

HOUSE BILL NO. 6256

June 21, 2022, Introduced by Rep. Cambensy and referred to the Committee on Natural Resources and Outdoor Recreation.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 63205 and 63207 (MCL 324.63205 and 324.63207), section 63205 as added by 2004 PA 449 and section 63207 as amended by 2018 PA 162.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 63205. (1) A person shall not engage in the mining of
- 2 nonferrous metallic minerals except as authorized in a mining
- 3 permit issued by the department.

1 (2) An application for a mining permit shall be submitted to
2 the department in a format to be developed by the department. The
3 application shall be accompanied by all of the following:

4 (a) A permit application fee of \$5,000.00. The department
5 shall forward all permit application fees received under this
6 section to the state treasurer for deposit in the fund.

7 (b) An environmental impact assessment for the proposed mining
8 operation that describes the natural and human-made features,
9 including, but not limited to, flora, fauna, hydrology, geology,
10 and geochemistry, and baseline conditions in the proposed mining
11 area and the affected area that may be impacted by the mining, and
12 the potential impacts on those features from the proposed mining
13 operation. The environmental impact assessment shall define the
14 affected area and shall address feasible and prudent alternatives.

15 (c) A mining, reclamation, and environmental protection plan
16 for the proposed mining operation, including beneficiation
17 operations, that will reasonably minimize the actual and potential
18 adverse impacts on natural resources, the environment, and public
19 health and safety within the mining area and the affected area. The
20 plan shall address the unique issues associated with nonferrous
21 metallic mining and shall include all of the following:

22 (i) A description of materials, methods, and techniques that
23 will be utilized.

24 (ii) Information that demonstrates that all methods, materials,
25 and techniques proposed to be utilized are capable of accomplishing
26 their stated objectives in protecting the environment and public
27 health, except that such information may not be required for
28 methods, materials, and techniques that are widely used in mining
29 or other industries and are generally accepted as effective. The

1 required information may consist of results of actual testing,
2 modeling, documentation by credible independent testing and
3 certification organizations, or documented applications in similar
4 uses and settings.

5 (iii) Plans and schedules for interim and final reclamation of
6 the mining area following cessation of mining operations.

7 (iv) **Identification of future land uses for which the mining**
8 **area will be made suitable by reclamation.**

9 (v) ~~(iv)~~—A description of the geochemistry of the ore, waste
10 rock, overburden, peripheral rock, and tailings, including
11 characterization of leachability and reactivity.

12 (vi) ~~(v)~~—Provisions for the prevention, control, and monitoring
13 of acid-forming waste products and other waste products from the
14 mining process so as to prevent leaching into groundwater or runoff
15 into surface water.

16 (d) A contingency plan that includes an assessment of the risk
17 to the environment or public health and safety associated with
18 potential significant incidents or failures and describes the
19 operator's notification and response plans. When the application is
20 submitted to the department, the applicant shall provide a copy of
21 the contingency plan to each emergency management coordinator
22 having jurisdiction over the affected area.

23 (e) Financial assurance as described in section 63211.

24 (f) A list of other state and federal permits that are
25 anticipated to be required.

26 (3) The applicant has the burden of establishing that the
27 terms and conditions set forth in the permit application; mining,
28 reclamation, and environmental protection plan; and environmental
29 impact assessment will result in a mining operation that reasonably

1 minimizes actual or potential adverse impacts on air, water, and
2 other natural resources and meets the requirements of this act.

3 (4) Effective 14 days after the department receives an
4 application for a mining permit, the application shall be
5 considered to be administratively complete unless the department
6 proceeds as provided under subsection (5).

7 (5) If, before the expiration of the 14-day period under
8 subsection (4), the department notifies the applicant that the
9 application is not administratively complete, specifying the
10 information necessary to make the application administratively
11 complete, or notifies the applicant that the fee required to
12 accompany the application has not been paid, specifying the amount
13 due, the running of the 14-day period under subsection (4) is
14 tolled until the applicant submits to the department the specified
15 information or fee amount due. The notice shall be given in writing
16 or electronically.

