

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0762/1insX

.....

INS X (~~5~~ goes in MGG's insert material

it finds that the proposed project represents the least environmentally damaging practicable alternative, taking into consideration practicable alternatives that avoid ^{wetland} impacts; that all practicable measures to minimize adverse impacts will be taken; and that

1

Insert

page 18

CS B

WETLANDS

change to sub

2

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

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Overview of the wetland permitting process

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Under current law, with certain exceptions, no person may discharge dredged or fill material into a wetland unless the discharge is authorized by a wetland general permit or wetland individual permit issued by DNR. DNR may not issue a individual permit or authorize a discharge under a general permit unless DNR determines that the discharge will comply with all applicable water quality standards. Current law requires that DNR issue statewide general permits for various types of discharges. These include general permits covering discharges that affect not more than two acres of wetland and that are necessary for dewatering or for the treatment of hazardous waste or toxic pollutants provided that toxic pollutants are not part of the discharge. If a person cannot, or chooses not to seek authorization to proceed under a general permit, the person may apply for an wetland individual permit. Also, DNR may require a person to apply for an individual permit if DNR determines that additional restrictions on the discharge are required in order to assure that no significant adverse impacts to wetland functional values will occur.

Wetland water quality standards

1 Wetland water quality standards that are promulgated as rules by DNR
2 require that various functional values that are provided by wetlands be protected
3 from adverse impacts. These functional values include providing protection from
4 flooding, recharging groundwaters, providing habitat for wildlife, and providing
5 protection to shorelines from erosion. Current law also sets forth criteria to be used
6 to assure the maintenance or enhancement of these functional values. These criteria
7 include requiring that certain solids, debris, or toxic substances be absent. This bill
8 incorporates all of the functional values and criteria that are contained in the DNR
9 rules for water quality certifications for wetlands.

Wetland individual permits

10 The bill creates separate provisions for issuing wetland individual permits that
11 apply to wetlands that are affected by an iron mining operation. These provisions
12 contain somewhat different requirements than those found under current law that
13 are applicable to wetland individual permits in general.

14 Under current law and under the bill, the person applying for a wetland
15 individual permit must include in the application for DNR's review an analysis of the
16 practicable alternatives that will avoid and minimize the adverse impacts of the
17 discharge on the wetland's functional values and that will not result in any other
18 significant adverse environmental consequences. Under current law, DNR limits its
19 review to the practicable alternatives that are located at or that are adjacent to the
20 discharge site if the proposed project that will cause the discharge will result in a
21 demonstrable economic public benefit, if the proposed project is for a facility that is
22 in existence at the time the application is filed, or if the proposed project will occur
23 in an industrial park. Under the bill, DNR limits its review of practicable

e standards

1 alternatives only if the proposed project will result in a demonstrable economic
2 public benefit.

3 Also in current law and under the bill, DNR in its review must consider the
4 direct, secondary, and cumulative impacts that may occur to wetland functional
5 values, the net positive or negative impact of the proposed project, and the impact
6 that will result from the mitigation that is required (see below).

7 The bill also requires that, in evaluating the significant adverse impacts as
8 part of its review, DNR must compare the functional values of the wetlands that will
9 be impacted by the mining site with other wetlands and water bodies in the region.

Under current law

ISSUE

10 DNR may, but is not required to, authorize the issuance of a wetland
11 individual permit if it finds that the proposed project represents the least
12 environmentally damaging practicable alternative, taking into consideration
13 practicable alternatives that avoid ^{wetland} impacts that all practicable measures to
14 minimize adverse impacts will be taken, and that the project will not result in
15 significant adverse impacts to wetland functional values, ^{or} to water quality, ^{or} in other
16 significant adverse environmental consequences. Under the bill, DNR must issue
17 a wetland individual permit if it finds that the project will meet these requirements.
18 Also, the bill specifically requires DNR to issue the permit if any significant adverse
19 impact to wetland functional values that remains after the impacts are avoided or
20 minimized to the extent practicable will be compensated for under a mitigation
21 program (see below).

