

## ESTABLISHING SMALL NATIVE COPPER MINING OPERATIONS

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**Senate Bill 129 (reported from House Committee  
without amendment)**

Analysis available at  
<http://www.legislature.mi.gov>

**Sponsor: Sen. Tom Casperson**  
**House Committee: Natural Resources**  
**Senate Committee: Natural Resources**  
**Complete to 4-11-17**

*(Public Act 40 of 2017)*

**BRIEF SUMMARY:** Senate Bill 129 would amend the Natural Resources and Environmental Protection Act (NREPA) by adding Part 634 to establish regulations for small native copper mining operations. The bill would prohibit a local unit of government from regulating or controlling mining activities that were subject to Part 634, including construction, operation, closure, postclosure monitoring, reclamation, and remediation activities. A local unit also would not have jurisdiction concerning the issuance of permits for those activities. The bill would also amend various other sections within NREPA to reflect the added regulations and update language.

**FISCAL IMPACT:** Senate Bill 129 would increase revenues for the Department of Environmental Quality; the revenue generated from permits is projected to cover the cost of administering the program. The department projects that there will be two to three mines subject to this bill in the near future. (For additional information, see *Fiscal Information*, later in the analysis.)

### **THE APPARENT PROBLEM:**

Mining operations are currently regulated under Part 632 of NREPA, which oversees the process of Nonferrous Metallic Mineral Mining. These mining operations produce rock waste that create acid runoff, which is harmful to the environment and public drinking supply. As a result, Part 632 oversees the specific environmental standards that mining operations producing acid-forming materials must follow. However, there is a developing interest in small mining operations that do not produce this acid-forming material, but don't have regulations to meet their specific needs.

Specifically, a portion of the Keweenaw Bay area in the western Upper Peninsula contains native copper (copper in its elemental form). Developers in the area wish to mine the copper, which would create a small operation similar to a gravel pit. Yet, supporters of the project say that the mining requirements that are currently in Part 632 are impractical for such a small operation, especially when mining native copper is unlikely to produce acid-forming materials. For example, Eagle Mine in Marquette (which falls under Part 632) is 140 acres and has trucks leaving the site about every 20 minutes for 24 hours a day and seven days a week, but a mining operation that would fall under the proposed new Part 634 would only be about 10 acres and have around three trucks a day leaving the site. Because the two operations would be vastly different in size, it would be unreasonably burdensome to subject such a small operation to the exact same standards.

## ***THE CONTENT OF THE BILL:***

Senate Bill 129 would amend the Natural Resources and Environmental Protection Act (NREPA) by adding Part 634 to establish regulations for small native copper mining operations.

The bill would prohibit a local unit of government from regulating or controlling mining activities that were subject to Part 634, including construction, operation, closure, postclosure monitoring, reclamation, and remediation activities. A local unit also would not have jurisdiction concerning the issuance of permits for those activities.

The bill would also amend various other sections within NREPA to reflect the added regulations and update language.

The bill applies, through the definition of "mine or mining" in the new Part 634, to an operation to excavate or remove earth material that generates at least 10,000 tons and not more than 75,000 tons of waste rock in a calendar year or that disturbs at least one 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 methods:

- Removing the overburden lying above the 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 of earth material that has significant acid-forming or leachable characteristics is not subject to Part 634.

### **Part 634: Small Native Copper Mines**

The bill would require the Department of Environmental Quality (DEQ) to administer and enforce this new part. In addition to other powers granted to it, the DEQ could promulgate rules it considered necessary to carry out its duties under Part 634.

The DEQ could also enter at any reasonable time in or upon a mining area for the purpose of inspecting and investigating conditions relating to mining activities.

### ***Local Regulation***

The bill would prohibit a local unit of government from regulating or controlling mining activities that were subject to Part 634, including construction, operation, closure, postclosure monitoring, reclamation, and remediation activities. A local unit also would not have jurisdiction concerning the issuance of permits for those activities.

A local unit of government may enact, maintain, and enforce ordinances or regulations affecting mining if they did not duplicate, contradict, or conflict with Part 634 and were reasonable in accommodating customary mining activities.

These provisions would not prohibit a local unit of government from conducting water quality monitoring activity.

### ***Mining Permit***

The bill would prohibit a person from engaging in mining activities except as authorized by a mining permit issued by the DEQ. A separate permit would be required for each mine.

A mining permit would be valid for the life of the mine, which the bill would define as the period from initiation of mining activities through the completion of reclamation. The DEQ, however, could revoke a permit if the permittee did not commence mining activities covered by the permit within three years after it was issued. The DEQ could terminate a permit upon the permittee's request if the department determined that the permittee had complied with all applicable provisions of Part 634.

