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Date: (Filing No. H-)

ENVIRONMENT AND NATURAL RESOURCES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
128TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 118, L.D. 160, Bill, “An Act To Prohibit the Mining of Massive Sulfide Ore Deposits under the Maine Metallic Mineral Mining Act”

Amend the bill by striking out the title and substituting the following:

'An Act To Prohibit Metallic Mineral Mining in Maine'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 12 MRSA §685-B, sub-§1-A, ¶B-2, as reallocated by RR 2011, c. 2, §8 and affected by §10, is repealed.

Sec. 2. 36 MRSA §2866, sub-§4, as amended by PL 2011, c. 653, §6 and affected by §33, is repealed.

Sec. 3. 38 MRSA §351, 2nd ¶, as enacted by PL 2011, c. 653, §9 and affected by §33, is repealed.

Sec. 4. 38 MRSA §352, sub-§3, as amended by PL 2011, c. 653, §10 and affected by §33 and amended by c. 657, Pt. W, §5, is further amended to read:

3. Maximum fee. The commissioner shall set the actual fees and shall publish a schedule of all fees by November 1st of each year. If the commissioner determines that a particular application, by virtue of its size, uniqueness, complexity or other relevant factors, is likely to require significantly more costs than those listed on Table I, the commissioner may designate that application as subject to special fees. Such a designation must be made at, or prior to, the time the application is accepted as complete and may not be based solely on the likelihood of extensive public controversy. The maximum fee for processing an application may not exceed \$250,000, ~~except that the maximum fee for processing an application under chapter 3, subchapter 1, article 9 is as provided for in subsection 4-A.~~ All staff of the department, the Department of Inland Fisheries and Wildlife, the Department of Agriculture, Conservation and Forestry and the Department of Marine Resources who have worked on the review of the application,

COMMITTEE AMENDMENT

1 including, but not limited to, preapplication consultations, shall submit quarterly reports
2 to the commissioner detailing the time spent on the application and all expenses
3 attributable to the application, including the costs of any appeals filed by the applicant
4 and, after taking into consideration the interest of fairness and equity, any other appeals if
5 the commissioner finds it in the public interest to do so. Any appeal filed by the applicant
6 of an application fee must be to the agency of jurisdiction of the application. The costs
7 associated with assistance to the board on an appeal before the board may be separately
8 charged. The processing fee for that application must be the actual cost to the
9 department, the Department of Inland Fisheries and Wildlife, the Department of
10 Agriculture, Conservation and Forestry and the Department of Marine Resources. The
11 processing fee must be distributed to each department that incurs a cost to be deposited in
12 the account in which the expenses were incurred in that department to reimburse the
13 actual cost to that department. The applicant must be billed quarterly and all fees paid
14 prior to receipt of the permit. At the time of the quarterly billing by the department, the
15 commissioner shall review the ongoing work of the department to identify, prevent and
16 mitigate undue delays or vague requirements of the application processing. Nothing in
17 this section limits the commissioner's authority to enter into an agreement with an
18 applicant for payment of costs in excess of the maximum fee established in this
19 subsection.

20 **Sec. 5. 38 MRSA §352, sub-§4-A**, as repealed and replaced by PL 2011, c. 653,
21 §11 and affected by §33, is repealed.

22 **Sec. 6. 38 MRSA §353, sub-§2**, as amended by PL 2011, c. 653, §13 and affected
23 by §33, is further amended to read:

24 **2. Processing fee.** Except for annual air emission fees pursuant to section 353-A and
25 annual waste discharge fees pursuant to section 353-B, a processing fee must be paid at
26 the time of filing the application. Failure to pay the processing fee at the time of filing
27 the application results in the application being returned to the applicant. One-half the
28 processing fee assessed in section 352, subsection 5-A for licenses issued for a 10-year
29 term must be paid at the time of filing the application. The remaining 1/2 of the
30 processing fee for licenses issued for a 10-year term must be paid 5 years after issuance
31 of the license. The commissioner may not refund the processing fee if the application is
32 denied by the board or the commissioner. ~~Except as provided in section 352, subsection~~
33 ~~4-A, if~~ If the application is withdrawn by the applicant within 30 days of the start of
34 processing, the portion of the processing fee that was expended or committed by the
35 department or the department's agents or contractors for the cost of processing the
36 application prior to the withdrawal of the application must be calculated, and the
37 remainder of the processing fee not expended or committed must be refunded.

