



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

<b>2017 Senate Bill 395</b>	<b>Senate Amendments 1, 2, 3, 5, 6, and 7</b>
<i>Memo published: October 6, 2017</i>	<i>Contact: Anna Henning, Senior Staff Attorney Larry Konopacki, Principal Attorney</i>

### **2017 SENATE BILL 395**

2017 Senate Bill 395 makes a number of changes to laws relating to nonferrous metallic mineral prospecting and mining, as summarized below.

#### **Sulfide Ore Permitting Conditions**

The bill repeals a requirement under which applicants for a nonferrous mining approval must provide, and the Department of Natural Resources (DNR) must verify, information showing that a sulfide mining operation in the United States or Canada has operated for at least 10 years without polluting surface water or groundwater and that a sulfide mining operation in the United States or Canada has been closed for at least 10 years without polluting surface water or groundwater.

#### **Applicability of Groundwater Standards**

In the context of nonferrous mining or prospecting, the bill provides that groundwater contamination enforcement standards do not apply below the depth in the Precambrian bedrock below which the groundwater is not reasonably capable of being used for human consumption and is not hydrologically connected to other sources of groundwater that are suitable for human consumption. Under current law, groundwater standards apply from the land surface down through all saturated geological formations.

#### **Wetlands**

The bill eliminates special administrative code provisions applicable to impacts to wetlands caused by a nonferrous mining operation. Under the bill, generally applicable wetlands requirements under current law would be applicable to a mining site.

## **Bulk Sampling**

Under current law, a person may apply to the DNR for an approval to engage in exploration for, prospecting for, or mining of nonferrous metallic minerals. The bill creates a separate approval process for “bulk sampling” of nonferrous metallic minerals, defined to include excavating in a potential mining site by removing less than 10,000 tons of material to assess the material or gather data to support a mining application.

Under the bill, a person who intends to conduct bulk sampling may file a bulk sampling plan with the DNR and utilize a streamlined process for obtaining any approvals necessary for the activity. A person who does so is required to include specified information with the plan and file a bond in an amount determined by the DNR (but not less than \$5,000) to cover costs of conducting the revegetation plan that is required to be included in the bulk sampling plan.

The bill also provides that the DNR is not required to prepare an environmental impact statement (EIS) related to a bulk sampling application.

## **Mining Permit Application Timeline**

The bill makes various changes to the process for approval of nonferrous metallic mineral prospecting and mining permits, including changes related to pre-application data collection and the timeline under which consideration of a mining application must be conducted. The bill also requires the DNR to seek to enter into a memorandum of understanding (MOU) with the applicant, the U.S. Army Corps of Engineers, and other relevant federal agencies, which may include an agreement between the DNR and the applicant regarding alternative timelines for the permitting process.

Unless a different timeline is provided for under this MOU, the timeline for review of an application for a nonferrous prospecting or mining permit is as follows:

1. The DNR has 180 days after application submittal to provide comments and request additional information. If no additional information is requested, the DNR has 180 days to prepare a draft EIS, a draft prospecting or mining permit, and any other related draft approvals.
2. If DNR requests additional information under step 1, it has 90 days after the applicant submits additional information to again provide comments and request additional information.<sup>1</sup> If no additional information is requested, the DNR has 180 days to prepare a draft EIS, a draft prospecting or mining permit, and any other related draft approvals.

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<sup>1</sup> If the applicant makes a substantial modification to the mining or prospecting plan that significantly changes the information necessary to prepare the EIS or adequately review an application during this phase of the process, the DNR may re-start the review process (this may only be done one time).

3. If DNR requests this additional information under step 2, it has 180 days after the applicant submits additional information to prepare a draft EIS, a draft prospecting or mining permit, and any other related draft approvals.

### **High Capacity Well Approval**

Under current law, a nonferrous prospecting or mining permit applicant must obtain a high capacity well approval if the applicant will withdraw groundwater or dewater mines at a rate and capacity of more than 100,000 gallons each day. The DNR is prohibited from issuing this approval if the withdrawal or dewatering will result in the unreasonable detriment of public or private water supplies or the unreasonable detriment of public rights in the waters of the state. [s. 293.65 (3), Stats.] Under the bill, the DNR is authorized to impose conditions on such an approval to avoid these outcomes, including requiring that the applicant replace, increase, or temporarily augment waters of the state.

### **Hearing and Review Process**

Under current law, a “master hearing” is held after the DNR issues a final EIS, draft mining or prospecting permits, and any other draft approvals that are required for the prospecting or mining project. This master hearing includes both a contested case hearing, with testimony under oath and the opportunity for cross-examination, and a public informational hearing. After the master hearing, DNR issues its decision on the application and related approvals. [ss. 293.43, 293.45, and 293.49, Stats.]

