

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1543

H. P. 1239

House of Representatives, March 28, 1979

Referred to the Committee on Energy and Natural Resources. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Masterton of Cape Elizabeth.

Cosponsor: Mr. Michael of Auburn.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

**AN ACT to Consolidate the Mining and Rehabilitation of Land into the Site
Location of Development Statute.**

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

- Sec. 1.** 10 MRSA § 2201, as enacted by PL 1969, c. 472, is repealed.
- Sec. 2.** 10 MRSA § 2202, as last amended by PL 1973, c. 537, § 8, is repealed.
- Sec. 3.** 10 MRSA § 2203, as last amended by PL 1977, c. 78, § 35, is repealed.
- Sec. 4.** 10 MRSA § 2204, as last amended by PL 1977, c. 300, § 1, is repealed.
- Sec. 5.** 10 MRSA § 2205, as last amended by PL 1973, c. 712, § 1, is repealed.
- Sec. 6.** 10 MRSA § 2206, as last amended by PL 1977, c. 694, § 171, is repealed.
- Sec. 7.** 10 MRSA §§ 2207 and 2208, as last amended by PL 1971, c. 618, § 13, are repealed.
- Sec. 8.** 10 MRSA § 2209, as last amended by PL 1977, c. 300, § 2, is repealed.
- Sec. 9.** 10 MRSA § 2210, as last amended by PL 1971, c. 618, § 13, is repealed.
- Sec. 10.** 10 MRSA § 2211, as enacted by PL 1969, c. 472, is repealed.

Sec. 11. 38 MRSA § 481, 2nd ¶, as amended by PL 1971, c. 618, § 12, is further amended to read:

The purpose of this subchapter is to provide a flexible and practical means by which the State, acting through the Board of Environmental Protection, in consultation with appropriate state agencies, may exercise the police power of the State to control the location of those developments substantially affecting local environment in order to insure that such developments will be located in a manner which will have a minimal adverse impact on the natural environment of their surroundings and protect the health, safety and general welfare of the people.

Sec. 12. 38 MRSA § 482, sub-§ 2, first ¶, as amended by PL 1975, c. 297, is further amended to read:

2. Development which may substantially affect the environment. "Development which may substantially affect the environment," in this Article called "development," means any state, municipal, quasi-municipal, educational, charitable, commercial or industrial development, including subdivisions, which occupies a land or water area in excess of 20 acres, or which contemplates drilling for or excavating natural resources, on land or under water where the area affected is in excess of 60,000 square feet, or which is a mining activity, or which is a structure; but excluding state highways, state aid highways, and, borrow pits for sand, fill or gravel, of less than 5 acres or when regulated by the Department of Transportation.

Sec. 13. 38 MRSA § 482, sub-§§ 2-A, 2-B, 3-A, 4-A and 4-B are enacted to read:

2-A. Exploration. "Exploration" means an activity solely intended to determine the existence, quality and quantity of product provided less than 1,000 cubic yards of product is not extracted or removed within 12 successive months.

2-B. Mining activity. "Mining activity" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of more than 1,000 cubic yards of product or overburden from the earth within 12 successive calendar months; any activity or process that for the extraction or removal of the product or overburden; and the preparation, washing, cleaning or other treatment of that 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.

3-A. Overburden. "Overburden" means earth and other materials naturally lying over the product to be mined.

4-A. Product. "Product" means clay, peat, stone minerals, ores, topsoils or other solid matter.

4-B. Reclamation. "Reclamation" means the rehabilitation of the area of land affected by mining under a plan approved by the commission, including, but

not limited to, the planting of forests, the seeding of grasses and legumes for grazing purposes, the planting of crops for harvest and the enhancement of wildlife and aquatic resources.

Sec. 14. 38 MRSA § 490 is enacted to read:

§ 490. Reclamation

1. **Policy.** It is the policy of the State that, unless a mining activity includes provisions for safety and rehabilitation of the area of land affected or otherwise complies with an approval issued pursuant to this chapter, a mining operation is justified only in the case of national emergency.

2. **Bonds.** The board may require a bond payable to the State with sureties satisfactory to the board or such other security as the board may determine will adequately secure compliance with this chapter, conditioned upon the faithful performance of the requirements set forth in this chapter and of the rules and regulations of the board. In determining the amount of the bond or the security, the board shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of grading and reclamation to be required. All proceeds of forfeited bonds or other security shall be expended by the board for the reclamation of the area for which the bond was posted, and any remainder shall be returned to the operator.

3. **Time schedules.** It shall be the duty of a person engaged in a mining activity to commence the reclamation of the area of land affected by the mining activity as soon as possible after the beginning of the mining activity of that area in accordance with plans previously approved by the board. If it appears that a planting to provide vegetative cover of an affected area may not be successful, the board may authorize the deferring of the planting until the soil has become suitable for those purposes and a yearly report shall be filed with the board indicating the soil conditions until a successful planting or seeding has been completed.

4. **Gifts and funds for reclamation.** The board may acquire, in the name of the State, land by gift or purchase which has been affected by a mining activity 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 remain property of the State. The board may accept funds from private or other sources, which shall be used for reclamation purposes, whether in conjunction with appropriated funds of the State or otherwise.

5. **Cooperation with others.** The board 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 chapter.

The board is designated the public agency of the State 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 chapter. For these purposes, the board 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 board deems advisable and proper for purposes of this chapter.

The board is further designated the public agency of the State for the purposes of meeting requirements of the Federal Government with respect to the administration of these federal funds, not inconsistent with this chapter.

6. Fees. All fees collected by and other funds received by the board pursuant to this chapter shall be placed in a reclamation fund to carry out the purposes of this chapter. This fund shall not lapse.

Sec. 15. Transitional provisions. All mining plans approved pursuant to Title 10, chapter 451, that are in effect, in whole or in part, on the effective date of this Act shall continue in effect unless revoked, suspended, modified or expired in accordance with the law.

STATEMENT OF FACT

This bill repeals the mining and rehabilitation of land statute and places its key provision in the site location of development statute. There are minor changes in the jurisdiction and responsibilities of the Department of Environmental Protection.

Some of those changes are as follows.

1. The definition of reclamation no longer exempts the filling of pits, shafts, and underground works.
2. Items that should be included in a reclamation plan are added to the definition of reclamation. These items are taken from Title 10, section 2201.
3. The definition of mining now includes exploration activities in excess of 1,000 cubic yards in a 12-month period.
4. The minimum and maximum bonding limits are deleted and bond requirements are to be optional rather than mandatory.

All mining activities at the present time require both a site location and rehabilitation approval. This bill will eliminate the duplicate approval process in favor of a single site location approval.