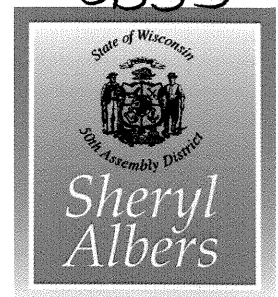


SB55b-pt 01

SB55

5



To: Senator Baumgardt
From: Representative Sheryl K. Albers *SA*

Date: June 1, 2001
Re: Motion on soil scrapes

Senator Baumgardt:

Please find the attached motion which came up under DNR. The legislation drafted will impose an acreage size limit of 3@ per 40@ parcel or sized smaller.

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This Roll Call is unofficial.
The vote recorded by the Committee Clerk is the vote of record.

Date:	5/24/01
Bill:	SB-55.
Agency:	Natural Resources
Abbreviation:	DNR
Topic:	Nonmetallic mining reclamation provisions.
Motion By:	Albers
Second By:	Gard
To:	Adopt Motion 397.
Vote:	WITHDRAWN.
Link To:	Motion 397.
Roll Call:	

NATURAL RESOURCES -- AIR, WASTE AND CONTAMINATED LAND

Nonmetallic Mining Reclamation Provisions

Motion:

Move to make the following changes related to nonmetallic mining reclamation provisions and fees:

1. Require DNR to charge an annual fee of \$300 for a mine size of one to five unreclaimed acres for annual fees due to DNR on or before December 31, 2003, in counties where DNR is the regulatory authority for nonmetallic mining reclamation programs.
2. Require DNR to charge a \$100 annual fee for a mine size of one to five unreclaimed acres in lieu of the \$300 fee, if the land is approved for a wildlife enhancement project, for annual fees due on or before December 31, 2003, in counties where DNR is the regulatory authority.
3. Exempt removal of topsoil from the nonmetallic mining reclamation requirements and nonmetallic mining reclamation fees when the nonmetallic mining activity is limited solely to removal of the topsoil. Specify that pond soil, meaning any soil taken from underneath navigable water, would not be considered topsoil removal for purposes of the exemption from the reclamation requirements and reclamation fees.
4. Define "topsoil" as the surface layer of soil which is generally more fertile than the underlying soil layers, which is the natural medium for plant growth and which can provide the plant growth, soil stability and other attributes necessary to meet the standards approved in the reclamation plan.

Note:

The Department of Natural Resources administers nonmetallic mining reclamation requirements included in Chapter 295 of the statutes. DNR promulgated administrative rules in chapter NR 135, effective December 1, 2000, to implement the provisions. Counties are required to enact and administer a nonmetallic mining reclamation ordinance that complies with the administrative rules and that becomes effective June 1, 2001 (six months after December 1, 2000). A municipality may, beginning June 1, 2001, administer and enforce a nonmetallic mining

reclamation program if it adopts a reclamation ordinance that complies with the administrative rules. DNR shall administer and enforce a nonmetallic mining reclamation in counties that do not adopt nonmetallic mining reclamation ordinances.

A county, city, village or town with a nonmetallic mining reclamation ordinance shall collect fees that equal the cost of: (a) the examination and approval of nonmetallic mining reclamation plans; (b) the inspection of nonmetallic mining reclamation; and (c) DNR's share of fees equal to the Department's statewide cost to inspect, enforce, consult with and audit the regulatory authority under the statute and rule. The local share of the fees collected by the local government is based on the unreclaimed acreage of each nonmetallic mining site in the jurisdiction. The Department's share of the annual fees collected by the county and local regulatory authorities is specified in NR 135.39 (3), Table 1, and equals: (a) \$30 if the mine size in unreclaimed acres is one to five acres; (b) \$60 for six to 10 acres; (c) \$90 for 11 to 15 acres; (d) \$120 for 16 to 25 acres; (e) \$140 for 26 to 50 acres; and (f) \$150 for 51 acres or larger.

