



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## ☞ Appendix A ... segment VI

### LRB BILL HISTORY RESEARCH APPENDIX

☞ The drafting file for 2011 LRB-3458/2 (For: Rep. Honadel)

has been copied/added to the drafting file for

**2011 LRB-3520** (For: Rep. Honadel)

☞ Are These "Companion Bills" ?? ... No



**RESEARCH APPENDIX -**  
**PLEASE KEEP WITH THE DRAFTING FILE**

Date Transfer Requested: 11/22/2011 (Per: JK)

☞ The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-3458/12

September 2011 Special Session RCT/MGG/RK/JK:kf/nn/cs:ph

stays RMR

**BILL**

m 11-18-11  
Regen  
Today

1 **AN ACT to repeal** 70.375 (2m), 70.395 (2) (d) 5. a. and b., 107.001 (2) and 293.01  
2 (8); **to renumber and amend** 30.123 (8) (c), 70.395 (2) (d) 5. c. and 87.30 (2);  
3 **to amend** 20.370 (2) (gh), 20.455 (1) (gh), 20.566 (7) (e), 20.566 (7) (v), 29.604  
4 (4) (intro.), 29.604 (4) (c) (intro.), 30.12 (3m) (c) (intro.), 30.133 (2), 30.19 (4) (c)  
5 (intro.), 30.195 (2) (c) (intro.), 44.40 (5), 70.375 (1) (ab), 70.375 (1) (ad), 70.375  
6 (1) (as), 70.375 (1) (bm), 70.375 (1) (d), 70.375 (2) (a), 70.375 (3) (intro.), 70.375  
7 (3) (g), 70.375 (4) (intro.), 70.375 (4) (a), 70.375 (4) (c), 70.375 (4) (d), 70.375 (4)  
8 (f), 70.375 (4) (i), 70.375 (4) (j), 70.375 (5) (intro.), 70.375 (6), 70.38 (1), 70.38 (2),  
9 70.39 (3), 70.395 (1e), 70.395 (2) (d) (intro.), 70.395 (2) (d) 1., 70.395 (2) (d) 1m.,  
10 70.395 (2) (d) 2., 70.395 (2) (d) 2m., 70.395 (2) (d) 3. a., 70.395 (2) (dc) 1., 70.395  
11 (2) (dg), 70.395 (2) (f), 70.395 (2) (fm), 70.395 (2) (g) 6., 70.395 (2) (h) 1., 70.395  
12 (2) (h) 2., 70.395 (2) (h) 3., 70.396 (2), 70.396 (3), 70.397 (3) (a), 70.995 (1) (a),  
13 70.995 (5), 107.001 (1), 107.01 (intro.), 107.01 (2), 107.02, 107.03, 107.04,  
14 107.11, 107.12, 107.20 (1), 107.20 (2), 107.30 (1), 107.30 (18), 107.30 (20), 160.19

1 (12), 196.491 (4) (b) 2., 281.65 (2) (a), 281.75 (17) (b), 287.13 (5) (e), 289.35,  
2 289.62 (2) (g) 2. and 6., 292.01 (1m), chapter 293 (title), 293.01 (5), 293.01 (7),  
3 293.01 (9), 293.01 (12), 293.01 (18), 293.01 (25), 293.21 (1) (a), 293.25 (2) (a),  
4 293.25 (4), 293.37 (4) (b), 293.47 (1) (b), 293.50 (1) (b), 293.50 (2) (intro.), 293.50  
5 (2) (a), 293.50 (2) (b), 293.51 (1), 293.65 (3) (a), 293.65 (3) (b), 293.86, chapter  
6 295 (title), 295.16 (4) (f), 299.85 (7) (a) 2. and 4., 299.95, 323.60 (5) (d) 3. and  
7 710.02 (2) (d); and **to create** 20.370 (2) (gi), 29.604 (7m), 31.23 (3) (e), 70.375  
8 (7), 70.395 (2) (d) 2n., 70.395 (2) (g) 11., 87.30 (2) (b), 293.01 (12m), subchapter  
9 III of chapter 295 [precedes 295.40] and 323.60 (1) (gm) of the statutes;  
10 **relating to:** regulation of ferrous metallic mining and related activities, the net  
11 proceeds occupation tax on ferrous and nonferrous metallic minerals mining,  
12 making an appropriation, and providing penalties.

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*Analysis by the Legislative Reference Bureau*

**OVERVIEW**

Under current law, the Department of Natural Resources (DNR) regulates mining for metallic minerals. The laws under which DNR regulates metallic mining apply to mining for ferrous minerals (iron) and mining for nonferrous minerals, such as copper or zinc.

This bill creates new statutes for regulating iron mining and modifies the current laws regulating metallic mining so that they cover only mining for nonferrous minerals.

Under current law, a person who proposes to mine for metallic minerals must obtain a mining permit and any other permit, license, certification, or other authorization (approval) that is required under the environmental and natural resources laws, other than the mining laws, for example, wastewater discharge permits, high capacity well approvals, and water quality certifications for wetlands.

Under the bill, a person who proposes to mine for iron ore must obtain an iron mining permit. The person must obtain some of the approvals under other environmental and natural resources laws, for example, wastewater discharge permits, but the bill provides new approvals in lieu of some current approvals, for example, high capacity well approvals and water quality certifications for wetlands. The standards and procedures for granting, and the requirements related to, an iron

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mining permit and the other new approvals differ in some respects from the standards, procedures, and requirements under current law, as described below.

Current law requires DNR to promulgate rules specifying standards for metallic mining and for the reclamation of mining sites. The rules relating to mining must contain standards for grading and stabilization, backfilling, vegetative cover, prevention of pollution resulting from leaching of waste materials, and prevention of significant environmental pollution. The rules relating to reclamation must contain provisions for disposal of wastes in disposal facilities licensed under the solid waste laws or otherwise in an environmentally sound manner, for management of runoff so as to prevent soil erosion, flooding, and water pollution, and for minimization of disturbance to wetlands. DNR has promulgated rules on these matters.

The bill places standards for iron mining and for the reclamation of iron mining sites in the statutes, rather than requiring rule-making. The standards in the bill are similar in many respects to DNR's current rules and are less stringent in other respects.

#### **APPLICATION FOR MINING PERMIT**

Under current law, a person who intends to apply for a permit for mining for metallic ore must notify DNR before collecting data intended to be used to support the application. DNR is required to provide public notice when it receives such a notification. After considering public comments, DNR must tell the person who filed the notice of intent what information DNR believes is needed to support an application for a mining permit. The person must submit the information as soon as it is in final form.

This bill requires a person who is contemplating a mining project to provide DNR with a general description of the proposed mining project. The description must include a description of the mining site, including the nature, extent, and final configuration of the proposed excavation and mining site and certain other information including a map showing the boundaries of the area of land that will be affected by the mining project and the names of each owner of the mining site. The bill requires the person to include this information with the bulk sampling plan, described below, or if the person does not file a bulk sampling plan, with the person's notification to DNR of the person's intent to apply for an iron mining permit. The bill requires DNR to conduct a public informational hearing on a proposed mining project after receiving the general description, either as part of the hearing on approvals required for bulk sampling or, if there is no such hearing, as a separate hearing.

This bill requires a person who intends to apply for an iron mining permit to notify DNR of the intention to file the application and requires DNR to meet with the applicant to make a preliminary assessment of the project's scope, to make an analysis of alternatives, to identify potential interested persons, and to ensure that the person intending to apply for an iron mining permit is aware of the approvals that the person may be required to obtain. DNR must also ensure that the person is aware of the requirements for submission of an environmental impact report and about the information DNR will require to enable it to process the application for the mining permit in a timely manner.

After the meeting, DNR must provide to the applicant any available information relevant to the potential impact of the project on threatened or endangered species and historic or cultural resources and any other information relevant to impacts that are required to be considered in the environmental impact statement.

Under current law, a person who wishes to obtain a permit for metallic mining must submit an application to DNR that includes a mining plan, a reclamation plan, information about the owners of the mining site, and information related to the failure to reclaim mining sites and to any criminal convictions for violations of environmental laws in the course of mining by persons involved in the proposed mining. The application must also include evidence that the applicant has applied for necessary approvals under applicable zoning ordinances and for any approvals issued by DNR that are necessary to conduct the mining, such as air pollution permits and wastewater discharge permits.

This bill includes similar provisions for the application for an iron mining permit, except that the applicant may provide evidence that the applicant will apply, rather than has applied, for necessary zoning approvals and other approvals issued by DNR.

The required content of the mining plan for iron mining under the bill is similar to that required under current statutes and DNR rules. The required content of the reclamation plan for iron mining is also similar to that required under current law.

DNR's current rules require the applicant for a metallic mining permit to show that the mining and reclamation will comply with specified minimum standards. The bill requires showings by the applicant for an iron mining permit that differ in some ways from DNR's rules. For example, the rules require a demonstration that water runoff from the mining site will be managed so as to prevent soil erosion to the extent practicable, flooding, damage to agricultural lands or livestock, damage to wild animals, pollution of ground or surface waters, damage to public health, and threats to public safety. The bill requires a showing that water runoff from an iron mining site will be managed in compliance with any approval that regulates construction site erosion control or storm water management.

#### **PERMITTING PROCESS**

##### ***Environmental impact statement***

Current law requires DNR to prepare an environmental impact statement (EIS) for every proposed metallic mine. An EIS contains detailed information about the environmental impact of a proposed project, including any adverse environmental effects that cannot be avoided if the proposal is implemented, alternatives to the proposed project, the beneficial aspects of the proposal, and the economic advantages and disadvantages of the proposal. For a metallic mining project, current law requires a description of significant long-term and short-term impacts, including impacts after the mining has ended, on tourism, employment, schools, social services, the tax base, the local economy, and "other significant factors."

This bill requires DNR to prepare an EIS for every proposed iron mine. The bill requires DNR to include a description of significant impacts on most of the same matters as under current metallic mining law.

Under current law, when a person applies for a permit or other approval for which DNR is required to complete an EIS, DNR is generally authorized to require the applicant to prepare an environmental impact report (EIR) that discloses environmental impacts of the proposed project to assist DNR in preparing the EIS. Current law authorizes DNR to enter into an agreement with a person considering applying to DNR for approval of a project that is large, complex, or environmentally sensitive to provide preapplication services necessary to evaluate the environmental impact of the project and to expedite the anticipated preparation of an EIS for the project.

The bill requires the applicant for a mining permit to prepare an EIR.

The bill requires the applicant for a mining permit to submit the EIR with the application for the mining permit.

Current law authorizes DNR to conduct the processes related to an EIS jointly with other agencies who have responsibilities related to a proposed project.

The bill requires DNR to conduct its environmental review process for a proposed iron mine jointly with other state agencies and requires the preparation of one joint EIS. The bill requires DNR to conduct its environmental review process jointly with any federal or local agency that consents to a joint process.

Current law requires DNR to hold at least one informational meeting on a preliminary environmental report for a mining project before it issues the EIS. This bill does not require such an informational meeting.

#### ***Mining hearing***

Current law requires DNR to hold a hearing on an application for a metallic mining permit. The hearing includes both a contested case hearing, with testimony under oath and the opportunity for cross-examination, and a public informational hearing. The law requires that the hearing cover the EIS and cover all other approvals issued by DNR that are required for the mining project, to the extent possible. Under current law, the provisions related to notice, hearing, and comment in the metallic mining law apply to any other needed approval, unless the applicant fails to make an application for an approval in time for it to be considered at the hearing on the mining permit.

This bill requires DNR to hold a public informational hearing for a proposed iron mining project. The hearing does not include a contested case hearing. The hearing must cover the mining permit, the EIS, and all other approvals issued by DNR that are required for the mining project, unless the application for an approval is filed too late to allow the approval to be considered at the mining hearing. Under the bill, the provisions related to notice, hearing, and comment in the iron mining law apply to any other needed approval.

#### ***Deadlines; automatic approval***

Current law does not specify a time, after the application for a mining permit is filed, within which DNR must act on a metallic mining permit application. It does require the mining hearing to be held between 120 days and 180 days after DNR

issues the EIS and requires DNR to act on the permit within 90 days after the completion of the record for the public hearing.

The bill requires DNR to act on an application for an iron mining permit no more than 360 days after the application is considered to be complete. Under the bill, if the applicant submits the application for another approval within 60 days after the application for the mining permit is considered to be complete, DNR must also act on the application for that approval by the 360-day deadline. If the applicant files the application for another approval more than 60 days after the application for the mining permit is considered to be complete, the deadline for DNR's action on the approval is extended by the number of days the application is late.

If DNR does not act within the deadline for acting on the application for an iron mining permit, the application is automatically approved.

Under the bill, the application for a mining permit is considered to be complete on the 30th day after DNR receives it, unless, before that day DNR provides the applicant with written notification that the application does not include a mining plan, reclamation plan, or waste site feasibility study and plan of operation that contain the types of information required under the bill or that the applicant has not submitted an EIR. DNR may not consider the quality of the information provided in determining whether the application is complete.