Other approvals that require a wetland impact evaluation

22 Under this bill, some of the provisions that apply to wetland individual permits
23 apply to other approvals issued by DNR that regulate activities that affect wetlands,
24 other than discharges of dredged or fill material, that require an evaluation of the

DNR

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and

INS X

1 impact on the wetland. Under the bill, DNR may not issue such an approval unless
 2 DNR determines that the activity will comply with all the applicable wetland water
 3 quality standards that are described above. The bill also requires DNR to go through
 4 the same process in reviewing an application for one of these other approvals as is
 5 required for wetland individual permits. After completing the reviewing process,
 6 the department may not deny the approval on the basis of the impacts from the
 7 activity on the wetland if the project will not result in will not result in significant
 8 adverse impacts to wetland functional values ^{or} to water quality ^{or} in other significant
 9 adverse environmental consequences. Also, the bill prohibits DNR from denying
 10 the approval permit if any significant adverse impact to wetland functional values
 11 that will ^{remain} after the impacts are avoided or minimized to the extent practicable will be
 12 compensated for under a mitigation program (see below).

Wetland general permits

13 Current law requires that DNR issue statewide general permits for various
 14 types of discharges of dredged and fill material into wetlands. These include general
 15 permits covering discharges that affect not more than two acres of wetland and that
 16 are necessary ^{or} ^{for} dewatering or for the treatment of hazardous waste or toxic
 17 pollutants provided that ^{hazardous} waste ^{or} ^{toxic} pollutants are not part of the discharge. The
 18 general permits also include discharges that affect not more than 10,000 square feet
 19 of wetlands that are ^{part} of developments for commercial, residential, agricultural,
 20 municipal, or recreational purposes. In order to proceed with a discharge that is
 21 authorized under a general permit, a person has to give written notification to DNR
 22 not less than 30 days before beginning the discharge. If, within 30 days after
 23 receiving the application, DNR does not either request additional information or
 24 inform the person giving notification that a wetland individual permit will ^{be} required,

(ACE)

1 the person may proceed with the discharge without any further authorization from
2 DNR.

3 These provisions relating to general permits also apply to discharges of dredged
4 and fill materials into wetlands that are associated with iron mining except a person
5 may not proceed with a discharge until the mining permit is issued.

that

Discharges of dredged or fill material into wetland subject to federal jurisdiction

6 Under federal law, activities involving the discharge of dredged or fill material
7 into wetlands subject to federal jurisdiction (federal wetlands) must comply with
8 certain guidelines contained in regulations promulgated by the federal
9 Environmental Protection Agency in order for a federal permit to be issued by the
10 Army Corps of Engineers. Before a federal permit may be issued, DNR must issue
11 a water quality certification. Under current law, a wetland individual or general
12 permit issued by DNR that authorizes a discharge of dredged or fill material
13 issued by DNR constitutes water quality certification for federal purposes. Under the bill,
14 a wetland individual permit or other approval for which a wetland impact evaluation
15 is required constitutes a federal water quality certification for a federal wetland.

U.S.

Mitigation

16 Under current law, mitigation is required as part of a wetland individual
17 permit. Mitigation may be accomplished by creating, enhancing, preserving, or
18 restoring a wetland in order to compensate for adverse impacts to other wetlands.
19 The mitigation program established by DNR must allow as mitigation the
20 purchasing ^{of} credits from a mitigation bank established in the state and completing
21 actual mitigation within ^{the} the same watershed as the discharge site or within one-
22 half mile of the discharge ^{site} if not in the same watershed. A wetland mitigation bank
23 is a system of accounting for wetland loss that includes one or more sites where

1 wetlands are improved to provide transferable credits to ^{be} subsequently applied to
 2 offset adverse impacts to other wetlands. Current law sets a minimum ratio of at
 3 least 1.2 acres ^{of} mitigation for each acre affected by ^a the discharge. ^{The} mitigation program
 4 may also include an in lieu fee ^{sub} program, if ^e one is established by DNR. ^{The} An in lieu fee
 5 ^{sub} program is ^{a program} under which under which payments are made to DNR or another entity ^{*}
 6 for the purposes of restoring, enhancing, creating, or preserving wetlands or other
 7 water resource features. Under the in lieu fee subprogram ^W wetlands that benefit
 8 ^{the} from from the program ^{must} shall be open to the public for nonmotorized activities such
 9 as hunting, cross-country skiing, and hiking.

