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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **2560**

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Authored by Hausman and Scalze

The bill was read for the first time and referred to the Committee on Environment Policy and Oversight

A bill for an act

relating to natural resources; providing for financial assurance for nonferrous metallic mineral mining; amending Minnesota Statutes 2008, sections 93.481, by adding a subdivision; 93.49; Minnesota Statutes 2009 Supplement, section 93.481, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 93.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2009 Supplement, section 93.481, subdivision 1, is amended to read:

Subdivision 1. **Prohibition against mining without permit; application for permit.** Except as provided in this subdivision, after June 30, 1975, no person shall engage in or carry out a mining operation for metallic minerals within the state unless the person has first obtained a permit to mine from the commissioner. Any person engaging in or carrying out a mining operation as of the effective date of the rules adopted under section 93.47 shall apply for a permit to mine within 180 days after the effective date of such rules. Any such existing mining operation may continue during the pendency of the application for the permit to mine. The person applying for a permit shall apply on forms prescribed by the commissioner and shall submit such information as the commissioner may require, including but not limited to the following:

(1) a proposed plan for the reclamation or restoration, or both, of any mining area affected by mining operations to be conducted on and after the date on which permits are required for mining under this section;

(2) a certificate issued by an insurance company authorized to do business in the United States that the applicant has a public liability insurance policy in force for the mining operation for which the permit is sought, or evidence that the applicant has

2.1 satisfied other state or federal self-insurance requirements, to provide personal injury
 2.2 and property damage protection in an amount adequate to compensate any persons who
 2.3 might be damaged as a result of the mining operation or any reclamation or restoration
 2.4 operations connected with the mining operation;

2.5 (3) an application fee of:

2.6 (i) \$25,000 for a permit to mine for a taconite mining operation;

2.7 (ii) \$50,000 for a permit to mine for a nonferrous metallic minerals operation;

2.8 (iii) \$10,000 for a permit to mine for a scam mining operation; or

2.9 (iv) \$5,000 for a permit to mine for a peat operation;

2.10 (4) ~~a bond which may be~~ financial assurance as required pursuant to ~~under~~ section
 2.11 93.49 or 93.491; and

2.12 (5) a copy of the applicant's advertisement of the ownership, location, and
 2.13 boundaries of the proposed mining area and reclamation or restoration operations, which
 2.14 advertisement shall be published in a legal newspaper in the locality of the proposed site
 2.15 at least once a week for four successive weeks before the application is filed, except that if
 2.16 the application is for a permit to conduct lean ore stockpile removal the advertisement
 2.17 need be published only once.

2.18 Sec. 2. Minnesota Statutes 2008, section 93.481, is amended by adding a subdivision
 2.19 to read:

2.20 Subd. 8. **Responsible persons.** For purposes of nonferrous mining operations, the
 2.21 permittee and any person who manages, directs, or conducts operations under this section,
 2.22 including a parent entity or affiliate who materially participates in that management,
 2.23 direction, or conduct of operations, is responsible for complying with sections 93.44 to
 2.24 93.51, rules adopted under those sections, and any permit conditions required by those
 2.25 sections or rules.

2.26 Sec. 3. Minnesota Statutes 2008, section 93.49, is amended to read:

2.27 **93.49 FINANCIAL ASSURANCE OF OPERATOR; FERROUS MINING.**

2.28 The commissioner shall require ~~a bond or other security or other~~ financial assurance
 2.29 satisfactory to the commissioner from an operator of a ferrous mine. The commissioner
 2.30 shall review annually the extent of each ferrous mine operator's financial assurance
 2.31 under this section. Financial assurance for nonferrous mining operations is governed
 2.32 by section 93.491.

3.1 Sec. 4. [93.491] FINANCIAL ASSURANCE OF OPERATOR; NONFERROUS
3.2 MINING.

3.3 Subdivision 1. **Financial assurance required.** As a condition for issuing a permit
3.4 to mine, the commissioner of natural resources shall require financial assurance from a
3.5 nonferrous mine operator sufficient to cover the reasonably estimated costs of contracting
3.6 with a third party for closure, corrective action, reclamation, and postclosure maintenance.
3.7 When determining the amount of financial assurance, the commissioner shall consult with
3.8 the commissioner of the Pollution Control Agency and with individuals with documented
3.9 experience and expertise in nonferrous mining reclamation and water treatment.

3.10 Subd. 2. **Long-term water treatment costs.** The financial assurance shall include
3.11 the reasonably estimated costs of constructing, operating, and maintaining any water
3.12 treatment facilities that may be needed as a result of the mining activity to ensure
3.13 compliance with federal and state environmental requirements after mining ceases.