The bill authorizes DNR to request additional information needed to process the application for a mining permit after the application is considered to be complete, but it may not delay the determination that the application is complete based on a request for additional information.

#### **GRANT OR DENIAL OF MINING PERMIT**

##### ***Grounds for denial***

Current law requires DNR to deny an application for a metallic mining permit for a proposed surface mine if the site is unsuitable for surface mining. A site is unsuitable for surface mining if the surface mining may reasonably be expected to destroy or damage either: 1) habitats required for the survival of endangered species of vegetation or wildlife that cannot be firmly reestablished elsewhere; or 2) unique features of the land, as determined by state or federal designation, as, for example, wilderness areas, national or state parks, archaeological areas, and other lands of a type specified by DNR by rule, as unique or unsuitable for surface mining. DNR has designated more than 150 specific scientific areas for the purposes of the determination of unsuitability.

This bill requires DNR to deny an application for an iron mining permit under the same standards for unsuitability as under current law, except that archaeological areas and other areas designated by DNR as being unique or unsuitable for surface mining are not considered for the purposes of determining unsuitability.

Current law requires DNR to deny an application for a mining permit if the mining operation is reasonably expected to cause any of the following: 1) hazards resulting in irreparable damage to specified kinds of structures, such as residences, schools, or commercial buildings, to public roads, or to other public property designated by DNR by rule, if the damage cannot be prevented under the mining

laws, avoided by removal from the area of hazard, or mitigated by purchase or by obtaining the consent of the owner; 2) irreparable environmental damage to lake or stream bodies despite adherence to the metallic mining laws, unless DNR has authorized the activity that causes the damage; 3) landslides or substantial deposition in stream or lake beds that cannot be feasibly prevented; or 4) the destruction or filling in of a lake bed.

The bill requires DNR to deny an application for an iron mining permit if the mining operation is reasonably expected to cause any of the following: 1) hazards resulting in irreparable damage to specified kinds of structures, such as residences, schools, or commercial buildings, or to public roads, but not to other public property designated by DNR by rule, if the damage cannot be prevented under the mining laws, avoided by removal from the area of hazard, or mitigated by purchase or by obtaining the consent of the owner; or 2) irreparable environmental damage to lake or stream bodies despite adherence to the metallic mining laws, unless DNR has authorized the activity that causes the damage. As to the bases described in 3) or 4) above the bill requires DNR to deny the application unless the activity or occurrence is authorized by DNR under an applicable approval such as a wetland water quality certification, or a permit for a navigable water activity.

As under the current metallic mining laws, the bill requires DNR to deny a mining permit if the applicant has violated and continues to fail to comply with this state's mining laws. As also provided under current metallic mining law, the bill contains requirements for the denial of an iron mining permit based on the failure to reclaim mining sites and based on criminal convictions for violations of environmental laws in the course of mining in the United States by persons involved in the proposed iron mining.

### ***Standards for approval***

Under current law, if none of the grounds for denial of the application for a metallic mining permit apply, DNR must issue the mining permit if it finds the following: 1) the mining plan and reclamation plan are reasonably certain to result in reclamation of the mining site as required by current law and DNR has approved the mining plan; 2) the proposed mining operation will comply with all applicable air, groundwater, surface water, and solid and hazardous waste management statutes and rules; 3) the proposed mine will not endanger public health, safety, or welfare; 4) the proposed mine will result in a net positive economic impact in the area expected to be most impacted by the mine; and 5) the proposed mining operation conforms with all applicable zoning ordinances.

Under this bill, the standards for approval of an iron mining permit differ in some respects from the standards under current law. Under the bill, if none of the grounds for denial of the application for an iron mining permit apply, DNR must issue an iron mining permit if it finds the following: 1) the mining plan and reclamation plan are reasonably certain to result in reclamation of the mining site as required by the provisions of this bill; 2) the applicant has committed to conducting the proposed iron mining in compliance with the mining permit and any other approvals issued by DNR; 3) the proposed iron mining is not likely to result in substantial adverse impacts to public health, safety, or welfare; 4) the proposed iron

mine will result in a net positive economic impact in the area expected to be most impacted by the mine; 5) the applicant will obtain all applicable zoning approvals; and 6) the waste site feasibility study and plan of operation comply with the provisions of this bill.

#### **REVIEW OF DNR DECISIONS**

Currently, any person aggrieved by a decision of DNR under the metallic mining laws may obtain a contested case administrative hearing under this state's administrative procedure laws.

Under this bill, no person is entitled to a contested case hearing on a decision by the DNR under the iron mining laws or a decision by DNR on any environmental approval needed for iron mining or bulk sampling. Judicial review of such a decision, on the administrative record before DNR, is the exclusive method for challenging the decision.

Current law authorizes citizen suits against a person alleged to be in violation of the metallic mining laws and against DNR when there is alleged to be a failure of DNR to perform a duty under those laws.

The bill does not provide for citizen suits related to iron mining.

#### **WETLANDS**

This bill makes various changes in current law relating to iron mining and impacts to wetlands and establishes different requirements than those found under current law. All of the changes explained below regarding wetlands apply to wetlands that are impacted by iron mining.

##### ***Wetland water quality certification***

Under the current permitting process there are two permitting procedures for discharging dredged or fill material into a wetland depending on whether the wetland is subjected to federal jurisdiction. Under federal law, activities involving the discharge of dredged or fill material into waters subject to federal jurisdiction must comply with certain guidelines contained in regulations promulgated by the federal Environmental Protection Agency in order for a federal permit to be issued by the U.S. Army Corps of Engineers (ACE). Wetlands are usually the type of waters involved (federal wetlands). Wetlands that are exempt from federal jurisdiction are those that are nonnavigable and isolated, intrastate waters. Current state law regulates discharges and other activities in these wetlands (nonfederal wetlands).

Current law relating to wetlands also makes a distinction between wetlands that are in, or in close proximity to, an area of special natural resource interest (ASNRI wetlands) and wetlands that are outside these areas. Current law defines "an area of special natural resource interest" as being an area that has significant ecological, cultural, aesthetic, educational, recreational, or scientific values and specifically lists certain areas, including Lake Michigan and Lake Superior, state forests, and state parks.

Under current law, before ACE may issue a federal permit, DNR must issue a water quality certification that certifies that the discharge complies with state water quality standards applicable to wetlands. For a discharge into nonfederal wetlands, DNR must issue a water quality certification that certifies that the discharge complies with these water quality standards. In issuing water quality certification

for both federal wetlands and nonfederal wetlands, DNR may impose conditions that must be met as part of the water quality certification.

This bill limits DNR's authority in imposing conditions for federal permits as part of the water quality certification. If DNR determines that implementation of the federal compensatory mitigation requirements will offset any significant adverse impact to the wetlands or if for federal ASNRI wetlands avoidance and minimization of adverse impacts has occurred to the extent practicable and any remaining significant adverse impacts are offset by compensation or mitigation, DNR may not impose any additional conditions. If DNR does not make this determination, DNR may impose only the conditions necessary to offset significant adverse impacts that are not offset by the federal compensatory mitigation requirements. The bill also provides that DNR may not increase the number of acres to be mitigated under the federal compensatory mitigation requirements.

For issuing a wetland water quality certification for nonfederal wetlands, if DNR determines that impacts to the wetland will be avoided or minimized to the extent practicable, any remaining impacts to nonfederal wetlands or an area of special natural resource interest, may not be used as a basis for denying certification if any remaining significant adverse impacts to the wetland or an area of special natural resource interest will be offset by compensation or mitigation. Under the bill, DNR must issue water quality certification for nonfederal wetlands if DNR determines that all practicable measures will be taken to minimize the adverse impacts to wetlands and any remaining significant adverse impacts are offset through compensation or mitigation.

The bill requires that an applicant for a wetland water quality certification for a nonfederal wetland submit a siting analysis as to various configurations for the iron mining site to DNR for review. These are limited to configurations associated with the proposed areas of iron deposits to be mined and areas contiguous to these deposits. In reviewing the analysis, DNR must recognize limitations associated with the proposed locations for iron mining, the need for waste sites and processing facilities to be contiguous to the location of the iron deposits, and the presumption that nonfederal wetlands will be impacted. If it is impracticable to avoid an impact or use of a nonfederal wetland, the applicant shall identify in the analysis the configurations that would result in impacts to the fewest acres. DNR then determines which configuration will affect the fewest acres and evaluates how that configuration will impact the functional values and water quality of the nonfederal wetland.

#### ***Wetland water quality standards***

Under rules promulgated by DNR, the state wetland water quality standards require that various functional values of the wetlands be protected from adverse impacts. These functional values include providing protection from flooding, recharging groundwaters, providing habitat for wildlife, and providing protection to shorelines from erosion. Current law also sets forth criteria to be used to assure the maintenance or enhancement of these functional values. These criteria include requiring that certain solids, debris, or toxic substances be absent. This bill incorporates all of the functional values and criteria that are contained in the DNR

rules for water quality certifications for wetlands. The wetland water quality standards under the bill require that the impacts must be minimized and that any remaining significant impacts be offset by compensation or mitigation. The bill also requires that in evaluating the significant adverse impacts, DNR must compare the functional values of the wetlands that will be impacted by the mining site with other wetlands and water bodies in the region.

### ***Mitigation and compensation***

Under current law, DNR is authorized, but is not required, to consider mitigation in determining whether to grant a water quality certification or other permit or approval affecting wetlands. Under current law, wetland mitigation consists of a project that restores, enhances, or creates (improves) a wetland to offset adverse impacts to other wetlands or that uses credits from a wetlands mitigation bank. A wetlands mitigation bank is a system of accounting for wetland loss that includes one or more sites where wetlands are improved to provide transferable credits to be subsequently applied to offset adverse impacts to other wetlands. Mitigation is based on a ratio of acres improved compared to the number of acres adversely impacted. The bill requires DNR to consider mitigation or compensation when issuing water quality certifications for both federal and nonfederal wetlands.

Under the bill, compensation allows for the offsetting of adverse impacts to other water quality functions besides those in wetlands. Compensation may include projects such as riparian restoration projects and shoreline stabilization projects if such projects are at locations that are more than one-half mile from the mining site.

Under current law, the ratio of acres for purposes of mitigation requires that 1.5 acres of wetlands be improved to every one acre that is adversely impacted with limited exception allowing the ratio to be one acre to one acre. The bill specifies that the ratio for mitigation may not exceed 1.5 acres. Under current law, in calculating the number of credits a person will receive in implementing mitigation, each acre restored receives one credit, the range of credits for each acre enhanced is from no credits to one credit, and each acre created receives one-half credit with a limited exception. Under the bill, each acre restored, enhanced, or created receives at least one credit.

Current law prohibits DNR from considering wetlands mitigation in reviewing whether to grant a permit or other approval for a project that adversely affects an area of special natural resource interest or an ASNRI wetland. Under the bill, mitigation and compensation to offset significant adverse impacts to these areas and ASNRI wetlands are allowed.

Under current law, mitigation must occur within one-half mile of the impacted wetland (on-site). If DNR determines that it is not practicable or ecologically preferable that the mitigation occur on-site, DNR shall allow mitigation to be preformed as near as practicable to the location of the adversely impacted wetland. Under the bill, if it is not practicable or ecologically preferable to conduct compensation or mitigation at an on-site location or if there is insufficient wetland acreage on-site, off-site compensation or mitigation may be performed. This may include purchases of credits from a mitigation bank located anywhere in the state.

The bill also authorizes other persons to perform compensation or mitigation, subject to DNR approval.

***Exemptions***

Under current law, artificial wetlands are exempt from the wetland water quality standards unless DNR determines significant functional values are present. This bill exempts these same artificial wetlands from the wetland water quality standards and eliminates the exception to the exemption for wetlands with certain significant functional values.

Under current law, certain activities in nonfederal wetlands are exempt from the water quality certification requirements for wetlands. These include maintenance of drainage and irrigation ditches, damaged parts of structures that are in bodies of waters, and maintenance of certain temporary mining roads. Under current law, these activities lose their exemption under certain circumstances, such as using a wetland for a use for which it was not previously used, or conducting an activity that may impair the flow of a body of water. Under the bill, very similar exemptions apply to iron mining activities. However, the provision regarding losing the exemption does not apply. Instead, the exemptions only apply if the person conducting the activity minimizes the adverse effect to the environment.

***Other provisions***

Under current law, for purposes of delineating the boundary of a wetland, DNR shall use the procedures contained in the wetlands delineation manual published by the ACE. The bill provides that if the applicant has provided information to DNR that is identified in the manual as being sufficient for determining where a wetland is or for delineating a wetland's boundaries, DNR may visit the site to conduct surveys or gather site-specific data provided that DNR does not discontinue processing the application to do so.

