

MAINE STATE LEGISLATURE

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SMG
R045

Date: 5/8/2017

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Majority

ENVIRONMENT AND NATURAL RESOURCES

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

128TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A " to S.P. 265, L.D. 820, Bill, "An Act To Protect Maine's Clean Water and Taxpayers from Mining Pollution"

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

Sec. 1. 12 MRSA §549-B, sub-§7, ¶C-1 is enacted to read:

C-1. Notwithstanding any other provision of law to the contrary, the director of the agency having jurisdiction over the state lands on which a mining lease is sought may not grant a mining lease under this section that authorizes mining operations proposed to be located wholly or partially in, on or under any of the following state lands:

(1) Designated lands under section 598-A;

(2) Historic sites as defined in section 1801, subsection 5;

(3) Parks as defined in section 1801, subsection 7;

(4) Public reserved lands as defined in section 1801, subsection 8;

(5) Submerged lands as defined in section 1801, subsection 9;

(6) The Allagash Wilderness Waterway as established under chapter 220, subchapter 6; and

(7) State-owned wildlife management areas acquired in accordance with section 10109, subsection 1.

Sec. 2. 38 MRSA §490-MM, sub-§§5-A, 10-A, 10-B, 10-C and 13-A are enacted to read:

5-A. Dry stack tailings management. "Dry stack tailings management" means the process of disposing of dewatered, compacted mine tailings into a freestanding, stable

COMMITTEE AMENDMENT

1 structure on an area with an impervious liner designed to shed water to a water collection
2 and treatment system.

3 **10-A. Mine shaft.** "Mine shaft" means a vertical, inclined or horizontal excavation,
4 including all underground workings, with a surface opening not exceeding 1,000 square
5 feet.

6 **10-B. Mine waste.** "Mine waste" means all material, including, but not limited to,
7 overburden, rock, lean ore, leached ore or tailings, that in the process of mining and
8 beneficiation has been exposed or removed from the earth during advanced exploration
9 and mining activities.

10 **10-C. Mine waste unit.** "Mine waste unit" means any land area, structure, location,
11 equipment or combination thereof on or in which mine wastes are managed. A structure
12 or area of land does not become a mine waste unit solely because it is used to store
13 nonreactive mine wastes generated on the site, such as soil or overburden, for 90 days or
14 less.

15 **13-A. Open-pit mining.** "Open-pit mining" means, for any single mining operation
16 permitted under this article, the process of mining a metallic mineral deposit by use of
17 surface pits or excavations having greater than 3 acres of surface area in aggregate or by
18 means of a surface pit excavated using one or more horizontal benches.

19 **Sec. 3. 38 MRS §490-MM, sub-§17,** as enacted by PL 2011, c. 653, §23 and
20 affected by §33, is repealed and the following enacted in its place:

21 **17. Tailings impoundment.** "Tailings impoundment" means a surface area,
22 contained by dikes or dams, on which is deposited the slurry of material that is separated
23 from a metallic product in the beneficiation or treatment of minerals, including any
24 surrounding dikes constructed to contain such material. "Tailings impoundment" does
25 not include a lined surface area on which dewatered tailings are stacked.

26 **Sec. 4. 38 MRS §490-MM, sub-§18** is enacted to read:

27 **18. Wet mine waste unit.** "Wet mine waste unit" means a mine waste unit in which
28 mine wastes are placed under water to minimize sulfide oxidation, acid formation or
29 particulate pollution.

30 **Sec. 5. 38 MRS §490-NN, sub-§1, ¶B,** as enacted by PL 2011, c. 653, §23 and
31 affected by §33, is amended to read:

32 B. In addition to other powers granted to it, the department shall adopt rules to carry
33 out its duties under this article, including, but not limited to, standards for
34 exploration, advanced exploration, construction, operation, closure, post-closure
35 monitoring, reclamation and remediation. Except as otherwise provided, rules
36 adopted under this article are major substantive rules for purposes of Title 5, chapter
37 375, subchapter 2-A and are subject to section 341-H. Notwithstanding Title 5,
38 section 8072, subsection 11, or any other provision of law to the contrary, rules
39 provisionally adopted by the department in accordance with this article and submitted
40 for legislative review may not be finally adopted by the department unless legislation
41 authorizing final adoption of those rules is enacted into law.

