

HOUSE BILL No. 5269

August 19, 2009, Introduced by Reps. Tlaib, Liss, Roberts, Robert Jones, Bledsoe, Smith, Johnson, Durhal, Haugh, Kennedy, Nathan and Jackson and referred to the Committee on Great Lakes and Environment.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
(MCL 324.101 to 324.90106) by adding part 639.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

PART 639 BLASTING IN MINING OPERATIONS

SEC. 63901. AS USED IN THIS PART:

(A) "DEPARTMENT" MEANS THE DEPARTMENT OF ENVIRONMENTAL
QUALITY.

(B) "MINERAL" MEANS GYPSUM, STONE, SALT, OR A SIMILAR SOLID
MATERIAL OR SUBSTANCE TO BE EXCAVATED FROM NATURAL DEPOSITS ON OR
IN THE EARTH FOR COMMERCIAL, INDUSTRIAL, OR CONSTRUCTION USES.
MINERAL DOES NOT INCLUDE METALLIC ORE OR MATERIAL MINED FOR ITS
METALLIC CONTENT.

(C) "MINING" MEANS THE EXCAVATION OR REMOVAL OF EARTH MATERIAL

1 IN THE REGULAR OPERATION OF A BUSINESS FOR THE PURPOSE OF
2 EXTRACTING A MINERAL OR MINERALS BY 1 OR BOTH OF THE FOLLOWING:

3 (i) REMOVING THE OVERBURDEN LYING ABOVE NATURAL DEPOSITS OF A
4 MINERAL AND EXCAVATING DIRECTLY FROM THE NATURAL DEPOSITS THUS
5 EXPOSED OR BY EXCAVATING DIRECTLY FROM DEPOSITS LYING EXPOSED IN
6 THEIR NATURAL STATE.

7 (ii) EXCAVATING FROM BELOW THE SURFACE OF THE GROUND BY MEANS
8 OF SHAFTS, TUNNELS, OR OTHER SUBSURFACE OPENINGS.

9 (D) "MINING AREA" MEANS AN AREA OF LAND FROM WHICH EARTH
10 MATERIAL IS REMOVED IN CONNECTION WITH MINING, ON WHICH MATERIAL
11 FROM THAT MINING IS STORED OR DEPOSITED, OR ON WHICH WATER
12 RESERVOIRS USED IN THAT MINING OR BENEFICIATING OR TREATMENT PLANTS
13 OR AUXILIARY FACILITIES ARE LOCATED, AND AUXILIARY LAND USED IN
14 CONNECTION WITH THE MINING.

15 (E) "OPERATOR" MEANS A PERSON WHO IS ENGAGED IN, OR WHO IS
16 PREPARING TO ENGAGE IN, MINING, WHETHER INDIVIDUALLY OR JOINTLY, OR
17 THROUGH AGENTS, EMPLOYEES, OR CONTRACTORS.

18 (F) "PROTECTED STRUCTURE" MEANS ANY DWELLING, PUBLIC BUILDING,
19 SCHOOL, CHURCH, OR COMMERCIAL OR INSTITUTIONAL BUILDING NOT OWNED
20 BY THE OPERATOR.

21 (G) "SCALED DISTANCE" MEANS THE DISTANCE, IN FEET, FROM
22 EXPLOSIVES DETONATED IN A BLAST TO A SPECIFIED LOCATION, DIVIDED BY
23 THE SQUARE ROOT OF THE MAXIMUM WEIGHT OF THE EXPLOSIVES, IN POUNDS,
24 TO BE DETONATED IN ANY 8-MILLISECOND PERIOD.

25 SEC. 63903. (1) AN OPERATOR SHALL LIMIT THE TYPE OF EXPLOSIVES
26 AND DETONATING EQUIPMENT AND THE SIZE, TIMING, AND FREQUENCY OF
27 BLASTS USED IN MINING BASED UPON THE PHYSICAL CONDITIONS OF THE

1 SITE SO AS TO PREVENT INJURY TO PERSONS AND DAMAGE TO PUBLIC OR
2 PRIVATE PROPERTY OUTSIDE THE BLASTING SITE.

3 (2) AN OPERATOR SHALL NOT ENGAGE IN BLASTING UNLESS THE
4 BLASTING EFFECTS WILL MEET AT LEAST 1 OF THE FOLLOWING STANDARDS:

5 (A) THE MAXIMUM PEAK PARTICLE VELOCITY FROM BLASTING DOES NOT
6 EXCEED THE FOLLOWING LIMITS AT THE LOCATION OF ANY PROTECTED
7 STRUCTURE, AS VERIFIED BY SEISMOGRAPH MEASUREMENTS IN 3 MUTUALLY
8 PERPENDICULAR DIRECTIONS:

9 (i) 1.25 INCHES PER SECOND FOR PROTECTED STRUCTURES NOT MORE
10 THAN 300 FEET FROM THE BLASTING SITE.

