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BILL ANALYSIS

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Senate Bill 390 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Tom Casperson
Committee: Natural Resources

Date Completed: 1-9-18

RATIONALE

On December 1, 2016, the United States Environmental Protection Agency (USEPA) proposed financial responsibility requirements for the hardrock mining and mineral processing industry. The regulations proposed to require current iron mine owners and operators to demonstrate financial responsibility and cover three types of costs associated with releases and potential releases of hazardous substances from their facilities, including response costs, health assessment costs, and natural resource damages. Some people were concerned that these costs did not accurately reflect the realities of the low-risk modern iron-mining sector. They believed, therefore, that the requirement for current owners or operators of mines to set aside funds for cleanup would constitute such an unnecessary and severe burden on iron-mining operations in Michigan that iron-mining could become economically infeasible. It was suggested that specific taxes already levied on iron-mining operations should be used to provide the financial assurance required by the proposed USEPA rule.

CONTENT

The bill would amend Public Act 77 of 1951, which provides for the taxation of low-grade iron ore, to revise the distribution of specific taxes levied on low-grade iron-ore mining property after 2016; and to establish the "Ferrous Mineral Reclamation Fund" within the Department of Treasury as a form of assurance for permitted iron mine operations.

Low-Grade Iron Ore Tax Distribution

Under the Act, before the first calendar year in which production of merchantable ore from a low-grade iron-ore mining property has been established on a commercial basis, or before the period of construction of the plants for the beneficiation or treatment of low-grade iron ore and the period of experimental operation of the plants, the low-grade iron-ore mining property is subject to a specific tax equal to the rated annual capacity of the plant in gross tons multiplied by 0.55% of the mine value per gross ton, based on the projected natural iron analysis of the iron ore pellets or of the concentrated and/or agglomerated products, multiplied by the percent of construction completion of the low-grade iron-ore mining property.

Sums collected under the Act must be distributed by the township treasurer to school districts, the State, and local governmental units in the same proportion as general property taxes are distributed. The amounts distributed may be used by the school districts and local governmental units for operating expenses, for capital improvements, and for the accumulation of reserves in a building and site fund or for the payment of interest or principal on bonds.

For specific taxes levied after 1993 and school operating purposes, the amount that otherwise would be disbursed to a local school district must be paid instead to the State Treasury and credited to the School Aid Fund.

The bill would require money collected from specific taxes levied on low-grade iron-ore mining property after 2016, which would otherwise be credited to the State School Aid Fund, to be distributed as follows:

-- An amount equal to $500,000 would be disbursed to the intermediate school district (ISD) that serves the county in which one or more mining properties are permitted on or before the effective date of the bill.
-- Subsequent to the distribution to the ISD, money would be forwarded to the State Treasurer for deposit in the proposed Ferrous Mineral Reclamation Fund until the Fund accrued an amount equal to the liability of the mining operations assured by the Fund.
-- After the Fund accrued an amount equal to the liability of the iron mine operations assured by the Fund, money would be paid to the State Treasury to be credited to the State School Aid Fund.

Ferrous Mineral Reclamation Fund

The Department of Environmental Quality (DEQ) could spend money from the Fund only to implement the mining and reclamation plan required by the Natural Resources and Environmental Protection Act, as well as necessary environmental protection measures, including remediation of any contamination of the air, surface water, or groundwater that was in violation of a mining permit, when a permittee failed to timely implement the mining and reclamation plan or measures in the plan.

The Fund would serve as a form of assurance for permitted iron mining operations that were under the common ownership of a parent corporation for which at least one of the mining operations paid specific taxes deposited into the Fund. If an iron mine permit were transferred to another operator, the assurance would be applied to the iron mine operations of the operator acquiring the permit in the same manner as the original permittee.

The iron mine operators assured by the Fund, or the parent corporation of those mine operators, and the DEQ would be required to develop an implementation and access agreement that established the liability of the iron mine operations assured by the Fund and the permissible expenditures of the Fund.

The State Treasurer would direct the investment of the Fund. The State Treasurer would credit to the Fund interest and earnings from Fund investments. Money in the Fund would have to be returned to the State School Aid Fund upon notice and approval of completed reclamation at all of the ferrous mineral operations that were assured by the Reclamation Fund.

MCL 211.624

BACKGROUND

Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund, directs the USEPA to develop regulations that require certain classes of facilities to establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. When releases of hazardous substances occur, or when a threat of release of hazardous substances must be averted, a Superfund response action may be necessary. Previously, a "polluter tax" on oil and chemical industries supported the Superfund. Since that tax expired, the USEPA's Superfund appropriation has been increasingly funded by general revenue. Therefore, the costs of response actions can fall to the taxpayer if parties responsible for the release or potential release of hazardous substances are unable to assume the costs.

On January 11, 2017, the USEPA proposed a rule to address these concerns. According to the EPA's summary of the rule, by assuring that owners and operators established financial

responsibility consistent with the risks associated with the production, transportation, treatment, storage, and disposal of hazardous substances at their facilities, the proposed rule would increase the likelihood that owners and operators would provide funds necessary to address the CERCLA liabilities at their facilities, thus preventing the burden from shifting to the taxpayer or to other parties. In addition, the EPA said that the proposed rule would provide an incentive for implementation of sound practices at hardrock mining facilities, decreasing the need for future CERCLA actions.