1 **Sec. 6. 38 MRSA §490-NN, sub-§2**, as enacted by PL 2011, c. 653, §23 and
2 affected by §33 and amended by c. 682, §38, is further amended to read:

3 **2. Maine Land Use Planning Commission.** The department may not approve a
4 permit under this article in an unorganized territory unless the Maine Land Use Planning
5 Commission certifies to the department that:

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

8 B. The proposed mining meets any land use standard established by the Maine Land
9 Use Planning Commission and applicable to the project that is not considered in the
10 department's review.

11 The Maine Land Use Planning Commission shall adopt rules in accordance with this
12 subsection relating to the certification of mining permit applications under this article.
13 Notwithstanding any other provision of law to the contrary, rules adopted pursuant to this
14 subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

15 **Sec. 7. 38 MRSA §490-OO, sub-§4, ¶¶D and H**, as enacted by PL 2011, c.
16 653, §23 and affected by §33, are amended to read:

17 D. There is reasonable assurance that discharges of pollutants from the mining
18 operation will not violate applicable water quality standards. Notwithstanding
19 sections 465-C and 470, ~~discharges to contamination of~~ groundwater from activities
20 permitted under this article may occur within a mining area, but such ~~discharges~~
21 contamination must be limited and may not result in contamination of groundwater
22 beyond each mining area. In determining compliance with this standard, the
23 department shall require groundwater monitoring consistent with the standards
24 established pursuant to section 490-QQ, subsection 3.:

25 (1) Contamination of groundwater beyond the mining area;

26 (2) Contamination of groundwater within the mining area that exceeds
27 applicable water quality criteria for pollutants other than pH or metals;

28 (3) Contamination of groundwater within the mining area due to pH or metals
29 that exceeds limits set forth in the mining permit by the department based on site-
30 specific geologic and hydrologic characteristics;

31 (4) Any violation of surface water quality standards under section 413 or article
32 4-A; or

33 (5) If groundwater or surface water quality within the mining area prior to the
34 commencement of any mining activity exceeds applicable water quality
35 standards, further degradation of such groundwater or surface water quality.

36 In determining compliance with this standard, the department shall require
37 groundwater monitoring consistent with the standards established pursuant to section
38 490-QQ, subsection 3.

39 Notwithstanding section 490-MM, subsection 12, for the purposes of this paragraph,
40 "mining area" means an area of land, approved by the department and set forth in the

1 mining permit, not to exceed 100 feet in any direction from a mine shaft, surface pit
2 or surface excavation, and does not include the following lands, regardless of the
3 distance of such land from a mine shaft, surface pit or surface excavation: the land on
4 which material from mining is stored or deposited, the land on which beneficiating or
5 treatment facilities are located, the land on which groundwater and surface water
6 management systems are located or the land on which water reservoirs used in a
7 mining operation are located.

8 H. The mining operation will not unreasonably cause or increase the flooding of the
9 area that is altered by the mining operation or adjacent properties or create an
10 unreasonable flood hazard to any structure. Mining Notwithstanding any provision
11 of law to the contrary, mining operations involving the removal of metallic minerals,
12 the storage of metallic minerals or mine waste, the processing of metallic minerals or
13 the treatment of mine waste may not be placed in or on flood plains or flood hazard
14 areas as long as they are designed, constructed, operated and reclaimed in a manner
15 that complies with the approval criteria in this subsection and the Natural Resources
16 Protection Act.

17 **Sec. 8. 38 MRSA §490-OO, sub-§4, ¶¶K to O** are enacted to read:

18 K. No part of the mining operation will be located wholly or partially in, on or under
19 any state land listed in Title 12, section 549-B, subsection 7, paragraph C-1.

20 L. The mining operation will not involve the removal of metallic minerals in, on or
21 from a river, stream or brook, as defined in section 480-B, subsection 9; a great pond,
22 as defined in section 480-B, subsection 5; a freshwater wetland, as defined in section
23 480-B, subsection 4; or a coastal wetland, as defined in section 480-B, subsection 2.

24 M. The mining operation will not involve placement of a mine shaft in, on or under a
25 significant river segment, as identified in section 437; an outstanding river segment,
26 as identified in section 480-P; an outstanding river, as identified in Title 12, section
27 403; a high or moderate value waterfowl and wading bird habitat that is a significant
28 wildlife habitat pursuant to section 480-B, subsection 10, paragraph B, subparagraph
29 (2); a great pond, as defined in section 480-B, subsection 5; or a coastal wetland, as
30 defined in section 480-B, subsection 2.

31 N. The mining operation will use dry stack tailings management and will not use wet
32 mine waste units or tailings impoundments for the management of mine waste and
33 tailings, except that the mining operation may involve the placement into a mine shaft
34 of waste rock that is neutralized or otherwise treated to prevent contamination of
35 groundwater or surface water.

