



Legislative Fiscal Bureau

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January 8, 2014

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Natural Resources: Request under s. 16.505, Stats., for Ferrous Mining Position Authority -- Agenda Item VI

REQUEST

On December 18, 2013, the Department of Administration (DOA), on behalf of the Department of Natural Resources (DNR), submitted a request to the Joint Committee on Finance pursuant to s. 16.505, Stats., to provide 1.0 PR permanent position beginning in 2013-14 for ferrous metallic (iron) mining permit review activities. The position authority would be provided in appropriation s. 20.370 (2)(gi). An objection was filed to this request. As a result, the request is before the Committee for approval under the s. 13.10 process.

BACKGROUND

Under 2013 Wisconsin Act 1, effective March 26, 2013, various changes were enacted related to the regulation of ferrous metallic mining. The Act created appropriation s. 20.370 (2)(gi) to receive all program revenues under subchapter III of Chapter 295 of the statutes for DNR's operations related to ferrous metallic exploration and mining. Act 1 did not authorize any positions in the appropriation, but DNR is authorized to spend all moneys received in the appropriation.

Under Act 1, the ferrous mining permit applicant is required to pay DNR costs of review for all necessary approvals for evaluating an iron mining project, including a bulk sampling approval, up to a cap of \$2 million. In addition to fees assessed within the \$2 million cap, the mining permit applicant would pay costs of the environmental impact statement if DNR contracts with a consultant for preparation of an environmental impact statement, and awards the contract on the basis of competitive bids. The mining applicant would also pay for an exploration license, drillhole fees, wetland delineations, and fees that might be assessed under the Great Lakes Compact.

Under section 295.73 of the statutes, the mining permit applicant is required to make a first payment of \$100,000 to DNR when the applicant submits the bulk sampling plan or the notice of intention to file a ferrous mining permit application, whichever is first. DNR would assess \$250,000 when the Department provides cost information demonstrating that the \$100,000 has been fully allocated to actual costs. DNR would then assess and receive additional payments in \$250,000 increments when the Department provides cost information demonstrating the previous \$250,000 has been fully allocated to actual costs. DNR would receive a final payment of \$150,000 when the Department allocated the previous payments, to reach the \$2 million cap.

Gogebic Taconite submitted a bulk sampling plan and a preapplication notice to DNR for a ferrous mining project in Iron and Ashland Counties on June 17, 2013. At that time, Gogebic Taconite paid \$100,000 as the first required permit application fee. The company may file an application for a mining permit 12 months or more after the preapplication is received. DNR deposited the \$100,000 payment into the new ferrous mining PR appropriation in 2012-13. DNR did not charge any expenditures against the appropriation in 2012-13.

Based on the preapplication, the potential iron mine would 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. The project may consist of two open pits reaching up to 1,000 feet deep, on a mining site totaling approximately 6,800 acres south of state highway 77 between Mellen and Upson.

ANALYSIS

DNR indicates the requested hydrogeologist - advanced position would be located in the Waste and Materials Management subprogram, would be assigned to the Rhinelander office, and would have primary responsibility for review of the metallic mining plan submittals, coordination of field staff and mining permit requirements, oversight inspections of applicant activities, and overall mining facility compliance. DNR conducted interviews for the position in December, 2013, and plans to complete the hiring process in January, 2014.

DNR and DOA did not request expenditure authority as part of the request for position authority because DNR is authorized to spend all moneys received under the ferrous mining appropriation, regardless of the amount shown in the Chapter 20 statutory appropriations schedule. However, DNR indicates the annual costs of the requested position would total approximately \$93,000 for salary, fringe benefits and supplies.

DNR estimated it has incurred approximately \$73,400 in costs related to the project as of November 16, 2013. This includes approximately 35 DNR staff charging a total of 1,107 hours to the iron mining project. (Department officials indicated information for costs incurred after November 16 will not be available until later in January, 2014.) DNR is in the process of establishing a methodology for determining which of the Department's costs relate to the Gogebic Taconite mining project, and which of those costs will be charged to the \$100,000 paid by Gogebic Taconite in June of 2013 for the Department's cost of evaluating the project. Until it makes that determination, the time of DNR staff working on the project is being charged to the appropriations from which the positions are authorized. When it finishes its determination, DNR plans to transfer

expenditures from those appropriations to the ferrous mining PR appropriation.

