2013 DRAFTING REQUEST

Bill

Received:	**2/1/2013**	Received By:	**btradewe**
Wanted:	**As time permits**	Same as LRB:	**-0821**
For:	**Fred Clark (608) 266-7746**	By/Representing:	**Andy Gill**
May Contact:		Drafter:	**btradewe**
Subject:	**Environment - mining** **Tax, Business - miscellaneous**	Addl. Drafters:	**jkreye**
		Extra Copies:	

Submit via email: **YES**
Requester's email: **Rep.Clark@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Regulation of metallic mining and taxation of iron mining

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1	btradewe 2/1/2013	csicilia 2/1/2013	jfrantze 2/1/2013	_____ _____	sbasford 2/1/2013	srose 2/4/2013	State S&L

FE Sent For:

at intro

<END>

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FE Sent For:
~~1/31/2013 12:00:00 AM~~

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/1	btradewe	/1 cjs 2/1					State S&L

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~~1/31/2013 12:00:00 AM~~

<END>

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB-0821/2
RCT&JK:cjs:ph

2013 SENATE BILL 3

January 31, 2013 – Introduced by Senators T. CULLEN, SCHULTZ, JAUCH, C. LARSON, HANSEN, LASSA, TAYLOR and WIRCH, cosponsored by Representatives CLARK, BARCA, JORGENSEN, KAHL, KOLSTE, SINICKI and ZEPNICK. Referred to Committee on Workforce Development, Forestry, Mining, and Revenue.

AN ACT ~~*to repeal*~~ 293.43 (3) (a) and 293.43 (5); ***to amend*** 70.375 (2) (a), 70.375 (5) (intro.), 70.395 (1e), 70.395 (2) (dc) 1., 70.395 (2) (dc) 2., 70.395 (2) (dc) 3., 70.395 (2) (g) (intro.), 227.42 (4), 281.93 (3), 283.63 (3), 285.81 (3), 289.05 (2), 289.27 (3), 289.29 (5), 293.31 (1), 293.35 (5), 293.43 (title), 293.43 (1m), 293.43 (2), 293.43 (3) (c), 293.43 (4), 293.45 (1) and (2), 293.49 (1) (a) (intro.), 293.49 (1) (a) 3., 293.49 (2) (intro.) and 293.51 (3); ***to repeal and recreate*** 293.43 (1) and 293.43 (3) (b) (intro.); and ***to create*** 20.192 (1) (g), 70.375 (7), 70.395 (2) (L), 238.14, 289.645 (4) (g), 293.313, 293.37 (2) (gm), 293.42, 293.43 (2m), 293.44, 293.45 (2m), 293.49 (4g), 293.51 (2m) and 293.64 of the statutes; **relating to:** regulation of metallic mining, an occupation tax on iron mining, and making an appropriation.

Analysis by the Legislative Reference Bureau

REGULATION OF METALLIC MINING

Processing application for 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 that is required under other environmental and natural resources laws (approval).

Current law requires DNR to prepare an environmental impact statement (EIS) for every proposed metallic mine. After the EIS is finalized, DNR must hold a public hearing (called the master hearing), that includes a public informational hearing and a contested case hearing with sworn testimony and the opportunity for cross–examination, before acting on the application for the mining permit and other approvals. Current law does not specify a time, after the application for a mining permit is filed, within which DNR must act on a mining permit application. It does require the master hearing to be held between 120 days and 180 days after DNR issues the EIS and requires DNR to act on the permit application within 90 days after the completion of the record for the master hearing.

Under this bill, DNR must hold a public informational hearing after the EIS for a proposed metallic mine is finalized. After the public informational hearing, the bill requires DNR to hold a contested case hearing covering the application for the mining permit and other approvals if any person notifies DNR that the person wishes to be a party within 30 days after DNR provides notice about the contested case hearing. The bill requires DNR to give the notice no more than 520 days after the application for the mining permit is complete, unless the deadline is extended as provided in the bill. The bill authorizes DNR to extend the deadline for a total of not more than 180 days if the applicant changes its proposal for the mine or if additional time is needed to ensure collaboration with a federal agency with responsibilities related to the proposed mine or to evaluate new information related to the mine. The bill authorizes the applicant to extend the deadline as often and for as long as it decides is necessary. The bill also authorizes DNR and the applicant to negotiate an agreement for a timeline for processing the mining permit application that includes a different deadline for DNR to provide notice of the contested case hearing.

The bill requires that the contested case hearing on a proposed metallic mine be concluded and the record of the hearing be completed no more than 680 days after the application for the mining permit is complete, except that if the deadline for providing notice concerning the contested case hearing is extended, the deadline for concluding the hearing and completing the record of the hearing is extended by the same number of days. The bill requires DNR to act on the application for the mining permit and other approvals no more than 730 days after the application for the mining permit is complete, except that if the deadline for providing notice concerning the contested case hearing is extended, the deadline for acting on the applications is extended by the same number of days.

