

February 12, 1988

**DRAFT**

MEMORANDUM

TO: Honorable Richard M. Hatsuura, Chairman  
Senate Committee on Agriculture, Energy & Ocean Resources

FROM: William W. Paty, Chairperson  
Board of Land and Natural Resources

SUBJECT: Senate Bill No. 3182, Relating to the Development and  
Use of Geothermal Energy

The purpose of Senate Bill No. 3182 is to appropriate an undetermined sum out of the general revenues for fiscal year 1988-89 for the development of geothermal resources, a cable system, and a comprehensive permit system.

The Department of Land and Natural Resources recognizes the desirability of geothermal development in Hawaii. The Department feels that the existing procedures of State and County governments have admirably facilitated the exploration and development of geothermal resources by the private sector. The private sector has proceeded slowly with geothermal development in Hawaii largely due to economic constraints imposed by the low market price of oil and environmental concerns, rather than to existing governmental procedures which have been updated in close coordination with the interested private sector companies. The Bill's goal to transfer functions and develop a comprehensive permit system incorporating all State and County permitting functions may delay the geothermal development already taking place (including private sector plans for a 124 megawatt geothermal power plant), if new rules must be adopted and such adoption is challenged.

The Department of Land and Natural Resources supports the intent of Senate Bill No. 3182 to streamline existing permit procedures.

A BILL FOR AN ACT

RELATING TO THE DEVELOPMENT AND USE OF GEOTHERMAL ENERGY.

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

1           SECTION 1. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to  
3 read as follows:

4                                   "CHAPTER

5   GEOTHERMAL AND CABLE SYSTEM

6   DEVELOPMENT PERMITTING ACT OF 1988

7           §     -1 This chapter shall be known and may be cited  
8 as the "Geothermal and Cable System Development Permitting  
9 Act of 1988."

10          §     -2 Findings and declaration of purpose. The  
11 legislature hereby finds and declares that:

- 12           (1) The development of Hawaii's geothermal resources,  
13               principally located on the Island of Hawaii,  
14               represents a substantial and long-term source of  
15               indigenous renewable alternate energy that could  
16               be used to generate electric energy to meet the

1 State's electric energy needs and concurrently  
2 help to reduce the State's need for imported  
3 fossil fuels;

4 (2) The State has deemed it appropriate that the private  
5 sector should develop such geothermal resources, and,  
6 to that end, has sought to encourage private sector  
7 exploration and development of such geothermal  
8 resources;

9 (3) The private sector companies seeking to develop such  
10 geothermal resources are, however, unable or unwilling  
11 to expend the substantial amounts of funds needed to  
12 develop these resources to their full extent without an  
13 assured and sufficiently large market for the electric  
14 energy to be generated therefrom, and the present and  
15 projected electric energy demand on the Island of  
16 Hawaii does not provide such an assured and  
17 sufficiently large market;

18 (4) The greatest present and projected demand for such  
19 geothermally-generated electric energy is located on  
20 the Island of Oahu;

21 (5) The State, with the support and assistance of the  
22 Federal and County of Hawaii governments, has been  
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1 exploring for several years the technical, engineering,  
2 economic and financial feasibility of an inter-island  
3 deep water electrical transmission cable system that  
4 would be capable of transmitting such geothermally-  
5 generated electric energy from the Island of Hawaii to  
6 the Island of Maui and Oahu, and has concluded that  
7 such a cable system is both feasible and desirable;

8 (6) The development of such a cable system will not be  
9 undertaken without the firm assurance that a sufficient  
10 amount of geothermally-generated electric energy will  
11 be continuously available to be transmitted through a  
12 cable system once it becomes operational;

13 (7) The fundamental interrelationship between the  
14 development of such geothermal resources and a cable  
15 system and the magnitude of the cost to undertake each  
16 of these developments clearly indicate that neither  
17 will be undertaken without the firm assurance that the  
18 other will also be undertaken in a synchronized and  
19 coordinated manner to enable both developments to be  
20 completed substantially concurrently, thereby ensuring  
21 that revenues will be available to begin amortizing the  
22 costs of each of these developments;

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- 1 (8) A major and fundamental impediment to the development  
2 of each of such geothermal resources and a cable system  
3 is the diverse array of Federal, State and County land  
4 use, planning, environmental and other related laws and  
5 regulations that currently control the undertaking of  
6 all commercial projects in the State;
- 7 (9) While many of these controls attempt to ensure that  
8 commercial development projects in general are  
9 undertaken in a manner consistent with land use,  
10 planning, environmental and other public policies, many ( (
- 11 of these specific laws, regulations and controls in  
12 most instances are, or tend to be, repetitive,  
13 duplicate and uncoordinated, and thus consume  
14 unnecessary amounts of time, effort and expense and  
15 result at best in increases in the cost of new projects  
16 and at worst in abandonment of needed projects;
- 17 (10) The State and counties have, to a limited extent,  
18 sought to ameliorate certain of these impediments  
19 through the enactment or adoption of measures to  
20 improve the coordination and efficiency of land use and  
21 planning controls and specifically to facilitate the  
22 development of such geothermal resources;
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1 (11) Notwithstanding these efforts, the complexities, the  
2 magnitude in scope and cost, the fundamental  
3 interrelationship between the development of such  
4 geothermal resources and a cable system, the inherent  
5 requirement for the coordinated development of the  
6 geothermal resources and a cable system, the  
7 substantial length of time required to undertake and  
8 complete both developments, and the requirements for  
9 private and possibly public financing for both  
10 developments cannot be effectively handled and  
11 accommodated by these existing laws, regulations and  
12 controls;

13 (12) The development of such geothermal resources and a  
14 cable system, both individually and collectively, would  
15 represent the largest and most complex development ever  
16 undertaken in the State;

17 (13) The private sector companies that have been engaged in  
18 developing the State's geothermal resources and other  
19 such companies that have expressed strong interest in  
20 developing a cable system have all emphasized the need  
21 for a comprehensive permitting system that can provide  
22 for and facilitate the coordinated development of both

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1 such geothermal resources and a cable system, thus  
2 providing such companies with the firm assurances that  
3 they require to commit the substantial amounts of  
4 funds, time and effort necessary to undertake such  
5 developments, while at the same time ensuring the  
6 fulfillment of fundamental State and county land use  
7 and planning policies;

8 (14) Several of such private sector companies have expressed  
9 an interest in undertaking, through a consortium of  
10 private companies or otherwise, the development of the  
11 geothermal resources and a cable system as a combined  
12 single project and have further expressed the desire  
13 that a comprehensive permitting system be established  
14 that could accommodate this development of a combined  
15 single project;

16 (15) The development of such geothermal resources and a  
17 cable system are in furtherance of the State's  
18 policies, as expressed in the State Plan and elsewhere,  
19 to develop the State's indigenous renewable alternate  
20 energy resources and to decrease the State's dependency  
21 on imported fossil fuels; and

1 (16) It is declared as a matter of legislative determination  
2 that the development of the State's geothermal  
3 resources and the related cable system cannot  
4 effectively be undertaken and accomplished under  
5 existing laws, regulations and controls, and that the  
6 development of such geothermal resources and the cable  
7 system being necessary to and proper to attain the  
8 public policies of the State heretofore recited, a  
9 comprehensive permitting system for the development of  
10 the State's geothermal resources and the cable system  
11 should be established by an act of the legislature.

12 § -3 Definitions. As used in this chapter when the  
13 context otherwise requires:

14 "Agency" means any department, office, board or commission  
15 of the State or a county government which is a part of the  
16 executive branch of that government, but does not include any  
17 public corporation or authority that may be established by the  
18 legislature for the purposes of the project.

19 "Applicant" means any person who, pursuant to statute,  
20 ordinance, rule or regulation requests approval or a permit for  
21 the proposed project.

22 "Approval" means a discretionary consent required from an  
23 agency prior to the actual implementation of the project.



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1 "Department" means the department of land and natural  
2 resources or any successor thereto.

3 "Discretionary consent" means a consent, sanction or  
4 recommendation from an agency for which judgment and free will  
5 may be exercised by the issuing agency, as distinguished from a  
6 ministerial consent.

7 "Environmental impact statement" means an informational  
8 document prepared in compliance with chapter 343.

9 "Inter-agency group" means the body established pursuant to  
10 § -6 of this chapter.

11 "Lead agency" means the department.

12 "Permit" means any license, permit, certificate,  
13 certification, approval, compliance schedule or other similar  
14 document or decision pertaining to any regulatory or management  
15 program which is related to the protection, conservation, use of,  
16 or interference with the natural resources of land, air or water  
17 in the State, and which is required prior to or in connection  
18 with the undertaking of the project.

19 "Person" includes any individual, partnership, firm,  
20 association, trust, estate, corporation, joint venture,  
21 consortium, any public corporation or authority that may be  
22 established by the legislature for the purposes of the project,  
23 or other legal entity other than an agency.

1 "Project" means the commercial development, construction,  
2 installation, financing, operation, maintenance, repair and  
3 replacement, including without limitation all applicable  
4 exploratory, testing and predevelopment activities related to the  
5 foregoing, of (i) a geothermal power plant or plants, including  
6 all associated equipment, facilities, wells and transmission  
7 lines, on the Island of Hawaii for the primary purpose of  
8 generating electric energy for transmission to the Island of Oahu  
9 through the cable system, and (ii) an inter-island deep water  
10 electrical transmission cable system, including all land-based  
11 transmission lines and other ancillary facilities, to transmit  
12 geothermally-generated electric energy from the Island of Hawaii  
13 to the Island of Oahu, whether or not the cable system is used to  
14 deliver electric energy to any intervening point. Nothing in  
15 this definition shall preclude the sale of a portion of the  
16 electric energy generated by the geothermal plant or plants to  
17 the electric utility serving any one or more of the Islands of  
18 Hawaii, Maui, Molokai or Lanai.

19 **§ -4 Comprehensive permit system.** (a) The department is  
20 designated as the lead agency for the purposes of this chapter  
21 and, in addition to its existing functions, shall establish and  
22 administer the comprehensive permit system provided for in this  
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1 chapter, which shall incorporate all State and county permitting  
2 functions involved in the development of the project which are  
3 transferred by this chapter to the department to effectuate the  
4 purposes of this chapter.

5 (b) The comprehensive permit system shall include:

6 (1) A master consolidated permit application and review  
7 process for the project, which shall incorporate a list  
8 of all permits required for the project; the role and  
9 functions of the department as the lead agency and the  
10 inter-agency group; all permit review and approval  
11 deadlines; a schedule for meetings and actions of the  
12 inter-agency group; a mechanism to resolve any  
13 conflicts that may arise between or among the  
14 department and any other agencies, including any  
15 Federal agencies, as a result of conflicting permit,  
16 approval or other requirements, procedures or agency  
17 perspectives; and any other desirable or necessary  
18 administrative or legislative actions; and

19 (2) A master consolidated permit application form to be  
20 used for the project for all permitting purposes.

21 (c) The department shall have primary jurisdiction over the  
22 permitting requirements and procedures for the project; shall  
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1 perform all of the permitting functions for which it is currently  
2 responsible and which are transferred to it by this chapter for  
3 the purposes of the project; and shall coordinate and consolidate  
4 all required permit reviews by other agencies, and to the fullest  
5 extent possible by all Federal agencies, having jurisdiction over  
6 any aspect of the project.

7 § -5 Consolidated permit application and review process.

8 (a) The department shall serve as the lead agency for the  
9 consolidated permit application and review process established  
10 pursuant to section -4(b)(1) and as set forth in this section for  
11 the project. All agencies whose permitting functions are not  
12 transferred by this chapter to the department for the purposes of  
13 the project are required to participate in the master  
14 consolidated permit application and review process.

15 (b) Notwithstanding any other law, ordinance, rule or  
16 regulation to the contrary, the department and each State and  
17 county agency whose permitting functions are not transferred by  
18 this chapter to the department for the purposes of the project  
19 shall complete all of their respective permitting functions for  
20 the purposes of the project, pursuant to the provisions of this  
21 chapter, within sixty days of the receipt of the master  
22 consolidated permit application for the proposed project; except  
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1 that the department or any such agency shall have good cause to  
2 exceed such sixty-day time limit if the permit-issuing agency  
3 must rely on another agency, including any Federal agency, for  
4 all or part of the permit processing and the delay is caused by  
5 such other agency.

6 (c) The procedure shall be as follows:

7 (1) The applicant shall submit the master consolidated  
8 permit application using the master consolidated permit  
9 application form, which shall include such data about  
10 the proposed project that the department deems  
11 necessary to fulfil the purposes of this chapter and to  
12 determine which other agencies may have jurisdiction  
13 over any aspect of the proposed project.

14 (2) Upon receipt of the master consolidated permit  
15 application, the department shall notify all State and  
16 county agencies whose permitting functions are not  
17 transferred by this chapter to the department for the  
18 purposes of the project, as well as all Federal  
19 agencies, which the department determines may have  
20 jurisdiction over any aspect of the proposed project as  
21 set forth in such application, and shall invite the  
22 Federal agencies so notified to participate in the  
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1 consolidated application process. Such State and  
2 county agencies, and those Federal agencies which  
3 accept such invitation, shall thereafter participate in  
4 the master consolidated permit application and review  
5 process.

6 (3) The applicant shall designate its representative to  
7 serve on the master consolidated permit application and  
8 review team, and the representatives of such State,  
9 county and Federal agencies shall be those  
10 representatives in the inter-agency group.

11 (4) The representatives of the department and such State,  
12 county and Federal agencies and the applicant shall  
13 develop and sign a joint agreement among themselves  
14 which shall identify the members of the master  
15 consolidated permit application and review team,  
16 specify the regulatory and review responsibilities of  
17 the department and each such State, county and Federal  
18 agency and set forth the responsibilities of the  
19 applicant, and establish a timetable for regulatory  
20 review, the conduct of necessary hearings, the  
21 preparation of an environ-mental impact statement if  
22 necessary, and other actions required to minimize  
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1 duplication and coordinate and consolidate the  
2 activities of the applicant, the department and such  
3 State, county and Federal agencies.

4 (5) The department, each such State and county agency whose  
5 permitting functions are not transferred by this  
6 chapter to the department for the purposes of the  
7 project and each Federal agency shall issue its own  
8 permit or approval based upon its own jurisdiction.  
9 The consolidated application process shall not affect  
10 or invalidate the jurisdiction or authority of any  
11 agency under existing law, except to the extent that  
12 the permitting functions of any State or county agency  
13 are transferred by this chapter to the department for  
14 the purposes of the project.

15 (6) The applicant must apply directly to each Federal  
16 agency which does not participate in the master  
17 consolidated permit application and review process.

18 (7) The department shall review for completeness and  
19 thereafter process each master consolidated permit  
20 application submitted by an applicant for the project,  
21 and shall monitor the processing of the permit  
22 application by such State and county agencies whose  
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1           permitting functions are not transferred by this  
2           chapter to the department for the purposes of the  
3           project. The department shall coordinate, and seek to  
4           consolidate where possible, the permitting functions,  
5           and monitor and assist in the permitting functions  
6           conducted by all such agencies, and to the fullest  
7           extent possible the Federal agencies, in accordance  
8           with the comprehensive permit system.

9           (8) Once the processing of each master consolidated permit  
10          application has been completed and the permit requested  
11          has been issued to the applicant, the department shall  
12          there-after monitor the applicant's work undertaken  
13          pursuant to such permit to ensure the applicant's  
14          compliance with the terms and conditions of such permit  
15          and to assist, as appropriate, the applicant in its  
16          project.

17          §    -6 Inter-agency group. (a) The department shall  
18          establish an inter-agency group comprised of those State and  
19          county agencies whose permitting functions are not transferred by  
20          this chapter to the department for the purposes of the project  
21          and which have jurisdiction over any aspect of the project. Each  
22          such agency shall designate an appropriate representative to  
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1 serve on the inter-agency group as part of such representative's  
2 official responsibilities. The inter-agency group shall perform  
3 liaison and assisting functions as required by this chapter and  
4 the department. The department shall invite and encourage the  
5 appropriate Federal agencies having jurisdiction over any aspect  
6 of the project to participate in the inter-agency group.

7 (b) The department and such agencies shall cooperate with  
8 such Federal agencies to the fullest extent possible to minimize  
9 duplication between and, where possible, promote consolidation of  
10 Federal and State requirements. Such cooperation, to the fullest  
11 extent possible, shall include, among other things, joint  
12 environmental impact statements with concurrent public review and  
13 processing at both levels of government. Where Federal law has  
14 requirements that are in addition to but not in conflict with  
15 State law requirements, the department and the agencies shall  
16 cooperate in fulfilling, to the fullest extent possible, their  
17 requirements such that all documents shall comply with all  
18 applicable laws.

19 (c) If the legislature establishes any public corporation  
20 or authority for the purposes of the project, then such public  
21 corporation or authority shall, upon its establishment, be a  
22 member of the inter-agency group.

1           §    -7 Streamlining activities. In administering the  
2 comprehensive permit system, the department shall:

- 3           (1) Monitor all permit applications submitted under this  
4 chapter and the processing thereof on an ongoing basis  
5 to determine the source of any inefficiencies, delays  
6 and duplications encountered and the status of such  
7 permits in process;
- 8           (2) Adopt and implement needed streamlining measures  
9 including, but not limited to, measures defined by the  
10 department and/or the inter-agency group in  
11 consultation with those agencies whose permitting  
12 functions are not transferred by this chapter to the  
13 department for the purposes of the project and with  
14 members of the public;
- 15           (3) Design, in addition to the master consolidated permit  
16 application form, applications, checklists and other  
17 forms essential to the implementation of the  
18 comprehensive permit process;
- 19           (4) Seek by legislative or administrative action the  
20 elimination of duplicative or redundant permit  
21 requirements, including any hearing procedures, and  
22 consolidate them where possible;
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1 (5) Ensure that all standards used in any agency decision-  
2 making for any required permits are clear, explicit and  
3 precise; and

4 (6) Incorporate, where possible, rebuttable presumptions  
5 into the comprehensive permit process.

6 **§ -8 Information services.** The department shall:

7 (1) Operate a permit information and coordination center  
8 during normal working hours, which would provide  
9 guidance to potential applicants for the project with  
10 regard to the permits and procedures that may apply to  
11 the project; and

12 (2) Maintain and update a repository of the laws, rules and  
13 regulations, procedures, permit requirements and  
14 criteria of State and county agencies whose permitting  
15 functions are not transferred by this chapter to the  
16 department for the purposes of the project and which  
17 have control or regulatory power over any aspect of the  
18 project and of Federal agencies having jurisdiction  
19 over any aspect of the project.

20 **§ -9 Construction of the chapter; rules.** This chapter  
21 shall be construed liberally to effectuate its purposes, and the  
22 department shall have all powers which may be necessary to carry  
23 out the purposes of this chapter, including the authority to  
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1 make, amend and repeal rules to implement this chapter. The  
2 adoption, amendment and repeal of all rules shall be subject to  
3 chapter 91.

4       **§ -10 Transfer of functions.** (a) Those functions  
5 identified below insofar as they relate to the permit  
6 application, review, processing, issuance and monitoring of State  
7 and county laws, ordinances, rules and regulations and to the  
8 enforcement of terms, conditions and stipulations of permits as  
9 defined in section -3 and other authorizations issued by State  
10 and county agencies with respect to the development,  
11 construction, installation, operation, maintenance, repair and  
12 replacement of the project, or any portion or portions thereof,  
13 are transferred to the department. This transfer shall vest in  
14 the department exclusive responsibility for the permit and  
15 enforcement functions described above of all State and county  
16 laws, ordinances, rules and regulations relevant in any manner to  
17 the development, construction, installation, operation,  
18 maintenance, repair and replacement of the project, or any  
19 portion or portions thereof. With respect to each of the  
20 statutory authorities cited below, the transferred functions  
21 include all enforcement functions of the given agencies or their  
22 officials under the statute cited as may be related to the  
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1 enforcement of such terms, conditions and stipulations of  
2 permits, including but not limited to the specific sections of  
3 the statute cited. "Enforcement", for purposes of this transfer  
4 of functions, includes monitoring and any other compliance or  
5 oversight activities reasonably related to the enforcement  
6 process. These transferred functions include:

7 (1) Such functions of the land use commission related to:  
8 district boundary amendments as set forth in sections  
9 205-3.1 et seq.; changes in zoning as set forth in  
10 section 205.5; and shoreline setback approvals as set  
11 forth in part II of chapter 205; and

12 (2) Such permit approval and enforcement functions of the  
13 director of transportation or other appropriate  
14 official or entity in the department of transportation  
15 related to permits or approvals issued for the use of  
16 commercial activities in or affecting the shore waters  
17 and shores of the State under chapter 266.

