

JAN 22 2016

A BILL FOR AN ACT

RELATING TO GEOTHERMAL.

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

1 SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended
2 by adding a new section to be appropriately designated and to
3 read as follows:

4 "§46- Geothermal resources exploration; county
5 authority. (a) No county shall adopt an ordinance to regulate
6 geothermal resources exploration, as defined in section 182-1,
7 that is conducted one mile or more from a residence.

8 (b) A county may adopt an ordinance to regulate geothermal
9 resources exploration, as defined in section 182-1, that is
10 conducted less than one mile from a residence; provided that the
11 ordinance is not inconsistent with state law, including section
12 46-17(2).

13 For purposes of this subsection, the absence of state law
14 shall be interpreted to mean that the power to regulate
15 geothermal resources development and geothermal resources
16 exploration, as those terms are defined in section 182-1, has
17 been reserved to the State."



1 SECTION 2. Chapter 182, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§182- Geothermal resources exploration; county
5 authority. (a) No county shall adopt an ordinance to regulate
6 geothermal resources exploration that is conducted one mile or
7 more from a residence.

8 (b) A county may adopt an ordinance to regulate geothermal
9 resources exploration that is conducted within one mile from a
10 residence; provided that the ordinance is not inconsistent with
11 state law, including section 46-17(2).

12 For purposes of this subsection, the absence of state law
13 shall be interpreted to mean that the power to regulate
14 geothermal resources development and geothermal resources
15 exploration has been reserved to the State."

16 SECTION 3. Section 46-1.5, Hawaii Revised Statutes, is
17 amended to read as follows:

18 **"§46-1.5 General powers and limitation of the counties.**
19 Subject to general law, each county shall have the following
20 powers and shall be subject to the following liabilities and
21 limitations:



- 1 (1) Each county shall have the power to frame and adopt a
2 charter for its own self-government that shall
3 establish the county executive, administrative, and
4 legislative structure and organization, including but
5 not limited to the method of appointment or election
6 of officials, their duties, responsibilities, and
7 compensation, and the terms of their office;
- 8 (2) Each county shall have the power to provide for and
9 regulate the marking and lighting of all buildings and
10 other structures that may be obstructions or hazards
11 to aerial navigation, so far as may be necessary or
12 proper for the protection and safeguarding of life,
13 health, and property;
- 14 (3) Each county shall have the power to enforce all claims
15 on behalf of the county and approve all lawful claims
16 against the county, but shall be prohibited from
17 entering into, granting, or making in any manner any
18 contract, authorization, allowance payment, or
19 liability contrary to the provisions of any county
20 charter or general law;



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1 (4) Each county shall have the power to make contracts and
2 to do all things necessary and proper to carry into
3 execution all powers vested in the county or any
4 county officer;

5 (5) Each county shall have the power to:

6 (A) Maintain channels, whether natural or artificial,
7 including their exits to the ocean, in suitable
8 condition to carry off storm waters;

9 (B) Remove from the channels, and from the shores and
10 beaches, any debris that is likely to create an
11 unsanitary condition or become a public nuisance;
12 provided that, to the extent any of the foregoing
13 work is a private responsibility, the
14 responsibility may be enforced by the county in
15 lieu of the work being done at public expense;

16 (C) Construct, acquire by gift, purchase, or by the
17 exercise of eminent domain, reconstruct, improve,
18 better, extend, and maintain projects or
19 undertakings for the control of and protection
20 against floods and flood waters, including the



1 power to drain and rehabilitate lands already
2 flooded;

3 (D) Enact zoning ordinances providing that lands
4 deemed subject to seasonable, periodic, or
5 occasional flooding shall not be used for
6 residence or other purposes in a manner as to
7 endanger the health or safety of the occupants
8 thereof, as required by the Federal Flood
9 Insurance Act of 1956 (chapter 1025, Public Law
10 1016); and