17 (6) Within 42 days after an application for a mining permit is
18 determined to be administratively complete, the department shall
19 hold a public meeting on the application. The department shall give
20 notice of the public meeting not less than 14 or more than 28 days
21 before the date of the public meeting. The notice shall specify the
22 time and place of the public meeting, which shall be held in the
23 county where the proposed mining operation is located. ~~and~~**The**
24 **notice** shall include information on how to review a copy of the
25 application. The notice shall be given in writing to the city,
26 village, or township and the county where the proposed mining
27 operation is to be located and to all affected federally recognized
28 Indian tribes in this state. The notice shall also be given by
29 publication in a newspaper of local distribution in the area where

1 the proposed mining operation is to be located.

2 (7) The department shall accept written public comment on the
3 permit application for 28 days following the public meeting under
4 subsection (6). Within 28 days after the expiration of the public
5 comment period, the department shall reach a proposed decision to
6 grant or deny a mining permit and shall establish a time and place
7 for a public hearing on the proposed decision. The department shall
8 give notice of the public hearing not less than 14 or more than 28
9 days before the date of the public hearing. The notice shall be
10 given in writing to the city, village, or township and the county
11 where the proposed mining operation is to be located and to all
12 affected federally recognized Indian tribes in this state. The
13 notice shall also be given by publication in a newspaper of local
14 distribution in the area where the proposed mining operation is to
15 be located. The notice shall contain all of the following:

16 (a) A summary of the permit application.

17 (b) Information on how to review a complete copy of the
18 application. The application shall be made available at a public
19 location in the area **where the proposed mining operation is**
20 **located.**

21 (c) A listing of other permits and hearings that are pending
22 or anticipated under this act with respect to the proposed mining
23 operation.

24 (d) The time and place of the public hearing, which shall be
25 held in the area where the proposed mining operation is located.

26 (8) The department shall accept written public comment on the
27 proposed decision to grant or deny a mining permit for 28 days
28 following the public hearing. At the expiration of the public
29 comment period, the department shall issue a report summarizing all

1 comments received and providing the department's response to the
2 comments.

3 (9) Within 28 days after the expiration of the public comment
4 period under subsection (8), the department shall grant or deny the
5 mining permit application in writing. A determination that an
6 application is administratively complete does not preclude the
7 department from requiring additional information from the
8 applicant. The 28-day period under this subsection shall be tolled
9 until such time as the applicant submits the requested information.
10 If a mining permit is denied, the reasons shall be stated in a
11 written report to the applicant.

12 (10) A mining permit shall not be issued or transferred to a
13 person if the department has determined that ~~the person to be~~ **is** in
14 violation of this part, rules promulgated under this part, the
15 permit, or an order of the department under this part, unless the
16 person has corrected the violation or the person has agreed in
17 writing to correct the violation pursuant to a compliance schedule
18 approved by the department.

19 (11) Subject to subsection (10), the department shall approve
20 a mining permit if it determines ~~both of the following:~~

21 ~~(a) The~~ **that the** permit application meets the requirements of
22 this part **and rules promulgated under this part.**

23 ~~(b) The proposed mining operation will not pollute, impair, or~~
24 ~~destroy the air, water, or other natural resources or the public~~
25 ~~trust in those resources, in accordance with part 17 of this act.~~
26 ~~In making this determination, the department shall take into~~
27 ~~account the extent to which other permit determinations afford~~
28 ~~protection to natural resources. For the purposes of this~~
29 ~~subsection, excavation and removal of nonferrous metallic minerals~~

1 ~~and of associated overburden and waste rock, in and of itself, does~~
2 ~~not constitute pollution, impairment, or destruction of these~~
3 ~~natural resources.~~

4 (12) The department shall deny a mining permit if it
5 determines the requirements of subsection (11) have not been met.

