



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: SENATOR NEAL KEDZIE

FROM: Anna Henning, Staff Attorney, and Larry Konopacki, Senior Staff Attorney

RE: Differences Between LRB-4035/P1 and 2011 Assembly Bill 426, as Passed by the Assembly, Relating to the Regulation of Ferrous Mining

DATE: February 13, 2012

This memorandum briefly describes the differences between LRB-4035/P1 and 2011 Assembly Bill 426, as amended and passed by the Assembly on January 26, 2012 ("AB 426"), relating to the regulation of ferrous mining. **AB 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. For a detailed description of AB 426, see the following 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.
- IM-2012-04 http://legis.wisconsin.gov/lc/publications/im/IM2012_04.pdf.

LRB-4035/P1 retains most of the provisions in the bill but makes the changes discussed below.

TAXATION OF A FERROUS MINE

Under current law, retained in **AB 426**, a net proceeds occupation tax is imposed on net income from the sale of metallic minerals extracted in the state.¹ For ferrous mines, **LRB-4035/P1** retains the net proceeds tax and creates an additional tax. Specifically, the additional tax is equal to \$2.00 (adjusted for inflation) for each 2,240 pounds (i.e., "long ton") of mining product sold as part of a ferrous mining

¹ Although AB 426 retains current law with regard to the assessment and structure of the net proceeds tax, it changes the distribution of the tax to require that 40% of the revenues from the tax be deposited in the state's general fund. LRB-4035/P1 makes the same change to the distribution of net proceeds tax revenues as does AB 426.

operation, based on a three-year average. The tax would first be imposed on minerals sold during the third year in which ferrous minerals are mined. Seventy percent of the revenue collected from the tax must be deposited to the investment and local impact fund, a fund from which revenues are distributed to local governments impacted by metallic mining. Thirty percent of the revenue must be deposited into the state's general fund.

WETLAND MITIGATION

AB 426 and LRB-4035/P1 require the Department of Natural Resources (DNR) to issue a water quality certification for activities affecting wetlands if any impacts that remain after all practical measures are taken to avoid and minimize impacts are offset by mitigation. Under **AB 426**, a *maximum* of 1.5 acres of mitigation may be required per acre of wetlands that is adversely impacted as part of a ferrous mining operation. Under **LRB-4035/P1**, the DNR must require a *minimum* of 1.5 acres of mitigation per acre of wetlands that is adversely impacted as part of a ferrous mining operation.

TIMELINE FOR REVIEW OF A FERROUS MINING PERMIT

Under **AB 426**, the DNR must make a decision regarding a ferrous mining permit application no later than 360 days after the day on which the permit application is deemed administratively complete. In general, AB 426 likewise requires the DNR to approve or deny all environmental and natural resource permits required for a ferrous mining project by the 360-day deadline.

Under **LRB-4035/P1**, the DNR must make a decision on the ferrous mining permit and related approvals within the 360-day timeframe, unless the DNR and the permit applicant agree to extend the timeline for 30 days. The deadline may be extended an unlimited number of times, but each extension is limited to 30 days and requires a new agreement between the DNR and the applicant.

AUTOMATIC APPROVAL IF THE DNR DOES NOT MAKE A DECISION

Under **AB 426**, if the DNR does not issue or deny a ferrous 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.

Under **LRB-4035/P1**, if the DNR does not issue or deny a ferrous mining permit within the deadline, including any 30-day extensions agreed to by the applicant, then the DNR must refund the mining permit application fees paid by the applicant.²

² Under AB 426 and LRB-4035/P1, an applicant for a ferrous mining permit must pay a fee equal to the DNR's costs for evaluating the ferrous mining project, including the costs for consultants retained by the DNR and the cost of environmental review, but not to exceed \$2 million. In the event that the DNR does not make a final decision within the allotted timeframe, that fee must be refunded under LRB-4035/P1.

CONTESTED CASE HEARINGS

Under **AB 426**, no person is entitled to a contested case hearing regarding a ferrous mining permit or any other permit or approval issued by DNR in connection with a ferrous mining operation. **LRB-4035/P1** does not prohibit contested case hearings regarding a ferrous mining permit or related permits or approvals, meaning that these types of DNR decisions may be subject to contested case hearings under ch. 227, Stats.

If you have any questions, please feel free to contact us directly at the Legislative Council staff offices.

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