Legislative Analysis

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SAND AND GRAVEL MINING

Senate Bill 429 (proposed substitute H-2)
Senate Bill 430 as passed by the Senate
Sponsor: Sen. Jim Ananich
House Committee: Local Government and Municipal Finance
Senate Committee: Transportation and Infrastructure
Complete to 6-21-22

SUMMARY:

Senate Bill 429 would add Part 639 (Sand and Gravel Mining) to NREPA to regulate the ***mining*** of ***sand and gravel***. EGLE would have to administer and enforce Part 639. The bill states that Part 639 would not limit EGLE's authority to take whatever response activities it determined necessary to protect the environment, natural resources, or the public health, safety, and welfare.

Mining would mean the extraction of sand and gravel and associated activities and operations within the mining area that are involved in bringing sand and gravel products to market, including onsite loading, transport, and processing of material.

Sand and gravel would mean sand or gravel that is excavated from natural deposits for commercial, industrial, or construction purposes. The following would not be considered sand and gravel for purposes of Part 639:

- Clay.
- Limestone or limestone products.
- Sand mined for commercial or industrial purposes from sand dune areas regulated under Part 637 of NREPA.
- Earth materials associated with the extraction of ferrous minerals, nonferrous metallic minerals, or coal regulated under Part 631, 632, or 635 of NREPA, respectively. (Ferrous minerals are iron ores. Nonferrous metallic minerals are ores of metals other than iron, such as copper and nickel.)

Local preemption

Part 639 would preempt an ordinance, regulation, resolution, policy, or practice of a city, village, township, or county or a governmental authority created by the state constitution of a city, township, village, or county if either of the following applies:

- It prohibits or regulates mining, including its location and development, or trucking activities related to a sand and gravel mine.
- It duplicates, modifies, extends, revises, contradicts, or conflicts with Part 639.

In addition, an entity described above could not adopt, maintain, or enforce such an ordinance, regulation, resolution, policy, or practice.

Applicability of Part 639

Notwithstanding the provisions preempting local regulation of sand and gravel mines, Part 639 would not apply to either of the following:

- Mining of a mine with a total sand and gravel deposit of 1.0 million tons or less.
- Mining ***authorized*** before the effective date of the bill. (However, Part 639 would apply to an expansion of mining into an area that was not authorized for mining on that date.)

  Authorized would mean that the mining has received a local permit for mining, zoning approval, or other governmental authorization or that those forms of authorization are not required because the mining is a legal nonconforming use or is not regulated.

However, the owner or ***operator*** of a mine or mining operation described above could choose to be subject to Part 639 by submitting an application to EGLE as described below, in which case Part 639 (and its preemption of the local regulation of sand and gravel mines) would apply.

> ***Operator*** would mean a person engaged or preparing to engage in mining or reclamation.

Mining permits

Except for ***de minimis extraction*** or activities exempted above, a person could not engage in sand and gravel mining except as authorized by a mining permit.

> ***De minimis extraction*** would mean extraction of sand and gravel that meets either of the following:
>
> - It is conducted by or for a property owner for end use by that owner on that property and not for resale or inclusion in any other commercial product.
> - It does not exceed 5,000 cubic yards of sand and gravel during the ***life of the mine***. (As a point of reference, a single cube that is 51 feet long, 51 feet wide, and 51 feet tall would have a volume of about 5,000 cubic yards.)
>
> ***Life of the mine*** would mean the period of time from issuance of a mining permit through the completion of reclamation of the mine as required by this part. [**Note**: This term is used elsewhere in Part 639 with this definition. As used here, in reference to a mine that is exempt from the issuance of a mining permit, its meaning is unclear.]

To obtain a mining permit, a person would have to submit to EGLE an application containing the applicant's name and address and the location of the proposed ***mining area*** (including a legal description and survey).

> ***Mining area*** would mean an area containing all of the following:
>
> - Land from which material is removed in connection with the production or extraction of sand and gravel by surface or open pit mining methods.
> - Land where material from that mining is stored on the surface.
> - Land on which processing plants and auxiliary facilities are located.
> - Land on which water reservoirs used in mining are located.
> - Auxiliary land used in conjunction with mining.

