

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

4 (d) The department and an applicant may negotiate an agreement specifying  
5 a timeline for processing the application for a prospecting permit and for other  
6 approvals, licenses, or permits issued by the department and that timeline may  
7 include a deadline for the department to approve or deny the application for a  
8 prospecting permit that is different from the deadline under par. (a).

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

10 293.49 (1) (a) (intro.) Except as provided in sub. (2) and s. 293.50 and except  
11 with respect to property specified in s. 41.41 (11), ~~within 90 days of the completion~~  
12 ~~of the public hearing record,~~ the department shall issue the mining permit if it finds:

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

14 293.49 (1) (a) 3. In the case of a surface mine, the site is not unsuitable for  
15 mining. The preliminary determination that a site was not unsuitable for mining  
16 under s. 293.45 may not be conclusive in the determination of the site's suitability  
17 for mining under this section. However, at the hearing held under ~~this section and~~  
18 ~~s. 293.43 s. 293.495,~~ testimony and evidence submitted at the any prospecting permit  
19 proceeding relevant to the issue of suitability of the proposed mining site for surface  
20 mining may be adopted, subject to the opportunity for cross-examination and  
21 rebuttal, if not unduly repetitious.

22 **SECTION 40.** 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 ~~the~~ The department shall deny the mining permit if it finds any of the following:

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

1           293.49 (4g) (a) The department shall approve or deny the application for a  
2 mining permit, and for any other approval, license, or permit that was covered by the  
3 informational hearing under s. 293.43 (1m), no later than the 520th day after the day  
4 on which the department determines that the application for the mining permit is  
5 complete, except as provided in pars. (b) to (d).

6           (b) The department may extend the deadline under par. (a), upon notice to the  
7 applicant, for a total of not more than 180 days, if any of the following applies:

8           1. The department needs additional time to ensure collaboration with any  
9 federal regulatory agency with responsibilities related to the mining operation.

10           2. The department needs additional time to evaluate information related to the  
11 mining operation that becomes available after the applicant files the application for  
12 the mining permit.

13           3. The applicant makes changes to its proposal for the mining operation.

14           (c) The applicant may, by providing notice to the department, extend the  
15 deadline under par. (a) as often and for any length of time that the applicant  
16 determines to be necessary.

17           (d) The department and an applicant may negotiate an agreement specifying  
18 a timeline for processing the application for a mining permit and for other approvals,  
19 licenses, or permits issued by the department and that timeline may include a  
20 deadline for the department to approve or deny the application for a mining permit  
21 that is different from the deadline under par. (a).

22           **SECTION 42.** 293.49 (4r) of the statutes is created to read:

23           293.49 (4r) An applicant may not take any action authorized under a mining  
24 permit, or any other approval, license, or approval incidental to the proposed mining,  
25 before the 30th day after the department issues its decision to approve the mining

1 permit. If a person files a notice of intent to participate in a contested case hearing,  
2 as provided in s. 293.495 (4), the applicant may not take any action authorized under  
3 the mining permit, or any other approval, license, or permit incidental to the  
4 proposed mining before the decision in the contested case is served under s. 227.48.

5 **SECTION 43.** 293.49 (5) of the statutes is repealed and recreated to read:

6 293.49 (5) The department shall provide notice of its decision under this section  
7 to the applicant and to the persons specified in s. 293.43 (3) (b) 1.

8 **SECTION 44.** 293.495 of the statutes is created to read:

9 **293.495 Contested case hearing. (1) REQUIREMENT; SCOPE.** A contested case  
10 hearing shall be held on the decision to grant or deny the application for a mining  
11 permit or a prospecting permit, other than a prospecting permit to which s. 293.42  
12 applies, if a person files a notice of intent to participate under sub. (4) within 30 days  
13 after the department provides notice under sub. (3). The department's decision on  
14 any other approval, license, or permit that was covered by the informational hearing  
15 under s. 293.43 (1m) shall be considered at the contested case hearing.

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

19 **(3) NOTICE.** The department shall provide notice of the contested case hearing  
20 by doing all of the following immediately after it makes its decision under s. 293.45  
21 or 293.49:

22 (a) Mailing a copy of the notice to all known departments and agencies required  
23 to grant any permit necessary for the proposed operation; to any regional planning  
24 commission within which the affected area lies; to the governing bodies of all towns,  
25 villages, cities, and counties within which any part of the proposed prospecting site

1 or mining site lies; to the governing bodies of any towns, villages, or cities contiguous  
2 to any town, village, or city within which any part of the proposed prospecting site  
3 or mining site lies; and to any interested persons who have requested such  
4 notification.

5 (b) Publication of a class 2 notice, under ch. 985, utilizing a display advertising  
6 format, in the weekly newspaper published in the closest geographic proximity to the  
7 proposed prospecting site or mining site; in the newspaper having the largest  
8 circulation in a county within which all or a portion of the proposed site lies; and in  
9 those newspapers published in counties contiguous to the counties within which all  
10 or a portion of the proposed site lies that have a substantial circulation in the area  
11 of, or adjacent to, the proposed site.

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

18 (4) PARTICIPATION. Any person, including a county, city, village, or town that  
19 receives notice under sub. (3) (b) 1., who wishes to participate as a party shall file a  
20 written notice with the hearing examiner setting forth the person's interest within  
21 30 days after the department provides notice under sub. (3), unless good cause is  
22 shown.

23 (5) REQUIREMENTS OF DEPARTMENT. In a contested case hearing under this  
24 section, the department shall proceed first with the presentation of evidence and  
25 shall have the burden of proof.

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

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

8 (8) DEADLINES. (a) The hearing examiner shall conclude the hearing under this  
9 section no later than the 180th day after the department issues its decision on the  
10 application for the prospecting permit under s. 293.45 or its decision on the  
11 application for the mining permit under s. 293.49.

