



**GOV. MSG. NO. 1322**

EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

July 6, 2016

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Twenty-Eighth State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,  
Speaker and Members of the  
House of Representatives  
Twenty-Eighth State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on July 6, 2016, the following bill was signed into law:

HB1170 HD2 SD2

RELATING TO LAND RESOURCES  
**ACT 220 (16)**

Sincerely,

DAVID Y. IGE  
Governor, State of Hawai'i

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# A BILL FOR AN ACT

RELATING TO LAND RESOURCES.

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

1 SECTION 1. Section 171-95, Hawaii Revised Statutes, is  
2 amended by amending subsection (c) to read as follows:  
3 "(c) For the purposes of this section, "renewable energy  
4 producer" means:  
5 (1) Any producer or developer of electrical or thermal  
6 energy produced by wind, solar energy, hydropower,  
7 geothermal resources, landfill gas, waste-to-energy,  
8 ocean thermal energy conversion, cold seawater, wave  
9 energy, biomass, including municipal solid waste,  
10 biofuels or fuels derived from organic sources,  
11 hydrogen fuels derived primarily from renewable  
12 energy, or fuel cells where the fuel is derived  
13 primarily from renewable sources that sell all of the  
14 net power produced from the demised premises to an  
15 electric utility company regulated under chapter 269  
16 or that sells all of the thermal energy it produces to  
17 customers of district cooling systems; provided that  
18 up to twenty-five per cent of the power produced by a



1 renewable energy producer and sold to the utility or  
2 to district cooling system customers may be derived  
3 from fossil fuels; or

4 (2) Any grower or producer of plant or animal materials  
5 used primarily for the production of biofuels or other  
6 fuels; provided that nothing herein is intended to  
7 prevent the waste product or byproduct of the plant or  
8 animal material grown or produced for the production  
9 of biofuel, other fuels, electrical energy, or thermal  
10 energy, from being used for other useful purposes."

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

13 1. By adding a new definition to be appropriately inserted  
14 and to read:

15 "Department" means the department of land and natural  
16 resources."

17 2. By amending the definition of "geothermal resources" to  
18 read:

19 "Geothermal resources" means the natural heat of the  
20 earth, the energy, in whatever form, below the surface of the  
21 earth present in, resulting from, or created by, or which may be



1 extracted from, such natural heat, and all minerals in solution  
2 or other products obtained from naturally heated fluids, brines,  
3 associated gases, and steam, in whatever form, found below the  
4 surface of the earth, but excluding oil, hydrocarbon gas, other  
5 hydrocarbon substances, and any water, mineral in solution, or  
6 other product obtained from naturally heated fluids, brines,  
7 associated gases, and steam, in whatever form, found below the  
8 surface of the earth, [~~having a temperature of 150 degrees~~  
9 ~~Fahrenheit or less,~~] and not used for electrical power  
10 generation."

11 3. By amending the definition of "geothermal resources  
12 exploration" to read:

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

- 15 (1) Conducting non-invasive geophysical operations,  
16 including geochemical operations, remote sensing, and  
17 other similar techniques; or
- 18 (2) Drilling exploration wells for purposes including but  
19 not limited to the extraction and removal of minerals  
20 of types and quantities;



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

5 4. By amending the definition of "mining lease" to read:

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

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

13 "(a) All minerals in, on, or under state lands or reserved  
14 lands ~~[which hereafter become state lands]~~ are reserved to the  
15 State; provided that the board ~~[of land and natural resources]~~  
16 may release, cancel, or waive the reservation whenever it deems  
17 the land use, other than mining, is of greater benefit to the  
18 State as provided for in section 182-4. ~~[Such]~~ The minerals are  
19 reserved from sale or lease except as provided in this chapter.  
20 A purchaser or lessee of ~~[any such]~~ the lands shall acquire no  
21 right, title, or interest in or to the minerals. The right of



1 the purchaser or lessee shall be subject to the reservation of  
2 all the minerals and to the conditions and limitations  
3 prescribed by law providing for the State and persons authorized  
4 by it to prospect for, mine, and remove the minerals, and to  
5 occupy and use so much of the surface of the land as may be  
6 required for all purposes reasonably extending to the mining and  
7 removal of the minerals therefrom by any means whatsoever."