DNR indicates that, to date, staff have performed the following activities related to the Gogebic Taconite project: (a) hydrogeologists and a natural resources manager in the drinking water and groundwater, and waste and materials management subprograms provided overall coordination of permit review activities, reviewed the bulk sampling plan and preapplication, and met with the applicant and state, local, and federal agencies; (b) law enforcement wardens provided security for DNR staff who needed to perform job duties at the mining site, and provided coordination and security information to other law enforcement agencies; (c) a forester provided site information to other agencies; (d) wastewater specialists and water regulation and zoning specialists in the watershed management subprogram reviewed the Gogebic Taconite stormwater permit application, performed work related to delineation of wetlands, provided information to the applicant regarding what information the applicant will need to gather, and inspected stormwater practices at the site; and (e) the Department allocated indirect costs of 16.62% of salary and fringe benefit costs in the subprograms described under (a) through (d) as administrative overhead costs in programs such as legal, budget, finance, human resources, information technology, and the Secretary's office. DNR officials indicate the staff are authorized in appropriations funded from the segregated environmental management account of the environmental fund, the segregated conservation fund, program revenues for solid waste management administration, and general purpose revenues. Staff who charge time to ferrous mining activities would otherwise perform activities such as solid waste management, conservation or environmental enforcement, wetlands management, stormwater management, and forestry management.

DNR officials indicate the Department may reach \$100,000 in costs allocable to the first \$100,000 payment in January, 2014. At that time, DNR will be required to provide cost information demonstrating the \$100,000 has been fully allocated against actual costs before the Department can require Gogebic Taconite to submit the next payment of \$250,000. It is probable the next payment of \$250,000 will be received in 2013-14. It is uncertain what total amount of expenditures will be charged to the appropriation in each of 2013-14 and 2014-15. Given bulk sampling permit review activities to date and ongoing tasks related to the preapplication notice, it is likely expenditures will exceed an amount needed for one full-time equivalent staff person. The timing of receipt of future payments from Gogebic Taconite will be somewhat dependent on the timing of future submittals by the company to DNR, particularly the potential submittal of a mining permit application, and the amount of time DNR needs to spend to review those submittals. It is likely that DNR workload will increase significantly when the mining permit application is submitted.

Permitting activities related to the Gogebic Taconite mining project are expected to continue for several years, and to total at least the one staff position currently requested. The Committee may wish to approve the request (Alternative 1) as a way of more accurately aligning position authority with actual workload related to the ferrous mining appropriation. In addition to approving the position authority, the Committee may wish to provide expenditure authority related to the position in the ferrous mining appropriation. For example, providing expenditure authority of \$93,000 PR in each of 2013-14 and 2014-15 (Alternative 2) would reflect the level of expected expenditures for the requested position. While DNR may not need expenditure authority to charge

relevant expenditures to the appropriation, approval of expenditure authority would result in the Chapter 20 statutory appropriations schedule more accurately reflecting anticipated expenditures.

During legislative deliberations that resulted in 2013 Act 1, DNR estimated it may need approximately 1.5 to 8.0 staff, and \$650,000 to \$3.5 million over a four-year period, for mine preapplication and permit review activities (excluding a contract for the environmental impact statement). Actual costs would depend on a variety of factors including the size, location and complexity of a proposed mining project and the quality of mining application materials. The proposed Penokee/Gogebic mine would generate substantial mining wastes, including large amounts of tailings, overburden and other waste rock. Onsite crushing and processing plants would be included to process the iron ore into taconite pellets for shipment primarily by rail to steel mills. Significant sources of energy (electricity and natural gas) would also be required for the mining and processing facilities. In addition to the mining permit, a typical mining application would include state permits related to mining waste storage and disposal, water withdrawal, stormwater, wetland and water quality impacts, and air emissions. Consultation with federal and local government, tribal, and mining company officials would also be required.