If county or municipality does not adopt a nonmetallic mining reclamation ordinance, DNR will be the regulatory authority and will charge annual fees according to NR 135.39 (4) (c), Table 2, that equal, for fees due on or before December 31, 2003 (the annual fee paid in 2001 will cover both calendar years 2001 and 2002): (a) \$450 if the mine size in unreclaimed acres is one to five acres; (b) \$600 for six to 10 acres; (c) \$750 for 11 to 15 acres; (d) \$1,000 for 16 to 25 acres; (e) \$1,100 for 26 to 50 acres; and (f) \$1,250 for 51 acres or larger.

The motion would statutorily establish the fee currently included in NR 135.39 (4)(c), Table 2, as \$300 instead of \$450 if the mine size in unreclaimed acres is one to five acres. The fee would be \$100 instead of the current \$450 if the land is approved for a wildlife enhancement project. DNR estimates that approximately five counties statewide will not adopt a conforming nonmetallic mining reclamation ordinance, and that DNR will be the regulatory authority in those five counties. DNR will determine which counties have not adopted a conforming nonmetallic mining reclamation ordinance after the June 1, 2001, adoption deadline. There would be an estimated 85 nonmetallic mines with one to five acres in the five counties. The estimated revenue reduction from the \$150 annual fee reduction would be \$12,750 in each of 2001-02 (fees collected for 2001 and 2002) and 2002-03 (fees collected for 2003). The fees are deposited in the environmental management account of the segregated environmental fund. Under the bill, the environmental management account would have an estimated June 30, 2003, balance of \$165,000. The motion would reduce the account balance to \$139,500.

Data is not available to estimate how many of the 85 one to five acre mines in the estimated five counties statewide that would be subject to DNR as the regulatory authority, would be approved for a wildlife enhancement project and would pay an annual fee of \$100 on or before December 31, 2003, instead of the current \$450 or the \$300 in the motion or one to five acre mines that are not approved for a wildlife enhancement project. Local governments, or DNR if the Department is the regulatory authority, would approve nonmetallic mining reclamation plans for post-mining land uses at existing and proposed nonmetallic mines during the next few years. Any fees generated under the motion would be deposited in the environmental fund.

Currently, a nonmetallic mining reclamation ordinance and standards do not apply to the following activities: (a) excavations or grading by a person solely for domestic or farm use at his or her residence or farm; (b) excavation or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility or any other transportation facility if the excavation or grading is within the property boundaries of the transportation facility; (c) grading conducted for preparing a construction site or restoring land following a flood or natural disaster; (d) excavations for building construction purposes; (e) nonmetallic mining sites of less than one acre; (f) any mining operation, the reclamation of which is required in a permit obtained under chapter 293, the metallic mining statute; (g) certain activities required to prepare, operate or close a solid waste disposal facility or hazardous waste disposal facility; (h) dredging for navigational purposes, to construct or maintain farm drainage ditches and for the remediation of environmental contamination and the disposal of spoils from that dredging; and (i) removal of material from the bed of Lake Michigan or Lake Superior by a public utility pursuant to a permit under s. 30.21.

Currently, NR 135 defines "topsoil" as the surface layer of soil which is generally more fertile than the underlying soil layers, which is the natural medium for plant growth and which can provide the plant growth, soil stability and other attributes necessary to meet the success standards approved in the reclamation plan. NR 135 defines "topsoil substitute material" as soil or other unconsolidated material either used alone or mixed with other beneficial materials and which can provide the plant growth, site stability and other attributes necessary to meet the success standards approved in the reclamation plan. NR 135 includes requirements for management of topsoil as specified in the reclamation plan, including removal prior to mining, storage and redistribution after mining activities.

The nonmetallic mining statutes do not define topsoil. The motion would include the NR 135 definition of topsoil.

It is unknown how many nonmetallic mines have activities that only involve removal of topsoil. Under the motion, such mines would not be subject to the nonmetallic mining reclamation requirements or fees. There would be an unknown reduction in environmental fund fee revenues due to the exemption. Removal of pond soil would not be considered removal of topsoil for purposes of the proposed exemption. Pond soil would mean any soil removed from underneath navigable water.

[Change to Base: - \$25,500 SEG-REV environmental fund]

[Change to Bill: - \$25,500 SEG-REV environmental fund]