A mining permit application would have to be submitted in a form approved by EGLE, with at least all of the following:

- An **application fee** of $5,000, to be deposited into the Sand and Gravel Surveillance Fund described below.
- An **environmental impact assessment** that describes natural and artificial features in the proposed mining area (including plants, animals, hydrology, geology, and baseline conditions) and the potential impact of the proposed mining on those features.
- A **mining and reclamation plan** for the proposed mining operation, as described below.
- **Financial assurance**, as described below.

Mining and reclamation plan

A mining and reclamation plan would have to include all of the following:

- A general description of the sand and gravel deposit.
- A general description of the materials, methods, and techniques that will be used for mining.
- The proposed order in which the property will be mined and reclaimed, including any proposed phasing.
- The proposed depth from grade level from which the sand and gravel will be removed.
- Plans for surface overburden removal and a department-approved soil conservation plan that includes steps for the conservation of topsoil and considers land use after the cessation of mining, site conditions, and, to the extent practical, concurrent reclamation and soil conservation.
- Provisions for grading, revegetation, and stabilization that will minimize, to the extent practicable, soil erosion, sedimentation, noise, airborne dust, and public safety concerns. The provisions for grading would have to include at least both of the following:
    - The reclaimed slopes of the banks of the excavation must not be steeper than three feet horizontal to one foot vertical (a 33% grade), measured from the nearest setback line into any area disturbed by mining.
    - Where open water that is deeper than five feet results from mining, the reclaimed slope into the water must not be steeper than five feet horizontal to one foot vertical (a 20% grade), maintained and extended into the water to a depth of five feet.
- A description of the processing activities that are proposed to be conducted on site to create sand and gravel products, such as washing, screening, crushing, and blending of sand, gravel, and other materials, including recycled materials and other materials obtained from off site.
- A description of the proposed lighting at the mining area.
- A description of measures to be implemented to ensure that the mining does not create dust that exceeds the standards required under an applicable general or individual air permit issued under federal law or under Part 55 (Air Pollution Control) of NREPA.
- With regard to ground vibration, a description of measures to be implemented to ensure that the operation of stationary machinery or equipment does not result in a displacement of more than one tenth of an inch measured anywhere outside the ***property line***. (As used in Part 639, ***property line*** would mean the exterior property line of all contiguous parcels owned or controlled by the operator, including easements, leasehold interests, options to lease or to purchase, and rights of first offer or refusal.)

- A description of all explosives that are intended to be used, stored, or handled on site.
- A description of measures to be implemented to ensure that blasting activity does not cause any of the following at a residential building:[1]
    - Ground vibration exceeding that set forth in Figure B-1 ("Safe levels of blasting vibrations for houses using a combination of velocity and displacement") of *Structure Response and Damage Produced by Ground Vibration from Surface Mine Blasting*, Report of Investigations 8507 of the U.S. Department of the Interior, Bureau of Mines (1989).[2]
    - Air blast in excess of 133 decibels at any residential dwelling.
    - Unreasonable dust or noise.
- With regard to noise levels, a description of measures to be implemented to ensure that the eight-hour time-weighted average sound pressure levels in decibels measured at the common property line nearest to the area of active mining on a sound level meter using the A-weighting network[3] does not exceed the greater of the following:
    - 20 A-weighted decibels above background levels.
    - The following levels for adjacent property:
        - 75 A-weighted decibels for property zoned residential.
        - 85 A-weighted decibels for property zoned commercial.
        - 90 A-weighted decibels for property zoned industrial or another zoning classification.
- A description of the loading hours. The bill would require that loading or unloading of customer trucks or trailers must be allowed at least from 6 a.m. to 7 p.m., Monday through Friday, and from 6 a.m. to 5 p.m. on Saturday. Additional loading hours could be specifically approved by EGLE or required by state or county contract. All other regulated mining operations would have to be completed within the same hours of loading and unlading, unless specifically approved by the local government. This provision would not apply to maintenance operations or the loading of railroad cars or ships.
- A description of the proposed primary haul routes to and from the mining area and a primary road (a county primary road or state trunk line highway as described in 1951 PA 51). The description would have to include any anticipated impact on vehicle and pedestrian safety and on the condition of the haul routes.[4]
- Plans for reclamation of the mining area after the mining ends, including a description of how reclamation will allow for use of the land.
- Plans for the interim uses of reclaimed areas before the mining ends.

