

METALLIC MINERAL MINING FEES

Senate Bill 742 as passed by the Senate
First Analysis (11-13-97)

Sponsor: Senator Don Koivisto
Senate Committee: Appropriations
House Committee: Conservation,
Environment and Recreation

THE APPARENT PROBLEM:

The federal Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87) was enacted to address concerns regarding the reclamation and environmental remediation of old mines, and allowed any state that wanted to conduct its own mining regulation and reclamation to do so. In Michigan, the Department of Environmental Quality's (DEQ) Geological Survey Division is the state's coordinating agency. Public Act 92 of 1970, the Michigan Mine Reclamation Act (later recodified into the Natural Resources and Environmental Protection Act [NREPA] under Public Act 451 of 1994), outlines the responsibilities of the "supervisor of reclamation," or the state geologist, and the DEQ, in administering and enforcing a regulatory program for metallic mineral mining activities. However, although the department complies with the federal act's requirement that it accept reclamation plans, it has not had the staff to review these plans since 1982. According to the department, the program was supported by general fund revenues from 1970 until 1982, but discontinued during the recession of the early 1980s. Consequently, legislation has been introduced that would establish a "user pay" system to provide funding for the program by assessing a surveillance fee on the production of metallic minerals.

THE CONTENT OF THE BILL:

The bill would amend Part 631 (MCL 324.63101 et al.) of the Natural Resources and Environmental Protection Act (NREPA), concerning the reclamation of mining lands, to require that, beginning on October 1, 1997, a metallic mineral operator first obtain a permit from the Department of Environmental Quality (DEQ) before mining for metallic minerals, and file an annual report on restoration and reclamation activities; to assess a metallic mineral surveillance fee upon each metallic product mined that would be used to administer and enforce metallic mineral mining activities; to establish a Metallic Mineral Surveillance Fund; and to establish new definitions for terms used regarding the mining of metallic minerals.

Metallic Mineral Mining Permit. After October 1, 1997, a person engaged in the business of mining metallic minerals would have to obtain a metallic mineral mining permit. However, a person carrying out a metallic mining operation as of the effective date of the bill would have one year after the bill's effective date to apply for a permit. In addition to a permit application, an applicant for a permit would have to submit detailed information to the DEQ, including a mining and reclamation plan that would include all of the following:

- C The method and direction of mining.
- C Surface overburden stripping plans.
- C The depth of grade level over the entire site from which the metallic mineral would be removed.
- C Provisions for grading, revegetation, and stabilization that would minimize soil erosion, sedimentation, and public safety concerns.
- C The location of buildings, equipment, stockpiles, roads, or other features necessary to the mining activity and provisions for their removal and restoration of the area when the project ends.
- C The interim use or uses of reclaimed areas before the cessation of the entire mining operation.
- C Maps and other supporting documents required by the DEQ.
- C Fencing or other techniques to minimize trespass or unauthorized access to the mining activity.
- C A hydrogeological survey of the surrounding area, if required by the DEQ when mining activity below the water table is proposed.
- C In situations where threatened or endangered species are identified, an indication of how the threatened or

endangered species would be protected or, if not protected, what mitigation measures would be performed.

In addition, if the proposed mining activity included beneficiation or treatment of the metallic ore or material mined for its metallic content, the application documents would have to include specific plans depicting the beneficiation and treatment methods and techniques, and manufacturer's material safety data sheets on all chemicals or other additives that are not natural to the site, that would be utilized in the process. The operator would have to obtain all applicable state and federal permits before beginning the beneficiation process.

Permit Conditions. A metallic mineral mining permit would be valid for the life of a mine, but the DEQ could revoke one if the person holding the permit didn't start mining and reclamation activities within three years; if the permittee requested that the permit be revoked, and the DEQ determined that the mining hadn't caused pollution; if the permittee failed to submit an annual report of production, as specified under the bill; or if the DEQ found that the permittee wasn't complying with the provisions of the act and there existed a threat to the public health and safety. In addition, the DEQ could order immediate suspension of mining activities if there existed an emergency endangering the public health and safety or an imminent threat to the state's natural resources. A suspension order would be in effect for up to ten days, or until the operation was in compliance, whichever was the shorter of the two time periods. The DEQ would have to issue an emergency order and schedule a hearing to extend the suspension beyond ten days, and the total duration of the suspension could not exceed 30 days.

