

MAINE STATE LEGISLATURE

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STATE OF MAINE
LEGISLATIVE RESEARCH COMMITTEE

FIRST SUMMARY REPORT
TO THE
ONE HUNDRED AND FIFTH LEGISLATURE
VOLUME ONE

JANUARY, 1971



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January 1, 1971

To the Members of the 105th Legislature:

By statute the Legislative Research Committee is required to make or cause to be made such studies and investigations as the Legislature directs. In addition, the Committee is empowered to and has liberally exercised its own initiative by undertaking studies of matters pertaining to important issues of public policy and questions of state-wide interest. The Committee's ultimate objective is to assist the Legislature by submitting factual information pertinent to the questions involved along with such findings and recommendations for action or nonaction as the Committee deems desirable.

The Legislative Research Committee has inquired at great length and with serious purpose into those matters referred to it and hereby has the pleasure of submitting to you the first portion of its report on activities of the past two years. This report designated as Volume I deals with eight assigned topics and contains the findings and recommendations pursuant thereto. Reports relative to other matters ordered for study by action of the Legislature or undertaken by motion will appear in subsequent publications.

On behalf of the membership, I wish to express at this time our individual and collective appreciation to many individuals, organizations and persons in the service of the State whose assistance to the Committee in its studies and deliberations has made it possible to obtain information respecting the many problems confronting the Committee and without whose cooperation conclusions could not have been reached.

The members of the Committee also wish to express their appreciation for being chosen to participate in these assignments and sincerely hope the following reports will prove of benefit to the Members of the Legislature as well as the citizens of Maine.

Respectfully submitted,

A handwritten signature in cursive script that reads "William E. Dennett".

WILLIAM E. DENNETT, Chairman
Legislative Research Committee

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STATE OF MAINE
LEGISLATIVE RESEARCH COMMITTEE

REPORT ON
SURFICIAL MINING
to the
ONE HUNDRED AND FIFTH LEGISLATURE

JANUARY, 1971
Legislative Research Committee
Publication 105-5

SURFICIAL MINING

ORDERED, the Senate concurring, that the Legislative Research Committee is directed to study the problems connected with surficial mining of sand, gravel and borrow in this State for the purpose of devising recommendations for a workable and equitable reclamation procedure or requirements. Such study shall not be limited to problems connected with the reclamation of newly opened or proposed surface pits but shall also include the reclamation of abandoned or non-operating pits; and be it further

ORDERED, that the Division of Geological Survey of the Department of Economic Development is directed to provide the Committee with technical advice, information and other assistance as the Committee deems necessary to carry out the purposes of this Order; and be it further

ORDERED, that the Committee report the results of this study at the regular session of the One Hundred and Fifth Legislature.

HP 1288	House of Representatives	In Senate Chamber
Snow	Read and Passed	Read and Passed
Caribou	June 26, 1969	July 1, 1969
	Sent up for concurrence	In concurrence

SUBCOMMITTEE ON SURFICIAL MINING

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In response to considerable legislative activity aimed at regulating mining at the 1969 regular session, the One Hundred and Fourth Legislature, by joint order House Paper 1288, directed the Legislative Research Committee to study the problems connected with surficial mining of sand, gravel and borrow in this State for the purpose of devising recommendations for a workable and equitable reclamation procedure or requirements. The order further provided that the study not be limited to problems connected with the reclamation of newly opened or proposed surface pits but shall also include the reclamation of abandoned or nonoperating pits. The Division of Geological Survey of the Department of Economic Development was also directed under the order to provide the Committee with such technical advice and assistance as deemed necessary to carry out such purposes.

Mining in Maine, as elsewhere on earth, can be traced by physical evidence and disruption of landscape to the earliest periods of civilization. It is no doubt true, based on archeological discoveries, that man learned to burrow before he was able to build.

For the purpose of this report it is sufficient to say that since these early gropings the processes of excavation, extraction and then abandonment have never ceased. Instead, with the never ending search for useful material from the earth's crust these processes have accelerated over the years at an alarming rate geared to the needs of a growing society and the constant advance in technology.

