

WL 7/18/88

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

ACT 301

S.B. NO. 3182

S.D. 2  
H.D. 2  
C.D. 1

A BILL FOR AN ACT  
DIVISION OF LAND & NATURAL RESOURCES  
LAND DEVELOPMENT

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:

"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, which  
13 are located principally on the island of Hawaii and  
14 possibly on the island of Maui, represents a  
15 substantial and long-term source of indigenous  
16 renewable alternate energy that could be used to

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

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

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

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

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

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

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

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

- 6 (9) These controls attempt to ensure that commercial  
7 development projects in general are undertaken in a  
8 manner consistent with land use, planning,  
9 environmental, and other public policies, except that  
10 some of these specific laws, regulations, and controls  
11 may be repetitive, duplicative, and uncoordinated;
- 12 (10) To a limited extent, the State and counties have sought  
13 to ameliorate this difficulty through the enactment or  
14 adoption of measures to improve the coordination and  
15 efficiency of land use and planning controls and  
16 specifically to facilitate the development of  
17 geothermal resources;
- 18 (11) Notwithstanding these efforts, the complexities, the  
19 magnitude in scope and cost, the fundamental  
20 interrelationship between the development of geothermal  
21 resources and a cable system, the inherent requirement  
22 for the coordinated development of the geothermal  
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1 resources and a cable system, the substantial length of  
2 time required to undertake and complete both  
3 developments, and the desirability of private funding  
4 for both developments require that affected state and  
5 county agencies be directed to pursue and develop to  
6 the maximum extent under existing law the coordination  
7 and consolidation of regulations and controls pertinent  
8 to the development of geothermal resources and a cable  
9 system;

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) Because of the complexities of both projects, there is  
15 a need to develop a consolidated permit application and  
16 review process to provide for and facilitate the firm  
17 assurances that companies will require before  
18 committing the substantial amounts of funds, time, and  
19 effort necessary to undertake these developments, while  
20 at the same time ensuring the fulfillment of  
21 fundamental state and county land use and planning  
22 policies;

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

7 (15) A consolidated permit application and review process  
8 for the development of the State's geothermal resources  
9 and the cable system should be established by an act of  
10 the legislature.

11 § -3 Definitions. As used in this chapter unless the  
12 context clearly requires otherwise:

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

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

21 "Approval" means a discretionary consent required from an  
22 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 agency.

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, as applicable, an  
8 informational document prepared in compliance with chapter 343 or  
9 with the National Environmental Policy Act of 1969 (Public Law  
10 91-190).

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

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

20 "Person" includes any individual, partnership, firm,  
21 association, trust, estate, corporation, joint venture,  
22 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 for the  
11 purpose of generating electric energy for transmission  
12 primarily to the island of Oahu through the cable  
13 system; and

14 (2) An interisland deep water electrical transmission cable  
15 system, including all land-based transmission lines and  
16 other ancillary facilities, to transmit geothermally  
17 generated electric energy from the island of Hawaii to  
18 the island of Oahu, regardless of whether the cable  
19 system is used to deliver electric energy to any  
20 intervening point.

21 § -4 Consolidated permit application and review process.

22 (a) The department is designated as the lead agency for the  
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1 purposes of this chapter and, in addition to its existing  
2 functions, shall establish and administer the consolidated permit  
3 application and review process provided for in this chapter,  
4 which shall incorporate the permitting functions of those  
5 agencies involved in the development of the project which are  
6 transferred by section -10 to the department to effectuate the  
7 purposes of this chapter.

8 (b) The consolidated permit application and review process  
9 shall incorporate:

- 10 (1) A list of all permits required for the project;
- 11 (2) The role and functions of the department as the lead  
12 agency and the interagency group;
- 13 (3) All permit review and approval deadlines;
- 14 (4) A schedule for meetings and actions of the interagency  
15 group;
- 16 (5) A mechanism to resolve any conflicts that may arise  
17 between or among the department and any other agencies,  
18 including any federal agencies, as a result of  
19 conflicting permit, approval, or other requirements,  
20 procedures, or agency perspectives;
- 21 (6) Any other administrative procedures related to the  
22 foregoing; and
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1 (7) A consolidated permit application form to be used for  
2 the project for all permitting purposes.

