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

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

11 (1) Cultivation of crops, including crops for bioenergy,
12 flowers, vegetables, foliage, fruits, forage, and
13 timber;

14 (2) Game and fish propagation;

15 (3) Raising of livestock, including poultry, bees, fish,
16 or other animal or aquatic life that are propagated
17 for economic or personal use;

18 (4) Farm dwellings, employee housing, farm buildings, or
19 activities or uses related to farming and animal
20 husbandry. "Farm dwelling", as used in this
21 paragraph, means a single-family dwelling located on
22 and used in connection with a farm, including clusters



- 1 of single-family farm dwellings permitted within
2 agricultural parks developed by the State, or where
3 agricultural activity provides income to the family
4 occupying the dwelling;
- 5 (5) Public institutions and buildings that are necessary
6 for agricultural practices;
- 7 (6) Public and private open area types of recreational
8 uses, including day camps, picnic grounds, parks, and
9 riding stables, but not including dragstrips,
10 airports, drive-in theaters, golf courses, golf
11 driving ranges, country clubs, and overnight camps;
- 12 (7) Public, private, and quasi-public utility lines and
13 roadways, transformer stations, communications
14 equipment buildings, solid waste transfer stations,
15 major water storage tanks, and appurtenant small
16 buildings such as booster pumping stations, but not
17 including offices or yards for equipment, material,
18 vehicle storage, repair or maintenance, treatment
19 plants, corporation yards, or other similar
20 structures;
- 21 (8) Retention, restoration, rehabilitation, or improvement
22 of buildings or sites of historic or scenic interest;



1 (9) Roadside stands for the sale of agricultural products
2 grown on the premises;

3 (10) Buildings and uses, including mills, storage, and
4 processing facilities, maintenance facilities, and
5 vehicle and equipment storage areas that are normally
6 considered directly accessory to the above-mentioned
7 uses and are permitted under section 205-2(d);

8 (11) Agricultural parks;

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

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

- 1 (B) The employee housing units not owned by their
2 occupants shall be rented or leased at affordable
3 rates for agricultural workers; or
- 4 (C) The agricultural support buildings shall be
5 rented or leased to agricultural business
6 operators or agricultural support services;
- 7 (13) Agricultural tourism conducted on a working farm, or a
8 farming operation as defined in section 165-2, for the
9 enjoyment, education, or involvement of visitors;
10 provided that the agricultural tourism activity is
11 accessory and secondary to the principal agricultural
12 use and does not interfere with surrounding farm
13 operations; and provided further that this paragraph
14 shall apply only to a county that has adopted
15 ordinances regulating agricultural tourism under
16 section 205-5;
- 17 (14) Wind energy facilities, including the appurtenances
18 associated with the production and transmission of
19 wind generated energy; provided that the wind energy
20 facilities and appurtenances are compatible with
21 agriculture uses and cause minimal adverse impact on
22 agricultural land;



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

9 For the purposes of this paragraph:

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

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



1 (16) Agricultural-energy facilities, including
2 appurtenances necessary for an agricultural-energy
3 enterprise; provided that the primary activity of the
4 agricultural-energy enterprise is agricultural
5 activity. To be considered the primary activity of an
6 agricultural-energy enterprise, the total acreage
7 devoted to agricultural activity shall be not less
8 than ninety per cent of the total acreage of the
9 agricultural-energy enterprise. The agricultural-
10 energy facility shall be limited to lands owned,
11 leased, licensed, or operated by the entity conducting
12 the agricultural activity.

13 As used in this paragraph:

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

16 "Agricultural-energy enterprise" means an
17 enterprise that integrally incorporates an
18 agricultural activity with an agricultural-energy
19 facility.

20 "Agricultural-energy facility" means a facility
21 that generates, stores, or distributes renewable
22 energy as defined in section 269-91 or renewable fuel



1 including electrical or thermal energy or liquid or
2 gaseous fuels from products of agricultural activities
3 from agricultural lands located in the State.

