

ACT 135

H.B. NO. 3033-78

**A Bill for an Act Relating to the Reservation and Disposition of Government
Mineral Rights.**

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 182-1, Hawaii Revised Statutes, is amended by amending the definition of "occupier" to read:

"“Occupier” means any person who owns in fee the surface of the land or any person entitled to the possession of land under a certificate of occupation, a nine hundred and ninety-nine year homestead lease, a right of purchase lease, a cash freehold agreement, and any person entitled to possession under a general lease from the State, and also means and includes the assignee of any one of the above.”

SECTION 2. Section 182-3, Hawaii Revised Statutes, is amended to read:

“Sec. 182-3 Bond; compensation of occupiers. (a) Every lessee of a mining lease granted under this chapter and every assignee thereof shall file with the board of land and natural resources a bond, in a form and in an amount approved by the board, made payable to the State and which shall be conditioned upon the faithful performance by the lessee of all the requirements of this chapter and of the mining lease, and also conditioned upon the full payment by the lessee of all damages suffered by the occupiers hereinunder mentioned. If the State sells or leases its mineral rights on land which it or its predecessors in interest have granted or leased, or which it may hereafter sell or lease, and the land thereof including any crops or improvements is damaged by any mining or other incidental operations, including exploratory work, or by the failure of the lessee of the mining lease to properly restore the land after termination of the operations, the occupier shall be reimbursed the full extent of the damages caused by the mining operations of the lessee to be allocated between the lessee and the fee owner in accordance with the lease terms, if any.

(b) Nothing herein shall be construed to prevent the occupier from demanding and receiving rentals from the lessee of the mining lease or to forbid and prevent the occupier and the lessee from agreeing upon the amount of damages to be paid and the terms and conditions of payment. The occupier may in writing before or within thirty days after the public auction notify the board that he elects to have the amount of damages and the amount of rentals to be paid as a result of the mining lease determined by arbitration with the successful bidder. In such event, the occupier shall notify the successful bidder of his election to arbitrate, and the arbitration shall proceed in accordance with chapter 658. The arbitrators in fixing the amount of damages to be paid to the occupier shall award him the amount which in their judgment shall fairly compensate the occupier for the damages he may suffer to his crops or improvements or to the surface or condition of his land caused by the mining of other incidental operations, including exploratory work, and a reasonable rental for the use of the surface.”

SECTION 3. Section 182-4, Hawaii Revised Statutes, is amended to read:

“Sec. 182-4 Mining leases on state lands. If any mineral is discovered or known to exist on state lands, any interested person may notify the board of land and natural resources of his 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 by

regulation may prescribe. As soon as practicable thereafter, the board shall cause a notice to be published in a newspaper of general circulation in the county where the lands are located, at least once in each of three successive weeks, setting forth the description of the land, and the minerals desired to be leased. The board may hold the public auction of the mining lease within six months from the date of the first publication notice or such further time as may be reasonably necessary. Whether or not the state land sought to be auctioned is then being utilized or put to some productive use, the board, after due notice of public hearing to all parties in interest, within six weeks from the date of the first publication of notice or such further time as may be reasonably necessary, shall determine whether the proposed mining operation or the existing or reasonably foreseeable future use of the land would be of greater benefit to the State. If the board determines that the existing or reasonable foreseeable future use would be of greater benefit to the State than the proposed mining use of the land, it shall disapprove the application for a mining lease of the land without putting the land to auction. The board shall determine the area to be offered for lease and, after due notice of public hearing to all parties of interest, may modify the boundaries of the land areas. At least thirty days prior to the holding of any public auction, the board shall cause a notice to be published in a newspaper of general circulation in the State at least once in each of three successive weeks, setting forth the description of the land, the minerals to be leased, and the time and place of the auction. Bidders at the public auction may be required to bid on the amount of annual rental to be paid for the term of the mining lease based on an upset price fixed by the board, a royalty based on the gross proceeds or net profit, cash bonus, or any combination or other basis and under such terms and conditions as may be set by the board."

SECTION 4. Section 182-5, Hawaii Revised Statutes, is amended to read:

"Sec. 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 his 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 public auction, grant a mining lease on reserved lands to the occupier thereof. Such a mining lease may be granted to a person other than the occupier if the occupier has assigned his rights to apply for a mining lease to another person, in which case only such an assignee may be granted a mining lease. If the occupier or his assignee of the right to obtain a mining lease should fail to apply for a mining lease within six months from the date of notice from the board of a finding by the board that it is in the public interest that the minerals on the reserved lands be mined, a mining lease shall be granted under section 182-4; provided that bidders at the public auction shall bid on an amount to be paid to the State for a mining lease granting to the lessee the right to exploit minerals reserved to the State."

