

NREPA MINING PERMIT REQUIREMENTS

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Senate Bill 839 (reported from House committee w/ amendment)

Analysis available at

Senate Bill 840 (reported from House committee w/o amendment)

<http://www.legislature.mi.gov>

Senate Bill 881 (reported from House committee w/o amendment)

Sponsor: Sen. Thomas Casperson

(Enacted as Public Acts 163, 164, and 165 of 2018)

House Committee: Natural Resources

Senate Committee: Natural Resources

Complete to 5-10-18

BRIEF SUMMARY: Senate Bills 839, 840, and 881 would amend the Natural Resources and Environmental Protection Act (NREPA) to revise certain practices for amending a mining permit, to add practices that do not require a permit, and to clarify exemptions. Each bill would take effect 90 days after enactment.

FISCAL IMPACT: The bills are unlikely to affect local government costs or revenues. It is unclear whether they would affect costs or revenues for the Department of Environmental Quality. (See *Fiscal Information*, below, for further discussion.)

THE APPARENT PROBLEM:

Mining companies in Michigan must adhere to strict policies and procedures for operations conducted within the state, even if just to build a bathroom for their employees. According to the bills' sponsor, the many layers of governmental permits required for mining should not be required for adding building or structures that help facilitate the business yet do not engage in mining operations or change any current mining operations. Legislation has been proposed to facilitate such activities undertaken by mining companies.

THE CONTENT OF THE BILLS:

Senate Bill 839 would amend Part 632, relating to nonferrous metallic mineral mining.

Currently, NREPA states that a mining permit *may* be amended as follows:

- The permittee (the individual submitting the permit) *may* submit to the Department of Environmental Quality (DEQ) a request to amend the mining permit to address anticipated changes in the mining operation.
- The DEQ *may* require a mining permit to be amended if it determines the terms and conditions of the permit are not providing protection to the environment, natural resources, or public health and safety.
- Within 30 days after receiving a request to amend a mining permit or upon making a determination that the amendment is necessary, the DEQ is required to determine whether the request constitutes a significant change from the original mining permit. If the DEQ determines that the amendment request does constitute a significant change, the DEQ *may* submit the amendment request to

be reviewed as if it were a new mining permit application under Section 63205(4) to (9) of NREPA. If the DEQ determines that the amendment request does not constitute a significant change, the DEQ must approve the amendment within 14 days after publishing notice of its determination.

The bill would stipulate that a mining permit amendment can only be initiated either when the permittee submits a request or when the DEQ requires that a mining permit be amended. The bill also would add that in making its determination as to whether the amendment constitutes a significant change from the original permit, the DEQ must consider whether the change will result in environmental impacts that are materially increased or different from those addressed in the approved mining permit conditions, application, or any additional information forming the basis of the approved mining permit conditions.

Under the bill, if the DEQ determined that the request constitutes a significant change, it would have to do either of the following:

- Submit the request for amendment to be reviewed as if it were a new mining permit application under Section 63205(4) to (9) of NREPA. (Those provisions allow for the DEQ to approve or deny a permit after a public comment period.)
- Within 42 days after the determination that the amendment request constitutes a significant change from the conditions of the approved mining permit, hold a public meeting on the request. The DEQ would have to give notice of the meeting as provided under Section 63205(6) of NREPA.¹ The DEQ would also have to accept written public comments for 28 days after the public meeting. When the public comment period expires, the DEQ would have 14 days to grant or deny the request in writing.

Currently, the DEQ is required to state in a written report to the permittee the reasons for denial. The bill would remove this provision. (However, a written report for a denial is also required under Section 63205(9), as part of the process for denying a new mining permit application.)

Finally, the bill as amended would add that a permittee may submit to the DEQ a written request to relocate, reconfigure, or modify shafts, tunnels, or other subsurface openings or surface facilities, buildings, or equipment, *other than a tailings basin or a stockpile*, without obtaining an amendment to the permit. Within 30 days after receiving the request, the DEQ would have to either grant or deny the request and notify the permittee in writing. Additionally, the DEQ would be required to grant the request if *all* of the following applied:

- Any proposed relocation, reconfiguration, or modification of shafts, tunnels, or other subsurface openings will not result in subsidence of other adverse

¹ “The department shall give notice of the public meeting not less than 14 or more than 28 days before the date of the public meeting. The notice shall specify the time and place of the public meeting, which shall be held in the county where the proposed mining operation is located, and shall include information on how to review a copy of the application. The notice shall be given in writing to the city, village, or township and the county where the proposed mining operation is to be located and to all affected federally recognized Indian tribes in this state. The notice shall also be given by publication in a newspaper of local distribution in the area where the proposed mining operation is to be located.”

environmental impacts. The permittee's request would have to include information demonstrating that the applicable requirements of this subdivision are met.

- Any proposed relocation, reconfiguration, or modification of surface facilities buildings, or equipment, *other than a tailings basin or a stockpile*, would take place within the permitted mining area.

