

HOUSE BILL NO. 4528

May 04, 2023, Introduced by Reps. Witwer, Filler, Brenda Carter, Snyder, Tyrone Carter, Outman, O'Neal, Beeler, Neeley, Posthumus, Scott, Kuse, Schuette, Meerman, Liberati and VanderWall 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, as of the effective date of this part.

(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

1 399.201 to 399.215, and recognized as a historic resource by the
2 local unit of government pursuant to that act.

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

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

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

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

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

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

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

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

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

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

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

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

1 (n) "Primary road" means a county primary road as described in
2 section 5 of 1951 PA 51, MCL 247.655, or a state trunk line highway
3 as described in section 1 of 1951 PA 51, MCL 247.651.

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

8 (p) "Sand and gravel" means sand or gravel, or both, that is
9 excavated from natural deposits on or in the earth for commercial,
10 industrial, or construction purposes. However, sand and gravel does
11 not include clay; limestone or limestone products; sand mined for
12 commercial or industrial purposes from sand dune areas regulated
13 under part 637; or earth materials associated with extraction of
14 coal regulated under part 635, nonferrous metallic minerals
15 regulated under part 632, or ferrous minerals regulated under part
16 631.

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

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

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

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

28 Sec. 63902. (1) Subject to subsection (2) and notwithstanding
29 section 63903, this part does not apply to either of the following

1 unless the owner or operator elects to be subject to this part by
2 submitting an application to the department under section 63904:

3 (a) Mining authorized on or before the effective date of the
4 amendatory act that added this section.

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

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

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

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

14 Sec. 63903. This part preempts an ordinance, regulation,
15 resolution, policy, practice, or master plan of a governmental
16 authority created by the state constitution or statute or of a
17 city, village, township, or county that prohibits or regulates
18 mining, including, but not limited to, its location and
19 development, or trucking activities of or relating to a mine, or
20 that duplicates, modifies, extends, revises, contradicts, or
21 conflicts with this part. A governmental authority created by the
22 state constitution or statute or a city, village, township, or
23 county shall not adopt, maintain, or enforce an ordinance,
24 regulation, resolution, policy, practice, or master plan in
25 relation to mining that duplicates, is different from, extends,
26 revises, contradicts, is more strict than, or conflicts in any
27 manner with this part.

28 Sec. 63904. (1) Except for de minimis extraction or for
29 activities exempt under section 63902, a person shall not engage in

1 mining except as authorized by a mining permit.

2 (2) To obtain a mining permit, a person shall submit an
3 application to the department. The application shall contain the
4 name and address of the applicant and the location, including a
5 legal description and survey, of the proposed mining area. An
6 application shall be submitted on a form and in a medium provided
7 or approved by the department.

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

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

13 (b) An environmental impact assessment for the proposed mining
14 that describes the natural and human-made features, including, but
15 not limited to, flora, fauna, hydrology, geology, and baseline
16 conditions in the proposed mining area, and the potential impacts
17 on those features from the proposed mining.

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

20 (d) Financial assurance as described in section 63913.

21 Sec. 63905. A mining and reclamation plan required under
22 section 63904 shall include all of the following:

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

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

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

29 (d) The proposed sequence of mining, including, but not

1 limited to, proposed phasing, if applicable.

2 (e) Surface overburden removal plans and a department-approved
3 soil conservation plan. The soil conservation plan shall meet both
4 of the following requirements:

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

6 (ii) Consider land use after the cessation of mining, site
7 conditions, and, to the extent practical, concurrent reclamation
8 and soil conservation.

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

11 (g) Provisions for grading, revegetation, and stabilization
12 that will minimize, to the extent practicable, soil erosion,
13 sedimentation, noise, airborne dust, and public safety concerns.
14 The provisions for grading shall include both of the following:

15 (i) The reclaimed slopes of the banks of the excavation shall
16 not be steeper than 3 feet horizontal to 1 foot vertical measured
17 from the nearest setback line into any area disturbed by mining.

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

22 (h) A site plan that complies with all of the following:

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

24 (A) The proposed locations of buildings, equipment,
25 stockpiles, roads, berms, or other features necessary for mining
26 and includes provisions for their removal and for reclamation of
27 the area following cessation of mining.

