

JAN 22 2016

A BILL FOR AN ACT

RELATING TO GEOTHERMAL RESOURCES.

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

1 SECTION 1. The legislature finds that Act 296, Session
2 Laws of Hawaii 1983, established geothermal resource subzones as
3 a regulatory framework. Act 97, Session Laws of Hawaii 2012,
4 repealed the regulatory framework and geothermal resources
5 subzones.

6 The Final Report of The Geothermal Public Health Assessment
7 Study Group, entitled *Geothermal Public Health Assessment* was
8 released on September 9, 2013. The Final Report addresses the
9 health effects of various toxic hazards associated with
10 geothermal energy production and makes related recommendations.

11 On March 17, 2014, Attorney General Opinion No. 14-1,
12 "Management and Disposition of Geothermal Resources on DHHL
13 Lands" concluded that the department of Hawaiian home lands is
14 entitled to manage and dispose of geothermal resources on its
15 lands. The attorney general recommends that the department of
16 land and natural resources assist the department of Hawaiian
17 home lands with the technical aspects of geothermal management.



1 The legislature further finds that there is a need for
2 appropriate statutes to govern geothermal development in Hawai'i.
3 The purpose of this Act is to establish a permit system for land
4 use regulation of geothermal development.

5 SECTION 2. Chapter 205, Hawaii Revised Statutes, is
6 amended by adding a new part to be appropriately designated and
7 to read as follows:

8 "PART . GEOTHERMAL RESOURCES

9 §205-A Definitions. As used in this part:

10 "Geothermal resources" has the same meaning as in section
11 182-1.

12 "Geothermal resources development" has the same meaning as
13 in section 182-1.

14 "Permitting entity" means a county or state entity that
15 issues a permit for geothermal resources development pursuant to
16 section 205-B.

17 §205-B Geothermal resources development permits. (a) A
18 permit for geothermal resources development within an urban,
19 rural, or agricultural district may be issued by a county
20 planning commission unless some other agency or body is
21 designated by ordinance of the county council.



1 (b) A permit for geothermal resources development within a
2 conservation district may be issued by the board of land and
3 natural resources.

4 (c) A permit for geothermal resources development on
5 property under the jurisdiction of the department Hawaiian home
6 lands may be issued by the Hawaiian homes commission, in
7 consultation with the board of land and natural resources.

8 (d) No county ordinance regarding geothermal resources
9 development shall be held invalid on the ground that it covers
10 any subject or matter embraced within any statute or rule of the
11 State; provided that in any case of a conflict between a statute
12 or rule and an ordinance, the law affording the most protection
13 to the environment, public health, or public safety shall apply.

14 (e) After acceptance of a properly filed and completed
15 application, including an environmental review and supporting
16 data, the permitting entity shall conduct a public hearing on
17 the island where the geothermal resources development is being
18 proposed and as close as practicable to the area that would be
19 affected by the proposed development.

20 For purposes of the public hearing or any related contested
21 case proceedings, the permitting entity shall have power to



1 summon witnesses, compel discovery and disclosure of evidence,
2 administer oaths, and require testimony.

3 (f) Notice of the public hearing under subsection (e)
4 shall be published on three separate days in a newspaper of
5 general circulation in the county where the public hearing is to
6 be held; provided that the first publication shall be not less
7 than twenty days before the date set for the hearing. The
8 notice shall be mailed not less than twenty days before the date
9 set for the hearing to all owners of land within three thousand
10 feet of the proposed geothermal resources development. Copies
11 of the notice also shall be submitted to the department of land
12 and natural resources; department of business, economic
13 development, and tourism; department of Hawaiian home lands;
14 appropriate county planning commission; and appropriate county
15 planning department of the county where the proposed geothermal
16 resources development is located.

17 (g) Unless an extension is agreed to by the applicant and
18 the permitting entity, a final decision shall be issued not more
19 than six months after the date of the later of the conclusion of
20 the public hearing or the final decision and order in any
21 contested case proceedings.