12 (b) The deadline for the decision on the matters covered in the hearing under  
13 this section is the 210th day after the department issues its decision on the  
14 application for the prospecting permit under s. 293.45 or its decision on the  
15 application for the mining permit under s. 293.49.

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

18 SECTION 45. 293.51 (2m) of the statutes is created to read:

19 293.51 (2m) Upon notification that an application for a mining permit has been  
20 approved by the department but prior to commencing mining, the operator shall  
21 establish an irrevocable trust, in accordance with the proposed agreement under s.  
22 293.37 (2) (gm), in an amount equal to 20 percent of the amount of the bond or other  
23 security required under sub. (1) plus 20 percent of the amount of the proof of financial  
24 responsibility required <sup>provided</sup> under s. 289.41 (3) for the mining waste site. <sup>Insert 20-24</sup>

25 SECTION 46. 293.51 (3) of the statutes is amended to read:

1           293.51 (3) Upon approval of the operator's bond, mining application and  
2 certificate of insurance and receipt of evidence of the establishment of the trust  
3 under sub. (2m), the department shall issue written authorization to commence  
4 mining at the permitted mining site in accordance with the approved mining and  
5 reclamation plans.

6           **SECTION 47.** 293.64 of the statutes is created to read:

7           **293.64 Groundwater quality.** (1) (a) In the feasibility report under s. 289.24  
8 for a prospecting or mining waste facility, an applicant shall submit information  
9 based on predictive modeling to demonstrate whether there is a reasonable certainty  
10 that the facility will result in a violation of groundwater quality standards beyond  
11 the design management zone, determined under s. 160.21 (2) (d), within 250 years

12 after construction of the facility. *Insert 21-12*

13           (b) In determining whether to approve, under s. 289.29, a feasibility report for  
14 a prospecting or mining waste facility and in determining under s. 293.49 (1) (a) 2.  
15 whether a prospecting or mining waste facility will comply with groundwater laws  
16 and rules of the department, the department may not consider the effect that the  
17 facility might have on groundwater quality more than 250 years after the  
18 construction of the facility.

19           (2) For the purposes of s. NR 182.075 (1s) and (1u), Wis. Adm. Code, the  
20 horizontal distance to the mandatory intervention boundary for a prospecting or  
21 mining waste site is 150 feet from the outer waste boundary or a longer distance, up  
22 to 600 feet, agreed to by the applicant and the department, notwithstanding s. NR  
23 182.075 (1) (c), Wis. Adm. Code, except that the horizontal distance to the mandatory  
24 intervention boundary may not exceed 50 percent of the horizontal distance from the

1 outer waste boundary to the boundary of the design management zone, determined  
2 under s. 160.21 (2) (d), for the prospecting or mining waste site.

3 **SECTION 48. Nonstatutory provisions.**

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

10

(END)

Inset 22-9

1           **Analysis insert**

**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 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, but not a contested case hearing, after the EIS for a proposed metallic mine is finalized and before acting on the application for the mining permit and other approvals. The bill requires DNR to act on the application for the mining permit and other approvals no later 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 act on the application for the mining permit.

The bill requires that a contested case hearing be held on DNR's action on the application for the mining permit and other approvals if <sup>DNR</sup>any person notifies DNR that the person wishes to be a party within 30 days after <sup>DNR</sup>provides notice about the hearing. If a contested case hearing is held, DNR proceeds first with the presentation of evidence and has the burden of proof. The bill requires that the hearing be concluded no later than 180 days after DNR acts on the application for the mining permit and that the decision on the matters covered in the hearing be made no later than 210 days after DNR acts on the application for the mining permit.

***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, and 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 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 DNR's decision on the permit application or on 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 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.

the person's

**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 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 <sup>prospecting and</sup> mining waste from the recycling tipping fee.

**Groundwater**  
*submit information based on*

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 conduct predictive modeling to determine 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.

demonstrate

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 and methodologies of the American Society for Testing and Materials for testing and other methodologies related to the evaluation of mining waste.

1 **Insert 20-24**

2 not or, if the applicant provides proof of financial responsibility using the net worth  
3 method under s. 289.41 (4), 20 percent of the amount of the proof of financial  
4 responsibility that would be required <sup>to be provided</sup> under s. 289.41 ~~(4)~~ <sup>3</sup> for the mining waste site  
5 if the applicant did not use the net worth method

6 **Insert 21-12**

7 not a period equal to the proposed period in which the mining waste facility is  
8 proposed to operate plus 250 years after the closure of the mining waste facility

9 **Insert 22-9**

10 ~~#~~  
(0) WASTE CHARACTERIZATION RULES.

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

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

289.05

e 2

e affected

1 department of natural resources is not required to present the rules required under  
 2 section 285.51 (9) of the statutes, as created by this act, in final draft form to the  
 3 governor for approval.

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

e affected

## Tradewell, Becky

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**From:** Kreye, Joseph  
**Sent:** Wednesday, January 16, 2013 2:37 PM  
**To:** Konopacki, Larry; Henning, Anna; Tradewell, Becky  
**Subject:** FW: Draft review: LRB -0821/1 Topic: Regulation of metallic mining and taxation of iron mining  
**Attachments:** 13-0821/1

Hi Larry,

I think you're right: "that are" should be inserted after "or" on page 8, line 18.

Joe

**Joseph Kreye**  
**Senior Legislative Attorney**  
Legislative Reference Bureau  
608 266-2263

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**From:** Konopacki, Larry  
**Sent:** Wednesday, January 16, 2013 1:56 PM  
**To:** Henning, Anna; Tradewell, Becky  
**Subject:** FW: Draft review: LRB -0821/1 Topic: Regulation of metallic mining and taxation of iron mining

Hi Becky - I'm home today with a sick 6 year-old. I looked through the bill, and everything looks to be great. One question - on page 8, line 18, should "that are" be inserted after "or"?

Thanks!

