# WISCONSIN LEGISLATIVE COUNCIL
# AMENDMENT MEMO

| 2011 Assembly Bill 426 | Assembly Substitute Amendment 1 |
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| *Memo published*: **January 25, 2012** | *Contact*: **Anna Henning, Staff Attorney (266-0292)** |

***2011 Assembly Bill 426*** exempts the mining of ferrous (i.e., iron ore) minerals from the state's current metallic mineral mining law. It creates a separate, expedited process and modified standards governing the issuance of ferrous mining permits and related environmental and natural resource approvals. ***Assembly Substitute Amendment 1*** to the bill retains most of the provisions in the bill, but it makes the changes described below. For a detailed description of the bill, as recommended for amendment and passage by the committee, see Legislative Council information memoranda:

- IM-2012-02 http://legis.wisconsin.gov/lc/publications/im/IM2012_02.pdf;
- IM-2012-03 http://legis.wisconsin.gov/lc/publications/im/IM2012_03.pdf; and
- IM-2012-04 http://legis.wisconsin.gov/lc/publications/im/IM2012_04.pdf.

## *PERMIT PROCEDURE FOR CONSTRUCTION OF TRANSMISSION LINES AND PUBLIC UTILITIES*

The construction of high-voltage transmission lines, large electric generating facilities, or specified facilities or equipment for electric, natural gas, or water utilities may require approvals from both the Department of Natural Resources (DNR) and the Public Service Commission (PSC). Under ***current law***, a person who proposes to construct such a project must submit a single permit application to the DNR in lieu of multiple permit applications that might otherwise be required. The permit application must be submitted at the same time the person files an application with the PSC. The DNR must participate in PSC investigations or proceedings with regard to the project. In addition, the DNR must take final action on an application with 30 days of the final action by the PSC. [s. 30.025, Stats.] ***The bill*** does not modify these procedures.

Under ***the substitute amendment***, a person who proposes to construct such a project may, but is not required to, submit a combined application for the various DNR permits that may be required. If the person elects to submit the combined application, the procedures described above apply. If the person

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does not elect to submit a combined application, then PSC approval and DNR permits may be processed separately.

## ***DISTRIBUTION OF MINING PERMIT APPLICATION TO TRIBAL GOVERNING BODIES***

Under ***the bill***, an applicant for a ferrous mining permit must distribute copies of the application for the permit to the clerk of any city, village, town, or county with zoning jurisdiction over the proposed site, to the clerk of any city, village, town, or county within whose boundaries any portion of the proposed mining site is located, and to the main public library of each city, village, town, or county with zoning jurisdiction over the proposed site or within whose boundaries any portion of the proposed site is located.

Under the ***substitute amendment***, in addition to the entities to which notice must be provided under the bill, an applicant for a ferrous mining permit must distribute a copy of the application to the elected governing body of any federally recognized American Indian tribe or band that has a reservation located within 20 miles of the proposed mining site.

## ***REIMBURSEMENT OF DNR COSTS***

***The bill*** requires an applicant for a ferrous mining permit to reimburse the DNR for costs related to the evaluation of a mining permit application and preparation of an environmental impact statement. However, the bill caps costs to be paid by an applicant at $1.1 million. The bill provides that an amount no greater than $1.1 million shall be paid according to the following fee schedule. First, $100,000 must be paid with the submission of a bulk sampling plan or a notice of intent to file a mining permit, whichever occurs earlier. Second, an additional fee of $250,000 must be paid when the DNR provides cost information demonstrating that the initial $100,000 has been fully allocated against actual costs. Three additional fees of $250,000 each must similarly be paid after the DNR demonstrates that prior fees have been fully allocated against actual costs.

***The substitute amendment*** provides for a similar fee schedule as is provided in the bill, but it caps the costs to be paid by an applicant at $2 million, rather than $1.1 million.

