

# MAINE STATE LEGISLATURE

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NEW DRAFT OF: H. P. 344; L. D. 472

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ONE HUNDRED AND FOURTH LEGISLATURE

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Legislative Document

No. 1598

H. P. 1270

House of Representatives, June 13, 1969

Reported by a Majority of the Committee on Natural Resources. Printed under Joint Rules No. 18.

BERTHA W. JOHNSON, Clerk

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SIXTY-NINE

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**AN ACT Providing for the Conservation and Rehabilitation of Land  
Affected in Connection With Mining.**

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

R. S., T. 10, Part 5-A, additional. Title 10 of the Revised Statutes is amended by adding a new part 5-A, to read as follows:

**PART 5-A**

**MINING-CONSERVATION AND REHABILITATION OF LAND**

**CHAPTER 451**

**CONSERVATION AND REHABILITATION OF LAND**

§ 2201. Declaration of policy

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, 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 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.

It is the policy of the State of Maine that unless the mining operation includes provisions to rehabilitate the area of land affected, a mining operation is justified only in the case of national emergency.

**§ 2202. Definitions**

1. **Area of land affected.** "Area of land affected" means the area of land from which overburden is to be removed or has been removed or upon which overburden, product or byproduct is to be deposited or will by natural forces be deposited, and shall include all lands excavated or cleared of vegetation in the operation.

2. **Commission.** "Commission" means The Maine Mining Commission.

3. **Mining plan.** "Mining plan" means the physical characteristics of the proposed shaft, drift, cut or open pit; the proposed locations for the placing or handling of overburden; the manner in which water is to be controlled and all 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.

4. **Mining.** "Mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of clay, sand and gravel, peat, stone, minerals, ores, topsoils or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of product; 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 when conducted in a farming operation or a construction project located on the land of the same owner as that of the mining operation, and shall not include excavation or grading preliminary to a construction project.

5. **Operation.** "Operation" means all of the premises facilities, roads and plant used in the process of producing or concentrating a product from a mine, or removing overburden for the purpose of determining the location, quality or quantity of a product in a manner not in compliance with rules and regulations for exploration as set forth by the commission.

6. **Operator.** "Operator" means a person named as such in the mining plan and a person engaged in mining who removes or intends to remove more than 1,000 cubic yards of product from the earth 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.

7. **Overburden.** "Overburden" means earth and other materials naturally lying over the product to be mined.

8. **Person.** "Person" shall include governmental and quasi-governmental entities.

9. **Product.** "Product" means clay, sand and gravel, peat, stone, minerals, ores, topsoils or other solid matter.

10. **Reclamation.** "Reclamation" means the rehabilitation of the area of land affected by mining under a plan approved by the commission, but not including the filling in of pits, shafts and underground workings.

**§ 2203. The Maine Mining Commission**

The Maine Mining Commission shall administer this chapter. The commission shall consist of 5 members who shall be appointed by the Governor with the advice and consent of the Executive Council. Initially, one member shall be appointed for a term of one year, one member for a term of 2 years, one member for a term of 3 years, one member for a term of 4 years and one member for a term of 5 years. Thereafter each member shall be appointed for a term of 5 years. In the event of a vacancy on the commission, appointments shall be made for the remainder of the unexpired term. The members of the commission shall be reimbursed for their expenses incurred in performing their functions. One member shall be a representative of mining interests, one shall be a representative of conservation interests, and the remaining 3 shall be public representatives. Two of the public members shall be trained in the fields of either geology, planning, biological science or civil engineering. No more than 3 members of the commission shall be of the same political party. The commission shall employ a director, whose compensation shall be set by the Governor and Council. The director shall employ, pursuant to the Personnel Law, such personnel as may be necessary, to properly administer this subchapter, including mining engineers and persons experienced in land management and reclamation. All hearings under this chapter shall be held by the director or members of his staff authorized by the director. After hearing, all orders and decisions shall be made by the director.

**§ 2204. Powers of the commission**

The commission shall have and exercise the following powers :

1. Rules and regulations. Upon recommendation of the director, to adopt rules and regulations to carry out the purposes of this chapter in accordance with the Administrative Code.
2. General supervision. Through the director, to exercise general supervision and administration and enforcement of this chapter and all rules and regulations and orders promulgated thereunder.
3. Research. Through the director, to conduct investigations, research, experiments and demonstrations, and to collect and disseminate information relating to reclamation of lands and waters affected by mining.
4. Limitations. The commission shall not require a mining plan or bond or other security in connection with sand, gravel and borrow mining operations of the State or its subdivisions or by quasi-municipal corporations or the removal of said materials by persons contracting with said agencies, provided said agencies shall by contract or regulation or otherwise accomplish the objectives of this chapter. If after hearing the commission shall determine that such operation is not being carried out in a manner consistent with the objectives of this chapter, it may then require a mining plan and bond or other security.

