

MAINE STATE LEGISLATURE

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(Governor's Bill)
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1621

H. P. 1496

House of Representatives, May 18, 1981

Referred to the Committee on Taxation. Sent up for concurrence and ordered sent forthwith.

EDWIN H. PERT, Clerk

Presented by Representative Post of Owl's Head.

Cosponsors: Representative Mitchell of Vassalboro, Representative Masterman of Milo and Senator Violette of Aroostook.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Create an Excise Tax on Mining Companies and to Amend the Statutes on Mining on State Lands.

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

Sec. 1. 5 MRSA c. 13-C is enacted to read:

CHAPTER 13-C

MINING GRANTS

§ 289. Grant credit

Any mining company may make grants to one or more municipalities for the purpose of funding planning studies in advance of the operation of the mine to deal with the social, economic or environmental effects of mining on the municipalities.

The grants, up to a total of \$50,000 during any 5-year period, may be used as a credit by the mining company against the taxes due under this chapter during the year the grants are made, upon certification by the Commissioner of Finance and Administration, in consultation with the State Planning Office, that the grants were used for the purpose of this section.

If the entire credit cannot be used in the year the grant or grants are made, that portion of the credit not used shall be carried over to the following year or years.

Sec. 2. 5 MRSA c. 18 is enacted to read:

CHAPTER 18

MINING TRUST FUND

§ 451. Statement of purpose

The Legislature has established the Mining Trust Fund pursuant to Title 36, section 2862, subsection 2, paragraph B. This fund is established to compensate the State for the costs of mining to it and its people. It is recognized that this fund shall be used by the Governor to replace, generally, the loss to the State and to deal with extraordinary government costs. The committee on the Mining Trust Fund is established to assist the Governor in using the fund and its income.

§ 452. Committee membership; organization

The Commissioner of Conservation, Commissioner of Educational and Cultural Services, Commissioner of Environmental Protection and Commissioner of Inland Fisheries and Wildlife shall be members of the Committee on the Mining Trust Fund. The Governor shall designate a member of his staff to be a member of the committee, who shall be the chairman of the committee. The committee shall meet at the call of the chairman or upon the request of a majority of the committee members. The committee shall meet at least annually.

§ 453. Duties

The committee shall make recommendations to the Governor on the use of the principle and income of the Mining Trust Fund, established pursuant to Title 36, section 2862, subsection 2, paragraph B. These recommendations are limited to:

1. Development of lands for parks and wildlife habitats and sanctuaries. Making grants from the fund to acquire or develop lands and interests in lands for parks and wildlife habitats and sanctuaries;
2. Restoration of lakes, rivers, streams and land areas. Making grants from the fund for the restoration of lakes, rivers, streams and land areas; and
3. Education costs and construction projects. Making grants from the fund for education costs and construction projects made necessary by increased enrollment caused by mining activity.

§ 454. Grants

If the Governor approves a recommendation as submitted, the recommendation shall be effected by the appropriate agency or agencies.

If the Governor disapproves a recommendation, the recommendation shall have no effect.

Sec. 3. 12 MRSA c. 201-A, sub-c. II, as enacted by PL 1977, c. 360, § 7 and as amended, is repealed.

Sec. 4. 12 MRSA c. 201-A, sub-c. III is enacted to read:

**SUBCHAPTER III
MINING ON STATE LANDS**

§ 549. Jurisdiction

The Maine Geological Survey and the agencies having jurisdiction over state-owned lands shall have jurisdiction, as set forth in this subchapter, over all state-owned lands for the purpose of mineral development and mining thereon. The Maine Geological Survey and the agencies having jurisdiction over state-owned lands may make such rules as each deems proper with respect to the authority delegated pursuant to this subchapter.

§ 549-A. Definitions

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

1. **Development.** “Development” includes all of the methods used in the preparation of a known and presumed economically extractable ore deposit for mining.

2. **Director of the survey.** “Director of the survey” means the Director of the Maine Geological Survey.

3. **Exploration.** “Exploration” means an examination of an area for the purpose of discovering the presence of minerals with techniques which include all of the manual, mechanical, electronic or chemical methods of determining the presence, size and quality of a mineral deposit.

4. **Explosives.** “Explosives” means explosive materials which are used to explore, develop or mine a mineral deposit.

5. **Machinery.** “Machinery” means equipment or machinery, exclusive of vehicles, which is used to explore, develop or mine a mineral deposit.

6. **Minerals.** “Minerals” includes all naturally occurring mineral deposits, including hydrocarbons and peat, but excluding sand, gravel and water.

7. **Mining.** “Mining” means all of the extractive and beneficiative processes necessary to remove and prepare a mineral deposit for market.

8. **Ore.** “Ore” means any mineral or an aggregate of minerals which can be extracted from the earth economically.

9. **Person.** “Person” includes individuals, partnerships, corporations and other entities.

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

11. **State lands.** "State lands" means all lands owned or held in trust by the State or in which the State holds an interest, but not including inland and tidal submerged lands and waters.

§ 549-B. Exploration permits, exploration claims and mining leases

1. **Authority to explore.** Any individual over 18 years of age or other person may enter upon state lands, including lands held under specific trust instruments when the trust is consistent with mineral development, on receipt of an exploration permit from the director of the survey for the purpose of exploration, unless otherwise indicated in this subchapter. An exploration permit shall be issued upon payment of a fee of \$20 and shall apply to state lands only. An exploration permit shall bear a number and be dated on the date of issue thereof and shall expire at midnight on the next June 30th. The holder of an exploration permit is entitled to a renewal of his permit upon expiration thereof, upon making application to the director of the survey on or before June 30th, including payment of the prescribed fee, which renewal shall take effect on July 1st and bear the same number as the expired permit. Prospectors' permits in effect on June 30, 1981, shall remain in effect as exploration permits until June 30, 1982.

