

SB 166-FN – AS INTRODUCED

2009 SESSION

09-0921

08/03

SENATE BILL ***166-FN***

AN ACT relative to mineral extraction, mining, and reclamation in New Hampshire.

SPONSORS: Sen. Odell, Dist 8; Sen. Merrill, Dist 21; Sen. Denley, Dist 3; Sen. Fuller Clark, Dist 24; Rep. Spang, Straf 7; Rep. T. Howard, Sull 2

COMMITTEE: Energy, Environment and Economic Development

ANALYSIS

This bill:

- I. Adds definitions to the chapter on mining and reclamation.
- II. Expands the duties of the commissioner of the department of resources and economic development.
- III. Sets out what should be a mining permit application.

This bill was requested by the department of environmental services.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

09-0921

08/03

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nine

AN ACT relative to mineral extraction, mining, and reclamation in New Hampshire.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Mining and Reclamation; Definitions. RSA 12-E:1 is repealed and reenacted to read as follows:

12-E:1 Definitions. In this chapter:

I. "Affected site" means the land or water upon, in, or under which mining is conducted or is to be conducted including the mine and that land or water which is or will be substantially affected physically or chemically as is detailed in the mining plan pursuant to RSA 12-E:4.

II. "Commissioner" means the commissioner of the department of resources and economic development or the commissioner's designee.

III. "Comparable natural contour" means a surface configuration which resembles the general surface configuration of adjacent land and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and mining equipment eliminated.

IV. "Dimension stone" means rock that is cut, shaped, or selected for use in blocks, slabs, sheets, or other construction units of specified shapes or sizes and used for external or interior parts of buildings, foundations, curbing, flagging, bridges, or revetments, or for other architectural or engineering purposes. Dimension stone includes quarry blocks from which sections of dimension stone are to be produced. Dimension stone does not include earth as defined in RSA 155-E:1, I.

V. "Financial assurance plan" means a mechanism prepared by the applicant, and approved by the commissioner and the department of environmental services, to ensure that adequate financial support for closure, site assessment, reclamation, and long-term monitoring is current and sufficient to comply with all applicable federal, state, and local regulations governing the cessation of prospecting or mining operations in New Hampshire.

VI. "Mine" means all areas, surface mined or being mined underground as well as adjacent areas ancillary to the operation, together with cleaning, concentrating, and preparation plants, storage area, haulageways, spoil areas, pipes, tunnels, waterways, sluiceways, ponds, pools, lagoons, roads or trails, and any affected ground or surface waters.

VII. "Mineral" means copper, diatomite, feldspar, garnet, lime, thorium, uranium, and any similar solid material or metal substance excluding sand, gravel, and construction aggregate to be excavated from natural deposits or formations on or in the earth or in or underneath water, or for quarrying or crushing of rock or bedrock for the purpose of producing construction aggregate.

VIII. "Mining" means the activities performed in the extraction of minerals including the excavation of pits, underground mines, and drifts, borings used for solution mining, removal of minerals, removal of dimension stone, disposal of overburden, and the construction of roads pipes, tunnels, ponds, pools, sluiceways, lagoons, and any affected ground or surface water, for transport and storage of mining materials; provided, however, the following shall not be subject to this chapter:

(a) Mining activities for which the permit site would be 100,000 square feet or less, or 50,000 square feet or less, if within the protected shoreland zone, defined by RSA 483-B:4, XV, and

would result in less than 2,000 cubic yards per year excavated; provided, however, that all mineral dredging activity in any waters of the state of New Hampshire, unless classified as small motor mineral dredging pursuant to RSA 482-A:3, XI, shall, regardless of the size of area involved, be subject to the permit requirement and other conditions set forth in this chapter.

(b) Mining activities in existence on August 24, 1979, or mining activities for which mining permits have been granted as of the effective date of this paragraph.

(c) Mining or quarrying activities for the production of construction aggregate.

IX. "Mining and reclamation plan" means technical data accompanied with the owner's permit application detailing the anticipated mining, blasting, and reclamation activities, environmental protection measures, and the plans that define daily operations of the mine and its ancillary equipment and areas impacted by mining operations, associated with mineral extraction subject to this chapter.

X. "Mining operator" or "operator" means any person, firm, association, partnership, cooperative, corporation, or trust engaged in mining.

