

MAINE STATE LEGISLATURE

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



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

DMG
ROFS

L.D. 1853

Date: 4/12/12

(Filing No. H-940)

majority

ENVIRONMENT AND NATURAL RESOURCES

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1371, L.D. 1853, Bill, "An Act To Improve Environmental Oversight and Streamline Permitting for Mining in Maine"

Amend the bill by striking out the title and substituting the following:

'An Act To Improve Environmental Oversight and Streamline Permitting for Metallic Mineral Mining in Maine'

Amend the bill by striking out everything after the enacting clause and inserting the following:

Sec. 1. 12 MRSA §550-A, as amended by PL 1985, c. 819, Pt. A, §17, is repealed.

Sec. 2. 12 MRSA §685-B, sub-§1-A, ¶B-1 is enacted to read:

B-1. A permit is not required for a project for mining of metallic minerals that is reviewed under the Maine Metallic Mineral Mining Act. A person submitting a permit application to the Department of Environmental Protection under Title 38, chapter 3, subchapter 1, article 9 for a metallic mineral mining project located wholly or in part within the unorganized and deorganized areas of the State shall file a notice of the intent to develop and a map indicating the location of the proposed development with the commission prior to or concurrently with submission of a development application to the Department of Environmental Protection. The commission must certify to the department that the proposed development is an allowed use within the subdistrict or subdistricts for which it is proposed and that the proposed development meets any land use standards established by the commission and applicable to the project that are not considered in the department's review. This paragraph does not prohibit the commission from enforcing the land use standards certified to the Department of Environmental Protection under this paragraph;

Sec. 3. 12 MRSA §685-B, sub-§4, ¶A, as amended by PL 1999, c. 333, §16, is further amended to read:

COMMITTEE AMENDMENT

1 Adequate technical and financial provision has been made for complying with the
2 requirements of the State's air and water pollution control and other environmental
3 laws, and those standards and regulations adopted with respect thereto, including
4 without limitation the minimum lot size laws, sections 4807 to 4807-G, the site
5 location of development laws, Title 38, sections 481 to 490 489-E, and the natural
6 resource protection laws, Title 38, sections 480-A to 480-Z, and adequate provision
7 has been made for solid waste and sewage disposal, for controlling of offensive odors
8 and for the securing and maintenance of sufficient healthful water supplies;

9 **Sec. 4. 36 MRSA §2861, sub-§6**, as enacted by PL 1991, c. 883, §4, is amended
10 to read:

11 **6. Oversight.** The Treasurer of State, following the payment of excise tax revenues
12 to municipalities pursuant to subsection 4, shall annually set aside 25% of the remaining
13 revenues from mining operations ~~in municipalities not under the jurisdiction of the Maine~~
14 ~~Land Use Regulation Commission~~ to be deposited in the Mining ~~Corrective Action~~
15 Oversight Fund. Money in this fund is available ~~to municipalities to fund corrective~~
16 action oversight of mining activity as defined by rule by the Department of
17 Environmental Protection in relation to metallic mineral exploration.

18 **Sec. 5. 36 MRSA §2862, first ¶**, as amended by PL 1991, c. 883, §5, is further
19 amended to read:

20 Excise tax revenues remaining after municipal reimbursement and payments into the
21 Mining ~~Corrective Action~~ Oversight Fund under section 2861 must be used as follows.

22 **Sec. 6. 36 MRSA §2866**, as enacted by PL 1991, c. 883, §8, is amended to read:

23 **§2866. Mining Oversight Fund**

24 **1. Creation of fund.** The Mining ~~Corrective Action~~ Oversight Fund, referred to in
25 this section as "the "fund," is established as a nonlapsing fund administered by the
26 Mining Excise Tax Trust Fund Board of Trustees, referred to in this section as "the
27 "board." The board shall oversee and authorize expenditures from the fund.

28 **2. Investment.** The Treasurer of State shall invest the money in the fund as
29 authorized by Title 5, section 138.

30 ~~**3. Scope of corrective action.** The fund may be used only for corrective action for~~
31 ~~mining operations located in municipalities.~~

32 **4. Uses of fund.** Money from the fund may be used only to fund ~~corrective action~~
33 oversight of mining activity as ~~defined~~ provided in the mining rules adopted by the
34 Department of Environmental Protection ~~and the Maine Land Use Regulation~~
35 ~~Commission under the Maine Metallic Mineral Mining Act, and expenses for site~~
36 oversight. Corrective action includes, but is not limited to, remedial action related to:
37 Expenses for site oversight include, but are not limited to, expenses of the department or
38 the department's agents or contractors related to site oversight, including costs of
39 personnel and administrative costs and expenses necessary to administer, review and
40 monitor corrective action.

41 ~~A. Contaminated ground water;~~

- 1 ~~B. Disposition of mining wastes;~~
- 2 ~~C. Reclamation defects on or surrounding the site; and~~
- 3 ~~D. Pollution control at the site.~~

4 ~~**5. Restrictions and liability.** Money from the fund may be used only for corrective~~
5 ~~action necessary to address problems that occur at the site following termination of~~
6 ~~mining operations and closure of the mine. Corrective action necessary during the~~
7 ~~operation of a mine must be funded by the mining company. The existence of this fund~~
8 ~~does not relieve a mining company of any liability or responsibility arising from a~~
9 ~~corrective action following termination of its mining operation in a municipality.~~

10 ~~**6. Disposition of fund.** When corrective action is necessary in accordance with this~~
11 ~~section, the board shall provide funds for remedial activities at the site on a pro rata basis~~
12 ~~to ensure that funds are available for any necessary corrective action at other sites. This~~
13 ~~determination is based on the amount of excise tax revenues generated at each site.~~

14 ~~**7. Depletion of fund.** Following termination of mining operations, the mining~~
15 ~~company and, in the case of a mining company that is a subsidiary of a corporation, the~~
16 ~~parent company remain liable for any corrective action determined necessary by the~~
17 ~~board. If the contributions of the mining company to the fund are insufficient to fund~~
18 ~~corrective action, the mining company or its successor, if the company has been sold,~~
19 ~~remains liable for the costs of corrective action. If the mining company ceases to exist,~~
20 ~~the parent company, if any, is liable for any necessary corrective action. Any funds~~
21 ~~expended for corrective action as provided in this section must be reimbursed in full by~~
22 ~~the mining company, its successor or its parent corporation.~~

23 **Sec. 7. 38 MRSA §349-A**, as enacted by PL 1989, c. 874, §1, is repealed.

24 **Sec. 8. 38 MRSA §351, first ¶**, as enacted by PL 1983, c. 574, §1, is amended to
25 read:

26 The Maine Environmental Protection Fund, referred to in this subchapter as "the
27 fund," is established as a nonlapsing fund to supplement licensing programs administered
28 by the Department of Environmental Protection. All Except as otherwise provided in this
29 section, all fees established under this subchapter shall must be credited to the fund, and
30 administrative expenses directly related to licensing programs shall must be charged to
31 the fund, except that in fiscal year 1984, \$41,250 shall be deposited in the General Fund.

32 **Sec. 9. 38 MRSA §351**, as amended by PL 1991, c. 9, Pt. E, §27, is further
33 amended by adding after the first indented paragraph a new paragraph to read:

34 All fees related to metallic mineral mining applications and permits under section
35 352, subsection 4-A must be credited to the Metallic Mining Fund, Other Special
36 Revenue Funds account, which is established as a subaccount of the Maine
37 Environmental Protection Fund to provide for prompt and effective planning, oversight
38 and implementation of metallic mineral mining operations.