Gogebic Taconite could submit an iron mining application as soon as late June of 2014. DNR would have 30 days after the receipt of an application to determine if the application is complete or if additional information is required. Within 10 days of the applicant responding to a request for supplemental information, the application is deemed complete and DNR may need to make determinations on the mining and related permits within 420 to 480 days. While the precise timing of a mining application, and the associated workload, is not known at this time, it is likely to significantly exceed the one staff person currently requested. Additional resources could be considered in the 2015-17 budget, or in a future s. 16.505 request, once more details are known.

On the other hand, the Committee could also consider approving additional staff at this time in the new ferrous mining appropriation, in recognition of the likelihood that workload is expected to substantially exceed one full-time equivalent of effort during 2013-14, and will likely increase in subsequent years as the mining permit application is submitted and reviewed. One option would be to approve 2.0 positions and associated expenditure authority, instead of 1.0 (Alternative 3) in the ferrous mining appropriation.

Any approved positions could also be provided as four-year project positions instead of permanent (Alternative 2b or 3b). This would recognize that Act 1 generally requires DNR to complete all mining permit review activities within 420 to 480 days after the application is submitted. However, as described earlier, it is uncertain what the timing of the permit application will be, and it is possible that current workload could continue beyond the four-year term of the project positions. In addition, it may be easier to find qualified candidates for a permanent position. DNR may only expend monies from the appropriation to the extent program revenues are available to support the expenditures.

If the Committee wishes to provide position authority related to ferrous mining regulatory activities without increasing the total number of authorized positions in DNR, it could approve the request and also delete the same number of waste and materials management program vacant positions as are approved in the ferrous mining PR appropriation (Alternative 4). However, a

corresponding deletion of staff would not allow the Department to fill one or two of the existing waste and material management program vacancies for currently authorized non-mining activities. Some may argue it is not appropriate to reduce authorized staff in other program areas to accommodate the increased iron mining project activity.

The DNR Waste and Materials Management subprogram is authorized 76.75 positions. As of the end of November, 2013, the subprogram had seven vacant positions (4.0 FED [appropriation s. 20.370(2)(mm)], 2.0 PR [s. 20.370(2)(dg)], and 1.0 GPR [s. 20.370(2)(ma)]). The Department allocated one of the vacant federal positions to be filled by the hydrogeologist in Rhinelander who will perform ferrous mining permit review activities. If the Committee approves the request for a new position, the person filling the federal position being assigned to ferrous mining activities would likely be moved to the ferrous mining PR appropriation. Federal funding is not expected to be sufficient to fill at least two of the remaining authorized vacant federal waste management positions in 2013-15. As of late December, 2013, DNR was also in the process of filling 1.0 vacant PR position. It should also be noted that the 2013-15 biennial budget requires DNR to delete at least 32.1 positions from the agency (associated with certain February, 2013, long-term vacancy levels). DNR and DOA have not yet finalized a required report to Joint Finance identifying specific position reductions. DNR indicates the remaining vacant GPR and PR positions are being considered for possible deletion under the budget act provisions.

If the request is not approved (Alternative 5), DNR would likely continue its current practice of allocating positions authorized for other purposes to ferrous mining permit review, and charging the time of those staff to the new ferrous mining appropriation. Position authority in the ferrous mining appropriation could be considered as part of 2015-17 biennial budget deliberations, separate legislation, or a future request under s. 16.505 of the statutes.

ALTERNATIVES

1. Approve the DOA request to provide DNR with 1.0 PR permanent position beginning in 2013-14 for ferrous metallic mining permit review.
2. Approve \$93,000 PR annually with 1.0 PR position for ferrous metallic mining permit review in one of the following ways:
 - a. as permanent.
 - b. as a four-year project position.
3. Approve \$186,000 PR annually with 2.0 PR positions for ferrous metallic mining permit review in one of the following ways:
 - a. as permanent.
 - b. as four-year project positions.

4. In addition to one of the above alternatives, adopt one of the following:
 - a. delete \$68,000 FED with 1.0 position annually from the waste and materials management program.
 - b. delete \$136,000 FED with 2.0 positions annually from the waste and materials management program.
 - c. delete \$68,000 FED with 1.0 position annually and \$68,000 PR with 1.0 position annually from the waste and materials management program.
5. Deny the request.

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