Larry

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**From:** LRB.Legal  
**Sent:** Wed 1/16/2013 10:18 AM  
**To:** Konopacki, Larry  
**Subject:** Draft review: LRB -0821/1 Topic: Regulation of metallic mining and taxation of iron mining

**Draft Requester: Sen. Timothy Cullen**

**Following is the PDF version of draft LRB -0821/1.**

1/17/13 Anna informed Robin that they want the  
contested case hearing before the Final DNR decision  
on the application.

## Tradewell, Becky

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**From:** Henning, Anna  
**Sent:** Friday, January 18, 2013 11:48 AM  
**To:** Tradewell, Becky  
**Subject:** FW: Drafting questions

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**From:** Henning, Anna  
**Sent:** Friday, January 18, 2013 8:44 AM  
**To:** Stoa, Jim  
**Subject:** Drafting questions

Hi Jim,

I have a few questions for you, to help facilitate the revisions to the draft:

1. We are struggling with what, precisely, you want to require the DNR to do by the 520<sup>th</sup> day. Yesterday you suggested that the department would "certify materials" by that date, but in attempting to draft, we had questions about which materials. We thought about requiring DNR to "complete its review" (without rendering a final permit decision) by that date, but it's unclear what that means, and that seems to undermine the goal of having the contested case hearing affect the outcome. (It also is somewhat difficult to draft, in part because provisions of current law require that the DNR compile a "statement" of its findings after the contested case hearing, so it is unclear how the earlier review and the later findings must fit together, if at all.) An alternative would be to require the DNR to commence the contested case hearing by the 520<sup>th</sup> day. I think the latter approach may pose fewer drafting problems, not that the former approach is impossible.
2. Under the current version of LRB-0821, an informational hearing is held after the final EIS is prepared, but before the DNR renders a final permitting decision. Under current law, that informational hearing and the contested case hearing happen together – as part of one "master hearing" that occurs prior to the final permit decision. Would you like to hold the informational hearing and the contested case hearing together, as under current law? That might be the simpler approach, but it doesn't necessarily fit with the goal of having the DNR complete the bulk of its review by the 520<sup>th</sup> day (because, presumably, you would want the DNR to have at least heard from the public in an informational hearing prior to "completing its review"?).
3. If you have the contested case following the completion of the department's review (or something similar), would you like to retain the provision specifying that the department has the burden of proof?

A phone conversation might be easier, but I thought it might be helpful to get these in writing. I'll be away from my desk for the next 15 minutes, but back soon. Becky is in today and was already actively puzzling about these questions at 6:30am.

Thanks,  
Anna

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Anna Henning  
Staff Attorney  
Wisconsin Legislative Council  
(608) 266-0292  
[anna.henning@legis.wisconsin.gov](mailto:anna.henning@legis.wisconsin.gov)

1/18/13 About 1:15 p.m.

Instructions conveyed by Anna

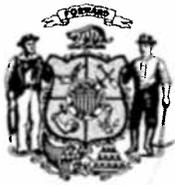
Keep the informational hearing and the contested case hearing separate.

1. Require DNR to complete the final EIS, have the public informational hearing, and give the notice about the opportunity for the contested case hearing within 520 days of the application for the mining permit being complete - plus the opportunity for extensions in the current draft

2. Require DNR to complete the contested case hearing, including completion of the hearing record, within 680 days of the permit application being complete - plus any extensions made in previous step

3. Require DNR to make its decision on the permit application within 730 days of the permit application being complete - plus any extensions made under step 1

Also - there is no need for the language on burden of proof.



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0821 2  
RCT&JK:cjs:ph

EM 1/19/13

2013 BILL

slays

1W

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1 AN ACT *to repeal* 227.42 (4), 293.43 (3) (a) and 293.43 (5); *to amend* 70.375 (2)  
 2 (a), 70.375 (5) (intro.), 70.395 (1e), 70.395 (2) (dc) 1., 70.395 (2) (dc) 2., 70.395  
 3 (2) (dc) 3., 70.395 (2) (g) (intro.), 281.35 (5) (e), 281.93 (3), 283.63 (3), 285.81 (3),  
 4 289.05 (2), 289.27 (3), 289.29 (5), 293.31 (1), 293.35 (5), 293.43 (title), 293.43  
 5 (1m), 293.43 (2), 293.43 (3) (c), 293.43 (4), 293.45 (1) and (2), 293.49 (1) (a)  
 6 (intro.), 293.49 (1) (a) 3., 293.49 (2) (intro.) and 293.51 (3); *to repeal and*  
 7 *recreate* 293.43 (1), 293.43 (3) (b) (intro.) and 293.49 (5); and *to create* 20.192  
 8 (1) (g), 70.375 (7), 70.395 (2) (L), 238.14, 289.645 (4) (g), 293.313, 293.37 (2) (gm),  
 9 293.42, 293.43 (2m), 293.45 (2m), 293.49 (4g), 293.49 (4r), 293.495, 293.51 (2m)  
 10 and 293.64 of the statutes; **relating to:** regulation of metallic mining, an  
 11 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

**BILL**

*a public informational hearing and*

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 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, but not a contested case hearing, after the EIS for a proposed metallic mine is finalized and before acting on the application for the mining permit and other approvals. The bill requires DNR to act on the application for the mining permit and other approvals no later 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 act on the application for the mining permit.~~

*Analysis  
insert  
A*

*provide  
notice  
of  
the contested  
case  
hearing*

~~The bill requires that a contested case hearing be held on DNR's action on 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 hearing. If a contested case hearing is held, DNR proceeds first with the presentation of evidence and has the burden of proof. The bill requires that the hearing be concluded no later than 180 days after DNR acts on the application for the mining permit and that the decision on the matters covered in the hearing be made no later than 210 days after DNR acts on the application for the mining permit.~~

*Analysis  
insert  
B*

**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.

**BILL**

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 ~~DNR's decision on the permit application or~~ <sup>for</sup> other approvals covered in the informational hearing.

