(Governor's Bill)
SECOND REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document **No. 2043**

H. P. 2129 House of Representatives, March 2, 1982

Referred to the Committee on Taxation. Sent up for concurrence and 2,500 ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Kane of South Portland.

Cosponsors: Senator Carpenter of Aroostook, Senator Violette of Aroostook and Representative Masterman of Milo.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-TWO

AN ACT to Create an Excise Tax on Mining Companies.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA c. 18 is enacted to read:

CHAPTER 18

MINING EXCISE TAX TRUST FUND

§451. Statement of purpose

The purpose of this chapter is to establish the Maine Mining Excise Tax Trust Fund to replace, generally, the loss to the State of a nonrenewable natural resource and to deal with extraordinary government costs required by mining.

§452. Creation of the Maine Mining Excise Tax Trust Fund

There is created a separate trust fund to be known as the Maine Mining Excise Tax Trust Fund, in this chapter called the "trust fund." The fund shall be invested by the Treasurer of State in accordance with section 138.

§453. Board of trustees

1. Creation. There is created the Maine Mining Excise Tax Trust Fund Board of Trustees, in this chapter called the board. The board shall consist of 5 members.

2. Appointment of members. The board's members shall be appointed by the Governor and shall be subject to review by the joint standing committee of the Legislature having jurisdiction over taxation and to confirmation by the Legislature. The board members may be removed for cause.

3. Terms. Of the initial appointees: One shall serve a term of one year; one shall serve a term of 2 years; one shall serve a term of 3 years; one shall serve a term of 4 years; and one shall serve a term of 5 years. Upon expiration of these terms, members shall serve for 5 years. Members shall be eligible for reappointment.

4. Chairman. The chairman of the board shall be named by the Governor, and shall serve as chairman at the pleasure of the Governor.

§454. Powers and duties of the board

1. Powers. The board may authorize expenditure of income of the trust fund for projects in accordance with section 455. The board may act in its own capacity to carry out the purposes of this section, and shall have the authority to purchase real estate with the consent of the Governor and to enter into contracts in its own name. The board may transfer responsibility to carry out the purposes set forth in section 455, and may transfer funds therefore, to state agencies and institutions of higher education when that transfer is consented to in writing by the agency accepting responsibility and by the Governor. The board shall carry out its duties in accordance with chapter 375.

2. Consultation. The board shall consult with the Commissioner of Conservation, Commissioner of Environmental Protection, Commissioner of Inland Fisheries and Wildlife, the Director of the State Planning Office, and such other state agencies as may be necessary in making decisions on the expenditures of funds or transfer of responsibilities.

3. Concurrence of 3 members required for expenditure. No expenditure of funds or transfer of responsibility may be made without the concurrence of 3 board members.

4. Reinvestment of funds. The board may direct that the Treasurer of State reinvest any portion of the income earned by the trust fund with the principal of the trust fund. Any such funds reinvested shall not be considered principal of the trust fund for the purposes of section 455, subsection 1, paragraph B.

5. Location. For administrative purposes, the board shall be housed in the Department of Conservation. There is authorized one full-time position in the department to serve the board in carrying out this section.

6. Biennial report. The board shall prepare a biennial report to be submitted to the Governor and Legislature. The report shall include an audited financial statement of the trust fund, a listing of activities undertaken by the board in the preceding 2 years and a general plan of expenditures and activities for the coming 2 years. The reports shall be submitted 30 days prior to the convening of the First Regular Session of each Legislature.

§455. Uses of the trust fund

1. Funds available. The board may utilize available funds as follows.

A. The board may utilize the income earned by the trust fund for the purposes of this section.

B. The board may utilize the principal of the trust fund for purposes of this section, provided that the principal shall only be used upon the recommendation of 4 members of the board and the consent of the Governor. Not more than 10% of the principal of the trust fund may be used in any one year.

2. Uses. The eligible uses of the funds available from the trust fund shall be:

A. Purchase and development of land or other interests in real estate for park and recreational uses;

B. Purchase of wildlife habitat and unique natural areas; and

C. Restoration of lakes, rivers and streams.

Sec. 2. 36 MRSA §655, sub-§1, ¶Q is enacted to read:

Q. Minerals and mineral products as defined in section 2855, subsections 6 and 7.

Sec. 3. 36 MRSA §656, sub-§1, ¶B, is repealed and the following enacted in its place:

B. All minerals as defined in section 2855, subsection 7, and mines thereof, shall be exempt from taxation and shall in no event constitute an element of value of any real estate of which they are a part.

Sec. 4. 36 MRSA c. 367 is enacted to read:

CHAPTER 367

MINERAL EXCISE TAX

§2851. Preamble

It is the Legislature's belief that mining is an acceptable and necessary activity in the State. Mining results in economic benefits to the locality where it occurs, as well as to the entire State and the Nation. Those who conduct mining do so by their own initiative and by investing their capital. When mining is conducted, investments of the State are also made to provide public facilities and services. Aesthetic costs and the permanent loss of valuable assets also result from mining. It is the Legislature's intent that the mineral excise tax be fairly related to the services provided by the State and its subdivisions, as well as account for the costs of mining and the permanent loss of valuable assets.

§2852. Findings

The Legislature makes the following findings.

1. Mineral resources fundamental. Mineral resources are fundamental to modern civilization.

2. Mineral resources as economic wealth. Mineral resources have historically been a primary source of economic wealth, are valuable and, once removed, are forever lost as an economic asset to the State. While the minerals themselves are nonrenewable assets, mining creates economic benefits to the State.

