



Legislative Fiscal Bureau

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November 10, 2003

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 411: Exemption from Requirements for Nonmetallic Mining Reclamation

Assembly Bill 411 would exempt from nonmetallic mining reclamation requirements the removal of soils for the purpose of creating a pond or wetland that has an area of three acres or less. AB 411 was introduced on June 12, 2003. On October 15, 2003, the Assembly Committee on Natural Resources recommended adoption of Assembly Amendment 1 by a vote of 8-2, and recommended passage as amended by a vote of 7-3. On October 27, 2003, the Assembly referred the bill to the Joint Committee on Finance.

SUMMARY OF BILL AS AMENDED

Assembly Bill 411 would exempt from nonmetallic mining reclamation requirements the removal of soils for the purpose of creating a pond or wetland that has an area of three acres or less. Assembly Amendment 1 adds the following three conditions that must be met in order for the exemption to apply:

1. The person intending to create the pond or wetland would be required to notify county land conservation personnel for the county in which the pond or wetland would be located of the person's intent to create a pond or wetland under the provision.
2. The person would be required to complete the creation of the pond or wetland no more than 18 months after providing the notification above.
3. The person could stockpile the materials removed in the creation of the pond or wetland on the site for no more than 12 months, except that the person may stockpile the materials

for up to two additional periods of up to 12 months each, if the person obtains the approval of the county land conservation personnel and complies with any requirements imposed by county land conservation personnel with regard to sloping and seeding the stockpile to limit runoff into water bodies.

Currently, counties are required to administer a nonmetallic mining reclamation program that complies with Department of Natural Resources (DNR) administrative rules in chapter NR 135, and that includes permit requirements, requirements for fees, requirements for reclamation plans, and requirements for proof of financial responsibility for reclaiming nonmetallic mining sites. If a county does not administer a program that complies with the DNR rules, DNR administers the nonmetallic mining reclamation program in the county. Currently, all counties (except Milwaukee) and approximately 25 cities, villages or towns administer nonmetallic mining reclamation programs.

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, relating to metallic mining; (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 (generally relating to water intake and harbor facilities).

FISCAL EFFECT

A county, city, village or town with a nonmetallic mining reclamation ordinance is required to 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. The fees are deposited in the environmental management account of the segregated environmental fund. In 2002-03, DNR

received nonmetallic mining fees totaling \$162,600 from local governments that administer nonmetallic mining reclamation ordinances.

DNR estimates that the original bill would result in a loss of approximately \$11,200 annually in state nonmetallic mining fee revenues to the environmental management account. The Department's estimate assumes there would be an average of approximately five new exemptions annually in each of 70 counties (excluding Menominee and Milwaukee), plus one exemption annually in each of 25 administering towns, villages or cities. This would result in a total of approximately 375 exemptions annually that would not be subject to the \$30 fee to be paid to DNR for unreclaimed acreage of one to five acres ($375 \times \$30 \text{ fee} = \$11,250$). DNR's fiscal estimate does not provide information about data used to determine the estimated number of exemptions.

DNR also estimates that counties and local governments that administer the nonmetallic mining reclamation programs would also experience a decline in local revenues totaling approximately \$56,200 statewide. This would be based on an estimated 375 exemptions statewide annually, with a local fee decrease of approximately \$150 per exemption under the bill. This would include average lost revenues of approximately \$750 per year per each of 70 administering counties (five exemptions \times \$150 fee loss per exemption) or \$150 per administering city, village or town (one exemption in each of 25 local governments). Local government regulatory staff may still need to visit the site to verify eligibility for the acreage-based exemption, but would not be able to recover the associated costs by charging nonmetallic mining reclamation program fees for such sites. Similarly, under current law, local government staff may need to make site visits to verify eligibility for current exemptions.

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