As a result of this development, the cumulative effect of years of mining activity has seriously scarred large portions of the countryside in Maine. It is this unsightly and needless waste of land with accompanying hazards to life and environment which has aroused public interest and become a matter of serious legislative concern.

At the present time some areas of mining activity are subject to regulation while others are not. In this respect the Committee found a review of these regulatory controls helpful in so far as developing a suitable vehicle to implement its recommendation in response to the limits of the foregoing directive.

Maine Mining Bureau.¹ The regulatory authority of the Maine Mining Bureau extends over the exploration, production and mineral development on State owned lands and lands held in trust by the State. Additional authority was given to the Bureau relative to gas and oil by the Oil and Gas Conservation and Development Control Act² of 1969, which includes all land, inland waters and offshore territory of the State. The Bureau's jurisdiction does not; however, extend over mining activity on privately owned lands. For a detailed analysis of existing law and evaluation of the Maine Mining Bureau, reference is made to a recent study by Harriet P. Henry.³

Maine Mining Commission⁴ The Maine Mining Commission, as established by the 104th Legislature, has the power to regulate

¹ 10 MRSA, §2101 as amended by C. 508, P.L. 1969

² 10 MRSA, §2155 as enacted by C. 301, P.L. 1969

³ Maine Law Affecting Marine Resources, Vol. 4., pp. 809-841

⁴ 10 MRSA, §2201 as enacted by C. 472, P.L. 1969

hard rock or consolidated mining activity on both publicly and privately owned lands. Its purpose is to encourage the prudent development of the mineral resources of the State by requiring mining plans and other safeguards for the reclamation of lands affected by mining operations. It should be noted that the Commission's authority specifically excludes surficial or unconsolidated mining of sand, gravel and other borrow under the Act.⁵

Maine State Highway Commission. For many years the Maine State Highway Commission has recognized the devastating effect on the landscape of borrow pits, gravel pits and waste areas adjacent to highways. In an outstanding pioneering effort, the Commission has attempted to control these activities through the use of standard specifications⁶ included in all highway contracts. These regulations have been strengthened considerably over the years so that contracts now provide for definite corrective action by the contractor to clean up desecrated areas.

Environmental Improvement Commission. Under an Act to Regulate Site Location of Development Substantially Affecting Environment⁷, the Environmental Improvement Commission has certain controls. The purpose of this subchapter is to provide a flexible and practical means by which the State, acting through the Environmental Improvement Commission, in consultation with appropriate state agencies, may exercise the police power of the State to control the location of those developments

⁵ Ibid, Section 2202, subsection 5.

⁶ State Highway Commission Standard Specifications, June 1968 and special provisions, Sections 106 and 657, June 1970.

⁷ 38 MRSA, §481 as enacted by C. 571, P.L. 1969.

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. It is assumed from the provisions of this law that mining operations, preparation and process plants would be subject to control although the Committee knows of no specific instance of this.

Municipal Zoning Ordinance. From testimony received at public hearings held by the Committee it was learned that many towns in southern Maine had placed severe restrictions on the location of gravel pits and the transport of products through built-up areas. Regulation at the local level through zoning and other ordinances was criticized for the lack of uniformity, unworkable or lack of reclamation requirements and the great hardship placed on the mining industry.

Department of Labor and Industry. The Department of Labor and Industry also exercises an important measure of control and regulation over mining activity through its construction safety rules and regulations and employment practices.

Federal Government. At the Federal level regulation has been attempted through such measures as Regulation of Surface and Strip Mining (S3126), 1968; Mined Lands Conservation Act (HR222), 1969; Surface Mining Reclamation Act (S524), 1969, and the National Mining and Minerals Policy (S719), 1970, none of which have as yet been enacted into law.

Private Owners. Self-regulation and reclamation by private industry was witnessed by the Committee through a visit to the North Leeds operation of Blue Rock Industries. In the Committee's opinion this operation is a fine example of reclamation measures as applied over a period of years to worked-out areas of sand and gravel. The Committee commends these and other owners and operators who have already taken the burden upon themselves of restoring the land for other uses.

