

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE

ONE HUNDRED AND TENTH LEGISLATURE

SECOND SPECIAL SESSION

September 25, 1981

AND

THIRD SPECIAL SESSION

December 9, 1981

AND

SECOND REGULAR SESSION

January 6, 1982 to April 13, 1982

AND AT THE

FOURTH SPECIAL SESSION

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AND AT THE

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J.S. McCarthy Co.
Augusta, Maine
1981

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND AND THIRD SPECIAL SESSIONS

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SECOND REGULAR SESSION

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FOURTH AND FIFTH SPECIAL SESSIONS

of the

ONE HUNDRED AND TENTH LEGISLATURE

1981

CHAPTER 711

H.P. 2428 - L.D. 2155

AN ACT to Create an Excise Tax on Mining Companies and Regulate Mining Activities.

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

Sec. 1. 1 MRSA §2601, sub-§4 is enacted to read:

4. Review of grants for mining impact assistance. The provisions for mining impact assistance contained in Title 36, section 2863, shall be reviewed by January 1, 1987, and every 5 years thereafter.

Sec. 2. 5 MRSA c. 18 is enacted to read:

CHAPTER 18

MINING EXCISE TAX TRUST FUND

§451. Statement of purpose

The purpose of this chapter is to establish the Mining Excise Tax Trust Fund to replace, generally, the loss to the State of a nonrenewable natural resource and to deal with extraordinary government costs required by mining of metallic minerals.

§452. Mining Excise Tax Trust Fund

There is created a separate trust fund to be known as the Mining Excise Tax Trust Fund.

1. Nonlapsing fund. The fund shall not lapse.

2. Investment. The Treasurer of State shall invest the fund in accordance with section 138.

3. Principal limit. The principal amount of the fund shall not exceed \$10,000,000.

§453. Board of trustees

The following provisions shall apply to the Mining

Excise Tax Trust Fund Board of Trustees.

1. Membership. The board shall consist of 5 members, at least one of whom shall be a resident of the unorganized territory.

2. Appointment of members. The board's members shall be appointed by the Governor and shall be subject to review by the joint standing committee of the Legislature having jurisdiction over taxation and to confirmation by the Legislature. The board members may be removed for cause.

3. Terms. Of the initial appointees: One shall serve a term of one year; one shall serve a term of 2 years; one shall serve a term of 3 years; one shall serve a term of 4 years; and one shall serve a term of 5 years. Upon expiration of these terms, members shall be appointed to serve for 5 years. Members may be reappointed.

§454. Powers and duties of the board

The board shall have the following powers and duties.

1. Powers. The board may authorize expenditures of income of the trust fund as provided by the general plan approved by the Legislature. The board may:

A. Purchase real estate with the consent of the Governor; and

B. Transfer responsibility to carry out the purposes set forth in section 455, and transfer funds therefore, to state agencies and institutions of higher education when the transfer is consented to in writing by the agency accepting responsibility and by the Governor.

2. Consultation. The board shall consult with the Commissioner of Conservation, Commissioner of Environmental Protection, Commissioner of Inland Fisheries and Wildlife, the Director of the State Planning Office and such other state agencies as may be necessary in making decisions on the expenditures of funds or transfer of responsibilities.

3. Concurrence required for expenditures. An expenditure of funds or transfer of responsibility may only be made with the concurrence of at least 3 board members.

4. Reinvestment of funds. The board may direct that the Treasurer of State reinvest any portion of the income earned by the trust fund with the principal of the trust fund. Funds reinvested may not be considered principal of

the trust fund for the purposes of section 455, subsection 1, paragraph B.

5. Location. For administrative purposes, the board shall be housed in the Department of Conservation. One full-time position in the department may serve the board in carrying out the purposes of this section.