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

10 § -5 Consolidated permit application and review

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

18 (b) To the greatest extent possible, the department and  
19 each agency whose permitting functions are not transferred by  
20 section -10 to the department for the purposes of the project  
21 shall complete all of their respective permitting functions for  
22 the purposes of the project, in accordance with the timetable for  
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1 regulatory review set forth in the joint agreement described in  
 2 subsection (c)(3) and within the time limits contained in the  
 3 applicable permit statutes, ordinances, regulations, or rules;  
 4 except that the department or any agency shall have good cause to  
 5 extend, if and as permitted, the applicable time limit if the  
 6 permit-issuing agency must rely on another agency, including any  
 7 federal agency, for all or part of the permit processing and the  
 8 delay is caused by the other agency.

9 (c) The procedure shall be as follows:

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

17 (2) Upon receipt of the consolidated permit application,  
 18 the department shall notify all agencies whose  
 19 permitting functions are not transferred by section  
 20 -10 to the department for the purposes of the  
 21 project, as well as all federal agencies, that the  
 22 department determines may have jurisdiction over any  
 23 aspect of the proposed project as set forth in the  
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1 application, and shall invite the federal agencies so  
2 notified to participate in the consolidated permit  
3 application process. The agencies, and those federal  
4 agencies that accept the invitation, thereafter shall  
5 participate in the consolidated permit application and  
6 review process.

7 (3) The representatives of the department and the state,  
8 county, and federal agencies and the applicant shall  
9 develop and sign a joint agreement among themselves  
10 which shall:

- 11 (A) Identify the members of the consolidated permit  
12 application and review team;
- 13 (B) Identify all permits required for the project;
- 14 (C) Specify the regulatory and review responsibilities  
15 of the department and each state, county, and  
16 federal agency and set forth the responsibilities  
17 of the applicant;
- 18 (D) Establish a timetable for regulatory review, the  
19 conduct of necessary hearings, the preparation of  
20 an environmental impact statement if necessary,  
21 and other actions required to minimize duplication  
22 and to coordinate and consolidate the activities  
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1 of the applicant, the department, and the state,  
2 county, and federal agencies; and

3 (E) Provide that a hearing required for a permit shall  
4 be held on the island where the proposed activity  
5 shall occur.

6 (4) A consolidated permit application and review team shall  
7 be established and shall consist of the members of the  
8 interagency group established pursuant to section  
9 -6(a). The applicant shall designate its  
10 representative to be available to the review team, as  
11 it may require, for purposes of processing the  
12 applicant's consolidated permit application.

13 (5) The department and each agency whose permitting  
14 functions are not transferred by section -10 to the  
15 department for the purposes of the project, and each  
16 federal agency shall issue its own permit or approval  
17 based upon its own jurisdiction. The consolidated  
18 permit application and review process shall not affect  
19 or invalidate the jurisdiction or authority of any  
20 agency under existing law, except to the extent that  
21 the permitting functions of any agency are transferred  
22 by section -10 to the department for the purposes of  
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1 the project.

2 (6) The applicant shall apply directly to each federal  
3 agency that does not participate in the consolidated  
4 permit application and review process.

5 (7) The department shall review for completeness and  
6 thereafter shall process the consolidated permit  
7 application submitted by an applicant for the project,  
8 and shall monitor the processing of permit application  
9 by those agencies whose permitting functions are not  
10 transferred by section -10 to the department for the  
11 purposes of the project. The department shall  
12 coordinate, and seek to consolidate where possible, the  
13 permitting functions and shall monitor and assist in  
14 the permitting functions conducted by all of these  
15 agencies, and to the fullest extent possible the  
16 federal agencies, in accordance with the consolidated  
17 permit application and review process.

