Legislative Fiscal Bureau
One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: http://legis.wisconsin.gov/lfb

February 25, 2013

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Fiscal Effect of 2013 Senate and Assembly Bill 1: Ferrous Metallic Mining

This memorandum provides information regarding various fiscal effects of the ferrous (iron) metallic mining bill, (2013 Assembly Bill 1 and Senate Bill 1). Specifically, this memorandum provides information related to the following: (a) impacts on the Department of Natural Resources including the general fiscal impact, solid waste tipping fees, mining permit-related fees, wetland mitigation, and the managed forest law program; (b) a description of the state's involvement in mining damage claims; (c) fiscal effects on other state agencies; (d) effects on mining-related state and local taxation, including the investment and local impact fund; and (e) whether an emergency statement would be required. The bill would create a separate regulatory framework for the permitting of ferrous metallic mines and make a number of changes to state regulatory powers and procedures, timelines for decisions, and fee amounts for iron mining projects.

In addition to the fiscal effect of the bill as introduced, this memorandum discusses the fiscal implications of several of the 11 identical amendments adopted by the Assembly and Senate standing committees during executive action on February 6, 2013. Where applicable, these effects are identified and discussed *in italics*.

On February 6, 2013, the bill, as amended, was recommended for passage by the Assembly Committee on Jobs, Economy and Mining on a vote of 10 to 6 and by the Senate Committee on Workforce Development, Forestry, Mining and Revenue by a vote of 3 to 2.

DEPARTMENT OF NATURAL RESOURCES

This section discusses fiscal impacts on the Department of Natural Resources (DNR). It discusses solid waste tipping fees, application fees, and permit review costs paid by a mining permit applicant. It also discusses DNR staff and costs related to review of the mining permit application and environmental impact statement, long-term DNR staff costs, a potential permit fee refund provision, contested case hearing costs, wetland mitigation revenues, the Metallic Mining

Council, and managed forest law impacts.

DNR submitted a fiscal note to the bill that characterized the fiscal effect as indeterminate given the variety of circumstances, complexity, number, and timing of iron mining projects that could be encountered under the terms of the bill. However, DNR submissions for the current and prior session bills did identify potential areas of impact and ranges of potential costs that may total from $1 million to over $6.5 million, which are also discussed below.

State Tipping Fees. Under current law, state fees are imposed for the disposal of most materials in solid waste disposal facilities (landfills). These fees are generally based on the number of tons disposed and are often referred to as state tipping fees. The fee is currently $13 per ton for most waste, other than certain high-volume (charged at 50¢ per ton) or exempt waste. Certain mining wastes disposed of in state-licensed landfills are also subject to state tipping fees, but at a different rate. Currently, landfills also pay annual license fees and a landfill license surcharge tipping fee. Administrative rule NR 520.04 exempts mining operations from the 15¢ per ton landfill license surcharge tipping fee.

Table 1 shows state tipping fees for most non-high volume waste disposed in Wisconsin under current law and for mining wastes under the bill. The bill would exclude mining wastes disposed in a mining waste site covered by an iron mining permit from certain solid waste disposal fees paid by landfills, most notably the $7 per ton recycling tipping fee, and instead apply a 2.7¢ per ton rate (1¢ for environmental repair, 1¢ for groundwater, and 0.7¢ for the Waste Facility Siting Board).

TABLE 1

State Solid Waste Disposal (Tipping) Fees

	Current Law		Bill
Tonnage Fees	General	Mining	(Mining)
Recycling	$7.000	$7.000	None
Environmental Repair	2.500	0.010	$0.010
Groundwater	0.100	0.010	0.010
Well Compensation	0.040	None	None
Nonpoint	3.200	None	None
Landfill License Surcharge	0.150	None	None
Waste Facility Siting	0.007	0.007	0.007
	$12.997	$7.027	$0.027

The tipping fees identified in Table 1 are paid when solid wastes are deposited at a state-licensed landfill. DNR staff indicated that almost all mining wastes would be expected to be subject to the $7 per ton recycling fee under current law. In addition to the tipping fees, DNR is required to develop by administrative rule graduated charges to cover the costs of solid waste license and review activities. Under the bill, annual landfill license fees (fees vary, but are generally under $8,000) would not apply to mining waste disposed at a site covered by a mining

permit. The bill's exemption of mining waste disposal facilities from an annual landfill license fee would exempt ferrous mining waste from the landfill license surcharge tipping fee. Further, the bill would require DNR to revise its administrative rules that provide nonferrous mining exemptions, to provide the same exemptions for ferrous mining. In addition, certain other solid waste tipping and license fees apply to disposal of hazardous wastes. Ferrous mining waste would be exempted from these fees under the bill.

The amount of waste materials that would be disposed of either at the mining site or off-site would depend on the size, configuration and structure of the ore body and the mining operation. However, significant amounts of waste materials would be generated. For each ton of taconite produced, it is possible that, on average, over three tons of wastes could be produced. Mining waste materials include overburden (the rock materials overlaying or surrounding the ore body), waste rock (rock materials not containing significant amounts of iron) and tailings (the crushed ore waste left over from processing taconite pellets). How these wastes are handled depends in part on their composition, the available land at the mining site, and reclamation plans. It is likely that more than one type of waste disposal facility would be utilized at a mine. The reclamation plan for the mine site would need to address the long-term storage, disposal, or reuse of the waste materials.

A potential iron mine could be located along the Penokee Ridge (also known as the Gogebic Range that stretches into the Upper Peninsula of Michigan) in Ashland and Iron Counties. No mining application has been submitted to date, and the size and scope of potential mining operations may vary substantially. However, a potential phase one project might, for example, consist of an approximately 900 to 1,500-acre open-pit reaching up to 1,000 feet deep, on a mining site extending four to five miles on over 4,000 acres south of state highway 77 between Mellen and Upson. In later phases the mining could, potentially, be extended for up to 20 miles, or more. On-site crushing and processing plants could be included to process the iron ore into taconite pellets for shipment primarily by rail and ship to steel mills. One or more significant sources of energy would also be required for the mining and processing facilities.

In early 2011, Gogebic Taconite received a DNR permit to drill up to eight exploratory holes to begin to determine the size, composition and other features of the ore body. Drilling was expected to begin in July, 2011, but has been put on hold by the mining company. Pending results of these initial borings, more expansive drilling, perhaps followed by other excavating and related analysis (known as prospecting or bulk sampling) may be necessary before the potential scope of mining would be known and the formal mine permitting process would be started.

Gogebic Taconite has indicated approximately eight million long tons (2,240 pounds per long ton) of taconite could be produced annually over the expected 35-year life of a phase one mine. Precise waste estimates are not possible at this time and may vary substantially based on mine design. However, an annual production of eight million long tons (equivalent to 8,960,000 U.S. short tons) of taconite could be expected to produce roughly 29 million short tons (2,000 pounds per short ton) of mining waste materials annually and perhaps one billion tons over 35 years. Annual mining wastes could be comprised of approximately 18 million tons of tailings and 11 million tons of overburden or other waste rock. Based on a 2.7¢ per ton tipping fee under the bill, 29 million tons of mining wastes could generate state revenues of perhaps $665,000 to $785,000 annually once the mine were in full production. The lower estimate would be based on

approximately 24.6 million tons of mining waste, and would reflect about 40% of the non-tailings waste being recycled or put to some other beneficial reuse that would exempt it from the fee. Based on the $665,000 annual figure, $493,000 would be deposited to the segregated environmental fund and $172,000 as Waste Facility Siting Board (WFSB) program revenues. The Waste Facility Siting Board is attached to DOA and facilitates negotiation and arbitration between a solid waste landfill license applicant and local municipalities.

If the $7 per ton recycling fee were applied to this amount of waste it would generate over $172 million annually for the environmental management account of the environmental fund. (The recycling program was folded into the environmental fund under 2011 Act 32.) The environmental management account funds several activities including the following: recycling assistance to local governments; debt service costs for general obligation bonds issued for contaminated land, sediment and water pollution abatement programs; DNR administration of recycling, contaminated land and brownfields cleanup programs; state-funded cleanup where there is no responsible party able or willing to pay for the cleanup; brownfields and clean sweep grants; and, other programs. After mining activities are underway, the 2¢ per ton mining waste disposal fee that would be deposited in the environmental management account of the environmental fund could be appropriated by the Legislature to offset DNR ongoing costs of monitoring the iron mining operation, or for any other expenditures authorized under the environmental management account.

Table 2 shows the state tipping fees that could be paid annually by an iron mining operation in full production under the example outlined above (based on 24.6 million tons of billable mining wastes).

TABLE 2

State Mining Waste Tipping Fee Example

	Current Law	Bill
Environmental Fund 2¢	$493,000	$493,000
WFSB 0.7¢	172,000	172,000
Recycling Fee $7	172,480,000	0
Total State Tipping Fee	$173,145,000	$665,000

Application Fees. The bill would limit application and filing fees for required approvals to: (a) the lesser of DNR's actual costs or $2 million for evaluating the mining permit, including the costs for consultants retained by the Department to evaluate the application for the mining permit and the application for any other approval; and (b) the full costs of a DNR contract for preparation of an environmental impact statement (EIS), if DNR contracts with a consultant to assist in preparation of an EIS, and if DNR awards the contract on the basis of competitive bids.

Under current law, the company proposing to mine is responsible for all fees related to the mining permit and various other environmental permits that can vary significantly depending on the size and scope of the particular project and the state resources that would be potentially affected. However, in addition to the mining permit, a typical application would include state

permits related to mining waste storage and disposal, water withdrawal, wetland and water quality impacts, and air emissions. In general, the mining company is either responsible for a set fee (typically established in administrative rule or statute and intended, in the aggregate, to recoup DNR costs of review and/or monitoring) or the actual costs of review for these permits.

Currently, when a person applies for a prospecting or metallic mining permit, the applicant must pay a fee estimated by DNR to cover the costs anticipated to be incurred by the Department during the coming year related to DNR review of the application. The applicant pays for costs associated with the preparation of an EIS separately. DNR is required to annually compare the mining permit review fees paid by the applicant with the fees incurred under DNR water, waste, air and other environmental permit requirements (statutory chapters 30, 280 to 292 and 295 to 299), excluding costs associated with preparation of an EIS. The Department reconciles the fee amounts, and the applicant pays an additional fee for any costs which exceed the amount previously paid by the applicant. When DNR makes a final decision on issuance or denial of a permit, the Department reconciles the final permit review fee amounts so they do not exceed the total DNR costs. The applicant then pays a final fee equal to the amount by which total DNR costs exceed the fees previously paid, or DNR refunds the applicant the amount by which fees previously paid exceeded DNR costs.

Under the bill, the mining applicant would pay DNR costs of reviewing the mining permit application similar to current law, except that DNR costs of review for all necessary approvals, other than a contract for the EIS, would be capped at $2 million. The bill would also define an approval to include withdrawals of county forest lands and managed forest law orders. DNR would receive a $100,000 payment from the mining applicant when the applicant files the bulk sampling plan or a pre-application notice for an iron mine. The Department could then receive up to seven additional $250,000 payments from the applicant after DNR demonstrates that each prior payment has been fully allocated against actual costs, with a final payment of $150,000 being made as the $2 million cap is reached.

Under the bill, the applicant would be required to pay the full costs of a contract for preparation of the EIS if DNR contracts with a consultant to assist in preparation of the EIS and awards the contract on the basis of competitive bids. A mining permit applicant would not be required to pay any application or filing fee for any approval other than a mining permit, notwithstanding any fee required under statutory chapters 23, 29, 30, 31, 169, 281, 283, 285, 289, or 291 (DNR conservation and environmental laws). The bill would retain the current law requirement that a mining permit applicant pay any fee required for an approval under the Great Lakes Compact. The payments by a mining applicant under current law and the bill are shown in Table 3.

TABLE 3

Mining Applicant Payment of Permit Review Costs

	Current Law	Bill
DNR Staff and Permit Review Costs	Actual costs	The lesser of actual DNR permit review costs or $2,000,000.
Development of Environmental Impact Statement (EIS)	Actual costs of DNR and any contract.	Full costs of the contract if DNR contracts with a consultant to assist in preparation of the EIS and awards the contract on the basis of competitive bids.
Total DNR and EIS Costs	Actual costs	The lesser of actual DNR permit review costs or $2,000,000, plus the full costs of an EIS contract if DNR awards the contract on the basis of competitive bids.