6. Biennial report and annual plan. The board shall prepare:

A. A biennial report to be submitted to the Governor and Legislature. The report shall include an audited financial statement of the trust fund and a listing of activities undertaken by the board in the preceding biennium. The report shall be submitted 30 days prior to the convening of the First Regular Session of the Legislature; and

B. An annual general plan of expenditures and activities for the coming year. The general plan shall be submitted to the Legislature 30 days prior to the convening of each regular session for approval.

§455. Uses of the trust fund

1. Funds available. The board may utilize available funds as follows.

A. The board may use income for the purposes of this section.

B. The board may use the principal if approved by the Legislature and the Governor.

2. Uses. Funds may be used as follows:

A. To purchase and develop land or other real property interests for park and recreational uses;

B. To purchase wildlife habitats, marine habitats and unique natural areas; or

C. To restore the quality of marine waters, lakes, rivers and streams.

Sec. 3. 36 MRSA §573, sub-§3, ¶¶C and D, as enacted by PL 1981, c. 625, §1, are amended to read:

C. Deed restrictions, restrictive covenants or organizational charters which prevent commercial harvesting of trees or require a primary use of land other than

commercial harvesting and which were effective prior to January 1, 1982; or

D. If the parcel is less than 100 acres, the sole use of the land is harvesting trees for personal use; or

Sec. 4. 36 MRSA §573, sub-§3, ¶E is enacted to read:

E. Past or present multiple use for mineral exploration.

Sec. 5. 36 MRSA §581-C is enacted to read:

§581-C. Mineral lands

Notwithstanding the provisions of section 581, on withdrawal or change of use of land containing naturally occurring metallic minerals, the penalty due with respect to the portion of the just value attributable to those minerals shall be the minimum penalty provided in the Maine Constitution, Article IX, section 8.

1. Just value. The portion of just value attributable to the naturally occurring metallic minerals shall be the just value of the minerals according to section 2864.

2. Additional penalty. The additional penalty for failure to report a change of use under section 579 may not apply to this penalty.

3. Interest. Interest shall be applied to this penalty at a rate of 5% per year.

4. Supplemental assessments. When the penalty provisions of this section apply to a change of use or withdrawal, supplemental assessments under section 579, or supplemental assessments under any other section, of the tax that should have been paid may not be made on the portion of the valuation of that land that is attributable to naturally occurring metallic minerals.

5. Application. This section shall also apply to changes in use occurring before the effective date of this section.

6. Allocation of penalty. This penalty shall be deposited in the Mining Impact Assistance Fund provided in section 2863.

Sec. 6. 36 MRSA §603, sub-§9 is amended to read:

9. Certain corporations. The personal property of

manufacturing, mining, smelting, agricultural and stock raising corporations, and corporations organized for the purpose of buying, selling and leasing real estate shall be taxed to the corporation or to the persons having possession of such property in the place where situated, except as provided in ~~subsection~~ subsections 1 and 10.

Sec. 7. 36 MRSA §603, sub-§10 is enacted to read:

10. Tax situs. The tax situs of tangible personal property shall be at the mine site if that property is:

A. Owned, leased or otherwise subject to possessory control of a mining company; and

B. On route to or from, being transported to or from or destined to or from a mine site.

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

Sec. 8. 36 MRSA §656, sub-§1, ¶B is repealed and the following enacted in its place:

B. Naturally occurring metallic minerals;

Sec. 9. 36 MRSA §1112-A is enacted to read:

§1112-A. Mineral lands

Notwithstanding the provisions of this subchapter, the amount of a penalty that would be due on the valuation of land that is attributable to naturally occurring metallic minerals shall be determined in the same manner as provided under section 581-C.

Sec. 10. 36 MRSA c. 371 is enacted to read:

CHAPTER 371

MINING EXCISE TAX

§2851. Preamble

It is the Legislature's belief that mining for metallic minerals is an acceptable and necessary activity in the State. Mining results in economic benefits to the locality where it occurs, as well as to the entire State and the Nation. Those who conduct mining do so by their own initiative and by investing their capital. When mining is conducted, investments of the State are also made to provide public facilities and services. Aesthetic costs and the

permanent loss of valuable assets also result from mining. It is the Legislature's intent that the mining excise tax be fairly related to the services provided by the State and its subdivisions, as well as account for the costs of mining and the permanent loss of valuable assets.

