



# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 820

S.P. 265

In Senate, March 2, 2017

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

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Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Secretary of the Senate

Presented by Senator CARSON of Cumberland.  
Cosponsored by Representative FOLEY of Wells and  
Senators: CARPENTER of Aroostook, SAVIELLO of Franklin, Representatives: COREY of  
Windham, HARLOW of Portland, HARVELL of Farmington, MAREAN of Hollis, PARRY of  
Arundel, PIERCE of Dresden.

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

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

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

7 (1) Designated lands under section 598-A;

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

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

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

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

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

14 (7) State-owned wildlife management areas acquired in accordance with section  
15 10109, subsection 1.

16 **Sec. 2. 38 MRSA §490-MM, sub-§12**, as enacted by PL 2011, c. 653, §23 and  
17 affected by §33, is amended to read:

18 **12. Mining area.** "Mining area" means an area of land described in a permit  
19 application and approved by the department, ~~including but not limited to land~~ from which  
20 earth material is removed in connection with the mining, of ore. "Mining area" does not  
21 include the lands land on which material from that mining is stored or deposited, the  
22 lands land on which beneficiating or treatment facilities, ~~including~~ are located, the land  
23 on which groundwater and surface water management treatment systems, ~~are located or~~  
24 the lands land on which water reservoirs used in a mining operation are located.

25 **Sec. 3. 38 MRSA §490-NN, sub-§1, ¶B**, as enacted by PL 2011, c. 653, §23 and  
26 affected by §33, is amended to read:

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

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

1 D. There is reasonable assurance that discharges of pollutants from the mining  
2 operation will not violate applicable water quality standards. Notwithstanding  
3 sections 465-C and 470, discharges ~~to~~ resulting in limited contamination of  
4 groundwater from activities permitted under this article may occur within a mining  
5 area, but such discharges may not result in ~~contamination of groundwater beyond~~  
6 each mining area. In determining compliance with this standard, the department shall  
7 require groundwater monitoring consistent with the standards established pursuant to  
8 section 490-QQ, subsection 3.

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

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

12 (3) Contamination of groundwater within the mining area above a specified  
13 level, as determined by the department based on site-specific geologic and  
14 hydrologic characteristics and in accordance with standards established by rule  
15 that are designed to minimize pollution from mining operations; or

16 (4) Any violation of surface water quality standards under section 465.

17 In determining compliance with this standard, the department shall require  
18 groundwater monitoring consistent with the standards established pursuant to section  
19 490-QQ, subsection 3.

20 H. The mining operation will not unreasonably cause or increase the flooding of the  
21 area that is altered by the mining operation or adjacent properties or create an  
22 unreasonable flood hazard to any structure. ~~Mining~~ Notwithstanding any provision  
23 of law to the contrary, mining operations may not be placed in, on or under  
24 flood plains or flood hazard areas as long as they are designed, constructed, operated and  
25 reclaimed in a manner that complies with the approval criteria in this subsection and  
26 the Natural Resources Protection Act.

27 **Sec. 5. 38 MRSA §490-OO, sub-§4, ¶¶K and L** are enacted to read:

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

30 L. No part of the mining operation will be located in, on or under a river, stream or  
31 brook, as defined in section 480-B, subsection 9; a great pond, as defined in section  
32 480-B, subsection 5; a freshwater wetland, as defined in section 480-B, subsection 4;  
33 or a coastal wetland, as defined in section 480-B, subsection 2.

34 **Sec. 6. 38 MRSA §490-RR, sub-§§2 and 3**, as enacted by PL 2011, c. 653, §23  
35 and affected by §33, are amended to read:

36 **2. Coverage of financial assurance.** The financial assurance required under  
37 subsection 1 applies to all mining and reclamation operations that are subject to a mining  
38 permit and must be sufficient to cover the cost for the department to administer, and hire  
39 a 3rd party to implement, activities necessary for the investigation, monitoring, closure,  
40 treatment, remediation, reclamation, operation and maintenance under the environmental  
41 protection, reclamation and closure plan as well as other necessary environmental

1 protection measures, including, as provided under subsection 3-A, remediation of any  
2 contamination of the air, surface water or groundwater and of any other environmental  
3 effects caused by or relating to a worst-case catastrophic mining event or failure.

4 **3. Form of financial assurance.** ~~The~~ Except as provided in subsection 3-A,  
5 financial assurance may consist of a surety bond, escrow, cash, certificate of deposit,  
6 trust, irrevocable letter of credit issued by a financial institution acceptable to the  
7 department, or other equivalent security, or combination thereof, as long as the  
8 department approves the financial assurance as proposed by the applicant. When  
9 determining the appropriate security to require, the department shall take into  
10 consideration the type and location of the mining operation and the type of security that is  
11 adequate to protect the State's financial interest. The financial assurance must be in a  
12 form that cannot be cancelled, withdrawn, revoked or otherwise reduced without the  
13 express written consent of the commissioner after a finding that the ~~reduced amount is~~  
14 appropriate given the conditions related to the mining operation, including, but not  
15 limited to, the potential cost of long term maintenance and monitoring, closure and any  
16 necessary response to episodic maintenance mining operations present no threat to public  
17 health and safety or to the environment.

18 **Sec. 7. 38 MRSA §490-RR, sub-§3-A** is enacted to read:

19 **3-A. Coverage and form of financial assurance for worst-case catastrophic**  
20 **mining event or failure.** The department shall require an applicant for a mining permit  
21 to submit information assessing the cost of responding to a worst-case catastrophic  
22 mining event or failure, including the cost of restoring and repairing any damage to  
23 public facilities or services, to private property or to the environment resulting from the  
24 event or failure. The applicant must include with its application a review of the  
25 application submission materials required under this subsection as performed by a  
26 qualified, independent 3rd-party reviewer approved by the department. The costs of the  
27 3rd-party review must be paid by the applicant. Estimates of the costs of a worst-case  
28 catastrophic mining event or failure provided by the applicant may not include costs to  
29 the applicant associated with loss of use of any mining operation or facility or the costs of  
30 repairing any damaged mining operation or facility to restore operations or other  
31 functionality. The department shall require the applicant to provide financial assurance in  
32 the amount determined by the 3rd-party reviewer to be sufficient for the department to  
33 respond to, restore and remediate any damage to public facilities or services, to private  
34 property or to the environment resulting from the highest cost estimate for a worst-case  
35 catastrophic mining event or failure. This financial assurance coverage amount must be  
36 posted in accordance with this subsection before the department issues a permit to mine  
37 under this article.

38 The financial assurance required under this subsection must consist of a trust fund that is  
39 secured with any of the following forms of negotiable property, or a combination thereof,  
40 as approved by the department, except that at least 15% of the financial assurance must  
41 be secured by cash, negotiable bonds or negotiable certificates of deposit:

42 A. A cash account in one or more federally insured accounts;



1 established by rule that are designed to minimize pollution from mining operations; or  
2 any violation of surface water quality standards.

3 6. It prohibits the placement of any mining operation under the Mining Act in, on or  
4 under a flood plain or a flood hazard area.

5 7. It requires an applicant for a permit or a permittee under the Mining Act to  
6 provide special financial assurance coverage for a worst-case catastrophic mining event  
7 or failure.

8 8. It requires the department, on or before January 12, 2018, to provisionally adopt  
9 and submit to the Legislature for review major substantive rules relating to the Mining  
10 Act.