

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 601

S. P. 203

In Senate, February 24, 1977

Referred to the Committee on State Government. Sent down for concurrence and 2,000 copies ordered printed.

MAY M. ROSS, Secretary

Presented by Senator Collins of Aroostook.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Reorganize the Department of Conservation.

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

Sec. 1. 5 MRSA § 711, sub-§ 13 is enacted to read:

13. Officials, certain employees of the Department of Conservation. The associate commissioners, the bureau directors, the director of the Land Use Regulation Commission, the forest insect manager, the environmental resource specialist, the hydrogeologist, the geology technician and such scalers and surveyors as are appointed by the Director of the Bureau of Public Lands.

Sec. 2. 10 MRSA c. 401, as amended, is repealed.

Sec. 2-A. 12 MRSA § 501, as last repealed and replaced by PL 1973, c. 460, § 1, is amended by adding at the end the following new paragraph:

Except as prohibited by section 512, the Director of the Bureau of Forestry shall have the authority, on behalf of the bureau and with the consent of the Governor, to sell, grant, lease, transfer or otherwise convey any real or personal property, or interests therein, which are owned by, or are within the custody and control of, the bureau and which have been determined by the director to be surplus to the needs of the bureau.

Sec. 2-B. 12 MRSA § 512, 2nd ¶, 2nd sentence is amended to read:

The lands acquired within the limits described in this section by the Bureau of Forestry and designated by it as state forests or natural areas shall never be sold, but may be exchanged for other land to permit consolidation, better access or more efficient administration.

Sec. 3. 12 MRSA c. 201-A is enacted to read:

CHAPTER 201-A
MINING AND MINERALS
SUBCHAPTER I
MINING ON STATE LANDS

§ 541. Jurisdiction

The Maine Geological Survey, within the Department of Conservation, hereinafter referred to as the survey, shall have jurisdiction over all state lands for the purpose of mineral development and mining thereon, subject to the conditions and provisions of this chapter. The survey shall administer, regulate and control all mineral development and mining on state lands. The survey shall have the power to make such rules and regulations as it may deem proper with respect to all sections of this subchapter, including safety and resource conservation.

§ 542. Definitions

As used in this subchapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Development. "Development" shall include all of the methods used in the preparation of a known and presumed economically extractable ore deposit for mining.
2. Director. "Director" shall mean the Director of the Maine Geological Survey.
3. Exploration. "Exploration" shall include all of the manual, mechanical, electronic or chemical methods of determining the presence, size and unit value of a mineral deposit.
4. Explosives. "Explosives" shall mean explosive materials which are used to prospect, explore, develop or mine a mineral deposit.
5. Machinery. "Machinery" shall mean equipment or machinery, exclusive of vehicles, which are used to prospect, explore, develop or mine a mineral deposit.
6. Minerals. "Minerals" shall include all naturally occurring mineral deposits including hydrocarbons and peat, but excluding sand, gravel and water.
7. Mining. "Mining" shall mean all of the extractive and beneficiative processes necessary to remove and prepare for market a mineral deposit.
8. Ore. "Ore" shall mean any mineral or an aggregate of minerals which can be worked commercially.
9. Person. "Person" shall include individuals, partnerships, corporations and other entities.
10. Prospecting. "Prospecting" shall mean a preliminary examination of an area for the purpose of discovering the possible presence of valuable minerals.

11. **Royalty.** "Royalty" shall mean the amount paid to the State for the right to remove minerals from state land, including minimum and preproduction payments.

12. **State lands.** "State lands" shall mean all lands owned or held in trust by the State, including inland and tidal submerged lands and waters.

§ 543. Permitting, licensing and leasing

1. **Authority to prospect.** Any individual over 18 years of age or other person may enter upon state-owned land, including lands held under specific trust instruments when the trust is such as to be consistent with mineral development, on receipt of a prospector's permit from the director for the purpose of prospecting for valuable minerals, except water, sand and gravel, unless otherwise indicated in this subchapter. A prospector's permit shall be issued upon payment of a fee of \$10 and shall apply to state lands within the jurisdiction of the survey. A prospector's permit shall bear a number and be dated on the date of issue thereof and shall expire at midnight on the 31st day of December then next ensuing. The holder of a permit is entitled to a renewal of his permit upon expiration thereof, upon making application to the director on or before December 31st including payment of the prescribed fee, which renewal shall take effect on January 1st and bear the same number as the expired permit.