## ***TAXES AND FEES APPLICABLE TO FERROUS MINING OPERATIONS***

Under ***current law***, several unique taxes and fees apply to a metallic mining operation, including a tax on the net proceeds resulting from the extraction of metallic minerals; a series of up to three $50,000 fees used to offset costs incurred by local governments in negotiating agreements with a potential mining operator; and a construction fee used to pay one-time construction payments to local governments in the area where construction has begun for a metallic mining operation. [ss. 70.375 and 70.395 (2) (dc) and (dg), Stats.]

***The bill*** does not include changes to definitions and cross-references that appear necessary in order to make the special tax, fees, and payments relating to metallic mineral mining operations applicable to ferrous mining operations. ***The substitute amendment*** makes changes to definitions and cross-references to make these taxes, fees, and payments applicable to ferrous mining operations.

## ***DISTRIBUTION OF NET PROCEEDS OCCUPATION TAX REVENUE***

A net proceeds occupation tax is imposed on income, after specified deductions, from the sale of metallic minerals extracted in the state. Under ***the bill***, for ferrous mines, 50% of the revenue from the tax must be transferred to the state's general fund, and 50% must be transferred to an investment and local impact fund, a fund from which payments are made to local governments in areas impacted by metallic mining. Under ***the substitute amendment***, 40% of such revenues must be transferred to the state's general fund, and 60% must be transferred to the investment and local impact fund.

## ***MITIGATION OF IMPACTS TO WETLANDS***

Any proposal to fill or dredge a wetland in Wisconsin requires a "water quality certification" from the state. Mitigation of wetlands impacts may not be considered as part of an approval unless all practicable measures have first been taken to avoid and minimize adverse impacts that a proposed project may have on wetlands.

***The bill*** generally requires the DNR to consider mitigation as part of a water quality certification decision. Under the bill, any significant adverse impacts to wetlands that remain after impacts have been minimized are subject to a "compensation and mitigation program" submitted by an applicant for a water quality certification. The bill authorizes mitigation to occur off-site if: on-site mitigation is not practicable; off-site mitigation is ecologically preferable; or there is insufficient wetland acreage on-site. Among other activities, such mitigation may include purchases of credits from a mitigation bank located anywhere in the state.

***The substitute amendment*** generally retains the process created for wetlands mitigation under the bill. However, under the substitute amendment, an applicant for a water quality certification, in preparing a compensation and mitigation program, must identify and consider compensation and mitigation that could be conducted within the same watershed in which the mining site is located.

## ***GREAT LAKES COMPACT***

The Great Lakes-St. Lawrence River Basin Water Resources Compact ("Great Lakes Compact") is an agreement ratified by eight Great Lakes states, including Wisconsin. The individual member states have enacted legislation to implement the terms of the Great Lakes Compact, which addresses the conservation of water within the Great Lakes Basin.

Under ***the bill***, an applicant for a ferrous mining permit is not required to pay any application or filing fee for any approval other than a mining permit. This exemption includes approvals required under the Great Lakes Compact. In addition, the bill specifies that if there is a conflict between the ferrous mining law created under the bill and the statutes that implement the Great Lakes Compact, the ferrous mining law controls.

Under the ***substitute amendment***, an applicant for a ferrous mining permit is required to pay the application fee associated with an approval under the Great Lakes Compact law. In addition, the bill specifies that, with the exception of the procedural process created under the bill for approvals relating to a ferrous mining permit, the Great Lakes Compact law controls over the ferrous mining law in the event of a conflict.

## ***WATER WITHDRAWAL PERMITS***

DNR approval is required to withdrawal large quantities of surface or groundwater in the state. Under ***the bill***, the DNR generally must issue a mining water withdrawal permit for a ferrous mine if the withdrawal or use of the surface water or groundwater satisfies all of the following requirements:

- The proposed withdrawal and uses of the water are substantially consistent with the protection of public health, safety, and welfare and will not be significantly detrimental to the public interest.

- The proposed withdrawal and uses of the water will not have a significant adverse impact on the environment and ecosystem of the Great Lakes Basin or the Upper Mississippi River Basin.