Current law requires a permit holder to grant DNR an easement to ensure that an improved wetland is not destroyed or substantially degraded by subsequent owners. This bill imposes this requirement on persons who receive a water quality certification and requires DNR to suspend the certification if the permit holder fails to grant the easement within the time limit set forth in the mining permit.

**GROUNDWATER QUALITY**

***Groundwater quality standards***

Under current law, DNR and the Department of Health Services (DHS) establish groundwater quality standards, consisting of enforcement standards and preventive action limits, for substances that contaminate groundwater. The preventive action limit for a substance is 10 percent, 20 percent, or 50 percent of the enforcement limit depending on the type of substance.

Under this bill, the enforcement standards and preventive action limits established by DNR and DHS continue to apply to iron mining operations.

***Point of standards application***

Current law generally requires each state regulatory agency, including DNR, to promulgate rules containing design and operational criteria for facilities and activities affecting groundwater that are designed, to the extent technically and

economically feasible, to minimize the level of substances in groundwater and to maintain compliance with preventive action limits, unless compliance with the preventive action limits is not technically and economically feasible. Current law requires each regulatory agency to promulgate rules that specify the range of responses that the regulatory agency may take or that it may require the person controlling a facility or activity to take if a preventive action limit is attained or exceeded at what is called a point of standards application. Under current law and under this bill, any point at which groundwater is monitored is a point of standards application to determine whether a preventive action limit has been attained or exceeded.

Current law generally prohibits a regulatory agency from promulgating rules containing design and operational criteria that allow an enforcement standard to be exceeded at a point of standards application. Under current law and under this bill, for determining whether an enforcement standard has been attained or exceeded, a point of standards application is any point beyond the boundary of the property on which the regulated facility or activity is located, any point of present groundwater use, and, for certain facilities, such as waste disposal facilities, any point beyond a three-dimensional design management zone (DMZ) established by DNR by rule.

***Design management zone***

Under DNR's rules, the horizontal dimensions of a DMZ vary depending on the type of facility. For a metallic mining waste site, the horizontal distance to the boundary of the DMZ is generally 1,200 feet from the outer waste boundary or at the boundary of the property owned or leased by the applicant, whichever distance is less. For a metallic surface mine, the horizontal distance to the boundary of the DMZ is generally 1,200 feet from the edge of the mining excavation or at the property boundary, whichever distance is less. Generally, the smaller the DMZ, the more likely that a preventive action limit or enforcement standard will be attained or exceeded at the boundary and the more likely that the operator will be required to implement a response.

Under this bill, for an iron mining site, the horizontal distance to the boundary of the DMZ is generally 1,200 feet from the engineered structures of a mining waste site, including any wastewater and sludge storage or treatment lagoon, the edge of the mine and adjacent mine mill and ferrous mineral processing and other facilities or at the property boundary, whichever distance is less.

Under current rules, DNR may reduce the horizontal distance to the boundary of the DMZ on a metallic mining site if certain conditions are met, but may not expand it.

Under the bill, DNR may not reduce the horizontal distance to the boundary of the DMZ on a metallic mining site but may expand it by an additional 1,200 feet in any direction if DNR determines that preventive action limits and enforcement standards will be met at the boundary of the expanded DMZ and that preventive action limits and enforcement standards cannot be met at the boundary of the DMZ if it is not expanded.

Under DNR's rules, a DMZ extends vertically from the land surface through all saturated geological formations. Under the bill, the vertical distance to the boundary

of the DMZ on an iron mining site extends no deeper than 1,000 feet into the Precambrian bedrock or than the final depth of the mining excavation, whichever is greater.

***Mandatory intervention boundary***

Currently, for metallic mining waste sites and metallic mines, in addition to the DMZ, DNR's rules provide for a mandatory intervention boundary that is 150 feet from the outer waste boundary or the edge of the mine. Under the rules, if a preventive action limit or an enforcement standard is exceeded beyond the mandatory intervention boundary, DNR must require a response by the operator.

The bill does not provide a mandatory intervention boundary for an iron mining site.

***Response when preventive action limit is attained or exceeded***

Under DNR's groundwater rules, when a preventive action limit is attained or exceeded at a point of standards application, DNR must determine the appropriate response, taking into consideration the response proposed by the operator. The response must be designed and implemented to minimize the concentration of the substance in groundwater at the point of standards application to the extent feasible, to regain and maintain compliance with the preventive action limit, and to ensure that the enforcement standard is not attained or exceeded at the point of standards application. DNR's rules specify a range of responses for when a preventive action limit is attained or exceeded at a point of standards application, including requiring a revision of operational procedures and requiring remedial action to restore groundwater quality.

Under the bill, when a preventive action limit is attained or exceeded at a point of standards application and the quality of groundwater is statistically significantly different from the quality of the groundwater unaffected by the iron mining, DNR must evaluate the range of responses proposed by the operator, including alternate responses to the responses specified in DNR's rules, and designate the appropriate response. DNR may determine that no response is necessary if it determines that the preventive action limit will not be attained or exceeded at any point outside the DMZ or, in some cases, if the natural concentration of the substance is above the preventive action limit.

***Response when enforcement standard is attained or exceeded***

Under DNR's groundwater rules, when an enforcement standard is attained or exceeded at a point of standards application for a solid or hazardous waste facility, DNR must require responses as necessary to prevent any new releases of the substance from traveling beyond the DMZ and to restore the contaminated groundwater within a reasonable period. When an enforcement standard is attained or exceeded at a point of standards application for a facility that is not a solid or hazardous waste facility, DNR must generally prohibit the activity that uses or produces the substance and require remedial actions, unless it can be shown that an alternative response will achieve compliance with the enforcement standard at the point of standards application.

Under the bill, when an enforcement standard is attained or exceeded at a point of standards application and the quality of groundwater is statistically significantly

different from the quality of the groundwater unaffected by the iron mining, DNR must evaluate the operator's proposed range of responses and designate an appropriate response. DNR may not prohibit an activity or require closure of a mining waste site unless DNR determines that no other remedial action would prevent the violation of the enforcement standard at the point of standards application.

#### **DISPOSAL OF MINING WASTE**

##### ***Approval of facility***

Under current law, no person may construct or operate a solid waste disposal facility, such as a landfill, without the approval of DNR under the solid waste statutes and rules. The rules under which metallic mining waste facilities are regulated differ in some ways from the rules for other solid waste facilities.

Under this bill, the current solid waste laws do not apply to iron mining waste facilities. Instead, the standards for an iron mining waste facility are specified in the iron mining laws and the process for approving an iron mining waste facility is part of the process for approving the iron mining permit. Under the bill, if a mining site will include a disposal facility for waste that is not mining waste, such as trash from an office or cafeteria, the current solid waste laws apply to that disposal facility.

##### ***Location of facility***

Current law requires DNR to promulgate rules for the location of solid waste facilities. Unless DNR grants an exemption, as described below (in the section on exemptions), the rules prohibit the location of a mining waste site in any of the following areas: 1) within 1,000 feet of a state trunk highway, a state park or scenic easement or overlook, a scenic or wild river, or a hiking or bike trail, unless the proposed waste site is visually inconspicuous or is screened; 2) within an area designated in the statutes as being unsuitable for surface mining, such as a wilderness area, a wildlife refuge, or a state or national park; 3) within 200 feet of the property boundary; 4) within a floodplain; 5) within 300 feet of a navigable river or stream; 6) within 1,000 feet of a lake; or 6) within 1,200 feet of a private or public water supply well.

This bill includes the same locational limits for an iron mining waste site, except that it does not prohibit an iron mining waste site from being located within an area designated in the statutes as being unsuitable for surface mining.

##### ***Waste site feasibility study and plan of operation***

The current solid waste statutes require an applicant for the approval of a solid waste disposal facility to submit a waste site feasibility study, to demonstrate the suitability of the site for the disposal of solid waste, and a plan of operation for the facility. DNR's rules concerning metallic mining waste facilities contain extensive requirements for the waste site feasibility study and plan of operation.

This bill requires an applicant for an iron mining permit to submit a waste site feasibility study and plan of operation as part of the application for the mining permit. The bill contains extensive requirements for the waste site feasibility study and plan of operation, many of which are similar to the requirements in DNR's

current rules. Some of the technical requirements in the bill differ from the current rules.

The bill requires the applicant to perform analyses to assess the potential environmental impact of mining waste handling, storage, and disposal. The applicant must conduct investigations on the proposed waste site and in the laboratory to determine the characteristics of the site through measures such as soil borings and tests and determining groundwater levels and flow patterns and premining groundwater quality. The applicant must provide information about the ecosystems and climatology in the vicinity of the proposed mining waste site and about the geology, zoning, and land use in the area.

Under the bill, the applicant must submit a proposed waste site design that includes proposed methods for controlling water that has been contaminated by dissolved materials (leachate) and for controlling access to the facility and engineering plans and must submit a description of typical daily operations of the iron mining waste facility.

#### ***Proof of financial responsibility***

Under current law and under this bill, the operator of a mine must furnish to DNR a bond or other security in an amount sufficient to cover the cost of reclamation of the mining site.

Current law also requires the operator of a mining waste facility to provide proof of financial responsibility for the costs of the care, maintenance, and monitoring of the facility after it is closed (long-term care). The obligation to provide proof of financial responsibility for long-term care continues until DNR terminates that requirement, which it may not do until at least 40 years after closure of the mine.

Under this bill, the operator of an iron mining waste facility is also required to provide proof of financial responsibility for the costs of the long-term care of the facility. Under the bill, the operator of an iron mine may apply to DNR for termination of its obligation to provide proof of financial responsibility for long-term care of the mining waste facility after the facility has been closed for at least 20 years by submitting an application that demonstrates that proof of financial responsibility for long-term care is no longer necessary for adequate protection of public health or the environment. If DNR decides that additional proof of financial responsibility for long-term care is still needed, the operator may not submit another application for five years.

#### **WATER WITHDRAWALS**

Under current law, no person may withdraw water from a stream or lake without a permit (surface water withdrawal permit) issued by DNR. Current law also regulates withdrawals of groundwater. That law prohibits a property owner from withdrawing water from or constructing a well that, together with other wells on the same property, has a capacity of more than 100,000 gallons per day without an approval from DNR (high capacity well approval). DNR must review, using an environmental review process specified in DNR's rules, every application for an approval of a high capacity well that has a water loss of more than 95 percent of the amount of water withdrawn, that may have a significant environmental impact on a spring, or that is located in a groundwater protection area. A groundwater

protection area is an area within 1,200 feet of certain outstanding or exceptional resource waters or certain trout streams. Current law also provides that if DNR determines that a proposed high capacity well may impair the water supply of a public utility, then DNR may not approve the well unless it includes certain approval conditions that will ensure that the water supply of the public utility will not be impaired and if DNR determines that a proposed high capacity well that has a water loss of 95 percent of the amount of water withdrawn, may have a significant impact on a spring or is located in a groundwater protection area, then DNR generally may not approve the well unless it includes certain approval conditions that will ensure that the high capacity well will not cause significant adverse environmental impact.

Current law also provides that if a person to whom DNR has issued a surface water withdrawal permit or a high capacity well approval proposes to begin a new withdrawal or increase an existing withdrawal that will result in a water loss beyond a specified threshold amount, then that person must apply for a new or modified surface water withdrawal permit or high capacity well approval (water loss application). A water loss is a loss of water from the basin from which it is withdrawn as a result of interbasin diversion or consumptive use. The water loss application must contain certain information including the place and source of the proposed withdrawal, the estimated average volumes and rates of water loss, the anticipated costs of any proposed construction, and a description of the conservation practices that the applicant intends to follow. If DNR approves the water loss application then DNR must modify the applicant's existing surface water withdrawal permit or high capacity well approval or issue a new permit or approval that specifies certain conditions with regard to the water withdrawal.

This bill establishes different requirements for surface water and groundwater withdrawals relating to iron mining. In lieu of a surface water withdrawal permit, a high capacity well approval, and a water loss application, a person who, as part of an iron mining operation or bulk sampling (explained below), engages in a surface water withdrawal or withdrawal of groundwater or the dewatering of mines that exceeds 100,000 gallons a day, must obtain a water withdrawal permit from DNR (mining water withdrawal permit). The bill specifies that a person who applies for a mining water withdrawal permit need not be a riparian (waterfront) property owner. If the withdrawal of water will involve one or more high capacity wells, DNR must require the applicant to submit a siting analysis that includes alternate proposed locations for each well. In evaluating the siting analysis, DNR must recognize that there is a need for mining waste sites and processing facilities to be contiguous to the location of the ferrous mineral deposits and must allow any high capacity well to be located so that need will be met. DNR must also determine which location has the fewest overall adverse environmental impacts to the extent practicable. In determining what is practicable, DNR must take into consideration the ability to implement certain conservation measures.