[1] The bill repeats the blasting activity provisions in section 63905(1)(n) and (t). The version in subdivision (t) does not contain the provision concerning ground vibration in excess of that in Figure B-1 of the Bureau of Mines report. It is unclear whether or how its presence in subdivision (n) is affected by its absence in subdivision (t), or vice versa.

[2] See page 73: https://www.osmre.gov/resources/blasting/docs/USBM/RI8507BlastingVibration1989.pdf

[3] A-weighting adjusts the measurement of a sound level made by a technological instrument to more closely approximate how humans perceive the relative loudness of that sound. It skews somewhat toward higher frequencies at the expense of lower ones. It should be noted that some believe that this skewing misrepresents how humans experience certain kinds of noise.

[4] For a mining operation that requires the use of a road other than a class A road, EGLE could request that the operator collaborate with the county road commission to determine a route from the mining area to a class A road. The route would have to be reasonably direct in order to accommodate the mining operations and associated trucking operations. [Note: The bill does not define the term "class A road." It is often used to refer to roads that have been designated as "All Season Routes," meaning that they are not subject to seasonal weight restrictions.]

- A description of measures to be implemented to ensure that all mined material disposed of within the mining area and all areas to be reclaimed under the permit will not result in an authorized release of pollutants to the surface drainage system.
- A description of measures to be implemented to ensure that an unauthorized release of pollutants to groundwater will not occur from any material mined, handled, or disposed of in the mining area.
- A description of measures to be implemented to ensure that any existing groundwater contamination will not be exacerbated.
- If a historical or archaeological resource is identified in the mining area, an indication of how the resource will be protected or of the mitigation measures that will be performed.
- If threatened or endangered species are identified in the mining area, an indication of how they will be protected or of what mitigation measures will be performed, in compliance with the federal Endangered Species Act, Part 365 (Endangered Species Protection) of NREPA, and rules promulgated under those respective laws.
- If required by EGLE when the mining area will present a dangerous condition if left open, a proposal delineating fencing (four-foot-high woven wire farm fence or the equivalent) or other techniques to minimize unauthorized access to the mining area.
- A description of comprehensive general liability insurance covering third-party personal injury and property damage. The bill would require the operator to maintain such insurance through the life of the mine in amounts of at least $1.0 million per occurrence.

Site plan

A mining and reclamation plan would also have to include a site plan that shows all residential dwellings within 500 feet of the proposed mine as well as the proposed location of buildings, equipment, stockpiles, roads, berms, or other features necessary for mining and includes provisions for their removal and the reclamation of the area after the mining ends. The site plan would have to comply with all of the following:

- A mining area must be set back at least 50 feet from the nearest public roadway or adjoining property line.
- Equipment used for screening and crushing must be set back as follows:
    - At least 200 feet from the nearest public roadway.
    - At least 300 feet from the nearest adjoining property line.
    - At least 400 feet from the nearest residential dwelling occupied on adjacent property on the date the mining and reclamation plan is submitted to EGLE.
- The site plan must describe the proposed primary routes to be used to transport sand and gravel from the mining area to a primary road, other than for local deliveries.
- The operator must maintain signs on the boundaries of the mining area, spaced up to 200 feet from each other, that say "NO TRESPASSING – MINING AREA." The bill would further require these signs to face outward.
- Except for screening berms, stockpiles (material, such as overburden, that in the process of mining has been removed from the earth and stored on the surface) must not be more than the higher of either 70 feet above ground surface at the stockpile location or 40 feet above the elevation of the adjoining property at the nearest property line.
- To the extent reasonably practicable, an active mining area must be screened from view from adjoining properties by using overburden to the extent available to construct berms of up to six feet high along adjoining property lines or through another means

requested by the applicant and approved by EGLE. Berms visible to the public could be required to be landscaped with grass or trees to the extent reasonably practicable.

Reclamation provisions

All reclamation provisions required as described above would have to be carried to completion with reasonable diligence and could be conducted at the same time as the mining to the extent practicable, taking into consideration the mining and reclamation plan, safety, economics, the availability of equipment and material, and other site-specific conditions relevant to the land's post-mining use. Once begun, final reclamation measures would have to be performed in compliance with the mining and reclamation plan unless the owner or operator resumed exploration or mining. The owner or operator would have to initiate reclamation within the shorter of the following time periods:[5]

- The period required by federal law.
- One year after mining operations end—or a longer period if approved by EGLE upon written request.

