

# HOUSE BILL NO. 6108

November 14, 2024, Introduced by Reps. Snyder and Farhat and referred to the Committee on Regulatory Reform.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 9115 (MCL 324.9115), as amended by 2017 PA 40, and by adding part 639.

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

1           Sec. 9115. (1) Subject to subsection (2), a person engaged in  
2 the logging industry, the mining industry, or the plowing or  
3 tilling of land for the purpose of crop production or the  
4 harvesting of crops is not required to obtain a permit under this

1 part. However, all earth changes associated with the activities  
 2 listed in this section shall conform to the same standards as if  
 3 they required a permit under this part. The exemption from  
 4 obtaining a permit under this subsection does not include either of  
 5 the following:

6 (a) Access roads to and from the site where active mining or  
 7 logging is taking place.

8 (b) Ancillary activities associated with logging and mining.

9 (2) This part does not apply to a ~~metallic mineral~~ mining  
 10 activity that is regulated under a mining and reclamation plan  
 11 under part 631, ~~or~~ 634, or **639** or a mining, reclamation, and  
 12 environmental protection plan under part 632, if the plan contains  
 13 soil erosion and sedimentation control provisions and is approved  
 14 by the department **under part 631, 632, 634, or 639, respectively.**

15 (3) A person is not required to obtain a permit from a county  
 16 enforcing agency or a municipal enforcing agency for earth changes  
 17 associated with well locations, surface facilities, flowlines, or  
 18 access roads relating to oil or gas exploration and development  
 19 activities regulated under part 615 or mineral well exploration and  
 20 development activities regulated under part 625, if the application  
 21 for a permit to drill and operate contains a soil erosion and  
 22 sedimentation control plan that is approved by the department under  
 23 part 615 or 625, **respectively.** However, those earth changes shall  
 24 conform to the same standards as required for a permit under this  
 25 part. This subsection does not apply to a multisource commercial  
 26 hazardous waste disposal well as defined in section 62506a.

27 (4) As used in this section, "mining" does not include the  
 28 removal of clay, gravel, sand, peat, or topsoil **unless authorized**  
 29 **by a permit under part 639.**

## PART 639. SAND AND GRAVEL MINING

Sec. 63901. As used in this part:

(a) "Administratively complete" describes an application for a mining permit that contains all of the documents and information required under this part.

(b) "Contested case hearing" means a hearing under chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.288.

(c) "De minimis extraction" means extraction of sand and gravel that meets either of the following requirements:

(i) Is conducted by or for a property owner for end use by that property owner on the same property, and not for resale or inclusion in any other commercial product.

(ii) Does not exceed 5,000 cubic yards of sand and gravel during the life of the mine.

(d) "Department" means the department of environment, Great Lakes, and energy.

(e) "Fencing" means 4-foot-high woven wire farm fence or its equivalent.

(f) "Historical or archaeological resource" means a structure or site that is any of the following:

(i) A historic landmark included on the National Register of Historic Places under 54 USC 300101 to 307108.

(ii) Listed on the state register of historic sites pursuant to the Governor John B. Swainson Michigan historical markers act, 1955 PA 10, MCL 399.151 to 399.160.

(iii) Located in a historic district established by a local unit pursuant to the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215, and recognized as a historic resource by the

1 local unit of government pursuant to that act.

2 (g) "In existence" or "existing" describes active or  
3 previously active mining areas that have not yet been fully  
4 reclaimed.

5 (h) "Life of the mine" means the period of time from issuance  
6 of a mining permit through the completion of reclamation of the  
7 mine as required by this part.

8 (i) "Mine" means a sand and gravel mine.

9 (j) "Mining" means the extraction of sand and gravel and  
10 associated activities and operations within the mining area that  
11 are involved in bringing sand and gravel products to market,  
12 including, but not limited to, onsite loading, transport, and  
13 processing of material.

14 (k) "Mining area" means an area comprising all of the  
15 following, whether or not below the water table:

16 (i) Land from which material is removed in connection with the  
17 production or extraction, other than de minimis extraction, of sand  
18 and gravel by surface or open pit mining methods.

19 (ii) Land where material from that mining is stored on the  
20 surface.

21 (iii) Land on which processing plants and auxiliary facilities  
22 are located.

23 (iv) Land on which water reservoirs used in mining are located.

24 (v) Auxiliary land used in conjunction with mining.

25 (l) "Mining permit" means a sand and gravel mining permit  
26 issued under section 63906.

27 (m) "Operator" means a person engaged in or preparing to  
28 engage in mining or reclamation.

29 (n) "Primary road" means a county primary road as described in

1 section 5 of 1951 PA 51, MCL 247.655, or a state trunk line highway  
2 as described in section 1 of 1951 PA 51, MCL 247.651.

3 (o) "Property line" means the exterior property line of all  
4 contiguous parcels owned or controlled by the operator, including  
5 easements, leasehold interests, options to lease, options to  
6 purchase, and rights of first offer or refusal.

7 (p) "Sand and gravel" means sand or gravel, or both, that is  
8 excavated from natural deposits on or in the earth for commercial,  
9 industrial, or construction purposes. However, sand and gravel does  
10 not include clay; limestone or limestone products; sand mined for  
11 commercial or industrial purposes from sand dune areas regulated  
12 under part 637; or earth materials associated with extraction of  
13 coal regulated under part 635, nonferrous metallic minerals  
14 regulated under part 632, or ferrous minerals regulated under part  
15 631.

16 (q) "Sand and gravel products" means those products produced  
17 from the processing of sand and gravel and other materials,  
18 including, but not limited to, recycled materials and other  
19 materials obtained from off-site.

20 (r) "Sand and gravel surveillance fund" means the sand and  
21 gravel surveillance fund created in section 63920.

22 (s) "Sequence of mining" means the order in which the property  
23 will be mined and reclaimed.

24 (t) "Stockpile" means material, including surface overburden,  
25 that in the process of mining has been removed from the earth and  
26 stored on the surface.

27 (u) "Supervisor of reclamation" means the state geologist.