### ***Obtaining a Mining Permit***

To receive a permit, an operator would have to submit to the DEQ an application on a form prescribed by the department. ("Operator" would mean a person who is engaged in or preparing to engage in mining activities, whether individually or jointly, or through agents, employees, or contractors, and who has overall responsibility for the activities.) The application would have to include all of the following:

- A permit application fee of \$5,000, which the DEQ must forward to the State Treasurer for deposit in the proposed Small Native Copper Mine Surveillance Fund.
- Provisions for a conformance bond (a surety bond that was executed by a surety company authorized to do business in Michigan, cash, a certificate of deposit, a letter of credit, or other security filed by a person and accepted by the DEQ to ensure compliance with Part 634 or rules promulgated under it).
- A mining and reclamation plan that addresses mining activities proposed in the application.

The mining and reclamation plan would have to include *all* of the following:

- A map or maps showing the locations and dimensions of proposed adits, shafts, underground mine workings, and surface pits; proposed overburden, waste rock, and ore stockpiles; and any crushing, grinding, or separating equipment that would be used.
- A description of the mining methods that would be used.
- Plans and descriptions of measures that would 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 reclamation plans and schedules would have to address mining activities proposed in the application and provide for grading, revegetation, and stabilization that would do *all* of the following:
  - Minimize soil erosion and sedimentation.
  - Protect public safety.
  - Establish conditions that would promote future beneficial use and would not require perpetual care.
- Plans and schedules for baseline water quality sampling, which would have to be conducted before mining commenced. Samples would have to be collected from

the existing water supply wells available for sampling and located within 1,320 feet of the proposed mining area. Samples would not have to be collected from more than three such water supply wells. Samples would have to be collected from the nearest surface water body located within 1,320 feet of the proposed mining area, if any. The samples would have to be analyzed for pH, copper, and nitrate using laboratory methods approved by the Environmental Protection Agency (EPA).

### ***Reviewing a Mining Permit***

Within seven days after receiving a mining permit application, the DEQ would be required to give written notice to the county and municipality where the mine was proposed to be located of the specific location of the proposed mine. Within 14 days after receiving a mining permit application, the DEQ would have to publish notice of it in a newspaper of local distribution in the area of the proposed mine and post a copy of it on the DEQ's website.

Effective 14 days after the DEQ received an application, it would be considered to be administratively complete. However, if, before that date, the DEQ notified the applicant that the application was not administratively complete and specified the information or fee necessary to make it so, the running of the 14-day period would be tolled until the applicant submitted to the DEQ the specified information or fee. ("Administratively complete" would refer to an application for a mining permit that included the fee and all of the documents and other information required under Part 634 and any rules promulgated under it.)

The DEQ would have to grant or deny a mining permit within 45 days after an application was considered or determined to be administratively complete. If a permit were denied, the reasons would have to be stated in a written report to the applicant. If the DEQ determined that information in the application was insufficient to determine whether a permit could be granted, the department could request additional information or clarification from the applicant. The 45-day period would be tolled until the applicant submitted the requested information.

### ***Mining Permit Transfer***

A mining permit could be transferred with the DEQ's approval. The person seeking to acquire the permit would have to submit a request for transfer to the DEQ on forms provided by the DEQ. The person acquiring the permit would have to 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 prescribed in Part 634. Pending the transfer, the person seeking to acquire the permit could not operate the mine.

A mining permit could not be transferred to a person whom the DEQ had determined to be in violation of Part 634, rules promulgated under it, or a condition of a permit issued under Part 634. The person would have to correct the violation or the DEQ accept a compliance schedule and the person entered into a written agreement to correct the violation.

If the DEQ notified a permittee of a violation of Part 634, related rules, or a permit condition at the mining area involved in the transfer, the permit could not be transferred until the permittee had corrected the violation or the person acquiring the permit had entered into a written consent agreement to correct the violation.

### ***Amending a Mining Permit***

A mining permit could be amended upon a permittee's request to the DEQ. The DEQ would have to determine whether the requested amendment constituted a significant change to the mining and reclamation plan. If it determined that the amendment constituted a significant change, the DEQ would have to submit the request to the same review process as if it were a new permit application. If the DEQ determined that the requested amendment did not constitute a significant change, the DEQ would have to approve the request within 14 days after receiving it.