3. Development of mineral resources. Development of this country's mineral resources has involved only a small portion of its land area and may be expected to involve a similarly small portion of the land area of Maine.

4. Excise tax. The tax established by this chapter is not a property tax. It is an excise tax imposed on those engaged in and enjoying the privilege of conducting mining in the State.

5. Creation of additional costs to government by mining. The activity of mining may create additional costs to the State and its political subdivisions for government services, such as environmental monitoring and education and for highways, sewers, schools and other improvements which are necessary to accommodate the development of a mining industry.

6. Effect of mining on environment and other qualities. The activity of mining has effects on the environment and recreational and aesthetic qualities of the State. These effects constitute a cost to the State.

7. Quality of life. The activity of mining may significantly alter the quality of life in communities affected by mining.

8. Size of mining operation. As the size of a mining operation increases, the cost to the State and its political subdivisions increases, as do the effects on the environment. As the size of a mining operation increases, the company mining benefits from economies of scale in the mining operation.

9. Long-term and short-term economic costs. The State and its political subdivisions incur long-term and short-term economic costs as a result of mining.

10. Impact of mineral tax laws on mining industry. Mineral tax laws have a significant impact on the profitability of mining and the industry's ability to enter into and sustain production.

§2853. Purpose

It is the policy of the State to encourage the sound and orderly development of Maine's mineral resources. The object of this policy is to assure that the actions associated with development of these resources will:

1. Expansion and diversification of economy. Encourage expansion and diversification of the Maine economy and create new employment opportunities for Maine people;

2. Land use; environmental, safety and health regulations. Adhere to sound and effective land use, environmental, safety and health regulations administered through appropriate public agencies;

3. Assistance to municipalities and counties. Provide planning and development assistance to Maine municipalities and counties that will be significantly affected by mineral resource development; and

4. Scheme of taxation. Establish a practical scheme of taxation on mining companies which will:

A. Permit these companies to profitably operate mines within the State;

B. Encourage the economically efficient extraction of minerals; and

C. Compensate the State and its political subdivisions for present and future costs incurred or to be incurred as a result of the mining activity.

§2854. Excise tax in lieu of property taxes

Every mining company shall pay to the State Tax Assessor, for the use set forth in this chapter, an annual excise tax for the privilege of conducting mining within the State. The excise tax imposed by this chapter shall be in lieu of all property taxes on or with respect to mining property, as defined in section 2855, subsection 14.

§2855. Definitions

For the purposes of this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Allowable deductions. "Allowable deductions" means accuruals for reclamation and restoration costs as well as accuruals for post-mining costs and all those deductions allowable in computing taxable income under the code, including, without limitation: All ordinary and necessary expenses of mining and mining processes; an allowance for depreciation which may be calculated by any method allowable

under the code; amortization of capital costs; and an allowance for recovery of exploration and development costs as defined in Sections 616 and 617 of the code, whether incurred before or after the date of enactment of this chapter; provided that the deduction for percentage depletion contained in Section 613 of the code and the tax provided for in this chapter shall not be allowable deductions.

2. The code. The "code" means the United States Internal Revenue Code of 1954, as amended, and implementing regulations thereof in effect as of December 31, 1981.

3. Commencement of mining. "Commencement of mining" means and shall be deemed to occur when the surface soil is broken in order to facilitate or accomplish the extraction or removal of more than 1,000 cubic yards of a mineral ore body, top soil, other solid matter or minerals naturally lying over the ore body from the earth within 12 successive calendar months, except in connection with exploratory activity; or construction or reconstruction is commenced on fixtures, buildings or surface improvements which are mining property, as defined by this chapter, whichever occurs first.

4. Counties likely to be affected by mining. "Counties likely to be affected by mining" are the counties in which the mines are located plus any counties whose boundaries are no greater than 20 miles by paved road from the mine sites.

5. Exploratory activity. "Exploratory activity" means all activities undertaken by the owner or any person for the purpose of determining the existence of minerals or the quantity, quality or character of the minerals or feasibility of mining those minerals. These activities include, without limitation: Testing and evaluation of the land and subsurface; taking soil and stream sediment samples; drilling on the land including, without limitation, bulk sample drilling or excavation, performance of geophysical tests; and activity incidential to the foregoing; notwithstanding that the activity may involve the use of equipment on the land, may alter the character and appearance of the land or result in disturbance of the land, including, without limitation, the creation of trails or roads, removal of trees, the planting of new vegetation or the marking of sample holes.

6. Gross income from mining. "Gross income from mining" means that amount of income attributable to a mining company from the process of extraction of minerals from the ground and the application of mining processes,

including mining transportation, and as further defined in the United States Internal Revenue Code of 1954, Section 613, as amended, in this chapter called the code, and the implementing regulations thereof.

7. Installed cost of mining property. "Installed cost of mining property" means the basis under section 1012 of the code for all mining property with a useful life beyond the tax year.

8. Land. "Land" means real estate and all natural resources and any interest in or right involving such real estate or natural resources including, without limitation, minerals and mineral rights, timber and timber rights and water and water rights. The term "land" does not include structures constructed, placed or located within a mine site by a person or machine, such as buildings, structures, fixtures, fences, bridges, dikes, canals or other improvements within a mine site.

9. Mine site. "Mine site" means the entire area owned, leased or otherwise subject to the possessory control of a mining company within which mining or the application of mining processes or activities incidental thereto, occur or may reasonably be foreseen to occur. The mine site may include, without limitation, the area occupied or to be occupied by the excavation, tailings, waste rock, or overburden storage areas, mills, pipes, canals, roads, administrative and other buildings, improvements and structures appurtenant or related to any of the foregoing and rights-of-way or easements related to any of the foregoing. The mine site shall be determined taking into account all relevant information including, but not limited to, plans or permits approved under the site location of development law, Title 38, chapter 3, subchapter 1, Article 6.