Beyond these considerations and such other general laws of the State as incidental to mining, the Committee found no regulation or control in respect to surficial mining for sand, gravel and other borrow on privately owned lands.

As the study continued the Committee held public hearings on November 19, 1969 and December 10, 1970 for the purpose of providing an opportunity for interested persons, organizations and agencies to express their views on the need for regulation and reclamation requirements.

The Committee found as a result of these hearings and the many deliberations which followed that regulation of surface mining in the private sector was not only desirable but acceptable to all concerned provided such regulation or control would be imposed at the State or Federal level. The reason for this as given by a spokesman for the Associated General Contractors of Maine, Inc., an organization involving 200 member firms all directly connected with the construction industry, in testimony before the Committee is as follows:

"We, along with the State and the municipalities, have left some ugly scars on the face of the earth as the result of our taking sand, gravel, and borrow for highway and building construction purposes. It should be recognized though, that due to the highly competitive nature of our industry, some eighty percent being done under a competitive bid system, that each individual contractor, each individual owner or operator of a gravel pit or borrow pit could not spend money on reclamation. His competition would not allow it. Reclamation in this area can only be accomplished by state or federal legislation which imposes the same requirements on all users, so that their relative competitive positions are unchanged. Voluntary reclamation or municipal ordinances will not work."

After studying all aspects of the problem the Committee can only conclude that the extraction of unconsolidated materials by surface mining is a significant and essential industrial activity in the State of Maine and of great benefit to the economy. However, after many years of operating and abandoning surface mines on a private basis, not subject to any regulation or control, a multiplicity of adverse effects have taken place which are destroying or diminishing the availability of land for commercial, industrial, recreational, agricultural, forestry and other purposes, contributing to floods, erosion, landslides and water pollution, creating hazards dangerous to life and property, destroying fish and wildlife habitat, impairing natural beauty and counteracting efforts to conserve soil, groundwater and other natural resources.

The Committee; therefore, recommends in the best interest of the State that surficial mining of sand, gravel and other borrow be placed under the jurisdiction of the Maine Mining Commission as enacted under Chapter 472 of the Public Laws of 1969 and further, that such activity be subject to the same requirements and reclamation procedures.

In view of these findings the Committee submits the following legislation and recommends its adoption.

AN ACT to Regulate Surficial Mining
Under the Maine Mining Commission

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

Sec. 1. R. S., T. 10, §2201, amended. The first paragraph of section 2201 of Title 10 of the Revised Statutes, as enacted by chapter 472 of the public laws of 1969, is amended to read as follows:

It is declared to be the policy of this State, while encouraging the prudent development of its mineral resources that where mining operations are conducted, to provide for the reclamation of affected lands and to encourage their productive use, and to maintain a productive and compatible surface mining industry, having due consideration for the rights and interests of land owners, adjacent residents and all the people of the State, including but not limited to: The planting of forests; the seeding of grasses and legumes for grazing purposes; the planting of crops for harvest; the concealment from commonly traveled roads, ways and waterways; softening the contour of pit walls through leveling operations; the enhancement of wildlife and aquatic resources; and for the conservation, development, management and appropriate use of all the natural resources of such areas for compatible multiple purposes, and to protect the health, safety and general welfare of the people, as well as the natural beauty and environmental values.

Sec. 2. R. S., T. 10, §2202, sub-§3-A, additional. Section 2202 of Title 10 of the Revised Statutes, as enacted by chapter 472 of the public laws of 1969, is amended by adding a new section 3-A, to read as follows:

3-A. High wall. "High wall" means that side of a pit or quarry adjacent to unmined land.

Sec. 3. R. S., T. 10, §2202, sub-§§4 and 5 amended. Subsections 4 and 5 of section 2202 of Title 10 of the Revised Statutes, as enacted by chapter 472 of the public laws of 1969, are amended to read as follows:

4. Mining plan. "Mining plan" means the physical characteristics of the proposed shaft, drift, cut, borrow or open pit; the proposed locations for the placing or handling of overburden; the manner in which water is to be controlled and other acts to be performed by the operator in the process of uncovering and removing the product. The mining plan shall include the plan and time schedule for reclamation.

