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# A BILL FOR AN ACT

RELATING TO GEOTHERMAL RESOURCES.

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

1           SECTION 1. Chapter 205, Hawaii Revised Statutes, is  
2 amended by adding a new part to be appropriately designated and  
3 to read as follows:

4           "PART     .    **GEOTHERMAL RESOURCES DEVELOPMENT**

5           §205-A   **Geothermal resources development permits;**  
6 **applications.** (a) To ensure that prospective geothermal  
7 resources development will have the least detrimental  
8 environmental impact, any application to obtain a geothermal  
9 resources development permit from a government entity shall  
10 provide, at a minimum, the following:

- 11           (1) An assessment of any potential geologic hazards to  
12                geothermal production or use in the proposed area or  
13                site;
- 14           (2) An assessment of any environmental or social impacts  
15                within the proposed area or site;
- 16           (3) An assessment of the compatibility of development and  
17                utilization of geothermal resources with other allowed



1 uses within the proposed area or site and within the  
2 surrounding area; and

3 (4) A description of the proposed geothermal resources  
4 development, including the establishment of an  
5 appropriate, industry recognized buffer zone between  
6 the proposed geothermal resources development and  
7 abutting land.

8 (b) Within forty-five days of receiving the application,  
9 the government entity shall determine whether the application is  
10 complete, and if not, inform the applicant of the deficiency.

11 **§205-B Geothermal resources development permits;**  
12 **agricultural, rural, and urban districts; county authority. (a)**  
13 A permit for geothermal resources development or the operation  
14 of a geothermal energy facility within an agricultural, rural,  
15 or urban district shall be issued by the appropriate county  
16 authority.

17 (b) In addition to the requirements of this part and the  
18 powers pursuant to sections 46-1.5 and 46-4, each county may  
19 adopt more stringent ordinances regarding geothermal resources  
20 development permits within agricultural, rural, or urban  
21 districts.



1 (c) For the purposes of this part, "appropriate county  
2 authority" means the county entity that issues development  
3 permits.

4 **§205-C Geothermal resources development permits;**  
5 **agricultural, rural, and urban districts; unpermitted use;**  
6 **public hearing.** (a) If, after receipt of a properly filed and  
7 completed application, including all supporting data required  
8 under section 205-A, the appropriate county authority determines  
9 that the proposed geothermal resources development is not an  
10 expressly permitted use pursuant to the county general plan and  
11 zoning ordinances, the appropriate county authority shall  
12 conduct a public hearing.

13 (b) The public hearing shall be held on the island on  
14 which the geothermal resources development is being proposed and  
15 as close as practicable to the area that would be affected by  
16 the proposed geothermal resources development.

17 (c) No later than twenty days prior to the hearing, the  
18 appropriate county authority shall provide public notice to  
19 affected state agencies and owners of land within two thousand  
20 feet of the proposed geothermal resources development.

21 **§205-D Request for mediation.** (a) Any party who submits  
22 written comments at the public hearing shall have standing to



1 request mediation between the aggrieved party and the applicant;  
2 provided that the request for mediation and a self-addressed  
3 postage prepaid envelope are received by the appropriate county  
4 authority no later than five days after the close of the initial  
5 public hearing.

6 (b) The appropriate county authority shall notify any  
7 person who submitted an appropriate request for mediation of the  
8 date, time, and place of the mediation conference by mailing the  
9 notice in the self-addressed postage prepaid envelope no later  
10 than ten days prior to the date of the mediation conference;  
11 provided that the mediation conference shall be held on the  
12 island where the initial public hearing was held.

13 **§205-E Mediation.** (a) The appropriate county authority  
14 shall appoint a mediator no later than fourteen days after  
15 receipt of an appropriate request for mediation under section  
16 205-D; provided that the mediator shall not be an employee of  
17 any county agency.

18 (b) The appropriate county authority shall require the  
19 aggrieved party and the applicant to participate in mediation.

20 (c) The mediation period shall not extend beyond sixty  
21 days, except by order of the appropriate county authority, and



1 shall be limited to the issues raised in the written comments  
2 submitted by the aggrieved party at the initial public hearing.