§2852. Findings

The Legislature makes the following findings.

1. Mineral resources fundamental. Mineral resources are fundamental to modern civilization.

2. Mineral resources as economic wealth. Mineral resources have historically been a primary source of economic wealth, are valuable and, once removed, are forever lost as an economic asset to the State.

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

4. Excise tax. The tax established by this chapter is not a property tax. It is an excise tax imposed on those engaged in and enjoying the privilege of conducting mining in the State.

5. Creation of additional costs to government by mining. The activity of mining may create additional costs to the State and its political subdivisions for government services, such as environmental monitoring and education and for highways, sewers, schools and other improvements which are necessary to accommodate the development of a mining industry.

6. Effect of mining on environment and other qualities. The activity of mining may have permanent and often damaging effects on the environment and recreational and aesthetic qualities of the State. These effects constitute a cost to the State.

7. Quality of life. The activity of mining may significantly alter the quality of life in communities affected by mining.

8. Size of mining operation. As the size of a mining operation increases, the cost to the State and its political subdivisions may increase, as do the effects on the environment. As the size of a mining operation increases, the mining company benefits from economies of scale in the mining operation.

9. Long-term and short-term economic costs. The State and its political subdivisions incur long-term and short-term economic costs as a result of mining. A fund, in which is deposited a portion of the excise tax revenues, assures that money will be available for long-term and short-term costs associated with social, educational, environmental and economic impacts of mining.

10. Impact of mining tax laws on mining industry. Mining tax laws may have a significant impact on the profitability of mining and the industry's ability to enter into and sustain production.

§2853. Purpose

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

1. Expansion and diversification of economy. Encourage expansion and diversification of the state's economy and create new employment opportunities for the state's people;

2. Land use; environmental, safety and health regulations. Adhere to sound and effective land use, environmental, safety and health regulations administered through appropriate public agencies;

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

4. Scheme of taxation. Establish a practical scheme of taxation on mining companies which will:

A. Permit these companies to profitably operate mines within the State;

B. Encourage the economically efficient extraction of minerals;

C. Permit the State to derive a benefit from the extraction of a nonrenewable resource; and

D. Compensate the State and its political subdivisions for present and future costs incurred or to be incurred as a result of the mining activity.

§2854. Excise tax in lieu of property taxes

1. Annual excise tax. A mining company shall pay to

the State Tax Assessor, for the use set forth in this chapter, an annual excise tax for the privilege of conducting mining within the State.

2. Property tax exemption. The excise tax imposed by this chapter shall be in lieu of all property taxes on or with respect to mining property, except for the real property taxes on the following:

A. Buildings, excluding fixtures and equipment; and

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

§2855. Definitions

For the purposes of this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. The code. The "code" means the United States Internal Revenue Code of 1954, as amended, as of December 31, 1981, and the implementing regulations thereof.

2. Commencement of mining. "Commencement of mining" means when the mine is opened and in the process of development, and shall be deemed to occur when whichever of the following first occurs:

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

B. Construction or reconstruction is commenced on fixtures, buildings or surface improvements, to be used in connection with mining.

3. Exploratory activity. "Exploratory activity" means all activities undertaken by the owner or any other person for the purpose of determining the existence of minerals or the quantity, quality or character of the minerals or feasibility of mining those minerals. These activities may include, without limitation: Testing and evaluation of the land and subsurface; taking soil and stream sediment samples; drilling on the land including, without limitation, bulk sample drilling; bulk sample excavation; performance of geophysical tests; and activities incidental to the foregoing; notwithstanding that the activity may involve the use of equipment on the land, may alter the character and

appearance of the land or may result in disturbance of the land, including, without limitation, the creation of trails or roads, removal of trees, the planting of new vegetation or the taking of other measures to prevent soil erosion, or the marking of sample holes.