28 (v) "Supervisor of reclamation hearing" means an evidentiary  
29 hearing scheduled by the supervisor of reclamation to hear matters

1 pertaining to this part and conducted pursuant to the  
2 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
3 24.328, unless a different procedure is authorized by this part.

4 Sec. 63902. (1) Subject to subsection (2) and notwithstanding  
5 section 63903, this part does not apply to either of the following  
6 unless the owner or operator elects to be subject to this part by  
7 submitting an application to the department under section 63904:

8 (a) Mining authorized on or before the effective date of the  
9 amendatory act that added this section. The owner or operator of a  
10 mine existing on that date as a result of mining authorized on or  
11 before that date is not eligible to submit an application to the  
12 department under section 63904 during the 3-year period beginning  
13 on that date.

14 (b) Mining of a mine that has a total sand and gravel deposit  
15 of 1,000,000 tons or less.

16 (2) For purposes of this section, mining is considered  
17 authorized if either of the following applies:

18 (a) It has received each required local permit for mining,  
19 zoning approval, or other governmental authorization.

20 (b) It is not required to have obtained an authorization,  
21 described in subdivision (a), because of nonregulation or because  
22 the mining is a legal nonconforming use.

23 Sec. 63903. (1) This part preempts an ordinance, regulation,  
24 resolution, policy, practice, or master plan of a governmental  
25 authority created by the state constitution or statute or of a  
26 county, township, village, or, subject to subsection (2), city that  
27 prohibits or regulates mining, including, but not limited to, its  
28 location and development, or trucking activities of or relating to  
29 a mine, or that duplicates, modifies, extends, revises,

1 contradicts, or conflicts with this part. A governmental authority  
2 created by the state constitution or statute or a county, township,  
3 village, or, subject to subsection (2), city shall not adopt,  
4 maintain, or enforce an ordinance, regulation, resolution, policy,  
5 practice, or master plan in relation to mining that duplicates, is  
6 different from, extends, revises, contradicts, is more strict than,  
7 or conflicts in any manner with this part.

8 (2) This part applies to a city only if the city annexed  
9 territory of a township in annexation proceedings commencing after  
10 January 1, 2023 and applies to only that annexed territory of the  
11 city.

12 Sec. 63904. (1) Except for de minimis extraction or for  
13 activities exempt under section 63902, a person shall not engage in  
14 mining in a township, village, or, subject to section 63903(2),  
15 city except as authorized by a mining permit.

16 (2) To obtain a mining permit, a person shall submit an  
17 application to the department. The application shall contain the  
18 name and address of the applicant and the location, including a  
19 legal description and survey, of the proposed mining area. An  
20 application shall be submitted on a form and in a medium provided  
21 or approved by the department.

22 (3) A mining permit application shall be accompanied, at a  
23 minimum, by all of the following:

24 (a) An application fee of \$5,000.00. The department shall  
25 forward the application fee to the state treasurer for deposit in  
26 the sand and gravel surveillance fund.

27 (b) An environmental impact assessment for the proposed mining  
28 that describes the natural and human-made features, including, but  
29 not limited to, flora, fauna, hydrology, geology, and baseline

1 conditions in the proposed mining area, and the potential impacts  
2 on those features from the proposed mining.

3 (c) A mining and reclamation plan for the proposed mining  
4 operation that complies with section 63905.

5 (d) Financial assurance as described in section 63913.  
6 Sec. 63905. A mining and reclamation plan required under  
7 section 63904 shall include all of the following:

8 (a) A general description of materials, methods, and  
9 techniques that will be utilized for mining.

10 (b) Plans for reclamation of the mining area following  
11 cessation of mining, including, but not limited to, a description  
12 of how reclamation will allow for use of the land after closure.

13 (c) A general description of the sand and gravel deposit.

14 (d) The proposed sequence of mining, habitat conservation, and  
15 restoration, including, but not limited to, proposed phasing, if  
16 applicable.

17 (e) Surface overburden removal plans and a department-approved  
18 soil conservation plan. The soil conservation plan shall meet all  
19 of the following requirements:

20 (i) Include steps for the conservation of topsoil.

21 (ii) Consider land use after the cessation of mining and site  
22 conditions.

23 (iii) To the extent practical, provide for concurrent  
24 reclamation and soil conservation.

25 (f) The proposed depth from grade level from which the sand  
26 and gravel will be removed.

27 (g) Provisions for grading, revegetation, and stabilization  
28 that will minimize, to the extent practicable, soil erosion,  
29 sedimentation, noise, airborne dust, and public safety concerns.



1 The provisions for grading shall include both of the following:

2 (i) The reclaimed slopes of the banks of the excavation shall  
3 not be steeper than 3 feet horizontal to 1 foot vertical.

4 (ii) Where open water with a maximum depth in excess of 5 feet  
5 results from mining, the reclaimed slope into the water shall not  
6 be steeper than 5 feet horizontal to 1 foot vertical, maintained  
7 and extended into the water to a depth of 5 feet.

8 (h) Provisions for the monitoring of groundwater if the  
9 environmental impact assessment under section 63904(3)(b)  
10 identifies expected impacts to groundwater elevation.

11 (i) A site plan that complies with all of the following:

12 (i) The site plan shall show all of the following:

13 (A) The proposed locations of buildings, equipment,  
14 stockpiles, roads, berms, or other features necessary for mining  
15 and includes provisions for their removal and for reclamation of  
16 the area following cessation of mining.

17 (B) The location of each residential building within 500 feet  
18 of the proposed mine.

19 (ii) A mining area shall be located not less than 50 feet from  
20 the nearest public roadway or adjoining property line.

21 (iii) Equipment used for screening and crushing shall be located  
22 as follows:

23 (A) Not less than 200 feet from the nearest public roadway.

24 (B) Not less than 300 feet from the nearest adjoining property  
25 line.

26 (C) Not less than 500 feet from the nearest residential  
27 building occupied on adjacent property on the date the mining and  
28 reclamation plan is submitted to the department.