Mining permit application process

Upon receiving a mining permit application, EGLE would have 14 days to determine whether it is administratively complete (that is, whether it contains all the documents and information required under Part 639). Within that time, EGLE could notify the applicant in writing that the application fee has not been paid or that the application is missing specified information, and the 14-day period would be tolled until the applicant submitted the required payment or information. At the end of the 14-day period, the application would automatically be administratively complete. This determination would not preclude EGLE from requiring additional information from an applicant.

Within 42 days after an administratively complete application was first received, EGLE would have to publish notice of the application in a newspaper of general circulation in the area of the proposed mine, transmit a copy of it to the applicant and the relevant official of the city, village, or township where the proposed mine will be located, post the notice on its website, make it available at its Lansing and relevant district offices, and transmit a copy of it to anyone else who makes a written request. The notice would have to contain all of the following information:

- The date it was published.
- The name and address of the applicant.
- The location of the proposed mining area.
- A concise description of the applicant's proposed use.
- A concise description of how EGLE will decide whether to grant or deny the application and how the public can comment on it.
- The addresses and phone numbers of the Lansing EGLE office, the EGLE district office in the area of the proposed mine, and the EGLE office where the application itself or more information about it can be obtained and any other relevant documents can be looked at or copied.

[5] Sections 63905(2) and 63914 both require reclamation activities to be conducted in compliance with the mining and reclamation plan. Only section 63905(2), however, requires compliance with federal law if it prescribes a shorter time period than the one-year period under the bill, with any EGLE-approved extensions. Both sections allow for EGLE to approve a longer time frame, but only section 63914 requires the operator to request it first in writing.

The public would have up to 30 days after publication of the notice to submit written comments to EGLE for its consideration in making a final determination on the application. EGLE could extend this time period for up to 30 more days. EGLE also could hold a public hearing in the county where the proposed mine will be located if it determines that there is sufficient public interest or that a written comment gives sufficient cause. EGLE would have to provide notice of the hearing to relevant local units of government from 5 to 28 days before the hearing. EGLE would have to accept written public comment on the application for 15 days after the hearing. At the end of the public comment period, EGLE would have to summarize the comments and EGLE's response to them in a report posted on its website and made available at its Lansing and relevant district offices.

Within 15 days after the end of the public comment period, and not more than 120 days after the application was determined administratively complete, EGLE would have to grant or deny the application.

EGLE would have to grant the application and issue the mining permit upon determining all of the following:

- The application and any relevant additional information obtained by the department demonstrate that the proposed mining meets the requirements of Part 639.
- The proposed mining will not pollute, impair, or destroy the air, water, or other natural resources or the public trust in them.
- The reclamation set forth in the mining and reclamation plan is consistent with the master plan of the city, village, or township where the proposed mine will be located or can be made consistent with the master plan. EGLE would have to modify the proposed reclamation set forth in the mining and reclamation plan as necessary to make the reclamation consistent with the master plan.

If any of the conditions listed above were not met, EGLE would have to deny the application. EGLE also could deny an application if the operator were in violation of Part 639, an EGLE order issued under Part 639, or a mining permit, unless the person had either corrected the violation or agreed to do so under an administrative consent agreement with an EGLE-approved compliance schedule. EGLE would have to notify the applicant in writing of the reasons for denial of an application.

The bill provides that terms and conditions set forth in the application and the plan and approved by EGLE are considered incorporated into the mining permit.

The issuance of a mining permit would not amend the municipality's underlying zoning or master plan to the extent that the underlying zoning or master plan complies with the provisions of Part 639 that preempt and prohibit any local regulation of sand and gravel mining.

Mining permit validity, transfer, amendments, and modifications

A mining permit would be valid for the life of the mine, although EGLE could revoke a permit if the operator does not start mining or building facilities within 10 years after the permit is issued.

A mining permit could be transferred if approved by EGLE. The person who would acquire the permit would have to submit a request to EGLE and accept the conditions of the permit and

adhere to the requirements of the approved mining and reclamation plan. EGLE could deny a transfer request if the proposed transferee were in violation of Part 639, an EGLE order issued under Part 639, or a mining permit, unless the person had either corrected the violation or agreed to do so under an administrative consent agreement with an EGLE-approved compliance schedule. If EGLE had notified the current operator of a violation of Part 639 or the permit, the permit could not be transferred until the violation was corrected or the proposed transferee had entered into a written agreement with EGLE to correct it.