18 (8) Once the processing of the consolidated permit  
19 application has been completed and the permits  
20 requested have been issued to the applicant, the  
21 department shall monitor the applicant's work  
22 undertaken pursuant to the permits to ensure the  
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1 applicant's compliance with the terms and conditions of  
2 the permits.

3 (d) Where the contested case provisions under chapter 91  
4 apply to any one or more of the permits to be issued by the  
5 agency for the purposes of the project, the agency may, if there  
6 is a contested case involving any of the permits, be required to  
7 conduct only one contested case hearing on the permit or permits  
8 within its jurisdiction. Any appeal from a decision made by the  
9 agency pursuant to a public hearing or hearings required in  
10 connection with a permit shall be made directly on the record to  
11 the supreme court for final decision subject to chapter 602.

12 § -6 Interagency group. (a) The department shall  
13 establish an interagency group comprised of those agencies whose  
14 permitting functions are not transferred by section -10 to the  
15 department for the purposes of the project and which have  
16 jurisdiction over any aspect of the project. Each of these  
17 agencies shall designate an appropriate representative to serve  
18 on the interagency group as part of the representative's official  
19 responsibilities. The interagency group shall perform liaison  
20 and assisting functions as required by this chapter and the  
21 department. The department shall invite and encourage the  
22 appropriate federal agencies having jurisdiction over any aspect  
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1 of the project to participate in the interagency group.

2 (b) The department and agencies shall cooperate with the  
3 federal agencies to the fullest extent possible to minimize  
4 duplication between and, where possible, promote consolidation of  
5 federal and state requirements. To the fullest extent possible,  
6 this cooperation shall include, among other things, joint  
7 environmental impact statements with concurrent public review and  
8 processing at both levels of government. Where federal law has  
9 requirements that are in addition to but not in conflict with  
10 state law requirements, the department and the agencies shall  
11 cooperate to the fullest extent possible in fulfilling their  
12 requirements so that all documents shall comply with all  
13 applicable laws.

14 (c) If the legislature establishes any public corporation  
15 or authority for the purposes of the project, then upon its  
16 establishment, the public corporation or authority shall be a  
17 member of the interagency group.

18 § -7 Streamlining activities. In administering the  
19 consolidated permit application and review process, the  
20 department shall:

21 (1) Monitor all permit applications submitted under this  
22 chapter and the processing thereof on an ongoing basis  
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1 to determine the source of any inefficiencies, delays,  
2 and duplications encountered and the status of all  
3 permits in process;

4 (2) Adopt and implement needed streamlining measures  
5 identified by the interagency group, in consultation  
6 with those agencies whose permitting functions are not  
7 transferred by section -10 to the department for the  
8 purposes of the project and with members of the public;

9 (3) Design, in addition to the consolidated permit  
10 application form, other applications, checklists, and  
11 forms essential to the implementation of the  
12 consolidated permit application and review process;

13 (4) Recommend to the legislature, as appropriate, suggested  
14 changes to existing laws to eliminate any duplicative  
15 or redundant permit requirements;

16 (5) Coordinate with agencies to ensure that all standards  
17 used in any agency decision-making for any required  
18 permits are clear, explicit, and precise; and

19 (6) Incorporate, where possible, rebuttable presumptions  
20 based upon requirements met for permits issued  
21 previously under the consolidated permit application  
22 and review process.

1 § -8 Information services. The department shall:

2 (1) Operate a permit information and coordination center  
3 during normal working hours, which will provide  
4 guidance to potential applicants for the project with  
5 regard to the permits and procedures that may apply to  
6 the project; and

7 (2) Maintain and update a repository of the laws, rules,  
8 procedures, permit requirements, and criteria of  
9 agencies whose permitting functions are not transferred  
10 by section -10 to the department for the purposes of  
11 the project and which have control or regulatory power  
12 over any aspect of the project and of federal agencies  
13 having jurisdiction over any aspect of the project.

