

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1853

H.P. 1183

House of Representatives, May 1, 2023

**An Act to Conform the Mining Excise Tax Laws to the Maine
Metallic Mineral Mining Act and Set the Mining Excise Tax at 10
Percent**

(EMERGENCY)

Reference to the Committee on Taxation suggested and ordered printed.

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

ROBERT B. HUNT
Clerk

Presented by Representative COLLINGS of Portland.
Cosponsored by Representatives: LANDRY of Farmington, Speaker TALBOT ROSS of
Portland.

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

3 **Whereas,** there are inconsistencies between Maine's excise tax law and the Maine
4 Metallic Mineral Mining Act; and

5 **Whereas,** clarifying these inconsistencies is essential to provide immediate clarity for
6 mining permits; and

7 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
8 the meaning of the Constitution of Maine and require the following legislation as
9 immediately necessary for the preservation of the public peace, health and safety; now,
10 therefore,

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

12 **Sec. 1. 36 MRSA §603, sub-§10,** as amended by PL 1983, c. 776, §2, is further
13 amended to read:

14 **10. Tax situs.** The tax situs of tangible personal property ~~shall be at~~ is the mine site
15 mining area if that property is:

16 A. Owned, leased or otherwise subject to possessory control of a ~~mining company~~
17 metallic mineral operator; and

18 B. On route to or from, being transported to or from or destined to or from a ~~mine site~~
19 mining area.

20 Except as otherwise provided in this subsection, the tax situs of tangible personal property
21 leased to a ~~mining company~~ shall be in metallic mineral operator is the place where the
22 property is situated.

23 For the purposes of this subsection, the definitions of section 2855 ~~shall~~ apply.

24 **Sec. 2. 36 MRSA §2852, sub-§1,** as enacted by PL 1981, c. 711, §10, is amended
25 to read:

26 **1. Mineral Metallic mineral resources fundamental.** ~~Mineral Metallic mineral~~
27 resources are fundamental to modern civilization.

28 **Sec. 3. 36 MRSA §2852, sub-§2,** as enacted by PL 1981, c. 711, §10, is amended
29 to read:

30 **2. Mineral Metallic mineral resources as economic wealth.** ~~Mineral Metallic~~
31 mineral resources have historically been a primary source of economic wealth, are valuable
32 and, once removed, are forever lost as an economic asset to the State.

33 **Sec. 4. 36 MRSA §2852, sub-§3,** as enacted by PL 1981, c. 711, §10, is amended
34 to read:

35 **3. Development of metallic mineral resources.** Development of this country's
36 metallic mineral resources has involved only a small portion of its land area and may be
37 expected to involve a similarly small portion of the land area of Maine.

38 **Sec. 5. 36 MRSA §2852, sub-§8,** as enacted by PL 1981, c. 711, §10, is amended
39 to read:

1 **8. Size of mining operation.** As the size of a mining operation increases, the cost to
2 the State and its political subdivisions may increase, as do the effects on the environment.
3 As the size of a mining operation increases, the ~~mining company~~ metallic mineral operator
4 benefits from economies of scale in the mining operation.

5 **Sec. 6. 36 MRSA §2853, first ¶**, as enacted by PL 1981, c. 711, §10, is amended
6 to read:

7 It is the policy of the State to encourage the sound and orderly development of Maine's
8 metallic mineral resources. The object of this policy is to assure that the actions associated
9 with development of these resources will:

10 **Sec. 7. 36 MRSA §2853, sub-§3**, as enacted by PL 1981, c. 711, §10, is amended
11 to read:

12 **3. Assistance to municipalities and counties.** Provide planning and development
13 assistance to municipalities, counties and the unorganized territory if significantly affected
14 by metallic mineral resource development; and

15 **Sec. 8. 36 MRSA §2853, sub-§4**, as enacted by PL 1981, c. 711, §10, is amended
16 to read:

17 **4. Scheme of taxation.** Establish a practical scheme of taxation on ~~mining companies~~
18 which metallic mineral operators that will:

- 19 A. Permit these companies to profitably operate mines within the State;
- 20 B. Encourage the economically efficient extraction of metallic minerals;
- 21 C. Permit the State to derive a benefit from the extraction of a nonrenewable resource;
- 22 and
- 23 D. Compensate the State and its political subdivisions for present and future costs
- 24 incurred or to be incurred as a result of the mining activity.

