

Tradewell, Becky

From: Konopacki, Larry
Sent: Tuesday, February 21, 2012 7:04 PM
To: Tradewell, Becky; Henning, Anna
Cc: Hasler, Joe; Stafford, Beau
Subject: LRB s0333/1 - Contested case hearing/prospecting

Hi Becky, as we discussed, the default contested case hearing opportunity under s. 227.42 may apply to a prospecting permit decision by the DNR under LRB s0333/1. I spoke with Beau Stafford in Senator Jauch's office and he asked that the bill be clarified so that no contested case hearing is available on a prospecting permit decision.

Thanks,
Larry

Larry A. Konopacki
Wisconsin Legislative Council
(608) 267-0683
larry.konopacki@legis.wisconsin.gov

2/22/12 Per Anna Henning - ✓ Change p. 12, line 8 so
it reads "the department determines that the application...
is complete, ..."

Ret

3/1/12 11:45 am.
Meeting with Beau from Sen. Jauch's office & Joe from Sen. Schultz's office.

X1. Specify that the WEDC money is for catastrophes that are related to ferrous mining.

X2. Make an exception to the sulfide moratorium for ferrous mining.

X3. Require the mining company to provide information on which to determine that there are not significant amounts of sulfide minerals. Assume that there are significant amounts until company shows otherwise.

X4. In proposed s. 293.495 (1) - start clock running when DNR determines the application is complete.

X5. Exempt ferrous mining waste from the recycling tipping fee.

6. Tax changes that Joe K. is working on with LRB.

X6. Add magnetite to def. of ferrous mineral.

Tradewell, Becky

From: Stafford, Beau
Sent: Thursday, March 01, 2012 7:06 PM
To: Tradewell, Becky; Hinz, Daryl; Moran, Sean; Reinhardt, Rob
Cc: Hasler, Joe; Buhrandt, Jeff; Allbaugh, Todd; Konopacki, Larry; Henning, Anna
Subject: Final Changes to Schultz/Jauch Substitute Amendment

General requests:

- We would like to eventually get this drafted as a senate substitute amendment to the Assembly bill and to the Senate bill.

Section 6

Changes

- We will sub in language provided by Joe Kreye and Sean Moran:
Section 1. 70.375 (2b) of the statutes is created to read:

70.375 (2b) Minimum tax. Beginning with the first month of extraction, for the first 60 months in which a person is extracting ferrous metallic minerals in this state, the amount of the tax imposed on that person is the greater of the tax computed under sub. (2) for the year in which extraction occurs or an amount equal to \$416,667 for each month in which extraction occurs.

Section 2. 70.375 (2c) of the statutes is created to read:

70.375 (2c) Credit. If a person subject to sub. (2b) would have paid less tax under sub. (2) than under sub. (2b), the person may claim as a credit against the tax imposed under sub. (2) or (2b) an amount equal to the difference between the amount paid under sub. (2b) and the amount that the person would have paid under sub. (2), except that the person may not claim a credit amount that would result in less than the total minimum tax liability computed under sub. (2b) for the first 60 months in which a person is extracting ferrous metallic minerals in this state.

- Need to add in a provision to the language above that would apply to mines in operation after December 31, 2011.
- Allow the company to use construction payments as a credit toward net proceeds liability as soon as the first month of extraction.

Section 13

Changes:

- Need to clarify that the cat fund is used for mining related catastrophes.

Section 16

Changes:

- Need to also include an exclusion from the sulfide moratorium for ferrous mining.
- Include a provision to have the mining company prove to the DNR that there are not significant amounts of sulfide in order for them to be exempt from the EIS and contested case exemption as well as the 10,000 ton prospecting definition. Note – the company would only have to prove the lack of sulfides if they wanted to conduct

- prospecting without an EIS or a contested case hearing.
- Need to include magnetite in the ferrous mineral definition.

Section 21

Changes:

- We may need to revise this section in accordance to the determination of sulfides in the question directly above.

Section 25

Changes:

- Similar to comments in section 21, we may need to make a revision to this depending on when the DNR determines the amount of sulfides.

Section 28

Changes

- Section 28 (1), page 12, line 8 we want to change the word “filed” to “complete.” This should allow the DNR to get more information before the clock officially starts.

NEW SECTION - Exemption from Recycling Fee for ferrous mining companies – left to Rebecca and LFB’s best judgment.

Beau Stafford

Office of Senator Bob Jauch
25th Senate District
608-266-3510
Beau.stafford@legis.wi.gov



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBs0333/2

Now, if possible

RCT/JK/MPG/MGG:jld&kjf:jm

stays VNR

SENATE SUBSTITUTE AMENDMENT,
TO 2011 ASSEMBLY BILL 426

see aff'd ✓

please regenerate
↓

1 AN ACT *to amend* 20.566 (7) (title), 70.375 (2) (a), 70.395 (1e), 70.395 (2) (dc) 1.,
2 70.395 (2) (dc) 2., 70.395 (2) (dc) 3., 293.01 (18), 293.32 (2), 293.35 (5), 293.43
3 (3) (b) (intro.), 293.49 (1) (a) (intro.) and 293.49 (2) (intro.); and *to create* 20.192
4 (1) (b), 20.566 (7) (w), 25.17 (1) (jd), 70.375 (2) (am), 70.395 (2) (gm), 227.43 (1)
5 (bd), 238.14, 281.34 (5) (am), 293.01 (2m), 293.01 (4e), 293.01 (4m), 293.13 (1)
6 (c), 293.35 (4), 293.43 (5) (bm), 293.43 (6) and 293.495 of the statutes; **relating**
7 **to:** the process for issuance of prospecting and mining permits for certain iron
8 mining, standards for activities related to iron mining, fees related to iron
9 mining, the net proceeds occupation tax on iron mining, and making
10 appropriations.

Analysis by the Legislative Reference Bureau

Processing of application for iron mining permit

Under current law, a person who proposes to mine for metallic minerals must obtain a mining permit from the Department of Natural Resources (DNR), as well

as any other permit, license, certification, or other authorization (approval) that is required under other environmental and natural resources laws. The law requires DNR to prepare an environmental impact statement (EIS) for every proposed metallic mine and to hold an informational meeting on a preliminary version of the EIS. After the EIS is finalized, DNR must hold a public hearing, including a contested case hearing, before acting on the application for the mining permit and other environmental and natural resources approvals. 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.

based on information provided by the applicant, This substitute amendment establishes additional deadlines for DNR to act on the application for a mining permit if the proposed mine is an iron mine and DNR determines that it is not likely that any of the areas disturbed by the mining will contain significant amounts of sulfide minerals (nonsulfide iron mine). Under the substitute amendment, DNR must generally hold the informational meeting on the preliminary EIS for a proposed nonsulfide iron mine within 270 days after the application for the permit is *complete* filed and must generally issue or deny the mining permit application within 270 days after that informational meeting concludes. The applicant may propose any number of extensions to the deadlines and any extensions proposed by the applicant automatically take effect. DNR may not propose more than three extensions for any one permit application. If DNR and the applicant do not agree to an extension proposed by DNR, including the length of the extension, DNR may request a hearing examiner appointed by the administrator of the Division of Hearing and Appeals in the Department of Administration (the division) to resolve the disagreement. The hearing examiner determines whether there is good cause for an extension and, if so, specifies the length of the extension. The deadlines may also be extended by DNR if the U.S. Army Corps of Engineers notifies DNR that an extension is necessary to allow DNR and the U.S. Army Corps of Engineers to jointly prepare the EISs for the proposed nonsulfide iron mine.