11 (E) Establish and charge user fees to create and
12 maintain any stormwater management system or
13 infrastructure;

14 (6) Each county shall have the power to exercise the power
15 of condemnation by eminent domain when it is in the
16 public interest to do so;

17 (7) Each county shall have the power to exercise
18 regulatory powers over business activity as are
19 assigned to them by chapter 445 or other general law;



1 (8) Each county shall have the power to fix the fees and
2 charges for all official services not otherwise
3 provided for;

4 (9) Each county shall have the power to provide by
5 ordinance assessments for the improvement or
6 maintenance of districts within the county;

7 (10) Except as otherwise provided, no county shall have the
8 power to give or loan credit to, or in aid of, any
9 person or corporation, directly or indirectly, except
10 for a public purpose;

11 (11) Where not within the jurisdiction of the public
12 utilities commission, each county shall have the power
13 to regulate by ordinance the operation of motor
14 vehicle common carriers transporting passengers within
15 the county and adopt and amend rules the county deems
16 necessary for the public convenience and necessity;

17 (12) Each county shall have the power to enact and enforce
18 ordinances necessary to prevent or summarily remove
19 public nuisances and to compel the clearing or removal
20 of any public nuisance, refuse, and uncultivated
21 undergrowth from streets, sidewalks, public places,



1 and unoccupied lots. In connection with these powers,
2 each county may impose and enforce liens upon the
3 property for the cost to the county of removing and
4 completing the necessary work where the property
5 owners fail, after reasonable notice, to comply with
6 the ordinances. The authority provided by this
7 paragraph shall not be self-executing, but shall
8 become fully effective within a county only upon the
9 enactment or adoption by the county of appropriate and
10 particular laws, ordinances, or rules defining "public
11 nuisances" with respect to each county's respective
12 circumstances. The counties shall provide the
13 property owner with the opportunity to contest the
14 summary action and to recover the owner's property;
15 (13) Each county shall have the power to enact ordinances
16 deemed necessary to protect health, life, and
17 property, and to preserve the order and security of
18 the county and its inhabitants on any subject or
19 matter not inconsistent with, or tending to defeat,
20 the intent of any state statute where the statute does
21 not disclose an express or implied intent that the



1 statute shall be exclusive or uniform throughout the
2 State; provided that the regulation of geothermal
3 resources development and geothermal resources
4 exploration, as those terms are defined in section
5 182-1, shall be reserved to the State unless delegated
6 to the counties by statute;

7 (14) Each county shall have the power to:

8 (A) Make and enforce within the limits of the county
9 all necessary ordinances covering all:

10 (i) Local police matters;

11 (ii) Matters of sanitation;

12 (iii) Matters of inspection of buildings;

13 (iv) Matters of condemnation of unsafe

14 structures, plumbing, sewers, dairies, milk,
15 fish, and morgues; and

16 (v) Matters of the collection and disposition of
17 rubbish and garbage;

18 (B) Provide exemptions for homeless facilities and
19 any other program for the homeless authorized by
20 part XVII of chapter 346, for all matters under
21 this paragraph;



1 (C) Appoint county physicians and sanitary and other
2 inspectors as necessary to carry into effect
3 ordinances made under this paragraph, who shall
4 have the same power as given by law to agents of
5 the department of health, subject only to
6 limitations placed on them by the terms and
7 conditions of their appointments; and

8 (D) Fix a penalty for the violation of any ordinance,
9 which penalty may be a misdemeanor, petty
10 misdemeanor, or violation as defined by general
11 law;

12 (15) Each county shall have the power to provide public
13 pounds; to regulate the impounding of stray animals
14 and fowl, and their disposition; and to provide for
15 the appointment, powers, duties, and fees of animal
16 control officers;

17 (16) Each county shall have the power to purchase and
18 otherwise acquire, lease, and hold real and personal
19 property within the defined boundaries of the county
20 and to dispose of the real and personal property as