18 (b) In performing the functions transferred to it by the  
19 section, the department shall follow existing laws, ordinances,  
20 rules and regulations as closely as is consistent with standards  
21 meeting minimum requirements of good design, health, safety and  
22 coordinated development.  
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1 (c) Nothing in this section 10 shall be construed to  
2 relieve an applicant from the laws, ordinances, rules and  
3 regulations of any agency whose functions are not transferred by  
4 this chapter to the department for the purposes of the project.

5 (d) The provisions of this section shall not apply to any  
6 permit issued by the public utilities commission under chapter  
7 269.

8 (e) Notwithstanding any other provision of this chapter,  
9 the provisions of this section shall take effect on a date that  
10 is one year from the date of the enactment of this chapter.

11 § -11 Annual report. The department shall submit an  
12 annual report to the governor and the legislature on its work  
13 during the preceding year, the development status of the project,  
14 any problems encountered and any legislative actions that may be  
15 needed further to improve the comprehensive permit process and  
16 implement the intent of this chapter.

17 § -12 Severability. If any provision of this chapter or  
18 the application thereof to any person or circumstances is held  
19 invalid, such invalidity shall not affect other provisions or  
20 applications of this chapter which can be given effect without  
21 the invalid provision or application, and to this end the  
22 provisions of this chapter are declared to be severable.

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1 § -13 Exemptions from certain State laws. In order to  
2 promote the purposes of this chapter all persons hired by the  
3 department to effectuate this chapter are excepted from  
4 provisions of chapters 76, 77, and 89."

5 SECTION 2. Appropriations. There is appropriated out of  
6 the general revenues of the State of Hawaii the sum of \$275,000,  
7 or so much thereof as may be necessary for fiscal year 1988-1989,  
8 to carry out the purposes of this chapter. The sum appropriated  
9 shall be expended by the department of land and natural resources  
10 for the purposes of this Act. Any unexpended or unencumbered  
11 balance of any appropriation made by this chapter as of the close  
12 of business on June 30, 1989, shall lapse into the general fund.

13 SECTION 3. This chapter shall take effect upon its  
14 approval, but shall not apply to any applications filed prior to  
15 the effective date.  
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WATER RESOURCES & FLOOD CONTROL BRANCH  
Division of Water and Land Development

FROM: Geo. Mats DATE: 2-29-88 FILE IN: \_\_\_\_\_

TO: INITIAL: PLEASE: REMARKS:

- \_\_\_\_\_ G. MATSUMOTO
- \_\_\_\_\_ D. Lum
- ✓ \_\_\_\_\_ E. Sakoda
- \_\_\_\_\_ D. Nakano
- \_\_\_\_\_ M. Ohye
- \_\_\_\_\_ T. Nakama
- \_\_\_\_\_ R. Jinnai
- \_\_\_\_\_ S. Miyamoto
- \_\_\_\_\_ S. Samuels
- \_\_\_\_\_ S. Chow
- \_\_\_\_\_ D. Hamada
- \_\_\_\_\_ K. Oshiro
- \_\_\_\_\_ D. Stewart
- \_\_\_\_\_ M. Tagomori
- \_\_\_\_\_ G. Akita
- \_\_\_\_\_ L. Chang
- \_\_\_\_\_ S. Kokubun

- \_\_\_\_\_ See Me
- ✓ \_\_\_\_\_ Call
- \_\_\_\_\_ Review & Comment
- \_\_\_\_\_ Take Action
- \_\_\_\_\_ Investigate & Report
- \_\_\_\_\_ Draft Reply
- \_\_\_\_\_ Acknowledge Receipt
- \_\_\_\_\_ Type Draft
- \_\_\_\_\_ Type Final cc: \_\_\_\_\_
- \_\_\_\_\_ Xerox \_\_\_\_\_ copies
- \_\_\_\_\_ File
- \_\_\_\_\_ Mail

FOR YOUR

- \_\_\_\_\_ Approval
- \_\_\_\_\_ Signature
- \_\_\_\_\_ Information

• No hearing date yet for this  
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• Note that DLNR is now the  
responsible agency.

• With county permits deleted,  
our argument for non-support  
of the bill would be stronger —



*Water 724*

**1880**

STANDING COMMITTEE REPORT NO.

Honolulu, Hawaii

FEB 19

, 1988

*W.H. J.*

Honorable Richard S. H. Wong  
President of the Senate  
Fourteenth State Legislature  
Regular Session of 1988  
State of Hawaii

Sir:

Re: S.B. No. 3182

Your Committee on Agriculture, Energy and Ocean Resources, to which was referred S.B. No. 3182 entitled:

"A BILL FOR AN ACT RELATING TO THE DEVELOPMENT AND USE OF GEOTHERMAL ENERGY,"

begs leave to report as follows:

The purpose of this bill is to establish a comprehensive permit system relating to geothermal and cable system development.

This bill was submitted by the Administration upon the recommendation of the Governor's Advisory Board on the Underwater Cable Transmission Project concerning new legislation relating to the development and use of geothermal energy.

One of the major and fundamental impediments to the development of the geothermal resources on the island of Hawaii and the concurrent development of the cable system project that would move the generated electrical energy to the island of Oahu is the diverse array of Federal, State and County land use, planning, environmental and other related laws and regulations. This bill seeks to facilitate that permit process and thereby make the development of one of Hawaii's most significant energy sources more attractive to private developers.

Your Committee heard testimony from Hawaiian Electric Company, the Department of Business and Economic Development, the Mayor of the County of Hawaii, the Sierra Club, the Chamber of Commerce of Hawaii, the Sierra Club representatives of the University of Hawaii, and True Geothermal Energy Company.

Your Committee has amended this bill by including reference to the island of Maui on line 6, page 3 and deleting sections -10(a)(2) and -10(a)(3) on page 22 which would transfer a county's responsibilities for zoning, shoreline setback approvals, and special management area permits.

Your Committee has further amended the bill by setting the amount to be appropriated at \$275,000, designating the Department of Land and Natural Resources as the expending agency, and making nonsubstantive changes for the purpose of clarity and conformance with recommended drafting style.

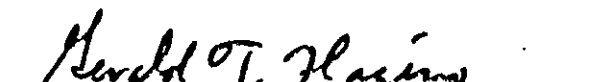
Your Committee on Agriculture, Energy and Ocean Resources is in accord with the intent and purpose of S.B. No. 3182, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3182, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted,

  
RICHARD M. MATSUURA, Chairman

  
JAMES AKI, Vice Chairman

  
RUSSELL BLAIR, Member

  
GERALD T. HAGINO, Member

  
MILTON HOLT, Member

*Excused*

---

NORMAN MIZUGUCHI, Member

*Excused*

---

PATSY K. YOUNG, Member

*RNL*

---

ROBERT N. HERKES, Member

*Ann Kobayashi*

---

ANN KOBAYASHI, Member

cableper

MEMORANDUM

TO: William W. Paty, Chairperson

FROM: Manabu Tagomori

SUBJECT: Comments on the Proposed Legislative Bills Related to the Geothermal Cable Authority and Comprehensive Permitting System for Geothermal Development

Dowald has reviewed two proposed legislative bills which are attached for your reference. The bills are related to geothermal development and concern the following:

- (1) The establishment of a geothermal and cable development authority; and
- (2) The establishment of a comprehensive permit system for the development of geothermal resources.

The following comments have been prepared for your ~~reference:~~  
*consideration*

- o Dowald supports the overall concept of the establishment of a geothermal and cable system authority which should facilitate and supervise the development of the State's geothermal resources and the related cable system.
- o Furthermore, the creation of such an authority seems consistent with the objectives of the State Energy Functional Plan which is to accelerate the transition to an indigenous renewable energy economy by facilitating private sector activities to explore supply options and achieve local commercialization and application of appropriate alternate energy technologies.
- o However, Dowald has some reservations concerning the bill to establish a comprehensive permit system. While the intent of the bill has merit, it implies that the existing permitting system at both the county and state levels are repetitive, duplicative, uncoordinated, and consume unnecessary amounts of time.

- o It is our position that the current permit system is adequate and makes every effort to move in an expeditious manner when reviewing and processing permit applications.
- o Additionally, establishment of a comprehensive permitting system which designates the Department of Land and Natural Resources as the lead agency will result in a increased workload for the department.
- o Additional funds will be needed to implement and administer the proposed incorporation of all State and county permitting functions resulting in an increase in program funding for the present biennium and future budgetary periods by substantial amounts.



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
P. O. BOX 621  
HONOLULU, HAWAII 96809

*D. Paty*  
*info & files*  
*Da*  
WATER AND LAND

March 24, 1988

MEMORANDUM

TO: Honorable Mark J. Andrews, Chairman  
House Committee on Planning, Energy, and  
Environmental Protection

FROM: William W. Paty, Chairperson  
Board of Land and Natural Resources

SUBJECT: Senate Bill No. 2750, S.D. 1, Relating to  
Geothermal Mining Leases

The purpose of Senate Bill No. 2750, S.D. 1, is to grant the surface owner or its assignee the right of first refusal in obtaining a geothermal mining lease on reserved lands within a geothermal resource subzone.

We would like to refer you to Committee Report No. 2157 of the Senate Committee on Housing, Hawaiian Programs, and Natural Resources. As stated in its report, the Committee "finds the bill ensures that a developer who has expended efforts and funds to explore and prove out a geothermal resource will not lose the opportunity to lease and develop to someone else through an auction...The bill protects investments made first." This Committee finding does not appear to be reflected in the present Bill.

So that the intent of the Committee can be incorporated into this Bill, we suggest that the Bill be amended by a proviso clause, as follows:

"Any provision to the contrary notwithstanding, if the board decides that it is appropriate to grant a geothermal mining lease on the reserved lands, the surface owner or the owner's assignee shall have the first right of refusal for a mining lease, provided that the surface owner or his assignee shall have demonstrated his intention to explore the resource by completing the drilling of one or more geothermal wells."

The Department of Land and Natural Resources supports S.B. No. 2750, S.D. 1, with the added proviso.

1988 Legislature  
WATER-RELATED BILLS/RESOLUTIONS PASSED

A. HOUSE BILLS

1. H.B. 2706, Relating to the Molokai Irrigation and Water Utilization Project

a. Purpose

Amends present law to correct the name of an organization; specifically changes the "Molokai County Farm Bureau" to the "Molokai Farm Bureau" under the Molokai Irrigation System Water Users Advisory Board.

b. Implementation

No direct agency action needed; however, correct all current references to the "Molokai County Farm Bureau".

B. SENATE BILLS

1. S.B. No. 2462, Relating to the Protection of Streams

a. Purpose

Requires the Commission on Water Resource Management to identify rivers or streams, or portions thereof, which may be placed within a Wild and Scenic Rivers System and to provide an annual report to the Legislature.

Also, required the Commission to consult with the aquatic biologist of DLNR, the Natural Reserves System Commission, and the UH Cooperative Fishery Unit when establishing an instream flow standard.

b. Implementation

Identify rivers or streams with high natural quality or that possess significant scenic value.

Prepare an annual report for the legislature.

Consult with aquatic biologists from DLNR, the Natural Reserves System Commission, and the UH when establishing an instream flow standard.

2. S.B. No. 2750, Relating to Geothermal Mining Leases

a. Purpose

Allows application for mining leases for minerals within geothermal resource subzones.

Also, provides the surface owner or assignee the first right of refusal for a mining lease if the Board decides to grant geothermal mining lease on reserved lands.

b. Implementation

Amend administrative rules on leasing and drilling geothermal resources.

3. S.B. 3182, Relating to the Development and Use of Geothermal Energy

a. Purpose

Designates DLNR as the lead agency to establish and administer a consolidated permit application and review process for the development of geothermal resources and associated cable systems.

b. Implementation

Draft administrative rules.

Establish a limited staff within DLNR to process all geothermal resource-related permit applications. Staff functions would include coordinating meetings with all affected agencies.

C. HOUSE RESOLUTIONS

1. HCR No. 63/HR No. 83, Requesting Assessment of Rural Water Catchment Problems

a. Purpose

Requests DLNR to study the water supply problems of rural residents who are not presently served by the county water systems, to conduct a survey of these rural residents in need of government support for their water supply and to determine the appropriateness of State subsidy in providing water to needy rural residents.

b. Implementation

Initiate budget request to conduct study.

2. HCR No. 169/HR No. 222, Requesting a Feasibility Study on the Development of Lualualei Tunnel Water for Use by Waianae Farmers

a. Purpose

Requests DLNR to conduct a feasibility study to determine whether water resources from the Lualualei tunnel could be developed and be made available for use by Waianae farmers.

b. Implementation

Initiate budget request to conduct study.



3. HCR No. 351/NR No. 417, Requesting the U.S. Air Force to Repair Bridges and to Construct Jetties at Bellows Air Force Station in Such a Manner as to Reduce the Possibility of Flooding in Waimanalo, Oahu

a. Purpose

Requests the U.S. Air Force to rebuild the bridge at the entrance to Bellows Air Field (located on Inaole Stream) and to repair a damaged wooden bridge on Waimanalo Stream to prevent future flooding.

Also, requests that the Air Force construct a jetty at the mouth of Inaole Stream to prevent sand blockage.

b. Implementation

No action required of DLNR, other than monitoring progress.

c. Status

Air force plans to replace the damaged wooden bridge on Waimanalo Stream with a double span concrete bridge. The bridge referenced in HR No. 417 consists of a system of box culverts. The Air Force plans to add more box culverts at this location and at another existing bridge on Waimanalo Stream (upstream of the wooden bridge).

D. SENATE RESOLUTIONS

1. SR No. 90, Requesting a Feasibility Study on the Development of Lualualei Shaft Water for Use by Waianae Farmers

(Similar to HCR No. 169 described above.)

FEB 1 1988

# A BILL FOR AN ACT

MAKING AN APPROPRIATION FOR A CONSORTIUM TO STIMULATE GEOTHERMAL RESOURCE DEVELOPMENT.

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

1 SECTION 1. There is appropriated out of the general  
 2 revenues of the State of Hawaii the sum of \$3,000,000, or so much  
 3 thereof as may be necessary for fiscal years 1988-1989 and 1989-  
 4 1990, to finance the efforts of a consortium involving the  
 5 University of Hawaii, energy-related organizations, and private  
 6 industry to stimulate geothermal resource development through  
 7 confirmation of the geothermal resource base and initiation of a  
 8 geothermal technology transfer program.

9 SECTION 2. The sum appropriated shall be expended by the  
 10 University of Hawaii for the purposes of this Act.

11 SECTION 3. This Act shall take effect on July 1, 1988.

INTRODUCED BY:

*Richard M. Atkinson*  
*Anthony K. H. Chang*  
*And Kobayashi*

## A PLAN TO STIMULATE GEOTHERMAL RESOURCE DEVELOPMENT IN HAWAII February 1, 1988

### EXECUTIVE SUMMARY

The combined geothermal energy and deep sea transmission cable projects are poised for rapid commercialization. However, two key concerns appear to be forestalling development:

1. Has the geothermal resource base been confirmed?
2. Is geothermal energy cost competitive in Hawaii?

A partnership of the University of Hawaii and other cooperating organizations proposes to answer these questions. A sum of \$3 million is requested from the State Legislature to be matched by \$5 million from the business and development community, who will also provide 13.5 acres of land to expand R&D capability adjacent to HGP-A. This important assessment activity could trigger more than \$50 million of private sector and Federal involvement, which could eventually lead to a \$2 billion geothermal and deep cable program.

The consortium will drill a selected number of scientific observation and production wells. The primary focus for the resource assessment program will be the Kilauea East Rift Zone, although other sites will be considered to expand the potential resource base. In addition, the University will work closely with local researchers and companies to develop ideas and products utilizing the heat, minerals and fluids from the geothermal process.

This program has been developed in concert with the larger, follow-up effort required for full and complete confirmation of the resources. This plan is phase I of the total resource assessment.

### INTRODUCTION

The Kilauea East Rift Zone has long been assumed to have 500 megawatts of electrical generation capability. This estimate may well be correct, but certainly has not been satisfactorily proven. The extent of the geothermal resource outside the area of the HGP-A and the Kapoho State 1A wells remains subject to confirmation. The HGP-A well has produced in excess of 2 megawatts for a period of approximately five years. The Kapoho State 1A well has not undergone an extended flow test, and although it evidently has a potential generating capability greater than the HGP-A well, it remains essentially unproven.

To have a viable geothermal reservoir four conditions must be present: 1) high temperature, 2) porous and permeable rock - usually in the form of fracture permeability, 3) sufficient hot water to supply the turbines driving the generator for an extended period of time - usually approximately 30 years, or groundwater recharge into the reservoir system, and 4) an impermeable cap to prevent the hot reservoir fluids from escaping from the

reservoir. Although much of the Kilauea East Rift Zone may have subsurface temperatures in excess of the amount necessary for electrical generation, areas in which all the other necessary conditions are present are unknown because of the lack of drilling data outside the HGP-A area.

To determine subsurface conditions in Hawaii, drilling must penetrate below the groundwater zone and into subaqueous rocks. Drilling represents a point of ground truth from which projections of geology, hydrology, and subsurface temperature can be made and reservoir engineering conducted. It is the most reliable exploration technique that can be used in the search for geothermal resources.

### **PROPOSED EXPLORATION PROGRAM**

Much preliminary geothermal surface exploration already has been completed during the work that produced the Geothermal Resources of Hawaii map published in 1983. Active volcanoes and geothermal heat sources are known, rift zones have been identified and mapped, and areas of geochemical or geophysical anomalies defined. However the need remains to establish fluid communication and reservoir capacity so that production wells can be located to test the existence of geothermal resources. This can be accomplished by drilling several scientific observation wells in the near vicinity of existing or future production wells in the Kilauea East Rift Zone (in the designated geothermal subzones).

Prior to the drilling of any well, existing data should be reviewed, land ownership should be determined, permission gained to inspect the property and sites selected to drill the observation wells. Site selection should be based on geology, geothermal potential, ease of access for the drilling rig, drilling water availability, and locations in which the drill can be set up with the minimum of site preparation and environmental impact.

During the permitting process efforts will be made to obtain generic stipulations rather than site specific requirements as the environmental impact of the drilling will be transient and minor. Alternative sites will be permitted to provide program and siting flexibility once the drilling commences.

After permitting, the observation wells should be drilled to depths of approximately 1200 meters (4,000 feet) or deeper. Interference tests will be conducted (private production wells flowing with observation wells monitoring pressure at depth) to confirm communication between the producing and observation wells. Then calculations can be made for reservoir size and capacity. Cooperation with the private developers will be needed to coordinate reservoir engineering, sharing of data, and other matters.

This drilling program with reservoir engineering is designed to determine the geothermal potential of the Kilauea East Rift Zone. The observation wells specified will be slim holes with bottom hole diameters less than 6" and as small as 2". As an integral part of the total plan, a limited number

of production wells within the designated subzones will need to be drilled to complement the scientific program.

Other potential geothermal sites will be considered for this Phase I assessment program. The availability of funds and acceptability of permitted locations will be determining factors in the expansion of the program beyond the Puna region.

#### **EXPANDED COMMUNITY GEOTHERMAL TECHNOLOGY TRANSFER PROGRAM**

More than 80% of the heat from the HGP-A powerplant is discarded. In addition, the waste effluent is supersaturated with silica. It is proposed that an expanded program for direct use of the geothermal fluids be supported.

The University and the Department of Business and Economic Development initiated at a beginning level such a program which has resulted in nearly a 100% R&D to commercialization rate. However, there is insufficient land to expand this successful program. In this regard, Kapoho Land & Development Company and Integrated Resources Incorporated have offered 13.5 acres next to HGP-A to the University to initiate a geothermal technology transfer program.

Experience has shown that the local community strongly supports this type of program which has the potential to produce jobs and cottage industries. Thus, any geothermal zone which is exploited could enhance the nearby community through creation of appropriate technology opportunities.

#### **BUDGET**

The development of geothermal energy and the undersea cable will proceed only if investors are convinced that a sufficient resource base is available and there is strong local support. For a sum of \$8 million over two years, private sector investment approaching \$2 billion can be triggered.

It is recommended that the State of Hawaii provide \$3 million to be matched by \$5 million from private sources. In addition, lands adjacent to HGP-A will be donated or made available for the R&D effort.

Each of the observation wells should cost approximately \$250,000 to \$750,000 for a total scientific drilling program cost of approximately \$3 million. Private interest will contribute up to \$4 million for the drilling and completion of two production wells for use in reservoir engineering. All data will be made available to the State-industry partnership. A drilling superintendent will be retained to supervise drilling activities and to insure that adequate drilling supplies are ordered and available. A project manager will be assigned to the program to provide overall supervision, and a geologist will site the wells to insure program compliance, to collect geological data, to provide geological advice, and to log the wells. Thermal

logging and reservoir engineering will be accomplished with equipment owned and purchased by HNEI.