The substitute amendment requires the administrator of the division to appoint a hearing examiner to conduct the informational meeting and the public hearing on the application for a mining permit for proposed nonsulfide iron mining and to appoint the same hearing examiner to resolve any disagreements over extensions of deadlines for DNR actions. The bill requires the hearing examiner to conduct a conference with the parties before the hearing on the permit application, to determine which issues will be considered at the hearing, and to establish a schedule that will allow DNR to act on the mining permit application by the deadline specified under the substitute amendment.

Other changes to the laws regulating iron mining

Current law requires a person who proposes to conduct metallic mining to pay fees to DNR that equal the costs that DNR incurs in connection with the proposed mining.

Analysis
in S&A
A

Under this substitute amendment, the fees that must be paid to DNR by a person who proposes to conduct nonsulfide iron mining may not exceed \$2,000,000, except that, as under current law, the person is also required to pay the full costs of the preparation of the EIS for the proposed mining.

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 current law, DNR determines whether it must prepare an EIS for a prospecting permit in the same way that it determines whether it must prepare an EIS for other actions for which an EIS is not specifically required.

The substitute amendment specifies that DNR is not required to prepare an EIS for a prospecting permit for nonsulfide iron ore. The substitute amendment also provides that DNR is not required to hold a hearing on a prospecting permit for nonsulfide iron ore.

Under the substitute amendment, if an iron mining operation is located in an area ceded by the Chippewa to the United States, any wetland mitigation that is authorized or required by DNR must occur within the ceded territory.

Current law requires a person who proposes to construct a high capacity well to obtain approval from DNR. Under the law, if DNR determines that a high capacity well may impair the water supply of a public water utility, DNR may not approve the proposed high capacity well unless it includes conditions that will ensure that the water supply of the public utility will not be impaired.

The substitute amendment provides that, if DNR determines that a high capacity well proposed in connection with iron mining may impair a privately owned high capacity well, DNR may not approve the proposed high capacity well unless it includes conditions that will ensure that the privately owned high capacity well will not be impaired.

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.

Under the substitute amendment, for the first five years in which taxes are imposed, the annual amount of the tax imposed on a person engaged in mining ferrous metallic minerals in this state is, generally, the greater of \$5,000,000 or the amount of the net proceeds occupation tax computed for that person. If the amount of the net proceeds occupation tax computed for that person is less than \$5,000,000, the person may claim the difference between the net proceeds occupation tax amount and \$5,000,000 as a credit against the tax imposed in subsequent years as long as the person's tax liability is not less than \$5,000,000.

Under current law, in addition to paying the net proceeds occupation tax, a person who intends to apply for a mining permit must make an additional three payments of \$50,000 each to the investment and local impact fund. Under the substitute amendment, a person who intends to apply for a mining permit must also make an additional three payments of \$75,000 each to the investment and local impact fund.

Current
3- JK

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.

Under the substitute amendment, 70 percent of the 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, 10 percent of the revenue is deposited into a mining transportation fund, and 20 percent of the revenue is used for a regional Wisconsin diversification program that the substitute amendment requires the Wisconsin Economic Development Corporation (WEDC) to establish. Under the substitute amendment, the local impact fund board disburses moneys from the mining transportation fund for highway, rail, or shipping infrastructure relating to mining for ferrous metallic minerals. The substitute amendment authorizes WEDC to use the moneys it receives for the regional Wisconsin diversification program for the purpose of making business diversification grants or loans in coordination with appropriate units of local government to businesses that are located in close proximity to, but no more than 100 miles from, the site of a mine for ferrous metallic minerals. The substitute amendment also authorizes WEDC to use those moneys for the purpose of catastrophe abatement or response, as determined by WEDC.

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

1

SECTION 1. 20.192 (1) (b) of the statutes is created to read:

2

20.192 (1) (b) *Regional Wisconsin diversification program.* All moneys received

3 under s. 70.395 (1e) for grants, loans, and disbursements under s. 238.14.

4 SECTION 2. 20.566 (7) (title) of the statutes is amended to read:

5 20.566 (7) (title) INVESTMENT AND LOCAL IMPACT FUND; MINING TRANSPORTATION
6 FUND.

7 SECTION 3. 20.566 (7) (w) of the statutes is created to read:

8 20.566 (7) (w) *Mining transportation fund.* From the mining transportation
9 fund, all moneys received under s. 70.395 (1e) to be disbursed under s. 70.395 (2)
10 (gm).

11 SECTION 4. 25.17 (1) (jd) of the statutes is created to read:

From the economic development funds

Insert
5-1

25.17 (1) (jd) Mining transportation fund (s. 70.395 (2) (gm));

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

sub. (2b) and (2c)

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

SECTION 6. 70.375 (2) (am) of the statutes is created to read:

70.375 (2) (am) Beginning with the first year of extraction, for the first 5 years in which a person is engaged in mining ferrous metallic minerals in this state, the annual amount of the tax imposed on that person under this section is the greater of \$5,000,000 or the tax computed under this section, except that in the first year of extraction the tax is the greater of \$5,000,000, prorated beginning with the month in which extraction begins, and the tax computed under this section. If the person would have paid less than \$5,000,000 in annual taxes under this section, notwithstanding this paragraph, the person may claim as a credit against the taxes imposed under this section in subsequent years an amount equal to the difference between \$5,000,000 and the amount computed under this section, except that the person may not claim a credit amount that would result in an annual tax liability under this section that is less than \$5,000,000.

Insert
5-23

SECTION 7. 70.395 (1e) of the statutes is amended to read:

Economic development - funds

1 70.395 (1e) DISTRIBUTION. Fifteen days after the collection of the tax under ss.
 2 70.38 to 70.39, the department of administration, upon certification of the
 3 department of revenue, shall transfer the amount collected in respect to mines not
 4 in operation on November 28, 1981, to the investment and local impact fund, except
 5 that the department of administration shall transfer 70 percent of the amount
 6 collected from each person extracting ferrous metallic minerals to the investment
 7 and local impact fund, 20 percent to the appropriation under s. 20.192 (1) (b) for the
 8 regional Wisconsin diversification program, and 10 percent to the mining
 9 transportation fund.

under s. 238.14

9

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

11 70.395 (2) (dc) 1. Each person intending to submit an application for a mining
 12 permit shall pay ~~\$50,000~~ \$75,000 to the department of revenue for deposit in the
 13 investment and local impact fund at the time that the person notifies the department
 14 of natural resources under s. 293.31 (1) of that intent.