29 (iv) The site plan shall describe the proposed primary routes

1 to be used to transport sand and gravel from the mining area to a  
2 primary road, other than for local deliveries.

3 (v) The operator shall maintain on the boundaries of the  
4 mining area outward facing signage, spaced no greater than every  
5 200 feet, specifying "No Trespassing - Mining Area".

6 (vi) A stockpile shall not exceed the higher of 70 feet above  
7 the ground surface at the location of the stockpile or 40 feet  
8 higher than the elevation of the adjoining property at the nearest  
9 property line. This subparagraph does not apply to screening berms.

10 (vii) An active mining area shall be screened from view from  
11 adjoining properties to the extent reasonably practicable. The  
12 screening shall be accomplished by using overburden, to the extent  
13 available, to construct berms of up to 6 feet in height along  
14 adjoining property boundaries, unless the applicant requests and  
15 the department approves a different method of screening. The  
16 department may require berms visible to the public to be landscaped  
17 with grass or trees to the extent reasonably practicable.

18 (j) The interim use or uses of reclaimed areas before the  
19 cessation of all mining.

20 (k) If required by the department when the mining area will  
21 present a dangerous condition if left open, a proposal specifying  
22 fencing or other techniques to minimize trespass or unauthorized  
23 access to the mining area.

24 (l) If a threatened or endangered species is actually  
25 identified within the mining area, a description of how the  
26 threatened or endangered species will be protected or of the  
27 mitigation measures that will be performed, in compliance with part  
28 365 and rules promulgated thereunder and the endangered species act  
29 of 1973, 16 USC 1531 to 1544, and rules promulgated thereunder.

1 (m) If a historical or archaeological resource is identified  
2 in the mining area, an indication of how the historical or  
3 archaeological resource will be protected or of the mitigation  
4 measures that will be performed in compliance with applicable law.

5 (n) A description of measures to be implemented to ensure the  
6 following:

7 (i) That all mined material disposed of within the mining area  
8 or any area to be reclaimed under the mining permit will not result  
9 in an unauthorized release of pollutants to surface drainage.

10 (ii) That an unauthorized release of pollutants to groundwater  
11 will not occur from any material mined, handled, or disposed of  
12 within the mining area.

13 (iii) That existing groundwater contamination, if any, will not  
14 be exacerbated.

15 (o) A description of measures to be implemented to ensure that  
16 the mining does not create dust, noise, or ground vibration in  
17 excess of the following standards:

18 (i) For dust control, the standards required pursuant to any  
19 applicable general or individual air permit issued pursuant to part  
20 55 or federal law.

21 (ii) For noise levels associated with active mining and  
22 processing activities, a 1-hour time-weighted average sound  
23 pressure level in decibels measured at the common property line  
24 nearest to the area of active mining on a sound level meter using  
25 the A-weighting network shall not exceed the greater of the  
26 following as measured using test equipment as provided by the most  
27 recent versions of ANSI S1.1-1994 (R 1999); ANSI S1.4-1983 (R  
28 2001); ANSI/ASA S1.11-2014, Part 1, IEC 61260-1:2014 (R 2019);  
29 ANSI/ASA S1.11-2016, Part 2, IEC 61260-2:2016 (R 2020); ANSI/ASA

1 S1.11-2016, Part 3, IEC 61260-3:2016 (R 2020); and SAE J-184-2014,  
2 sections 30-103 and 30-104:

3 (A) 20 A-weighted decibels above background levels.

4 (B) For residentially zoned adjacent property, 75 A-weighted  
5 decibels; for commercially zoned adjacent property, 85 A-weighted  
6 decibels; and for adjacent property in any other zoning  
7 classification, including, but not limited to, industrial, 90 A-  
8 weighted decibels.

9 (iii) For ground vibration, a displacement of 0.10 inches  
10 measured anywhere outside of the property line resulting from the  
11 operation of stationary machinery or equipment.

12 (p) A description of customer truck loading hours. Customer  
13 truck loading is permitted from at least 6 a.m. to 7 p.m. local  
14 time, Monday through Friday and from at least 6 a.m. to 5 p.m.,  
15 local time, on Saturday, except to the extent additional hours are  
16 specifically approved by the department or required by state or  
17 county contract. All other regulated mining operations must be  
18 completed within the same hours of loading and unloading, unless  
19 specifically approved by the local unit of government. This  
20 subdivision does not apply to maintenance operations.

21 (q) A description of proposed lighting at the mining area.

22 (r) A description of the proposed primary haul routes between  
23 the mining area and a primary road, and the anticipated impact, if  
24 any, of the operator's use of the haul routes on vehicle and  
25 pedestrian safety and on the condition of the haul routes. If a  
26 mining operation requires the use of a road other than a class A  
27 road, the department shall request that the operator collaborate  
28 with the county road commission to determine a route from the  
29 mining area to a class A road. The route shall be reasonably direct

1 to accommodate customary mining operations, including, but not  
2 limited to, trucking operations.

3 (s) A description of the processing activities proposed to be  
4 conducted on-site, such as washing, screening, crushing, and  
5 blending of sand, gravel, and other materials, including, but not  
6 limited to, recycled materials and other materials obtained from  
7 off-site, to create sand and gravel products.

8 (t) A description of comprehensive general liability insurance  
9 covering third party personal injury and property damage. The  
10 operator shall maintain such insurance throughout the life of the  
11 mine in amounts not less than \$1,000,000.00 per occurrence.

12 Sec. 63906. (1) Subject to subsection (2), effective 14 days  
13 after the department receives a mining permit application, the  
14 application is considered to be administratively complete. When the  
15 application is administratively complete, the department shall  
16 notify the applicant in writing.

17 (2) If, before the expiration of the 14-day period under  
18 subsection (1), the department notifies the applicant that the  
19 application is not administratively complete, specifying the  
20 information necessary to make the application administratively  
21 complete, or notifies the applicant that the application fee has  
22 not been paid, specifying the amount due, the running of the 14-day  
23 period under subsection (1) is tolled until the applicant submits  
24 to the department the specified information or fee amount due. The  
25 notice shall be given in writing. A determination that an  
26 application is administratively complete does not preclude the  
27 department from requiring additional information from the  
28 applicant. The time periods under subsection (12) are tolled until  
29 the applicant submits the requested additional information.