If machinery or explosives are to be used for exploration on state lands, the methods to be employed and the amount of explosives to be allowed shall first be approved by the director of the survey and the director of the agency having jurisdiction over the state land. The use of machinery or explosives shall be approved only where it will be done in harmony with the activities of the agency having jurisdiction over the state land and will not result in environmental harm.

2. **Exploration for and mining of hydrocarbons.** The director of the survey and the Director of the Bureau of Public Lands may promulgate rules 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 directors may promulgate rules for state lands to specify the size of the area of exploration, the amount charged for exploration permits and exploration claims, the duration of such permits and claims and other matters related to the exploration and mining of hydrocarbons on state lands.

3. **Location of exploration claim and maintenance of rights of possession.** Any person or corporation who has secured an exploration permit may locate one or more exploration claims by defining the boundary lines of the claim or claims. No exploration claim may be smaller than 20 acres, except in cases where only a smaller area is available in a parcel of state-owned land. The location or record of any exploration claim shall be construed to include all surface found within the surface boundary lines, and all ledges throughout their entire vertical depth, but

shall not include any portion of the ledges beyond the end and side lines of the exploration claim or timber or growth on the exploration claim. As nearly as circumstances permit, an exploration claim shall be staked out in the following manner:

A. By erecting a post or other reasonably permanent monument at each of the corners of the exploration claim. Every post or monument shall stand not less than 4 feet above the ground, shall not be less than 4 inches in diameter and shall bear the following information: The name of the locator, the number of his exploration permit, the date of the staking and, if the exploration claim is staked on behalf of another person, the name of the other person and the number of his exploration permit;

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

C. By establishing post or buoy markers to witness exploration 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 exploration claim corners or by such other methods as the director of the survey may by regulation establish.

Any person who has located and recorded any exploration claim or claims shall, subject to this subchapter, have the right of possession of the premises covered by that exploration claim or claims, for the purpose of conducting exploration activities thereon. The 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 exploration claim may be effective until the transferor has notified the director of the survey of the transfer and has received an acknowledgement by the director of the survey in writing of receipt of the notification. The director of the survey shall acknowledge within 30 days of the receipt of the notice. Without the express prior written consent of the director of the survey and the agency of the state having jurisdiction over the state land, granted for good cause, the exploration claim shall in no way interfere with conservation, recreation, harvesting timber, leasing campsite lots or other activities of the agency having jurisdiction.

4. Recording of exploration claim. No person may have the right of possession of any exploration claim until the exploration claim has been recorded with the director of the survey. The explorer who first records with the director of the survey a validly-staked exploration claim or claims shall be deemed the claim holder of record for the purposes of this subchapter. The director of the survey shall provide to the agency having jurisdiction over the state-owned land a copy of the record of the exploration claim. The record shall contain:

A. The name of the claimant;

- B. A general description of the minerals or metals sought;**
- C. The date of location and a description of the exploration claim as follows:**
- (1) A reference, using magnetic bearing and distance, to such natural object, permanent monument or surveyed corner of the state-owned parcel as will identify the claim; and**
 - (2) A description, using magnetic bearings and distances, of each sideline and corner of the exploration claim; and**
- D. A United States Geological Survey quadrangle base map and an aerial photograph of an appropriate scale that shows with reasonable accuracy the outline location and corners of the exploration claim in relation to the state-owned parcel and prominent natural objects or permanent structural features so that the exploration claim may be located on the ground by the director of the survey or his representatives.**
- 5. Fees and terms of exploration claim.**
- A. The fee for recording, renewing, transferring or changing the size of a claim is \$100 which shall be paid to the director of the survey.**
- B. The term of the exploration claim shall be for one year, renewable for 5 years from the initial date of recording by written notice to the director of the survey before June 30th. For claims recorded after April 1st and before June 30th, the first renewal notice shall be due on the 2nd June 30th following. By the end of the 5-year period, any title to the claim shall lapse, unless a mining lease has been issued by the State under this subchapter. The director of the survey may, upon application and for good cause, grant an extension for an additional period not to exceed 2 years. Upon lapse or 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.**
- C. In addition to the recording fee, a rental fee shall be levied from the date of recordation of the claim as follows:**
- | | |
|-------------|-----------------|
| First year: | \$.25 per acre |
| 2nd year: | .75 per acre |
| 3rd year: | 1.50 per acre |
| 4th year: | 2.50 per acre |
| 5th year: | 5.00 per acre |
| 6th year: | 20.00 per acre |
| 7th year: | 30.00 per acre |

The rental fee payment for the first year shall be due on the date of recordation of the claim. The rental fee payment for the 2nd year and for each year the

claim is in effect shall be due on the June 30th which precedes the year for which the payment is due and shall be paid to the director of the survey. For claims recorded after April 1st and before June 30th, the 2nd rental fee payment shall be due on the 2nd June 30th following.

D. An affidavit of investigatory and exploratory work shall be filed each year with the director of the survey on June 30th. For claims recorded after April 1st and before June 30th, the first affidavit of investigatory and exploratory work shall be filed on the 2nd June 30th following. All work done shall be described in the affidavit and shall include work which tends to reveal such characteristics of the material sought as length, width, depth, thickness, tonnage and mineral or metal content, or, with respect to nonmetallic minerals, other physical characteristics of the deposit relating directly to the commercial exploitation thereof and such other information relating to the exploration work as the director of the survey may require. This information may be shared with other governmental agencies, but shall not constitute records available for public inspection or disclosure pursuant to Title 1, section 408, during the period of time in which the claim is in effect.

E. The failure to comply with any of the requirements of this subsection shall operate as a forfeiture of the claim or claims. Written notice of the 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 of the survey within 14 days after notice of forfeiture has been given. If the petition for a hearing is filed with the director of the survey within the 14-day period, the director of the survey 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 of the survey may extend the time for filing the petition.

