

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 345

S. P. 133

In Senate, January 26, 1971

Referred to Committee on Natural Resources. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Violette of Aroostook.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

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 ~~3,000~~ 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 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 affected 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 pay-

ment 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-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. 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~~ 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:

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

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 affected 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 affected. 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 disturbed 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 affected 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 affected 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.