39 **Sec. 10. 38 MRSA §352, sub-§3**, as amended by PL 2009, c. 642, Pt. A, §8, is
40 further amended to read:

41 **3. Maximum fee.** The commissioner shall set the actual fees and shall publish a
42 schedule of all fees by November 1st of each year. If the commissioner determines that a

1 particular application, by virtue of its size, uniqueness, complexity or other relevant
2 factors, is likely to require significantly more costs than those listed on Table I, the
3 commissioner may designate that application as subject to special fees. Such a
4 designation must be made at, or prior to, the time the application is accepted as complete
5 and may not be based solely on the likelihood of extensive public controversy. The
6 maximum fee for processing an application may not exceed \$250,000, except that the
7 maximum fee for processing an application under chapter 3, subchapter 1, article 9 is as
8 provided for in subsection 4-A. All staff of the department, the Department of Inland
9 Fisheries and Wildlife, the Department of Conservation, the Department of Agriculture,
10 Food and Rural Resources and the Department of Marine Resources who have worked on
11 the review of the application, including, but not limited to, preapplication consultations,
12 shall submit quarterly reports to the commissioner detailing the time spent on the
13 application and all expenses attributable to the application, including the costs of any
14 appeals filed by the applicant and, after taking into consideration the interest of fairness
15 and equity, any other appeals if the commissioner finds it in the public interest to do so.
16 Any appeal filed by the applicant of an application fee must be to the agency of
17 jurisdiction of the application. The costs associated with assistance to the board on an
18 appeal before the board may be separately charged. The processing fee for that
19 application must be the actual cost to the department, the Department of Inland Fisheries
20 and Wildlife, the Department of Conservation, the Department of Agriculture, Food and
21 Rural Resources and the Department of Marine Resources. The processing fee must be
22 distributed to each department that incurs a cost to be deposited in the account in which
23 the expenses were incurred in that department to reimburse the actual cost to that
24 department. The applicant must be billed quarterly and all fees paid prior to receipt of the
25 permit. At the time of the quarterly billing by the department, the commissioner shall
26 review the ongoing work of the department to identify, prevent and mitigate undue delays
27 or vague requirements of the application processing. Nothing in this section limits the
28 commissioner's authority to enter into an agreement with an applicant for payment of
29 costs in excess of the maximum fee established in this subsection.

30 **Sec. 11. 38 MRSA §352, sub-§4-A,** as enacted by PL 1989, c. 874, §2, is
31 repealed and the following enacted in its place:

32 **4-A. Fees for metallic mineral mining.** Metallic mineral mining permit
33 applications under chapter 3, subchapter 1, article 9 are subject to the following fees.
34 Fees under this subsection must be deposited in the Metallic Mining Fund, Other Special
35 Revenue Funds subaccount.

36 **A.** The initial processing fee is \$500,000.

37 **B.** Preapplication and processing fees are special fees subject to subsection 3. The
38 maximum fee for processing an application must be discussed by the department and
39 the applicant during preapplication meetings. If the applicant does not agree to the
40 maximum fee as determined by the commissioner, the refund provisions of paragraph
41 F apply.

42 **C.** The costs associated with the department's preparation for and attendance at any
43 application proceeding held by the board, including the costs associated with
44 assistance to the board, must be paid by the applicant.

1 D. The costs associated with the department's assistance to the board on an appeal by
2 the applicant before the board must be paid by the applicant and may be separately
3 charged to the applicant by the department. The costs associated with the
4 department's assistance to the board on an appeal by a person other than the applicant
5 before the board may not be charged to the applicant.

6 E. The annual license fee must be at least \$20,000 and may not exceed \$50,000 and
7 must be set by the department prior to the issuance of the permit.

8 F. If at any time the application is withdrawn by the applicant, the department shall
9 calculate the portion of the processing fee that was expended or committed by the
10 department or the department's agents or contractors for processing the application
11 prior to the withdrawal and the remainder of the processing fee not expended or
12 committed must be refunded to the applicant.

13 **Sec. 12. 38 MRSA §353, sub-§1-A**, as enacted by PL 1989, c. 874, §3, is
14 repealed.

15 **Sec. 13. 38 MRSA §353, sub-§2**, as amended by PL 1997, c. 794, Pt. B, §5, is
16 further amended to read:

17 **2. Processing fee.** Except for annual air emission fees pursuant to section 353-A and
18 annual waste discharge fees pursuant to section 353-B, a processing fee must be paid at
19 the time of filing the application. Failure to pay the processing fee at the time of filing
20 the application results in the application being returned to the applicant. One-half the
21 processing fee assessed in section 352, subsection 5-A for licenses issued for a 10-year
22 term must be paid at the time of filing the application. The remaining 1/2 of the
23 processing fee for licenses issued for a 10-year term must be paid 5 years after issuance
24 of the license. The commissioner may not refund the processing fee if the application is
25 denied by the board or the commissioner. ~~If~~ Except as provided in section 352, subsection
26 4-A, if the application is withdrawn by the applicant within 30 days of the start of
27 processing, the processing fee must be refunded, except in the case of nonferrous metal
28 mining applications portion of the processing fee that was expended or committed by the
29 department or the department's agents or contractors for the cost of processing the
30 application prior to the withdrawal of the application must be calculated, and the
31 remainder of the processing fee not expended or committed must be refunded. If an
32 application for nonferrous metal mining is withdrawn by the applicant within 30 days of
33 the date of filing, 1/2 of the application fee must be refunded.

34 **Sec. 14. 38 MRSA §420-D, sub-§5**, as amended by PL 2011, c. 206, §8, is
35 further amended to read:

36 **5. Relationship to other laws.** A storm water permit pursuant to this section is not
37 required for a project requiring review by the department pursuant to any of the following
38 provisions but the project may be required to meet standards for management of storm
39 water adopted pursuant to this section: article 6, site location of development; article 7,
40 performance standards for excavations for borrow, clay, topsoil or silt; article 8-A,
41 performance standards for quarries; article 9, the Maine Metallic Mineral Mining Act;
42 sections 631 to 636, permits for hydropower projects; and section 1310-N, 1319-R or
43 1319-X, waste facility licenses. When a project requires a storm water permit and
44 requires review pursuant to article 5-A, the department shall issue a joint order unless the

1 permit required pursuant to article 5-A is a permit-by-rule or general permit, or separate
2 orders are requested by the applicant and approved by the department.

3 A storm water permit pursuant to this section is not required for a project receiving
4 review by a registered municipality pursuant to section 489-A if the storm water
5 ordinances under which the project is reviewed are at least as stringent as the storm water
6 standards adopted pursuant to section 484 or if the municipality meets the requirements
7 of section 489-A, subsection 2-A, paragraph B.

8 **Sec. 15. 38 MRSA §480-D, sub-§3**, as amended by PL 2001, c. 618, §3, is
9 further amended to read:

10 **3. Harm to habitats; fisheries.** The activity will not unreasonably harm any
11 significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered
12 plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or
13 marine fisheries or other aquatic life.

14 In determining whether mining, as defined in section 490-MM, subsection 11, will
15 comply with this subsection, the department shall review an analysis of alternatives
16 submitted by the applicant. For purposes of this subsection, a practicable alternative to
17 mining, as defined in section 490-MM, subsection 11, that is less damaging to the
18 environment is not considered to exist. The department may consider alternatives
19 associated with the activity, including alternative design and operational measures, in its
20 evaluation of whether the activity avoided and minimized impacts to the maximum extent
21 practicable.