A city, village, township, or county or the operator of the mine could submit a written request to EGLE to impose conditions in a mining permit. While an operator could submit such a request only for a mining permit that has been granted, a city, village, township, or county could make such a request either during the application process or after the permit is granted.

Upon receiving an amendment request, EGLE would have to determine whether the amendment is a significant change to the conditions of the mining permit. Upon determining that an amendment requested by a city, village, township, or county is not a significant change, EGLE could either approve or deny it. Up determining that an amendment requested by an operator is not a significant change, EGLE would have to approve it.

If EGLE determines that the amendment *is* a significant change, it could submit the amendment to the same review process as for a mining permit application. EGLE would have to notify the requestor in writing of its reasons for denying an amendment request.

EGLE could grant a modification of the provisions of Part 639 upon a request from an operator if EGLE determines that the modification is not against the public interest. EGLE could provide for public notice and comments and a public hearing in the same manner as for a mining permit application if EGLE determines that the requested modification could have a significant impact on the environment or public safety.

Financial assurance

An operator would have to maintain financial assurance during mining until all reclamation has been completed. The financial assurance would have to consist of a performance bond, surety, escrow, certificate of deposit, irrevocable letter of credit, cash, or other equivalent security, or a combination of these, at the sole option of the operator and subject to the approval of the department. EGLE could waive the financial assurance if the operator annually submits a statement of financial responsibility that demonstrates sufficient financial resources (apart from the proposed mining activity) to satisfy the reclamation requirements under Part 639.

The financial assurance would have to be in the amount, as determined by the department of not less than $3,000 or more than $8,000 per acre disturbed and not yet reclaimed, not counting roadways, plant facilities, and open water areas that will remain open water after reclamation.

EGLE could order an operator to suspend mining for failure to maintain financial assurance.

Sales reports and mining surveillance fee

By February 15 of each year, an operator would have to file a report of the number of tons of sand and gravel products sold from each of the operator's mines during the previous calendar year. The operator would have to preserve the records on which the annual report is based for

two years, and EGLE could audit them. EGLE could order an operator to suspend mining for failure to properly submit the annual report.

To support its activities under Part 639, EGLE would assess a mining surveillance fee against the sand and gravel products sold by an operator during a calendar year. The fees would be deposited in the Sand and Gravel Surveillance Fund described below. The amount collected could not exceed EGLE's actual costs in implementing Part 639.

The total amount of revenue to be raised in a fiscal year with mining surveillance fees would be determined by subtracting the money in the Sand and Gravel Surveillance Fund carried over to that fiscal year from the amount appropriated for that fiscal year for surveillance, monitoring, administration, and enforcement under Part 639.

EGLE would determine the fee amount per ton by dividing the total amount to be raised by the number of tons of sand and gravel sold in this state by all operators for the previous calendar year. This quotient would be the fee amount per ton—up to a maximum of five cents per ton.

The amount of the mining surveillance fee owed by an operator would be the fee amount per ton times the total number of tons reported by that operator. The operator would have to pay the fee within 30 days after receiving notice. If the department receives the fee after the due date, the fee would have to include a penalty of 10%.

Sand and Gravel Surveillance Fund

The bill would create the Sand and Gravel Surveillance Fund, into which all application and mining surveillance fees paid under Part 639 would be deposited. The state treasurer could also receive money or other assets from any other source for deposit into the fund. The state treasurer would be responsible for directing the investment of the fund and crediting the interest and earnings from those investments to the fund. Unexpended money in the fund at the close of the fiscal year would remain in the fund and be carried over to the next fiscal year. EGLE would be the administrator of the fund for auditing purposes.

EGLE could spend money from the fund, upon appropriation, only for the actual cost of its surveillance, monitoring, administration, and enforcement activities under Part 639.

Annual plan map

By the first June 1 following issuance of the mining permit, the operator would have to file with EGLE a plan map of the mining area that is drawn to 1:2,400 scale (one inch equals 200 feet) and is in the form specified by EGLE. By June 1 of each subsequent year, the operator would have to file a plan map that shows any changes made during the previous calendar year and the portion of the mining area that the operator expects will have active mining in the current calendar year.