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

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



- 1 (18) Agricultural education programs conducted on a farming
2 operation as defined in section 165-2, for the
3 education and participation of the general public;
4 provided that the agricultural education programs are
5 accessory and secondary to the principal agricultural
6 use of the parcels or lots on which the agricultural
7 education programs are to occur and do not interfere
8 with surrounding farm operations. For the purposes of
9 this section, "agricultural education programs" means
10 activities or events designed to promote knowledge and
11 understanding of agricultural activities and practices
12 conducted on a farming operation as defined in section
13 165-2; [œ]
- 14 (19) Solar energy facilities that do not occupy more than
15 ten per cent of the acreage of the parcel, or twenty
16 acres of land, whichever is lesser; provided that this
17 use shall not be permitted on lands with soil
18 classified by the land study bureau's detailed land
19 classification as overall (master) productivity rating
20 class A[-]; or



1 (20) Geothermal resources exploration and geothermal
 2 resources development, as defined under section
 3 182-1."

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

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

- 9 (1) Low density residential uses;
- 10 (2) Agricultural uses;
- 11 (3) Golf courses, golf driving ranges, and golf-related
- 12 facilities; ~~and~~
- 13 (4) Public, quasi-public, and public utility
- 14 facilities~~[-]~~; and
- 15 (5) Geothermal resources exploration and geothermal
- 16 resources development, as defined under section 182-1.

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

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



1 ~~["§205-5.1 Geothermal resource subzones. (a) Geothermal~~
2 ~~resource subzones may be designated within the urban, rural,~~
3 ~~agricultural, and conservation land use districts established~~
4 ~~under section 205-2. Only those areas designated as geothermal~~
5 ~~resource subzones may be utilized for geothermal development~~
6 ~~activities in addition to those uses permitted in each land use~~
7 ~~district under this chapter. Geothermal development activities~~
8 ~~may be permitted within urban, rural, agricultural, and~~
9 ~~conservation land use districts in accordance with this chapter.~~
10 ~~"Geothermal development activities" means the exploration,~~
11 ~~development, or production of electrical energy from geothermal~~
12 ~~resources and direct use applications of geothermal resources,~~
13 ~~provided that within the urban, rural, and agricultural land use~~
14 ~~districts, direct use applications of geothermal resources are~~
15 ~~permitted both within and outside of areas designated as~~
16 ~~geothermal resource subzones pursuant to section 205-5.2 if such~~
17 ~~direct use applications are in conformance with all other~~
18 ~~applicable state and county land use regulations and are in~~
19 ~~conformance with this chapter.~~

20 ~~(b) The board of land and natural resources shall have the~~
21 ~~responsibility for designating areas as geothermal resource~~
22 ~~subzones as provided under section 205-5.2; except that the~~



1 ~~total area within an agricultural district which is the subject~~
2 ~~of a geothermal mining lease approved by the board of land and~~
3 ~~natural resources, any part or all of which area is the subject~~
4 ~~of a special use permit issued by the county for geothermal~~
5 ~~development activities, on or before May 25, 1984, is designated~~
6 ~~as a geothermal resource subzone for the duration of the lease.~~
7 ~~The designation of geothermal resource subzones shall be~~
8 ~~governed exclusively by this section and section 205 5.2, except~~
9 ~~as provided therein. The board shall adopt, amend, or repeal~~
10 ~~rules related to its authority to designate and regulate the use~~
11 ~~of geothermal resource subzones in the manner provided under~~
12 ~~chapter 91.~~

13 ~~The authority of the board to designate geothermal resource~~
14 ~~subzones shall be an exception to those provisions of this~~
15 ~~chapter and of section 46 4 authorizing the land use commission~~
16 ~~and the counties to establish and modify land use districts and~~
17 ~~to regulate uses therein. The provisions of this section shall~~
18 ~~not abrogate nor supersede the provisions of chapters 182, 183,~~
19 ~~and 183C.~~

20 ~~(c) The use of an area for geothermal development~~
21 ~~activities within a geothermal resource subzone shall be~~
22 ~~governed by the board within the conservation district and,~~