10. Minerals. "Minerals" means all naturally-occuring metallic minerals.

11. Mining and mining processes. The terms "mining" and "mining processes" have the following meanings.

A. "Mining" and "mining processes" mean:

(1) The extraction of minerals from the ground; or

(2) Processes used in the separation or extraction of the mineral or minerals from other material from the mine or other natural deposit,

including, but not limited to: Crushing; grinding; and beneficiation by concentration including gravity, flotation, amalgamation, electrostatic or magnetic; cyanidation; leaching; crystallization; or precipitation; but not including electrolytic deposition; roasting; thermal or electric smelting or refining.

B. Mining and mining processes do not include exploratory activity.

12. Mining company. "Mining company" means any person who engages in the mining or the application or mining processes of any minerals in the State and is a combination of 2 or more persons or employs 2 or more employees, as defined in Title 26, section 663, subsection 3, in that mining.

13. Mining income. "Mining income" means gross income from mining for each mine site, reduced by allowable deductions attributable to each such mine site, whether the cost or event giving rise to the deduction occurred before or after the effective date of this chapter.

14. Mining property. "Mining property" means all real estate comprising the mine site and all other real estate and all tangible personal property on, under or within a mine site which is owned, leased or otherwise subject to possessory control by a mining company, exclusive of tangible personal property which is leased to the mining company and with respect to which the lessor is subject to property taxation by a municipality in this State other than the one in which the mine site is located. It does not include those vehicles upon which state excise taxes are paid for the current registration period pursuant to Title 36, chapter 111.

15. Municipality likely to be affected by mining. A "municipality likely to be affected by mining" is a municipality identified according to the procedure set forth in section 2864, subsection 1, or a municipality which is determined to be affected after an appeal under section 2864, subsection 6.

16. Tax year. "Tax year" means an annual accounting period ending on the last day of the month of the period used by the mining company as its taxable year for federal income tax purposes.

17. Termination of mining. "Termination of mining" means and shall be deemed to occur on March 31st of any year if:

A. The mining company has permanently abandoned mining during the previous 12 months ; or

B. During the previous 2 years, there has been:

(1) Extraction, removal or sale of less than 1,000 cubic yards of a mineral ore body , top soil, other solid matter or materials naturally lying over the ore body from the earth; and

(2) No construction or reconstruction of any fixtures, buildings or surface improvements which are mining property, as defined by this chapter.

18. Valuation of mining property. "Valuation of mining property" means the value of all mining property excluding land on or within a mine site in an amount equal to the installed cost of the mining property in place on the last day of the tax year, which would be subject to property tax except for the exemption provided in section 2854.

§2856. Returns; credits; extensions

1. Annual return. Every mining company shall file, for each tax year with the State Tax Assessor on or before the date the mining company's federal income tax return is due to be filed, without regard to extension on the federal return, an annual return on a form specified by the State Tax Assessor, which shall provide such information for the mining company's tax year with respect to valuation of mining property, gross income from mining and allowable deductions as is required to compute the tax due under section 2857 for the tax year. The return shall indicate the tax due for the tax year computed in accordance with section 2857. The return shall also set forth all credits to which the mining company is entitled pursuant to subsection 2 or section 2862. The mining company shall pay the tax due, less any credits, at the time it files its annual return.

2. Credits. Credits shall be allowed, and grants shall be determined as follows.

A. A credit against the tax imposed by this chapter shall be allowed for property taxes levied and paid in the State on property which becomes mining property after March 31st of any year. The amount of the credit shall be computed as follows: The number of days remaining in the property tax year beginning with the date mining commences and the next March 31st, inclusive, shall be divided by 365; the percentage thus arrived at shall be multiplied by the property taxes levied and paid during that property tax year against mining property. The credit may be used in the year in which the property tax was paid or in any year thereafter.

B. Grants may be made to the Department of Educational and Cultural Services for training as follows.

(1) Any mining company may make grants to the Department of Educational and Cultural Services for the purpose of establishing and carrying out training programs at vocational-technical institutes in skills appropriate to mining in the State.

(2) Such grants accepted by the Department of Educational and Cultural Services, up to a total of $250,000 may be used as a credit against the mineral excise tax in the year in which the grant is made or in any year thereafter.

3. Computation. In computing a mining company's mining income, gross income from mining and allowable deductions shall be computed as if each mine were a separate tax payer.

A. If a sale comprising any portion of gross income from mining occurs by contract, covenant or agreement between parent and subsidiary companies, between companies which are wholly or partially owned by a common parent or between companies otherwise affiliated, the State Tax Assessor may distribute, apportion or allocate on a reasonable basis gross income from mining, allowance deductions, credits or allowances between or among those companies, if the distribution, apportionment or allocation is necessary in order to prevent evasion of taxes imposed by this chapter, or to clearly reflect the mining income of any such mining company or companies.

4. Extensions. The State Tax Assessor may grant a reasonable extension of the time for filing a return or payment of tax required by this chapter on such terms and conditions as he may require. In no event may the extension exceed 8 months.

