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GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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BOATING AND OCEAN RECREATION
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COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committee on
WATER AND LAND**

**Monday, February 11, 2013
8:30 A.M.
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 932 HOUSE DRAFT 1
RELATING TO MINERAL RESOURCES**

House Bill 932 House Draft 1 proposes to revise statutory provisions relating to the regulation of mineral resources under Chapters 171 and 182, Hawaii Revised Statutes, to include geothermal within the definition of a "renewable energy producer" and to provide clarity, eliminate ambiguities, and incorporate technical, non-substantive changes in accordance with Act 97, Session Laws of Hawaii (SLH) 2012. **The Department of Land and Natural Resources (Department) strongly supports this Administrative measure to reduce barriers that could pose potential delays to geothermal exploration and development.**

Current statutes do not classify geothermal resources as part of the definition of "renewable energy producer". Adding this designation would provide geothermal resources equity to other renewable energy sources such as wind, solar, hydropower, or biomass.

Statutes pertaining to the regulation and management of mineral resources are in need of update to provide clarity, reduce ambiguities, and to correlate changes in accordance with Act 97, SLH 2012. The identification and elimination of conflicts in statutory language and procedures would reduce barriers and eliminate ambiguities that could pose potential delays to geothermal exploration and development and facilitate the disposition and regulation of the use and management of mineral resources. Such clarification and update will assist the Department in working toward meeting goals of the Hawaii Clean Energy Initiative and the Administration's New Day Plan regarding renewable energy development.

Thank you for the opportunity to provide testimony on this measure.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

NEIL ABERCROMBIE
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Statement of
RICHARD C. LIM
Director

Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON WATER AND LAND

Monday, February 11, 2013
8:30 AM
State Capitol, Conference Room 325

in consideration of
HB 932, HD 1
RELATING TO MINERAL RESOURCES.

Chair Evans, Vice Chair Lowen, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) supports
HB 932, HD 1, an Administration bill.

This bill includes geothermal within the definition of a renewable energy producer for
public land leasing purposes. It also eliminates ambiguities, modifies definitions and
incorporates additional technical, non-substantive changes in accordance with Act 97, SLH 2012.
Lastly, it provides additional clarity regarding Department of Land and Natural Resources'
(DLNR) administration of the State's mineral leasing program.

We support this bill because clarity in permitting procedures is essential for both
regulators and potential renewable energy developers. The elimination of conflicts in statutory
language through this bill will remove barriers and thus help the State achieve its renewable
energy objectives.

We defer to the Department of Land and Natural Resources regarding the provisions of this measure impacting the administration of the State's mineral leasing program.

Thank you for the opportunity to offer these comments in support of HB 932, HD 1.



HB932 HD1
RELATING TO MINERAL RESOURCES
House Committee on Water & Land

February 11, 2013

8:30 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) offers **COMMENTS** on HB932 HD1, which would define “geothermal” as a “renewable energy source” and give the Board of Land and Natural Resources the ability to lease public lands for geothermal. The bill is also a housekeeping measure and attempts to make amendments consistent with Act 97 (2012). OHA’s comments focus on the need to address concerns that arose by the passage of Act 97.

The passage of Act 97 was a detriment to the public because it removed regulations that were enacted to respond to the unique hazards created by geothermal exploration and development and to ensure critical input by the most affected communities. Act 97 completely eliminated years of land use planning and did not replace it with an alternative process or guidelines. By deleting the statutory regulations, it eliminated the county review and approval process and along with it, an evaluation of county-specific social, health, environmental, and cultural issues.

There should be an open and transparent process for evaluation of geothermal exploration or development, particularly for proposals that will impact Hawai‘i’s most fragile lands and communities. OHA understands the value of a streamlined process for the exploration of alternative energy options. However, deleting all geothermal specific regulations, as occurred in Act 97, went far beyond what is necessary. The full range of environmental impacts resulting from geothermal exploration and development remain yet unknown. Accordingly, experimenting with new technology in the most sensitive of protected regions, including fragile watershed areas and the habitats of threatened or endangered animal and plant species, may be unwise. Further, since geothermal exploration and development may result in emission of noxious gases and noise and ground surface disturbance, the geothermal resource subzone provisions that were deleted by Act 97 provide an additional layer of protection and procedural safeguards. These include a public hearing in the proposed affected community and an opportunity for contested case hearing.

HB932 HD1 would benefit from the addition of an opportunity for input by critically affected communities. Mahalo for the opportunity to testify on this important measure.

**Testimony Before the House Committee on
WATER AND LAND
Monday, February 11, 2013 8:30 A.M.
State Capitol, Conference Room 325
In consideration of
HOUSE BILL 932 HD1
RELATING TO MINERAL RESOURCES**

I am Lono Lyman, a native Hawaiian and the president of Kapoho Management Company, Inc. (KMC) general partner of Kapoho Land Partnership (KLP) a Hawaii Limited Partnership. I am manager of KLP and manager of Kapoho Land and Development Company, Ltd. (KLDC). KLDC is the fee owner of significant acreage in Kapoho, Puna District, Island of Hawaii. KLP holds the surface leases and owns the subsurface and occupier rights for most of the KLDC lands. My kuliana is to represent the Lyman family interest in geothermal development, and I have done so for most of the years since the late-1970s. The Puna Geothermal Ventures project is on our lands.

House Bill 932 HD1 purports to revise statutory provisions relating to the regulation of mineral resources under Chapters 171 and 182, Hawaii Revised Statutes , to include geothermal within the definition of a "renewable energy producer" and to provide clarity, eliminate ambiguities, and incorporate technical, non-substantive changes in accordance with Act 97, Session Laws of Hawaii (SLH) 2012.

However, HB 932 HD1 goes beyond non-substantive changes by adding all "reserved lands" and by deleting provisions excluding any water, minerals in solution, or other products obtained from naturally heated fluids . . . having a temperature of 150 degrees Fahrenheit or less . . . "Reserved Lands" is defined by HRS 182-1 as those lands . . . in which the State has reserved to itself expressly or by implication the minerals or right to mine minerals, or both." HB 932 HD1 represents another taking of private rights and ownership of both heat and of ground water.

The ownership of the geothermal resources underlying privately owned property is an unsettled legal issue. This was acknowledged by the State of Hawaii in Geothermal Resource Mining Lease No. 2, issued in December 1980. Specifically, paragraph 23, titled "No Warranty of Title," states in part that the "Lessor [State of Hawaii] does not warrant title to the leased lands or the geothermal resources and geothermal by-products which may be discovered thereon; this Lease is issued only under such title as the State of Hawaii may have as of the effective date of this Lease or may thereafter acquire."

The ownership of geothermal resources underlying private lands can be resolved only by a court of law and not by legislative fiat. The legislative taking of private property without due process and without compensation is protected by both the United States Constitution and the Hawaii State Constitution.

Because of these constitutional issues, we ask that HB 932 HD 1 be deferred. If the Committee does not agree with the foregoing, we ask that the committee report reflect that these constitutional issues have been raised.