Application fees under current law can vary considerably and would depend on a variety of factors including the size, location and complexity of the proposed mining project. A smaller project where the mining company includes high-quality data with its mining application and environmental report may cost DNR $1 million or less to review and analyze, while a large, complex project would be expected to cost several million dollars. It appears likely that a proposed Penokee/Gogebic Range iron mine would also include large on-site crushing and processing plants to produce taconite pellets. One or more major sources of energy to run the operations would also be required.

A major cost of any mining proposal is the environmental impact statement (EIS) required under state law. Currently, the EIS for a metallic mine is required to address a variety of issues including the following: (a) the environmental and economic impact of the proposed action; (b) alternatives to the proposed action; (c) the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity; (d) any irreversible and irretrievable commitments of resources that would be involved in the proposed action; (e) the short-term and long-term beneficial aspects of the proposed project; (f) the economic advantages and disadvantages of the proposal; (g) the impacts to tourism, employment, schools, medical care facilities, private and public social services, tax base, and the local economy; and (h) other significant factors.

Current Wisconsin law requires the applicant to pay the cost of the state's preparation of the EIS, including any consultant costs, printing, and postage. Under the bill, the applicant would pay the costs of a competitively bid EIS contract. Any DNR costs of contract oversight or other EIS-related costs not included in the contract would fall under the $2,000,000 cap. Further, under the bill an EIS would also be required, but "other significant factors" identified under "(h)" above would not be required to be addressed. It is unclear the extent to which this difference might reduce the cost or scope of an EIS under the bill.

The costs of an EIS and other permit reviews for a potential Penokee/Gogebic iron mine are not known at this time. The two most recent mining applications received by DNR may provide

some idea of the range of costs likely to be encountered. However, it should be noted that the costs for both these mining projects were incurred some time ago and may not be representative of current costs.

The proposed Crandon, or Nicolet, mine would have been located south of Crandon in Forest County. Exploration on a large zinc and copper deposit occurred in the 1970s. The application process for a mine was begun in 1978, but the application was withdrawn in 1986 shortly after DNR had published a final environmental impact statement. In 1995 a second proposal was advanced to mine approximately 55 million tons of zinc and copper ore from an underground mine. Ownership of the mine site and planned mining activity changed several times over the following years culminating in an October, 2003, sale to the Sokaogon Chippewa (Mole Lake) and Forest County Potawatomi Communities. The mining application was withdrawn in late 2003 before a draft EIS had been published by DNR.

The original application (withdrawn in 1986) generated DNR fee revenue of approximately $1.85 million. This included over $1.6 million for development of the environmental impact statement, and over $220,000 for the mining and various other permits required. The second application (withdrawn in 2003) generated fee revenues of almost $6.7 million. Costs included over $4.5 million for DNR to hire consultants, gather and analyze data, and begin to develop the EIS. Fees for regulatory review activities related to the mining permit and all other DNR approvals that would be required totaled over $2.1 million.

The Flambeau mine was located on an approximately 181-acre site near the Flambeau River in Rusk County approximately one mile south of Ladysmith. The mining company began the permitting process in 1987, with all state permits being issued by January, 1991. In July, 1991, construction began on an approximately 35-acre open pit that reached 2,600 feet long, 550 feet wide, and up to 220 feet deep. The mine produced approximately 1.9 million tons of ore and produced marketable copper (181,000 tons), gold and silver. The Flambeau mine permitting process generated DNR fee revenues of approximately $371,000. Costs included $189,000 for DNR to develop the EIS and approximately $182,000 for regulatory review of mining related permits. Reclamation of the mine site was substantially completed in 1999, though groundwater and other monitoring continues at the site.

DNR Staff and Costs. Under the bill, DNR would receive reimbursement from the mining permit applicant for the lesser of $2,000,000, or DNR's actual costs of permit review. This provision would appear to cover DNR costs incurred from the pre-application notice to the decision on issuance of the mining and related permits. The DNR fiscal note for the bill indicated that mining project pre-application and permit review costs could vary substantially, and could be approximately $150,000 annually for a small mining proposal to $800,000 annually for a large mining proposal over approximately four-years (or, a total of approximately $600,000 to $3.2 million). Under the bill, the pre-application and permit review cost components would be subject to the $2,000,000 cap for reimbursement from the mining permit applicant.

The bill would require the applicant to reimburse DNR for the actual costs of preparation of an EIS, if DNR awards a contract on the basis of competitive bids.

The DNR fiscal note for the bill indicated the Department's annual costs of $150,000 to $800,000 related to pre-application and permitting activities would include three components, and would require approximately 1.5 to 8.0 staff, at a cost of $100,000 per employee per year, for approximately four years. First, DNR estimated it would need 0.5 to 2.0 staff for project management, oversight and coordination, including for: (a) overall management and oversight of the DNR mining permit development; (b) coordination with the U.S. Army Corps of Engineers and other affected governments (federal, tribal, state, and local units of government); and (c) oversight of environmental performance after the mine operation begins. Second, the Department estimated it would need 0.5 to 4.0 staff for permitting and plan review, including for: (a) reclamation plan development, review and approval; (b) plan review and approval for waste management facilities, wastewater treatment, storm water management, and water supply; and (c) environmental permitting for air, waste, wastewater, storm water, high capacity well, water use, waterway and wetland permitting needs. Third, DNR estimated it would need 0.5 to 2.0 staff for technical review of specialized data needed to support groundwater modeling and analysis of surface water impacts.

The DNR fiscal note for the current bill does not discuss costs related to the development of the environmental impact statement. DNR's fiscal note for a similar bill last session (2011 AB 426) indicated the Department's staff costs related to oversight of the development of an environmental impact statement would total approximately $50,000 to $300,000 on a one-time basis during development of the EIS and would require 0.5 to 3.0 staff. The DNR positions would provide oversight and assessment of the impact of a mining proposal on threatened and endangered species, fish, wildlife and forestry resources, groundwater and surface water. DNR EIS oversight costs likely would not be included in any EIS contract and therefore would be expected to be subject to the $2 million cost reimbursement cap under the bill.

Further, last session DNR estimated a cost of $350,000 to over $2.7 million to contract with a consultant to develop an EIS. In the DNR fiscal note for 2011 AB 426, DNR indicated the estimate was based on past costs ranging from $370,000 for the 200-acre Flambeau Mine to $2.4 million for the recently completed Keetac Mine expansion in Minnesota. The Department's fiscal note for 2011 AB 426 indicated the most cost effective approach would be to have one contractor develop an EIS for both the state and the U.S. Army Corps of Engineers.

The bill would create a program revenue continuing appropriation for receipt of the fees to be used for ferrous mining operations. The Department's fiscal note indicated a potential need for between 1.5 and 8.0 staff over approximately four years for mine pre-application and permit review activities. No staff would be provided under the bill. Staff resources for the PR appropriation created under the bill could be provided through separate legislation, or through a section 16.505 passive review request to the Joint Committee on Finance when a mining proposal was received by DNR.

The bill does not specify how costs in excess of the $2 million cap, if incurred, would be addressed. The DNR fiscal notes would suggest that these costs may total from between approximately $650,000 to $3.5 million depending on numerous factors, including the size, complexity and site conditions of a proposed mine. Absent a separate appropriation by the Legislature, DNR would be required to absorb any costs in excess of $2 million within its existing

budget authority to the extent allowable. However, DNR may have some difficulty in finding state program revenue (fee) or segregated revenue (such as the environmental fund) appropriations that would allow expenditures for such purposes. Federal appropriations might also be considered by DNR, but federal restrictions may prevent their utilization. Further, to the extent existing appropriations could be utilized for ferrous metallic mining related costs, staff and resources would be diverted from current functions. For example, DNR is appropriated funds from the segregated environmental management account of the environmental fund for administration of environmental activities under statutory chapters 285 and 289 to 299 (including metallic mining under current law and the bill), but these funds are currently allocated to activities of staff in the Waste and Materials Management and Remediation and Redevelopment programs. If a large and complex iron mining project were proposed, it is possible the $2 million cap could require a significant supplemental appropriation, a substantial diversion of existing state resources, or both.

To the extent DNR is able to coordinate its review and EIS development with the federal government, costs may be reduced for both the state and federal government as the associated costs would also be shared. However, if the timelines under the bill make it more difficult to jointly perform certain tasks, including the EIS, state costs may be higher than under current law. Further, the timelines under the bill may require a higher level of DNR staff (and consultant contracts) in a shorter period of time. While the DNR fiscal note suggests costs might be incurred over an approximately four-year period, the bill would establish a timeframe that could be required to be completed (preapplication to permit decision issued) in less than two and one-half years under certain circumstances. Additionally, the relevance and quality of data provided by the mining applicant to DNR would affect state costs of review. That is, to the extent the mining company application is well documented and supported by high-quality testing, sampling and baseline data, DNR may have less of a need to perform independent testing, or may be able to verify information with more limited sampling.

Assembly/Senate Amendments 2, 3 and 10. *Amendment 2 would require DNR to seek to enter into a memorandum of understanding with any federal regulatory agency with responsibilities related to a potential mining operation covering timelines, sampling metrology, and any other issue of mutual concern related to processing an application for a mining permit. To the extent the amendment might result in joint work by DNR and a federal agency, work might be completed in a shorter period of time and/or at a lower cost for DNR and a mining permit applicant. It should also be noted that Amendment 3 would allow the mining applicant, at the time of application, to extend the 420-day timeline. Further, a provision of Amendment 10 would specify that the $2 million cap on mining applicant fees would not apply to a power plant or transmission line application.*

The bill would also require DNR to modify certain current administrative rules related to metallic mining to exclude applicability to ferrous mining and to extend current metallic mining rule exemptions to ferrous mining. Although the DNR fiscal note does not identify specific costs, it can be expected that DNR would incur one-time staff and related costs associated with rule development.

The DNR fiscal note also describes long-term costs to the Department after a mine permit

has been issued. The Department would incur long-term costs for ongoing project oversight and inspections of the mining site. Officials indicate that if a mine is developed, approximately $386,900 for 5.0 positions could be incurred annually, depending on the scale and method of the mining operation. DNR indicates the positions, and annual salary and fringe costs, would include: (a) $78,500 for a natural resources program manager; (b) $67,100 for a field staff position (a hydrogeologist, waste management specialist, or water resources management specialist); (c) $67,100 for an office technical staff person (of the same classification types as the field staff position); and (d) $174,200 for two engineers after the mine begins operation (air management, wastewater, water resources, or water supply engineer positions). The DNR fiscal estimate does not include an estimate for oversight of reclamation and environmental monitoring after a mine has been closed. As discussed earlier, ongoing costs of monitoring the iron mining during the operating phase may be fully or partially offset by the 2¢ per ton mining waste disposal fee that would be deposited in the environmental management account of the environmental fund under the bill. However, receipt of this revenue would not begin until the year after mining operations began, and would end after active mining ceased.

Permit Timeline and Fee Refund. Under the bill, DNR would have 30 days after the receipt of an iron mining permit application to determine if the application is complete. Upon DNR sending a notice that the application is complete, or upon the expiration of the 30-day period without a DNR determination, the application is considered complete. If it is determined that the application is not complete, DNR may make one written request for additional information within the 30-day review period. There would be no deadline on when the mining applicant must respond to a DNR request for additional information. However, within 10 days of receiving additional requested information, DNR must notify the applicant whether it has received all of the requested information. The bill would specify that the application is considered administratively complete upon the earlier of the date this notice is sent or the expiration of the 10-day period.

The bill would then require DNR to approve or deny the mining permit application within 420 days after the application is considered administratively complete. The Department and the applicant could jointly agree to not more than one 60-day extension of the 420-day timeline if: (a) the extension is necessary to enable DNR and the U.S. Army Corps of Engineers to jointly prepare their environmental impact statements; or (b) new information or a change to the mining proposal necessitates additional time to review the application.

If DNR does not issue its decision within the required timeline (420 to 480 days, as applicable), the Department would be required to refund any fees paid by the applicant for mining permit review and for the contracted costs of preparation of the EIS. The amounts paid by the applicant to DNR would be deposited in a new program revenue appropriation. To the extent DNR had already made PR expenditures relating to the mining application, it is unclear how a refund would be made. Program revenue appropriations are a part of the state general fund. If DNR would have to refund the amounts already spent, the state general fund would likely have to subsidize the deficit that would occur in the program revenue appropriation. When a program revenue appropriation goes into deficit, the agency is currently required to submit a plan to DOA and the Legislature to resolve the deficit. Legislation may be required to resolve any program revenue deficiency that would result if a refund were made under this provision.