§2857. Amount of tax

The amount of the annual excise tax on mining companies shall be the sum of the excise taxes due on each mine site. The excise tax due on each mine site shall be the greater of the following:

1. Tax on mining property. The valuation of mining property multiplied by 0.005; or

2. Tax on mining income. The amount of the tax on mining income is as follows.

A. If the amount of mining income is less than $10,000,000, the tax due shall be the mining income multiplied by 0.04.

B. If the amount of mining income is equal to or greater than $10,000,000, the tax due shall be the mining income multiplied by a percentage which is determined by multiplying 0.04 by a fraction, the numerator of which is gross income from mining, and the denominator of which is gross income from mining less mining income, reduced by federal income taxes for the tax year with respect to the mine site if it were a separate taxpayer.

§2858. Lien of tax

If the tax imposed by this chapter is not paid when due, the State Tax Assessor may file in the office of the registry of deeds of the county where the property is located with respect to real property, fixtures or other property designated in Title 11, section 9-401, subsection (1), paragraph (a), and the State Tax Assessor may file in the office of the Secretary of State with respect to all other property, a notice of lien specifying the amount of tax, penalty and interest due, the name and last known address of the taxpayer liable for the amount and the fact that the State Tax Assessor has complied with this chapter in the assessment of the tax. From the time of the filing of a notice of lien in a registry of deeds, the amount set forth in the notice of lien constitutes a lien upon all real property, fixtures or other property designated in Title 11, section 9-401, subsection (1), paragraph (a), of the taxpayer in the county then owned by him or thereafter acquired by him in the period before the expiration of the lien. From the time of the filing of a notice of lien in the office of the Secretary of State, the amount set forth in the notice of lien constitutes a lien upon all other property in this

State of the taxpayer then owned by him or thereafter acquired by him in the period before the expiration of the lien for which an effective lien could not be recorded in a registry of deeds. In the case of any prior mortgage on any real or personal property so written as to secure a present debt and also future advances by the mortgagee to the mortgagor, the lien provided in this section, when notice has been filed in the proper office, shall be subject to the prior mortgage, unless the State Tax Assessor also notifies the mortgagee of the recording of the lien in writing, in which case any indebtedness thereafter created from the mortgagor to the mortgagee shall be junior to the lien provided in this section. The lien provided in this section has the same force, effect and priority as a judgment lien and shall continue for 5 years from the date of recording, unless sooner released or otherwise changed. The lien may, within the 5-year period or within 5 years from the date of the last extension of the lien in the manner provided by this section, be extended by filing for record in the appropriate office a copy of the notice and from the time of that filing the lien shall be extended for 5 years, unless sooner released or discharged.

§2859. Release of lien

The State Tax Assessor shall issue to the taxpayer a certificate of release of the lien or release all or any portion of the property subject to any lien provided for in this chapter or subordinate the lien to other liens if:

1. Liability satisfied or unenforceable. The State Tax Assessor finds that the liability for the amount demanded, together with costs, has been satisfied or has become unenforceable by reason of lapse of time;

2. Bond with surety. There is furnished to the State Tax Assessor a bond with surety approved by the State Tax Assessor in a sum sufficient to equal the amount demanded, together with costs, the bond to be conditioned upon payment of any judgment rendered in proceedings regularly instituted by the State Tax Assessor to enforce collection thereof at law or of any amount agreed upon in writing by the State Tax Assessor to constitute the full amount of the liability;

3. State interest of no value. The State Tax Assessor determines at any time that the interest of this State in the property has no value; and

4. Lien on other property of taxpayer. The State Tax Assessor determines that the taxes are sufficiently secured

by a lien on other property of the taxpayer or that the release or subordination of the lien will not endanger or jeopardize the collection of the taxes.

§2860. Enforcement of lien

Any lien provided for by section 2858 may be enforced at any time after the tax liability with respect to which the lien arose becomes due after written notice and demand for payment of the tax liability has been made upon the mining company. Enforcement shall be by means of a civil action brought by the Attorney General in the name of the State in the Superior Court of the county in which the property is located to subject any property, of whatever nature, of the mining company, or in which he has any right, title or interest, to the payment of the tax or liability. The court shall, after the parties have been duly notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property, and, in all cases where a claim or interest of the State therein is established, may decree a sale of the property, by the proper officer of the court and a distribution of the proceeds of such sale according to the findings of the court. If the property is sold to satisfy a lien held by the State, the State may bid at the sale such sum, not exceeding the amount of the lien with expenses of sale, as the State Tax Assessor directs.

§2861. Taxpayer not a resident

When notice and demand for the payment of a tax is given to a nonresident and it appears to the State Tax Assessor that it is not practicable to locate property of the taxpayer sufficient in amount to cover the amount of tax due, he shall send a copy of the notice of lien provided for in section 2858 to the taxpayer at his last known address, together with a notice that the notice of lien has been filed with the registry of deeds or the Secretary of State. Thereafter, the Attorney General, at the request of the State Tax Assessor, may institute any action or proceeding to collect or enforce the claim in any place and by any procedure that a civil judgment of a court record of this State could be collected or enforced.

§2862. Prepayment of taxes

1. Prepayment. A mining company may prepay to the State Tax Assessor at any time a portion of the taxes due under this chapter not to exceed $250,000 in any one year or $500,000 for any mine site.

2. Prepayment of taxes as a credit. If a mining company prepays any portion of the taxes due under this chapter, it may take that prepayment as a credit against the taxes due under this chapter, in the year of payment or in any year thereafter.

§2863. Use of tax revenues

The excise tax revenues shall be used as follows.

1. Reimbursement. The Treasurer of State shall reimburse each municipality 50% of the property tax revenues loss suffered by that municipality during the previous calendar year as a result of the exemptions established by this chapter, and by section 655, paragraph Q and by section 656, paragraph B. The property tax revenue loss shall be determined pursuant to the following procedure.