3.14 Subd. 3. **Form of financial assurance.** (a) The financial assurance shall be
3.15 deposited into a trust fund at a bank or trust company approved by the commissioner of
3.16 management and budget, with the funds available only upon the written request of the
3.17 commissioner of natural resources. Interest and investment returns from the trust fund
3.18 shall be retained by the trust fund.

3.19 (b) The financial assurance shall be in a form the commissioner of management
3.20 and budget determines will adequately protect the state's taxpayers if a nonferrous mine
3.21 operator or other responsible person defaults on the permit obligations. The commissioner
3.22 of management and budget may accept financial assurance only in the following forms:

3.23 (1) cash or cash equivalents;

3.24 (2) bills, certificates, notes, or bonds of the United States;

3.25 (3) other obligations of the United States or its agencies;

3.26 (4) obligations of any corporation wholly owned by the federal government; and

3.27 (5) indebtedness of the federal National Mortgage Association.

3.28 Subd. 4. **Prohibited forms of financial assurance.** The commissioner of
3.29 management and budget may not accept the following as financial assurance under
3.30 this section: corporate guarantees, self-insurance, financial tests, captive insurance, or
3.31 any other form the commissioner of management and budget determines may become
3.32 unavailable to the state if the nonferrous mining operator or other responsible person
3.33 defaults on the permit obligations.

3.34 Subd. 5. **Annual review of financial assurance.** (a) The commissioner of natural
3.35 resources, in consultation with the commissioner of management and budget, shall review
3.36 at least annually the adequacy of each nonferrous mine operator's financial assurance

4.1 under this section. The commissioner of natural resources shall require additional financial
4.2 assurance if the commissioner determines during the annual review or at any other time
4.3 that the operator's financial assurance is inadequate.

4.4 (b) After completion of the review under paragraph (a), the commissioner of natural
4.5 resources shall publish a notice in the State Register and the Environmental Quality Board
4.6 Monitor stating that the commissioner has completed review of the financial assurance in
4.7 place, stating whether the amount and type of financial assurance in place is adequate, and
4.8 providing a detailed analysis of the rationale for the commissioner's decision.

4.9 (c) Written objections to the commissioner's financial assurance review may be
4.10 filed with the commissioner no later than 30 days following the publication required
4.11 under paragraph (b). Within ten days after the final day for filing written objections, the
4.12 commissioner shall determine whether any of the objections raise a material issue of fact
4.13 and whether there is a reasonable basis underlying the issue of fact such that holding a
4.14 hearing would allow the presentation or introduction of relevant information that would
4.15 aid the commissioner in making a final determination on the adequacy of the operator's
4.16 existing financial assurance or the type and level of financial assurance to be required.
4.17 If the commissioner concludes that any of the objections meet those requirements, the
4.18 commissioner shall commence a contested case under the contested case procedures
4.19 adopted by the Office of Administrative Hearings.

4.20 Subd. 6. **Release of financial assurance.** (a) Before the release of any amount of the
4.21 financial assurance to the permittee of a nonferrous mining operation, the commissioner
4.22 of natural resources shall publish a notice of the action in the State Register and the
4.23 Environmental Quality Board Monitor.

4.24 (b) Written objections to the commissioner's financial assurance release decision may
4.25 be filed with the commissioner no later than 30 days following the publication required
4.26 under paragraph (a). Within ten days after the final day for filing written objections, the
4.27 commissioner shall determine whether any of the objections raise a material issue of fact
4.28 and whether there is a reasonable basis underlying the issue of fact such that holding a
4.29 hearing would allow the presentation or introduction of relevant information that would
4.30 aid the commissioner in making a final determination on whether to release all or part
4.31 of the financial assurance. If the commissioner concludes that any of the objections
4.32 meet those requirements, the commissioner shall commence a contested case under the
4.33 contested case procedures adopted by the Office of Administrative Hearings.

4.34 (c) The portion of the financial assurance attributable to the estimated cost of water
4.35 treatment shall not be released until the discharge has ceased for a period of five years, as
4.36 determined by ongoing monitoring and testing, or, if the discharge is continuous, until the

5.1 operator has met all applicable effluent limitations and water quality standards without
5.2 treatment for five consecutive years following closure of the mine.

5.3 Subd. 7. **Treatment of financial assurance in environmental review process.** The
5.4 commissioner of natural resources or other responsible government unit shall include an
5.5 analysis and estimate of the financial assurance that would be required for each alternative
5.6 in any draft or final environmental impact statement for a nonferrous mining operation.
5.7 The analysis shall include an adequate discussion of reasonably foreseeable best-case,
5.8 worst-case, and most likely scenarios from an environmental perspective.