25 **Sec. 9. 36 MRSA §2854, sub-§1**, as enacted by PL 1981, c. 711, §10, is amended
26 to read:

27 **1. Annual excise tax.** A ~~mining company~~ metallic mineral operator shall pay to the
28 State Tax Assessor, for the use set forth in this chapter, an annual excise tax for the privilege
29 of conducting mining within the State.

30 **Sec. 10. 36 MRSA §2854, sub-§2, ¶B**, as enacted by PL 1981, c. 711, §10, is
31 amended to read:

- 32 B. Land, excluding the value of metallic minerals or metallic mineral rights.

33 **Sec. 11. 36 MRSA §2855, sub-§1-A** is enacted to read:

34 **1-A. Advanced exploration.** "Advanced exploration" means any metallic mineral
35 bulk sampling or exploratory activity that exceeds those activities that are exploration
36 activities and are specified in rules adopted by the Department of Environmental
37 Protection. Samples taken as part of exploration are not considered bulk sampling.

38 **Sec. 12. 36 MRSA §2855, sub-§1-B** is enacted to read:

39 **1-B. Affected area.** "Affected area" means an area outside of a mining area where
40 the land surface, surface water, groundwater, air resources, soils or existing uses are

1 potentially affected by mining operations as determined through an environmental impact
2 assessment.

3 **Sec. 13. 36 MRSA §2855, sub-§2, ¶A**, as enacted by PL 1981, c. 711, §10, is
4 amended to read:

5 A. The surface soil is broken in order to facilitate or accomplish the extraction or
6 removal, within 12 successive calendar months, of more than 1,000 cubic yards from
7 the earth of a metallic mineral, top soil or other solid matter or material naturally lying
8 over the metallic minerals, except in connection with exploratory an exploration
9 activity; or

10 **Sec. 14. 36 MRSA §2855, sub-§3**, as enacted by PL 1981, c. 711, §10, is repealed
11 and the following enacted in its place:

12 **3. Exploration.** "Exploration" or "exploration activity" means the following activities
13 when conducted in accordance with rules adopted by the Department of Environmental
14 Protection for the purpose of determining the location, extent and composition of metallic
15 mineral deposits: test boring, test drilling, hand sampling, the digging of test pits, trenching
16 or outcrop stripping for the removal of overburden having a maximum surface opening of
17 300 square feet per test pit or trench or other test sampling methods determined by the
18 department to cause minimal disturbance of soil and vegetative cover.

19 **Sec. 15. 36 MRSA §2855, sub-§4**, as enacted by PL 1981, c. 711, §10, is amended
20 to read:

21 **4. Facilities and equipment.** "Facilities and equipment" means all mining property,
22 excluding land and metallic mineral products.

23 **Sec. 16. 36 MRSA §2855, sub-§5**, as enacted by PL 1981, c. 711, §10, is amended
24 to read:

25 **5. Gross proceeds.** "Gross proceeds" means a ~~mining company's~~ metallic mineral
26 operator's federal gross income from mining with respect to a mine site, as defined in
27 Section 613 of the code mining area.

28 **Sec. 17. 36 MRSA §2855, sub-§6**, as enacted by PL 1981, c. 711, §10, is amended
29 to read:

30 **6. Land.** "Land" means all real estate and all natural resources and any interest in or
31 right involving that real estate or those natural resources including, without limitation,
32 metallic minerals, metallic mineral rights, timber, timber rights, water and water rights.
33 "Land" does not include improvements constructed, placed or located within a ~~mine site~~
34 mining area, such as buildings, structures, fixtures, fences, bridges, dikes, canals, dams,
35 roads or other improvements within a ~~mine site~~ mining area.