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

10 "§182-4 Mining leases on state lands. (a) If any mineral  
11 is discovered or known to exist on state lands, any interested  
12 person may notify the board [~~of land and natural resources~~] of  
13 the person's desire to apply for a mining lease. The notice  
14 shall be accompanied by a fee of \$100 together with a  
15 description of the land desired to be leased [~~and~~], the minerals  
16 involved, and any information and maps that the board by rule  
17 may prescribe. As soon as practicable thereafter, the board  
18 shall cause a public notice to be given in the county where the  
19 lands are located, at least once in each of three successive  
20 weeks, setting forth the description of the land, and the  
21 minerals desired to be leased. The board may hold the public



1 auction of the mining lease within six months from the date of  
2 the first notice or any further time that may be reasonably  
3 necessary. Whether or not the state land sought to be auctioned  
4 is then being utilized or put to some productive use, the board,  
5 after due notice of public hearing to all parties in interest,  
6 within six weeks from the date of the first notice or any  
7 further time that may be reasonably necessary, shall determine  
8 whether the proposed mining operation or the existing or  
9 reasonably foreseeable future use of the land would be of  
10 greater benefit to the State. If the board determines that the  
11 existing or reasonably foreseeable future use would be of  
12 greater benefit to the State than the proposed mining use of the  
13 land, it shall disapprove the application for a mining lease of  
14 the land without putting the land to auction. The board shall  
15 determine the area to be offered for lease and, after due notice  
16 of public hearing to all parties in interest, may modify the  
17 boundaries of the land areas. At least thirty days prior to the  
18 holding of any public auction, the board shall cause a public  
19 notice to be given in the State at least once in each of three  
20 successive weeks, setting forth the description of the land, the  
21 minerals to be leased, and the time and place of the auction.



1 Bidders at the public auction may be required to bid on the  
2 amount of annual rental to be paid for the term of the mining  
3 lease based on an upset price fixed by the board, a royalty  
4 based on the gross proceeds or net profits, cash bonus, or any  
5 combination or other basis and under any terms and conditions  
6 that may be set by the board.

7 (b) Any provisions to the contrary notwithstanding, if the  
8 person who discovers the mineral discovers it as a result of  
9 exploration permitted under section 182-6, and if that person  
10 bids at the public auction on the mining lease for the right to  
11 mine the discovered mineral and is unsuccessful in obtaining  
12 such lease, that person shall be reimbursed by the person  
13 submitting the highest successful bid at public auction for the  
14 direct or indirect costs incurred in the exploration of the  
15 land, excluding salaries, [~~attorneys~~] attorney's fees, and legal  
16 expenses. The department [~~shall have the authority to~~] may  
17 review and approve all expenses and costs that may be  
18 reimbursed.

19 (c) Notwithstanding any other law to the contrary, an  
20 application for a mining lease submitted pursuant to this





1 section may be granted by the board in accordance with the  
2 procedures set forth in section 171-95.3."

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

5 "§182-5 Mining leases on reserved lands. If any mineral  
6 is discovered or known to exist on reserved lands, any  
7 interested person may notify the board [~~of land and natural~~  
8 ~~resources~~] of the person's desire to apply for a mining lease.  
9 The notice shall be accompanied by a fee of \$100 together with a  
10 description of the land desired to be leased and the minerals  
11 involved and [~~such~~] information and maps as the board may by  
12 [~~regulation~~] rule prescribe. The board may grant a mining lease  
13 on reserved lands in accordance with section 182-4, or the board  
14 [~~may,~~] by the vote of two-thirds of [~~its~~] the members to which  
15 the board is entitled, without public auction, may grant a  
16 mining lease on reserved lands to the occupier thereof. [~~Such~~  
17 a] A mining lease may be granted to a person other than the  
18 occupier if the occupier has assigned the occupier's rights to  
19 apply for a mining lease to another person, in which case only  
20 [~~such~~] an assignee may be granted a mining lease. Any  
21 provisions to the contrary notwithstanding, if the board decides



1 that it is appropriate to grant a geothermal mining lease on the  
2 reserved lands, the surface owner or the owner's assignee shall  
3 have the first right of refusal for a mining lease. If the  
4 occupier or the occupier's assignee of the right to obtain a  
5 mining lease should fail to apply for a mining lease within six  
6 months from the date of notice from the board of a finding by  
7 the board that it is in the public interest that the minerals on  
8 the reserved lands be mined, a mining lease shall be granted  
9 under section 182-4; provided that bidders at the public auction  
10 shall bid on an amount to be paid to the State for a mining  
11 lease granting to the lessee the right to exploit minerals  
12 reserved to the State."

