TESTIMONY OF
DANIEL D'ALESSANDRO, DEPUTY TAX POLICY COUNSEL
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES

Before the Joint Standing Committee on Taxation
Hearing Date: *March 20, 2025*

LD *223* – "*An Act to Amend the Mining Excise Tax Laws*"
LD *936* – "*An Act to Amend the Laws Regarding the Mining Excise Tax*"

Senator Grohoski, Representative Cloutier, and members of the Taxation Committee – good afternoon, my name is Daniel D'Alessandro, Deputy Tax Policy Counsel in the Department of Administrative and Financial Services Office of Tax Policy. I am testifying at the request of the Administration in Support of LD *223*, "*An Act to Amend the Mining Excise Tax Laws*" and LD *936*, "*An Act to Amend the Laws Regarding the Mining Excise Tax.*"

These bills implement the recommendations of the report on Maine's Taxation of Metallic Mineral Mining Business Activity prepared by the Office of Tax Policy pursuant to Resolves 2023, chapter 83 and are largely the same as LD 2251 of the 131st Session, as amended by the Taxation Committee.

LD 223, a Department of Administrative and Financial Services department bill, includes new legislative language to clarify the imposition and calculation of the tax as well as add administrative provisions regarding extensions, amended returns, accounting periods, and estimated tax payments. Importantly, LD 223 also adjusts the use of the revenue generated from the Mining Excise Tax by directing 75% of the revenue to the Land for Maine's Future Trust Fund and 25% to the General Fund.

LD 936, on the other hand, directs 75% of the Mining Excise Tax revenue to the Mining Excise Tax Trust Fund and 25% to the General Fund and lacks the new clarifying and administrative provisions. Another difference between the bills is that LD 223 would apply beginning January 1, 2025 while LD 936 wouldn't apply until January 1, 2026.

A well-designed mining or severance tax should raise sufficient revenue to compensate for the permanent loss of resource value in the state and fund protection measures for the risk of environmental damage, while also allowing for the profitable operation of regulated mining activity in an economically efficient manner. Because mining in Maine, and mining lithium in the United States, is at an early stage in its development, there continue to be considerable unknowns regarding how these criteria should be balanced. This uncertainty suggests that a conservative approach in updating the State's mining taxes be taken at the outset, making sure that the State is not left in a worse position due to the mining activity, and then, as necessary, revisiting as the market matures.

The report found that the existing Mining Excise Tax, enacted in 1982 but never applied due to a lack of commercial mining in the State, has become increasingly complex as the legal framework of the Maine property and income taxes has shifted around it. The intervening changes have left the Mining Excise Tax, and its interaction with other areas of State tax law, at a level of complexity that borders on unadministrable. The study explored the need and opportunity for simplification to further the policy goals outlined in Title 36, Section 2853. Simplification is an important component of allowing companies to profitably operate mines within the State and in encouraging the economically efficient extraction of minerals. In addition, simplification is necessary for the administration of the Mining Excise Tax and the property tax on mining operations.

The bills implement the report's recommendations for simplifying the tax structure around mining by:

- Aligning similar Title 36 mining tax definitions with Title 38 mining regulation definitions.
- Repealing most of the Mining Excise Tax business property tax provisions, including the mining-related municipal reimbursement, and instead relying on the existing Business Equipment Tax Exemption (BETE) and the general property tax administration and appeal processes, while maintaining the property tax exemption for unextracted minerals.
- Creating a new sales tax exemption for machinery and equipment and fuel and electricity used in commercial mining modeled after existing production exemptions.

Comparing different states' mining tax rates is difficult because of differences in how states define the tax base and available exemptions or credits. Nevertheless, a multistate comparison is useful to put Maine's tax rate in context. The Resolves 2023, chapter 83 study found that comparable states have a tax rate of 0.75% to 5.00%, placing Maine's current base tax rate of 0.90% at the low end of that range. In certain theoretical but very unlikely circumstances, Maine's tax rate can move as high as 3.5%, still well within the range of surveyed states.

The report recommended removing the variance in Maine's Mining Excise Tax rate and increasing the base rate toward the upper middle of the surveyed range, while remaining within the current range of the Maine Mining Excise Tax, by setting a static tax rate of 3.5%. In addition, it recommended removing the minimum tax based on property value and the credit for property taxes paid. After considering the issue, the Taxation Committee amended LD 2251 to instead use a 5% tax rate. Both LD 223 and 936 utilize the 5% rate selected by the Taxation Committee.

The Administration recommends that the bulk of the Mining Excise Tax revenue, 75%, be directed toward protecting and enriching Maine's environment and that the Land for Maine's Future (LMF) program is the preferred vehicle to do so. LMF has a strong track record of helping to conserve Maine's natural resources and this funding would further these continued investments. The remaining revenue should go to the General Fund.

The Administration recommends against directing money to the Mining Excise Tax Trust Fund because of the provisions restricting its use in the Maine Constitution. While these limitations may make sense in certain circumstances, the hypothetical and uncertain nature of Mining Excise Tax revenue flows makes any benefits of these Constitutional restrictions largely hypothetical. As these revenue flows become more certain, the Legislature will have ample time to redirect the revenue before substantial amounts are likely to be raised.

The long-term size of a potential mining industry and the possibility or extent of long-term Mining Excise Tax revenue cannot be reasonably estimated at this time.

Administrative costs for computer programming are currently under review.

The Administration looks forward to working with the Committee on these bills; representatives from MRS will be here for the Work Session to provide additional information and respond in detail to the Committee's questions.