15 **SECTION 9.** 70.395 (2) (dc) 2. of the statutes is amended to read:

16 70.395 (2) (dc) 2. A person making a payment under subd. 1. shall pay an
 17 additional ~~\$50,000~~ \$75,000 upon notification by the board that the board has
 18 distributed 50% of the payment under subd. 1.

19 **SECTION 10.** 70.395 (2) (dc) 3. of the statutes is amended to read:

20 70.395 (2) (dc) 3. A person making a payment under subd. 2. shall pay an
 21 additional ~~\$50,000~~ \$75,000 upon notification by the board that the board has
 22 distributed all of the payment under subd. 1. and 50% of the payment under subd.

23 2.

24 **SECTION 11.** 70.395 (2) (gm) of the statutes is created to read:

Insert 6-23

1 70.395 (2) (gm) There is created a mining transportation fund under the
2 jurisdiction and management of the investment and local impact board, as created
3 under s. 15.435. The board may disburse moneys from the mining transportation
4 fund, as it determines is necessary, for highway, rail, or shipping infrastructure
5 related to mining ferrous metallic minerals in this state.

6 **SECTION 12.** 227.43 (1) (bd) of the statutes is created to read:

7 227.43 (1) (bd) Assign a hearing examiner to preside over the informational
8 meeting under s. 293.43 (3) (b) and over the hearing under s. 293.43 (1m) for an
9 application for a permit to mine for ferrous minerals and assign the same hearing
10 examiner to any request under s. 293.495 (3) (c) 1. for the same mining permit
11 application.

12 **SECTION 13.** 238.14 of the statutes is created to read:

13 **238.14 Regional Wisconsin diversification program.** The corporation
14 may use moneys received under s. 20.192 (1) ^{eg} (b) only as follows:

15 (1) The corporation may make a grant or loan of those moneys to a business that
16 is located within 100 miles from the site of a mine for ferrous metallic minerals in
17 this state, and the corporation shall give preference for that grant or loan to a
18 business that is located in close proximity to the site of the mine. In making a grant
19 or loan under this subsection, the corporation shall coordinate with an appropriate
20 unit of local government, as defined in s. 238.133 (1) (b), to make that grant or loan
21 on a competitive basis for the purpose of business diversification.

22 (2) The corporation may disburse those moneys for the purpose of catastrophe
23 abatement or response, ^{related to a mine for ferrous metallic minerals} as determined by the corporation.

24 **SECTION 14.** 281.34 (5) (am) of the statutes is created to read:

1 281.34 (5) (am) *Iron mining*. If the department determines that a high capacity
2 well proposed in connection with iron mining may impair a privately owned high
3 capacity well, the department may not approve the proposed high capacity well
4 unless it is able to include and includes in the approval conditions, which may include
5 conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, that
6 will ensure that the privately owned high capacity well will not be impaired.

Insert
8-6 →

7 **SECTION 15.** 293.01 (2m) of the statutes is created to read:

8 293.01 (2m) "Ceded territory" means the territory in Wisconsin ceded by the
9 Chippewa Indians to the United States in the treaty of 1837, 7 Stat. 536, and the
10 treaty of 1842, 7 Stat. 591.

11 **SECTION 16.** 293.01 (4e) of the statutes is created to read:

12 293.01 (4e) "Ferrous mineral" means an ore or earthen material in natural
13 deposits in or on the earth that primarily exists in the form of an iron oxide, including
14 taconite and hematite, magnetite,

15 **SECTION 17.** 293.01 (4m) of the statutes is created to read:

16 293.01 (4m) "Ferrous mining" means the mining of ferrous minerals at a
17 mining site where the department determines ^{Inset 8-17} that it is not likely that any of the
18 disturbed areas will contain significant amounts of sulfide minerals.

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

20 293.01 (18) "Prospecting" means engaging in the examination of an area for the
21 purpose of determining the quality and quantity of minerals, other than for
22 exploration but including the obtaining of an ore sample, by such physical means as
23 excavating, trenching, construction of shafts, ramps and tunnels and other means,
24 other than for exploration, which the department, by rule, identifies, and the
25 production of prospecting refuse and other associated activities. "Prospecting" shall

1 not include such activities when the activities are, by themselves, intended for and
2 capable of commercial exploitation of the underlying ore body. However, the fact that
3 prospecting activities and construction may have use ultimately in mining, if
4 approved, shall not mean that prospecting activities and construction constitute
5 mining within the meaning of sub. (9), provided such activities and construction are
6 reasonably related to prospecting requirements. When conducted in contemplation
7 of ferrous mining, "prospecting" does not include any activities that result in the
8 removal of 10,000 or more tons of material.

9 **SECTION 19.** 293.13 (1) (c) of the statutes is created to read:

10 293.13 (1) (c) Require that, if an iron mining operation is located in whole or
11 in part within the ceded territory, any wetland mitigation that is authorized or
12 required by the department as a result of, or as part of, the mining operation occurs
13 within the ceded territory.

14 **SECTION 20.** 293.32 (2) of the statutes is amended to read:

15 293.32 (2) The department shall annually compare the fees paid under this
16 section and under chs. 30, 280 to 292 and 295 to 299 in connection with proposed
17 prospecting or mining for which notice has been given under s. 293.31 (1) with the
18 costs incurred by the department in connection with that proposed prospecting or
19 mining, including the costs incurred under chs. 30, 280 to 292 and 295 to 299 but
20 excluding costs related to the environmental impact statement. If the costs incurred
21 exceed the fees paid, the person who notified the department shall pay a fee equal
22 to the amount by which the costs exceed the fees previously paid, except that the total
23 amount that a person who proposes to conduct ferrous mining may be required to pay
24 under this subsection and sub. (1) may not exceed \$2,000,000.

25 **SECTION 21.** 293.35 (4) of the statutes is created to read:

1 293.35 (4) The department is not required to prepare a statement under s. 1.11
2 or an environmental analysis for consideration of an application for a permit to
3 prospect in contemplation of ferrous mining.

4 **SECTION 22.** 293.35 (5) of the statutes is amended to read:

5 293.35 (5) If the department determines that a statement under s. 1.11 is
6 required for consideration of an application for a prospecting permit to which sub.
7 (4) does not apply, the statement need not consider impacts unrelated to the proposed
8 prospecting activity, other than the issue of unsuitability for surface mining, absent
9 a certification under sub. (1).