Assembly/Senate Amendment 3. *It should be noted that this amendment would allow the mining applicant, at the time of application, to specify a timeline that is greater than the 420 days specified under the bill. If exercised, this option could reduce the likelihood of DNR failing to make a determination in the required time.*

Contested Case Hearing. In general, under current law, a person aggrieved by a decision of a state agency may obtain a contested case administrative hearing under administrative procedure laws in Chapter 227 of the statutes. DNR is required to hold a master hearing that includes a public hearing and a contested case hearing on the mining permit, EIS and all related permits applied for as part of a proposed mining operation before it makes a final decision on approval or denial of a mining permit. If a matter is covered in a contested case hearing as part of a mining operation permit master hearing, the general requirement for a contested case hearing does not apply. DNR costs associated with its involvement in the contested case hearing happen before DNR makes the final decision on the permit application. Thus, under current law, the Department's costs associated with a metallic mining contested case hearing would generally be reimbursed by the permit applicant.

Under the bill, a contested case hearing would be held after DNR makes a decision on issuance of an iron mining and related permits, if one or more aggrieved persons request the hearing within 30 days after DNR issues a decision on the mining permit application. A contested case hearing would not be authorized before DNR makes the decision on the permit. The final decision of the hearing examiner must be made within 150 days after DNR issues its permit decision. The bill requires the applicant to reimburse DNR costs of evaluating the permit application, up to $2,000,000. Permit review costs would be incurred through the time at which the Department approves or denies the mining permit application. Thus, DNR's costs associated with a contested case hearing which would occur after the permit decision is issued likely would not be reimbursed by the applicant.

The DNR fiscal note discusses potential DNR costs associated with participating in a contested case hearing. The Department notes it could absorb approximately $240,000 in one-time costs for DNR staff and consultants during the 150 days during which the hearing examiner would have to hold a contested case hearing and make a decision. DNR program staff costs of approximately $180,000, to support approximately 1.8 full-time equivalent positions primarily related to the legal, air, waste, water, fisheries, wildlife and endangered resources programs could include: (a) preparation of Department testimony, review of testimony presented by other parties, activities related to discovery of facts during the hearing process, participation in the hearing, and post-hearing review; and (b) project coordination. DNR also estimates it would incur approximately $60,000 associated with consultants contracted by the Department for permit review and EIS activities.

Under current law and the bill, the Department of Administration (DOA) would provide hearing examiner services for a contested case hearing, and would be authorized to charge DNR for certain DOA services. The DNR fiscal note does not discuss these potential costs. However, DNR officials have indicated that DOA might incur costs of approximately $102,000 to $107,000 for approximately six months, related to the 150-day contested case timeline plus pre- and post-

hearing time needs, including: (a) $70,000 for a senior level hearing examiner (experienced attorney) for salary and fringe; (b) $22,000 for program assistant support staff for salary and fringe; and (c) $10,000 to $15,000 for transcription services. It is not clear what portion of these potential costs might be absorbed within existing DOA resources versus being charged to DNR.

Wetlands and Mitigation. 2011 Act 118 modified statutory provisions relating to approvals for activities affecting wetlands, in particular by providing DNR authority to issue general or individual permits for discharges of dredged or fill material to wetlands in the state. Under current law, general permits for discharges to wetlands mostly are limited to activities affecting not more than either two acres or 10,000 square feet (about 0.23 acre), depending on the nature of the activity. All other activities requiring a permit are subject to individual permits.

Under current law, activities under a general permit relating to development for industrial, commercial or residential purposes, and not affecting more than 10,000 square feet of wetlands, must pay a restoration surcharge at the time of application. The surcharge is to be established annually by DNR and is to be no more than 50% of the market price of purchasing equivalent credits from a mitigation bank. Currently, the statutes specify an application fee of $500 for most wetlands general permits. Additionally, DNR has established restoration surcharges for general permits for industrial, commercial or residential development at $200 for activities affecting no more than 0.l acre of wetlands ($700 total) or $300 for activities affecting more than 0.1 acre but not more than 10,000 square feet of wetlands ($800 total). The revenues of the surcharge are deposited to a program revenue, continuing appropriation created under Act 118 for the purpose of restoring or creating wetlands in the state.

Also, under current law, activities requiring an individual permit must mitigate the impacts of the activity by restoring, enhancing or creating other wetland areas to compensate for the impacts under the permitted activity. Under current law, mitigation options include: (a) purchasing credits from a mitigation bank; (b) conducting mitigation within the same watershed as the discharge, or within one-half mile of the discharge activity; or (c) participating in an in lieu fee subprogram. The statutes provide that purchasing mitigation credits or participating in the in lieu fee subprogram are to be the preferred means of mitigating impacts. For purposes of mitigation, the minimum ratio applied to projects is to be established by DNR, consistent with federal regulations, but is to be no less than 1.2 acres of restored, enhanced or created wetlands for every acre affected by a discharge. Mitigation within the same watershed as the discharge or within one-half mile of the discharge site need only be 90% of the ratio established for other mitigation not as proximate to the discharge, but not less than the 1.2 acre minimum. DNR reports it is beginning to create the in lieu fee subprogram authorized under Act 118, but that a program is likely one to two years from being fully implemented. Under the program's general statutory creation, a permit holder would make payments to DNR or another entity for the restoration, preservation, enhancement or creation of wetlands or other water resource features in the state. Payment terms are to be specified by DNR. By statute, individual wetlands permits currently must pay an application fee of $800.

Under the bill, ferrous bulk sampling and mining operations would be required to either obtain an individual permit or act under authority of a general permit, if applicable, for any discharges to wetlands occurring in the course of approved projects. As it pertains to mitigation

program requirements, the bill would apply most provisions noted above, with the following exceptions: (a) the bill would provide that any mitigation would occur at a ratio of no more than 1.5 acre of wetland creation, enhancement, preservation or restoration for every acre of wetland impacts; and (b) any wetlands impacts from ferrous mining operations in the Ceded Territory must be mitigated in the Ceded Territory. (DNR reports there are five active mitigation banks in Wisconsin that are primarily open to general use. Of these, four have acreage in the Ceded Territory.) The bill would also provide mitigation may take place off the mining site, or more than one-half mile from a mining site, only if on-site mitigation is not practicable, not ecologically preferable, or if insufficient on-site acreage exists.

It is expected that most wetlands impacts associated with ferrous mining activity would be subject to individual permits, although mining permit applicants would not be required to pay application fees for wetlands permits under the bill's general waiver of separate environmental fees in favor of a single mining application fee. However, a person conducting mining or bulk sampling activity under a wetlands individual permit would have the option of participating in the in lieu fee subprogram. In lieu fee payments would be deposited to the program revenue, continuing appropriation noted earlier. Because the payment and administrative terms of the in lieu fee subprogram have not been established, the fiscal effect of these bill provisions is unknown at this time.

Further, to the degree any ferrous bulk sampling or mining activity could occur under a wetlands general permit for industrial purposes, the bill would apply the general permit restoration surcharge noted above to such activity. The fiscal effect of this provision also cannot be determined at this time.

Assembly/Senate Amendment 8. *The amendment would modify the sequence of preferred mitigation activities associated with mining. If wetland mitigation were not practicable or ecologically preferable to be conducted on the mining site, including within one-half mile of the mining site, or if such an area were to have insufficient acreage for mitigation, mitigation would be required in the same watershed as the affected wetland area. If mitigation in the same watershed were not practicable or ecologically preferable, mitigation would be required to occur in the same primary water basin of the state (the Lake Superior basin, the Lake Michigan basin, or the Mississippi River basin) in which the affected wetland is located. Mitigation could occur elsewhere in the state if none of these could be achieved.*

Additionally, for a mining site adversely affecting wetlands in the Ceded Territory, the amendment would specify that mitigation occurring in a watershed or basin partly contained in the Ceded Territory is to occur in the portion of the watershed or basin that is in the Ceded Territory.

Wetland Delineation. Under current law, DNR is generally required to produce, or arrange for the production of, maps that show the occurrence of any wetlands in Wisconsin with an area of at least five acres. Further, the statutes provide that owners or lessees of land may request DNR to determine the incidence of wetlands on specific parcels. A person may request DNR conduct: (a) a wetland confirmation, during which DNR examines wetland boundaries previously suggested by a third-party reviewer; or (b) a wetland identification, during which DNR conducts an on-site inspection of a parcel of up to five acres to determine whether the property contains wetlands. The

statutes authorize DNR to assess fees of $300 for every 20 acres reviewed for a wetland confirmation or $300 per acre inspected for a wetland identification.

The bill would specify that any owner or lessee of land may request DNR to conduct a wetland determination or wetland boundary delineation to evaluate a wetland individual permit application submitted for proposed mining or bulk sampling activity. The bill also would provide a ferrous mining permit applicant is not required to pay most application or filing fees for permits or approvals otherwise collectable by DNR under current law. Instead, an applicant is required to pay the costs to DNR of evaluating a ferrous mining permit application, up to $2 million, not including certain costs related to preparing an EIS. The DNR fiscal note estimates the Department's costs in determining the occurrence of wetlands at a potential mining site would vary with the nature of wetland boundary information provided by an applicant, if any, and the size and scope of the mining project. Assuming the Department would be conducting a wetland determination, DNR estimates one-time staff costs could be $5,000 for a small site with few wetlands to $100,000 or more for a large project site with many wetland areas and varying land types.

Assembly/Senate Amendment 5. *The amendment would authorize DNR to assess a fee equal to its costs in providing wetland determinations or wetland boundary delineations in evaluating a ferrous mining or bulk sampling permit. The fee would not be subject to the $2 million cap.*

Metallic Mining Council. Under current law, a Metallic Mining Council (created under s. 15.347 (12) of the statutes) advises DNR on issues related to metallic mining in the state. The Council statutorily consists of nine persons representing a variety and balance of scientific and environmental viewpoints. Members are appointed by the Secretary of DNR for staggered three-year terms. Under s. 289.08 of the statutes, the Council has the following duties: (a) advise DNR on the implementation of specific statutory requirements in chapters 289 (solid waste), 292 (environmental cleanup), 291 (hazardous waste), and 293 (metallic mining); (b) serve as an advisory, problem-solving body to work with and advise DNR on matters relating to the reclamation of mined land in the state and on methods of and criteria for the location, design, construction and operation and maintenance of facilities for the disposal of metallic mine-related waste; and (c) review and comment on all rules proposed by DNR related to the statutory requirements under (a) above, before the Department proposes the rules in final draft form. DNR is required to transmit the written comments of Metallic Mining Council members with the summary of any related proposed rules that the Department submits to the Legislature. The Department is also required to prepare written minutes of all meetings of the Council and make them available to interested parties.

DNR indicates the Metallic Mining Council was last active in 1998 when the Council advised DNR on administrative rules related to revision of groundwater provisions at metallic mining waste sites (NR 182) and creation of irrevocable trust fund requirements for metallic mines (NR 132). The terms of members expired by the year 2000. The Metallic Mining Council has not met since then.

Currently, the Metallic Mining Council is required to advise DNR on administrative rules

related to ferrous metallic mining under chapter 293 of the statutes. The bill does not amend the duties of the Metallic Mining Council to include the ferrous metallic mining chapter 295 created in the bill. Thus, the Council would not be required to advise DNR on administrative rules developed under new chapter 295 requirements.

If, under current law, a potential ferrous metallic mine application or administrative rule change would prompt DNR to reactivate the Metallic Mining Council, the Department could incur costs associated with staffing the Council and holding Council meetings. Since the Council would not be authorized to advise the Department on ferrous metallic mining activities under chapter 295 under the bill, the Department would not incur costs associated with activities of the Council that it would likely incur under current law. Examples of potential costs are DNR staff time, and reimbursement to council members for their actual and necessary expenses, such as mileage for travel to meetings, and meals.

