

# MAINE STATE LEGISLATURE

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# 127th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2015

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Legislative Document

No. 750

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H.P. 503

House of Representatives, March 5, 2015

### An Act To Allow Regulated Metal Mining in Maine

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Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

*Robert B. Hunt*  
ROBERT B. HUNT  
Clerk

Presented by Representative CHAPMAN of Brooksville.  
Cosponsored by Senator GRATWICK of Penobscot and  
Representative: CHIPMAN of Portland.

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

2 **Sec. 1. 38 MRSA §490-UU** is enacted to read:

3 **§490-UU. Moratorium**

4 Notwithstanding any provision of law to the contrary, a person may not engage in  
5 metallic mineral exploration or mining in the State until the department finally adopts  
6 major substantive rules related to the Maine Metallic Mineral Mining Act that are  
7 provisionally adopted and submitted for legislative review in accordance with Title 5,  
8 chapter 375, subchapter 2-A and that are authorized for final adoption by the Legislature.

9 **Sec. 2. Major substantive rulemaking; Department of Environmental**  
10 **Protection.** The Department of Environmental Protection shall, by January 1, 2017,  
11 provisionally adopt and submit to the Legislature for review rules related to the Maine  
12 Metallic Mineral Mining Act.

13 **1. Standards.** The rules adopted pursuant to this section must include standards  
14 determined by the department to be necessary to protect the public health and safety and  
15 the environment. Standards adopted by the department may include, but are not limited  
16 to, standards regulating effects on groundwater quality, control of noise, preservation of  
17 historic sites, preservation of unusual natural areas, effects on scenic character and  
18 protection of wildlife and fisheries. The department shall ensure that the rules adopted  
19 pursuant to this section:

20 A. Comply with all applicable federal environmental laws and standards, including  
21 but not limited to the federal Clean Air Act and the federal Clean Water Act;

22 B. Require that all mining areas be left in or returned to a geologically stable  
23 condition following remediation and closure;

24 C. Require the permittee to provide a specific plan for ensuring that all mining areas  
25 will be left in or returned to a geologically stable condition following remediation and  
26 closure;

27 D. Require the permittee to demonstrate that the environmental quality and security  
28 of the site will be protected through the use of proven technologies and best available  
29 practices and require use of these technologies and practices as a permit condition;

30 E. Require that all remediation costs related to a mining area are paid by the  
31 permittee and not by the State;

32 F. Require that the financial assurance method approved for and financial assurance  
33 amount required for a permittee be determined by an independent 3rd-party expert  
34 with a background in mining;

35 G. Prohibit in situ leaching, heap leaching and block caving;

36 H. Prohibit the granting of a permit to an applicant when the applicant or an affiliate,  
37 subsidiary or parent corporation of the applicant has ever been listed in the World  
38 Bank Listing of Ineligible Firms & Individuals, has ever abandoned any mining site  
39 resulting in nonremediable or unremediated environmental or economic damages or

1 has ever engaged in any ocean dumping of mining tailings regardless of the legality  
2 of such dumping; and

3 I. Implement a framework for permitting a mining activity that includes several well-  
4 defined decision points, both prior to the commencement of and during the conduct  
5 of mining activities, to allow for and require additional review of the permit and  
6 mining plan by the department, with the department retaining the authority to require  
7 the amendment of permit conditions or the immediate cessation of previously  
8 permitted mining activities.

9 For the purposes of this section, "geologically stable" means impervious to physical,  
10 chemical or biological weathering processes that form a toxic metal transport mechanism  
11 that can create off-site contamination within a period of 1,000 years.

12 **2. Maine Land Use Planning Commission certification.** The rules adopted  
13 pursuant to this section relating to the permitting process for a mining permit must  
14 provide for Maine Land Use Planning Commission certification pursuant to the Maine  
15 Revised Statutes, Title 38, section 490-NN, subsection 2 in the initial stages of the  
16 permitting process.

17 Rules adopted pursuant to this section are major substantive rules as defined in Title  
18 5, chapter 375, subchapter 2-A. Notwithstanding Title 5, section 8072, subsection 11, the  
19 department may not finally adopt a provisionally adopted rule or part of a provisionally  
20 adopted rule submitted pursuant to this section unless legislation authorizing adoption of  
21 the rule or part of the rule is enacted into law by the First Regular Session of the 128th  
22 Legislature.

23 **Sec. 3. Major substantive rulemaking; Maine Land Use Planning**  
24 **Commission certification of mining permit applications.** The Maine Land Use  
25 Planning Commission shall, by January 1, 2017, provisionally adopt and submit to the  
26 Legislature for review rules related to commission certification of metallic mineral  
27 mining permit applications as described in the Maine Metallic Mineral Mining Act.  
28 Rules adopted pursuant to this section are major substantive rules as defined in the Maine  
29 Revised Statutes, Title 5, chapter 375, subchapter 2-A. Notwithstanding Title 5, section  
30 8072, subsection 11, the commission may not finally adopt a provisionally adopted rule  
31 or part of a provisionally adopted rule submitted pursuant to this section unless legislation  
32 authorizing adoption of the rule or part of the rule is enacted into law by the First Regular  
33 Session of the 128th Legislature.

34 **SUMMARY**

35 This bill provides for a moratorium on metallic mineral exploration or mining in the  
36 State. It directs the Department of Environmental Protection, by January 1, 2017, to  
37 provisionally adopt and submit for legislative review major substantive rules related to  
38 the Maine Metallic Mineral Mining Act. These rules must:

39 1. Include standards necessary to protect the public health and safety and the  
40 environment;

- 1           2. Comply with all applicable federal environmental laws and standards;
- 2           3. Require that all mining areas be left in or returned to a geologically stable  
3 condition following remediation and closure;
- 4           4. Require the permittee to provide a specific plan for ensuring that all mining areas  
5 will be left in or returned to a geologically stable condition following remediation and  
6 closure;
- 7           5. Require the permittee to demonstrate that the environmental quality and security  
8 of the site will be protected through the use of proven technologies and best available  
9 practices and require use of these technologies and practices as a permit condition;
- 10          6. Require that all remediation costs related to a mining area are paid by the  
11 permittee and not by the State;
- 12          7. Require that the financial assurance method approved for and the financial  
13 assurance amount required for a permittee be determined by an independent 3rd-party  
14 expert with a background in mining;
- 15          8. Prohibit in situ leaching, heap leaching and block caving;
- 16          9. Prohibit the granting of a permit to certain applicants; and
- 17          10. Implement a framework for permitting a mining activity that includes several  
18 well-defined decision points for the department to conduct additional review of the  
19 permitted activities.

20           The bill provides that the department may not finally adopt the rules unless the  
21 Legislature authorizes final adoption. The moratorium remains in effect until the  
22 Legislature authorizes final adoption of the department's rules and the department finally  
23 adopts those rules. The bill also provides for accompanying major substantive  
24 rulemaking by the Maine Land Use Planning Commission regarding certification of  
25 mining permit applications.