Processing application for prospecting permit

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, an EIS is not mandatory for proposed prospecting. DNR determines whether it must prepare an EIS for prospecting in the same way that it determines whether it must prepare an EIS for other actions for which an EIS is not mandatory. Under current law, the rest of the procedure for processing an

application for a prospecting permit is similar to that for processing the application for a mining permit.

This bill provides an expedited procedure for processing a prospecting permit if the application for the permit shows that less than 10,000 tons of material is proposed to be excavated. Under the expedited process:

1. An EIS is not required.

2. DNR must hold a public informational hearing.

3. DNR must act on the application for the prospecting permit and, generally, for other approvals covered in the informational hearing no later than 60 days after the application for the prospecting permit is complete.

4. No contested case hearing is available on the application for the permit or for other approvals covered in the informational hearing.

For an application for a prospecting permit to which the expedited process does not apply, the bill makes changes to the permitting process that are the similar to those made for processing the application for a mining permit, including the deadlines for DNR action.

Notice of intent

Under current law, a person who intends to apply for a permit for mining or prospecting for metallic ore must notify DNR before collecting data intended to be used to support the application.

This bill requires a person who intends to apply for a permit for mining for metallic ore, but not for prospecting, to provide notice of that intent at least 12 months before filing the application.

Collaboration

This bill requires DNR to do all of the following in relation to proposed metallic mining:

1. Provide assistance to a person who notifies DNR of the person's intent to apply for a mining or prospecting permit during the processes related to obtaining a permit.

2. Work and consult with American Indian tribes and bands during the processes related to proposed mining in which the tribes and bands have an interest.

3. Work with and provide assistance to other regulatory agencies, including local and federal agencies, during the processes relating to proposed mining in which the agencies have an interest.

4. Seek to enter into a memorandum of understanding with any federal agency with responsibilities related to a potential mining operation covering timelines and other issues of mutual concern.

5. Seek to be the lead agency in matters related to processing an application for a mining permit that are undertaken in coordination with a federal agency.

Irrevocable trust

Currently, DNR's rules on metallic mining require a person to whom a mining permit is issued to establish an irrevocable trust to ensure adequate funds to undertake preventive measures to avoid adverse environmental consequences and to take measures in response to a spill of hazardous substances or the failure of a mining waste facility to contain the waste. DNR determines the level of funding

required based on the likelihood of the need for preventive or response measures and the range of costs of the measures.

Under this bill, the level of funding for the irrevocable trust for a metallic mine is equal to the sum of the following:

1. Twenty percent of the amount of the bond or other security required under current law to ensure the availability of funds for reclamation of the mining site.

2. Twenty percent of the amount of the bond or other security required under current law as proof of financial responsibility for closure and long–term care of the mining waste facility.

Recycling tipping fee

Current law imposes several fees, often referred to as tipping fees, on generators of solid waste that are based on the tonnage of solid waste disposed of at solid waste disposal facilities. 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 bill exempts metallic prospecting and mining waste from the recycling tipping fee.

Groundwater

Under current law, among other conditions, to approve the application for a permit for metallic mining DNR must find that the proposed mine will comply with groundwater laws and rules. Under the groundwater laws, DNR and the Department of Health Services establish groundwater quality standards for substances that contaminate groundwater. Also under current law, for certain facilities, such as waste disposal facilities, the groundwater law requires DNR to establish a three–dimensional design management zone (DMZ) within the property boundaries. DNR's current rules require the applicant for a mining permit to submit information based on predictive modeling to demonstrate whether there is a reasonable certainty that a mining waste facility will result in the violation of a groundwater standard beyond the DMZ. There is no time frame specified for this modeling.

This bill requires an applicant for a mining permit to submit information based on predictive modeling to demonstrate whether there is a reasonable certainty that a mining waste facility will result in the violation of a groundwater standard beyond the DMZ within 250 years after the facility is planned to be closed.

Currently, for metallic mining waste sites, in addition to the DMZ, DNR's rules provide for a mandatory intervention boundary that is generally 150 feet from the outer waste boundary. 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.

This bill provides that DNR and an applicant for a mining permit may agree to use a mandatory intervention boundary that is a longer distance, up to 600 feet, from the outer waste boundary.

The bill also requires DNR to study whether, in connection with metallic mining, groundwater standards should apply in an aquifer containing saline (salty) water and to report its conclusions to the legislature.

Mining waste characterization

Current law requires DNR to promulgate rules for the identification and regulation of metallic mining wastes. This bill requires DNR to adopt, in those rules, standards of the American Society for Testing and Materials for testing and other methodologies related to the evaluation of mining waste.