A. The State Tax Assessor shall make the following determinations:

(1) The total amount of property taxes levied by the municipality in the previous calendar year;

(2) The municipal valuation which resulted in subparagraph (1); and

(3) The valuation of the property which is exempt as a result of this chapter.

B. The State Tax Assessor shall add the valuation as determined in paragraph A, subparagraph (2), to the valuation as determined in paragraph A, subparagraph (3), and divide the sum into the figure determined in paragraph A, subparagraph (1).

(1) The valuation of minerals for purposes of this section shall be the gross income from mining for the tax year ending prior to April 1st of each year.

C. The State Tax Assessor shall apply the rate calculated in paragraph B to the valuation of the exempt property to determine the amount of tax revenue loss.

D. The Treasurer of State shall use the excise tax revenues to pay to each municipality 50% of the tax revenue loss as determined by paragraph B. The Treasurer of State shall pay to the municipality this 50% by February 1st of the year following the year in which property tax revenue was lost by the municipality.

2. Remaining funds. Except as provided in paragraph G, any amount remaining after the reimbursement prescribed in subsection 1 shall be used as follows.

A. In the first year following the commencement of mining, an amount equal to the taxes attributable in that year to a mine site shall be distributed as follows:

(1) 22.5% shall be deposited in the General Fund;

(2) 70% shall be distributed by the Treasurer of State to municipalities likely to be affected by mining at that mine site, in accordance with section 2864; and

(3) 7.5% shall be distributed by the Treasurer of State to the counties likely to be affected by mining at that mine site, in accordance with section 2864.

B. In the 2nd year following the commencement of mining, an amount equal to the taxes attributable in that year to a mine site shall be distributed as follows:

(1) 22.5% shall be deposited in the General Fund;

(2) 10% shall be deposited in the Maine Mining Trust Fund established by Title 5, chapter 18;

(3) 60% shall be distributed to municipalities likely to be affected by mining at that mine site; and

(4) 7.5% shall be distributed to the counties likely to be affected by mining at that mine site.

C. In the 3rd year following the commencement of mining, an amount equal to the taxes attributable in that year to a mine site shall be distributed as follows:

(1) 25% shall be deposited in the General Fund;

(2) 20% shall be deposited in the Maine Mining Trust Fund;

(3) 50% shall be distributed to municipalities likely to be affected by mining at that mine site; and

(4) 5% shall be distributed to the counties likely to be affected by mining at that mine site.

D. In the 4th year following the commencement of mining, an amount equal to the taxes attributable in that year to a mine site shall be distributed as follows:

(1) 25% shall be deposited in the General Fund;

(2) 30% shall be deposited in the Maine Mining Trust Fund;

(3) 40% shall be distributed to municipalities likely to be affected by mining at that mine site; and

(4) 5% shall be distributed to the counties likely to be affected by mining at that mine site.

E. In the 5th year following the commencement of mining, an amount equal to the taxes attributable in that year to a mine site shall be distributed as follows:

(1) 25% shall be deposited in the General Fund;

(2) 40% shall be deposited in the Maine Mining Trust Fund;

(3) 30% shall be distributed to the municipalities likely to be affected by mining at that mine site; and

(4) 5% shall be distributed to the counties likely to be affected by mining at that mine site.

F. In the years following the 5th year after the commencement of mining, any mineral excise tax revenues attributable to a mine site and not payed by the Treasurer of State to municipalities or counties likely to be affected by mining at that mine site for bond repayment under section 2865 shall be distributed as follows:

(1) 30% to the General Fund;

(2) 60% to the Maine Mining Trust Fund; and

(3) 10% to municipalities likely to be affected by mining at that mine site.

G. If, prior to the commencement of extraction of minerals for sale, a mining company ceases construction of a mine site, any taxes due during the period of construction cessation shall be distributed according to the most recently applicable provision of this subsection.

H. Any amounts paid in accordance with section 2862 and which are in excess of the amounts due under section 2857 in each year shall be distributed as follows:

(1) 90% to municipalities likely to be affected by mining at the mine site at which excess payments were received; and

(2) 10% to counties likely to be affected by mining at the mine site from which excess payments were received.

§2864. Distribution of revenues to municipalities and counties likely to be affected by mining

1. Identification of eligible municipalities. Prior to the commencement of each fiscal year, the State Tax Assessor will identify those municipalities likely to be affected by mining and provide the Treasurer of State with a list of those municipalities. In making the determination, the State Tax Assessor will utilize the method set forth in paragraphs A and B.

A. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

(1) The "population" of each municipality will be determined from the United States Decennial Census, the United States quinquennial census or the intercensal estimates issued by the Department of Human Services, whichever provides data for the most recent year.

(2) Two municipalities are "contiguous" only if one can pass directly by paved highway from one to the other without passing through a 3rd municipality or unorganized territory.

(3) The municipality in which a mine site is located is the "first zone." If a mine site extends across the boundaries of 2 or more munic-

ipalities, the first zone shall include all such municipalities. If a mine site is within the unorganized territory, the municipality which is closest to the mine site shall be the first zone.

(4) The municipalities which are contiguous to the first zone shall be the "2nd zone."

(5) "Subsequent zone" means municipalities which are contiguous to the next innermost zone.

(6) "Presumed effect" is a mathematical expression of the proportion of the population in each zone weighted by proximity to a mine site.

B. The method of calculating a municipality's share of funds shall be as follows.

(1) The population of each zone shall be calculated by summing the populations for all municipalities within the zone for which population data is available.