The remaining \$1 million sum will be used to support the geothermal technology transfer program to create new industries for the local community by preparing land provided by the private sector and bringing geothermal fluids to the site for use by the University of Hawaii and cooperating companies and individuals. Additional lands up to 174 acres in the Puna region near HGP-A are being considered by the Natural Energy Laboratory of Hawaii for development into a geothermal industrial park.

This \$8 million "Hawaii" supported program could be supplemented by an equal or greater sum from the Federal government. Should this assessment effort prove convincing, an additional \$50 million of resource confirmation drilling could be sparked to be entirely paid by the private sector. Ultimately, a \$2 billion geothermal/deep sea cable program could be triggered.

The principal investigator will be Harry J. Olson, the Spark M. Matsunaga Fellow in Renewable Energy Engineering at the University of Hawaii. He will draw together a staff to include Donald Thomas of the Hawaii Institute of Geophysics and Arthur Seki of HNEI, and a team of consultants from the private sector and local governments to plan and implement the program.

2358memo

MEMORANDUM FOR THE RECORD

FROM: Dean Nakano

SUBJECT: S.B. No. 2358, Making an Appropriation for a Consortium to Stimulate Geothermal Resource Development

On Thursday, February 4, 1988, I attended a meeting at the University of Hawaii concerning S.B. No. 2358, which seeks an appropriation of \$3,000,000 to stimulate geothermal development in Hawaii. In attendance at the meeting were the following:

Pat Takahashi (HNEI)	Gerald Lesperance (DBED)
Arthur Seki (HNEI)	Rod Moss (True/Mid-Pacific)
Harry Olson (HNEI)	Bill Bonnett (HEI)
Don Thomas (HIG-UH)	
Larry Kumabe (Mayor Carpenter's Advisory Committee)	
Harold Tanouye( " " " " )	

The meeting was held to discuss the overall bill and the proposed scientific program for which the funds are being requested. The program calls for a jointly funded project combining \$3 million from the State and \$5 million from private sources. The program proposes to drill a selected number of scientific observation wells in conjunction with privately funded production wells. (A copy of S.B. No. 2358 and the draft scientific/exploration program is attached.)

The next meeting is scheduled for the week of 2/8/88, to further discuss the details of the proposed exploration program and to coordinate the preparation of testimony for the upcoming legislative hearing on S.B. No. 2358.

  
Dean Nakano

sb2358

MEMORANDUM

TO: Honorable Richard M. Matsuura, Chairman  
Senate Committee on \_\_\_\_\_

FROM: William W. Paty, Chairperson  
Department of Land and Natural Resources

SUBJECT: S.B. No. 2358, Related to Making an Appropriation for a Consortium to Stimulate Geothermal Resource Development

S.B. No. 2358 requests that \$3,000,000 be appropriated from the general revenues of the State of Hawaii for the purpose of scientific exploration and the initiation of a geothermal technology transfer program.

The Department of Land and Natural Resources supports the passage of this bill for the following reasons:

Funding of this assessment activity through the efforts of a joint scientific exploration project involving the University of Hawaii, energy-related organizations, and private industry will provide invaluable information such as reservoir size and capacity.

Confirmation of a viable geothermal resource base and the initiation of direct-use applications for geothermal energy will stimulate the development of our State's geothermal resources by the private community.

Furthermore, this commitment to scientific research relating to geothermal energy is consistent with the objective of the State Energy Functional Plan which is to accelerate the transition to an indigenous renewable energy economy by facilitating private sector activities to explore supply options and achieve local commercialization and application of appropriate alternate energy technologies.



WL 7/18/88

RECEIVED  
THE SENATE  
FOURTEENTH LEGISLATURE, 1988  
STATE OF HAWAII

88

ACT 378

S.B. NO.

2750  
S.D. 1  
H.D. 1

DIV. OF WATER &  
LAND DEVELOPMENT

# A BILL FOR AN ACT

RELATING TO GEOTHERMAL MINING LEASES.

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

SECTION 1. The purpose of this Act is to grant a surface owner or the owner's assignee the first right of refusal in obtaining a geothermal mining lease on reserved lands within a geothermal resource subzone.

SECTION 2. Section 182-5, Hawaii Revised Statutes, is amended to read as follows:

"§182-5 Mining leases on reserved lands. If any mineral is discovered or known to exist on reserved lands, any interested person may notify the board of land and natural resources of the person's desire to apply for a mining lease. The notice shall be accompanied by a fee of \$100 together with a description of the land desired to be leased and the minerals involved and such information and maps as the board may by regulation prescribe. The board may grant a mining lease on reserved lands in accordance with section 182-4, or the board may, by the vote of two-thirds of its members to which the board is entitled, without

S.B. NO. 2750  
S.D. 1  
H.D. 1

1 public auction, grant a mining lease on reserved lands to the  
2 occupier thereof. Such a mining lease may be granted to a person  
3 other than the occupier if the occupier has assigned the  
4 occupier's rights to apply for a mining lease to another person,  
5 in which case only such an assignee may be granted a mining  
6 lease. Any provisions to the contrary notwithstanding, if the  
7 board decides that it is appropriate to grant a geothermal mining  
8 lease on the reserved lands, the surface owner or the owner's  
9 assignee shall have the first right of refusal for a mining  
10 lease; however, the granting of a geothermal mining lease does  
11 not create the presumption that a geothermal resource subzone  
12 will be designated, nor shall geothermal development activities  
13 occur on land within the geothermal mining lease until the area  
14 is designated a geothermal resource subzone. If the occupier or  
15 the occupier's assignee of the right to obtain a mining lease  
16 should fail to apply for a mining lease within six months from  
17 the date of notice from the board of a finding by the board that  
18 it is in the public interest that the minerals on the reserved  
19 lands be mined, a mining lease shall be granted under section  
20 182-4; provided that bidders at the public auction shall bid on  
21 an amount to be paid to the State for a mining lease granting to  
22 the lessee the right to exploit minerals reserved to the State."

23 SECTION 3. New statutory material is underscored.

24 SECTION 4. This Act shall take effect upon its approval.

WL 2/18/88

THE SENATE  
FOURTEENTH LEGISLATURE, 19<sup>88</sup>  
STATE OF HAWAII

**ACT 378**

**S.B. NO.** 2750  
S.D. 1  
H.D. 1

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S.B. NO.

2750  
S.D. 1  
H.D. 1

1 public auction, grant a mining lease on reserved lands to the  
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 19 lands be mined, a mining lease shall be granted under section  
 20 182-4; provided that bidders at the public auction shall bid on  
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 22 the lessee the right to exploit minerals reserved to the State."

23 SECTION 3. New statutory material is underscored.

24 SECTION 4. This Act shall take effect upon its approval.

THE SENATE  
FOURTEENTH LEGISLATURE, 19<sup>88</sup>  
STATE OF HAWAII

FEB 0 1 1988

FEA-63  
S.B. NO. 2358

# A BILL FOR AN ACT

MAKING AN APPROPRIATION FOR A CONSORTIUM TO STIMULATE GEOTHERMAL  
RESOURCE DEVELOPMENT.

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

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,000,000, or so much thereof as may be necessary for fiscal years 1988-1989 and 1989-1990, to finance the efforts of a consortium involving the University of Hawaii, energy-related organizations, and private industry to stimulate geothermal resource development through confirmation of the geothermal resource base and initiation of a geothermal technology transfer program.

SECTION 2. The sum appropriated shall be expended by the University of Hawaii for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 1988.

INTRODUCED BY:

*Ronald A. Atkinson*  
*Anthony K. L. Cheng*  
*And Kobayashi*

## HOUSE RESOLUTION

REQUESTING A STUDY OF THE LAND CORRIDOR NEEDED TO TRANSPORT  
GEOTHERMAL POWER BETWEEN THE ISLANDS OF HAWAII, MAUI AND  
OAHU, AND ON THE ISLAND OF HAWAII.

WHEREAS, the State of Hawaii has an immediate need to develop  
local sources of energy; and

WHEREAS, the geothermal resources of the island of Hawaii  
offer one possible source of this energy supply; and

WHEREAS, plans were approved for the location of geothermal  
zones by past legislative action; and

WHEREAS, energy production companies have started the  
necessary development actions for the production of energy; and

WHEREAS, use of this geothermal energy supply will be  
maximized only if it is transported to population centers in the  
State; and

WHEREAS, no specific overland transportation method or route  
to take this energy supply to the export centers has yet been  
agreed upon; and

WHEREAS, no specific overland corridors have been agreed  
upon with respect to the transmission of 25 megawatts of  
geothermal power needed to serve the Big Island; now, therefore,

BE IT RESOLVED by the House of Representatives of the  
Fourteenth Legislature of the State of Hawaii, Regular Session of  
1988, that the Department of Business and Economic Development  
continue work on the plans that will describe the necessary  
overland transportation methods and routes which will be needed  
to convey geothermal energy to a designated export center and  
from the geothermal subzone to Keaau; and

BE IT FURTHER RESOLVED that the Governor's Underwater Cable  
Advisory Board and the Department of Land and Natural Resources  
cooperate in assisting the Department of Business and Economic  
Development; and

H. R. NO.

BE IT FURTHER RESOLVED that the planning process involve consultation with affected communities in identifying tentative land corridors which might be developed for this transport of power on any island over which the line will pass;

BE IT FURTHER RESOLVED that these plans be made available to all interested developers, agencies, community groups, and individual citizens who would wish to study and use them; and

BE IT FURTHER RESOLVED that the State solicit involvement and input from the governments of the affected counties; and

BE IT FURTHER RESOLVED that the Department of Business and Economic Development present a progress report to the Legislature twenty days prior to the convening of the Regular Session of 1989; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be sent to the Department of Business and Economic Development, the Department of Land and Natural Resources, the Governor's Underwater Cable Advisory Board, and the Mayors and Councils of the City and County of Honolulu and Counties of Hawaii and Maui.

WL 4/5 ✓  
Dean

STAND. COM. REP. NO. 1106-88

Honolulu, Hawaii  
March 31, 1988

RE: S.B. No. 2750  
S.D. 1  
H.D. 1

Honorable Daniel J. Kihano  
Speaker, House of Representatives  
Fourteenth State Legislature  
Regular Session of 1988  
State of Hawaii

Sir:

Your Committee on Planning, Energy, Environmental Protection, to which was referred S.B. No. 2750, S.D. 1 entitled: "A BILL FOR AN ACT RELATING TO GEOTHERMAL MINING LEASES", begs leave to report as follows:

The purpose of this bill is to grant the surface owner or its assignee the first right to apply for a mining lease on reserved lands within a geothermal resource subzone.

Under Section 182-5, Hawaii Revised Statutes, the Board of Land and Natural Resources grants mining leases on reserved lands to the occupier or the occupier's assignee. This bill protects the surface owner or the owner's assignee by giving them the first right to apply for a mining lease.

Your Committee has amended this bill by inserting language to clearly state that the granting of a mining lease does not presume that a geothermal resource subzone will be designated and that geothermal activities shall not occur on land within the geothermal mining lease until the area is designated a geothermal resource subzone.

This bill has been further amended for the purpose of consistency.

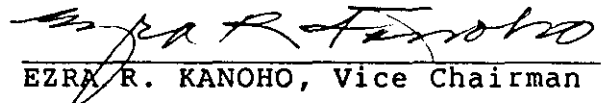
Your Committee on Planning, Energy, and Environmental Protection is in accord with the intent and purpose of S.B. No. 2750, S.D. 1, as amended herein, and recommends that it pass

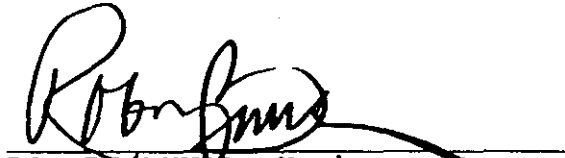


Second Reading in the form attached hereto as S.B. No. 2750, S.D. 1, H.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted,

  
MARK J. ANDREWS, Chairman


  
EZRA R. KANOHO, Vice Chairman

  
ROBERT BUNDA, Member

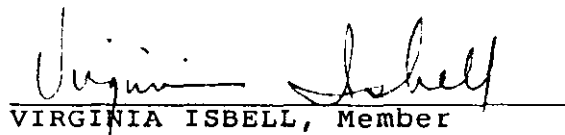
  
CAROL FUKUNAGA, Member


  
CLARICE Y. HASHIMOTO, Member

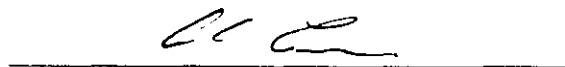
  
KENNETH T. HIRAKI, Member

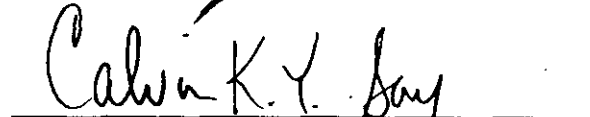
  
HERBERT J. HONDA, Member

  
DAVID Y. IGE, Member

  
VIRGINIA ISBELL, Member

  
SAMUEL S.H. LEE, Member

  
ANDREW LEVIN, Member

  
CALVIN K.Y. SAY, Member

  
HARVEY S. TAJIRI, Member

  
MIKE O'KIEFFE, Member

  
BILL PFEIL, Member

# A BILL FOR AN ACT

RELATING TO GEOTHERMAL MINING LEASES.

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

1 SECTION 1. The purpose of this Act is to grant a surface  
2 owner or the owner's assignee the first right of refusal in  
3 obtaining a geothermal mining lease on reserved lands within a  
4 geothermal resource subzone.

5 SECTION 2. Section 182-5, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "**§182-5 Mining leases on reserved lands.** If any mineral is  
8 discovered or known to exist on reserved lands, any interested  
9 person may notify the board of land and natural resources of the  
10 person's desire to apply for a mining lease. The notice shall be  
11 accompanied by a fee of \$100 together with a description of the  
12 land desired to be leased and the minerals involved and such  
13 information and maps as the board may by regulation prescribe.  
14 The board may grant a mining lease on reserved lands in  
15 accordance with section 182-4, or the board may, by the vote of  
16 two-thirds of its members to which the board is entitled, without  
17  
18

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1 public auction, grant a mining lease on reserved lands to the  
2 occupier thereof. Such a mining lease may be granted to a person  
3 other than the occupier if the occupier has assigned the  
4 occupier's rights to apply for a mining lease to another person,  
5 in which case only such an assignee may be granted a mining  
6 lease. Any provisions to the contrary notwithstanding, if the  
7 board decides that it is appropriate to grant a geothermal mining  
8 lease on the reserved lands, the surface owner or the owner's  
9 assignee shall have the first right of refusal for a mining  
10 lease; however, the granting of a geothermal mining lease does  
11 not create the presumption that a geothermal resource subzone  
12 will be designated, nor shall geothermal development activities  
13 occur on land within the geothermal mining lease until the area  
14 is designated a geothermal resource subzone. If the occupier or  
15 the occupier's assignee of the right to obtain a mining lease  
16 should fail to apply for a mining lease within six months from  
17 the date of notice from the board of a finding by the board that  
18 it is in the public interest that the minerals on the reserved  
19 lands be mined, a mining lease shall be granted under section  
20 182-4; provided that bidders at the public auction shall bid on  
21 an amount to be paid to the State for a mining lease granting to  
22 the lessee the right to exploit minerals reserved to the State."

23 SECTION 3. New statutory material is underscored.

24 SECTION 4. This Act shall take effect upon its approval.

FOURTEENTH STATE LEGISLATURE  
REGULAR SESSION 1988

*Chair 4/13*  
*Deputy*  
*Jny*  
*SAS*  
*lee*  
*W*  
*7082*

NOTICE OF CONFERENCE COMMITTEE MEETINGS

DATE: Friday, April 15, 1988  
TIME: 2:30 p.m.  
PLACE: Senate Conference Room 2, State Capitol

A G E N D A

SENATE COMMITTEE ON AGRICULTURE, ENERGY AND OCEAN RESOURCES

Senator Richard M. Matsuura, Chairman *R. M. M.*

SENATE COMMITTEE ON WAYS AND MEANS

Senator Mamoru Yamasaki, Chairman *M. Y.*

HOUSE COMMITTEE ON PLANNING, ENERGY AND ENVIRONMENTAL PROTECTION

Representative Mark J. Andrews, Chairman *M. J. A.*

HOUSE COMMITTEE ON FINANCE

Representative Joseph M. Souki, Chairman *J. M. S.*

- |                           |  |                         |
|---------------------------|--|-------------------------|
| S.B. 2363, S.D. 2, H.D. 2 | Relating to the issuance of special purpose revenue bonds to manufacturing enterprises |                         |
| S.B. 3161, S.D. 1, H.D. 2 | Relating to management of state funds  |                         |
| S.B. 3182, S.D. 2, H.D. 2 | Relating to the development and use of geothermal energy                               | <i>lee</i><br><i>WL</i> |
| H.B. 2068, H.D. 1, S.D. 2 | Making an appropriation for a methanol-from-biomass program                            |                         |

*Wfk* *113*

A BILL FOR AN ACT

RELATING TO THE DEVELOPMENT AND USE OF GEOTHERMAL ENERGY.

*Push  
Comments  
This Conf.  
Draft.*

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

1 SECTION 1. The Hawaii Revised Statutes is amended by adding  
2 a new chapter to be appropriately designated and to read as  
3 follows:

"CHAPTER

GEOTHERMAL AND CABLE SYSTEM

DEVELOPMENT PERMITTING ACT OF 1988

7 § -1 Short title. This chapter shall be known and may be  
8 cited as the "Geothermal and Cable System Development Permitting  
9 Act of 1988".

10 § -2 Findings and declaration of purpose. The  
11 legislature hereby finds and declares that:

- 12 (1) The development of Hawaii's geothermal resources  
13 represents a substantial and long-term source of  
14 indigenous renewable alternate energy that could be  
15 used to generate electric energy to meet the State's  
16 electric energy needs and concurrently help to reduce  
17 the State's need for imported fossil fuels;

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- 1 (2) The State has deemed it appropriate that the private  
2 sector should develop these geothermal resources, and,  
3 to that end, has sought to encourage private sector  
4 exploration and development of geothermal resources;
- 5 (3) The private sector companies seeking to develop  
6 geothermal resources are, however, unable or unwilling  
7 to expend the substantial amounts of funds needed to  
8 develop these resources to their full extent without an  
9 assured and sufficiently large market for the electric  
10 energy to be generated therefrom, and the present and  
11 projected electric energy demand on the island of  
12 Hawaii does not provide an assured and sufficiently  
13 large market;
- 14 (4) The greatest present and projected demand for  
15 geothermally generated electric energy is located on  
16 the island of Oahu;
- 17 (5) The State, with the support and assistance of the  
18 federal and county of Hawaii governments, has been  
19 exploring for several years the technical, engineering,  
20 economic, and financial feasibility of an interisland  
21 deep water electrical transmission cable system that  
22 would be capable of transmitting geothermally generated  
23 electric energy from the islands of Hawaii or Maui to  
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1 the island of Oahu.;

2 (6) The development of such a cable system will not be  
3 undertaken without the firm assurance that a sufficient  
4 amount of geothermally generated electric energy will  
5 be continuously available to be transmitted through a  
6 cable system once it becomes operational;

7 (7) The fundamental interrelationship between the  
8 development of geothermal resources and a cable system  
9 and the magnitude of the cost to undertake each of  
10 these developments clearly indicate that neither will  
11 be undertaken without the firm assurance that the other  
12 also will be undertaken in a synchronized and  
13 coordinated manner to enable both developments in  
14 substance to be completed concurrently, thereby  
15 ensuring that revenues will be available to begin  
16 amortizing the costs of each of these developments;

17 (8) A major and fundamental impediment to the development  
18 of both geothermal resources and a cable system is the  
19 diverse array of federal, state, and county land use,  
20 planning, environmental, and other related laws and  
21 regulations that currently control the undertaking of  
22 all commercial projects in the State;

23 (9) While these controls are to ensure that commercial  
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at projects in general are undertaken in a  
development consistent with land use, planning,  
environmental, and other public policies, some of the  
specific laws, regulations, and controls may be  
repetitive, duplicative, and uncoordinated, and thus  
may consume unnecessary amounts of time, effort, and  
expense, and result at best in increases in the cost of  
new projects and at worst in abandonment of needed  
projects;

- (10) To a limited extent, the State and counties have sought to ameliorate certain of these impediments through the enactment or adoption of measures to improve the coordination and efficiency of land use and planning controls and specifically to facilitate the development of geothermal resources;
- (11) Notwithstanding these efforts, the complexities, the magnitude in scope and cost, the fundamental interrelationship between the development of geothermal resources and a cable system, the inherent requirements for the coordinated development of the geothermal resources and a cable system, the substantial time required to undertake and complete both developments, and the requirements for private

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1 development of the geothermal resources and a cable  
2 system as a combined single project and have further  
3 expressed the desire that a consolidated permitting  
4 system be established that could accommodate this  
5 development of a combined single project;

6 (15) The development of geothermal resources and a cable  
7 system are in furtherance of the State's policies, as  
8 expressed in the state plan and elsewhere, to develop  
9 the State's indigenous renewable alternate energy  
10 resources and to decrease the State's dependency on  
11 imported fossil fuels; and

12 (16) A consolidated permitting system for the development of  
13 the State's geothermal resources and the cable system  
14 should be established by an act of the legislature.