\*  
for the permit

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.

**BILL**

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.

**BILL*****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.

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

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

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

2           20.192 (1) (g) *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.** 70.375 (2) (a) of the statutes is amended to read:

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

13           **SECTION 3.** 70.375 (5) (intro.) of the statutes is amended to read:

14           70.375 (5) **RATES.** (intro.) The Except as provided in sub. (7), the tax to be  
15 assessed, levied and collected upon persons engaging in mining metalliferous  
16 minerals in this state shall be computed at the following rates:

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

18           70.375 (7) **PER TON RATE.** (a) Notwithstanding subs. (2) and (5), for mines in  
19 operation after December 31, 2012, the tax assessed, levied, and collected from a  
20 person engaged in mining ferrous minerals in this state is an amount equal to \$2.412  
21 for each 2,240 pounds of ferrous minerals extracted by the person from mines in this

**BILL**

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

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

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

10 70.395 (1e) DISTRIBUTION. Fifteen days after the collection of the tax under ss.  
11 70.38 to 70.39, the department of administration, upon certification of the  
12 department of revenue, shall transfer the amount collected in respect to mines not  
13 in operation on November 28, 1981, to the investment and local impact fund, except  
14 that the department of administration shall transfer 70 percent of the amount  
15 collected from each person under s. 70.375 (7) to the investment and local impact  
16 fund and 30 percent of the amount collected from each person under s. 70.375 (7) to  
17 the appropriation under s. 20.192 (1) (g) for the regional Wisconsin diversification  
18 program under s. 238.14.

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

20 70.395 (2) (dc) 1. Each person intending to submit an application for a mining  
21 permit shall pay \$50,000 \$100,000 to the department of revenue for deposit in the  
22 investment and local impact fund at the time that the person notifies the department  
23 of natural resources under s. 293.31 (1) of that intent.

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

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

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

5           70.395 (2) (dc) 3. A person making a payment under subd. 2. shall pay an  
6 additional \$50,000 \$100,000 upon notification by the board that the board has  
7 distributed all of the payment under subd. 1. and 50% of the payment under subd.  
8 2.

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

10           70.395 (2) (g) (intro.) The board may distribute the revenues received by the  
11 investment and local impact fund under sub. (1e) or proceeds thereof in accordance  
12 with par. (h) for the following purposes, as the board determines necessary:

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

14           70.395 (2) (L) Notwithstanding any other provision under this subsection, the  
15 board may provide grants to local governmental units, as defined in s. 238.133 (1) (b),  
16 to prepare economic impact studies related to sites at or near the local governmental  
17 units on which exploration or prospecting is being conducted for the potential mining  
18 of ferrous minerals <sup>that are</sup> on the subject of a preapplication process for a permit to mine  
19 ferrous minerals.

20 ~~**SECTION 11.** 227.42 (4) of the statutes is repealed.~~

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

22           **238.14 Regional Wisconsin diversification program.** The corporation  
23 may use moneys appropriated under s. 20.192 (1) (g) only as follows:

24           (1) The corporation may make a grant or loan of those moneys to a business that  
25 is located within 100 miles from the site of a mine for ferrous metallic minerals in

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x

1 this state, and the corporation shall give preference for that grant or loan to a  
2 business that is located in close proximity to the site of the mine. In making a grant  
3 or loan under this subsection, the corporation shall coordinate with an appropriate  
4 local governmental unit, as defined in s. 238.133 (1) (b), to make that grant or loan  
5 on a competitive basis for the purpose of business diversification.

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

9 **SECTION 13.** 281.35 (5) (e) of the statutes is amended to read:

10 281.35 (5) (e) *Right to hearing.* ~~Except as provided in s. 227.42 (4), any~~ Any  
11 person who receives notice of a denial or modification requirement under par. (c) is  
12 entitled to a contested case hearing under ch. 227 if the person requests the hearing  
13 within 30 days after receiving the notice, unless a hearing on the matter is available  
14 as a part of a hearing under s. 293.495.

15 **SECTION 14.** 281.93 (3) of the statutes is amended to read:

16 281.93 (3) MINING HEARING. Subsections (1) and (2) do not apply if a hearing  
17 on the matter is conducted as a part of a hearing under s. 293.43 ~~293.495~~<sup>495</sup>

18 **SECTION 15.** 283.63 (3) of the statutes is amended to read:

19 283.63 (3) Subsections (1) and (2) do not apply if a hearing on the permit  
20 application is conducted as a part of a hearing under s. 293.43 ~~293.495~~<sup>495</sup>

21 **SECTION 16.** 285.81 (3) of the statutes is amended to read:

22 285.81 (3) MINING HEARING. Subsections (1) and (2) do not apply if a hearing  
23 on the matter is conducted as a part of a hearing under s. 293.43 ~~293.495~~<sup>495</sup>

24 **SECTION 17.** 289.05 (2) of the statutes is amended to read:

LPS:  
if says:  
293.44

**BILL**

1           289.05 (2) With the advice and comment of the metallic mining council, the  
 2 department shall promulgate rules for the identification and regulation of metallic  
 3 mining wastes. The rules promulgated to identify metallic mining wastes and to  
 4 regulate the location, design, construction, operation and maintenance of facilities  
 5 for the disposal of metallic mining wastes shall be in accordance with any or all of  
 6 the provisions under this chapter and chs. 30 and 283. The rules shall take into  
 7 consideration the special requirements of metallic mining operations in the location,  
 8 design, construction, operation and maintenance of facilities for the disposal of  
 9 metallic mining wastes as well as any special environmental concerns that will arise  
 10 as a result of the disposal of metallic mining wastes. In promulgating the rules, the  
 11 department shall give consideration to research, studies, data and recommendations  
 12 of the U.S. environmental protection agency on the subject of metallic mining wastes  
 13 arising from the agency's efforts to implement the resource conservation and  
 14 recovery act. In the rules, the department shall adopt the standards of the American  
 15 Society for Testing and Materials for testing and other methodologies related to the  
 16 evaluation of mining waste. After the department promulgates rules adopting those  
 17 standards, the department may modify or replace the rules to reflect new  
 18 technologies or industry practices.