36 **Sec. 18. 36 MRSA §2855, sub-§7**, as enacted by PL 1981, c. 711, §10, is repealed
37 and the following enacted in its place:

38 **7. Mining area.** "Mining area" means an area of land described in a permit application
39 and approved by the Department of Environmental Protection, including but not limited to
40 land from which earth material is removed in connection with mining, the lands on which
41 material from that mining is stored or deposited, the lands on which beneficiating or
42 treatment facilities, including groundwater and surface water management treatment

1 systems, are located on the lands on which water reservoirs used in a mining operation are
2 located. The mining area must be determined according to section 2865.

3 **Sec. 19. 36 MRSA §2855, sub-§8**, as amended by PL 1983, c. 776, §4, is further
4 amended to read:

5 **8. ~~Mineral~~ Metallic mineral products.** "~~Mineral~~ Metallic mineral products" means
6 all unextracted and extracted metallic minerals and all products derived therefrom by
7 mining.

8 **Sec. 20. 36 MRSA §2855, sub-§9**, as enacted by PL 1981, c. 711, §10, is repealed
9 and the following enacted in its place:

10 **9. Metallic mineral.** "Metallic mineral" means any ore or material to be excavated
11 from the natural deposits on or in the earth for its metallic mineral content to be used for
12 commercial or industrial purposes. "Metallic mineral" does not include thorium or uranium.

13 **Sec. 21. 36 MRSA §2855, sub-§10**, as enacted by PL 1981, c. 711, §10, is repealed
14 and the following enacted in its place:

15 **10. Mining, mining operation or mining activity.** "Mining," "mining operation" or
16 "mining activity" means activities, facilities or processes necessary for the extraction or
17 removal of metallic minerals or overburden or for the preparation, washing, cleaning or
18 other treatment of metallic minerals and includes the bulk sampling, advanced exploration,
19 extraction or beneficiation of metallic minerals as well as waste storage and other stockpiles
20 and reclamation activities, but does not include exploration.

21 **Sec. 22. 36 MRSA §2855, sub-§11**, as enacted by PL 1981, c. 711, §10, is repealed
22 and the following enacted in its place:

23 **11. Metallic mineral operator.** "Metallic mineral operator" means a permittee or
24 other person who is engaged in, or who is preparing to engage in, mining operations for
25 metallic minerals, whether individually or jointly or through agents, employees or
26 contractors.

27 **Sec. 23. 36 MRSA §2855, sub-§12**, as amended by PL 1983, c. 776, §5, is further
28 amended to read:

29 **12. Mining property.** "Mining property" means:

30 A. All real estate on, under, within or comprising a ~~mine-site~~ mining area; and

31 B. All tangible personal property on, under or within a ~~mine-site~~ mining area, or on
32 route to or from a ~~mine-site~~ mining area, or being transported to or from or destined to
33 or from a ~~mine-site~~ mining area, and ~~which that~~ is owned, leased or otherwise subject
34 to possessory control by a ~~mining company~~ metallic mineral operator.

35 C. ~~Mining property does not include:~~

36 (1) ~~All property which is not mineral products and is not primarily used or held~~
37 ~~for use in connection with mining or the business of mining at a mine site, or any~~
38 ~~activity necessary or incidental to or in support of mining or the business of mining~~
39 ~~engaged in at a mine site; or~~

40 (2) ~~Those vehicles upon which state excise taxes are paid for the current~~
41 ~~registration period pursuant to chapter 111.~~

1 "Mining property" does not include all property that is not metallic mineral products and is
2 not primarily used or held for use in connection with mining or the business of mining at a
3 mining area, or any activity necessary or incidental to or in support of mining or the
4 business of mining engaged in at a mining area, or those vehicles upon which state excise
5 taxes are paid for the current registration period pursuant to chapter 111.