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

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

3 (iii) Equipment used for screening and crushing shall be located
4 as follows:

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

6 (B) Not less than 300 feet from the nearest adjoining property
7 line.

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

11 (iv) The site plan shall describe the proposed primary routes
12 to be used to transport sand and gravel from the mining area to a
13 primary road, other than for local deliveries.

14 (v) The operator shall maintain on the boundaries of the
15 mining area outward facing signage, spaced no greater than every
16 200 feet, specifying "No Trespassing - Mining Area".

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

21 (vii) An active mining area shall be screened from view from
22 adjoining properties to the extent reasonably practicable. The
23 screening shall be accomplished by using overburden, to the extent
24 available, to construct berms of up to 6 feet in height along
25 adjoining property boundaries, unless the applicant requests and
26 the department approves a different method of screening. The
27 department may require berms visible to the public to be landscaped
28 with grass or trees to the extent reasonably practicable.

29 (i) The interim use or uses of reclaimed areas before the

1 cessation of all mining.

2 (j) If required by the department when the mining area will
3 present a dangerous condition if left open, a proposal specifying
4 fencing or other techniques to minimize trespass or unauthorized
5 access to the mining area.

6 (k) If a threatened or endangered species is actually
7 identified within the mining area, a description of how the
8 threatened or endangered species will be protected or of the
9 mitigation measures that will be performed, in compliance with part
10 365 and rules promulgated thereunder and the endangered species act
11 of 1973, 16 USC 1531 to 1544, and rules promulgated thereunder.

12 (l) If a historical or archaeological resource is identified in
13 the mining area, an indication of how the historical or
14 archaeological resource will be protected or of the mitigation
15 measures that will be performed in compliance with applicable law.

16 (m) A description of measures to be implemented to ensure the
17 following:

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

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

24 (iii) That existing groundwater contamination, if any, will not
25 be exacerbated.

26 (n) A description of measures to be implemented to ensure that
27 the mining does not create dust, noise, or ground vibration in
28 excess of the following standards:

29 (i) For dust control, the standards required pursuant to any

1 applicable general or individual air permit issued pursuant to part
2 55 or federal law.

3 (ii) For noise levels, the 8-hour time-weighted average sound
4 pressure level in decibels measured at the common property line
5 nearest to the area of active mining on a sound level meter using
6 the A-weighting network shall not exceed the greater of the
7 following:

8 (A) 20 dB(A) above background levels.

9 (B) For residentially zoned adjacent property, 75 A-weighted
10 decibels; for commercially zoned adjacent property, 85 A-weighted
11 decibels; and for adjacent property in any other zoning
12 classification, including, but not limited to, industrial, 90 A-
13 weighted decibels.

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

17 (o) A description of measures to be implemented to ensure that
18 blasting activity, if any, does not create any of the following at
19 a residential building:

20 (i) Ground vibration in excess of that set forth in United
21 States Bureau of Mines Reports, RI 8507, Figure B-1 "Safe levels of
22 blasting vibrations for houses using a combination of velocity and
23 displacement".

24 (ii) Air blast in excess of 133 decibels.

25 (iii) Unreasonable dust or noise.

26 (p) A description of all explosives that are intended to be
27 used, stored, or handled on-site. Explosives shall be used, stored,
28 and handled only in accordance with part 55 "Explosives and
29 Blasting Agents" of the department of labor and economic

1 opportunity's "General Industry Safety and Health Standards".

2 (q) A description of customer truck loading hours. Customer
3 truck loading is permitted from at least 6 a.m. to 7 p.m. local
4 time, Monday through Friday and from at least 6 a.m. to 5 p.m.,
5 local time, on Saturday, except to the extent additional hours are
6 specifically approved by the department or required by state or
7 county contract. All other regulated mining operations must be
8 completed within the same hours of loading and unloading, unless
9 specifically approved by the local unit of government. This
10 subdivision does not apply to either of the following:

11 (i) Maintenance operations.

12 (ii) The loading of railroad cars or ships.

13 (r) A description of proposed lighting at the mining area.

14 (s) A description of the proposed primary haul routes between
15 the mining area and a primary road, and the anticipated impact, if
16 any, of the operator's use of the haul routes on vehicle and
17 pedestrian safety and on the condition of the haul routes. If a
18 mining operation requires the use of a road other than a class A
19 road, the department may request that the operator collaborate with
20 the county road commission to determine a route from the mining
21 area to a class A road. The route shall be reasonably direct to
22 accommodate customary mining operations, including, but not limited
23 to, trucking operations.