1 ~~except as herein provided, by state and county statutes,~~
2 ~~ordinances, and rules not inconsistent herewith within~~
3 ~~agricultural, rural, and urban districts, except that no land~~
4 ~~use commission approval or special use permit procedures under~~
5 ~~section 205-6 shall be required for the use of such subzones.~~
6 ~~In the absence of provisions in the county general plan and~~
7 ~~zoning ordinances specifically relating to the use and location~~
8 ~~of geothermal development activities in an agricultural, rural,~~
9 ~~or urban district, the appropriate county authority may issue a~~
10 ~~geothermal resource permit to allow geothermal development~~
11 ~~activities. "Appropriate county authority" means the county~~
12 ~~planning commission unless some other agency or body is~~
13 ~~designated by ordinance of the county council. Such uses as are~~
14 ~~permitted by county general plan and zoning ordinances, by the~~
15 ~~appropriate county authority, shall be deemed to be reasonable~~
16 ~~and to promote the effectiveness and objectives of this chapter.~~
17 ~~Chapters 177, 178, 182, 183, 183C, 205A, 226, 342, and 343 shall~~
18 ~~apply as appropriate. If provisions in the county general plan~~
19 ~~and zoning ordinances specifically relate to the use and~~
20 ~~location of geothermal development activities in an~~
21 ~~agricultural, rural, or urban district, the provisions shall~~
22 ~~require the appropriate county authority to conduct a public~~



1 ~~hearing on any application for a geothermal resource permit to~~
2 ~~determine whether the use is in conformity with the criteria~~
3 ~~specified in subsection (e) for granting geothermal resource~~
4 ~~permits; provided that within the urban, rural, and agricultural~~
5 ~~land use districts, direct use applications of geothermal~~
6 ~~resources are permitted without any application for a geothermal~~
7 ~~resource permit both within and outside of areas designated as~~
8 ~~geothermal resource subzones pursuant to section 205 5.2 if such~~
9 ~~direct use applications are in conformance with all other~~
10 ~~applicable state and county land use regulations and are in~~
11 ~~conformance with this chapter.~~

12 ~~(d) If geothermal development activities are proposed~~
13 ~~within a conservation district, with an application with all~~
14 ~~required data, the board of land and natural resources shall~~
15 ~~conduct a public hearing and, upon appropriate request for~~
16 ~~mediation from any party who submitted comment at the public~~
17 ~~hearing, the board shall appoint a mediator within five days.~~
18 ~~The board shall require the parties to participate in mediation.~~
19 ~~The mediator shall not be a member of the board or its staff.~~
20 ~~The mediation period shall not extend beyond thirty days after~~
21 ~~the date mediation started, except by order of the board.~~
22 ~~Mediation shall be confined to the issues raised at the public~~



1 ~~hearing by the party requesting mediation. The mediator will~~
2 ~~submit a written recommendation to the board, based upon any~~
3 ~~mediation agreement reached between the parties for~~
4 ~~consideration by the board in its final decision. If there is~~
5 ~~no mediation agreement, the board may have a second public~~
6 ~~hearing to receive additional comment related to the mediation~~
7 ~~issues. Within ten days after the second public hearing, the~~
8 ~~board may receive additional written comment on the issues~~
9 ~~raised at the second public hearing from any party.~~

10 ~~The board shall consider the comments raised at the second~~
11 ~~hearing before rendering its final decision. The board shall~~
12 ~~then determine whether, pursuant to board rules, a conservation~~
13 ~~district use permit shall be granted to authorize the geothermal~~
14 ~~development activities described in the application. The board~~
15 ~~shall grant a conservation district use permit if it finds that~~
16 ~~the applicant has demonstrated that:~~

- 17 ~~(1) The desired uses would not have unreasonable adverse~~
18 ~~health, environmental, or socio economic effects on~~
19 ~~residents or surrounding property; and~~
20 ~~(2) The desired uses would not unreasonably burden public~~
21 ~~agencies to provide roads and streets, sewers, water,~~
22 ~~drainage, and police and fire protection; or~~



1 ~~(3) There are reasonable measures available to mitigate~~
2 ~~the unreasonable adverse effects or burdens referred~~
3 ~~to above.~~

4 ~~A decision shall be made by the board within six months of~~
5 ~~the date a complete application was filed; provided that the~~
6 ~~time limit may be extended by agreement between the applicant~~
7 ~~and the board.~~

