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# A BILL FOR AN ACT

RELATING TO NATURAL RESOURCES.

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

1           SECTION 1. 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-~~ Penalties, fees, and costs collected. All  
5 penalties, fees, and costs established and collected by the  
6 department pursuant to this chapter shall be deposited in the  
7 special land and development fund established under section  
8 171-19."

9           SECTION 2. Section 171-19, Hawaii Revised Statutes, is  
10 amended by amending subsection (a) to read as follows:

11           "(a) There is created in the department a special fund to  
12 be designated as the "special land and development fund".  
13 Subject to the Hawaiian Homes Commission Act of 1920, as  
14 amended, and section 5(f) of the Admission Act of 1959, all  
15 proceeds of sale of public lands, including interest on deferred  
16 payments; all moneys collected under section 171-58 for mineral  
17 and water rights; all rents from leases, licenses, and permits  
18 derived from public lands; all moneys collected from lessees of



1 public lands within industrial parks; all fees, fines, and other  
2 administrative charges collected under this chapter and chapter  
3 183C; a portion of the highway fuel tax collected under chapter  
4 243; all moneys collected by the department for the commercial  
5 use of public trails and trail accesses under the jurisdiction  
6 of the department; transient accommodations tax revenues  
7 collected pursuant to section 237D-6.5(b)(2); all penalties,  
8 fees, and costs collected for government mineral rights under  
9 section 182- ; and private contributions for the management,  
10 maintenance, and development of trails and accesses shall be set  
11 apart in the fund and shall be used only as authorized by the  
12 legislature for the following purposes:

- 13 (1) To reimburse the general fund of the State for  
14 advances made that are required to be reimbursed from  
15 the proceeds derived from sales, leases, licenses, or  
16 permits of public lands;
- 17 (2) For the planning, development, management, operations,  
18 or maintenance of all lands and improvements under the  
19 control and management of the board, including but not  
20 limited to permanent or temporary staff positions who  
21 may be appointed without regard to chapter 76;



- 1           (3) To repurchase any land, including improvements, in the  
2           exercise by the board of any right of repurchase  
3           specifically reserved in any patent, deed, lease, or  
4           other documents or as provided by law;
- 5           (4) For the payment of all appraisal fees; provided that  
6           all fees reimbursed to the board shall be deposited in  
7           the fund;
- 8           (5) For the payment of publication notices as required  
9           under this chapter; provided that all or a portion of  
10          the expenditures may be charged to the purchaser or  
11          lessee of public lands or any interest therein under  
12          rules adopted by the board;
- 13          (6) For the management, maintenance, and development of  
14          trails and trail accesses under the jurisdiction of  
15          the department;
- 16          (7) For the payment to private land developers who have  
17          contracted with the board for development of public  
18          lands under section 171-60;
- 19          (8) For the payment of debt service on revenue bonds  
20          issued by the department, and the establishment of  
21          debt service and other reserves deemed necessary by  
22          the board;



- 1           (9) To reimburse the general fund for debt service on  
2           general obligation bonds issued to finance  
3           departmental projects, where the bonds are designated  
4           to be reimbursed from the special land and development  
5           fund;
- 6           (10) For the protection, planning, management, and  
7           regulation of water resources under chapter 174C; and  
8           (11) For other purposes of this chapter."

9           SECTION 3. Section 171-95, Hawaii Revised Statutes, is  
10          amended by amending subsection (c) to read as follows:

11           "(c) For the purposes of this section, "renewable energy  
12          producer" means:

- 13           (1) Any producer or developer of electrical or thermal  
14           energy produced by wind, solar energy, hydropower,  
15           geothermal resources, landfill gas, waste-to-energy,  
16           ocean thermal energy conversion, cold seawater, wave  
17           energy, biomass, including municipal solid waste,  
18           biofuels or fuels derived from organic sources,  
19           hydrogen fuels derived primarily from renewable  
20           energy, or fuel cells where the fuel is derived  
21           primarily from renewable sources that sell all of the  
22           net power produced from the demised premises to an



1 electric utility company regulated under chapter 269  
2 or that sells all of the thermal energy it produces to  
3 customers of district cooling systems; provided that  
4 up to twenty-five per cent of the power produced by a  
5 renewable energy producer and sold to the utility or  
6 to district cooling system customers may be derived  
7 from fossil fuels; or

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

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

17 1. By adding a new definition to be appropriately inserted  
18 and to read:

19 "Department" means the department of land and natural  
20 resources."