22 In determining whether there is unreasonable harm to significant wildlife habitat, the
23 department may consider proposed mitigation if that mitigation does not diminish in the
24 vicinity of the proposed activity the overall value of significant wildlife habitat and
25 species utilization of the habitat and if there is no specific biological or physical feature
26 unique to the habitat that would be adversely affected by the proposed activity. For
27 purposes of this subsection, "mitigation" means any action taken or not taken to avoid,
28 minimize, rectify, reduce, eliminate or compensate for any actual or potential adverse
29 impact on the significant wildlife habitat, including the following:

- 30 A. Avoiding an impact altogether by not taking a certain action or parts of an action;
- 31 B. Minimizing an impact by limiting the magnitude, duration or location of an
32 activity or by controlling the timing of an activity;
- 33 C. Rectifying an impact by repairing, rehabilitating or restoring the affected
34 environment;
- 35 D. Reducing or eliminating an impact over time through preservation and
36 maintenance operations during the life of the project; or
- 37 E. Compensating for an impact by replacing the affected significant wildlife habitat.

38 **Sec. 16. 38 MRSA §482, sub-§2, ¶B**, as amended by PL 2005, c. 330, §18, is
39 further amended to read:

40 B. ~~Is a metallic mineral mining or advanced exploration activity as defined in this~~
41 ~~section~~ or an oil or gas exploration or production activity that includes drilling or
42 excavation under water;

1 **Sec. 17. 38 MRSA §482, sub-§2-B**, as amended by PL 1995, c. 700, §4, is
2 repealed.

3 **Sec. 18. 38 MRSA §484, sub-§4-A**, as amended by PL 2009, c. 506, §1 and
4 affected by §3, is further amended to read:

5 **4-A. Storm water management and erosion and sedimentation control.** The
6 proposed development, ~~other than a metallic mineral mining or advanced exploration~~
7 ~~activity~~, meets the standards for storm water management in section 420-D and the
8 standard for erosion and sedimentation control in section 420-C. ~~A proposed metallic~~
9 ~~mineral mining or advanced exploration activity must meet storm water standards in~~
10 ~~department rules adopted to implement subsections 3 and 7.~~ If exempt under section
11 420-D, subsection 7, a proposed development must satisfy the applicable storm water
12 quantity standard and, if the development is located in the direct watershed of a lake
13 included in the list adopted pursuant to section 420-D, subsection 3, any applicable storm
14 water quality standards adopted pursuant to section 420-D. For redevelopment projects
15 only, the standards for storm water management in section 420-D are met if the proposed
16 development is located in a designated area served by a department-approved
17 management system for storm water as described in section 420-D, subsection 2, as long
18 as the owner or operator of the parcel upon which the proposed development will be
19 located enters into or obtains and remains in compliance with all agreements, permits and
20 approvals necessary for the proposed development to be served by such management
21 system for storm water.

22 **Sec. 19. 38 MRSA §485-A, sub-§1-C**, as amended by PL 2009, c. 602, §2, is
23 further amended to read:

24 **1-C. Long-term construction projects.** The department shall adopt rules
25 identifying requirements for a long-term construction project that allow approval of
26 development within a specified area and within specified parameters such as maximum
27 area and groundwater usage, although the specific nature and extent of the development
28 or timing of construction may not be known at the time a permit for the long-term
29 construction project is issued. The location and parameters of the development must
30 meet the standards of this article. ~~This subsection does not apply to metallic mineral~~
31 ~~mining or advanced exploration activities.~~

32 **Sec. 20. 38 MRSA §488, sub-§9**, as amended by PL 2009, c. 615, Pt. E, §19, is
33 further amended to read:

34 **9. Development within unorganized areas.** A development located entirely within
35 an area subject to the jurisdiction of the Maine Land Use Regulation Commission, other
36 than a ~~metallic mineral mining or advanced exploration activity~~, an oil terminal facility or
37 an offshore wind power project with an aggregate generating capacity of 3 megawatts or
38 more that is not a community-based offshore wind energy project as defined in Title 12,
39 section 682, subsection 19, is exempt from the requirements of this article.

40 A. If a development is located in part within an organized area and in part within an
41 area subject to the jurisdiction of the Maine Land Use Regulation Commission, that
42 portion of the development within the organized area is subject to review under this
43 article if that portion is a development pursuant to this article. That portion of the

1 development within the jurisdiction of the commission is exempt from the
2 requirements of this article except as provided in paragraph B.

3 B. If a development is located as described in paragraph A, the department may
4 review those aspects of a development within the jurisdiction of the Maine Land Use
5 Regulation Commission if the commission determines that the development is an
6 allowed use within the subdistrict or subdistricts for which it is proposed pursuant to
7 Title 12, section 685-B. A permit from the Maine Land Use Regulation Commission
8 is not required for those aspects of a development approved by the department under
9 this paragraph.

10 Review by the department of subsequent modifications to a development approved by the
11 department is required. For a development or part of a development within the
12 jurisdiction of the Maine Land Use Regulation Commission, the director of the
13 commission may request and obtain technical assistance and recommendations from the
14 department. The commissioner shall respond to the requests in a timely manner. The
15 recommendations of the department must be considered by the Maine Land Use
16 Regulation Commission in acting upon a development application.

17 **Sec. 21. 38 MRSA §488, sub-§11**, as repealed and replaced by PL 1997, c. 502,
18 §10 and affected by §18, is amended to read:

19 **11. Farm and fire ponds.** A pond that is used for irrigation of field crops, water
20 storage for cranberry operations or fire protection determined to be necessary in that
21 location by the municipal fire department is exempt from review under this article. This
22 provision does not provide an exemption for ~~mining or advanced exploration activity or~~
23 excavation for borrow, clay, topsoil or silt.

24 **Sec. 22. 38 MRSA §490**, as amended by PL 1995, c. 700, §11, is repealed.

25 **Sec. 23. 38 MRSA c. 3, sub-c. 1, art. 9** is enacted to read:

26 **ARTICLE 9**

27 **MAINE METALLIC MINERAL MINING ACT**

28 **§490-LL. Short title**

29 This article may be known and cited as "the Maine Metallic Mineral Mining Act."

30 **§490-MM. Definitions**

31 As used in this article, unless the context otherwise indicates, the following terms
32 have the following meanings.

33 **1. Advanced exploration.** "Advanced exploration" means any metallic mineral bulk
34 sampling or exploratory activity that exceeds those activities that are exploration
35 activities and are specified in rules adopted by the department. Samples taken as part of
36 exploration are not considered bulk sampling.

37 **2. Affected area.** "Affected area" means an area outside of a mining area where the
38 land surface, surface water, groundwater, air resources, soils or existing uses are

1 potentially affected by mining operations as determined through an environmental impact
2 assessment.

3 **3. Beneficiation.** "Beneficiation" means the treatment of ore to liberate or
4 concentrate its valuable constituents. "Beneficiation" includes, but is not limited to,
5 crushing, grinding, washing, dissolution, crystallization, filtration, sorting, sizing, drying,
6 sintering, pelletizing, briquetting, calcining, roasting in preparation for leaching to
7 produce a final or intermediate product that does not undergo further beneficiation or
8 processing, gravity concentration, magnetic separation, electrostatic separation, flotation,
9 ion exchange, solvent extraction, electrowinning, precipitation, amalgamation and dump,
10 vat, tank and in situ leaching.

11 **4. Closure.** "Closure" means activities undertaken to manage a mining area and, if
12 necessary, an affected area, pursuant to an environmental protection, reclamation and
13 closure plan approved by the department. "Closure" includes, but is not limited to,
14 actions taken to contain metallic mineral wastes on site and to ensure the integrity of
15 waste management structures and the permanent securement of pits, shafts and
16 underground workings.