1 the interests of the inhabitants of the county may
2 require, except that:

3 (A) Any property held for school purposes may not be
4 disposed of without the consent of the
5 superintendent of education;

6 (B) No property bordering the ocean shall be sold or
7 otherwise disposed of; and

8 (C) All proceeds from the sale of park lands shall be
9 expended only for the acquisition of property for
10 park or recreational purposes;

11 (17) Each county shall have the power to provide by charter
12 for the prosecution of all offenses and to prosecute
13 for offenses against the laws of the State under the
14 authority of the attorney general of the State;

15 (18) Each county shall have the power to make
16 appropriations in amounts deemed appropriate from any
17 moneys in the treasury, for the purpose of:

18 (A) Community promotion and public celebrations;

19 (B) The entertainment of distinguished persons as may
20 from time to time visit the county;



1 (C) The entertainment of other distinguished persons,
2 as well as, public officials when deemed to be in
3 the best interest of the community; and

4 (D) The rendering of civic tribute to individuals
5 who, by virtue of their accomplishments and
6 community service, merit civic commendations,
7 recognition, or remembrance;

8 (19) Each county shall have the power to:

9 (A) Construct, purchase, take on lease, lease,
10 sublease, or in any other manner acquire, manage,
11 maintain, or dispose of buildings for county
12 purposes, sewers, sewer systems, pumping
13 stations, waterworks, including reservoirs,
14 wells, pipelines, and other conduits for
15 distributing water to the public, lighting
16 plants, and apparatus and appliances for lighting
17 streets and public buildings, and manage,
18 regulate, and control the same;

19 (B) Regulate and control the location and quality of
20 all appliances necessary to the furnishing of



- 1 water, heat, light, power, telephone, and
2 telecommunications service to the county;
- 3 (C) Acquire, regulate, and control any and all
4 appliances for the sprinkling and cleaning of the
5 streets and the public ways, and for flushing the
6 sewers; and
- 7 (D) Open, close, construct, or maintain county
8 highways or charge toll on county highways;
9 provided that all revenues received from a toll
10 charge shall be used for the construction or
11 maintenance of county highways;
- 12 (20) Each county shall have the power to regulate the
13 renting, subletting, and rental conditions of property
14 for places of abode by ordinance;
- 15 (21) Unless otherwise provided by law, each county shall
16 have the power to establish by ordinance the order of
17 succession of county officials in the event of a
18 military or civil disaster;
- 19 (22) Each county shall have the power to sue and be sued in
20 its corporate name;



1 (23) Each county shall have the power to establish and
2 maintain waterworks and sewer works; to collect rates
3 for water supplied to consumers and for the use of
4 sewers; to install water meters whenever deemed
5 expedient; provided that owners of premises having
6 vested water rights under existing laws appurtenant to
7 the premises shall not be charged for the installation
8 or use of the water meters on the premises; to take
9 over from the State existing waterworks systems,
10 including water rights, pipelines, and other
11 appurtenances belonging thereto, and sewer systems,
12 and to enlarge, develop, and improve the same;

13 (24) (A) Each county may impose civil fines, in addition
14 to criminal penalties, for any violation of
15 county ordinances or rules after reasonable
16 notice and requests to correct or cease the
17 violation have been made upon the violator. Any
18 administratively imposed civil fine shall not be
19 collected until after an opportunity for a
20 hearing under chapter 91. Any appeal shall be
21 filed within thirty days from the date of the



1 final written decision. These proceedings shall
2 not be a prerequisite for any civil fine or
3 injunctive relief ordered by the circuit court;
4 (B) Each county by ordinance may provide for the
5 addition of any unpaid civil fines, ordered by
6 any court of competent jurisdiction, to any
7 taxes, fees, or charges, with the exception of
8 fees or charges for water for residential use and
9 sewer charges, collected by the county. Each
10 county by ordinance may also provide for the
11 addition of any unpaid administratively imposed
12 civil fines, which remain due after all judicial
13 review rights under section 91-14 are exhausted,
14 to any taxes, fees, or charges, with the
15 exception of water for residential use and sewer
16 charges, collected by the county. The ordinance
17 shall specify the administrative procedures for
18 the addition of the unpaid civil fines to the
19 eligible taxes, fees, or charges and may require
20 hearings or other proceedings. After addition of
21 the unpaid civil fines to the taxes, fees, or