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

6. Land use ruling. Any person with a recorded exploration claim shall make application to the director of the agency having jurisdiction over the state lands on which the claim is located for a ruling on the question of 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 without consulting the director of the survey. No mining lease may be issued under this subchapter without a land use ruling which answers the question in this subsection in the affirmative.

A public hearing shall be held prior to any ruling required under this subsection. The ruling shall be made within 180 days of the date of the application and when obtained shall be binding and irrevocable for such period of time as the applicant and the State may agree.

7. Mining lease. Mining leases may be applied for and granted as follows.

A. Any person with a valid recorded exploration claim in accordance with this subchapter may make application for a mining lease to the director of the agency having jurisdiction over the state lands on which the mining lease is sought. The application shall be accompanied by a report from a certified geologist or mining engineer containing all information of a geologic, engineering and operational nature which is required by the director of the survey or the director of the agency having jurisdiction over the state lands on which the mining lease is sought to properly evaluate the application, an accurate survey of the property boundaries certified by a registered surveyor and evidence of ability to finance the proposed mining operations.

B. The director of the agency having jurisdiction over these state lands shall hold a hearing for the purpose of hearing evidence on whether to grant or deny a mining lease to mine under this section. The hearing shall be held within 90 days of receipt of the application and notice of the date, time and place shall be given to the applicant and public notice shall be made by causing publication of the notice 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.

C. A decision in accordance with this subsection shall be issued within 120 days of the date of the hearing.

D. The director of the agency having jurisdiction over the state lands, with the consent of the director of the survey, may issue a mining lease subject to such terms and conditions as the directors may determine.

E. If a lease is issued, the lessee shall be required to provide a bond in an amount determined by the director of the agency having jurisdiction over the state-owned lands to be necessary to reclaim the area mined and to protect against damage that may be caused to any property located outside the leased area by lessee's mining operations or, in lieu of a bond, other security determined by the director of the agency having jurisdiction over the state-owned lands to provide the same protection as a bond.

8. Common and undivided interests. The director of the survey and the Director of the Bureau of Public Lands, acting jointly, may by regulation establish procedures for the filing of exploration claims and issuance of exploration permits and leases covering state-owned public lands, including public reserved lands, which are comprised of state-owned common and undivided interests. The regulations may condition the issuance of an exploration permit or mining lease and the filing of an exploration claim upon the consent of a majority

of the private common and undivided ownership of the parcel of land to which the exploration permit, exploration claim or mining lease relates.

Any permit or lease issued under this section shall extend only to the common and undivided interest of the State. Any partition occasioned by a negative ruling under subsection 6 or 7 shall be conducted with reasonable expedition. In any partition or location of public reserved land, the Bureau of Public Lands may accept a partition of the surface estate and continue as a cotenant in all or a portion of the mineral estate.

9. **Royalty.** Royalty payments shall be made as follows.

A. The holder of a lease to mine shall make royalty payments annually or more frequently if so specified in the 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 director of the survey and the director of the agency having jurisdiction over the state lands. The royalty rate set shall reasonably relate to applicable royalty rates generally prevailing.

10. **Disposition of fees and royalties.** 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.

11. **Rights-of-way.** Any person who has located an exploration claim and has been issued a mining lease in accordance with this subchapter may, with the consent of the director of the agency having jurisdiction over such state lands 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 holder of a mining lease may be issued a permit 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 that 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 may be imposed.

12. **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 of the agency having jurisdiction over these state-owned lands 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 him may seem just and expedient.

13. **Annual reports.** Any person with a mining lease engaged in mine development or mining under this subchapter shall, in the month of June following

the year the operation was carried on, pay all applicable fees, rentals and royalties and file an annual report with the director of the survey and director of the agency having jurisdiction over the state-owned land setting forth:

- A. Location of the operation;
- B. Quality 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, relating to the mining lease, mine development or mining, the director of the bureau and the director of the agency having jurisdiction over the state-owned lands may require by regulation.

This information may be shared with other government agencies, but shall not constitute records available for public inspection or disclosure pursuant to Title 1, section 408.

14. **Termination.** In the event that any explorer, claimant or lessee violates any of the provisions of this subchapter or any rule, the director of the survey or the director of the agency having jurisdiction over the state-owned lands shall notify the explorer, claimant or lessee, as the case may be, of the alleged violation and of the nature of the alleged violation, by sending the notice by registered or certified mail to him at his last known address. If the violation is not remedied within 30 days after the date of mailing the notice, the permit, claim or lease of the violator in existence at the time of the violation may be terminated by the State through the director of the survey or the director of the agency having jurisdiction over the state-owned lands by giving written notice of termination in the same manner specified for notice of violation. For cause, the State, through the director of the survey or the director of the agency having jurisdiction over the state-owned lands, may extend such further time for compliance as it may determine. Any person who is aggrieved may file a written petition for a hearing before the State within 30 days of the date of the giving of written notice of termination by the State. The hearing shall take place within 30 days of receipt of the petition and a decision rendered by the State within 60 days following the final adjournment of the hearing. Appeals from the state's decision shall be pursuant to the Maine Rules of Civil Procedure, Rule 80B.

15. **Injunctions against violation.** Whenever it appears that any person is violating or threatening to violate any provision of this subchapter or any rule or order issued pursuant thereto, the State may seek an injunction against that person in the Superior Court of the county in which the office of the director of the survey and the director of the agency having jurisdiction over the state-owned lands 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 the person from continuing the violation or from carrying out the treat of violation. In any such action, the court

shall have jurisdiction to grant to the State, without bond or other undertaking, such prohibitory or mandatory injunctions as the facts may warrant, including temporary restraining orders and preliminary injunctions.

