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CONSTITUTIONAL AMENDMENTS

RELATING TO MINING

Report by the Joint Standing

Committee on Taxation of the

110th Legislature to the

111th Legislature

December 14, 1982

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Constitutional Amendments Relating to Mining

Chapter 711 of the Public Laws of 1981, An Act to Create an Excise Tax on Mining Companies and Regulate Mining Activities required the Taxation Committee of the 110th Legislature to study the subject of constitutional amendments relating to the Act and to mining activities in Maine. This requirement was added to the Act because the Taxation Committee, in considering the original legislation had determined that in order to facilitate mining in Maine, certain provisions of the Constitution might need to be altered. The Committee makes the following recommendations.

I. Municipal Reimbursement

The Committee recommends that Article IV, Part 3, §23 of the Maine Constitution be amended to exempt unextracted minerals from the requirement that the State reimburse municipalities for 50% of the property tax revenue loss suffered by municipalities because of statutory property tax exemptions enacted after April 1, 1978.

The Committee makes this recommendation because unextracted minerals are difficult, if not impossible to value and because one of the purposes of exempting minerals from property tax was to avoid having to value them. Attempts to value minerals in other states have resulted in substantial problems and litigation. This provision will not result in any actual loss to municipalities because the Taxation Committee is unaware of any municipality which is currently taxing unextracted minerals in any event.

It also became apparent to the Committee that this provision of the Constitution is unduly inflexible in requiring exactly 50% reimbursement. A recent Attorney General's opinion has stated that no more than 50% may be allowed by the Legislature. The Taxation Committee, therefore, recommends that the Constitution be amended to permit the Legislature to reimburse municipalities for more than 50% of the property tax revenue loss, if the situation warrants.

It was the intention of the Taxation Committee in considering Chapter 711, that when calculating the 50% municipal reimbursement, adjustment should be made for funds received by a municipality because the reduction in state valuation resulting from the property tax exemptions contained in that Act. It should be noted that a December 3, 1982 opinion of the Attorney General has indicated that the reimbursement formula provided in section 2861 may be unconstitutional because it considers the extra funds twice, resulting in less than the full 50 percent reimbursement. In order to remedy this situation, the Committee recommends that subsection 3, paragraph E of section 2861 be repealed.

II. Withdrawal from Current Use Penalty

Article IX, Section 8 of the Maine Constitution and implementing legislation permit certain land to be assessed at current use value rather than just value if it is classified under the tree growth or open space tax laws. If the use of the land is changed, the land is withdrawn from current use valuation, and the taxpayer must pay a penalty. Much potential mining land is currently classified as tree growth or open space. If land upon which minerals have been located is withdrawn under current law, the penalty would be calculated considering the

value of the minerals that are part of the land, resulting in a potentially large penalty. Such penalties may be so large as to deter mining and exploration for minerals in the state because of the potential penalties if it is determined that the use of the land has changed.

The Taxation Committee believes that a mineral excise tax has been enacted to take the place of a property tax on minerals as well as mineral products and other mining property. It is unlikely that the difficulties of assessing penalties relating to mineral deposits were envisioned at the time the penalty provisions were adopted. It certainly was never intended that the withdrawal penalty deter mining or exploration in the State of Maine because of inflated withdrawal penalties when minerals are present on land withdrawn. For this reason and because valuing minerals is impractical, the Committee feels that where an excise tax has been enacted to apply to mining of certain minerals, the presence of those minerals should not be considered when a withdrawal penalty is being calculated. The result would be a withdrawal penalty calculated on the land as if it did not contain the minerals.

III. Trust Fund

The Taxation Committee recommends that the Constitution be amended to require a vote of two-thirds of all the members elected to each House of the Legislature before expenditure of the principal of the Mining Excise Tax Trust Fund.

The Trust Fund was established to provide compensation to the state for the loss of non-renewable mineral resources. The Committee

believes that to protect the integrity of the purpose of the Fund, a two-thirds vote should be required. The only way to impose this requirement on the Legislature is through the use of a Constitutional Amendment.