1           (3) Within 14 days after an application is considered to be  
2 administratively complete under subsection (1) or (2), the  
3 department shall transmit a copy of the application to the  
4 supervisor or manager of the township, the chief administrative  
5 officer of the village, or, subject to section 63903(2), the chief  
6 administrative officer of the city where the mining area is  
7 proposed to be located.

8           (4) Within 42 days after an administratively complete  
9 application is received by the department, the department shall do  
10 all of the following:

11           (a) Publish a public notice of the application in a newspaper  
12 of general circulation in the area of the proposed mine.

13           (b) Transmit a copy of the public notice to the applicant and  
14 to the supervisor or manager of the township, the chief  
15 administrative officer of the village, or, subject to section  
16 63903(2), the chief administrative officer of the city where the  
17 mining area is proposed to be located.

18           (c) Post the public notice on the department's website and  
19 make the notice available at the department's office in Lansing and  
20 its district office for the district that includes the proposed  
21 mining area. The department shall maintain the posting and continue  
22 to make the notice available until the application is granted or  
23 denied.

24           (5) The department shall transmit a copy of the notice under  
25 subsection (4) to a person upon written request.

26           (6) The notice under subsection (4) shall contain all of the  
27 following information:

28           (a) The date of publication of the notice.

29           (b) The address and telephone number of the department's

1 office in Lansing and the department district office of the  
2 district that includes the location of the proposed mining area.

3 (c) The name and address of the applicant.

4 (d) A concise description of the applicant's proposed use.

5 (e) The location of the proposed mining area identified in the  
6 application.

7 (f) A concise description of the department's procedures to  
8 arrive at a decision to grant or deny the mining permit  
9 application.

10 (g) Information on the public comment period under subsection  
11 (7) and any other means by which interested persons may comment, in  
12 writing, on the application.

13 (h) The address and telephone number of the department office  
14 where more information about or a copy of the application may be  
15 obtained and where any other applicable related documents may be  
16 inspected or copied.

17 (7) Not later than 30 days after the notice is published under  
18 subsection (4), a person may submit written comments on the  
19 application to the department. The department may extend the time  
20 for public comment for not more than 30 days if the department  
21 determines that an extension of time is necessary to facilitate  
22 additional public comment.

23 (8) During the application process, the local unit of  
24 government may submit to the department a written request to  
25 include in the mining permit requirements based on site-specific  
26 conditions designed to avoid creating a private or public nuisance.  
27 Upon receipt of the request, the department shall notify the permit  
28 applicant. If the department determines that a requested  
29 requirement is necessary based on site-specific conditions to avoid

1 creating a private or public nuisance, the department may include  
2 the requirement in the mining permit.

3 (9) In making a final determination on the application, the  
4 department shall consider written comments submitted to the  
5 department as provided under subsections (6)(g) and (7). The  
6 department shall retain the comments for at least 1 year after  
7 making a final determination on the application.

8 (10) If the department determines that 1 or more of the public  
9 comments described in subsection (9) constitute sufficient cause or  
10 that there is sufficient public interest in an application, the  
11 department may conduct a public hearing on the application in the  
12 county where the mining area is proposed to be located. The  
13 department shall give notice of the public hearing not fewer than 5  
14 or more than 28 days before the date of the public hearing. The  
15 notice shall specify the time and place of the public hearing and  
16 shall include information on how to review a copy of the  
17 application. The notice shall be given in writing to the county and  
18 the township, village, or, subject to section 63903(2), city where  
19 the mining area is proposed to be located. The department shall  
20 accept written public comment on the application for 15 days after  
21 the public hearing.

22 (11) At the expiration of the public comment period under  
23 subsection (10), or, if there is no public hearing under subsection  
24 (10), the public comment period under subsection (7), the  
25 department shall issue a report summarizing all comments received  
26 and providing the department's response to the comments. The  
27 department shall post the report on the department's website and  
28 make the report available at the department's office in Lansing and  
29 its district office for the district that includes the proposed the



1 mining area.

2 (12) Within 15 days after the expiration of the public comment  
3 period under subsection (10), or, if there is no public hearing  
4 under subsection (10), the public comment period under subsection  
5 (7), and not more than 180 days after the date the department  
6 determines that the mining permit application is administratively  
7 complete, the department shall do 1 of the following:

8 (a) Subject to subdivision (b), grant the application and  
9 issue the mining permit if the department determines all of the  
10 following:

11 (i) The application and any relevant additional information  
12 obtained by the department demonstrate that the proposed mining  
13 meets the requirements of this part.

14 (ii) The proposed mining will not pollute, impair, or destroy  
15 the air, water, or other natural resources or the public trust in  
16 natural resources, in accordance with part 17. In making this  
17 determination, the department shall take into account the extent to  
18 which other permit determinations and conditions protect those  
19 natural resources. For the purposes of this subsection, excavation  
20 and removal of sand and gravel and of associated overburden, in and  
21 of itself, does not constitute pollution, impairment, or  
22 destruction of natural resources or the public trust in natural  
23 resources.

24 (iii) The reclamation set forth in the mining and reclamation  
25 plan is consistent with or can be made consistent with the master  
26 plan of the county, township, village, or, subject to section  
27 63903(2), city exercising zoning jurisdiction where the mining area  
28 is proposed to be located, to the extent that the master plan  
29 complies with section 63903. In granting the application, the

1 department shall modify the proposed reclamation set forth in the  
2 mining and reclamation plan as the department determines is  
3 necessary to make the reclamation consistent with the master plan,  
4 to the extent that the master plan complies with section 63903.

