

## AMEND CERTAIN NREPA PERMIT REQUIREMENTS

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**Senate Bill 839 as passed by the Senate**  
**Senate Bill 840 (S-1) as passed by the Senate**  
**Senate Bill 881 (S-1) as passed by the Senate**  
**Sponsor: Sen. Thomas Casperson**

Analysis available at  
<http://www.legislature.mi.gov>

**House Committee: Natural Resources**  
**Senate Committee: Natural Resources**

**Complete to 4-24-18**

### SUMMARY:

Senate Bills 839, 840, and 881 would amend the Natural Resources and Environmental Protection Act (NREPA) to revise certain practices when amending a mining permit, to add practices that do not require a permit, and to clarify exemptions. Each bill would take effect 90 days after enactment.

**Senate Bill 839** would amend Part 632, relating to nonferrous metallic mineral mining.

Currently, NREPA states that a mining permit *may* be amended as follows:

- The permittee (the individual submitting the permit) *may* submit to the Department of Environmental Quality (DEQ) a request to amend the mining permit to address anticipated changes in the mining operation.
- The DEQ *may* require a mining permit to be amended if it determines the terms and conditions of the permit are not providing protection to the environment, natural resources, or public health and safety.
- Within 30 days after receiving a request to amend a mining permit or upon making a determination that the amendment is necessary, the DEQ is required to determine whether the request constitutes a significant change from the original mining permit. If the DEQ determines that the amendment request does constitute a significant change, the DEQ *may* submit the amendment request to be reviewed as if it were a new mining permit application under Section 63205(4) to (9) of NREPA. If the DEQ determines that the amendment request does not constitute a significant change, the DEQ must approve the amendment within 14 days after publishing notice of its determination.

The bill would stipulate that a mining permit amendment can only be initiated either when the permittee submits a request or when the DEQ requires that a mining permit be amended. The bill also would add that in making its determination as to whether the amendment constitutes a significant change from the original permit, the DEQ must consider whether the change will result in environmental impacts that are materially increased or different from those addressed in the approved mining permit conditions, application, or any additional information forming the basis of the approved mining permit conditions.

Under the bill, if the DEQ determined that the request constitutes a significant change, it would have to do either of the following:

- Submit the request for amendment to be reviewed as if it were a new mining permit application under Section 63205(4) to (9) of NREPA. (Those provisions allow for the DEQ to approve or deny a permit after a public comment period.)
- Within 42 days after the determination that the amendment request constitutes a significant change from the conditions of the approved mining permit, hold a public meeting on the request. The DEQ would have to give notice of the meeting as provided under Section 63205(6) of NREPA.<sup>1</sup> The DEQ would also have to accept written public comments for 28 days after the public meeting. When the public comment period expires, the DEQ would have 14 days to grant or deny the request in writing.

Currently, the DEQ is required to state in a written report to the permittee the reasons for denial. The bill would remove this provision. (However, a written report for a denial is also required under Section 63205(9), as part of the process for denying a new mining permit application.)

Finally, the bill would add that a permittee may relocate, reconfigure, or modify surface or underground facilities, building, or equipment, *other than a tailings basin or a stockpile*, without obtaining an amendment to the permit, but only if *both* of the following apply:

- The relocation, reconfiguration, or modification takes place within the permitted mining area and does not require an amendment to any other permits issued by the DEQ.
- The permittee provides written notice to the DEQ at least 30 days before undertaking the relocation, reconfiguration, or modification.

MCL 324.63207

**Senate Bill 840** would amend Part 301, relating to inland lakes and streams.

Currently, a permit is not required under Part 301 for a variety of activities, including for a waste collection or treatment facility that is ordered to be constructed or is approved for construction under state or federal water pollution control law, if constructed in upland.

The bill would amend this provision so that a permit would not be required for *maintenance and operation* of a waste collection or treatment facility *either* ordered to be constructed or approved for *operation* under a state or a federal water pollution control law *and this Part*. (*Italics* denotes changes in wording proposed by the bill.)

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<sup>1</sup> “The department shall give notice of the public meeting not less than 14 or more than 28 days before the date of the public meeting. The notice shall specify the time and place of the public meeting, which shall be held in the county where the proposed mining operation is located, and shall include information on how to review a copy of the application. The notice shall be given in writing to the city, village, or township and the county where the proposed mining operation is to be located and to all affected federally recognized Indian tribes in this state. The notice shall also be given by publication in a newspaper of local distribution in the area where the proposed mining operation is to be located.”

For purposes of this provision, under the bill, *operation* would include dredging, filling, or construction and placement of structures in the waste collection or treatment facility in compliance with NREPA.

MCL 324.30103

**Senate Bill 881** would amend Part 31, relating to water resource protection.

Currently, Part 31 does not apply to copper or iron mining operations, whereby such operations result in the placement, removal, use, or processing of copper or iron mineral tailings or copper or iron mineral deposits from such operations being placed up in inland waters on bottomlands owned by or under the control of the mining company and only water which may contain a minimal amount of residue as determined by the DEQ being allowed to escape into public waters. Nor does it apply to the discharge of water from underground iron or copper mining operations subject to a determination by the DEQ.

The bill would amend this section to replace all references to “copper or iron” with “ferrous and nonferrous” to stay up-to-date with changes under Parts 631 (Ferrous Mineral Mining) and 632 (Nonferrous Metallic Mineral Mining).

The bill also would mandate that ferrous and nonferrous tailings and mineral deposits placed in inland waters owned by or under the control of the mineral operator, and discharge of water from underground mining operations, would not be subject to Part 31 *unless* there is to be a discharge of waste or waste effluent into waters of the state.

Finally, the bill would add that the mining exemption would not apply to inland waters owned by or under control of a ferrous or nonferrous mineral operator if there is an ***inland lake or stream*** (as defined in Section 30101) that flows both into and out from those inland waters directly into the waters of the state.

***Inland lake or stream*** means a natural or artificial lake, pond, or impoundment; a river, stream, or creek which may or may not be serving as a drain as defined by the Drain Code (MCL 280.1 to 280.630); or any other body of water that has definite banks, a bed, and visible evidence of a continued flow or continued occurrence of water, including the St. Marys, St. Clair, and Detroit Rivers. Inland lake or stream *does not include* the Great Lakes, Lake St. Clair, or a lake or pond that has a surface area of less than 5 acres.

MCL 324.3116

## **FISCAL IMPACT:**

### **SB 839 Mining permit process changes**

It is unclear whether the changes to the mining permitting process included in Senate Bill 839 would affect costs or revenues for the DEQ. The bill would not change current fee rate or alter initial eligibility requirements; it is difficult to determine whether changes in

process would have an effect on the number of permit applicants or the cost of permitting. The bill is unlikely to affect local government costs or revenues.

**SB 840 Waste collection or treatment facility permit requirements**

It is unclear whether the changes to the waste collection or treatment facility permit requirements included in Senate Bill 840 would affect costs or revenues for the DEQ. The bill would not change current fee rate or alter initial eligibility requirements; it is difficult to determine whether changes in process would have an effect on the number of permit applicants or the cost of permitting. The bill is unlikely to affect local government costs or revenues.

**SB 881 Ferrous and nonferrous mining operations**

Senate Bill 881 is unlikely to affect costs or revenues for the DEQ or local units of government.

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