(2) In the first year after the commencement of mining and in all years following the 5th year after the commencement of extraction of minerals for sale, the proportion of presumed effect occuring in each zone is determined as follows.

(a) The proportion of presumed effects occuring in the first zone is the dividend of a fraction whose numerator is the population of the first zone and whose denominator is the sum of the population of the first zone and the 2nd zone.

(b) The proportion of the presumed effects occuring in a given zone beyond the first zone shall be calculated by taking the remainder of the product of the results of calculations indicated by subdivisions (i), (ii) and (iii), when subtracted from the product of the calculations indicated by subdivisions (iv) and (v).

(i) The population in the next outermost zone from the zone whose presumed effects are being calculated is to be divided by the sum of the population for each zone from the next outermost zone inward to the first zone.

(ii) The population in the zone whose presumed effects are being estimated is to be divided by the sum of the population in all zones from the zone whose presumed effects are being calculated inward to the first zone.

(iii) The population in each zone inward from the zone whose presumed effects are being estimated is to be divided by the sum of the population from that zone inward to the first zone; this calculation is performed for each zone inward from the zone whose effects are being estimated to the first zone.

(iv) The population in the zone whose presumed effects are being estimated is to be divided by the sum of the population in all zones from the zone whose presumed effects are being calculated inward to the first zone.

(v) The population in each zone inward from the zone whose presumed effects are being estimated is to be divided by the sum of the population from that zone inward to the first zone; this calculation is performed for each zone inward from the zone whose effects are being estimated to the first zone.

(3) Beginning in the 2nd year after a mine is opened and continuing to the 5th year after the commencement of extraction of minerals for sale, whenever revised population data are available at the time when these calculations are to be made, the proportion of presumed effects in the first zone and each zone is determined as follows.

(a) The proportion of presumed effects in the first zone is calculated by dividing the product of the square of the population in the first zone in the year for which the most recent data is available and the population in the 2nd zone in the year preceding the year for which the most recent data is available by the product of the population of the first zone in the year preceding the year for which the most recent data is available, the population in the 2nd zone in the year for which the most recent data is available, and the sum of the population of the first zone and the population of the 2nd zone in the year for which the most recent data is available.

(b) The proportion of presumed effects in each zone is calculated as the product of:

(i) The result of the calculation indicated by subparagraph 2, division (b); and

(ii) The product of the population in the zone for which the presumed effects are being estimated in the period for which the most recent data is available divided by the population in that zone in the period preceding the year for which the most recent data is available, and the population in the next outermost zone in the year preceding that in which the most recent data is available divided by the population in the next outermost zone in the year for which the most recent data is available.

2. Distribution of revenues among municipalities. The Treasurer of State shall distribute the funds authorized under section 2863 to the municipalities likely to be affected by mining on the basis of each town's share of presumed effects of the mine. This share is calculated as the product of each municipality's share, expressed as a percent, of the population in the zone in which it is located, and the share of each zone, expressed as a percent, of all zones which account for at least 90% of the total presumed effect.

A. In calculating that portion of the presumed effect which accounts for 90% of the total presumed effect, numbers may be rounded to the nearest 1/100.

B. Any portion of funds not accounted for by the portion of presumed effects of all zones which account for at least 90% of the total presumed effect shall be distributed equally among all eligible municipalities.

3. Distribution of funds to counties likely to be affected by mining. Funds to be distributed among counties

likely to be affected by mining shall be divided evenly among all counties.

4. Data and calculations to be made public; comments. The State Tax Assessor shall make public the data and calculations made under this section and shall provide at least 30 days for comments prior to submitting the list of municipalities to the Treasurer of State.

5. Use of funds. Municipalities and counties may use funds under section 2863 to provide public facilities and services required by mining activity.

6. Appeals. A municipality which has been determined to be unlikely to be affected by mining may appeal this determination to the Administrative Court established by Title 4, chapter 25. In making its appeal, the municipality must show by a preponderance of evidence that impacts are occuring or will occur.

A. A municipality which is determined to be likely to be affected under this subsection shall receive funds in the proportion of that municipality's population to the population of all the municipalities in the outermost zone as defined in subsection 1, paragraph A, subparagraph (5).

7. Reporting. Municipalities and counties which receive funds under this section shall report annually to the Treasurer of State the uses and expenditure of funds.

§2865. Refund

If the State Tax Assessor determines, upon written application by a mining company or during the course of an audit, that any tax has been paid erroneously or illegally or computed incorrectly, he shall certify to the State Controller the amount in excess of that legally due, from whom it was collected or by whom paid, and that amount shall be credited by the State Tax Assessor on any taxes then due from the mining company and the balance shall be refunded to the mining company, or its successors, administrators, executors, or assigns. No credit may be allowed unless a written petition therefor, stating the ground upon which refund is claimed, is filed with the State Tax Assessor or the overpayment is discovered in an audit within 3 years of the date of overpayment. The State Tax Assessor shall have the right to cancel or abate any tax which has been illegally levied.

§2866. Withdrawal of land from the tree growth tax law

For purposes of the definition of "forest land" set forth in section 573, subsection 3 and of determining the applicability of the tree growth tax law provided in subchapter II-A, land which would otherwise be included within the definition of "forest land" shall not be excluded by reason of any exploratory activity, as defined in section 2855, subsection 15, taking place on that land, whether before or after the effective date of this chapter and the land shall continue to qualify as "forest land" within the meaning of the definition and for purposes of the tree growth tax law until the commencement of mining, as defined in section 2855, subsection 8 whereupon such land shall no longer qualify as forest land.