XI. "Overburden" means earth and other natural materials over and around the minerals which will be displaced by mining operations.

XII. "Permit site" means the land surrounding and including the affected site and mine needed to internalize the mining operation to safeguard adjacent lands and interests.

XIII. "Pre-application meeting" means the requested in writing by a potential permit applicant prior to submission of its permit application and to be scheduled by the commissioner, where the applicant, representatives of the department of resources and economic development, representatives from the department of environmental services, and the chair of the local planning board for the community in which the mine is to be located, or his or her designee, will meet to review the proposed application, and, if the commissioner so requests, conduct a site visit. The pre-application meeting and any documents submitted or exchanged for the purposes of the pre-application meeting are not public, or subject to public disclosure, pursuant to RSA 91-A.

XIV. "Prospecting" means exploration for minerals with mechanized equipment which will result in disturbance of land and which could pose a danger to the public or cause significant environmental harm.

XV. "Quarry" means an excavation in bedrock open to the surface excavated for the purpose of removing rock, minerals, or metallic ores.

XVI. "Reclamation" means the restoration of the permit site by grading, backfilling, compacting, and landscaping to a compatible natural contour and the reestablishment of permanent self-regenerating vegetative cover of the same seasonal variety previously occurring in the area which is capable of self-regeneration equal to or greater than its productive capacity prior to the mining activities unless alternate plans for other uses are approved by the commissioner.

XVII. "Rock" means granite, schist, quartzite, and any other solid material consisting of minerals. The crushing of rock for the purpose of producing construction aggregate shall be regulated pursuant to RSA 155-E.

XVIII. "Runoff" means any water on or flowing on or across the land surface.

XIX. "Toxic substance" means any chemical substance which has the capacity to produce personal injury or illness to human health through ingestion, inhalation, or absorption through any body surface.

XX. "Wetlands" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

2 Mining and Reclamation; Duties of the Commissioner. RSA 12-E:2 is repealed and reenacted to read as follows:

12-E:2 Duties of the Commissioner. The commissioner shall:

I. Schedule and coordinate a pre-application meeting upon the receipt of a request from the potential permit applicant.

II. Evaluate and accept or reject all mining permit applications submitted by mining operators. If, in his or her evaluation, the commissioner determines the operation will not comply with this chapter or the impact of the mining operation is too great or is in an area unsuitable for mining because of historical, archaeological, or environmental reasons or the reclamation plans or pollution prevention measures are insufficient, the permit shall be denied. Upon rejection or conditional approval of the permit application, the commissioner shall state the reasons for such determination in writing. The operator shall have an opportunity to amend the application to conform to the commissioner's requirements. All permit applications shall be acknowledged within 5 working days and processed within 120 days pursuant to RSA 541-A:29 of receipt by the commissioner.

III. Have the authority to suspend or revoke any permit issued pursuant to this chapter for failure to comply with the permit or for noncompliance with rules adopted pursuant to this chapter. The commissioner may also suspend or revoke any permit issued pursuant to this chapter if he or she concludes that the operator lacks sufficient managerial, technical, or financial resources to conduct mining activities in continuing compliance with the terms and conditions of any permit and in accordance with applicable rules.

IV. Supervise the leasing of state-owned lands for mining operations pursuant to RSA 12-E:9.

V. Have the power to subpoena witnesses and administer oaths in any proceeding or examination instituted before or conducted by the commissioner, and to compel the production of any account books, contracts, records, engineering surveys, documents, memoranda, and papers of any kind necessary to implement this chapter.

VI. Prepare an annual report. Such report shall include the number and geographic distribution of permit applications accepted and rejected, the acreage of the affected sites and permit sites, the names of the operators, corporate officers, and corporations making such

applications and such other information as will enable the actions of the commissioner to be evaluated. The report shall be submitted to the governor and council.

VII. Make announced and unannounced inspections and investigations on the permit site and affected site to ensure orderly operation of the mining plan in a responsible manner and make inspections based on a citizen complaint. All inspections shall be conducted in the presence of the operator or his or her duly authorized employees or representatives and the operator shall be available or make such persons available for inspections.