1 (h) Applicants for geothermal resources development
2 permits shall comply with the environmental review process
3 required by chapter 343. For purposes of this subsection, it
4 shall be presumed that a geothermal development may have a
5 significant effect on the environment. The environmental review
6 accompanying an application under this section shall include a
7 detailed discussion of the following:

- 8 (1) The potential for the production of geothermal energy
9 in the area proposed by the applicant and related
10 factors that may affect the development and its
11 surrounding environment;
- 12 (2) The prospects for the utilization of geothermal energy
13 in the area;
- 14 (3) The geologic hazards that potential geothermal
15 projects may encounter, in the near term and long
16 term;
- 17 (4) Cultural, social, and environmental impacts of the
18 proposed geothermal resources development, including
19 the potential for health, safety, and nuisance impacts
20 on surrounding residents and land uses;



- 1 (5) The compatibility of geothermal development and
- 2 potential related industries with present uses of
- 3 surrounding land and those uses permitted under the
- 4 general plan or land use policies of the county where
- 5 the area is located;
- 6 (6) The potential economic benefits to be derived from
- 7 geothermal development;
- 8 (7) Alternative methods for production of electricity in
- 9 the same proposed quantity and area, and the relative
- 10 impacts and benefits of each alternative; and
- 11 (8) Emission monitoring and emergency response measures
- 12 appropriate for the area and surrounding properties.
- 13 (i) A geothermal resources development permit may be
- 14 issued if the permitting entity finds the environmental review
- 15 provided by the applicant is satisfactory and complete, the
- 16 proposed geothermal resources development complies with
- 17 applicable plans and zoning ordinances, and the proposed
- 18 geothermal resources development would neither:
- 19 (1) Have unreasonable adverse health, environmental, or
- 20 socio-economic effects on residents and surrounding
- 21 property; nor



1 (2) Unreasonably burden public agencies to provide roads,
2 streets, sewers, water, drainage, school improvements,
3 and police and fire protection;
4 provided that the permitting entity may prescribe mitigating
5 actions to be taken by the applicant to address any effects or
6 burdens, including as a condition of the permit approval, the
7 establishment of an appropriate buffer zone between the proposed
8 geothermal resources development and abutting land. Each of the
9 environmental review factors addressed in the application may
10 form a basis for specific regulatory conditions and provisions.

11 §205-C Public health and safety. (a) A permitting entity
12 reviewing an application pursuant to this part shall consider
13 toxic hazards associated with geothermal energy production that
14 can affect public health, safety and well-being and shall
15 incorporate conditions in the permit that thoroughly and
16 competently address those concerns:

17 (b) Public health and safety conditions shall include
18 requirements that the applicant:

19 (1) Apply and maintain best management practices, best
20 available control technologies and state-of-the-art
21 mitigation measures in operating its facilities;



- 1 (2) Prevent air and water pollution and excessive noise
- 2 from geothermal development; provided that noise shall
- 3 not exceed levels that are appropriate in view of
- 4 zoning of nearby residential properties;
- 5 (3) Maintain competent pollution-related monitoring
- 6 systems, protocols, and emergency response plans; and
- 7 (4) Satisfy additional health and safety conditions that
- 8 may be required by county ordinances or regulations or
- 9 that appropriately result from environmental review."

10 SECTION 3. The provisions of this Act shall apply to any

11 geothermal resources producer operating within the jurisdiction

12 of a permitting entity as of the effective date of this Act;

13 provided that the producer may continue to operate pursuant to

14 existing permits until ninety days after the date a permitting

15 entity with jurisdiction has adopted rules governing geothermal

16 development; and provided further that if during said ninety day

17 period the producer applies to the permitting entity in

18 compliance with such rules, the geothermal resources producer

19 may continue to operate within the limits of existing permits

20 until action on the application has been completed.



S.B. NO. 2267

1 SECTION 4. In codifying the new parts and sections added
 2 by this Act, the revisor shall substitute an appropriate part
 3 number and section numbers for the letters used in designating
 4 the new sections in this Act.

5 SECTION 5. This Act shall take effect on July 1, 2016.

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S.B. NO. 2267

Report Title:

Geothermal Resources Development; Permitting

Description:

Establishes a geothermal development permitting system under county and state permitting entities. Establishes public notice and public hearing requirements for geothermal resources development.

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