Managed Forest Law Withdrawal Fees and Taxes. It appears that much of the private land in the area where mining activity is likely to occur, which may initially be located in the towns of Morse in Ashland County and Anderson in Iron County, is currently enrolled in the managed forest law (MFL) program under multiple MFL orders. In lieu of general property taxes, owners of land enrolled in the MFL program are required to make annual acreage share payments to municipalities in amounts determined by the date the land was entered into the program (79¢ per acre for land entered through 2004 and $2.14 per acre for lands entered after 2004) as well as pay an annual yield tax or severance fee of 5% of the timber harvested on the land (based on the average price of species harvested). The municipality retains 80% of these payments and sends 20% to the county. In addition, under the MFL program, a landowner has the option of closing a maximum of 160 acres per municipality to public access if an additional fee is paid for each acre closed (currently $1.08 per acre entered through 2004, and $8.54 per acre after 2004). These closed acreage fees are deposited in the forestry account of the segregated conservation fund. However, DNR staff indicates that most of the affected acres are in the open program.

Before bulk sampling or mining operations could begin, affected acres enrolled in the MFL program would be required to be withdrawn from the program. Withdrawal from the MFL program currently carries a withdrawal fee of $300 per order, which is deposited in the forestry account. Under the bill, the DNR costs of processing the withdrawal would be subject to the overall $2 million fee cap. In addition, withdrawal taxes are assessed (calculated by the Department of Revenue) and are generally the higher of either: (a) the MFL owner's past tax liability (calculated using the assessed value of the property and net tax rate in the municipality in the year prior to withdrawal multiplied by the years the land was designated as MFL program land); or (b) 5% of the value of merchantable timber on the land; less any acreage share and yield taxes paid by the owner. DNR remits all withdrawal taxes to the municipality where the land is located and the municipality retains 80% of the payment and remits 20% to the county. DNR staff indicate that these parcels were converted from the Forest Crop Law (FCL) program to the MFL program in 1998 (1998 was the first year of MFL enrollment).

Therefore, if the parcels were withdrawn from the MFL program in 2013, the withdrawal taxes would likely be calculated based on 15 years of enrollment in MFL. While the rate may vary

significantly by specific parcel, based on recent assessed values and tax rates in the towns of Anderson and Morse, withdrawal taxes may average approximately $10,000 per 40-acre parcel. Depending on the size of the area cleared for mining activities, the potential revenue to local governments may total approximately $250,000 if 1,000 acres were withdrawn, $500,000 based on 2,000 acres (and so on). However, individual MFL parcels may be withdrawn over a period of years as actual mining activity approached. Once the acres were withdrawn from the MFL program, the municipalities and counties where these acres are located would no longer receive annual MFL acreage fee payments which, as these parcels were primarily enrolled in the program prior to 2004, are currently 79¢ per acre for payments due in January, 2014. The municipalities would also no longer receive annual yield tax payments (DOR estimated annual yield tax payments to average approximately 46¢ per acre based on 2010 payments) for a total estimated loss of approximately $1.25 per acre per year. Upon withdrawal from MFL, the land would become subject to property taxes, which is discussed in a separate section of this memo. Under the bill, the mining applicant would pay actual DNR costs of processing the withdrawals, subject to the overall $2 million cap on mining application-related permit fees.

Assembly/Senate Amendment 10. *A provision in the amendment would prohibit DNR from requiring the withdrawal of a parcel from the FCL or MFL program based on the cutting of timber or other activities on FCL or MFL land related to bulk sampling for ferrous minerals if certain conditions are met. The bill would define bulk sampling as "excavating in a potential mining site by removing less than 10,000 tons of material for the purposes of obtaining site-specific data to assess the quality and quantity of the ferrous mineral deposits and of collecting data from and analyzing the excavated materials in order to prepare the application for a mining permit or for any other approval." The conditions required for the withdrawal exemption would include: (a) the cutting or activity is necessary to engage in bulk sampling; (b) the area that will be affected by the cutting or the activity does not exceed five acres; (c) a bulk sampling plan has been filed with DNR and all approvals that are required for bulk sampling have been issued by the Department; and (d) the revegetation plan that is part of the bulk sampling plan includes forestry practices that will ensure that the timber, forest crops, and other vegetation that will be cut or otherwise affected will be restored to the greatest extent possible. The amendment specifies that the revegetation plan requirement under (d) would not apply to FCL or MFL enrolled land that is within a mining site described in a preapplication notification for a mining permit or in an application for a mining permit. Further, the amendment exempts a cutting proposal for bulk sampling from the provisions regarding whether the cutting conforms to the forestry management plan and is consistent with sound forestry practices.*

Under current law, and under the bill, DNR may require withdrawal of all or part of a parcel from the FCL or MFL program, following an investigation by the Department, if DNR finds that the lands are not meeting the statutory requirements of the program, the land owner is not complying with the requirements of the forestry management plan, or if the owner conducts timber cutting without the proper notification and approval by DNR. Current law requires a landowner to submit a notice of intent to cut timber on FCL or MFL enrolled land to DNR 30 days prior to cutting. If the proposed cutting conforms to the forestry management plan and is consistent with sound forestry practices, DNR is required to approve the request. If the proposed cutting does not conform to the management plan or is not consistent with sound forestry practices, DNR is

required to assist the owner in developing an acceptable proposal before approving the request.

Under current law and the bill, before bulk sampling or mining operations could begin, affected acres enrolled in FCL or MFL would be required to be withdrawn from the programs. (Bulk sampling would necessitate substantial timber harvesting likely to be in conflict with the FCL or MFL forestry management plan which could result in the Department ordering the parcel to be withdrawn from the program.) The amendment specifies that DNR may not require a parcel to be withdrawn from FCL or MFL for timber harvesting for the purposes of bulk sampling on a parcel of five acres or less. These parcels could remain in the FCL or MFL programs when they may otherwise, under current law and under the bill, have been required to be withdrawn. Therefore, the municipalities would continue to receive annual acreage share and yield tax payments on the parcels, but would not receive withdrawal taxes for those parcels. Anticipated yield tax revenues would be expected to be significantly higher than average annual yield tax revenues as a substantial clearing of the timber would be anticipated, versus a more selective timber harvest typical under a FCL or MFL forestry management plan. For example, at current levels, a five-acre parcel enrolled in MFL in 1998 (subject to prior to 2004-level fees) and open to public access would generate approximately $10.70 in annual acreage share revenues and perhaps an average one-time $2,500 to $3,000 in yield tax revenues from a clearcut. However, the yield tax may vary substantially depending on the forest age, the cover type of the timber harvested (northern hardwoods tend to yield higher prices than aspen), timber quality and volume (the more logs, the higher the price, versus pulpwood) and timber market conditions. Whereas, under current law and the bill, while the exact size of a parcel that would be withdrawn for bulk sampling is unknown, based on current assessed values and tax rates in the towns of Anderson and Morse, were a five-acre parcel to be withdrawn from the MFL program in 2013, withdrawal tax revenues to the municipality may average perhaps $1,250.

County Forest Withdrawal and Fees. A withdrawal of county forest lands would be defined as a mining-related approval under the bill. Therefore, DNR could charge a mining applicant the actual costs of processing a county forest withdrawal, subject to the overall $2 million cap on mining application-related permit fees. Use of Iron County forest lands for waste material storage or other auxiliary mining-related uses has been discussed as part of a potential mining project.

Upon application DNR may enter county forest lands into the state program. These lands must be managed under a comprehensive county forest land use plan developed by the county forestry committee with assistance from DNR and other interested agencies, and approved by the county board and DNR, covering a period of 15 years. County forest lands are generally open to the public for various outdoor recreational purposes. Towns with county forest lands receive an annual state payment of 30¢ per acre.

Under current law, before certain mining-related activities could begin, affected acres enrolled in the county forest lands program would be required to be withdrawn from the program. Withdrawal from the program requires the county board to pass a resolution, adopted by not less than two-thirds of its membership, and to apply to DNR for withdrawal of lands from the program. The county pays no fee for the withdrawal application. DNR is required to investigate the application including examining the character of the land, the volume of timber, improvements,

and any other special values. In order for DNR to issue an order withdrawing the lands from the program, the Department must find that the benefits after withdrawal of the lands outweigh the benefits under continued entry of the lands in the program, and that the lands will be put to a better and higher use. DNR indicates that, in order to meet the higher and better use requirement, a county will often identify suitable replacement forest lands to be enrolled in the program in conjunction with a withdrawal.

STATE MINING CLAIMS INVOLVEMENT

Claims Related to Injury. Currently, sections 107.30 to 107.35 of the statutes authorize persons to submit a claim to the Department of Safety and Professional Services (DSPS) to recover damages for mining-related injuries. The bill revises definitions in the statutory sections related to mining, mining operation, prospecting, and prospecting site, in a manner which retains the current applicability of the mining damages claims provisions to both ferrous and nonferrous mining.

Currently, and under the bill, a person may file a claim to recover damages for mining-related injuries. A mining-related injury is defined as death or injury to a person or property caused by: (a) environmental pollution from emissions, seepages, leakages or other discharges from mine excavations in the state or from mining waste in the state; or (b) substantial surface subsidence from mine excavations in the state.

Within 10 days of receiving a claim, DSPS is required to notify the mining company alleged to have caused the claimant's damages that the claim has been made. If the mining company and the claimant do not settle the claim, DSPS is required to hold an adjudicatory hearing. If the Department finds that the claimant has incurred damages from mining-related injuries, DSPS is required to make an award from a DSPS appropriation for the amount of the damages, but not to exceed $150,000, less any amount recovered in other legal action. Damages are generally awarded without regard to fault. The claimant or the state may take separate legal action to recover the amount of the state award.

Currently, and under the bill, DSPS would pay any eligible mining damage claims from a GPR appropriation for operations of the Safety and Buildings Division, [s. 20.165 (2)(a)]. The appropriation is authorized $74,600 GPR in 2012-13 with 1.0 position, and is currently used only for administration of a private sewage system rehabilitation and replacement grant program. However, the appropriation is authorized to spend appropriated funds for other administrative activities of the Division, in addition to mining damage claims and associated administrative activities. The Safety and Buildings Division administers building codes for public and private buildings, places of employment and residential structures. It provides plan review and inspection for commercial, industrial, and multifamily buildings, and for systems such as electrical, plumbing, private sewage, elevator, heating, ventilating, and air conditioning, boilers, mechanical, fire protection, amusement rides, swimming pools, and manufactured homes. The Division also issues credentials for many related occupations, and administers programs related to mine safety and fire prevention. Most of the Division's functions are funded from a program revenue appropriation which receives revenues from plan review, inspection, and credentialing activities.

The mining damages claims program was created in 1980, under Chapter 353, Laws of 1979, in the former Department of Industry, Labor and Human Relations (DILHR), with two appropriations, an annual GPR administrative appropriation (with no funding), and a GPR sum-sufficient appropriation to pay claims. In the 1995-97 biennial budget, the chapter 107 program references to DILHR were moved to the former Department of Commerce when the Safety and Buildings programs were moved to Commerce. However, the appropriations were retained in the renamed Department of Workforce Development (DWD).

In the 2003-05 biennial budget, the two mining damages appropriations in the Department of Workforce Development were repealed, and the Commerce Safety and Buildings operations annual GPR appropriation was amended to add mining damages claims and administrative functions as authorized expenditures. The GPR sum-sufficient claims appropriation was not recreated in Commerce. In the 2011-13 biennial budget, the Commerce Safety and Buildings program and associated appropriations were moved to the Department of Safety and Professional Services (formerly the Department of Regulation and Licensing).

In the 1980s, DILHR promulgated an administrative rule with procedures for processing mining damage claims. The rule was renumbered as Chapter DWD 82 in 1997, and remains as part of current administrative code. In October, 2012, DWD submitted a recommendation to the Small Business Regulatory Review Board that DWD 82 be repealed because the agency no longer was responsible for the program. DWD indicated the claims process did not appear to have ever been used. The administrative code chapter was never renumbered to Commerce or DSPS code, and it appears Commerce and DSPS never promulgated a different administrative rule for the program. DSPS has no historical information about the program and has not indicated procedures it would follow if it received a mining damage claim.

When the former GPR sum-sufficient claims appropriation existed, expenditures from the appropriation were capped by language in section 107.31 (5) through calculation of a "mining damage reserve accumulation." The mining damage reserve accumulation expenditure cap amount is calculated by subtracting the total amount of all mining damages awards paid from the appropriation as of May 22, 1980, from the sum of: (a) four percent of all metalliferous metallic mining net proceeds taxes deposited by the Department of Administration in the investment and local impact fund beginning on May 22, 1980; and (b) prior to May 22, 1990, $500,000. If the balance of the mining damage reserve accumulation is less than $500,000 at the beginning of a fiscal year or falls below that amount at any time, DSPS is required to delay the payment of mining damage awards during that fiscal year until after the close of the fiscal year to determine the sufficiency of the mining damage reserve accumulation. The statutory calculation of the mining damage reserve accumulation now serves as a cap on mining damages claims expenditures from the Safety and Buildings operations appropriation.