15 § -3 Definitions. As used in this chapter unless the  
16 context clearly requires otherwise:

17 "Agency" means any department, office, board, or commission  
18 of the State or a county government which is a part of the  
19 executive branch of that government, but does not include any  
20 public corporation or authority that may be established by the  
21 legislature for the purposes of the project.

22 "Applicant" means any person who, pursuant to statute,  
23 ordinance, rule, or regulation requests approval or a permit for  
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1 the proposed project.

2 "Approval" means a discretionary consent required from an  
3 agency prior to the actual implementation of the project.

4 "Department" means the department of land and natural  
5 resources or any successor agency.

6 "Discretionary consent" means a consent, sanction, or  
7 recommendation from an agency for which judgment and free will  
8 may be exercised by the issuing agency, as distinguished from a  
9 ministerial consent.

10 "Environmental impact statement" means an informational  
11 document prepared in compliance with chapter 343.

12 "Interagency group" means the body established in section  
13 -5.

14 "Permit" means any license, permit, certificate,  
15 certification, approval, compliance schedule, or other similar  
16 document or decision pertaining to any regulatory or management  
17 program which is related to the protection, conservation, use of,  
18 or interference with the natural resources of land, air, or water  
19 in the State and which is required prior to or in connection with  
20 the undertaking of the project.

21 "Person" includes any individual, partnership, firm,  
22 association, trust, estate, corporation, joint venture,  
23 consortium, any public corporation or authority that may be  
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1 established by the legislature for the purposes of the project,  
2 or other legal entity other than an agency.

3 "Project" means the commercial development, construction,  
4 installation, financing, operation, maintenance, repair, and  
5 replacement, including without limitation all applicable  
6 exploratory, testing, and predevelopment activities related to  
7 the foregoing, of:

8 (1) A geothermal power plant or plants, including all  
9 associated equipment, facilities, wells, and  
10 transmission lines, on the island of Hawaii or Maui for  
11 the primary purpose of generating electric energy for  
12 transmission to the island of Oahu through the cable  
13 system for sale to any public or private entity on  
14 Oahu; and

15 (2) An interisland deep water electrical transmission cable  
16 system, including all land-based transmission lines and  
17 other ancillary facilities, to transmit geothermally  
18 generated electric energy from the island of Hawaii or  
19 Maui to the island of Oahu, regardless of whether the  
20 cable system is used to deliver electric energy to any  
21 intervening point. Nothing in this definition shall  
22 preclude the sale of a portion of the electric energy  
23 generated by the geothermal plant or plants to a public  
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1           or private entity located on any one or more of the  
2           islands of Hawaii, Maui, Molokai, or Lanai.

3           § -4 Consolidated permit application and review process.

4           An applicant for a proposed project may submit to the department  
5           a master consolidated permit application on a form provided by  
6           the department which shall contain sufficient data about the  
7           proposed project for the department to determine which other  
8           agencies may have jurisdiction over permits required by the  
9           proposed project. Upon receipt of such master consolidated  
10          permit application, the department shall notify all federal,  
11          state, and county agencies which the department determines may  
12          have jurisdiction over part or all of the proposed project. The  
13          federal agencies shall be invited to participate, and all state  
14          and county agencies so notified shall be required to participate,  
15          in the consolidated permit application and review process as  
16          follows:

- 17           (1) Where an applicant is required to obtain more than one  
18           permit from the same agency for a proposed project, the  
19           applicant may submit a request in writing to that  
20           agency for a consolidated permit application and review  
21           process.
- 22           (2) The applicant shall apply directly to each federal  
23           agency that does not participate in the consolidated

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1 permit application and review process for the required  
2 federal permits.

3 (3) Upon receipt of a request for consolidation, the agency  
4 shall consolidate all the permits required for the  
5 proposed project over which it has jurisdiction for  
6 concurrent processing and review, unless the agency can  
7 demonstrate a legal reason why any permit cannot be  
8 consolidated; provided that the agency shall not  
9 consolidate permits of different subject categories,  
10 i.e., inland, ocean, coastal zone, air, or water, or  
11 any permits requiring sequential approval.

12 (4) The agency shall hold a consolidated hearing on the  
13 consolidated permit application; provided that, where  
14 the interagency group established under section -5  
15 determines it is feasible, the agency shall participate  
16 in joint hearings with other agencies which have  
17 jurisdiction over other permits required for the same  
18 proposed project; and provided further that the agency  
19 ensures that a hearing is held in each community in  
20 which the permitted actions requested are located.

21 (5) Upon completion of the consolidated or joint hearing  
22 and proper technical review of the consolidated permit  
23 application, the agency shall issue a consolidated  
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1 permit to the applicant if the consolidated permit  
2 application has met all necessary requirements.

3 (6) Where the contested case provisions under chapter 91  
4 apply to any one or more of the permits included in the  
5 consolidated permit issued by the agency, the agency  
6 shall be required to conduct only one contested case  
7 hearing on the consolidated permit in the event of any  
8 contested cases involving any permit consolidated  
9 therein.

10 (7) The consolidated permit application and review process  
11 shall not affect or invalidate the jurisdiction or  
12 authority of any agency under existing laws and rules  
13 and the department shall not issue any consolidated  
14 permits or provide for the enforcement of such  
15 consolidated permits on criteria that are less  
16 stringent than the criteria established for the  
17 issuance of each individual permit.

18 (8) The department and agencies shall cooperate with the  
19 federal agencies to the fullest extent possible to  
20 minimize duplication. To the fullest extent possible,  
21 this cooperation shall include, among other things,  
22 environmental impact statements with concurrent public  
23 review and processing at both levels of government.  
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1           Where federal law has requirements that are in addition  
2           to but not in conflict with state law requirements, the  
3           department and the agencies shall cooperate to the  
4           fullest extent possible in fulfilling their  
5           requirements so that all documents shall comply with  
6           all applicable laws.

7           (9) The department shall monitor the processing of the  
8           permit applications by those state and county agencies  
9           to which the applicant has submitted a consolidated  
10          permit request. The department shall coordinate and  
11          assist in the permitting procedures conducted by all of  
12          the agencies included in the proposed project, and to  
13          the fullest extent possible the federal agencies.

14          § -5 Interagency group. The department shall establish an  
15          interagency group comprised of those state and county agencies  
16          having jurisdiction over any aspect of the proposed project. The  
17          department shall also include all those federal agencies which  
18          have accepted an invitation to participate in the consolidated  
19          permit application and review process. If the legislature  
20          establishes any public corporation or authority for the purpose  
21          of a project, such corporation or authority shall designate a  
22          representative to serve on the interagency group. Each of these  
23          agencies and the applicant shall designate an appropriate  
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1 representative to serve on the interagency group; provided that  
2 the applicant representative shall not have the right to vote on  
3 any decisions made by the interagency group. The members of the  
4 interagency group shall develop and sign an agreement which:

- 5 (1) Identifies the members of the interagency group;  
6 (2) Identifies all the permits required for the project;  
7 (3) Specifies the regulatory and review responsibilities of  
8 each government agency and sets forth the  
9 responsibilities of the applicant;  
10 (4) Establishes a timetable for regulatory review, the  
11 conduct of necessary hearings, preparation of an  
12 environmental impact statement, if necessary, and other  
13 actions required to minimize duplication and coordinate  
14 the activities of the applicant and agencies; and  
15 (5) Establishes a mechanism to resolve any conflicts that  
16 may arise between or among the department and any  
17 agency, including any federal agencies, as a result of  
18 conflicting permit, approval, or other requirements,  
19 procedures, or agency perspectives.

20 The interagency group shall also act as a liaison group in  
21 determining and coordinating any joint interagency hearings on  
22 consolidated applications.

23 § -6 Streamlining activities. In administering the  
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1 comprehensive permit system, the department shall:

- 2 (1) Monitor all permit applications submitted under this  
3 chapter and the processing thereof on an ongoing basis  
4 to determine the source of any inefficiencies, delays,  
5 and duplications encountered and the status of all  
6 permits in process;
- 7 (2) Pursue the implementation of streamlining measures  
8 identified by the interagency group;
- 9 (3) Design, in addition to the master consolidated permit  
10 application form, other applications, checklists, and  
11 forms essential to the implementation of the  
12 consolidated permit process and;
- 13 (4) Ensure that all standards used in any agency decision-  
14 making for any required permits are clear, explicit,  
15 and precise.

16 **§ -7 Information services.** The department shall:

- 17 (1) Operate a permit information and coordination center  
18 during normal working hours, which will provide  
19 guidance to potential applicants for a project with  
20 regard to the permits and procedures that may apply to  
21 the project; and
- 22 (2) Maintain and update a repository of the laws, rules,  
23 procedures, permit requirements, and criteria of state  
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1           and county agencies which have control or regulatory  
2           power over any aspect of the project and of federal  
3           agencies having jurisdiction over any aspect of the  
4           project.

5           **§ -8 Construction of the chapter; rules.** This chapter  
6           shall be construed liberally to effectuate its purposes, and the  
7           department shall have all powers which may be necessary to carry  
8           out the purposes of this chapter, including the authority to  
9           adopt, amend, and repeal rules to implement this chapter. The  
10          adoption, amendment, and repeal of all rules shall be subject to  
11          chapter 91.

12          **§ -9 Annual report.** The department shall submit an  
13          annual report to the governor and the legislature on its work  
14          during the preceding year, the development status of the project,  
15          any problems encountered, and any legislative actions that may be  
16          needed further to improve the comprehensive permit process and  
17          implement the intent of this chapter.

18          **§ -10 Severability.** If any provision of this chapter or  
19          the application thereof to any person or circumstances is held  
20          invalid, the invalidity shall not affect other provisions or  
21          applications of this chapter that can be given effect without the  
22          invalid provision or application, and to this end the provisions  
23          of this chapter are declared severable.

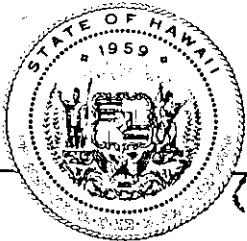
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1           §     -11 Exemptions from certain state laws. In order to  
2 promote the purposes of this chapter, all persons hired by the  
3 department to effectuate this chapter are excepted from chapters  
4 76, 77, and 89."

5           SECTION 2. There is appropriated out of the general  
6 revenues of the State of Hawaii the sum of \$275,000, or so much  
7 thereof as may be necessary for fiscal year 1988-1989, to carry  
8 out the purposes of this chapter. The sum appropriated shall be  
9 expended by the department of land and natural resources for the  
10 purposes of this Act. Any unexpended or unencumbered balance of  
11 any appropriation made by this chapter as of the close of  
12 business on June 30, 1989, shall lapse into the general fund.

13           SECTION 3. This chapter shall take effect on July 1, 1988,  
14 but shall not apply to any applications filed prior to the  
15 effective date.



# DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT

KAMAMALU BUILDING, 250 SOUTH KING ST., HONOLULU, HAWAII  
MAILING ADDRESS: P.O. BOX 2359, HONOLULU, HAWAII 96804 TELEX: 7430250 HBDPED

JOHN WAIHEE  
GOVERNOR

ROGER A. ULVELING  
DIRECTOR

BARBARA KIM STANTON  
DEPUTY DIRECTOR

LESLIE S. MATSUBARA  
DEPUTY DIRECTOR

0285k

*RAU*  
*WHL*  
*H.A.P.*

April 11, 1988

RECEIVED  
LAND AND NATURAL RESOURCES  
STATE OF HAWAII

MEMORANDUM

TO: The Honorable William W. Paty  
Chairperson, Board of Land and Natural Resources

FROM: Roger A. Ulveling

SUBJECT: S.B. 3182, S.D. 2, Geothermal/Cable Permitting Bill

APR 11 1988  
STATE OF HAWAII  
LAND AND NATURAL RESOURCES  
RECEIVED

Attached for your information and review are three letters from Mr. Gerald Sumida, Esq., legal consultant to DBED, that address concerns raised during legislative testimony over this bill. His letter addresses these concerns in the form of modifications to S.D. 2. In addition, I have attached a copy of some point by point responses to these issues prepared by Mr. Sumida, which reflect the understanding of DBED.

Your comments, if any, are requested as soon as possible, but not later than noon, April 12, 1988. These documents are being reviewed concurrently by the Attorney General's Office while they review specific legal concerns over S.D. 2.

Comments should be directed to Mr. Maurice H. Kaya, Energy Division, at Extension 4150.

*Leslie S. Matsubara*

RAU/MHK/hk

for Director

Attachments

CARLSMITH, WICHMAN, CASE, MUKAI AND ICHIKI  
ATTORNEYS AT LAW

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April 6, 1988

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Mr. Maurice H. Kaya  
Energy Program Administrator  
Energy Division  
Department of Business and  
Economic Development  
335 Merchant Street - Room 108  
Honolulu HI 96813

Dear Maurice:

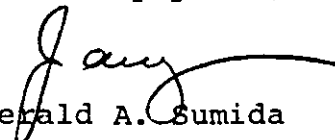
Geothermal/Cable Permitting Bill

Pursuant to our telephone conversation earlier this morning, I am enclosing, as we discussed, the following for your possible use in our meetings this afternoon:

1. Technical change to Section -3 of S.B. No. 3182, D.S. 2 relating to the electric utility issue;
2. Technical change to Section -5(b) as aforesaid relating to the time limit for permit processing issue;
3. Technical change to Section -5(c)(8) as aforesaid relating to monitoring of the applicant's compliance with a final permit; and
4. Excerpts from previous DPED permit reform studies defining and explaining the mechanism of "rebuttable presumption" to streamline the permit process.

Please call me should you have any questions on the above. With warm regards,

Sincerely yours,

  
Gerald A. Sumida

Enc.

4/6/88

Technical Change to Section -3 of  
S.B. No. 3182, S.D. 2 (Page 9, lines 15-19)

- (2) An interisland deep water electrical transmission cable system, including all land-based transmission lines and other ancillary facilities, to transmit geothermally generated electric energy from the island of Hawaii to the island of Oahu, regardless of whether the cable system is used to deliver electric energy to any intervening point. Nothing in this definition shall preclude the sale of a portion of the electric energy generated by the geothermal plant or plants to [the] an electric utility subject to chapter 269 and serving any one or more of the islands of Hawaii, Maui, Molokai, or Lanai.

4/6/88

Technical Change to Section -5(b)  
of S.B. No. 3182, S.D. 2  
(Page 11, lines 19-23, Page 12, lines 1-8)

(b) [Notwithstanding any other law, ordinance, rule, or regulation to the contrary,] To the greatest extent possible, the department and each state and county agency whose permitting functions are not transferred by this chapter to the department for the purposes of the project shall complete all of their respective permitting functions for the purposes of the project, pursuant to this chapter, [within sixty days of the receipt of the master consolidated permit application for the proposed project; except that the department or any permit-issuing agency must rely on another agency, including any federal agency, for all or part of the permit processing and the delay is caused by the other agency.] in accordance with the timetable for regulatory review set forth in the joint agreement described in section -5(c)(4) and within the time limits, without extension, contained in the applicable permit statutes, ordinances, regulations, or rules; except that the department or any such agency shall have good cause to extend, if and as permitted, the applicable time limit if the permit-issuing agency must rely on another agency, including any federal agency, for all or part of the permit processing and the delay is caused by such other agency.

WOT  
S.B. 3182

4/6/88

Technical Change to Section -5(c)(8)  
of S.B. No. 3182, S.D. 2 (Page 15, lines 19-20)

- (8) Once the processing of each master consolidated permit application has been completed and the permit requested has been issued to the applicant, the department thereafter shall monitor the applicant's work undertaken pursuant to the permit to ensure the applicant's compliance with the terms and conditions of the permit [and to assist, as appropriate, the applicant in its project].



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April 8, 1988

Mr. Roger Ulveling  
Director  
Department of Planning and  
Economic Development  
State of Hawaii  
Kamamalu Building, Room 901  
250 South King Street  
Honolulu, Hawaii 96813

HAND DELIVER

Dear Roger:

Geothermal/Cable Permitting Bill  
(S.B. 3182, S.D. 2)

Pursuant to our conversations on April 6, 1988,  
regarding the above matter, I am enclosing for your review and  
comments the following draft documents:

1. "Responses to Certain Concerns Expressed on S.B.  
3182, S.D. 2", which responds in bullet format to the  
concerns expressed principally by the Puna Community  
Council in its written statements; and
2. Draft of a possible response by Representative  
Robert N. Herkes.

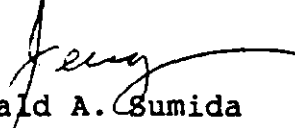
Please note that both drafts imply that the suggested  
"technical changes", which I provided to you on April 6, 1988,  
will be incorporated into the revised version of S.B. 3182,  
S.D. 2.

Mr. Roger Ulveling  
April 8, 1988  
Page 2

Please let me know if you have any comments or changes to the above, and I would be pleased to revise either or both.

With warm regards,

Sincerely yours,



Gerald A. Sumida  
Attorney at Law  
A Law Corporation

GAS/ch  
Enclosures

cc: Mr. Susumo Ono (w/encs.)  
✓ Mr. Maurice H. Kaya (w/encs.)  
Mr. Gerald O. Lesperance (w/encs.)

4/7/88

Responses to Certain Concerns Expressed on  
S.B. No. 3182, S.D. 2 (A Bill for an Act Relating  
to the Development and Use of Geothermal Energy)

1. Concern: The requirement that all permitting functions by an agency be performed within the 60-day time limit conflicts with H.R.S. Chapter 343 regarding environmental impact statements.

- The 60-day processing time limit was intended to become effective after an EIS had been completed.
- However, to eliminate any potential confusion, this provision will be amended to make clear that all existing permit review time limits will continue unchanged in the comprehensive permit system in S.B. 3182, S.D. 2.

2. Concern: S.B. 3182, S.D. 2 will eliminate contested case hearings in the permit review process.

- The comprehensive permit system to be established under S.B. 3182, S.D. 2, will not eliminate or in any other way affect provisions for contested case hearings. These provisions will remain unchanged.
- S.B. 3182, S.D. 2 will seek to consolidate, where possible, several public hearings into a single joint public hearing which would be used by the

**DRAFT**  
APR 7 1988

participating agencies in their respective permit review functions. This would reduce duplicative and time-consuming sequential hearings by, where possible, combining these hearings into a joint hearing.

- Even with a joint hearing, each agency will still be required to fulfill its own permit review functions as currently provided by law.

3. Concern: The mechanism to resolve any conflicts that may arise between or among permitting agencies will eliminate the legal right to a contested case proceeding.

- Under S.B.3182, S.D. 2, the DLNR, as lead agency, is to develop a mechanism to resolve interagency conflicts, which may arise because of conflicting permit, approval or other requirements, procedures or perspectives of the agencies involved. This mechanism does not affect either existing contested case provisions under various permitting laws or the public's rights with respect to contested case proceedings.
- This mechanism to resolve conflicts is aimed solely to assist in the coordination of the permitting functions by the various participating agencies.

4. Concern: The definition of "project" in S.B. 3182, S.D. 2, by not precluding the sale of a portion of electric energy generated by a geothermal plant to "the electric utility" on Hawaii, Maui, Molokai or Lanai would in effect create a monopoly.

-- The intent of this provision was to make clear that geothermally generated electric energy could be sold to the recognized electric utility on each of the four islands.

-- This provision will be amended to clarify that such sales could be made to an electric utility on those islands that is subject to Public Utilities Commission regulation and that serves one or more of these islands.

5. Concern: The permit process streamlining measures, permit requirements and hearing procedures should be identified more clearly, and additional time is required to do this.