5. Mining. "Mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of clay, cobbles, gravel, limestone, loam, peat, sand, stone, minerals, ores, topsoils, surficial construction materials or other solid or unconsolidated matter; any activity or process constituting all or part of a process for the extraction or removal of product, except exploration as defined; and the preparation,

washing, cleaning or other treatment of such 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, ~~nor shall it include sand, gravel or borrow operations.~~

Sec. 4. R. S., T. 10, §2202, sub-§7, amended. Subsection 7 of section 2202 of Title 10 of the Revised Statutes, as enacted by chapter 472 of the public laws of 1969, is amended to read as follows:

7. Operator. "Operator" means a person named as such in the mining plan and a person engaged in mining under a valid operating permit who removes or intends to remove more than ~~1,000~~ 500 cubic yards of product from the earth or affect more than one acre of land by mining within 12 successive calendar months or who removes overburden for the purpose of determining the location, quality or quantity of a product in a manner not in compliance with the rules and regulations for exploration as set forth by the commission or who extracts, prepares or sells surficial construction materials in general commerce.

Sec. 5. R. S., T. 10, §2202, sub-§§9 and 10, amended. Subsections 9 and 10 of section 2202 of Title 10 of the Revised Statutes, as enacted by chapter 472 of the public laws of 1969, are amended to read as follows:

9. Person. "Person" shall include any individual, firm, copartnership, joint venture, association, corporation, estate,

trust, business trust, receiver, syndicate or any governmental and quasi-governmental entities or other public or private group or combination acting as a unit.

10. Product. "Product" means clay, cobbles, gravel, limestone, loam, peat, sand, stone, minerals, ores, topsoils, surficial construction materials or other solid or unconsolidated matter.

Sec. 6. R. S., T. 10, §2202, sub-§10-A, additional. Section 2202 of Title 10 of the Revised Statutes, as enacted by chapter 472 of the public laws of 1969, is amended by adding a new subsection 10-A, to read as follows:

10-A. Quarry. "Quarry" means an open cut excavation for the removal or extraction of cut, dimension, building or ornamental stone, or bedrock which goes directly into a processing plant.

Sec. 7. R. S., T. 10, §2202, sub-§11, amended. Subsection 11 of section 2202 of Title 10 of the Revised Statutes, as enacted by chapter 472 of the public laws of 1969, is amended to read as follows:

11. Reclamation. "Reclamation" means the rehabilitation of the area of land affected by mining or currently used in or effected by production of surficial material under a plan approved by the commission, but not including, subject to the commission's discretion, the filling in of pits, shafts and underground workings.

Sec. 8. R. S., T. 10, §2202, sub-§12, additional. Section 2202 of Title 10 of the Revised Statutes, as enacted by chapter 472

of the public laws of 1969, is amended by adding a new subsection 12, to read as follows:

12. Surficial construction materials. "Surficial construction materials" means naturally occurring unconsolidated mineral material which overlies the bedrock surface of the land; including, but not limited to, sand, gravel, cobbles, clay and loam.

Sec. 9. R.S., T. 10, §2203, amended. The 6th sentence of section 2203 of Title 10 of the Revised Statutes, as enacted by chapter 472 of the public laws of 1969, is amended to read as follows:

The members of the commission shall receive \$20 for every day actually spent in performance of the duties imposed under this chapter and be reimbursed for their expenses incurred in performing their functions.

Sec. 10. R. S., T. 10, §2203, amended. Section 2203 of Title 10 of the Revised Statutes, as enacted by chapter 472 of the public laws of 1969, is amended by adding at the end the following new paragraph:

The director shall submit an annual report of the commission's activities and expenditures to the Governor and members of the Legislature.