§ 549-C. Compliance with regulatory laws

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

Sec. 5. 36 MRSA § 656, sub-§ 1, ¶ B is repealed and the following enacted in its place:

B. Mines sites, as defined in section 2855, subsection 3, shall be exempt from taxation, except as provided in chapter 371.

Sec. 6. 36 MRSA c. 371 is enacted to read:

CHAPTER 371

MINERAL EXCISE TAX

§ 2851. Preamble

It is the Legislature's belief that mining is an acceptable and necessary activity in the State. Mining results in economic benefits to the locality where it occurs, as well as to the entire State and the Nation. Those who conduct such mining do so by their own initiative and by investing their capital. When mining is conducted, investments of the State are also made, such as government services, environmental and aesthetic costs and the permanent loss of valuable assets. It is the Legislature's intent that the mineral excise tax obtain only such revenues as will compensate the State for its costs of mining.

§ 2852. Findings

The Legislature finds the following.

1. Mineral resources fundamental. Mineral resources are fundamental to modern civilization.

2. Mineral resources as economic wealth. Mineral resources have historically been a primary source of economic wealth, are valuable and, once removed, are forever lost as an economic asset to the State.

3. Development of mineral resources. Development of this country's mineral resources has involved only a small portion of its land area and may be expected to involve a similarly small land area in Maine.

4. Excise tax. The tax established by this chapter is not a property tax. It is an excise tax imposed on those engaged in and enjoying the privilege of conducting mining in the State. A property tax could not provide sufficient revenues to reimburse the State for the governmental, cultural, environmental and aesthetic costs of mining.

5. **Creation of additional costs to government by mining.** The activity of mining creates additional costs to the State and its political subdivisions for government services, such as environmental monitoring and education and for highways, sewers, schools and other improvements which are necessary to accommodate the development of a mining industry.

6. **Effect of mining on environment and other qualities.** The activity of mining has a permanent and often damaging effect on the environment and recreational and aesthetic qualities of the State. Such effect constitutes a cost to the State.

7. **Quality of life.** The activity of mining significantly alters the quality of life in communities affected by mining.

8. **Size of mining operation.** As the size of a mining operation increases, the cost of the State and its political subdivisions to support the operation increases, as does the damage to the environment. As the size of a mining operation increases, the company mining benefits from economies of scale in the mining operation.

9. **Long-term and short-term economic costs.** The State and its political subdivisions incur long-term and short-term economic costs as a result of mining. A fund, in which is deposited a portion of the excise tax revenues, assures that money will be available for long-term and short-term costs associated with social, educational, environmental and economic impacts of mining.

10. **Impact of mineral tax laws on mining industry.** Mineral tax laws have a significant impact on the profitability of mining and the industry's ability to enter into and sustain production.

§ 2853. Purpose

It is the policy of the State to encourage the sound and orderly development of Maine's mineral resources under reasonable constraints. The object of this policy is to assure that the actions associated with development of these resources will:

1. **Expansion and diversification of economy.** Encourage expansion and diversification of the Maine economy and create new employment opportunities for Maine people;

2. **Land use; environmental, safety and health regulations.** Adhere to sound and effective land use, environmental, safety and health regulations administered through appropriate public agencies;

3. **Planning and development assistance to communities and regions.** Afford planning and development assistance to Maine communities and regions that will be significantly affected by mineral resource development; and

4. **Scheme of taxation.** Establish a practical scheme of taxation on mining companies which will:

A. **Permit such companies to operate mines within the State profitably;**

- B. Encourage the economically efficient extraction of minerals;**
- C. Permit the State to derive a benefit from the extraction of a nonrenewable resource; and**
- D. Compensate the State and its political subdivisions for present and future costs incurred or to be incurred as a result of the mining activity.**

§ 2854. Excise tax; exemption

Every mining company shall pay to the State Tax Assessor, for the use set forth in this chapter, an annual excise tax for the privilege of conducting mining within the State and for the costs to the State resulting from the mining activity. Mining property, as defined in section 2855, subsection 8, is exempt from property taxes which otherwise would be assessed by a tax jurisdiction wherein the mine site is located.

§ 2855. Definitions

For the purposes of this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Gross proceeds.** "Gross proceeds" means the value of the mineral products produced at the mine site, calculated as follows: If the mineral product is sold under contract or contracts of sale, the amount of money or its equivalent received by the mining company from the sale of all mineral products during the calendar year, under the contract or contracts of sale. A contract existing between the parent and a subsidiary company or between companies which are wholly or partially owned by a common parent or between companies otherwise affiliated shall not be deemed to be a contract for the purposes of this chapter, unless the amount specified in the contract reasonably approximates an arms-length transaction which is considered to be a transaction between a smelter and a wholly-independent mining company. If the amount does not reasonably approximate an arms-length transaction, the amount specified in an arms-length transaction will be used as the value of the mineral products. In the absence of any comparable arms-length transactions, other acceptable valuation methods may be utilized. The State Tax Assessor may determine the reasonableness of the contract or contracts for sale, the arms-length transaction and the reasonable value of the mineral products.

2. **Land.** "Land" means real property or other natural resources or any interest in or right involving the property, including, but without limitation, minerals and mineral rights, timber and timber rights and water and water rights. The term "land" does not include structures constructed, placed or located within a mining site by a person or machine, such as buildings, structures, fixtures, fences, bridges, dikes, canals or other improvements within a mining site.

3. **Mine site.** "Mine site" means the area related to mining occupied by the excavation, tailings ponds, mills, rights-of-way for pipes, canals and roads, and

improvements and structures appurtenant or related thereto. The State Tax Assessor may determine the mine site, in consultation with the Bureau of Geology, Department of Environmental Protection and the Land Use Regulation Commission.