5 (b) Deny the application and notify the applicant in writing  
6 of the reasons for the denial. The department shall deny the  
7 application if the requirements of subdivision (a) are not met. In  
8 addition, the department may deny the application if the department  
9 determines that the operator or proposed operator is in violation  
10 of this part, an order issued by the department under this part, or  
11 a mining permit. However, the department shall not deny the  
12 application because of such a violation if the person has corrected  
13 the violation or has agreed in writing to correct the violation  
14 pursuant to an administrative consent agreement containing a  
15 compliance schedule approved by the department.

16 (13) Terms and conditions that are set forth in the mining  
17 permit application and the mining and reclamation plan and that are  
18 approved by the department are considered to be incorporated in the  
19 mining permit.

20 (14) The issuance of a mining permit does not amend the  
21 underlying zoning or the master plan, to the extent that the  
22 underlying zoning or master plan complies with section 63903.

23 Sec. 63907. (1) A mining permit issued by the department is  
24 valid for the life of the mine. However, the department may revoke  
25 a mining permit if the operator does not commence construction of  
26 plant facilities or mining covered by the mining permit within 5  
27 years after the date the mining permit is issued. The operator may  
28 request a 1-year extension of the revocation time period for proper  
29 cause. The department may grant up to 5 such extensions.

1           (2) A mining permit may be transferred with approval of the  
2 department, subject to this subsection and subsections (3) and (4).  
3 The person seeking to acquire the mining permit shall submit a  
4 request for transfer of the mining permit to the department on a  
5 form and in a medium provided or approved by the department. The  
6 person acquiring the mining permit shall accept the conditions of  
7 that mining permit and adhere to the requirements of the approved  
8 mining and reclamation plan.

9           (3) The department may deny a request to transfer a mining  
10 permit if the department determines that the proposed transferee is  
11 in violation of this part, an order issued by the department under  
12 this part, or a mining permit. However, the department shall not  
13 deny the request because of such a violation if the person has  
14 corrected the violation or has agreed in writing to correct the  
15 violation pursuant to an administrative consent agreement  
16 containing a compliance schedule approved by the department.

17           (4) If the operator has been notified by the department of a  
18 violation of this part or the mining permit at the mining area  
19 involved in the transfer, the mining permit shall not be  
20 transferred until the operator has corrected the violation or the  
21 person acquiring the mining permit has entered into a written  
22 agreement with the department to correct the violation.

23           (5) The operator may submit to the department a written  
24 request to amend a mining permit. Upon receipt of the request, the  
25 department shall determine if the requested amendment would be a  
26 significant change in the conditions of the mining permit. If the  
27 department determines that the requested amendment would be a  
28 significant change, the department shall submit the request to the  
29 same review process as provided in section 63906. If the department

1 denies the request, the department shall notify the operator in  
2 writing of the reasons for the denial. If the department determines  
3 that the requested amendment would not be a significant change in  
4 the conditions of the mining permit, the department shall approve  
5 the request and notify the operator in writing.

6 (6) The local unit of government may submit to the department  
7 a written request to amend a mining permit application during the  
8 application process or to amend the mining permit after the permit  
9 is granted. Upon receipt of the request, the department shall  
10 consult with the applicant and the local unit of government and  
11 then determine if the requested amendment is reasonable and  
12 necessary. If the department determines that the requested  
13 amendment is reasonable and necessary, the department shall grant  
14 the request, notify the mining permit applicant or permittee and  
15 the local unit of government in writing, and modify the mining  
16 permit application or issue an amended mining permit accordingly.  
17 If the department determines that the requested amendment is not  
18 reasonable and necessary, the department shall deny the request and  
19 notify the mining permit applicant or permittee and the local unit  
20 of government in writing of the reasons for the denial.

21 Sec. 63908. (1) For purposes of surveillance, monitoring,  
22 administration, and enforcement of this part, the department shall  
23 assess against the operator of a mine permitted under this part a  
24 mining surveillance fee on the sand and gravel products sold during  
25 the calendar year.

26 (2) Revenue from mining surveillance fees shall not exceed the  
27 actual costs to the department of implementing this part. The  
28 department shall forward mining surveillance fee revenue to the  
29 state treasurer for deposit in the sand and gravel surveillance

1 fund. The total amount of revenue to be raised with the mining  
2 surveillance fees during a fiscal year shall be determined by  
3 subtracting the amount of unexpended money in the fund that is  
4 carried over to that fiscal year under section 63920(3) from the  
5 amount appropriated for that fiscal year for surveillance,  
6 monitoring, administration, and enforcement under this part. The  
7 department shall divide the total amount of revenue to be raised  
8 with the mining surveillance fees by the number of tons of sand and  
9 gravel sold in this state for the preceding calendar year as  
10 reported by all operators under subsection (3) to determine the fee  
11 amount per ton. However, for the first 5 years after the effective  
12 date of the amendatory act that added this section, the fee amount  
13 per ton shall be the lesser of this quotient and 5 cents per ton.  
14 Thereafter, the fee amount shall be the lesser of this quotient and  
15 10 cents per ton. Before the department adjusts the mining  
16 surveillance fee under this subsection, the department shall  
17 consult with the statewide aggregate association.

18 (3) An operator shall file a report of sand and gravel sales  
19 by February 15 of each year. The report shall specify the number of  
20 tons of sand and gravel products sold from each of the operator's  
21 sand and gravel mines from January 1 through December 31 of the  
22 immediately preceding year.

23 (4) The amount of the mining surveillance fee owed by an  
24 operator is the product of the amount per ton determined under  
25 subsection (2) and the total number of tons required to be reported  
26 by that operator under subsection (3). Payment of the mining  
27 surveillance fee is due by 30 days after the department sends  
28 written notice to the operator of the amount due. If the department  
29 receives the mining surveillance fee after the due date, the fee

1 shall include a penalty of an additional 10%.

2 (5) The department may order an operator to suspend mining if  
3 the operator does not submit an annual report in compliance with  
4 subsection (3).

5 (6) An operator shall preserve for 2 years the records on  
6 which the annual report of sales under subsection (3) is based. The  
7 records are subject to audit by the department.

8 (7) The surveillance fee and annual report required by this  
9 section and the records on which the annual report is based are  
10 confidential and exempt from disclosure under the freedom of  
11 information act, 1976 PA 442, MCL 15.231 to 15.246, except with the  
12 written consent of the operator or pursuant to court order.