36 O. The mining operation will not use open-pit mining.

37 **Sec. 9. 38 MRSA §490-RR, sub-§2,** as enacted by PL 2011, c. 653, §23 and
38 affected by §33, is repealed and the following enacted in its place:

39 **2. Coverage and form of financial assurance.** The financial assurance required
40 under subsection 1 applies to all mining and reclamation operations that are subject to a
41 mining permit.

42 A. The amount of the financial assurance must be sufficient to cover the cost for the
43 department to administer, and hire a 3rd party to implement, all necessary

1 investigation, monitoring, closure, post-closure, treatment, remediation, corrective
2 action, reclamation, operation and maintenance activities under the environmental
3 protection, reclamation and closure plan, including, but not limited to:

4 (1) The cost to investigate all possible releases of contaminants at the site,
5 monitor all aspects of the mining operation, close the mining operation in
6 accordance with the closure plan, conduct treatment activities of all expected
7 fluids and wastes generated by the mining operation for a minimum of 100 years,
8 implement remedial activities for all possible releases and maintenance of
9 structures and waste units as if these units have released contaminants to the
10 groundwater and surface water, conduct corrective actions for potential
11 environmental impacts to groundwater and surface water resources as identified
12 in the environmental impact assessment and conduct all other necessary activities
13 at the mine site in accordance with the environmental protection, reclamation and
14 closure plan; and

15 (2) The cost to respond to a worst-case catastrophic mining event or failure,
16 including, but not limited to, the cost of restoring, repairing and remediating any
17 damage to public facilities or services, to private property or to the environment
18 resulting from the event or failure.

19 B. An applicant for a mining permit must include with its application a review of the
20 proposed financial assurance amounts required under this section as performed by a
21 qualified, independent 3rd-party reviewer approved by the department. The costs of
22 the 3rd-party review must be paid by the applicant. Estimates of the costs of a worst-
23 case catastrophic mining event or failure under paragraph A, subparagraph (2)
24 provided by the applicant may not include costs to the applicant associated with loss
25 of use of any mining operation or facility or the costs of repairing any damaged
26 mining operation or facility to restore operations or other functionality.

27 C. The department shall require the applicant to provide financial assurance in the
28 amount determined by the 3rd-party reviewer under paragraph B to be sufficient for
29 the department to conduct all activities listed under paragraph A. Financial assurance
30 estimates provided by the applicant and reviewed by the 3rd-party reviewer under
31 this section must use the highest cost option for all estimates and include a minimum
32 20% contingency to account for unexpected expenses.

33 D. The financial assurance required by department under this subsection must consist
34 of a trust fund that is secured with any of the following forms of negotiable property,
35 or a combination thereof, as approved by the department:

36 (1) A cash account in one or more federally insured accounts;

37 (2) Negotiable bonds issued by the United States or by a state or a municipality
38 having a Standard and Poor's credit rating of AAA or AA or an equivalent rating
39 from a national securities credit rating service; or

40 (3) Negotiable certificates of deposit in one or more federally insured
41 depositories.

1 E. The financial assurance required by the department under this section must be
2 posted by the applicant before the department issues a permit to mine under this
3 article.

4 **Sec. 10. 38 MRSA §490-RR, sub-§3**, as enacted by PL 2011, c. 653, §23 and
5 affected by §33, is repealed.

6 **Sec. 11. Department of Environmental Protection; approval of final**
7 **adoption.** Final adoption of Chapter 200: Metallic Mineral Exploration, Advanced
8 Exploration and Mining, a provisionally adopted major substantive rule of the
9 Department of Environmental Protection that was submitted to the Legislature for review
10 pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A on January
11 13, 2017, is authorized only if the following changes are made:

12 1. The rule must be amended in section 2 to define "dry stack tailings management"
13 consistent with the statutory definition of "dry stack tailings management" under Title 38,
14 section 490-MM, subsection 5-A;

15 2. The rule must be amended in section 2 to define "mine shaft" consistent with the
16 statutory definition of "mine shaft" under Title 38, section 490-MM, subsection 10-A;

17 3. The rule must be amended in section 2 to amend the definition of "mine waste" as
18 necessary to ensure consistency with the statutory definition of "mine waste" under Title
19 38, section 490-MM, subsection 10-B;

20 4. The rule must be amended in section 2 to amend the definition of "mine waste
21 unit" as necessary to ensure consistency with the statutory definition of "mine waste unit"
22 under Title 38, section 490-MM, subsection 10-C;