10 **SECTION 23.** 293.43 (3) (b) (intro.) of the statutes is amended to read:

11 293.43 (3) (b) (intro.) If it is determined that a statement under s. 1.11 is
12 required, or if an environmental impact statement is required under s. 293.39, the
13 department shall hold at least one informational meeting regarding the preliminary
14 environmental report within 60 days of its issuance and, for an application for a
15 mining permit for ferrous mining, no later than the deadline under s. 293.495 (1).
16 The hearing examiner assigned under s. 227.43 (1) (bd) shall preside over the
17 informational meeting regarding the preliminary environmental impact report for
18 proposed ferrous mining. The meeting shall be held not sooner than 30 days nor later
19 than 60 days after the issuance of the report. The scheduling and providing of notice
20 of the meeting shall be completed not later than 10 days following the issuance of the
21 preliminary environmental report. A hearing referred to under sub. (1m) shall be
22 scheduled for a date not less than 120 days nor more than 180 days after the issuance
23 of the environmental impact statement. The scheduling and providing of notice of
24 the hearing shall be completed within 30 days from the date of issuance of the
25 environmental impact statement. The providing of notice shall be accomplished by:

1 **SECTION 24.** 293.43 (5) (bm) of the statutes is created to read:

2 293.43 (5) (bm) The hearing examiner shall hold a prehearing conference on
3 an application for a mining permit for ferrous mining. At the prehearing conference
4 under this paragraph, the parties shall outline the issues that they wish to raise in
5 the contested case portion of the hearing and shall present summaries of the
6 testimony that they wish to present. The hearing examiner shall identify the issues
7 that will be considered in the contested case portion of the hearing for an application
8 for a mining permit for ferrous mining, shall notify the parties of those issues, and
9 shall exclude evidence that is not relevant to those issues. The hearing examiner
10 shall also establish a schedule for the case that will enable the department to meet
11 the deadline under s. 293.495 (2).

12 **SECTION 25.** 293.43 (6) of the statutes is created to read:

13 293.43 (6) EXCEPTION FOR CERTAIN PROSPECTING. The department is not required
14 to conduct a hearing under this section on a permit for prospecting in contemplation
15 of ferrous mining. *Insert 11-15*

16 **SECTION 26.** 293.49 (1) (a) (intro.) of the statutes is amended to read:

17 293.49 (1) (a) (intro.) Except as provided in sub. (2) and s. 293.50 and except
18 with respect to property specified in s. 41.41 (11), within 90 days of the completion
19 of the public hearing record or, for an application for a mining permit for ferrous
20 mining, no later than the deadline under s. 293.495 (2), the department shall issue
21 the mining permit if it finds:

22 **SECTION 27.** 293.49 (2) (intro.) of the statutes is amended to read:

23 293.49 (2) (intro.) Within 90 days of the completion of the public hearing record
24 or, for an application for a mining permit for ferrous mining, no later than the

1 deadline under s. 293.495 (2), the department shall deny the mining permit if it finds
2 any of the following:

3 SECTION 28. 293.495 of the statutes is created to read:

4 **293.495 Deadlines for processing ferrous mining permit applications.**

5 (1) DEADLINE FOR INFORMATIONAL MEETING. The deadline for the department to hold
6 the informational meeting under s. 293.43 (3) (b) on the preliminary environmental
7 report for a mining permit for ferrous mining is the 270th day after the day on which

8 *Insert 12-8* the application under s. 293.37 for the mining permit is *complete* ~~filed~~ except as extended
9 under sub. (3) or (4).

10 (2) DEADLINE FOR ACTING ON MINING PERMIT APPLICATION. The deadline for the
11 department to act under s. 293.49 (1) (a) (intro.) and (2) (intro.) on the application for
12 a mining permit for ferrous mining is the 270th day after the day on which the
13 informational meeting under s. 293.43 (3) (b) is concluded, except as extended under
14 sub. (3) or (4).

15 (3) REQUESTS FOR EXTENSIONS. (a) The department may propose not more than
16 3 extensions under this section for any one application for a mining permit. An
17 applicant may propose any number of extensions under this section for any one
18 application for a mining permit.

19 (am) If an applicant proposes an extension under par. (a) to a deadline under
20 sub. (1) or (2), the deadline is extended as proposed by the applicant.

21 (b) If the department and an applicant agree to an extension to a deadline
22 under sub. (1) or (2) proposed by the department under par. (a), including the length
23 of the extension, the deadline is extended as provided in the agreement.

24 (c) 1. If the department and an applicant do not agree to an extension proposed
25 by the department under par. (a), the department may request the administrator of

1 the division of hearings and appeals in the department of administration to appoint
2 a hearing examiner to resolve the disagreement.

3 2. A hearing examiner appointed under subd. 1. shall determine whether there
4 is good cause for an extension and, if so, shall grant an extension and specify the
5 length of the extension.

6 (4) EXTENSION FOR JOINT PREPARATION OF ENVIRONMENTAL IMPACT STATEMENT. If
7 the U.S. Army Corps of Engineers notifies the department that an extension of the
8 deadline under sub. (1) or (2) or both deadlines is necessary to enable the department
9 and the U.S. Army Corps of Engineers to jointly prepare their environmental impact
10 statements for the proposed ferrous mining, the department shall extend the
11 deadline or deadlines by the amount that the U.S. Army Corps of Engineers
12 determines is necessary. The department shall notify the applicant of any extension
13 under this subsection.

(END)

Insert
13-13 → 14

Insert 3 - JK

MS 91
Under the substitute amendment, for the first 60 months in which a person is extracting ferrous metallic minerals in this state, the annual amount of the tax imposed on that person is the greater of the amount of the net proceeds occupation tax computed for that person or an amount equal to \$416,667 for each month in which extraction occurs. If the amount of the net proceeds occupation tax computed for that person is less than the minimum amount required under the substitute amendment, the person may claim the difference between the net proceeds occupation tax amount and the minimum amount paid as a credit against the tax imposed in subsequent years as long as the person's tax liability is not less than the minimum amount, less any credit the person claims for construction fees, as allowed under current law.

Insert 5 - 23

1 SECTION 1. 70.375 (2b) of the statutes is created to read:

2 70.375 (2b) MINIMUM TAX. With respect to mines in operation after December
3 31, 2011, beginning with the first month of extraction, for the first 60 months in
4 which a person is extracting ferrous metallic minerals in this state, the amount of
5 the tax imposed on that person is the greater of the tax computed under sub. (2) for
6 the year in which extraction occurs or an amount equal to \$416,667 for each month
7 in which extraction occurs.

8 SECTION 2. 70.375 (2c) of the statutes is created to read:

9 70.375 (2c) CREDIT. With respect to mines in operation after December 31, 2011,
10 if a person subject to sub. (2b) would have paid less tax under sub. (2) than under sub.
11 (2b), the person may claim as a credit against the tax imposed under sub. (2) or (2b)
12 an amount equal to the difference between the amount paid under sub. (2b) and the
13 amount that the person would have paid under sub. (2), except that the person may
14 not claim a credit amount that would result in less than the total minimum tax
15 liability computed under sub. (2b), less any credit amount claimed under s. 70.395
16 (2) (dg), for the first 60 months in which a person is extracting ferrous metallic
17 minerals in this state. The person may carry forward the amount of any unused

1 credit under this subsection[✓] to claim against the person's tax liability in subsequent
2 years until the total amount of the credit is used.