While minimal information is available about the history of the program, it appears that no state agency ever received or paid claims from the mining damage appropriation. It is unknown whether any state agency ever calculated the mining damage reserve accumulation balance. DSPS officials have no information about any past calculations of the mining damage reserve accumulation balance, and have not calculated the current balance. (However, it is likely there

would be some balance based on net proceeds taxes paid by the Flambeau mine.) If the balance is below $500,000, payment of any eligible mining damage claim received by DSPS would be delayed until a future fiscal year.

The statutes require DSPS to pay any mining damage claims from a GPR sum-certain appropriation that is currently used solely for administration of an unrelated program. Thus, it is likely that if a mining damage claim were received, DSPS would need to submit a s. 13.10 request to the Joint Committee on Finance, or request separate legislative approval, to provide a GPR supplement to the DSPS appropriation before an eligible award could be paid.

Claims Related to Private Water Supply. Currently, sections 293.65 (4) and (5) of the statutes authorize a person to submit a claim to the Department of Natural Resources (DNR) to recover damages to the quantity or quality of his or her private water supply caused by prospecting or mining. The bill would amend the current provisions to apply to nonferrous prospecting or mining, and would create sections 295.61 (8) and (9) to apply the same (currently for metallic mining) authorization and requirements for claims of damages to the quantity or quality of a private water supply caused by ferrous bulk sampling or mining. Thus, the bill would not change the current authorization for a person to submit a claim for damages related to a private water supply from ferrous or nonferrous metallic mining activities. DNR indicates that the current law process, in existence since 1978, has never been used.

Currently, and under the bill, a person who claims damages to the quantity or quality of his or her private water supply caused by ferrous or nonferrous metallic mining may file a complaint with DNR. The Department is required to investigate the claim and to schedule a hearing if DNR concludes there is reason to believe the mining is interrelated to the condition giving rise to the complaint.

The person may also file a claim with the town, village or city where the private water supply is located to obtain an alternate water supply for the private water supply that is the subject of the complaint. The responsibility of the local government to supply water to the property begins when the complaint is filed, and ends after DNR issues a decision after the hearing.

DNR is required to issue a decision within 60 days after the hearing. If the Department concludes that mining is the principal cause of the damage to the private water supply, DNR is required to issue an order to the mine operator to: (a) provide water to the person who filed the complaint; (b) reimburse the town, village or city for its costs of providing water to the claimant; and (c) pay full compensatory damages up to $75,000 per claimant (indexed upward annually since 1978). If DNR determines that mining is not the cause of the damage to the private water supply, the claimant would be responsible for reimbursing the town, village or city for the costs of any water the local government supplied.

If a town, village or city incurs costs in monitoring, providing water to the claimant, or retaining legal counsel or technical consultants related to the DNR hearing, such costs are reimbursable through the investment and local impact fund (ILIF). If a DNR order requiring the mining operator to provide water to the claimant or to reimburse the town, village or city for the

cost of supplying the water is appealed and is not upheld, the Court would be required to order that these costs by the operator would be reimbursed from the investment and local impact fund. The ILIF is discussed separately in this memorandum.

Claims Related to Private Well Contamination. Currently, section 281.75 of the statutes establishes a well compensation grant program under DNR. A landowner or lessee with annual family income of not more than $65,000, with property with a contaminated private water supply, is authorized to submit a claim to DNR. DNR is authorized to pay 75% of eligible costs, up to $12,000, for the landowner or lessee to obtain an alternate water supply, construct a new private water supply, or connect to an existing private or public water supply. The program does not apply to contamination which is compensable under the statutory chapters 107 (DSPS damage claims) and 293 (metallic mining) current law provisions described above.

Under the bill, the well compensation grant program statute would be amended so the program would not apply to contamination from ferrous metallic mining which is compensable under the proposed chapter 295 provisions described above. Thus, the bill would not change the well compensation grant program exclusion of contamination from nonferrous or ferrous mining if it is compensated under chapters 107, 293, or the proposed 295.

OTHER STATE AGENCIES

DOA Division of Hearings and Appeals. Under current law, a person aggrieved by an administrative decision of a state agency may obtain a contested case hearing under administrative procedure laws in Chapter 227 of the statutes. The hearing examiners assigned to preside over these hearings and related appeals are employees of the Department of Administration's Division of Hearings and Appeals. In 2012-13, the Division is budgeted $5,779,000 ($2,510,200 GPR and $3,268,800 PR) and authorized 49.93 (22.09 GPR and 27.84 PR) positions for its operations. Program revenue for the Division is funded from hearings and appeals fees paid by agencies for services rendered. As provided by s. 227.43(3)(a), the Division may charge DNR fees for services rendered to it, in the amount determined to be the cost of providing the services, less any costs covered by the Division's GPR-funded general program operations appropriation.

Under the bill, a hearing examiner is required to deliver a final decision within 150 days following the contested DNR decision on the mining permit application. The Department of Administration was not requested to prepare a fiscal note for the bill. Further, no funding or position authorization is provided for the Division under the bill. The number of potential contested case hearings associated with the issuance of iron mining and related permits is unknown. However, to the extent that the bill would increase workload for the Division, the cost of which could exceed current funding, additional position authority and appropriations (funded from GPR or fees charged to DNR) may be needed.

State Court System. Since the bill provides for various actions in circuit court, the Director of State Courts Office (DSCO) indicates that the number of court proceedings could increase. However, it is unknown by how much and what additional resources, if any, would be needed. According to the DSCO fiscal note for the bill: "Additional court proceedings could be generated

under the terms of this bill, but it is impossible to predict how frequently that may happen. Additional proceedings require additional judge, court reporter, and court staff time. These costs are borne by both the state and the county. An accurate estimate of the additional costs is impossible with the data available."

Department Of Justice. The DOJ indicates that the provisions of the bill would increase its mining responsibilities related to: (a) defending certain mining-related actions initiated by DNR; and (b) prosecuting certain mining-related violations. In its fiscal estimate, DOJ indicates that it, "cannot reliably estimate the number of legal challenges and law violations that may result from the passage of [the bill], but the department would be responsible for client representation and for enforcement actions. The department may require additional resources dependent upon representational and enforcement action demand and activity."

Department Of Health Services. The DHS is budgeted $315,900 SEG in 2012-13 from the environmental fund to develop and implement groundwater standards and standards for hazardous air contaminants. Some of this funding supports 1.0 toxicologist position that provides risk assessment and other toxicological analysis relating to potential groundwater quality standards, including issues that may arise if mine construction permits are requested.

The bill would not modify DHS' current responsibilities to consult with DNR and to analyze potential impacts on local groundwater and public health with respect to the construction of any proposed mine. While recognizing the bill's potential to increase requests for toxicology services required by DNR, DHS concludes that it can manage the requirements of establishing quality standards without additional resources.

Public Service Commission. The PSC submitted a fiscal estimate for the bill, but indicated that the bill was not expected to have a fiscal impact on the Commission's operations. The bill would modify current law provisions related to the citing of large electric generating facilities. Currently, a certificate of public convenience and necessity (CPCN) must be issued through a process that is administered jointly by the Commission and the DNR before a facility can be constructed. The bill would modify certification provisions related to DNR. In addition, a current law provision exempts facilities from the CPCN process if the developer of the facility is not a public utility and at least 70% of the electricity produced by the facility is intended for the developer's own use in manufacturing. The bill would modify the exemption by adding mining to manufacturing as a qualifying use under the 70% test.

Department Of Revenue. The DOR fiscal note describes the bill's changes to the distribution of the mining net proceeds tax and the amount of the notice of intent fee. The fiscal note indicates that the impacts of these changes could not be reliably estimated. These provisions are discussed in greater detail below.

Wisconsin Economic Development Corporation. Under the bill, forty percent of the net proceeds tax collections generated from ferrous metallic mining would be placed in the economic development fund to be appropriated to the Wisconsin Economic Development Corporation (WEDC) for grants and loans to state businesses. In making such grants and loans, WEDC would

be required to give preference to businesses located in an area affected by mining for ferrous metals. In its fiscal note, WEDC indicated they currently oversee similar programs and could absorb the costs associated with this program within existing resources.

Under provisions of 2011 Wisconsin Act 32, the segregated recycling fund was renamed the economic development fund, and the recycling surcharge was renamed the economic development surcharge. Surcharge revenues are deposited in the fund ($27.5 million in 2011-12). Economic development fund revenues may be appropriated to WEDC through a continuing SEG appropriation and used to fund WEDC administered economic development programs. Overall base-level state funding (GPR and SEG) to WEDC currently totals $57 million annually.

Assembly/Senate Amendment 11. *The amendment would deposit forty percent of certain net proceeds tax collections generated from ferrous metallic mining into the state general fund, rather than the economic development fund. The amendment would also delete the separate WEDC grant and loan program that would have given preference to businesses in an area affected by iron mining.*

TAXATION

Wisconsin Metalliferous Mining Tax -- Current Law

Wisconsin imposes a net proceeds occupational tax on state metalliferous mining operations. The mining tax is imposed using a progressive, bracket-based rate structure that is indexed to the annual change in the gross national product (GNP) deflator for June of the current year compared to June of the previous year, subject to a maximum yearly increase of 10%. The table below shows the tax rate structure that was in effect for calendar year 2012. Persons mining metalliferous minerals must file a report with, and remit taxes to, the Department of Revenue (DOR) on or before June 15 reflecting net proceeds and metalliferous mining taxes due for the prior calendar year.

TABLE 4

2012 Mining Tax Rate Structure

Net Proceeds			Rate
$0	to	$536,600	0%
536,601	to	10,734,000	3
10,734,001	to	21,467,900	7
21,467,901	to	32,202,100	10
32,202,101	to	42,936,400	13
42,936,401	to	53,669,900	14
53,669,601	or more		15

The tax is determined by adding together the gross proceeds from mining and subtracting allowable deductions. Current law enumerates specific deductions, such as the actual costs of labor and supplies in mining, costs of extracting and processing the ore, costs of mining related services, federal and state taxes paid, and site reclamation and restoration costs. Current law

deductions are described in the Attachment.

All revenues generated from the tax are deposited in the Investment and Local Impact Fund (ILIF), which is a segregated account administered by the Investment and Local Impact Fund Board (ILIFB). The fund was established in 1977 to provide financial assistance to local units of government experiencing social, educational, environmental, or economic impacts associated with metalliferous mining. The ILIFB is attached to DOR for administrative purposes and consists of eleven members, including: (a) the chief executive officer of the Wisconsin Economic Development Corporation or his or her designee; (b) the Secretary of DOR or his or her designee; (c) three public members; (d) five local officials consisting of two municipal officials, two county officials, and one school board member; and (e) one Native American. The public members, local officials, and Native American member must be appointed by the Governor for staggered four-year terms, subject to certain criteria enumerated in statute. It should be noted that no members are currently appointed to the Board.

The most recent mining operation in the state was the Flambeau mine in Rusk County. As a result of this mining activity, the state collected net proceeds taxes of approximately $440,000 in 1993-94, $6.13 million in 1994-95, $6.41 million in 1995-96, $1.07 million in 1996-97, and $30,000 in 1997-98. The mine closed operations in 1997 and the mine site was reclaimed in 1998. No revenues have been generated from that mine since 1997-98.

Current law requires that net proceeds taxes deposited into the ILIF must be used for specified purposes. Eligible counties, cities, towns, villages, and tribes that are affected by mining activity must be paid a first-dollar payment from the ILIF. A first-dollar payment is defined as an amount equal to $100,000, indexed for inflation against the GNP deflator. For 2012-13, the first-dollar payment is $214,700. Counties are also entitled to an additional payment of 20% of the tax collected, annually, from persons extracting metallic minerals in the county up to $250,000 (indexed for inflation against the GNP deflator). For 2012-13, the additional payment to counties may not exceed $536,700, annually. Ten percent of the tax paid by each mine to the fund, plus all accrued interest on that amount, must be retained by the Board in the project reserve fund to: (a) ensure an annual payment to each county, city, town, village, and school district in an amount equal to the average payment for the three previous years; (b) reimburse counties, municipalities, and school districts for costs associated with the cessation of mining; and (c) indemnify counties, municipalities, and school districts for reclamation expenses.