13 Sec. 63909. The department, if requested by an operator, may  
14 grant a modification of the provisions of this part if the  
15 department determines that the modification is not contrary to the  
16 public interest. If the department determines that the requested  
17 modification has significant potential impact to public health or  
18 safety, the environment, or natural resources, the department shall  
19 provide for public notice and comments and a public hearing in the  
20 same manner as provided in section 63906 for a mining permit  
21 application.

22 Sec. 63910. (1) The department shall administer and enforce  
23 this part.

24 (2) After giving reasonable notice to the operator or  
25 landowner, the department may enter a mining area of a mine  
26 permitted or required to be permitted under this part for an  
27 investigation and inspection without incurring liability to the  
28 operator or landowner.

29 Sec. 63911. By the first June 1 immediately after a mining

1 permit is issued, an operator shall file with the department a plan  
2 map of the mining area. The map shall be drawn to a scale of 1 inch  
3 equals 200 feet and be in the form specified by the department.  
4 Annually thereafter, by June 1, the operator shall file a plan map  
5 in the same scale and form showing any changes made during the  
6 preceding calendar year and the portion of the mining area that the  
7 operator anticipates will be subjected to active mining during the  
8 current calendar year.

9       Sec. 63912. (1) The operator of a mine permitted under this  
10 part shall file with the department a mining and reclamation report  
11 on or before June 1 of each year, during the life of the mine. The  
12 mining and reclamation report shall contain all of the following:

13       (a) A description of the status of mining and reclamation,  
14 including, but not limited to, revised drawings or photographs  
15 depicting the progress of mining and reclamation, as applicable,  
16 for the preceding year.

17       (b) A list of the incident reports required under subsection  
18 (2) for the preceding calendar year.

19       (c) A description of the annual financial assurance update  
20 required under section 63913.

21       (2) The operator of a mine permitted under this part shall  
22 promptly report to the department any incident or act of nature at  
23 a mining area or violation of a mining permit that has created, or  
24 may create, a threat to the public health or safety, the  
25 environment, or natural resources.

26       (3) An operator shall preserve for 2 years records on which  
27 the reports under subsection (1) or (2) are based and shall make  
28 the records available to the department upon request.

29       Sec. 63913. (1) The operator of a mine permitted under this

1 part shall maintain financial assurance during mining until the  
2 department determines that all reclamation has been completed,  
3 except that financial assurance shall be released immediately upon  
4 termination of a mining permit under section 63907(1). The  
5 financial assurance shall consist, at the option of the operator  
6 and subject to the approval of the department, of a performance  
7 bond, surety, escrow, cash, certificate of deposit, irrevocable  
8 letter of credit, or other equivalent security, or any combination  
9 thereof. The department may waive the requirement for financial  
10 assurance if the operator annually submits a statement of financial  
11 responsibility demonstrating to the satisfaction of the department  
12 that the applicant has sufficient financial resources, apart from  
13 the proposed mining activity, to satisfy the reclamation  
14 requirements under this part.

15 (2) The financial assurance required under subsection (1)  
16 shall be in an amount, as determined by the department, of not less  
17 than \$3,000.00 or more than \$8,000.00, per acre of area disturbed  
18 and not yet reclaimed, excluding roadways and open water areas that  
19 will remain open water after completion of reclamation.

20 (3) The department, in consultation with the statewide  
21 aggregate association, may increase the required amount of  
22 financial assurance per acre. The first increase shall not occur  
23 until at least 5 years after the effective date of the amendatory  
24 act that added this section. Subsequent increases shall not occur  
25 until at least 5 years after the immediately preceding increase.  
26 The required amount of financial assurance per acre shall not  
27 exceed the amount, as determined by the department of treasury,  
28 derived by multiplying the required amount of financial assurance  
29 per acre during the immediately preceding fiscal year by the



1 inflation adjustment factor, and rounding to the nearest dollar.  
2 However, the inflation adjustment factor shall not be less than  
3 1.00. As used in this subsection:

4 (a) "Consumer Price Index" means the most comprehensive index  
5 of consumer prices available for the Detroit area from the Bureau  
6 of Labor Statistics of the United States Department of Labor.

7 (b) "Inflation adjustment factor" means the 3-year average  
8 July-June Consumer Price Index for the immediately preceding fiscal  
9 year divided by the 3-year average July-June Consumer Price Index  
10 for the fiscal year in which the required amount of financial  
11 assurance per acre was most recently determined under this  
12 subsection or subsection (2).

13 (4) The operator shall annually update the amount of financial  
14 assurance or statement of financial responsibility maintained or  
15 submitted by the operator under subsection (1) to account for any  
16 increase in the number of acres described in subsection (2). The  
17 operator may annually update the amount of financial assurance or  
18 statement of financial responsibility to account for any decrease  
19 in the number of such acres.

20 Sec. 63914. (1) If mining at a mine permitted under this part  
21 is suspended for a continuous period exceeding 1 year, the operator  
22 shall maintain, monitor, and secure the mining area.

23 (2) The operator of a mine permitted under this part shall  
24 conduct reclamation activities at the mining area in compliance  
25 with the approved mining and reclamation plan. Reclamation may be  
26 conducted concurrently with mining to the extent practicable.

27 (3) The operator shall begin final reclamation of the mining  
28 area within 1 year after the date of cessation of mining, or a  
29 longer period if approved by the department. The operator shall

1 complete reclamation within the time set forth in the approved  
2 mining and reclamation plan.

3 (4) Once initiated, final reclamation shall be performed to  
4 completion. However, subject to department approval, final  
5 reclamation may be suspended if the owner or operator resumes  
6 exploration or mining.

7 Sec. 63915. (1) A person who is aggrieved by an order, action,  
8 or inaction of the department under this part, including, but not  
9 limited to, the issuance, denial, termination, revocation, or  
10 amendment of a mining permit, or aggrieved by the operation of a  
11 mine may file a petition with the department requesting a contested  
12 case hearing. The filing of the petition is the aggrieved person's  
13 sole recourse within the department. The department may reject as  
14 untimely a petition filed more than 90 days after an order, action,  
15 or inaction of the department by which the petitioner is aggrieved.