Annual mining and reclamation report

By June 1 of each year during the life of the mine, the operator would have to file with EGLE a mining and reclamation report containing all of the following:

- A description of the status of mining and reclamation, including revised drawings or photographs depicting the progress of mining and reclamation for the previous year.
- A description of the annual financial assurance update described above.

- A list, for the previous calendar year, of incident reports required to be made as described below.

The operator would have to preserve the records underlying the report for two years after it is filed and make them available to EGLE upon request.

Incident reports

If a violation of a mining permit or an incident or act of nature at a mining area creates or could create a threat to the environment, natural resources, public health, or public safety, the operator would have to promptly report the violation, incident, or act of nature to EGLE. The operator would have to preserve records underlying the report for two years and make them available to EGLE upon request.

Contested case hearing

A person aggrieved by any of the following could file a petition with EGLE requesting a contested case hearing under the Administrative Procedures Act:

- The operation of a mine.
- The issuance, denial, termination, revocation, or amendment of a mining permit.
- An order, action, or inaction by EGLE under Part 639.

The filing of this petition would be an aggrieved person's sole recourse.

EGLE could reject as untimely a petition filed more than 90 days after the EGLE order, action, or inaction by which the petitioner is aggrieved.

EGLE would have to provide notice by mail of a contested case hearing to the petitioner, the operator or mining permit applicant, and other affected parties.

The circuit court for Ingham County would have exclusive jurisdiction to hear an appeal from a final decision or order made in such a proceeding.

Violations of Part 639 or a mining permit

If EGLE determined that an operator violated Part 639 or a mining permit, it would have to require the operator to correct the violation. If the violation caused an imminent and substantial endangerment to the environment, natural resources, public safety, or public health, EGLE would have to take action necessary to abate or eliminate the endangerment, which could include one or more of the following:

- Revoking the operator's mining permit.
- Issuing an order to the operator to immediately suspend mining.
- Issuing an order to the operator to undertake such other actions as may be necessary to abate or eliminate the endangerment.

If the violation included failure to submit the required annual sales report or maintain the required financial assurance, EGLE could issue an order to the operator to immediately suspend mining.

Before suspending mining, revoking a mining permit, or otherwise preventing the continuation of mining, EGLE would have to give the operator written notice (by certified mail) of the

alleged violation, a reasonable period of time to correct the violation, and an opportunity for a hearing.

An order suspending mining activities would remain in effect for 10 days or until the endangerment[6] is eliminated, whichever period is shorter. If the endangerment continued, the state geologist could, after providing an opportunity for a supervisor of reclamation hearing, extend the suspension beyond 10 days. However, the total duration of the suspension of mining activities could not be more than 30 days, unless again extended by order of the state geologist following an opportunity for a supervisor of reclamation hearing or by an administrative consent agreement. The department would have to provide notice of a supervisor of reclamation hearing by certified mail, return receipt requested, no less than 10 days before the hearing date, to other interested parties whose notification the state geologist considers necessary and appropriate.

The revocation of a mining permit or suspension of mining as described above would not relieve an operator of the responsibility to complete reclamation, maintain financial assurance, and undertake appropriate measures to protect the environment, natural resources, public health, and public safety.

Failure to take corrective actions

If the operator or a surety under financial assurance provisions failed or neglected to correct a violation of Part 639 or a mining permit or to take corrective actions as specified under an EGLE order, EGLE could, 24 hours after giving written notice, enter the mining area and any property necessary to reach the mining area, correct the violation, and remediate any damage to the environment, natural resources, or public health resulting from the violation. The operator and surety would be jointly and severally liable for expenses incurred by EGLE and would have to pay the expenses within 30 days after being notified of the amount. EGLE could bring an action in the circuit court of Ingham County to recover expenses not timely paid.

Complaints alleging violations

EGLE would have to make a record of any complaints it receives alleging a violation of Part 639 or a mining permit and of the allegations in the complaint. If EGLE determined that the person making the complaint provided written evidence sufficient to support the allegations, it would have to notify the operator immediately and provide the operator with a copy of the complaint, the record, and all written evidence.