**SECTION 18.** 289.27 (3) of the statutes is amended to read:

20           289.27 (3) NONAPPLICABILITY. Notwithstanding sub. (2), this section does not  
 21 apply if a hearing on the feasibility report is conducted as a part of a hearing under  
 22 s. 293.43 ~~293.495~~ and the time limits, notice and hearing provisions under that  
 23 section supersede the time limits, notice and hearing provisions under s. 289.25 (2)  
 24 and (3) and this section.

← LPS:  
it says  
293.44

**SECTION 19.** 289.29 (5) of the statutes is amended to read:

**BILL**

1           289.29 (5) ISSUANCE OF FINAL DETERMINATION OF FEASIBILITY IN CERTAIN  
 2 SITUATIONS INVOLVING UTILITIES AND MINING. If a determination of feasibility is  
 3 identified in the listing specified in s. 196.491 (3) (a) 3. a., the issuance of a final  
 4 determination of feasibility is subject to the time limit under s. 196.491 (3) (a) 3. b.  
 5 If a determination of feasibility is ~~required~~ <sup>covered by a hearing plain</sup> under s. 293.45, the issuance of a final  
 6 determination of feasibility is subject to ~~the time limits~~ <sup>PLAIN</sup> under s. 293.45 (2) or 293.49,  
 7 whichever is applicable. <sub>↑ plain text</sub>

8           **SECTION 20.** 289.645 (4) (g) of the statutes is created to read:  
 9           289.645 (4) (g) The recycling fee does not apply to prospecting or mining waste.

10          **SECTION 21.** 293.31 (1) of the statutes is amended to read:

11          293.31 (1) Any person intending to submit an application for a prospecting or  
 12 mining permit shall notify the department prior to the collection of data or  
 13 information intended to be used to support the permit application. A person  
 14 intending to submit an application for a mining permit shall provide notice under  
 15 this subsection at least 12 months before filing that application. Specific  
 16 environmental data which would be pertinent to a specific prospecting or mining  
 17 application, but which was obtained or collected or generated prior to the notice of  
 18 intent to apply for a prospecting or mining permit, shall be submitted in writing to  
 19 the department together with any substantiating background information which  
 20 would assist the department in establishing the validity of the data. The department  
 21 shall review the data and, if it concludes that the benefits of permitting the  
 22 admission of the data outweigh the policy reasons for excluding it, and if the data is  
 23 otherwise admissible, inform the person giving the notice of intent to prospect or  
 24 mine that the data will be accepted by the department. Such exclusion shall not  
 25 relate to general environmental information such as soil characteristics, hydrologic

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1 conditions and air and water data contained in publications, maps, documents,  
2 studies, reports and similar sources, whether public or private, not prepared by or  
3 for the applicant. Such exclusion shall likewise not relate to data which is otherwise  
4 admissible that is collected prior to notification under this subsection for purposes  
5 of evaluating another site or sites and which is not collected with intent to evade the  
6 provisions of this section.

7 **SECTION 22.** 293.313 of the statutes is created to read:

8 **293.313 Collaboration.** The department shall do all of the following:

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

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

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

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

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

25 **SECTION 23.** 293.35 (5) of the statutes is amended to read:

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1           293.35 (5) If the department determines that a statement under s. 1.11 is  
2 required for consideration of an application for a prospecting permit to which s.  
3 293.42 does not apply, the statement need not consider impacts unrelated to the  
4 proposed prospecting activity, other than the issue of unsuitability for surface  
5 mining, absent a certification under sub. (1).

6           **SECTION 24.** 293.37 (2) (gm) of the statutes is created to read:

7           293.37 (2) (gm) A proposed irrevocable trust agreement to provide funds for  
8 activities to avoid or remedy any adverse environmental consequences from the  
9 mining operation.

10          **SECTION 25.** 293.42 of the statutes is created to read:

11          **293.42 Process for certain prospecting permit applications.** If the  
12 application for a prospecting permit shows that less 10,000 tons of material is  
13 proposed to be excavated, all of the following apply:

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

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

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

**BILL****SECTION 25**

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

4           (5) For each approval, license, or permit, other than the prospecting permit,  
5           covered by the hearing under sub. (2), except for an approval, license, or permit for  
6           which federal law requires the opportunity for public comment or the ability to  
7           request a public hearing prior to issuance, the department shall approve the  
8           application and issue the approval, license, or permit or deny the application no later  
9           than 60 days after the department determines that the application for the  
10          prospecting permit is complete, notwithstanding any procedural provisions that  
11          would otherwise apply.

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

15          **SECTION 26.** 293.43 (title) of the statutes is amended to read:

16          **293.43 (title) Hearings Public informational hearings on permit**  
17          **applications.**

18          **SECTION 27.** 293.43 (1) of the statutes is repealed and recreated to read:

19          293.43 (1) **APPLICABILITY.** This section applies to all applications for mining  
20          permits and to those applications for prospecting permits to which s. 293.42 does not  
21          apply.

22          **SECTION 28.** 293.43 (1m) of the statutes is amended to read:

23          293.43 (1m) **SCOPE.** (a) ~~The hearing on the~~ Before approving or denying the  
24          application for a prospecting or mining permit shall cover, the department shall hold  
25          a public informational hearing covering the application and, any statements

**BILL**

1 environmental impact statement prepared under s. 1.11 and, to the fullest extent  
2 possible, all other applications for approvals, licenses and permits issued by the  
3 department. The department shall inform the applicant as to the timely application  
4 date for all approvals, licenses and permits issued by the department, so as to  
5 facilitate the consideration of all other matters at the hearing on the prospecting or  
6 mining permits permit.