- The proposed withdrawal and use of the water will not be significantly detrimental to the quantity and quality of the waters of the state.

- The proposed withdrawal and use of the water will not significantly impair the rights of riparian owners or the applicant obtains the consent of the riparian owners.

- The proposed withdrawal and use of the water will not result in significant injury to public rights in navigable waters.

- If the withdrawal or the use of the water will result in an interbasin diversion, relevant statutory requirements are satisfied.

- The proposed withdrawal or use of the water will comply with any requirements imposed by the DNR to offset significant impacts to public or private water supplies.

In addition, an applicant for a mining water withdrawal permit must submit a plan containing proposed conservation measures to meet the standards listed above. The DNR may require one or more specific conservation measures to be included in the plan. If the DNR finds that the standards above will be satisfied through the implementation of some or all of the conservation measures contained in the plan, it must issue the water withdrawal permit.

Also, under the bill, if the DNR finds that the applicant cannot meet all of the standards listed above, the department must nevertheless issue the water withdrawal permit if it determines that the public benefits resulting from the mining operation exceed any injury to public rights and interests in a body of water. In making such determinations, the bill requires the DNR to recognize that the withdrawal and use of the waters of the state in connection with mining is in the public's interest and welfare and fulfills a public purpose. The DNR must also consider the following factors in making the determination:

- The extent to which the public rights in a navigable body of water, and its related environment, may be substantially and irreparably injured by the proposed withdrawal or use.

- Public benefits that may be provided by increased employment, economic activity, and tax revenues from the mining operation.

- The direct and indirect social benefits and costs that will result from the proposed mining operation.

- The rights of riparian owners or other competing users to the water that will be subject to the permit.

- The extent to which any impacts from mining or bulk sampling will be temporary.

The bill also authorizes the DNR to require a permit applicant to offset a significant impact to a public or private water supply. Finally, the bill authorizes the DNR to impose specified reasonable additional permit conditions, provided that the conditions relate to specified issues and do not interfere with the mining operation or bulk sampling or limit the amount of water to be used for the mining operation or bulk sampling.

***The substitute amendment*** modifies the structure created by the bill for water withdrawal permits. It retains the general standards governing issuance of a water withdrawal permit in connection with a ferrous mining operation. However, rather than require the that the DNR "must nevertheless issue" a water withdrawal permit if the withdrawal cannot meet the general standards but determines that public benefits exceed any injury to public rights and interests in a body of water, under the substitute amendment, the DNR must "consider" that question *as part of* its determination of a proposed withdrawal's compliance with the general standards created under the bill.

## ***CLAIMS FOR DAMAGES RESULTING FROM MINING***

Under ***current law***, a person may file a claim with the Department of Safety and Professional Services (DSPS) for mining-related injuries, defined to mean death or injury to a person or property caused by environmental pollution from emissions, seepages, leakages, or other discharges from mine excavations or mining waste, or substantial surface subsidence from mine excavations. If the claim is not settled between the parties, the DSPS holds an adjudicatory hearing and awards damages to the claimant, not to exceed $150,000, if the claimant demonstrates that he or she has incurred mining-related injuries. These damages are generally awarded without regard to fault. The state may be able to recoup funds from the mining company as part of a civil action against the mining company. [s. 107.31, Stats.] Under ***the bill***, this claim system is not applicable to injuries caused by ferrous mining. ***The substitute amendment*** retains current law with regard to this claim system as applied to ferrous mining.

## ***LEGISLATIVE HISTORY***

2011 Assembly Bill 426 was introduced by the Assembly Committee on Jobs, Economy, and Small Business on December 14, 2011. On January 24, 2012, the committee voted to recommend adoption of Assembly Substitute Amendment 1 to the bill by a vote of Ayes, 9; Noes, 5. On the same day, the committee voted to recommend passage of the bill, as amended, also by a vote of Ayes, 9; Noes, 5.

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