

MAINE STATE LEGISLATURE

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SMS
R. 10

Date: 6/2/15

(Filing No. H-272)

Majority

ENVIRONMENT AND NATURAL RESOURCES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 503, L.D. 750, Bill, "An Act To Allow Regulated Metal Mining in Maine"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 38 MRSA §490-MM, sub-§§3, 7 and 12, as enacted by PL 2011, c. 653, §23 and affected by §33, are amended to read:

3. Beneficiation. "Beneficiation" means the treatment of ore to liberate or concentrate its valuable constituents. "Beneficiation" includes, but is not limited to, crushing, grinding, washing, dissolution, crystallization, filtration, sorting, sizing, drying, sintering, pelletizing, briquetting, calcining, roasting in preparation for leaching to produce a final or intermediate product that does not undergo further beneficiation or processing, gravity concentration, magnetic separation, electrostatic separation, flotation, ion exchange, solvent extraction, electrowinning, precipitation, amalgamation and dump, vat, and tank and in situ leaching.

7. Heap or percolation leaching. "Heap or percolation leaching" means a process for the primary purpose of recovering metallic minerals in an outdoor environment from a stockpile of crushed or excavated ore by percolating water or a solution through the ore and collecting the leachate. "Heap or percolation leaching" includes in situ leaching.

12. Mining area. "Mining area" means an area of land described in a permit application and approved by the department, including but not limited to land from which earth material is removed in connection with mining, ~~the lands~~ land on which material from that mining is stored or deposited, ~~the lands~~ land on which beneficiating or treatment facilities, including groundwater and surface water management treatment systems, are located ~~or the lands~~, land on which water reservoirs impoundments used in a mining operation are located, including, but not limited to, water storage ponds, sedimentation ponds, retention ponds or leachate collection ponds, or any other land on which a single mining operation or mining activity is located. Each mining operation or mining activity must have a defined mining area.

COMMITTEE AMENDMENT

A. & S.

1 **Sec. 2. Department of Environmental Protection; approval of final**
2 **adoption.** Notwithstanding any provision of law to the contrary in the Maine Revised
3 Statutes, Title 5, chapter 375, subchapter 2-A, the Department of Environmental
4 Protection is authorized to finally adopt Chapter 200: Metallic Mineral Exploration,
5 Advanced Exploration and Mining, a provisionally adopted major substantive rule of the
6 Department of Environmental Protection that was submitted to the Legislature for review
7 pursuant to Title 5, chapter 375, subchapter 2-A on January 10, 2014 and that was also
8 submitted to the Legislature for review on January 9, 2015 only if the following changes
9 are made:

10 1. The rule must be amended in Section 1(B)(1) to prohibit the issuance of a permit
11 for a mining operation that includes heap or percolation leaching, in situ leaching or
12 block caving;

13 2. The rule must be amended in Section 2(Q) to amend the definition of
14 "beneficiation" as necessary to ensure consistency with the statutory definition of
15 "beneficiation" under Title 38, section 490-MM, subsection 3;

16 3. The rule must be amended in Section 2(VV) to amend the definition of "heap or
17 percolation leaching" as necessary to ensure consistency with the statutory definition of
18 "heap or percolation leaching" under Title 38, section 490-MM, subsection 7;

19 4. The rule must be amended in Section 2(GGG) to amend the definition of "mining
20 area" as necessary to ensure consistency with the statutory definition of "mining area"
21 under Title 38, section 490-MM, subsection 12;

22 5. The rule must be amended in Section 2(MMM) to amend the definition of
23 "passive treatment system" or "passive treatment" to mean the process of sequentially
24 removing metals or acidity, or both, using naturally available energy sources, such as
25 topographical gradient, microbial metabolic energy, photosynthesis and chemical energy,
26 that does not require power or chemicals after construction and operates successfully over
27 its design life with regular but infrequent maintenance;