8 ~~(e) If geothermal development activities are proposed~~
9 ~~within agricultural, rural, or urban districts and such proposed~~
10 ~~activities are not permitted uses pursuant to county general~~
11 ~~plan and zoning ordinances, then after receipt of a properly~~
12 ~~filed and completed application, including all required~~
13 ~~supporting data, the appropriate county authority shall conduct~~
14 ~~a public hearing. Upon appropriate request for mediation from~~
15 ~~any party who submitted comment at the public hearing, the~~
16 ~~county authority shall appoint a mediator within five days. The~~
17 ~~county authority shall require the parties to participate in~~
18 ~~mediation. The mediator shall not be an employee of any county~~
19 ~~agency or its staff. The mediation period shall not extend~~
20 ~~beyond thirty days after mediation started, except by order of~~
21 ~~the county authority. Mediation shall be confined to the issues~~
22 ~~raised at the public hearing by the party requesting mediation.~~



1 ~~The mediator will submit a written recommendation to the county~~
 2 ~~authority, based upon any mediation agreement reached between~~
 3 ~~the parties for consideration by the county authority in its~~
 4 ~~final decision. If there is no mediation agreement, the county~~
 5 ~~authority may have a second public hearing to receive additional~~
 6 ~~comment related to the mediation issues. Within ten days after~~
 7 ~~the second public hearing, the county authority may receive~~
 8 ~~additional written comment on the issues raised at the second~~
 9 ~~public hearing from any party.~~

10 ~~The county authority shall consider the comments raised at~~
 11 ~~the second hearing before rendering its final decision. The~~
 12 ~~county authority shall then determine whether a geothermal~~
 13 ~~resource permit shall be granted to authorize the geothermal~~
 14 ~~development activities described in the application. The~~
 15 ~~appropriate county authority shall grant a geothermal resource~~
 16 ~~permit if it finds that applicant has demonstrated that:~~

17 ~~(1) The desired uses would not have unreasonable adverse~~
 18 ~~health, environmental, or socio economic effects on~~
 19 ~~residents or surrounding property;~~

20 ~~(2) The desired uses would not unreasonably burden public~~
 21 ~~agencies to provide roads and streets, sewers, water,~~



1 ~~drainage, school improvements, and police and fire~~
2 ~~protection; and~~

3 ~~(3) That there are reasonable measures available to~~
4 ~~mitigate the unreasonable adverse effects or burdens~~
5 ~~referred to above.~~

6 ~~Unless there is a mutual agreement to extend, a decision~~
7 ~~shall be made on the application by the appropriate county~~
8 ~~authority within six months of the date a complete application~~
9 ~~was filed; provided that the time limit may be extended by~~
10 ~~agreement between the applicant and the appropriate county~~
11 ~~authority.~~

12 ~~(f) Requests for mediation shall be received by the board~~
13 ~~or county authority within five days after the close of the~~
14 ~~initial public hearing. Within five days thereafter, the board~~
15 ~~or county authority shall appoint a mediator. Any person~~
16 ~~submitting an appropriate request for mediation shall be~~
17 ~~notified by the board or county authority of the date, time, and~~
18 ~~place of the mediation conference by depositing such notice in~~
19 ~~the mail to the return address stated on the request for~~
20 ~~mediation. The notice shall be mailed no later than ten days~~
21 ~~before the start of the mediation conference. The conference~~
22 ~~shall be held on the island where the public hearing is held.~~



1 ~~(g) Any decision made by an appropriate county authority~~
2 ~~or the board pursuant to a public hearing or hearings under this~~
3 ~~section may be appealed directly on the record to the~~
4 ~~intermediate appellate court for final decision and shall not be~~
5 ~~subject to a contested case hearing. Sections 91-14(b) and (g)~~
6 ~~shall govern the appeal, notwithstanding the lack of a contested~~
7 ~~case hearing on the matter. The appropriate county authority or~~
8 ~~the board shall provide a court reporter to produce a transcript~~
9 ~~of the proceedings at all public hearings under this section for~~
10 ~~purposes of an appeal.~~