Insert 6 - 23

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

4 70.395 (2) (dg) Each person constructing a metalliferous mining site shall pay
5 to the department of revenue for deposit in the investment and local impact fund, as
6 a construction fee, an amount sufficient to make the construction period payments
7 under par. (d) 5. in respect to that site. Any person paying a construction fee under
8 this paragraph may credit against taxes due under s. 70.375 an amount equal to the
9 payments that the taxpayer has made under this paragraph, provided that the credit
10 does not reduce the taxpayer's liability under s. 70.375 below the amount needed to
11 make the first-dollar payments under par. (d) 1., 2. and 2m. for that year in respect
12 to the taxpayer's mine. The taxpayer may use the credit to reduce the taxpayer's
13 liability under s. 70.375 below the minimum amount required under s. 70.375 (2b).
14 Any amount not creditable because of that limitation in any year may be carried
15 forward.

History: 1977 c. 31, 185, 423; 1979 c. 34 s. 2102 (46) (c); 1979 c. 63; 1979 c. 175 s. 53; 1981 c. 86 ss. 27 to 36, 71; 1981 c. 374 s. 150; 1983 a. 27 ss. 1184u to 1185r, 2202 (38) and (45); 1983 a. 410 ss. 22, 2202 (38); 1985 a. 29 ss. 1214s to 1214z, 3200 (46) (a); 1985 a. 332 s. 253; 1987 a. 399; 1989 a. 31; 1991 a. 39, 259; 1995 a. 27, 227; 1997 a. 27; 1999 a. 32.

1 **Insert 9-13** ✓

2 **SECTION 3.** 293.31 (7) of the statutes is created to read:

3 293.31 (7) (a) If a person who intends to mine for ferrous minerals wishes to
4 have the department determine that it is not likely that any of the areas that would
5 be disturbed by proposed mining contain significant amounts of sulfide minerals, the
6 person shall provide the department with information on which to make that
7 determination.

8 (b) The department may only determine that it is not likely that any of the areas
9 disturbed by proposed mining for ferrous minerals contain significant amounts of
10 sulfide minerals if the person who intends to mine provides sufficient information
11 under par. (a) to make that determination.

12 **Insert 11-15**

13 ~~No~~ ~~It~~ Notwithstanding s. 227.42, no person is entitled to a contested case hearing on
14 a decision by the department on a permit for prospecting in contemplation of ferrous
15 mining.

16 **Insert 12-8**

17 the department determines that

18 **Insert 13-13**

19 **SECTION 4.** 293.50 (4) of the statutes is created to read:

20 293.50 (4) Subsection (2) does not apply to an application for a mining permit
21 for ferrous mining.



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBs0333/2

RCT/JK/MPG/MGG:jld&kjf:jf

stay

Today

stays

SENATE SUBSTITUTE AMENDMENT,
TO 2011 ASSEMBLY BILL 426

see pp. 14, 3189
10

Regen

1 AN ACT *to amend* 20.566 (7) (title), 70.375 (2) (a), 70.395 (1e), 70.395 (2) (dc) 1.,
2 70.395 (2) (dc) 2., 70.395 (2) (dc) 3., 70.395 (2) (dg), 289.645 (3), 293.01 (18),
3 293.32 (2), 293.35 (5), 293.43 (3) (b) (intro.), 293.49 (1) (a) (intro.) and 293.49 (2)
4 (intro.); and *to create* 20.192 (1) (q), 20.566 (7) (w), 25.17 (1) (jd), 25.49 (2m),
5 70.375 (2b), 70.375 (2c), 70.395 (2) (gm), 227.43 (1) (bd), 238.14, 281.34 (5) (am),
6 293.01 (2m), 293.01 (4e), 293.01 (4m), 293.13 (1) (c), 293.31 (7), 293.35 (4),
7 293.43 (5) (bm), 293.43 (6), 293.495 and 293.50 (4) of the statutes; **relating to:**
8 the process for issuance of prospecting and mining permits for certain iron
9 mining, standards for activities related to iron mining, fees related to iron

1 mining, the net proceeds occupation tax on iron mining, and making
2 appropriations.

Analysis by the Legislative Reference Bureau

Processing of application for iron mining permit

Under current law, a person who proposes to mine for metallic minerals must obtain a mining permit from the Department of Natural Resources (DNR), as well as any other permit, license, certification, or other authorization (approval) that is required under other environmental and natural resources laws. The law requires DNR to prepare an environmental impact statement (EIS) for every proposed metallic mine and to hold an informational meeting on a preliminary version of the EIS. After the EIS is finalized, DNR must hold a public hearing, including a contested case hearing, before acting on the application for the mining permit and other environmental and natural resources approvals. 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.

This substitute amendment establishes additional deadlines for DNR to act on the application for a mining permit if the proposed mine is an iron mine and DNR determines, based on information provided by the applicant, that it is not likely that any of the areas disturbed by the mining will contain significant amounts of sulfide minerals (nonsulfide iron mine). Under the substitute amendment, DNR must generally hold the informational meeting on the preliminary EIS for a proposed nonsulfide iron mine within 270 days after the application for the permit is complete and must generally issue or deny the mining permit application within 270 days after that informational meeting concludes. The applicant may propose any number of extensions to the deadlines and any extensions proposed by the applicant automatically take effect. DNR may not propose more than three extensions for any one permit application. If DNR and the applicant do not agree to an extension proposed by DNR, including the length of the extension, DNR may request a hearing examiner appointed by the administrator of the Division of Hearing and Appeals in the Department of Administration (the division) to resolve the disagreement. The hearing examiner determines whether there is good cause for an extension and, if so, specifies the length of the extension. The deadlines may also be extended by DNR if the U.S. Army Corps of Engineers notifies DNR that an extension is necessary to allow DNR and the U.S. Army Corps of Engineers to jointly prepare the EISs for the proposed nonsulfide iron mine.

The substitute amendment requires the administrator of the division to appoint a hearing examiner to conduct the informational meeting and the public hearing on the application for a mining permit for proposed nonsulfide iron mining and to appoint the same hearing examiner to resolve any disagreements over

X extensions of deadlines for DNR actions. The bill ^{substitute amendment} requires the hearing examiner to conduct a conference with the parties before the hearing on the permit application, to determine which issues will be considered at the hearing, and to establish a schedule that will allow DNR to act on the mining permit application by the deadline specified under the substitute amendment.

Other changes to the laws regulating iron mining

Current law requires a person who proposes to conduct metallic mining to pay fees to DNR that equal the costs that DNR incurs in connection with the proposed mining.

Under this substitute amendment, the fees that must be paid to DNR by a person who proposes to conduct nonsulfide iron mining may not exceed \$2,000,000, except that, as under current law, the person is also required to pay the full costs of the preparation of the EIS for the proposed mining.

Current law imposes on generators of solid waste several fees based on the tonnage of solid waste disposed of at solid waste disposal facilities. This kind of fee is often referred to as a tipping fee. The recycling tipping fee is \$7 per ton. Under current law there are some exemptions from the recycling tipping fee and the other tipping fees.