OCCUPATION TAX ON MINING

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. The tax rates are annually adjusted to reflect the change in gross national product. Gross national product, generally, measures the output generated by U.S. enterprises, regardless of whether those enterprises are located in this country.

Under this bill, instead of paying a net proceeds occupation tax based on net income, a person who is mining ferrous minerals in this state would pay a tax equal to $2.412 for each 2,240 pounds of ferrous minerals extracted from mines in this state, based on a three–year average. The tax rate would be annually adjusted to reflect the change in the gross domestic product.

Under current law, a person who intends to apply for a mining permit must make three payments of $50,000 each to the investment and local impact fund. Under the bill, a person who intends to apply for a mining permit must instead make three payments of $100,000 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 board). The revenue is then, generally, distributed to the counties and municipalities in which metallic minerals are being mined. The bill allows the board to provide grants to units of local government to prepare economic impact studies related to sites at or near the units of local government on which exploration or prospecting is being conducted for the potential mining of ferrous minerals.

Under the bill, 70 percent of the revenue collected from the tax on extracting ferrous metallic minerals in this state, as created in the bill, is deposited into the investment and local impact fund and 30 percent of the revenue is used for a regional Wisconsin diversification program that the bill requires the Wisconsin Economic Development Corporation (WEDC) to establish. The bill 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 bill also authorizes WEDC to use those moneys for the purpose of catastrophe abatement or response, as determined by WEDC.

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

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

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

20.192 **(1)** (g) *Regional Wisconsin diversification program.* All moneys received under s. 70.395 (1e) for grants, loans, and disbursements under s. 238.14.

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

70.375 **(2)** (a) ~~In~~ Except as provided in sub. (7), 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 3. 70.375 (5) (intro.) of the statutes is amended to read:

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

SECTION 4. 70.375 (7) of the statutes is created to read:

70.375 **(7)** PER TON RATE. (a) Notwithstanding subs. (2) and (5), for mines in operation after December 31, 2012, the tax assessed, levied, and collected from a person engaged in mining ferrous minerals in this state is an amount equal to $2.412 for each 2,240 pounds of ferrous minerals extracted by the person from mines in this

state, based on the average annual amount extracted during the current year and the previous 2 years, not including any year in which the person is not extracting ferrous minerals from mines in this state.

(b) Beginning in 2014, and in each year thereafter, the department shall change the dollar amount rate under par. (a) to reflect the percentage change in the gross domestic product implicit price deflator from the 4th quarter of the 2nd preceding year to the 4th quarter of the preceding year, as determined by the federal department of commerce.

SECTION 5. 70.395 (1e) of the statutes is amended to read:

70.395 **(1e)** DISTRIBUTION. Fifteen days after the collection of the tax under ss. 70.38 to 70.39, the department of administration, upon certification of the department of revenue, shall transfer the amount collected in respect to mines not in operation on November 28, 1981, to the investment and local impact fund, except that the department of administration shall transfer 70 percent of the amount collected from each person under s. 70.375 (7) to the investment and local impact fund and 30 percent of the amount collected from each person under s. 70.375 (7) to the appropriation under s. 20.192 (1) (g) for the regional Wisconsin diversification program under s. 238.14.

SECTION 6. 70.395 (2) (dc) 1. of the statutes is amended to read:

70.395 **(2)** (dc) 1. Each person intending to submit an application for a mining permit shall pay ~~$50,000~~ $100,000 to the department of revenue for deposit in the investment and local impact fund at the time that the person notifies the department of natural resources under s. 293.31 (1) of that intent.

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

70.395 **(2)** (dc) 2. A person making a payment under subd. 1. shall pay an additional ~~$50,000~~ $100,000 upon notification by the board that the board has distributed 50% of the payment under subd. 1.

SECTION 8. 70.395 (2) (dc) 3. of the statutes is amended to read:

70.395 **(2)** (dc) 3. A person making a payment under subd. 2. shall pay an additional ~~$50,000~~ $100,000 upon notification by the board that the board has distributed all of the payment under subd. 1. and 50% of the payment under subd. 2.

SECTION 9. 70.395 (2) (g) (intro.) of the statutes is amended to read:

70.395 **(2)** (g) (intro.) The board may distribute the revenues received by the investment and local impact fund under sub. (1e) or proceeds thereof in accordance with par. (h) for the following purposes, as the board determines necessary:

SECTION 10. 70.395 (2) (L) of the statutes is created to read:

70.395 **(2)** (L) Notwithstanding any other provision under this subsection, the board may provide grants to local governmental units, as defined in s. 238.133 (1) (b), to prepare economic impact studies related to sites at or near the local governmental units on which exploration or prospecting is being conducted for the potential mining of ferrous minerals or that are the subject of a preapplication process for a permit to mine ferrous minerals.