1 charges, the unpaid civil fines shall not become
2 a part of any taxes, fees, or charges. The
3 county by ordinance may condition the issuance or
4 renewal of a license, approval, or permit for
5 which a fee or charge is assessed, except for
6 water for residential use and sewer charges, on
7 payment of the unpaid civil fines. Upon
8 recordation of a notice of unpaid civil fines in
9 the bureau of conveyances, the amount of the
10 civil fines, including any increase in the amount
11 of the fine which the county may assess, shall
12 constitute a lien upon all real property or
13 rights to real property belonging to any person
14 liable for the unpaid civil fines. The lien in
15 favor of the county shall be subordinate to any
16 lien in favor of any person recorded or
17 registered prior to the recordation of the notice
18 of unpaid civil fines and senior to any lien
19 recorded or registered after the recordation of
20 the notice. The lien shall continue until the
21 unpaid civil fines are paid in full or until a



1 certificate of release or partial release of the
2 lien, prepared by the county at the owner's
3 expense, is recorded. The notice of unpaid civil
4 fines shall state the amount of the fine as of
5 the date of the notice and maximum permissible
6 daily increase of the fine. The county shall not
7 be required to include a social security number,
8 state general excise taxpayer identification
9 number, or federal employer identification number
10 on the notice. Recordation of the notice in the
11 bureau of conveyances shall be deemed, at such
12 time, for all purposes and without any further
13 action, to procure a lien on land registered in
14 land court under chapter 501. After the unpaid
15 civil fines are added to the taxes, fees, or
16 charges as specified by county ordinance, the
17 unpaid civil fines shall be deemed immediately
18 due, owing, and delinquent and may be collected
19 in any lawful manner. The procedure for
20 collection of unpaid civil fines authorized in
21 this paragraph shall be in addition to any other



1 procedures for collection available to the State
2 and county by law or rules of the courts;
3 (C) Each county may impose civil fines upon any
4 person who places graffiti on any real or
5 personal property owned, managed, or maintained
6 by the county. The fine may be up to \$1,000 or
7 may be equal to the actual cost of having the
8 damaged property repaired or replaced. The
9 parent or guardian having custody of a minor who
10 places graffiti on any real or personal property
11 owned, managed, or maintained by the county shall
12 be jointly and severally liable with the minor
13 for any civil fines imposed hereunder. Any such
14 fine may be administratively imposed after an
15 opportunity for a hearing under chapter 91, but
16 such a proceeding shall not be a prerequisite for
17 any civil fine ordered by any court. As used in
18 this subparagraph, "graffiti" means any
19 unauthorized drawing, inscription, figure, or
20 mark of any type intentionally created by paint,
21 ink, chalk, dye, or similar substances;



1 (D) At the completion of an appeal in which the
2 county's enforcement action is affirmed and upon
3 correction of the violation if requested by the
4 violator, the case shall be reviewed by the
5 county agency that imposed the civil fines to
6 determine the appropriateness of the amount of
7 the civil fines that accrued while the appeal
8 proceedings were pending. In its review of the
9 amount of the accrued fines, the county agency
10 may consider:

- 11 (i) The nature and egregiousness of the
12 violation;
- 13 (ii) The duration of the violation;
- 14 (iii) The number of recurring and other similar
15 violations;
- 16 (iv) Any effort taken by the violator to correct
17 the violation;
- 18 (v) The degree of involvement in causing or
19 continuing the violation;
- 20 (vi) Reasons for any delay in the completion of
21 the appeal; and



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(vii) Other extenuating circumstances.