10 Under the bill, as under current law, mitigation may be accomplished by
 11 creating, enhancing, restoring, or preserving another wetland. Under the bill,
 12 mitigation can include a mitigation project performed by an applicant for a mining
 13 permit, purchase of mitigation credits from a mitigation bank ^{for a site} located ^{anywhere} in the state or
 14 from certain ^{mitigation} banks established before February 1, 2002. Mitigation can also include
 15 participation in the ^e in-lieu fee program as described above.

16 Under the bill, if ^{is not practicable or ecologically preferable} to conduct
 17 mitigation at a location ^{on the mining site or} within one-half mile of the outer boundary of the mining site
 18 (on-site location) or if there is no on-site location that will provide sufficient wetland
 19 acreage, DNR must allow the applicant to conduct mitigation at a site other than
 20 an on-site location. However, If a mining operation is located in whole or in part
 21 within the ceded territory, any mitigation, including mitigation accomplished
 22 through the purchase of mitigation bank credits and the in-lieu fee subprogram,
 23 shall occur within the ceded territory. The bill defines "ceded territory" to be ^{the} territory
 24 located in the state that was ceded by the Chippewa Indians to the United States

that is required to compensate for adverse impacts to wetlands in the

ceded territory

1 in two treaties ⁱⁿ 1837 and 1842. The bill sets a maximum ratio of 1.5 acres of
2 mitigation for each acre of adversely impacted wetland.

3 The bill establishes a different procedure for reviewing mitigation measures
4 for a federal wetland. Under the bill, DNR reviews the applicable mitigation
5 measures under federal law and determines whether DNR has reasonable assurance
6 that these measures will compensate for any significant adverse impacts to wetland
7 functional values, any significant adverse impacts to water quality, and any other
8 significant adverse environmental consequences (significant adverse effects). If
9 DNR determines it has reasonable assurance that the mitigation measures will
10 compensate for these significant adverse effects. DNR may not impose any

11 additional conditions. If DNR determines that it does not have reasonable
12 assurance, it may impose additional conditions, but these are limited to those that
13 are necessary to compensate for any ^{remaining} significant adverse effects. The bill also
14 provides that DNR may not increase the number of acres to be mitigated under the
15 federal compensatory mitigation requirements.

That will remain after the completion of

Exemptions

16 Under current law, certain activities in wetlands do not require authorization
17 under a wetland individual ^{or} general permit. These activities include normal
18 farming, silviculture, and ranching activities and certain activities related to
19 drainage and irrigation ditches, temporary mining roads, and damaged parts of
20 structures that are in use of a wetland. Under current law, these activities lose the
21 exemption under certain circumstances, such as using a wetland for a use for which
22 it was not previously used or conducting an activity that may impair the flow of a
23 ~~wetland~~ ^{wetland} body of water. Under the bill, some of these exemptions apply to iron mining
24 activities. However, the provision regarding losing an exemption does not apply.

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1 Instead, the exemptions only apply if the person conducting the activity minimizes
2 the adverse effect to the environment.

3 Under current rules promulgated by the DNR, certain artificial wetlands are
4 exempt from the wetland permitting requirements unless DNR determines that
5 significant functional values are present. These exemptions include artificial
6 wetlands that are within active nonmetallic mining operations. Under this bill,
7 these same artificial wetlands are exempt from the wetland permitting
8 requirements, except that the exemption for mining is limited to iron mining and the
9 exception regarding significant functional values does not apply.