SECTION 11. 227.42 (4) of the statutes is amended to read:

227.42 **(4)** This section does not apply if a hearing on the matter was conducted as a part of a hearing under s. ~~293.43~~ 293.44.

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

238.14 Regional Wisconsin diversification program. The corporation may use moneys appropriated under s. 20.192 (1) (g) only as follows:

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

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

SECTION 13. 281.93 (3) of the statutes is amended to read:

281.93 **(3)** MINING HEARING. Subsections (1) and (2) do not apply if a hearing on the matter is conducted as a part of a hearing under s. ~~293.43~~ 293.44.

SECTION 14. 283.63 (3) of the statutes is amended to read:

283.63 **(3)** Subsections (1) and (2) do not apply if a hearing on the permit application is conducted as a part of a hearing under s. ~~293.43~~ 293.44.

SECTION 15. 285.81 (3) of the statutes is amended to read:

285.81 **(3)** MINING HEARING. Subsections (1) and (2) do not apply if a hearing on the matter is conducted as a part of a hearing under s. ~~293.43~~ 293.44.

SECTION 16. 289.05 (2) of the statutes is amended to read:

289.05 **(2)** With the advice and comment of the metallic mining council, the department shall promulgate rules for the identification and regulation of metallic mining wastes. The rules promulgated to identify metallic mining wastes and to regulate the location, design, construction, operation and maintenance of facilities for the disposal of metallic mining wastes shall be in accordance with any or all of

the provisions under this chapter and chs. 30 and 283. The rules shall take into consideration the special requirements of metallic mining operations in the location, design, construction, operation and maintenance of facilities for the disposal of metallic mining wastes as well as any special environmental concerns that will arise as a result of the disposal of metallic mining wastes. In promulgating the rules, the department shall give consideration to research, studies, data and recommendations of the U.S. environmental protection agency on the subject of metallic mining wastes arising from the agency's efforts to implement the resource conservation and recovery act. In the rules, the department shall adopt the standards of the American Society for Testing and Materials for testing and other methodologies related to the evaluation of mining waste. After the department promulgates rules adopting those standards, the department may modify or replace the rules to reflect new technologies or industry practices.

SECTION 17. 289.27 (3) of the statutes is amended to read:

289.27 **(3)** NONAPPLICABILITY. Notwithstanding sub. (2), this section does not apply if a hearing on the feasibility report is conducted as a part of a hearing under s. ~~293.43~~ 293.44 and the time limits, notice and hearing provisions under that section supersede the time limits, notice and hearing provisions under s. 289.25 (2) and (3) and this section.

SECTION 18. 289.29 (5) of the statutes is amended to read:

289.29 **(5)** ISSUANCE OF FINAL DETERMINATION OF FEASIBILITY IN CERTAIN SITUATIONS INVOLVING UTILITIES AND MINING. If a determination of feasibility is identified in the listing specified in s. 196.491 (3) (a) 3. a., the issuance of a final determination of feasibility is subject to the time limit under s. 196.491 (3) (a) 3. b. If a determination of feasibility is ~~required~~ covered by a hearing under s. 293.43, the

issuance of a final determination of feasibility is subject to the time limits under s. 293.45 ~~(2)~~ or 293.49, whichever is applicable.

SECTION 19. 289.645 (4) (g) of the statutes is created to read:

289.645 **(4)** (g) The recycling fee does not apply to prospecting or mining waste.

SECTION 20. 293.31 (1) of the statutes is amended to read:

293.31 **(1)** Any person intending to submit an application for a prospecting or mining permit shall notify the department prior to the collection of data or information intended to be used to support the permit application. A person intending to submit an application for a mining permit shall provide notice under this subsection at least 12 months before filing that application. Specific environmental data which would be pertinent to a specific prospecting or mining application, but which was obtained or collected or generated prior to the notice of intent to apply for a prospecting or mining permit, shall be submitted in writing to the department together with any substantiating background information which would assist the department in establishing the validity of the data. The department shall review the data and, if it concludes that the benefits of permitting the admission of the data outweigh the policy reasons for excluding it, and if the data is otherwise admissible, inform the person giving the notice of intent to prospect or mine that the data will be accepted by the department. Such exclusion shall not relate to general environmental information such as soil characteristics, hydrologic conditions and air and water data contained in publications, maps, documents, studies, reports and similar sources, whether public or private, not prepared by or for the applicant. Such exclusion shall likewise not relate to data which is otherwise admissible that is collected prior to notification under this subsection for purposes

of evaluating another site or sites and which is not collected with intent to evade the provisions of this section.

SECTION 21. 293.313 of the statutes is created to read:

293.313 Collaboration. The department shall do all of the following:

(1) Provide assistance to a person who provides notice under s. 293.31 during the processes under this subchapter.

(2) Work with and consult with federally recognized American Indian tribes or bands in this state during the processes under this subchapter concerning proposed mining in which the tribes and bands have an interest.