VIII. Adopt rules, pursuant to RSA 541-A, relative to:

- (a) The form of the mining permit application.
- (b) The form of application for renewal of the mining permit.
- (c) The form of application for prospecting permits.
- (d) Entry onto permit sites and adjacent properties.
- (e) Emergency actions to halt mining operations for the public safety.
- (f) Prospecting, mining, and reclamation activities in a manner to ensure public safety and protect the environment from the effects of such activities.

IX. Have the authority to reclaim land subject to the granted permit upon forfeiture of the performance bond.

X. Provide technical assistance, conduct research, experiments, and demonstrations, and disseminate information resulting therefrom and to receive federal, state, or other funds and allocate them for reclamation, education, or other research and assistance projects.

XI. Report any violation of a permit, or of any provision of this chapter, or of any rule promulgated hereunder, to the commissioner of the department of environmental services.

XII. Give notice to the commissioner of the department of environmental services of any proceeding to revoke, suspend, or modify any permit.

XIII. Give notice to the commissioner of the department of environmental services of any modification of any financial assurance plan required under this chapter.

3 New Section; Duties of the Commissioner of the Department of Environmental Services; Mining and Reclamation. Amend RSA 12-E by inserting after section 2 the following new section:

12-E:2-a Duties of the Commissioner of the Department of Environmental Services. The commissioner of the department of environmental services shall:

- I. Report any violation of any environmental law by a mining operator to the commissioner.

II. Give notice to the commissioner of any proceeding by the department of environmental services to revoke, suspend, or modify any permit issued to a mining operator by the department of environmental services.

III. Investigate any alleged violation of any rule or condition to any permit issued by the department of environmental services by a mining operator and report the results of such investigation to the commissioner.

IV. Adopt rules, pursuant to RSA 541-A, relative to the environmental impacts, and mitigation and remediation thereof, of mining.

4 Mining and Reclamation; Prospecting Permit Required. Amend RSA 12-E:3, I to read as follows:

I. Prior to prospecting for minerals *on any lands within the state* a person shall obtain a prospecting permit from the commissioner upon payment of a fee pursuant to RSA 12-E:8. The commissioner may attach conditions upon issuance of the permit to minimize the environmental damage of such activities. ***In no instance shall a prospecting permit cover a surface area greater than 20,000 square feet.*** Such prospecting permit shall be valid for a term of one year subject to renewal upon request to the commissioner. ***The prospecting permit shall not be effective until all required permits are obtained from the department of environmental services.***

5 Mining Permit Required; Mining and Reclamation; Reference Change. Amend the introductory paragraph RSA 12-E:4 to read as follows:

12-E:4 Mining Permit Required. No person shall conduct mining on any lands in the state unless he holds a valid permit issued by the commissioner or is exempted pursuant to RSA 12-E:1, ~~[VI]~~ **IX**.

6 New Paragraph; Mining and Reclamation; Mining Permit Required. Amend RSA 12-E:4 by inserting after paragraph I the following new paragraph:

I-a. A mining permit shall not become effective until all required permits and approvals from the department of environmental services have been obtained. This includes, as operations proceed, approvals for operations, remediation, closure, and reclamation.

7 Mining and Reclamation; Mining Permit Required. Amend RSA 12-E:4, II to read as follows:

II. Such mining permit shall include a mining plan, a blasting plan if such activities are anticipated, and a reclamation plan. Such permit shall be valid for a term of 3 years and, upon submission of a renewal permit application by the operator, shall be renewed 60 days prior to its expiration; provided, however, the commissioner determines that the operator has complied with the permit. ***The issuance of a mining permit shall not preclude the obligation of the applicant to obtain local approvals required under all applicable lawful ordinance not inconsistent with this chapter.*** The commissioner shall have the authority to modify a permit or renewal as he *or she* deems necessary consistent with ~~[regulations promulgated]~~ **rules adopted** under this chapter. Renewal permits ~~[shall not]~~ **may** be subject to public hearings under the provisions of RSA 12-E:5 ***at the discretion of the commissioner.*** There is no limit to the number of renewals that may be issued for each

operation provided the commissioner determines the operator has continued to comply with the original permit.

