

CREATE REGULATORY PROGRAM FOR SMALL NATIVE COPPER MINING OPERATIONS

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Senate Bill 591 as passed by the Senate
Sponsor: Sen. Tom Casperson
House Committee: Natural Resources
Senate Committee: Natural Resources
Revised as of 5-16-16

SUMMARY:

Senate Bill 591 would amend the Natural Resources and Environmental Protection Act (NREPA) by adding a new Part 634 and making complementary amendments to existing Section 63201. Generally speaking, Part 634 would create a regulatory program for *small native copper mining operations* to be administered by the Department of Environmental Quality (DEQ).

"Native copper" means copper in its elemental form. The bill applies to a mining operation to excavate or remove earth material that generates not less than 10,000 tons and not more than 75,000 tons of waste rock in a calendar year or disturbs not less than 1 acre and not more than 10 acres of land in a calendar year.

The bill grants DEQ administrative and enforcement duties for operations that fall under Part 634, and a local unit of government would be prohibited from regulating or controlling mining activities under that part, and would not have jurisdiction concerning the issuance of permits. However, a local unit of government could enact, maintain, and enforce ordinances or regulations that affect mining if those ordinances or regulations do not duplicate, contradict, or conflict with Part 634.

SB 591 would add language stating that activities which fall under Part 634 would not be considered "mining" under the existing Part 632, which currently governs nonferrous metallic mineral mining. The bill would take effect 90 days after the date it is enacted into law. A more detailed summary follows.

Definitions

Section 63401 would add the following terms which relate to Part 634:

"Administratively complete" refers to an application for a mining permit under Part 634 that includes the fee and all of the documents and other information required under Part 634 and any rules promulgated under Part 634

"Conformance bond" means a surety bond that has been executed by a surety company authorized to do business in this state, cash, a certificate of deposit, a letter of credit, or other security filed by a person and accepted by the department to ensure compliance with this part or rules promulgated under this part.

"Fund" means the Small Native Copper Mine Surveillance Fund created in Section 63415.

"Life of the mine" means the period from initiation of mining activities through the completion of reclamation.

"Mine" or "mining" means an operation to excavate or remove earth material that generates not less than 10,000 tons and not more than 75,000 tons of waste rock in a calendar year or disturbs not less than 1 acre and not more than 10 acres of land in a calendar year in the regular operation of a business for the primary purpose of extracting native copper by one or both of the following:

- Removing the overburden lying above natural deposits of native copper and excavating directly from the natural deposits thus exposed or by excavating directly from deposits lying exposed in their natural state.
- Excavating from below the surface of the ground by means of shafts, tunnels, or other subsurface openings.

"Mining activity" means any of the following activities within a mining area for the purpose of, or associated with, mining:

- Clearing and grading of land.
- Drilling and blasting.
- Excavation of earth materials to access or remove ore.
- Crushing, grinding, or separation activities.
- Reclamation.
- Transportation of overburden, waste rock, ore, and tailings within the mining area.
- Storage, relocation, and disposal of overburden, waste rock, ore, and tailings within a mining area, including backfilling of mined areas.
- Construction of water impoundment and drainage features.
- Construction of haul roads.
- Construction of utilities or extension of existing utilities.
- Withdrawal, transportation, and discharge of water in connection with mining.

"Mining area" means all of the following:

- Land from which material is removed by surface or open pit mining methods.
- Land on which adits (horizontal mine entrances), shafts, or other openings between the land surface and underground mine workings are located.
- Land on which material from mining is deposited.
- Land on which crushing, grinding, or separation facilities are located.
- Land on which water reservoirs used in connection with mining are located.

"Mining permit" or "permit" means a permit issued under Section 63405 for conducting mining activities.

"Operator" means a person that is engaged in or preparing to engage in mining activities, whether individually or jointly, or through agents, employees, or contractors, and that has overall responsibility for the mining activities.

"Waste rock" means earth material that is excavated during mining, from which the economically recoverable native copper has been separated, and that is stored on the surface for one year or more. Waste rock does not include earth material from excavation or grading done in preparation for commencement of mining.

The existing Section 63201 (MCL 324.63201) contains definitions that relate to Part 632 (Nonferrous metallic mineral mining). SB 591 would add language stating that activities which fall under Part 634 would not be considered "mining" under Part 632 and would also specify that for purposes of Part 632, the quantity of earth material excavated or removed and/or the disturbing of acreage is measured in a calendar year. Presently, the definition states that the quantities of each is measured in a year.

Administration of Part 634

Section 63403 would grant the DEQ administrative and enforcement duties for operations that fall under Part 634. The department would be able to promulgate rules it considers necessary to carry out this Part. The DEQ would also be allowed to enter in or upon a mining area for the purpose of investigating or inspecting conditions relating to mining activities at any reasonable time.

