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**WISCONSIN LEGISLATIVE COUNCIL  
INFORMATION MEMORANDUM**

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**2011 Assembly Bill 426, Relating to the Regulation of Ferrous Mining, as Recommended for Passage: Changes to the Permitting Process for Exploration, Prospecting, and Mining**

2011 Assembly Bill 426, relating to the regulation of ferrous (i.e., iron ore) mining, 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 passage of the bill, as amended by Assembly Substitute Amendment 1 to the bill. The bill exempts the mining of ferrous minerals from the current state metallic mineral mining law and creates an expedited process and modified standards to facilitate permits for ferrous mining in the state.

This memorandum describes the bill, as recommended for amendment and passage by the committee (“the bill”). Specifically, it describes changes made by the bill to the process for obtaining Department of Natural Resources (DNR) approval for ferrous mining activities, namely exploration, prospecting (also called “bulk sampling”), and mining. Before conducting ferrous mining, a mine operator may also be required to obtain permits and approvals under various state and federal laws for environmental and natural resource impacts related to mining. Changes made by the bill to those related environmental and natural resource laws are discussed in a separate memorandum. A third memorandum discusses changes made by the bill to the enforcement of a ferrous mining permit and the taxation of ferrous mining activities.

Under current law, DNR authorization is required before a person may engage in any of three levels of activity related to mining metallic<sup>1</sup> minerals: exploration, prospecting, and mining. Exploration involves drilling holes not more than 18 inches in diameter to examine geologic features. Prospecting involves more extensive examination of an area, including the collection of ore samples by means such as excavating, trenching, and construction of ramps and tunnels, but not including activities intended for and capable of commercial exploitation of an ore body. Mining refers to the activities conducted in connection with extracting minerals for commercial purposes, including the extraction of minerals and the various infrastructure and waste processing activities required to support the extraction. To date, the DNR has approved only one metallic mining operation under the existing metallic mining statutes—the Flambeau Mine located in Rusk County. A few other mining operations have been proposed, but the proposals were abandoned.

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<sup>1</sup> The mining of nonmetallic materials, such as sand and gravel, is governed under a separate statute.

Under current law, the DNR may issue a metallic mining permit following a multi-stage process involving public hearings, preparation and public review of an environmental impact statement, and the approval of various state and federal permits and approvals relating to environmental and natural resources impacts resulting from mining and activities secondary to mining. Unlike some states' laws, Wisconsin's mining law generally does not distinguish between the mining of ferrous and nonferrous minerals.<sup>2</sup> The bill creates such a distinction. It creates a separate, expedited process governing the issuance of permits and approvals for ferrous mining activities.

Examples of key changes made by the bill to the permitting process include a 360-day deadline for DNR approval of ferrous mining permits and all related environmental approvals, elimination of contested case hearings relating to prospecting and mining permits, and an expedited process for prospecting for ferrous minerals.

### **EXPLORATION LICENSE**

Under **current law**, the timeline and application requirements for a license to engage in exploration of a potential mining site are established by administrative rule and application procedures developed by the DNR. In contrast, **the bill** establishes the procedure and detailed application components for obtaining a ferrous minerals exploration license by statute.

#### **APPLICATION**

Under **current law**, an applicant for an exploration license must submit the following materials:

- An application fee of \$300.
- A \$5,000 bond.<sup>3</sup>
- A certificate of insurance affording personal injury and property damage protection in an amount deemed adequate by the DNR but not less than \$50,000.
- An application on a form prepared by the DNR.

[s. NR 130.05, Wis. Adm. Code.]

**The bill** retains those requirements, with the following exceptions. First, it caps the amount of damage protection required for the certificate of insurance at \$1 million. Second, it sets forth the required components of the application in statute, specifically requiring the application to include an exploration plan and a reclamation plan, both containing specified components.

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<sup>2</sup> However, see the discussion below regarding special restrictions that apply to the mining of sulfide minerals.

<sup>3</sup> Under current law and the bill, the DNR may increase the amount of the bond if it determines that the amount of the bond is inadequate to fund the termination of all drillholes for which the explorer is responsible.

### ***STANDARDS FOR ISSUANCE OF A LICENSE***

Under ***current law***, the DNR must issue an exploration license upon an applicant's satisfactory completion of all conditions in the administrative rules chapter governing exploration. The DNR must deny an exploration license if it finds that proposed exploration will not comply with the minimum statutory standards governing mining activities and reclamation or if the applicant is in violation of ch. 293, Stats., or any administrative rule governing exploration. [ss. NR 130.06 and 130.09, Wis. Adm. Code.] The issuance of a license is subject to various conditions relating to the permanent and temporary abandonment of drill holes.

Under ***the bill***, the DNR must deny an exploration license if it finds that, after the activities in the exploration plan and reclamation plan have been completed, the exploration will have a substantial and irreparable adverse impact on the environment or present a substantial risk of injury to public health and welfare. Unless it provides written notification to the applicant of its intent to deny an exploration license on those grounds, the DNR is required to issue the license according to the timeline described below. The bill requires the DNR to include requirements in the license that are substantially similar to the conditions that a license is subject to under current law.