14 § -9 Construction of the Act; rules. This chapter shall  
15 be construed liberally to effectuate its purposes, and the  
16 department shall have all powers which may be necessary to carry  
17 out the purposes of this chapter, including the authority to  
18 make, amend, and repeal rules to implement this chapter; provided  
19 that all procedures for public information and review under  
20 chapter 91 shall be preserved; and provided further that the  
21 consolidated permit application and review process shall not  
22 affect or invalidate the jurisdiction or authority of any agency  
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1 under existing law. The adoption, amendment, and repeal of all  
 2 rules shall be subject to chapter 91.

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

- 21 (1) Such functions of the land use commission related to:  
 22 district boundary amendments as set forth in section  
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1 205-3.1 et seq.; and changes in zoning as set forth in  
2 section 205-5; and

3 (2) The permit approval and enforcement functions of the  
4 director of transportation or other appropriate  
5 official or entity in the department of transportation  
6 related to permits or approvals issued for the use of  
7 or commercial activities in or affecting the ocean  
8 waters and shores of the state under chapter 266.

9 (b) Nothing in this section shall be construed to relieve  
10 an applicant from the laws, ordinances, and rules of any agency  
11 whose functions are not transferred by this section to the  
12 department for the purposes of the project.

13 (c) This section shall not apply to any permit issued by  
14 the public utilities commission under chapter 269.

15 (d) Notwithstanding any other provision of this chapter,  
16 this section shall take effect on a date that is one year after  
17 the effective date of this chapter.

18 § -11 Annual report. The department shall submit an  
19 annual report to the governor and the legislature on its work  
20 during the preceding year, the development status of the project,  
21 any problems encountered, and any legislative actions that may be  
22 needed further to improve the consolidated permit application and  
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1 review process and implement the intent of this chapter.

2 § -12 Severability. If any provision of this chapter or  
3 the application thereof to any person or circumstances is held  
4 invalid, the invalidity shall not affect other provisions or  
5 applications of this chapter that can be given effect without the  
6 invalid provision or application, and to this end the provisions  
7 of this chapter are declared severable.

8 § -13 Exemptions from certain state laws. In order to  
9 promote the purposes of this chapter, all persons hired by the  
10 department to effectuate this chapter are excepted from chapters  
11 76, 77, and 89.

12 § -14 Development of geothermal resources on Maui. To  
13 the extent an applicant's proposed project includes the  
14 development of geothermal resources on the island of Maui and the  
15 delivery of electric energy generated from these resources to the  
16 island of Oahu through the cable system, this chapter shall apply  
17 to that proposed project."

18 SECTION 2. There is appropriated out of the general  
19 revenues of the State of Hawaii the sum of \$275,000, or so much  
20 thereof as may be necessary for fiscal year 1988-1989, to carry  
21 out the purposes of this chapter. The sum appropriated shall be  
22 expended by the department of land and natural resources for the  
23 purposes of this Act.

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

Approved by the  
Governor on

JUN 13 1988

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STANDING COMMITTEE REPORT NO.

**1880**

Honolulu, Hawaii

FEB 19, 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

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.

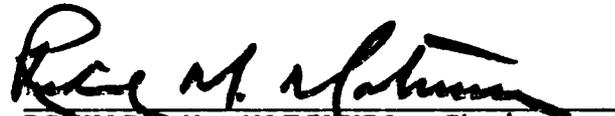
Your Committee heard testimony from Hawaiian Electric Company, the Department of Business and Economic Development, the Mayor of the County of Hawaii, the Sierra Club, the Chamber of Commerce of Hawaii, the Sierra Club representatives of the University of Hawaii, and True Geothermal Energy Company.

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.

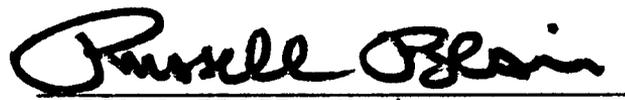
Your Committee has further amended the bill by setting the amount to be appropriated at \$275,000, designating the Department of Land and Natural Resources as the expending agency, and making nonsubstantive changes for the purpose of clarity and conformance with recommended drafting style.

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