LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINTH LEGISLATURE

FIRST REGULAR SESSION

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advisable to protect and preserve the environment and the public's health, safety and general welfare.

§ 626. Criteria

The board shall approve any project where the advantages outweigh the adverse impacts over the life of the facility. In making this determination, the board shall consider, as a minimum the following:

1. Energy. The total energy and capacity the facility will provide and the amount of fossil fuel generation that will or may be displaced;

2. Flow regulation. The advantages of the facility in stabilizing stream flow, including maintaining minimum flows and providing flood control and adverse impacts, if any, from fluctuating water levels;

3. Fish and wildlife. The fish and wildlife habitat created or altered by the facility;

4. Other uses. Any benefits to or conflicts with recreation, navigation or other uses of the stream or impoundment; and

5. Environmental considerations. Whether the proposed project will significantly harm the natural environs of any great pond, river or stream, cause undue soil erosion or lower existing water quality.

Any small hydroelectric facility receiving approval of the board under this subarticle shall not require permits under the site location development statutes, sections 481 to 488; the wetlands statutes, sections 471 to 478; the great ponds statutes, sections 391 to 394; or the Stream Alteration statutes, Title 12, sections 2206 to 2211, as any of these statutes may apply, notwithstanding their terms.

Effective September 14, 1979

CHAPTER 466

H. P. 1239 — L. D. 1543

AN ACT to Consolidate the Mining and Rehabilitation of Land into the Site Location of Development Statute.

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

Sec. 1. 10 MRSA § 2201, as enacted by PL 1969, c. 472, is repealed.

Sec. 2. 10 MRSA § 2202, as last amended by PL 1973, c. 537, § 8, is repealed.

Sec. 3. 10 MRSA § 2203, as last amended by PL 1977, c. 78, § 35, is repealed.

Sec. 4. 10 MRSA § 2204, as last amended by PL 1977, c. 300, § 1, is repealed.

Sec. 5. 10 MRSA § 2205, as last amended by PL 1973, c. 712, § 1, is repealed.

Sec. 6. 10 MRSA § 2206, as last amended by PL 1977, c. 694, § 171, is repealed.

Sec. 7. 10 MRSA §§ 2207 and 2208, as last amended by PL 1971, c. 618, § 13, are repealed.

Sec. 8. 10 MRSA § 2209, as last amended by PL 1977, c. 300, § 2, is repealed.

Sec. 9. 10 MRSA § 2210, as last amended by PL 1971, c. 618, § 13, is repealed.

Sec. 10. 10 MRSA § 2211, as enacted by PL 1969, c. 472, is repealed.

Sec. 11. 38 MRSA § 481, 2nd ¶, as amended by PL 1971, c. 618, § 12, is further amended to read:

The purpose of this subchapter is to provide a flexible and practical means by which the State, acting through the Board of Environmental Protection, in consultation with appropriate state agencies, may exercise the police power of the State to control the location of those developments substantially affecting local environment in order to insure that such developments will be located in a manner which will have a minimal adverse impact on the natural environment of their surroundings **and protect the health, safety and general welfare of the people.**

Sec. 12. 38 MRSA § 482, sub-§ 2, first ¶, as amended by PL 1975, c. 297, is further amended to read:

2. Development which may substantially affect the environment. "Development which may substantially affect the environment," in this Article called "development," means any state, municipal, quasi-municipal, educational, charitable, commercial or industrial development, including subdivisions, which occupies a land or water area in excess of 20 acres, or which contemplates drilling for or excavating natural resources, on land or under water where the area affected is in excess of 60,000 square feet, **or which is a mining activity,** or which is a structure; but excluding state highways, state aid highways, and, borrow pits for sand, fill or gravel, of less than 5 acres or when regulated by the Department of Transportation.

Sec. 13. 38 MRSA § 482, sub-§§ 2-A, 2-B, 3-A, 4-A and 4-B are enacted to read:

2-A. Exploration. "Exploration" means an activity solely intended to determine the existence, quality and quantity of product provided less than 1,000

cubic yards of product is extracted or removed within 12 successive months.

2-B. Mining activity. "Mining activity" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of more than 1,000 cubic yards of product or overburden from the earth within 12 successive calendar months; any activity or process that for the extraction or removal of the product or overburden; and the preparation, washing, cleaning or other treatment of that product so as to make it suitable for commercial, industrial or construction use, but shall not include excavation or grading preliminary to a construction project.

3-A. Overburden. "Overburden" means earth and other materials naturally lying over the product to be mined.

4-A. Product. "Product" means clay, peat, stone minerals, ores, topsoils or other solid matter.

4-B. Reclamation. "Reclamation" means the rehabilitation of the area of land affected by mining under a plan approved by the board, including, but not limited to, the creation of lakes or ponds, where practicable, the planting of forests, the seeding of grasses and legumes for grazing purposes, the planting of crops for harvest and the enhancement of wildlife and aquatic resources, but not including the filling in of pits, shafts and underground workings with solid materials.

Sec. 14. 38 MRSA § 490 is enacted to read:

§ 490. Reclamation

1. Requirement. All mining activities shall include provisions for safety and reclamation of the land area affected or otherwise comply with an approval issued pursuant to this chapter.

2. Bonds. The board may require a bond payable to the State with sureties satisfactory to the board or such other security as the board may determine will adequately secure compliance with this chapter, conditioned upon the faithful performance of the requirements set forth in this chapter and of the rules and regulations of the board. In determining the amount of the bond or the security, the board shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of grading and reclamation to be required. All proceeds of forfeited bonds or other security shall be expended by the board for the reclamation of the area for which the bond was posted, and any remainder shall be returned to the operator.

3. Time schedules. It shall be the duty of a person engaged in a mining activity to commence the reclamation of the area of land affected by the mining activity as soon as possible after the beginning of the mining activity of that area in accordance with plans previously approved by the board. If it appears that

planting to provide vegetative cover of an affected area may not be successful, the board may authorize the deferring of the planting until the soil has become suitable for those purposes and a yearly report shall be filed with the board indicating the soil conditions until a successful planting or seeding has been completed.

4. Gifts and funds for reclamation. The board may acquire, in the name of the State, land by gift or purchase which has been affected by a mining activity for the purpose of carrying out reclamation work. Upon completion of reclamation, the land may be sold at public auction, conveyed to the municipality or remain property of the State. The board may accept funds from private or other sources, which shall be used for reclamation purposes, whether in conjunction with appropriated funds of the State or otherwise.

5. Cooperation with others. The board shall cooperate with the federal, state and local governments, with natural resource and conservation organizations, and with any public or private entities having interests in any subject within the purview of this chapter.

The board is designated the public agency of the State for the purpose of cooperating with appropriate departments and agencies of the Federal Government concerning reclamation of lands in connection with development and mining of minerals in the State, and for the purpose of cooperating and consulting with federal agencies in carrying out this chapter. For these purposes, the board may accept federal funds which may be made available pursuant to federal law, and may accept such technical and financial assistance from the Federal Government as the board deems advisable and proper for purposes of this chapter.

The board is further designated the public agency of the State for the purposes of meeting requirements of the Federal Government with respect to the administration of these federal funds, not inconsistent with this chapter.

6. Fees. All fees collected by and other funds received by the board pursuant to this chapter shall be placed in a reclamation fund to carry out the purposes of this chapter. This fund shall not lapse.

Sec. 15. **Transitional provisions.** All mining plans approved pursuant to Title 10, chapter 451, that are in effect, in whole or in part, on the effective date of this Act shall continue in effect unless revoked, suspended, modified or expired in accordance with the law.

Effective September 14, 1979