16 (2) The department shall provide notice by mail of a contested  
17 case hearing under subsection (1) to all of the following:

- 18 (a) The person requesting the contested case hearing.  
19 (b) The operator or mining permit applicant.  
20 (c) Other affected parties.

21 (3) A party to the contested case that is aggrieved by the  
22 decision in the contested case, as its sole remedy, may appeal to  
23 the circuit court for Ingham County under section 63919(a).

24 Sec. 63916. (1) If the department determines that an operator  
25 has violated this part or a mining permit, the department shall  
26 require the operator to correct the violation.

27 (2) If the department determines that a violation of this part  
28 or a mining permit is resulting in an imminent and substantial  
29 endangerment to the public health or safety, the environment, or

1 natural resources, the department shall take action necessary to  
2 abate or eliminate the endangerment. The action may include 1 or  
3 more of the following:

4 (a) Revoking the mining permit.

5 (b) Issuing an order to the operator to immediately suspend  
6 mining. For the purposes of enforcement under this subdivision,  
7 imminent and substantial endangerment includes failure to do either  
8 of the following:

9 (i) Submit an annual report as required by section 63908.

10 (ii) Maintain financial assurance under section 63913.

11 (c) Issuing an order to the operator to undertake such other  
12 actions as may be necessary to abate or eliminate the endangerment.

13 (3) Before taking action under this section to suspend mining  
14 or revoke a mining permit, or to otherwise prevent the continuation  
15 of mining, the department shall give the operator written notice,  
16 by certified mail, of the alleged violation and a reasonable period  
17 of time to correct the alleged violation. The department shall  
18 provide the operator an opportunity for a supervisor of reclamation  
19 hearing.

20 (4) An order suspending mining activities under subsection

21 (2)(b) remains in effect until the endangerment to the public  
22 health or safety, the environment, or natural resources is  
23 eliminated, but not more than 10 days. If the endangerment  
24 continues, the supervisor of reclamation may, by order issued after  
25 providing an opportunity for a supervisor of reclamation hearing,  
26 extend the suspension beyond 10 days. The total duration of the  
27 suspension of mining activities shall not be more than 30 days,  
28 unless again extended by order of the supervisor of reclamation  
29 following an opportunity for a supervisor of reclamation hearing or

1 extended by an administrative consent agreement. The department  
2 shall provide notice of a supervisor of reclamation hearing under  
3 this subsection by certified mail, return receipt requested, not  
4 less than 10 days before the hearing date, to other interested  
5 persons whose notification the supervisor of reclamation considers  
6 necessary and appropriate.

7 (5) If the operator or a surety under section 63913 fails or  
8 neglects to correct a violation of this part or a mining permit or  
9 take corrective actions as specified under an order of the  
10 department, the department may, beginning 24 hours after giving  
11 written notice to the operator and surety, enter the mining area  
12 and any private or public property necessary to reach the mining  
13 area, correct the violation, and remediate any damage to the public  
14 health or safety, the environment, or natural resources resulting  
15 from the violation. The operator and surety are jointly and  
16 severally liable for expenses so incurred by the department. The  
17 operator or surety shall pay the expenses within 30 days after  
18 being notified of the amount. If the expenses are not timely paid,  
19 the department may bring an action against the operator or surety,  
20 jointly or severally, for the recovery of the expenses. This part  
21 does not limit the department's authority to take whatever response  
22 activities it determines necessary to protect public health or  
23 safety, the environment, or natural resources.

24 (6) The revocation of a mining permit or suspension of mining  
25 under subsection (2) does not relieve an operator of the  
26 responsibility to complete reclamation, maintain financial  
27 assurance under section 63913, and undertake appropriate measures  
28 to protect the public health or safety, the environment, or natural  
29 resources.

1           (7) If the department receives a complaint alleging a  
2 violation of this part or a mining permit, the department shall  
3 make a record of the complaint and the allegations included in the  
4 complaint. If the person making the complaint provides written  
5 evidence sufficient to support the allegations included in the  
6 complaint, as determined by the department, the department shall  
7 immediately notify the operator of the complaint and provide the  
8 operator with a copy of the complaint, the record, and all written  
9 evidence. The department shall give the operator an opportunity to  
10 rebut the complaint and any supporting evidence. The department  
11 shall take steps that it considers necessary to confirm the  
12 evidence provided by the operator in rebuttal. If the department  
13 determines that the complaint has been rebutted, it shall dismiss  
14 the complaint and notify the complainant and operator of the  
15 dismissal. If the complaint is not dismissed, the department shall  
16 do all of the following:

17           (a) Conduct an inspection of the mining operation to  
18 investigate the allegations not more than 5 business days after  
19 receipt of the complaint. If the complaint or allegations are of a  
20 highly serious nature, as determined by the department, the  
21 department shall inspect the mining operation as quickly as  
22 possible.

23           (b) Not more than 15 business days after completing an  
24 investigation of the complaint, submit a written report of the  
25 complaint and the results of the investigation to the operator and  
26 the person who made the complaint. At a minimum, the written report  
27 shall state whether the investigation identified a violation of  
28 this part or a mining permit.

29           Sec. 63917. (1) The department may request the attorney

1 general to commence a civil action for appropriate relief,  
2 including, but not limited to, a permanent or temporary injunction,  
3 for a violation of this part, a mining permit, or an order issued  
4 under this part. Before requesting the attorney general to commence  
5 a civil action or before the attorney general commences a civil  
6 action at the attorney general's own initiative, the department  
7 must provide the operator an opportunity for a contested case  
8 hearing. The court has jurisdiction to restrain the violation and  
9 to require compliance. In addition to any other relief granted  
10 under this subsection, the court may impose a civil fine of not  
11 more than \$1,000.00 per day of violation.

