

# HOUSE BILL NO. 6388

September 22, 2022, Introduced by Reps. Howell and 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, 63209, and 63219 (MCL 324.63205, 324.63209, and 324.63219), as added by 2004 PA 449, and by adding sections 63102 and 63102b.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           **Sec. 63102. If a person submits an application for a mining**  
2 **permit under this part and 1 or more other permits under this act**  
3 **with respect to a particular mining operation, the department must**  
4 **process the applications in a coordinated fashion to the extent**

1 feasible given procedural requirements applicable to individual  
2 permits. The coordinated permit process may include consolidating  
3 public hearings required under other parts of this act. Any notice  
4 of a consolidated public hearing shall state clearly the permits  
5 that are to be considered at the public hearing.

6       Sec. 63102b. (1) A person who has applied for a mining permit  
7 under section 63103a may challenge the department's inaction on or  
8 denial of the application for the mining permit or any permit  
9 processed as provided by section 63102 by filing a petition with  
10 the department to initiate a contested case hearing under the  
11 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
12 24.328. The department may reject as untimely a petition filed more  
13 than 60 days after the department's inaction on or denial of the  
14 application.

15       (2) Any person who is aggrieved by an order, action, or  
16 inaction of the department or by the issuance, denial, revocation,  
17 or amendment of a mining permit under this part or a permit under  
18 this act processed as provided in section 63205(15) that is needed  
19 for a proposed mining operation may file a petition with the  
20 department requesting a contested case hearing. The petition must  
21 be filed not more than 60 days after issuance, denial, revocation,  
22 or amendment of the mining permit or issuance of the last permit  
23 processed under section 63102, whichever is later.

24       (3) A petition under subsection (2) shall include a statement  
25 of the issues proposed to be addressed by a contested case hearing  
26 and the specific relief or resolution requested. To the extent  
27 known by the petitioner, the petition may also include any of the  
28 following information with respect to the contested case hearing:

29       (a) A proposed list of prospective witnesses to be called,

1 including experts, with a brief description of the proposed  
2 testimony of or a summary of evidence to be presented by each  
3 witness.

4 (b) A proposed list of publications, references, or studies to  
5 be introduced and relied upon.

6 (c) An estimate of time required for the petitioner to present  
7 the matter.

8 (4) Any person may serve timely responses to a petition under  
9 subsection (2). The department shall establish deadlines for  
10 responses to be submitted.

11 (5) The department shall grant a petition under subsection (2)  
12 if the department finds all of the following:

13 (a) The petition raises a material issue of fact in dispute  
14 concerning the mining permit or a permit processed as provided  
15 under section 63102 that has not been sufficiently evaluated by the  
16 department.

17 (b) The department has jurisdiction to make a determination on  
18 the disputed material issue of fact.

19 (c) There is a reasonable basis underlying a disputed material  
20 issue of fact such that a contested case hearing would allow the  
21 introduction of information that would help the department resolve  
22 the issue of fact and make a final decision on the permit.

23 (6) Within 90 days after a petition is filed under subsection  
24 (2), the department shall determine whether to grant the petition.  
25 A determination not to grant the petition serves as the final  
26 decision of the department on the permits, subject to judicial  
27 review under the administrative procedures act of 1969, 1969 PA  
28 306, MCL 24.201 to 24.328.

29 (7) The contested case rights and procedures set forth in

1 subsections (2) to (6) supersede and replace the contested case  
2 rights and procedures that would otherwise apply to the permits  
3 processed as provided in section 63102.

4 (8) Any contested case hearing under this part and judicial  
5 appeal of the final agency action resulting from the hearing shall  
6 be pursuant to the administrative procedures act of 1969, 1969 PA  
7 306, MCL 24.201 to 24.328. The department shall provide notice of  
8 the hearing and shall mail copies of the notice to the person  
9 requesting the hearing and to the city, village, or township and  
10 the county where the proposed mining operation is to be located and  
11 to all affected federally recognized Indian tribes in this state.  
12 The department shall publish notice of the hearing in a newspaper  
13 of local distribution in the area of the mining operation at least  
14 10 days before the hearing.

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

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

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

24 (b) An environmental impact assessment for the proposed mining  
25 operation that describes the natural and human-made features,  
26 including, but not limited to, flora, fauna, hydrology, geology,  
27 and geochemistry, and baseline conditions in the proposed mining  
28 area and the affected area that may be impacted by the mining, and  
29 the potential impacts on those features from the proposed mining

1 operation. The environmental impact assessment shall define the  
2 affected area and shall address feasible and prudent alternatives.

