

Fiscal Estimate - 2017 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 17-2652/1	Introduction Number SB-395
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Description
 the regulation of nonferrous metallic mining, prospecting, exploration, and bulk sampling, repealing administrative rules relating to wetlands, granting rule-making authority, and making an appropriation

Fiscal Effect

State:

<input type="checkbox"/> No State Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input checked="" type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Increase Existing Appropriations		<input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Decrease Existing Appropriations		
<input type="checkbox"/> Create New Appropriations		

Local:

<input type="checkbox"/> No Local Government Costs		
<input checked="" type="checkbox"/> Indeterminate		
1. <input type="checkbox"/> Increase Costs	3. <input type="checkbox"/> Increase Revenue	5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
2. <input type="checkbox"/> Decrease Costs	4. <input type="checkbox"/> Decrease Revenue	
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

Fund Sources Affected	Affected Ch. 20 Appropriations
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	

Agency/Prepared By	Authorized Signature	Date
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Fiscal Estimate Narratives

DNR 9/6/2017

LRB Number	17-2652/1	Introduction Number	SB-395	Estimate Type	Original
Description the regulation of nonferrous metallic mining, prospecting, exploration, and bulk sampling, repealing administrative rules relating to wetlands, granting rule-making authority, and making an appropriation					

Assumptions Used in Arriving at Fiscal Estimate

The bill makes changes to how the Department of Natural Resources (DNR) regulates mining for non-ferrous metallic minerals.

Given the variety of physical/geographical circumstances, the unknown number of applications and the complexity of regulatory assumptions surrounding any potential mining project that could be submitted for DNR review, the Department characterizes the fiscal impact of the bill as indeterminate. This analysis elaborates on a variety of the factors that led the Department to this conclusion.

"Moratorium" on Permits for Mining Sulfide Ore Bodies

Current law prohibits the Department from issuing a permit for mining a sulfide ore body until the applicant submits and the department verifies that a mining operation with the potential to generate acid drainage in the United States or Canada has operated for ten years without a violation of environmental law and without causing significant environmental pollution of surface or groundwater from acid drainage or from the release of heavy metals. In addition, it must be shown that a mining operation has been closed for ten years without a violation of environmental law and without causing significant environmental pollution of groundwater or surface water from acid drainage or from the release of heavy metals. Current law provisions do not focus on the site-specific characteristics of a proposed mine site in Wisconsin. Each mining proposal and mine site must be evaluated based on site-specific characteristics. Because of the differences in geology and hydrogeology in different areas of North America as compared to Wisconsin, it is very difficult to draw conclusions about a proposed mine in Wisconsin based on other mining operations. Removing these "moratorium" provisions may result in less staff time needed to review and consider the materials that would currently be needed to satisfy the provision. Lacking any information on what mine or mines an applicant might select and the quality of data available for those mines, it is not possible to determine how much staff time would have been required to consider the data, to make the legal determination, and to address any challenges to such a determination.

Bulk Sampling

The bill includes provisions similar to those for ferrous mining that allow bulk sampling. Bulk sampling is defined as the removal of less than 10,000 tons of material to assess the quality and quantity of a mineral deposit and to collect and analyze data to prepare an application for a prospecting or mining permit. The bulk sampling provisions in the bill give applicants an optional step between exploration and a prospecting or mining permit application to learn more about an ore body. As is required for ferrous mining, the bill requires that bulk sampling activity must be conducted at locations that result in the fewest overall adverse environmental impacts. Similar to the ferrous mining law, the bill also requires an applicant to obtain all necessary approvals (for example, stormwater and wetland permits) and post a bond, conditioned on the successful completion of the requirements for bulk sampling, before bulk sampling can take place.

Given the variety of physical/geographical circumstances, the unknown number of applications and the complexity of regulatory assumptions surrounding any potential mining project that could be submitted for DNR review, the Department characterizes the fiscal impact of the bill as indeterminate.

Permitting Process

The bill makes changes in the process for permitting a nonferrous mining operation, including the addition of specific timeframes for Department actions and a change in the format of the hearing process. The bill allows an applicant to begin collecting data that would be used to prepare a mining permit application or an environmental impact report prior to filing a notice of intent to file a mining or prospecting permit

application. The bill permits (but does not require) the submission of information to the Department on the methodology that is intended to be used, for review and comment by the Department. The bill allows the Department to assess a fee to cover DNR's costs in reviewing the proposed methodologies. Similar to the ferrous mining law, the bill contains timeframes and requirements for the Department to provide information after a notice of intent is filed regarding the type of information that should be included in an environmental impact report and the requirements for the approvals relating to the proposed prospecting or mining project. The bill also includes deadlines for Department review of a mining or prospecting permit application and the information provided by an applicant in the environmental impact report.

