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L.D. 1772

Date: 3/31/14 majority

(Filing No. H-769)

ENVIRONMENT AND NATURAL RESOURCES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
126TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1270, L.D. 1772, "Resolve, Regarding Legislative Review of Chapter 200: Metallic Mineral Exploration, Advanced Exploration and Mining, a Late-filed Major Substantive Rule of the Department of Environmental Protection"

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

'Resolve, Regarding Metallic Mineral Exploration, Advanced Exploration and Mining'

Amend the resolve by striking out everything after the title and before the summary and inserting the following:

'Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, Chapter 200: Metallic Mineral Exploration, Advanced Exploration and Mining, a provisionally adopted major substantive rule of the Department of Environmental Protection, has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A outside the legislative rule acceptance period; and

Whereas, portions of Chapter 13: Metallic Mineral Exploration, Advanced Exploration and Mining, a provisionally adopted major substantive rule of the Maine Land Use Planning Commission, has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of these rules; and

COMMITTEE AMENDMENT

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1 **Whereas**, in the judgment of the Legislature, these facts create an emergency within
2 the meaning of the Constitution of Maine and require the following legislation as
3 immediately necessary for the preservation of the public peace, health and safety; now,
4 therefore, be it

5 **Sec. 1. Disapproval of final adoption; Department of Environmental**
6 **Protection. Resolved:** That final adoption of Chapter 200: Metallic Mineral
7 Exploration, Advanced Exploration and Mining, a provisionally adopted major
8 substantive rule of the Department of Environmental Protection that has been submitted
9 to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375,
10 subchapter 2-A outside the legislative rule acceptance period, is not authorized; and be it
11 further

12 **Sec. 2. Disapproval of final adoption; Maine Land Use Planning**
13 **Commission. Resolved:** That final adoption of portions of Chapter 13: Metallic
14 Mineral Exploration, Advanced Exploration and Mining, a provisionally adopted major
15 substantive rule of the Maine Land Use Planning Commission that has been submitted to
16 the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375,
17 subchapter 2-A, is not authorized; and be it further

18 **Sec. 3. Existing metallic mineral mining rules; Department of**
19 **Environmental Protection. Resolved:** That the Department of Environmental
20 Protection shall, as soon as practicable, repeal its existing metallic mineral mining rules
21 and adopt metallic mineral mining rules identical to those rules in effect immediately
22 prior to the routine technical rule amendments to exploration and advanced exploration
23 sections that took effect on April 21, 2013. Rules adopted pursuant to this section are
24 routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375,
25 subchapter 2-A; and be it further

26 **Sec. 4. Major substantive rulemaking; Department of Environmental**
27 **Protection. Resolved:** That, by February 1, 2016, the Department of Environmental
28 Protection shall provisionally adopt and submit to the Legislature for review rules related
29 to the Maine Metallic Mineral Mining Act.

30 **1. Legislative rule acceptance period.** Notwithstanding any provision to the
31 contrary contained in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A,
32 major substantive rules submitted pursuant to this section on or before February 1, 2016
33 must be considered submitted within the legislative rule acceptance period for the Second
34 Regular Session of the 127th Legislature, as defined in Title 5, section 8071-A, except
35 that, if the rules are submitted outside the otherwise applicable legislative rule acceptance
36 period but on or before February 1, 2016, the department shall, at the time the rules are
37 submitted, provide written notice to the Executive Director of the Legislative Council
38 stating that the department is submitting the rules outside the otherwise applicable rule
39 acceptance period in accordance with the allowance provided in this subsection.

40 **2. Standards.** The rules adopted pursuant to this section must include standards
41 determined by the department to be necessary to protect the public health and safety and
42 the environment. Standards adopted by the department may include, but are not limited
43 to, standards regulating effects on groundwater quality, control of noise, preservation of

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1 historic sites, preservation of unusual natural areas, effects on scenic character and
2 protection of wildlife and fisheries.

3 **3. Maine Land Use Planning Commission certification.** The rules adopted
4 pursuant to this section relating to the permitting process for a mining permit must
5 provide for Maine Land Use Planning Commission certification pursuant to the Maine
6 Revised Statutes, Title 38, section 490-NN, subsection 2 in the initial stages of the
7 permitting process.

