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

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

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

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

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

(1) Designated lands under section 598-A;
(2) Historic sites as defined in section 1801, subsection 5;
(3) Parks as defined in section 1801, subsection 7;
(4) Public reserved lands as defined in section 1801, subsection 8;
(5) Submerged lands as defined in section 1801, subsection 9;
(6) The Allagash Wilderness Waterway as established under chapter 220, subchapter 6; and
(7) State-owned wildlife management areas acquired in accordance with section 10109, subsection 1.

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

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

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

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

Sec. 4. 38 MRSA §490-OO, sub-§4, ¶D and H, as enacted by PL 2011, c. 653, §23 and affected by §33, are amended to read:
D. There is reasonable assurance that discharges of pollutants from the mining operation will not violate applicable water quality standards. Notwithstanding sections 465-C and 470, discharges resulting in limited contamination of groundwater from activities permitted under this article may occur within a mining area, but such discharges may not result in contamination of groundwater beyond each mining area. In determining compliance with this standard, the department shall require groundwater monitoring consistent with the standards established pursuant to section 490-QQ, subsection 3:

(1) Contamination of groundwater beyond the mining area;

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

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

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

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

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

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

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

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

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

2. Coverage of financial assurance. The financial assurance required under subsection 1 applies to all mining and reclamation operations that are subject to a mining permit and must be sufficient to cover the cost for the department to administer, and hire a 3rd party to implement, activities necessary for the investigation, monitoring, closure, treatment, remediation, reclamation, operation and maintenance under the environmental protection, reclamation and closure plan as well as other necessary environmental
protection measures, including, as provided under subsection 3-A, remediation of any contamination of the air, surface water or groundwater and of any other environmental effects caused by or relating to a worst-case catastrophic mining event or failure.

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

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

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

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

A. A cash account in one or more federally insured accounts;
B. Negotiable bonds issued by the United States or by a state or a municipality
having a Standard and Poor's credit rating of AAA or AA or an equivalent rating
from a national securities credit rating service;

C. Negotiable certificates of deposit in one or more federally insured depositaries; or

D. Irrevocable letters of credit.

Sec. 8. Department of Environmental Protection; major substantive
rulemaking. On or before January 12, 2018, the Department of Environmental
Protection shall provisionally adopt and submit to the Legislature for review rules
establishing a regulatory framework for metallic mineral mining in the State in
accordance with the Maine Metallic Mineral Mining Act. Rules adopted pursuant to this
section are major substantive rules pursuant to the Maine Revised Statutes, Title 5,
chapter 375, subchapter 2-A.

SUMMARY

This bill amends the State's mining laws as follows.

1. It prohibits the issuance of a mining lease under the Maine Revised Statutes, Title
12, chapter 201-A, subchapter 3 if the proposed mining operation is to be wholly or
partially located in, on or under any designated land, state historic site, state park, public
reserved land, submerged land or state-owned wildlife management area or the Allagash
Wilderness Waterway. The bill also prohibits the issuance of a mining permit under the
Maine Metallic Mineral Mining Act, referred to in this summary as the "Mining Act," if
any part of the mining operation will be located wholly or partially in, on or under any of
the same state lands.

2. It amends the definition of "mining area" under the Mining Act to restrict that
definition to an area of land from which earth material is removed in connection with the
mining of ore.

3. It amends the rule-making authority of the Department of Environmental
Protection under the Mining Act to require that any rule or rule change proposed by the
department in accordance with its authority under the Mining Act may not be finally
adopted by the department unless legislation authorizing final adoption of such rules is
enacted into law.

4. It prohibits the placement of any mining operation under the Mining Act in, on or
under a river, stream or brook, a great pond, a freshwater wetland or a coastal wetland.

5. It amends permit approval conditions under the Mining Act relating to discharges
causing groundwater contamination by allowing only for limited contamination of
groundwater within a mining area that does not result in contamination of groundwater
beyond the mining area; contamination of groundwater within the mining area that
exceeds certain water quality criteria for pollutants; contamination of groundwater within
the mining area that exceeds a specified level determined by the department based on
site-specific geologic and hydrologic characteristics and in accordance with standards
established by rule that are designed to minimize pollution from mining operations; or
any violation of surface water quality standards.

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

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

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