3 (c) A mining, reclamation, and environmental protection plan  
4 for the proposed mining operation, including beneficiation  
5 operations, that will reasonably minimize the actual and potential  
6 adverse impacts on natural resources, the environment, and public  
7 health and safety within the mining area and the affected area. The  
8 plan shall address the unique issues associated with nonferrous  
9 metallic mining and shall include all of the following:

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

12 (ii) Information that demonstrates that all methods, materials,  
13 and techniques proposed to be utilized are capable of accomplishing  
14 their stated objectives in protecting the environment and public  
15 health, except that such information ~~may~~**is** not ~~be~~ required for  
16 methods, materials, and techniques that are widely used in mining  
17 or other industries and are generally accepted as effective. The  
18 required information may consist of results of actual testing,  
19 modeling, documentation by credible independent testing and  
20 certification organizations, or documented applications in similar  
21 uses and settings.

22 (iii) Plans and schedules for interim and final reclamation of  
23 the mining area ~~following~~**after** cessation of mining operations.

24 (iv) A description of the geochemistry of the ore, waste rock,  
25 overburden, peripheral rock, and tailings, including  
26 characterization of leachability and reactivity.

27 (v) Provisions for the prevention, control, and monitoring of  
28 acid-forming waste products and other waste products from the  
29 mining process so as to prevent leaching into groundwater or runoff

1 into surface water.

2 (d) A contingency plan that includes an assessment of the risk  
3 to the environment or public health and safety associated with  
4 potential significant incidents or failures and describes the  
5 operator's notification and response plans. When the application is  
6 submitted to the department, the applicant shall provide a copy of  
7 the contingency plan to each emergency management coordinator  
8 having jurisdiction over the affected area.

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

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

12 (3) The applicant has the burden of establishing that the  
13 terms and conditions set forth in the permit application; mining,  
14 reclamation, and environmental protection plan; and environmental  
15 impact assessment will result in a mining operation that reasonably  
16 minimizes actual or potential adverse impacts on air, water, and  
17 other natural resources and meets the requirements of this act.

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

22 (5) If, before the expiration of the 14-day period under  
23 subsection (4), the department notifies the applicant that the  
24 application is not administratively complete, specifying the  
25 information necessary to make the application administratively  
26 complete, or notifies the applicant that the fee required to  
27 accompany the application has not been paid, specifying the amount  
28 due, the running of the 14-day period under subsection (4) is  
29 tolled until the applicant submits to the department the specified

1 information or fee amount due. The notice shall be given in writing  
2 or electronically.

3 (6) Within 42 days after an application for a mining permit is  
4 determined to be administratively complete, the department shall  
5 hold a public meeting on the application. The department shall give  
6 notice of the public meeting not less than 14 or more than 28 days  
7 before the date of the public meeting. The notice shall specify the  
8 time and place of the public meeting, which shall be held in the  
9 county where the proposed mining operation is located, and shall  
10 include information on how to review a copy of the application. The  
11 notice shall be given in writing to the city, village, or township  
12 and the county where the proposed mining operation is to be located  
13 and to all affected federally recognized Indian tribes in this  
14 state. The notice shall also be given by publication in a newspaper  
15 of local distribution in the area where the proposed mining  
16 operation is to be located.

17 (7) The department shall accept written public comment on the  
18 permit application for 28 days following the public meeting under  
19 subsection (6). Within 28 days after the expiration of the public  
20 comment period, the department shall reach a proposed decision to  
21 grant or deny a mining permit and shall establish a time and place  
22 for a public hearing on the proposed decision. The department shall  
23 give notice of the public hearing not less than 14 or more than 28  
24 days before the date of the public hearing. The notice shall be  
25 given in writing to the city, village, or township and the county  
26 where the proposed mining operation is to be located and to all  
27 affected federally recognized Indian tribes in this state. The  
28 notice shall also be given by publication in a newspaper of local  
29 distribution in the area where the proposed mining operation is to

1 be located. The notice shall contain all of the following:

2 (a) A summary of the permit application.

3 (b) Information on how to review a complete copy of the  
4 application. The application shall be made available at a public  
5 location in the area.

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

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

11 (8) The department shall accept written public comment on the  
12 proposed decision to grant or deny a mining permit for 28 days  
13 following the public hearing. At the expiration of the public  
14 comment period, the department shall issue a report summarizing all  
15 comments received and providing the department's response to the  
16 comments.