In a Federal Register notice dated July 28, 2009, the USEPA identified hardrock mining as one of the classes for which it would first develop financial responsibility requirements. The rule proposed on January 11, 2017 would require owners and operators subject to the rule (including iron mine operators) to demonstrate and to maintain financial responsibility consistent with the degree and duration of risk associated with the treatment, production, transportation, storage, and disposal of hazardous substances at their facilities. Current owners and operators of facilities subject to the rule would be required to demonstrate financial responsibility to cover the three types of costs associated with releases and potential releases of hazardous substances from their facilities, including response costs, health assessment costs, and natural resource damages. Thus, by requiring current owners or operators of facilities that manage hazardous substances to set aside funds for cleanup (or otherwise demonstrate their ability to pay for it), the USEPA expected this proposed rule to increase the likelihood that owners or operators subject to it would be able to pay the costs associated with releases or potential releases of hazardous substances from their facilities for which they are responsible, in the event a CERCLA cleanup became necessary.

Subsequently, the EPA decided not to issue final regulations for the proposed financial responsibility requirements. On December 1, 2017, the EPA Administrator signed a Federal Register notice to inform the public of this decision. Based on the EPA's interpretation of CERCLA, its evaluation of the record for the proposed rule, and the public comment received on it, the EPA determined that "the degree and duration of risk associated with the modern production, transportation, storage or disposal of hazardous substances by the hardrock mining industry does not present a level of risk of taxpayer funded response actions that warrant imposition of financial responsibility requirements for this sector", according to the EPA.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would allow mining companies to meet the proposed Federal obligations under CERCLA while also maintaining their ability to continue production of merchantable iron ore. According to Cleveland-Cliffs Inc., a mining company that has operated continuously in the Upper Peninsula since 1847, the obligations described by the proposed USEPA rule should not apply to the modern iron-ore mining sector. Modern iron-ore mining is low risk and does not cause the potential hazards described by the proposed rule. Reportedly, no mine that yields iron ore exclusively has ever been listed on the Superfund National Priority List. The rule provided for neither site-specific nor sector-specific consideration. It also did not consider Michigan's statutory requirements under Part 631 of the Natural Resources and Environmental Protection Act, which requires an operator to furnish a performance bond or other security or assurance, if the Department of Environmental Quality has reasonable doubts as to an operator's financial ability to comply with the actions to be taken after completion of mining operations. The assurance mechanism of the bill would satisfy most, if not all, of the requirements of the proposed USEPA rule. The Ferrous Mineral Reclamation Fund would be a beneficial backup, to be used in a worst case scenario if a company were to unexpectedly become insolvent and unable to meet its financial obligations under the proposed rule.

Response: As noted above, the EPA decided not to finalize the proposed financial responsibility requirements for the hardrock mining industry.

Opposing Argument

The bill would take money away from schools across the State to pay for the financial responsibilities of a private business. Currently, sums collected from the tax on iron ore go to the School Aid Fund, which aids school districts, higher education, and school employee retirement systems across Michigan. It is the responsibility of the mining company, not the schools of Michigan, to ensure that the necessary cleanup and reclamation are completed on the mines from which they profit.

Response: Ensuring a healthy local economy is important to the local communities in which mining occurs, including the schools. When the Empire Mine became idle in 2016, the local community was severely affected. Many people who had worked in the mine were forced to move out of the area to find jobs. Local businesses were negatively affected and the school district lost many students. Additionally, the School Aid Fund does not receive any money from the specific tax on the production of merchantable iron ore if no merchantable iron ore is being produced, as is the case with the idled Empire Mine. Ensuring that production continues in active mines and that iron mining continues to be economically feasible are in the best interest of Michigan as well as any school districts that benefit from the specific tax.

Legislative Analyst: Nathan Leaman

FISCAL IMPACT

The bill would reduce School Aid Fund revenue by approximately $8.0 million per year for an indeterminate number of years, based on revenue received in FY 2014-15 and FY 2015-16, after which School Aid Fund revenue would be reduced by $500,000 per year. During 2015, Michigan had two active iron ore mines, both located in Marquette County, although in 2016 one mine was idled.

Under current law, revenue from the tax on low-grade iron ore is distributed proportionally to the units of government in the same manner as property taxes, except that the portion that would be distributed to a local school district for school operating purposes is instead directed to the School Aid Fund. The bill would change that distribution, earmarking $500,000 to the ISD in which a taxpayer is located (the Marquette County ISD), to be distributed as agreed by the ISD and local school districts located in that county (Marquette County). These distributions would be in addition to revenue distributed by the State under the School Aid Act, and would not be considered when computing foundation allowance payments. Any remaining revenue ($7.5 million per year, based on FY 2015-16) would be directed to the Ferrous Mineral Reclamation Fund created by the bill, until the balance of the fund equaled the liability faced by the fund. That liability total is unknown, and could change over time. As a result, it is unknown how long the fund would continue to receive the deposits of approximately $7.5 million per year. Once the balance in the fund reaches the limit, remaining revenue would be deposited into the School Aid Fund.

Fiscal Analyst: David Zin