**§ 2205. Approval of mining plan required ; contents of mining plan ; fee ; bond**

1. **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 affected by the operation.

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, but the commission may require appropriate safety measures to be carried out and may require re-vegetation to screen such quarries from the public view.

3. **Plans.** In addition to the information required in subsections 1 and 2, each mining plan shall be accompanied by plans or proposals showing the physical characteristics of the mining operation, the manner, an approximate time schedule and a reclamation plan for the affected area in such detail as the commission may by rule and regulation require. Said mining plan shall meet all requirements of this chapter and rules and regulations adopted pursuant thereto.

4. **Fee; bond.** The mining plan shall be accompanied by a fee of \$50, plus \$25 for each acre or fraction thereof of the affected area, but not to exceed a total of \$500. The operator shall file with the commission a bond payable to the State of Maine with sureties satisfactory to the commission or such other security as the commission may determine will adequately secure compliance with this chapter, in an amount to be determined by the director of not less than \$100 nor more than \$1,500 for each acre or fraction thereof of the affected area, conditioned upon the faithful performance of the requirements set forth in this chapter and of the rules and regulations of the commission. In determining the amount of the bond or the security within the limits, the commission 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 commission for the reclamation of the area for which the bond was posted, and any remainder shall be returned to the operator.

5. **Regulations.** The commission shall issue regulations applicable to the filing of mining plans and of operator's bonds or other security, for the filling of large, permanent and unsightly test mining pits, exploration pits, exploration shafts and trenching. No operator's bond or mining plan shall be required for exploratory work related thereto.

6. **Effective date.** Notwithstanding subsection 1, 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.

The commission shall issue rules and regulations applicable to the mining of sand, gravel and borrow which may take into consideration the size of said mining operation, and other economic factors, in order to simplify compliance with this chapter.

The commission may issue rules and regulations to encourage the hobby collecting of minerals or rock-hounding, so-called.

§ 2206. Procedure

1. Approval of plans. The commission shall examine all plans and supporting data submitted by the operator and shall within 20 working days after receipt of the mining plan, notify the applicant if his mining plan is approved. Failure of the commission to notify the applicant of approval within the 20 working days shall be deemed a rejection of the plan, and if the plan is so rejected, the commission shall set forth the reasons for the rejection. The commission may propose modifications or may approve the mining plan in part only. Should the applicant disagree with the approval or rejection, he may by written notice, request a hearing before the commission, which hearing shall be held within 20 days of the receipt of the written notice. Following the hearing, the director shall notify the applicant of its decision by registered mail within the required 20 days of hearing. Any person aggrieved by the decision of the commission may appeal as provided in section 2212, subsection 4.

2. Amended mining plan. The applicant may file an amended mining plan, which shall be approved or rejected by the commission as in the case of an original mining plan. No additional fee or bond or other security shall be required unless warranted by a material change in the mining plan.

3. Reports. The commission may require reports in such form and in such detail as shall be determined by the commission to show compliance with the mining plan.

4. Revocation and suspension. The commission may, after notice and hearing, suspend or revoke its approval of a mining plan for noncompliance by the operator with the terms thereof or for violation by the operator of regulations in force when the plan was approved.

5. Procedure for increase or decrease of acreage affected by mining plan. An operator may, at any time, apply to the commission for an amendment of his mining plan to increase or reduce the acreage affected by it. The operator shall file an amended plan in such form as shall be determined by the commission and shall pay a fee and post a bond or other security for any additional area affected as in the case of an original mining plan. If the commission approves a reduction in the acreage covered by the original or amended mining plan, it shall release the bond or other security for each acre reduced.

6. Time limits. As determined by rules and regulations of the commission, time limits shall be established requiring reclamation projects to be kept current with the time schedule provided in the mining plan.

7. Bond released. When reclamation of a portion of the area of land affected has been completed and approved by the commission, the commission shall release the bond or other security which was filed for that portion of such operation. The remaining amount of the bond shall not be released

until such time as the reclamation is done according to law and approved by the commission.