4. Facilities and equipment. "Facilities and equipment" means all mining property, excluding land and mineral products.

5. Gross proceeds. "Gross proceeds" means a mining company's federal gross income from mining with respect to a mine site, as defined in Section 613 of the code.

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

7. Mine site. "Mine site" means the entire contiguous area owned, leased or otherwise subject to the possessory control of a mining company within which mining or activities incidental thereto, occur or may reasonably be expected to occur.

A. The mine site includes, without limitation, the contiguous area in which are located or reasonably may be expected to be located: The excavation; tailings, waste rock or overburden storage areas; mills; conveyors; concentrators; crushers; screens; pipes; canals; dams; ponds; lagoons; ditches; roads; access roads; utility facilities or equipment; pollution control facilities; railroad tracks or sidings; administrative or other buildings; or improvements, structures, rights-of-way or easements appurtenant or related to any of the foregoing.

B. The mine site shall be determined according to section 2865.

8. Mineral products. "Mineral products" means all minerals and all products derived from minerals by mining.

9. Minerals. "Minerals" means all naturally-occurring metallic minerals.

10. Mining. The term "mining" has the following meanings.

A. "Mining" means:

(1) The extraction of minerals from the ground; or

(2) Processes used in the separation or extraction of the mineral or minerals from other material from the mine or other natural deposit, including, but not limited to: Crushing; grinding; beneficiation by concentration (gravity, flotation, amalgamation, electrostatic or magnetic); cyanidation; leaching; crystallization; or precipitation or processes substantially equivalent to or necessary or incidental to any of the foregoing; but not including electrolytic deposition; roasting; thermal or electric smelting; or refining.

B. Mining does not include exploratory activity.

11. Mining company. "Mining company" means a person who engages in mining in the State.

12. Mining property. "Mining property" means:

A. All real estate on, under, within or comprising a mine site; and

B. All tangible personal property on, under or within a mine site, or on route to or from a mine site, or being transported to or from or destined to or from a mine site, and which is owned, leased or otherwise subject to possessory control by a mining company.

C. Mining property does not include:

(1) Tangible personal property which is leased to the mining company and with respect to which the lessor is subject to property taxation by a municipality in this State other than the one in which the mine site is located; or

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

13. Municipality. "Municipality" means a city, town or plantation.

14. Net proceeds. "Net proceeds" means a mining company's federal taxable income from the property with respect to a mine site (computed without allowance for depletion) as defined in Section 613 of the code adjusted as follows:

A. The following deductions shall be allowed in addition to those allowed in computing taxable income from the property under the code:

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

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

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

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

B. The following may not be allowed as deductions:

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

(2) The tax provided by this chapter; and

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

15. Tax year. "Tax year" means an annual accounting period ending on the last day of the month of the period used by the mining company as its taxable year for federal income tax purposes.

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

A. The mining company has permanently abandoned mining during the previous 12 months; or

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

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

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

17. Value of facilities and equipment. "Value of facilities and equipment" means the basis to the owner as defined in Section 1012 of the code for all facilities and equipment:

A. With a useful life beyond one year at the date of acquisition; and

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

(1) On, under or within a mine site; or

(2) Within the State and on route to or from a mine site, or being transported to or from or destined to or from a mine site.

§2856. Amount of tax

The amount of the annual excise tax on a mining company shall be the sum of the excise taxes due on each mine site. The excise tax due on each mine site shall be the greater of the following:

1. Tax on facilities and equipment. The value of facilities and equipment multiplied by 0.005; or

2. Tax on gross proceeds. The gross proceeds multiplied by:

A. If net proceeds is greater than zero, the greater of the following:

(1) 0.009; or

(2) A number determined by subtracting from 0.045 the quotient obtained by dividing:

(a) Gross proceeds, by

(b) Net proceeds multiplied by 100.