6 **Sec. 24. 36 MRSA §2855, sub-§14**, as amended by PL 1993, c. 395, §18, is further
7 amended to read:

8 **14. Net proceeds.** "Net proceeds" means a ~~mining company's~~ metallic mineral
9 operator's federal taxable income from the property with respect to a ~~mine site~~ mining area
10 (computed without allowance for depletion as defined in Section 613 of the code) adjusted
11 as follows.

12 A. The following deductions are allowed in addition to those allowed in computing
13 taxable income from the property under the code:

14 (1) Cost depletion as would be allowed under Section 611 of the code without
15 regard to percentage depletion;

16 (2) Exploration and development costs as defined in Sections 616 and 617 of the
17 code. Exploration and development costs incurred prior to the commencement of
18 mining must be recovered proportionately over the life of the mine in the same
19 manner as that provided in Section 611 of the code with respect to cost depletion.
20 Exploration and development costs incurred after the commencement of mining
21 must be recovered in the year incurred;

22 (3) Net operating loss deductions as defined in Section 172 of the code, but not
23 including the exclusions under paragraph B; and

24 (4) Reasonable accruals for all reclamation, restoration and shut-down costs
25 required by state or federal laws, regulations or permits. These accruals must be
26 made on a proportionate basis over the accrual period.

27 B. The following may not be allowed as deductions:

28 (1) Property taxes paid that are allowed as a credit against the tax provided by this
29 chapter;

30 (2) The tax provided by this chapter; and

31 (3) Percentage depletion as allowed under Section 613 of the code.

32 **Sec. 25. 36 MRSA §2855, sub-§14-A** is enacted to read:

33 **14-A. Reclamation.** "Reclamation" or "reclamation operation" means the
34 rehabilitation of the mining area, affected area and any other area of land or water body
35 affected by mining under an environmental protection, reclamation and closure plan
36 approved by the Department of Environmental Protection. "Reclamation" includes, but is
37 not limited to, stabilization of slopes, creation of safety benches, planting of forests, seeding
38 of grasses and legumes for grazing purposes, planting of crops for harvest and enhancement
39 of wildlife and aquatic resources.

40 **Sec. 26. 36 MRSA §2855, sub-§15**, as enacted by PL 1981, c. 711, §10, is amended
41 to read:

1 **15. Tax year.** "Tax year" means an annual accounting period ending on the last day
2 of the month of the period used by the ~~mining company~~ metallic mineral operator as its
3 taxable year for federal income tax purposes.

4 **Sec. 27. 36 MRSA §2855, sub-§16**, as enacted by PL 1981, c. 711, §10, is amended
5 to read:

6 **16. Termination of mining.** "Termination of mining" means, and ~~shall be~~ is deemed
7 to occur on March 31st of any year if:

8 A. The ~~mining company~~ metallic mineral operator has permanently abandoned mining
9 during the previous 12 months; or

10 B. During the previous 2 years, there has been:

11 (1) Extraction or removal from the earth or sale of less than 1,000 cubic yards of
12 metallic minerals, top soil, other solid matter or material naturally lying over the
13 metallic minerals; and

14 (2) No construction or reconstruction of fixtures, buildings or surface
15 improvements ~~which~~ that are mining property.

16 **Sec. 28. 36 MRSA §2855, sub-§17, ¶B**, as enacted by PL 1981, c. 711, §10, is
17 amended to read:

18 B. Which are, on the last day of the tax year:

19 (1) On, under or within a ~~mine-site~~ mining area; or

20 (2) Within the State and on route to or from a ~~mine-site~~ mining area, or being
21 transported to or from or destined to or from a ~~mine-site~~ mining area.