If machinery or explosives are to be used for prospecting on state lands, the methods to be employed and the amount of explosives to be allowed must first be approved by the director. Prior to granting such approval, the director shall consult with the agency of the state having jurisdiction over such state land in order to harmonize, to the extent practicable, the activities of the prospector and the activities of the state agency having jurisdiction.

2. **Exploration and mining hydrocarbons.** The director may promulgate rules and regulations governing exploration and mining of hydrocarbons on all lands within the jurisdiction of the State, public and private, in order to prevent the waste of hydrocarbons and to protect correlative rights and natural resources. The director may promulgate rules and regulations for state lands to specify the size of the area of exploration, the amount charged for permits, the duration of permits and other matters related to the exploration and mining of hydrocarbons on state lands.

3. **Location of claim and maintenance of rights of possession.** Any person or corporation who has secured a prospector's permit may locate one or more claims by defining the boundary lines of the claim or claims. No claim shall be greater than 1,500 feet in length by 600 feet in width. The location or record of any claim shall be construed to include all surface found within the surface boundary lines thereof and all ledges throughout their entire vertical depth, but shall not include any portion of such ledges beyond the end and side lines of such claim, or timber or growth on such claim. As nearly as circumstances will permit, a claim shall be staked out in the following manner, namely:

A. By erecting a post or other reasonably permanent monument at each of the 4 corners of the claim and numbering the posts or monuments con-

secutively, one through 4, beginning in the most northeasterly corner and proceeding about the claim in a clockwise direction. Every post or monument shall stand not less than 4 feet above the ground, shall be not less than 4 inches in diameter, and shall bear the following information.

(1) Post or monument #1. The name of the locator, the number of his prospector's permit, the date of the staking, and, if the claim is staked on behalf of another person, the name of the other person and the number of his prospector's permit.

(2) Posts or monuments #2, #3 and #4. The name of the locator, and if the claim is staked for another person, his name;

B. By plainly marking the trees with paint and by trimming the underbrush along the boundary lines of the claim to indicate clearly the outlines of the claim. Where there are no trees or underbrush, by piling stones or placing pickets at reasonable intervals along the boundary lines of the claim; or

C. By establishing post or buoy markers to witness claim corners which fall in a body of water, by placing posts on dry land and marking thereon exact distances and directions to over-water claim corners, or by such other methods as the survey may by regulation establish.

Any person who has located and recorded any claim or claims shall, subject to the provisions of this subchapter, have the right of possession of the premises covered by that claim or claims, for the purpose of conducting thereon exploration activities. Such right of possession shall be alienable in the same manner as real estate. No alienation or transfer of the rights of possession conferred by a located and recorded claim shall be effective against the survey until the transferor shall have notified the director of such transfer and shall have received an acknowledgment by the director in writing of receipt of such notification. Without the express prior written consent of the director granted for good cause, the claim shall in no way interfere with harvesting timber, leasing campsite lots or other activities until actual mining operations are being carried on.

4. Recording of claim. No person shall have the right of possession of any claim until such claim shall have been recorded with the director. The prospector who first records with the director a validly staked claim or claims in any area shall be deemed the claimholder of record for purposes of this subchapter. This record shall contain:

A. The name of the locator;

B. A general description of the minerals or metals sought;

C. The date of the location and description of the location of that claim, with reference to such natural object or permanent monument as will identify the claim;

D. The location and description of each corner, with the markings thereon;

E. An outline sketch or plan of the claim showing with reasonable accuracy claim corners, witness points and prominent natural objects or permanent structural features, so that the claim may be located on the ground by the director or his representatives;