6 (13) **The approval or denial of an application for a mining**
7 **permit shall be in writing and shall be based upon evidence that**
8 **would meet the standards in section 75 of the administrative**
9 **procedures act of 1969, 1969 PA 306, MCL 24.275.**

10 (14) Approval of an application for a mining permit may be
11 granted with conditions or modifications necessary to achieve
12 compliance with this part and rules promulgated under this part.

13 (15) A denial of an application for a mining permit and any
14 review upholding the denial or modification shall determine, to the
15 extent practical, all of the following:

16 (a) That the decision is based on specifically cited
17 provisions of this act or rules promulgated under this act.

18 (b) That the decision is based upon sufficient facts or data,
19 which are recorded in the file.

20 (c) To the extent applicable, both of the following:

21 (i) That the decision is the product of reliable scientific
22 principles and methods.

23 (ii) That the decision has applied the principles and methods
24 reliably to the facts.

25 (16) ~~(13)~~ Terms and conditions that are set forth in the
26 permit application and the mining, reclamation, and environmental
27 protection plan and that are approved by the department shall be
28 incorporated in and become a part of the mining permit.

29 (17) ~~(14)~~ A mining permit is not effective until all other

1 permits required under this act for the proposed mining operation
2 are obtained.

3 **(18)** ~~(15)~~—If a person submits an application for a mining
4 permit and 1 or more other permits under this act with respect to a
5 particular mining operation, the department may process the
6 applications in a coordinated fashion to the extent feasible given
7 procedural requirements applicable to individual permits. The
8 coordinated permit process may include consolidating public
9 hearings under this part with public hearings required under other
10 parts of this act. Any notice of a consolidated public hearing
11 shall state clearly which permits are to be considered at the
12 public hearing. An applicant may waive any required timelines under
13 subsections (4) to (9) to facilitate the coordination.

14 **(19) A court may consolidate all appeals relating to approval**
15 **or denial of permits required under this act for a nonferrous**
16 **metallic mineral mine.**

17 Sec. 63207. (1) A mining permit issued by the department
18 remains in effect until terminated or revoked by the department.

19 (2) The department may terminate a mining permit under 1 or
20 more of the following conditions:

21 (a) The permittee has not commenced construction of plant
22 facilities or conducted actual mining activities covered by the
23 mining permit within 2 years after the effective date of the mining
24 permit.

25 (b) The permittee has completed final reclamation of the
26 mining area and requests the termination of the mining permit and
27 the department determines ~~all~~ **both** of the following:

28 (i) The mining operation has ~~not polluted, impaired, or~~
29 ~~destroyed the air, water, or other natural resources or the public~~

1 ~~trust in those resources by activities conducted within the scope~~
2 ~~of~~ **complied with** the permit, **this part, and rules promulgated under**
3 **this part.**

4 ~~(ii) The permittee has otherwise fulfilled all conditions~~
5 ~~determined to be necessary by the department to protect the public~~
6 ~~health, safety, and welfare and the environment.~~

7 **(ii)** ~~(iii)~~ The requirements for the postclosure monitoring period
8 have been satisfied.

9 (3) The department may revoke a mining permit pursuant to
10 section 63221.

11 (4) A permittee shall not transfer a mining permit to a new
12 operator unless all of the following occur:

13 (a) The person acquiring the mining permit submits to the
14 department on forms provided by the department a request for
15 transfer of the mining permit and provides the financial assurance
16 required under section 63211.

17 (b) The person acquiring the mining permit accepts the
18 conditions of the existing mining permit and adheres to the
19 requirements set forth in this part.

20 (c) If the department determines that the permittee is in
21 violation of this part or rules promulgated under this part at the
22 mining site involved in the transfer, the permittee has completed
23 the necessary corrective actions or the person acquiring the mining
24 permit has entered into a written consent agreement to correct all
25 of the violations.

26 (d) The department, after providing public notice of the
27 proposed transfer, approves the transfer.

28 (5) Pending the transfer of an existing mining permit under
29 subsection (4), the proposed transferee shall not operate the mine.