17 (9) Within 28 days after the expiration of the public comment  
18 period under subsection (8), the department shall grant or deny the  
19 mining permit application in writing. A determination that an  
20 application is administratively complete does not preclude the  
21 department from requiring additional information from the  
22 applicant. The 28-day period under this subsection shall be tolled  
23 until such time as the applicant submits the requested information.  
24 If a mining permit is denied, the reasons shall be stated in a  
25 written report to the applicant.

26 (10) A mining permit shall not be issued or transferred to a  
27 person if the department has determined that **the** person ~~to be~~**is** in  
28 violation of this part, rules promulgated under this part, the  
29 permit, or an order of the department under this part, unless the



1 person has corrected the violation or the person has agreed in  
2 writing to correct the violation pursuant to a compliance schedule  
3 approved by the department.

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

6 (a) The permit application meets the requirements of this  
7 part.

8 (b) The proposed mining operation will not pollute, impair, or  
9 destroy the air, water, or other natural resources or the public  
10 trust in those resources, in accordance with part 17. ~~of this act.~~  
11 In making this determination, the department shall take into  
12 account the extent to which other permit determinations afford  
13 protection to natural resources. For the purposes of this  
14 subsection, excavation and removal of nonferrous metallic minerals  
15 and of associated overburden and waste rock, in and of itself, does  
16 not constitute pollution, impairment, or destruction of those  
17 natural resources.

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

20 (13) Terms and conditions that are set forth in the permit  
21 application and the mining, reclamation, and environmental  
22 protection plan and that are approved by the department shall be  
23 incorporated in and become a part of the mining permit.

24 (14) A mining permit is not effective until all other permits  
25 required under this act for the proposed mining operation are  
26 obtained.

27 (15) If a person submits an application for a mining permit  
28 and 1 or more other permits under this act with respect to a  
29 particular mining operation, the department ~~may~~**must** process the

1 applications in a coordinated fashion to the extent feasible given  
2 procedural requirements applicable to individual permits. The  
3 coordinated permit process may include consolidating public  
4 hearings under this part with public hearings required under other  
5 parts of this act. Any notice of a consolidated public hearing  
6 shall state clearly ~~which~~ **the** permits **that** are to be considered at  
7 the public hearing. An applicant may waive any required timelines  
8 under subsections (4) to (9) to facilitate the coordination.

9       Sec. 63209. (1) A permittee shall comply with all other  
10 applicable permit standards under this act.

11       (2) A permittee shall conduct reclamation activities at a  
12 mining area in accordance with the approved mining, reclamation,  
13 and environmental protection plan.

14       (3) If mining operations are suspended for a continuous period  
15 exceeding 90 days, the permittee shall take actions to maintain,  
16 monitor, and secure the mining area and shall conduct any interim  
17 sloping or stabilizing of surfaces necessary to protect the  
18 environment, natural resources, or public health and safety in  
19 accordance with the permit.

20       (4) Subject to subsection (5), a permittee shall begin final  
21 reclamation of a mining area within 3 years ~~of~~ **after** the date of  
22 cessation of mining operations and shall complete reclamation  
23 within the time set forth in the mining, reclamation, and  
24 environmental protection plan approved by the department.

25       (5) Upon written request of a permittee, the department may  
26 approve an extension of time to begin or complete final  
27 reclamation.

28       (6) A permittee shall conduct groundwater and surface water  
29 monitoring in accordance with the provisions of the permit during

1 mining operations and during the postclosure monitoring period. The  
2 postclosure monitoring period shall be 20 years following cessation  
3 of mining, subject to the following conditions:

4 (a) The permittee shall provide to the department a written  
5 request to terminate the postclosure monitoring not less than 18  
6 months before the proposed termination date and shall provide the  
7 department with technical data and information demonstrating the  
8 basis for the termination. The department shall extend the  
9 postclosure monitoring period in increments of up to 20 years  
10 unless the department determines, approximately 1 year before the  
11 end of a postclosure monitoring period or postclosure incremental  
12 monitoring period, that there is no significant potential for water  
13 contamination resulting from the mining operation.

14 (b) The department may shorten the postclosure monitoring  
15 period at any time upon determining that there is no significant  
16 potential for water contamination resulting from the mining  
17 operation.

18 (7) The department may extend or shorten the postclosure  
19 monitoring period under subsection (6) only after public notice and  
20 opportunity for a public hearing under section ~~63219(2)~~. **63219(8)**.

