

ACT 11

An Act Relating to Mineral Rights in the State of Hawaii, Providing for the Reservation of Such Rights to the State in State Lands, the Lease of Such Rights and the Payment of Rentals and Royalties Therefor, and Regulation of Strip Mining.

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

SECTION 1. Title 12 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended by adding thereto a new chapter numbered 99A, including new sections numbered 99A-1 to 99A-15, inclusive, to read as follows:

“CHAPTER 99A. RESERVATION AND DISPOSITION OF GOVERNMENT MINERAL RIGHTS.

Sec. 99A-1. Definitions. In this chapter, if not inconsistent with the context:

(a) ‘Minerals’ means any or all of the oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits whether solid, gaseous, or liquid, in, on, or under any land; but does not include sand, rock, gravel and other materials suitable for use and used in road construction.

(b) ‘Board’ means board of land and natural resources.

(c) ‘Reserved lands’ means those lands owned or leased by any person in which the State or its predecessors in interest has reserved to itself expressly or by implication the minerals or right to mine minerals, or both.

(d) ‘State lands’ includes all public and other lands owned or in possession, use and control of the then Territory of Hawaii or the State of Hawaii or any of its agencies and the provisions of this chapter shall apply thereto.

(e) ‘Occupier’ means any person entitled to the possession of land under a certificate of occupation, a right of purchase lease, a cash freehold agreement, or under a deed, grant or patent, and any person entitled to possession under a general lease, and also means and includes the assignee of any one of the above.

(f) ‘Force majeure’ means any fire, explosion, flood, volcanic activity, seismic or tidal wave, mobilization, war (whether declared or undeclared), act of any belligerent in any such war, riot, rebellion, the elements, power shortages, strike, lock-out, difference of workmen, any cause which prevents the economic mining of the lease, or any other cause beyond the reasonable control of the party affected, whether or not of the nature or character hereinabove specifically enumerated.

(g) ‘Mining operations’ means the process of excavation, extraction and removal of minerals from the ground, design engineering, other engineering, erection of transportation facilities and port facilities, erection of necessary plants, other necessary operations or research or development approved by the board preceding or connected with the actual extraction of minerals.

Sec. 99A-2. Mineral rights reserved to the State.

(a) All minerals in, on or under state lands or lands which hereafter become state lands are reserved to the State; provided, that the board may release, cancel or waive such reservation whenever it deems the land use, other than mining, is of greater benefit to the State as provided for in section 99A-4. Such minerals are reserved from sale or lease except as provided in this law. A purchaser or lessee of any such lands shall acquire no right, title or interest in or to such minerals. The right of such purchaser or lessee shall be subject to the reservation of all such minerals and to the conditions and limitations prescribed by law providing for the State and persons authorized by it to prospect for, mine and remove such minerals, and to occupy and use so much of the surface of the land as may be required for all purposes reasonably extending to the mining and removal of such minerals therefrom by any means whatsoever.

(b) Subject to the provisions of section 99A-2(a), all land patents, leases, grants or other conveyance of state lands shall be subject to and contain a reservation to the State of all such minerals, and shall also contain a reservation to the State, and persons authorized by it, of the right to prospect for, mine and remove such minerals by deep mining, strip mining, drilling and any other means whatsoever, and to occupy and use so much of the surface as may be required therefor.

Sec. 99A-3. Bond; compensation to occupiers.

(a) Every lessee of a mining lease granted under this chapter and every assignee thereof shall file with the board 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 occupier thereof is damaged due to injury to his crops or improvements or to the surface or condition of his land caused 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 such operations, such occupier shall be reimbursed the full extent of the damages caused by the mining operations of the lessee so long as the occupier was not granted a mining lease without public auction under the provisions of section 99A-5.

(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 such lessee from agreeing upon the amount of damages to be paid the occupier 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 the provisions of chapter 188 of the Revised Laws of Hawaii 1955.

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 or other incidental operations, including exploratory work, and a reasonable rental for the use of the surface.

Sec. 99A-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 his desire to apply for a mining lease. Such 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 such 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 such mining lease within six months from the date of the first publication of 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 shall determine that the existing or reasonably foreseeable future use would be of greater benefit to the State than the proposed mining use of such land, it shall disapprove the application for a mining lease of such 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 in 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 shall 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.

Sec. 99A-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 his desire to apply for a mining lease. Such 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 the provisions of section 99A-4, or the board may, by the vote of two-thirds of its voting members, 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 such reserved lands be mined, a mining lease shall be granted under the provisions of section 99A-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.

Sec. 99A-6. Exploration. Any person wishing to conduct exploration on such state lands shall apply to the board who shall issue exploration permits upon such terms and conditions as it shall by regulation prescribe. During and as a result of such exploration, no minerals of such types and quantity beyond that reasonably required for testing and analysis shall be extracted and removed from such state lands. Upon termination of the exploration permit, the drill logs and the results of the assays resulting from the exploration shall be turned over to the board and kept confidential by the board. If such person shall not make application for a mining lease of such lands within a period of six months from the date such information is turned over to the board, the board in its discretion need not keep such information confidential.