The bill requires DNR to issue a mining water withdrawal permit if the withdrawal meets certain requirements (general requirements). Among those requirements is that the proposed withdrawal and use of the water is substantially consistent with the protection of public health, safety, and welfare; that it will not be

significantly detrimental to the quantity or quality of the waters of this state; that it will not significantly impair the rights of riparian owners or the applicant obtains the consent of riparian owners; and that it will not result in significant injury to public rights in navigable waters. The bill requires that the applicant submit a plan to DNR that contains proposed conservation measures, such as mitigation, compensation, or offsetting of significant impacts to navigable waters by restoring or enlarging up to 1.5 acres of a natural navigable water in exchange for each acre of a natural navigable water that is significantly impacted (offsetting impacts to navigable waters). After DNR reviews the application and plan, DNR must issue a permit if it finds that the general requirements will be met by implementing some or all of the conservation measures. The bill further provides that if the applicant cannot meet the general requirements by implementing conservation measures, DNR shall nevertheless issue the mining water withdrawal permit if DNR determines that the public benefits resulting from the iron mining operation exceed any injury to public rights in a body of water that is affected by the mining operation. In making this determination, DNR is required to recognize certain factors, including the extent to which public rights in a navigable body of water may be substantially and irreparably injured by the proposed withdrawal, public benefits that may be provided, such as increased employment, from the iron mining operation, and the social benefits and costs that will result from the mining operation.

The bill authorizes DNR to impose certain reasonable conditions in the mining water withdrawal permit, but the conditions may not interfere with, or limit the amount of water needed for, the iron mining operation or bulk sampling. The bill also allows an iron mining operator to request a modification of any condition in the mining water withdrawal permit and establishes certain deadlines under which DNR must approve or deny the request for modification. The bill specifies that if a request for modification results in an existing withdrawal resulting in a water loss averaging more than a specified number of gallons per day in a 30-day period, then DNR must determine whether, under its rules, it is required to prepare an environmental assessment or environmental impact statement. If so, then DNR must prepare the environmental assessment or environmental impact statement.

#### **NAVIGABLE WATERS**

Under current law, DNR regulates certain activities that occur in or near navigable waterways. In order for a person to conduct such an activity, the person may be required to obtain one or more permits from DNR. Among the permits that DNR issues are permits to place structures or deposits in navigable waters, permits to construct or maintain bridges and culverts, permits to enlarge or connect waterways, permits to change the courses of streams and rivers, and permits to remove material from beds of navigable waterways. Current law also requires that DNR have in place general permits for some of these activities. Under current law, some activities are exempt from these requirements.

In order to receive an individual permit for the navigable waters activities regulated by DNR, the activity must meet certain requirements. These requirements vary depending on the type of permit issued, and may include

requirements that address possible obstruction to navigation, reduction to flood flow capacity, and interference with the rights of other riparian owners. The bill modifies the requirements for the purpose of issuing individual permits associated with iron mining and provides that the same requirements apply to all of these permits. Under the bill, a navigable waters permit will be issued if it will not significantly impair the public's rights and interests in navigable waters, will not significantly reduce flood flow capacity, will not significantly affect riparian rights, and will not significantly degrade water quality. The bill requires that the applicant submit a plan to DNR that contains proposed measures, such as improving public rights in navigable waters, conducting mitigation or compensation, or offsetting impacts to navigable waters. After DNR reviews the application and plan, DNR must issue a permit or enter into a contract if it finds that the requirements will be met by implementing some or all of the measures.

Under current law, to qualify for some of the individual or general permits or to conduct activities under certain permit exemptions, the person must be an owner of riparian property. Under the bill for purposes of iron mining, the requirement of being a riparian owner does not apply.

#### **EXEMPTIONS**

Current law authorizes DNR to promulgate rules under which it may grant to an applicant for a metallic mining permit an exemption to a rule promulgated under the solid waste, hazardous waste, or metallic mining laws if the exemption does not result in a violation of any federal or state environmental statute or endanger public health, safety, or welfare or the environment.

This bill authorizes an applicant for an iron mining permit to request an exemption from any requirement in the iron mining laws applicable to a mining permit application, a mining permit, or any other approval issued by DNR that is needed to conduct the iron mining. DNR must grant or deny the exemption within 15 days. DNR must grant the exemption if it is consistent with the purposes of the iron mining laws; it does not violate other applicable environmental laws; and either: 1) it will not result in significant adverse environmental impacts, or 2) it will result in significant adverse environmental impacts but the applicant will offset those impacts through compensation, mitigation, or conservation measures, except that DNR may not grant the exemption or variance if granting it would violate federal law.

#### **RELATION TO OTHER LAWS**

Current law provides that if there is a standard under other state or federal statutes or rules that specifically regulates in whole an activity also regulated under the metallic mining law, the standard under the other statutes or rules is the controlling standard. If the other federal or state statute or rule only specifically regulates the activity in part, it is controlling as to that part.

Under this bill, if there is a conflict between a provision of the iron mining laws and a provision in another state environmental law, the provision in the iron mining laws controls.

### **EXPLORATION**

Current law requires a person who intends to engage in exploration to be licensed by DNR. Exploration is drilling to search for minerals or to establish the nature of a known mineral deposit. The law requires DNR to promulgate rules containing minimum standards for exploration and for the reclamation of exploration sites.

This bill also requires a person who intends to engage in exploration for iron ore to be licensed by DNR. The bill requires an applicant for an exploration license to file an exploration plan and a reclamation plan that include provisions related to the matters for which DNR is required to establish standards under current law. The bill contains requirements for filling drillholes once exploration has been completed that are similar to the requirements in DNR's current rules.

Under the current rules, DNR must deny the application for an exploration license if it finds that the exploration will not comply with the standards for exploration and reclamation or if the explorer is in violation of the rules.

Under the bill, DNR must deny the application for an exploration license if it concludes that, after the reclamation plan has been completed, the exploration will have a substantial and irreparable adverse impact on the environment or present a substantial risk of injury to public health and welfare. If DNR intends to deny a license, it must notify the applicant of that intent and the reasons for the intended denial and give the applicant ten days to correct the problems with its application.

As under current DNR rules, the bill generally requires DNR to issue or deny an application for an exploration license within ten business days of receipt of the application. Under the bill, however, if DNR does not comply with that deadline, the exploration license is automatically issued.

### **BULK SAMPLING**

Under current law, a person may not prospect for metallic ore without a prospecting permit from DNR. Prospecting is examining an area to determine the quantity and quality of metallic minerals by means other than drilling, for example, by excavating.

Under the bill, a person intending to examine an area to determine the quantity and quality of iron ore by means other than drilling is not required to obtain a prospecting license.

The bill does authorize a person who intends to engage in bulk sampling to file a bulk sampling plan with DNR. Bulk sampling is excavating in a potential mining site to assess the quality and quantity of iron ore deposits and to collect and analyze data to prepare the application for a mining permit or other approval. A person who files a bulk sampling plan must do all of the following:

1. Describe the bulk sampling site and the methods to be used for bulk sampling.
2. Submit a plan for controlling surface erosion that identifies how adverse impacts to plant and wildlife habitats will be avoided or minimized to the extent practicable.
3. Submit a plan for revegetation that describes how adverse environmental impacts will be avoided or minimized to the extent practicable, how the site will be

revegetated and stabilized, and how adverse impacts to plant and wildlife habitats will be avoided or minimized to the extent practicable.

4. Describe any known adverse environmental impacts that are likely to be caused by bulk sampling and how those impacts will be avoided or minimized to the extent practicable.

The bill requires DNR, within 14 days of receipt of a bulk sampling plan, to identify in writing any kind of approval that DNR issues that is needed to conduct the proposed bulk sampling, such as a wastewater discharge permit or a wetland water quality certification, and any waivers, exemptions, or exceptions to those approvals that may be available.

The bill requires a person who has submitted a bulk sampling plan to submit all applications for approvals and for waivers, exemptions, or exceptions to approvals for the bulk sampling at one time.

The bill specifies deadlines for DNR to act on approvals needed to conduct bulk sampling that would not otherwise apply to those types of approvals. When a person who files a bulk sampling plan applies for an approval or a waiver, exemption, or exception to an approval, the application is considered to be complete on the 30th day after DNR receives the application, unless before that day DNR informs the person that the application is not complete. Once an application is considered to be complete, DNR must act within 30 days on an application for a waiver, exemption, or exception to an approval, for a determination that an activity is below the threshold that requires an approval, or for a determination of eligibility for coverage under a general permit or a registration permit. For other approvals, DNR must act within 60 days after the application is considered to be complete, except that if it is not possible for DNR to act on approval for an individual permit, such as a wastewater discharge permit, for which federal law requires an opportunity for public comment or the ability to request a hearing before issuance of the permit within 60 days, it must act within 180 days.

Under current law, if a proposed state agency action, such as the issuance of a permit, authorization, or exception, will affect any site that is significant in the history, prehistory, architecture, archaeology, or culture of this state (historic property), the state agency must notify the director of the State Historical Society (SHS) or his or her designee (state historic preservation officer). If the state historic preservation officer determines that the proposed agency action will have an adverse effect on a historic property that is listed on the national or state register of historic places, the Wisconsin inventory of historic places, or SHS's list of locally designated historic places, that officer may require negotiations with the state agency to reduce that adverse effect.

The bill requires a bulk sampling plan to include: 1) a description of any adverse effects that the bulk sampling might have on any historic property or on any scenic or recreational areas; and 2) plans to avoid or minimize those adverse effects to the extent practicable. The bill also provides that if DNR determines that an applicant has taken measures to minimize the adverse effects of proposed bulk sampling on a historic property, DNR is not required to notify the state historic preservation officer, and the state historic preservation officer may not require

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negotiations to reduce that adverse effect. If that adverse effect cannot practicably be minimized, any negotiations between DNR and the state historic preservation officer must be completed within 60 days.

DNR is not required to prepare an environmental impact statement for proposed bulk sampling. Also, the bill requires DNR to act on any required construction site erosion control or storm water management approval, even if DNR has authorized a local program to issue approvals for construction site erosion control or stormwater management.

**FEES**

Under current law, a person who gives notice of intent to apply for a metallic mining permit must pay a fee established by DNR by rule designed to cover the costs incurred by DNR in connection with the proposed mining during the year following receipt of the proposed notice. The person must also pay fees for any approvals other than the mining permit that are needed to conduct the mining. The law requires DNR to annually compare the fees paid by an applicant with the costs incurred by DNR in connection with the proposed mining. If the costs incurred by DNR exceed the fees paid, the person must pay a fee equal to the difference.

Under this bill, an applicant is not required to pay an application or filing fee for any approval other than a mining permit. The bill requires DNR to assess a fee equal to its costs for evaluating a mining project or \$1,100,000, whichever is less. An applicant must pay \$100,000 with the bulk sampling plan or, if no bulk sampling plan is filed, with the notice of intent to file a mining permit application and then must make \$250,000 payments when DNR shows that the previous payments have been fully allocated against actual costs.

Current law imposes fees on the disposal of solid waste that are called tonnage fees or tipping fees. Under the bill, the operator of a mining waste site must pay the groundwater fee, the environmental repair fee, and the waste facility siting board fee but is not subject to the recycling fee.

**NET PROCEEDS OCCUPATION TAX**

Under current law, the state imposes a net proceeds occupation tax on the mining of metallic minerals in this state. The tax is based, generally, on a percentage of net income from the sale of ore or minerals after certain mining processes have been applied to the ore or minerals. For purposes of administering the net proceeds occupation tax and assessing manufacturing property in this state for property tax purposes, the Department of Revenue (DOR) assesses the value of the lands from which metalliferous minerals are extracted, but excludes the value of the metalliferous mineral content of the land from the assessment.

Under the bill, for the first five years in which a mine extracts ferrous metallic minerals in this state, the amount of the net proceeds occupation tax would be the lesser of a percentage of the mine's net income for the year, as determined under current law, or \$2.25 for each 2,240 pounds of iron product sold ~~in that year~~. For the subsequent years, the amount of the net proceeds tax imposed on extracting ferrous metallic minerals in this state would be the greater of a percentage of the mine's net income for the year, as determined under current law, or \$2.25 for each 2,240 pounds of iron product sold ~~in that year~~. The bill provides that DOR must annually adjust

*based on  
based on a five-  
year average*

the per pound amount to reflect the ~~average~~<sup>annual</sup> percentage change in the gross domestic product deflator ~~during a five-year period~~. However, DOR would not adjust the per pound amount in any year in which the the aggregate price of ferrous metallic minerals is less than in the previous year and the ~~average~~<sup>annual</sup> percentage change in the gross domestic product deflator is a positive number.

Under the bill, DOR continues to assess the value of lands from which ferrous or nonferrous metallic minerals are extracted, but excludes from the assessment the value of the ferrous or nonferrous metallic mineral content of the land and the value of the facilities and improvements used for processing the ferrous or nonferrous metallic minerals.

Under current law, the revenue collected from the net proceeds occupation tax is deposited into the investment and local impact fund. The fund is managed by the local impact fund board. The revenue is then, generally, distributed to the counties and municipalities in which metallic minerals are being mined. Part of the revenue is distributed to counties and municipalities as "first-dollar payments" equal to \$100,000, adjusted to reflect the annual change in gross national product. Additional payments are then made after the first dollar payments.