B. If net proceeds is equal to or less than zero, then 0.009.

§2857. Returns

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

2. Form and contents. The return shall indicate:

A. The tax due;

B. The estimated tax payments made;

C. Credits provided under section 2858; and

D. Information relating to the value of facilities and equipment, gross proceeds, net proceeds or other relevant information as the State Tax Assessor may by rule require.

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

4. Extensions. The State Tax Assessor may grant a reasonable extension of time for filing a return, declaration, statement or other document or payment of tax or estimated tax required by this chapter on such terms and conditions as he may require. The extension may not exceed 8 months.

5. Computation. In computing a mining company's tax, gross proceeds and net proceeds shall be computed as if each mine site were a separate taxpayer. The State Tax Assessor may distribute, apportion or allocate on a reasonable basis gross proceeds, deductions, credits or allowances between or among mining companies or mine sites, if such distribution, apportionment or allocation is necessary to prevent evasion of taxes imposed by this chapter, or to reflect clearly the gross or net proceeds of any mining company or mine site.

§2858. Credits, refunds and amendments

Credits, refunds and amendments shall be computed and applied separately for each mine site. The following provisions shall apply.

1. Credit for property tax prior to commencement of mining. A credit shall be allowed for property taxes paid by a mining company or any other person on property which becomes exempt during the year under section 2854, subsection 2. The amount of the credit shall be computed as fol-

lows: The number of days remaining in the property tax year beginning with the date mining commences and the next March 31st, inclusive, shall be divided by 365; the percentage thus arrived at shall be multiplied by the property taxes paid during that property tax year against such property. The credit may be used in the tax year in which the property tax was paid or in any tax years thereafter.

2. Credit for property tax paid on land and buildings. A credit shall be allowed for property taxes paid by a mining company or any other person on land and buildings that are mining property. The credit may be used in the tax year in which the property tax was paid or in any tax years thereafter.

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

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

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

4. Credit for penalty payments. A credit shall be allowed for a penalty paid by a mining company or any other person under sections 581-C or 1112-A with respect to the mine site. The credit may not exceed 10% of the penalty in each of the first 6 tax years and the balance may be taken in any tax years thereafter. The State Tax Assessor shall allow a higher percentage to reflect an expected mine life of less than 6 years.

5. Refunds. Tax refunds and abatements shall be made in accordance with section 2011, except if estimated tax payments exceed the tax due for the tax year, the State Tax Assessor shall refund the excess, unless the mining company requests otherwise.

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

§2859. Estimated tax declarations

A mining company shall make a declaration of its estimated tax for the tax year.

1. Amount. The estimated tax may not be less than the smaller of the following:

A. An amount equal to the preceding tax year's tax liability under this chapter, if the tax applied for a taxable year of 12 months; or

B. Eighty percent of the tax liability under this chapter for the current tax year.

2. Time for filing. A declaration shall be filed on or before the 15th day of the 4th month of the tax year if mining commenced before the tax year. If mining commenced after the beginning of the tax year, the declaration shall be filed within 90 days of the commencement of mining.

3. Payments of estimated tax. The estimated tax shall be paid in 4 equal installments on or before the dates federal corporate estimated income taxes are due to be paid. These payments shall be considered payments on account.

4. Short tax year. If the tax year is less than 12 months, declarations and payments shall be made as provided by rule of the State Tax Assessor.

5. Amendment. A declaration may be amended as provided by rule of the State Tax Assessor. If a declaration is amended, the remaining installments shall be ratably increased or decreased to reflect the change in the estimated tax.

§2860. Enforcement

The following provisions shall apply to enforcement of this chapter.

1. General enforcement provisions. The provisions of chapters 1 to 7 and chapter 835 shall apply with like effect to collecting the tax and enforcing the provisions of this chapter.