Other provisions

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

*that is improved under
a mitigation program*

17 Current law requires a person holding a wetland individual permit to grant an
18 easement to DNR or to execute a comparable legal instrument, to ensure that an
19 improved wetland is not destroyed or substantially degraded by subsequent owners.

20 Under the bill a person who is issued a wetland individual permit or other approval
21 for which a wetland impact evaluation is required must grant such an easement or
22 execute such an instrument, and DNR must suspend the wetland permit or approval
23 if the permit or approval holder fails to grant the easement or execute the instrument
24 within the time limit set forth in the mining permit.

2013-2014 DRAFTING INSERT
FROM THE
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LRB-0762/1
RCT:.....

no 97

Insert 4-A

permits for discharges into

no 97

Insert 5-A

permits for discharges into

Insert 5-B

Current law prohibits DNR from issuing a permit for metallic mining in a sulfide ore body (a mineral deposit in which metals are mixed with sulfide minerals) ✓
unless it finds, based on information provided by the applicant, that two conditions are satisfied. The first condition is that a mining operation has operated in a sulfide ore body that has a net acid generating potential for at least ten years without causing water pollution from acid drainage or the release of heavy metals. The ✓
second condition is that a mining operation that operated in a sulfide ore body that has a net acid generating potential has been closed for at least ten years without causing water pollution from acid drainage or the release of heavy metals.

Under the bill, these conditions on issuing a permit for metallic mining in a sulfide ore body do not apply to issuing a permit for iron mining.

Insert 6-A

PREAPPLICATION PROCESS

no 9

Insert 6-B

Under this bill, these provisions do not apply to a person who intends to apply for an iron mining permit.

no 9

Insert 7-A

at least 12 months before filing

Insert 7-B

APPLICATION FOR MINING PERMIT

no 9

Insert 11-A

between 120 and 180 days after it issues the EIS for the proposed mine and before it acts on the mining permit application

no 9

Insert 12-A

before it acts on a mining permit application

no 9

Insert 12-B

unless DNR and the applicant agree to extend the deadline. The parties may agree to only one extension, which may not exceed 60 days. DNR and the applicant may agree to an extension only if an extension is necessary to allow DNR and the U.S. Army Corps of Engineers to jointly prepare the EIS or if new information or a change to the mining proposal necessitates additional time to review the application

no 9

Insert 12-C

for acting on the mining permit application

Insert 13-A

9

DNR must refund the fees paid by the applicant. The bill also authorizes the applicant to bring a court action to compel DNR to act on the mining permit

Insert 13-B

Determination of completeness

The bill requires DNR to review the application for a mining permit and, within 30 days, determine whether the application is complete. If DNR determines that the application is complete, it notifies the applicant and the date of the notification is the date on which the application is considered to be complete. If DNR determines that the application is incomplete, it notifies the applicant and may make one request for additional information within the 30-day review period. If DNR fails to provide a notice during the 30-day review period, the application is considered to be complete at the end of that period. Within 10 days after receiving additional requested information, DNR notifies the applicant whether it has received all of the requested information. The day on which DNR sends the second notice is the day on which the application is considered to be complete. If DNR fails to provide a notice during the 10-day period, the application is considered to be complete at the end of that period.

Insert 14-A

Current law requires DNR to deny an application for a metallic mining permit if the mining operation is reasonably expected to cause the destruction or filling in of a lake bed or to cause landslides or substantial deposition in stream or lake beds that cannot be feasibly prevented. ✓

The bill requires DNR to deny an application for an iron mining permit if the mining operation is reasonably expected to cause the destruction or filling in of a lake bed, unless DNR has authorized the destruction or filling in of the lake bed under the provisions of the bill related to wetlands, navigable waters, or water withdrawals. The bill requires DNR to deny an application for an iron mining permit if the mining operation is reasonably expected to cause landslides or substantial deposition in stream or lake beds that cannot be feasibly prevented, unless DNR has authorized the landslides or substantial deposition in stream or lake beds under the provisions of the bill related to wetlands or navigable waters.