### ***TIMELINE***

Under ***current law***, the DNR must issue an exploration license within 10 business days after it receives a completed application, or within 10 business days or by July 1<sup>st</sup>, whichever is later, if the application is for the upcoming license year.<sup>4</sup> Current law does not provide a deadline by which an application will be considered complete.

***The bill*** retains the 10 business day deadline under current law. However, under the bill, an application for an exploration license is considered to be administratively complete on the day that it is submitted, unless, before the 10th business day after receiving the application, the DNR provides the applicant with written notification that the application is not administratively complete. The bill specifies that the DNR may not consider the quality of the information provided when determining whether an application for an exploration license is administratively complete. Instead, the DNR may make such a finding only if one of several specified components of the application is missing. If an item is missing and is requested by the DNR, the DNR must either issue the exploration license or provide written notification of its intent not to issue the license within seven business days of an applicant's submission of the item. The DNR must then provide the applicant with an opportunity to correct any deficiencies in the exploration plan or restoration plan within 10 business days. If the applicant amends the exploration plan or reclamation plan and corrects the deficiencies, the DNR must issue the exploration license within 10 business days of receipt of the amended exploration or reclamation plan (or by July 1 if the license is for the upcoming year).

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<sup>4</sup> Under current law and the bill, a "license year" is the period of time commencing on July 1st of any year and ending on the following June 30th.

## **PROSPECTING**

### **APPROVAL PROCESS**

Under **current law**, a person must obtain a prospecting permit before engaging in prospecting. The process for obtaining a prospecting permit involves nearly all of the same steps required to obtain a mining permit, described below, including a notice of intent requirement, an environmental impact statement (in most cases), one or more contested case hearings, and requirements for reclamation.

In lieu of a prospecting permit, **the bill** authorizes a person to submit a plan to the DNR before conducting “bulk sampling,” defined to mean excavation by removal of less than 10,000 tons of material for purposes of assessing a ferrous mineral deposit. At the same time that the bulk sampling plan is submitted, the applicant must submit a “pre-application description,” described in the section on pre-application notification, for the potential full mining operation.

The bulk sampling plan must include the following components:

- A description of the site, including its size and the number of acres to be disturbed.
- A description of methods to be used.
- A site-specific plan for controlling surface erosion.
- A revegetation plan that describes how environmental impacts will be avoided or minimized to the extent practicable.<sup>5</sup>
- The estimated time for completing the bulk sampling and revegetation.
- A description of any known adverse environmental impacts that are likely to be caused by the bulk sampling and how those impacts will be avoided or minimized to the extent practicable.
- A description of any adverse effects that the bulk sampling might have on specified historic properties.

Within 14 days of receiving a bulk sampling plan, the bill requires the DNR to identify all approvals, permits, and waivers required under state and federal environmental and natural resources laws before the bulk sampling plan may be implemented. After the applicant submits materials for all required approvals, permits, and waivers identified by the DNR related to the bulk sampling plan, together with a \$5,000<sup>6</sup> bond, those materials are considered to be administratively complete on the 30th day after the DNR receives them.

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<sup>5</sup> By requiring “revegetation” rather than “reclamation,” the bill appears to suggest that full topographic restoration of the site may not be required for bulk sampling.

<sup>6</sup> The bill authorizes the DNR to increase the amount of the bond if it determines that \$5,000 is inadequate to cover the costs of revegetation.

Notwithstanding conflicting review periods set forth in statute or administrative rules, the bill requires the DNR to approve or deny all applications for waivers, exceptions, and determinations that approval is not needed within 30 days of the date when the materials are administratively complete. It must likewise approve or deny all other required approvals within 60 days of the date when the materials are administratively complete. Within that timeframe, the bill also requires the DNR to issue a public notice regarding the proposed bulk sampling activities, draft approvals, pre-application description, and the opportunity for comment. Also within that timeframe, the DNR must provide an opportunity for public comment and hold a single public informational hearing covering all approvals. The DNR also must act on any required construction site erosion control and stormwater management approval, notwithstanding any authority that has been granted to local governments to administer such approvals. The bill requires the DNR to take various mitigation and compensation actions proposed by a mining operator into account when acting on the various environmental and natural resource approvals related to bulk sampling activity.

### ***HISTORIC PRESERVATION***

The bill amends current historic preservation law with regard to bulk sampling activities. Under ***current law***, if a state agency determines that a proposed action will have an adverse effect on a historic property, the agency must notify the state's historic preservation officer of the effect. If the officer determines that the proposed action will have an adverse effect on a historic property, the officer may require negotiations with the state agency to reduce such effects. [s. 44.40, Stats.]

Under ***the bill***, if the DNR determines that proposed bulk sampling activities will have an adverse effect on historic property but also determines that the person proposing to engage in bulk sampling is taking measures to minimize that effect, then the DNR is not required to notify the state historic preservation officer of the potential adverse effect. In addition, the bill prohibits the state historic preservation officer from requiring negotiations to reduce the adverse effect. Finally, the bill requires that if the adverse effect cannot practicably be minimized, any negotiations between the DNR and the state historic preservation officer must be completed within 60 days.

### ***POSSESSION AND TRANSPORTATION OF ANIMALS ON THE THREATENED OR ENDANGERED SPECIES LIST***

Unless authorized by a DNR permit, Wisconsin law generally provides that no person may take, transport, possess, process, or sell any wild animal listed on the DNR's endangered and threatened species list. [s. 29.604 (4), Stats.] ***Current law*** does not provide any special exemptions from those general prohibitions for metallic mining or prospecting activities.