Under current law, each county, municipality, or Native American community that contains at least 15 percent of a minable ore body for which construction, but not extraction, has begun at a metalliferous mining site receives a one-time payment of \$100,000. Under current law, each person constructing a metallic mining site must pay a construction fee in an amount sufficient to make the one-time construction payments.

Under the bill, the first \$6,000,000 in revenue collected from the net proceeds occupation tax on extracting ferrous metallic minerals in this state is deposited into the investment and local impact fund and any such revenue in excess of \$6,000,000 is deposited into the general fund. Under the bill, a Native American community in which an ore body is located would not receive a one-time payment of \$100,000 related to a ferrous metallic mining operation, but would receive a payment equal to 25 percent of the first \$6,000,000 in revenue collected from the net proceeds occupation tax on extracting ferrous metallic minerals. The bill also provides that a person constructing a ferrous metallic mining site would not pay a construction fee. Finally, with regards to distributing moneys from the investment and local impact fund, the local impact fund board must give priority to property tax relief and economic development efforts.

#### **OTHER**

##### ***Shoreland and floodplain zoning***

Current law prohibits locating a solid waste facility in an area that is covered by a shoreland or floodplain zoning ordinance unless the facility is authorized under a permit issued by DNR. This bill requires DNR to specify in the permit the authorized location, height, or size of the facility that may be located in the area. This bill also specifies that DNR may not prohibit a waste site, structure, building, fill, or other development or construction activity (activity) to be located in an area that would otherwise be prohibited under a shoreland or floodplain zoning ordinance if

the activity is authorized by DNR as part of a mining operation covered by an iron mining permit.

Current law provides that a structure, building, fill, or development (structure) that is placed or maintained in a floodplain in violation of a floodplain zoning ordinance is a public nuisance and provides that any person placing or maintaining the structure may be subject to a fine. The bill specifies that these provisions do not apply to a structure placed or maintained as part of a mining operation covered by an iron mining permit issued by DNR.

***Local impact committees***

Current law authorizes a local or tribal government likely to be substantially affected by proposed metallic mining to establish a local impact committee for purposes that include facilitating communications with the mining company, reviewing and commenting on reclamation plans, and negotiating an agreement between the local or tribal government and the mining company. The law requires the mining company to appoint a person to be the liaison with the local impact committee and requires the mining company to make reasonable efforts to design and carry out mining operations in harmony with community development objectives. Under some circumstances, a local impact committee may receive funding from the investment and local impact fund board.

This bill provides for local impact committees for proposed iron mines in a manner similar to the manner in which those committees are established under current law.

***Rights and conditions relating to mining contracts and leases***

Current law establishes certain rights and imposes certain conditions with respect to contracts or leases that authorize a person to dig for ores and minerals, including the conditions under which a miner may retain ore and minerals discovered on the land, a miner's obligation to keep and to provide certain records concerning mine operations, and the consequences to a miner who conceals or disposes of any ores or minerals for the purpose of defrauding a lessor. Current law also establishes a maximum term for exploration mining leases with regard to minerals that contain metals.

This bill limits these current law provisions to mining activities relating to nonferrous metallic mining.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1

**SECTION 1.** 20.370 (2) (gh) of the statutes is amended to read:

1           20.370 (2) (gh) ~~*Mining*~~— *Nonferrous metallic mining regulation and*  
2 *administration*. The amounts in the schedule for the administration, regulation and  
3 enforcement of *nonferrous metallic mining* exploration, prospecting, mining and  
4 mine reclamation activities under ch. 293. All moneys received under ch. 293 shall  
5 be credited to this appropriation.

6           **SECTION 2.** 20.370 (2) (gi) of the statutes is created to read:

7           20.370 (2) (gi) *Ferrous metallic mining operations*. All moneys received under  
8 subch. III of ch. 295 for the department of natural resource's operations related to  
9 ferrous metallic exploration and mining.

10          **SECTION 3.** 20.455 (1) (gh) of the statutes is amended to read:

11          20.455 (1) (gh) *Investigation and prosecution*. Moneys received under ss. 23.22  
12 (9) (c), 49.49 (6), 100.263, 133.16, 281.98 (2), 283.91 (5), 289.96 (3) (b), 291.97 (3),  
13 292.99 (2), 293.87 (4) (b), 295.19 (3) (b) 2., 295.79 (4) (b), and 299.97 (2), for the  
14 expenses of investigation and prosecution of violations, including attorney fees.

15          **SECTION 4.** 20.566 (7) (e) of the statutes is amended to read:

16          20.566 (7) (e) *Investment and local impact fund supplement*. The amounts in  
17 the schedule to supplement par. (v) for the purposes of ss. 70.395, 293.33 (4) ~~and,~~  
18 293.65 (5) (a), and 295.443.

19          **SECTION 5.** 20.566 (7) (v) of the statutes is amended to read:

20          20.566 (7) (v) *Investment and local impact fund*. From the investment and local  
21 impact fund, all moneys received under s. 70.395 (1e) and (2) (dc) and (dg), less the  
22 moneys appropriated under s. 20.370 (2) (gr), to be disbursed under ss. 70.395 (2) (d)  
23 to (g), 293.33 (4) ~~and,~~ 293.65 (5) (a), and 295.443.

24          **SECTION 6.** 29.604 (4) (intro.) of the statutes is amended to read:

1           29.604 (4) PROHIBITION. (intro.) Except as provided in sub. (6r) and (7m) or as  
2 permitted by departmental rule or permit:

3           **SECTION 7.** 29.604 (4) (c) (intro.) of the statutes is amended to read:

4           29.604 (4) (c) (intro.) No person may do any of the following to any wild plant  
5 of an endangered or threatened species that is on public property or on property that  
6 he or she does not own or lease, except in the course of forestry or agricultural  
7 practices ~~or~~, in the construction, operation, or maintenance of a utility facility, or as  
8 part of bulk sampling activities under s. 295.45:

9           **SECTION 8.** 29.604 (7m) of the statutes is created to read:

10          29.604 (7m) BULK SAMPLING ACTIVITIES. A person may take, transport, or  
11 possess a wild animal on the department's endangered and threatened species list  
12 without a permit under this section if the person avoids and minimizes adverse  
13 impacts to the wild animal to the extent practicable, if the taking, transporting, or  
14 possession does not result in wounding or killing the wild animal, and if the person  
15 takes, transports, or possesses the wild animal for the purpose of bulk sampling  
16 activities under s. 295.45.

17          **SECTION 9.** 30.12 (3m) (c) (intro.) of the statutes is amended to read:

18          30.12 (3m) (c) (intro.) The department shall issue an individual permit to a  
19 riparian owner for a structure or a deposit pursuant to an application under par. (a)  
20 if the department finds that all of the following ~~apply requirements~~ are met:

21          **SECTION 10.** 30.123 (8) (c) of the statutes is renumbered 30.123 (8) (c) (intro.)  
22 and amended to read:

23          30.123 (8) (c) (intro.) The department shall issue an individual permit  
24 pursuant to an application under par. (a) if the department finds that the all of the  
25 following requirements are met:

1           1. The bridge or culvert will not materially obstruct navigation,

2           2. The bridge or culvert will not materially reduce the effective flood flow  
3           capacity of a stream, and,

4           3. The bridge or culvert will not be detrimental to the public interest.

5           **SECTION 11.** 30.133 (2) of the statutes is amended to read:

6           30.133 (2) This section does not apply to riparian land located within the  
7           boundary of any hydroelectric project licensed or exempted by the federal  
8           government, if the conveyance is authorized under any license, rule or order issued  
9           by the federal agency having jurisdiction over the project. This section does not apply  
10          to riparian land that is associated with an approval required for bulk sampling or  
11          mining that is required under subch. III of ch. 295.

12          **SECTION 12.** 30.19 (4) (c) (intro.) of the statutes is amended to read:

13          30.19 (4) (c) (intro.) The department shall issue an individual permit pursuant  
14          to an application under par. (a) if the department finds that all of the following apply  
15          requirements are met:

16          **SECTION 13.** 30.195 (2) (c) (intro.) of the statutes is amended to read:

17          30.195 (2) (c) (intro.) The department shall issue an individual permit applied  
18          for under this section to a riparian owner if the department determines that all of the  
19          following apply requirements are met:

20          **SECTION 14.** 31.23 (3) (e) of the statutes is created to read:

21          31.23 (3) (e) This subsection does not apply to a bridge that is constructed,  
22          maintained, or operated in association with mining or bulk sampling that is subject  
23          to subch. III of ch. 295.

24          **SECTION 15.** 44.40 (5) of the statutes is amended to read:

1           44.40 (5) This section does not apply as provided in s. 295.45 (6) or to any state  
2 agency action which is subject to 16 USC 461 to 470mm.

3           **SECTION 16.** 70.375 (1) (ab) of the statutes is amended to read:

4           70.375 (1) (ab) "Controlled entity" means a person at least 50% of the voting  
5 stock of which is owned directly or indirectly by another person who is engaged in  
6 mining metalliferous ferrous or nonferrous metallic minerals.

7           **SECTION 17.** 70.375 (1) (ad) of the statutes is amended to read:

8           70.375 (1) (ad) "Controlling entity" is a person who owns directly or indirectly  
9 at least 50% of the voting stock of another person who is engaged in mining  
10 metalliferous ferrous or nonferrous metallic minerals.

11           **SECTION 18.** 70.375 (1) (as) of the statutes is amended to read:

12           70.375 (1) (as) "Mine" means an excavation in or at the earth's surface made  
13 to extract metalliferous nonferrous metallic minerals for which a permit has been  
14 issued under s. 293.49 or ferrous metallic minerals for which a permit has been  
15 issued under s. 295.58.

16           **SECTION 19.** 70.375 (1) (bm) of the statutes is amended to read:

17           70.375 (1) (bm) "Mining-related purposes" means activities which are directly  
18 in response to the application for a mining permit under s. 293.37 or 295.47; directly  
19 in response to construction, operation, curtailment of operation or cessation of  
20 operation of a metalliferous ferrous or nonferrous metallic mineral mine site; or  
21 directly in response to conditions at a metalliferous ferrous or nonferrous metallic  
22 mineral mine site which is not in operation. "Mining-related purposes" also includes  
23 activities which anticipate the economic and social consequences of the cessation of  
24 mining. "Mining-related purposes" also includes the purposes under s. 70.395 (2)  
25 (g).

1           **SECTION 20.** 70.375 (1) (d) of the statutes is amended to read:

2           70.375 (1) (d) "Person" means a sole proprietorship, partnership, limited  
3 liability company, association or corporation and includes a lessee engaged in mining  
4 ~~metalliferous~~ ferrous or nonferrous metallic minerals.

5           **SECTION 21.** 70.375 (2) (a) of the statutes is amended to read:

6           70.375 (2) (a) In respect to mines not in operation on November 28, 1981, there  
7 is imposed upon persons engaged in mining ~~metalliferous~~ ferrous or nonferrous  
8 metallic minerals in this state a net proceeds occupation tax effective on the date on  
9 which extraction begins to compensate the state and municipalities for the loss of  
10 valuable, irreplaceable ~~metalliferous~~ ferrous or nonferrous metallic minerals. ~~The~~  
11 Except as provided in sub. (7), the amount of the tax shall be determined by applying  
12 the rates established under sub. (5) to the net proceeds of each mine. The net  
13 proceeds of each mine for each year are the difference between the gross proceeds and  
14 the deductions allowed under sub. (4) for the year.

15           **SECTION 22.** 70.375 (2m) of the statutes is repealed.

16           **SECTION 23.** 70.375 (3) (intro.) of the statutes is amended to read:

17           70.375 (3) ALTERNATE COMPUTATION OF GROSS PROCEEDS. (intro.) If products are  
18 sold or transferred to a person operating a smelting, refining or other processing or  
19 marketing facility which is located outside of the United States or to a controlled  
20 entity or controlling entity of the seller or transferor and if the secretary determines  
21 that the gross proceeds under sub. (1) (am) do not reflect or demonstrate the gross  
22 proceeds that would have been received from an unrelated purchaser for the product  
23 under similar circumstances, the gross proceeds shall be computed under this  
24 subsection. For the purpose of this subsection "control" means direct or indirect  
25 ownership of at least 50% of the total combined voting stock of the corporation. The

1 gross proceeds shall be computed by multiplying that part of the production of  
2 recovered ~~metalliferous~~ ferrous or nonferrous metallic minerals which were sold or  
3 transferred during the taxable year by the average price of that mineral for the  
4 taxable year and then subtracting the cost of postmining processes, including the  
5 cost of capital (interest and earnings) imputed to that production. The average price  
6 shall be computed from the monthly prices published in the engineering and mining  
7 journal as follows:

8 **SECTION 24.** 70.375 (3) (g) of the statutes is amended to read:

9 70.375 (3) (g) Other ~~metalliferous~~ ferrous or nonferrous metallic minerals or  
10 other forms of ~~metalliferous~~ ferrous or nonferrous metallic minerals not including  
11 mineral aggregates such as stone, sand and gravel, at a price determined by the  
12 secretary, by rule, from a nationally known publication or other nationally known  
13 source listing prices of ~~metalliferous~~ ferrous or nonferrous metallic minerals.