7 (b) Except as provided in this paragraph, for all department issued approvals,  
8 licenses and permits relating to prospecting or mining including solid waste  
9 feasibility report approvals and permits related to air and water, ~~to be issued after~~  
10 ~~April 30, 1980~~, the notice, hearing and comment provisions, if any, and the time for  
11 issuance of decisions, shall be controlled by this section and <sup>293.44</sup> ss. 293.45 <sup>no strike</sup> and 293.49.

12 ~~and 293.495~~ If an applicant fails to make application for an approval, license or  
13 permit for an activity incidental to prospecting or mining in time <sup>↑</sup> for notice under this  
14 section to be provided, the notice and comment requirements, if any, shall be  
15 controlled by the specific statutory provisions with respect to that application. If  
16 notice under those specific statutory notice requirements can be given for  
17 consideration of the approval, license or permit at the hearing under this section, the  
18 application shall be considered at that hearing; otherwise, the specific statutory  
19 hearing provisions, if any, with respect to that application shall control. The  
20 substantive requirements for the issuance of any approval, permit or license  
21 incidental to prospecting or mining are not affected by the fact that a hearing on the  
22 approval, permit or license is conducted as part of a hearing under this section.

23 **SECTION 29.** 293.43 (2) of the statutes is amended to read:

**BILL**

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

4           **SECTION 30.** 293.43 (2m) of the statutes is created to read:

5           293.43 (2m) MEETING ON PRELIMINARY ENVIRONMENTAL IMPACT STATEMENT. Before  
6 issuing a final environmental impact statement for a mining permit or for a  
7 prospecting permit, if the department determines that an environmental impact  
8 statement is required under s. 1.11 for the prospecting permit, the department shall  
9 hold at least one informational meeting regarding its preliminary environmental  
10 impact statement.

11           **SECTION 31.** 293.43 (3) (a) of the statutes is repealed.

12           **SECTION 32.** 293.43 (3) (b) (intro.) of the statutes is repealed and recreated to  
13 read:

14           293.43 (3) (b) (intro.) The department shall hold the hearing under sub. (1m)  
15 after it issues the final environmental impact statement, if an environmental impact  
16 statement is required. The department shall provide notice of the hearing under sub.  
17 (1m) by doing all of the following:

18           **SECTION 33.** 293.43 (3) (c) of the statutes is amended to read:

19           293.43 (3) (c) Written comments may be submitted by any governmental  
20 agency ~~within 80 days of the date of~~ or any individual after the issuance of the  
21 environmental impact statement under par. (b). ~~Individual persons may submit~~  
22 ~~written comments within 120 days of the date of issuance of the statement.~~ The last  
23 day for receipt of comments shall be specified by the department in all notices.

24           **SECTION 34.** 293.43 (4) of the statutes is amended to read:

**BILL**

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

8           **SECTION 35.** 293.43 (5) of the statutes is repealed.

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

10           293.45 (1) The department shall issue a prospecting permit under this section  
11 to an applicant ~~within 60 days following the date of the completion of the hearing~~  
12 ~~record if, on the basis of the application, the department's investigation and hearing~~  
13 ~~and any written comments, if it finds that the site is not unsuitable for prospecting~~  
14 or, absent a certification under s. 293.35 (1), surface mining, the department has  
15 approved the prospecting plan and the reclamation plan complies with ss. 293.13 (2)  
16 and 293.35 (2) and (3) and rules promulgated under ss. 293.13 (2) and 293.35 (2) and  
17 (3). The department may modify any part of the application or reclamation plan and  
18 approve it as modified. Except as otherwise provided in this chapter, prospecting  
19 permits shall be valid for the life of the project, unless canceled under s. 293.83 (1)  
20 or (3) or 293.85 or revoked under s. 293.87 (2) or (3).

21           (2) The department shall deny a prospecting permit ~~within 60 days following~~  
22 ~~the date of the completion of the hearing record~~ if it finds that the site is unsuitable  
23 for prospecting or, absent certification under s. 293.35 (1), surface mining, or the  
24 reclamation plan, including the bond, does not comply with ss. 293.13 (2) and 293.35  
25 (2) and (3) and rules promulgated under ss. 293.13 (2) and 293.35 (2) and (3) or that

Insert  
From  
pp. 21-23

**BILL**

1 the applicant is in violation of this chapter or any rules adopted under this chapter.  
 2 If the applicant has previously failed and continues to fail to comply with this  
 3 chapter, or if the applicant has within the previous 20 years forfeited any bond posted  
 4 in accordance with prospecting or mining activities in this state, unless by mutual  
 5 agreement with the state, the department may not issue a prospecting permit. The  
 6 department may not issue a prospecting permit if it finds that any officer, director  
 7 or manager of the applicant has, while employed by the applicant, the applicant's  
 8 parent corporation, any of the applicant's principal shareholders or members, or any  
 9 of the applicant's subsidiaries or affiliates, in which the applicant owns more than  
 10 a 40% interest, within the previous 20 years forfeited any bond posted in accordance  
 11 with prospecting or mining activities in this state unless by mutual agreement with  
 12 the state. In this subsection, "forfeited any bond" means the forfeiture of any  
 13 performance security occasioned by noncompliance with any prospecting or mining  
 14 laws or implementing rules. If an application for a prospecting permit is denied, the  
 15 department, within 30 days from the date of application denial, shall furnish to the  
 16 applicant in writing the reasons for the denial.