A permit could be transferred with departmental approval if the person acquiring the permit submitted a transfer request and accepted the conditions of the existing permit. Pending the transfer, the mine could not be operated. A permit could not be transferred to a person who was in violation of the provisions of the act or a departmental order until the violation was corrected or an agreement had been reached to correct it. If a permittee was under notice because of unsatisfactory conditions at the mining site, then the permit could not be transferred until corrective actions were taken or the person acquiring the permit entered into an agreement to correct the conditions.

The DEQ would have up to 60 days to review a permit application, to notify the applicant whether it was accurate or complete, and to notify the applicant if changes or additional information were needed. Upon receiving additional information, the DEQ would then have up to an additional 30 days to review it. After completing the review process, the DEQ would have 60

days to approve or deny an application. If an applicant requested that an existing metallic mineral permit be amended, the DEQ would have to determine if the request constituted a significant change from the conditions of the approved permit, in which case the DEQ could submit the request for amendment to the same review process as the original application.

Annual Production Reports. Each metallic mineral operator would be required to file a report on or before February 15 of each year showing the annual production of metallic product from each metallic mineral mine. Failure to submit an annual report would constitute grounds for revocation of a permit. The bill would also require that records upon which the annual report was based be preserved for three years and be subject to departmental audit.

Metallic Mineral Surveillance Fee. A metallic mineral surveillance fee would be assessed for the purpose of surveillance, monitoring, administration, and enforcement of the provisions of Part 631. The fee would be assessed for the calendar year reported in an operator's annual report upon each metallic product, at the following rates: gold would be not more than 9.4 cents per troy ounce; silver would be not more than 0.13 cents per troy ounce; copper would be not more than 0.03 cents per pound; and iron would be not more than 1 cent per metric ton. Funds collected under the assessment could not exceed the actual costs to the department of implementing the provisions of Part 631 pertaining to metallic mineral mining, and would have to be deposited in the Metallic Mineral Surveillance Fund established under the bill.

The fees would be due no more than 30 days after the department had sent written notice to the metallic mineral operator of the amount due. A penalty, equal to ten percent of the amount due, or \$1,000, whichever was greater, would be assessed against the metallic mineral operator if a fee was not paid when due. An unpaid fee and penalty would constitute a debt and become the basis of a judgment against the operator. Penalties received under these provisions would be used to carry out enforcement of the provisions of Part 631.

Metallic Mineral Surveillance Fund. The fund would be established to provide appropriations only for surveillance, monitoring, administration, and enforcement, and for computing the surveillance fee established under the bill. Any amount in the fund that was unexpended at the end of a fiscal year would be credited to a separate department fund, carried over to the succeeding fiscal year, and deducted from the amount appropriated for that year.

Definitions. The bill would establish new definitions pertaining to the mining of metallic minerals, as follows:

C Under the act, "mineral" is defined to mean coal, gypsum, stone, metallic ore, or material mined for its metallic content and other similar solid material or substance to be excavated from natural deposits on or in the earth for commercial, industrial, or construction uses; "mineral" does not include clay, gravel, marl, peat, or sand. House Bill 5246 would redefine "mineral" to mean any substance to be excavated from the natural deposits on or in the earth for commercial, industrial, or construction purposes, including gypsum, limestone, dolostone, sandstone, shale, metallic mineral, or other solid materials. The bill would also specify that "mineral" would not include -- in addition, to clay, gravel, marl, and peat -- inland sand or sand mined from regulated sand dune areas for commercial or industrial purposes, or coal from an area of land regulated under Part 635 of the act.