F. The fee for recording, renewing or transferring a claim shall be \$10;

G. A claim shall be in effect until December 31st following the date of recording, and shall be extended for further 12-month periods, not exceeding 4 in number, upon application to the director on or before December 31st and upon payment of the appropriate fee, and upon filing an affidavit that during the period about to expire investigatory work has been performed on the claim to the extent of not less than 50 work hours or \$250 worth of work. The director may, upon petition of the claimholder, allow all or part of any such excess expenditure to be credited to assessment requirements in the following years on the claim. Where the holder of the claim has 2 or more contiguous claims, the required amount of work for all the claims may be performed on one or more of such contiguous claims. The work done shall be described in the affidavit and shall include only work which tends to reveal such characteristics of the material sought as length, width, depth, thickness, tonnage and mineral or metal content. If the date of recording a claim is after the 30th day of September in any year, the director shall extend such claim until the 31st day of December of the next ensuing year without requiring such affidavit, upon payment by the locator of the required renewal fee. If the normal exploration plans on over-water claims or a claim group include drilling or geophysical work which requires an ice cover, the director may allow the exploration expenditure to be applied either to a present year or the subsequent year, if requested by the claimholder. Extension will be granted only to those claims which are of record on or before September 30 of the year in which the request is made;

H. No claim may be held through authority of the prospector's permit for a period of more than 5 years from the initial date of recording. By the end of the 5-year period, any title to the claim will lapse unless the right to the claim has been established by a license to mine or mining lease issued by the State under this subchapter. The director may, upon application and for good cause, grant an extension for an additional period not to exceed 2 years. Upon lapse or upon filing of notice of abandonment of a claim, no person holding the claim immediately prior to date of lapse or abandonment or his representative, partner, affiliate or leasing associate may relocate on the same area for a period of 60 days; and

I. The failure to comply with any of the requirements for renewing claims under paragraph G shall operate as a forfeiture of the claim or claims. Written notice of such forfeiture shall be sent by registered or certified mail to claimant's last known address. Any claimant who is aggrieved may file a written petition for a hearing before the director within 14 days after notice of forfeiture has been given. If the petition for a hearing is filed with the director within the 14-day period, the director shall within 30 days grant a hearing on the forfeiture and give the claimant 10 days' notice of

the time and place thereof. For good cause, the director may extend the time for filing such petition.

If any claimant is aggrieved by the decision of the director resulting from the hearing, he may within 30 days thereafter appeal to the Superior Court, by filing a complaint therefor. The court shall fix a time and place for hearing and cause of notice thereof to be given to the director and after hearing, the court may affirm or reverse the decision of the director and the decision of the court shall be final. During the pendency of all proceedings under this paragraph, no person shall lay claim to the area of dispute. The director may perform the duties of this paragraph personally or through his designee.

5. Land use ruling. Any person with a recorded claim or contiguous claims may make application to the director for a ruling as to whether mining operations can be carried on consistent with any prior or proposed other use by the State or any agency or instrumentality thereof. Such a ruling that mining operations can be carried on shall not be made by the director except with the consent of any agency of the State having jurisdiction over the land with respect to which the mining is proposed. No license to mine or mining lease shall be issued under this subchapter without such a land use ruling for the area involved.

A public hearing may be held prior to any ruling required under this subsection. Such ruling shall be made within 90 days of the date of such application and when obtained shall be binding and irrevocable for such period of time as the applicant and the State may agree.

6. License to mine.

A. Any person with a valid recorded claim or contiguous claims in accordance with this subchapter may make application to the director for a license to mine. Such application shall include a report from a certified geologist or mining engineer describing the proposed mining operations, an accurate survey of the property boundaries certified by a qualified surveyor and evidence of ability to finance the proposed mining operations.

B. Upon receipt of the application, the director, with the consent and joinder of the Director of the Bureau of Public Lands, may grant the license subject to such terms and conditions as the directors of the survey and the Bureau of Public Lands may determine.