8 Rules adopted pursuant to this section are major substantive rules as defined in the
9 Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A; and be it further

10 **Sec. 5. Major substantive rulemaking; Maine Land Use Planning**
11 **Commission certification of mining permit applications. Resolved:** That, by
12 February 1, 2016, the Maine Land Use Planning Commission shall provisionally adopt
13 and submit to the Legislature for review rules related to commission certification of
14 metallic mineral mining permit applications as described in the Maine Metallic Mineral
15 Mining Act. Notwithstanding any provision to the contrary contained in the Maine
16 Revised Statutes, Title 5, chapter 375, subchapter 2-A, major substantive rules submitted
17 pursuant to this section on or before February 1, 2016 must be considered submitted
18 within the legislative rule acceptance period for the Second Regular Session of the 127th
19 Legislature, as defined in Title 5, section 8071-A, except that, if the rules are submitted
20 outside the otherwise applicable legislative rule acceptance period but on or before
21 February 1, 2016, the commission shall, at the time the rules are submitted, provide
22 written notice to the Executive Director of the Legislative Council stating that the
23 commission is submitting the rules outside the otherwise applicable rule acceptance
24 period in accordance with the allowance provided in this section. Rules adopted pursuant
25 to this section are major substantive rules as defined in Title 5, chapter 375, subchapter
26 2-A; and be it further

27 **Sec. 6. Metallic Mining Fund; Department of Environmental Protection.**
28 **Resolved:** That all costs associated with rule-making activities undertaken by the
29 Department of Environmental Protection pursuant to section 3 or 4 must be drawn from
30 existing funds within the Metallic Mining Fund established under Public Law 2011,
31 chapter 653, section 32.

32 **Emergency clause.** In view of the emergency cited in the preamble, this
33 legislation takes effect when approved.'

34 **SUMMARY**

35 This amendment, which is the majority report of the committee, replaces the resolve
36 and changes the title. This amendment disapproves final adoption of Chapter 200:
37 Metallic Mineral Exploration, Advanced Exploration and Mining, a provisionally adopted
38 major substantive rule of the Department of Environmental Protection that was filed
39 outside the legislative rule acceptance period, and portions of Chapter 13: Metallic
40 Mineral Exploration, Advanced Exploration and Mining, a provisionally adopted major
41 substantive rule of the Maine Land Use Planning Commission. It directs the Department
42 of Environmental Protection to, as soon as practicable, repeal its existing metallic mineral
43 mining rules and adopt metallic mineral mining rules identical to those rules in effect

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COMMITTEE AMENDMENT "A" to H.P. 1270, L.D. 1772

1 immediately prior to the routine technical rule amendments to exploration and advanced
2 exploration sections that took effect on April 21, 2013. It directs the Department of
3 Environmental Protection to, by February 1, 2016, provisionally adopt and submit to the
4 Legislature for review major substantive rules related to the Maine Metallic Mineral
5 Mining Act. It directs the Maine Land Use Planning Commission to, by February 1,
6 2016, provisionally adopt and submit to the Legislature for review major substantive
7 rules related to commission certification of metallic mineral mining permit applications
8 as described in the Maine Metallic Mineral Mining Act. It directs the Department of
9 Environmental Protection to draw funding for its rule-making activities authorized in this
10 resolve from the Metallic Mining Fund established under Public Law 2011, chapter 653,
11 section 32.

FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



126th MAINE LEGISLATURE

LD 1772

LR 2797(02)

Resolve, Regarding Legislative Review of Chapter 200: Metallic Mineral Exploration, Advanced Exploration and Mining, a Late-filed Major Substantive Rule of the Department of Environmental Protection

**Fiscal Note for Bill as Amended by Committee Amendment "A" (H-769)
Committee: Environment and Natural Resources**

Fiscal Note Required: Yes

Fiscal Note

Current biennium cost increase - Other Special Revenue Funds
 Current biennium revenue decrease - Other Special Revenue Funds
 Future biennium cost increase - General Fund

Fiscal Detail and Notes

The bill requires the Department of Environmental Protection (DEP) to repeal its existing mineral mining rules and adopt prior metallic mineral mining rules at an expected cost of \$7,500. This bill requires, by February 1, 2016, that DEP provisionally adopt and submit rules to the Legislature related to the Maine Metallic Mineral Mining Act. The cost to DEP to do this may vary depending on the amount of public participation, board meetings and certain other factors, although DEP incurred a cost of \$175,000 to provisionally adopt and submit similar rules in 2013. This bill eliminates potential revenue to the Metallic Mining Fund within DEP from a processing fee of \$500,000 and an annual license fee of between \$20,000 and \$50,000 by repealing the existing mineral mining rules. All costs to DEP will be funded by the Metallic Mining Fund within DEP. The fund has sufficient resources to absorb these costs from transfers made to it from Public Law 2011, Chapter 653. The bill requires the Land Use Planning Commission (LUPC) within the Department of Agriculture, Conservation and Forestry to adopt and submit rules to the Legislature on certification of metallic mineral mining permit applications. The LUPC will require a General Fund appropriation in fiscal year 2015-16 of \$2,335 for costs related to rulemaking.