SECTION 5. Section 182-7, Hawaii Revised Statutes, is amended to read:

"Sec. 182-7 Lease. Prior to the public auction contemplated in section 182-4 or 182-5, or the granting of mining lease without public auction contemplated in section 182-5, the board of land and natural resources shall cause a mining lease for the land in question to be drawn. The lease shall describe the land and shall contain, in addition to such other provisions which the board may deem appropriate, provisions to the following effect:

- (1) The term of the lease shall be sixty-five years or for a lesser period at the discretion of the board.
- (2) The payments to the State as fixed by the board; provided, that in the case of bauxite, bauxitic clay, gibbsite, diaspore, boehmite, and all ores of aluminum, the amount of royalties for each long dry ton of ore as beneficiated shall not be less than twenty-five cents or the equivalent of the price of one pound of virgin pig aluminum, whichever is higher, nor shall it exceed the equivalent of the price of three pounds of virgin pig aluminum; provided further, that the rate of royalty for ore processed into aluminous oxide in the State shall be set at eighty per cent of the rate of royalty for ore not processed to aluminous oxide in the State; and provided further, that the royalty shall be fixed at a rate which will tend to encourage the establishment and continuation of the mining industry in the State. The prices of virgin pig aluminum for the purpose of determining the royalties hereunder shall be the basic price on the mainland United States market for virgin pig, not refined, f.o.b. factory. The royalties shall be in lieu of any severance or other similar tax on the extracting, producing, winning, beneficiating, handling, storing, treating, or transporting of the mineral or any product into which it may be processed in the State, and shall not be subject to reopening or renegotiating for and during the first twenty years of the lease term.

In the event the lessee desires to mine other minerals, the lessee shall, before mining the minerals, so notify the board in writing, and the board and the lessee shall negotiate and fix the royalties for such minerals.

- (3) The lessee shall covenant and agree that the lessee shall commence mining operations upon the leased lands within three years from the date of execution of the lease; provided, that so long as the lessee is actively and on a substantial scale engaged in mining operations on at least one such lease on the same minerals, the covenant shall be suspended as to all other leases held by the lessee.

Any interested party may, however, request that a mining lease contain a research period under which the lessees shall be required to expend money in research and development to establish a method to make economical the mining and processing of the mineral deposits contained in the lease. If the board determines that the research period would be beneficial it shall fix the period of research and shall also fix a minimum expenditure for labor performed or money spent by the lessee in research and development and the method by which the lessee shall establish that such expenditure in fact be made. In such leases, the obligation to commence mining operations within three years shall not

commence until the expiration of the research period.

- (4) For the period of the lease the lessee shall have the exclusive right of possession of the minerals leased and the exclusive rights to mine and remove the minerals by means which shall be reasonable and satisfactory to the board and to occupy and use so much of the surface of the land as may reasonably be required, subject to the provisions of section 182-3. The right to use the surface shall include the right to erect transportation facilities thereon, construct plants for beneficiating, drying, and processing the minerals for electric power generation and transmission and such other uses as may be necessary or convenient to the winning and processing of the minerals; provided, that the lessee shall comply with all water and air pollution control laws, rules and regulations of the State or its political subdivisions.
- (5) The lessee may retain all minerals separated from the land as a part of the process of mining the minerals specified in the mining lease; provided, that the lease may prescribe the accounting and testing procedures by which the amount and quality of such additional materials shall be determined for the purpose of computing the excise tax thereon."

SECTION 6. Section 182-8, Hawaii Revised Statutes, is amended to read:

"Sec. 182-8 Number of leases; acreage limitations; area covered by lease.

The board is authorized to impose a limitation on the number of leases or acres which a mining lessee or his transferee may hold under such terms and conditions as the board determines to be in the best interest of the State. No lease shall grant and include an area of land exceeding four square miles of contiguous land, in which the longest dimension of the area demised shall exceed its narrowest dimension by more than six times unless otherwise approved by the board."

SECTION 7. Section 182-10, Hawaii Revised Statutes, is amended to read:

"Sec. 182-10 Revocation of mining leases. A mining lease may be revoked if the lessee fails to pay rentals when due or if any of the terms of the lease or of law are not complied with, or if the lessee wholly ceases all mining operations for other than reasons of force majeure or the uneconomic operation of the mining lease for a period of one year without the written consent of the board of land and natural resources; provided, that the board shall give the lessee notice of any default and the lessee shall have six months or such other time limit as provided by the rules and regulations from the date of the notice to remedy the default."

SECTION 8. Chapter 182, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

"Sec. 182- Unitization. Upon motion by the board or petition filed by any mining lessee, the board, in its discretion, may order such lessees or owners of mineral rights on adjoining properties to collectively adopt, and operate under, a cooperative or unit plan of development, if the board finds that such a plan will prevent the waste of any mineral, increase the ultimate recovery, avoid the drilling, digging, or excavating of any unnecessary well, or for such other reason that would encourage and promote the development of any mineral resource."

SECTION 9. Chapter 182, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

“Sec. 182- Penalty for violation. Any person who violates any provision of this chapter, or any regulation adopted pursuant hereto, shall be fined not more than \$500 for each offense. If any person after receiving written notice for a violation fails to cure such violation within such time and under such conditions as determined by the rules and regulations, such person shall be subject to a citation for a new and separate violation. There shall be a fine not more than \$500 for each additional violation.”

SECTION 10. Chapter 182, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

“Sec. 182- Levy and assessment of general excise tax. Notwithstanding any provision to the contrary, the levy and assessment of the general excise tax on the gross proceeds from any manner of sale of (i) geothermal resources or (ii) electrical energy produced by the geothermal resources producer from such geothermal resources, shall be made only as a tax on the business of a producer, at the rate assessed producers, under section 237-13 (2) (A).”

SECTION 11. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.

SECTION 12. This Act shall take effect upon its approval.

(Approved May 30, 1978.)