The operator would have to be given an opportunity to rebut the complaint and any evidence, and EGLE would have to take all necessary steps to confirm the evidence provided by the operator. Upon determining the complaint to have been rebutted, EGLE would have to dismiss the complaint and notify the operator and the person making the complaint. The person who made the complaint would be liable to EGLE for the costs of investigating any subsequent dismissed complaints made by that person concerning the same operator and the same mining operation.

[6] As used in these provisions, "endangerment" would include the failure to submit the annual sales report or to maintain the required financial assurance.

For a complaint that is not dismissed, EGLE would have to do all of the following:

- Not more than five business days after receiving the complaint, conduct an investigation of the mining operation to investigate the allegations. If EGLE thinks the complaint or allegations are highly serious, it would have to inspect the mining operation as quickly as possible.
- Not more than 15 business days after investigation of the complaint, submit a written report of the complaint and investigation results to the operator and the person making the complaint, stating at a minimum whether the investigation identified a violation of Part 639 or a mining permit.

Civil actions

EGLE could request the attorney general to commence a civil action for appropriate relief, including a temporary or permanent injunction, for a violation of Part 639, an order issued under Part 639, or a mining permit. Before requesting the attorney general to commence a civil action, EGLE would have to provide the operator an opportunity for a hearing. (EGLE also would have to provide the operator an opportunity for a hearing before the attorney general commenced a civil action at the attorney general's own initiative.) The circuit court for Ingham County would have exclusive jurisdiction over an action filed under these provisions. The court would have jurisdiction to restrain the violation and require compliance. The court could impose a civil fine of up to $1,000 per day of violation in addition to injunctive or other appropriate relief.

In addition, the court could impose a civil fine of $50,000 to $1.0 million if all of the following conditions were met:

- The court finds that the operator violated Part 639, an order issued under Part 639, or a mining permit.
- The court finds that this violation posed or poses a substantial endangerment to the public health, safety, or welfare.
- The court determines that the defendant knowingly acted in such a manner as to cause a danger of death or serious bodily injury.
- The court determines that the defendant had an actual awareness, belief, or understanding that his or her conduct would cause a substantial danger of death or serious bodily injury.

The attorney general also could file a civil action to recover the full value of the damages to the state's natural resources and the costs of surveillance and enforcement incurred by the state as a result of the violation.

A civil fine or other civil recovery under the above provisions would be payable to the state and credited to the general fund. The fine or other civil recovery would constitute a lien on any property of any kind owned by the defendant and, if notice of the lien were properly filed or recorded, the lien would be effective and have priority over all other liens and encumbrances filed or recorded on or after the date of judgment. The lien would have to be terminated within 14 days after payment of the fine or other recovery.

Intentional false statements

The bill would provide that a person who intentionally makes a false statement, representation, or certification in a mining permit application, a form pertaining to a mining permit, or a notice

or report required by a mining permit, knowing[7] the statement, representation, or certification to be false, is guilty of a felony punishable for each violation by imprisonment for up to two years or a $2,500 to $25,000 fine, or both imprisonment and a fine. For a violation committed after a first conviction under the above provisions, the court would have to impose a fine of $25,000 to $50,000 per day of violation.

The court also could impose, in addition to the above penalties, a sentence of imprisonment for up to one year or a fine of up to $50,000, or both, if all of the following conditions were met:

- The court finds that the violation posed or poses a substantial endangerment to the public health, safety, or welfare.
- The court determines that the defendant knowingly acted in such a manner as to cause a danger of death or serious bodily injury.
- The court determines that the defendant had an actual awareness, belief, or understanding that his or her conduct would cause a substantial danger of death or serious bodily injury.

The circuit court for Ingham County would have exclusive jurisdiction over any proceedings conducted under the above provisions, except for arraignment or the issuance of a criminal complaint or warrant.

Not a nuisance

A mine or mining would not be a public or private nuisance if a mining permit had been issued for it under Part 639 and it were not determined to be in violation of Part 639 in a civil action as described above. This provision would apply regardless of any of the following:

- A change in the ownership of the mine.
- A change in the size of the mine.
- A change in the type of sand and gravel product being produced.
- A change in the size of the community where the mine is located.
- A change in the land use or occupancy of land within one mile of the mine's boundaries if the mine or mining would not have been a nuisance with respect to the use and occupancy of the land before that change.
- Temporary interruption or cessation of mining.
- Enrollment in government programs.
- Adoption of new technology.

