

ABANDONED OR IDLE MINE INSPECTION; LIENS FOR SAFETY MEASURES INCURRED BY STATE

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House Bill 6258 as introduced
Sponsor: Rep. Sara Cambensy
Committee: Natural Resources and Outdoor Recreation
Complete to 9-28-22

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

SUMMARY:

House Bill 6258 would repeal 1911 PA 163, the act which presently contains mine inspector duties and inspection requirements, and move those requirements to the Natural Resources and Environmental Protection Act (NREPA). The bill would amend NREPA to add a new Part 629 (Mine Inspection), which would prescribe certain mine inspection requirements.

The inspection requirements in 1911 PA 163 now apply to individuals elected as mine inspector in counties where there is an iron or copper mine. The bill would change this requirement to apply to metallic mineral mines and would allow a lien to be placed against the real or personal property of the owner of an abandoned or idled mine if they do not make certain required safety measures. Presently, 1911 PA 163 allows unpaid safety expenses to be added to the property owner's taxes as a separate assessment.

Inspection requirements

The bill would require the Department of Environment, Great Lakes, and Energy (EGLE) to do all of the following:

- Inspect each active mine at least once every 60 days.
- Condemn a mine or part of a mine where the employees are in danger from any cause.
- Require the erection of a partition between mine shafts and ladder ways.
- Immediately do both of the following if a mine or part of a mine is dangerous:
 - Order in writing the individuals working at that place to leave and not return until further notice. An order under this provision and a notification as required below would have to clearly define the limits of the dangerous place.
 - Notify in writing the operator or its agent of the work to be done or change to be made to secure the place from danger other than ordinary mine risks.
- Order the mine operator or its agent to do both of the following:
- Furnish all shafts and open pits of the mine with some secure safeguard at the top of the shaft or open pit so as to prevent individuals or material from falling down the mine.
- Furnish a covering on all the carriages on which individuals ascend or descend a shaft, if in EGLE's judgment it is practicable and necessary for safety.

If a mine operator allows an individual to work in a place condemned as described above, except to do the work required to ensure the safety (ordinary risks of mining excepted) of employees who will work in that area, the operator of the mine would be liable for an accident that causes injury or death to an employee working in the place and that occurs before the condemnation order is complied with or revoked.

The operator of a mine or its agent would have to furnish an EGLE employee upon request with all of the following:

- For inspection, maps, drawings, and plans of the mine, together with plans of all contemplated changes in the manner of working the mine or any part of the mine.
- An individual or individuals to accompany the EGLE employee through the mine or any part of the mine.
- Use of ladders and other appliances necessary and suitable to make a proper inspection of the mine.

A person who violated the above requirements would have to be ordered to pay a civil fine of at least \$100 but not more than \$500.

EGLE would have to immediately conduct an inspection if an individual working in any mine or place where mining is done notifies it verbally or in writing of any mine condition or accident with respect to which it has jurisdiction under Part 629. Such a notice would be exempt from disclosure under the Freedom of Information Act and could not be disclosed by EGLE except if required by court order. An EGLE officer or employee who disclosed the name of an individual who gave such a notice would have to be ordered to pay a civil fine of at least \$100 but not more than \$500.

Idle or abandoned mines

A mine that is closed or abandoned could not be reopened, and an individual other than an officer or employee of EGLE could not enter the mine unless EGLE has inspected the mine and issued a certificate of safety. A mine owner or operator who directed or allowed an individual to enter a mine in violation of this provision would have to be ordered to pay a civil fine of at least \$100 but not more than \$500.

EGLE would have to order the owner or owners of the land on which an idle or abandoned mine is located, or the agent of the owner or owners, in writing served as described in the bill, to erect and maintain around each shaft and open pit of the mine a suitable fence or railing as necessary to prevent individuals or domestic animals from falling into the shaft or open pit.

