



Senate Fiscal Agency
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Senate Bill 429 (Substitute S-3 as reported)
Senate Bills 430 and 431 (as reported without amendment)
Sponsor: Senator Jim Ananich
Committee: Transportation and Infrastructure

CONTENT

Senate Bill 429 (S-3) would add Part 639 (Sand and Gravel Mining) to the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- Specify that mining would be considered authorized under Part 639 if it had received a local permit for mining, zoning approval, or other governmental authorization, or was not required to have obtained an authorization because of nonregulation or because the mining was a legal nonconforming use.
- Specify that Part 639 would preempt an ordinance, regulation, resolution, policy, or practice of a governmental authority created by statute, municipality, or county that prohibited or regulated certain aspects of a mine.
- Prohibit, except for de minimis extraction or for certain exempt activities, a person from engaging in mining except as authorized by a mining permit, which would have to be obtained from the Department of Environment, Great Lakes, and Energy (DEGLE).
- Require an application for a mining permit to include the name and address of the applicant, the location and legal description and survey of the proposed mining area, a \$5,000 application fee, an environmental impact assessment, a mining and reclamation plan, and financial assurance.
- Require a mining and reclamation plan to include a general description of materials, methods, and techniques that would be utilized for mining, among other information.
- Require all reclamation provisions to be carried to completion with reasonable diligence and be conducted concurrently with mining to the extent practicable.
- Require a mining permit application to be considered to be administratively complete effective 14 days after DEGLE received it.
- Require DEGLE to publish public notice of the application in a newspaper of general circulation in the area of the proposed mine and transmit the notice to the applicant and the supervisor or manager of the township or chief administrative officer of the city or village where the mine was proposed to be located within 42 days after receiving an administratively complete application.
- Specify that a person would have to submit comments on the application in writing to DEGLE within 30 days after the notice was published and, if DEGLE determined that one or more of the public comments constituted sufficient cause or that there was sufficient public interest in an application, require DEGLE to conduct a public hearing on the application.
- Within 15 days after the expiration of the extended public comment period described above, or if there were no extended public comment period, within a certain amount of time, require DEGLE to grant the application and issue the mining permit or deny the application.
- Specify that a mining permit issued by DEGLE would be valid for the life of the mine and that the mining permit could be transferred or amended with the approval of DEGLE.

- Allow a local unit of government to submit a request to DEGLE to amend a mining permit application or a mining permit.
- Require DEGLE to assess against an operator a mining surveillance fee on the sand and gravel products sold for purposes of surveillance, monitoring, administration, and enforcement of Part 639, and require those fees to be forwarded to the State Treasurer for deposit in the Sand and Gravel Surveillance Fund, which the bill would create.
- Require an operator to file with DEGLE by the first June 1 immediately after a mining permit was issued a plan map of the mining area, and on or before June 1 of each year, a mining and reclamation report during the life of the mine.
- Require an operator to maintain financial assurance in the amount of \$3,000 per acre of area distributed and not yet reclaimed during mining until DEGLE determined that all reclamation was completed.
- Allow a person aggrieved by an order, action, or inaction of DEGLE under Part 639, by certain activity concerning a mining permit, or by the operation of a mine to file a petition with DEGLE requesting a hearing.
- If DEGLE determined that an operator had violated Part 639 or a mining permit, require DEGLE to require the operator to correct the violation, and if a violation of Part 639 or a mining permit were resulting in an imminent and substantial endangerment to the public health or safety, environment, or natural resources, require DEGLE to take action necessary to abate or eliminate the endangerment.
- Specify that Part 639 would not limit DEGLE's authority to take whatever response activities it determined necessary to protect the public health, safety, and welfare, the environment, or natural resources.
- Allow DEGLE to request the Attorney General to commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of Part 639, a mining permit, or an order issued under Part 639.
- Prescribe penalties for violations of Part 639.
- Specify that an operator would be liable to a city, a village, or the county road commission for damage caused by the operator's trucks to streets or county roads that were haul routes between the mining operation and a primary road.
- Specify that a mine or mining would not be a public or private nuisance if a mining permit had been issued for the mine or mining as provided by the bill and the mine or mining was not determined in an action as described above to be in violation of Part 639.

Senate Bill 430 would amend the Code of Criminal Procedure to include in the sentencing guidelines the felonies proposed by Senate Bill 429.

Senate Bill 431 would amend the Michigan Zoning Enabling Act to prohibit a county or township from regulating or controlling aggregate mining and specify that the county or township would not have jurisdiction over the issuance of a permit, approval, or other authorization for the location, operation, abandonment, or reclamation of an aggregate mine unless certain conditions were met.

Senate Bill 430 is tie-barred to Senate Bill 429.

MCL 324.9115 et al. (S.B. 429)
 777.13f (S.B. 430)
 125.3205 (S.B. 431)

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

Senate Bill 429 (S-3) would have an indeterminate fiscal impact on DEGLE. The bill would require DEGLE to administer the new permitting process. This would include meeting all public notice, public comment, and public meeting requirements. The Department would have to

evaluate the permits for administrative compliance. If an application were identified as noncompliant or incomplete, the Department would be responsible for communicating the reasons and monitoring whether the applicant had addressed the problems before determining whether to issue a permit.

The bill would require DEGLE to track and maintain a record of all permits issued and to manage all requests for transferring or amending existing permits. The Department also would have to manage the reclamation plans of each permit and to monitor the annual reports for each mine. Additionally, the Department would be responsible for surveillance, monitoring, administration, and enforcement. The bill would allow the Department to assess a surveillance fee that would be calculated using a prescribed formula and the amount paid by each mine would be based on tons of sand and gravel sold from mines in the previous year. Surveillance fees would be deposited into the Sand and Gravel Surveillance Fund, while civil fines and recovery awarded through enforcement actions taken on behalf of the Department by the Attorney General would be deposited into the General Fund.

The Department would receive increased revenue through the \$5,000 fee permit for each application and the surveillance fee, the amounts of which are unknown at this time. The Department would have an increase in administrative costs associated with processing, surveillance, monitoring, administration, and enforcement of each permit. To the extent that the new revenue from fees is equal to the marginal cost of managing each permit, the bill would have a no fiscal impact on DEGLE; if costs exceeded, the opposite would be true, but fees collected in the fund can only be used to cover the actual costs associated with the Department's surveillance and enforcement activities.

The bill's criminal penalties could have a negative fiscal impact on the State and local government. Violations of the bill's provisions would be punishable as felonies of varying severity. More felony arrests and convictions could increase resource demands on law enforcement, court systems, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,400 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government would be approximately \$5,400 per prisoner per year. Any associated increase in fine revenue would increase funding to public libraries.

Senate Bill 430 would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

Senate Bill 431 would have no fiscal impact on State or local units of government.

Date Completed: 6-2-21

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