23 5. The rule must be amended in section 2 to define "open-pit mining" consistent with
24 the statutory definition of "open-pit mining" under Title 38, section 490-MM, subsection
25 13-A;

26 6. The rule must be amended in section 2 to amend the definition of "tailings
27 impoundment" as necessary to ensure consistency with the statutory definition of "tailings
28 impoundment" under Title 38, section 490-MM, subsection 17;

29 7. The rule must be amended in section 2 to amend the definition of "wet mine waste
30 unit" as necessary to ensure consistency with the statutory definition of "wet mine waste
31 unit" under Title 38, section 490-MM, subsection 18;

32 8. The rule must be amended, as necessary, in section 11(A), section 20(B) and any
33 other affected sections to incorporate the statutory prohibition against the permitting of a
34 mining operation located in, on or under any state land listed in Title 12, section 549-B,
35 subsection 7, paragraph C-1, as provided in Title 38, section 490-OO, subsection 4,
36 paragraph K;

37 9. The rule must be amended, as necessary, in section 11(A), section 20(B) and any
38 other affected sections to incorporate the statutory prohibition against the permitting of a
39 mining operation involving the removal of metallic minerals in, on or from certain natural
40 resources as provided in Title 38, section 490-OO, subsection 4, paragraph L;

41 10. The rule must be amended, as necessary, in section 11(A), section 20(B) and any
42 other affected sections to incorporate the statutory prohibition against the permitting of a

1 mining operation involving the placement of a mine shaft in, on or under certain natural
2 resources as provided in Title 38, section 490-OO, subsection 4, paragraph M;

3 11. The rule must be amended, as necessary, in section 11(A), section 21, section 24
4 and any other affected sections to incorporate the statutory requirement for the use of dry
5 stack tailings management and the statutory prohibition against the permitting of a mining
6 operation involving the use of wet mine waste units or tailings impoundments as provided
7 in Title 38, section 490-OO, subsection 4, paragraph N;

8 12. The rule must be amended, as necessary, in section 11(A) and any other affected
9 sections to incorporate the statutory prohibition against the permitting of a mining
10 operation that uses open-pit mining as provided in Title 38, section 490-OO, subsection 4,
11 paragraph O;

12 13. The rule must be amended in section 17 and any other affected sections to clarify
13 the coverage and form of required financial assurance pursuant to Title 38, section
14 490-RR, subsection 2;

15 14. The rule must be amended in section 22 and any other affected sections to clarify
16 the limited definition of "mining area" pursuant to Title 38, section 490-OO, subsection 4,
17 paragraph D;

18 15. All necessary grammatical, formatting, punctuation or other technical
19 nonsubstantive editing changes must be made to the rule, including, but not limited to, the
20 addition of subsection headings in section 2 and the removal of strikethrough letters or
21 words remaining from prior drafts and edits; and

22 16. All other necessary changes must be made to the rule to ensure conformity
23 throughout the rule and consistency with the provisions of this Act.

24 **Sec. 12. Maine Land Use Planning Commission rulemaking; certification**
25 **of mining permit applications.** By July 1, 2018, the Maine Land Use Planning
26 Commission shall adopt rules related to commission certification of metallic mineral
27 mining permit applications in accordance with the Maine Revised Statutes, Title 38,
28 section 490-NN, subsection 2. Rules adopted pursuant to this section must include any
29 additional provisions necessary to ensure consistency with the Maine Metallic Mineral
30 Mining Act and rules related to the Maine Metallic Mineral Mining Act adopted by the
31 Department of Environmental Protection.'

32 SUMMARY

33 This amendment, which is the majority report of the committee, replaces the bill and
34 amends the State's mining laws as follows.

35 1. It prohibits the issuance of a mining lease under the Maine Revised Statutes, Title
36 12, chapter 201-A, subchapter 3 if the proposed mining operation is to be wholly or
37 partially located in, on or under any designated land, state historic site, state park, public
38 reserved land, submerged land or state-owned wildlife management area or the Allagash
39 Wilderness Waterway. The amendment also prohibits the issuance of a mining permit
40 under the Maine Metallic Mineral Mining Act, referred to in this summary as the "Mining
41 Act," if any part of the mining operation will be located wholly or partially in, on or
42 under any of the same state lands.

1 2. It adds to the Mining Act definitions for the terms "dry stack tailings
2 management," "mine shaft," "mine waste," "mine waste unit," "open-pit mining" and "wet
3 mine waste unit," and it amends the existing definition for the term "tailings
4 impoundment."