24 (t) A description of the processing activities proposed to be
25 conducted on-site, such as washing, screening, crushing, and
26 blending of sand, gravel, and other materials, including, but not
27 limited to, recycled materials and other materials obtained from
28 off-site, to create sand and gravel products.

29 (u) A description of comprehensive general liability insurance

1 covering third party personal injury and property damage. The
2 operator shall maintain such insurance throughout the life of the
3 mine in amounts not less than \$1,000,000.00 per occurrence.

4 Sec. 63906. (1) Subject to subsection (2), effective 14 days
5 after the department receives a mining permit application, the
6 application is considered to be administratively complete. When the
7 application is administratively complete, the department shall
8 notify the applicant in writing.

9 (2) If, before the expiration of the 14-day period under
10 subsection (1), the department notifies the applicant that the
11 application is not administratively complete, specifying the
12 information necessary to make the application administratively
13 complete, or notifies the applicant that the application fee has
14 not been paid, specifying the amount due, the running of the 14-day
15 period under subsection (1) is tolled until the applicant submits
16 to the department the specified information or fee amount due. The
17 notice shall be given in writing. A determination that an
18 application is administratively complete does not preclude the
19 department from requiring additional information from the
20 applicant.

21 (3) Within 42 days after an administratively complete
22 application is received by the department, the department shall do
23 all of the following:

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

26 (b) Transmit a copy of the public notice to the applicant and
27 to the supervisor or manager of the township or chief
28 administrative officer of the city or village where the mine is
29 proposed to be located.

1 (c) Post the public notice on the department's website and
2 make the notice available at the department's office in Lansing and
3 its district office for the district that includes the proposed
4 mining area. The department shall maintain the posting and continue
5 to make the notice available until the application is granted or
6 denied.

7 (4) The department shall transmit a copy of the notice under
8 subsection (3) to a person upon written request.

9 (5) The notice under subsection (3) shall contain all of the
10 following information:

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

12 (b) The address and telephone number of the department's
13 office in Lansing and the department district office of the
14 district that includes the location of the proposed mining area.

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

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

17 (e) The location of the proposed mining area identified in the
18 application.

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

22 (g) Information on the public comment period under subsection
23 (6) and any other means by which interested persons may comment, in
24 writing, on the application.

25 (h) The address and telephone number of the department office
26 where more information about or a copy of the application may be
27 obtained and where any other applicable related documents may be
28 inspected or copied.

29 (6) Not later than 30 days after the notice is published under

1 subsection (3), a person may submit written comments on the
2 application to the department. The department may extend the time
3 for public comment for not more than 30 days if the department
4 determines that an extension of time is necessary to facilitate
5 additional public comment.

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

11 (8) If the department determines that 1 or more of the public
12 comments described in subsection (7) constitute sufficient cause or
13 that there is sufficient public interest in an application, the
14 department may conduct a public hearing on the application in the
15 county where the mining area is proposed to be located. The
16 department shall give notice of the public hearing not fewer than 5
17 or more than 28 days before the date of the public hearing. The
18 notice shall specify the time and place of the public hearing and
19 shall include information on how to review a copy of the
20 application. The notice shall be given in writing to the city,
21 village, or township and the county where the mining area is
22 proposed to be located. The department shall accept written public
23 comment on the application for 15 days after the public hearing.

24 (9) At the expiration of the public comment period under
25 subsection (8), or, if there is no public hearing under subsection
26 (8), the public comment period under subsection (6), the department
27 shall issue a report summarizing all comments received and
28 providing the department's response to the comments. The department
29 shall post the report on the department's website and make the

1 report available at the department's office in Lansing and its
2 district office for the district that includes the proposed the
3 mining area.