3 (d) If the parties cannot reach agreement on all of the  
4 disputed issues, the county authority may conduct a second  
5 public hearing at the same place as the initial public hearing  
6 to receive additional written comments from any party on any  
7 unresolved issues; provided that written comments received more  
8 than ten days after the second public hearing shall not be  
9 accepted.

10 (e) The appropriate county authority shall consider the  
11 comments submitted at the second public hearing prior to  
12 rendering a final decision.

13 **§205-F Final decisions.** (a) Unless an extension is  
14 agreed to by the applicant and the appropriate county authority,  
15 the appropriate county authority shall issue a final decision no  
16 later than six months after receipt of a properly filed and  
17 completed application under section 205-A.

18 (b) A geothermal resources development permit shall be  
19 issued if the appropriate county authority finds that the  
20 proposed geothermal resources development would not:



- 1 (1) Have unreasonable adverse health, environmental, or  
2 socioeconomic effects on residents and surrounding  
3 property; and
- 4 (2) Unreasonably burden public agencies to provide roads,  
5 streets, sewers, water, drainage, school improvements,  
6 and police and fire protection;
- 7 provided that the appropriate county authority may prescribe  
8 mitigating actions to be taken by the applicant to address any  
9 unreasonable effects or burdens as a condition of the permit  
10 approval.

11 **§205-G Final decisions; appeal.** (a) A final decision  
12 under section 205-F may be appealed on the record directly to  
13 the intermediate appellate court for final decision and shall  
14 not be subject to a contested case hearing under chapter 91.  
15 Section 91-14(b) and (g) shall govern the appeal,  
16 notwithstanding the lack of a contested case hearing on the  
17 matter.

18 (b) The record shall include:

- 19 (1) The application and all supporting documents,  
20 including reports, studies, affidavits, statements,  
21 and exhibits, if any;



- 1 (2) Staff recommendations submitted to the appropriate  
2 county authority in consideration of the application;
- 3 (3) Oral and written comments submitted at the public  
4 hearings;
- 5 (4) Written transcripts of the public hearings;
- 6 (5) A statement of relevant matters noticed by the members  
7 of the appropriate county authority at the public  
8 hearings;
- 9 (6) Any written decision of the appropriate county  
10 authority related to the application and public  
11 hearings; and
- 12 (7) Other documents required by the appropriate county  
13 authority of the applicant.

14 **§205-H Public hearings; transcript.** To ensure a complete  
15 record for appeal, the appropriate county authority shall  
16 provide a court reporter to produce a transcript of all public  
17 hearings under this part."

18 SECTION 2. Section 183C-6, Hawaii Revised Statutes, is  
19 amended by amending subsection (a) to read as follows:

20 "**§183C-6 Permits and site plan approvals.** (a) The  
21 department shall regulate land use in the conservation district  
22 by the issuance of permits[-]; provided that any application for



1 a geothermal resources development permit shall be in accordance  
2 with section 205-A."

3 SECTION 3. Section 205-2, Hawaii Revised Statutes, is  
4 amended by amending subsections (b), (c), and (d) to read as  
5 follows:

6 "(b) Urban districts shall include activities or uses as  
7 provided by ordinances or regulations of the county within which  
8 the urban district is situated.

9 In addition, urban districts shall include geothermal  
10 resources exploration and geothermal resources development, as  
11 defined under section 182-1, as permissible uses[-]; provided  
12 that for the development, operation, or both of a geothermal to  
13 electrical energy facility, a geothermal resources development  
14 permit shall be issued in accordance with part .