***The bill*** authorizes a person to take, transport, or possess a wild animal on the DNR's endangered and threatened species list without a permit if all of the following apply:

- The person avoids and minimizes adverse impacts to the wild animal to the extent practicable.
- The taking, transporting, or possession does not result in wounding or killing the wild animal.

- The person takes, transports, or possesses the wild animal for the purpose of bulk sampling activities authorized under the bill.

## **MINING PERMITTING PROCESS**

**The bill** makes significant changes to the process for obtaining a mining permit for a ferrous mining operation as compared to current law. Some key changes include an overall deadline for approval or denial of a mining permit, elimination of a separate hearing to review the environmental impact statement, and the elimination of contested case hearings from the permit review process.

### ***TIMELINE***

Under **current law**, the process to obtain a mining permit lasts at least 2-1/2 years, and may take longer if a project is complex or generates significant public input. Several deadlines limit the time period within which DNR must act. However, several stages in the process—most notably the time periods during which draft and final environmental impact statements are prepared—are not subject to a statutory deadline.

The permit approval process begins with the submission of a “notice of intent” to submit a mining permit application. The notice of intent begins the pre-application process, described below. The DNR must hold an informational hearing regarding an applicant’s notice of intent no less than 45 days or more than 90 days after the applicant submits the notice of intent. Within 90 days of the close of that hearing, the DNR must provide specified information (described in the section on pre-application notification) to the potential applicant. [s. NR 132.05 (4), Wis. Adm. Code.]

At that time, the DNR may also request a “scope of study,” in which data requirements, specific methodologies, a tentative schedule for collection of field data, names of people who will be responsible for data collection, and related information are identified. If the DNR requests a scope of study, the study must be submitted by the potential applicant within 120 days of the DNR’s request. The DNR must accept, reject, or modify the scope of study within 60 days of its receipt. [s. NR 132.05 (7), Wis. Adm. Code.]

After an applicant submits an application for a mining permit, the DNR prepares a draft environmental impact statement. The DNR must hold an informational meeting regarding the draft environmental impact statement no sooner than 30 days and no later than 60 days after the document is released.

The DNR then prepares the final environmental impact statement. After the final environmental impact statement is released, the DNR must hold a “master hearing” no sooner than 120 days and no later than 180 days after it releases the final environmental impact

statement.<sup>7</sup> The DNR must make the final decision regarding a mining permit within 90 days of the completion of the record from the master hearing.<sup>8</sup>

Under ***the bill***, the mining permit application process begins with the submission of a pre-application notice, described below. The applicant must submit the notice at least 12 months before submitting the mining permit application.

After the mining permit application is submitted, the bill requires the DNR to issue or deny a mining permit *no more than 360 days* after the day on which an application for a mining permit is deemed “administratively complete.” An application for a mining permit is deemed to be administratively complete on the 30th day after the DNR receives the application, unless the DNR provides the applicant with written notice prior to that date that the application is not complete. The DNR may determine that an application is incomplete only if the applicant fails to submit one of the following items: a mining plan; a reclamation plan; a mining waste site feasibility study and plan of operation; an environmental impact report; or evidence that the applicant has applied or will apply for necessary permits and permissions under applicable zoning ordinances. The bill does not authorize the DNR to determine that an application is incomplete based on an assessment of the quality of the materials submitted.

In addition to the mining permit, the bill requires the DNR to approve or deny all environmental and natural resource permits required for a ferrous mining project by the same 360-day deadline required for processing the mining permit application, provided that the applicant submits the application for the related permits no later than 60 days after the day on which the application for the mining permit is administratively complete. If the applicant submits an application for a related permit more than 60 days after submitting the mining permit application, the deadline for approval is extended by the number of days past the 60th day that the applicant submits the application.

### ***AUTOMATIC APPROVAL***

***Current law*** does not provide for the automatic approval of a mining permit in the event that the DNR does not act within the statutory timeline. Under ***the bill***, if the DNR does not issue or deny a mining permit within the 360-day deadline described above, then the permit application is automatically deemed to have been approved. The permit applicant may then commence ferrous mining activities, regardless of any delay in DNR issuance of the permit.

### ***PRE-APPLICATION NOTIFICATION***

Although the notices serve somewhat different functions, both current law and the bill require an applicant for a mining permit to submit a notice to the DNR prior to the submission of a permit application. Under ***current law***, a person who intends to apply for a metallic mining permit must first submit a “notice of intent” to the DNR. The notice of intent is an indication

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<sup>7</sup> A “master hearing” is a hearing to consider both the mining permit application and applications for various related environmental and natural resource approvals required in connection with a mining permit. Public hearing procedures are discussed in greater detail below.

<sup>8</sup> Decisions regarding related DNR permits and approvals must also be approved or denied before this deadline, provided that the applications for such permits and approvals are submitted in a timely manner.

that the potential applicant is interested in developing a mine and will be collecting data to support a mining permit application. The notice of intent generally must be submitted prior to collecting data to support a mining permit application.<sup>9</sup> The notice of intent includes information regarding the potential application; a map of the proposed mining site; the date on which the prospective applicant intends to file a mining permit application; environmental data; and a preliminary project description. The notice need not be submitted within any particular time of the submission of the mining permit application; however, because it generally must be submitted before any data is collected, it would typically need to be submitted well in advance of the permit application.