4 (10) Within 15 days after the expiration of the public comment
5 period under subsection (8), or, if there is no public hearing
6 under subsection (8), the public comment period under subsection
7 (6), and not more than 180 days after the date the department
8 determines that the mining permit application is administratively
9 complete, the department shall do 1 of the following:

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

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

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

26 (iii) The reclamation set forth in the mining and reclamation
27 plan is consistent with or can be made consistent with the master
28 plan of the city, village, or township where the mine is proposed
29 to be located, to the extent that the master plan complies with

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

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

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

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

24 Sec. 63907. (1) A mining permit issued by the department is
25 valid for the life of the mine. However, the department may revoke
26 a mining permit if the operator does not commence construction of
27 plant facilities or mining covered by the mining permit within 10
28 years after the date the mining permit is issued.

29 (2) A mining permit may be transferred with approval of the

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

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

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

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

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

5 Sec. 63908. (1) For purposes of surveillance, monitoring,
6 administration, and enforcement of this part, the department shall
7 assess against the operator of a mine permitted under this part a
8 mining surveillance fee on the sand and gravel products sold during
9 the calendar year.

10 (2) Revenue from mining surveillance fees shall not exceed the
11 actual costs to the department of implementing this part. The
12 department shall forward mining surveillance fee revenue to the
13 state treasurer for deposit in the sand and gravel surveillance
14 fund. The total amount of revenue to be raised with the mining
15 surveillance fees during a fiscal year shall be determined by
16 subtracting the amount of unexpended money in the fund that is
17 carried over to that fiscal year under section 63920(3) from the
18 amount appropriated for that fiscal year for surveillance,
19 monitoring, administration, and enforcement under this part. The
20 department shall divide the total amount of revenue to be raised
21 with the mining surveillance fees by the number of tons of sand and
22 gravel sold in this state for the preceding calendar year as
23 reported by all operators under subsection (3). The fee amount per
24 ton shall be the lesser of this quotient and 5 cents per ton.

25 (3) An operator shall file a report of sand and gravel sales
26 by February 15 of each year. The report shall specify the number of
27 tons of sand and gravel products sold from each of the operator's
28 sand and gravel mines from January 1 through December 31 of the
29 immediately preceding year.

1 (4) The amount of the mining surveillance fee owed by an
2 operator is the product of the amount per ton determined under
3 subsection (2) and the total number of tons required to be reported
4 by that operator under subsection (3). Payment of the mining
5 surveillance fee is due by 30 days after the department sends
6 written notice to the operator of the amount due. If the department
7 receives the mining surveillance fee after the due date, the fee
8 shall include a penalty of an additional 10%.

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

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

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

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

29 Sec. 63910. (1) The department shall administer and enforce

1 this part.

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

7 Sec. 63911. By the first June 1 immediately after a mining
8 permit is issued, an operator shall file with the department a plan
9 map of the mining area. The map shall be drawn to a scale of 1 inch
10 equals 200 feet and be in the form specified by the department.
11 Annually thereafter, by June 1, the operator shall file a plan map
12 in the same scale and form showing any changes made during the
13 preceding calendar year and the portion of the mining area that the
14 operator anticipates will be subjected to active mining during the
15 current calendar year.

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

20 (a) A description of the status of mining and reclamation,
21 including, but not limited to, revised drawings or photographs
22 depicting the progress of mining and reclamation, as applicable,
23 for the preceding year.

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

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

28 (2) The operator of a mine permitted under this part shall
29 promptly report to the department any incident or act of nature at

1 a mining area or violation of a mining permit that has created, or
2 may create, a threat to the public health or safety, the
3 environment, or natural resources.

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

7 Sec. 63913. (1) The operator of a mine permitted under this
8 part shall maintain financial assurance during mining until the
9 department determines that all reclamation has been completed,
10 except that financial assurance shall be released immediately upon
11 termination of a mining permit under section 63907(1). The
12 financial assurance shall consist, at the option of the operator
13 and subject to the approval of the department, of a performance
14 bond, surety, escrow, cash, certificate of deposit, irrevocable
15 letter of credit, or other equivalent security, or any combination
16 thereof. The department may waive the requirement for financial
17 assurance if the operator annually submits a statement of financial
18 responsibility demonstrating to the satisfaction of the department
19 that the applicant has sufficient financial resources, apart from
20 the proposed mining activity, to satisfy the reclamation
21 requirements under this part.

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

27 (3) The operator shall annually update the amount of financial
28 assurance or statement of financial responsibility maintained or
29 submitted by the operator under subsection (1) to account for any

1 increase in the number of acres described in subsection (2). The
2 operator may annually update the amount of financial assurance or
3 statement of financial responsibility to account for any decrease
4 in the number of such acres.