21 2. By amending the definitions of "geothermal resources  
22 exploration", and "mining lease" to read:



1 "Geothermal resources exploration" means either of the  
2 following:

3 (1) Conducting non-invasive geophysical operations,  
4 including geochemical operations, remote sensing, and  
5 other similar techniques; or

6 (2) Drilling exploration wells for, but not limited to,  
7 the extraction and removal of minerals of types and  
8 quantities;

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

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

18 SECTION 5. Section 182-2, Hawaii Revised Statutes, is  
19 amended by amending subsection (a) to read as follows:

20 "(a) All minerals in, on, or under state lands or reserved  
21 lands [~~which hereafter become state lands~~] are reserved to the  
22 State; provided that the board [~~of land and natural resources~~]



1 may release, cancel, or waive the reservation whenever it deems  
2 the land use, other than mining, is of greater benefit to the  
3 State as provided for in section 182-4. Such minerals are  
4 reserved from sale or lease except as provided in this chapter.  
5 A purchaser or lessee of any such lands shall acquire no right,  
6 title, or interest in or to the minerals. The right of the  
7 purchaser or lessee shall be subject to the reservation of all  
8 the minerals and to the conditions and limitations prescribed by  
9 law providing for the State and persons authorized by it to  
10 prospect for, mine, and remove the minerals, and to occupy and  
11 use so much of the surface of the land as may be required for  
12 all purposes reasonably extending to the mining and removal of  
13 the minerals therefrom by any means whatsoever."

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

16 **"§182-4 Mining leases on state lands.** (a) If any mineral  
17 is discovered or known to exist on state lands, any interested  
18 person may notify the board [~~of land and natural resources~~] of  
19 the person's desire to apply for a mining lease. The notice  
20 shall be accompanied by [~~a fee of \$100~~] the required fees, as  
21 established by the department, together with a description of  
22 the land desired to be leased [~~and~~], the minerals involved, and



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





1 the land areas. At least thirty days prior to the holding of  
2 any public auction, the board shall cause a public notice to be  
3 given in the State at least once in each of three successive  
4 weeks, setting forth the description of the land, the minerals  
5 to be leased, and the time and place of the auction. Bidders at  
6 the public auction may be required to bid on the amount of  
7 annual rental to be paid for the term of the mining lease based  
8 on an upset price fixed by the board, a royalty based on the  
9 gross proceeds or net profits, cash bonus, or any combination or  
10 other basis and under any terms and conditions that may be set  
11 by the board.

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



1        (c) Any proposed mining operations to be undertaken by a  
2 renewable energy producer, as defined in section 171-95, shall  
3 require an application to the board for a mining lease on state  
4 lands. Any provisions to the contrary notwithstanding, such  
5 application for a mining lease on state lands may be granted by  
6 the board in accordance with this section, or the board may, by  
7 the vote of two-thirds of the members to which the board is  
8 entitled, grant a mining lease to the renewable energy producer  
9 without public auction."

10        SECTION 7. Section 182-5, Hawaii Revised Statutes, is  
11 amended to read as follows:

12        **"§182-5 Mining leases on reserved lands.** If any mineral  
13 is discovered or known to exist on reserved lands, any  
14 interested person may notify the board [~~of land and natural~~  
15 ~~resources~~] of the person's desire to apply for a mining lease.  
16 The notice shall be accompanied by [~~a fee of \$100~~] the required  
17 fees, as established by the department, together with a  
18 description of the land desired to be leased and the minerals  
19 involved and such information and maps as the board may by  
20 [~~regulation~~] rule prescribe. The board may grant a mining lease  
21 on reserved lands in accordance with section 182-4, or the board  
22 may, by the vote of two-thirds of [~~its~~] the members to which the



