

1.1 A bill for an act

1.2 relating to natural resources; prohibiting issuance of nonferrous metallic mineral
1.3 mining permits under certain circumstances; defining financial assurance
1.4 required for nonferrous metallic mineral mining; increasing civil penalty for
1.5 nonferrous metallic mineral mining law violations; requiring rulemaking;
1.6 amending Minnesota Statutes 2008, sections 93.481, subdivisions 1, 7, by adding
1.7 subdivisions; 93.49; 93.51, subdivision 1; proposing coding for new law in
1.8 Minnesota Statutes, chapter 93.

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

1.10 Section 1. Minnesota Statutes 2008, section 93.481, subdivision 1, is amended to read:

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

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

1.24 (b) A certificate issued by an insurance company authorized to do business in
1.25 the United States that the applicant has a public liability insurance policy in force for
1.26 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 (c) ~~A bond which may be~~ Financial assurance as required pursuant to section under
 2.6 sections 93.49 and 93.491; and

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

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

2.15 Subd. 2a. **Permits to conduct nonferrous metallic mineral mining.** (a) For
 2.16 purposes of this section, "nonferrous metallic mineral mining" means mining for
 2.17 nonferrous metals in a mineral deposit containing or associated with sulfide minerals.

2.18 (b) For purposes of this section, "water treatment" means the use of mechanical,
 2.19 chemical, or biological processes, whether part of mechanical systems, biological systems,
 2.20 or permeable barriers, or other applicable systems or methods, that are necessary to avoid
 2.21 the contamination of surface water and groundwater with metals or acidity resulting from
 2.22 the oxidation of sulfide minerals exposed to air and water during and following closure of
 2.23 a nonferrous metallic mineral mining operation.

2.24 (c) The commissioner shall not issue a permit to mine under this section to a
 2.25 nonferrous metallic mineral mining operation unless the applicant establishes that the
 2.26 mining conditions, activities, and practices will not require water treatment after the mine's
 2.27 closure or otherwise result in irreparable harm to significant scientific or environmental
 2.28 resources.

2.29 Sec. 3. Minnesota Statutes 2008, section 93.481, subdivision 7, is amended to read:

2.30 **Subd. 7. Mining administration account.** The mining administration account is
 2.31 established as an account in the natural resources fund. Ferrous mining administrative fees
 2.32 charged to owners, operators, or managers of mines shall be credited to the account and
 2.33 may be appropriated to the commissioner to cover the costs of providing and monitoring
 2.34 permits to mine ferrous metals under this section. Nonferrous metallic mineral mining

3.1 administrative fees charged to owners, operators, or managers of nonferrous metallic
3.2 mineral mines shall be credited to a nonferrous metallic mineral mining fund within the
3.3 mining administration account and may be appropriated to the commissioner to cover
3.4 the costs of providing and monitoring permits for nonferrous metallic mineral mines
3.5 under this section.

3.6 Sec. 4. Minnesota Statutes 2008, section 93.481, is amended by adding a subdivision
3.7 to read:

3.8 Subd. 8. **Responsible persons.** For purposes of nonferrous metallic mineral mining
3.9 operations, the permittee and any person who manages, directs, or conducts operations
3.10 under this section, including a parent entity or affiliate who materially participates in that
3.11 management, direction, or conduct, is responsible for complying with all provisions of
3.12 sections 93.44 to 93.51, with any rules adopted under those sections, and with any permit
3.13 conditions required by those sections or rules.

3.14 Sec. 5. Minnesota Statutes 2008, section 93.49, is amended to read:

3.15 **93.49 FINANCIAL ASSURANCE OF OPERATOR; FERROUS MINING.**

3.16 The commissioner shall require ~~a bond or other security or other~~ financial assurance
3.17 satisfactory to the commissioner from an operator of a ferrous mine. The commissioner
3.18 shall review annually the extent of each operator's financial assurance under this section.
3.19 Financial assurance for nonferrous metallic mineral mining operations is governed by
3.20 section 93.491.

3.21 Sec. 6. **[93.491] FINANCIAL ASSURANCE OF OPERATOR; NONFERROUS**
3.22 **METALLIC MINERAL MINING.**

3.23 Subdivision 1. **Financial assurance required.** The commissioner shall require
3.24 financial assurance satisfactory to the commissioner from an operator of a nonferrous
3.25 metallic mineral mine.

3.26 Subd. 2. **Amount of financial assurance.** The commissioner of natural resources,
3.27 in consultation with the commissioners of finance and the Pollution Control Agency,
3.28 shall determine the amount of the financial assurance required of an operator of a
3.29 nonferrous metallic mineral mining operation. The amount shall be the estimated cost to
3.30 the state for hiring a third party to perform reclamation activities, including closure and
3.31 postclosure maintenance needed if operations cease, and corrective action as required
3.32 by the commissioner if noncompliance with design and operating criteria in the permit
3.33 to mine occurs. The estimated cost shall include the cost of administering the contract

4.1 with the third party. In determining the amount of financial assurance, the commissioner
4.2 shall consult with individuals with documented experience and expertise in nonferrous
4.3 metallic mineral mining, including closure, cleanup, and reclamation of nonferrous
4.4 metallic mineral mines.

