

# MAINE STATE LEGISLATURE

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New Draft of S. P. 232, L. D. 775

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ONE HUNDRED AND EIGHTH LEGISLATURE

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Legislative Document

No. 1840

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S. P. 525

In Senate, June 2, 1977

Reported by Senator Collins of Aroostook from Committee on State Government. Sent down for concurrence and ordered printed under Joint Rules No. 2.

MAY M. ROSS, Secretary

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SEVEN

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**AN ACT to Improve the Management of the Department of Conservation.**

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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 director of the administrative services, the director of planning and program services, 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Sec. 2. 10 MRSA c. 401, as amended, is repealed.

Sec. 3. 12 MRSA § 501, as last repealed and replaced by PL 1973, c. 460, § 1, is amended by adding at the end a new paragraph to read:

Except as prohibited by this paragraph and 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. The director shall not sell the state nursery.

Sec. 4. 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. 5. 12 MRSA c. 201, sub-c. III, as amended, is repealed.

Sec. 6. 12 MRSA c. 201-A is enacted to read:

## CHAPTER 201-A

### MINING AND MINERALS

#### SUBCHAPTER I

#### MAINE GEOLOGICAL SURVEY

##### § 541. Maine Geological Survey established

There is established within the Department of Conservation to accomplish the purposes of this chapter a Maine Geological Survey, hereinafter referred to as the "survey," to gather, analyze, interpret, publish and disseminate information relating to the geologic features of the State, and to administer mineral exploration and development activities on state-owned lands.

##### § 542. Survey; powers and duties

1. Information program. The survey shall develop and administer a program to gather, interpret, publish and disseminate information relating to the geologic features of the State including, but not limited to, hydrogeologic, marine-estuarine, bedrock, surficial and economic geology.

2. Information furnished agencies and public; environmental development applications. To the extent of its available resources, the survey shall provide, as requested, geologic information to public agencies and the general public. The survey may review the geologic aspects of environmental and site development applications under consideration by state and federal regulatory agencies.

3. Employees. The survey may employ or retain such professional and other employees, subject to the Personnel Law, as are necessary to carry out the purposes of this chapter, within the limits of the funds available.

4. Mineral resources development. The survey is responsible for the orderly development of mineral resources on state-owned lands, including submerged lands and waters, both inland and tidal, acting in conjunction with the Bureau of Public Lands.

5. Research projects. The survey may initiate, contract for and manage research projects relating to the purposes of this chapter.

6. Royalties, fees and rents. The survey shall receive all royalties, fees and rents accruing to the State under this chapter, which 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.

7. Rules and regulations. The survey may from time to time adopt, amend, repeal and enforce reasonable rules and regulations necessary to carry out the duties assigned to it.

8. Printing fund. There is established within the survey a revolving fund for the use of the survey to cover printing and distribution costs for geological and related technical literature. The director is authorized to fix the price at which publications of the survey may be sold and delivered. The survey shall retain without charge 10% of all such publications for complimentary distribution. The director is further authorized to fix the price at which the United States Geological Survey and other United States Government maps, charts and other publications may be sold and delivered, provided such publications are specifically authorized for resale by the originating agency and are specifically concerned with technical information on the State of Maine. Income from the sale of publications shall be credited to the revolving fund to be used as a continuing carrying account to carry out the purposes of the printing fund.

§ 543. Director of the survey

1. Director. The executive head of the survey shall be the director who shall also be the State Geologist. He shall personally attend to the duties of his office so far as practicable.

2. Powers and duties. The director shall exercise the powers of the office and shall be responsible for the execution of its duties.

A. The director shall administer the survey and adopt such methods of administration, not inconsistent with the law, as he may determine necessary to render the survey efficient.

B. The director shall appoint and remove the staff of the survey, subject to the Personnel Law, and prescribe their duties as may be necessary to implement the purposes of this chapter.

C. The director shall organize such administrative divisions within the survey as are necessary to carry out the purposes of this chapter including, but not limited to, hydrogeology, marine and physical geology.