Given the variety of physical/geographical circumstances, the unknown number of applications and the complexity of regulatory assumptions surrounding any potential mining project that could be submitted for DNR review, the Department characterizes the fiscal impact of the timelines in the bill as indeterminate.

Master hearing

The bill replaces the "master hearing" process (which included a contested case hearing prior to the issuance of any permitting decisions) with a public informational hearing. The public informational hearing process is commonly used by the Department for permits, approvals and Environmental Impact Statements (EIS).

Prior to the public informational hearing, the Department is required to provide public access to the applications, draft permits and the draft EIS for review and comment. The bill includes a 45 day public comment period.

The bill provides an opportunity for a contested case hearing on the Department's decision related to the EIS or any approval related to the prospecting or mining operation. The bill also provides an opportunity for judicial review of any decision in a contested case hearing or any Department decision relating to nonferrous mining, prospecting, exploration or bulk sampling. As with ferrous mining, a petition for judicial review must be brought in the circuit court for the county in which the majority of the mining activity will occur.

Given the variety of physical/geographical circumstances, the unknown number of applications and the complexity of regulatory assumptions, and the unknown issues that may give rise to legal challenge surrounding any potential mining project that could be submitted for DNR review, the Department characterizes the fiscal impact of the format and timing of the contested case hearings as indeterminate. Moving the contested case hearing aspects to later in the process may involve the same amount of staff resources for preparation as the process under current law.

Groundwater modelling changes

The bill proposes to modify certain provisions relating to modeling for a waste site, the vertical distance (depth) used to determine compliance with groundwater standards. The determination of the depth in the Precambrian bedrock below which the groundwater is not reasonably capable of being used or made suitable for human consumption and is not hydrologically connected to other sources of groundwater that are suitable for human consumption, is a complicated task. The depth can be highly variable due to a number of factors. The age and type rock are factors to consider. The stresses applied to the rock by tectonic activity and the resulting structures all contribute to weathering profiles and depths of groundwater circulation. In order to assess the depth the department would need to: evaluate data submitted by the applicant and review existing water use and well construction information from the area; evaluate the Rock Quality Designation (RQD) of the country rock hosting the ore deposit as well as the deposit itself; assess water quality from various depths in the bedrock system especially upgradient from the ore body; conduct downhole thermal data through logging or Digital Temperature Sensing (DTS) surveys of deep exploration holes; assess neutron logs to evaluate the porosity of the rock at depth.

DNR is able to absorb this within its existing budget.

Assessment of wetland impacts

The bill repeals the provisions in the Department's nonferrous mining regulations that relate to wetland impacts (NR 132). As a result of the repeal, the provisions applicable to all other wetland permits under s. 281.36 will apply to nonferrous mining activities. Given the variety of physical/geographical circumstances, the unknown number of applications and the complexity of regulatory assumptions surrounding any potential mining project that could be submitted for DNR review, the Department characterizes the fiscal

impact of the bill as indeterminate. While it is not possible to determine the amount of staff work needed to address wetland permitting factors, the changes from the process established in NR 132 to the reliance on the current process for all other wetland permits established in 281.36 would likely result in similar staffing resource needs.

Solid waste disposal fees

The bill exempts nonferrous metallic mining from certain solid waste disposal fees – these fees include solid waste review and license fees, tonnage fees, and the recycling fee. Current law includes: 289.63 (4): Ground water and well compensation fees: \$0.01/ton; 289.64 (3): Solid waste facility siting board fee: \$0.007/ton; and 289.67 (1) (d): Environmental repair fee and surcharge” \$0.01/ton. Revenue amounts would be directly related to volume of mining waste generated and disposed under a mining permit. Under the bill, the operator of a mining waste site must continue to pay the groundwater fee, the environmental repair fee and surcharge and the solid waste facility siting board fee.

The bill eliminates the ability of the Department to collect environmental permit fees authorized by other statutes during the mine permitting process. Rather than collect individual fees, the bill authorizes recovery of the department’s actual costs from the mining applicant.

Long-Range Fiscal Implications