38 **Sec. 7. 38 MRSA §420-D, sub-§5**, as amended by PL 2011, c. 653, §14 and
39 affected by §33, is further amended to read:

40 **5. Relationship to other laws.** A storm water permit pursuant to this section is not
41 required for a project requiring review by the department pursuant to any of the following
42 provisions but the project may be required to meet standards for management of storm
43 water adopted pursuant to this section: article 6, site location of development; article 7,
44 performance standards for excavations for borrow, clay, topsoil or silt; article 8-A,
45 performance standards for quarries; ~~article 9, the Maine Metallic Mineral Mining Act;~~

1 sections 631 to 636, permits for hydropower projects; and section 1310-N, 1319-R or
2 1319-X, waste facility licenses. When a project requires a storm water permit and
3 requires review pursuant to article 5-A, the department shall issue a joint order unless the
4 permit required pursuant to article 5-A is a permit-by-rule or general permit, or separate
5 orders are requested by the applicant and approved by the department.

6 A storm water permit pursuant to this section is not required for a project receiving
7 review by a registered municipality pursuant to section 489-A if the storm water
8 ordinances under which the project is reviewed are at least as stringent as the storm water
9 standards adopted pursuant to section 484 or if the municipality meets the requirements
10 of section 489-A, subsection 2-A, paragraph B.

11 **Sec. 8. 38 MRSA §480-D, sub-§3**, as amended by PL 2011, c. 653, §15 and
12 affected by §33, is further amended to read:

13 **3. Harm to habitats; fisheries.** The activity will not unreasonably harm any
14 significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered
15 plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or
16 marine fisheries or other aquatic life.

17 ~~In determining whether mining, as defined in section 490 MM, subsection 11, will~~
18 ~~comply with this subsection, the department shall review an analysis of alternatives~~
19 ~~submitted by the applicant. For purposes of this subsection, a practicable alternative to~~
20 ~~mining, as defined in section 490 MM, subsection 11, that is less damaging to the~~
21 ~~environment is not considered to exist. The department may consider alternatives~~
22 ~~associated with the activity, including alternative design and operational measures, in its~~
23 ~~evaluation of whether the activity avoided and minimized impacts to the maximum extent~~
24 ~~practicable.~~

25 In determining whether there is unreasonable harm to significant wildlife habitat, the
26 department may consider proposed mitigation if that mitigation does not diminish in the
27 vicinity of the proposed activity the overall value of significant wildlife habitat and
28 species utilization of the habitat and if there is no specific biological or physical feature
29 unique to the habitat that would be adversely affected by the proposed activity. For
30 purposes of this subsection, "mitigation" means any action taken or not taken to avoid,
31 minimize, rectify, reduce, eliminate or compensate for any actual or potential adverse
32 impact on the significant wildlife habitat, including the following:

- 33 A. Avoiding an impact altogether by not taking a certain action or parts of an action;
- 34 B. Minimizing an impact by limiting the magnitude, duration or location of an
35 activity or by controlling the timing of an activity;
- 36 C. Rectifying an impact by repairing, rehabilitating or restoring the affected
37 environment;
- 38 D. Reducing or eliminating an impact over time through preservation and
39 maintenance operations during the life of the project; or
- 40 E. Compensating for an impact by replacing the affected significant wildlife habitat.

41 **Sec. 9. 38 MRSA c. 3, sub-c. 1, art. 9**, as enacted by PL 2011, c. 653, §23, is
42 repealed.