22 **Sec. 29. 36 MRSA §2856, first ¶**, as enacted by PL 1981, c. 711, §10, is amended
23 to read:

24 The amount of the annual excise tax on a ~~mining company~~ metallic mineral operator
25 ~~shall be~~ is the sum of the excise taxes due on each ~~mine-site~~ mining area. The excise tax
26 due on each ~~mine-site~~ mining area is the greater of the following:

27 **Sec. 30. 36 MRSA §2856, sub-§2, ¶A**, as corrected by RR 2013, c. 2, §45, is
28 amended by amending subparagraph (1) to read:

29 (1) ~~0.009~~ 0.1; or

30 **Sec. 31. 36 MRSA §2856, sub-§2, ¶B**, as corrected by RR 2013, c. 2, §45, is
31 amended to read:

32 B. If net proceeds are equal to or less than zero, then ~~0.009~~ 0.1.

33 **Sec. 32. 36 MRSA §2857, sub-§1**, as enacted by PL 1981, c. 711, §10, is amended
34 to read:

35 **1. Annual return.** A ~~mining company~~ metallic mineral operator shall file, on or
36 before the date the ~~mining company's~~ metallic mineral operator's state income tax return is
37 due to be filed, an annual return on a form specified by the State Tax Assessor for each tax
38 year.

1 **Sec. 33. 36 MRSA §2857, sub-§3**, as enacted by PL 1981, c. 711, §10, is amended
2 to read:

3 **3. Payments.** A ~~mining company~~ metallic mineral operator shall pay the tax due, less
4 estimated tax payments and credits, at the time its annual return is due without extensions.

5 **Sec. 34. 36 MRSA §2857, sub-§5**, as enacted by PL 1981, c. 711, §10, is amended
6 to read:

7 **5. Computation.** In computing a ~~mining company's~~ metallic mineral operator's tax,
8 gross proceeds and net proceeds ~~shall~~ must be computed as if each ~~mine-site~~ mining area
9 were a separate taxpayer. The State Tax Assessor may distribute, apportion or allocate on
10 a reasonable basis gross proceeds, deductions, credits or allowances between or among
11 ~~mining companies~~ metallic mineral operators or ~~mine-sites~~ mining areas, if such
12 distribution, apportionment or allocation is necessary to prevent evasion of taxes imposed
13 by this chapter, or to reflect clearly the gross or net proceeds of any ~~mining company~~
14 metallic mineral operator or ~~mine-site~~ mining area.

15 **Sec. 35. 36 MRSA §2858**, as amended by PL 1987, c. 772, §26, is further amended
16 to read:

17 **§2858. Credits, refunds and amendments**

18 Credits, refunds and amendments ~~shall~~ must be computed and applied separately for
19 each ~~mine-site~~ mining area. The following provisions ~~shall~~ apply.

20 **1. Credit for property tax prior to commencement of mining.** A credit ~~shall be~~ is
21 allowed for property taxes paid by a ~~mining company~~ metallic mineral operator or any
22 other person on property ~~which that~~ becomes exempt during the year under section 2854,
23 subsection 2. The amount of the credit ~~shall be~~ is computed as follows: The number of
24 days remaining in the property tax year beginning with the date mining commences and
25 the next March 31st, inclusive, ~~shall~~ must be divided by 365; the percentage thus arrived
26 at ~~shall~~ must be multiplied by the property taxes paid during that property tax year against
27 such property. The credit may be used in the tax year in which the property tax was paid or
28 in any tax years thereafter.

29 **2. Credit for property tax paid on land and buildings.** A credit ~~shall be~~ is allowed
30 for property taxes paid by a ~~mining company~~ metallic mineral operator or any other person
31 on land and buildings that are mining property. The credit may be used in the tax year in
32 which the property tax was paid or in any tax years thereafter.

33 **3. Credits for prepayment of taxes.** The following provisions apply to prepayment
34 of taxes other than estimated tax payments.

35 A. A person may prepay to the State Tax Assessor at any time prior to the end of the
36 5 years following the commencement of mining, a portion of the taxes due under this
37 chapter not to exceed \$250,000 in one year or \$500,000 for a ~~mine-site~~ mining area.

38 B. If a person (whether or not it was a ~~mining company~~ metallic mineral operator at
39 the time of the prepayment) prepays a portion of the taxes due under this chapter, it
40 may take that prepayment as a credit against the taxes due under this chapter in any tax
41 years following prepayment.