### ***Operator Responsibilities***

For each mine, an operator would have to maintain a conformance bond of \$50,000 during mining activities and until the DEQ determined that all reclamation was completed in compliance with the mining permit. If an operator violated this requirement, the DEQ could order immediate suspension of mining activities, including the removal of native copper from the site.

An operator would have to comply with all other applicable requirements of NREPA, and would have to conduct mining activities at a mining area in conformance with the approved mining and reclamation plan.

If mining activities were suspended for a continuous period of more than 240 days, the operator would have to maintain, monitor, and secure the mining area and 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 would have to begin final reclamation of the mining area within three years after the date of cessation of other mining activities, and complete reclamation within the time set forth in the approved mining and reclamation plan. However, upon the operator's written request, the DEQ could approve an extension of time to begin or complete final reclamation.

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

### ***Operating Fee***

For purposes of surveillance, monitoring, administration, and enforcement of proposed Part 634, an operator would have to pay the DEQ, by February 15 each year, an operating fee of \$5,000 for each mine where mining activities were ongoing as of December 31 of the previous year. The fee would be due each year until the mining activities ceased and the DEQ released the conformance bond.

If payment of the fee were late, the DEQ would have to assess against the operator a penalty equal to 2% of the amount due, for each month or part of a month during which an operating fee was not paid after the due date.

The DEQ would have to forward all annual operating fees and penalties to the State Treasurer for deposit in the proposed Small Native Copper Mine Surveillance Fund.

### ***Small Native Copper Mine Surveillance Fund***

The bill would also create the Fund within the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund. The State Treasurer would have to direct the investment of the Fund, and credit to it any interest and earnings from investments. Money in the Fund at the close of the fiscal year would remain in the Fund and would not lapse to the General Fund. The DEQ could spend Fund money, upon appropriation, only for surveillance, monitoring, administration, and enforcement under Part 634.

### ***Failure to Perform Reclamation***

If the DEQ determined that an operator had failed or neglected to perform reclamation in conformance with Part 634 or rules promulgated under it, it would have to give written notice to the operator and the surety executing the conformance bond. Notice may be served personally or sent by registered mail. If the operator or surety failed or neglected to properly commence the required reclamation within 90 days after the date of notice, or failed to proceed with reclamation at a rate that would conclude the reclamation within the period specified in the mining and reclamation plan, the DEQ could enter into and upon any private or public property on which the mining area was located or as necessary to reach the mining area and conduct necessary reclamation.

The operator and surety would be jointly and severally liable for all expenses incurred by the DEQ. The DEQ would have to certify to the operator and surety the state's claim in writing, listing the items of expense incurred in reclamation. The operator or surety would then have to pay the claim within 30 days. If the claim was not paid within that time period, the DEQ could 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.

### ***Emergency Suspension of Mining Activities***

The DEQ could order immediate suspension of any mining activities if it found that 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 until the endangerment or threat was eliminated, but not more than 10 days. To extend the suspension beyond 10 days, the DEQ would have to issue an emergency order to continue it and schedule a hearing as provided by the Administrative Procedures Act. The total duration of the suspension could not be more than 30 days.

### ***Attorney General Action***

At the DEQ's request, the Attorney General could institute an action in a circuit court of the county in which a mining area was located for a restraining order or injunction or other appropriate remedy to prevent or preclude a violation of Part 634 or a rule promulgated under it.

### ***Other Definitions as used in Part 634***

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

"Mining activity" would mean 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 gain access to 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" would mean all of the following:

- Land from which material is removed by surface or open pit mining methods.
- Land on which adits, 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.

"Waste rock" would mean 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 would not include earth material from excavation or grading done in preparation for commencement of mining.

### **Part 31: Water Resources Protection**

Part 31 prescribes a fee for a permit related to a site of construction activity, and requires the fee to be submitted along with the permittee's notice of coverage. "Notice of coverage" means a notice that a person engaging in construction activity agrees to comply with a permit by rule for that activity.

The bill would amend Part 31 to specify that a notice of coverage would not be required to include a copy of an individual permit issued under Part 91 (Soil Conservation, Erosion, and Sedimentation Control) if it included a copy of a permit for the construction activity issued under Part 615 (Supervisor of Wells), 625 (Mineral Wells), 631 (Ferrous Mineral Mining), 632 (Nonferrous Metallic Mineral Mining), or 634 (Small Native Copper Mines), along with any forms or diagrams pertaining to soil erosion and sedimentation control that were part of the application for that permit.

### **Part 91: Soil Conservation, Erosion, & Sedimentation Control**

Part 91 currently does not apply to a metallic mineral mining activity that is regulated under a mining and reclamation plan under Part 631. Under the bill, Part 91 also would not apply to a metallic mineral mining activity regulated under such a plan under proposed Part 634.