15 (c) Rural districts shall include activities or uses as  
16 characterized by low density residential lots of not more than  
17 one dwelling house per one-half acre, except as provided by  
18 county ordinance pursuant to section 46-4(c), in areas where  
19 "city-like" concentration of people, structures, streets, and  
20 urban level of services are absent, and where small farms are  
21 intermixed with low density residential lots except that within  
22 a subdivision, as defined in section 484-1, the commission for



1 good cause may allow one lot of less than one-half acre, but not  
2 less than eighteen thousand five hundred square feet, or an  
3 equivalent residential density, within a rural subdivision and  
4 permit the construction of one dwelling on such lot; provided  
5 that all other dwellings in the subdivision shall have a minimum  
6 lot size of one-half acre or 21,780 square feet. Such petition  
7 for variance may be processed under the special permit  
8 procedure. These districts may include contiguous areas which  
9 are not suited to low density residential lots or small farms by  
10 reason of topography, soils, and other related characteristics.  
11 Rural districts shall also include golf courses, golf driving  
12 ranges, and golf-related facilities.

13 In addition to the uses listed in this subsection, rural  
14 districts shall include geothermal resources exploration and  
15 geothermal resources development, as defined under section  
16 182-1, as permissible uses~~[r]~~; provided that for the  
17 development, operation, or both of a geothermal to electrical  
18 energy facility, a geothermal resources development permit shall  
19 be issued in accordance with part \_\_\_\_\_.

20 (d) ~~[Agricultural]~~ Permissible uses in agricultural  
21 districts shall include:



- 1           (1) Activities or uses as characterized by the cultivation  
2           of crops, crops for bioenergy, orchards, forage, and  
3           forestry;
- 4           (2) Farming activities or uses related to animal husbandry  
5           and game and fish propagation;
- 6           (3) Aquaculture, which means the production of aquatic  
7           plant and animal life within ponds and other bodies of  
8           water;
- 9           (4) Wind generated energy production for public, private,  
10          and commercial use;
- 11          (5) Biofuel production, as described in section  
12          205-4.5(a)(16), for public, private, and commercial  
13          use;
- 14          (6) Solar energy facilities; provided that:
- 15            (A) This paragraph shall apply only to land with soil  
16            classified by the land study bureau's detailed  
17            land classification as overall (master)  
18            productivity rating class B, C, D, or E; and
- 19            (B) Solar energy facilities placed within land with  
20            soil classified as overall productivity rating  
21            class B or C shall not occupy more than ten per



1 cent of the acreage of the parcel, or twenty  
2 acres of land, whichever is lesser;

3 (7) Bona fide agricultural services and uses that support  
4 the agricultural activities of the fee or leasehold  
5 owner of the property and accessory to any of the  
6 above activities, regardless of whether conducted on  
7 the same premises as the agricultural activities to  
8 which they are accessory, including farm dwellings as  
9 defined in section 205-4.5(a)(4), employee housing,  
10 farm buildings, mills, storage facilities, processing  
11 facilities, photovoltaic, biogas, and other small-  
12 scale renewable energy systems producing energy solely  
13 for use in the agricultural activities of the fee or  
14 leasehold owner of the property, agricultural-energy  
15 facilities as defined in section 205-4.5(a)(17),  
16 vehicle and equipment storage areas, and plantation  
17 community subdivisions as defined in section  
18 205-4.5(a)(12);

19 (8) Wind machines and wind farms;

20 (9) Small-scale meteorological, air quality, noise, and  
21 other scientific and environmental data collection and  
22 monitoring facilities occupying less than one-half



1 acre of land; provided that these facilities shall not  
2 be used as or equipped for use as living quarters or  
3 dwellings;

4 (10) Agricultural parks;

5 (11) Agricultural tourism conducted on a working farm, or a  
6 farming operation as defined in section 165-2, for the  
7 enjoyment, education, or involvement of visitors;  
8 provided that the agricultural tourism activity is  
9 accessory and secondary to the principal agricultural  
10 use and does not interfere with surrounding farm  
11 operations; and provided further that this paragraph  
12 shall apply only to a county that has adopted  
13 ordinances regulating agricultural tourism under  
14 section 205-5;

15 (12) Agricultural tourism activities, including overnight  
16 accommodations of twenty-one days or less, for any one  
17 stay within a county; provided that this paragraph  
18 shall apply only to a county that includes at least  
19 three islands and has adopted ordinances regulating  
20 agricultural tourism activities pursuant to section  
21 205-5; provided further that the agricultural tourism  
22 activities coexist with a bona fide agricultural