Under current law, the filing of the notice of intent triggers a dialogue whereby the DNR advises the potential applicant about specific environmental and quality assurance requirements the person must provide for a mining permit application and any required environmental impact report; the methodology and procedures to be used in gathering information; the type and quantity of required information on the natural resources at the proposed mining site; the timely application date for all other necessary approvals to facilitate the consideration of all approvals at the master hearing; whether the DNR will accept general environmental data submitted by the potential applicant with the notice of intent; and preliminary verification procedures to be conducted by the DNR. [ss. 293.31 (4) and 293.43 (1m), Stats.; s. NR 132.05 (4), Wis. Adm. Code.] The DNR may revise or modify requirements relating to information which must be gathered and submitted by the potential applicant. [s. NR 132.05 (5), Wis. Adm. Code.] The DNR may also require the potential applicant to develop a “scope of study” designed to comply with the DNR’s informational requests. [s. NR 132.05 (7) (a), Wis. Adm. Code.]

**The bill** requires a permit applicant to submit a “pre-application notification.” The notification expresses a potential mining permit applicant’s intention to file an application for a mining permit. The notification need not be submitted before data is collected, but it must be submitted at least 12 months prior to submitting a mining permit application. At the same time that an applicant submits the notification required under the bill, the applicant must also submit a “pre-application description” of the mining project, to include a map and various specified information regarding the proposed site.<sup>10</sup> After an applicant submits a pre-application notice, the bill requires the DNR to meet with the applicant to make a preliminary assessment of the project’s scope, make an analysis of alternatives, identify potential interested persons, and ensure that the applicant is aware of all required approvals, the environmental impact report requirement, and the information the DNR will require to enable a mining permit application to be processed in a timely manner. After the meeting, the bill requires the DNR to provide to the applicant any available information relevant to the potential impact of the project on threatened or endangered species and historic or cultural resources and any other information relevant to impacts that are required to be considered in the environmental impact statement. The bill does not authorize the DNR to request a “scope of study” document.

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<sup>9</sup> However, the DNR may consider data collected before the notice of intent if it determines that the benefits of admitting the data outweigh the policy reasons for excluding it. [s. 293.31, Stats.]

<sup>10</sup> If the applicant engages in bulk sampling before applying for a mining permit, then the pre-application description must be submitted together with the bulk sampling permit application.

## ***PUBLIC HEARINGS***

Under ***current law***, the process for obtaining a metallic mining permit involves a minimum of three public hearings: an informational hearing regarding the notice of intent to file an application; an informational meeting regarding a draft environmental impact statement; and a “master hearing” regarding the mining permit and related environmental and natural resource approvals. A separate set of hearings are required in connection with a prospecting permit. The DNR is authorized to hold additional hearings relating to any aspect of the administration of the metallic mining statutes. [s. 293.15, Stats.]

To the extent practicable, the DNR is required under current law to include all related permits applied for in connection with a proposed mining operation within the scope of the master hearing.<sup>11</sup> A master hearing on a mining permit includes both general public testimony and a contested case hearing. During the public testimony portion of the hearing, all interested persons must be given an opportunity to express their views on any aspect of the matters under consideration. Persons who participate as parties in the contested case portion of the master hearing may submit legal briefs and evidence and call and cross-examine witnesses, who testify under oath.<sup>12</sup>

Under ***the bill***, the DNR must hold an informational hearing, which covers the mining permit, all other approvals, and the environmental impact statement. Prior to the hearing, the DNR must make the application for the ferrous mining permit, applications for related permits and approvals, the environmental impact statement, and any analyses or preliminary determinations available for review in the city, village, or town where the proposed mining site is located. Interested persons may submit written or oral comments regarding a mining permit application. Within its posted notice regarding a mining permit application, DNR must describe the opportunity for written public comment by any person within 45 days after the notice is published, and shall provide the date, time, and location of the public informational hearing.

In addition, the DNR must hold a public informational hearing following receipt of an applicant’s pre-application description and bulk sampling plan. The hearing must be held in the county in which the majority of the proposed mining site is located. To the extent possible, the hearing must encompass the pre-application description and all permits and approvals required in connection with bulk sampling. If no approvals are required in connection with bulk sampling, or the applicant does not propose to conduct bulk sampling, then the hearing covers the pre-application description.

The bill specifies that no person is entitled to a contested case hearing regarding a ferrous mining permit or any other approval issued by DNR in connection with a ferrous mining operation.

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<sup>11</sup> After an applicant submits a notice of intent under current law, the DNR must inform an applicant as to the timely application date for all approvals, licenses, and permits issued by the DNR in connection with the proposed operation, so as to facilitate consideration of those matters at the master hearing.

<sup>12</sup> Subsequent contested case hearings may also be available after a mining permit is issued.

## **CONTENTS**

Under **current law**, an application for a metallic mining permit must include all of the following components:

- A mining plan.
- A detailed reclamation plan.
- The name and address of each owner of land and holder of an option or lease on land within the mining site.
- All permits held by the applicant.
- Evidence that the applicant has applied for necessary environmental and zoning approvals and permits.
- Information on the applicant's history, including any forfeitures, felony convictions, bankruptcies, and permit revocations.
- Other pertinent information requested by the DNR.