14 **SECTION 25.** 70.375 (4) (intro.) of the statutes is amended to read:

15 70.375 (4) DEDUCTIONS. (intro.) If the costs are not excluded in determining  
16 gross proceeds and are actually incurred or accrued, there shall be allowed to persons  
17 subject to the tax under sub. (2) ~~or (2m)~~ the following deductions:

18 **SECTION 26.** 70.375 (4) (a) of the statutes is amended to read:

19 70.375 (4) (a) The actual and necessary expenses incurred during the taxable  
20 year for labor, tools, appliances and supplies used in mining ~~metalliferous~~ ferrous or  
21 nonferrous metallic minerals, including the labor of the lessee and the lessee's  
22 employees and the amount expended by the lessee for tools, appliances and supplies  
23 used by the lessee in the mining operation. The personal labor of the lessee shall be  
24 computed at the prevailing wage rate.

25 **SECTION 27.** 70.375 (4) (c) of the statutes is amended to read:

1           70.375 (4) (c) The actual and necessary expenses for administrative,  
2 appraising, accounting, legal, medical, engineering, clerical and technical services  
3 directly related to mining ~~metalliferous~~ ferrous or nonferrous metallic minerals in  
4 this state, excluding salaries and expenses for corporate officers and for lobbying, as  
5 defined in s. 13.62 (10).

6           **SECTION 28.** 70.375 (4) (d) of the statutes is amended to read:

7           70.375 (4) (d) The actual and necessary expenses directly related to the repair  
8 and maintenance of any machinery, mills, reduction works, buildings, structures,  
9 other necessary improvements, tools, appliances and supplies used in mining  
10 ~~metalliferous~~ ferrous or nonferrous metallic minerals extracted in this state.

11           **SECTION 29.** 70.375 (4) (f) of the statutes is amended to read:

12           70.375 (4) (f) Rents paid on personal property used in mining ~~metalliferous~~  
13 ferrous or nonferrous metallic minerals.

14           **SECTION 30.** 70.375 (4) (i) of the statutes is amended to read:

15           70.375 (4) (i) The cost of premiums for insurance on persons or tangible assets  
16 relating to mining ~~metalliferous~~ ferrous or nonferrous metallic minerals.

17           **SECTION 31.** 70.375 (4) (j) of the statutes is amended to read:

18           70.375 (4) (j) Losses from uninsured casualty losses and the sale of personal  
19 property used in mining ~~metalliferous~~ ferrous or nonferrous metallic minerals.

20           **SECTION 32.** 70.375 (5) (intro.) of the statutes is amended to read:

21           70.375 (5) RATES. (intro.) ~~The~~ Except as provided in sub. (7), the tax to be  
22 assessed, levied and collected upon persons engaging in mining ~~metalliferous~~ ferrous  
23 or nonferrous metallic minerals in this state shall be computed at the following rates:

24           **SECTION 33.** 70.375 (6) of the statutes is amended to read:

- 31 -

PLAIN

1

70.375 (6) INDEXING. For the first calendar year 1983 of extraction and  
corresponding fiscal years and thereafter, the dollar amounts in sub. (5) and s. 70.395  
(1) and (2) (d) 1m. and 5. ~~a.~~ and (dg) shall be changed to reflect the percentage change  
between the gross ~~national~~ domestic product deflator for June of the current year and  
the gross ~~national~~ domestic product deflator for June of the previous year, as  
determined by the U.S. department of commerce as of December 30 of the year for  
which the taxes are due, except that no annual increase may be more than 10%. For  
calendar year 1983 and corresponding fiscal years and thereafter until calendar year  
1997 and corresponding fiscal years, the dollar amounts in s. 70.395 (1m), 1995  
stats., shall be changed to reflect the percentage change between the gross ~~national~~  
domestic product deflator for June of the current year and the gross ~~national~~  
domestic product deflator for June of the previous year, as determined by the U.S.  
department of commerce as of December 30 of the year for which the taxes are due,  
except that no annual increase may be more than 10%. The revised amounts shall  
be rounded to the nearest whole number divisible by 100 and shall not be reduced  
below the amounts under sub. (5) on November 28, 1981. Annually, the department  
shall adopt any changes in dollar amounts required under this subsection and  
incorporate them into the appropriate tax forms.

19

**SECTION 34.** 70.375 (7) of the statutes is created to read:

20

70.375 (7) FERROUS METALLIC MINING. (a) Notwithstanding subs. (2), (5), and  
(6), the tax assessed, levied, and collected from a person engaged in mining ferrous  
metallic minerals in this state, as provided under subch. III of ch. 295, is:

23

1. Beginning with the first calendar year of extraction and ending with the 5th  
calendar year of extraction, an amount equal to the lesser of the following:

25

a. The amount determined under subs. (2), (5), and (6) for the year.

32

*BILL based on the average amount sold during the previous 5 years, not including any year in which no ferrous metallic minerals are extracted in this state*

**SECTION 34**

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b. Subject to par. (b), \$2.25 for each 2,240 pounds of iron product sold *(in that*

*year)*

2. Beginning with the 6th year of extraction, an amount equal to the greater of the following:

a. The amount determined under subs. (2), (5), and (6) for the year.

b. Subject to par. (b), \$2.25 for each 2,240 pounds of iron product sold *(in that*

*year)*

(b) For the 2nd calendar year of extraction, and corresponding fiscal years, and for each calendar year of extraction thereafter, the department shall change the dollar amounts under par. (a) 1. b. and 2. b. to reflect the *average* percentage change

in the gross domestic product deflator, as determined by the U.S. department of commerce, for the 5-year period ending on June 30 of the current year, not including any year in which no ferrous metallic minerals are extracted in this state, except that no adjustment shall be made in the dollar amounts under par. (a) 1. b. and 2. b. for any calendar year in which the aggregate price of ferrous metallic minerals is less than in the previous year, as reported by the taxpayer, and the *average* percentage change in the gross domestic product deflator, as described in this paragraph is a positive number.

**SECTION 35.** 70.38 (1) of the statutes is amended to read:

**70.38 (1) REPORTS.** On or before June 15, persons mining metalliferous ferrous or nonferrous metallic minerals shall file with the department a true and accurate report in the form the department deems necessary to administer the tax under s. 70.375. The books and records of the person shall be open to inspection and examination to employees of the department designated by the secretary and to the state geologist.

*between the gross domestic product deflator for June of the current year and the gross domestic product deflator for June of the previous year, as determined by the U.S. department of commerce on December 30 of the year in which the taxes are due*

1           **SECTION 36.** 70.38 (2) of the statutes is amended to read:

2           70.38 (2) COMBINED REPORTING. If the same person extracts ~~metalliferous~~  
3           ferrous or nonferrous metallic minerals from different sites in this state, the net  
4           proceeds for each site for which a permit has been issued under s. 293.49 ~~or 295.58~~  
5           shall be reported separately for the purposes of computing the amount of the tax  
6           under s. 70.375 (5).

7           **SECTION 37.** 70.39 (3) of the statutes is amended to read:

8           70.39 (3) After the tax becomes delinquent, the department shall issue a  
9           warrant to the sheriff of any county of the state in which the ~~metalliferous~~ ferrous  
10          or nonferrous metallic mineral property is located in total or in part. The warrant  
11          shall command the sheriff to levy upon and sell sufficient of the person's  
12          ~~metalliferous~~ ferrous or nonferrous metallic mineral property found within the  
13          sheriff's county, to pay the tax with the penalties, interest and costs, and to proceed  
14          in the same manner as upon an execution against property issued out of a court of  
15          record, and to return the warrant to the department and pay to it the money  
16          collected, or the part thereof as may be necessary to pay the tax, penalties, interest  
17          and costs, within 60 days after the receipt of the warrant, and deliver the balance,  
18          if any, after deduction of lawful charges to the person.

19          **SECTION 38.** 70.395 (1e) of the statutes is amended to read:

20          70.395 (1e) DISTRIBUTION. Fifteen days after the collection of the tax under ss.  
21          70.38 to 70.39, the department of administration, upon certification of the  
22          department of revenue, shall transfer the amount collected in respect to mines not  
23          in operation on November 28, 1981, to the investment and local impact fund, except  
24          that the department of administration shall transfer the first \$6,000,000 collected  
25          from each person extracting ferrous metallic minerals to the investment and local

1 impact fund and the department of revenue shall deposit amounts exceeding the first  
2 \$6,000,000 collected from any such person into the general fund.

3 **SECTION 39.** 70.395 (2) (d) (intro.) of the statutes is amended to read:

4 70.395 (2) (d) (intro.) Annually on the first Monday in January, except as  
5 provided in subd. 5. ~~b. and e.~~, the department of administration shall distribute, upon  
6 certification by the board:

7 **SECTION 40.** 70.395 (2) (d) 1. of the statutes is amended to read:

8 70.395 (2) (d) 1. To each county in which metalliferous ferrous or nonferrous  
9 metallic minerals are extracted, the first-dollar payment.

10 **SECTION 41.** 70.395 (2) (d) 1m. of the statutes is amended to read:

11 70.395 (2) (d) 1m. To each county in which metalliferous ferrous or nonferrous  
12 metallic minerals are extracted, 20% of the tax collected annually under ss. 70.38 to  
13 70.39 from persons extracting metalliferous ferrous or nonferrous metallic minerals  
14 in the county or \$250,000, whichever is less, to be used for mining-related purposes.

15 **SECTION 42.** 70.395 (2) (d) 2. of the statutes is amended to read:

16 70.395 (2) (d) 2. To each city, town or village in which metalliferous ferrous or  
17 nonferrous metallic minerals are extracted, the first-dollar payment minus any  
18 payment during that year under par. (d) (intro.) or subd. 5. If the minable ore body  
19 is located in 2 contiguous municipalities and if at least 15% of the minable ore body  
20 is in each municipality, each qualifying municipality shall receive a full payment  
21 specified in this subdivision as if the ore body were located solely within that  
22 municipality. The department of revenue shall annually change the dollar amount  
23 specified in this subdivision as specified in s. 70.375 (6) except that the dollar amount  
24 may not be reduced below the dollar amount under this subdivision on November 28,  
25 1981.

1           **SECTION 43.** 70.395 (2) (d) 2m. of the statutes is amended to read:

2           70.395 (2) (d) 2m. To any Native American community that has tribal lands  
3 within a municipality qualified to receive a payment under this section for the  
4 mining of nonferrous metallic minerals, an amount equal to \$100,000 minus any  
5 payments during that year under par. (d) (intro.) or subd. 5. Annually, the dollar  
6 amount in this subdivision shall be adjusted as specified under s. 70.375 (6).

7           **SECTION 44.** 70.395 (2) (d) 2n. of the statutes is created to read:

8           70.395 (2) (d) 2n. To all Native American communities that have tribal lands  
9 within a municipality qualified to receive a payment under this section for mining  
10 of ferrous metallic minerals, payments totalling 25 percent of the first \$6,000,000  
11 collected under ss. 70.38 to 70.39 from the extraction of ferrous metallic minerals.  
12 If more than one Native American community qualifies for a payment under this  
13 subdivision, the amount of the payment to each such community shall be in  
14 proportion to the percentage of the ore body that is located in the municipality.

15           **SECTION 45.** 70.395 (2) (d) 3. a. of the statutes is amended to read:

16           70.395 (2) (d) 3. a. On or before February 10 of each year persons extracting  
17 metalliferous ferrous or nonferrous metallic minerals in this state shall report to the  
18 department the amount of crude ore extracted from each municipality and county in  
19 the state in the previous year. The data shall detail the total amount of crude ore  
20 extracted from each mine and the portion of the total taken from each municipality  
21 and county. This data shall be included in the report required by s. 70.38 (1) and (2).

22           **SECTION 46.** 70.395 (2) (d) 5. a. and b. of the statutes are repealed.

23           **SECTION 47.** 70.395 (2) (d) 5. c. of the statutes is renumbered 70.395 (2) (d) 5.  
24 and amended to read:

1           70.395 (2) (d) 5. To each Native American community, county, city, town and  
2 village that contains at least 15% of a minable ore body in respect to which  
3 construction has begun at a metalliferous nonferrous metallic mining site but in  
4 respect to which extraction has not begun, \$100,000 as a one-time payment. Those  
5 payments shall be made on or before the date 30 days after the beginning of  
6 construction.