17 **5. Contamination.** As applied to groundwater, "contamination" means
18 nonattainment of water quality standards, the cause of which is attributable to a mining
19 operation, as:

20 A. Specified in rules relating to primary drinking water standards adopted pursuant
21 to Title 22, section 2611; or

22 B. Demonstrated by a statistically significant change in measured parameters that
23 indicates deterioration of water quality determined through assessment monitoring.

24 As applied to surface water, "contamination" means a condition created by any direct or
25 indirect discharge that causes or contributes to nonattainment of applicable water quality
26 or licensing standards under section 414-A or 420. The nonattainment may be
27 attributable to the mining operation either by itself or in combination with other
28 discharges.

29 **6. Exploration.** "Exploration" or "exploration activity" means the following
30 activities when conducted in accordance with rules adopted by the department for the
31 purpose of determining the location, extent and composition of metallic mineral deposits:
32 test boring, test drilling, hand sampling, the digging of test pits, trenching or outcrop
33 stripping for the removal of overburden having a maximum surface opening of 300
34 square feet per test pit or trench or other test sampling methods determined by the
35 department to cause minimal disturbance of soil and vegetative cover.

36 **7. Heap or percolation leaching.** "Heap or percolation leaching" means a process
37 for the primary purpose of recovering metallic minerals in an outdoor environment from a
38 stockpile of crushed or excavated ore by percolating water or a solution through the ore
39 and collecting the leachate.

40 **8. Metallic mineral.** "Metallic mineral" means any ore or material to be excavated
41 from the natural deposits on or in the earth for its metallic mineral content to be used for
42 commercial or industrial purposes. "Metallic mineral" does not include thorium or
43 uranium.

1 **9. Metallic mineral operator.** "Metallic mineral operator" means a permittee or
2 other person who is engaged in, or who is preparing to engage in, mining operations for
3 metallic minerals, whether individually or jointly or through agents, employees or
4 contractors.

5 **10. Metallic product.** "Metallic product" means a commercially salable mineral or
6 metal produced primarily for its metallic mineral content in its final marketable form or
7 state.

8 **11. Mining.** "Mining," "mining operation" or "mining activity" means activities,
9 facilities or processes necessary for the extraction or removal of metallic minerals or
10 overburden or for the preparation, washing, cleaning or other treatment of metallic
11 minerals and includes the bulk sampling, advanced exploration, extraction or
12 beneficiation of metallic minerals as well as waste storage and other stockpiles and
13 reclamation activities, but does not include exploration.

14 **12. Mining area.** "Mining area" means an area of land described in a permit
15 application and approved by the department, including but not limited to land from which
16 earth material is removed in connection with mining, the lands on which material from
17 that mining is stored or deposited, the lands on which beneficiating or treatment facilities,
18 including groundwater and surface water management treatment systems, are located or
19 the lands on which water reservoirs used in a mining operation are located.

20 **13. Mining permit.** "Mining permit" means a permit issued under this article for
21 conducting mining and reclamation operations.

22 **14. Permittee.** "Permittee" means a person who is issued a mining permit.

23 **15. Post-closure monitoring period.** "Post-closure monitoring period" means a
24 period following closure during which a permittee is required to conduct monitoring of
25 groundwater and surface water and other environmental parameters as specified in a
26 mining permit.

27 **16. Reclamation.** "Reclamation" or "reclamation operation" means the
28 rehabilitation of the mining area, affected area and any other area of land or water body
29 affected by mining under an environmental protection, reclamation and closure plan
30 approved by the department. "Reclamation" includes, but is not limited to, stabilization
31 of slopes, creation of safety benches, planting of forests, seeding of grasses and legumes
32 for grazing purposes, planting of crops for harvest and enhancement of wildlife and
33 aquatic resources.

34 **17. Tailings impoundment.** "Tailings impoundment" means land on which is
35 deposited, by hydraulic or other means, material that is separated from the metallic
36 product in the beneficiation or treatment of minerals, including any surrounding dikes
37 constructed to contain the material.

38 **§490-NN. Administration and enforcement; rules; regulation by local units of**
39 **government**

40 **1. Administration; jurisdiction; rules.** The department shall administer and
41 enforce this article in all areas of the State, including the unorganized territory, in order to
42 regulate mining.

1 A. The provisions of articles 6, 7 and 8-A, chapter 13 and section 420-D do not
2 apply to projects reviewed under this article. Projects reviewed under this article do
3 not require any other permits from the department except for permits required under
4 section 490-OO; permits required under article 5-A; waste discharge licenses
5 required under section 413 for discharges of pollutants to groundwater via an
6 underground injection well or discharges of pollutants to surface waters of the State,
7 including permits for construction and industrial discharge issued by the department
8 pursuant to 40 Code of Federal Regulations, Section 122.26; licenses required under
9 chapter 4; and other permits or licenses issued pursuant to any United States
10 Environmental Protection Agency federally delegated program. This article does not
11 prohibit the department from adopting rules to implement standards for mining that
12 are necessary to protect human health and the environment.

13 B. In addition to other powers granted to it, the department shall adopt rules to carry
14 out its duties under this article, including, but not limited to, standards for
15 exploration, advanced exploration, construction, operation, closure, post-closure
16 monitoring, reclamation and remediation. Except as otherwise provided, rules
17 adopted under this article are major substantive rules for purposes of Title 5, chapter
18 375, subchapter 2-A and are subject to section 341-H.

19 2. **Maine Land Use Regulation Commission.** The department may not approve a
20 permit under this article in an unorganized territory unless the Maine Land Use
21 Regulation Commission certifies to the department that:

22 A. The proposed mining is an allowed use within the subdistrict or subdistricts in
23 which it is to be located; and

24 B. The proposed mining meets any land use standard established by the Maine Land
25 Use Regulation Commission and applicable to the project that is not considered in the
26 department's review.

27 3. **Municipal authority.** This article does not prevent a municipality from
28 regulating or controlling mining or reclamation activities that are subject to this article,
29 including, but not limited to, construction, operation, closure, post-closure monitoring,
30 reclamation and remediation activities.

31 **§490-OO. Mining permit; application procedure**

32 1. **Permit required.** A person may not engage in mining without a permit issued by
33 the department under this article.

34 2. **Application procedure.** An application for a mining permit must be submitted to
35 the department in a format to be developed by the department. The application must
36 include the following:

37 A. The fees established in section 352. All costs incurred by the department in
38 processing an application must be paid for by the applicant;

39 B. An environmental impact assessment for the proposed mining operation that
40 describes the natural and artificial features, including, but not limited to, groundwater
41 and surface water quality, flora, fauna, hydrology, geology and geochemistry and
42 baseline conditions for those features in the proposed mining area and affected area
43 that may be affected by the mining operation and the potential impacts on those

1 features from the proposed mining operation. The environmental impact assessment
2 must define the mining area and the affected area and address practicable alternatives
3 to address impacts to the mining area and potential impacts to the affected area. The
4 department shall review the environmental impact assessment and may approve,
5 reject or require modifications to the assessment;

6 C. An environmental protection, reclamation and closure plan for the proposed
7 mining operation, including beneficiation operations, that will reasonably avoid,
8 minimize and mitigate the actual and potential adverse impacts on natural resources,
9 the environment and public health and safety within the mining area and the affected
10 area. The plan must address unique issues associated with mining and must include,
11 but not be limited to, the following:

12 (1) A description of materials, methods and techniques that will be used;

13 (2) Information that demonstrates that the methods, materials and techniques
14 proposed to be used are capable of accomplishing their stated objectives in
15 protecting the environment and public health. The required information may
16 consist of results of actual testing, modeling, documentation by credible
17 independent testing and certification organizations or documented applications in
18 similar uses and settings;

19 (3) Plans and schedules for interim and final reclamation of the mining area and
20 the affected area following cessation of mining operations and plans and
21 schedules for measures taken during suspension of operations, including
22 contemporaneous reclamation, to the extent practicable;

23 (4) A description of the geochemistry of the ore, waste rock, overburden,
24 peripheral rock, spent leach material and tailings, including characterization of
25 leachability, reactivity and acid-forming characteristics;

26 (5) A mining operations closure plan;

27 (6) Provisions for the prevention, control and monitoring of acid-forming waste
28 products and other waste products from the mining process in accordance with
29 standards in subsection 4, paragraphs D and E;

30 (7) Storm water and surface water management provisions;

31 (8) A water quality monitoring plan;

32 (9) A description of the wastewater discharge management plan;

33 (10) A description of any tailings impoundment and the methods, materials and
34 techniques to be used;

35 (11) A plan for the storage of hazardous materials; and

36 (12) An estimate of costs for reclamation, closure and environmental protection.