[s. 293.37 (2), Stats.]

**The bill** eliminates the requirement that the applicant submit "other pertinent information requested by the DNR." The bill also modifies the requirement that an applicant provide evidence of approval submissions, specifically by requiring evidence that the applicant will apply, rather than has applied, for environmental and natural resource approvals related to the mining operation. The bill also requires a waste site feasibility study as part of the mining plan, whereas under current law, a waste site feasibility study is submitted and reviewed separately. In addition, the bill modifies the requirements related to mining and reclamation plans, as described below.

### ***Mining Plan***

Under **current law**, a mining plan must include:

- A detailed map of the proposed mining site.
- Details of the nature, extent, and final configuration of the proposed excavation, including the nature and depth of overburden (i.e., the rock and soil located above the mineral to be mined).
- Specified information relating to proposed operating procedures.
- Demonstrations of satisfactory evidence that the proposed mining operation will be consistent with the reclamation plan and comply with various specified standards.
- A pre-blasting survey.

[s. NR 132.07, Wis. Adm. Code.]

**The bill** modifies several of the general components of the mining plan required under current law. Under the bill, the mining plan may contain aerial photographs in lieu of a detailed map, if the photographs show the details of the site to the DNR's satisfaction. In addition, information regarding the nature and depth of the overburden is not required. The bill also eliminates the required demonstrations relating to the following subjects from the mining plan and instead includes them in the reclamation plan: grading and stabilization of excavation and deposits; stabilization of merchantable by-products; protection of topsoil; and the achievement of aesthetic standards. It likewise eliminates required demonstrations regarding the maintenance of adequate vegetative cover and the impoundment of water from the mining plan. With regard to a demonstration relating to the adequate diversion and drainage of water, the bill adds the phrase "to the extent possible" to the relevant standard. Finally, with regard to a demonstration related to the backfilling of excavations, the bill retains the standard prohibiting violations of groundwater quality standards but removes a standard prohibiting an adverse affect on public health or welfare.

### ***Reclamation Plan***

Under **current law**, a reclamation plan must include detailed information and maps regarding reclamation procedures and demonstrations of satisfactory evidence that the proposed reclamation will conform with the following minimum standards:

- All toxic and hazardous wastes, refuse, tailings, and other solid waste shall be disposed of in conformance with applicable state and federal statutes or regulations.
- All tunnels, shafts, or other underground openings shall be sealed in a manner which will prevent seepage of water in amounts which may be expected to create a safety, health, or environmental hazard, unless the applicant can demonstrate alternative uses which do not endanger public health and safety and which conform to applicable environmental protection and mine safety laws and rules.
- All underground and surface runoff waters from mining sites shall be managed, impounded, or treated so as to prevent soil erosion to the extent practicable, flooding, damage to agricultural lands or livestock, damage to wild animals, pollution of ground or surface waters, damage to public health, or threats to public safety.
- All surface structures constructed as a part of the mining activities shall be removed, unless they are converted to an acceptable alternate use.
- Adequate measures shall be taken to prevent significant surface subsidence, but if such subsidence does occur, the affected area shall be reclaimed.
- All topsoil from surface areas disturbed by the mining operation shall be removed and stored in an environmentally acceptable manner for use in reclamation.
- All disturbed surface areas shall be revegetated as soon as practicable after the disturbance to stabilize slopes and prevent air and water pollution, with the objective

of reestablishing a variety of plants and animals indigenous to the area immediately prior to mining, unless such reestablishment is inconsistent with statutory requirements. Plant species not indigenous to the area may be used if necessary to provide rapid stabilization of slopes and prevention of erosion, if such species are acceptable to DNR, but the ultimate goal of reestablishment of indigenous species shall be maintained.

In addition, if the anticipated life and total area of the mineral deposit are of sufficient magnitude, as determined by the DNR, the plan must include a comprehensive long-term plan showing the manner, location, and estimated timetable for reclamation. Finally, if it is physically or economically impracticable or environmentally or socially undesirable for the reclamation process to return the area to its original state, the applicant must provide reasons that the reclamation process would be impracticable or undesirable, and a discussion of alternative conditions and uses to which the affected area can be put. [s. NR 132.08, Wis. Adm. Code.]

As with the mining plan, **the bill** retains some and modifies other current components of the reclamation plan. In particular, the bill retains the requirement that the plan include a map, and it requires similar map features as are required under current law, including detailed information regarding specified reclamation procedures such as the proposed interim and final topography of the site, the proposed final land use, and plans for long-term maintenance of the mining site. Likewise, the bill retains standards related to sealing tunnels, removing surface structures, measures to prevent surface subsidence, and the management of underground and surface runoff waters. It also retains the provision specifying that plant species not indigenous to the area may be used if necessary to provide rapid stabilization of slopes and to prevent erosion. In addition, the bill retains accommodation under current law for alternative options where it is physically or economically impracticable or environmentally or socially undesirable for the reclamation process to return the area to its original state.

