

Why I Voted Against the Open-Pit Mining Bill

Posted on Mar 13, Posted by [Kathleen Vinehout, State Senator 31st District](#) Category [Wisconsin](#)

I am writing to provide you with an update about the open-pit mining bill. I voted against the bill when it was before the Senate. Prior to this, my colleagues and I tried to improve the bill with 20 bipartisan amendments, which were voted down. Since this is such a significant issue, I wanted you to know the latest.

The open-pit mining bill passed the state Senate by one vote. Recently the Assembly passed the bill 58 – 39. The Governor signed the bill into law last Monday, March 11th.

I want to explain a little about the bill and why I opposed it.

Wisconsin has a long history of mining. We also have a carefully crafted law that allows mining. In fact, as recently as 1993, the Flambeau Mine in Rusk County operated under the current law. I have read this law in detail. It is very thorough and has evolved over the years to accommodate changes in the industry and in public health and environmental needs. It is well balanced, involves local citizen input and provides resources to local communities affected by mining.

A few years ago, a West Virginia coal mining company, Gogebic Taconite (GTAC), asked Wisconsin to change the law. The concern conveyed to the Legislature by the company was the lack of certainty and predictability in the mining permit process. Both Democrats and Republicans agreed there could be positive changes to the law to bring certainty for mining companies and to streamline the permitting process.

I agreed there needed to be a clear deadline by which the state must agree to permit or not permit a mine.

Changes in creating the right process and timing had to be carefully balanced because Wisconsin is not the only player in permitting a mine. The U.S. Army Corps of Engineers must approve a federal permit that shows the mine will comply with the federal Clean Air Act and the Clean Water Act. The Corps acknowledged that one of the most significant opportunities to speed up the process was to make sure the law allowed for the collaboration between the state and the federal government by respecting federal law and the time needed by the federal agency.

The timelines had to be carefully established to allow for the concurrent review of the permitting application by the state and federal government. Also, it would be in the best interest of all those involved if the law allowed one single environmental impact statement be submitted. These statements are very expensive, highly technical and often disagree.

This particular location for the mine will affect the streams leading into the Bad River. This river flows through the reservation of the Bad River Band of the Lake Superior Chippewa. Native American tribes and bands are sovereign nations. As such they have their own clean water standards and laws that the mine must agree to follow if the mine engages in activities that would affect these waterways.

This past summer and fall the Senate Select Committee on Mining, led by Senator Cullen, collected over 20 hours of public testimony. Input was gathered from the mining association, industry experts, environmentalists, Native Americans, the Department of Natural Resources, the US Corps of Engineers and many others.

From this work Senator Cullen, Senator Schultz and Senator Jauch drafted a bipartisan bill to change the process. This bill, known as Senate Bill 3, added a 520-day deadline to the permitting process. The bill allowed for a collaborative process between the mine owners, the state and the Army Corps of Engineers. The bill that was only 25 pages did not change Wisconsin environmental law, nor did it release the mine from any existing environmental law. The bill allowed for a master public hearing once the DNR approved the permit and made immediate payments to the local communities affected by the mine. The bill did not release the mine from following local laws.

I found this bill to be a carefully balanced approach. I cosponsored and voted for a version of SB 3 on the Senate floor.

Unfortunately there was a parallel process to draft a different mining bill. The bill was drafted behind closed doors during the last legislative session. Modifications were made in secret during December of 2012. Newly elected Senator Tiffany introduced the bill in January of 2013. The bill, known as Senate Bill 1, received one public hearing in January and was modified by the committee on Finance and brought to the Senate floor in late February.

Senate Bill 1 had a number of problems that my colleagues and I tried to correct on the Senate floor. Chief among the problems were the potential environmental damage caused by the mine to local water sources, ground water and harm to navigable waterways.