1 activity. For the purposes of this paragraph, "bona  
2 fide agricultural activity" means a farming operation  
3 as defined in section 165-2;

4 (13) Open area recreational facilities;

5 [+](14)[+] Geothermal resources exploration and geothermal  
6 resources development, as defined under section 182-1;  
7 [~~and~~] provided that for the development, operation, or  
8 both of a geothermal to electrical energy facility, a  
9 geothermal resources development permit shall be  
10 issued in accordance with part ; and

11 [+](15)[+] Agricultural-based commercial operations, including:

12 (A) A roadside stand that is not an enclosed  
13 structure, owned and operated by a producer for  
14 the display and sale of agricultural products  
15 grown in Hawaii and value-added products that  
16 were produced using agricultural products grown  
17 in Hawaii;

18 (B) Retail activities in an enclosed structure owned  
19 and operated by a producer for the display and  
20 sale of agricultural products grown in Hawaii,  
21 value-added products that were produced using  
22 agricultural products grown in Hawaii, logo items



1 related to the producer's agricultural  
2 operations, and other food items; and  
3 (C) A retail food establishment owned and operated by  
4 a producer and permitted under [†]title 11, [†]  
5 chapter 12 of the rules of the department of  
6 health that prepares and serves food at retail  
7 using products grown in Hawaii and value-added  
8 products that were produced using agricultural  
9 products grown in Hawaii.

10 The owner of an agricultural-based commercial  
11 operation shall certify, upon request of an officer or  
12 agent charged with enforcement of this chapter under  
13 section 205-12, that the agricultural products  
14 displayed or sold by the operation meet the  
15 requirements of this paragraph.

16 Agricultural districts shall not include golf courses and golf  
17 driving ranges, except as provided in section 205-4.5(d).

18 Agricultural districts include areas that are not used for, or  
19 that are not suited to, agricultural and ancillary activities by  
20 reason of topography, soils, and other related characteristics."

21 SECTION 4. Section 205-4.5, Hawaii Revised Statutes, is  
22 amended by amending subsection (a) to read as follows:



1           "(a) Within the agricultural district, all lands with soil  
2 classified by the land study bureau's detailed land  
3 classification as overall (master) productivity rating class A  
4 or B shall be restricted to the following permitted uses:

5           (1) Cultivation of crops, including crops for bioenergy,  
6           flowers, vegetables, foliage, fruits, forage, and  
7           timber;

8           (2) Game and fish propagation;

9           (3) Raising of livestock, including poultry, bees, fish,  
10           or other animal or aquatic life that are propagated  
11           for economic or personal use;

12           (4) Farm dwellings, employee housing, farm buildings, or  
13           activities or uses related to farming and animal  
14           husbandry. "Farm dwelling", as used in this  
15           paragraph, means a single-family dwelling located on  
16           and used in connection with a farm, including clusters  
17           of single-family farm dwellings permitted within  
18           agricultural parks developed by the State, or where  
19           agricultural activity provides income to the family  
20           occupying the dwelling;

21           (5) Public institutions and buildings that are necessary  
22           for agricultural practices;



- 1 (6) Public and private open area types of recreational  
2 uses, including day camps, picnic grounds, parks, and  
3 riding stables, but not including dragstrips,  
4 airports, drive-in theaters, golf courses, golf  
5 driving ranges, country clubs, and overnight camps;
- 6 (7) Public, private, and quasi-public utility lines and  
7 roadways, transformer stations, communications  
8 equipment buildings, solid waste transfer stations,  
9 major water storage tanks, and appurtenant small  
10 buildings such as booster pumping stations, but not  
11 including offices or yards for equipment, material,  
12 vehicle storage, repair or maintenance, treatment  
13 plants, corporation yards, or other similar  
14 structures;
- 15 (8) Retention, restoration, rehabilitation, or improvement  
16 of buildings or sites of historic or scenic interest;
- 17 (9) Agricultural-based commercial operations as described  
18 in section [+]205-2(d)(15)[+];
- 19 (10) Buildings and uses, including mills, storage, and  
20 processing facilities, maintenance facilities,  
21 photovoltaic, biogas, and other small-scale renewable  
22 energy systems producing energy solely for use in the