§2867. Rules

The State Tax Assessor may promulgate rules to administer this chapter.

STATEMENT OF FACT

This bill is a redraft of L. D. 1621, submitted to the First Regular Session of the 110th Legislature. References to modifications, deletions and additions in this bill refer to changes made from L. D. 1621.

Section 1 of the bill establishes the Maine Excise Tax Mining Trust Fund. Among other things, section 1 does the following:

1. Establishes a mining excise tax trust fund;

2. Deletes the provisions for grants to municipalities and instead inserts a provision permitting the prepayment of taxes for local government impact assistance;

3. Creates a 5-member board of trustees.

4. Establishes the powers and duties of the board. The board is authorized to act in its own capacity or may transfer responsibility to state agencies or institutions of higher education in carrying out its purposes. A majority of the board is required to make decisions. The board is required to consult with state agencies in making its decisions, and to prepare a biennial report of its activities to the Governor and Legislature. The board is authorized to direct that any unused funds be reinvested. For administra-

tive purposes, the board is housed in the Department of Conservation, and one position is authorized to support the board; and

5. Identifies the permissible uses of trust fund moneys. Such uses are limited to the purchase and development of land for parks and recreation uses, the purchase of wildlife habitat and unique natural areas and the restoration of lakes, rivers and streams.

Funds available for these purposes are the income earned by the trust fund and up to 10% of the principal of the trust fund in any one year. The principal may only be used if the Governor consents.

Sections 2 and 3 of the bill now provide for an exemption for minerals from real and personal property taxes whether or not they are being mined, to clarify that the tax contained in this bill is the only tax to be applied to metallic mineral deposits.

Section 4 of this bill establishes the mineral excise tax, and the formulas for its determination, collection and redistribution.

Proposed sections 2851, 2852 and 2853 of Title 36, have been slightly modified from the previous bill for editorial purposes.

Proposed section 2855 of Title 36, changes several definitions found in the original bill. The changes are as follows.

Mining income. "Mining income" is defined as federal taxable income, but without deductions for percentage depletion or deduction of the mineral excise tax. This is now the base for the variable portion of the tax.

Gross income from mining. This definition substitutes for "gross proceeds" in the original. This definition incorporates by reference the definition of gross income from mining found in the United States Internal Revenue Code.

Allowable deductions. Deductions allowed from gross income to calculate mining income are all usual business expenses allowed in calculating federal taxable income, an allowance for depreciation, and amortization of non-depreciable development and exploration expenditures. These are also defined by reference to the United States

Internal Revenue Code. Funds set aside for future reclamation are also allowed as deductions.

Tax year. The firm's federal income "tax year" is now the period over which the tax is calculated, rather than the calendar year.

Mine site. The definition of "mine site" is amended to permit reference to plans or permits approved by the Board of Enviromental Protection under the Site Location of Development Law.

Minerals. The word "ore" is dropped from the definition so as not to limit the term to metallic minerals in their ore state.

Mining and mining processes. The definition is changed to be consistent with the United States Internal Revenue Code definitions. The definitions of the commencement and ending of mining are slightly modified to clarify the conditions under which mining is determined to begin and end and made separate definitional sections.

Installed cost. The term "installed cost" replaces the term "purchase price" as the basis of valuation; it is defined by reference to the United States Internal Revenue Code.

Valuation of mine property. The definition now fixes the value on the last day of the tax year.

Municipality likely to be affected by mining. This definition is included for purposes of the revenue sharing provision established in section 2864. The definition refers to the formula in that section.

Counties likely to be affected by mining. This definition is for the same purpose as Title 36, section 2855, subsection 13. Counties likely to be affected are defined as the county in which a mine is located, plus any county whose boundary is not greater than 20 miles from the mine.

Exploratory activity. This subsection is added to define exploratory activity as the activities normally engaged in to discover and test the quality and quantity of mineral deposits.

The definition of mineral products is deleted, since it is no longer needed.

In proposed Title 36, section 2856, quarterly returns are eliminated; companies will only be required to file annual returns. The credit for any property taxes paid is unchanged. A new credit for contributions of up to $250,000 towards the development of training programs at vocational-technical institutes in skills relevant to mining is established. Provision is also made in this section for the State Tax Assessor to determine the distribution of income and deductions in the case of non-arms length transactions in the sale of minerals.

Proposed Title 36, section 2857, sets the excise tax rate on mine property at 5 mills. The rate on mining income is set at 4% on amounts less than $10,000,000. On amounts above $10,000,000, the rate is determined by multiplying 4% by an adjustment factor which is gross income from each mine site divided by gross income less mining income:

$$\frac{\text{Gross}}{\text{Gross - (Mining Income - Federal Income Taxes)}}$$

This formula increases the rate as the mining company's profitability increases.

Proposed Title 36, section 2862, of allows companies to prepay up to $250,000 in any one year, or a total of $500,000, of the excise tax. This will allow funds to be distributed to municipalities and counties in the construction period of a mine, when the regular tax revenues will be low, but the effects on the local governments will be greatest.

The company is allowed to credit the prepayments against the mining excise tax.

Proposed Title 36, section 2863, slightly modifies the original version for clarification. A definition of the value of minerals as equal to gross income from mining is included for purposes of determining the valuation of minerals in calculating reimbursement to towns. This definition provides a practical means of assessing the value of minerals and avoids the difficulties encountered in attempting to assess the value of minerals still in the ground.