Under the bill, the DNR holds a public informational hearing (not a contested case hearing) on the draft prospecting or mining permit, the draft EIS, and other necessary approvals. Following the DNR’s decision on whether to approve these permits and approvals, a person may request a contested case hearing if the person believes that he or she is aggrieved by the DNR’s decision. If a contested case hearing is requested and held, the bill requires the hearing examiner to issue a decision within 270 days after the DNR approves or denies the mining or prospecting permit. The hearing examiner may not issue an order prohibiting an activity that is authorized by the DNR decision being reviewed in the contested case hearing.

Under the bill, a person may petition for judicial review of the hearing examiner’s decision within 30 days of the decision in the court for the county in which the majority of the mining or prospecting site is located or in which the majority of the exploration or bulk sampling will occur.

The bill does not authorize a person to request a contested case hearing on a DNR decision relating to exploration or bulk sampling.

### **Fees**

The bill exempts a nonferrous metallic mining operation from specified solid waste disposal fees that would be required under current law.

### **Predictive Modeling**

Under the bill, if the DNR requires an applicant for a nonferrous mining permit to conduct engineering and hydrologic modeling to evaluate whether a waste site in the proposed mining operation will violate groundwater or surface water quality standards, the period of time to be examined may not extend longer than 250 years after closure of the mining waste site.

### **Financial Assurance Requirement**

Under current law contained in administrative code, an applicant for a nonferrous metallic mining permit must create and maintain an irrevocable trust, and maintain this trust in perpetuity, to ensure the availability of funds for preventative and remedial activities. [s. 132.085, Stats.] The bill eliminates this requirement and prohibits the DNR from imposing a financial assurance requirement other than as specified in statute. The bill does not eliminate other forms of financial assurance required under current law, such as requirements for insurance and financial requirements related to completion of the reclamation plan and long-term care of a waste facility.

### **SENATE AMENDMENT 1**

Senate Amendment 1 clarifies that judicial review is available to a person aggrieved by a DNR decision relating to nonferrous metallic mineral exploration, bulk sampling, prospecting, and mining. The amendment also clarifies that petitions for judicial review relating to all of these types of decisions must be brought in the county in which the majority of the proposed activities are to occur.

### **SENATE AMENDMENT 2**

Senate Amendment 2 provides 30 additional days, resulting in a total of 60 days, for a person to request a contested case hearing after the DNR issues its decision to approve or deny a nonferrous mining approval or related approval.

### **SENATE AMENDMENT 3**

Senate Amendment 3 requires a nonferrous mining operator to provide one of several specified forms of financial assurance, prior to beginning mining operations, to cover unforeseen remedial contingencies not otherwise covered by the reclamation bond and waste site long-term care bond, including for the provision of a replacement water supply if required under the bill. This amount of this financial assurance is equal to 10% of these other two bonds through the life of the mining operation. For the 40 years following the end of extraction activities at the mining site, the operator must maintain this bond in an amount equal to 10% of the amount of these two bonds at the time that the operator ceased extraction. The bond must be released no later than 40 years after the end of extraction activities.

### **SENATE AMENDMENT 5**

Under current law, the DNR must issue a nonferrous mining permit if it makes certain findings. Senate Amendment 5 requires the DNR to issue a mining permit if it makes all of the findings required under current law and, in addition, concludes that the technology that will be used at a proposed nonferrous mining operation is capable of resulting in compliance with all applicable air, groundwater, surface water, and solid and hazardous waste management laws and rules of the DNR.

### **SENATE AMENDMENT 6**

Under the bill, a person who wishes to engage in bulk sampling of nonferrous metallic minerals may choose whether to apply separately for any required approvals or to submit a bulk sampling plan with the DNR after which applications for any necessary approvals are combined into a streamlined approval process. No DNR approval of the applicant's bulk sampling plan is required and the DNR does not issue a separate approval for bulk sampling. Senate Amendment 6 requires anyone who wishes to engage in bulk sampling to submit a bulk sampling plan and to be issued a bulk sampling approval prior to commencing that activity.

### **SENATE AMENDMENT 7**

Senate Amendment 7 requires a nonferrous mining operator to provide proof of financial responsibility for the reasonably anticipated costs to be incurred during the period between 40 and 250 years after closure of the mining waste site to repair or replace any engineered cover systems or tailings water management control systems used at the mining site or mining waste site. This proof of financial responsibility must be provided at the time of closure of the mining waste site, in an amount to be calculated at the time that the nonferrous mining permit is approved. The DNR must base this amount on the net present value discounted at a rate of at least 5% per year. The amendment requires that the proof of financial responsibility be created in one of a listed number of forms, all of which are interest-bearing forms of security. The funds available may be used by the operator or the DNR to conduct the anticipated repairs or replacements and any remaining funds are to be returned to the operator.

### **BILL HISTORY**

Senate Amendments 1, 2, 3, and 7 were offered by Senator Tiffany and Senate Amendments 5 and 6 were offered by Senator Testin. On October 4, 2017, the Senate Committee on Sporting Heritage, Mining, and Forestry recommended the adoption of amendments 2 and 6 by votes of Ayes, 4; Noes, 0; and recommended adoption of amendments 1, 3, 5, and 7 and passage of the bill, as amended, by votes of Ayes, 3; Noes, 2.

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