11 (ii) 1.00 INCHES PER SECOND FOR PROTECTED STRUCTURES MORE THAN
12 300 FEET BUT NOT MORE THAN 5,000 FEET FROM THE BLASTING SITE.

13 (iii) 0.75 INCHES PER SECOND FOR PROTECTED STRUCTURES 5,000 FEET
14 OR MORE FROM THE BLASTING SITE.

15 (B) THE SCALED DISTANCE IS NOT LESS THAN THE FOLLOWING AS
16 CALCULATED AT THE LOCATION OF ANY PROTECTED STRUCTURE:

17 (i) FOR PROTECTED STRUCTURES NOT MORE THAN 300 FEET FROM THE
18 BLASTING SITE, 50.

19 (ii) FOR PROTECTED STRUCTURES MORE THAN 300 FEET BUT NOT MORE
20 THAN 5,000 FEET FROM THE BLASTING SITE, 55.

21 (iii) FOR PROTECTED STRUCTURES 5,000 FEET OR MORE FROM THE
22 BLASTING SITE, 65.

23 (C) THE BLASTING CONFORMS TO AN ALTERNATIVE STANDARD APPROVED
24 BY THE DEPARTMENT. AN OPERATOR SEEKING TO USE AN ALTERNATIVE
25 STANDARD SHALL SUBMIT A WRITTEN REQUEST TO THE DEPARTMENT. THE
26 REQUEST SHALL BE SUPPORTED BY TECHNICAL INFORMATION, WHICH MAY
27 INCLUDE DOCUMENTED APPROVAL OF THE BLASTING METHOD BY AGENCIES IN

1 OTHER STATES THAT REGULATE BLASTING AT MINING OPERATIONS. THE
2 DEPARTMENT SHALL APPROVE THE PROPOSED ALTERNATIVE STANDARD IF THE
3 TECHNICAL INFORMATION SUBMITTED PROVIDES SUFFICIENT JUSTIFICATION
4 FOR THE USE OF THE ALTERNATIVE STANDARD. OTHERWISE, THE DEPARTMENT
5 SHALL DISAPPROVE THE PROPOSED ALTERNATIVE STANDARD. THE DEPARTMENT
6 SHALL NOTIFY THE OPERATOR IN WRITING OF THE DEPARTMENT'S APPROVAL
7 OR DISAPPROVAL OF THE PROPOSED ALTERNATIVE STANDARD.

8 (3) THE DEPARTMENT MAY EXEMPT AN OPERATOR FROM MEETING A
9 STANDARD UNDER SUBSECTION (2) AT A PROTECTED STRUCTURE IF THE
10 OPERATOR SUBMITS TO THE DEPARTMENT A WAIVER SIGNED BY THE OWNER OF
11 THE PROTECTED STRUCTURE. THE WAIVER SHALL BE IN WRITING AND IN A
12 FORM APPROVED BY THE DEPARTMENT.

13 (4) AN OPERATOR SHALL MAINTAIN BLASTING RECORDS FOR AT LEAST 1
14 YEAR AND SHALL MAKE THE RECORDS AVAILABLE TO THE DEPARTMENT UPON
15 REQUEST. THE BLASTING RECORDS SHALL INCLUDE ALL OF THE FOLLOWING:

16 (A) THE DATES, TIMES, AND LOCATIONS OF ALL BLASTS.

17 (B) THE TYPE AND AMOUNT OF EXPLOSIVES USED.

18 (C) IF THE OPERATOR UTILIZES THE STANDARD DESCRIBED IN
19 SUBSECTION (2) (A), ALL SEISMOGRAPH MEASUREMENTS.

20 (D) IF THE OPERATOR UTILIZES AN ALTERNATIVE STANDARD UNDER
21 SUBSECTION (2) (C), ANY OTHER INFORMATION REQUIRED UNDER THE
22 ALTERNATIVE STANDARD.

23 SEC. 63905. (1) THE DEPARTMENT SHALL ADMINISTER AND ENFORCE
24 THIS PART. IN ADDITION TO OTHER POWERS GRANTED TO IT, THE
25 DEPARTMENT MAY DO ANY OF THE FOLLOWING:

26 (A) PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969,
27 1969 PA 306, MCL 24.201 TO 24.328, PROMULGATE RULES AS MAY BE

1 NECESSARY TO IMPLEMENT AND ADMINISTER THIS PART.

2 (B) ENTER AT ALL REASONABLE TIMES IN OR UPON A MINING AREA FOR
3 THE PURPOSE OF INSPECTING AND INVESTIGATING CONDITIONS RELATING TO
4 BLASTING OPERATIONS AT THE MINING AREA.