-- Considerable study has been done on the permitting requirements that would be involved for the geothermal/cable system project. These include, among others; the following comprehensive analysis:

- Hawaii Deep Water Electrical Transmission Cable

Demonstration Program - Phase II-A report entitled Task 1 - Environmental Analyses (March 1984);

- DPED, Preliminary Analysis: Legal, Institutional and Financial Aspects of An Inter-island Electrical Transmission Cable (April 1984);
- DPED, Report to the Thirteenth State Legislature in Response to Senate Resolution No. 140 Requesting the Department of Planning and Economic Development to Expedite Geothermal Development (December 1985); and
- DPED, Alternative Approaches to the Legal, Institutional and Financial Aspects of Developing an Inter-island Electrical Transmission Cable System (April 1986).

Hence, additional studies would simply duplicate what has already been done, with no added benefit.

- Under S.B. 1382, S.D. 2, an applicant for the project would, in the earliest stage of the comprehensive permit process, enter into a joint agreement with the applicable state and county agencies, and possibly federal agencies, to identify the specific permits needed, the specific permit procedures to be undertaken, the appropriate documents (including an

EIS) that must be prepared, the schedule of joint and other public hearings, regulatory deadlines and ways in which consolidation and coordination of permitting functions can be accomplished. These will serve clearly to identify all requirements involved and the possible ways, and the extent, to which fulfillment of these requirements can be coordinated and consolidated.

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April 8, 1988

Mr. Maurice H. Kaya  
Energy Program Administrator  
Energy Division  
Department of Planning and  
Economic Development  
335 Merchant Street - Room 108  
Honolulu, Hawaii 96813

HAND DELIVER

Dear Maurice:

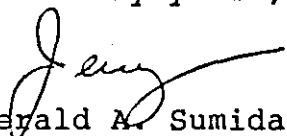
Geothermal/Cable Permitting Bill

Pursuant to our telephone conversation earlier this morning, I am enclosing, as we discussed, the following for your review and possible use relating to S.B. 3182, S.D. 2:

1. Technical changes to Section -2 (page 1, line 13) and the addition of a new Section -14 (Page 22) relating to the development of geothermal resources on the island of Maui;
2. Technical change to Section -5(c)(3) (page 13, lines 8-12) deleting the applicant from the review team but having the applicant available to the review team; and
3. Technical change to Section -7(4) relating to recommending changes, as appropriate, to permit legislation.

Please call me should you have any questions on the above. With warm regards,

Sincerely yours,

  
Gerald A. Sumida

GAS/ch  
Enclosures



4/8/88

Technical Changes to Section -2 (Page 1, line 13)  
and the Addition of A New Section -14 (Page 22)  
of S.B. 3182, S.D. 2

1. Change to section -2 (page 1, line 13):

§ -2 Findings and declaration of purpose. The legislature hereby finds and declares that:

- (1) The development of Hawaii's geothermal resources, [principally] which are located principally on the island of Hawaii and possibly on the island of Maui, represents a substantial and long-term source of indigenous renewable alternate energy that could be used to generate electric energy to meet the State's electric energy need for imported fossil fuels;

2. Addition of A New Section -14 (page 22):

§ -14 Development of Geothermal Resources on Maui.  
To the extent that an applicant's proposed project includes the development of geothermal resources on the island of Maui and the delivery of electric energy generated from these resources to the island of Oahu through the cable system, this chapter shall apply to that proposed project.

4/8/88

Technical Change to Section -5(c)(3)  
of S.B. 3182, S.D. 2 (Page 13, lines 8-12)

(3) [The applicant shall designate its representative to serve on and the representatives of the state, county, and federal agencies shall be those representatives in the interagency group.] The interagency group shall constitute the master consolidated permit application and review team, and the applicant shall designate its representative to be available to the review team, as it may require, for purposes of processing the application's master consolidated permit application.

*not applicable*

4/8/88

Technical Change to Section -7(4)  
of S.B. 3182, S.D. 2 (Page 18, lines 1-4)

- (4) [Seek by legislative or administrative action the elimination of] Recommend to the Legislature, as appropriate, suggested changes to existing laws to eliminate any duplicative or redundant permit requirements[, including any hearing procedures,] and consolidate them where possible;

*Not  
AM*

subject to preemption by the area-specific super agency.

Use-specific super agencies may be established to regulate the siting and development of specific types of development. Such agencies are used most often for regulating the development of energy-related facilities, although they might also be established to regulate other uses (e.g., tourism complexes, port facilities) which are of substantial importance to a larger region or jurisdiction than that which is responsible for most land use regulation. Three alternative strategies are available in the establishment of a use-specific super agency. First, all other regulatory agencies may be divested of power to regulate the particular type of development and sole power may be delegated to the super agency. Second, the super agency may be delegated power to override the decision of other agencies concerning the particular type of development. Third, the other regulatory controls which would apply to the particular development may be statutorily reduced.

#### D. Techniques Reducing Redundancy of Procedures

Permit surrender is the transfer or delegation of one agency's or one level of government's authority to regulate a particular aspect of development to another agency. This action may be in response to a recognition that the two agencies have a common substantive responsibility. The body delegating approval authority may retain power to override the delegee's decisions in the event the delegating body disagrees with a particular approval decision. In spite of the override power, it may remove the necessity in most instances of applicants duplicating some procedures where such duplication serves no substantive purpose.

In some situations the review processes leading to a permit might adequately deal with the concerns of a second permit. In such instances there can be established a rebuttable presumption that the approval of the first permit assures compliance with the conditions of the second permit. The presumption is made by the second permitting agency; it could be rebutted only if evidence were made available to the agency that, in fact, certain of its conditions were not considered by the first agency or if some information provided by the applicant was considered fraudulent or misrepresenting. In such cases, the second agency's review procedures would be instituted.

Impact assessment requirement revisions can be adopted which reflect both the importance of having relevant information regarding the consequences of a project and the inefficiency of packaging such information in different forms for different agencies. In particular, environmental impact statements (EIS) and EIS-equivalents (e.g., special management area impact statements) and their review procedures can be structured similarly. Any permit must be based on good information; standardized impact-reporting procedures meet the needs of a range of agencies while reducing the burden on applicants.

Joint hearings (described above as a coordinating technique) reduce redundancy insofar as they provide for the preparation of a single written and oral presentation at the joint hearing rather than individual reports.

### Pre-Application Conferences

Pre-application conferences provide for a multi-agency review of a project prior to the formal submission of individual applications to the agencies. These conferences not only allow the applicant to gain a better understanding of agency requirements but also allow potential inter-agency conflicts to arise early in the process. An example of the type of conflict which might be avoided is the "two yesses that equal a no" situation. This happens when two (or more) agencies approve a permit subject to certain conditions. The problem is that the conditions imposed by one agency would conflict with those imposed by the other agency to the extent that the project could not be undertaken.

These conferences are similar to the conceptual review technique discussed earlier. The difference is the multi-agency context of the conferences. This context raises the issue of how these conferences are to be triggered. Among the possibilities are having a coordinating agency to which applications could be made, having a lead agency mechanism incorporated into this technique, or having the conferences in any case which involves a particular type of activity.

Another issue is the degree to which the conference results are binding on the parties involved. Without some assurance that the results would be meaningful, there is little incentive for the parties to participate. Yet if they are completely binding, the formal application process becomes a mere formality. The possibility of such a result raises the issue of public participation.

The presence of the public at these conferences may substantially inhibit the functioning of this technique. Much of the potential for these conferences lies in the resolution of inter-agency conflict. If this process were open to the public, such conflicts might be downplayed rather than resolved. Yet the absence of the public from these conferences suggests that the results cannot be completely binding. The public should have an opportunity to comment before final decisions are made.

No state has formally instituted this technique. It is, however, one of the tools used by the administrator of the Oregon program.<sup>24</sup> Oregon has not issued regulations or guidelines on its use, nor is there any written description of the functioning of these conferences. It is, therefore, difficult to use the Oregon program as an example.

### Rebuttable Presumptions

Rebuttable presumption is a technique which allows the receipt of one permit to satisfy, at least partially, the requirements of a second permit. In essence, the receipt of a specialized permit presumes that the subject which was dealt with by that permit has been adequately handled for the purposes of later, more

generalized permits. The presumption can be rebutted. For example, a municipal approval of a sewage disposal system might create a rebuttable presumption that the sewage concerns involved in a state land use permit have been satisfied. This technique encourages the early receipt of the more specific permits and thus requires that the regulatory system allow such permits to be applied for before other permits. If the regulatory system does not allow this, as it does not in Hawaii, the technique may not be as useful.

Vermont has adopted this technique as part of its program. The technique has been described by one commentator as follows:

The technical review of plans for water and sewage is done by the Protection Division [a state agency] based upon standards in other statutes and regulations. When completed, they are formalized in a certification that the plans are in compliance with the appropriate review criteria. These Certifications of Compliance serve as the basis upon which District Commissions presume, subject to challenge, that sewage and water supply criteria in Act 250 [the state land use permit] have been satisfied and a duplicate review is not necessary.<sup>25</sup> (emphasis added)

#### Standards Determination

Standards determination refers to the establishment by an agency of explicit standards which must be used in any decision-making (by any agency) involving the subject matter covered by the standards. The state agency with regulatory control over the quality of the state's water can explicitly set out the standards for "water quality." Every other agency which considers water quality as part of its processing must then refer to the "water quality" standards as part of its own process.

This technique eliminates conflicting interpretations of the same concept and provides uniformity. It is similar to the rebuttable presumption in that one agency accepts the work done by another agency, instead of duplicating that work. The difference is that the rebuttable presumption applies only to a specific activity while standards determination intends to apply to all activities that are impacted by the standards.

Standards determination presents substantial difficulties in terms of implementation. Many states have agencies which establish standards in the form of agency rules and regulations. Establishing a system which would make these rules and regulations binding on other agencies might create more confusion than uniformity. And even if standards could be made binding on other agencies, the agencies which apply the standards may not have the staff resources and technical knowledge to apply them competently.

Another consideration is in determining which areas could be handled by

STANDING COMMITTEE REPORT NO.

**1996**

Honolulu, Hawaii

MAR 0 4 , 1988

Honorable Richard S. H. Wong  
President of the Senate  
Fourteenth State Legislature  
Regular Session of 1988  
State of Hawaii

Sir:

RE: S.B. No. 3182, S.D. 1

Your Committee on Ways and Means, to which was referred S.B. No. 3182, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO THE DEVELOPMENT AND USE OF GEOTHERMAL ENERGY,"

begs leave to report as follows:

The purpose of this bill is to establish a comprehensive permit system relating to geothermal and cable system development.

This bill was submitted by the Administration upon the recommendation of the Governor's Advisory Board on the Underwater Cable Transmission Project concerning new legislation relating to the development and use of geothermal energy.

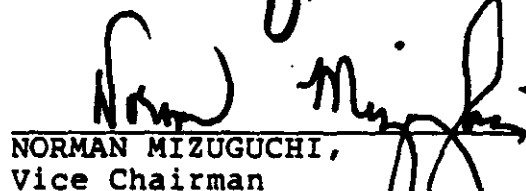
One of the major and fundamental impediments to the development of the geothermal resources on the island of Hawaii and the concurrent development of the cable system project that would move the generated electrical energy to the island of Oahu is the diverse array of federal, state, and county land use, planning, environmental, and other related laws and regulations. This bill seeks to facilitate that permit process and thereby make the development of one of Hawaii's most significant energy sources more attractive to private developers.

Your Committee has amended this bill by changing its effective date to July 1, 1988, to coincide with the beginning of the fiscal year, and by making technical, nonsubstantive amendments for purposes of style and clarity, and to correct obsolete references.

Your Committee on Ways and Means is in accord with the intent and purpose of S.B. No. 3182, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 3182, S.D. 2.

Respectfully submitted,

  
MAMORU YAMASAKI, Chairman

  
NORMAN MIZUGUCHI,  
Vice Chairman

  
JAMES AKI, Member

  
RUSSELL BLAIR, Member

  
LEHUA FERNANDES SALLING,  
Member


  
GERALD T. HAGINO, Member

  
BERTRAND KOBAYASHI, Member



  
RICHARD M. MATSUURA, Member

  
DENNIS M. NAKASATO, Member

  
PATSY K. YOUNG, Member

  
ROBERT N. HERKES, Member

  
DONNA R. IKEDA, Member

  
ANN KOBAYASHI, Member

# A BILL FOR AN ACT

RELATING TO THE DEVELOPMENT AND USE OF GEOTHERMAL ENERGY.

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

1         SECTION 1. The Hawaii Revised Statutes is amended by adding  
2         a new chapter to be appropriately designated and to read as  
3         follows:

4                                 "CHAPTER

5   GEOTHERMAL AND CABLE SYSTEM

6   DEVELOPMENT PERMITTING ACT OF 1988

7                 § -1 Short title. This chapter shall be known and may be  
8         cited as the "Geothermal and Cable System Development Permitting  
9         Act of 1988".

10                § -2 Findings and declaration of purpose. The  
11         legislature hereby finds and declares that:

- 12                (1) The development of Hawaii's geothermal resources,  
13                 principally located on the island of Hawaii, represents  
14                 a substantial and long-term source of indigenous  
15                 renewable alternate energy that could be used to  
16                 generate electric energy to meet the State's electric  
17  
18

S.B. NO.

3182  
S.D. 2

1 energy needs and concurrently help to reduce the  
2 State's need for imported fossil fuels;

3 (2) The State has deemed it appropriate that the private  
4 sector should develop these geothermal resources, and,  
5 to that end, has sought to encourage private sector  
6 exploration and development of geothermal resources;

7 (3) The private sector companies seeking to develop  
8 geothermal resources are, however, unable or unwilling  
9 to expend the substantial amounts of funds needed to  
10 develop these resources to their full extent without an  
11 assured and sufficiently large market for the electric  
12 energy to be generated therefrom, and the present and  
13 projected electric energy demand on the island of  
14 Hawaii does not provide an assured and sufficiently  
15 large market;

16 (4) The greatest present and projected demand for  
17 geothermally generated electric energy is located on  
18 the island of Oahu;

19 (5) The State, with the support and assistance of the  
20 federal and county of Hawaii governments, has been  
21 exploring for several years the technical, engineering,  
22 economic, and financial feasibility of an interisland  
23  
24

S.B. NO.

3182  
S.D. 2

1 deep water electrical transmission cable system that  
2 would be capable of transmitting geothermally generated  
3 electric energy from the island of Hawaii to the  
4 islands of Maui and Oahu, and has concluded that a  
5 cable system is both feasible and desirable;

6 (6) The development of such a cable system will not be  
7 undertaken without the firm assurance that a sufficient  
8 amount of geothermally generated electric energy will  
9 be continuously available to be transmitted through a  
10 cable system once it becomes operational;

11 (7) The fundamental interrelationship between the  
12 development of geothermal resources and a cable system  
13 and the magnitude of the cost to undertake each of  
14 these developments clearly indicate that neither will  
15 be undertaken without the firm assurance that the other  
16 also will be undertaken in a synchronized and  
17 coordinated manner to enable both developments in  
18 substance to be completed concurrently, thereby  
19 ensuring that revenues will be available to begin  
20 amortizing the costs of each of these developments;

21 (8) A major and fundamental impediment to the development  
22 of both geothermal resources and a cable system is the  
23  
24

1           diverse array of federal, state, and county land use,  
2           planning, environmental, and other related laws and  
3           regulations that currently control the undertaking of  
4           all commercial projects in the State;

5           (9) While many of these controls attempt to ensure that  
6           commercial development projects in general are  
7           undertaken in a manner consistent with land use,  
8           planning, environmental, and other public policies,  
9           many of these specific laws, regulations, and controls  
10          in most instances are, or tend to be, repetitive,  
11          duplicative, and uncoordinated, and thus consume  
12          unnecessary amounts of time, effort, and expense, and  
13          result at best in increases in the cost of new projects  
14          and at worst in abandonment of needed projects;

15          (10) To a limited extent, the State and counties have sought  
16          to ameliorate certain of these impediments through the  
17          enactment or adoption of measures to improve the  
18          coordination and efficiency of land use and planning  
19          controls and specifically to facilitate the development  
20          of geothermal resources;

21          (11) Notwithstanding these efforts, the complexities, the  
22          magnitude in scope and cost, the fundamental  
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1 deep water electrical transmission cable system that  
2 would be capable of transmitting geothermally generated  
3 electric energy from the island of Hawaii to the  
4 islands of Maui and Oahu, and has concluded that a  
5 cable system is both feasible and desirable;

6 (6) The development of such a cable system will not be  
7 undertaken without the firm assurance that a sufficient  
8 amount of geothermally generated electric energy will  
9 be continuously available to be transmitted through a  
10 cable system once it becomes operational;

11 (7) The fundamental interrelationship between the  
12 development of geothermal resources and a cable system  
13 and the magnitude of the cost to undertake each of  
14 these developments clearly indicate that neither will  
15 be undertaken without the firm assurance that the other  
16 also will be undertaken in a synchronized and  
17 coordinated manner to enable both developments in  
18 substance to be completed concurrently, thereby  
19 ensuring that revenues will be available to begin  
20 amortizing the costs of each of these developments;

21 (8) A major and fundamental impediment to the development  
22 of both geothermal resources and a cable system is the  
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1 diverse array of federal, state, and county land use,  
2 planning, environmental, and other related laws and  
3 regulations that currently control the undertaking of  
4 all commercial projects in the State;

5 (9) While many of these controls attempt to ensure that  
6 commercial development projects in general are  
7 undertaken in a manner consistent with land use,  
8 planning, environmental, and other public policies,  
9 many of these specific laws, regulations, and controls  
10 in most instances are, or tend to be, repetitive,  
11 duplicative, and uncoordinated, and thus consume  
12 unnecessary amounts of time, effort, and expense, and  
13 result at best in increases in the cost of new projects  
14 and at worst in abandonment of needed projects;

15 (10) To a limited extent, the State and counties have sought  
16 to ameliorate certain of these impediments through the  
17 enactment or adoption of measures to improve the  
18 coordination and efficiency of land use and planning  
19 controls and specifically to facilitate the development  
20 of geothermal resources;

21 (11) Notwithstanding these efforts, the complexities, the  
22 magnitude in scope and cost, the fundamental  
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1 interrelationship between the development of geothermal  
2 resources and a cable system, the inherent requirement  
3 for the coordinated development of the geothermal  
4 resources and a cable system, the substantial length of  
5 time required to undertake and complete both  
6 developments, and the requirements for private and  
7 possibly public financing for both developments cannot  
8 be effectively handled and accommodated by these  
9 existing laws, regulations, and controls;

10 (12) The development of geothermal resources and a cable  
11 system, both individually and collectively, would  
12 represent the largest and most complex development ever  
13 undertaken in the State;

14 (13) The private sector companies that have been engaged in  
15 developing the State's geothermal resources and other  
16 companies that have expressed strong interest in  
17 developing a cable system all have emphasized the need  
18 for a comprehensive permitting system that can provide  
19 for and facilitate the coordinated development of both  
20 geothermal resources and a cable system, thus providing  
21 these companies with the firm assurances that they  
22 require to commit the substantial amounts of funds,

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1 time, and effort necessary to undertake these  
2 developments, while at the same time ensuring the  
3 fulfillment of fundamental state and county land use  
4 and planning policies;

5 (14) Several of these private sector companies have  
6 expressed an interest in undertaking, through a  
7 consortium of private companies or otherwise, the  
8 development of the geothermal resources and a cable  
9 system as a combined single project and have further  
10 expressed the desire that a comprehensive permitting  
11 system be established that could accommodate this  
12 development of a combined single project;

13 (15) The development of geothermal resources and a cable  
14 system are in furtherance of the State's policies, as  
15 expressed in the state plan and elsewhere, to develop  
16 the State's indigenous renewable alternate energy  
17 resources and to decrease the State's dependency on  
18 imported fossil fuels; and

19 (16) It is declared as a matter of legislative determination  
20 that the development of the State's geothermal  
21 resources and the related cable system cannot  
22 effectively be undertaken and accomplished under  
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1 existing laws, regulations, and controls, and that the  
2 development of geothermal resources and the cable  
3 system being necessary to and proper to attain the  
4 public policies of the State previously recited, a  
5 comprehensive permitting system for the development of  
6 the State's geothermal resources and the cable system  
7 should be established by an act of the legislature.

8 § -3 Definitions. As used in this chapter unless the  
9 context clearly requires otherwise:

10 "Agency" means any department, office, board, or commission  
11 of the State or a county government which is a part of the  
12 executive branch of that government, but does not include any  
13 public corporation or authority that may be established by the  
14 legislature for the purposes of the project.

15 "Applicant" means any person who, pursuant to statute,  
16 ordinance, rule, or regulation requests approval or a permit for  
17 the proposed project.

18 "Approval" means a discretionary consent required from an  
19 agency prior to the actual implementation of the project.

20 "Department" means the department of land and natural  
21 resources or any successor agency.