37 D. A contingency plan that includes an assessment of the risk to the environment and
38 public health and safety associated with potential significant incidents or failures
39 related to the mining operation and describes the metallic mineral operator's

1 notification and response plans. When the application is accepted as complete for
2 processing by the department, the applicant shall provide a copy of the contingency
3 plan to each municipality in which the mining area and affected area may be located
4 or, in the unorganized territory, to the county commissioners for each county in
5 which the mining area or affected area may be located. The department may require
6 amendments to the contingency plan;

7 E. Financial assurance as described in section 490-RR; and

8 F. A list of other state and federal permits or approvals anticipated by the applicant
9 to be required.

10 **3. Permit issuance if violation exists.** A mining permit may not be issued or
11 transferred to a person if the department has determined that person to be in violation of
12 this article, rules adopted under this article, a mining permit, an order of the department
13 issued pursuant to this article or any other state law, rule, permit or order that the
14 department determines through rulemaking is relevant to the issuance or transfer of a
15 mining permit unless the person has corrected the violation or the person has agreed in a
16 judicially enforceable document to correct the violation pursuant to a compliance
17 schedule approved by the department.

18 **4. Criteria for approval.** Except as provided for in subsection 3, the department
19 shall approve a mining permit whenever it finds the following.

20 A. The applicant has the financial capacity and technical ability to develop the
21 project in a manner consistent with applicable state environmental standards and with
22 the provisions of this article.

23 B. The applicant has made adequate provision for fitting the mining operation
24 harmoniously into the existing natural environment and the development will not
25 unreasonably adversely affect existing uses, scenic character, air quality, water
26 quality or other natural resources.

27 (1) In making a determination under this paragraph regarding a mining
28 operation's effects on natural resources regulated by the Natural Resources
29 Protection Act, the department shall apply the same standards applied under the
30 Natural Resources Protection Act.

31 (2) The applicant must demonstrate that there is reasonable assurance that public
32 and private water supplies will not be affected by the mining operations.

33 (3) The applicant must demonstrate that rules to protect human health and the
34 environment adopted by the department pursuant to this article will be met.

35 C. The mining operation will be located on soil types that are suitable to the nature
36 of the mining operation.

37 D. There is reasonable assurance that discharges of pollutants from the mining
38 operation will not violate applicable water quality standards. Notwithstanding
39 sections 465-C and 470, discharges to groundwater from activities permitted under
40 this article may occur within a mining area, but such discharges may not result in
41 contamination of groundwater beyond each mining area. In determining compliance

1 with this standard, the department shall require groundwater monitoring consistent
2 with the standards established pursuant to section 490-QQ, subsection 3.

3 E. The mining operation will not cause a direct or indirect discharge of pollutants
4 into surface waters or discharge groundwater containing pollutants into surface
5 waters that results in a condition that is in nonattainment of or noncompliance with
6 the standards in article 4-A or section 414-A or 420.

7 F. Withdrawals of groundwater and surface water related to the mining operation
8 will comply with article 4-B.

9 G. The applicant has made adequate provision of utilities, including water supplies,
10 wastewater facilities and solid waste disposal, required for the mining operation, and
11 the mining operation will not have an unreasonable adverse effect on the existing or
12 proposed utilities in a municipality or area served by those services.

13 H. The mining operation will not unreasonably cause or increase the flooding of the
14 area that is altered by the mining operation or adjacent properties or create an
15 unreasonable flood hazard to any structure. Mining operations may be placed in
16 flood plains or flood hazard areas as long as they are designed, constructed, operated
17 and reclaimed in a manner that complies with the approval criteria in this subsection
18 and the Natural Resources Protection Act.

19 I. The applicant has made adequate provision for protection of public safety.

20 J. The mining operation will not use heap or percolation leaching.

21 **5. Permit coordination.** If a person submits an application for a mining permit
22 under this article and an application to the department for any other permit required
23 pursuant to section 490-NN, subsection 1, the department shall process the applications in
24 a coordinated fashion and issue a joint decision. The coordinated permit process must
25 include consolidation of public hearings.

26 **6. Public and local participation.** In addition to provisions for public participation
27 pursuant to Title 5, chapter 375 and department rules relating to public participation in
28 the processing of applications, the following provisions apply to an application for a
29 mining permit.

30 A. At least 60 days prior to submitting an application to the department, the applicant
31 shall notify by certified mail the municipal officers of each municipality in which the
32 mining area or affected area may be located or, in the unorganized territory, the
33 county commissioners for each county in which the mining area or affected area may
34 be located. The applicant at the same time shall provide a copy of the notice to the
35 department and the Director of the Bureau of Geology and Natural Areas within the
36 Department of Conservation.

37 B. At the time an application is submitted to the department, the applicant shall
38 provide written notice to the municipal officers of each municipality in which the
39 mining area and affected area may be located or, in the unorganized territory, to the
40 county commissioners for each county in which the mining area or affected area may
41 be located and shall publish notice of the application in a newspaper of general
42 circulation in the area.

1 C. The department shall hold an adjudicatory public hearing within the municipality
2 in which the mining operation may be located or, in the unorganized territory, in a
3 convenient location in the vicinity of the proposed mining operation. Administrative
4 expenses of a hearing held pursuant to this paragraph must be paid for by the
5 applicant.

6 D. The municipal officers, or their designees, from each municipality in which the
7 mining area or affected area may be located or, in the unorganized territory, the
8 county commissioners, or their designees, for each county in which the mining area
9 or affected area may be located have intervenor status if they request it within 60
10 days after notification under paragraph B. The intervenor status granted under this
11 paragraph applies in any proceeding for a permit under this article. Immediately upon
12 the commissioner's receipt of a request for intervenor status under this paragraph, the
13 intervenors have all rights and responsibilities commensurate with this status.

14 E. The commissioner shall reimburse or make assistance grants for the direct
15 expenses of intervention of any party granted intervenor status under paragraph D,
16 not to exceed \$50,000. The department shall adopt rules governing payment by an
17 applicant to the department of fees necessary for the department to award intervenor
18 assistance grants and governing the award and management of intervenor assistance
19 grants and reimbursement of expenses to ensure that the funds are used in support of
20 direct, substantive participation in the proceedings before the department. Allowable
21 expenses include, without limitation, hydrogeological studies, traffic analyses, the
22 retention of expert witnesses and attorneys and other related items. Expenses not used
23 in support of direct, substantive participation in the proceedings before the
24 department, including attorney's fees related to court appeals, are not eligible for
25 reimbursement under this subsection. Expenses otherwise eligible under this
26 subsection that are incurred by the municipality or county commissioners after
27 notification pursuant to paragraph B are eligible for reimbursement under this
28 paragraph only if a completed application is accepted by the department. The
29 department shall also establish rules governing the process by which an intervenor
30 under paragraph D may gain entry to the proposed mining site for purposes of
31 reasonable inspection and site investigations under the auspices of the department.
32 Rules adopted pursuant to this paragraph are routine technical rules as defined in
33 Title 5, chapter 375, subchapter 2-A.