D. The director shall prepare and submit to the Commissioner of Conservation the budget for the survey.

E. The director may, upon such terms and conditions as he deems reasonable, and with the approval of the Commissioner of Conservation, accept grants and funds from and enter into contracts with federal, state, local or other public entities to carry out the purposes of this chapter or to provide geological services, including mapping and inventory information. The proceeds of any such contract shall be paid into a separate account to be established by the Treasurer of State, which account shall not lapse, but shall continue from year to year and shall be available to carry out the purposes of this chapter.

F. The director shall not, when appointed or while in office, have any pecuniary interest in, directly or indirectly, any mining activity on land owned by the State, except in his official capacity.

Sec. 7. 12 MRSA c. 201-A, sub-c. II is enacted to read:

**SUBCHAPTER II**  
**MINING ON STATE LANDS**

**§ 545. 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.

**§ 546. 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.

#### § 547. 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 shall 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 no. 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 no. 2, no. 3 and no. 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. The director shall acknowledge within 30 days of receipt of such notice. 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 perm-

anent 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 30th 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 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 the 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 shall 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 shall 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 shall 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 the Bureau of Public Lands.

**C.** All fees and royalties accruing to the survey under this subchapter 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 subchapter, 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 may, with the consent of the director and consistent with the law, 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, construct, 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 subchapter 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 the Maine Rules of Civil Procedure, Rule 80B.

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.

§ 548. 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. 8. 12 MRSA § 552, sub-§ 2, ¶ D, sub-¶¶ (6) and (7) are enacted to read:

(6) Rules and regulations adopted by the Bureau of Public Lands shall be enforced by any law enforcement officer.

(7) A violation of any of the rules or regulations promulgated in conformity with this section shall be a Class E crime.

Sec. 9. 12 MRSA § 602, sub-§ 3, last ¶, as last amended by PL 1973, c. 84, is repealed and the following enacted in its place:

Prior to the adoption or amendment of any rule, the bureau shall give notice as provided in this subsection and may hold a public hearing, provided that a public hearing shall be held if requested by an interested person. When a public hearing is held, written statements and arguments concerning the proposed rule may be filed with the bureau within 10 days after the close of the public hearing, or within such longer time as the bureau may direct. The bureau shall consider all relevant information available to it, including public comments, before adopting any rule. At the time of adoption of any rule, the bureau shall adopt a written statement explaining the factual and policy basis for the rule.

At least 20 days prior to the adoption of any rule, the bureau shall publish notice in a newspaper of general circulation in the area of the State affected, and shall publish a 2nd notice in the same paper no more than 10 days before the hearing and notify any person who has filed within the past year a written request with the bureau for notice of rule-making. Notification under this subsection shall be by mail or otherwise in writing to the last address provided to the bureau by that person.

Notice shall refer to the statutory authority under which the adoption of the rule is proposed; state the time and place of any scheduled public hearing, or state the manner in which a hearing may be requested; state the manner and time within which data, views or arguments may be submitted to the bureau for consideration, whether or not a hearing is held; and if possible, contain the express terms of the proposed rule or, otherwise, describe the substance of the proposed rule, stating the subjects and issues involved and indicate where a copy of the proposed rule may be obtained.

The bureau may establish a fee schedule for notice under this subsection, imposing a cost reasonably related to the actual expense entailed.

If the bureau finds that immediate adoption or amendment of a rule by procedures other than those set forth in this subsection is necessary to avoid an immediate threat to public health, safety or general welfare, it may modify those procedures to the minimum extent required to enable adoption of rules designed to mitigate or alleviate the threat found. Any emergency rule shall include the bureau's findings with respect to the existence of an emergency. Any emergency rule shall be effective only for 90 days, or any lesser period of time specified in an enabling statute or in the emergency rule. After the expiration of the emergency period, such rule shall not thereafter be adopted except in the manner provided by this subsection.