22 "Discretionary consent" means a consent, sanction, or  
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1 recommendation from an agency for which judgment and free will  
2 may be exercised by the issuing agency, as distinguished from a  
3 ministerial consent.

4 "Environmental impact statement" means an informational  
5 document prepared in compliance with chapter 343.

6 "Interagency group" means the body established pursuant to  
7 section -6.

8 "Permit" means any license, permit, certificate,  
9 certification, approval, compliance schedule, or other similar  
10 document or decision pertaining to any regulatory or management  
11 program which is related to the protection, conservation, use of,  
12 or interference with the natural resources of land, air, or water  
13 in the State and which is required prior to or in connection with  
14 the undertaking of the project.

15 "Person" includes any individual, partnership, firm,  
16 association, trust, estate, corporation, joint venture,  
17 consortium, any public corporation or authority that may be  
18 established by the legislature for the purposes of the project,  
19 or other legal entity other than an agency.

20 "Project" means the commercial development, construction,  
21 installation, financing, operation, maintenance, repair, and  
22 replacement, including without limitation all applicable  
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1 exploratory, testing, and predevelopment activities related to  
2 the foregoing, of:

- 3 (1) A geothermal power plant or plants, including all  
4 associated equipment, facilities, wells, and  
5 transmission lines, on the island of Hawaii for the  
6 primary purpose of generating electric energy for  
7 transmission to the island of Oahu through the cable  
8 system; and
- 9 (2) An interisland deep water electrical transmission cable  
10 system, including all land-based transmission lines and  
11 other ancillary facilities, to transmit geothermally  
12 generated electric energy from the island of Hawaii to  
13 the island of Oahu, regardless of whether the cable  
14 system is used to deliver electric energy to any  
15 intervening point. Nothing in this definition shall  
16 preclude the sale of a portion of the electric energy  
17 generated by the geothermal plant or plants to the  
18 electric utility serving any one or more of the islands  
19 of Hawaii, Maui, Molokai, or Lanai.

20 § -4 Comprehensive permit system. (a) The department is  
21 designated as the lead agency for the purposes of this chapter  
22 and, in addition to its existing functions, shall establish and  
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1 administer the comprehensive permit system provided for in this  
2 chapter, which shall incorporate all state and county permitting  
3 functions involved in the development of the project which are  
4 transferred by this chapter to the department to effectuate the  
5 purposes of this chapter.

6 (b) The comprehensive permit system shall include:

7 (1) A master consolidated permit application and review  
8 process for the project, which shall incorporate:

9 (A) A list of all permits required for the project;

10 (B) The role and functions of the department as the  
11 lead agency and the interagency group;

12 (C) All permit review and approval deadlines;

13 (D) A schedule for meetings and actions of the  
14 interagency group;

15 (E) A mechanism to resolve any conflicts that may  
16 arise between or among the department and any  
17 other agencies, including any federal agencies, as  
18 a result of conflicting permit, approval, or other  
19 requirements, procedures, or agency perspectives;  
20 and

21 (F) Any other desirable or necessary administrative or  
22 legislative actions; and  
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1 (2) A master consolidated permit application form to be  
2 used for the project for all permitting purposes.

3 (c) The department shall have primary jurisdiction over the  
4 permitting requirements and procedures for the project; shall  
5 perform all of the permitting functions for which it is currently  
6 responsible and which are transferred to it by this chapter for  
7 the purposes of the project; and shall coordinate and consolidate  
8 all required permit reviews by other agencies, and to the fullest  
9 extent possible, by all federal agencies having jurisdiction over  
10 any aspect of the project.

11 § -5 Consolidated permit application and review process.

12 (a) The department shall serve as the lead agency for the  
13 consolidated permit application and review process established  
14 pursuant to section -4(b)(1) and as set forth in this section  
15 for the project. All agencies whose permitting functions are not  
16 transferred by this chapter to the department for the purposes of  
17 the project are required to participate in the master  
18 consolidated permit application and review process.

19 (b) Notwithstanding any other law, ordinance, rule, or  
20 regulation to the contrary, the department and each state and  
21 county agency whose permitting functions are not transferred by  
22 this chapter to the department for the purposes of the project  
23 shall complete all of their respective permitting functions for  
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1 the purposes of the project, pursuant to this chapter, within  
2 sixty days of the receipt of the master consolidated permit  
3 application for the proposed project; except that the department  
4 or any permit-issuing agency shall have good cause to exceed the  
5 sixty-day time limit if the permit-issuing agency must rely on  
6 another agency, including any federal agency, for all or part of  
7 the permit processing and the delay is caused by the other  
8 agency.

9 (c) The procedure shall be as follows:

10 (1) The applicant shall submit the master consolidated  
11 permit application using a master consolidated permit  
12 application form, which shall include whatever data  
13 about the proposed project that the department deems  
14 necessary to fulfill the purposes of this chapter and  
15 to determine which other agencies may have jurisdiction  
16 over any aspect of the proposed project.

17 (2) Upon receipt of the master consolidated permit  
18 application, the department shall notify all State and  
19 county agencies whose permitting functions are not  
20 transferred by this chapter to the department for the  
21 purposes of the project, as well as all federal  
22 agencies that the department determines may have  
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1 jurisdiction over any aspect of the proposed project as  
2 set forth in the application, and shall invite the  
3 federal agencies so notified to participate in the  
4 consolidated application process. The state and county  
5 agencies, and those federal agencies that accept the  
6 invitation, thereafter shall participate in the master  
7 consolidated permit application and review process.

8 (3) The applicant shall designate its representative to  
9 serve on the master consolidated permit application and  
10 review team, and the representatives of the state,  
11 county, and federal agencies shall be those  
12 representatives in the interagency group.

13 (4) The representatives of the department and state,  
14 county, and federal agencies and the applicant shall  
15 develop and sign a joint agreement among themselves  
16 which shall:

17 (A) Identify the members of the master consolidated  
18 permit application and review team;

19 (B) Specify the regulatory and review responsibilities  
20 of the department and each state, county, and  
21 federal agency and set forth the responsibilities  
22 of the applicant; and

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1 (C) Establish a timetable for regulatory review, the  
2 conduct of necessary hearings, the preparation of  
3 an environmental impact statement if necessary,  
4 and other actions required to minimize duplication  
5 and to coordinate and consolidate the activities  
6 of the applicant, the department, and the state,  
7 county, and federal agencies.

8 (5) The department, each state and county agency whose  
9 permitting functions are not transferred by this  
10 chapter to the department for the purposes of the  
11 project, and each federal agency shall issue its own  
12 permit or approval based upon its own jurisdiction.  
13 The consolidated application process shall not affect  
14 or invalidate the jurisdiction or authority of any  
15 agency under existing law, except to the extent that  
16 the permitting functions of any state or county agency  
17 are transferred by this chapter to the department for  
18 the purposes of the project.

19 (6) The applicant shall apply directly to each federal  
20 agency that does not participate in the master  
21 consolidated permit application and review process.

22 (7) The department shall review for completeness and  
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1           thereafter shall process each master consolidated  
2           permit application submitted by an applicant for the  
3           project, and shall monitor the processing of the permit  
4           application by those state and county agencies whose  
5           permitting functions are not transferred by this  
6           chapter to the department for the purposes of the  
7           project. The department shall coordinate, and seek to  
8           consolidate where possible, the permitting functions  
9           and shall monitor and assist in the permitting  
10          functions conducted by all of these agencies, and to  
11          the fullest extent possible the federal agencies, in  
12          accordance with the comprehensive permit system.

13           (8) Once the processing of each master consolidated permit  
14           application has been completed and the permit requested  
15           has been issued to the applicant, the department  
16           thereafter shall monitor the applicant's work  
17           undertaken pursuant to the permit to ensure the  
18           applicant's compliance with the terms and conditions of  
19           the permit and to assist, as appropriate, the applicant  
20           in its project.

21           § -6 Interagency group. (a) The department shall  
22           establish an interagency group comprised of those state and  
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1 county agencies whose permitting functions are not transferred by  
2 this chapter to the department for the purposes of the project  
3 and which have jurisdiction over any aspect of the project. Each  
4 of these agencies shall designate an appropriate representative  
5 to serve on the interagency group as part of the representative's  
6 official responsibilities. The interagency group shall perform  
7 liaison and assisting functions as required by this chapter and  
8 the department. The department shall invite and encourage the  
9 appropriate federal agencies having jurisdiction over any aspect  
10 of the project to participate in the interagency group.

11 (b) The department and agencies shall cooperate with the  
12 federal agencies to the fullest extent possible to minimize  
13 duplication between and, where possible, promote consolidation of  
14 federal and state requirements. To the fullest extent possible,  
15 this cooperation shall include, among other things, joint  
16 environmental impact statements with concurrent public review and  
17 processing at both levels of government. Where federal law has  
18 requirements that are in addition to but not in conflict with  
19 state law requirements, the department and the agencies shall  
20 cooperate to the fullest extent possible in fulfilling their  
21 requirements so that all documents shall comply with all  
22 applicable laws.

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1           (c) If the legislature establishes any public corporation  
2 or authority for the purposes of the project, then upon its  
3 establishment, the public corporation or authority shall be a  
4 member of the interagency group.

5           **§ -7 Streamlining activities.** In administering the  
6 comprehensive permit system, the department shall:

- 7           (1) Monitor all permit applications submitted under this  
8 chapter and the processing thereof on an ongoing basis  
9 to determine the source of any inefficiencies, delays,  
10 and duplications encountered and the status of all  
11 permits in process;
- 12           (2) Adopt and implement needed streamlining measures  
13 including, but not limited to, measures defined by the  
14 department, or the interagency group, or both, in  
15 consultation with those agencies whose permitting  
16 functions are not transferred by this chapter to the  
17 department for the purposes of the project and with  
18 members of the public;
- 19           (3) Design, in addition to the master consolidated permit  
20 application form, other applications, checklists, and  
21 forms essential to the implementation of the  
22 comprehensive permit process;
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1 (4) Seek by legislative or administrative action the  
2 elimination of duplicative or redundant permit  
3 requirements, including any hearing procedures, and  
4 consolidate them where possible;

5 (5) Ensure that all standards used in any agency decision-  
6 making for any required permits are clear, explicit,  
7 and precise; and

8 (6) Incorporate, where possible, rebuttable presumptions  
9 into the comprehensive permit process.

10 **§ -8 Information services. The department shall:**

11 (1) Operate a permit information and coordination center  
12 during normal working hours, which will provide  
13 guidance to potential applicants for the project with  
14 regard to the permits and procedures that may apply to  
15 the project; and

16 (2) Maintain and update a repository of the laws, rules,  
17 procedures, permit requirements, and criteria of state  
18 and county agencies whose permitting functions are not  
19 transferred by this chapter to the department for the  
20 purposes of the project and which have control or  
21 regulatory power over any aspect of the project and of  
22 federal agencies having jurisdiction over any aspect of  
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1           the project.

2           **§ -9 Construction of the chapter; rules.** This chapter  
3 shall be construed liberally to effectuate its purposes, and the  
4 department shall have all powers which may be necessary to carry  
5 out the purposes of this chapter, including the authority to  
6 adopt, amend, and repeal rules to implement this chapter. The  
7 adoption, amendment, and repeal of all rules shall be subject to  
8 chapter 91.

9           **§ -10 Transfer of functions.** (a) Those functions  
10 identified in this section insofar as they relate to the permit  
11 application, review, processing, issuance, and monitoring of  
12 state and county laws, ordinances, and rules and to the  
13 enforcement of terms, conditions, and stipulations of permits and  
14 other authorizations issued by state and county agencies with  
15 respect to the development, construction, installation,  
16 operation, maintenance, repair, and replacement of the project,  
17 or any portion or portions thereof, are transferred to the  
18 department. This transfer shall vest in the department exclusive  
19 responsibility for the permit and enforcement functions described  
20 in this section of all state and county laws, ordinances, and  
21 rules relevant in any manner to the development, construction,  
22 installation, operation, maintenance, repair, and replacement of

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1 the project or any portion or portions thereof. With respect to  
2 each of the statutory authorities cited below, the transferred  
3 functions include all enforcement functions of the given agencies  
4 or their officials under the statute cited as may be related to  
5 the enforcement of the terms, conditions, and stipulations of  
6 permits, including but not limited to the specific sections of  
7 the statute cited. "Enforcement", for purposes of this transfer  
8 of functions, includes monitoring and any other compliance or  
9 oversight activities reasonably related to the enforcement  
10 process. These transferred functions include:

- 11 (1) The functions of the land use commission related to:  
12 district boundary amendments as set forth in sections  
13 205-3.1 et seq.; changes in zoning as set forth in  
14 section 205-5; and shoreline setback approvals as set  
15 forth in part III of chapter 205A; and  
16 (2) The permit approval and enforcement functions of the  
17 director of transportation or other appropriate  
18 official or entity in the department of transportation  
19 related to permits or approvals issued for the use of  
20 commercial activities in or affecting the ocean waters  
21 and shores of the State under chapter 266.

- 22 (b) In performing the functions transferred to it by this  
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1 section, the department shall follow existing laws, ordinances,  
2 and rules as closely as is consistent with standards meeting  
3 minimum requirements of good design, health, safety, and  
4 coordinated development.

5 (c) Nothing in this section shall be construed to relieve  
6 an applicant from the laws, ordinances, and rules of any agency  
7 whose functions are not transferred by this chapter to the  
8 department for the purposes of the project.

9 (d) This section shall not apply to any permit issued by  
10 the public utilities commission under chapter 269.

11 (e) Notwithstanding any other provision of this chapter,  
12 this section shall take effect on a date that is one year after  
13 the effective date of this chapter.

14 § -11 Annual report. The department shall submit an  
15 annual report to the governor and the legislature on its work  
16 during the preceding year, the development status of the project,  
17 any problems encountered, and any legislative actions that may be  
18 needed further to improve the comprehensive permit process and  
19 implement the intent of this chapter.

20 § -12 Severability. If any provision of this chapter or  
21 the application thereof to any person or circumstances is held  
22 invalid, the invalidity shall not affect other provisions or  
23



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1 applications of this chapter that can be given effect without the  
2 invalid provision or application, and to this end the provisions  
3 of this chapter are declared severable.

4 § -13 Exemptions from certain state laws. In order to  
5 promote the purposes of this chapter, all persons hired by the  
6 department to effectuate this chapter are excepted from chapters  
7 76, 77, and 89."

8 SECTION 2. There is appropriated out of the general  
9 revenues of the State of Hawaii the sum of \$275,000, or so much  
10 thereof as may be necessary for fiscal year 1988-1989, to carry  
11 out the purposes of this chapter. The sum appropriated shall be  
12 expended by the department of land and natural resources for the  
13 purposes of this Act. Any unexpended or unencumbered balance of  
14 any appropriation made by this chapter as of the close of  
15 business on June 30, 1989, shall lapse into the general fund.

16 SECTION 3. This chapter shall take effect on July 1, 1988,  
17 but shall not apply to any applications filed prior to the  
18 effective date.

~~CHRONOLOGY OF~~ GEOTHERMAL ACTIVITIES

Department of Land and Natural Resources

CDUA by Campbell Estate (HA 3/2/82-1463) to conduct  
geothermal activities at Kahaualea, Puna, Hawaii

May 20, 1982	Public hearing on CDUA; Hilo High School Cafe.
October 5, 1982	Contested case hearing on CDUA
" 25-29 1982	" " " "
Nov. 15-19, 1982	" " " "
Dec. 7-10, 1982	" " " "
Feb. 10, 1983	Final arguments
Feb. 25, 1983	BLNR issues Findings of Fact, Conclusions of Law, and Decision and Order
Mar. - Apr. 1984	Informational meeting--receive testimony on geologic hazards at Kahaualea

Subzone Designation

PUBLIC INFORMATIONAL MEETING ON SUBZONE DESIGNATION:

May 8, 1984	Hilo, Hawaii
" 9, "	Kahului, Maui
" 29, "	Hilo, Hawaii
" 30, "	Kahului, Maui
July 10, 1984	Puna Community Council
" 11, "	Volcano Community Association
" 27, "	Ulupalakua, Kanaio, Maui
" 30, "	Pahoa Community Council

PUBLIC HEARING ON SUBZONE DESIGNATION:

Sept. 10, 1984	Kula Elementary School, Maui
" 11, "	Pahoa Elementary School, Hawaii
" 12, "	Campus Center, UH-Hilo, Hawaii
" 12, "	Volcanoes National Park, Hawaii
Nov. 16, "	Board designates Kilauea Lower East Rift and Haleakala Southwest Rift Geothermal Resources Subzones

CONTESTED CASE HEARING ON PROPOSED KILAUEA UPPER EAST  
RIFT GEOTHERMAL RESOURCE SUBZONE:

Dec. 12-20, 1984	State Office Building, Hilo
" 28, "	Decision and Order by the Board to consider land exchange between Campbell Estate and State; and assess Kilauea Middle East GRS

PUBLIC INFORMATION MEETING ON PROPOSED KILAUEA  
SOUTHWEST AND MIDDLE EAST RIFT SUBZONE DESIGNATION:

Mar. 13, 1985 Keaau, Hawaii  
" 14, " Pahala, Hawaii  
May 15, " Pahoa, Hawaii  
" 16, " Pahala, Hawaii

PUBLIC HEARING ON KILAUEA SOUTHWEST RIFT AND  
MIDDLE EAST SUBZONE DESIGNATION:

Sept. 26, 1985 Pahoa, Hawaii  
" " " Pahala, Hawaii

CONTESTED CASE HEARING ON KILAUEA MIDDLE EAST RIFT GRS:

Nov. 13-15, 1985

Dec. 20, 1985 Decision and Order of the Board designating  
Kilauea Middle East Rift GRS 9,014 acs as  
a GRS

Dec. 27, 1985 Land exchange between Campbell Estate and State  
(Kahaualea and Puna Forest Reserve, including  
the Wao Kele 'O Puna Natural Area Reserve)  
completed

Jan. 13, 1986 Public hearing on Campbell CDUA to conduct  
geothermal activities in Kilauea Middle East Rift  
GRS (HA 12/20/85-1830)

Feb. 18-23, 1986 Contested case hearing on CDUA

Mar. 14, 1986 Contested case hearing continued

April 11, 1986 Decision and Order (D/O) of the Board to allow  
25-100 megawatt incremental geothermal  
development

October 1986 Appeals on the Kahaualea CDUA D/O, Kahaualea  
EIS and Kahaualea GRS D/O; dismissed by  
the Third Circuit Court

December 1986 Written briefs for Kilauea Middle East Rift  
GRS D/O and Kilauea Middle East Rift CDUA D/O  
filed with Hawaii Supreme Court (re: 1st  
Amendment "religious" free exercise clause).  
Awaiting date for oral argument before Supreme  
Court, sometime in March or April 1987.

Pending Geothermal Activities

DEPARTMENT OF LAND AND NATURAL RESOURCES

1. Request for a contested case hearing on the proposed Kilauea Southwest Rift GRS currently being evaluated by the Board of Land and Natural Resources and Attorney General. Determination to be made as to whether a contested case hearing will be granted.
2. Pursuant to Acts 290, 124, 167, and 187, SLH, the Department's Administrative rules on the Designation and Regulation of Geothermal Resource Subzones need to be amended.
3. Proposed pipeline project between Thermal Power Co. and the Natural Energy Laboratory of Hawaii to connect Kapoho State No. 1-A well and the HGP-A power plant facility will require review of amended Plan of Operations submitted by Thermal Power Co.
4. Puna Geothermal Venture's (PGV) proposes 25 MW power plant on lands leased under State Geothermal Resource Mining Lease No. R-2. This proposed project will require Board approval on a new Plan of Operations.
5. Issuance of mining lease to Campbell Estate covering approximately 9,014 acres in the Kilauea Middle East Rift GRS.
6. Issuance of a geothermal exploration permit to Puna Geothermal Venture to conduct surface geophysical surveys. Board submittal in preparation.
7. Jointly funded (DPED/DLNR) consultant study evaluating development of Hawaii's renewable energy resources and State's water resources.

## GEOHERMAL LEGISLATION

### 1986

#### Act 290, SLH 1986 - Contested Cases

Allows Board at any time after a contested case hearing related to geothermal development activities in conservation districts is requested, to appoint a special master for mediation.

#### Act 167, SLH 1986 - Conservation District Use Permit

Establishes criteria upon which the Board shall review a conservation district use permit application for geothermal development activities.

#### Act 124, SLH 1986 - Direct Use Applications

Amends definition of geothermal development activity to include direct use applications.

#### Act 187, SLH 1986 - Notice to Landowners Affected

Relating to Notification of Owners of Properties included Within and Adjoining Areas Being proposed for designation as Geothermal Resource Subzones

### 1985

#### Act 138, SLH 1985 - Geothermal Royalties

Provides for the waiver of royalty payments to the State by the Board for up to eight years.