The bill modifies the standard regarding the storage of removed topsoil for use in reclamation. Specifically, the bill allows topsoil to be used in reclamation “or in the mitigation or minimization of adverse environmental impacts,” whereas current law requires all disturbed topsoil to be used for reclamation. The bill also specifies that the standard requiring revegetation of all disturbed surface areas as soon as practicable after the disturbance to stabilize slopes and prevent air and water pollution shall be satisfied “to the extent practicable.” In addition, the bill removes the requirement that plant species not indigenous to the area may be used only if such species are acceptable to the DNR.

In addition, the bill eliminates the separate comprehensive plan requirement for ferrous mining operations. However, as mentioned, it retains the requirement that plans for long-term maintenance of the site be included in the general reclamation plan.

#### ***STANDARDS FOR ISSUANCE OF A MINING PERMIT***

Under **current law**, the DNR *must issue* a mining permit if all of the following six standards are satisfied:

- The mining plan and reclamation plan are reasonably certain to result in reclamation of the mining site.

- The proposed mine will comply with applicable air, ground and surface water, and solid and toxic waste disposal requirements.
- A proposed surface mine site is not unsuitable for surface mining. A site is unsuitable if the mining activity is reasonably expected to irreparably damage specified unique features of the land or habitat required for specified endangered species.
- The proposed mine will not endanger public health, safety, or welfare.
- The proposed mine will result in a net positive economic impact in the area reasonably expected to be most impacted by the mining activity.
- The proposed mining operation conforms with all applicable zoning ordinances.

[s. 293.49 (1), Stats.]

**The bill** likewise requires the DNR to issue a mining permit if six conditions are satisfied. The bill retains two of the six conditions set forth in current law—namely those requiring that the proposed mining must not be likely to result in substantial adverse impacts to public health, safety, or welfare and requiring that the proposed mining will result in a net positive economic impact in the area.

Of the four remaining conditions for approval under current law, the bill eliminates and replaces two and amends two. First, the bill eliminates the condition requiring that a proposed mining site not be unsuitable for mining (however, as described below, the bill retains unsuitability as a basis for denial of the permit). Second, the bill eliminates the condition requiring the proposed operation to comply with all applicable administrative rules governing air, groundwater, surface water, and solid and hazardous waste management. The bill replaces those conditions with conditions that the applicant has *committed* to conducting the proposed mining in compliance with the mining permit and other approvals and that the waste site feasibility study and plan of operation must comply with the relevant waste site submissions required under the bill.

The bill modifies the two remaining conditions. First, whereas current law requires a mining operation to conform with all applicable zoning ordinances, the bill requires that the applicant *has applied* for applicable zoning approvals. Second, whereas current law requires that the mining plan and reclamation plan be reasonably certain to result in reclamation of the mining site consistent with the mining statutes and administrative rules, the bill requires that the mining plan and reclamation plan be reasonably certain to result in reclamation of the mining site consistent with the statute.

#### ***GROUNDS FOR DENIAL OF A MINING PERMIT APPLICATION***

Under **current law**, the DNR *must deny* an application for a mining permit if any of the six standards for issuance of a mining permit, listed above, is not satisfied. In addition, the DNR must deny the permit if the applicant, or an officer or director of the applicant, has forfeited a bond posted in accordance with mining activities in this state within a specified timeframe, or if the proposed mining activity may reasonably be expected to create one or more of the following problems:

- Landslides or substantial deposition from the proposed operation in stream or lake beds that cannot be feasibly prevented.
- Significant surface subsidence that cannot be reclaimed because of the geologic characteristics present at the proposed site.
- Hazards resulting in unpreventable, unavoidable, unmitigable, irreparable damage to various types of structures, improvements, and natural resources.

[s. 293.49 (2), Stats.; s. NR 132.10 (1), Wis. Adm. Code.]

**The bill** modifies the grounds for denial of a mining permit application in two ways. First, it modifies the definition for the unsuitability of a mining site. Under current law, a site is unsuitable if the mining activity is “reasonably expected” to destroy or irreparably damage specified features. Under the bill, a site is “unsuitable” if “it is more probable than not” that the mining activity will irreparably damage specified features. Also within the definition, both current law and the bill include protected species habitat that cannot be reestablished elsewhere or unique land features that cannot have their unique characteristic preserved by relocation or replacement elsewhere. However, the bill excludes archaeological areas and other lands designated by the DNR from the unique land features to be taken into consideration.

Second, the bill includes a narrower set of circumstances in which landslides, subsidence, or hazards give rise to a mandatory denial than apply under current law. Specifically, the bill requires that the irreparable damage to specified structures be physical in nature in order for a hazard to the structure to qualify as grounds for denial of a mining permit. It also removes the general category of property designated by the DNR from the list of structures protected from hazards resulting in irreparable damage.

Finally, the bill eliminates the requirement under current law that the DNR must deny a mining permit if the proposed project does not conform with all applicable zoning ordinances.

### **EXEMPTIONS**

Under current law and the bill, an applicant for a mining permit may request exemptions from various requirements related to metallic mining. Under **current law**, the DNR is authorized to grant an exemption, but is not required to do so. In contrast, **the bill** requires the DNR to grant an exemption if the request is consistent with the purposes of the iron mining statutes, will not violate other environmental laws, and will either not result in significant adverse environmental impacts, or such adverse impacts will be offset through compensation or mitigation.