Sec. 99A-7. Lease. Prior to the public auction contemplated in sections 99A-4 or 99A-5, or the granting of mining lease without public auction contemplated in section 99A-5, the board shall cause a mining lease for the land in question to be drawn. Such 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:

(a) The term of the lease shall be sixty-five years or for a lesser period at the discretion of the board.

(b) The payment of royalties to the State shall be 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 said 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. Such royalties shall be in lieu of any severance or other similar tax on the 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, such lessee shall, before mining such minerals, so notify the board in writing, and

the board and the lessee shall negotiate and fix the royalties for such minerals.

(c) 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 such 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, such covenant shall be suspended as to all other leases held by such 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 such 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.

(d) 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 said 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 99A-3 herein. The right to use the surface shall include the right to erect transportation facilities thereon, construct plants for beneficiating, drying and processing said minerals 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.

(e) 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 severance or excise taxes thereon.

Sec. 99A-8. Number of leases; area covered by lease. There shall be no limit upon the number of mining leases that may be granted to any person undertaking any mining operations. 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.

Sec. 99A-9. Deposit; first year's rental. All bidders shall prior to the date of public auction post with the board a deposit of \$500. The board shall refund to unsuccessful bidders such amount within two days after the auction. All bidders, prior to the auction, shall satisfy the board of their financial ability to conduct mining operations and of their capability to develop a mine. The successful bidder shall pay to the board the amount of the first year's rental within two days after the acceptance of the bid by the board and the \$500 deposit shall be

credited against such sum. If the deposit exceeds the first year's rental, the excess shall be refunded. All rentals thereafter are payable in advance once a year.

Sec. 99A-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 such mining lease for a period of one year without the written consent of the board; provided, that the board shall give the lessee notice of any default and such lessee shall have six months from the date of such notice to remedy such default.

Sec. 99A-11. Assignment. Any mining lease may be assigned in whole or in part, subject to the approval of the board, to an assignee who shall have the same qualifications as any bidder for a mining lease. The assignee shall be bound by the terms of the lease to the extent as if such assignee were the original lessee. The approval of the assignment by the board shall release the assignor from any liabilities or duties under the mining lease as to the portion thereof assigned except for any liability or duty which arose prior to the approval of such assignment by the board and which remains unsatisfied or unperformed.

Sec. 99A-12. Acquisition of rights-of-way. The State may, at its discretion, acquire by eminent domain, by negotiation or otherwise, such real property, rights-of-way and interest in, over, across, under, and through any real property which may be necessary for the transportation or communication facilities in connection with any mining operations and may assign, lease or otherwise transfer such property or rights to persons or corporations engaged in mining operations.

Sec. 99A-13. Surrender of mining leases. Any lessee of a mining lease, who has complied fully with all the terms, covenants, and conditions of the existing lease, may, with the consent of the board, surrender at any time and from time to time all or any part of a mining lease or the land contained therein upon payments as consideration therefor two years' rent prorated upon the portion of the lease or land surrendered. The lessee shall thereupon be relieved of any further liability or duty with respect to the land or lease so surrendered; provided, that nothing herein contained shall constitute a waiver of any liability or duty lessee may have with respect to the land or lease surrendered as a result of any previous activities conducted on such land or under such lease. Upon the termination, cancellation or surrender of any mining lease or any portion thereof, the lessee shall have the right to remove any and all equipment, buildings and plants placed on the land surrendered by the holder of the mining lease. A mining lease may also be surrendered if as a result of a final determination by a court of competent jurisdiction, the lessee is found to have acquired no rights in or to the minerals on reserved lands, nor the right to exploit the same, pursuant to the said lease, and, in such event, the lessee shall be reimbursed for rentals paid to the State pursuant to the said lease.

Sec. 99A-14. Rules and regulations. Subject to the provisions of Act 103, Session Laws of Hawaii 1961, the board may make, promulgate and amend such rules and regulations as it deems necessary to carry out the provisions of this chapter and to perform its duties thereunder,

all commensurate with and for the purpose of protecting the public interest. All such rules and regulations shall have the force and effect of law.

Sec. 99A-15. Other use of surface of state lands. Where mining leases are granted on state lands, the board may reserve to the State the right to lease, sell or otherwise dispose of the surface of the lands embraced within such lease. Such lease, sale or other disposal of the surface, if made, shall be subject to the rights of the holder of the mining lease.”

SECTION 2. The provisions of chapter 98C, Revised Laws of Hawaii 1955, as amended, shall apply to state lands.

SECTION 3. If any provisions of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

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

(Approved May 3, 1963.) **S.B. 79.**