The ILIFB may award discretionary monies to affected counties, cities, towns, villages, school districts, tribes, and local impact committees. Discretionary payments may be made to these entities to pay for certain reasonable expenses for the purposes permitted under state law. In addition, if a mine is abandoned and must be reclaimed, certain payments must be made to DNR for long-term care of mining waste sites and environmental repair for mining waste sites.

Changes to the Wisconsin Metalliferous Mining Tax Under the Bill

The bill would not modify the current law imposition of the net proceeds tax. However, the bill would require that 40% of the revenues collected from the tax on a person extracting ferrous

metallic minerals be deposited into the Wisconsin Economic Development Fund for the purpose of making grants and loans to businesses in this state, with preference to businesses located in an area affected by ferrous metallic mining. Therefore, the amounts available for distribution to impacted local units of government and tribes from ferrous mining activities from the ILIF would be reduced compared to current law. The current provisions regarding required distributions from the ILIF would not be changed.

Assembly/Senate Amendment 11. *The amendment would make the following changes to the bill with regards to current laws governing the metalliferous mining tax.*

a. As noted in the previous section, the bill would require that 40% of revenues collected from the metalliferous mining tax be deposited into WEDC for the purpose of making grants and loans to businesses in this state, with preference to businesses located in an area affected by ferrous metallic mining. Under the amendment, these provisions would be deleted and all net proceeds tax revenues would first be deposited into the ILIF until the amount deposited is sufficient to make all first-dollar payments to eligible counties, cities, towns, villages, and tribes. For revenues generated in excess of that amount, 60% would be deposited into the ILIF and 40% would be deposited into the general fund.

b. Under current law, references to the Internal Revenue Code (IRC) for laws governing metalliferous mining taxes refer to the IRC, as amended, through December 31, 1981. Under the amendments, references to the IRC for laws governing metalliferous mining taxes would refer to current federal law.

c. The amendment would create a new provision specifying that a person subject to the metalliferous mining tax must use generally accepted accounting principles to determine the person's net proceeds occupation tax liability, unless otherwise specified in state or federal law.

d. As noted, under current law, the ILIFB may award discretionary monies to affected counties, cities, towns, villages, school districts, tribes, and local impact committees. Current law specifies ten purposes for which discretionary payments may be made, one of which is for "studies and projects for local development". Under the amendment, this provision would be amended to be for "studies and projects for local private sector economic development". In addition, the amendment would specify that the Board must give preference to private sector development projects when awarding discretionary payments.

Mining Fees Deposited Into the ILIF

Notice of Intent (NOI) Fee. Current law requires that each person intending to submit an application for a mining permit must pay a NOI fee of $50,000 to DOR for deposit in the ILIF at the time the person notifies DNR of its intent to prospect or mine. Once the applicant is notified that the ILIFB has distributed 50% of this amount, the applicant must make a second payment to DOR of $50,000. After the applicant is notified that the Board has distributed all of the first payment and half of the second payment, the applicant must make a third payment of $50,000.

The Board may distribute NOI fees to a county, town, village, city, tribe, or a local impact

committee authorized under DNR metallic mining laws governing prospecting, mining, and reclamation. The fees may only be used for the following purposes: (a) legal counsel; (b) qualified technical experts in the areas of transportation, utilities, economic and social impacts, environmental impacts, and municipal services; and (c) other reasonable and necessary expenses incurred by the recipient that directly relate to the good faith negotiation of a local agreement, as specified under DNR metallic mining laws, for the proposed mine for which the payment is being made.

Under the bill, each fee would be increased from $50,000 to $75,000. As a result, an applicant for either a ferrous or nonferrous metallic mining permit may be required to pay up to $225,000 under the bill, as compared to $150,000 under current law.

Construction Fee. Under current law, each person constructing a metalliferous mine must pay to DOR for deposit in the ILIF a one-time construction fee no more than 30 days after the beginning of construction to be paid to each Native American community, county, city, town, and village that contains at least 15% of a minable ore body in respect to which construction has begun. Similar to the net proceeds tax brackets, the construction fee is indexed to the annual change in the GNP deflator for June of the current year as compared to June of the prior year. For 2012-13, the construction fee for each mining site is $214,700. The construction fee may be credited against net proceeds taxes in future years and may be carried forward; however, the credit may not reduce the taxpayer's net proceeds tax liability below the amount needed to make first-dollar payments to eligible counties, cities, towns, villages, and tribes.

The construction fee would not be changed by the bill.

Fund Administrative Fee

Under current law, there is imposed an ILIF administrative fee on each person that has gross proceeds subject to the net proceeds tax. DOR must calculate the fee imposed on each person, on or before July 31 of each year, by dividing the person's gross proceeds for the previous year by the total gross proceeds of all persons mining metallic minerals for that year, and by multiplying the resulting fraction by the amount expended for the administrative expenses, travel, materials, and other necessary expenses incurred by the ILIFB.

The administrative fee would not be changed by the bill.

Description of When Metalliferous Mining Tax and Fee Payments are Made from the ILIF -- Current Law and Modifications Under AB1/SB1

The following section provides a description of when funds might be available for local units of government, under current law and under the bill, for Gogebic Taconite's proposed iron ore mine in Ashland and Iron Counties. As noted, no members are currently appointed to the ILIFB. Under both current law and under the bill, the Governor must make appointments to the Board, with approval of the Senate. No revenues may be disbursed from the ILIF to any local governmental entity without approval by the Board.

Current Law. As noted, current law requires that each person intending to submit an application for a mining permit must pay an initial NOI fee of $50,000 to DOR for deposit in the ILIF at the time the person notifies DNR of its intent to prospect or mine. Gogebic Taconite would pay the initial NOI fee at the time that the company filed a notice of intent to submit an application for a mining permit. Once the ILIFB has been reconstituted, the Board must distribute these revenues, and the two subsequent payments (totaling up to $150,000 in total NOI fees), from the fund in the manner described above.

Under current law, no overall timeline exists for the DNR permitting process with respect to metallic mining. Based primarily on testimony from the Department in public hearings, the timeframe for permitting a mine may vary dramatically depending on the size, location, and complexity of the proposed project, as well as the cooperation of the mining company, local governments, and interested individuals or groups. The proposed iron ore mine for Gogebic Taconite is anticipated to be a large scale operation and is expected to receive a considerable amount of public input. Since current law does not impose a time limit on the overall DNR permitting process, it is unknown how long this process would take to approve the company's permit and begin construction of the mine. As a result, it cannot be predicted how long Gogebic Taconite's proposed mine would take to obtain an approved permit under current law, and whether the company (or another company) would submit a permit application under current law. The DNR cannot provide an estimate, with any accuracy, for how long the permitting process might take under current law because the Department has not received a mining plan from the company. Assuming the permit would be approved, the one-time construction fee must be paid no more than 30 days after the beginning of construction to eligible tribes, counties, cities, towns, and villages in the manner described above. Gogebic Taconite would pay, and each eligible local governmental entity would receive, the one-time construction fee ($214,700 in 2012-13) within 30 days after beginning construction of the mine under current law.

According to the economic impact analysis published by NorthStar Economics, Inc., construction of Gogebic Taconite's proposed mine would take approximately two years before extraction of ferrous metallic minerals would occur. Net proceeds tax revenues would be first payable the June following the first calendar year in which sales of metalliferous mining occur. All tax revenues would accrue to the ILIF. Revenues would be used to make first dollar payments, additional county payments, and discretionary payments to eligible local units of government. In the early years of operation, it is likely that the mining company would have significant deductions for depreciation of machinery and structures used in mining, and for amortization of permit fees and other pre-mining expenditures. Therefore, the mine would likely have a reduced amount of taxable net proceeds in the initial years of operation.

Timeline under AB1/SB1. The bill would create a separate permitting process for ferrous metallic mining from other metalliferous mining. Gogebic Taconite would pay a NOI fee of $75,000 (as compared to $50,000 under current law) at the time the company files a preapplication notification notifying the DNR of its intention to file an application for a ferrous mining permit. Once the ILIFB has been reconstituted, the Board must distribute these revenues, and the two subsequent payments (totaling up to $225,000 in total NOI fees), from the fund in the same manner as provided under current law.

The bill specifies that the preapplication must be filed at least 12 months prior to a person filing an application for a mining permit; however, the bill does not specify a limit on the amount of time a company can take prior to filing for a ferrous metallic mining permit. Once the company submits an application for a mining permit, DNR would have 30 days to review the contents of the application and make one request for additional information, if needed. Assuming that the DNR would request additional information from the person filing for a mining permit, the applicant has discretion as to when the applicant will submit the additional information requested by the Department. The bill does not provide any minimum or maximum period of time in which the applicant must submit the additional information; however, once the applicant submits requested information for a ferrous mining permit, DNR has 10 days to notify the applicant whether it has received all the requested information. Upon issuance of this notice (or 10 days, whichever is less), the application submission is considered administratively complete.

Once a permit application is considered administratively complete, the Department must make a decision on whether to approve or deny the permit within 420 days. The bill specifies that, under certain circumstances, the applicant and DNR may jointly agree to one extension to the permitting period of up to 60 days. If an extension is agreed upon, the maximum permit application review period could be a total of up to 480 days. Under the bill, assuming a permit application is submitted by Gogebic Taconite and approved by DNR, the company could begin construction of the mine. As provided under current law, the one-time construction fee must be paid no more than 30 days after the beginning of construction to eligible tribes, counties, cities, towns, and villages in the manner described under current law. Gogebic Taconite would pay, and eligible local governmental units would receive, the one-time construction fee ($214,700 in 2012-13) within thirty days after beginning construction of the mine in the manner described under current law. It should be noted that a contested case hearing and the associated decision must be completed within 150 days following DNR approval of the permit. While the hearing examiner may not enjoin a permittee from beginning construction of the mine during the time the contested case hearings are proceeding, it is reasonable to assume that a permittee would delay investing significant amounts of money into construction of a mine where one or more permits might be modified as a result of a contested case hearing. Under that assumption, a mining applicant with an approved permit would not begin construction of the mine until between at least 570 and 630 days after the application is considered administratively complete, and eligible units of government could receive the one-time construction fee between 600 days and 660 days following an administratively complete application to the DNR for a ferrous metallic mining permit. It should also be noted that the DNR is not prohibited from issuing a permit in less than 420 days, in which case, the permitting process may be shorter than described above.

Based on the NorthStar Economics, Inc. analysis, construction of the mine would take two years. Similar to the description of net proceeds tax payments under current law, net proceeds tax revenues would be first payable the June following the first calendar year in which sales of metallic minerals occur. Under the bill, only 60% (as compared to 100% under current law) of net proceeds tax revenues would be deposited in the ILIF. These revenues would be used to make first-dollar payments, make additional county payments, retain a project reserve fund, and make discretionary payments to eligible local units of government, in the same manner as under current law. In the early years of operation, it is likely that the mining company would have significant deductions for

depreciation of machinery and structures used in mining, and for amortization of permit fees and other pre-mining expenditures. Therefore, the mine would likely have a reduced amount of taxable net proceeds in the initial years of operation.

According to testimony from the Army Corps of Engineers, federal approval of the proposed mine's environmental impact statement and approval of wetland and other navigable water permits are often performed in conjunction with state agencies. Limiting the time DNR may review the application for a permit may result in the applicant paying for duplicative work for the state and federal review process, and may result in the federal permitting process taking longer than the maximum period of time in which the DNR is permitted to take under the bill to approve a permit application. If that were to occur, the construction of the mine could be delayed longer than is contemplated under the bill, pending federal permitting decisions.

The bill places limits on the minimum amount of time an applicant must provide DNR notification prior to submitting a permit application, but also limits the amount of time that the Department has to approve or deny a ferrous metallic mining application considered administratively complete. Under the bill, an applicant has the ability to speed up the DNR permitting process for a ferrous metallic mine, but the bill also provides the applicant some discretion as to when the applicant believes that the information they have collected and provided to the Department is sufficient for DNR to make its decision on whether to approve the permit. Under current law, the permitting process for a mining project is not subject to an overall minimum or maximum number of days to complete. While it is not known how long the permitting process would take for a large ferrous metallic mining project under the bill as compared to current law, it is expected that the bill would shorten the permitting process.