4. Mineral products. "Mineral products" means the products derived from minerals by means of extraction, reduction or milling in the State.

5. Minerals. "Minerals" means all naturally-occurring metallic ore minerals.

6. Mining. "Mining" means the extractive and beneficiative processes necessary to remove and prepare for market minerals, including the extraction, severing, milling or transport of minerals or mineral products within the State or any of the methods used in the preparation of a known and presumed economically extractable deposit of minerals for any such process. Mining is deemed to be commenced when:

A. The surface soil is broken in order to facilitate or accomplish the extraction or removal of more than 1,000 cubic yards of a mineral ore body, top soil, other solid matter or minerals naturally lying over the ore body from the earth within 12 successive calendar months; or

B. Construction or reconstruction is commenced on fixtures, buildings or surface improvements which are mining property, as defined by this chapter, whichever occurs first. Mining shall be deemed to terminate on April 1st of any year if, during the previous 3 months, there has been:

(1) Extraction, removal or sale of less than 1,000 cubic yards of a mineral ore body, top soil, other solid matter or materials naturally lying over the ore body from the earth; and

(2) No construction or reconstruction of any fixtures, buildings or surface improvements which are mining property, as defined by this chapter.

7. Mining company. "Mining company" means any person who engages in the mining of any minerals in the State and is a combination of 2 or more persons or employs 2 or more employees, as defined in Title 26, section 663, subsection 3, in such mining.

8. Mining property. "Mining property" means all real and tangible personal property in the State on or within a mine site and owned, leased or otherwise subject to possessory control by a mining company, exclusive of tangible personal property which is subject to a local property tax in a Maine tax jurisdiction other than the jurisdiction where the mine site is located. It does not include those vehicles upon which state excise taxes are paid for the current registration period pursuant to chapter 111.

9. Net proceeds. "Net proceeds" means gross income from the property, as defined in the United States Internal Revenue Code, Section 613(c), less the

deductions permitted in the computation of the taxpayer's taxable income from the property, computed without allowance for depletion, pursuant to the United States Internal Revenue Code, Section 613, to determine taxable income, but not including deductions which might be allowed for the amount paid as mineral excise tax or Maine corporate income tax.

10. Purchase price of mining property. "Purchase price of mining property" means the dollar value of the consideration given in exchange for acquisition of the mining property by the mining company or, in the case of property leased by a mining company, by the owner of the mining property.

11. Valuation of mining property. "Valuation of mining property" means the value of all mining property, excluding land, in an amount equal to the purchase price to the mining company of the mining property, except that, in the case of tangible personal property that is mining property leased by a mining company, the "valuation of mining property" means the purchase price to the owner of that property.

§ 2856. Returns; credit extensions

1. Returns. Every mining company shall, with regard to each mine site, before the last day of January, April, July and October, file with the State Tax Assessor a return for the quarter ending the last day of the preceding month. The return shall be in a format established by the State Tax Assessor.

The return shall contain a statement by the mining company of the valuation of mining property as of the last day of the quarter for which the return is filed. The mining company shall compute the quarterly tax on mining property by multiplying the valuation reported by .375%.

Additionally, for each quarter in which mineral products produced at the mine site are sold, the return shall contain a statement of the gross proceeds for the period covered by the return. The mining company shall compute the tax on gross proceeds by multiplying the gross proceeds by the minimum rate of tax upon gross proceeds.

The mining company shall make payment with the return for each quarter of an amount which is the greater of the tax on mining property or the tax on gross proceeds as computed under this subsection.

The return for the quarter ending March 31st shall provide summary information for the preceding calendar year with respect to deductions and valuations as of December 31st allowed in computing the net proceeds for the preceding calendar year. Any additional tax resulting from the calculation of the full year's tax pursuant to section 2857, subsection 2, shall be paid to the State Tax Assessor by the mining company on or before April 30th. The amount of any additional tax shall be computed by subtracting the sum of the quarterly tax liabilities under this chapter, exclusive of property tax credits pursuant to subsection 2 for the preceding calendar year from the tax on gross proceeds as determined for that year.

2. **Credit.** A credit shall be allowed for property taxes levied and paid in the State on mining property subject to taxation under this chapter. The amount of the credit shall be computed as follows: The number of days remaining in the property tax year beginning with the date mining commences and the next March 31st, inclusive, shall be divided by 365; the percentage thus arrived at shall be multiplied by the property taxes levied and paid during that property tax year against mining property valued for purposes of determining the minimum tax under this chapter during the same property tax year; and the resulting product shall be the amount of the credit.

The credit shall be taken in as many equal quarterly installments as there are months or portions thereof remaining between the time mining commences and the next April 1st.

3. **Extensions.** The State Tax Assessor may grant a reasonable extension of the time for filing a return or payment of tax required by this chapter on such terms and conditions as he may require. In no such event may the extension exceed 8 months.

§ 2857. Amount of tax

The amount of the annual excise tax on mining companies shall be the greater of the following:

1. **Tax on mining property.** The sum of 4 quarterly assessments on mining property, the assessments being computed pursuant to section 2856, subsection 1; or

2. **Tax on gross proceeds.** An amount which is equal to the gross proceeds multiplied by a rate which is calculated by dividing the annual net proceeds by the annual gross proceeds and dividing the subsequent result by 8. In no event may the rate be less than 2%.