28 6. The rule must be amended in Section 2 to add a definition for "remediation" that
29 means the cleanup, removal or containment of contaminants or contamination within a
30 mining area or an affected area, including long-term action that stops or substantially
31 reduces a release or threat of release of contaminants or contamination that is serious but
32 not an immediate threat to public health and safety or the environment, short-term
33 immediate actions that address releases of contaminants or contamination that require
34 expedited responses and an action involving either a short-term removal action or a long-
35 term removal response. The rule must provide that remediation activities may include,
36 but are not limited to, removing contaminants or contamination, containing or treating
37 waste on site and identifying and removing sources of groundwater contamination and
38 halting further migration of contaminants;

39 7. The rule must be amended in Section 9(B)(1)(i)(i) to require, as part of the
40 application contents relating to applicant information, a list and explanations of all felony
41 convictions and all criminal convictions of environmental or land use laws administered
42 by the department, the State, other states, the United States or another country, not just
43 those within the 10 years immediately preceding the filing of the application. The rule
44 must provide that a list and explanations of civil violations of environmental or land use

1 laws administered by the department, the State, other states, the United States or another
2 country are required only for those civil violations occurring in the 10 years immediately
3 preceding the filing of the application. The rule must provide that the department may
4 require the applicant to update the list to reflect any felony or criminal convictions or
5 civil violations of environmental or land use laws imposed on the applicant, its
6 responsible officers or related corporations subsequent to the filing of the application;

7 8. The rule must be amended in Section 9(C) to provide that the department shall
8 require testing, as part of the baseline site characterization report, to establish a baseline
9 for maximum contaminant levels established by the federal Environmental Protection
10 Agency, maximum exposure guidelines for drinking water standards established by the
11 Department of Health and Human Services, Maine Center for Disease Control and
12 Prevention, drinking water standards adopted pursuant to Title 22, section 2611 and
13 applicable water quality or licensing standards under Title 38, sections 414-A and 420,
14 unless the applicant can demonstrate to the department's satisfaction that testing for
15 specific elements, contaminants or conditions under any of these specified water quality
16 guidelines and standards is not necessary. To the extent necessary, the rule must be
17 amended in Section 22 to provide that the department shall require monitoring, as part of
18 the monitoring plan, to ensure maintenance of the baseline for these specified water
19 quality guidelines and standards, unless the applicant can demonstrate to the department's
20 satisfaction that monitoring for specific elements, contaminants or conditions under any
21 of these specified water quality guidelines and standards is not necessary;

22 9. The rule must be amended in Section 9(K) to require, as part of the contingency
23 plan, a description of the detection and warning systems to be used by the applicant in
24 alerting the applicant or the department that an accident or failure listed in Section
25 9(K)(1) has occurred;

26 10. The rule must be amended in Section 10(G)(9) to clarify that access to a potential
27 mining site during the application process by any intervenor must be as allowed pursuant
28 to an adjudicatory hearing process;

29 11. The rule must be amended in Section 11(A)(2)(j) to clarify that a permit may not
30 be approved unless the applicant has demonstrated that the proposed mining operation
31 will not use heap or percolation leaching, in situ leaching or block caving;

32 12. The rule must be amended in Section 11(D) to clarify that the department may
33 not issue a mining permit if the applicant or any person in a position to control the
34 operations of the applicant has documented violations of state or federal land use or
35 environmental laws, or documented violations of land use or environmental laws of a
36 foreign country, demonstrating that the applicant would not be capable of complying with
37 the terms and conditions of a mining permit. The rule must provide that an applicant may
38 present evidence of changed conditions or circumstances demonstrating the current
39 ability to comply with all permit terms and conditions notwithstanding any prior
40 violations and that if that evidence is sufficient to warrant a finding by the department
41 that the applicant is capable of compliance, the department may issue the permit;

42 13. The rule must be amended in Section 15(B)(4)(a) to require, as part of the
43 information required to support a request to transfer a permit, a list and explanations of all
44 felony convictions and all criminal convictions of environmental or land use laws
45 administered by the department, the State, other states, the United States or another