Insert 15-A

9 As under the current metallic mining laws, the bill requires DNR to deny an application for an iron mining permit if the mining operation is reasonably expected to cause

Insert 18-A

W09

If the matter was covered in the contested case hearing conducted before DNR acts on an application for a metallic mining permit, this general right to a contested case hearing after a decision has been made does not apply.

This bill does not allow a contested case hearing on any decision by DNR related to a proposed iron mine before DNR acts on the application for the iron mining permit. Under the bill, the right to a contested case hearing applies if a person is aggrieved by a decision to grant or deny an iron mining permit or a related DNR approval or a final decision on the EIS for a proposed iron mine and the person seeking the hearing requests the hearing within 30 days after DNR issues the decision on the iron mining permit application. One consolidated hearing is held on all of the issues raised by persons requesting a hearing.

The bill requires the hearing examiner presiding over the contested case hearing to issue a final decision no more than 150 days after DNR issues its decision. If the hearing examiner does not meet this deadline, DNR's decision is affirmed. Under the bill, the hearing examiner may not issue an order prohibiting activity authorized under the DNR decision that is being reviewed in the hearing.

Under current law, if a hearing examiner finds that a claim is frivolous, the hearing examiner is required to award the successful party the costs and reasonable

attorney fees that are directly attributable to responding to the claim. To find a that a claim is frivolous, the hearing examiner must find that the claim was made in bad faith, solely for the purpose of harassing or maliciously injuring another or that the party or the party's attorney knew, or should have known, that the claim was without any reasonable basis in law and could not be supported by a good faith argument for an extension, modification, or reversal of existing law.

This bill adds that a hearing examiner may find that a claim is frivolous in a proceeding relating to iron mining if the hearing examiner finds that the claim was made primarily for the purpose of causing ^{delay} to an activity authorized under an approval that is the subject of the hearing.

Insert 27-A

not

, but the bill changes the manner in which they apply

Insert 29-A

not

For other mining facilities, the horizontal distance to the boundary of the DMZ

Re

is generally 150 feet from the edge of the facility or at the property boundary, whichever distance is less.

Insert 30-A

not

Under the bill, the horizontal distance to the mandatory intervention boundary for an iron mining site is generally 300 feet from the outer waste boundary or the

outer edge of the excavation. The bill authorizes DNR to reduce the mandatory intervention boundary by up to 150 feet if it determines that the reduction is necessary to adequately identify and respond to potential groundwater quality issues. Under the bill, if a preventive action limit or enforcement standard is exceeded beyond the mandatory intervention boundary, DNR must require a response by the operator.

Insert 34-A

no 9

first, third, fourth, and ^{seventh} ~~sixth~~ prohibitions described above

Insert 34-B

no 9

(See the discussion of unsuitability under **GRANT OR DENIAL OF MINING PERMIT,**

Grounds for denial, above.)

Insert 36-A

no 9

for the iron mining waste facility;

Insert 36-B

no 9

, in relation to the portion of the mining site that will be disturbed at the end

of the following year

Insert 37-A

no 9

terminates after 40 years

Insert 37-AM

Under current law

There are several laws that may currently apply to withdrawals of groundwater or surface water.



Insert 37-B

for certain withdrawals of water from a stream or lake, including withdrawals for metallic mining. The law requires DNR to deny a surface water withdrawal permit for metallic mining if the injury to public rights caused by the withdrawal exceeds the public benefits generated by the mining or if the withdrawal would unreasonably injure rights of riparian (waterfront) property owners unless the riparian property owners consent to the proposed withdrawal



Insert 37-C

(a high capacity well) or from engaging in the removal of more than 100,000 gallons per day of water from a mine



Insert 37-D

Current law prohibits DNR from issuing an approval for the withdrawal of groundwater for mining or for removing water from (dewatering) a mine if the withdrawal or removal would result in the unreasonable detriment of public or private water supplies or the unreasonable detriment of public rights in the waters of the state.