§ 2858. Lien of tax

If the tax imposed by this chapter is not paid when due, the State Tax Assessor may file in the office of the registry of deeds of the county where the property is located with respect to real property, fixtures or other property designated in Title 11, section 9-401, subsection 1, paragraph A, and the State Tax Assessor may file in the office of the Secretary of State with respect to all other property, a notice of lien specifying the amount of tax, penalty and interest due, the name and last known address of the taxpayer liable for the amount and the fact that the State Tax Assessor has complied with this chapter in the assessment of the tax. From the time of the filing of a notice of lien in a registry of deeds, the amount set forth in the notice of lien constitutes a lien upon all real property, fixtures or other property designated in Title 11, section 9-401, subsection 1, paragraph A, of the taxpayer in the county then owned by him or thereafter acquired by him in the period before the expiration of the lien. From the time of the filing of a notice of lien in the office of the Secretary of State, the amount set forth in the notice of lien

constitutes a lien upon all other property in this State of the taxpayer then owned by him or thereafter acquired by him in the period before the expiration of the lien for which an effective lien could not be recorded in a registry of deeds. In the case of any prior mortgage on any real or personal property so written as to secure a present debt and also future advances by the mortgagee to the mortgagor, the lien provided in this section, when notice has been filed in the proper office, shall be subject to the prior mortgage, unless the State Tax Assessor also notifies the mortgagee of the recording of the lien in writing, in which case any indebtedness thereafter created from the mortgagor to the mortgagee shall be junior to the lien provided in this section. The lien provided in this section has the same force, effect and priority as a judgment lien and shall continue for 5 years from the date of recording, unless sooner released or otherwise changed. The lien may within the 5-year period, or within 5 years from the date of the last extension of the lien in the manner provided by this section, be extended by filing for record in the appropriate office a copy of the notice and from the time of such filing the lien shall be extended for 5 years, unless sooner released or discharged.

§ 2859. Release of lien

The State Tax Assessor shall issue to the taxpayer a certificate of release of the lien or release all or any portion of the property subject to any lien provided for in this chapter or subordinate the lien to other liens if:

1. **Liability satisfied or unenforceable.** The State Tax Assessor finds that the liability for the amount demanded, together with costs, has been satisfied or has become unenforceable by reason of lapse of time;

2. **Bond with surety.** There is furnished to the State Tax Assessor a bond with surety approved by the State Tax Assessor in a sum sufficient to equal the amount demanded, together with costs, the bond to be conditioned upon payment of any judgment rendered in proceedings regularly instituted by the State Tax Assessor to enforce collection thereof at law or of any amount agreed upon in writing by the State Tax Assessor to constitute the full amount of the liability;

3. **State interest of no value.** The State Tax Assessor determines at any time that the interest of this State in the property has no value; and

4. **Lien on other property of taxpayer.** The State Tax Assessor determines that the taxes are sufficiently secured by a lien on other property of the taxpayer or that the release or subordination of the lien will not endanger or jeopardize the collection of the taxes.

§ 2860. Enforcement of lien

Any lien provided for by section 2858 may be enforced at any time after the tax liability with respect to which the lien arose becomes due after written notice and demand for payment of the tax liability has been made upon the taxpayer. Enforcement shall be by means of a civil action brought by the Attorney General in the name of the State in the Superior Court of the county in which the property

is located to subject any property, of whatever nature, of the taxpayer, or in which he has any right, title or interest, to the payment of the tax or liability. The court shall, after the parties have been duly notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property, and, in all cases where a claim or interest of the State therein is established, may decree a sale of the property, by the proper officer of the court, and a distribution of the proceeds of the sale according to the findings of the court. If the property is sold to satisfy a lien held by the State, the State may bid at the sale such sum, not exceeding the amount of the lien with expenses of sale, as the State Tax Assessor directs.

§ 2861. Taxpayer not a resident

When notice and demand for the payment of a tax is given to a nonresident and it appears to the State Tax Assessor that it is not practicable to locate property of the taxpayer sufficient in amount to cover the amount of tax due, he shall send a copy of the notice of lien provided for in section 2858 to the taxpayer at his last known address, together with a notice that the notice of lien has been filed with the registry of deeds or the Secretary of State. Thereafter, the Attorney General, at the request of the State Tax Assessor, may institute any action or proceeding to collect or enforce the claim in any place and by any procedure that a civil judgment of a court record of this State could be collected or enforced.

§ 2862. Use of tax revenues

The excise tax revenues shall be used as follows.

1. **Reimbursement.** The Treasurer of State shall reimburse each municipality 50% of the property tax revenue loss suffered by that municipality during the previous calendar year as a result of the exemption established by this chapter. The property tax revenue loss shall be determined pursuant to the following procedure.

A. If a municipality suffers property tax revenue loss as a result of the exemption resulting from this chapter, the State Tax Assessor shall make the following determinations:

- (1) The total amount of property taxes levied by the municipality in the previous calendar year;
- (2) The valuation of the property taxed by the municipality which resulted in subparagraph (1); and
- (3) The valuation of the property which is exempt as a result of this chapter.

B. The State Tax Assessor shall add the valuation as determined in paragraph A, subparagraph (2), to the valuation as determined in paragraph A, subparagraph (3), and divide the sum into the figure determined in paragraph A, subparagraph (1).

C. The State Tax Assessor shall apply the rate in paragraph B to the valuation of the exempt property to determine the amount of tax revenue loss.

D. The Treasurer of State shall use the excise tax revenues to pay to each municipality 50% of the tax revenue loss in paragraph C. The Treasurer of State shall pay to the municipality this 50% by February 1st of the year following the year in which property tax revenue was lost by the municipality.

2. Remaining funds. Any amount remaining after the reimbursement prescribed in subsection 1 shall be used as follows.

A. One-third shall be deposited in the General Fund.

B. Two-thirds shall be used to establish a separate trust fund to be known as the "Mining Trust Fund." The fund shall be invested by the Treasurer of State in accordance with Title 5, section 13.

The Mining Trust Fund shall be utilized pursuant to Title 5, chapter 18.

§ 2863. Grant credit

A mining company may obtain a credit against the taxes used under this chapter pursuant to Title 5, chapter 13-C.