42 **5. Refunds.** Tax refunds and abatement ~~shall~~ must be made in accordance with
43 section 2011, except if estimated tax payments exceed the tax due for the tax year, the State

1 Tax Assessor shall refund the excess, unless the ~~mining company~~ metallic mineral operator
2 requests otherwise.

3 **6. Amendment for unexpended accruals.** If accruals taken as deductions under
4 section 2855, subsection 14, are not actually expended for the purposes for which they were
5 accrued, then the ~~mining company~~ metallic mineral operator shall amend its returns for the
6 tax years the deductions were taken to reduce those deductions to actual expenditures.

7 **Sec. 36. 36 MRSA §2859**, as repealed and replaced by PL 1985, c. 691, §§27 and
8 48, is amended to read:

9 **§2859. Estimated tax requirements**

10 A ~~mining company~~ metallic mineral operator shall make payments of estimated tax
11 pursuant to section 5228, except that the estimated tax liability is to be based on liability
12 for the mining excise tax rather than the income tax.

13 **Sec. 37. 36 MRSA §2862, sub-§7**, as enacted by PL 1981, c. 711, §10, is amended
14 to read:

15 **7. Changes in mining activity.** If, prior to the commencement of extraction of
16 metallic minerals for sale, a ~~mining company~~ metallic mineral operator ceases construction
17 of a ~~mine site~~ mining area, any taxes due during the period of construction cessation ~~shall~~
18 must be distributed according to the most recently applicable provision of this section.

19 **Sec. 38. 36 MRSA §2863, sub-§1, ¶C**, as enacted by PL 1981, c. 711, §10, is
20 amended to read:

21 C. "Related to mining" means directly related to mining or to the construction or
22 reconstruction of a ~~mine site~~ mining area. New or additional public facilities or
23 services ~~shall be~~ are deemed to be related to mining when they are provided to a ~~mining~~
24 ~~company~~ metallic mineral operator, to employees of the ~~mining company~~ metallic
25 mineral operator or its contractors or subcontractors and their families; or when they
26 are required because of an increase in population directly attributable to mining or to
27 the construction or reconstruction of a ~~mine site~~ mining area.

28 **Sec. 39. 36 MRSA §2863, sub-§4**, as enacted by PL 1981, c. 711, §10, is amended
29 to read:

30 **4. Grants to municipalities in which a ~~mine site~~ mining area is located.** To the
31 extent funds are available from the excise tax revenues attributable to a ~~mine site~~ mining
32 area located within a municipality, the commissioner shall make a grant to that
33 municipality. The amount of that grant may not be greater than 50% of the amount
34 calculated under section 2861, subsection 3, paragraph E.

35 **Sec. 40. 36 MRSA §2865**, as amended by PL 2007, c. 627, §76, is further amended
36 to read:

37 **§2865. Mine-site Mining area and valuation determinations**

38 **1. Mine-site Mining area.** The State Tax Assessor shall determine the area of a ~~mine~~
39 site mining area, taking into account all relevant information, including, but not limited to,
40 plans or permits approved under the site location of development law, Title 38, chapter 3,
41 subchapter 1, ~~Article~~ article 6. The assessor shall give notice to the ~~mining company~~

1 metallic mineral operator and to the municipality in which the ~~mine-site~~ mining area is
2 located of the determination. The assessor's determination is reviewable under section 151.

3 **2. Valuation.** If a ~~mine-site~~ mining area is located in a municipality, the assessor shall
4 determine the valuation of mining property and the percentage of that valuation represented
5 by land and buildings that are not exempt from property taxes. That valuation of land and
6 buildings must be applied in determining the property taxes. The municipality in which
7 the ~~mine-site~~ mining area is located may appeal that determination to the State Board of
8 Property Tax Review as provided in chapter 101, subchapter 2-A.

9 **Emergency clause.** In view of the emergency cited in the preamble, this legislation
10 takes effect when approved.

11 SUMMARY

12 This bill conforms the definitions in the mining excise tax laws to the Maine Metallic
13 Mineral Mining Act. The bill also increases from 0.009 to 0.1 the tax rate on gross proceeds
14 from a mining area.