1 country, not just those within the 10 years immediately preceding the filing of the request
 2 to transfer the permit. The rule must provide that a list and explanations of civil
 3 violations of environmental or land use laws administered by the department, the State,
 4 other states, the United States or another country are required only for those civil
 5 violations occurring in the 10 years immediately preceding the filing of the request to
 6 transfer the permit. The rule must provide that the department may require the transferee
 7 to update the list to reflect any felony or criminal convictions or civil violations of
 8 environmental or land use laws imposed on the transferee, its responsible officers or
 9 related corporations subsequent to the filing of the request to transfer the permit;

10 14. The rule must be amended in Section 17(A)(7) to require the department to hire
 11 3rd parties with documented experience in material handling and construction, mining
 12 costs and financial analysis to analyze and evaluate the proposed terms and conditions of
 13 financial assurance required for the applicant or permittee;

14 15. The rule must be amended in Section 17 to provide that additional financial
 15 assurance is required for a mining operation that includes a tailings impoundment. The
 16 rule must provide that, as part of the application requirements for a mining operation that
 17 includes a tailings impoundment, the applicant shall submit the following information:
 18 information assessing the potential risk for a failure of the tailings impoundment that
 19 would pose a threat to the public health and safety or the environment; information
 20 estimating the cost of responding to a failure of the tailings impoundment, including the
 21 cost of restoring and repairing any damaged public facilities or services and the cost of
 22 restoring and remediating any damage to the environment resulting from a failure of the
 23 tailings impoundment; and information projecting the variation over time and, based on
 24 the size of the tailings impoundment, of the potential costs of a failure of the tailings
 25 impoundment. The rule must provide for qualified, independent 3rd-party review of the
 26 application submission materials required for a mining operation that includes a tailings
 27 impoundment, with the costs of the 3rd-party review to be paid by the applicant. The rule
 28 must provide that the estimates of the costs of a failure of the tailings impoundment
 29 provided by the applicant may not include costs to the applicant associated with loss of
 30 use of the tailings impoundment for operations or the costs of repairing the tailings
 31 impoundment to restore operations. The rule must require financial assurance in an
 32 amount determined by the department to be sufficient for the department to respond to,
 33 restore and remediate any damage to public facilities or services or to the environment
 34 resulting from the highest cost estimate failure of the tailings impoundment, as based on
 35 the applicant's cost estimates or as based on information provided by the 3rd-party
 36 reviewer, and this financial assurance coverage amount must be posted in accordance
 37 with Section 17 before any tailings may be placed or deposited in the impoundment. The
 38 rule must provide for administration of this financial assurance in accordance with
 39 Section 17, including annual adjustment of the financial assurance amount so that the
 40 amount is sufficient for the department to respond to, restore and remediate any damage
 41 to public facilities or services or to the environment resulting from the highest cost
 42 estimate failure of the tailings impoundment in the upcoming year. This rule change
 43 must be incorporated as necessary in Section 17 and any other affected sections;

44 16. The rule must be amended in Section 20(B)(3) to provide that, except as allowed
 45 under state and federal laws, no mining may be conducted in or on designated lands under
 46 Title 12, section 598-A, including, but not limited to, the Allagash Wilderness Waterway

COMMITTEE AMENDMENT

1 and public reserved lands, but not including public reserved lots described in Title 12,
2 section 1801, subsection 8, paragraph A;

3 17. The rule must be amended in Section 20(B)(4) to provide that the setback from
4 the resources listed in Section 20(B)(4) applies to both surface and underground mining;

5 18. The rule must be amended in Section 20(B)(4) to require a setback, in
6 accordance with Section 20(B)(4), from designated lands under Title 12, section 598-A,
7 including, but not limited to, the Allagash Wilderness Waterway and public reserved
8 lands, but not including public reserved lots described in Title 12, section 1801,
9 subsection 8, paragraph A;