§ 2864. Rules

The State Tax Assessor may promulgate rules to administer this chapter.

FISCAL NOTE

It is not likely this bill will have any effect on the coming biennium. The earliest a mine could be subject to this tax appears to be 1983. Revenues in the early stages of a mine would be approximately \$600,000 to \$1,000,000 each year, as determined by the minimum tax defined in this bill.

Annual revenues from operating mines will depend on the number and size of mines in the State. During the years of full operation, a mine such as that proposed for Aroostook County would pay a tax of approximately \$1,500,000 to \$2,000,000 each year, depending on the operating costs of the mine and the price of the minerals extracted.

STATEMENT OF FACT

This bill establishes a tax on mining companies which extract metallic minerals in Maine, provides for the disposition of the revenues generated by the new tax and makes improvements in the procedures for administering exploration and mining activities on state-owned lands.

In 1977, a large deposit of copper and zinc was discovered in northern Maine near Bald Mountain. The massive, rich, 36,000,000-ton deposit is estimated to be the 3rd most significant copper discovery on the North American continent since the 1950's. This discovery has led to a large increase in exploration for additional mineral deposits. It is likely that other deposits will be found.

If the Bald Mountain copper-zinc deposit is mined, the mining operation will be at a scale unprecedented in Maine. To prepare for this possibility, the Governor asked the Department of Conservation to review and assess the adequacy of existing state laws and policies regarding mining in Maine. In its review, the department sought the advice of a committee representing the mining industry, environmental groups, the university, a regional planning commission, private mining and exploration consultants and one member each from the Joint Standing Committee on Taxation and the Joint Standing Committee on Energy and Natural Resources.

Because of the complexity of the subject and this bill, a relatively lengthy discussion follows.

Overview of this bill

Very generally, this bill:

1. Establishes an excise tax on metallic mineral production in the State by:
 - A. Setting forth financial and tax-reporting requirements for mining companies;
 - B. Setting forth the formula under which the excise tax is determined;
 - C. Exempting mine sites from property taxation;
 - D. Setting forth how municipalities are to be reimbursed as a result of lost property tax revenues; and
 - E. Setting forth how the revenues from the excise tax are to be utilized;
2. Provides for changes in the excise tax provisions if an amendment to the Constitution of Maine calling for up to 85% reimbursement of municipalities and counties for lost property tax revenues is adopted by referendum; and
3. Amends the provisions covering mining on state lands in order to avoid unnecessary delays in obtaining the requisite permits and rulings.

Comments on section 1 of the bill which establishes a grant credit program

Section 1 of the bill enacts Title 5, chapter 13-C, which permits a mining company to obtain a credit against its excise taxes by making certain types of grants to municipalities. The grants are to provide assistance to municipalities in planning for the social, economic or environmental effects of a mine in advance of the time when additional state or local revenues from mining will be available for this purpose. If a mining company makes a grant or grants to one or more towns, the amount of the grant may be used as a credit against the company's excise taxes, up to a maximum of \$50,000 in any 5-year period.

Comments on section 2 of the bill which establishes how the Mining Trust Fund is to be used

Section 2 enacts Title 5, chapter 18. This chapter provides that the Governor may use the Mining Trust Fund for certain purposes, which relate to the cost to the State of mining activity, pursuant to recommendations of a Committee on the Mining Trust Fund.

**Comments on section 4 of the bill which enacts
provisions relating to mining on state land**

This section enacts Title 12, chapter 201-A, subchapter III.

Section 549. Jurisdiction. The Maine Geological Survey shares responsibility for administering mineral exploration and mining on state-owned lands, except intertidal or submerged lands, with the state agency which has jurisdiction over the land.

Section 549-A. Definitions. Minerals are defined to include all naturally-occurring mineral deposits, except sand, gravel and water.

Section 549-B. Exploration permits, exploration claims and mining leases. This section sets forth the procedures, requirements and fees for conducting mineral exploration and mining operations on state-owned land.

A permitting process administered by the Maine Geological Survey grants the right to explore on all state-owned lands for a \$20 annual exploration fee. The use of machinery or explosives in exploration requires prior approval of the state agency with jurisdiction over the land to be explored.

Exclusive exploration rights to specific state-owned lands are granted through an exploration claim procedure. These exploration claims must be identified on the ground and recorded with the Maine Geological Survey. Exploration claims are renewable annually for a maximum of 7 years. A recording fee of \$100 and an annual exploration claim rental fee based on the number of acres claimed are required. In addition, the holder of an exploration claim must submit an annual report of exploration work to the Director of the Maine Geological Survey. The intent of these fees and reporting requirements is to insure that serious exploration work is conducted and that the claim is not held for speculative or protective purposes.

If a commercial mineral deposit is discovered on a claimed parcel of state-owned land, the claim holder must obtain both a positive land use ruling and a mining lease before mining operations may begin. The land use ruling is a determination by the state agency which has jurisdiction over the land that mining is an appropriate activity on the specified site. A public hearing is required. The mining lease sets forth the terms and conditions, including any reports, fees and royalties under which a mining operation will be permitted on state-owned lands.

Section 549-C. Compliance with regulatory laws. Exploration and mining activities on state-owned lands are subject to all applicable environmental or other regulatory laws and regulations of the State.

**Comments on section 5 of the bill which replaces the
tax exemption for mining in Title 36, section 656, subsection 1,
paragraph B**

Section 5 replaces Title 36, section 656, subsection 1, paragraph B. The present provision establishes only a 10-year period of tax exemption for opened mines. The new provision, in effect, establishes an exemption for the entire life of the mine.

**Comments on section 6 of the bill which
establishes the "Mineral Excise Tax"**

Section 6 of the bill establishes the Mineral Excise Tax.

Section 2852. Findings. This section provides a general, factual introduction for the bill.