The substitute amendment exempts iron mining waste from the recycling tipping fee.

Current law (often called the mining moratorium law) prohibits DNR from issuing a mining permit for the mining of a sulfide ore body until DNR makes two determinations, based on information provided by the applicant. A sulfide ore body is a mineral deposit in which metals are mixed with sulfide minerals. The determinations are that a mining operation in the United States or Canada has operated in a sulfide ore body with an acid generating capacity for at least ten years without polluting groundwater or surface water from acid drainage or the release of heavy metals and that such a mining operation has been closed for at least ten years without polluting groundwater or surface water from acid drainage or the release of heavy metals.

* This bill ^{The substitute amendment} exempts a proposal for a nonsulfide iron mine from the mining moratorium law.

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 current law, DNR determines whether it must prepare an EIS for a prospecting permit in the same way that it determines whether it must prepare an EIS for other actions for which an EIS is not specifically required.

The substitute amendment specifies that DNR is not required to prepare an EIS for a prospecting permit for nonsulfide iron ore. The substitute amendment also provides that DNR is not required to hold a hearing on a prospecting permit for nonsulfide iron ore.

Under the substitute amendment, if an iron mining operation is located in an area ceded by the Chippewa to the United States, any wetland mitigation that is authorized or required by DNR must occur within the ceded territory.

Current law requires a person who proposes to construct a high capacity well to obtain approval from DNR. Under the law, if DNR determines that a high capacity well may impair the water supply of a public water utility, DNR may not approve the proposed high capacity well unless it includes conditions that will ensure that the water supply of the public utility will not be impaired.

X The substitute amendment provides that, if DNR determines that a high capacity well proposed in connection with iron mining may impair a privately owned high capacity well, DNR may not approve the proposed high capacity well unless it includes conditions that will ensure that the privately owned high capacity well will not be impaired.

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. Under the substitute amendment, for the first 60 months in which a person is extracting ferrous metallic minerals in this state, the annual amount of the tax imposed on that person is the greater of the amount of the net proceeds occupation tax computed for that person or an amount equal to \$416,667 for each month in which extraction occurs. If the amount of the net proceeds occupation tax computed for that person is less than the minimum amount required under the substitute amendment, the person may claim the difference between the net proceeds occupation tax amount and the minimum amount paid as a credit against the tax imposed in subsequent years as long as the person's tax liability is not less than the minimum amount, less any credit the person claims for construction fees, as allowed under current law.

Under current law, in addition to paying the net proceeds occupation tax, a person who intends to apply for a mining permit must make an additional three payments of \$50,000 each to the investment and local impact fund. Under the substitute amendment, a person who intends to apply for a mining permit must also make an additional three payments of \$75,000 each to the investment and local impact fund.

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.

Under the substitute amendment, 70 percent of the 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, 10 percent of the revenue is deposited into a mining transportation fund, and 20 percent of the revenue is used for a regional Wisconsin diversification program that the substitute amendment requires the Wisconsin Economic Development Corporation (WEDC) to establish. Under the substitute amendment, the local impact fund board disburses moneys from the mining transportation fund for highway, rail, or shipping infrastructure relating to mining for ferrous metallic minerals. The substitute amendment authorizes WEDC to use the moneys it receives for the regional Wisconsin

diversification program for the purpose of making business diversification grants or loans in coordination with appropriate units of local government to businesses that are located in close proximity to, but no more than 100 miles from, the site of a mine for ferrous metallic minerals. The substitute amendment also authorizes WEDC to use those moneys for the purpose of catastrophe abatement or response, as determined by WEDC.

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

1 **SECTION 1.** 20.192 (1) (q) of the statutes is created to read:

2 20.192 (1) (q) *Regional Wisconsin diversification program.* From the economic
3 development fund, all moneys received under s. 70.395 (1e) for grants, loans, and
4 disbursements under s. 238.14.

5 **SECTION 2.** 20.566 (7) (title) of the statutes is amended to read:

6 20.566 (7) (title) INVESTMENT AND LOCAL IMPACT FUND; MINING TRANSPORTATION
7 FUND.

8 **SECTION 3.** 20.566 (7) (w) of the statutes is created to read:

9 20.566 (7) (w) *Mining transportation fund.* From the mining transportation
10 fund, all moneys received under s. 70.395 (1e) to be disbursed under s. 70.395 (2)
11 (gm).

12 **SECTION 4.** 25.17 (1) (jd) of the statutes is created to read:

13 25.17 (1) (jd) Mining transportation fund (s. 70.395 (2) (gm));

14 **SECTION 5.** 25.49 (2m) of the statutes is created to read:

15 25.49 (2m) The moneys transferred under s. 70.395 (1e) to the appropriation
16 account under s. 20.192 (1) (q).

17 **SECTION 6.** 70.375 (2) (a) of the statutes is amended to read:

18 70.375 (2) (a) In Except as provided in subs. (2b) and (2c), with respect to mines
19 not in operation on November 28, 1981, there is imposed upon persons engaged in

1 mining metalliferous minerals in this state a net proceeds occupation tax effective
2 on the date on which extraction begins to compensate the state and municipalities
3 for the loss of valuable, irreplaceable metalliferous minerals. The amount of the tax
4 shall be determined by applying the rates established under sub. (5) to the net
5 proceeds of each mine. The net proceeds of each mine for each year are the difference
6 between the gross proceeds and the deductions allowed under sub. (4) for the year.

7 **SECTION 7.** 70.375 (2b) of the statutes is created to read:

8 70.375 (2b) MINIMUM TAX. With respect to mines in operation after December
9 31, 2011, beginning with the first month of extraction, for the first 60 months in
10 which a person is extracting ferrous metallic minerals in this state, the amount of
11 the tax imposed on that person is the greater of the tax computed under sub. (2) for
12 the year in which extraction occurs or an amount equal to \$416,667 for each month
13 in which extraction occurs.

14 **SECTION 8.** 70.375 (2c) of the statutes is created to read:

15 70.375 (2c) CREDIT. With respect to mines in operation after December 31,
16 2011, if a person subject to sub. (2b) would have paid less tax under sub. (2) than
17 under sub. (2b), the person may claim as a credit against the tax imposed under sub.
18 (2) or (2b) an amount equal to the difference between the amount paid under sub. (2b)
19 and the amount that the person would have paid under sub. (2), except that the
20 person may not claim a credit amount that would result in less than the total
21 minimum tax liability computed under sub. (2b), less any credit amount claimed
22 under s. 70.395 (2) (dg), for the first 60 months in which a person is extracting ferrous
23 metallic minerals in this state. The person may carry forward the amount of any
24 unused credit under this subsection to claim against the person's tax liability in
25 subsequent years until the total amount of the credit is used.

