

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document

No. 1163

H.P. 841

House of Representatives, March 22, 2021

An Act To Reduce Pollution by Prohibiting Metallic Mineral Mining

Received by the Clerk of the House on March 18, 2021. Referred to the Committee on Environment and Natural Resources pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative O'NEIL of Saco.
Cosponsored by Senator MAXMIN of Lincoln and
Representatives: GROHOSKI of Ellsworth, PEBWORTH of Blue Hill, Senators: BAILEY of
York, MIRAMANT of Knox.

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

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3 and affected by §10, is repealed.

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5 by §33, is repealed.

6 **Sec. 3. 38 MRSA §351, 2nd ¶**, as enacted by PL 2011, c. 653, §9 and affected by
7 §33, is repealed.

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

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

40 **Sec. 5. 38 MRSA §352, sub-§4-A**, as repealed and replaced by PL 2011, c. 653,
41 §11 and affected by §33, is repealed.

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

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

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

17 **5. Relationship to other laws.** A storm water permit pursuant to this section is not
18 required for a project requiring review by the department pursuant to any of the following
19 provisions but the project may be required to meet standards for management of storm
20 water adopted pursuant to this section: article 6, site location of development; article 7,
21 performance standards for excavations for borrow, clay, topsoil or silt; article 8-A,
22 performance standards for quarries; ~~article 9, the Maine Metallic Mineral Mining Act;~~
23 sections 631 to 636, permits for hydropower projects; and section 1310-N, 1319-R or
24 1319-X, waste facility licenses. When a project requires a storm water permit and requires
25 review pursuant to article 5-A, the department shall issue a joint order unless the permit
26 required pursuant to article 5-A is a permit-by-rule or general permit, or separate orders are
27 requested by the applicant and approved by the department.

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

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

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

39 ~~In determining whether mining, as defined in section 490-MM, subsection 11, will comply~~
40 ~~with this subsection, the department shall review an analysis of alternatives submitted by~~
41 ~~the applicant. For purposes of this subsection, a practicable alternative to mining, as~~
42 ~~defined in section 490-MM, subsection 11, that is less damaging to the environment is not~~
43 ~~considered to exist. The department may consider alternatives associated with the activity,~~
44 ~~including alternative design and operational measures, in its evaluation of whether the~~
45 ~~activity avoided and minimized impacts to the maximum extent practicable.~~

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

- 9 A. Avoiding an impact altogether by not taking a certain action or parts of an action;
- 10 B. Minimizing an impact by limiting the magnitude, duration or location of an activity
11 or by controlling the timing of an activity;
- 12 C. Rectifying an impact by repairing, rehabilitating or restoring the affected
13 environment;
- 14 D. Reducing or eliminating an impact over time through preservation and maintenance
15 operations during the life of the project; or
- 16 E. Compensating for an impact by replacing the affected significant wildlife habitat.

17 **Sec. 9. 38 MRSA c. 3, sub-c. 1, art. 9**, as amended, is repealed.

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

19 **ARTICLE 10**

20 **PROHIBITION OF METALLIC MINERAL MINING**

21 **§490-UU. Definitions**

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

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

27 **2. Mining.** "Mining" means the activities, facilities or processes necessary for the
28 extraction or removal of metallic minerals or overburden or for the preparation, washing,
29 cleaning or other treatment of metallic minerals and includes the bulk sampling,
30 exploration, advanced exploration, extraction or beneficiation of metallic minerals as well
31 as waste storage and other stockpiles and reclamation activities.

32 **§490-VV. Prohibition of metallic mineral mining**

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

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SUMMARY

This bill 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.