A local unit of government would be prohibited from regulating or controlling mining activities that are subject to Part 634, and would not have jurisdiction concerning the issuance of permits. However, a local unit of government may enact, maintain, and enforce ordinances or regulations that affect mining if those ordinances or regulations do not duplicate, contradict, or conflict with Part 634. Those ordinances or regulations must be reasonable in accommodating customary mining activities.

Permit process and requirements

The bill would require a separate mining permit for each mine.

An application for a mining permit would be submitted by the operator to the DEQ on a form prescribed by the department. An application must include all of the following:

- A permit application fee of \$5,000 which the department must forward to the state treasurer for deposit in the Small Native Copper Mine Surveillance Fund.
- Provisions for a conformance bond as described in Section 63409.
- A mining and reclamation plan which includes all of the following:
 - A map or maps showing the locations and dimensions of the following:
 - Proposed adits, shafts, underground mine workings, and surface pits.
 - Proposed overburden, waste rock, and ore stockpiles.
 - Any crushing, grinding, or separation equipment that will be utilized.
 - A description of the mining methods that will be utilized.
 - Plans and descriptions of measures that will minimize soil erosion and sedimentation during mining activities.
 - A map and description of fencing or other techniques to minimize public safety hazards.

- Plans and schedules for reclamation of the mining area following cessation of mining activities. The plans and schedules shall provide for grading, revegetation, and stabilization that will do all of the following:
 - Minimize soil erosion and sedimentation.
 - Protect public safety.
 - Establish conditions that promote future beneficial use and do not require perpetual care.

The DEQ would be required to publish notice of an application in a newspaper of local distribution in the area of the proposed mine and post a copy of the application on its website within 14 days of its receipt.

Effective 14 days after the department receives an application for a mining permit, the application shall be considered to be administratively complete unless the department notifies the applicant that the application is not administratively complete before the end of the 14 day period. In that case, the DEQ must specify the information or fee necessary to make the application administratively complete, and the running of the 14-day period under is tolled until the applicant submits to the department the specified information or fee.

Unless the information in an application is determined by the department to be insufficient to determine whether a permit may be granted, the department would be required to grant or deny a mining permit within 45 days after an application is considered or determined to be administratively complete as detailed above. If a mining permit is denied, the reasons shall be stated in a written report to the applicant.

If the department determines that information in the application is insufficient to determine whether a permit may be granted, the department may request additional information or clarification from the applicant. The 45-day period is tolled until the applicant submits the requested information.

Conditions of a permit

Section 63407 contains provisions relating to a mining permit. Once issued, this permit would be valid for the life of the mine. However, the department may revoke a permit if the permittee does not commence mining activities covered by the permit within three years after the date of issuance.

The department may terminate a mining permit upon request of the permittee if the department determines that the permittee has complied with all applicable provisions of this part. A mining permit may be transferred with the department's approval. The person seeking to acquire the permit must submit a request for transfer of the permit to the department on forms provided by the department. The person acquiring the permit also must accept the conditions of the existing permit and adhere to the requirements set forth in the approved mining and reclamation plan and provide a conformance bond as set forth in Section 63409. Pending the transfer of the existing permit, the person seeking to acquire the permit could not operate the mine.

A mining permit could not be transferred to a person who has been determined by the DEQ to be in violation of this part, rules promulgated under this part, or a condition of a permit issued under this part, until the person acquiring the permit has corrected the violation or the department has accepted a compliance schedule and a written agreement has been reached to correct the violations.

If the permittee has been notified by the department of a violation of this part, rules promulgated under this part, or a condition of the permit issued under this part at the mining area involved in the transfer, then the mining permit shall not be transferred to a person until the permittee has completed the necessary corrective actions or the person acquiring the permit has entered into a written consent agreement to correct the violation.

A mining permit may be amended upon submission of a request by the permittee to the department. The department shall determine whether the requested amendment constitutes a significant change to the mining and reclamation plan. If the department determines that the requested amendment constitutes a significant change, the department must submit the request for amendment to the same review process as provided for a new permit application as detailed above. If the department determines that the requested amendment does not constitute a significant change, the department would be required to approve the request within 14 days after receiving the request.

Conformance Bond

Section 63409 would require an operator to maintain a \$25,000 conformance bond for each mine during mining activities and until the department determines that all reclamation has been completed in compliance with the mining permit. Failure to do so may result in the department ordering immediate suspension of mining activities, including the removal of native copper from the site.