10 19. The rule must be amended in Section 20(D) to provide that the applicant shall
11 design, construct, operate and maintain underground mine openings to prevent
12 unauthorized entry and, to the extent feasible and practicable, to minimize the risk of
13 unacceptable settling, subsidence, voids or caving;

14 20. The rule must be amended in Section 22(B)(1) to clarify that the points of
15 monitoring and compliance identified in Section 22(B)(1) are to be placed in relation to a
16 mining area and not in relation to a mining operation or activity;

17 21. The rule must be amended in Section 22(B)(1)(a) to clarify that the language in
18 Section 22(B)(1)(a) relates to groundwater monitoring systems;

19 22. The rule must be amended in Section 22(B)(1)(a)(i) to clarify that the language
20 in Section 22(B)(1)(a)(i) relates to groundwater monitoring at points of compliance;

21 23. The rule must be amended in Section 22(B)(1)(a)(ii) to clarify that the language
22 in Section 22(B)(1)(a)(ii) relates to groundwater monitoring within a mining area and to
23 provide that, to the extent technically feasible, the department shall require groundwater
24 monitoring within any mining area if the department determines such monitoring to be
25 necessary to assess the performance of pollution control measures or the potential for
26 contamination as defined under Title 38, section 490-MM, subsection 5 outside any
27 mining area;

28 24. The rule must be amended in Section 22(B)(1)(a)(iii) to clarify that the language
29 in Section 22(B)(1)(a)(iii) relates to groundwater monitoring to determine compliance
30 with surface water quality standards and to provide that, to the extent technically feasible,
31 the department shall require groundwater monitoring at any location to determine the
32 potential for groundwater discharges to surface waters that would cause or contribute to
33 nonattainment of applicable water quality criteria. The rule must provide that failure of
34 groundwater to meet applicable water quality criteria at points of baseflow discharge
35 constitutes contamination as defined under Title 38, section 490-MM, subsection 5;

36 25. The rule must be amended in Section 22(B)(1)(b) to clarify that the language in
37 Section 22(B)(1)(b) relates to background groundwater monitoring wells. The
38 department may renumber Section 22(B)(1)(b) as Section 22(B)(1)(a)(iv) and make all
39 other necessary changes in Section 22(B)(1) to ensure proper numbering and formatting
40 within Section 22(B)(1);

41 26. The rule must be amended to provide that wet mine waste units may not be used
42 for storage or treatment of mine waste after closure. This rule change must be

11. 11. 11.

1 incorporated as necessary in Section 2(LLLL), Section 9(D)(12), Section 20(G)(2),
2 Section 24(A)(3)(d), Section 24(B)(5) and any other affected sections;

3 27. The rule must be amended to provide that perpetual treatment means treatment
4 for more than 20 years post-closure. This rule change must be incorporated as necessary
5 in Section 2(OOO), Section 9(D)(12), Section 20(G)(2), Section 24(B)(5) and any other
6 affected sections;

7 28. All necessary corrections must be made to the table of contents so that it
8 corresponds with the page numbers and the subchapter, section or subsection titles within
9 the rule;

10 29. All other necessary grammatical, formatting, punctuation or other technical
11 nonsubstantive editing changes must be made to the rule, including the removal of
12 strikethrough letters or words remaining from prior drafts and edits; and

13 30. All other necessary changes must be made to the rule to ensure conformity
14 throughout the rule with the specified rule changes directed under this section.

15 The Department of Environmental Protection is not required to hold hearings or
16 undertake further proceedings prior to final adoption of the rule in accordance with this
17 section.