8 Mining and Reclamation; Mining Permit Required. RSA 12-E:4, III-IV is repealed and reenacted to read as follows:

III. The permit application shall be submitted to the commissioner and shall include, at a minimum:

(a) The names and addresses of:

(1) The permit applicant;

(2) The operator, if different from the applicant; and

(3) If (1) or (2) is a business enterprise other than a sole proprietor, the names and addresses of the principal owners and resident agent and the names and addresses of every officer, partner, director, or person performing a function similar to a director.

(b) The names and addresses of:

(1) Every legal owner of record of the property, both surface and subsurface, of the permit site;

(2) The holders of record of any leasehold interest in the property; and

(3) The owners of record of all surface and subsurface areas adjacent to any part of the permit site.

(c) A list of all names under which the applicant, partner, or principal owner previously operated a mining operation within the United States in the past 10 years.

(d) A statement as to whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant, or principal owners of both the applicant and another corporation has held, within a 5-year period prior to submission of the application, a federal or state mining permit which has been suspended or revoked, or has forfeited a reclamation bond or similar security and the reasons therefor. Whenever requested by the commissioner, the attorney general shall conduct a background investigation of the performance history and criminal record of the applicant and of its officers and directors, if any, and make a report to the department of resources and economic development. The cost of any investigation under this paragraph shall be borne by the applicant.

(e) A true copy of an original policy of insurance issued by an insurance company authorized to do business in this state covering all mining and reclamation operations of the applicant and affording personal injury protection in an amount not less than \$1,000,000 and property damage, including blasting damage, protection of not less than \$2,000,000.

(f) A geologic resources report, to include a description of the mineral to be mined.

(g) A copy of the applicant's public notice published pursuant to RSA 12-E:5.

(h) Proof that all pertinent federal, state, and local permits have been received prior to the initiation of work including, but not limited to, a fill and dredge permit pursuant to RSA 482-A and an alteration of terrain permit pursuant to RSA 485-A:17, processed by the department of environmental services.

IV. The mining operations plan shall include, at a minimum:

(a) A description of prospecting activities other than those requiring a prospecting permit issued pursuant to RSA 12-E:3;

(b) A detailed description of the permit site stating the geometry and volume of the excavation and the number of acres to be included, noting the acreage and cubic yards of the deposit area and permit site, expected yield in tons of the extracted minerals, the drainage area above and below the site, the hydrology and geology of the area, a topographical map represented at 2 feet contours, and extensive soil data;

(c) A detailed description of the means of pollution prevention, buffer zones, grades and stabilization of excavation, and waste management during the mining operations;

(d) A detailed map of the permit site drawn to scale, an aerial photograph of the permit site, and any other maps or photographs specified in the rules;

(e) A cross section map or plans of the permit site showing location of aquifers and estimated elevation of the water table;

(f) A description of anticipated blasting activities during the mining operation which shall be done in accordance with established engineering principles for prevention of vibration and air blast damage to residences, buildings, and surrounding land areas;

(g) An inventory of all public and private water supplies that lie within a ½ mile radius of the permitted site boundary, as indicated on a map included pursuant to RSA 12-E:4, IV(d);

(h) A description of the projected impacts of mining activities on the surface water and groundwater hydrology of the permitted site, and downgradient and downstream properties and receptors;

(i) A description of daily operations, staging activities, runoff control, management of inventories, and control measures for dust, noise, odor, and air emissions, a discussion of mining techniques to be utilized, and a description of all closure activities, including but not limited to the disposal of all wastes generated and stored on site and the disposition of all excess inventory and other materials that must be removed prior to closure and reclamation; and

(j) A description of site investigation plans to be undertaken upon cessation of mining activities to identify contamination of soil, surface water or groundwater, or air emissions for which remedial measures are necessary to achieve compliance with applicable state and federal cleanup laws and regulations, and an estimate of anticipated remediation costs, including but not limited to the costs of waste disposal, remediation of soil surface water or groundwater, or other media, environmental monitoring costs, and operations and maintenance costs.