§ 2207. Time for commencement and completion of reclamation ;  
deferred planting

It shall be the duty of an operator to commence the reclamation of the area of land affected by his operation as soon as possible after the beginning of the mining of that area in accordance with plans previously approved by the commission. If it appears that planting to provide vegetative cover of an affected area may not be successful, the commission may authorize the operator to defer such planting until the soil has become suitable for such purposes and a yearly report shall be filed with the commission indicating the soil conditions until a successful planting or seeding has been completed.

§ 2208. Partial release of bond when planting deferred ;  
payment in lieu of forfeiture

If the commission authorizes an operator to defer planting to provide vegetative cover for an area of land, it shall set the time within which such planting shall be carried out. If the operator has carried out on that area of land the method of operation, and reclamation approved by the commission other than the planting, the commission shall issue to the operator and to his surety a release of his surety bond or other securities held on deposit for each acre of land for which such method of operation and reclamation has been carried out, less revegetation costs as determined by the commission. This amount of the bond or other securities for each acre of land affected shall remain in the possession of the commission until a satisfactory planting plan has been carried out, or until it has been forfeited by the operator. If the remainder is forfeited, it shall be expended by the commission in a planting program for the area of land for which it has been posted. If the operator does not meet the planting requirements but does not want his bond forfeited, he may pay to the commission a sufficient sum to cover the remaining reclamation costs as determined by the commission and the bond or other security filed by him as surety may then be released by the commission.

§ 2209. Report on expiration of mining plan, contents

Within 60 days after the date of completion of reclamation provided in the mining plan, the operator shall file with the commission a final report containing such information as shall be determined by the commission. Upon the filing of the final report and upon determination that this chapter has been complied with, the commission shall release the bond. Appeal from a decision not to release the bond shall be subject to hearing and appeal as provided in section 2206, subsection 1.

§ 2210. Additional 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.

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. 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.

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.

All fees collected by and other funds received by the commission pursuant to this chapter shall be placed in a reclamation funds to carry out the purposes of this chapter, which fund shall not lapse.

#### § 2211. Conformance to statutes and regulations required, when

Notwithstanding the approval of a mining plan, all operations shall conform to any other statutes or regulations in effect.

#### § 2212. Hearings

The commission may hold, after 30 days' written notice to the alleged violator, a hearing in connection with any activity which may constitute a violation of this chapter. The commission shall have the following authority:

1. Powers and duties. To conduct hearings under this chapter or regulations adopted by the commission and for the purpose of any investigation or hearing, the commission may administer oaths or affirmations, subpoena witnesses, take evidence and require production of any books, papers, correspondence, memoranda, agreements or other documents or records which are relevant or material to the inquiry. Any records or other information furnished to or obtained by the commission under this section relating to processes or production unique to the owner or operator or which would tend to affect adversely the competitive position of such owner or operator shall be only for the confidential use of the commission. Such records or information may be used by the commission in compiling or publishing analyses or summaries relating to the general condition of the mining industry, provided that such analyses or summaries do not identify directly or indirectly any owner or operator or reveal any information otherwise confidential under this sec-



tion. Hearings may be held by the director or by a hearing examiner or member of the commission staff. A transcript shall be prepared for all hearings. The director may make any order authorized under this chapter after review of the transcript and any exhibits if he did not conduct the hearing himself.

2. Orders, remedial measures. To issue, after notice of noncompliance and hearing, orders requiring compliance with this chapter and regulations adopted pursuant thereto. A notice of noncompliance shall contain sufficient information to inform the alleged violator of the specific acts or omissions complained of.

3. Stop orders. If the director shall find that an emergency exists, he may issue a stop order including findings of fact pending a hearing.

4. Appeal. Any person aggrieved by an order or decision of the commission may, within 30 days after notice of the filing of such order or decision, appeal therefrom to the Superior Court. Such appeal shall not, unless otherwise ordered by the court, operate as a stay of the commission action appealed from. Notice of the appeal shall be ordered by the court and the appeal shall be heard without a jury and in the manner and with the rights provided by law in other civil actions so heard. The court shall receive in evidence in any proceeding hereunder a transcript of the proceedings before the commission, a copy of the commission's order, and such other evidence as the court in its discretion shall deem necessary. The court shall have jurisdiction to enter a judgment affirming or nullifying the order or decision, or remanding the cause to the commission upon such terms as the court shall direct.

#### § 2213. Penalties

Any person or operator who violates this chapter or regulations lawfully adopted pursuant thereto or who fails to obtain approval of his mining plan as provided or who fails to obey an order promulgated pursuant to this chapter, shall be liable to a penalty of not more than \$100 for each day of said violation, and in addition may be enjoined from continuing such violations.