1 **SECTION 9.** 70.395 (1e) of the statutes is amended to read:

2 70.395 (1e) DISTRIBUTION. Fifteen days after the collection of the tax under ss.
3 70.38 to 70.39, the department of administration, upon certification of the
4 department of revenue, shall transfer the amount collected in respect to mines not
5 in operation on November 28, 1981, to the investment and local impact fund, except
6 that the department of administration shall transfer 70 percent of the amount
7 collected from each person extracting ferrous metallic minerals to the investment
8 and local impact fund, 20 percent to the appropriation under s. 20.192 (1) (q) for the
9 regional Wisconsin diversification program under s. 238.14, and 10 percent to the
10 mining transportation fund.

11 **SECTION 10.** 70.395 (2) (dc) 1. of the statutes is amended to read:

12 70.395 (2) (dc) 1. Each person intending to submit an application for a mining
13 permit shall pay ~~\$50,000~~ \$75,000 to the department of revenue for deposit in the
14 investment and local impact fund at the time that the person notifies the department
15 of natural resources under s. 293.31 (1) of that intent.

16 **SECTION 11.** 70.395 (2) (dc) 2. of the statutes is amended to read:

17 70.395 (2) (dc) 2. A person making a payment under subd. 1. shall pay an
18 additional ~~\$50,000~~ \$75,000 upon notification by the board that the board has
19 distributed 50% of the payment under subd. 1.

20 **SECTION 12.** 70.395 (2) (dc) 3. of the statutes is amended to read:

21 70.395 (2) (dc) 3. A person making a payment under subd. 2. shall pay an
22 additional ~~\$50,000~~ \$75,000 upon notification by the board that the board has
23 distributed all of the payment under subd. 1. and 50% of the payment under subd.
24 2.

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

1 70.395 (2) (dg) Each person constructing a metalliferous mining site shall pay
2 to the department of revenue for deposit in the investment and local impact fund, as
3 a construction fee, an amount sufficient to make the construction period payments
4 under par. (d) 5. in respect to that site. Any person paying a construction fee under
5 this paragraph may credit against taxes due under s. 70.375 an amount equal to the
6 payments that the taxpayer has made under this paragraph, provided that the credit
7 does not reduce the taxpayer's liability under s. 70.375 below the amount needed to
8 make the first-dollar payments under par. (d) 1., 2. and 2m. for that year in respect
9 to the taxpayer's mine. The taxpayer may use the credit to reduce the taxpayer's
10 liability under s. 70.375 below the minimum amount required under s. 70.375 (2b).
11 Any amount not creditable because of that limitation in any year may be carried
12 forward.

13 **SECTION 14.** 70.395 (2) (gm) of the statutes is created to read:

14 70.395 (2) (gm) There is created a mining transportation fund under the
15 jurisdiction and management of the investment and local impact board, as created
16 under s. 15.435. The board may disburse moneys from the mining transportation
17 fund, as it determines is necessary, for highway, rail, or shipping infrastructure
18 related to mining ferrous metallic minerals in this state.

19 **SECTION 15.** 227.43 (1) (bd) of the statutes is created to read:

20 227.43 (1) (bd) Assign a hearing examiner to preside over the informational
21 meeting under s. 293.43 (3) (b) and over the hearing under s. 293.43 (1m) for an
22 application for a permit to mine for ferrous minerals and assign the same hearing
23 examiner to any request under s. 293.495 (3) (c) 1. for the same mining permit
24 application.

25 **SECTION 16.** 238.14 of the statutes is created to read:

1 **238.14 Regional Wisconsin diversification program.** The corporation
2 may use moneys received under s. 20.192 (1) (q) only as follows:

3 (1) The corporation may make a grant or loan of those moneys to a business that
4 is located within 100 miles from the site of a mine for ferrous metallic minerals in
5 this state, and the corporation shall give preference for that grant or loan to a
6 business that is located in close proximity to the site of the mine. In making a grant
7 or loan under this subsection, the corporation shall coordinate with an appropriate
8 unit of local government, as defined in s. 238.133 (1) (b), to make that grant or loan
9 on a competitive basis for the purpose of business diversification.

10 (2) The corporation may disburse those moneys for the purpose of catastrophe
11 abatement or response related to a mine for ferrous metallic minerals, as determined
12 by the corporation.

13 **SECTION 17.** 281.34 (5) (am) of the statutes is created to read:

14 281.34 (5) (am) *Iron mining.* If the department determines that a high capacity
15 well proposed in connection with iron mining may impair a privately owned high
16 capacity well, the department may not approve the proposed high capacity well
17 unless it is able to include and includes in the approval conditions, which may include
18 conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, that
19 will ensure that the privately owned high capacity well will not be impaired.

20 **SECTION 18.** 289.645 (3) of the statutes is amended to read:

21 289.645 (3) **AMOUNT OF RECYCLING FEE.** The fee imposed under this section is
22 \$7 per ton for all solid waste other than high-volume industrial waste and mining
23 waste from mining for ferrous minerals, as defined in s. 293.01 (4e).

24 **SECTION 19.** 293.01 (2m) of the statutes is created to read:

1 293.01 (2m) "Ceded territory" means the territory in Wisconsin ceded by the
2 Chippewa Indians to the United States in the treaty of 1837, 7 Stat. 536, and the
3 treaty of 1842, 7 Stat. 591.

4 **SECTION 20.** 293.01 (4e) of the statutes is created to read:

5 293.01 (4e) "Ferrous mineral" means an ore or earthen material in natural
6 deposits in or on the earth that primarily exists in the form of an iron oxide, including
7 taconite, magnetite, and hematite.

8 **SECTION 21.** 293.01 (4m) of the statutes is created to read:

9 293.01 (4m) "Ferrous mining" means the mining of ferrous minerals at a
10 mining site where the department determines, based on information provided under
11 s. 293.31 (7) (a) by a person proposing to mine for ferrous minerals, that it is not likely
12 that any of the disturbed areas will contain significant amounts of sulfide minerals.

13 **SECTION 22.** 293.01 (18) of the statutes is amended to read:

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

1 of ferrous mining, "prospecting" does not include any activities that result in the
2 removal of 10,000 or more tons of material.

3 **SECTION 23.** 293.13 (1) (c) of the statutes is created to read:

4 293.13 (1) (c) Require that, if an iron mining operation is located in whole or
5 in part within the ceded territory, any wetland mitigation that is authorized or
6 required by the department as a result of, or as part of, the mining operation occurs
7 within the ceded territory.

8 **SECTION 24.** 293.31 (7) of the statutes is created to read:

9 293.31 (7) (a) If a person who intends to mine for ferrous minerals wishes to
10 have the department determine that it is not likely that any of the areas that would
11 be disturbed by proposed mining contain significant amounts of sulfide minerals, the
12 person shall provide the department with information on which to make that
13 determination.

14 (b) The department may only determine that it is not likely that any of the areas
15 disturbed by proposed mining for ferrous minerals contain significant amounts of
16 sulfide minerals if the person who intends to mine provides sufficient information
17 under par. (a) to make that determination.