Also, under Part 91, a person is not required to obtain a permit from a county enforcing agency or a municipal enforcing agency for earth changes associated with well locations, surface facilities, flowlines, or access roads relating to oil or gas exploration and development activities regulated under Part 615, if the application for a permit to drill and operate contains a soil erosion and sedimentation control plan that is approved by the department under Part 615. Under the bill, subject to the same condition, a person also would not be required to obtain a permit for mineral well exploration and development activities regulated under Part 625.

### **Part 632: Nonferrous Metallic Mineral Mining**

Part 632 defines "mining" as the excavation or removal of more than 10,000 tons of earth material in a year or disturbing more than one acre of land in a year in the regular operation of a business for the purpose of extracting a nonferrous metallic mineral by one or both of the following:

- Removing the overburden lying above natural deposits of a mineral and excavating directly from those deposits 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.

Under the bill, "mining" under Part 632 would not include an operation subject to proposed Part 634.

### ***HOUSE COMMITTEE ACTION:***

The House Committee Natural Resources reported the Senate-passed version of the bill without amendment.

### ***FISCAL INFORMATION:***

This bill establishes Part 634 of NREPA, which would grant 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 \$50,000 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 129 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.

### ***ARGUMENTS:***

#### ***For:***

Supporters of the bill are confident that the development of the native copper mine in the Upper Peninsula will spark job creation in the area and boost the local economy. Proponents believe that even if the mine creates a few jobs, the operation would still be meaningful as every job is important, especially year-round employment in the Upper Peninsula. However, as noted earlier, the mining requirements that are currently in Part 632 are impractical for such small operations like proposed native copper mines and would be unreasonably burdensome.

Supporters of the bill believe that the proposed environmental regulations in SB 129 are sufficient to ensure that the environment will be kept clean and safe. Not only would the developer of the mine be required to conduct baseline water quality testing, but also include in the mining plans precise efforts for revegetation and stabilization of the area mined after operations cease. In addition, if, at any time, the mining operation produces rock waste that forms acid-bearing properties, the operation would automatically be subjected to the existing Part 632.

#### ***Against:***

Opponents of the bill are not convinced that there are enough safeguards in Part 634 to protect against environmental damage. For instance, mining operators would not be required to continually conduct water quality testing, which could mean that acid rock drainage could be easily missed. While mining for native copper may be extremely unlikely to produce rock waste that has acid-forming properties, there is a chance these harmful materials could be produced. As a result, if acid rock drainage is not being looked for or tested throughout the mining process, it could be missed and prove harmful to not only the environment, but also the local water supply. Further, critics say, that the bill does not require an applicant to submit the kind of a comprehensive environmental impact assessment as required under current mining regulations, and the financial assurance requirements under proposed Part 634 are less stringent than the existing requirements under Part 632.

Critics also believe that the bill should have some kind of mechanism for local residents to influence or have a say in the mining operations. Even though a mining operation under Part 634 would be small, the actions of conducting day-to-day mining operations can still be noisy. Noisy actions include blasting, crushing, and grinding. The bill currently allows for a public comment period after the DEQ publishes notice of a mining operation application. However, this mechanism is inadequate, as it does not allow locals to meet with representatives from the DEQ or a company seeking to mine in the area. This hinders a local resident's ability to seek answers and learn more about the mining that would take place in their area. Not having a public hearing process could also quash the ability to include helpful and useful suggestions from concerned residents in the final mining permit.

As such, opponents of the bill would like to include provisions that allow for some local input and control, such as suggested hours of operation.

***Response:***

Proponents of the bill have responded to this concern by reiterating the availability for anyone to submit written testimony during the public commenting process once the DEQ has given notice of an application to mine. In addition, supporters of the bill are apprehensive that no concerned local residents would appear at the public hearings, and instead that activists against any mining activity would disrupt the process by opposing any legal operations.

***POSITIONS:***

Representatives from the following entities support the bill:

- Evergreen Explorations, LLC. (3-22-17)
- Michigan Manufacturers Association. (3-29-17)
- Department of Environmental Quality. (3-29-17)

Representatives from the following entities oppose the bill:

- Michigan Environmental Council. (3-29-17)
- Michigan Municipal League. (3-29-17)
- Michigan Townships Association. (3-29-17)
- Michigan Association of Counties. (3-29-17)
- The League of Women Voters of Michigan (3-21-17)
- The vice-chair of the Marquette County Commission, representing District Two. (3-29-17)

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