The civil fine that is imposed by administrative order after this review is completed and the violation is corrected shall be subject to judicial review, notwithstanding any provisions for administrative review in county charters;

(E) After completion of a review of the amount of accrued civil fine by the county agency that imposed the fine, the amount of the civil fine determined appropriate, including both the initial civil fine and any accrued daily civil fine, shall immediately become due and collectible following reasonable notice to the violator. If no review of the accrued civil fine is requested, the amount of the civil fine, not to exceed the total accrual of civil fine prior to correcting the violation, shall immediately become due and collectible following reasonable notice to the violator, at the completion of all appeal proceedings;



1 (F) If no county agency exists to conduct appeal
 2 proceedings for a particular civil fine action
 3 taken by the county, then one shall be
 4 established by ordinance before the county shall
 5 impose the civil fine;

6 (25) Any law to the contrary notwithstanding, any county
 7 mayor, by executive order, may exempt donors, provider
 8 agencies, homeless facilities, and any other program
 9 for the homeless under part XVII of chapter 346 from
 10 real property taxes, water and sewer development fees,
 11 rates collected for water supplied to consumers and
 12 for use of sewers, and any other county taxes,
 13 charges, or fees; provided that any county may enact
 14 ordinances to regulate and grant the exemptions
 15 granted by this paragraph;

16 (26) Any county may establish a captive insurance company
 17 pursuant to article 19, chapter 431; and

18 (27) Each county shall have the power to enact and enforce
 19 ordinances regulating towing operations."

20 SECTION 4. Section 182-7, Hawaii Revised Statutes, is
 21 amended by amending subsection (e) to read as follows:



1 "(e) For the period of the lease the lessee shall have the
2 exclusive right of possession of the minerals leased and the
3 exclusive rights to mine and remove the minerals by means which
4 shall be reasonable and satisfactory to the board and to occupy
5 and use so much of the surface of the land as may reasonably be
6 required, subject to the provisions of section 182-3. The right
7 to use the surface shall include the right to erect
8 transportation facilities thereon, construct plants for
9 beneficiating, drying, and processing the minerals for electric
10 power generation and transmission and such other uses as may be
11 necessary or convenient to the winning and processing of the
12 minerals; provided that the lessee shall comply with all water
13 and air pollution control laws, [~~and~~] rules of the State [~~or~~],
14 and other laws of its political subdivisions[-] relating to
15 building, grading, and flood control codes; provided that
16 notwithstanding any other law to the contrary, the rules of the
17 board regarding mining operations, geothermal resources
18 development, and geothermal resources exploration, including
19 drilling conditions and restrictions, shall be uniform
20 throughout the State."



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1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act, upon its approval, shall take effect
4 retroactive to December 4, 2012.

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INTRODUCED BY: Juanita F. Brown

~~Dr. McKay~~

Clemente

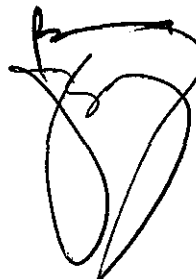
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Report Title:

Geothermal Resources Exploration; Drilling; County Authority

Description:

Allows counties to adopt ordinances to regulate geothermal resources exploration conducted less than one mile from a residence if the ordinance is not inconsistent with state law. Prohibits counties from adopting ordinances to regulate geothermal resources exploration conducted one mile or more from a residence. Clarifies that the regulation of geothermal resources development and geothermal resources exploration is reserved to the State unless delegated to the counties by statute. Requires the lessee of a mining lease to comply with all water and air pollution control laws, relating to building, grading, and flood control codes. Requires the rules of the board of land and natural resources regarding mining operations, geothermal resource development, and geothermal resource exploration, including drilling conditions and restrictions, to be uniform throughout the State. Effective retroactive to 12/4/2012.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