C. The director may hold a hearing for the purpose of hearing evidence on whether to grant or deny a license to mine under this section. In the event that the director determines to hold a hearing, a hearing shall be held within 60 days of the receipt of the application and the director shall cause notice of the date, time and place thereof to be given to the applicant and give public notice thereof by causing such notice to be published twice in a newspaper of general circulation in the proposed locality, or if none, in the state paper. The date of first publication shall be at least 10 days and the last publication shall be at least 3 days before the date of the hearing.

A decision in accordance with this paragraph shall be issued within 30 days of the date of the hearing.

D. The license to mine shall expire on December 31st of each year. The annual fee shall be jointly set by the directors of the survey and the Bureau of Public Lands.

7. Mining leases.

A. Any holder of a license to mine who has complied with the requirements of the survey may apply to the director for a lease of mining rights. Such application shall include the same information to be supplied with an application for a license to mine, and a bond in an amount determined by the director to be necessary to protect against damage the holder may cause to adjacent properties, or in lieu of a bond, other security determined by the director to provide the same protection as a bond.

B. Upon receipt of the application, the director, with the consent and joinder of the Director of the Bureau of Public Lands, may grant the lease subject to such terms and conditions as the directors of the survey and the Bureau of Public Lands may determine.

C. The director may hold a hearing for the purpose of hearing evidence on whether to grant or deny a mining lease under this section. In the event that the director determines to hold a hearing, a hearing shall be held within 60 days of the receipt of the application and shall cause notice of the date, time and place thereof to be given to the applicant and give public notice thereof by causing such notice to be published twice in a newspaper of general circulation in the proposed locality, or if none, in the state paper. The date of first publication shall be at least 10 days and the last publication shall be at least 3 days before the date of the hearing.

A decision in accordance with this paragraph shall be issued within 30 days of the date of the hearing.

8. Royalty.

A. The holder of a license or lease to mine shall make royalty payments annually or more frequently if so specified in the license or lease.

B. The amount of royalty payments, including minimum royalties and preproduction payments, together with the other terms and conditions of the lease, shall be set jointly by the directors of the survey and Bureau of Public Lands.

C. All fees and royalties accruing to the survey under this chapter shall be paid into a separate account to be established by the Treasurer of State to be used for salaries and other expenses incurred in the administration of this chapter, subject to and to the extent permitted by section 553, subsection 3, paragraph E. The account shall not lapse, but shall continue from year to year.

9. Rights of way. Any person who has located a claim and has been issued a license to mine or mining lease in accordance with this subchapter shall have the right of access across any lands owned or controlled by the State to and from that location. The director may issue a permit to the holder of a license to mine or mining lease giving him authority to open, con-

struct, put in, maintain and use ditches, tunnels, pipes, conduits, flumes and other works through, over and upon that land for drainage and passage of water, together with the right to construct dams, provided no such water flows on land of others, in connection with the working of his mine to bring thereto water necessary or convenient for its operation with such conditions and restrictions as the director may impose.

10. Mining under bodies of water. Where any mineral is situated under or in the bed of a stream or lake and for the efficient working of the mineral deposit it is necessary to divert the water of such stream, within the boundaries of public land, or drain any lake, the director may permit the same to be done, subject to such provisions for the benefit of any persons who are entitled to the use of the water of such stream or lake in its natural state, as to the director may seem just and expedient.

11. Annual reports. Any person with a recorded claim, license to mine or mining lease engaged in exploration, mine development, or mining under this subchapter shall file an annual report with the director and pay all applicable fees, rentals and royalties, in the month of January following the year such operation was carried on setting forth:

- A. Location of the operation;
- B. Quantity and grade of mineral products or ores produced;
- C. The amount of royalty which has accrued on material extracted;
- D. The number of persons ordinarily employed at operation below ground and above ground; and
- E. Any other information required by the director.