9 Mining Permit Required; Mining and Reclamation. Amend RSA 12-E:4, V to read as follows:

V. The reclamation plan shall include, at a minimum, a detailed description of the reclamation activities, such as a schedule for reclamation and including an outline of anticipated contemporaneous reclamation activities when a large tract of land is subject to mining operations. The reclaimed ~~land~~ **quarry floor and any other new horizontal surface created by the removal of rock** shall be at least as capable of supporting the uses as it supported prior to any mining activity or shall be capable of supporting different post-mining uses so long as such use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution. Such different post-mining uses may include agricultural, recreational, residential, commercial, industrial, forestry, or open space land use. The proposed land use following reclamation may not be impractical or unreasonable or inconsistent with applicable land use policies and plans and shall be approved by the commissioner. **Reclaimed vertical faces or highwalls shall not exceed steps of 30 feet vertical and 20 feet horizontal, unless otherwise approved by the commissioner.**

10 Mining Permit Required; Mining and Reclamation. Amend RSA 12-E:4, VII-VIII to read as follows:

VII. The operator may file amendments to the mining and reclamation plan with the commissioner. Upon the commissioner's approval, such amendments shall be incorporated into the permit. The commissioner may determine whether the plans will be altered to such a degree as to require an opportunity for hearing pursuant to RSA 12-E:5. Additional fees and ~~bonding~~ **financial assurance plans** may be required by the commissioner.

VII-a. The adequacy of the current financial assurances plans to address the estimated closure and reclamation costs of the mining operation shall be assessed at the time of each request for amendment or, at a minimum, every 3 years at the time of permit renewal.

VIII. A permit shall be denied by the commissioner in the following circumstances:

(a) The operator requesting such permit has a mining violation pursuant to RSA 12-E:10 outstanding in the state. If the operator has been involved in mining operations in another jurisdiction and has had similar violations filed against him **or her**, he **or she** shall present such information to the commissioner who may, in his **or her** discretion, approve or deny the permit based on such past activities;

(b) The operator has forfeited a reclamation bond anywhere in the United States during the past 5 years;

(c) The operator has not applied for a national pollutant discharge elimination system permit **and a storm water notice of intent and pollution prevention plan**, if required, granted by the federal environmental protection agency **and has not certified in writing that it has applied for aid, and has been granted, all other applicable local, state, and federal permits required under applicable environmental laws for the proposed mining operations**;

(d) If any of the corporate officers or principal owners have committed (a) or (b) above;

(e) If, in his *or her* determination *and in consultation with the department of environmental services and the department of safety*, the mining operation would constitute an imminent *and substantial* danger to the health and safety of the public by causing substantial harm to persons outside of the permit site or substantial harm to the maintenance of environmental quality in and near the permit site; ~~or~~

(f) If the mining plan does not meet the requirements of this chapter or the rules ~~promulgated~~ *adopted* pursuant to this chapter[-];

(g) The department of environmental services does not approve the mining and the reclamation plan, or does not concur with the commissioner's determination as to the amount of the financial assurance provided; or

(h) The department of safety does not approve of the blasting plan.

11 Opportunity for Public Hearing; Mining and Reclamation. Amend RSA 12-E:5 to read as follows:

12-E:5 Opportunity for Public Hearing.

I. Upon filing of a permit application or an application for an amended permit, the *applicant* operator shall publish notice of such application in a newspaper in general circulation of each county wherein the affected land lies at least once each week for 2 successive weeks after filing the application. The *applicant* operator shall notify landowners within 1/2 mile of the proposed permit area in writing of the application and shall file a copy of the mining and reclamation plan, or amended plan with the town clerk or city solicitor of the town or city wherein the land lies.

II. The commissioner shall fix a reasonable period of time within which any person desiring to be heard may file a petition for a hearing. Such period of time shall not be less than ~~20~~ **30** days. Upon the expiration of such time period in the absence of a protest or a request for a hearing, the commissioner may act on the permit upon the basis of the application and of the submittals and all other factors under consideration. When a petition for a hearing has been made, and good cause has been shown therefor, the commissioner shall set a time and place for a hearing. Notice of such hearing shall be *posted in the local media no less than 30 days before the hearing, posted at public places within the affected community or communities, and* given to the operator, *all abutters*, and ~~to~~ any interested party.

III. Where an amended permit or permit renewal seeks to change the use, size, volume, or intent from the original permit, such amended permit or renewal shall be required to obtain local approvals required under all applicable, lawful local ordinances.

12 Performance Bonds; Mining and Reclamation. RSA 12-E:6 is repealed and reenacted to read as follows:

12-E:6 Financial Assurance Plan.