Assembly/Senate Amendments 3 and 11. *Amendment 3 would specify that, as part of the application for a mining permit, an applicant may specify a deadline for the DNR to approve or deny a permit that is more than 420 days after the day on which the application is considered administratively complete. Assuming that an application is submitted by the company, it is unknown whether Gogebic Taconite would request that the deadline for the DNR to approve or deny the permit be extended. As a result, it is unknown whether the potential timing of the one-time construction fee and net proceeds tax revenues would be delayed as compared to the description provided in the previous section. As noted, Amendment 11 would modify the bill to first deposit all net proceeds tax revenues into the ILIF until the amount deposited is sufficient to make all first-dollar payments, and 60% of revenues generated in excess of that amount would be deposited into the fund.*

Sales and Use Taxes -- Current Law

Under current law, manufacturing is defined for the purposes of state sales and use taxes as the production by machinery of a new article of tangible personal property, item, or property with a different form, use, and name from existing materials, by a process popularly regarded as manufacturing. Manufacturing begins with conveying raw materials and supplies from plant inventory to the place where work is performed in the same plant, and ends with conveying finished units of tangible personal property, items, or property to the point of first storage in the same plant. Manufacturing specifically includes: (a) crushing, washing, grading, and blending

sand, rock, gravel, and other minerals; (b) ore dressing, including the mechanical preparation, by crushing and other processes, and the concentration, by flotation and other processes, of ore, and beneficiation, including the preparation of ore for smelting; (c) conveying work in progress directly from one manufacturing process to another in the same plant; (d) testing and inspecting, throughout the manufacturing process, the new article of tangible personal property, item, or property that is being manufactured; (e) storing work in progress in the same plant where the manufacturing occurs; (f) assembling finished units of tangible personal property, items, or property; and (g) packaging a new article of tangible personal property, items, or property if the manufacturer, or another person on the manufacturer's behalf, performs the packaging and if the packaging becomes part of the new article as it is customarily offered for sale by the manufacturer.

The definition of manufacturing specifically excludes: (a) storing raw materials or finished units of tangible personal property, items, or property; (b) research or development; (c) delivery to or from the plant; and (d) repairing or maintaining plant facilities.

Based on the current law definition of manufacturing, a company engaged in mining activities is generally entitled to the same state sales and use tax exemptions provided to other manufacturers. Current law provides the following sales tax exemptions for purchases by manufacturers:

a. Property that becomes an ingredient or component that is used exclusively and directly by a manufacturer in manufacturing an article of tangible personal property, that becomes an ingredient or component part of an article of property, or that is consumed or destroyed or loses its identity in the process of manufacturing tangible personal property that is subsequently sold.

b. Fuel and electricity consumed in manufacturing tangible personal property in Wisconsin.

c. Mobile units used for mixing and processing.

d. Machinery and equipment, including safety attachments and repair parts, used exclusively and directly by a manufacturer in manufacturing.

e. Motor vehicles not required to be licensed and used for recycling or waste reduction activities.

f. Property that becomes a component part of a waste treatment facility.

g. Equipment and parts used exclusively for waste reduction or recycling.

The bill does not modify current law sales and use tax exemptions. Therefore, the exemptions listed above would likely be provided for Gogebic Taconite's potential iron ore mining operation in the Penokee Mountain Range. In addition to these exemptions, most services such as legal services, geological consulting services, water quality consulting services, and other professional services are not subject to sales tax.

It should be noted that other types of business inputs, such as stationary, office furniture, and tangible personal property, items, and property that are not used in a manner that qualifies for the manufacturing exemption, would be subject to tax. For example, under current law, machinery used to physically extract mineral ore from the ground, as well as fuel, accessories, and parts of such machinery, does not qualify as machinery used in manufacturing and is subject to sales and use tax both under current law and under the bill.

Property Taxation -- Current Law

All real and personal property located in Wisconsin is subject to property taxation under chapter 70 of the state statutes, unless the property has been exempted from taxation. The property tax is the largest source of local government tax revenue, and the tax is administered primarily by local governments. The first step in this process is the discovery and valuation of taxable property, which is generally performed by municipal assessors. The state statutes provide an exception for manufacturing property, which is valued by DOR. The statutes include "metal mining" in the list of activities classified as manufacturing.

To be included as manufacturing property, a manufacturing activity must take place on the property. For mining property, the Department indicates that mining activity begins when the overburden is stripped from the land, thereby providing access to the minerals to be mined. DOR makes this determination on a parcel-by-parcel basis. Therefore, if mining activity occurs on only one of two adjoining parcels of land owned by the same individual, DOR would assess the parcel where mining activity is occurring, and the municipal assessor would value the other parcel. In addition, DOR employs a "substantial use" test based on a provision in s. 70.995(4) of the statutes. Under this test, mining activity must occur on 50% or more of the parcel in order for DOR to assess the property. Otherwise, the property's value is determined by the municipal assessor.

State law directs DOR to value mining property differently than the property of other manufacturers by excluding the value of the metalliferous mineral content of land where metalliferous minerals are being extracted and the net proceeds occupation tax (described above) is being imposed. Like other manufacturers, owners of mining property are required to file manufacturing report forms with DOR. On these forms, manufacturers report the original cost of their real and personal property by year of acquisition and report any additions to or deletions from that property. The Department considers that data, as well as other factors, such as appreciation, depreciation, and obsolescence, in valuing the property.

As a manufacturer, property used in mining could receive the exemption for manufacturing machinery and equipment. To qualify for the exemption, machinery and specific processing equipment must be used exclusively and directly in the manufacturing production process. As noted above, the production process for mining property begins when the overburden is stripped away from the earth. State law provides that the production process ends when the finished product is conveyed to the point of first storage on the plant premises. Mining property could also receive other exemptions available to manufacturers, such as for pollution abatement equipment, computers, and certain motor vehicles.

Manufacturers and municipalities containing manufacturing property may appeal manufacturing assessed values to DOR, where objections are heard by the state Board of Assessors. A $45 fee must accompany the objection. Determinations of the Board may be appealed to the Tax Appeals Commission (TAC), and TAC decisions may be appealed to the circuit court for Dane County.

After DOR determines the value of manufacturing property, the value is incorporated into the corresponding municipality's assessment roll, with the DOR values being "equated" to the municipally determined values to ensure that all properties are taxed at the same level of market value. At that time, manufacturing property, including mining property, is taxed at the same tax rate as similarly located property.

Under the preceding procedures, municipal assessors would value parcels where mining activity may be imminent, but is not yet occurring. In valuing these parcels, municipal assessors should follow the same principles and guidelines used to value other taxable real estate. These principles and guidelines are explained in the Wisconsin Property Assessment Manual published by DOR and reflect constitutional and statutory provisions, as interpreted in case law, and property appraisal practices and procedures. For example, the Manual indicates that values should reflect a property's "bundle of rights," which "consist of use, possession, enjoyment, disposition, exclusion, or the right not to exercise any of these rights," and "highest and best use'" which is "that use which over a period of time produces the greatest net return to the property owner." In applying these principles and guidelines, the courts have consistently held that the sale of the subject property or of comparable properties is the best indicator of value. However, in the absence of sales data, the courts have endorsed other valuation approaches. While state law directs DOR to exclude the value of the metalliferous content of land where metalliferous minerals are being extracted, the statutes do not provide a comparable exclusion when property is valued by the municipal assessor.

These provisions would not be changed by the bill.

Corporate Income/Franchise Tax -- Current Law

In general, a corporation determines state corporate income/franchise tax liability by computing gross or total income, subtracting deductions, apportioning the net income to the state (if necessary), adjusting for nonapportionable income and net operating losses (if applicable), applying the 7.9% state tax rate, and subtracting tax credits. Corporations that operate entirely in Wisconsin do not apportion net income. However, multistate corporations must apportion part of their income to the state. If the corporation is a member of a combined group of corporations, an individual corporation's income/franchise tax liability is based on the group's combined income computed in a combined report that must be completed by each such group.

Gross business income is income that is generated by a taxpayer in the active conduct of a trade or business. For tax purposes, total income includes gross profit, dividends, interest, rents, royalties, capital gains or losses, and other income.

Deductions are subtracted from gross income in determining net or taxable income.

Deductions are provided for compensation of officers and employees, repairs, taxes, interest, charitable contributions, depreciation and amortization, expensing certain depreciable assets (Section 179 expensing), bad debts, rents, depletion, insurance, retirement plans, employee benefit programs, advertising, and other ordinary and necessary business expenses. The state net proceeds tax on metallic mineral mining is deductible.

Generally, state definitions of income and deductions are referenced to federal law. For corporate income tax purposes, state provisions are referenced to the federal Internal Revenue Code (IRC) in effect on December 31, 2010, with numerous exceptions. Included in these exceptions are state depreciation deductions, which are referenced to federal IRC provisions in effect on January 31, 2000. Also, Wisconsin has different maximum expense and phase-out thresholds for expensing certain depreciable assets (section 179 expensing), and does not provide the federal domestic production activities deduction.

For state tax purposes, specified rules and laws are used to allocate or assign income of a particular corporate taxpayer to the state for tax purposes.

A corporation that conducts all of its business and owns property only in Wisconsin has all of its income subject to taxation in Wisconsin. Usually, such firms are incorporated in Wisconsin. These types of firms are often referred to as 100% Wisconsin firms, and they compute their taxes very much like a Wisconsin resident does under the individual income tax.

A corporation which conducts its business operations and owns property both within and outside of the state is subject to a different corporate income tax treatment than is a 100% Wisconsin firm. Wisconsin generally employs one of three methods of assigning the income of a multistate corporation to the state--separate accounting, apportionment, or specific allocation.

Under Wisconsin law, a multijurisdictional corporation must use separate accounting when the corporation's business activities in the state are not an integral part of a unitary business. Separate accounting implies that the income and expenses of each specific business function or activity of a multijurisdictional corporation can be accounted for individually and independently. The corporation must determine the income attributable to Wisconsin using separate records of the sales and expenses for the Wisconsin business. Currently, few multijurisdictional corporations in the state use separate accounting to determine their net tax liability.

Under apportionment, the corporation adds its total gross income from its in-state and out-of-state unitary business activities, subtracts its deductions, and multiplies the amount of net income by its apportionment ratio, or percentage, as determined by the Wisconsin apportionment factor. The apportionment percentage is used to approximate how much of a corporation's total net income is generated by activities in Wisconsin. Most multistate corporations apportion income to Wisconsin using single sales factor apportionment.

The statutes and administrative rules include provisions for determining if certain sales are considered to be in Wisconsin, and therefore included in the numerator of the sales factor. (In general, all the corporation's sales or gross receipts are included in the denominator.) For the

purposes of the sales factor, sales of tangible personal property are considered in the state, regardless of the f.o.b. point (where responsibility for goods is transferred) or other conditions of the sale, if: (a) the property is delivered or shipped to a purchaser, other than the federal government, within the state; or (b) the property is shipped from an office, store, warehouse, factory, or other place of storage in Wisconsin and delivered to the federal government within the state.

In addition, certain sales of personal property in states where a taxpayer has no nexus are treated as being in Wisconsin. These sales are known as "throwback sales", and include the following:

a. Sales of tangible personal property that is shipped from an office, store, warehouse, factory, or other place of storage in Wisconsin and delivered to the federal government outside the state, and the taxpayer is not within the jurisdiction, for income tax purposes, of the destination state.

b. Sales of tangible personal property that is shipped from an office, store, warehouse, factory, or other place of storage in Wisconsin to a purchaser, other than the federal government, and the taxpayer is not in the jurisdiction, for income tax purposes, of the destination state.

c. Sales of tangible personal property by an office in Wisconsin to a purchaser in another state, that are not shipped or delivered from Wisconsin, if the taxpayer is not within the jurisdiction, for income tax purposes, of either the state from which the property is delivered or shipped, or the destination state.

Generally, for individual multijurisdictional corporations, the sales factor is a percentage determined by dividing the total sales or receipts of the corporation in Wisconsin by the total sales or receipts of the corporation everywhere. Sales are generally all gross receipts from the course of the taxpayer's regular trade or business operations which produce apportionable business income. Specific provisions apply regarding receipts of interstate financial institutions, brokerages, and other investment businesses.

Allocation of nonapportionable income traces the income to the state of its supposed source and includes the income in that state's tax base. For state income and franchise tax purposes, nonapportionable income includes income, gain, or loss from: (a) the sale of nonbusiness real property or nonbusiness tangible personal property; (b) rental of nonbusiness real property or nonbusiness tangible personal property; and (c) royalties from nonbusiness real property or nonbusiness tangible personal property.