1 agricultural activities of the fee or leasehold owner  
2 of the property, and vehicle and equipment storage  
3 areas that are normally considered directly accessory  
4 to the above-mentioned uses and are permitted under  
5 section 205-2(d);

6 (11) Agricultural parks;

7 (12) Plantation community subdivisions, which as used in  
8 this chapter means an established subdivision or  
9 cluster of employee housing, community buildings, and  
10 agricultural support buildings on land currently or  
11 formerly owned, leased, or operated by a sugar or  
12 pineapple plantation; provided that the existing  
13 structures may be used or rehabilitated for use, and  
14 new employee housing and agricultural support  
15 buildings may be allowed on land within the  
16 subdivision as follows:

17 (A) The employee housing is occupied by employees or  
18 former employees of the plantation who have a  
19 property interest in the land;

20 (B) The employee housing units not owned by their  
21 occupants shall be rented or leased at affordable  
22 rates for agricultural workers; or



1 (C) The agricultural support buildings shall be  
2 rented or leased to agricultural business  
3 operators or agricultural support services;

4 (13) Agricultural tourism conducted on a working farm, or a  
5 farming operation as defined in section 165-2, for the  
6 enjoyment, education, or involvement of visitors;  
7 provided that the agricultural tourism activity is  
8 accessory and secondary to the principal agricultural  
9 use and does not interfere with surrounding farm  
10 operations; and provided further that this paragraph  
11 shall apply only to a county that has adopted  
12 ordinances regulating agricultural tourism under  
13 section 205-5;

14 (14) Agricultural tourism activities, including overnight  
15 accommodations of twenty-one days or less, for any one  
16 stay within a county; provided that this paragraph  
17 shall apply only to a county that includes at least  
18 three islands and has adopted ordinances regulating  
19 agricultural tourism activities pursuant to section  
20 205-5; provided further that the agricultural tourism  
21 activities coexist with a bona fide agricultural  
22 activity. For the purposes of this paragraph, "bona



1           fide agricultural activity" means a farming operation  
2           as defined in section 165-2;

3           (15) Wind energy facilities, including the appurtenances  
4           associated with the production and transmission of  
5           wind generated energy; provided that the wind energy  
6           facilities and appurtenances are compatible with  
7           agriculture uses and cause minimal adverse impact on  
8           agricultural land;

9           (16) Biofuel processing facilities, including the  
10          appurtenances associated with the production and  
11          refining of biofuels that is normally considered  
12          directly accessory and secondary to the growing of the  
13          energy feedstock; provided that biofuels processing  
14          facilities and appurtenances do not adversely impact  
15          agricultural land and other agricultural uses in the  
16          vicinity.

17                   For the purposes of this paragraph:

18                   "Appurtenances" means operational infrastructure  
19                   of the appropriate type and scale for economic  
20                   commercial storage and distribution, and other similar  
21                   handling of feedstock, fuels, and other products of  
22                   biofuel processing facilities.



1 "Biofuel processing facility" means a facility  
2 that produces liquid or gaseous fuels from organic  
3 sources such as biomass crops, agricultural residues,  
4 and oil crops, including palm, canola, soybean, and  
5 waste cooking oils; grease; food wastes; and animal  
6 residues and wastes that can be used to generate  
7 energy;

8 (17) Agricultural-energy facilities, including  
9 appurtenances necessary for an agricultural-energy  
10 enterprise; provided that the primary activity of the  
11 agricultural-energy enterprise is agricultural  
12 activity. To be considered the primary activity of an  
13 agricultural-energy enterprise, the total acreage  
14 devoted to agricultural activity shall be not less  
15 than ninety per cent of the total acreage of the  
16 agricultural-energy enterprise. The agricultural-  
17 energy facility shall be limited to lands owned,  
18 leased, licensed, or operated by the entity conducting  
19 the agricultural activity.

20 As used in this paragraph:

21 "Agricultural activity" means any activity  
22 described in paragraphs (1) to (3) of this subsection.