WJ

Insert 39-A

To approve a water loss application, DNR must find, among other things, that the proposed withdrawal and use of the water is consistent with the protection of public health, safety, and welfare and will not be detrimental to the public interest; that the proposed withdrawal will not have a significant detrimental effect on the quantity and quality of the waters of the state; that no public rights in navigable waters will be adversely affected; and that the applicant incorporates reasonable conservation practices.

WJ

Insert 39-AM

, such as the amount of water loss that is allowed and any other conditions necessary to protect the environment and public health, safety, and welfare

WJ

Insert 39-B

Finally, the current law that implements the Great Lakes Water Resources Compact requires water use permits for certain withdrawals of groundwater or surface water.

Under the bill

Insert 39-C

WJ

, except that the current law that implements the Great Lakes Water Resources Compact continues to apply

Insert 41-A

9 Under the bill, if DNR determines that a high capacity well proposed by an applicant may impair a privately owned high capacity well, DNR must include conditions in the water withdrawal permit that will ensure that the privately owned well will not be impaired, unless the owner of the private well agrees to the impairment. no 9

Insert 46-A

no 9 Under current law, the process for obtaining a prospecting permit is similar to the process for obtaining a mining permit. When a person completes prospecting, the person must conduct reclamation, that is, must rehabilitate the site to either its original state or, if that is physically or economically impracticable or environmentally or socially undesirable, to a state that provides long-term environmental stability.

Insert 48-A

no 9 permit for a discharge into wetlands

Insert 51-A

no 9 In addition to these fees, if DNR contracts with a consultant to assist in preparation of the EIS and awards that contract on the basis of competitive bids, the applicant must pay the full costs under the contract.

Insert 52-A

The bill provides that when the revenue that is deposited into the economic development fund is appropriated to the Wisconsin Economic Development Corporation (WEDC), WEDC must use the revenue to make grants and loans to businesses in this state, giving preference to businesses in an area affected by iron mining.

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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RNK:.....

INSERT 12-AM

no dl

The bill requires DNR to take testimony at the hearing on certain issues with regard to a proposed withdrawal of groundwater or surface water including the public rights in any body of water and the related environment that may be injured by the proposed withdrawal, the public benefits provided by increased employment, economic activity, and tax revenues from the proposed mining, and the rights of competing users of the groundwater or surface water.

INSERT 39-C -2

no dl

This bill specifies that a person is not required to be the owner of riparian property in order to obtain a permit to withdraw surface water from that riparian property if the person leases the riparian property from the owner or holds an easement on the riparian property. The bill also specifies that a person is not required to be the owner of a piece of property in order to obtain a permit to withdraw groundwater from that piece of property if the person leases the piece of property from the owner, the person holds an easement on the piece of property, or the person has obtained permission from the owner to withdraw groundwater from that piece of property.

INSERT 43-A

no dl

Requirements for issuing individual waterway permits under current law that are not modified under the bill continue to apply to the extent that they do not conflict with any other provision in the bill.

INSERT 43-B

no dl

Under current law, to qualify for some individual waterway permits or to conduct activities under certain permit exemptions, a person must be an owner of riparian property. This bill provides that for the purposes of obtaining an individual waterway permit associated with bulk sampling or mining, a person who is not a riparian owner may exercise a riparian right held by a riparian owner if the person

iron

*

exercises that right with respect to riparian property that the person leases or on which the person holds an easement.

INSERT 53-A



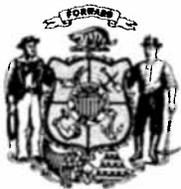
⁵ except to the extent necessary for the municipality to which the ordinance applies to maintain eligibility for participation in the National Flood Insurance Program.

Insert 52-B

Joe

Under current law, in addition to paying the net proceeds occupation tax, 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. The bill increases the payments to \$75,000 each.