2. Lien. The tax, if unpaid when due, may become a lien on the mining property or any other property of the mining company, as provided under section 5313.

§2861. Municipal reimbursement

1. Reimbursement. Excise tax revenues shall be used

first to reimburse municipalities for the tax exemptions established by this chapter.

2. Treasurer's duties. The Treasurer of State shall reimburse each municipality 50% of the property tax revenue loss suffered by that municipality during the previous calendar year as a result of the exemptions established by this chapter.

3. Determination of amount. The property tax revenue loss shall be determined as follows.

A. The State Tax Assessor shall make the following determinations:

(1) The total amount of property taxes levied by the municipality in the previous calendar year;

(2) The municipal valuation which resulted in subparagraph (1); and

(3) The valuation of the property which is exempt as a result of this chapter.

B. The valuation of property which is exempt as a result of this chapter, shall be the total valuation of that property reduced by the valuation of that property which would be determined to be exempt under this Title as this Title existed on the day before the effective date of this Act.

C. The State Tax Assessor shall add the valuation as determined in paragraph A, subparagraph (2), to the valuation as determined in paragraph A, subparagraph (3), and divide the sum into the figure determined in paragraph A, subparagraph (1).

D. The State Tax Assessor shall apply the rate calculated in paragraph C to the valuation of the exempt property to determine the amount of potential tax revenue loss.

E. The State Tax Assessor shall reduce the amount from paragraph D to reflect the additional school support provided by the State because of the change in valuation under paragraph B, which figure shall be the actual tax revenue loss.

4. Payment. The Treasurer of State shall use the excise tax revenues to pay to each municipality 50% of the actual tax revenue loss as determined by subsection 3, paragraph E. The Treasurer of State shall set aside an

amount from these revenues sufficient to meet this obligation. He shall pay the 50% due to the municipality by February 1st of the year following the year in which property tax revenue was lost by the municipality.

§2862. Distribution of remaining revenues

Excise tax revenues remaining after municipal reimbursement under section 2861 shall be used as follows.

1. First year. In the first year following the commencement of mining, revenues shall be distributed as follows:

- A. 20% to the General Fund; and
- B. 80% to the Mining Impact Assistance Fund.

2. Second year. In the 2nd year following the commencement of mining, revenues shall be distributed as follows:

- A. 15% to the General Fund;
- B. 10% to the Mining Excise Tax Trust Fund; and
- C. 75% to the Mining Impact Assistance Fund.

3. Third year. In the 3rd year following the commencement of mining, revenues shall be distributed as follows:

- A. 20% to the General Fund;
- B. 15% to the Mining Excise Tax Trust Fund; and
- C. 65% to the Mining Impact Assistance Fund.

4. Fourth year. In the 4th year following the commencement of mining, revenues shall be distributed as follows:

- A. 25% to the General Fund;
- B. 25% to the Mining Excise Tax Trust Fund; and
- C. 50% to the Mining Impact Assistance Fund.

5. Fifth year. In the 5th year following the commencement of mining, revenues shall be distributed as follows:

- A. 25% to the General Fund;

B. 30% to the Mining Excise Tax Trust Fund; and

C. 45% to the Mining Impact Assistance Fund.

6. Subsequent years. In the years following the 5th year after the commencement of mining, revenues shall be distributed as follows:

A. 30% to the General Fund;

B. 60% to the Mining Excise Tax Trust Fund; and

C. 10% to the Mining Impact Assistance Fund.

7. Changes in mining activity. If, prior to the commencement of extraction of minerals for sale, a mining company ceases construction of a mine site, any taxes due during the period of construction cessation shall be distributed according to the most recently applicable provision of this section.

8. Adjustments to distribution formula. The distribution provisions of this section shall be altered as follows.

A. Amounts paid in accordance with section 2858, subsection 3, in each year shall be deposited in the Mining Impact Assistance Fund.