1 "Agricultural-energy enterprise" means an  
2 enterprise that integrally incorporates an  
3 agricultural activity with an agricultural-energy  
4 facility.

5 "Agricultural-energy facility" means a facility  
6 that generates, stores, or distributes renewable  
7 energy as defined in section 269-91 or renewable fuel  
8 including electrical or thermal energy or liquid or  
9 gaseous fuels from products of agricultural activities  
10 from agricultural lands located in the State.

11 "Appurtenances" means operational infrastructure  
12 of the appropriate type and scale for the economic  
13 commercial generation, storage, distribution, and  
14 other similar handling of energy, including equipment,  
15 feedstock, fuels, and other products of agricultural-  
16 energy facilities;

17 (18) Construction and operation of wireless communication  
18 antennas; provided that, for the purposes of this  
19 paragraph, "wireless communication antenna" means  
20 communications equipment that is either freestanding  
21 or placed upon or attached to an already existing  
22 structure and that transmits and receives



1           electromagnetic radio signals used in the provision of  
2           all types of wireless communications services;  
3           provided further that nothing in this paragraph shall  
4           be construed to permit the construction of any new  
5           structure that is not deemed a permitted use under  
6           this subsection;

7           (19) Agricultural education programs conducted on a farming  
8           operation as defined in section 165-2, for the  
9           education and participation of the general public;  
10          provided that the agricultural education programs are  
11          accessory and secondary to the principal agricultural  
12          use of the parcels or lots on which the agricultural  
13          education programs are to occur and do not interfere  
14          with surrounding farm operations. For the purposes of  
15          this section, "agricultural education programs" means  
16          activities or events designed to promote knowledge and  
17          understanding of agricultural activities and practices  
18          conducted on a farming operation as defined in section  
19          165-2;

20          (20) Solar energy facilities that do not occupy more than  
21          ten per cent of the acreage of the parcel, or twenty  
22          acres of land, whichever is lesser; provided that this



1 use shall not be permitted on lands with soil  
2 classified by the land study bureau's detailed land  
3 classification as overall (master) productivity rating  
4 class A; or

5 [†] (21) [†] Geothermal resources exploration and geothermal  
6 resources development, as defined under section  
7 182-1[-]; provided that for the development,  
8 operation, or both of a geothermal to electrical  
9 energy facility, a geothermal resources development  
10 permit shall be issued in accordance with part ."

11 SECTION 5. Section 205-5, Hawaii Revised Statutes, is  
12 amended by amending subsection (c) to read as follows:

13 "(c) Unless authorized by special permit issued pursuant  
14 to this chapter, only the following uses shall be permitted  
15 within rural districts:

- 16 (1) Low density residential uses;  
17 (2) Agricultural uses;  
18 (3) Golf courses, golf driving ranges, and golf-related  
19 facilities;  
20 (4) Public, quasi-public, and public utility facilities;  
21 and



1           (5) Geothermal resources exploration and geothermal  
2           resources development, as defined under section 182-  
3           1[-]; provided that for the development, operation, or  
4           both of a geothermal to electrical energy facility, a  
5           geothermal resources development permit shall be  
6           issued in accordance with part \_\_\_\_\_.

7           In addition, the minimum lot size for any low density  
8           residential use shall be one-half acre and there shall be but  
9           one dwelling house per one-half acre, except as provided for in  
10          section 205-2."

11          SECTION 6. In codifying the new part and sections added by  
12          section 1 of this Act, the revisor of statutes shall substitute  
13          an appropriate part number and section numbers for the letters  
14          used in designating the new sections in this Act.

15          SECTION 7. Statutory material to be repealed is bracketed  
16          and stricken. New statutory material is underscored.

17          SECTION 8. This Act shall take effect on July 1, 2020.



**Report Title:**

Geothermal Resources Development; Permits

**Description:**

Establishes a permitting process for geothermal resources development within agricultural, rural, and urban districts. Establishes application requirements for geothermal resources development within conservation districts. Effective 07/01/2020. (HD2)

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