1 (6) A mining permit shall be amended as follows:

2 (a) A mining permit amendment shall be initiated as provided
3 in either of the following:

4 (i) The permittee submits to the department a request to amend
5 the mining permit to address anticipated changes in the mining
6 operation, including, if applicable, amendments to the
7 environmental impact assessment and to the mining, reclamation, and
8 environmental protection plan.

9 (ii) The department requires a mining permit to be amended
10 after determining that the terms and conditions of the mining
11 permit are not ~~providing the intended reasonable protection of the~~
12 ~~environment, natural resources, or public health and safety~~**in**
13 **compliance with this part and rules promulgated under this part.**

14 (b) Within 30 days after receiving a request to amend a mining
15 permit under subdivision (a) (i), or upon a determination by the
16 department under subdivision (a) (ii) that an amendment is necessary,
17 the department shall determine whether the proposed amendment
18 constitutes a significant change from the conditions of the
19 approved mining permit. In making that determination, the
20 department shall consider whether the change will result in
21 environmental impacts that are materially increased or different
22 from those addressed in the approved mining permit conditions, the
23 mining permit application, or any additional information forming
24 the basis of the approved mining permit conditions.

25 (c) If the department determines under subdivision (b) that
26 the request constitutes a significant change from the conditions of
27 the approved mining permit, the department shall in its sole
28 discretion do 1 of the following:

29 (i) Submit the request for amendment to the same review process

1 as provided for a new permit application in section 63205(4) to
2 (9).

3 (ii) Within 42 days after the determination that the amendment
4 request constitutes a significant change from the conditions of the
5 approved mining permit, hold a public meeting on the request. The
6 department shall give notice of the public meeting in the same
7 manner provided for in section 63205(6). The department shall
8 accept written public comment on the request for 28 days after the
9 public meeting. Within 14 days after the expiration of the public
10 comment period, the department shall grant or deny the request in
11 writing.

12 (d) If the department determines under subdivision (b) that
13 the request for amendment does not constitute a significant change
14 from the conditions of the approved mining permit, the department
15 shall provide written notice of the determination to the city,
16 village, or township and the county where the proposed mining
17 operation is to be located and to all affected federally recognized
18 Indian tribes in this state. The department shall also give notice
19 of the determination by publication in a newspaper of local
20 distribution in the area where **the mining operation is located or**
21 the proposed mining operation is to be located. The department
22 shall approve the amendment within 14 days after publication of the
23 notice and shall notify the permittee of the approval.

24 (7) A permittee may submit to the department a written request
25 to relocate, reconfigure, or modify shafts, tunnels, or other
26 subsurface openings or surface facilities, buildings, or equipment,
27 other than a tailings basin or a stockpile, without obtaining an
28 amendment to the permit under subsection (6). Within 30 days after
29 receiving the request, the department shall grant or deny the

1 request and notify the permittee in writing of the department's
2 determination. Subject to subsection (6) (a) (ii), the department
3 shall grant the request if all of the following apply:

4 (a) Any proposed relocation, reconfiguration, or modification
5 of shafts, tunnels, or other subsurface openings will not result in
6 subsidence or other adverse environmental impacts **that violate this**
7 **part or rule promulgated under this part.** The permittee's request
8 shall include information demonstrating that the requirements of
9 this subdivision, if applicable, are met.

10 (b) Any proposed relocation, reconfiguration, or modification
11 of surface facilities, buildings, or equipment, other than a
12 tailings basin or a stockpile, will take place within the permitted
13 mining area.

14 Enacting section 1. Section 63205 of the natural resources and
15 environmental protection act, 1994 PA 451, MCL 324.63205, as
16 amended by this amendatory act, takes effect 1 year after the date
17 it is enacted into law.

18 Enacting section 2. This amendatory act does not take effect
19 unless Senate Bill No.____ or House Bill No.____ (request no.
20 05612'22) of the 101st Legislature is enacted into law.