Other responsibilities of operators

Section 63411 would also require:

- An operator to comply with all other applicable requirements of this act.
- An operator to conduct mining activities at a mining area in conformance with the approved mining and reclamation plan. If mining activities are suspended for a continuous period exceeding 240 days, the operator shall maintain, monitor, and secure the mining area and shall conduct any interim sloping or stabilizing of surfaces necessary to protect the environment, natural resources, or public health and safety in accordance with the mining permit.
- An operator to begin final reclamation of a mining area within three years after the date of cessation of other mining activities and would have to complete reclamation within the time set forth in the mining and reclamation plan approved by the department. Upon written request of the operator, however, the department may approve an extension of time to begin or complete final reclamation.

- Compliance with Part 634 would not relieve a person of the responsibility to comply with all other applicable state or federal statutes or regulations.

Annual operator fee

Section 63413 would require an operator to annually pay a \$5,000 fee that would be used for surveillance, monitoring, administration, and enforcement of Part 634. The fee must be paid by February 15 of each year per mine that was operational on December 31 of the prior year. The fee is due each year until the mining activities cease and the department has released the conformance bond.

For each month or part of a month during which an operating fee has not been paid after the due date, a penalty equal to 2% of the amount due shall be assessed against the operator. The department would forward all annual operating fees and penalties collected under this section to the state treasurer for deposit in the fund.

The Small Native Copper Mine Surveillance Fund

Section 63415 would create the Small Native Copper Mine Surveillance Fund within the state treasury. The state treasurer may receive money or other assets from any source for deposit into the fund and would direct the investment of the fund, crediting to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year would remain in the fund and shall not lapse to the general fund. The department could expend money from the fund, upon appropriation, only for surveillance, monitoring, administration, and enforcement under this part.

Violations and penalties

Section 63417 would establish a process for addressing violations of Part 634. If the department determines that an operator has failed or neglected to perform reclamation in conformance with this part or rules promulgated under this part, the department would be required give written notice of this determination to the operator and to the surety executing the conformance bond. The notice of determination may be served upon the operator and surety in person or by registered mail.

If the operator or surety fails or neglects to properly begin the required reclamation within 90 days after the date of service or mailing of the notice or fails to proceed with reclamation at a rate that will conclude the reclamation within the period specified in the mining and reclamation plan, the department may enter into and upon any private or public property on which the mining area is located and upon and across any private or public property necessary to reach the mining area and conduct necessary reclamation, and the operator and surety are jointly and severally liable for all expenses incurred by the department.

The department must certify to the operator and surety the claim of the state in writing, listing the items of expense incurred in reclamation. The claim would be required to be paid by the operator or surety within 30 days, and if it is not paid within that time the DEQ may bring suit against the operator or surety, jointly or severally, for the collection of the claim in any court of competent jurisdiction in Ingham County.

The department may order immediate suspension of any mining activities if the department finds that there exists an emergency endangering the public health and safety or an imminent threat to the natural resources of the state. Such an order suspending mining activities would remain in effect until the endangerment to the public health and safety or the threat to the natural resources has been eliminated, but not more than 10 days. To extend the suspension beyond 10 days, the department must issue an emergency order to continue the suspension of mining activities and schedule a hearing as provided by the Administrative Procedures Act of 1969 (PA 306 of 1969). The total duration of the suspension of activities shall not be more than 30 days.

At the request of the department, the attorney general may institute an action in a circuit court of the county in which the mining area is located for a restraining order or injunction or other appropriate remedy to prevent or preclude a violation of this part or a rule promulgated under this part.

FISCAL IMPACT:

Senate Bill 591 would increase revenues for the Department of Environmental Quality; the nature of this bill's potential effect on departmental costs is unknown. This bill establishes Part 634 of NREPA which grants DEQ authority over the regulation of small native copper mines. The bill includes two new restricted revenue streams: a permit application fee of \$5,000 per mine and an annual mine operator fee of \$5,000. The revenue from these fees would be deposited into the newly created Small Native Copper Mine Surveillance Fund. Money in this fund requires appropriation in order to be expended and may only be spent on surveillance, monitoring, administration, and enforcement under Part 634 of NREPA.

The department projects that there will be two to three mines subject to this bill in the near future. The revenue generated from these permits is projected to cover the cost of administering the program. The \$5,000 mine operator fee is projected to cover approximately 80 hours of staff time per year for each mine, which would be sufficient to address costs. Additionally, mine operators are required to maintain a conformance bond of \$25,000 for the life of each mine. The department may collect these funds if the mine is not closed in accordance with DEQ requirements for mine closure at the end of the mining operation. It is unclear how many of these conformance bonds would ultimately be claimed by DEQ.

Senate Bill 591 would not have an effect on revenues nor costs for local units of government. This bill restricts local governments from regulating or controlling small native copper mining activity and designates such regulation as the domain of the state through DEQ. The bill does allow local governments to enforce small native copper mine ordinances or regulations that do not contradict or conflict with Part 634.

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■ 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.