(3) Work with and provide assistance to other regulatory agencies, including local, state, and federal agencies, during the processes under this subchapter related to proposed mining in which the agencies have an interest.

(4) After the department receives a notice under s. 293.31, seek to enter into a memorandum of understanding with any federal regulatory agency with responsibilities related to the potential mining operation covering timelines, sampling metrology, and any other issue of mutual concern related to processing an application for a mining permit.

(5) Seek to take the lead in processes related to processing an application for a mining permit that are undertaken in coordination with federal regulatory agencies.

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

293.35 **(5)** If the department determines that a statement under s. 1.11 is required for consideration of an application for a prospecting permit to which s. 293.42 does not apply, the statement need not consider impacts unrelated to the

proposed prospecting activity, other than the issue of unsuitability for surface mining, absent a certification under sub. (1).

SECTION 23. 293.37 (2) (gm) of the statutes is created to read:

293.37 **(2)** (gm) A proposed irrevocable trust agreement to provide funds for activities to avoid or remedy any adverse environmental consequences from the mining operation.

SECTION 24. 293.42 of the statutes is created to read:

293.42 Process for certain prospecting permit applications. If the application for a prospecting permit shows that less 10,000 tons of material is proposed to be excavated, all of the following apply:

(1) The department is not required to prepare a statement under s. 1.11 or an environmental analysis for consideration of the application.

(2) The department shall hold a public informational hearing on the application in the county where the prospecting site, or the largest portion of the prospecting site, is located.

(3) The hearing under sub. (2), shall cover, to the fullest extent possible, all other applications for approvals, licenses, and permits issued by the department that are needed to conduct the prospecting. The department shall inform the applicant as to the timely application date for all approvals, licenses, and permits issued by the department, so as to facilitate their consideration at the hearing.

(4) The department shall approve the application for the prospecting permit, and issue the prospecting permit, or deny the application, under s. 293.45, no later than 60 days after the department determines that the application is complete.

(5) For each approval, license, or permit, other than the prospecting permit, covered by the hearing under sub. (2), except for an approval, license, or permit for

which federal law requires the opportunity for public comment or the ability to request a public hearing prior to issuance, the department shall approve the application and issue the approval, license, or permit or deny the application no later than 60 days after the department determines that the application for the prospecting permit is complete, notwithstanding any procedural provisions that would otherwise apply.

(6) Notwithstanding s. 227.42, no person is entitled to a contested case hearing on a decision by the department on the prospecting permit or on another approval, license, or permit that is covered by the public informational hearing under sub. (2).

SECTION 25. 293.43 (title) of the statutes is amended to read:

293.43 (title) ~~**Hearings**~~ **Public informational hearings on permit applications.**

SECTION 26. 293.43 (1) of the statutes is repealed and recreated to read:

293.43 **(1)** APPLICABILITY. This section applies to all applications for mining permits and to those applications for prospecting permits to which s. 293.42 does not apply.

SECTION 27. 293.43 (1m) of the statutes is amended to read:

293.43 **(1m)** SCOPE. (a) ~~The hearing on the~~ Before approving or denying the application for a prospecting or mining permit ~~shall cover~~, the department shall hold a public informational hearing covering the application ~~and~~, any ~~statements~~ environmental impact statement prepared under s. 1.11 and, to the fullest extent possible, all other applications for approvals, licenses and permits issued by the department. The department shall inform the applicant as to the timely application date for all approvals, licenses and permits issued by the department, so as to

facilitate the consideration of all other matters at the hearing on the prospecting or mining ~~permits~~ permit.

(b) Except as provided in this paragraph, for all department issued approvals, licenses and permits relating to prospecting or mining including solid waste feasibility report approvals and permits related to air and water~~, to be issued after April 30, 1980~~, the notice, hearing and comment provisions, if any, and the time for issuance of decisions, shall be controlled by this section and ss. 293.44, 293.45, and 293.49. If an applicant fails to make application for an approval, license or permit for an activity incidental to prospecting or mining in time for notice under this section to be provided, the notice and comment requirements, if any, shall be controlled by the specific statutory provisions with respect to that application. If notice under those specific statutory notice requirements can be given for consideration of the approval, license or permit at the hearing under this section, the application shall be considered at that hearing; otherwise, the specific statutory hearing provisions, if any, with respect to that application shall control. The substantive requirements for the issuance of any approval, permit or license incidental to prospecting or mining are not affected by the fact that a hearing on the approval, permit or license is conducted as part of a hearing under this section.

SECTION 28. 293.43 (2) of the statutes is amended to read:

293.43 **(2)** LOCATION. The hearing under sub. (1m) shall be held in the county where the prospecting or mining site, or the largest portion of the prospecting or mining site, is located, but may subsequently be adjourned to other locations.