The open-pit mine proposed by GTAC would be the largest of its type. The iron ore deposit is roughly 22 miles long. The first phase of the mine would be 4 ½ miles long and a mile and 1,000 feet deep. The waste from this mine (434 million cubic yards) would fill 3 times over the volume of Lake Monona. The waste materials would be used to fill lakes and streams – contaminating water with toxins like arsenic, lead and mercury.

The bill allowed the mine to not follow a number of environmental regulations related to water. For example, the bill allowed the mine to fill streams less than two miles long and ponds less than two acres wide. Proponents claimed this filling of streams and ponds was necessary. Senator Schultz argued on the Senate floor so many streams would be filled they would stretch from Lambeau Field to Camp Randall – 108 miles.

The taking of Wisconsin's navigable waterways may violate Article IX of the Wisconsin Constitution that contains a clause known as the Public Trust Doctrine. The constitution protects the rights of the people of Wisconsin to use the water ways as common highways and forever free." During the Senate debate I heard testimony that the filling of streams and lakes would likely result in an immediate court challenge.

Taken in its entirety, SB 1 added longer delays and higher costs to the mining permitting process particularly because of the unworkable time frame from the federal agencies position. The bill creates a fractured and uncertain process that will likely lead to a many year delay by the US Corps of Engineers. The bill will almost certainly result in lawsuits from the tribe and others concerned with the violation of the Wisconsin Constitution. The fiscal estimate – or cost to the state- prepared by the Department of Justice recognized these likely court costs to the

people of the state of Wisconsin. The DOJ said they were unable to determine how high the court costs would be.

Mines pay fees to the state for the right to extract minerals. Unfortunately SB 1 uses the net proceeds tax" and allows the mine to write off" expenses and avoid making payments to the local communities impacted by the mine. This is especially troublesome during the early years of the mine when the communities would most incur costs like new road construction or the hiring of additional law enforcement officers.

Because of the lack of local resources to cope with the effects of the mine, the environmental damage and the permission to avoid following local ordinances, many local elected leaders in the Northern Wisconsin opposed the bill. For example, the Mayor of Mellon, the city nearest the mine, strongly opposes the mine. I also received a resolution from the Washburn City Council opposing the mine.

The strongest argument the proponents of the mine made was the possibility of job creation in an economically depressed area of the state. But even this argument is questionable. I carefully reviewed the only economic impact statement used to demonstrate the jobs created by the mine. The analysis by NorthStar Economics is made up almost entirely with assertions about dollars and jobs but without any supporting evidence. There are only two sentences in the 26 page document that describe the author's assertions. There was no basis by which to evaluate the author's assumptions, methodology or accuracy.

Taken in its entirety, SB 1 did exactly the opposite of what it claimed to do: It created a more uncertain, less predictable and longer process than we now have in Wisconsin's mining law. The bill undermines the authority of the Department of Natural Resources by taking away the discretion the department has to work with a mining company. The bill releases the mine from many environmental protections. The bill releases the mine from complying with local ordinances. The bill does not provide resources to local communities —especially in the early years of the mine. The bill creates a mining process that will almost certainly end up in court.

There is a clear alternative to SB 1. We can choose a mining bill that gives greater certainty to the process, does not change environmental law, will not end up in court and provides resources to communities affected by the mine.

I've been hired by the people of the 31st Senate District to represent their interests in Madison. I received over 200 contacts related to the open-pit mining bill. Overwhelmingly the people of my district opposed this bill. Over 95% of those who contacted me opposed the bill. These numbers are similar across Wisconsin. It is clear to me that people want a bipartisan bill that does not destroy the pristine North Woods.

We should not presume the only way to have mining in Wisconsin is to degrade our wetlands, rivers, lakes and streams and ignore the rules and needs of local people.

For these reasons I voted against the open-pit mining bill SB1.

Thank you so much for your email. Please feel free to share this message with your friends. Please contact me regarding any issue of concern or interest to you.

Sincerely,

Kathleen Vinehout
State Senator - 31st District

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