

MAINE STATE LEGISLATURE

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Date: 5/10/17 minority

L.D. 160
(Filing No. H-158)

ENVIRONMENT AND NATURAL RESOURCES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
128TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 118, L.D. 160, Bill, "An Act To Prohibit the Mining of Massive Sulfide Ore Deposits under the Maine Metallic Mineral Mining Act"

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

'An Act To Prohibit Metallic Mineral Mining in Maine'

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

Sec. 1. 12 MRSA §685-B, sub-§1-A, ¶B-2, as reallocated by RR 2011, c. 2, §8 and affected by §10, is repealed.

Sec. 2. 36 MRSA §2866, sub-§4, as amended by PL 2011, c. 653, §6 and affected by §33, is repealed.

Sec. 3. 38 MRSA §351, 2nd ¶, as enacted by PL 2011, c. 653, §9 and affected by §33, is repealed.

Sec. 4. 38 MRSA §352, sub-§3, as amended by PL 2011, c. 653, §10 and affected by §33 and amended by c. 657, Pt. W, §5, is further amended to read:

3. Maximum fee. The commissioner shall set the actual fees and shall publish a schedule of all fees by November 1st of each year. If the commissioner determines that a particular application, by virtue of its size, uniqueness, complexity or other relevant factors, is likely to require significantly more costs than those listed on Table I, the commissioner may designate that application as subject to special fees. Such a designation must be made at, or prior to, the time the application is accepted as complete and may not be based solely on the likelihood of extensive public controversy. The maximum fee for processing an application may not exceed \$250,000, ~~except that the maximum fee for processing an application under chapter 3, subchapter 1, article 9 is as provided for in subsection 4-A.~~ All staff of the department, the Department of Inland Fisheries and Wildlife, the Department of Agriculture, Conservation and Forestry and the Department of Marine Resources who have worked on the review of the application,

COMMITTEE AMENDMENT

1 including, but not limited to, preapplication consultations, shall submit quarterly reports
 2 to the commissioner detailing the time spent on the application and all expenses
 3 attributable to the application, including the costs of any appeals filed by the applicant
 4 and, after taking into consideration the interest of fairness and equity, any other appeals if
 5 the commissioner finds it in the public interest to do so. Any appeal filed by the applicant
 6 of an application fee must be to the agency of jurisdiction of the application. The costs
 7 associated with assistance to the board on an appeal before the board may be separately
 8 charged. The processing fee for that application must be the actual cost to the
 9 department, the Department of Inland Fisheries and Wildlife, the Department of
 10 Agriculture, Conservation and Forestry and the Department of Marine Resources. The
 11 processing fee must be distributed to each department that incurs a cost to be deposited in
 12 the account in which the expenses were incurred in that department to reimburse the
 13 actual cost to that department. The applicant must be billed quarterly and all fees paid
 14 prior to receipt of the permit. At the time of the quarterly billing by the department, the
 15 commissioner shall review the ongoing work of the department to identify, prevent and
 16 mitigate undue delays or vague requirements of the application processing. Nothing in
 17 this section limits the commissioner's authority to enter into an agreement with an
 18 applicant for payment of costs in excess of the maximum fee established in this
 19 subsection.

20 **Sec. 5. 38 MRSA §352, sub-§4-A**, as repealed and replaced by PL 2011, c. 653,
 21 §11 and affected by §33, is repealed.

22 **Sec. 6. 38 MRSA §353, sub-§2**, as amended by PL 2011, c. 653, §13 and affected
 23 by §33, is further amended to read:

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

38 **Sec. 7. 38 MRSA §420-D, sub-§5**, as amended by PL 2011, c. 653, §14 and
 39 affected by §33, is further amended to read:

40 **5. Relationship to other laws.** A storm water permit pursuant to this section is not
 41 required for a project requiring review by the department pursuant to any of the following
 42 provisions but the project may be required to meet standards for management of storm
 43 water adopted pursuant to this section: article 6, site location of development; article 7,
 44 performance standards for excavations for borrow, clay, topsoil or silt; article 8-A,
 45 performance standards for quarries; ~~article 9, the Maine Metallic Mineral Mining Act;~~

1 sections 631 to 636, permits for hydropower projects; and section 1310-N, 1319-R or
 2 1319-X, waste facility licenses. When a project requires a storm water permit and
 3 requires review pursuant to article 5-A, the department shall issue a joint order unless the
 4 permit required pursuant to article 5-A is a permit-by-rule or general permit, or separate
 5 orders are requested by the applicant and approved by the department.

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

11 **Sec. 8. 38 MRSA §480-D, sub-§3**, as amended by PL 2011, c. 653, §15 and
 12 affected by §33, is further amended to read:

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

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

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

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

41 **Sec. 9. 38 MRSA c. 3, sub-c. 1, art. 9**, as enacted by PL 2011, c. 653, §23, is
 42 repealed.

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Sec. 10. 38 MRSA c. 3, sub-c. 1, art. 9-A is enacted to read:

ARTICLE 9-A

PROHIBITION OF METALLIC MINERAL MINING

§490-UU. Definitions

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

1. **Metallic mineral.** "Metallic mineral" means any ore or material to be excavated from the natural deposits on or in the earth for its metallic mineral content to be used for commercial or industrial purposes.

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

§490-VV. Prohibition of metallic mineral mining

Notwithstanding any other provision of law to the contrary, an agency of the State may not issue a permit, lease or license for or otherwise approve or authorize the mining of metallic minerals in the State for commercial or industrial purposes.'

SUMMARY

This amendment, which is the minority report of the committee, changes the title of the bill and replaces the bill. It repeals the Maine Metallic Mineral Mining Act and enacts a prohibition on the issuance of a permit, lease or license for or other approval or authorization of the mining of metallic minerals in the State for commercial or industrial purposes.

FISCAL NOTE REQUIRED
(See attached)



128th MAINE LEGISLATURE

LD 160

LR 1069(02)

An Act To Prohibit the Mining of Massive Sulfide Ore Deposits under the Maine Metallic Mineral Mining Act

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-158)

Committee: Environment and Natural Resources

Fiscal Note Required: Yes

Fiscal Note

Potential current biennium revenue decrease - Other Special Revenue Funds

Potential future biennium savings - Other Special Revenue Funds

Fiscal Detail and Notes

The bill would prohibit the Department of Environmental Protection (DEP) from issuing a permit for metallic mineral mining under the Maine Metallic Mineral Mining Act by repealing the statute. The repeal would eliminate any potential permit fee revenue from accruing to the Metallic Mining Fund within the DEP. The repeal would also generate savings from elimination of any costs associated with the DEP's permitting process.