



Legislative Fiscal Bureau

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May 27, 2015

Joint Committee on Finance

Paper #562

Mining Construction Fee (DOR -- Tax Administration)

CURRENT LAW

Under current law, Wisconsin imposes a net proceeds tax and certain fees on state metalliferous mining operations. Proceeds from the mining tax and mining-related fees are deposited into the Investment and Local Impact Fund (ILIF). The statutes also specify certain payments from the ILIF to municipalities and tribes that are affected by mining operations. The tax brackets for the net proceeds tax and the amounts of most of the mining-related fees and payments are indexed for inflation, based on annual changes in the gross national product deflator.

One of the mining-related fees is a one-time construction fee, which must be paid by each person constructing a metalliferous mine within 30 days after the beginning of construction. The fee is deposited into the ILIF and paid to each tribal community, county, city, town, and village that contains at least 15% of a minable ore body in respect to which construction has begun (construction period payment). The construction period payment is set by statute at \$100,000 per eligible recipient. The construction fee is imposed in an amount sufficient to make the construction period payments to all eligible recipients, and may be credited against the mine's future net proceeds tax payments.

Current law is unclear about whether the construction fee is indexed for inflation. The indexing statute states that the dollar amount in the construction fee statute is subject to indexing. However, the construction fee statute does not include a specific dollar amount. Instead, it refers to an amount sufficient to make the construction period payments in respect to the mining site. As noted, the construction period payment statute specifies the \$100,000 payment amount; however, it does not mention indexing. The indexing provision generally reflects the percentage change in the gross national product deflator from 1982 to the present year. If the construction period payment, and the construction fee, were subject to the indexing provision, the amount would be \$221,300 in 2014-15.

GOVERNOR

No provision.

DISCUSSION POINTS

1. During deliberations on mining legislation in the 2011-2012 and 2103-2014 legislative sessions, this office provided information on mining-related taxes and fees which assumed that the construction period payment and construction fee were subject to the indexing provisions. However, the Department of Revenue believes that the indexing requirement does not apply to the construction period payment or construction fee because the indexing statute refers to the dollar amount in the construction fee statute. As noted above, that statute does not include a dollar amount. It instead refers to the dollar amount in a separate statute setting forth the construction period payment.

2. In order to remove this ambiguity from the statutes, the Committee may wish to clarify whether or not the construction period payment and the construction fee are subject to indexing. As noted, application of the indexing provision would increase the amount of the fee and payment from \$100,000 per eligible recipient to \$221,300 per eligible recipient in 2014-15.

ALTERNATIVES

1. Specify that the mining construction period payment and construction fee are subject to the indexing provision.

2. Delete the reference to the construction fee under the indexing statute to clarify that the construction fee and construction period payment are not subject to indexing.

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