34 **§490-PP. Mining permit; duration; termination; revocation; transfer; amendment**

35 **1. Duration of permit.** A mining permit issued by the department remains in effect
36 until terminated or revoked by the department. The duration of other permits issued for
37 the mining operation must be provided for in those permits. The department shall conduct
38 annual reviews of the mining operations and assess compliance with the permit terms.

39 **2. Termination of permit.** After public notice, the department may terminate or
40 request surrender of a mining permit if:

41 A. The permittee has not commenced construction of mining facilities or conducted
42 mining activities covered by the mining permit within 4 years after the effective date
43 of the mining permit; or

1 B. The permittee has satisfied the requirements of the environmental protection,
2 reclamation and closure plan and completed final reclamation of the mining area and,
3 if necessary, the affected area and requests the termination of the mining permit and
4 the department determines all of the following:

5 (1) The air, water or other natural resources are not polluted or impaired from the
6 mining operation;

7 (2) The permittee has otherwise fulfilled all conditions determined to be
8 necessary by the department to protect the public health, safety and welfare and
9 the environment; and

10 (3) The requirements for the post-closure monitoring period have been satisfied.

11 **3. Revocation of permit.** The department may revoke a mining permit after public
12 notice pursuant to section 490-TT.

13 **4. Transfer of permit.** After public notice and unless otherwise provided in this
14 article, a mining permit may be transferred with prior written approval of the department
15 in accordance with the provisions of this subsection.

16 A. The person acquiring the mining permit shall submit to the department on forms
17 provided by the department a request for transfer of the mining permit and shall
18 provide the financial assurance required under section 490-RR.

19 B. A person acquiring a mining permit must accept the conditions of the existing
20 mining permit and adhere to the requirements set forth in this article.

21 C. If a permittee is determined by the department to be in violation of this article or
22 the rules adopted under this article at the mining site that is the subject of the transfer,
23 the mining permit may not be transferred until the permittee has completed the
24 necessary corrective actions or the person acquiring the mining permit has entered
25 into a written consent agreement to correct all of the violations.

26 D. A transferee shall demonstrate to the department's satisfaction the technical and
27 financial capacity and intent to:

28 (1) Comply with all terms and conditions of the mining permit; and

29 (2) Satisfy all applicable statutory and regulatory criteria, including, but not
30 limited to, providing adequate evidence of the financial assurance required by
31 section 490-RR.

32 **5. Amendment of permit.** After public notice, a mining permit may be amended in
33 accordance with this subsection.

34 A. A permittee may submit to the department a request to amend a mining permit to
35 address anticipated changes in the mining operation, including, if applicable,
36 amendments to the environmental impact assessment and to the environmental
37 protection, reclamation and closure plan.

38 B. The department may require a mining permit to be amended if the department
39 determines that the terms and conditions of the mining permit are not providing

1 reasonable protection of the environment, natural resources or public health and
2 safety.

3 **§490-QQ. Performance, operation and reclamation standards**

4 **1. Performance standards.** Standards adopted by the department through
5 rulemaking must be performance-based to the extent feasible, and the department may
6 require that the applicant implement control devices or measures necessary to achieve the
7 performance standards. If the rules include standards that are not performance-based, the
8 rules may allow a permittee to propose an alternative means of compliance that achieves
9 equivalent environmental performance. The department is not required to approve the
10 proposed alternative means of compliance. If the applicant proposes a control device or
11 measure, it must demonstrate that there is reasonable assurance that the device or measure
12 will achieve the performance standard.

13 **2. Suspension of mining operations.** If mining operations are suspended for a
14 continuous period exceeding 90 days, the permittee shall provide notice to the department
15 and take actions, consistent with its environmental protection, reclamation and closure
16 plan, to maintain, monitor and secure the mining area and shall conduct any interim
17 sloping or stabilizing of surfaces necessary to protect the environment, natural resources
18 and public health and safety in accordance with the mining permit. If mining operations
19 are suspended for a continuous period exceeding 365 days, the permittee is considered to
20 have ceased mining operations and all requirements applicable to closure take effect
21 unless the department agrees in writing to delay the implementation of the closure plan
22 based on a written submission by the permittee that demonstrates that the mining
23 operations are expected to recommence within a reasonable period of time as determined
24 by the department. The department may require partial closure of mining operations.

25 **3. Water quality monitoring.** Through rulemaking the department shall establish
26 standards for monitoring groundwater as close as practicable to any mining area that may
27 pose a threat to groundwater. A permittee shall conduct groundwater and surface water
28 monitoring in accordance with the provisions of a mining permit during mining
29 operations, during suspension of mining operations, during closure and during the post-
30 closure monitoring period. The post-closure monitoring period must be at least 30 years
31 following cessation of mining, subject to the following conditions.

32 **A.** The permittee shall provide to the department a written request to terminate post-
33 closure monitoring not less than 18 months before the proposed termination date and
34 shall provide the department with technical data and information demonstrating the
35 basis for the termination of the post-closure monitoring.

36 **B.** The department may shorten the post-closure monitoring period at any time upon
37 determining that there is no significant potential for water contamination resulting
38 from the mining operation.

39 **C.** The department shall extend the post-closure monitoring period in increments of
40 up to 20 years unless the department determines, approximately one year before the
41 end of a post-closure monitoring period or post-closure incremental monitoring
42 period, that there is no significant potential for surface water or groundwater
43 contamination resulting from the mining operation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

4. Reclamation. The following reclamation requirements apply.

A. Except as provided in paragraph B, a permittee shall commence and complete final reclamation of a mining area and, if necessary, any affected area consistent with mining permit conditions and the environmental protection, reclamation and closure plan approved by the department.

B. Upon written request of a permittee, the department may approve an extension of time to begin or complete final reclamation.

C. Both the mining area and the affected area must be reclaimed with the goal that the affected area be returned to the ecological conditions that approximate pre-mining conditions to the extent feasible and practicable and considering any changes caused by non-mining activities or other natural events.

D. Following closure and reclamation, the landowner or lessee of a mining area in an unorganized territory shall petition the Maine Land Use Regulation Commission for rezoning to an appropriate subdistrict designation.

5. Inspection and maintenance. A permittee shall fully comply with all inspection, maintenance and monitoring requirements contained in a mining permit. After closure, mining areas and affected areas must be inspected at least twice per year. All waste piles and impoundments or any other pile or storage facility must be inspected by a licensed civil engineer with expertise in structural stability of waste piles and impoundments. The engineer shall either certify that the mining area and affected area are in good condition and not susceptible to failure due to significant weather, seismic or other events or identify the corrective measures that must be undertaken by the permittee. The inspections must document that all permit requirements, including storm water control, sediment and erosion control, dust migration, access controls, land use restrictions, waste pile or impoundment stabilization measures and treatment systems are fully compliant with the mining permit conditions and that there are no known conditions that could present an unreasonable threat to public health and safety or the environment. A permittee shall notify the department of any recommended corrective measures as soon as practicable after the inspection. A permittee shall submit an inspection report to the department within 21 days after the inspection.