1 board is entitled, without public auction, grant a mining lease  
2 on reserved lands to the occupier thereof. Such a mining lease  
3 may be granted to a person other than the occupier if the  
4 occupier has assigned the occupier's rights to apply for a  
5 mining lease to another person, in which case only such an  
6 assignee may be granted a mining lease. Any provisions to the  
7 contrary notwithstanding, if the board decides that it is  
8 appropriate to grant a geothermal mining lease on the reserved  
9 lands, the surface owner or the owner's assignee shall have the  
10 first right of refusal for a mining lease. If the occupier or  
11 the occupier's assignee of the right to obtain a mining lease  
12 should fail to apply for a mining lease within six months from  
13 the date of notice from the board of a finding by the board that  
14 it is in the public interest that the minerals on the reserved  
15 lands be mined, a mining lease shall be granted under section  
16 182-4; provided that bidders at the public auction shall bid on  
17 an amount to be paid to the State for a mining lease granting to  
18 the lessee the right to exploit minerals reserved to the State."

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

21 **"§182-6 Exploration.** Any person wishing to conduct  
22 geothermal resources exploration on state or reserved lands



1 shall apply to the board [~~of land and natural resources who~~],  
2 which shall issue exploration permits upon terms and conditions  
3 as it shall by [~~regulation~~] rule prescribe. During and as a  
4 result of the exploration, no minerals of such types and  
5 quantity beyond that reasonably required for testing and  
6 analysis shall be extracted and removed from such state lands[~~-~~]  
7 or reserved lands. Upon termination of the exploration permit,  
8 all exploration data, including the drill logs and the results  
9 of the assays resulting from the geothermal resources  
10 exploration, shall be turned over to the board and kept  
11 confidential by the board. If the person shall not make  
12 application for a mining lease of the lands within a period of  
13 six months from the date the information is turned over to the  
14 board, the board in its discretion need not keep the information  
15 confidential.

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

19 SECTION 9. Section 182-7, Hawaii Revised Statutes, is  
20 amended as follows:

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



1           "(a) Prior to the public auction contemplated in section  
2 182-4 or 182-5, or the granting of mining lease without public  
3 auction contemplated in section 182-4 or 182-5, the board [~~of~~  
4 ~~land and natural resources~~] shall cause a mining lease for the  
5 land in question to be drawn. The lease shall describe the land  
6 and shall contain, in addition to such other provisions which  
7 the board may deem appropriate, specific provisions as provided  
8 in this section."

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

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

17           Any interested party may, however, request that a mining  
18 lease contain a research period under which the lessees shall be  
19 required to expend money in research and development to  
20 establish a method to make economical the mining and processing  
21 of the [~~mineral deposits contained~~] minerals identified in the  
22 lease. If the board determines that the research period would



1 be beneficial, it shall fix the period of research and shall  
2 also fix a minimum expenditure for labor performed or money  
3 spent by the lessee [~~in~~] on research and development and the  
4 method by which the lessee shall establish that such expenditure  
5 in fact be made. In such leases, the obligation to commence  
6 mining operations within three years shall not commence until  
7 the expiration of the research period.

8 (e) For the period of the lease the lessee shall have the  
9 exclusive right of possession of the minerals leased and the  
10 exclusive rights to mine and remove the minerals by means which  
11 shall be reasonable and satisfactory to the board and to occupy  
12 and use so much of the surface of the land as may reasonably be  
13 required, subject to the provisions of section 182-3. The right  
14 to use the surface shall include the right to erect  
15 transportation facilities thereon, construct plants for  
16 beneficiating, drying, and processing the minerals for electric  
17 power generation and transmission and such other uses as may be  
18 approved by the board. Such other uses may include uses  
19 necessary or convenient to the [~~winning and~~] processing of the  
20 minerals; provided that the lessee shall comply with all water  
21 and air pollution control laws, and rules of the State or its  
22 political subdivisions.