12. Termination. In the event that any prospector, claimant, licensee or lessee violates any of the provisions of this chapter or any rule or regulation of the survey, the director shall notify such prospector, claimant, licensee or lessee, as the case may be, of such alleged violation and of the nature of such alleged violation, by sending such notice by registered or certified mail to him at the last address known to the director. If such violation is not remedied within 30 days after the date of mailing such notice, the permit, claim, license or lease of such violator in existence at the time of such violation may be terminated by the director by giving written notice of termination in the same manner specified for notice of violation. For cause, the director may extend such further time for compliance as he may determine. Any person who is aggrieved may file a written petition for a hearing before the director within 30 days of the date of the giving of written notice of termination by the director. The hearing shall take place within 30 days of receipt of the petition and a decision rendered by the director within 30 days following the final adjournment of the hearing. Appeals from the director's decision shall be pursuant to the provisions of Rule 80B, Maine Rules of Civil Procedure.

13. Injunctions against violation. Whenever it appears that any person is violating or threatening to violate any provision of this subchapter, or any

rule, regulation or order of the survey, the director may seek an injunction against such person in the Superior Court of the county in which the office of the survey is located or of any county where the violation occurs or is threatened, or in the county in which the defendant resides or in which any defendant resides if there is more than one defendant, to restrain such person from continuing such violation or from carrying out the threat of violation. In any such action, the court shall have jurisdiction to grant to the director, without bond or other undertaking, such prohibitory or mandatory injunctions as the facts may warrant, including temporary restraining orders and preliminary injunctions.

§ 544. Compliance with regulatory laws

Nothing in this subchapter shall be deemed to relieve any mining licensee or lessee from the obligation to comply with applicable environmental or other regulatory laws and regulations of the State.

Sec. 4. 12 MRSA § 632, first sentence, as amended by PL 1973, c. 460, § 19, is further amended to read:

The ~~Maine State Bureau of Parks and Recreation~~ Department of Conservation shall maintain a continuing Keep Maine Scenic program, including necessary research, education, promotion and enforcement, for the protection of Maine's natural beauty and elimination of offensive litter and other unsightly conditions on roadsides, streets, waterways and beaches and in parks and other public areas.

Sec. 5. 12 MRSA § 633, first sentence, as amended by PL 1973, c. 460, § 11, is further amended to read:

The Commissioner of the Department of Conservation shall appoint a Keep Maine Scenic Committee to advise and consult with the ~~bureau~~ department in carrying out the administration of this chapter.

Sec. 6. 12 MRSA § 5012, as amended by PL 1975, c. 771, § 157, is further amended by inserting after the first paragraph the following new paragraphs:

The commissioner shall have the power to appoint associate commissioners and bureau heads as shall be necessary for the proper performance of the duties of the department.

The commissioner shall appoint an associate commissioner for program and an associate commissioner for administration to assist in carrying out the responsibilities of the department. The associate commissioner for program shall be a person with training and experience in natural resource planning and policy. The associate commissioner for administration shall be a person with training and experience in operations and administrative management.

Sec. 7. 12 MRSA § 5012, as amended by PL 1975, c. 771, § 157, is further amended by adding at the end the following new paragraphs:

The commissioner may, on behalf of the department, enter into such agreements with state and local agencies and authorities as will promote the objectives of the department.

The commissioner may from time to time make noncash awards for outstanding contributions in the field of natural resource management.

Sec. 8. 12 MRSA § 5013, last ¶, first sentence, as enacted by PL 1973, c. 460, § 16, is amended to read:

Every person appointed as a bureau director or associate commissioner or in another supervisory capacity in the department shall have experience and skill in the field of the functions of such position.

Sec. 9. 32 MRSA § 1951, sub-§ 4, as last amended by PL 1973, c. 460, § 18, is repealed and the following enacted in its place:

4. Director of the board. "Director of the board" means the Commissioner of Business Regulation or the person designated by him.

Sec. 10. 32 MRSA § 2003, last ¶, as amended by PL 1965, c. 226, § 72-A, is repealed and the following enacted in its place:

The board shall investigate or cause to be investigated all complaints made to it and all cases of noncompliance with or violation of this subchapter or of rules and regulations promulgated by the board as provided in this subchapter. The board shall have the authority, after hearing, to refuse to issue or renew a license, or to suspend a license until the case or complaint can be heard by the Administrative Court Judge. The Administrative Court Judge shall have the power to suspend or revoke the license of any licensed arborist who is found guilty on one or more of the grounds set forth in section 2061. The board may in its discretion, after a lapse of 6 months, reissue a license which has been suspended or revoked.