#### Act 226, SLH 1985 - Geothermal Appeals

Requires that any appeal of a geothermal-related contested case hearing be made directly to the Hawaii Supreme Court.

### 1984

#### Act 151 - Geothermal Resource Subzones

Clarifies rights of existing geothermal resource mining lessees (i.e. "grandfathered" certain leases as GRS).

### 1983

#### Act 296 - Geothermal Resource Subzones

Provides for designation and regulation of geothermal resource subzones.

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THE SENATE  
THE FOURTEENTH LEGISLATURE  
REGULAR SESSION 1988

DEPARTMENT OF WATER & LAND RESOURCES

RECEIVED  
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STATE

COMMITTEE ON AGRICULTURE, ENERGY & OCEAN RESOURCES

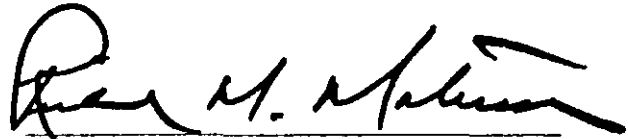
Senator Richard M. Matsuura, Chairman  
Senator James Aki, Vice-Chairman

INFORMATIONAL BRIEFING

DATE: Wednesday, April 6, 1988  
TIME: 1:30 p.m.  
PLACE: Senate Conference Room 2

A G E N D A

SB 3182, SD 2      RELATING TO THE DEVELOPMENT AND USE OF  
SSCR 1996          GEOTHERMAL ENERGY



SENATOR RICHARD M. MATSUURA  
CHAIRMAN

FOR FURTHER INFORMATION, PLEASE CALL THE COMMITTEE CLERK AT  
548-6291.

WA 4/5/88

STAND. COM. REP. NO. 1084-88

Honolulu, Hawaii  
March 31, 1988

RE: S.B. No. 3182  
S.D. 2  
H.D. 2

Honorable Daniel J. Kihano  
Speaker, House of Representatives  
Fourteenth State Legislature  
Regular Session of 1988  
State of Hawaii

Sir:

Your Committee on Finance, to which was referred S.B. No. 3182, S.D. 2, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE DEVELOPMENT AND USE OF GEOTHERMAL ENERGY", begs leave to report as follows:

The purpose of this bill is to mandate the Governor's Advisory Board on the Underwater Cable Transmission to develop legislation to establish a comprehensive permit system relating to geothermal and cable system development.

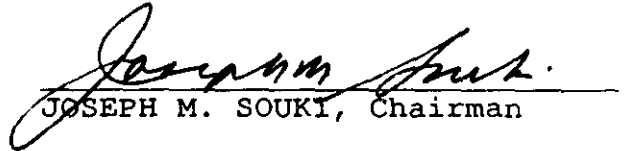
One of the major and fundamental elements of the development of a combined geothermal/cable system project is the diverse array of federal, state and county land use, planning, environmental and other related laws, regulations, and permits that currently control the undertaking of all commercial projects in the State. Many of these controls attempt to ensure that commercial development projects are undertaken in a manner consistent with land use, planning, environmental, and other public policies. At the same time many of these specific laws, regulations, and controls overlap in jurisdiction.


This bill seeks to establish a comprehensive permit system designed specifically to facilitate the implementation of a geothermal/cable system project.

Your Committee made technical, nonsubstantive amendments to this bill for purposes of style and clarity.

Your Committee on Finance is in accord with the intent and purpose of S.B. No. 3182, S.D. 2, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 3182, S.D. 2, H.D. 2.

Respectfully submitted,

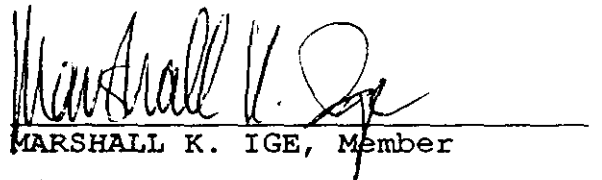
  
JOSEPH M. SOUKI, Chairman

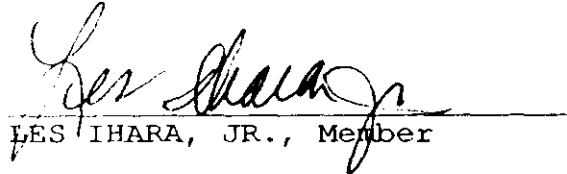
  
CAROL A. FUKUNAGA,  
Vice Chairman

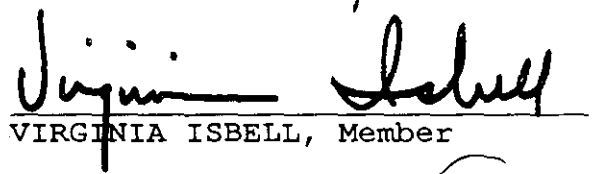
  
DENNIS A. ARAKAKI, Member

  
KAREN K. HORITA, Member

  
DAVID Y. IGE, Member

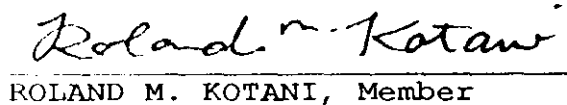
  
MARSHALL K. IGE, Member

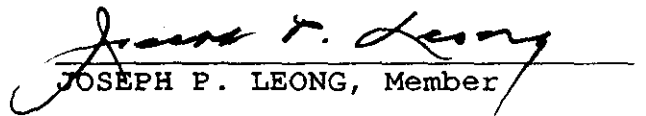
  
LES IHARA, JR., Member

  
VIRGINIA ISBELL, Member

  
EZRA R. KANOHO, Member

  
BERTHA C. KAWAKAMI, Member


  
ROLAND M. KOTANI, Member

  
JOSEPH P. LEONG, Member

  
HARVEY S. TAJIRI, Member

  
CAM CAVASSO, Member



  
BARBARA MARUMOTO, Member

  
PATRICK A. RIBELLIA, Member

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A BILL FOR AN ACT

RELATING TO THE DEVELOPMENT AND USE OF GEOTHERMAL ENERGY.

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

1 SECTION 1. The legislature hereby finds and declares that:

2 (1) The development of Hawaii's geothermal resources,  
3 principally located on the island of Hawaii, represents  
4 a substantial and long-term source of indigenous  
5 renewable alternate energy that could be used to  
6 generate electric energy to meet the State's electric  
7 energy needs and concurrently help to reduce the  
8 State's need for imported fossil fuels;

9 (2) The State has deemed it appropriate that the private  
10 sector should develop these geothermal resources, and,  
11 to that end, has sought to encourage private sector  
12 exploration and development of geothermal resources;

13 (3) The private sector companies seeking to develop  
14 geothermal resources are, however, unable or unwilling  
15 to expend the substantial amounts of funds needed to  
16 develop these resources to their full extent without an  
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1 assured and sufficiently large market for the electric  
2 energy to be generated therefrom, and the present and  
3 projected electric energy demand on the island of  
4 Hawaii does not provide an assured and sufficiently  
5 large market;

6 (4) The greatest present and projected demand for  
7 geothermally generated electric energy is located on  
8 the island of Oahu;

9 (5) The State, with the support and assistance of the  
10 federal and county of Hawaii governments, has been  
11 exploring for several years the technical, engineering,  
12 economic, and financial feasibility of an interisland  
13 deep water electrical transmission cable system that  
14 would be capable of transmitting geothermally generated  
15 electric energy from the island of Hawaii to the  
16 islands of Maui and Oahu;

17 (6) The development of this cable system will not be  
18 undertaken without the firm assurance that a sufficient  
19 amount of geothermally generated electric energy will  
20 be continuously available to be transmitted through a  
21 cable system once it becomes operational;

22 (7) The fundamental interrelationship between the  
23 development of geothermal resources and a cable system  
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1 and the magnitude of the cost to undertake each of  
2 these developments clearly indicate that neither will  
3 be undertaken without the firm assurance that the other  
4 also will be undertaken in a synchronized and  
5 coordinated manner to enable both developments in  
6 substance to be completed concurrently, thereby  
7 ensuring that revenues will be available to begin  
8 amortizing the costs of each of these developments;

9 (8) A major and fundamental impediment to the development  
10 of both geothermal resources and a cable system is the  
11 diverse array of federal, state, and county land use,  
12 planning, environmental, and other related laws and  
13 regulations that currently control the undertaking of  
14 all commercial projects in the State;

15 (9) While many of these controls attempt to ensure that  
16 commercial development projects in general are  
17 undertaken in a manner consistent with land use,  
18 planning, environmental, and other public policies,  
19 many of these specific laws, regulations, and controls  
20 may be repetitive, duplicative, and uncoordinated, and  
21 thus consume unnecessary amounts of time, effort, and  
22 expense and result at best in increases in the cost of  
23  
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1 new projects and at worst in abandonment of needed  
2 projects;

3 (10) To a limited extent, the State and counties have sought  
4 to ameliorate certain of these impediments through the  
5 enactment or adoption of measures to improve the  
6 coordination and efficiency of land use and planning  
7 controls and specifically to facilitate the development  
8 of geothermal resources;

9 (11) Notwithstanding these efforts, the complexities, the  
10 magnitude in scope and cost, the fundamental  
11 interrelationship between the development of geothermal  
12 resources and a cable system, the inherent requirement  
13 for the coordinated development of the geothermal  
14 resources and a cable system, the substantial length of  
15 time required to undertake and complete both  
16 developments, and the requirements for private and  
17 possibly public financing for both developments cannot  
18 effectively be handled and accommodated by these  
19 existing laws, regulations, and controls;

20 (12) The development of geothermal resources and a cable  
21 system, both individually and collectively, would  
22 represent the largest and most complex development ever  
23 undertaken in the State;

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1 (13) The private sector companies that have been engaged in  
2 developing the State's geothermal resources and other  
3 companies that have expressed strong interest in  
4 developing a cable system all have emphasized the need  
5 for a comprehensive permitting system that can provide  
6 for and facilitate the coordinated development of both  
7 geothermal resources and a cable system, thus providing  
8 these companies with the firm assurances that they  
9 require to commit the substantial amounts of funds,  
10 time, and effort necessary to undertake these  
11 developments, while at the same time ensuring the  
12 fulfillment of fundamental state and county land use  
13 and planning policies;

14 (14) Several of these private sector companies have  
15 expressed an interest in undertaking, through a  
16 consortium of private companies or otherwise, the  
17 development of the geothermal resources and a cable  
18 system as a combined single project and have further  
19 expressed the desire that a comprehensive permitting  
20 system be established that could accommodate this  
21 development of a combined single project;

22 (15) The development of geothermal resources and a cable  
23 system are in furtherance of the State's policies, as  
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1 expressed in the state plan and elsewhere, to develop  
2 the State's indigenous renewable alternate energy  
3 resources and to decrease the State's dependency on  
4 imported fossil fuels; and

5 (16) It is declared as a matter of legislative determination  
6 that the development of geothermal resources and the  
7 cable system being necessary and proper to attain the  
8 public policies of the State previously recited, a  
9 comprehensive permitting system for the development of  
10 the State's geothermal resources and the related cable  
11 system should be established by an act of the  
12 legislature.

13 SECTION 2. The governor's advisory board on the underwater  
14 cable transmission shall develop legislation for the  
15 establishment of a comprehensive permit system relating to  
16 geothermal and cable system development as recommended by the  
17 board in its January 15, 1988 progress report to the legislature.  
18 The board shall submit a written report to the legislature of  
19 findings and recommendations not later than twenty days prior to  
20 the convening of the Regular Session of 1989. The report shall  
21 include but not be limited to:

22 (1) Specific identification of the streamlining measures to  
23 be included in the permit consolidation process.

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1 (2) Enumeration of the permit requirements, including any  
2 hearing procedures, needed to complete geothermal  
3 development and the undersea cable project, identifying  
4 those that appear to be redundant or duplicative and  
5 thus have the potential to be consolidated.

6 (3) Identification and discussion of the purpose and  
7 rationale for the existence of each of the requirements  
8 in paragraph (2) and an explanation of how the concerns  
9 addressed by these requirements will be addressed if  
10 any of these requirements are consolidated.

11 In the formulation of its report, the board shall consult  
12 with each of the affected counties and members of the public.

13 SECTION 3. There is appropriated out of the general  
14 revenues of the State of Hawaii the sum of \$100,000, or so much  
15 thereof as may be necessary for fiscal year 1988-1989, to carry  
16 out the purposes of this Act. The sum appropriated shall be  
17 expended by the department of business and economic development  
18 for the purposes of this Act.

19 SECTION 4. This Act shall take effect on July 1, 1988.  
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From the desk of:  
**GEORGE MATSUMOTO**

M.T.

The attached is DOWG

From  
I'm returning this  
for your files.

Libert's 2/18 request.

asm  
it was forwarded

to Russell Fukumoto, who is to coordinate

for DLNR.

## GEOHERMAL ZONING AND PERMIT REQUIREMENTS

Department of Land and Natural Resources  
Division of Water and Land Development  
State of Hawaii

<u>Activities</u>	<u>Time</u> →
<u>Zoning:</u>	
1. Geothermal Subzoning (developer application)	Review, Public Hearing and Decision (180 days from acceptance)      Judicial Appeals, if any, (? days) →
<u>Permits:</u>	
1. Geothermal Exploration Permit	Approval (60 days from receipt) →
2. Geothermal Well Drilling Permit	Approval (60 days from receipt) →
3. Geothermal Well Modification Permit	Approval (60 days from receipt) →
4. Geothermal Well Abandonment Permit	Approval (no time limit specified) →

### GROUND WATER WELL DRILLING PERMIT REQUIREMENTS

<u>Permits:</u>	
1. Well Drilling Permit*	Approval (2 weeks from receipt) →
2. Water Use Permit*	Approval (180 days from receipt) →

\*If geothermal development requires ground water development.

HIERARCHY OF PERMITS/APPROVALS/LICENSES

<u>GEOHERMAL</u>	<u>INTER-ISLAND CABLE</u>	<u>UNIQUE REQUIREMENT</u>
Geothermal Resource Subzone Designation (BLNR) Geothermal Resource Permit (County) and/or CDU Permit (BLNR)	Dept of Army Permit (Corps of Engineers) NEPA EIS (US CEQ) CDU Permit (BLNR) SMA Use Permit (County) Shoreline Setback Variancy (County) <i>See below for more info</i>	EIS/Public Hearing Required
Authority to Construct (Air) (DOH) *Underground Injection Control Permit (DOH) *General Plan Amendment (County) *Zone Change (County) Geothermal Mining Lease (DLNR) Designated Groundwater Control Area Use (DLNR) *Variance from Pollution Controls (Water) (DOH)	Permit for Work in Shorewaters (DOT) *Conditional Use (City Council) General Plan Amendment (County) *Zoning Waiver (Height) (County)	EIS/Public Hearing May Be Required
Plan Approval (County) Geothermal Exploration Permit (DLNR) Geothermal Plan of Operation (DLNR) Geothermal Well Permit (DLNR) *Modification of Geothermal Well for Injection Use (DLNR) *Abandonment of Geothermal Well (DLNR) *Permit to Drill a Water Well (DLNR)	*Work Upon a State Highway (DOT) CZM Consistency (DBED)	EIS/Public Hearing Not Required
Building; Electrical; Plumbing; Grading; Grubbing; Stockpiling; Outdoor Lighting; and *Street Usage Permits and Plan Approval (County)		EIS/Public Hearing Not Required

\*The permit/approval is not always required.

STANDING COMMITTEE REPORT NO.

**1996**

Honolulu, Hawaii

MAR 0 4 , 1988

Honorable Richard S. H. Wong  
President of the Senate  
Fourteenth State Legislature  
Regular Session of 1988  
State of Hawaii

Sir:

RE: S.B. No. 3182, S.D. 1

Your Committee on Ways and Means, to which was referred S.B. No. 3182, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO THE DEVELOPMENT AND USE OF GEOTHERMAL ENERGY,"

begs leave to report as follows:

The purpose of this bill is to establish a comprehensive permit system relating to geothermal and cable system development.

This bill was submitted by the Administration upon the recommendation of the Governor's Advisory Board on the Underwater Cable Transmission Project concerning new legislation relating to the development and use of geothermal energy.


One of the major and fundamental impediments to the development of the geothermal resources on the island of Hawaii and the concurrent development of the cable system project that would move the generated electrical energy to the island of Oahu is the diverse array of federal, state, and county land use, planning, environmental, and other related laws and regulations. This bill seeks to facilitate that permit process and thereby make the development of one of Hawaii's most significant energy sources more attractive to private developers.

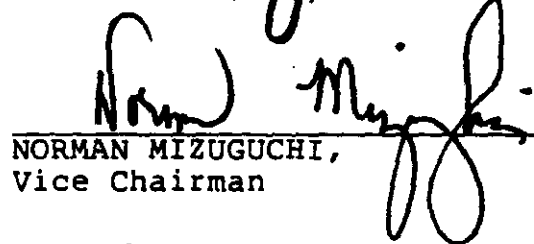
Your Committee has amended this bill by changing its effective date to July 1, 1988, to coincide with the beginning of the fiscal year, and by making technical, nonsubstantive amendments for purposes of style and clarity, and to correct obsolete references.

1996

Your Committee on Ways and Means is in accord with the intent and purpose of S.B. No. 3182, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 3182, S.D. 2.

Respectfully submitted,

  
MAMORU YAMASAKI, Chairman

  
NORMAN MIZUGUCHI,  
Vice Chairman

  
JAMES AKI, Member

  
RUSSELL BLAIR, Member

  
LEHUA FERNANDES SALLING,  
Member

  
GERALD T. HAGINO, Member

  
BERTRAND KOBAYASHI, Member

  
RICHARD M. MATSUURA, Member

  
DENNIS M. NAKASATO, Member

  
PATSY K. YOUNG, Member

  
ROBERT N. HERKES, Member

  
DONNA R. IKEDA, Member

  
ANN KOBAYASHI, Member

A BILL FOR AN ACT

RELATING TO THE DEVELOPMENT AND USE OF GEOTHERMAL ENERGY.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by adding  
2 a new chapter to be appropriately designated and to read as  
3 follows:

4 "CHAPTER

5 GEOTHERMAL AND CABLE SYSTEM

6 DEVELOPMENT PERMITTING ACT OF 1988

7 § -1 Short title. This chapter shall be known and may be  
8 cited as the "Geothermal and Cable System Development Permitting  
9 Act of 1988".