§490-RR. Financial assurance

1. Duration of financial assurance. A permittee shall maintain financial assurance during mining operations until the department determines that all reclamation has been completed and during the post-closure monitoring period except that financial assurance must be reduced or released immediately upon termination of a mining permit under section 490-PP, subsection 2, paragraph A. The department may require financial assurance to remain in effect for as long as the mining operation and any associated waste material could create an unreasonable threat to public health and safety or the environment.

2. Coverage of financial assurance. The financial assurance required under subsection 1 applies to all mining and reclamation operations that are subject to a mining permit and must be sufficient to cover the cost for the department to administer, and hire a 3rd party to implement, activities necessary for the investigation, monitoring, closure,

1 treatment, remediation, reclamation, operation and maintenance under the environmental
2 protection, reclamation and closure plan as well as other necessary environmental
3 protection measures, including remediation of any contamination of the air, surface water
4 or groundwater.

5 **3. Form of financial assurance.** The financial assurance may consist of a surety
6 bond, escrow, cash, certificate of deposit, trust, irrevocable letter of credit issued by a
7 financial institution acceptable to the department, or other equivalent security, or
8 combination thereof, as long as the department approves the financial assurance as
9 proposed by the applicant. When determining the appropriate security to require, the
10 department shall take into consideration the type and location of the mining operation and
11 the type of security that is adequate to protect the State's financial interest. The financial
12 assurance must be in a form that cannot be cancelled, withdrawn, revoked or otherwise
13 reduced without the express written consent of the commissioner after a finding that the
14 reduced amount is appropriate given the conditions related to the mining operation,
15 including, but not limited to, the potential cost of long-term maintenance and monitoring,
16 closure and any necessary response to episodic maintenance.

17 **4. Updates to financial assurance.** A permittee shall provide to the department an
18 annual statement of financial responsibility, and the department may require that the
19 financial assurance be adjusted to ensure that the financial assurance is sufficient for the
20 purposes of subsection 2.

21 **5. Failure to provide financial assurance.** Failure to provide financial assurance
22 under this section constitutes grounds for the department to order immediate suspension
23 of mining activities pursuant to section 490-TT, including, but not limited to, the removal
24 of metallic product from the mining area.

25 **§490-SS. Mining and reclamation report**

26 **1. Filing requirement.** A permittee shall file with the department a mining and
27 reclamation report on or before March 15th of each year, during the period the mine is
28 operating, during suspension of mining operations and during the post-closure monitoring
29 period. The mining and reclamation report must contain the following:

30 A. A description of the status of mining and reclamation operations;

31 B. An update of the contingency plan. The permittee shall provide a copy of the
32 update to the municipality or county commissioners, as applicable;

33 C. A report of monitoring results for the preceding calendar year;

34 D. A report of the total tons of material mined from the mining area and the amount
35 of metallic product by weight produced from the mine for the preceding calendar
36 year; and

37 E. A list of the notifications required under subsection 2 for the preceding calendar
38 year.

39 **2. Notification requirement.** A permittee shall promptly notify the department and
40 each municipality in which the mining area and the affected area are located, or, in the
41 unorganized territory, the county commissioners for each county in which the mining
42 area and the affected area are located, of any incident, act of nature or exceedance of a

1 permit standard or condition related to the mining operation that has created, or may
2 create, a threat to the environment, natural resources or public health and safety.

3 **3. Records.** Records must be retained as follows.

4 A. Records upon which mining and reclamation reports are based must be preserved
5 by the permittee for 6 years. The permittee shall make the records available to the
6 department upon request.

7 B. Records upon which incident reports under subsection 2 are based must be
8 preserved by the permittee for 6 years or until the end of the post-closure monitoring
9 period, whichever is later.

10 **§490-TT. Violations**

11 **1. Permittee required to correct violations.** If the department determines that a
12 permittee has violated this chapter, a rule adopted under this article, an order of the
13 department or a mining permit issued under this article, the department shall require the
14 permittee to correct the violation and the department may pursue enforcement action
15 pursuant to sections 347-A, 348 and 349.

16 **2. Imminent endangerment.** If the department determines that a violation under
17 subsection 1 is causing or resulting in an imminent and substantial endangerment to the
18 public health or safety, environment or natural resources, the department shall take action
19 necessary to abate or eliminate the endangerment. Such action may include one or more
20 of the following:

21 A. Revoking the mining permit as authorized by section 342, subsection 11-B;

22 B. Issuing an order to the permittee requiring immediate suspension of mining
23 activities, including, but not limited to, the removal of metallic product from the site;

24 C. Issuing an order to the permittee to undertake such other response actions as may
25 be necessary to abate or eliminate the endangerment; and

26 D. Issuance of an emergency order as authorized by section 347-A, subsection 3.

27 **3. Effect of revocation or suspension.** The revocation of a mining permit or
28 suspension of mining activities under subsection 2 does not relieve a permittee of the
29 responsibility to complete closure, reclamation, operation and maintenance and
30 monitoring, to maintain financial assurance required under section 490-RR and to
31 undertake all appropriate measures to protect the environment, natural resources and
32 public health and safety.

33 **4. Compliance with Maine Administrative Procedure Act.** The department shall
34 comply with the Maine Administrative Procedure Act in its actions under this section.

35 **Sec. 24. 38 MRSA §633, sub-§2,** as amended by PL 1989, c. 878, Pt. G, §8, is
36 further amended to read:

37 **2. Exceptions.** This subarticle ~~shall~~ does not apply to activities for which, prior to
38 the effective date of this Act, a permit or permits have been issued pursuant to any of the
39 following laws: Land use regulation laws, Title 12, sections 681 to 689; stream alteration
40 laws, former sections 425 to 430; great ponds laws, former sections 391 to 394; alteration
41 of coastal wetlands laws, former sections 471 to 478; site location of development laws,

1 sections 481 to 490 489-E; and small hydroelectric generating facilities laws, this
2 subarticle.

3 **Sec. 25. 38 MRSA §840, sub-§1, ¶D**, as amended by PL 1995, c. 630, §2, is
4 further amended to read:

5 D. Operating with a permit setting water levels issued under the protection of
6 natural resources laws, sections 480-A to 480-S; the site location of development
7 laws, sections 481 to 490 489-E; the small hydroelectric generating facilities laws,
8 sections 631 to 636; the land use regulation laws, Title 12, sections 681 to 689; or any
9 other statute regulating the construction or operation of dams;

10 **Sec. 26. 38 MRSA §1319-E, sub-§1, ¶E**, as amended by PL 1993, c. 355, §54,
11 is further amended to read:

12 E. Costs incurred in the inspection or supervision of hazardous waste, waste oil and
13 biomedical waste activities and handlers; and

14 **Sec. 27. 38 MRSA §1319-E, sub-§1, ¶F**, as amended by PL 1993, c. 355, §54, is
15 repealed.

16 **Sec. 28. Mining Oversight Fund; legislative intent.** It is the Legislature's
17 intent that the Mining Oversight Fund created in the Maine Revised Statutes, Title 36,
18 section 2866 be used only for its intended purpose to fund oversight of metallic mineral
19 mining operations by the Department of Environmental Protection and the Metallic
20 Mineral Fund created in the Maine Revised Statutes, Title 38, section 351 be used only
21 for its intended purpose to provide for prompt and effective planning, oversight and
22 implementation of metallic mineral mining operations and these funds should not be
23 appropriated or allocated to any other purpose.