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

15 "§182-6 Exploration. Any person wishing to conduct  
16 geothermal or mineral exploration on state lands or reserved  
17 lands shall apply to the board [~~of land and natural resources~~  
18 ~~wher~~], which shall issue exploration permits upon terms and  
19 conditions as it shall by [~~regulation~~] rule prescribe. During  
20 and as a result of the exploration, no minerals of [~~such~~] types  
21 and quantity beyond that reasonably required for testing and



1 analysis shall be extracted and removed from [~~such~~] the state  
2 lands[-] or reserved lands. Upon termination of the exploration  
3 permit, all exploration data, including but not limited to the  
4 drill logs and the results of the assays resulting from the  
5 exploration, shall be turned over to the board and kept  
6 confidential by the board. If the person [~~shall~~] does not make  
7 application for a mining lease of the lands within a period of  
8 six months from the date the information is turned over to the  
9 board, the board in its discretion need not keep the information  
10 confidential.

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

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

16 1. By amending subsection (a) to read:

17 "(a) Prior to the public auction contemplated in section  
18 182-4 or 182-5, or the granting of mining lease without public  
19 auction contemplated in section 182-4 or 182-5, the board [~~of~~  
20 ~~land and natural resources~~] shall cause a mining lease for the  
21 land in question to be drawn. The lease shall describe the land



1 and shall contain, in addition to such other provisions which  
2 the board may deem appropriate, specific provisions as provided  
3 in this section."

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

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

12 Any interested party may [~~however,~~] request that a mining  
13 lease contain a research period under which the lessees shall be  
14 required to expend money in research and development to  
15 establish a method to make economical the mining and processing  
16 of the [~~mineral deposits contained~~] minerals identified in the  
17 lease. If the board determines that the research period would  
18 be beneficial, it shall fix the period of research and shall  
19 also fix a minimum expenditure for labor performed or money  
20 spent by the lessee [~~in~~] on research and development and the  
21 method by which the lessee shall establish that such expenditure



1 in fact be made. In [~~such~~] these leases, the obligation to  
2 commence mining operations within three years shall not commence  
3 until the expiration of the research period.

4 (e) For the period of the lease the lessee shall have the  
5 exclusive right of possession of the minerals leased and the  
6 exclusive rights to mine and remove the minerals by means  
7 [~~which~~] that shall be reasonable and satisfactory to the board  
8 and to occupy and use so much of the surface of the land as may  
9 reasonably be required, subject to the provisions of section  
10 182-3. The right to use the surface shall include the right to  
11 erect transportation facilities thereon, construct plants for  
12 beneficiating, drying, and processing the minerals for electric  
13 power generation and transmission and [~~such~~] other uses as may  
14 be approved by the board. The other uses may include but need  
15 not be limited to uses necessary or convenient to the [winning  
16 and] processing of the minerals; provided that the lessee shall  
17 comply with all water and air pollution control laws, and rules  
18 of the State or its political subdivisions.

19 (f) The lessee may retain all minerals separated from the  
20 land as a part of the process of mining the minerals specified  
21 in the mining lease; provided that the lease may prescribe the



1 accounting and testing procedures by which the amount and  
2 quality of [~~such~~] the additional materials shall be determined  
3 for the purpose of computing the excise tax thereon[~~-~~] and the  
4 applicable royalty that may be set by the board for the use of  
5 the minerals."

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

8 "§182-10 Revocation of mining leases. A mining lease may  
9 be revoked if the lessee fails to pay rentals when due or if any  
10 of the terms of the lease or of law are not complied with, or if  
11 the lessee wholly ceases all mining operations for other than  
12 reasons of force majeure or the uneconomic operation of the  
13 mining lease for a period of one year without the written  
14 consent of the board [~~of land and natural resources~~]; provided  
15 that the board shall give the lessee notice of any default and  
16 the lessee shall have six months or such other time limit as  
17 provided by the rules [~~and regulations~~] from the date of the  
18 notice to remedy the default."

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




1           "~~§182-14 Rules [and regulations]~~. Subject to chapter 91,  
2 the board [~~of land and natural resources]~~ may [~~make, promulgate]~~  
3 adopt and amend [~~such~~] rules [~~and regulations]~~ as it deems  
4 necessary to carry out this chapter and to perform its duties  
5 thereunder, all commensurate with and for the purpose of  
6 protecting the public interest. All [~~such~~] rules [~~and~~  
7 ~~regulations]~~ shall have the force and effect of law."

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

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

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

APPROVED this 6 day of JUL , 2016



GOVERNOR OF THE STATE OF HAWAII