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

9 SECTION 10. Section 182-9, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 **"§182-9 Deposit; first year's rental.** All bidders shall,  
12 prior to the date of public auction, post with the board [e~~f~~  
13 ~~land and natural resources a deposit of \$500.~~] the required  
14 deposit, as established by the department. The board shall  
15 refund to unsuccessful bidders such amount within two days after  
16 the auction. All bidders, prior to the auction, shall satisfy  
17 the board of their financial ability to conduct mining  
18 operations and of their capability to develop a mine. The  
19 successful bidder shall pay to the board the amount of the first  
20 year's rental within two days after the acceptance of the bid by  
21 the board and the [~~\$500 deposit~~] required deposit, as  
22 established by the department, shall be credited against such



1 sum. If the deposit exceeds the first year's rental, the excess  
2 shall be refunded. All rentals thereafter are payable in  
3 advance once a year."

4 SECTION 11. Section 182-10, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 **"§182-10 Revocation of mining leases.** A mining lease may  
7 be revoked if the lessee fails to pay rentals when due or if any  
8 of the terms of the lease or of law are not complied with, or if  
9 the lessee wholly ceases all mining operations for other than  
10 reasons of force majeure or the uneconomic operation of the  
11 mining lease for a period of one year without the written  
12 consent of the board [~~of land and natural resources~~]; provided  
13 that the board shall give the lessee notice of any default and  
14 the lessee shall have six months or such other time limit as  
15 provided by the rules [~~and regulations~~] from the date of the  
16 notice to remedy the default."

17 SECTION 12. Section 182-14, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 **"§182-14 Rules [~~and regulations~~].** Subject to chapter 91,  
20 the board [~~of land and natural resources~~] may [~~make, promulgate~~]  
21 adopt and amend such rules [~~and regulations~~] as it deems  
22 necessary to carry out this chapter and to perform its duties





1 thereunder, all commensurate with and for the purpose of  
2 protecting the public interest. All such rules [~~and~~  
3 ~~regulations~~] shall have the force and effect of law."

4 SECTION 13. Section 182-17, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "~~[+]~~**§182-17**~~[+]~~ **Penalty for violation.** (a) Any person who  
7 violates any provision of this chapter, or any [~~regulation~~] rule  
8 adopted pursuant hereto~~[, shall be fined not more than \$500 for~~  
9 ~~each offense.]~~ to this chapter may be subject to a fine imposed  
10 by the board. Such fine shall not exceed \$5,000 per violation.  
11 If any person after receiving written notice for a violation  
12 fails to cure such violation within such time and under such  
13 conditions as determined by [~~the rules and regulations,~~] the  
14 board, such person shall be subject to a citation for a new and  
15 separate violation. There shall be a fine of not more than  
16 [~~\$500~~] \$5,000 for each additional violation.

17 (b) No provision of this chapter shall bar the right of  
18 any injured person to seek other legal or equitable relief  
19 against a violator of this chapter.

20 (c) Except as otherwise provided by law, the board or its  
21 authorized representative by proper delegation may set, charge,  
22 and collect administrative fines or bring legal action to



1 recover administrative fees and costs as documented by receipts  
2 or affidavit, including attorney's fees and costs; or bring  
3 legal action to recover administrative fines, fees, and costs,  
4 including attorney's fees and costs, or payment for damages  
5 resulting from a violation of this chapter or any rule adopted  
6 pursuant to this chapter."

7 SECTION 14. Sections 182-3(a), 182-11, 182-13, and 182-15,  
8 Hawaii Revised Statutes, are amended by substituting the word  
9 "board" wherever the phrase "board of land and natural  
10 resources" appears, as the context requires.

11 SECTION 15. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

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



**Report Title:**

Energy Resources; Natural Resources

**Description:**

Promotes renewable energy in Hawaii by: (1) providing that all penalties, fees, and costs established and collected by the Department of Land and Natural Resources pursuant to Chapter 182, Hawaii Revised Statutes, be deposited in the Special Land and Development Fund; (2) including geothermal resources within the definition of a renewable energy producer; and (3) clarifying the permitting procedures for regulators and renewable energy developers considering geothermal development. (SD1)

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