24 **Sec. 29. Maine Land Use Regulation Commission rulemaking; issue**
25 **screening.**

26 **1. Rulemaking; rezoning process.** By January 15, 2013, the Maine Land Use
27 Regulation Commission shall amend its rules relating to procedures and requirements for
28 changes to land use subdistrict boundaries for metallic mineral mining activities to
29 remove any provisions related to the permitting of metallic mineral mining activities
30 regulated under the Maine Metallic Mineral Mining Act established in the Maine Revised
31 Statutes, Title 38, chapter 3, subchapter 1, article 9. The amended rules may only relate
32 to the procedures and requirements necessary to review a rezoning application. Rules
33 adopted pursuant to this subsection are routine technical rules as defined in Title 5,
34 chapter 375, subchapter 2-A. Prior to adoption of rules pursuant to this subsection, when
35 reviewing an application for changes to a land use subdistrict boundary, the commission
36 may only apply procedures and requirements necessary to review the rezoning and may
37 not apply procedures and requirements related to environmental permitting regulated by
38 the Department of Environmental Protection under the Maine Metallic Mineral Mining
39 Act.

40 **2. Issue screening.** Within existing resources, or as resources become available
41 through donations, the Maine Land Use Regulation Commission shall collect information
42 regarding issues likely to arise in the rezoning of certain areas for metallic mineral mining
43 for the purpose of making the rezoning process more efficient and complete.

1 **3. Rulemaking; commission certification of mining permit applications.** By
2 January 10, 2014, the Maine Land Use Regulation Commission shall provisionally adopt
3 and submit to the Legislature for review rules related to commission certification of
4 metallic mineral mining permit applications as described in the Maine Metallic Mineral
5 Mining Act established pursuant to the Maine Revised Statutes, Title 38, chapter 3,
6 subchapter 1, article 9. Rules adopted pursuant to this subsection are major substantive
7 rules as defined in Title 5, chapter 375, subchapter 2-A.

8 **Sec. 30. Department of Environmental Protection major substantive**
9 **rulemaking.**

10 **1. Rulemaking.** By January 10, 2014, the Department of Environmental Protection
11 shall provisionally adopt and submit to the Legislature for review rules related to the
12 Maine Metallic Mineral Mining Act established pursuant to the Maine Revised Statutes,
13 Title 38, chapter 3, subchapter 1, article 9. Rules adopted pursuant to this subsection are
14 major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

15 **2. Standards.** The rules adopted pursuant to subsection 1 must include standards
16 determined by the department to be necessary to protect the public health and safety and
17 the environment. Standards adopted by the department may include, but are not limited
18 to, standards regarding effects on groundwater quantity, control of noise, preservation of
19 historic sites, preservation of unusual natural areas, effects on scenic character and
20 protection of wildlife and fisheries.

21 **3. Maine Land Use Regulation Commission certification.** The rules adopted
22 pursuant to subsection 1 relating to the permitting process for a mining permit must
23 provide for Maine Land Use Regulation Commission certification pursuant to the Maine
24 Revised Statutes, Title 38, section 490-NN, subsection 2 in the initial stages of the
25 permitting process.

26 **Sec. 31. Existing rules; exploration and advanced exploration;**
27 **rulemaking.**

28 **1. Existing rules.** Except as otherwise provided in this section, rules regulating
29 metallic mineral mining adopted by the Department of Environmental Protection and the
30 Maine Land Use Regulation Commission prior to the effective date of this section remain
31 in effect until the Legislature approves major substantive rules provisionally adopted by
32 the Department of Environmental Protection pursuant to this Act.

33 **2. Exploration and advanced exploration.** The Department of Environmental
34 Protection and the Maine Land Use Regulation Commission shall jointly amend their
35 rules related to exploration and advanced exploration activities to clarify the permitting
36 requirements for exploration and advanced exploration. Rules adopted pursuant to this
37 subsection remain in effect until the Legislature approves major substantive rules
38 provisionally adopted by the Department of Environmental Protection pursuant to this
39 Act. Rules adopted pursuant to this subsection are routine technical rules as defined in the
40 Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

41 **Sec. 32. Appropriations and allocations.** The Metallic Mining Fund, Other
42 Special Revenue Funds account is established as a nonlapsing fund under the jurisdiction
43 and control of the Department of Environmental Protection. The Metallic Mining Fund is

1 established to provide for the capacity for prompt and effective planning, oversight and
2 implementation of metallic mining operations. Notwithstanding any other provision of
3 law, the State Controller shall transfer \$250,000 from the Uncontrolled Sites Fund under
4 the Maine Revised Statutes, Title 38, section 1364, subsection 6 and \$250,000 from the
5 Ground Water Oil Clean-up Fund under Title 38, section 569-A to the Metallic Mining
6 Fund, Other Special Revenue Funds account within the Department of Environmental
7 Protection on or before September 30, 2013.

8 **Sec. 33. Effective date.** Those sections of this Act that amend the Maine Revised
9 Statutes, Title 12, Title 36 and Title 38 take effect June 1, 2014.'

10 **SUMMARY**

11 This amendment is the majority report of the Joint Standing Committee on
12 Environment and Natural Resources and replaces the bill, which is a concept draft. The
13 amendment creates a statutory framework for the regulation of metallic mineral mining in
14 the State by the Department of Environmental Protection. Under current law, metallic
15 mineral mining in the unorganized territories is regulated by the Maine Land Use
16 Regulation Commission. Under the amendment, beginning in January 2014, regulation
17 of metallic mineral mining is no longer regulated under the site location of development
18 laws but is regulated under the Maine Metallic Mineral Mining Act. Existing Maine
19 Land Use Regulation Commission and Department of Environmental Protection rules
20 relating to metallic mineral mining remain in effect until the Legislature approves major
21 substantive rules provisionally adopted by the Department of Environmental Protection,
22 except that the Department of Environmental Protection and the Maine Land Use
23 Regulation Commission are directed to amend their rules regarding exploration and
24 advanced exploration through routine technical rulemaking. The amendment transfers
25 \$250,000 from the Uncontrolled Sites Fund and \$250,000 from the Ground Water Oil
26 Clean-up Fund to the Metallic Mining Fund, Other Special Revenue Funds account.

FISCAL NOTE REQUIRED
(See attached)



125th MAINE LEGISLATURE

LD 1853

LR 2825(02)

An Act To Improve Environmental Oversight and Streamline Permitting for Mining in Maine

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-940)

Committee: Environment and Natural Resources

Fiscal Note Required: Yes

Fiscal Note

	FY 2011-12	FY 2012-13	Projections FY 2013-14	Projections FY 2014-15
Appropriations/Allocations				
Other Special Revenue Funds	\$0	\$0	\$250,000	\$250,000
Transfers				
Other Special Revenue Funds	\$0	\$0	\$0	\$0

Fiscal Detail and Notes

The bill provides a revised statutory framework to regulate mining activity and designates the Department of Environmental Protection (DEP) as the agency responsible for permitting and regulating the development, operation and closure of metallic mining activities in the State. The DEP is charged with a number of rulemaking obligations, including but not limited to developing standards for exploration, advanced exploration, construction, operation, closure, postclosure monitoring, reclamation and remediation. In the case of property located within the unorganized territory, the Land Use Regulatory Commission (LURC) must certify that the proposed mining is an allowed use within the district in which it is located and that the proposed mining meets any standards established by LURC that are not considered in the DEP's review.

The bill establishes the Metallic Mining Fund as a nonlapsing fund under the jurisdiction and control of the DEP. The Fund will be used to pay for expenses incurred in the development and implementation of required rules and regulations. DEP estimates that rulemaking expenses will total approximately \$500,000 over the 2014-2015 biennium. The Fund will require an allocation of \$250,000 in fiscal year 2013-14 and \$250,000 in fiscal year 2014-15 and will be funded by transferring \$250,000 from the Groundwater Oil Clean-up Fund and \$250,000 from the Uncontrolled Sites Fund by September 30, 2013. The Metallic Mining Fund will also receive fees as provided in the bill.