10 § -2 Findings and declaration of purpose. The  
11 legislature hereby finds and declares that:

12 (1) The development of Hawaii's geothermal resources,  
13 principally located on the island of Hawaii, represents  
14 a substantial and long-term source of indigenous  
15 renewable alternate energy that could be used to  
16 generate electric energy to meet the State's electric  
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1 energy needs and concurrently help to reduce the  
2 State's need for imported fossil fuels;

3 (2) The State has deemed it appropriate that the private  
4 sector should develop these geothermal resources, and,  
5 to that end, has sought to encourage private sector  
6 exploration and development of geothermal resources;

7 (3) The private sector companies seeking to develop  
8 geothermal resources are, however, unable or unwilling  
9 to expend the substantial amounts of funds needed to  
10 develop these resources to their full extent without an  
11 assured and sufficiently large market for the electric  
12 energy to be generated therefrom, and the present and  
13 projected electric energy demand on the island of  
14 Hawaii does not provide an assured and sufficiently  
15 large market;

16 (4) The greatest present and projected demand for  
17 geothermally generated electric energy is located on  
18 the island of Oahu;

19 (5) The State, with the support and assistance of the  
20 federal and county of Hawaii governments, has been  
21 exploring for several years the technical, engineering,  
22 economic, and financial feasibility of an interisland  
23  
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1 deep water electrical transmission cable system that  
2 would be capable of transmitting geothermally generated  
3 electric energy from the island of Hawaii to the  
4 islands of Maui and Oahu, and has concluded that a  
5 cable system is both feasible and desirable;

6 (6) The development of such a cable system will not be  
7 undertaken without the firm assurance that a sufficient  
8 amount of geothermally generated electric energy will  
9 be continuously available to be transmitted through a  
10 cable system once it becomes operational;

11 (7) The fundamental interrelationship between the  
12 development of geothermal resources and a cable system  
13 and the magnitude of the cost to undertake each of  
14 these developments clearly indicate that neither will  
15 be undertaken without the firm assurance that the other  
16 also will be undertaken in a synchronized and  
17 coordinated manner to enable both developments in  
18 substance to be completed concurrently, thereby  
19 ensuring that revenues will be available to begin  
20 amortizing the costs of each of these developments;

21 (8) A major and fundamental impediment to the development  
22 of both geothermal resources and a cable system is the  
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1 diverse array of federal, state, and county land use,  
2 planning, environmental, and other related laws and  
3 regulations that currently control the undertaking of  
4 all commercial projects in the State;

5 (9) While many of these controls attempt to ensure that  
6 commercial development projects in general are  
7 undertaken in a manner consistent with land use,  
8 planning, environmental, and other public policies,  
9 many of these specific laws, regulations, and controls  
10 in most instances are, or tend to be, repetitive,  
11 duplicative, and uncoordinated, and thus consume  
12 unnecessary amounts of time, effort, and expense, and  
13 result at best in increases in the cost of new projects  
14 and at worst in abandonment of needed projects;

15 (10) To a limited extent, the State and counties have sought  
16 to ameliorate certain of these impediments through the  
17 enactment or adoption of measures to improve the  
18 coordination and efficiency of land use and planning  
19 controls and specifically to facilitate the development  
20 of geothermal resources;

21 (11) Notwithstanding these efforts, the complexities, the  
22 magnitude in scope and cost, the fundamental  
23  
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1 deep water electrical transmission cable system that  
2 would be capable of transmitting geothermally generated  
3 electric energy from the island of Hawaii to the  
4 islands of Maui and Oahu, and has concluded that a  
5 cable system is both feasible and desirable;

6 (6) The development of such a cable system will not be  
7 undertaken without the firm assurance that a sufficient  
8 amount of geothermally generated electric energy will  
9 be continuously available to be transmitted through a  
10 cable system once it becomes operational;

11 (7) The fundamental interrelationship between the  
12 development of geothermal resources and a cable system  
13 and the magnitude of the cost to undertake each of  
14 these developments clearly indicate that neither will  
15 be undertaken without the firm assurance that the other  
16 also will be undertaken in a synchronized and  
17 coordinated manner to enable both developments in  
18 substance to be completed concurrently, thereby  
19 ensuring that revenues will be available to begin  
20 amortizing the costs of each of these developments;

21 (8) A major and fundamental impediment to the development  
22 of both geothermal resources and a cable system is the  
23  
24

1 diverse array of federal, state, and county land use,  
2 planning, environmental, and other related laws and  
3 regulations that currently control the undertaking of  
4 all commercial projects in the State;

5 (9) While many of these controls attempt to ensure that  
6 commercial development projects in general are  
7 undertaken in a manner consistent with land use,  
8 planning, environmental, and other public policies,  
9 many of these specific laws, regulations, and controls  
10 in most instances are, or tend to be, repetitive,  
11 duplicative, and uncoordinated, and thus consume  
12 unnecessary amounts of time, effort, and expense, and  
13 result at best in increases in the cost of new projects  
14 and at worst in abandonment of needed projects;

15 (10) To a limited extent, the State and counties have sought  
16 to ameliorate certain of these impediments through the  
17 enactment or adoption of measures to improve the  
18 coordination and efficiency of land use and planning  
19 controls and specifically to facilitate the development  
20 of geothermal resources;

21 (11) Notwithstanding these efforts, the complexities, the  
22 magnitude in scope and cost, the fundamental  
23  
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1 interrelationship between the development of geothermal  
2 resources and a cable system, the inherent requirement  
3 for the coordinated development of the geothermal  
4 resources and a cable system, the substantial length of  
5 time required to undertake and complete both  
6 developments, and the requirements for private and  
7 possibly public financing for both developments cannot  
8 be effectively handled and accommodated by these  
9 existing laws, regulations, and controls;

10 (12) The development of geothermal resources and a cable  
11 system, both individually and collectively, would  
12 represent the largest and most complex development ever  
13 undertaken in the State;

14 (13) The private sector companies that have been engaged in  
15 developing the State's geothermal resources and other  
16 companies that have expressed strong interest in  
17 developing a cable system all have emphasized the need  
18 for a comprehensive permitting system that can provide  
19 for and facilitate the coordinated development of both  
20 geothermal resources and a cable system, thus providing  
21 these companies with the firm assurances that they  
22 require to commit the substantial amounts of funds,  
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1 time, and effort necessary to undertake these  
2 developments, while at the same time ensuring the  
3 fulfillment of fundamental state and county land use  
4 and planning policies;

5 (14) Several of these private sector companies have  
6 expressed an interest in undertaking, through a  
7 consortium of private companies or otherwise, the  
8 development of the geothermal resources and a cable  
9 system as a combined single project and have further  
10 expressed the desire that a comprehensive permitting  
11 system be established that could accommodate this  
12 development of a combined single project;

13 (15) The development of geothermal resources and a cable  
14 system are in furtherance of the State's policies, as  
15 expressed in the state plan and elsewhere, to develop  
16 the State's indigenous renewable alternate energy  
17 resources and to decrease the State's dependency on  
18 imported fossil fuels; and

19 (16) It is declared as a matter of legislative determination  
20 that the development of the State's geothermal  
21 resources and the related cable system cannot  
22 effectively be undertaken and accomplished under  
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1 recommendation from an agency for which judgment and free will  
2 may be exercised by the issuing agency, as distinguished from a  
3 ministerial consent.

4 "Environmental impact statement" means an informational  
5 document prepared in compliance with chapter 343.

6 "Interagency group" means the body established pursuant to  
7 section -6.

8 "Permit" means any license, permit, certificate,  
9 certification, approval, compliance schedule, or other similar  
10 document or decision pertaining to any regulatory or management  
11 program which is related to the protection, conservation, use of,  
12 or interference with the natural resources of land, air, or water  
13 in the State and which is required prior to or in connection with  
14 the undertaking of the project.

15 "Person" includes any individual, partnership, firm,  
16 association, trust, estate, corporation, joint venture,  
17 consortium, any public corporation or authority that may be  
18 established by the legislature for the purposes of the project,  
19 or other legal entity other than an agency.

20 "Project" means the commercial development, construction,  
21 installation, financing, operation, maintenance, repair, and  
22 replacement, including without limitation all applicable  
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1 exploratory, testing, and predevelopment activities related to  
2 the foregoing, of:

- 3 (1) A geothermal power plant or plants, including all  
4 associated equipment, facilities, wells, and  
5 transmission lines, on the island of Hawaii for the  
6 primary purpose of generating electric energy for  
7 transmission to the island of Oahu through the cable  
8 system; and
- 9 (2) An interisland deep water electrical transmission cable  
10 system, including all land-based transmission lines and  
11 other ancillary facilities, to transmit geothermally  
12 generated electric energy from the island of Hawaii to  
13 the island of Oahu, regardless of whether the cable  
14 system is used to deliver electric energy to any  
15 intervening point. Nothing in this definition shall  
16 preclude the sale of a portion of the electric energy  
17 generated by the geothermal plant or plants to the  
18 electric utility serving any one or more of the islands  
19 of Hawaii, Maui, Molokai, or Lanai.

20 § -4 Comprehensive permit system. (a) The department is  
21 designated as the lead agency for the purposes of this chapter  
22 and, in addition to its existing functions, shall establish and  
23  
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1 administer the comprehensive permit system provided for in this  
2 chapter, which shall incorporate all state and county permitting  
3 functions involved in the development of the project which are  
4 transferred by this chapter to the department to effectuate the  
5 purposes of this chapter.

6 (b) The comprehensive permit system shall include:

7 (1) A master consolidated permit application and review  
8 process for the project, which shall incorporate:

9 (A) A list of all permits required for the project;

10 (B) The role and functions of the department as the  
11 lead agency and the interagency group;

12 (C) All permit review and approval deadlines;

13 (D) A schedule for meetings and actions of the  
14 interagency group;

15 (E) A mechanism to resolve any conflicts that may  
16 arise between or among the department and any  
17 other agencies, including any federal agencies, as  
18 a result of conflicting permit, approval, or other  
19 requirements, procedures, or agency perspectives;  
20 and

21 (F) Any other desirable or necessary administrative or  
22 legislative actions; and

1 (2) A master consolidated permit application form to be  
2 used for the project for all permitting purposes.

3 (c) The department shall have primary jurisdiction over the  
4 permitting requirements and procedures for the project; shall  
5 perform all of the permitting functions for which it is currently  
6 responsible and which are transferred to it by this chapter for  
7 the purposes of the project; and shall coordinate and consolidate  
8 all required permit reviews by other agencies, and to the fullest  
9 extent possible, by all federal agencies having jurisdiction over  
10 any aspect of the project.

11 **§ -5 Consolidated permit application and review process.**

12 (a) The department shall serve as the lead agency for the  
13 consolidated permit application and review process established  
14 pursuant to section -4(b)(1) and as set forth in this section  
15 for the project. All agencies whose permitting functions are not  
16 transferred by this chapter to the department for the purposes of  
17 the project are required to participate in the master  
18 consolidated permit application and review process.

19 (b) Notwithstanding any other law, ordinance, rule, or  
20 regulation to the contrary, the department and each state and  
21 county agency whose permitting functions are not transferred by  
22 this chapter to the department for the purposes of the project  
23 shall complete all of their respective permitting functions for  
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1 the purposes of the project, pursuant to this chapter, within  
2 sixty days of the receipt of the master consolidated permit  
3 application for the proposed project; except that the department  
4 or any permit-issuing agency shall have good cause to exceed the  
5 sixty-day time limit if the permit-issuing agency must rely on  
6 another agency, including any federal agency, for all or part of  
7 the permit processing and the delay is caused by the other  
8 agency.

9 (c) The procedure shall be as follows:

10 (1) The applicant shall submit the master consolidated  
11 permit application using a master consolidated permit  
12 application form, which shall include whatever data  
13 about the proposed project that the department deems  
14 necessary to fulfill the purposes of this chapter and  
15 to determine which other agencies may have jurisdiction  
16 over any aspect of the proposed project.

17 (2) Upon receipt of the master consolidated permit  
18 application, the department shall notify all State and  
19 county agencies whose permitting functions are not  
20 transferred by this chapter to the department for the  
21 purposes of the project, as well as all federal  
22 agencies that the department determines may have  
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1 jurisdiction over any aspect of the proposed project as  
2 set forth in the application, and shall invite the  
3 federal agencies so notified to participate in the  
4 consolidated application process. The state and county  
5 agencies, and those federal agencies that accept the  
6 invitation, thereafter shall participate in the master  
7 consolidated permit application and review process.

8 (3) The applicant shall designate its representative to  
9 serve on the master consolidated permit application and  
10 review team, and the representatives of the state,  
11 county, and federal agencies shall be those  
12 representatives in the interagency group.

13 (4) The representatives of the department and state,  
14 county, and federal agencies and the applicant shall  
15 develop and sign a joint agreement among themselves  
16 which shall:

17 (A) Identify the members of the master consolidated  
18 permit application and review team;

19 (B) Specify the regulatory and review responsibilities  
20 of the department and each state, county, and  
21 federal agency and set forth the responsibilities  
22 of the applicant; and  
23  
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1 (C) Establish a timetable for regulatory review, the  
2 conduct of necessary hearings, the preparation of  
3 an environmental impact statement if necessary,  
4 and other actions required to minimize duplication  
5 and to coordinate and consolidate the activities  
6 of the applicant, the department, and the state,  
7 county, and federal agencies.

8 (5) The department, each state and county agency whose  
9 permitting functions are not transferred by this  
10 chapter to the department for the purposes of the  
11 project, and each federal agency shall issue its own  
12 permit or approval based upon its own jurisdiction.  
13 The consolidated application process shall not affect  
14 or invalidate the jurisdiction or authority of any  
15 agency under existing law, except to the extent that  
16 the permitting functions of any state or county agency  
17 are transferred by this chapter to the department for  
18 the purposes of the project.

19 (6) The applicant shall apply directly to each federal  
20 agency that does not participate in the master  
21 consolidated permit application and review process.

22 (7) The department shall review for completeness and  
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1 existing laws, regulations, and controls, and that the  
2 development of geothermal resources and the cable  
3 system being necessary to and proper to attain the  
4 public policies of the State previously recited, a  
5 comprehensive permitting system for the development of  
6 the State's geothermal resources and the cable system  
7 should be established by an act of the legislature.

8 § -3 Definitions. As used in this chapter unless the  
9 context clearly requires otherwise:

10 "Agency" means any department, office, board, or commission  
11 of the State or a county government which is a part of the  
12 executive branch of that government, but does not include any  
13 public corporation or authority that may be established by the  
14 legislature for the purposes of the project.

15 "Applicant" means any person who, pursuant to statute,  
16 ordinance, rule, or regulation requests approval or a permit for  
17 the proposed project.

18 "Approval" means a discretionary consent required from an  
19 agency prior to the actual implementation of the project.

20 "Department" means the department of land and natural  
21 resources or any successor agency.

22 "Discretionary consent" means a consent, sanction, or  
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1 thereafter shall process each master consolidated  
2 permit application submitted by an applicant for the  
3 project, and shall monitor the processing of the permit  
4 application by those state and county agencies whose  
5 permitting functions are not transferred by this  
6 chapter to the department for the purposes of the  
7 project. The department shall coordinate, and seek to  
8 consolidate where possible, the permitting functions  
9 and shall monitor and assist in the permitting  
10 functions conducted by all of these agencies, and to  
11 the fullest extent possible the federal agencies, in  
12 accordance with the comprehensive permit system.

13 (8) Once the processing of each master consolidated permit  
14 application has been completed and the permit requested  
15 has been issued to the applicant, the department  
16 thereafter shall monitor the applicant's work  
17 undertaken pursuant to the permit to ensure the  
18 applicant's compliance with the terms and conditions of  
19 the permit and to assist, as appropriate, the applicant  
20 in its project.

21 § -6 Interagency group. (a) The department shall  
22 establish an interagency group comprised of those state and  
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1 county agencies whose permitting functions are not transferred by  
2 this chapter to the department for the purposes of the project  
3 and which have jurisdiction over any aspect of the project. Each  
4 of these agencies shall designate an appropriate representative  
5 to serve on the interagency group as part of the representative's  
6 official responsibilities. The interagency group shall perform  
7 liaison and assisting functions as required by this chapter and  
8 the department. The department shall invite and encourage the  
9 appropriate federal agencies having jurisdiction over any aspect  
10 of the project to participate in the interagency group.

11 (b) The department and agencies shall cooperate with the  
12 federal agencies to the fullest extent possible to minimize  
13 duplication between and, where possible, promote consolidation of  
14 federal and state requirements. To the fullest extent possible,  
15 this cooperation shall include, among other things, joint  
16 environmental impact statements with concurrent public review and  
17 processing at both levels of government. Where federal law has  
18 requirements that are in addition to but not in conflict with  
19 state law requirements, the department and the agencies shall  
20 cooperate to the fullest extent possible in fulfilling their  
21 requirements so that all documents shall comply with all  
22 applicable laws.



1           (c) If the legislature establishes any public corporation  
2 or authority for the purposes of the project, then upon its  
3 establishment, the public corporation or authority shall be a  
4 member of the interagency group.

5           **§ -7 Streamlining activities.** In administering the  
6 comprehensive permit system, the department shall:

- 7           (1) Monitor all permit applications submitted under this  
8 chapter and the processing thereof on an ongoing basis  
9 to determine the source of any inefficiencies, delays,  
10 and duplications encountered and the status of all  
11 permits in process;
- 12           (2) Adopt and implement needed streamlining measures  
13 including, but not limited to, measures defined by the  
14 department, or the interagency group, or both, in  
15 consultation with those agencies whose permitting  
16 functions are not transferred by this chapter to the  
17 department for the purposes of the project and with  
18 members of the public;
- 19           (3) Design, in addition to the master consolidated permit  
20 application form, other applications, checklists, and  
21 forms essential to the implementation of the  
22 comprehensive permit process;
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1 (4) Seek by legislative or administrative action the  
2 elimination of duplicative or redundant permit  
3 requirements, including any hearing procedures, and  
4 consolidate them where possible;

5 (5) Ensure that all standards used in any agency decision-  
6 making for any required permits are clear, explicit,  
7 and precise; and

8 (6) Incorporate, where possible, rebuttable presumptions  
9 into the comprehensive permit process.

10 **§ -8 Information services.** The department shall:

11 (1) Operate a permit information and coordination center  
12 during normal working hours, which will provide  
13 guidance to potential applicants for the project with  
14 regard to the permits and procedures that may apply to  
15 the project; and

16 (2) Maintain and update a repository of the laws, rules,  
17 procedures, permit requirements, and criteria of state  
18 and county agencies whose permitting functions are not  
19 transferred by this chapter to the department for the  
20 purposes of the project and which have control or  
21 regulatory power over any aspect of the project and of  
22 federal agencies having jurisdiction over any aspect of  
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1           the project.

2           **§ -9 Construction of the chapter; rules.** This chapter  
3 shall be construed liberally to effectuate its purposes, and the  
4 department shall have all powers which may be necessary to carry  
5 out the purposes of this chapter, including the authority to  
6 adopt, amend, and repeal rules to implement this chapter. The  
7 adoption, amendment, and repeal of all rules shall be subject to  
8 chapter 91.

9           **§ -10 Transfer of functions.** (a) Those functions  
10 identified in this section insofar as they relate to the permit  
11 application, review, processing, issuance, and monitoring of  
12 state and county laws, ordinances, and rules and to the  
13 enforcement of terms, conditions, and stipulations of permits and  
14 other authorizations issued by state and county agencies with  
15 respect to the development, construction, installation,  
16 operation, maintenance, repair, and replacement of the project,  
17 or any portion or portions thereof, are transferred to the  
18 department. This transfer shall vest in the department exclusive  
19 responsibility for the permit and enforcement functions described  
20 in this section of all state and county laws, ordinances, and  
21 rules relevant in any manner to the development, construction,  
22 installation, operation, maintenance, repair, and replacement of  
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1 the project or any portion or portions thereof. With respect to  
2 each of the statutory authorities cited below, the transferred  
3 functions include all enforcement functions of the given agencies  
4 or their officials under the statute cited as may be related to  
5 the enforcement of the terms, conditions, and stipulations of  
6 permits, including but not limited to the specific sections of  
7 the statute cited. "Enforcement", for purposes of this transfer  
8 of functions, includes monitoring and any other compliance or  
9 oversight activities reasonably related to the enforcement  
10 process. These transferred functions include:

- 11 (1) The functions of the land use commission related to:  
12 district boundary amendments as set forth in sections  
13 205-3.1 et seq.; changes in zoning as set forth in  
14 section 205-5; and shoreline setback approvals as set  
15 forth in part III of chapter 205A; and  
16 (2) The permit approval and enforcement functions of the  
17 director of transportation or other appropriate  
18 official or entity in the department of transportation  
19 related to permits or approvals issued for the use of  
20 commercial activities in or affecting the ocean waters  
21 and shores of the State under chapter 266.

- 22 (b) In performing the functions transferred to it by this  
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1 section, the department shall follow existing laws, ordinances,  
2 and rules as closely as is consistent with standards meeting  
3 minimum requirements of good design, health, safety, and  
4 coordinated development.

5 (c) Nothing in this section shall be construed to relieve  
6 an applicant from the laws, ordinances, and rules of any agency  
7 whose functions are not transferred by this chapter to the  
8 department for the purposes of the project.

9 (d) This section shall not apply to any permit issued by  
10 the public utilities commission under chapter 269.

11 (e) Notwithstanding any other provision of this chapter,  
12 this section shall take effect on a date that is one year after  
13 the effective date of this chapter.

14 § -11 Annual report. The department shall submit an  
15 annual report to the governor and the legislature on its work  
16 during the preceding year, the development status of the project,  
17 any problems encountered, and any legislative actions that may be  
18 needed further to improve the comprehensive permit process and  
19 implement the intent of this chapter.

20 § -12 Severability. If any provision of this chapter or  
21 the application thereof to any person or circumstances is held  
22 invalid, the invalidity shall not affect other provisions or  
23

1 applications of this chapter that can be given effect without the  
2 invalid provision or application, and to this end the provisions  
3 of this chapter are declared severable.

4 § -13 Exemptions from certain state laws. In order to  
5 promote the purposes of this chapter, all persons hired by the  
6 department to effectuate this chapter are excepted from chapters  
7 76, 77, and 89."

8 SECTION 2. There is appropriated out of the general  
9 revenues of the State of Hawaii the sum of \$275,000, or so much  
10 thereof as may be necessary for fiscal year 1988-1989, to carry  
11 out the purposes of this chapter. The sum appropriated shall be  
12 expended by the department of land and natural resources for the  
13 purposes of this Act. Any unexpended or unencumbered balance of  
14 any appropriation made by this chapter as of the close of  
15 business on June 30, 1989, shall lapse into the general fund.

16 SECTION 3. This chapter shall take effect on July 1, 1988,  
17 but shall not apply to any applications filed prior to the  
18 effective date.