MCL 324.63207

Senate Bill 840 would amend Part 301, relating to inland lakes and streams.

Currently, a permit is not required under Part 301 for a variety of activities, including for a waste collection or treatment facility that is ordered to be constructed or is approved for construction under state or federal water pollution control law, if constructed in upland.

The bill would amend this provision so that a permit would not be required for *maintenance and operation* of a waste collection or treatment facility *either* ordered to be constructed or approved for *operation* under a state or a federal water pollution control law *and this Part*. (*Italics* denotes changes in wording proposed by the bill.)

For purposes of this provision, under the bill, ***operation*** would include dredging, filling, or construction and placement of structures in the waste collection or treatment facility in compliance with NREPA.

MCL 324.30103

Senate Bill 881 would amend Part 31, relating to water resource protection.

Currently, Part 31 does not apply to copper or iron mining operations, whereby such operations result in the placement, removal, use, or processing of copper or iron mineral tailings or copper or iron mineral deposits from such operations being placed up in inland waters on bottomlands owned by or under the control of the mining company and only water which may contain a minimal amount of residue as determined by the DEQ being allowed to escape into public waters. Nor does it apply to the discharge of water from underground iron or copper mining operations subject to a determination by the DEQ.

The bill would amend this section to replace all references to “copper or iron” with “ferrous and nonferrous” to stay up-to-date with changes under Parts 631 (Ferrous Mineral Mining) and 632 (Nonferrous Metallic Mineral Mining).

The bill also would mandate that ferrous and nonferrous tailings and mineral deposits placed in inland waters owned by or under the control of the mineral operator, and discharge of water from underground mining operations, would not be subject to Part 31 *unless* there is to be a discharge of waste or waste effluent into waters of the state.

Finally, the bill would add that the mining exemption would not apply to inland waters owned by or under control of a ferrous or nonferrous mineral operator if there is an ***inland***

lake or stream (as defined in Section 30101) that flows both into and out from those inland waters directly into the waters of the state.

Inland lake or stream means a natural or artificial lake, pond, or impoundment; a river, stream, or creek which may or may not be serving as a drain as defined by the Drain Code (MCL 280.1 to 280.630); or any other body of water that has definite banks, a bed, and visible evidence of a continued flow or continued occurrence of water, including the St. Marys, St. Clair, and Detroit Rivers. Inland lake or stream *does not include* the Great Lakes, Lake St. Clair, or a lake or pond that has a surface area of less than 5 acres.

MCL 324.3116

HOUSE COMMITTEE ACTION:

The House Natural Resources committee adopted an amendment to Senate Bill 839 on May 2, 2018. The amendment replaces all of proposed Section 63207(7) with a new subsection (7), which would allow a permittee to submit to the DEQ a written request to modify facilities, buildings, or equipment, other than a tailings basin or a stockpile, without obtaining an amendment to the permit, as further described above.

FISCAL INFORMATION:

SB 839 Mining permit process changes

It is unclear whether the changes to the mining permitting process included in Senate Bill 839 would affect costs or revenues for the DEQ. The bill would not change current fee rate or alter initial eligibility requirements; it is difficult to determine whether changes in process would have an effect on the number of permit applicants or the cost of permitting. The bill is unlikely to affect local government costs or revenues.

SB 840 Waste collection or treatment facility permit requirements

It is unclear whether the changes to the waste collection or treatment facility permit requirements included in Senate Bill 840 would affect costs or revenues for the DEQ. The bill would not change current fee rate or alter initial eligibility requirements; it is difficult to determine whether changes in process would have an effect on the number of permit applicants or the cost of permitting. The bill is unlikely to affect local government costs or revenues.

SB 881 Ferrous and nonferrous mining operations

Senate Bill 881 is unlikely to affect costs or revenues for the DEQ or local units of government.

ARGUMENTS:

For:

Supporters of the bills argue that mining companies are currently encountering unnecessary and additional permit requirements when adding a building that clearly would not result in an adverse environmental impact. This bill package would allow mining companies to build additional buildings without the encumbrance of a prolonged permit approval while ensuring environmental compliance.

Against:

Critics of the bills argue that the lack of definitions for “environmental impact” and “significant change” leave gaps in the law to allow mining companies to construct additional buildings that could, in fact, have adverse environmental impacts. These critics would prefer to have definitions included in the carve-out to ensure definitive environmental compliance.

POSITIONS:

The following entities indicated support for the bills:

- Department of Environmental Quality (5-2-18)
- Highland Copper Company, Inc. (4-25-18)

The Lundin Mining Company’s Eagle Mine indicated support for SBs 839 and 840. (5-2-18)

The Michigan Environmental Council indicated a neutral position regarding SB 840. (4-25-18)

The Sierra Club indicated opposition to the bills. (5-2-18)

The following entities indicated opposition to SBs 839 and 881:

- Michigan Environmental Council (4-25-18)
- Michigan League of Conservation Voters (5-2-18)

Legislative Analyst: Emily S. Smith
Fiscal Analyst: Austin Scott

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.