Sec. 11. R. S., T. 10, §2204, sub-§4, additional. Section 2204 of Title 10 of the Revised Statutes, as enacted by chapter 472 of the public laws of 1969, is amended by adding a new subsection 4, to read as follows:

4. Entry upon lands for inspection. Through the director, or his accredited representatives, to enter upon the lands of the operator at all reasonable times for the purpose of inspection, to determine compliance with this chapter.

Sec. 12. R. S., T. 10, §2205, sub-§§1, 2, repealed and replaced. Subsections 1 and 2 of section 2205 of Title 10 of the Revised Statutes, as enacted by chapter 472 of the public laws of 1969, are repealed and the following enacted in place thereof:

1. Operators permit. It shall be unlawful, after the effective date of this Act, for any person to engage in any mining operation on lands in this State without first obtaining an operator's permit from the commission and payment of an appropriate application fee. Application for such permit shall be made upon a form furnished by the commission and shall be in force for a period of not more than 12 months. Permits issued pursuant to this section shall not be transferrable by the permit holder to a new operator if the operation is sold or transferred. Whenever an operation is sold or transferred the commission shall be notified in writing within 30 days of the date of transfer. Application fees shall be in such an amount as established by the commission.

1-A. Approval of mining plan. No operator shall engage in mining without first having obtained from the commission approval of his mining plan designating the area of land to be affected by

the operation. An operator shall not be required to provide, in a mining plan, for the reclamation of land affected by mining operations prior to October 1, 1969, but shall be required to provide for the reclamation of land affected by a mining operation subsequent to October 1, 1969. All surficial or borrow mining operators previously excluded under this chapter shall not be required to provide, in a mining plan, for reclamation of land affected by such mining operations prior to the effective date of this Act, but shall be required to provide for the reclamation of land affected by any mining operations subsequent to the effective date of this Act.

1-B. Exceptions. Any provision of this chapter to the contrary notwithstanding, a person or operator shall be exempt from the requirements of this chapter when engaged exclusively in mining for materials to be used in the construction, improvement or maintenance of public improvements which are under control or ownership of the State of Maine, exclusive of any political subdivision thereof, provided that the agency of the State under whose jurisdiction the public improvement is controlled shall require suitable provisions for reclamation and performance acceptable to the Maine Mining Commission.

2. Mining plan. An operator shall file a mining plan in such form as shall be determined by the commission containing such information as the commission shall require as set forth in its rules and regulations. Except however, no mining plan with respect

to a surface quarry in bedrock shall be required to provide for reclamation of said quarry in active working areas, but the commission may require appropriate safety measures to be carried out and may require revegetation to screen such quarries from the public view. Worked out and abandoned areas of surface quarries will be reclaimed by making all high walls stable and grading all floors to provide adequate drainage and future use as industrial or commercial sites.

Sec. 13. R. S., T. 10, §2205, sub-§4, amended. Subsection 4 of section 2205 of Title 10 of the Revised Statutes, as enacted by chapter 472 of the public laws of 1969, is amended by inserting after the 3rd sentence the following new sentence:

The minimum amount of any bond shall be \$2,000.

Sec. 14. R. S., T. 10, §2205, sub-§5-A, additional. Section 2205 of Title 10 of the Revised Statutes, as enacted by chapter 472 of the public laws of 1969, is amended by adding a new subsection 5-A, to read as follows:

5-A. Collection of fees. The commission is authorized to assess and to collect all fees, charges and other moneys pursuant to this chapter.

Sec. 15. R. S., T. 10, §2205, sub-§6, amended. Subsection 6 of section 2205 of Title 10 of the Revised Statutes, as enacted by chapter 472 of the public laws of 1969, is amended to read as follows:

6. Effective date. Notwithstanding subsection ~~1~~ 1-A, no

operator shall be required to file a mining plan or operator's bond until the commission shall have issued the regulations, required by this section, applicable to such plans and bonds.

Sec. 16. R. S., T. 10, §2210, amended. Section 2210 of Title 10 of the Revised Statutes, as enacted by chapter 472 of the public laws of 1969, is amended to read as follows:

§2210. Additonal powers

The commission may acquire in the name of the State land by gift or purchase which has been affected by mining operation 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 may remain property of the State. The commission may accept funds from private or other sources, to be used for reclamation purposes, whether in conjunction with appropriated funds of the State of Maine or otherwise.