5 3. It amends the rule-making authority of the Department of Environmental
6 Protection under the Mining Act to require that any rule or rule change proposed by the
7 department in accordance with its authority under the Mining Act may not be finally
8 adopted by the department unless legislation authorizing final adoption of such rules is
9 enacted into law.

10 4. It amends permit approval conditions under the Mining Act relating to discharges
11 causing groundwater contamination by allowing only for limited contamination of
12 groundwater within a mining area that does not result in contamination of groundwater
13 beyond the mining area; contamination of groundwater within the mining area that
14 exceeds certain water quality criteria for pollutants; contamination of groundwater within
15 the mining area due to pH or metals that exceeds limits set forth in the mining permit
16 based on site-specific geologic and hydrologic characteristics; any violation of surface
17 water quality standards; or, if groundwater or surface water quality within the mining area
18 prior to the commencement of mining activity exceeds applicable water quality standards,
19 further degradation of such groundwater or surface water quality. The amendment also
20 provides a narrow definition of the term "mining area" applicable only to this provision
21 on discharges causing groundwater contamination.

22 5. It prohibits the placement of mining operations under the Mining Act involving
23 the removal of metallic minerals, the storage of metallic minerals or mine waste, the
24 processing of metallic minerals or the treatment of mine waste in or on a flood plain or a
25 flood hazard area.

26 6. It prohibits the removal of metallic minerals in, on or from a river, stream or
27 brook, a great pond, a freshwater wetland or a coastal wetland.

28 7. It prohibits the placement of a mine shaft in, on or under a significant or
29 outstanding river segment, an outstanding river, a high or moderate value waterfowl and
30 wading bird habitat, a great pond or a coastal wetland.

31 8. It requires the use of dry stack tailings management and prohibits the use of wet
32 mine waste units or tailings impoundments for the management of mine waste and
33 tailings.

34 9. It prohibits open-pit mining.

35 10. It clarifies the financial assurance provisions in the Mining Act and requires an
36 applicant for a permit or a permittee under the Mining Act to provide special financial
37 assurance coverage for a worst-case catastrophic mining event or failure.

38 11. It authorizes, subject to the incorporation of specified amendments, final
39 adoption of Chapter 200: Metallic Mineral Exploration, Advanced Exploration and
40 Mining, a major substantive rule of the Department of Environmental Protection that was
41 submitted to the Legislature for review pursuant to Title 5, chapter 375, subchapter 2-A
42 on January 13, 2017.

1 12. It clarifies the rule-making authority of the Maine Land Use Planning
2 Commission under the Mining Act and directs the commission, by July 1, 2018, to adopt
3 rules related to commission certification of metallic mineral mining permit applications
4 under the Mining Act. Those rules are routine technical rules.

5 **FISCAL NOTE REQUIRED**

6 **(See attached)**



128th MAINE LEGISLATURE

LD 820

LR 1442(02)

An Act To Protect Maine's Clean Water and Taxpayers from Mining Pollution

Fiscal Note for Bill as Amended by Committee Amendment "A" (S-73)
Committee: Environment and Natural Resources
Fiscal Note Required: Yes

Fiscal Note

Potential future biennium revenue increase - General Fund
Potential future biennium cost increase - Other Special Revenue Funds
Potential future biennium revenue increase - Other Special Revenue Funds
Potential future biennium revenue increase - Municipalities

Fiscal Detail and Notes

The bill authorizes final adoption of Department of Environmental Protection (DEP) mining rules if certain changes are made to the rule. DEP's costs related to making changes to the rule are expected to be minor and can be absorbed within existing budgeted resources. DEP may incur costs in the future related to approving applicants for a mining permit and engaging in certain oversight activities. The extent of costs to DEP will depend on the number of applicants and the activities they engage in, but these costs are expected to be covered by mining fees. Under current statute, applicants are required to pay an initial processing fee not to exceed \$500,000 and an annual license fee between \$20,000 and \$50,000 that will be directed to the Metallic Mining Fund within DEP. No estimate is made at this time on the number of mining applicants. Any additional costs to the Maine Land Use Planning Commission for rulemaking are expected to be minor and can be absorbed within existing budgeted resources.

If applicants are approved, mining excise tax revenues would be received. Under current statute, the revenue would reimburse municipalities and unorganized territories for at least 50%, and if sufficiently available 100%, of the property tax revenue loss suffered by that municipality or unorganized territory as a result of property tax exemptions created under the mining excise tax statute. 25% of any remaining revenues would be paid to DEP for oversight of mining activity and 75% would be deposited to the General Fund. No estimate has been made at this time of the amount of mining excise tax revenues that might be generated.