If, within 30 days after notice is given, the owner or agent does not erect fences or railings, EGLE would have to cause the fences or railings to be erected, and the owner or owners of the land where the mine is located would be liable to the state for the costs incurred to do so. The costs to the state would constitute a lien in favor of the state against the land on which the mine is located. This lien would have priority over all other liens and encumbrances, except liens and encumbrances recorded before the date this lien was recorded. A lien under this provision would arise when EGLE first incurs those costs.

If the attorney general determines that this lien is insufficient to protect the interest of the state in recovering the costs, they could file a petition in the circuit court for the county where the land is located seeking either or both of the following:

- A lien against the land that takes priority over all other liens and encumbrances on the land that are or have been recorded.
- A lien against real or personal property or rights to real or personal property other than the land where the mine is located, owned by the person who owns the land where the mine is located. This lien would have priority over all other liens and encumbrances

recorded before the date this lien is recorded. The following would not subject to this lien:

- Assets of a qualified pension plan or individual retirement account under the Internal Revenue Code (26 USC 1 to 98344).
- Assets held expressly for the purpose of financing a dependent's college education.
- Up to \$500,000 in nonbusiness real or personal property or rights to real or personal property, except that not more than \$25,000 of this amount could be cash or securities.

A petition submitted by the attorney general would have to set forth with as much specificity as possible the type of lien sought, the property that would be affected, and the reasons the attorney general believes the lien is necessary. Upon receipt of a petition, the court would have to promptly schedule a hearing to determine whether the petition should be granted. Notice of the hearing would be provided to the attorney general, the property owner, and any persons holding liens or perfected security interests in the land where the mine is located.

The bill would also provide that if the state incurred unpaid costs relating to putting up the safety fences or railings that increase the market value of the land that is the location of the mine, the increase in value caused by the installation of fences or railing, to the extent of those costs, constitutes a lien in favor of the state against the land. This lien would have priority over all other liens or encumbrances that are or have been recorded against the land.

A lien that would be established under the bill would be perfected against land when a notice of lien is filed by EGLE with the register of deeds in the county in which the land is located. In addition, at the time of the filing of the notice of lien, EGLE would have to provide a copy of the notice of lien to the owner of that property by certified mail.

A lien would continue until the liability for costs is satisfied. Upon satisfaction of the liability secured by the lien, EGLE would then file a notice of release of lien to the owner of that property by certified mail.

List and report

EGLE would have to prepare, maintain on its website, and update as necessary a list of abandoned metallic mineral mines in Michigan, identifying each mine by name, location, and owner.

By March 1 each year, EGLE would have to prepare a report of its activities under Part 629 during the prior calendar year. The report would have to include at least all of the following:

- The number of mine accidents during the reporting period that caused death or injury to an individual.
- The circumstances of each accident described above, including at least all of the following:
 - The name of the mine where the accident occurred.
 - Whether the accident occurred through fault or negligence and, if so, whether the negligence was that of the mine owner or operator or of an employee or employees.
 - The results of inquests if any have been held in case of accidents causing death.

EGLE would have to post a report on its website for five years, as well as providing a copy to the board of commissioners of each county in which there is an active metallic mineral mine and to the director of the Michigan Occupational Safety and Health Administration.

Proposed MCL 324.62901 to 324.62915
MCL 425.101 to 425.113 (repealed)

FISCAL IMPACT:

House Bill 6258 is likely to increase costs for EGLE by requiring the department to regulate metallic mineral mines, including inspections, condemnations, execution of safety orders, and notifications of actions to mine owners. The bill would also create annual reporting requirements to document abandoned mines and the aforementioned regulatory actions. The extent of these costs increases is unclear and would likely vary annually by the number of mines subject to the provisions of the bill. The bill is unlikely to directly affect departmental revenues; costs would be borne by extant departmental revenues as no funding source is specified. Departmental funding totals \$728.7 million Gross (\$98.8 million GF/GP) for FY 2022-23. The bill is unlikely to affect local government costs or revenues.

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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.