1. Cooperation. The commission 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 ~~subchapter~~ chapter.

The commission is designated the public agency of the State of Maine 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 ~~subchapter~~-chapter. For these purposes the commission 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 commission deems advisable and proper for purposes of this ~~subchapter~~ chapter.

The commission is further designated the public agency of the State of Maine for the purpose of meeting requirements of the Federal Government with respect to the administration of such federal funds, not inconsistent with this ~~subchapter~~ chapter.

Permit fees and mining plan fees as provided in section 2205, subsections 1 and 4 shall be credited to the General Fund as undedicated revenue. All ~~fees-collected-by-and~~ other funds collected or otherwise received by the commission ~~pursuant-to-this chapter~~ shall be placed in a reclamation fund and expended at the commission's discretion to carry out the purposes of this chapter, which fund shall not lapse.

2. Substitution of lands to be reclaimed. The commission may approve the substitution of land previously affected by mining for lands of an existing or proposed mining operation on an acre for acre basis for reclamation purposes, provided that the substitution of lands to be reclaimed is submitted in a mining plan and meets all other requirements of this chapter and rules and regulations adopted pursuant thereto.

Sec. 17. R. S., T. 10, §2216, amended. Section 2216 of Title 10 of the Revised Statutes, as enacted by chapter 472 of the public laws of 1969, is amended to read as follows:

§2216. Criminal penalties

Any person or operator who violates any provision of this chapter or any regulation adopted hereunder shall be punished by a fine of not less than \$50 nor more than ~~\$100~~ \$1,000 for each day during which such violation has continued.

Sec. 18. Appropriation. There is appropriated from the General Fund the sum of \$184,000 to the Maine Mining Commission to carry out the purposes of this Act. The breakdown shall be as follows:

		<u>1971-72</u>		<u>1972-73</u>
MAINE MINING COMMISSION				
Personal Services	(6)	\$45,000	(6)	\$49,000
All Other		29,000		31,000
Capital Expenditures		20,000		10,000
		<hr/>		<hr/>
Total		\$94,000		\$90,000

Statement of Fact

The "Mining - Conservation and Rehabilitation of Land Act" enacted by the 104th Legislature declared the policy of the State of Maine to be ". . . where mining operations are conducted, to provide for the reclamation of effected lands and to encourage their productive use, . . ." This policy recognizes the fact that mining operations have been destroying much valuable land surface and suggests instruments whereby this practice can be corrected, through provisions for reclamation and rehabilitation of lands effected. However, the Act as finally passed under chapter 472 of the Public Laws of 1969 exempted sand, gravel and borrow operations, which account for more than ninety percent of the breaking and destruction of the land surface in the State.

It is the intent of this bill to provide for this omission by expanding the control of the Maine Mining Commission to cover all surficial mining, which will include the sand, gravel and borrow operations. At present hundreds of acres of productive agricultural and forest lands are being destroyed each year by the opening and expanding of sand, gravel and borrow pits, which are for the most part abandoned when worked out or the current need for the material is satisfied. When abandoned in this manner the forces of nature continue the process of destruction by further erosion, silting and ponding in and around the distrubed areas.

By enacting this bill the State will not prevent or restrict new or expanded surficial mining operations, but will require licensing and reclamation procedures to ensure future productive use of all land which is adversely effected by mining.

The Revised Statutes, Title 10, chapter 472 provides for the establishment of a Maine Mining Commission with authority to regulate the reclamation of lands effected by mining. Chapter 191 of the private and special laws of 1969 provides authority and funds for employment of four personnel to carry out the purposes of the statutes.

Inclusion of surficial mining under the statutes increases the areas to be regulated, controlled and inspected by adding several thousand individual sites. These additions will make it necessary to increase the personnel employed by at least two office and four field employees with corresponding increases in equipment, supplies and operating expenses.