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

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

12 (3) The operator shall begin final reclamation of the mining
13 area within 1 year after the date of cessation of mining, or a
14 longer period if approved by the department. The operator shall
15 complete reclamation within the time set forth in the approved
16 mining and reclamation plan.

17 (4) Once initiated, final reclamation shall be performed to
18 completion. However, final reclamation may be suspended if the
19 owner or operator resumes exploration or mining.

20 Sec. 63915. (1) A person who is aggrieved by an order, action,
21 or inaction of the department under this part, including, but not
22 limited to, the issuance, denial, termination, revocation, or
23 amendment of a mining permit, or aggrieved by the operation of a
24 mine may file a petition with the department requesting a contested
25 case hearing. The filing of the petition is the aggrieved person's
26 sole recourse. The department may reject as untimely a petition
27 filed more than 90 days after an order, action, or inaction of the
28 department by which the petitioner is aggrieved.

29 (2) The department shall provide notice by mail of a contested

1 case hearing under subsection (1) to all of the following:

2 (a) The person requesting the contested case hearing.

3 (b) The operator or mining permit applicant.

4 (c) Other affected parties.

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

8 (2) If the department determines that a violation of this part
9 or a mining permit is resulting in an imminent and substantial
10 endangerment to the public health or safety, the environment, or
11 natural resources, the department shall take action necessary to
12 abate or eliminate the endangerment. The action may include 1 or
13 more of the following:

14 (a) Revoking the mining permit.

15 (b) Issuing an order to the operator to immediately suspend
16 mining. For the purposes of enforcement under this subdivision,
17 imminent and substantial endangerment includes failure to do either
18 of the following:

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

20 (ii) Maintain financial assurance under section 63913.

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

23 (3) Before taking action under this section to suspend mining
24 or revoke a mining permit, or to otherwise prevent the continuation
25 of mining, the department shall give the operator written notice,
26 by certified mail, of the alleged violation and a reasonable period
27 of time to correct the alleged violation. The department shall
28 provide the operator an opportunity for a contested case hearing
29 conducted by the state geologist.

1 (4) An order suspending mining activities under subsection
2 (2) (b) remains in effect until the endangerment to the public
3 health or safety, the environment, or natural resources is
4 eliminated, but not more than 10 days. If the endangerment
5 continues, the state geologist may, by order issued after providing
6 an opportunity for a contested case hearing conducted by the state
7 geologist, extend the suspension beyond 10 days. The total duration
8 of the suspension of mining activities shall not be more than 30
9 days, unless again extended by order of the state geologist
10 following an opportunity for a contested case hearing conducted by
11 the state geologist or extended by an administrative consent
12 agreement. The department shall provide notice of a contested case
13 hearing under this subsection by certified mail, return receipt
14 requested, not less than 10 days before the hearing date, to other
15 interested persons whose notification the state geologist considers
16 necessary and appropriate.

17 (5) If the operator or a surety under section 63913 fails or
18 neglects to correct a violation of this part or a mining permit or
19 take corrective actions as specified under an order of the
20 department, the department may, beginning 24 hours after giving
21 written notice to the operator and surety, enter the mining area
22 and any private or public property necessary to reach the mining
23 area, correct the violation, and remediate any damage to the public
24 health or safety, the environment, or natural resources resulting
25 from the violation. The operator and surety are jointly and
26 severally liable for expenses so incurred by the department. The
27 operator or surety shall pay the expenses within 30 days after
28 being notified of the amount. If the expenses are not timely paid,
29 the department may bring an action against the operator or surety,

1 jointly or severally, for the recovery of the expenses. This part
2 does not limit the department's authority to take whatever response
3 activities it determines necessary to protect public health or
4 safety, the environment, or natural resources.

5 (6) The revocation of a mining permit or suspension of mining
6 under subsection (2) does not relieve an operator of the
7 responsibility to complete reclamation, maintain financial
8 assurance under section 63913, and undertake appropriate measures
9 to protect the public health or safety, the environment, or natural
10 resources.

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

27 (a) Conduct an inspection of the mining operation to
28 investigate the allegations not more than 5 business days after
29 receipt of the complaint. If the complaint or allegations are of a

1 highly serious nature, as determined by the department, the
2 department shall inspect the mining operation as quickly as
3 possible.