17 *after any contested case hearing under s. 293.44 and*  
 SECTION 37. 293.45 (2m) of the statutes is created to read:

18 293.45 (2m) (a) The department shall approve or deny the application for a  
 19 prospecting permit, other than a prospecting permit to which s. 293.42 applies, and  
 20 for any other approval, license, or permit that was covered by the informational  
 21 hearing under s. 293.43 (1m), *Insert 18-21* no later than the 520th day after the day on which the  
 22 department determines that the application for the prospecting permit is complete,  
 23 except as provided in pars. (b) to (d).

24 (b) The department may extend the deadline under par. (a), upon notice to the  
 25 applicant, for a total of not more than 180 days, if any of the following applies:

**BILL**

1 1. The department needs additional time to ensure collaboration with any  
2 federal regulatory agency with responsibilities related to the prospecting operation.

3 2. The department needs additional time to evaluate information related to the  
4 prospecting operation that becomes available after the applicant files the application  
5 for the prospecting permit.

6 3. The applicant makes changes to its proposal for the prospecting operation.

7 (c) The applicant may, by providing notice to the department, extend the  
8 deadline under par. (a) as often and for any length of time that the applicant  
9 determines to be necessary.

10 (d) The department and an applicant may negotiate an agreement specifying  
11 a timeline for processing the application for a prospecting permit and for other  
12 approvals, licenses, or permits issued by the department and that timeline may  
13 include a deadline for the department to approve or deny the application for a  
14 prospecting permit that is different from the deadline under par. (a).

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

16 293.49 (1) (a) (intro.) Except as provided in sub. (2) and s. 293.50 and except  
17 with respect to property specified in s. 41.41 (11), ~~within 90 days of the completion~~  
18 ~~of the public hearing record~~, the department shall issue the mining permit if it finds:

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

20 293.49 (1) (a) 3. In the case of a surface mine, the site is not unsuitable for  
21 mining. The preliminary determination that a site was not unsuitable for mining  
22 under s. 293.45 may not be conclusive in the determination of the site's suitability  
23 for mining under this section. However, at the hearing held under ~~this section and~~  
24 ~~s. 293.43~~ s. 293.43<sup>4</sup>, testimony and evidence submitted at the any prospecting permit  
25 proceeding relevant to the issue of suitability of the proposed mining site for surface

← LPS  
if any  
293.44

**BILL**

*after any contested case hearing under s. 293.44 and*

1 mining may be adopted, subject to the opportunity for cross-examination and  
2 rebuttal, if not unduly repetitious.

3 **SECTION 40.** 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 ~~the~~ The department shall deny the mining permit if it finds any of the following:

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

7 293.49 (4g) (a) The department shall approve or deny the application for a  
8 mining permit, and for any other approval, license, or permit that was covered by the  
9 informational hearing under s. 293.43 (1m), <sup>Insert 29-9</sup> no later than the 520th day after the day  
10 on which the department determines that the application for the mining permit is  
11 complete, except as provided in pars. (b) to (d).

12 (b) The department may extend the deadline under par. (a), upon notice to the  
13 applicant, for a total of not more than 180 days, if any of the following applies:

14 1. The department needs additional time to ensure collaboration with any  
15 federal regulatory agency with responsibilities related to the mining operation.

16 2. The department needs additional time to evaluate information related to the  
17 mining operation that becomes available after the applicant files the application for  
18 the mining permit.

19 3. The applicant makes changes to its proposal for the mining operation.

20 (c) The applicant may, by providing notice to the department, extend the  
21 deadline under par. (a) as often and for any length of time that the applicant  
22 determines to be necessary.

23 (d) The department and an applicant may negotiate an agreement specifying  
24 a timeline for processing the application for a mining permit and for other approvals,  
25 licenses, or permits issued by the department and that timeline may include a

**BILL**

1 deadline for the department to approve or deny the application for a mining permit  
2 that is different from the deadline under par. (a).

3 **SECTION 42.** 293.49 (4r) of the statutes is created to read:

4 293.49 (4r) An applicant may not take any action authorized under a mining  
5 permit, or any other approval, license, or approval incidental to the proposed mining,  
6 before the 30th day after the department issues its decision to approve the mining  
7 permit. If a person files a notice of intent to participate in a contested case hearing,  
8 as provided in s. 293.495 (4), the applicant may not take any action authorized under  
9 the mining permit, or any other approval, license, or permit incidental to the  
10 proposed mining before the decision in the contested case is served under s. 227.48.

11 **SECTION 43.** 293.49 (5) of the statutes is repealed and recreated to read:

12 293.49 (5) The department shall provide notice of its decision under this section  
13 to the applicant and to the persons specified in s. 293.43 (3) (b) 1.

14 **SECTION 44.** 293.495 of the statutes is created to read:

15 **293.495 Contested case hearing.** (1) REQUIREMENT; SCOPE. A contested case  
16 hearing shall be held on the decision to grant or deny the application for a mining  
17 permit or a prospecting permit, other than a prospecting permit to which s. 293.42  
18 applies, if a person files a notice of intent to participate under sub. (4) within 30 days

19 after the department provides notice under sub. (3). The department's decision on

20 application for any other approval, license, or permit that was covered by the informational hearing  
21 and any environmental impact statement prepared under s. 1.11  
under s. 293.43 (1m) shall be considered at the contested case hearing.

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

← LPS: the section number is supposed to be 293.44

move this section to p. 17

mining  
prospecting

**BILL**

more of this  
at this  
to p. 17

(a) ←

1 (3) NOTICE. The department shall provide notice of the contested case hearing

2 by doing all of the following immediately after it makes its decision under s. 293.45

3 or 293.49:

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

12 → 2. (b) Publication of a Publishing  
13 format, in the weekly newspaper published in the closest geographic proximity to the  
14 proposed prospecting site or mining site; in the newspaper having the largest  
15 circulation in a county within which all or a portion of the proposed site lies; and in  
16 those newspapers published in counties contiguous to the counties within which all  
17 or a portion of the proposed site lies that have a substantial circulation in the area  
18 of, or adjacent to, the proposed site.