SECTION 29. 293.43 (2m) of the statutes is created to read:

293.43 **(2m)** MEETING ON PRELIMINARY ENVIRONMENTAL IMPACT STATEMENT. Before issuing a final environmental impact statement for a mining permit or for a

prospecting permit, if the department determines that an environmental impact statement is required under s. 1.11 for the prospecting permit, the department shall hold at least one informational meeting regarding its preliminary environmental impact statement.

SECTION 30. 293.43 (3) (a) of the statutes is repealed.

SECTION 31. 293.43 (3) (b) (intro.) of the statutes is repealed and recreated to read:

293.43 **(3)** (b) (intro.) The department shall hold the hearing under sub. (1m) after it issues the final environmental impact statement, if an environmental impact statement is required. The department shall provide notice of the hearing under sub. (1m) by doing all of the following:

SECTION 32. 293.43 (3) (c) of the statutes is amended to read:

293.43 **(3)** (c) Written comments may be submitted by any governmental agency ~~within 80 days of the date of~~ or any individual after the issuance of the environmental impact statement under par. (b). ~~Individual persons may submit written comments within 120 days of the date of issuance of the statement.~~ The last day for receipt of comments shall be specified by the department in all notices.

SECTION 33. 293.43 (4) of the statutes is amended to read:

293.43 **(4)** PARTICIPATION BY LOCAL GOVERNMENTS. Any county, town, village or city receiving notice of the filing of an application in the manner provided under sub. (3) ~~(a) or~~ (b) shall refer the application and reclamation plan to a committee established under s. 293.33 (1) or (2), if any, for review and comment. Such counties, towns, villages or cities may participate ~~as a party~~ in the hearing under sub. (1m) on the application and may make recommendations on the reclamation plan and future use of the project site.

SECTION 34. 293.43 (5) of the statutes is repealed.

SECTION 35. 293.44 of the statutes is created to read:

293.44 Contested case hearing. (1) REQUIREMENT; SCOPE. A contested case hearing shall be held on the application for a mining permit or a prospecting permit, other than a prospecting permit to which s. 293.42 applies, if a person files a notice of intent to participate under sub. (4) within 30 days after the department provides notice under sub. (3). The application for any other approval, license, or permit that was covered by the informational hearing under s. 293.43 (1m) and any environmental impact statement prepared under s. 1.11 shall be considered at the contested case hearing.

(2) LOCATION. The contested case hearing shall be held in the county where the prospecting site or mining site, or the largest portion of the prospecting site or mining site, is located.

(3) NOTICE. (a) The department shall provide notice of the contested case hearing by doing all of the following:

1. Mailing a copy of the notice to all known departments and agencies required to grant any permit necessary for the proposed operation; to any regional planning commission within which the affected area lies; to the governing bodies of all towns, villages, cities, and counties within which any part of the proposed prospecting site or mining site lies; to the governing bodies of any towns, villages, or cities contiguous to any town, village, or city within which any part of the proposed prospecting site or mining site lies; and to any interested persons who have requested such notification.

2. Publishing a class 2 notice, under ch. 985, utilizing a display advertising format, in the weekly newspaper published in the closest geographic proximity to the

proposed prospecting site or mining site; in the newspaper having the largest circulation in a county within which all or a portion of the proposed site lies; and in those newspapers published in counties contiguous to the counties within which all or a portion of the proposed site lies that have a substantial circulation in the area of, or adjacent to, the proposed site.

3. Mailing a copy of the notice to the federal environmental protection agency, the U.S. army corps of engineers, and other states potentially affected by the proposed discharge if a water discharge permit under ch. 283 is to be considered at the hearing under this section and to the federal environmental protection agency and appropriate agencies in other states that may be affected if an air pollution control permit under ch. 285 is to be considered at the hearing under this section.

(b) 1. The department shall provide the notice under this subsection after holding the informational hearing under s. 293.43 and no later than the 520th day after the day on which the department determines that the application for the mining permit or prospecting permit is complete, except as provided in subds. 2. to 4.

2. The department may extend the deadline under subd. 1. upon notice to the applicant, for a total of not more than 180 days, if any of the following applies:

a. The department needs additional time to ensure collaboration with any federal regulatory agency with responsibilities related to the mining or prospecting operation.

b. The department needs additional time to evaluate information related to the mining or prospecting operation that becomes available after the applicant files the application for the mining permit or prospecting permit.

c. The applicant makes changes to its proposal for the mining or prospecting operation.

3. The applicant may, by providing notice to the department, extend the deadline under subd. 1. as often as and for any length of time that the applicant determines to be necessary.

4. The department and an applicant may negotiate an agreement specifying a timeline for processing the application for a mining permit or prospecting permit and for other approvals, licenses, or permits issued by the department and that timeline may include a deadline for the department to provide notice of the contested case hearing that is different from the deadline under subd. 1.