18 **Sec. 3. Maine Land Use Planning Commission rulemaking; certification**
19 **of mining permit applications.** By February 1, 2016, the Maine Land Use Planning
20 Commission shall adopt rules related to commission certification of metallic mineral
21 mining permit applications as described in the Maine Metallic Mineral Mining Act.
22 Rules adopted pursuant to this section must include any additional provisions necessary
23 to ensure consistency with the Maine Metallic Mineral Mining Act and rules related to
24 the Maine Metallic Mineral Mining Act adopted by the Department of Environmental
25 Protection. Notwithstanding any provision of law to the contrary, rules adopted pursuant
26 to this section are routine technical rules as defined in Title 5, chapter 375, subchapter
27 2-A.

28 **Sec. 4. Metallic Mining Fund; Department of Environmental Protection.**
29 Any costs to the Department of Environmental Protection associated with implementing
30 the directives in section 2 must be drawn from existing funds within the Metallic Mining
31 Fund, established by Public Law 2011, chapter 653, section 32.'

32 **SUMMARY**

33 This amendment, which is the majority report of the committee, replaces the bill and
34 authorizes final adoption by the Department of Environmental Protection of Chapter 200:
35 Metallic Mineral Exploration, Advanced Exploration and Mining, a provisionally adopted
36 major substantive rule of the Department of Environmental Protection that was submitted
37 to the Legislature for review on January 10, 2014 and that was also submitted to the
38 Legislature for review on January 9, 2015 only if a number of specified changes to the
39 rule are made. The amendment also provides for a number of corresponding changes to
40 the Maine Metallic Mineral Mining Act. The amendment also provides for rulemaking
41 by the Maine Land Use Planning Commission related to commission certification of

R. 43.

COMMITTEE AMENDMENT "A" to H.P. 503, L.D. 750

1 metallic mineral mining permit applications as described in the Maine Metallic Mineral
2 Mining Act.

3 The rules implementing the Maine Metallic Mineral Mining Act, which are
4 authorized for final adoption by this amendment, are intended to allow for the
5 commercial mining of metallic minerals in the State under a statutory and regulatory
6 framework that addresses risks and protects and prevents damage to the public health and
7 safety and the environment and that ensures that the full cost of closure, reclamation and
8 post-closure treatment and monitoring of a permitted mining site, as well as the full cost
9 of correction and remediation of an accident or failure at a permitted mining site, are paid
10 by the permittee and not by the State.

11 **FISCAL NOTE REQUIRED**

12 **(See attached)**



127th MAINE LEGISLATURE

LD 750

LR 1845(02)

An Act To Allow Regulated Metal Mining in Maine

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-272)
Committee: Environment and Natural Resources
Fiscal Note Required: Yes

Fiscal Note

Potential future biennium revenue increase - General Fund
Potential future biennium cost increase - Other Special Revenue Funds
Potential future biennium revenue increase - Other Special Revenue Funds
Potential future biennium revenue increase - Municipalities

Fiscal Detail and Notes

The bill authorizes final adoption of Department of Environmental Protection (DEP) mining rules if certain changes are made to the rule. DEP's costs related to making changes to the rule are expected to be minor and can be absorbed within existing budgeted resources. DEP may incur costs in the future related to approving applicants for a mining permit and engaging in certain oversight activities. The extent of costs to DEP will depend on the number of applicants and the activities they engage in, but these costs are expected to be covered by mining fees. Applicants are required to pay an initial processing fee not to exceed \$500,000 and an annual license fee between \$20,000 and \$50,000 that will be directed to the Metallic Mining Fund within DEP. No estimate is made at this time on the number of mining applicants. Any additional costs to the Maine Land Use Planning Commission for rulemaking are expected to be minor and can be absorbed within existing budgeted resources.

If applicants are approved, mining excise tax revenues would be received. The revenue would reimburse municipalities and unorganized territories for at least 50%, and if sufficiently available 100%, of the property tax revenue loss suffered by that municipality or unorganized territory as a result of property tax exemptions created under the mining excise tax statute. 25% of any remaining revenues would be paid to DEP for oversight of mining activity and 75% would be deposited to the General Fund. No estimate has been made at this time of the amount of mining excise tax revenues that might be generated.