B. Funds allocated to the Mining Impact Assistance Fund which would raise the fund above its limit shall be redistributed as follows:

(1) 33 1/3% to the General Fund; and

(2) 66 2/3% to the Mining Excise Tax Trust Fund.

C. Funds allocated to the Mining Excise Tax Trust Fund which would raise the fund above its limit shall be redistributed as follows:

(1) 33 1/3% to the Mining Impact Assistance Fund;
and

(2) 66 2/3% to the General Fund.

D. If both the Mining Excise Tax Trust Fund and the Mining Impact Assistance Fund have reached their limits, funds shall be redistributed to the General Fund.

§2863. Grants for impact assistance

The Mining Impact Assistance Fund shall be used to pro-

vide impact assistance to municipalities, counties or the Unorganized Territory Education and Services Fund, as follows.

1. Definitions. For the purposes of this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Commissioner" means the Commissioner of Finance and Administration.

B. "Public facilities and services" means facilities and services provided by a municipality or county for public purposes, including, without limitation, education, public health, welfare or safety, sewage disposal, water treatment, road construction or maintenance, transportation, environmental protection, recreation or planning for those facilities and services.

C. "Related to mining" means directly related to mining or to the construction or reconstruction of a mine site. New or additional public facilities or services shall be deemed to be related to mining when they are provided to a mining company, to employees of the mining company or its contractors or subcontractors and their families, or when they are required because of an increase in population directly attributable to mining or to the construction or reconstruction of a mine site.

2. Fund established. There is created the Mining Impact Assistance Fund, which shall receive part of the revenues from the excise tax.

A. The fund shall not lapse.

B. Expenditures under subsection 5 may not be made except from funds appropriated from this fund by the Legislature.

3. Maximum. The fund shall not exceed \$1,000,000 at any one time.

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

5. Grants to municipalities, counties and unorganized

territory. Prior to receiving the revenues, the Legislature shall make an annual appropriation of those revenues from the fund for grants. The commissioner may make grants from those appropriations to municipalities, counties or the Unorganized Territory Education and Services Fund for providing necessary new or additional public facilities and services related to mining. The commissioner shall award grants taking into account the applicant's:

A. Need for new or additional public facilities and services;

B. Severity of the impact of mining development;

C. Extent of local effort to meet anticipated needs; and

D. Availability of increased local revenues from other sources, including, without limitation, municipal reimbursement under subsection 4 or section 2861; changes in revenues from other state or federal programs and revenues from other public or private sources.

6. Applications. At least annually, the commissioner shall request applications for grants. Applications shall include evidence of the need for public facilities and services related to mining.

7. Report. The commissioner shall prepare an annual report to be submitted to the Legislature. The report shall include all the activities relating to the fund in the preceding year. The report shall be submitted 30 days prior to the convening of the regular session of the Legislature.

8. Rules. The commissioner may adopt or amend rules to establish the procedure for applying for, reviewing and making grants under this section. Those rules shall include provisions for application deadlines, contents of applications, criteria for selecting or approving applications or allocating limited funds, and deadlines for approval or disapproval.

§2864. Just value

The just value of minerals for purposes of property taxation shall be the present value of future net earnings from mining those minerals.

1. Determination. The State Tax Assessor shall determine that value using the best available information on the character, quality and extent of the mineral deposits, the expected income from mining those minerals, the costs and

expenses, including capital costs, development and other pre-mining costs and taxes of mining those minerals, and a discount rate.

2. Limitation. In determining just value the State Tax Assessor shall also apply the provision of section 701-A.

3. Discount rate. The discount rate to be applied shall be 17%.

4. Procedure. The State Tax Assessor shall give notice to a mining company and to the municipality in which a mine site is located, in writing, of his determination, and that determination shall be reviewable under section 151.

§2865. Mine site and valuation determinations

The State Tax Assessor shall make the following determinations.