7           **SECTION 48.** 70.395 (2) (dc) 1. of the statutes is amended to read:

8           70.395 (2) (dc) 1. Each person intending to submit an application for a mining  
9 permit under s. 293.49 or 295.47 shall pay \$50,000 to the department of revenue for  
10 deposit in the investment and local impact fund at the time that the person notifies  
11 the department of natural resources under s. 293.31 (1) or 295.465 of that intent.

12           **SECTION 49.** 70.395 (2) (dg) of the statutes is amended to read:

13           70.395 (2) (dg) Each person constructing a metalliferous nonferrous metallic  
14 mining site shall pay to the department of revenue for deposit in the investment and  
15 local impact fund, as a construction fee, an amount sufficient to make the  
16 construction period payments under par. (d) 5. in respect to that site. Any person  
17 paying a construction fee under this paragraph may credit against taxes due under  
18 s. 70.375 an amount equal to the payments that the taxpayer has made under this  
19 paragraph, provided that the credit does not reduce the taxpayer's liability under s.  
20 70.375 below the amount needed to make the first-dollar payments under par. (d)  
21 1., 2. and 2m. for that year in respect to the taxpayer's mine. Any amount not  
22 creditable because of that limitation in any year may be carried forward.

23           **SECTION 50.** 70.395 (2) (f) of the statutes is amended to read:

24           70.395 (2) (f) A school district may apply to the board for payments from the  
25 fund in an amount equal to the school district's nonshared costs. If the board finds

1 that the school district has incurred costs attributable to enrollment resulting from  
2 the development and operation of ~~metalliferous~~ ferrous or nonferrous metallic  
3 mineral mining and if the board and the school board of the school district reach an  
4 agreement on a payment schedule, the board shall certify to the department of  
5 administration for payment to the school district an amount equal to all or part of  
6 the nonshared costs of the school district in the year in which the initial agreement  
7 was reached. The board and the school district may, by mutual consent, modify the  
8 provisions of the agreement at any time. The payment shall be considered a  
9 nondeductible receipt for the purposes of s. 121.07 (6). In this paragraph, "nonshared  
10 costs" means the amount of the school district's principal and interest payments on  
11 long-term indebtedness and annual capital outlay for the current school year, which  
12 is not shared under s. 121.07 (6) (a) or other nonshared costs and which is  
13 attributable to enrollment increases resulting from the development of ~~metalliferous~~  
14 ferrous or nonferrous metallic mineral mining operations.

15 **SECTION 51.** 70.395 (2) (fm) of the statutes is amended to read:

16 70.395 (2) (fm) The board may distribute a payment received under par. (dc)  
17 to a county, town, village, city, tribal government or local impact committee  
18 authorized under s. 293.41 (3) or 295.443 only for legal counsel, qualified technical  
19 experts in the areas of transportation, utilities, economic and social impacts,  
20 environmental impacts and municipal services and other reasonable and necessary  
21 expenses incurred by the recipient that directly relate to the good faith negotiation  
22 of a local agreement under s. 293.41 or 295.443 for the proposed mine for which the  
23 payment is made.

24 **SECTION 52.** 70.395 (2) (g) 6. of the statutes is amended to read:

1           70.395 (2) (g) 6. Legal counsel and technical consultants to represent and assist  
2 municipalities appearing before state agencies on matters relating to ~~metalliferous~~  
3 nonferrous metallic mineral mining.

4           **SECTION 53.** 70.395 (2) (g) 11. of the statutes is created to read:

5           70.395 (2) (g) 11. Property tax relief and economic development efforts. For  
6 purposes of this paragraph, the board shall give priority to the purposes described  
7 in this subdivision.

8           **SECTION 54.** 70.395 (2) (h) 1. of the statutes is amended to read:

9           70.395 (2) (h) 1. Distribution shall first be made to those municipalities in  
10 which ~~metalliferous~~ ferrous or nonferrous metallic minerals are extracted or were  
11 extracted within 3 years previous to December 31 of the current year, or in which a  
12 permit has been issued under s. 293.49 or 295.58 to commence mining;

13           **SECTION 55.** 70.395 (2) (h) 2. of the statutes is amended to read:

14           70.395 (2) (h) 2. Distribution shall next be made to those municipalities  
15 adjacent to municipalities in which ~~metalliferous~~ ferrous or nonferrous metallic  
16 minerals are extracted or were extracted more than 3 years, but less than 7 years  
17 previous to December 31 of the current year;

18           **SECTION 56.** 70.395 (2) (h) 3. of the statutes is amended to read:

19           70.395 (2) (h) 3. Distribution shall next be made to those municipalities which  
20 are not adjacent to municipalities in which ~~metalliferous~~ ferrous or nonferrous  
21 metallic minerals are extracted and in which ~~metalliferous~~ ferrous or nonferrous  
22 metallic minerals are not extracted.

23           **SECTION 57.** 70.396 (2) of the statutes is amended to read:

24           70.396 (2) Funds may be placed in the county mining investment fund for  
25 investment by the state investment board or may be placed in a segregated account

1 with a financial institution located in the state. The funds may be withdrawn only  
2 at a later date to alleviate impacts associated with the closing of a metalliferous  
3 nonferrous metallic mine in the county or the curtailment of metalliferous  
4 nonferrous metallic mining activity in the county. If a county deposits mining impact  
5 funds in the county mining investment fund, withdrawals from the fund shall be  
6 subject to the restrictions described under s. 25.65 (4). If a county deposits mining  
7 impact funds with a financial institution located in this state, withdrawals made  
8 within 10 years of deposit shall be subject to the review and approval of the  
9 investment and local impact fund board. The county shall notify the board of  
10 withdrawals made 10 years after deposit. The county shall report annually to the  
11 impact board any deposits, withdrawals and use of mining impact funds in that year.

12 **SECTION 58.** 70.396 (3) of the statutes is amended to read:

13 70.396 (3) A maximum of \$25,000 annually may be distributed by a county to  
14 any town, city or village in the county where the extraction of metalliferous  
15 nonferrous metallic minerals is occurring.

16 **SECTION 59.** 70.397 (3) (a) of the statutes is amended to read:

17 70.397 (3) (a) Sections 70.38 (1), 70.385 and 70.39, as they apply to the tax  
18 under s. 70.375 (~~2m~~) (2), apply to the tax under this section. If a producer severs oil  
19 or gas from more than one location in this state, the producer shall submit a report  
20 for each location separately.

21 **SECTION 60.** 70.995 (1) (a) of the statutes is amended to read:

22 70.995 (1) (a) In this section "manufacturing property" includes all lands,  
23 buildings, structures and other real property used in manufacturing, assembling,  
24 processing, fabricating, making or milling tangible personal property for profit.  
25 Manufacturing property also includes warehouses, storage facilities and office

1 structures when the predominant use of the warehouses, storage facilities or offices  
2 is in support of the manufacturing property, and all personal property owned or used  
3 by any person engaged in this state in any of the activities mentioned, and used in  
4 the activity, including raw materials, supplies, machinery, equipment, work in  
5 process and finished inventory when located at the site of the activity.  
6 Establishments engaged in assembling component parts of manufactured products  
7 are considered manufacturing establishments if the new product is neither a  
8 structure nor other fixed improvement. Materials processed by a manufacturing  
9 establishment include products of agriculture, forestry, fishing, mining and  
10 quarrying. For the purposes of this section, establishments which engage in mining  
11 ~~metalliferous ferrous or nonferrous metallic~~ minerals are considered manufacturing  
12 establishments.

13 **SECTION 61.** 70.995 (5) of the statutes is amended to read:

14 70.995 (5) The department of revenue shall assess all property of  
15 manufacturing establishments included under subs. (1) and (2) as of the close of  
16 January 1 of each year, if on or before March 1 of that year the department has  
17 classified the property as manufacturing or the owner of the property has requested,  
18 in writing, that the department make such a classification and the department later  
19 does so. A change in ownership, location, or name of the manufacturing  
20 establishment does not necessitate a new request. In assessing lands from which  
21 ~~metalliferous ferrous or nonferrous metallic~~ minerals are being extracted and valued  
22 for purposes of the tax under s. 70.375, the value of the ~~metalliferous ferrous or~~  
23 ~~nonferrous metallic~~ mineral content of such lands, and the value of the facilities and  
24 ~~improvements used for processing the ferrous or nonferrous metallic minerals,~~ shall  
25 be excluded.

1           **SECTION 62.** 87.30 (2) of the statutes is renumbered 87.30 (2) (a) and amended  
2 to read:

3           87.30 (2) (a) ~~Every~~ Except as provided in par. (b), every structure, building, fill,  
4 or development placed or maintained within any floodplain in violation of a zoning  
5 ordinance adopted under this section, or s. 59.69, 61.35 or 62.23 is a public nuisance  
6 and the creation thereof may be enjoined and maintenance thereof may be abated by  
7 action at suit of any municipality, the state or any citizen thereof. Any person who  
8 places or maintains any structure, building, fill or development within any  
9 floodplain in violation of a zoning ordinance adopted under this section, or s. 59.69,  
10 61.35 or 62.23 may be fined not more than \$50 for each offense. Each day during  
11 which such violation exists is a separate offense.

12           **SECTION 63.** 87.30 (2) (b) of the statutes is created to read:

13           87.30 (2) (b) Paragraph (a) does not apply to a structure, building, fill, or  
14 development placed or maintained as part of a mining operation covered by a mining  
15 permit under s. 295.58.

16           **SECTION 64.** 107.001 (1) of the statutes is amended to read:

17           107.001 (1) "Exploration mining lease" means any lease, option to lease, option  
18 to purchase or similar conveyance entered into for the purpose of determining the  
19 presence, location, quality or quantity of ~~metalliferous~~ nonferrous metallic minerals  
20 or for the purpose of mining, developing or extracting ~~metalliferous~~ nonferrous  
21 metallic minerals, or both under ch. 293. Any lease, option to lease, option to  
22 purchase or similar conveyance entered into by a mining company is rebuttably  
23 presumed to be an exploration mining lease.

24           **SECTION 65.** 107.001 (2) of the statutes is repealed.

25           **SECTION 66.** 107.01 (intro.) of the statutes is amended to read:

1           **107.01 Rules governing mining rights.** (intro.) Where there is no contract  
2 between the parties or terms established by the landlord to the contrary the following  
3 rules and regulations shall be applied to mining contracts and leases for the digging  
4 of ~~ores and~~ nonferrous metallic minerals:

5           **SECTION 67.** 107.01 (2) of the statutes is amended to read:

6           107.01 (2) The discovery of a crevice or range containing ~~ores or minerals~~  
7 nonferrous metallic minerals shall entitle the discoverer to the ores or minerals  
8 pertaining thereto, subject to the rent due the discoverer's landlord, before as well  
9 as after the ~~ores or minerals~~ nonferrous metallic minerals are separated from the  
10 freehold; but such miner shall not be entitled to recover any ~~ores or minerals~~  
11 nonferrous metallic minerals or the value thereof from the person digging on the  
12 miner's range in good faith and known to be mining thereon until the miner shall  
13 have given notice of the miner's claim; and the miner shall be entitled to the ~~ores or~~  
14 minerals nonferrous metallic minerals dug after such notice.

15           **SECTION 68.** 107.02 of the statutes is amended to read:

16           **107.02 Mining statement; penalty.** When there is no agreement between the  
17 parties to any mining lease, license or permit, to mine or remove ~~ore~~ nonferrous  
18 metallic minerals from any lands in this state, regulating the method of reporting  
19 the amount of ~~ore~~ nonferrous metallic minerals taken, the person mining and  
20 removing the ~~ore or ores~~ nonferrous metallic minerals shall keep proper and correct  
21 books, and therefrom to make and deliver by or before the fifteenth day of each month  
22 to the lessor, owner or person entitled thereto, a detailed statement covering the  
23 operations of the preceding month. The statement shall show the total amount of  
24 tons or pounds of each kind of ~~ore~~ nonferrous metallic minerals produced; if sold, then  
25 to whom sold, giving the date of sale, date of delivery to any railroad company,

1 naming the company, and the station where delivered or billed for shipment; the  
2 name and address of the purchaser; the price per ton at which sold and the total value  
3 of each kind of ~~ore~~ nonferrous metallic minerals so sold. The books shall be always  
4 open to any owner, lessor, licensor or stockholder, if the owner, lessor or licensor is  
5 a corporation, and to any person or stockholder interested in any such mining  
6 operations, for the purpose of inspection and taking copies thereof or abstracts  
7 therefrom. Any person and every officer, agent or employee of any thereof, who  
8 violates this section, or who makes any false or incomplete entries on any such books  
9 or statements, shall be fined not less than \$100 or imprisoned in the county jail for  
10 not more than 3 months or both.