A subsection is added which distributes the taxes due each year and any prepayments among the General Fund, the trust fund and the local governments. Local governments are allocated a declining share of the revenues over the first 5 years of a mine, since this is when impacts are likely to be the greatest. A small 10% of the funds are provided to communities after year 5. The distribution of revenues is as follows:

Taxes due and paid in each year:

Year	1	2	3	4	5	6+
General Fund	22.5%	22.5	25	25	25	30
Trust Fund	0	10	20	30	40	60
Municipalities	70	60	50	40	30	10
Counties	7.5	7.5	5	5	5	0

Any funds prepaid by the mining company:

Municipalities	90%
Counties	10%

Proposed Title 36, section 2864, defines the procedure for determining the distribution of revenues to the counties and municipalities. The funds are distributed to municipalities through formulas which take into account population of municipalities, population changes after the beginning of mining and the distance from a municipality to the mine. In the first year, the formulas provide the greatest portion of funds to municipalities with the greatest population which are closest to the mine. After the first year, the formulas adjust the distribution to account for actual population changes in the period between the 2nd year and the 3rd year after the beginning of extraction of minerals. This is the period when population changes resulting from mining are the greatest, and so adjustments for those changes are incorporated in the formulas. After the 3rd year following beginning of extraction of minerals, the formula for in the first year is again used.

The formulas divide communities into a first zone, which is the municipality in which a mine is located or the nearest municipality to the mine, and zones of contiguous municipalities around the first zone. Contiguous in this case means "bordering on." A municipality's share of funds is determined first by determining the population of the zone of that municipality weighted by distance from the mine. This weighted population figure is called the "presumed effect" since it represents the idea that the effects of mining on a municipality will tend to be in proportion to that municipality's population and the distance to the mine. The precise share of funds for each municipality is then calculated by determining that municipality's share of the population of the zone in which it is located.

The formulas, expressed in mathematical terms, are as follows:

A. The formula for calculating the share of the first zone in the first year and in the years following the 3rd year after the beginning of actual mining is:

$$E_1 = \frac{P_1}{P_1 + P_2}$$

Where:

$E1$ = The portion of the presumed effect in the first zone (denoted by the subscript "1").

$P1$ = The population of the first zone.

$P2$ = The population of the 2nd zone.

B. The formula for determing the share of funds going to each of the other zones in the same period as in A, up to the zone which accounts for 90% of the presumed effect is:

$$E_z = \Pi i \left| \frac{P_{z+1}}{\sum_{i=1}^{z+1} P_i} \right| - \Pi i \left| \frac{P_{z+2}}{\sum_{i=1}^{z+2} P_i} \right|$$

Where:

Ez = The portion of presumed effect in a given zone (denoted by the subscript "z").

$Pz+1$ and $Pz+2$ are the populations of the next outermost zone and the 2nd outermost zone from the zone being calculated.

$\sum_{i=1}^{z+1} Pi$ is the sum of the populations of each zone from the first zone outward to zone $z+1$.

$\sum_{i=1}^{z+2} Pi$ is the same as above, except it extends to the 2nd outermost zone from the zone being estimated.

The symbol $\sum_{i=1}^{z+1} P_i$ (capital "Sigma") is a mathematical term which means "take the sum of all those numbers denoted by subscripts from 1 to z+1."

The symbol Π_i (capital "Pi") is a mathematical term which means "take the product of all those numbers denoted with subscript i."

<u>C.</u> The formula for determining the share of the first zone beginning in the 2nd year (when population changes from the mine have begun) and extending for the period until 3 years after the commencement of sale of minerals (the point at which population changes will generally be minimal) is:

$$E_1 = \frac{P_{(1)\,(t)} \qquad P_{(1)\,(t-1)}}{P_{(1)\,(t-1)} \qquad P_{(2)\,(t)} \qquad \left| P_{(1)\,(t)} + P_{(2)\,(t)} \right|}$$

Where:

E1 = The presumed effect in the first zone.

P (1) (t) = The population of the first zone in the year for which calculation is being made.

P (1) (t-1) = The population of the first zone in the previous year.

P (2) (t) and P (2) (t-1) are the same as the above 2 terms, except for the 2nd zone.

<u>D.</u> The formula for all subsequent zones for the same period as in C is:

$$E_z = \Pi i \left[\left| \frac{P_{(z+1)(t)}}{\sum_{i=1}^{z+1} P_{(i)(t)}} \right| - \Pi i \left| \frac{P_{(z+2)(t)}}{\sum_{i=1}^{z+2} P_{(i)(t)}} \right| \right]$$

$$\text{times} \left| \frac{P_{(z)(t)}}{P_{(z)(t-1)}} \right| \left| \frac{P_{(z+1)(t-1)}}{P_{(z+1)(t)}} \right|$$

Where the terms are as indicated in B and C.

A review period of 30 days is required during which time the results of these calculations are made available for comment. An appeal to the Administrative Court is also authorized for any town not included by the formula but which can show that it will be affected by mining.

If more than one county receives funds, they will split the funds equally.

An annual reporting of expenditures is required of towns and counties that receive funds.

Proposed Title 36, section 2865, is added to be consistent with other provisions of the Maine tax law which allow for refunds in the event of errors.

Proposed Title 36, section 2866, of clarifies the point at which a mine is removed from the provisions of the tree growth tax, by fixing the point at which the use of the land changes as the opening of the mine, as defined in the bill.

Sections 5 and 6 in the original bill are no longer needed.

No mines subject to this tax are expected to begin construction during the current biennium. The earliest a mine could begin is approximately 1983. Revenues from the tax would depend on the value of mine property in a given year, and the level of mining income, which is primarily determined by the price of metals sold.