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

Insert  
22-24 →

*more all of this to p. 17*

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

6 (5) REQUIREMENTS OF DEPARTMENT. In a contested case hearing under this  
7 section, the department shall proceed first with the presentation of evidence and  
8 shall have the burden of proof.

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

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

16 (8) DEADLINES. (a) The hearing examiner shall conclude the hearing under this  
17 section no later than the 180th day after the department issues its decision on the  
18 application for the prospecting permit under s. 293.45 or its decision on the  
19 application for the mining permit under s. 293.49.

20 (b) The deadline for the decision on the matters covered in the hearing under  
21 this section is the 210th day after the department issues its decision on the  
22 application for the prospecting permit under s. 293.45 or its decision on the  
23 application for the mining permit under s. 293.49.

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

**BILL**

1           **SECTION 45.** 293.51 (2m) of the statutes is created to read:

2           293.51 **(2m)** Upon notification that an application for a mining permit has been  
3 approved by the department but prior to commencing mining, the operator shall  
4 establish an irrevocable trust, in accordance with the proposed agreement under s.  
5 293.37 (2) (gm), in an amount equal to 20 percent of the amount of the bond or other  
6 security required under sub. (1) plus 20 percent of the amount of the proof of financial  
7 responsibility provided under s. 289.41 (3) for the mining waste site or, if the  
8 applicant provides proof of financial responsibility using the net worth method under  
9 s. 289.41 (4), of the amount of the proof of financial responsibility that would be  
10 required to be provided under s. 289.41 (3) for the mining waste site if the applicant  
11 did not use the net worth method.

12           **SECTION 46.** 293.51 (3) of the statutes is amended to read:

13           293.51 **(3)** Upon approval of the operator's bond, mining application and  
14 certificate of insurance and receipt of evidence of the establishment of the trust  
15 under sub. (2m), the department shall issue written authorization to commence  
16 mining at the permitted mining site in accordance with the approved mining and  
17 reclamation plans.

18           **SECTION 47.** 293.64 of the statutes is created to read:

19           **293.64 Groundwater quality.** (1) In the feasibility report under s. 289.24  
20 for a prospecting or mining waste facility, an applicant shall submit information  
21 based on predictive modeling to demonstrate whether there is a reasonable certainty  
22 that the facility will result in a violation of groundwater quality standards beyond  
23 the design management zone, determined under s. 160.21 (2) (d), within a period  
24 equal to the period in which the mining waste facility is proposed to operate plus 250  
25 years after the closure of the mining waste facility.

**BILL**

1           (2) For the purposes of s. NR 182.075 (1s) and (1u), Wis. Adm. Code, the  
2 horizontal distance to the mandatory intervention boundary for a prospecting or  
3 mining waste site is 150 feet from the outer waste boundary or a longer distance, up  
4 to 600 feet, agreed to by the applicant and the department, notwithstanding s. NR  
5 182.075 (1) (c), Wis. Adm. Code, except that the horizontal distance to the mandatory  
6 intervention boundary may not exceed 50 percent of the horizontal distance from the  
7 outer waste boundary to the boundary of the design management zone, determined  
8 under s. 160.21 (2) (d), for the prospecting or mining waste site.

**SECTION 48. Nonstatutory provisions.**

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

**(2) WASTE CHARACTERIZATION RULES.**

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

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

**BILL****SECTION 48**

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

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

11

(END)

1 **Analysis insert A**

*no 9* 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

2 **Analysis insert B**

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 ~~680~~ *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.

3

4 **Insert 8-19**

✓ 5 **SECTION 1.** 227.42 (4) of the statutes is amended to read:

6 227.42 (4) This section does not apply if a hearing on the matter was conducted  
7 as a part of a hearing under s. ~~293.43~~ 293.44.

8 History: 1975 c. 414; 1977 c. 418; Stats. 1977 s. 227.064; 1979 c. 221; 1981 c. 374; 1983 a. 298; 1985 a. 182 s. 28; Stats. 1985 s. 227.42; 1995 a. 227; 2009 a. 219.

8 **Insert 18-21**

*no 9* 9 730th day after the day on which the department determines that the  
10 application for the prospecting permit is complete, except that if the deadline under  
11 s. 293.44 (3) (b) 1. is extended under s. 293.44 (3) (b) 2. to 4., the deadline under this  
12 subsection is extended by the same number of days.

13 **Insert 20-9**

*no 9* 14 730th day after the day on which the department determines that the  
15 application for the mining permit is complete, except that if the deadline under s.

1 293.44 (3) (b) 1. is extended under s. 293.44 (3) (b) 2. to 4., the deadline under this  
2 subsection is extended by the same number of days.

3 **Insert 22-24**

4 (b) 1. The department shall provide the notice under this subsection after  
5 holding the informational hearing under s. 293.43 and no later than the 520th day  
6 after the day on which the department determines that the application for the  
7 mining permit or prospecting permit is complete, except as provided in subds. 2. to  
8 4.

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

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

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

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

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

22 4. The department and an applicant may negotiate an agreement specifying a  
23 timeline for processing the application for a <sup>mining permit or</sup> prospecting permit and for other  
24 approvals, licenses, or permits issued by the department and that timeline may

1 include a deadline for the department to provide notice of the contested case hearing  
2 that is different from the deadline under subd. 1.

3 **Insert 23-17**

W09

4 680th day after the day on which the department determines that the  
5 application for the mining permit or prospecting permit is complete, except that if  
6 the deadline under sub. (3) (b) 1. is extended under sub. (3) (b) 2. to 4., the deadline  
7 under this subsection is extended by the same number of days

✓  
✓

**Rose, Stefanie**

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**From:** Stoa, Jim  
**Sent:** Friday, January 25, 2013 11:10 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -0821/2 Topic: Regulation of metallic mining and taxation of iron mining

Please Jacket LRB -0821/2 for the SENATE.