Sec. 10. 12 MRSA § 632, as amended by PL 1973, c. 460, § 19, is further amended to read:

§ 632. Powers

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. The ~~bureau~~ department shall make full use of voluntary services and contributions from clubs, organizations and associations, individuals, municipalities, business and industry, or other state agencies.

Sec. 11. 12 MRSA § 633, 1st 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. 12. 12 MRSA § 633, 2nd ¶, 1st sentence, as amended by PL 1973, c. 460, § 11, is further amended to read:

The ~~bureau~~ department may promulgate rules and regulations to carry out this chapter in accordance with Title 5, chapter 303.

Sec. 13. 12 MRSA § 673, last ¶, as amended by PL 1973, c. 460, § 17, is repealed and the following enacted in its place:

Rules and regulations governing the Allagash Wilderness Waterway shall be adopted in accordance with section 602, subsection 3.

Sec. 14. 12 MRSA § 684, 6th sentence, as repealed and replaced by PL 1973, c. 579, § 1, is amended to read:

Members of the commission, except state employees, shall receive ~~\$25~~ \$40 per day for their services at meetings or hearings and all members shall receive necessary traveling expenses for attending any meetings of the commission or for any travel in connection with the official business of the commission and under specific authority of the commission, which traveling expenses shall be paid out of the General Fund.

**Sec. 15.** 12 MRSA § 685, 1st sentence, as amended by PL 1973, c. 460, § 15, is repealed and the following enacted in its place:

The Commissioner of Conservation shall prepare a biennial budget and shall submit to the Legislature requests for appropriations sufficient to carry out its assigned tasks.

**Sec. 16.** 12 MRSA § 685, 3rd sentence from the end, as amended by PL 1973, c. 460, § 15, is further amended to read:

The Commissioner of ~~the Department of~~ Conservation, with the ~~approval of the Governor~~ consent of a majority of the commission, shall appoint a director who shall be the principal administrative, operational and executive employee of the commission.

**Sec. 17.** 12 MRSA § 685-B, sub-§ 2, ¶ B, as enacted by PL 1971, c. 457, § 5, is repealed and the following enacted in its place:

**B.** The fee prescribed by the commission rules, such fee not to exceed 1/10 of 1% of the total construction costs nor be less than \$10.

**Sec. 18.** 12 MRSA § 5012, as amended by PL 1975, c. 771, § 157, is further amended by adding after the first paragraph 2 new paragraphs to read:

The commissioner shall have the power to appoint a director of administrative services, a director of planning and program services and bureau heads as shall be necessary for the proper performance of the duties of the department.

The director of administrative services and the director of planning and program services shall serve at the pleasure of the commissioner.

**Sec. 19.** 12 MRSA § 5012, as amended by PL 1975, c. 771, § 157, is further amended by adding at the end 2 new paragraphs to read:

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. 20.** 12 MRSA § 5013, sub-§ 1, 2nd sentence, as enacted by PL 1975, c. 521, § 2, is amended to read:

The director shall be appointed by the commissioner, with the ~~approval of the Governor~~ consent of a majority of the commission, for a term coterminous with the commissioner, subject to removal for cause by the commissioner with the approval of the Governor;

**Sec. 21.** 12 MRSA § 5013, sub-§ 5, as enacted by PL 1973, c. 460, § 16, is repealed and the following enacted in its place:

5. **Maine Geological Survey.** The Maine Geological Survey, which shall be under the direction and supervision of a director. The director shall be appointed by the commissioner, with the approval of the Governor, to serve

for a term coterminous with the commissioner, subject to removal for cause by the commissioner with the approval of the Governor.

**Sec. 22.** 12 MRSA § 5013, last ¶, 1st sentence, as enacted by PL 1973, c. 460, § 16, is amended to read:

Every person appointed as a bureau director, a **director of administrative services or of planning and program services**, or in another supervisory capacity in the department shall have experience and skill in the field of the functions of such position.