(4) PARTICIPATION. Any person, including a county, city, village, or town that receives notice under sub. (3) (a) 1., who wishes to participate as a party shall file a written notice with the hearing examiner setting forth the person's interest within 30 days after the department provides notice under sub. (3), unless good cause is shown.

(6) RECORD. Views given under s. 293.43 on the proposed mining or prospecting operation and all written comments submitted from any source are not part of the record for the contested case under this section, but shall be placed in the file of the proceeding and shall be given appropriate probative value by the hearing examiner or decisionmaker.

(7) CONTINUATION. Hearings conducted under this section may be continued for just cause, subject to the deadline under sub. (8).

(8) DEADLINES. The hearing examiner shall conclude the hearing under this section and complete the record of the hearing no later than the 680th day after the day on which the department determines that the application for the mining permit

or prospecting permit is complete, except that if the deadline under sub. (3) (b) 1. is extended under sub. (3) (b) 2. to 4., the deadline under this subsection is extended by the same number of days.

(9) APPLICABILITY OF OTHER LAW. Chapter 227 applies to a hearing under this section to the extent it is not inconsistent with this section.

SECTION 36. 293.45 (1) and (2) of the statutes are amended to read:

293.45 **(1)** The department shall issue a prospecting permit under this section to an applicant ~~within 60 days following the date of the completion of the hearing record if, on the basis of the application, the department's investigation and hearing and any written comments,~~ if it finds that the site is not unsuitable for prospecting or, absent a certification under s. 293.35 (1), surface mining, the department has approved the prospecting plan and the reclamation plan complies with ss. 293.13 (2) and 293.35 (2) and (3) and rules promulgated under ss. 293.13 (2) and 293.35 (2) and (3). The department may modify any part of the application or reclamation plan and approve it as modified. Except as otherwise provided in this chapter, prospecting permits shall be valid for the life of the project, unless canceled under s. 293.83 (1) or (3) or 293.85 or revoked under s. 293.87 (2) or (3).

(2) The department shall deny a prospecting permit ~~within 60 days following the date of the completion of the hearing record~~ if it finds that the site is unsuitable for prospecting or, absent certification under s. 293.35 (1), surface mining, or the reclamation plan, including the bond, does not comply with ss. 293.13 (2) and 293.35 (2) and (3) and rules promulgated under ss. 293.13 (2) and 293.35 (2) and (3) or that the applicant is in violation of this chapter or any rules adopted under this chapter. If the applicant has previously failed and continues to fail to comply with this chapter, or if the applicant has within the previous 20 years forfeited any bond posted

in accordance with prospecting or mining activities in this state, unless by mutual agreement with the state, the department may not issue a prospecting permit. The department may not issue a prospecting permit if it finds that any officer, director or manager of the applicant has, while employed by the applicant, the applicant's parent corporation, any of the applicant's principal shareholders or members, or any of the applicant's subsidiaries or affiliates, in which the applicant owns more than a 40% interest, within the previous 20 years forfeited any bond posted in accordance with prospecting or mining activities in this state unless by mutual agreement with the state. In this subsection, "forfeited any bond" means the forfeiture of any performance security occasioned by noncompliance with any prospecting or mining laws or implementing rules. If an application for a prospecting permit is denied, the department, within 30 days from the date of application denial, shall furnish to the applicant in writing the reasons for the denial.

SECTION 37. 293.45 (2m) of the statutes is created to read:

293.45 **(2m)** The department shall approve or deny the application for a prospecting permit, other than a prospecting permit to which s. 293.42 applies, and for any other approval, license, or permit that was covered by the informational hearing under s. 293.43 (1m), after any contested case hearing under s. 293.44 and no later than the 730th day after the day on which the department determines that the application for the prospecting permit is complete, except that if the deadline under s. 293.44 (3) (b) 1. is extended under s. 293.44 (3) (b) 2. to 4., the deadline under this subsection is extended by the same number of days.

SECTION 38. 293.49 (1) (a) (intro.) of the statutes is amended to read:

293.49 **(1)** (a) (intro.) Except as provided in sub. (2) and s. 293.50 and except with respect to property specified in s. 41.41 (11), ~~within 90 days of the completion of the public hearing record,~~ the department shall issue the mining permit if it finds:

SECTION 39. 293.49 (1) (a) 3. of the statutes is amended to read:

293.49 **(1)** (a) 3. In the case of a surface mine, the site is not unsuitable for mining. The preliminary determination that a site was not unsuitable for mining under s. 293.45 may not be conclusive in the determination of the site's suitability for mining under this section. However, at the hearing held under ~~this section and s. 293.43~~ s. 293.44, testimony and evidence submitted at ~~the~~ any prospecting permit proceeding relevant to the issue of suitability of the proposed mining site for surface mining may be adopted, subject to the opportunity for cross–examination and rebuttal, if not unduly repetitious.