C "Metallic mineral" would mean metallic ore or material mined for its metallic content; and "metallic product" would mean a commercially salable metallic mineral in its final marketable form or state.

C Currently, the act defines "mining" as "open pit mining," which means the mining of a mineral in the regular operation of a business by removing the overburden lying above a natural deposit of a mineral and mining directly from the natural deposits thus exposed or by mining directly from deposits lying exposed in their natural state. The definition does not include excavation or grading preliminary to a construction project or borrow operations for highway constructions. The bill would redefine "mining" to include surface mining, and to specify that the definition applies to mining of more than 10,000 tons of a mineral or disturbing more than one acre of land a year, and that it includes all mining below the water table or which will upon cessation of mining result in creating a body of water of any size.

C The bill would extend the definition of "mining area" to include an area of land that is mined by surface pit mining methods.

FISCAL IMPLICATIONS:

The House Fiscal Agency (HFA) reports that the bill would result in an increase in state funds from the surveillance fees that would be imposed on metallic mineral products. The fees would be credited to the general fund and appropriated to administer a regulatory program for metallic mineral mining activities under the provisions of the bill. Unspent funds would be available for spending in the subsequent fiscal year.

A Department of Environmental Quality (DEQ) analysis on a similar bill (House Bill 5246) notes that the

amount collected in metallic mineral surveillance fees would not exceed \$62,800, or the department's actual costs for one full-time employee (FTE) to administer the program. (10-15-97)

ARGUMENTS:

For:

It is important that the Department of Environmental Quality's (DEQ) program be reestablished to ensure that metallic mining activities are performed safely and to guarantee that lands that are subjected to mining activities in the future are reclaimed once mining activities cease. Michigan's mineral deposits have been mined for many years. However, some of the mines have been abandoned, leaving behind old pits and quarries that pose threats to the public health and safety, as well as having a significant impact upon the environment. Apparently, the state's metallic mineral mining program has not been properly administered since 1982, due to a lack of funding. Instead, the regulation of these mining activities has been left to local units of government. Nevertheless, according to the DEQ, few counties, townships or municipalities have adopted appropriate zoning ordinances to effectively regulate mining activities, and those that do often cannot afford to hire staff with the necessary professional expertise to monitor this field. The provisions of the bill would enable the DEQ to reestablish a regulatory program over these mining activities.

Against:

The bill specifies that each mining operator must file an annual production report with the DEQ indicating how much has been produced at each of the operator's mines. A metallic mineral surveillance fee would then be assessed for the calendar year reported in each annual report, with a different fee rate being established for each metallic mineral that is mined and regulated under the act. However, some people have pointed out that this would result in a mining operator supplying information that would ultimately be used to assess the cost of that operator's surveillance fee. Instead, it is argued, the state geologist should be responsible for conducting this assessment, as was the procedure when the department regulated metallic mineral mining activities in the past. Lacking this provision, arguments could arise between mining operators and communities that disagreed with an operator's valuation.

Against:

The bill would allow massive intrusions by state government into what should be the domain of private enterprise. The DEQ could, for example, halt a mining operation not only if it created an "imminent threat to the state's natural resources, but could also issue an

emergency order and schedule a hearing to extend the suspension beyond ten days. Therefore, the department could obstruct mining operations if it thought the operations could be dangerous.

Response:

The bill would grant broad enforcement powers to the DEQ, but that it would do so must be weighed not only against the value of the lands the bill would protect but against the fact that almost every power the department could exercise would be subject to the provisions of the Administrative Procedures Act (APA).

POSITIONS:

The Department of Environmental Quality (DEQ) supports the bill. (11-12-97)

The Michigan Environmental Council (MEC) supports the bill. (11-12-97)

The Michigan Townships Association (MTA) supports the bill. However, the association objects to the bill's provision that would permit mining operators to specify the value of their mining products. (11-12-97)

Analyst: R. Young

~~This analysis was prepared by staff of the House of Representatives~~
their deliberations, and does not constitute an official statement of legislative intent.