Sec. 11. 32 MRSA § 2004, is amended by adding at the end the following new sentence:

The Bureau of Forestry shall be reimbursed by the board for actual expense of services rendered to the board in administering the law.

Sec. 12. 32 MRSA § 2057, first ¶ is repealed and the following enacted in its place:

Licenses for arborists shall expire biennially on December 31st, or at such other times as the Commissioner of Business Regulation may designate, and shall become invalid on that date unless renewed.

Sec. 13. 32 MRSA § 2058, as amended by PL 1973, c. 460, § 18, is repealed and the following enacted in its place:

§ 2058. Renewals

It shall be the duty of the board to notify every person licensed under this subchapter of the date of expiration of his certificate and the amount of fee required for its renewal for a 2-year period. Such notice shall be mailed to such person's last known address at least 30 days in advance of the expiration of such license. Applications for renewal licenses shall contain whatever information is necessary for the board to determine whether the applicant should continue to hold a license and shall be accompanied by the required

fee, which shall be returnable if the applicant is denied a renewal license. Lost licenses shall be replaced on application by the licensed arborist and payment of \$1.

Sec. 14. 32 MRSA § 2059, sub-§§ 1 and 2 are repealed and the following enacted in their place:

1. **Original license.** For an original license to an individual, \$15. When the unexpired term of license of an applicant is or will be more than one year at the time of licensure, the board may require the applicant to pay an additional fee not to exceed $\frac{1}{2}$ the biennial renewal license fee;

2. **Biennial renewal license.** For a biennial renewal license, \$10.

Sec. 15. 32 MRSA § 2061, first ¶, as amended by PL 1965, c. 226, § 77, is repealed and the following enacted in its place:

The board may refuse to issue or renew, or the Administrative Court Judge, as designated in Title 5, chapters 301 to 307, may suspend or revoke a license on any one or more of the following grounds:

Sec. 16. **Amendatory clause.** Wherever in the Maine Revised Statutes the words "Maine Mining Bureau" appear, they shall mean the "Maine Geological Survey."

STATEMENT OF FACT

A Department of Conservation reorganization plan resulting from several months of staff study and employee deliberations was formally approved by the Governor last August. This bill implements that portion of the plan which requires statutory changes.

Section 1 clarifies the unclassified status of certain positions in the department as they have been established elsewhere in the Revised Statutes.

The development of mineral resources on state-owned lands has, since 1955, been administered and regulated by the Maine Mining Bureau, within the Department of Conservation. During the past 5 years, mineral exploration and development on state land has decreased; in addition, recent legislation has placed some of the responsibilities concerned with mining activity on state land within agencies other than the Mining Bureau. For these reasons, the members of the bureau determined that the need for a separate agency no longer exists, and recommended that legislation be prepared to dissolve the agency and place its administrative and technical responsibilities in the Bureau of Geology. Sections 2, 3 and 16 of this bill abolish the Maine Mining Bureau and transfers its budget and responsibilities to the Bureaus of Public Lands and Geology, which can more efficiently execute its functions.

Sections 2-A and 2-B allow the Bureau of Forestry, with the consent of the Governor, the power to dispose of property surplus to its needs other than by sale of lands designated as state forests and natural areas.

Sections 4 and 5 transfer the Keep Maine Scenic committee from the Bureau of Parks and Recreation to the commissioner's office in keeping with the reorganization policy of providing staff services more effectively at the department level.

Sections 6 and 8 authorize the department to establish 2 unclassified associate commissioner positions, one for program and one for administration. These positions will not require the expenditure of additional funds, but will be funded through the reclassification of existing positions.

Section 7 clarifies the authority of the department to enter into agreements with other state agencies and of the commissioner to make noncash awards for outstanding contributions in the field of natural resource management.

Sections 8 through 15 transfer the Arborist Examining Board from the Department of Conservation to the Department of Business Regulation.