Section 2853. Purpose. This section sets forth general state policy toward mining in Maine and serves as the policy framework for the remainder of the bill.

Section 2854. Excise tax. This section establishes an excise tax on mining companies for the privilege of conducting mining in Maine and in order that those conducting mining provide their fair share of revenues for government services. The privilege of conducting mining encompasses the benefits conferred on a mining company by the State, such benefits including the mining company's being permitted to utilize and degrade the state's great environmental and aesthetic assets. These environmental and aesthetic "costs" are both short-term and long-term. The trust fund reimburses the State for its lost environmental and aesthetic quality. The government services are those provided as the mining is conducted, as well as those after the close of the mine. That portion of the revenues placed in the General Fund approximate the former and are intended to cover such services as highway maintenance and environmental monitoring. The trust fund will provide for future services, such as reclamation, monitoring and post-boom economic dislocation. The section also exempts mining property from property taxes. It is not likely that local property taxes would apply in any event, because the area being seriously explored for minerals lies primarily in unorganized territory. This exemption does not apply to other taxes on mining companies, such as income taxes, vehicle excise taxes, sales and use taxes and other excise taxes.

The property tax exemption is provided because, under Maine's existing property tax laws, a major mining operation in the unorganized territory will significantly shift the tax burden in that area. The amount of money which can be raised by property taxation in the unorganized area is limited to the cost of yearly services provided to that area. A major increase in valuation will reduce the tax rate for landowners in the unorganized area, while the State will receive no additional revenues to compensate it for its costs. The imposition of the excise tax on mining companies, coupled with their exemption from the property taxes, avoids this problem. In addition, without the property tax exemption, an excise tax that raises reasonable revenues on top of property taxes would severely hamper a mining company's ability to operate profitably.

Section 2855. Definitions.

1. **Gross proceeds.** The gross proceeds are the total value of the mineral products produced as a result of mining activity in the State.
2. **Land.** This term intends to include the earth and its natural deposits and growths and intends to exclude man-made improvements.
3. **Mine site.** This term intends to include only those areas relating to mining. It is not intended to include administrative offices not located at the site of excavation, tailings ponds, mills or rights-of-way.
4. **Mineral products.** Mineral products are the minerals after being extracted, reduced or milled in the State.
5. **Minerals.** For the purposes of the mineral excise tax, only metallic minerals, such as gold, silver, zinc, copper and platinum are included. The mining of other resources, such as peat, sand and gravel, is excluded.
6. **Mining.** This term defines when mining commences and terminates for the purposes of the excise tax and the concomitant property tax exclusion.
7. **Mining company.** Mining company includes all combinations of persons, corporations or associations engaged in the mining of minerals in the State. The requirement that there must be 2 or more employees to qualify as a mining company is intended to exclude the weekend rockhound or collector. A company will not bring itself outside this definition by incorporating each and every employee. Such a legal construct will be viewed as a mining company.
8. **Mining property.** This term includes all property at or on a mine site, except property which is subject to property taxation in another Maine tax jurisdiction and vehicles upon which excise taxes are paid pursuant to Title 36, chapter 111.
9. **Net proceeds.** In order to determine the net proceeds, reference must be made to the United States Internal Revenue Code.
10. **Purchase price of mining property.** This term is self-explanatory. It is necessary to determine the minimum excise tax.
11. **Valuation of mining property.** This term is self-explanatory. It is necessary to determine the minimum excise tax.

Section 2856. Annual returns. This section sets forth the information that mining companies are required to submit annually and quarterly to the State Tax Assessor for the purpose of calculating the excise tax and the amount of taxes to be paid quarterly and annually. This section also provides for a credit and extensions.

Section 2857. Amount of tax. This section sets forth the method for calculating the excise tax on mining companies. The excise tax is calculated as a percentage of the gross proceeds of the mining company. The tax rate which is applied to the gross proceeds depends upon the level of the net proceeds for each tax year. That

is, as the mining company's net proceeds increase, the tax rate applied to the company's gross proceeds increases, and as the mining company's net proceeds decrease, the tax rate applied to the company's gross proceeds decreases. A minimum excise tax is set at 1.5% of the valuation of the buildings and improvements of the mining company or 2% on gross proceeds.

The tax is designed to account for the significant variances in the mining company's returns which can occur over time. The principal cause of these variances is changes in price. The prices for the metallic minerals covered by this bill are set in world markets and can fluctuate substantially, particularly over the 20 or more years of mine operations. If world prices decline substantially at some point during a mine's life, a high or fixed severance rate might cause a mine to be shut down as unprofitable. A variable rate allows the mining company to remain open in period of price decline.

Conversely, if there are periods of substantial price increases, a variable rate will return a greater share of this value to the State.

The tax form also allows a somewhat lower tax in the earliest years of production when the mining company's costs are generally highest.

Section 2858. Delinquent taxes. This section sets forth standard procedures for dealing with delinquency in the payment of excise taxes payable under this bill.

Section 2862. Use of tax revenues. This section sets forth the disposition of revenues raised by the excise tax on mining companies. The revenues are to be used as follows.

In the unlikely event that a mine locates in a municipality, that municipality will lose property tax revenues because the mine is exempt from property tax. The revenues from the excise tax will be used to reimburse a municipality with a mine for 50% of the lost property tax revenue. This section gives the method for calculating the reimbursement to municipalities.

One-third of the excise tax revenues which remain after reimbursement will go to the General Fund.

Two-thirds of the revenues which remain after reimbursement will be used to establish a Mining Trust Fund.

Section 2863. Grant credit. This section enables a mining company to receive excise tax credits for grants to municipalities which will be affected by their mining operations. This ties into section 1 of the bill.

Section 2864. Rules. This section authorizes the State Tax Assessor to make rules for the administration of the bill.