- end of insert 52-B -



Analysis insert

2011 SENATE BILL 488

February 16, 2012 - Introduced by Senators GALLOWAY, VUKMIR, ZIPPERER, WANGGAARD, DARLING, S. FITZGERALD, LASEE, LAZICH, LEIBHAM, KEDZIE and GROTHMAN, cosponsored by Representatives J. FITZGERALD, SUDER, WILLIAMS, TIFFANY, HONADEL, AUGUST, BALLWEG, BERNIER, BIES, BROOKS, CRAIG, ENDSLEY, FARROW, JACQUE, KAPENGA, KAUFERT, KERKMAN, KESTELL, KLEEFISCH, KLENKE, KNILANS, KNODL, KNUDSON, KOOYENGA, KRAMER, KRUG, KUGLITSCH, T. LARSON, LEMAHIEU, LITJENS, LOUDENBECK, MARKLEIN, MEYER, MURSAU, MURTHA, NASS, NERISON, NYGREN, A. OTT, J. OTT, PETERSEN, PETROWSKI, PETRYK, PRIDEMORE, RIPP, RIVARD, SEVERSON, SPANBAUER, STEINEKE, STONE, STRACHOTA, STROEBEL, TAUCHEN, THIESFELDT, TRANEL, VAN ROY, VOS, WEININGER and WYNN. Referred to Joint Committee on Finance.

AN ACT *to repeal* 30.025 (1e) (title) and (a), 107.001 (2) and 293.01 (8); *to renumber and amend* 30.025 (1e) (b), 30.123 (8) (c) and 87.30 (2); *to amend* 20.370 (2) (gh), 20.455 (1) (gh), 20.566 (7) (e), 20.566 (7) (v), 25.46 (7), 29.604 (4) (intro.), 29.604 (4) (c) (intro.), 30.025 (1m) (intro.), 30.025 (1m) (c), 30.025 (1s) (a), 30.025 (2), 30.025 (2g) (b) (intro.), 30.025 (4), 30.12 (3m) (c) (intro.), 30.133 (2), 30.19 (4) (c) (intro.), 30.195 (2) (c) (intro.), 44.40 (5), 70.375 (1) (as), 70.375 (1) (bm), 70.38 (2), 70.395 (1e), 70.395 (2) (dc) 1., 70.395 (2) (dc) 4., 70.395 (2) (fm), 70.395 (2) (h) 1., 107.001 (1), 107.01 (intro.), 107.01 (2), 107.02, 107.03, 107.04, 107.11, 107.12, 107.20 (1), 107.20 (2), 107.30 (8), 107.30 (15), 107.30 (16), 160.19 (12), 196.491 (3) (a) 3. b., 196.491 (4) (b) 2., 281.65 (2) (a), 281.75 (17) (b), 287.13 (5) (e), 289.35, 289.62 (2) (g) 2. and 6., 292.01 (1m), chapter 293 (title), 293.01 (5), 293.01 (7), 293.01 (9), 293.01 (12), 293.01 (18), 293.01 (25), 293.21 (1) (a), 293.25 (2) (a), 293.25 (4), 293.37 (4) (b), 293.47 (1) (b), 293.50 (1) (b), 293.50 (2) (intro.), 293.50 (2) (a), 293.50 (2) (b), 293.51 (1), 293.65 (3) (a),

SENATE BILL 488

293.65 (3) (b), 293.86, chapter 295 (title), 295.16 (4) (f), 299.85 (7) (a) 2. and 4., 299.95, 323.60 (5) (d) 3. and 710.02 (2) (d); and ~~to create~~ 20.370 (2) (gi), 29.604 (7m), 30.025 (4m), 31.23 (3) (e), 87.30 (2) (b), 293.01 (12m), subchapter III of chapter 295 [precedes 295.40] and 323.60 (1) (gm) of the statutes; **relating to:** regulation of ferrous metallic mining and related activities, procedures for obtaining approvals from the Department of Natural Resources for the construction of utility facilities, making an appropriation, and providing penalties.