18 **SECTION 25.** 293.32 (2) of the statutes is amended to read:

19 293.32 (2) The department shall annually compare the fees paid under this
20 section and under chs. 30, 280 to 292 and 295 to 299 in connection with proposed
21 prospecting or mining for which notice has been given under s. 293.31 (1) with the
22 costs incurred by the department in connection with that proposed prospecting or
23 mining, including the costs incurred under chs. 30, 280 to 292 and 295 to 299 but
24 excluding costs related to the environmental impact statement. If the costs incurred
25 exceed the fees paid, the person who notified the department shall pay a fee equal

1 to the amount by which the costs exceed the fees previously paid, except that the total
2 amount that a person who proposes to conduct ferrous mining may be required to pay
3 under this subsection and sub. (1) may not exceed \$2,000,000.

4 **SECTION 26.** 293.35 (4) of the statutes is created to read:

5 293.35 (4) The department is not required to prepare a statement under s. 1.11
6 or an environmental analysis for consideration of an application for a permit to
7 prospect in contemplation of ferrous mining.

8 **SECTION 27.** 293.35 (5) of the statutes is amended to read:

9 293.35 (5) If the department determines that a statement under s. 1.11 is
10 required for consideration of an application for a prospecting permit to which sub.
11 (4) does not apply, the statement need not consider impacts unrelated to the proposed
12 prospecting activity, other than the issue of unsuitability for surface mining, absent
13 a certification under sub. (1).

14 **SECTION 28.** 293.43 (3) (b) (intro.) of the statutes is amended to read:

15 293.43 (3) (b) (intro.) If it is determined that a statement under s. 1.11 is
16 required, or if an environmental impact statement is required under s. 293.39, the
17 department shall hold at least one informational meeting regarding the preliminary
18 environmental report within 60 days of its issuance and, for an application for a
19 mining permit for ferrous mining, no later than the deadline under s. 293.495 (1).
20 The hearing examiner assigned under s. 227.43 (1) (bd) shall preside over the
21 informational meeting regarding the preliminary environmental impact report for
22 proposed ferrous mining. The meeting shall be held not sooner than 30 days nor later
23 than 60 days after the issuance of the report. The scheduling and providing of notice
24 of the meeting shall be completed not later than 10 days following the issuance of the
25 preliminary environmental report. A hearing referred to under sub. (1m) shall be

1 scheduled for a date not less than 120 days nor more than 180 days after the issuance
2 of the environmental impact statement. The scheduling and providing of notice of
3 the hearing shall be completed within 30 days from the date of issuance of the
4 environmental impact statement. The providing of notice shall be accomplished by:

5 **SECTION 29.** 293.43 (5) (bm) of the statutes is created to read:

6 293.43 (5) (bm) The hearing examiner shall hold a prehearing conference on
7 an application for a mining permit for ferrous mining. At the prehearing conference
8 under this paragraph, the parties shall outline the issues that they wish to raise in
9 the contested case portion of the hearing and shall present summaries of the
10 testimony that they wish to present. The hearing examiner shall identify the issues
11 that will be considered in the contested case portion of the hearing for an application
12 for a mining permit for ferrous mining, shall notify the parties of those issues, and
13 shall exclude evidence that is not relevant to those issues. The hearing examiner
14 shall also establish a schedule for the case that will enable the department to meet
15 the deadline under s. 293.495 (2).

16 **SECTION 30.** 293.43 (6) of the statutes is created to read:

17 293.43 (6) EXCEPTION FOR CERTAIN PROSPECTING. The department is not required
18 to conduct a hearing under this section on a permit for prospecting in contemplation
19 of ferrous mining. Notwithstanding s. 227.42, no person is entitled to a contested
20 case hearing on a decision by the department on a permit for prospecting in
21 contemplation of ferrous mining.

22 **SECTION 31.** 293.49 (1) (a) (intro.) of the statutes is amended to read:

23 293.49 (1) (a) (intro.) Except as provided in sub. (2) and s. 293.50 and except
24 with respect to property specified in s. 41.41 (11), within 90 days of the completion
25 of the public hearing record or, for an application for a mining permit for ferrous

1 mining, no later than the deadline under s. 293.495 (2), the department shall issue
2 the mining permit if it finds:

3 **SECTION 32.** 293.49 (2) (intro.) of the statutes is amended to read:

4 293.49 (2) (intro.) Within 90 days of the completion of the public hearing record
5 or, for an application for a mining permit for ferrous mining, no later than the
6 deadline under s. 293.495 (2), the department shall deny the mining permit if it finds
7 any of the following:

8 **SECTION 33.** 293.495 of the statutes is created to read:

9 **293.495 Deadlines for processing ferrous mining permit applications.**

10 (1) **DEADLINE FOR INFORMATIONAL MEETING.** The deadline for the department to hold
11 the informational meeting under s. 293.43 (3) (b) on the preliminary environmental
12 report for a mining permit for ferrous mining is the 270th day after the day on which
13 the department determines that the application under s. 293.37 for the mining
14 permit is complete, except as extended under sub. (3) or (4).

15 (2) **DEADLINE FOR ACTING ON MINING PERMIT APPLICATION.** The deadline for the
16 department to act under s. 293.49 (1) (a) (intro.) and (2) (intro.) on the application for
17 a mining permit for ferrous mining is the 270th day after the day on which the
18 informational meeting under s. 293.43 (3) (b) is concluded, except as extended under
19 sub. (3) or (4).

20 (3) **REQUESTS FOR EXTENSIONS.** (a) The department may propose not more than
21 3 extensions under this section for any one application for a mining permit. An
22 applicant may propose any number of extensions under this section for any one
23 application for a mining permit.

24 (am) If an applicant proposes an extension under par. (a) to a deadline under
25 sub. (1) or (2), the deadline is extended as proposed by the applicant.

1 (b) If the department and an applicant agree to an extension to a deadline
2 under sub. (1) or (2) proposed by the department under par. (a), including the length
3 of the extension, the deadline is extended as provided in the agreement.

4 (c) 1. If the department and an applicant do not agree to an extension proposed
5 by the department under par. (a), the department may request the administrator of
6 the division of hearings and appeals in the department of administration to appoint
7 a hearing examiner to resolve the disagreement.

8 2. A hearing examiner appointed under subd. 1. shall determine whether there
9 is good cause for an extension and, if so, shall grant an extension and specify the
10 length of the extension.

11 (4) EXTENSION FOR JOINT PREPARATION OF ENVIRONMENTAL IMPACT STATEMENT. If
12 the U.S. Army Corps of Engineers notifies the department that an extension of the
13 deadline under sub. (1) or (2) or both deadlines is necessary to enable the department
14 and the U.S. Army Corps of Engineers to jointly prepare their environmental impact
15 statements for the proposed ferrous mining, the department shall extend the
16 deadline or deadlines by the amount that the U.S. Army Corps of Engineers
17 determines is necessary. The department shall notify the applicant of any extension
18 under this subsection.

19 **SECTION 34.** 293.50 (4) of the statutes is created to read:

20 293.50 (4) Subsection (2) does not apply to an application for a mining permit
21 for ferrous mining.

22 (END)