Exclusive jurisdiction of the circuit court of Ingham County

In addition to the exclusive jurisdiction of the circuit court for Ingham County for actions and proceedings as described above, the circuit court of Ingham County also would have exclusive jurisdiction over any other claim relating to the issuance of, or operation under, a mining permit applied for or issued under Part 639.

Other Part 639 provisions

After providing reasonable notice to the operator or landowner, EGLE could enter a mining area for an investigation and inspection without incurring liability to the operator or landowner.

[7] The bill provides that knowledge possessed by a person other than the defendant could not be attributed to the defendant unless the defendant took substantial affirmative steps to shield himself or herself from the relevant information.

If mining were suspended for a continuous period of longer than one year, the operator would have to maintain, monitor, and secure the mining area.

An operator would be liable to a city, a village, or the county road commission for damage the operator's trucks cause to a city street, village street, or county road, respectively, that is a haul route between the mining operation and a county primary road or state trunk line highway.

Part 639 would apply to all mining permit applications submitted after the effective date of the bill, including applications formerly submitted to any local government described in the bill's preemption clause, notwithstanding the previous administrative or judicial disposition of those mining permit applications.

EGLE could promulgate rules to implement Part 639.

Other NREPA amendments

Finally, SB 429 would amend Part 91 (Soil Erosion and Sedimentation Control) of NREPA to provide that Part 91 does not apply to sand and gravel mining conducted under Part 639 as long as the mining and reclamation plan under which the sand and gravel mining is conducted contains soil erosion and sedimentation control provisions and is approved by EGLE.

MCL 324.9115 and proposed MCL 324.63901 et seq.

Senate Bill 430 would amend the Code of Criminal Procedure to add the felonies proposed by SB 429 to the sentencing guidelines. Making a false mining permit statement would be listed as a class H crime against the public trust with a two-year maximum imprisonment, and making a false statement causing endangerment would be a class G crime against the public trust with a maximum imprisonment of three years.

The bill is tie-barred to SB 429, which means that it could not take effect unless SB 429 were also enacted.

MCL 777.13f

FISCAL IMPACT:

Senate Bill 429 would have an indeterminate fiscal impact on the state and on local units of government. Under the bill, the court may impose civil fines for violating provisions of the bill, and additional civil fines if violations pose or posed substantial endangerment to public health, safety, or welfare. The fiscal impact would depend on the number of individuals ordered to pay civil fines. Under the bill, civil fine revenue or other civil recovery would be required to be credited to the general fund and would constitute a lien on any property owned by the defendant. Also under the bill, individuals making false statements, representations, or certifications in applications for permits would be guilty of a felony punishable by imprisonment, fines, or both. The number of convictions that would result under provisions of the bill is not known. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2021, the average cost of prison incarceration in a state facility was roughly $44,400 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about $4,600 per supervised offender in the same year. Those costs are

financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

Senate Bill 429 is likely to increase costs and revenues for the Department of Environment, Great Lakes, and Energy. New costs would include notifying mining permit applicants of application status; publishing, transmitting, and posting public notices regarding proposed mines; reviewing and verifying information in mining permit applications; and monitoring environmental impacts of mining activity. The extent of these costs are likely to hinge on the number of sand and gravel mining applications received and the scope of each proposed mine's respective operation. The bill would also generate revenues for EGLE in the form of a one-time mining permit application fee of $5,000 and an annual mining surveillance fee proportional to sand and gravel products sold during a calendar year, plus a 10% penalty for late payment. The extent of this revenue is also likely to vary and depend on the number and scope of mining operations subject to the jurisdiction of EGLE's regulatory responsibility. It is unclear at present whether the aforementioned costs and revenues will balance in a given year or over the long term.

The bill would have no significant fiscal impact on the Department of Attorney General (AG). The bill would permit, rather than require, EGLE to request that the AG commence civil action for relief. The bill would also permit the AG to seek to recover the full costs of enforcement of the bill which could offset any costs to the AG in bringing civil action. Any additional administrative staff costs could be supported through the AG's ongoing appropriations.

Senate Bill 430 is a companion bill to SB 429 and amends sentencing guidelines to include falsifying permit applications and falsifying permit applications causing endangerment. The bill would not have a direct fiscal impact on the state or on local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.