**Sec. 23.** 30 MRSA § 4162, sub-§ 4, ¶ D, as amended by PL 1975, c. 777, § 10, is further amended to read:

D. Lease campsites, garages, depots, warehouses and other structures, or sites for the same, for a term of years not exceeding 5; grant options to renew such leases for a further term of years not to exceed 5 in the case of a commercial ~~camp use~~ which in the opinion of the director requires such option to secure adequate financing for the maintenance or improvement of facilities located upon public reserved land; and in the case of leases acquired by the State on lands exchanged for public reserved lands, shall authorize, upon reasonable terms and conditions, the transfer of leasehold interests from a lessee of a residential campsite to another; and sell storehouses and other structures and fixtures surplus to the needs of the bureau;

**Sec. 24.** 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. 25.** 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. 26.** 32 MRSA § 2004 is amended by adding at the end a new sentence to read:

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

**Sec. 27.** 32 MRSA § 2057, 1st ¶, 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. 28. 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. 29. 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; and

Sec. 30. 32 MRSA § 2061, 1st ¶, 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. 31. 38 MRSA § 325, 1st sentence, as amended by PL 1975, c. 28, is further amended to read:

The Director of the Bureau of Parks and Recreation may make grants-in-aid to political subdivisions and others for the acquisition, construction and maintenance of boat facilities and supporting facilities, on such terms as he determines necessary.

Sec. 32. 38 MRSA § 325, 2nd ¶, as amended by PL 1973, c. 460, § 19, is further amended to read:

The Director of the Bureau of Parks and Recreation shall determine where the facilities shall be located and which facilities shall be acquired, constructed and maintained by political subdivisions.

Sec. 33. Revision clause. Wherever in the Maine Revised Statutes or Private and Special Laws the words "Bureau of Geology" or word meaning "Bureau of Geology" appear, the Director of Legislative Research is author-



ized to delete those words and insert in their place the words "Maine Geological Survey" or appropriate word meaning "Maine Geological Survey."

**Sec. 34. Revision clause.** Wherever in the Maine Revised Statutes or Private and Special Laws the words "Maine Mining Bureau" or word meaning "Maine Mining Bureau" appear, the Director of Legislative Research is authorized to delete those words and insert in their place the words "Maine Geological Survey" or appropriate word meaning "Maine Geological Survey."

### STATEMENT OF FACT

This bill is a State Government Committee new draft of several bills before it, having to do with the Department of Conservation (L. D. 601, 775, 904 and 1228).

Very generally, this new draft :

1. Changes the method of appointment of the Director of the Land Use Regulation Commission by providing for appointment by the commissioner with consent of a majority of the commission ;
2. Abolishes the Bureau of Geology and the Maine Mining Bureau and transfers their functions to a newly authorized Maine Geological Survey ;
3. Establishes 2 new positions for the department, directors of administrative services and of planning and program services ; and
4. Makes other changes in department authority by providing for :
  - A. The transfer of the Keep Maine Scenic Program from the Bureau of Forestry to the commissioner's office ;
  - B. The transfer of the Arborist Examining Board from the Department of Conservation to the Department of Business Regulations ;
  - C. Changes in the method of promulgating certain rules and their enforcement and in the consequence of their violation ;
  - D. An increase in the Land Use Regulation Commission per diem from \$25 to \$40 ;
  - E. The preparation of the Land Use Regulation Commission budget by the commissioner ;
  - F. A \$10 minimum for land use fees ;
  - G. Five-year option on structures under the jurisdiction of the Bureau of Public Lands in order to secure financing for all commercial uses, not just commercial camps ;
  - H. Clarification of Bureau of Forestry authority for deposition of surplus real and personal property, including language to prohibit selling the State nursery ;

I. Clarification of Bureau of Parks and Recreation authority to provide funds for purchase and maintenance of boat facilities; and

J. Clarification of department authority to make agreements with other state agencies and to make noncash awards for outstanding contributions in natural resource management.

This new draft does not require an appropriation.