12 (2) Upon a finding by the court that an operator violated this  
13 part, a mining permit, or an order issued under this part and,  
14 subject to subsection (6), that the violation poses or posed a  
15 substantial endangerment to public health or safety, the court may  
16 impose, in addition to the sanctions set forth in subsection (1), a  
17 civil fine of not less than \$50,000.00 and not more than  
18 \$1,000,000.00.

19 (3) The attorney general may file a civil action to recover,  
20 in addition to a fine, the full value of the damages to the  
21 environment and natural resources of this state and the costs of  
22 surveillance and enforcement incurred by this state as a result of  
23 the violation.

24 (4) A person who intentionally makes a false statement,  
25 representation, or certification in an application for a mining  
26 permit, a form pertaining to a mining permit, or a notice or report  
27 required by a mining permit, knowing it to be false, is guilty of a  
28 felony punishable by imprisonment for not more than 2 years or a  
29 fine of not less than \$2,500.00 or more than \$25,000.00, or both,

1 for each violation. If the conviction is for a violation committed  
2 after a first conviction of the person under this subsection, the  
3 court shall impose a fine of not less than \$25,000.00 per day and  
4 not more than \$50,000.00 per day of violation. Knowledge possessed  
5 by a person other than the defendant under this subsection shall  
6 not be attributed to the defendant unless the defendant took  
7 substantial affirmative steps to shield himself or herself from the  
8 relevant information.

9 (5) Subject to subsection (6), upon a finding by the court  
10 that a violation described in subsection (4) poses or posed a  
11 substantial endangerment to public health or safety, the court may  
12 impose, in addition to the penalties set forth in subsection (4), a  
13 sentence of imprisonment for not more than 1 year or a fine of not  
14 more than \$500,000.00, or both.

15 (6) To find a defendant civilly or criminally liable for  
16 substantial endangerment under subsection (2) or (5), the court  
17 must determine that the defendant knowingly acted in such a manner  
18 as to cause a danger of death or serious bodily injury and that the  
19 defendant had an actual awareness, belief, or understanding that  
20 his or her conduct would cause a substantial danger of death or  
21 serious bodily injury.

22 (7) A civil fine or other civil recovery under this section is  
23 payable to this state and shall be credited to the general fund.  
24 The fine or other civil recovery constitutes a lien on any property  
25 of any kind owned by the defendant.

26 (8) A lien under subsection (7) is effective and has priority  
27 over all other liens and encumbrances, except those filed or  
28 recorded before the date of judgment, but only if notice of the  
29 lien is filed or recorded as required by state or federal law.

1           (9) A lien filed or recorded as described in subsection (8)  
 2 shall be terminated pursuant to the procedures required by state or  
 3 federal law within 14 days after the fine or other recovery ordered  
 4 to be paid is paid.

5           Sec. 63918. (1) A mine or mining is not a public or private  
 6 nuisance if both of the following apply:

7           (a) A mining permit has been issued for the mine or mining  
 8 under section 63906.

9           (b) The mine or mining is not determined in an action under  
 10 section 63917 to be in violation of this part.

11           (2) Subsection (1) applies notwithstanding any of the  
 12 following:

13           (a) A change in any of the following:

14           (i) The ownership of the mine.

15           (ii) The size of the mine.

16           (iii) The size of the community where the mine is located.

17           (b) Temporary cessation or interruption of mining.

18           (c) Enrollment of the mine or mining or the mine operator in  
 19 governmental programs.

20           (d) Adoption of new mining technology.

21           (e) A change in the type of sand and gravel product being  
 22 produced.

23           (f) A change in the land use or occupancy of land within 1  
 24 mile of the boundaries of the mine if, before that change in land  
 25 use or occupancy, the mine or mining would not have been a nuisance  
 26 with respect to the use and occupancy of the land.

27           Sec. 63919. The circuit court for Ingham County has exclusive  
 28 jurisdiction over all of the following:

29           (a) An appeal from the final decision or order made in a



1 proceeding instituted by an aggrieved person under section 63915.

2 (b) An action under section 63916(5) or 63917(1) to (3).

3 (c) Any other claim relating to the issuance of, or operation  
4 under, a mining permit applied for or issued under this part.

5 (d) Proceedings under section 63917(4) to (5), except for  
6 arraignment or the issuance of a criminal complaint or warrant.

7 Sec. 63920. (1) The sand and gravel surveillance fund is  
8 created within the state treasury.

9 (2) The state treasurer shall deposit fees paid under this  
10 part into the fund. The state treasurer may receive money or other  
11 assets from any other source for deposit into the fund. The state  
12 treasurer shall direct the investment of money in the fund and  
13 credit to the fund interest and earnings from the investments.

14 (3) Unexpended money in the fund at the close of the fiscal  
15 year shall remain in the fund and be carried over to the succeeding  
16 fiscal year.

17 (4) The department shall administer the fund for auditing  
18 purposes.

19 (5) The department shall expend money from the fund, upon  
20 appropriation, only for the actual cost of surveillance,  
21 monitoring, administration, and enforcement under this part.

22 Sec. 63921. An operator is liable to the county road  
23 commission for damage caused by the operator's trucks to a county  
24 road that is a haul route between the mining operation and a  
25 primary road.

26 Sec. 63922. This part applies to all mining permit  
27 applications submitted to the department after the effective date  
28 of this section, including, but not limited to, applications  
29 formerly submitted to any local government referenced in section

1 63903 notwithstanding the previous administrative or judicial  
2 disposition of such mining permit applications.

3 Sec. 63923. The department may promulgate rules necessary to  
4 implement this part pursuant to the administrative procedures act  
5 of 1969, 1969 PA 306, MCL 24.201 to 24.328.

6 Enacting section 1. This amendatory act does not take effect  
7 unless all of the following bills of the 102nd Legislature are  
8 enacted into law:

9 (a) Senate Bill No. \_\_\_\_ or House Bill No. 6111 (request no.  
10 04549'23 a \*).

11 (b) Senate Bill No. \_\_\_\_ or House Bill No. 6109 (request no.  
12 04549'23 b \*).