

Legislative Analysis



NONFERROUS METALLIC MINERAL MINING RULES

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House Bill 5427 as enrolled

Public Act 299 of 2005

Sponsor: Rep. Tom Casperson

House Committee: Conservation, Forestry, and Outdoor Recreation

Senate Committee: Natural Resources and Environmental Affairs

Second Analysis (8-28-06)

BRIEF SUMMARY: The bill would extend the rule promulgation deadline for rules regarding nonferrous metallic mineral mining from December 31, 2005 to February 15, 2006.

FISCAL IMPACT: The bill would have no apparent fiscal impact on the state or local units of government.

THE APPARENT PROBLEM:

Currently under the law, the Department of Environmental Quality administers and enforces Part 632 of the Natural Resources and Environmental Protection Act concerning nonferrous metallic mineral mining. This part of the act is new, having been enacted by the legislature as Public Act 449 of 2004 and going into effect December 27th of last year. The law specifies that the department set standards for construction, operation, closure, post-closure monitoring, reclamation, and remediation of a nonferrous metallic mineral mine, and promulgate rules to do so until December 31, 2005.

Nonferrous metallic mineral mining can—without careful attention to its risks—cause a great deal of damage to the environment. That is because sulfide mining produces high levels of toxic pollutants. For example, the sulfide minerals being mined become sulfuric acid when they are exposed to air and water. See [Background Information](#) below.

Over the course of the past 150 years, the Western Upper Peninsula has been home to approximately 800 open pit iron oxide and copper mines. There are two such mines remaining, and these mines are regulated under Part 631 of the Natural Resources and Environmental Protection Act, as well as other parts of NREPA. Recently, there has been an interest expressed by mining corporations in developing underground nonferrous sulfide mines in the Yellow Dog Plains area of Marquette County, and in portions of Menominee County, to mine for nickel, copper, and zinc deposits within the area. Some suggest that the Yellow Dog Plains could yield 405 million pounds of nickel and 335 million pounds of copper. It is estimated that the value of a deposit beneath the headwaters of the Salmon-Trout River ranges between \$2 billion and \$4 billion.

The last of Michigan's underground mines closed in the early 1970's, and until the enactment of Public Act 449 of 2004, there was no adequate regulatory structure in place to regulate the operation of such mines. The legislature enacted the law in recognition

that widespread development of sulfide mines in the Upper Peninsula, without an adequate regulatory structure, posed a risk to the environment, natural resources, quality of life, and public health, and has the potential to contaminate the water supply and destroy nearby wildlife.

The development of the law was broadly participatory. In early 2004, the Departments of Environmental Quality and Natural Resources convened a workgroup to study the potential development of sulfide mining in the Upper Peninsula. The workgroup was composed of representatives from the two departments, environmental groups, local governments, mining companies, tribal governments, and state legislators, as well as other interested individuals. The workgroup met throughout the summer and, in September 2004, reached an agreement to propose legislation regulating sulfide mining in the state. The legislation, introduced at the recommendation of the work group—Public Act 449 of 2004—went into effect on December 27th of last year.

Since that time, the promulgation of rules to implement the law has been underway. That process, too, has been broadly participatory, including public hearings in the Upper Peninsula and Lansing. The deadline for the rule-making process, set in the law, is December 31, 2005. As that deadline approaches, written comments on the rules continue to be analyzed by environmental health specialists following the public hearings, and the Department of Environmental Quality has requested an extension of the deadline.

THE CONTENT OF THE BILL:

House Bill 5427 would amend the Natural Resources and Environmental Protection Act to extend the rule promulgation deadline for rules regarding nonferrous metallic mineral mining from December 31, 2005 to February 15, 2006.

MCL 324.63203

BACKGROUND INFORMATION:

The part of the Natural Resources and Environmental Protection Act that describes the regulation of nonferrous metallic miners, begins with a section called legislative findings (MCL 324.63202). There, the law reads:

Discoveries of nonferrous metallic sulfide deposits have resulted in intensive exploration activity and may lead to the development of one or more mines. It goes on to say that nonferrous metallic sulfide deposits are different from the iron oxide ore deposits currently being mined in Michigan, in that the sulfide minerals may react, when exposed to air and water, to form acid rock drainage. If the mineral products and waste materials associated with nonferrous metallic sulfide mining operations are not properly managed and controlled, they can cause significant damage to the environment, impact human health, and degrade the quality of life of the impacted community. The special concerns surrounding nonferrous metallic mineral mining warrant additional regulatory measures

beyond those applied to the current iron mining operations. Nonferrous metallic mineral mining may be an important contributor to Michigan's economic vitality. The economic benefits of nonferrous metallic mineral mining shall occur only under conditions that assure that the environment, natural resources, and public health and welfare are adequately protected.

ARGUMENTS:

For:

The bill is necessary to ensure that rules are in place to properly regulate underground sulfide mines in the state. This type of mining, while new to Michigan, is known to produce high levels of toxic materials, including sulfuric acid. Rules to govern the mines must prevent the release of toxic contaminants into the environment that would pollute ground water and destroy the surrounding ecology of the area. To that end, a regulatory framework protecting the environment and public health must be carefully developed and consistently implemented. The bill helps to accomplish these ends by extending the rule-making deadline by one month, giving departmental specialists more time to respond to written comments that have followed upon the public hearings, and the public more time to consider the effects of nonferrous metallic mineral mining.

Against:

While an extension of the rule-making deadline is necessary, this 46-day extension is too short. The Department of Environmental Quality has requested a 90-day (three-month) extension, to ensure that adequate attention is given to rule preparation, and that adequate time is given to the legislature's review of the proposed rules—a process of legislative oversight that occurs when the rules are adopted by the Joint Committee on Administrative Rules (sometimes called JCAR).

Response:

The review of the rules by JCAR can be waived, so a 90-day extension is not necessary.

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