SECTION 40. 293.49 (2) (intro.) of the statutes is amended to read:

293.49 **(2)** (intro.) ~~Within 90 days of the completion of the public hearing record,~~ ~~the~~ The department shall deny the mining permit if it finds any of the following:

SECTION 41. 293.49 (4g) of the statutes is created to read:

293.49 **(4g)** The department shall approve or deny the application for a mining permit, and for any other approval, license, or permit that was covered by the informational hearing under s. 293.43 (1m), after any contested case hearing under s. 293.44 and no later than the 730th day after the day on which the department determines that the application for the mining permit is complete, except that if the deadline under s. 293.44 (3) (b) 1. is extended under s. 293.44 (3) (b) 2. to 4., the deadline under this subsection is extended by the same number of days.

SECTION 42. 293.51 (2m) of the statutes is created to read:

293.51 **(2m)** Upon notification that an application for a mining permit has been approved by the department but prior to commencing mining, the operator shall establish an irrevocable trust, in accordance with the proposed agreement under s. 293.37 (2) (gm), in an amount equal to 20 percent of the amount of the bond or other security required under sub. (1) plus 20 percent of the amount of the proof of financial responsibility provided under s. 289.41 (3) for the mining waste site or, if the applicant provides proof of financial responsibility using the net worth method under s. 289.41 (4), of the amount of the proof of financial responsibility that would be required to be provided under s. 289.41 (3) for the mining waste site if the applicant did not use the net worth method.

SECTION 43. 293.51 (3) of the statutes is amended to read:

293.51 **(3)** Upon approval of the operator's bond, mining application and certificate of insurance and receipt of evidence of the establishment of the trust under sub. (2m), the department shall issue written authorization to commence mining at the permitted mining site in accordance with the approved mining and reclamation plans.

SECTION 44. 293.64 of the statutes is created to read:

293.64 Groundwater quality. (1) In the feasibility report under s. 289.24 for a prospecting or mining waste facility, an applicant shall submit information based on predictive modeling to demonstrate whether there is a reasonable certainty that the facility will result in a violation of groundwater quality standards beyond the design management zone, determined under s. 160.21 (2) (d), within a period equal to the period in which the mining waste facility is proposed to operate plus 250 years after the closure of the mining waste facility.

(2) For the purposes of s. NR 182.075 (1s) and (1u), Wis. Adm. Code, the horizontal distance to the mandatory intervention boundary for a prospecting or mining waste site is 150 feet from the outer waste boundary or a longer distance, up to 600 feet, agreed to by the applicant and the department, notwithstanding s. NR 182.075 (1) (c), Wis. Adm. Code, except that the horizontal distance to the mandatory intervention boundary may not exceed 50 percent of the horizontal distance from the outer waste boundary to the boundary of the design management zone, determined under s. 160.21 (2) (d), for the prospecting or mining waste site.

SECTION 45. Nonstatutory provisions.

(1) REPORT CONCERNING GROUNDWATER STANDARDS. The department of natural resources shall study whether, in connection with metallic mining, groundwater standards under chapter NR 140, Wisconsin Administrative Code, should apply in an aquifer containing saline water and shall report its conclusions to the legislature, in the manner under section 13.172 (2) of the statutes, no later than the first day of the 12th month beginning after the effective date of this subsection.

(2) WASTE CHARACTERIZATION RULES.

(a) The department of natural resources shall submit in proposed form the rules required under section 289.05 (2) of the statutes, as affected by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 9th month beginning after the effective date of this paragraph.

(b) Notwithstanding section 227.135 (2) of the statutes, the department of natural resources is not required to present the statement of the scope of the rules required under section 289.05 (2) of the statutes, as affected by this act, to the governor for approval. Notwithstanding section 227.185 of the statutes, the department of natural resources is not required to present the rules required under

section 289.05 (2) of the statutes, as affected by this act, in final draft form to the governor for approval.

(c) Notwithstanding section 227.137 (2) of the statutes, the department of natural resources is not required to prepare an economic impact report for the rules required under section 289.05 (2) of the statutes, as affected by this act. Notwithstanding sections 227.14 (2g) and 227.19 (3) (e) of the statutes, the department of natural resources is not required to submit the proposed rules required under section 289.05 (2) of the statutes, as affected by this act, to the small business regulatory review board and is not required to prepare a final regulatory flexibility analysis for those rules.

(END)

Rose, Stefanie

From: Gill, Andy
Sent: Monday, February 04, 2013 11:08 AM
To: LRB.Legal
Subject: Draft Review: LRB -1470/1 Topic: Regulation of metallic mining and taxation of iron mining

Please Jacket LRB -1470/1 for the ASSEMBLY.