Under **current law**, the DNR generally must act on an exemption request within 15 days. However, the 15-day timeline does not apply if the requested exemption requires an exception from the mining statute. **The bill** retains the 15-day timeline but removes the exception for exemptions from statutory requirements.

**Current law** requires certain procedures to be followed, including the requirement that requests for exemptions generally must be submitted at least 90 days in advance of the master hearing (for the applicant) or at least 30 days before the hearing (for persons other than the

applicant). The DNR is also required to publish notice of a requested exemption. In addition, current law provides a process by which a hearing may be held to review a proposed exemption. In contrast, **the bill** does not restrict when an exemption may be requested, does not require public notice of a potential exemption, and does not provide for a process by which a public hearing may be held to review a proposed exemption.

## **ENVIRONMENTAL REVIEW**

Environmental review is a major component of the process to obtain approval for a metallic mining operation. **Current law** requires the DNR to prepare an environmental impact statement for every metallic mining permit. The statement must describe the short-term and long-term impacts of the proposed mining operation on tourism, employment, schools, medical care facilities, private and public social services, the tax base, the local economy, and other significant factors. [s. 293.39, Stats.] As mentioned, the DNR must issue a draft environmental impact statement before preparing a final environmental impact statement. In addition, the DNR may require that a potential mining permit applicant submit an environmental impact report, which serves as a starting point for compilation of the draft environmental impact statement.

**The bill** retains the requirement that an environmental impact statement be prepared for each proposed ferrous mining operation. However, it makes several changes to the standards and procedures for environmental review.

First, the bill requires an applicant for a ferrous mining permit to submit an environmental impact report together with the mining permit application. The environmental impact report must include: a description of the proposed mining project; environmental conditions and anticipated environmental impacts; socioeconomic conditions and anticipated socioeconomic impacts; details of any wetlands compensation program; any measures to offset navigable waters impacts; any proposed changes to forest designations; and alternatives to the mining project. The bill requires the DNR to accept original data from an environmental impact report for use in the environmental impact statement and specifies that the DNR need not verify the accuracy of all original data provided in the report. The bill also *requires* the DNR to use original data provided in the environmental impact report in the environmental impact statement if any of the following conditions is met:

- The DNR, its consultant, or a cooperating state or federal agency collects sufficient data to perform a limited statistical comparison with data from the environmental impact report that demonstrates that the data sets are statistically similar within a reasonable confidence limit.
- An expert who is employed by, or is a consultant to, the DNR or a cooperating state or federal agency determines that the data is within the range of expected results.
- The DNR, its consultant or a cooperating state or federal agency determines that the methodology used in the environmental impact report is scientifically and technically adequate for the tests being performed.

Second, the bill removes “other significant factors” from the factors that must be considered in the environmental impact statement. Finally, as mentioned, the bill does not require a public hearing regarding a draft environmental impact statement.

With regard to prospecting, **current law** acknowledges that an environmental impact statement may in some cases be required under s. 1.11 (2), Stats., which requires state agencies to prepare environmental impact statements when taking “major actions” that significantly affect the quality of the human environment. Current law does not explicitly require that such a statement be prepared for all prospecting permits. [s. 293.35 (5), Stats.] In contrast, **the bill** specifies that the DNR is not required to prepare an environmental impact statement for exploration or bulk sampling approvals.

### **REIMBURSEMENT OF DNR COSTS**

Under **current law**, applicants for a prospecting or mining permit must pay an initial fee in an amount estimated by the DNR to cover costs incurred by the department in connection with processing permit applications, excluding costs related to the evaluation of the environmental impact statement. [s. 293.32, Stats.] Such applicants must also pay a separate fee to cover the costs of an environmental impact statement, including the cost to the DNR of hiring consultants in preparation of the statement. [s. 23.40 (3), Stats.] In addition, the applicants must pay various fees for related approvals under state environmental and natural resources laws.

When the DNR issues or denies a prospecting or mining permit, or when a permit application is withdrawn, the DNR must compare the fees paid for the prospecting or mining permit, together with fees paid for specified related approvals, with the actual costs incurred by the department. The amounts are then reconciled such that the applicant will have paid all costs incurred by the DNR, but not more than that amount.

**The bill** likewise requires an applicant for a 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 \$2 million. The bill provides that costs 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.

In addition, except for the fee required for an approval under the Great Lakes Compact, the bill provides that an applicant for a mining permit is not required to pay any application or filing fee for any approval other than a mining permit, notwithstanding general statutory provisions requiring fees for various environmental permits and approvals.

### **BOND FOR RECLAMATION AND CERTIFICATE OF INSURANCE**

**Current law** requires an applicant to submit bonds in connection with exploration, prospecting, and mining. An applicant for an exploration license must submit a bond of \$5,000 to the DNR prior to conducting exploration. An applicant for a prospecting or mining

permit must provide a bond<sup>13</sup> to the DNR after a permit has been approved but before beginning operations. The bond is conditioned on faithful performance of all of the requirements of the pertinent statutes and administrative rules. The bond must be in an amount equal to the estimated cost to the state, as determined by the DNR, of fulfilling the reclamation plan, in relation to that portion of the site that will be disturbed by the end of the following year. [s. 293.51 (1), Stats.]