4.5 Subd. 3. **Form of financial assurance.** The form of the financial assurance must be
4.6 approved by the commissioners of natural resources and finance. Acceptable forms of
4.7 financial assurance include:

4.8 (1) a cash deposit to be deposited and maintained in a federal depository account of
4.9 the United States Treasury by the commissioner;

4.10 (2) an assignment of a certificate of deposit or savings accounts not in excess of the
4.11 maximum insurable amount as set by the Federal Deposit Insurance Corporation;

4.12 (3) an irrevocable, nonexpiring letter of credit from a bank or financial institution
4.13 organized or authorized to transact business in the United States that is entirely
4.14 independent of the mining operator as verified by the commissioner of commerce;

4.15 (4) negotiable federal, state, and municipal securities or bonds having a market value
4.16 of not less than the required dollar amount of the financial assurance and maintained in a
4.17 Securities Investors Protection Corporation insured trust account by a licensed securities
4.18 brokerage firm for the benefit of the commissioner of natural resources, acting by and
4.19 through the state; and

4.20 (5) surety bonds meeting the requirements of Treasury Department Circular 570,
4.21 including surety bonds arranged or paid for by third parties.

4.22 Subd. 4. **Prohibited forms of financial assurance.** The commissioner may not
4.23 accept the following forms of financial assurance under this section: corporate guarantees,
4.24 self-guarantees, self-assurances, and mining insurance.

4.25 Subd. 5. **Review of financial assurance.** (a) The commissioner of natural resources
4.26 shall review annually the extent and adequacy of each nonferrous metallic mineral mining
4.27 operator's financial assurance under this section.

4.28 (b) In addition to the annual review, the commissioner shall conduct a comprehensive
4.29 review of the financial assurance of an operator of a nonferrous metallic mineral mining
4.30 operation at least every five years. The commissioner may require further financial
4.31 assurance if the commissioner determines during the review or at any time that the
4.32 operator's financial assurance is inadequate. The purpose of the review is to determine
4.33 whether the amount of the financial assurance is adequate under this section. The
4.34 comprehensive review shall also include a detailed assessment of the adequacy of the
4.35 financial assurance and shall include consultation with the commissioner of finance and a
4.36 third-party expert meeting the qualifications of subdivision 2.

5.1 (c) After completion of the annual or comprehensive review of a nonferrous metallic
5.2 mineral mining operator's financial assurance, the commissioner shall publish a notice in
5.3 the State Register and the Environmental Quality Board Monitor stating that the annual
5.4 review of the financial assurance has been completed, stating whether the amount and type
5.5 of financial assurance in place is adequate, and providing a statement of reasons justifying
5.6 the decisions. The commissioner shall consider and respond to written comments filed
5.7 with the commissioner within 30 days after the publication required by this subdivision.
5.8 The commissioner shall provide opportunity for public comment and contested case
5.9 hearing as part of the comprehensive review consistent with the procedures for obtaining a
5.10 permit to mine under Minnesota Rules, part 6132.4000.

5.11 Subd. 6. **Release of financial assurance.** Before the release of any amount of the
5.12 financial assurance to the permittee of a nonferrous metallic mineral mining operation,
5.13 the commissioner shall publish a notice of the action in the State Register and the
5.14 Environmental Quality Board Monitor. The commissioner shall provide opportunity for
5.15 public comment and contested case hearing consistent with the procedures for obtaining a
5.16 permit to mine under Minnesota Rules, part 6132.4000.

5.17 Sec. 7. Minnesota Statutes 2008, section 93.51, subdivision 1, is amended to read:

5.18 Subdivision 1. **Civil penalty; nonferrous metallic mineral mining violation.** If
5.19 any person fails to comply with any provision of sections 93.44 to 93.51, or any rules
5.20 promulgated pursuant to these sections, or any permit condition required by these sections
5.21 or the rules, for a period of 15 days after notice of such failure, or the expiration of
5.22 time for corrective action as provided for in section 93.481, subdivision 4, such person
5.23 shall be liable for a civil penalty of not more than \$1,000 for each and every day of the
5.24 continuance of such failure. If the violation is of a provision or permit condition related to
5.25 nonferrous metallic mineral mining, the person is liable for a civil penalty of not more
5.26 than \$10,000 for each day of continued failure to comply. The commissioner may assess
5.27 and collect any such penalty.

5.28 Sec. 8. **RULEMAKING.**

5.29 The commissioner of natural resources shall amend Minnesota Rules according
5.30 to Minnesota Statutes, chapter 14, to implement the financial assurance requirements
5.31 for nonferrous metallic mineral mining operations as set forth in Minnesota Statutes,
5.32 section 93.491.