11 ~~(h) For the purposes of an appeal from a decision from a~~
12 ~~public hearing, the record shall include:~~

13 ~~(1) The application for the permit and all accompanying~~
14 ~~supporting documents, including but not limited to:~~
15 ~~reports, studies, affidavits, statements, and~~
16 ~~exhibits.~~

17 ~~(2) Staff recommendations submitted to the members of the~~
18 ~~agency in consideration of the application.~~

19 ~~(3) Oral and written public testimony received at the~~
20 ~~public hearings.~~

21 ~~(4) Written transcripts of the proceedings at the public~~
22 ~~hearings.~~



- 1 ~~(5) The written recommendation received by the agency from~~
- 2 ~~the mediator with any mediation agreement.~~
- 3 ~~(6) A statement of relevant matters noticed by the agency~~
- 4 ~~members at the public hearings.~~
- 5 ~~(7) The written decision of the agency issued in~~
- 6 ~~connection with the application and public hearings.~~
- 7 ~~(8) Other documents required by the board or county~~
- 8 ~~authority."]~~

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

11 ~~["§205-5.2 Designation of areas as geothermal resource~~
12 ~~subzones. (a) Beginning in 1983, the board of land and natural~~
13 ~~resources shall conduct a county by county assessment of areas~~
14 ~~with geothermal potential for the purpose of designating~~
15 ~~geothermal resource subzones. This assessment shall be revised~~
16 ~~or updated at the discretion of the board, but at least once~~
17 ~~each five years beginning in 1988. Any property owner or person~~
18 ~~with an interest in real property wishing to have an area~~
19 ~~designated as a geothermal resource subzone may submit a~~
20 ~~petition for a geothermal resource subzone designation in the~~
21 ~~form and manner established by rules and regulations adopted by~~
22 ~~the board. An environmental impact statement as defined under~~



1 ~~chapter 343 shall not be required for the assessment of areas~~
2 ~~under this section.~~

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

6 ~~(1) The area's potential for the production of geothermal~~
7 ~~energy;~~

8 ~~(2) The prospects for the utilization of geothermal energy~~
9 ~~in the area;~~

10 ~~(3) The geologic hazards that potential geothermal~~
11 ~~projects would encounter;~~

12 ~~(4) Social and environmental impacts;~~

13 ~~(5) The compatibility of geothermal development and~~
14 ~~potential related industries with present uses of~~
15 ~~surrounding land and those uses permitted under the~~
16 ~~general plan or land use policies of the county in~~
17 ~~which the area is located;~~

18 ~~(6) The potential economic benefits to be derived from~~
19 ~~geothermal development and potential related~~
20 ~~industries; and~~

21 ~~(7) The compatibility of geothermal development and~~
22 ~~potential related industries with the uses permitted~~



1 ~~under chapter 183C and section 205-2, where the area~~
2 ~~falls within a conservation district.~~

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

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

9 ~~(d) After the board has completed a county by county~~
10 ~~assessment of all areas with geothermal potential or after any~~
11 ~~subsequent update or review, the board shall compare all areas~~
12 ~~showing geothermal potential within each county, and shall~~
13 ~~propose areas for potential designation as geothermal resource~~
14 ~~subzones based upon a preliminary finding that the areas are~~
15 ~~those sites which best demonstrate an acceptable balance between~~
16 ~~the factors set forth in subsection (b). Once a proposal is~~
17 ~~made, the board shall conduct public hearings pursuant to this~~
18 ~~subsection, notwithstanding any contrary provision related to~~
19 ~~public hearing procedures. Contested case procedures are not~~
20 ~~applicable to these hearings.~~

21 ~~(1) Hearings shall be held at locations which are in close~~
22 ~~proximity to those areas proposed for designation. A~~