21 (8) Both the mining area and the affected area shall be  
22 reclaimed and remediated to achieve a self-sustaining ecosystem  
23 appropriate for the region that does not require perpetual care  
24 following closure and with the goal that the affected area shall be  
25 returned to ~~the~~ ecological conditions that approximate premining  
26 conditions, subject to changes caused by nonmining activities or  
27 other natural events. Any portion of the mining area owned by the  
28 applicant may be used for any legal purposes.

29 (9) Compliance with the provisions of this part does not

1 relieve a person of the obligation to comply with all other  
 2 applicable tribal, state, federal, or local statutes, regulations,  
 3 or ordinances.

4       Sec. 63219. (1) **A person who has applied for a mining permit**  
 5 **under section 63205 may challenge the department's inaction on or**  
 6 **denial of the application for the mining permit or any permit**  
 7 **processed as provided by section 63205(15) by filing a petition**  
 8 **with the department to initiate a contested case hearing under the**  
 9 **administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to**  
 10 **24.328. The department may reject as untimely a petition filed more**  
 11 **than 60 days after the department's inaction on or denial of the**  
 12 **application.**

13       (2) ~~(1) A~~ **Any person who is aggrieved by an order, action, or**  
 14 **inaction of the department or by the issuance, denial, revocation,**  
 15 **or amendment of a mining permit under this part or a permit under**  
 16 **this act processed as provided in section 63205(15) that is needed**  
 17 **for a proposed mining operation may file a petition with the**  
 18 **department requesting a contested case hearing. ~~under the~~**  
 19 ~~administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to~~  
 20 ~~24.328. A petition filed more than 60 days after an order, action,~~  
 21 ~~or inaction of the department or an action on a mining permit may~~  
 22 ~~be rejected as being untimely.~~ **The petition must be filed not more**  
 23 **than 60 days after issuance, denial, revocation, or amendment of**  
 24 **the mining permit or issuance of the last permit processed under**  
 25 **section 63205(15), whichever is later.**

26       (3) **A petition under subsection (2) shall include a statement**  
 27 **of the issues proposed to be addressed by a contested case hearing**  
 28 **and the specific relief or resolution requested. To the extent**  
 29 **known by the petitioner, the petition may also include any of the**

1 following information with respect to the contested case hearing:

2 (a) A proposed list of prospective witnesses to be called,  
3 including experts, with a brief description of the proposed  
4 testimony of or a summary of evidence to be presented by each  
5 witness.

6 (b) A proposed list of publications, references, or studies to  
7 be introduced and relied upon.

8 (c) An estimate of time required for the petitioner to present  
9 the matter.

10 (4) Any person may serve timely responses to a petition under  
11 subsection (2). The department shall establish deadlines for  
12 responses to be submitted.

13 (5) The department shall grant a petition under subsection (2)  
14 if the department finds all of the following:

15 (a) The petition raises a material issue of fact in dispute  
16 concerning the mining permit or a permit processed as provided  
17 under section 63205(15) that has not been sufficiently evaluated by  
18 the department.

19 (b) The department has jurisdiction to make a determination on  
20 the disputed material issue of fact.

21 (c) There is a reasonable basis underlying a disputed material  
22 issue of fact such that a contested case hearing would allow the  
23 introduction of information that would help the department resolve  
24 the issue of fact and make a final decision on the permit.

25 (6) Within 90 days after a petition is filed under subsection  
26 (2), the department shall determine whether to grant the petition.  
27 A determination not to grant the petition serves as the final  
28 decision of the department on the permits, subject to judicial  
29 review under the administrative procedures act of 1969, 1969 PA

1 306, MCL 24.201 to 24.328.

2 (7) **The contested case rights and procedures set forth in**  
3 **subsections (2) to (6) supersede and replace the contested case**  
4 **rights and procedures that would otherwise apply to the permits**  
5 **processed as provided in section 63205(15).**

6 (8) ~~(2)~~ **Any contested case hearing under this part and**  
7 **judicial appeal of the final agency action resulting from the**  
8 **hearing** shall be held pursuant to the administrative procedures act  
9 of 1969, 1969 PA 306, MCL 24.201 to 24.328. The department shall  
10 provide notice of the hearing and shall mail copies of the notice  
11 to the person requesting the hearing and to the city, village, or  
12 township and the county where the proposed mining operation is to  
13 be located and to all affected federally recognized Indian tribes  
14 in this state. The department shall publish notice of the hearing  
15 in a newspaper of local distribution in the area of the mining  
16 operation at least 10 days before the hearing.