### SECTION-BY-SECTION COMMENT

Sections 1, 19 and 21 clarify the unclassified status of certain positions in the department and establish 2 new positions, directors of administrative services and of planning and program services. The new positions will consolidate existing positions and duties within the department and will not require an appropriation.

Section 2 repeals authority for the Maine Mining Bureau and its programs. Sections 2, 8 and 34 of this new draft abolish the Maine Mining Bureau and transfer its budget and responsibilities to the Bureau of Public Lands and the Bureau of Geology, which can more efficiently execute its functions.

Sections 3 and 4 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. Section 3 also prohibits the sale of the state nursery.

Sections 5, 6, 22 and 33 establish the Maine Geological Survey formerly the department's Bureau of Geology. During the past 10 years, the geological needs of the State have changed rapidly, and statutes governing the state's geologic agency have been amended accordingly. These amendments, however, have been piecemeal and stopgap in nature. These sections bring all of the individual changes into a cohesive, systematic statute which carefully defines the most efficient response to the State's present and future geologic needs. Specifically, the new statute:

1. Allows the director to establish, for the first time, the necessary organizational and programmatic structures of the survey as required by state needs for geologic services;
2. Consolidates within a single administrative agency all mineral activities in the State including those on public land; and
3. Clarifies the powers and duties of the agency and its director so that programs can be developed and administered more effectively.

Sections 7 and 34: 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 Maine 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 7 and 34 abolish the Maine Mining Bureau; transfer its budget and responsibilities to the Bureau of Public Lands and the Bureau of Geology; and codify existing law pertaining to mining on state lands. This codification does not extend the department jurisdiction over any new mineral or mining activity, or into any new form of regulation over any mineral or mining activity.

Section 8 provides for the enforcement of, and a penalty for the violation of, regulations duly adopted by the Bureau of Public Lands.

Sections 9 and 13 repeal a reference to the abolished Parks and Recreation Commission and eliminate the requirement that the Bureau of Parks and Recreation rules be published in total each time a minor change is made. The present requirement is costly and acts as a deterrent against needed minor changes.

Sections 10, 11 and 12 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.

Section 13: See comment for section 9.

Section 14 raises the per diem for the Land Use Regulation Commission from \$25 to \$40.

Section 15 requires the commission to prepare the budget for the Land Use Regulation Commission. Currently, the commission prepares the budget and the commissioner approves it.

Sections 16 and 20 change the appointment procedure for the director of the Land Use Regulation Commission, by requiring that the director be appointed by the Commissioner of the Department of Conservation with the consent of a majority of the members of the Land Use Regulation Commission.

Section 17 establishes a \$10 minimum permit fee for the Land Use Regulation Commission. This will eliminate the receipt of small amounts submitted as a permit fee.

Section 18: See comment for section 1.

Section 19 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.

Section 20: See comment for section 16.

Section 21: See comment for section 1.

Section 22 provides that the Director of the Maine Geological Survey is appointed in a manner consistent with the appointment of other bureau directors in the Department of Conservation.

Section 23: The statutes presently allow a 5-year lease on structures under the jurisdiction of the Bureau of Public Lands, with the power to give a 5-year option in the case of a commercial camp in order to obtain financing. The bureau has had to turn down a request to give a 5-year option on a commercial barn and thereby hurt the prospective tenant's ability to obtain financing for a project. Section 23 also allows the bureau to give 5-year options in order to secure financing for all commercial uses, not just commercial camps.

Sections 24 through 30 transfer the Arborist Examining Board from the Department of Conservation to the Department of Business Regulation. These sections change the current statute by transferring the power to revoke or suspend arborist licenses from the Arborist Examining Board to the Administrative Court Judge; increasing the term of the license from one to 2 years, retaining the current fee; and requiring notification of expiration to licensees.

Sections 31 and 32 clarify the authority of the Bureau of Parks and Recreation to continue its practice of providing funds for the purchase of lands to be used for boat facilities and for their maintenance.