**The bill** likewise requires a \$5,000 bond to be submitted prior to conducting exploration. For bulk sampling, the bill requires a \$5,000 bond, which may be increased by the DNR. The bill does not modify current law with regard to a bond requirement for a ferrous mining permit, with one exception: the bill expressly excludes the cost of long-term care of the mining waste site from the estimated cost to the state of fulfilling the reclamation plan.

In addition to a bond, **current law** requires a mine operator to submit a certificate of insurance after a prospecting or mining permit has been approved but before beginning operations. Under current law, the certificate of insurance must afford personal injury and property damage protection in an amount determined to be adequate by the DNR but not less than \$50,000. [s. 293.51 (2), Stats.]

After a ferrous mining permit is approved, **the bill** likewise requires the permit holder to submit a certificate of insurance affording personal injury and property damage protection in an amount determined to be adequate by the DNR but not less than \$50,000. However, the bill provides that the amount of personal injury and property damage protection required must not exceed \$1 million. The bill does not require a certificate of insurance to be submitted in connection with bulk sampling.

### **MODIFICATION OF AN EXISTING MINING PERMIT**

Under **current law**, the operator of a metallic mine may apply to the DNR for an amendment of a mining permit, mining plan, or reclamation plan at any time. In general, the DNR must process an application for a proposed increase or decrease to the size of a mining site or a “substantial” change to a mining or reclamation plan in the same manner as the original mining permit application. [s. 293.55, Stats.; s. NR 132.12, Wis. Adm. Code.]

Under **the bill**, a ferrous mine operator may request a change to a mining permit, the mining plan, the reclamation plan, or the mining waste site feasibility study and plan of operation at any time. The bill requires the DNR to grant such a request, unless it determines that the requested change makes it *impossible* for the permit holder to substantially comply with the approved mining plan, reclamation plan, or mining waste site feasibility study and plan of operation. If the DNR determines that the requested change would make substantial compliance impossible, or if it finds, based on a review conducted no more frequently than every five years, that because of changing conditions, including changes in reclamation costs or technology, the reclamation plan is no longer sufficient to reasonably provide for reclamation of the mining site, the DNR must require the operator to submit necessary amended plans or studies. The bill provides that the general mining permit application procedures generally apply to the amended plans.

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<sup>13</sup> In lieu of a bond, the applicant may deposit cash, certificates of deposit, or government securities with the department.

## **RESTRICTION ON MINING SULFIDE MINERALS**

Under **current law**, the DNR is prohibited from issuing a permit for the mining of a sulfide ore body unless the DNR determines, based on information provided by a mining permit applicant and verified by the DNR, that sulfide mining operations, with certain restrictions, have been operated and closed without polluting groundwater or surface water from acid drainage or from the release of heavy metals or other significant environmental pollution. [s. 293.50, Stats.] This requirement is titled the “sulfide mining moratorium law.”

The concern with the disturbance of sulfide minerals is that when exposed to oxygen and water, sulfide minerals may undergo a series of chemical and biochemical reactions that produce acidic products which may have negative effects related to changing the pH level in groundwater or surface water and by dissolving other minerals, which may cause the release of heavy metals.

The sulfide mining moratorium law defines “sulfide ore body” broadly as “a mineral deposit in which metals are mixed with sulfide minerals.” Iron ore itself is not a sulfide ore. However, based on consultation with geologists at the U.S. Geological Survey and the DNR, virtually all geological formations in the state contain at least trace amounts of sulfide minerals, which means that this law could apply to any type of mining project. Although the DNR reports that it would be unlikely to apply the sulfide mining moratorium law to a ferrous mining project for which only trace amounts of sulfide minerals are present or the sulfide minerals that are present are avoidable, the breadth of the definition of “sulfide ore body” could create uncertainty as to the legitimacy of a prospective challenge to the DNR on this point.

**The bill** amends the sulfide mining moratorium law, making it applicable only to nonferrous mining. In particular, it modifies the definition of “sulfide ore body” to mean “a mineral deposit in which nonferrous metals are mixed with sulfide minerals.”

Regardless of whether the sulfide mining moratorium law would be applied, any mining operation would be required to manage acid production in its surface and groundwater management activities.

## **JUDICIAL REVIEW**

**Current law and the bill** allow for judicial review of final DNR decisions regarding metallic mining. In addition, they both generally limit the scope of judicial review to a bench trial based on the administrative record assembled by the DNR. [s. 227.57, Stats.] Thus, under the bill, as under current law, judicial review of DNR’s decisions would generally not entail the taking of testimony or opportunities to introduce new evidence.

However, because **the bill** eliminates contested case hearings for ferrous mining permits, the scope of the overall review would be narrower under the bill than under current law. Specifically, the administrative record under the bill would not include any sworn testimony, depositions, or other forms of evidence typically introduced during an evidentiary proceeding.

## **LOCAL IMPACT COMMITTEES**

Under **current law**, one or more counties, towns, villages, cities, or tribal governments likely to be substantially affected by a proposed mining operation may establish a local impact committee. A local impact committee may facilitate communications, review and comment on proposed operations, and conduct other activities relating to a proposed mining operation. Such committees may submit a request to obtain operating funds from the Mining Investment and Local Impact Fund, described above. **The bill** retains current law with respect to local impact committees.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by Anna Henning, Staff Attorney, and Larry Konopacki, Senior Staff Attorney, on January 25, 2012.

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