1. Mine site. He shall determine the area of a mine site, taking into account all relevant information including, but not limited to, plans or permits approved under the site location of development law, Title 38, chapter 3, subchapter 1, Article 6. He shall give notice to a mining company and to the municipality in which a mine site is located, in writing, of his determination and that determination shall be reviewable under section 151.

2. Valuation. If a mine site is located in a municipality, he shall determine the valuation of mining property and the percentage of that valuation represented by land and buildings not exempt from property taxes. That valuation of land and buildings shall be applied in determining the property taxes. A municipality in which a mine site is located may appeal that determination to the Municipal Valuation Appeals Board as provided under section 291.

Sec. 11. 38 MRSA §490, sub-§1, as enacted by PL 1979, c. 466, §14, is amended by adding at the end a new sentence to read:

For a metallic ore mine, these provisions shall include a plan for the maintenance of the mine site during mining and for a period after termination of mining, including the methods and annual estimated costs for gas monitoring; leachate pumping, transportation, monitoring and treatment; groundwater monitoring, collection and analysis; such revegetation as the board deems necessary; and activities necessary for prevention of soil erosion and for protection of ground and surface waters.

Sec. 12. 38 MRSA §490, sub-§2, as enacted by PL 1979, c. 466, §14, is amended by adding after the first sentence a new sentence to read:

Other security may include a security deposit with the State, an escrow account and agreement, insurance or an irrevocable trust.

Sec. 13. 38 MRSA §490, sub-§2-A is enacted to read:

2-A. Metallic ore mines. Security shall be required of a person engaged in the mining of metallic ores. However, if the board finds that the person's net worth or that of any affiliated person who guarantees performance, as shown on audited financial statements, exceeds 5 times the estimated costs of reclamation it may waive this requirement. If security is not required, that person or the affiliated person guaranteeing performance shall submit to the board annually, copies of his audited financial statements. The board shall review these statements annually and, if it finds at any time that that person's or affiliated person's financial capacity is insufficient to secure adequately compliance with this chapter, it shall require a bond or other security.

Sec. 14. 38 MRSA §490, sub-§7 is enacted to read:

7. Definition. For the purpose of this section, "reclamation" when applied to a metallic ore mine, shall include continued maintenance of land affected by mining for a period after termination of mining activity.

Sec. 15. 38 MRSA §490, sub-§8 is enacted to read:

8. Rules. The board may adopt or amend rules to carry out this section, including rules relating to operational or maintenance plans; standards for determining the reclamation period; annual revisions of those plans; limits, terms and conditions on bonds or other security; proof of financial responsibility of a person engaged in mining activity or the affiliated person who guarantees performance; estimation of reclamation costs; reports on reclamation activities; or the manner of determining when the bond or other security may be discharged.

Sec. 16. 38 MRSA §490, sub-§9 is enacted to read:

9. Enforcement. If, after an opportunity for a hearing, the board determines that the owner of a mine site or the person who was engaged in mining at the mine site has violated this section, the board shall direct the department to enter on the property and carry out the necessary recla-

mation. The person engaged in mining or any affiliated person who guarantees performance at the mine site shall be liable for the reasonable expenses of this necessary reclamation. The department may use the bond or other security to meet the reasonable expenses of reclamation.

Sec. 17. Study. The joint standing committee of the Legislature having jurisdiction over taxation shall study the subject of amendments to the Maine Constitution, including amendments to Article IV, Part 3rd, section 23; Article IX, section 8 and other constitutional amendments relating to the provisions of this Act and mining activities in this State. The committee shall further study what measures may be necessary to insure that mining companies shall not be subject to significant penalties for changes in land uses. The committee shall report its recommendations along with any necessary Constitutional Resolutions to the next special or regular session.

Sec. 18. Effective date. Section 8 of this Act shall take effect on March 1, 1983.

Effective August 12, 1982, unless otherwise indicated.