I. Upon approval of the mining and reclamation plans and prior to the issuance of a permit, the operator shall file with the commissioner proof of adequate financial assurances, as determined and required by the commissioner, payable to the state of New Hampshire with sureties or other security satisfactory to the commissioner to adequately secure compliance

with this chapter. The amount provided shall equal at least 110 percent of the costs necessary to achieve the goals set forth in the approved reclamation plan, including the cleanup of waste piles, lagoons, and other sources of contamination associated with the permitted mining operation. The financial assurance provided shall cover removal of all surficial wastes, closure of the mine, remediation costs, a site investigation by a third party to confirm that no groundwater or other contamination exists, long-term monitoring, operations and maintenance of remedial systems, and reclamation. However, the commissioner, subject to obtaining the written concurrence of the department of environmental services, shall have the authority to adjust the financial assurances provided commensurate with the size and impact of the permitted mining operation. In determining the amount of the financial assurances required, the character and nature of the area adjacent to the permit site, the estimated cost of reclamation, including cleanup, closure, and long-term monitoring of waste piles, lagoons, or other sources of contamination associated with the permitted mining operation, and the future suitable use of the land involved shall be considered to insure the performance of the operator's duties, but in no case shall the financial assurances provided be less than \$10,000 per acre of permitted site. The anticipated cost of the operator's reclamation duties pursuant to RSA 12-E:7 and the mining and reclamation plans shall be covered by the financial assurances to ensure successful completion of any such reclamation activities upon default by the operator. The commissioners of the department of resources and economic development and the department of environmental services shall review the adequacy of the financial assurances provided at least every 3 years, as well as at the time of permit renewal and at such times as amendments to the existing permits are requested. All proceeds of forfeited financial assurance or other security shall be expended by the commissioner, subject to the concurrence of the department of environmental services, for the reclamation and remediation of the land area for which the financial assurance was posted. Upon issuance of a certification in writing, signed by the commissioners of the department of resources and economic development and the department of environmental services, that all reclamation and remediation activities have been satisfactorily completed, the remainder of any financial assurance shall revert to the operator or other party as designated in the financial assurance plan.

II. A special performance bond for prospecting may be required by the commissioner whenever he or she determines possible injury to the land may occur when such activity is not included in the mining and reclamation plans.

III. All financial assurance provided or portions thereof may be released when reclamation and remediation of the affected area has been completed to the satisfaction of the commissioner and in no case sooner than 3 years from its filing. Upon release of the bond, accrued interest from the bond while in possession of the state shall be paid to the operator.

13 Duties of Operator During Mining and Reclamation. Amend the introductory paragraph of RSA 12-E:7, I to read as follows:

I. Upon approval of the permit application, issuance of permit, and payment of [~~performance bond~~] **required financial assurances**, the mining operator may engage in such mining operations as detailed in the application during the term of the permit period subject to the following conditions. The operator shall:

14 Duties of Operator During Mining and Reclamation. Amend RSA 12-E:7, I(b) to read as follows:

(b) Provide a buffer zone from the mine of 200 feet from any property line~~[-]~~ **or** public right-of-way ~~[or]~~ **and 250 feet from any public** ~~[water body]~~ **waters defined in RSA 483-B:4, XVI** except for haulage roads;

15 Duties of Operator During Mining and Reclamation. Amend RSA 12-E:7, I(e)-(j) to read as follows:

(e) Create, if authorized in the permit, permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated that the size of the impoundment is adequate for its intended purposes. The impoundment dam construction shall be so designed as to achieve necessary stability with an adequate margin of safety as determined by the commissioner **and permitted by the department of environmental services pursuant to RSA 482**; the quality of impounded water shall be suitable on a permanent basis for its intended use and discharges from the impoundment shall not degrade the water quality below water quality standards established pursuant to applicable federal and state law in the receiving stream; the level of water shall be reasonably stable; final grading shall provide adequate safety and access for proposed water users; and such water impoundments shall not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses;

(f) Regrade the affected site to a comparable natural contour, except a different topography shall be accepted for another approved intended use. In the case of surface quarries in bedrock where regrading is technically and economically unfeasible, the commissioner shall require appropriate safety measures to be carried out and revegetation to screen quarries and enhance public views;

