

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Allow Regulated Metal Mining in Maine

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

Sec. 1. 38 MRSA §490-UU is enacted to read:

§ 490-UU. Moratorium

Notwithstanding any provision of law to the contrary, a person may not engage in metallic mineral exploration or mining in the State until the department finally adopts major substantive rules related to the Maine Metallic Mineral Mining Act that are provisionally adopted and submitted for legislative review in accordance with Title 5, chapter 375, subchapter 2-A and that are authorized for final adoption by the Legislature.

Sec. 2. Major substantive rulemaking; Department of Environmental Protection.

The Department of Environmental Protection shall, by January 1, 2017, provisionally adopt and submit to the Legislature for review rules related to the Maine Metallic Mineral Mining Act.

1. Standards. The rules adopted pursuant to this section must include standards determined by the department to be necessary to protect the public health and safety and the environment. Standards adopted by the department may include, but are not limited to, standards regulating effects on groundwater quality, control of noise, preservation of historic sites, preservation of unusual natural areas, effects on scenic character and protection of wildlife and fisheries. The department shall ensure that the rules adopted pursuant to this section:

- A. Comply with all applicable federal environmental laws and standards, including but not limited to the federal Clean Air Act and the federal Clean Water Act;
- B. Require that all mining areas be left in or returned to a geologically stable condition following remediation and closure;
- C. Require the permittee to provide a specific plan for ensuring that all mining areas will be left in or returned to a geologically stable condition following remediation and closure;
- D. Require the permittee to demonstrate that the environmental quality and security of the site will be protected through the use of proven technologies and best available practices and require use of these technologies and practices as a permit condition;
- E. Require that all remediation costs related to a mining area are paid by the permittee and not by the State;
- F. Require that the financial assurance method approved for and financial assurance amount required for a permittee be determined by an independent 3rd-party expert with a background in mining;
- G. Prohibit in situ leaching, heap leaching and block caving;

H. Prohibit the granting of a permit to an applicant when the applicant or an affiliate, subsidiary or parent corporation of the applicant has ever been listed in the World Bank Listing of Ineligible Firms & Individuals, has ever abandoned any mining site resulting in nonremediable or unremediated environmental or economic damages or has ever engaged in any ocean dumping of mining tailings regardless of the legality of such dumping; and

I. Implement a framework for permitting a mining activity that includes several well-defined decision points, both prior to the commencement of and during the conduct of mining activities, to allow for and require additional review of the permit and mining plan by the department, with the department retaining the authority to require the amendment of permit conditions or the immediate cessation of previously permitted mining activities.

For the purposes of this section, "geologically stable" means impervious to physical, chemical or biological weathering processes that form a toxic metal transport mechanism that can create off-site contamination within a period of 1,000 years.

2. Maine Land Use Planning Commission certification. The rules adopted pursuant to this section relating to the permitting process for a mining permit must provide for Maine Land Use Planning Commission certification pursuant to the Maine Revised Statutes, Title 38, section 490-NN, subsection 2 in the initial stages of the permitting process.

Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. Notwithstanding Title 5, section 8072, subsection 11, the department may not finally adopt a provisionally adopted rule or part of a provisionally adopted rule submitted pursuant to this section unless legislation authorizing adoption of the rule or part of the rule is enacted into law by the First Regular Session of the 128th Legislature.

Sec. 3. Major substantive rulemaking; Maine Land Use Planning Commission certification of mining permit applications. The Maine Land Use Planning Commission shall, by January 1, 2017, provisionally adopt and submit to the Legislature for review rules related to commission certification of metallic mineral mining permit applications as described in the Maine Metallic Mineral Mining Act. Rules adopted pursuant to this section are major substantive rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A. Notwithstanding Title 5, section 8072, subsection 11, the commission may not finally adopt a provisionally adopted rule or part of a provisionally adopted rule submitted pursuant to this section unless legislation authorizing adoption of the rule or part of the rule is enacted into law by the First Regular Session of the 128th Legislature.

SUMMARY

This bill provides for a moratorium on metallic mineral exploration or mining in the State. It directs the Department of Environmental Protection, by January 1, 2017, to provisionally adopt and submit for legislative review major substantive rules related to the Maine Metallic Mineral Mining Act. These rules must:

1. Include standards necessary to protect the public health and safety and the environment;
2. Comply with all applicable federal environmental laws and standards;

3. Require that all mining areas be left in or returned to a geologically stable condition following remediation and closure;
4. Require the permittee to provide a specific plan for ensuring that all mining areas will be left in or returned to a geologically stable condition following remediation and closure;
5. Require the permittee to demonstrate that the environmental quality and security of the site will be protected through the use of proven technologies and best available practices and require use of these technologies and practices as a permit condition;
6. Require that all remediation costs related to a mining area are paid by the permittee and not by the State;
7. Require that the financial assurance method approved for and the financial assurance amount required for a permittee be determined by an independent 3rd-party expert with a background in mining;
8. Prohibit in situ leaching, heap leaching and block caving;
9. Prohibit the granting of a permit to certain applicants; and
10. Implement a framework for permitting a mining activity that includes several well-defined decision points for the department to conduct additional review of the permitted activities.

The bill provides that the department may not finally adopt the rules unless the Legislature authorizes final adoption. The moratorium remains in effect until the Legislature authorizes final adoption of the department's rules and the department finally adopts those rules. The bill also provides for accompanying major substantive rulemaking by the Maine Land Use Planning Commission regarding certification of mining permit applications.