4 (b) Not more than 15 business days after completing an
5 investigation of the complaint, submit a written report of the
6 complaint and the results of the investigation to the operator and
7 the person who made the complaint. At a minimum, the written report
8 shall state whether the investigation identified a violation of
9 this part or a mining permit.

10 (8) If the department dismisses a complaint and the department
11 previously dismissed a complaint by the same complainant with
12 respect to the same operator and mining operation, the complainant
13 is liable to the department for the full costs incurred by the
14 department to investigate the subsequent complaint.

15 Sec. 63917. (1) The department may request the attorney
16 general to commence a civil action for appropriate relief,
17 including, but not limited to, a permanent or temporary injunction,
18 for a violation of this part, a mining permit, or an order issued
19 under this part. Before requesting the attorney general to commence
20 a civil action or before the attorney general commences a civil
21 action at the attorney general's own initiative, the department
22 must provide the operator an opportunity for a contested case
23 hearing. The court has jurisdiction to restrain the violation and
24 to require compliance. In addition to any other relief granted
25 under this subsection, the court may impose a civil fine of not
26 more than \$1,000.00 per day of violation.

27 (2) Upon a finding by the court that an operator violated this
28 part, a mining permit, or an order issued under this part and,
29 subject to subsection (6), that the violation poses or posed a

1 substantial endangerment to public health or safety, the court may
2 impose, in addition to the sanctions set forth in subsection (1), a
3 civil fine of not less than \$50,000.00 and not more than
4 \$1,000,000.00.

5 (3) The attorney general may file a civil action to recover,
6 in addition to a fine, the full value of the damages to the
7 environment and natural resources of this state and the costs of
8 surveillance and enforcement incurred by this state as a result of
9 the violation.

10 (4) A person who intentionally makes a false statement,
11 representation, or certification in an application for a mining
12 permit, a form pertaining to a mining permit, or a notice or report
13 required by a mining permit, knowing it to be false, is guilty of a
14 felony punishable by imprisonment for not more than 2 years or a
15 fine of not less than \$2,500.00 or more than \$25,000.00, or both,
16 for each violation. If the conviction is for a violation committed
17 after a first conviction of the person under this subsection, the
18 court shall impose a fine of not less than \$25,000.00 per day and
19 not more than \$50,000.00 per day of violation. Knowledge possessed
20 by a person other than the defendant under this subsection shall
21 not be attributed to the defendant unless the defendant took
22 substantial affirmative steps to shield himself or herself from the
23 relevant information.

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

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

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

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

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

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

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

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

26 (2) Subsection (1) applies notwithstanding any of the
27 following:

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

29 (i) The ownership of the mine.

1 (ii) The size of the mine.

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

3 (b) Temporary cessation or interruption of mining.

4 (c) Enrollment of the mine or mining or the mine operator in
5 governmental programs.

6 (d) Adoption of new mining technology.

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

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

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

15 (a) An appeal from the final decision or order made in a
16 proceeding instituted by an aggrieved person under section 63915.

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

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

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

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

24 (2) The state treasurer shall deposit fees paid under this
25 part into the fund. The state treasurer may receive money or other
26 assets from any other source for deposit into the fund. The state
27 treasurer shall direct the investment of money in the fund and
28 credit to the fund interest and earnings from the investments.

29 (3) Unexpended money in the fund at the close of the fiscal

1 year shall remain in the fund and be carried over to the succeeding
2 fiscal year.

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

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

8 Sec. 63921. An operator is liable to a city, a village, or the
9 county road commission for damage caused by the operator's trucks
10 to a city street, village street, or county road, respectively,
11 that is a haul route between the mining operation and a primary
12 road.

13 Sec. 63922. This part applies to all mining permit
14 applications submitted to the department after the effective date
15 of this section, including, but not limited to, applications
16 formerly submitted to any local government referenced in section
17 63903 notwithstanding the previous administrative or judicial
18 disposition of such mining permit applications.

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

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

25 (a) Senate Bill No. ____ or House Bill No. 4526 (request no.
26 01555'23 a **).

27 (b) Senate Bill No. ____ or House Bill No. 4527 (request no.
28 01555'23 b **).