Under state tax provisions, net business losses, if any, are used to offset state taxable income before the state tax rate is applied to net income. The state corporate income tax rate is 7.9%, and is applied to all income subject to the state corporate income tax. The resulting amount is the corporation's gross tax liability.

State tax credits can then be used to offset gross tax liability to determine the corporation's

net tax liability. Wisconsin provides both refundable and nonrefundable tax credits under the corporate income tax. Corporate nonrefundable tax credits include manufacturing and agriculture, research and research facilities, super research and development, early stage seed investment, economic development, post-secondary education, dairy and livestock investment, manufacturing investment, electronic medical records, Health Insurance Risk-Sharing Plan (HIRSP), community rehabilitation program, ethanol and biodiesel fuel pump, biodiesel fuel production, water consumption, internet equipment, supplement to the federal historic rehabilitation, relocated businesses and community development tax credits. State refundable tax credits include enterprise zone, jobs, dairy manufacturing facility, meat processing facility investment, food processing plant and food warehouse investment, film production, woody biomass, beginning farmer and farm asset owner, and farmland preservation tax credits.

Corporations that are engaged in a unitary business with one or more other corporations are required to file a combined return. Specific provisions govern which corporations must file a combined return, and the manner in which combined net tax liability is determined. Wisconsin's combined reporting law requires a corporation to use combined reporting if it satisfies all of the following conditions: (a) the corporation is a member of a "commonly controlled group;"(b) the corporation is engaged in a "unitary business" with one or more other corporations in its commonly controlled group, or the commonly controlled group makes a controlled group election; or (c) the corporation is not excluded from the combined group under "water's edge" rules.

The general process of computing a combined group's net tax liability includes computing the combined unitary income of the group, determining each member's income and tax, and computing the group's tax liability. In general, member level data is computed separately, and then aggregated on the combined return. Combined groups are required to aggregate and reconcile federal taxable income from the federal consolidated return or from federal separate returns, and to make certain adjustments related to intercompany transactions and limitations that apply on the combined group level, and report it on a combined return. Following these adjustments, the group computes the aggregate Wisconsin addition and subtraction modifications to federal taxable income for each member that are generally required of all corporations to reflect the differences between Wisconsin and federal tax law provisions.

After aggregate additions and subtractions are made to the combined group's income, the nonapportionable and separately apportionable income (income subject to water's edge rules, lottery prizes, and separate entity income/loss) of each group member is subtracted. As previously noted, these amounts are generally allocated to the state where the property that produced the income, gain, or loss is located. Amounts that are allocable or apportionable to Wisconsin are included in the group's combined unitary income, following apportionment. The specific combined group adjustments and state additions and subtractions are used to determine the combined unitary income of the group.

The individual member's share of combined unitary income is apportioned by using the percentage calculated by dividing the member's sales in Wisconsin by the group's total sales. The group's unitary combined income is then multiplied by this percentage to determine the member's combined unitary income.

A corporation that is a member of a combined group can have income that is required to be apportioned separately from the group's combined unitary income. This can occur when a member has income or loss that is excluded from combined unitary income under "water's edge" rules. In addition, each member's combined unitary income is adjusted by adding nonapportionable income (rents and royalties from nonbusiness property, lottery prizes) and separately apportionable income (water's edge and separate unitary business income).

Individual combined group members that show a positive income amount can offset the income with net business loss carryforwards. A net business loss carryforward is an attribute of the separate corporation that generated the loss. However, the combined group member may share all or a portion of its business loss carryforward with other members of the combined group, if certain conditions are met.

After a group member offsets its income with any net business loss carryforwards, the individual corporation determines its gross tax by applying the 7.9% state corporate income/franchise tax rate to the resulting measure of income. The corporate income/franchise tax liability computed separately for each group member and separately computed components including business loss carryforwards and nonrefundable tax credits, are aggregated and included on the group's combined return to determine the combined group's tax liability.

Tax credits are attributes of the separate corporation rather than of the combined group, and credits are computed separately for each corporation. A combined group member's nonrefundable credits, other than research credits (but not the super research and development tax credit), including carryforwards of those credits, may only be used by the combined group member to offset the tax liability attributable to its own taxable income. The total amount of nonrefundable tax credits claimed by group members is reported on the combined return. However, a combined group member that computes a research and/or research facilities tax credit, or that has an unused carryforward of a research or research facilities tax credit, may share a portion of the credit with other members of the combined group.

Each combined group member also separately reports its refundable tax credits. However, any refundable tax credits computed by combined group members are aggregated and used to offset the combined group's tax liability reported on the combined return. Any refundable amount not used is refunded to the group's designated agent. The combined group's designated agent files the combined return and pays any tax due for the group.

The manufacturing and agriculture tax credit was enacted under 2011 Wisconsin Act 32 (the 2011-13 biennial budget act) and is provided under the state individual income and corporate income and franchise taxes, and will be phased in over a four-year period, starting with tax years beginning on or after January 1, 2013. The credit equals a specified percentage of the claimant's eligible qualified production activities income (QPAI) that is derived from property assessed as manufacturing or agricultural property in Wisconsin, as defined under state property tax law. The specified tax credit percentage is as follows:

a. 1.875% for tax years beginning after December 31, 2012, and before January 1, 2014;

b. 3.75% for tax years beginning after December 31, 2013, and before January 1, 2015;

c. 5.526% for tax years beginning after December 31, 2014, and before January 1, 2016;

d. 7.5% for tax years beginning after December 31, 2015.

Unused tax credit amounts can be carried forward up to 15 years to offset future tax liabilities.

As noted, the credit is based on eligible qualified production activities income derived from manufacturing property in Wisconsin, as defined under state property tax law. The definition of manufacturing property under state law includes any property in the Metal Mining major group classification of the Standard Industrial Classification (SIC) Manual, 1987 edition, published by the U.S. Office on Management and Budget (OMB).

Whether a Penokee/Gogebic mine would pay corporate income and franchise taxes to the State of Wisconsin, and the amount of any taxes paid, would depend upon a number of factors that are not certain at this time. For example, if most or all of the mine's output were sold outside of Wisconsin, then little or none of the mine's operating profits would be apportioned to Wisconsin under the single-sales apportionment formula. Also, it appears that the mine would be eligible to claim the manufacturing and agriculture credit. Starting in tax year 2016, that credit will equal 7.5% of the income attributable to mining operations in Wisconsin, which would eliminate most of any tax liability the mine would otherwise incur. It is also unknown whether the mine will be operating as a member of a combined group of corporations conducting a unitary business, and thus be subject to the combined reporting requirements. Finally, if the mining company were organized as a pass-through entity [limited liability company (LLC), partnership, or tax option corporation], the mine's profits would be passed through to its owners and taxed under the individual income tax. In that case, the apportionment provisions and the manufacturing and agriculture credit would still affect any tax liability. Information on the Gogebic Taconite website indicates that the firm is currently organized as an LLC.

STATEMENT OF EMERGENCY

Section 16.47(2) of the statutes requires that no bill containing an appropriation, increasing the cost of state government, or decreasing revenues in an annual amount exceeding $10,000 may pass either House of the Legislature until the budget has passed both Houses, unless the Governor or the Joint Committee on Finance attaches a statement that the bill is an emergency bill (emergency clause). If the bill affects state finances by greater than $10,000 annually, but less than $100,000 biennially, the organization committee of either House may recommend the bill for passage in that House only.

The bill would have several fiscal impacts as discussed in the previous sections. These include creating a DNR program revenue appropriation to receive all fees relating to a ferrous metallic mining permit, eliminating a state recycling tipping fee on iron mining wastes, limiting certain state mining permit-related revenues, and modifying the distribution of certain mining-

related taxes. Upon implementation these impacts would be expected to affect state finances in excess of the stated amounts. Therefore, the bill would require an emergency clause if it were to be passed by either house prior to passage of the 2013-15 biennial budget.

BL/sas
Attachment

ATTACHMENT

Current Law Deductions from the Net Proceeds Tax

1. The actual and necessary expenses incurred during the taxable year for labor, tools, appliances, and supplies used in mining metalliferous minerals, including the labor of the lessee, the labor of the lessee's employees, and the amount expended by the lessee for tools, appliances, and supplies used by the lessee in the mining operation. The personal labor of the lessee must be computed at the prevailing wage rate.

2. The actual and necessary expenses for mining, including extracting, transporting, milling, concentrating, smelting, refining, reducing, assaying, sampling, inventorying, and handling the ore, and for further processing and transferring related to the product for which gross proceeds are received, including the cost of capital (interest and earnings) imputed to smelting and refining expenses.

3. The actual and necessary expenses for administrative, appraising, accounting, legal, medical, engineering, clerical, and technical services directly related to mining metalliferous minerals in this state, excluding salaries and expenses for corporate officers and for lobbying, as defined under laws governing the regulation of lobbying.

4. The actual and necessary expenses directly related to the repair and maintenance of any machinery, mills, reduction works, buildings, structures, other necessary improvements, tools, appliances, and supplies used in mining metalliferous minerals extracted in this state.

5. Generally all federal income taxes, state income or franchise taxes, property taxes, sales and use taxes, and other taxes paid and deductible by corporations in computing net income for corporate income tax purposes which are allocable to the mine, excluding the metalliferous mining tax. However, in the case of a mine owned by a corporation that owns other business operations or is part of an affiliated group of corporations eligible to file consolidated federal income tax returns, the determination of deductible state income or franchise taxes and federal income taxes must be made by calculating the taxable income from the mine as though the mine were a separate entity and applying the federal income tax laws and state income or franchise tax laws to this income as though the mine were filing a separate income or franchise tax return. To calculate taxable income, federal taxable income as it applies to the depletion deduction under federal laws governing percentage depletion under section 613 of the Internal Revenue Code and associated federal regulations, as amended to December 31, 1981, must be adjusted to reflect the difference between Wisconsin income or franchise tax law and federal income tax law.

6. Rents paid on personal property used in mining metalliferous minerals.

7. The cost of relocating employees within this state.

8. The cost of premiums for bonds required under laws governing bonds filed with the

Department of Natural Resources.

9. The cost of premiums for insurance on persons or tangible assets relating to mining metalliferous minerals.

10. Losses from uninsured casualty losses and the sale of personal property used in mining metalliferous minerals.

11. Depreciation or amortization on property used in connection with mining. The deduction is limited to the amount allowable as a deduction to corporations in computing net income under state corporate income tax laws. The following assets may be depreciated or amortized: (a) machinery, mills, and reduction works; (b) buildings, structures, and other improvements; (c) permit fees, license fees, and any other fees for formal written authorization required by a department or instrumentality of the state; and (d) development of the mine after the date on which extraction begins.

12. Royalties paid to owners, not including the person mining or a controlled entity or controlling entity of the person mining, of the mineral rights to the lands where the mine or an extension of the mine is located.

13. Amortization by a straight-line method over the life of the mine commencing with production of pre-mining costs, including costs for drilling, geological and engineering studies, design of facilities, pilot mines, mine testing, environmental surveys, facilities siting surveys and other exploration and development activities. Such expenses incurred after mining begins are to be expensed currently.

14. Actual and necessary reclamation and restoration costs associated with a mine in this state, including payments for future reclamation and post-mining costs required by law or by DNR order and fees and charges under DNR laws governing water and sewage, air pollution, solid waste facilities, and general environmental provisions that are not otherwise deductible. Any refunds of escrowed or reserve fund payments allowed as a deduction as specified above must be taxed as net proceeds at the average effective tax rate for the years the deduction was taken.

15. Interest determined in the following manner: (a) if the interest is specifically allocable to the development or operation of a mine or beneficiation facility from which net proceeds are derived, all of the interest is deductible; (b) if the interest is not specifically allocable to the development or operation of a mine or beneficiation facility, the proportion of the interest that equals the proportion of the capital investment in the mine and beneficiation facilities as compared to the taxpayer's total capital investment; (c) if a mine is owned by a corporation that is part of an affiliated group of corporations, "interest" means the interest paid to nonmembers of the group; and (d) the deduction for interest may not exceed 5% of the total gross proceeds for the taxable year.

16. An allowance for depletion of ores on the basis of their actual original cost in cash or the equivalent of cash.

17. Investment and Local Impact Fund administrative fees.