(g) Establish on the regraded areas, and all other lands affected, unless the land is intended for a different post-mining use and has commissioner approval, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area. Introduced species may be used in the revegetation process, **excluding invasive species as defined in RSA 430:52, VII** where desirable and necessary to achieve the future land use plan;

(h) Remove all metal, lumber, equipment, or other refuse resulting from the operation. No refuse shall be placed or be caused to slide beyond the perimeter of the permit site;

(i) Insure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are disposed of in a manner consistent with applicable state law designed to prevent contamination of ground or surface waters. **The operator shall successfully demonstrate that waste rock materials will not be net acid-forming**;

(j) File a closing notice with the commissioner that the mining operations are terminated~~[-]~~; **and**

(k) Comply with all applicable environmental laws and regulations.

16 Duties of Operator During Mining and Reclamation. Amend RSA 12-E:7, II to read as follows:

II. All reclamation activities shall be ***performed to current state standards and*** carried to completion by the operator prior to the expiration of one year after termination of the mining operation unless the commissioner extends such deadline for good cause. Such activities shall proceed in an environmentally sound manner and as contemporaneously as practicable with the mining operations. The operator shall be responsible for 3 successive growing seasons after the completion of the reclamation plan. If the operator claims a mining operation is still functional but in the commissioner's determination, based upon the quarterly progress reports submitted by the operator pursuant to RSA 12-E:7, I(a), the operation is terminated, the operator shall be required to initiate reclamation activities. The commissioner shall establish a schedule for partial refund of the ~~[performance bond]~~ ***financial assurances*** as portions of reclamation activities are completed.

17 Leasing of State Owned Lands; Mining and Reclamation. Amend RSA 12-E:9, II-III to read as follows:

II. ***When approved by the governor and council***, the commissioner shall issue prospecting permits to persons pursuant to rules adopted under RSA 12-E:2, ~~[VII(f)]~~ ***VIII(f)*** to entitle persons to prospect for valuable mineral and metal deposits, excepting common sand and gravel, on state owned lands. Any prospector who discovers a valuable mineral ~~[of]~~ ***or*** metal deposit, ~~[upon filing a claim thereof and a permit pursuant to RSA 12-E:4, may mine such area]~~ ***may submit an application for a prospecting permit*** pursuant to rules adopted by the commissioner.

III. The commissioner shall determine the terms of ~~[the leases]~~ ***any mining lease requested***, including the amount of acreage, duration of lease, rental cost, royalties, and any conditions concerning extraction of minerals or reclamation of the leased land upon application for such lease by the prospector.

18 Penalties and Other Relief; Mining and Reclamation. Amend RSA 12-E:12, I to read as follows:

I. Any person who violates any provisions of this chapter or any lawful regulation or cease and desist order of the commissioner issued pursuant to this chapter, or any condition or limitation in a permit or amendment issued under this chapter or who shall fail, neglect, or refuse to obey any order lawfully issued pursuant to this chapter shall be subject to a civil penalty not to exceed ~~[\$10,000]~~ ***\$20,000*** for each day the violation continues.

19 Effective Date. This act shall take effect 60 days after its passage.

LBAO

09-0921

01/20/09

SB 166-FN - FISCAL NOTE

AN ACT relative to mineral extraction, mining, and reclamation in New Hampshire.

FISCAL IMPACT:

The Department of Environmental Services and the Department of Resources and Economic Development state this bill may increase state general fund expenditures by an indeterminable amount in FY 2009 and each year thereafter. There is no fiscal impact on state, county, and local revenues or county and local expenditures.

METHODOLOGY:

The Department of Environmental Services and the Department of Resources and Economic Development state this bill further defines the provisions of a mining permit application under RSA 12-E:1. Each Department states since FY 2000 there has been 1 mining permit issued that would fall under the jurisdiction of RSA 12-E:1. The Departments cannot predict how many future mining permits will be issued, however, believes it would be unlikely to exceed 1 per year. The Department of Environmental Services states it would require 145 hours of staff time to complete 1 mining permit application. The Department of Resources and Economic Development states it would require 150 hours of staff time to complete 1 mining permit application. Both Departments state the staff time required for 1 mining permit could be absorbed without additional positions or funding, however, because the number of future mining permit applications cannot be determined the Department states this bill has an indeterminable fiscal impact on state revenues and state expenditures.

This bill does not contain an appropriation or establish positions