1 ~~public notice of hearing, including a description of~~
2 ~~the proposed areas, an invitation for public comment,~~
3 ~~and a statement of the date, time, and place where~~
4 ~~persons may be heard shall be given and mailed no less~~
5 ~~than twenty days before the hearing. The notice shall~~
6 ~~be given on three separate days statewide and in the~~
7 ~~county in which the hearing is to be held. Copies of~~
8 ~~the notice shall be mailed to the department of~~
9 ~~business, economic development, and tourism, to the~~
10 ~~planning commission and planning department of the~~
11 ~~county in which the proposed areas are located, and to~~
12 ~~all owners of record of real estate within, and within~~
13 ~~one thousand feet of, the area being proposed for~~
14 ~~designation as a geothermal resource subzone. The~~
15 ~~notification shall be mailed to the owners and~~
16 ~~addresses as shown on the current real property tax~~
17 ~~rolls at the county real property tax office. Upon~~
18 ~~that action, the requirement for notification of~~
19 ~~owners of land is completed. For the purposes of this~~
20 ~~subsection, notice to one co owner shall be sufficient~~
21 ~~notice to all co owners,~~



1 ~~(2) The hearing shall be held before the board, and the~~
2 ~~authority to conduct hearings shall not be delegated~~
3 ~~to any agent or representative of the board. All~~
4 ~~persons and agencies shall be afforded the opportunity~~
5 ~~to submit data, views, and arguments either orally or~~
6 ~~in writing. The department of business, economic~~
7 ~~development, and tourism and the county planning~~
8 ~~department shall be permitted to appear at every~~
9 ~~hearing and make recommendations concerning each~~
10 ~~proposal by the board; and~~

11 ~~(3) At the close of the hearing, the board may designate~~
12 ~~areas as geothermal resource subzones or announce the~~
13 ~~date on which it will render its decision. The board~~
14 ~~may designate areas as geothermal resource subzones~~
15 ~~only upon finding that the areas are those sites which~~
16 ~~best demonstrate an acceptable balance between the~~
17 ~~factors set forth in subsection (b). Upon request,~~
18 ~~the board shall issue a concise statement of its~~
19 ~~findings and the principal reasons for its decision to~~
20 ~~designate a particular area.~~

21 ~~(e) The designation of any geothermal resource subzone may~~
22 ~~be withdrawn by the board of land and natural resources after~~



1 ~~proceedings conducted pursuant to chapter 91. The board shall~~
2 ~~withdraw a designation only upon finding by a preponderance of~~
3 ~~the evidence that the area is no longer suited for designation,~~
4 ~~provided that the designation shall not be withdrawn for areas~~
5 ~~in which active exploration, development, production or~~
6 ~~distribution of electrical energy from geothermal sources or~~
7 ~~direct use applications of geothermal resources are taking~~
8 ~~place.~~

9 ~~(f) This Act shall not apply to any active exploration,~~
10 ~~development or production of electrical energy from geothermal~~
11 ~~sources or direct use applications of geothermal resources~~
12 ~~taking place on June 14, 1983, provided that any expansion of~~
13 ~~such activities shall be carried out in compliance with its~~
14 ~~provisions."]~~

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

17 ~~["§205-5.3] Exploratory wells. Notwithstanding section~~
18 ~~205-5.1(a), (d), and (e), or any other provision of law, any~~
19 ~~exploratory well drilled for scientific purposes or to determine~~
20 ~~the economic viability of a geothermal resource, may be~~
21 ~~permitted outside of a designated geothermal resource subzone,~~
22 ~~regardless of land use classification, provided that the~~



1 ~~activity is limited to exploration only. All applicable state~~
2 ~~and county permits shall be required to drill such exploratory~~
3 ~~wells which shall not be exempt from the requirements of the~~
4 ~~environmental impact statement law, chapter 343."]~~

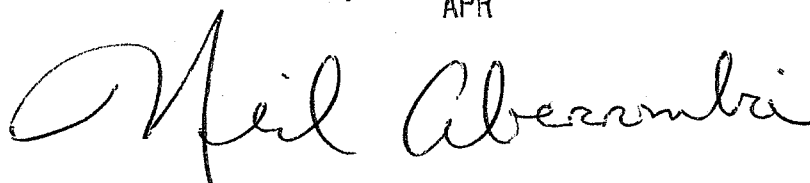
5 PART V

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

14 SECTION 13. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

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

APPROVED this 30 day of APR, 2012


GOVERNOR OF THE STATE OF HAWAII