11 **SECTION 69.** 107.03 of the statutes is amended to read:

12 **107.03 Conflicting claims.** In case of conflicting claims to a crevice or range  
13 bearing ~~ores or~~ nonferrous metallic minerals the court may continue any action to  
14 enforce a claim or grant any necessary time for the purpose of allowing parties to  
15 prove up their mines or diggings if it satisfactorily appears necessary to the ends of  
16 justice. In such case the court or judge may appoint a receiver and provide that the  
17 mines or diggings be worked under the receiver's direction, subject to the order of the  
18 court, in such manner as best ascertains the respective rights of the parties. The ~~ores~~  
19 ~~or~~ nonferrous metallic minerals raised by either party pending the dispute shall be  
20 delivered to the receiver, who may, by order of the court or judge, pay any rent or other  
21 necessary expenses therefrom.

22 **SECTION 70.** 107.04 of the statutes is amended to read:

23 **107.04 Lessee's fraud; failure to work mine.** Any miner who conceals or  
24 disposes of any ~~ores or~~ nonferrous metallic minerals or mines or diggings for the  
25 purpose of defrauding the lessor of rent or who neglects to pay any rent on ~~ores or~~

1 nonferrous metallic minerals raised by the miner for 3 days after the notice thereof  
2 and claim of the rent, shall forfeit all right to his or her mines, diggings or range; and  
3 the landlord after the concealment or after 3 days have expired from the time of  
4 demanding rent, may proceed against the miner to recover possession of the mines  
5 or diggings in circuit court as in the case of a tenant holding over after the  
6 termination of the lease. If a miner neglects to work his or her mines or diggings  
7 according to the usages of miners, without reasonable excuse, he or she shall likewise  
8 forfeit the mines or diggings and the landlord may proceed against the miner in like  
9 manner to recover possession of the mines or diggings.

10 SECTION 71. 107.11 of the statutes is amended to read:

11 107.11 Account of ~~ores~~ nonferrous metallic minerals received. Every  
12 person operating a metal recovery system and every purchaser of ~~ores and~~  
13 nonferrous metallic minerals shall keep a substantially bound book, ruled into  
14 suitable columns, in which shall be entered from day to day, as ~~ores or~~ nonferrous  
15 metallic minerals are received, the following items: the day, month and year when  
16 received; the name of the person from whom purchased; the name of the person by  
17 whom hauled and delivered; name of the owner of the land from which the ~~ores or~~  
18 nonferrous metallic minerals were obtained, or if not known, the name of the  
19 diggings or some distinct description of the land. The bound book shall be kept at the  
20 furnace or at the usual place of business of such person or purchaser or his or her  
21 agent in this state, and shall be open to authorized representatives of the department  
22 of revenue at reasonable times for inspection and taking extracts.

23 SECTION 72. 107.12 of the statutes is amended to read:

24 107.12 Penalty. If any person operating a metal recovery system or purchaser  
25 of ~~ores and~~ nonferrous metallic minerals or the agent of any such person or purchaser

1 doing business fails to keep such a book or to make such entries as required under  
2 s. 107.11 or unreasonably refuses to show the book for inspection or taking extracts  
3 or makes false entries in the book he or she shall forfeit \$10 for each offense, one-half  
4 to the use of the prosecutor; and each day such failure or refusal continues shall be  
5 deemed a distinct and separate offense.

6 **SECTION 73.** 107.20 (1) of the statutes is amended to read:

7 107.20 (1) Any provision of an exploration mining lease entered into after April  
8 25, 1978, granting an option or right to determine the presence, location, quality or  
9 quantity of ~~metalliferous~~ nonferrous metallic minerals shall be limited to a term not  
10 exceeding 10 years from the date on which the exploration mining lease is recorded  
11 in the office of the register of deeds of the county where the property is located, except  
12 that any provision of an exploration mining lease entered into after April 25, 1978,  
13 granting an option or right to determine the quality and quantity of ~~metalliferous~~  
14 nonferrous metallic minerals under a prospecting permit shall be limited to a term  
15 not exceeding 10 years from the date that the lessee applies for a prospecting permit  
16 under s. 293.35, if the lessee applies for the prospecting permit within 10 years from  
17 the date on which the exploration mining lease is recorded in the office of the register  
18 of deeds of the county where the property is located.

19 **SECTION 74.** 107.20 (2) of the statutes is amended to read:

20 107.20 (2) Any provision of an exploration mining lease entered into after April  
21 25, 1978, granting an option or right to develop or extract ~~metalliferous~~ nonferrous  
22 metallic minerals shall be limited to a term not exceeding 50 years from the date on  
23 which the exploration mining lease is recorded in the office of the register of deeds  
24 of the county where the property is located.

25 **SECTION 75.** 107.30 (1) of the statutes is amended to read:

1           107.30 (1) "Concentrates" means the nonferrous mineral-rich, finished,  
2 primary products of a concentrator.

3           **SECTION 76.** 107.30 (18) of the statutes is amended to read:

4           107.30 (18) "Refining" means the process by which ~~metal or valuable a~~  
5 nonferrous metallic mineral is extracted and purified from an ore or concentrate and  
6 includes but is not limited to hydrometallurgical operations such as leaching and  
7 pyrometallurgical operations such as fire refining, roasting and cindering.

8           **SECTION 77.** 107.30 (20) of the statutes is amended to read:

9           107.30 (20) "Smelting" means any metallurgical operation in which nonferrous  
10 metal is separated by fusion from those impurities with which it may be chemically  
11 combined or physically mixed such as in ores.

12           **SECTION 78.** 160.19 (12) of the statutes is amended to read:

13           160.19 (12) The requirements in this section shall not apply to rules governing  
14 an activity regulated under ch. 293 or subch. III of ch. 295, or to a solid waste facility  
15 regulated under subch. III of ch. 289 which is part of an activity regulated under ch.  
16 293 or subch. III of ch. 295, except that the department may promulgate new rules  
17 or amend rules governing this type of activity, practice or facility if the department  
18 determines that the amendment or promulgation of rules is necessary to protect  
19 public health, safety or welfare.

20           **SECTION 79.** 196.491 (4) (b) 2. of the statutes is amended to read:

21           196.491 (4) (b) 2. The person shows to the satisfaction of the commission that  
22 the person reasonably anticipates, at the time that construction of the equipment or  
23 facilities commences, that on each day that the equipment and facilities are in  
24 operation the person will consume no less than 70% of the aggregate kilowatt hours  
25 output from the equipment and facilities in manufacturing processes at the site

1 where the equipment and facilities are located or in ferrous mineral mining and  
2 processing activities governed by subch. III of ch. 295 at the site where the mining  
3 and processing equipment and facilities are located.

4 **SECTION 80.** 281.65 (2) (a) of the statutes is amended to read:

5 281.65 (2) (a) "Best management practices" means practices, techniques or  
6 measures, except for dredging, identified in areawide water quality management  
7 plans, which are determined to be effective means of preventing or reducing  
8 pollutants generated from nonpoint sources, or from the sediments of inland lakes  
9 polluted by nonpoint sources, to a level compatible with water quality objectives  
10 established under this section and which do not have an adverse impact on fish and  
11 wildlife habitat. The practices, techniques or measures include land acquisition,  
12 storm sewer rerouting and the removal of structures necessary to install structural  
13 urban best management practices, facilities for the handling and treatment of  
14 milkhouse wastewater, repair of fences built using grants under this section and  
15 measures to prevent or reduce pollutants generated from mine tailings disposal sites  
16 for which the department has not approved a plan of operation under s. 289.30 or s.  
17 295.51.

18 **SECTION 81.** 281.75 (17) (b) of the statutes is amended to read:

19 281.75 (17) (b) This section does not apply to contamination which is  
20 compensable under subch. II of ch. 107 or s. 293.65 (4) or to contamination arising  
21 out of mining operations governed by subch. III of ch. 295.

22 **SECTION 82.** 287.13 (5) (e) of the statutes is amended to read:

23 287.13 (5) (e) Solid waste produced by a commercial business or industry which  
24 is disposed of or held for disposal in an approved facility, as defined under s. 289.01  
25 (3), or a mining waste site, as defined in s. 295.41 (31), covered by a mining permit

1 under s. 295.58, owned, or leased by the generator and designed and constructed for  
2 the purpose of accepting that type of solid waste.

3 **SECTION 83.** 289.35 of the statutes is amended to read:

4 **289.35 Shoreland and floodplain zoning.** Solid waste facilities are  
5 prohibited within areas under the jurisdiction of shoreland and floodplain zoning  
6 regulations adopted under ss. 59.692, 61.351, 62.231 ~~and~~, 87.30, ~~and~~ 281.31, except  
7 that the department may issue permits authorizing facilities in such areas. If the  
8 department issues a permit under this section, the permit shall specify the location,  
9 height, or size of the solid waste facility authorized under the permit.

10 **SECTION 84.** 289.62 (2) (g) 2. and 6. of the statutes are amended to read:

11 289.62 (2) (g) 2. For nonhazardous tailing solids ~~or for nonacid producing~~  
12 ~~taconite tailing solids~~, 0.2 cent per ton.

13 6. For nonhazardous waste rock ~~or for nonacid producing taconite waste rock~~,  
14 0.1 cent per ton.

15 **SECTION 85.** 292.01 (1m) of the statutes is amended to read:

16 292.01 (1m) "Approved mining facility" has the meaning given in s. 289.01 (4)  
17 and includes a mining waste site as defined in s. 295.41 (31).

18 **SECTION 86.** Chapter 293 (title) of the statutes is amended to read:

19 **CHAPTER 293**

20 **NONFERROUS METALLIC MINING**

21 **SECTION 87.** 293.01 (5) of the statutes is amended to read:

22 293.01 (5) "Mineral exploration" or "exploration", unless the context requires  
23 otherwise, means the on-site geologic examination from the surface of an area by  
24 core, rotary, percussion or other drilling, where the diameter of the hole does not  
25 exceed 18 inches, for the purpose of searching for nonferrous metallic minerals or

1 establishing the nature of a known nonferrous metallic mineral deposit, and includes  
2 associated activities such as clearing and preparing sites or constructing roads for  
3 drilling.

4 **SECTION 88.** 293.01 (7) of the statutes is amended to read:

5 293.01 (7) "Merchantable by-product" means all waste soil, rock, mineral,  
6 liquid, vegetation and other material directly resulting from or displaced by the  
7 mining, cleaning or preparation of nonferrous metallic minerals during mining  
8 operations which are determined by the department to be marketable upon a  
9 showing of marketability made by the operator, accompanied by a verified statement  
10 by the operator of his or her intent to sell such material within 3 years from the time  
11 it results from or is displaced by mining. If after 3 years from the time merchantable  
12 by-product results from or is displaced by mining such material has not been  
13 transported off the mining site, it shall be considered and regulated as refuse unless  
14 removal is continuing at a rate of more than 12,000 cubic yards per year.

15 **SECTION 89.** 293.01 (8) of the statutes is repealed.

16 **SECTION 90.** 293.01 (9) of the statutes is amended to read:

17 293.01 (9) "Mining" or "mining operation" means all or part of the process  
18 involved in the mining of nonferrous metallic minerals, other than for exploration or  
19 prospecting, including commercial extraction, agglomeration, beneficiation,  
20 construction of roads, removal of overburden and the production of refuse.

21 **SECTION 91.** 293.01 (12) of the statutes is amended to read:

22 293.01 (12) "Mining site" means the surface area disturbed by a mining  
23 operation, including the surface area from which the nonferrous metallic minerals  
24 or refuse or both have been removed, the surface area covered by refuse, all lands  
25 disturbed by the construction or improvement of haulageways, and any surface areas

1 in which structures, equipment, materials and any other things used in the mining  
2 operation are situated.

3 **SECTION 92.** 293.01 (12m) of the statutes is created to read:

4 293.01 (12m) "Nonferrous metallic mineral" means an ore or other earthen  
5 material to be excavated from the natural deposits on or in the earth for its metallic  
6 content but not primarily for its iron oxide content.

7 **SECTION 93.** 293.01 (18) of the statutes is amended to read:

8 293.01 (18) "Prospecting" means engaging in the examination of an area for the  
9 purpose of determining the quality and quantity of nonferrous metallic minerals,  
10 other than for exploration but including the obtaining of an ore a nonferrous metallic  
11 mineral sample, by such physical means as excavating, trenching, construction of  
12 shafts, ramps and tunnels and other means, other than for exploration, which the  
13 department, by rule, identifies, and the production of prospecting refuse and other  
14 associated activities. "Prospecting" shall not include such activities when the  
15 activities are, by themselves, intended for and capable of commercial exploitation of  
16 the underlying nonferrous ore body. However, the fact that prospecting activities and  
17 construction may have use ultimately in mining, if approved, shall not mean that  
18 prospecting activities and construction constitute mining within the meaning of sub.  
19 (9), provided such activities and construction are reasonably related to prospecting  
20 requirements.

21 **SECTION 94.** 293.01 (25) of the statutes is amended to read:

22 293.01 (25) "Refuse" means all waste soil, rock, mineral, liquid, vegetation and  
23 other material, except merchantable by-products, directly resulting from or  
24 displaced by the prospecting or mining and from the cleaning or preparation of  
25 nonferrous metallic minerals during prospecting or mining operations, and shall