5 (2) A LOCAL UNIT OF GOVERNMENT SHALL NOT ENACT, MAINTAIN, OR
6 ENFORCE AN ORDINANCE, REGULATION, OR RESOLUTION WITH PROVISIONS
7 THAT DUPLICATE, CONTRADICT, OR CONFLICT IN ANY MANNER WITH THIS
8 PART.

9 SEC. 63907. (1) IF THE DEPARTMENT DETERMINES THAT AN OPERATOR
10 HAS VIOLATED THIS PART OR A RULE PROMULGATED UNDER THIS PART AND
11 THAT THE VIOLATION IS RESULTING IN OR MAY RESULT IN A THREAT OF
12 INJURY TO PERSONS OR DAMAGE TO PUBLIC OR PRIVATE PROPERTY OUTSIDE
13 THE BLASTING SITE, THE DEPARTMENT MAY ISSUE AN ORDER REQUIRING AN
14 OPERATOR TO TAKE ACTION NECESSARY TO ABATE OR ELIMINATE THE THREAT,
15 INCLUDING SUSPENSION OR MODIFICATION OF BLASTING OPERATIONS AT THE
16 MINING AREA.

17 (2) SUBJECT TO SUBSECTION (3), BEFORE ISSUING AN ORDER UNDER
18 SUBSECTION (1), THE DEPARTMENT SHALL GIVE NOTICE, PERSONALLY OR BY
19 MAIL, TO THE OPERATOR AND SHALL PROVIDE THE OPERATOR AN OPPORTUNITY
20 FOR AN EVIDENTIARY HEARING.

21 (3) IF THE DEPARTMENT FINDS THAT EMERGENCY ACTION IS REQUIRED
22 TO PREVENT AN IMMINENT AND SUBSTANTIAL THREAT OF INJURY TO PERSONS
23 OR DAMAGE TO PUBLIC OR PRIVATE PROPERTY OUTSIDE THE BLASTING SITE,
24 THE DEPARTMENT MAY ISSUE AN EMERGENCY ORDER WITHOUT A PUBLIC
25 HEARING REQUIRING AN OPERATOR TO TAKE ACTION NECESSARY TO ABATE OR
26 ELIMINATE THE THREAT, INCLUDING SUSPENSION OR MODIFICATION OF
27 BLASTING OPERATIONS AT THE MINING AREA. AN EMERGENCY ORDER SHALL

1 REMAIN IN EFFECT FOR NOT MORE THAN 21 DAYS.

2 SEC. 63909. A PERSON WHO IS AGGRIEVED BY AN ORDER, ACTION, OR
3 INACTION OF THE DEPARTMENT UNDER THIS PART MAY FILE A PETITION WITH
4 THE DEPARTMENT REQUESTING AN EVIDENTIARY HEARING OR MAY FILE A
5 PETITION FOR REVIEW WITH THE CIRCUIT COURT FOR THE COUNTY OF INGHAM
6 OR FOR THE COUNTY WHERE THE MINING AREA IS LOCATED.

7 SEC. 63911. THE DEPARTMENT SHALL PUBLISH NOTICE OF AN
8 EVIDENTIARY HEARING UNDER THIS PART IN A NEWSPAPER OF LOCAL
9 DISTRIBUTION IN THE AREA OF THE MINING OPERATION AT LEAST 10 DAYS
10 BEFORE THE HEARING.

11 SEC. 63913. (1) THE DEPARTMENT MAY REQUEST THE ATTORNEY
12 GENERAL TO COMMENCE A CIVIL ACTION FOR APPROPRIATE RELIEF,
13 INCLUDING A PERMANENT OR TEMPORARY INJUNCTION, FOR A VIOLATION OF
14 THIS PART OR AN ORDER ISSUED OR RULE PROMULGATED UNDER THIS PART.
15 AN ACTION UNDER THIS SUBSECTION MAY BE BROUGHT IN THE CIRCUIT COURT
16 FOR THE COUNTY OF INGHAM OR FOR THE COUNTY IN WHICH THE MINING
17 OPERATION IS LOCATED. THE COURT HAS JURISDICTION TO RESTRAIN THE
18 VIOLATION AND TO REQUIRE COMPLIANCE. IN ADDITION TO ANY OTHER
19 RELIEF GRANTED UNDER THIS SUBSECTION FOR A VIOLATION, THE COURT
20 SHALL IMPOSE A CIVIL FINE OF NOT LESS THAN \$1,500.00.

21 (2) A PERSON WHO INTENTIONALLY MAKES A FALSE STATEMENT,
22 REPRESENTATION, OR CERTIFICATION IN A RECORD OR REPORT REQUIRED
23 UNDER THIS PART IS GUILTY OF A FELONY AND MAY BE PUNISHED BY
24 IMPRISONMENT FOR NOT MORE THAN 2 YEARS AND SHALL BE FINED NOT LESS
25 THAN \$3,000.00.