Analysis by the Legislative Reference Bureau**OVERVIEW**

This bill makes changes in the laws relating to the regulation of iron mining ^{and} procedures for utility facility approvals.

change to sub-sub
PROCEDURES FOR UTILITY FACILITY APPROVALS

Under current law, with certain exceptions, a person may not begin the construction of certain utility facilities before the Public Service Commission (PSC) has issued to the person either a certificate of public convenience and necessity (CPCN) or a certificate authorizing the person to transact public utility business (PSC certificate). Current law also provides that a utility facility that is required to obtain a PSC certificate and that is required to obtain one or more permits from the Department of Natural Resources (DNR), such as a permit allowing the placement of a structure in navigable waters, must use a procedure that requires the utility

move
to p.
52

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facility to submit only one application to DNR for all of the required DNR permits (combined permit procedure) rather than submitting separate applications to DNR for each permit. Current law also specifies that the applicant under the combined permit procedure must submit the combined application for permits to DNR at the same time that the applicant files an application for a PSC certificate.

This bill makes the combined permit procedure optional and allows a utility facility ^{the applicant} to submit separate applications to DNR for each required permit. Under the bill, if the utility facility does not use the combined permit procedure, it is not required to file a DNR permit application at the same time that it files an application for a PSC certificate.

Current law requires a person proposing to construct a large electric generating facility or high-voltage transmission line (facility) to provide DNR with an engineering plan or project plan for the facility at least 60 days before filing an application with PSC for a CPCN. Within 30 days thereafter, DNR must provide the person with a listing of each DNR approval that appears to be required for the construction or operation of the facility. Current law requires the person to file the application for these approvals within 20 days after receiving the listing from DNR.

for an applicant proposing to construct a utility facility for iron mining activities

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This bill eliminates this 20-day deadline and also specifies that the person must only

apply for those approvals identified in the listing that are applicable.

for a person proposing to construct a facility for iron mining activities

IRON MINING, GENERALLY

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

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

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

Insert 4-A

Under the bill, a person who proposes to mine for iron ore must obtain an iron mining permit. The person must obtain some of the approvals under other environmental and natural resources laws, for example, wastewater discharge permits, but the bill provides new approvals *specific to iron mining* in lieu of some current approvals, for

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g Insert S-A

example, high capacity well approvals and water quality certifications for wetlands.

The standards and procedures for granting, and the requirements related to, an iron mining permit and the other new approvals *specific to iron mining* differ in some respects from the standards, procedures, and requirements under current law, as described below.

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

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

Insert
S-B →

SENATE BILL 488*Insert 6-A***APPLICATION FOR MINING PERMIT**

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

Insert 6-B

This bill requires a person who is contemplating ^{e an iron} a mining project to provide DNR with a general description of the proposed mining project. The description must include a description of the mining site, including the nature, extent, and final configuration of the proposed excavation and mining site and certain other information^s including a map showing the boundaries of the area of land that will be affected by the mining project and the names of each owner of the mining site. The bill requires the person to include this information with the bulk sampling plan, described below, or if the person does not file a bulk sampling plan, with the person's notification to DNR of the person's intent to apply for an iron mining permit. The bill requires DNR to conduct a public informational hearing on a proposed mining project

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after receiving the general description, either as part of the hearing on approvals required for bulk sampling or, if there is no such hearing, as a separate hearing. ✓

This bill requires a person who intends to apply for an iron mining permit to notify DNR of ~~the intention~~ ^{that} ~~to file~~ ^{insert 7-A} the application and ~~requires~~ ^{The bill} DNR to meet with the applicant to make a preliminary assessment of the project's scope, to make an analysis of alternatives, to identify potential interested persons, and to ensure that the person intending to apply for an iron mining permit is aware of the approvals that the person may be required to obtain. DNR must also ensure that the person is aware of the requirements for submission of an environmental impact report and ~~about the~~ ^{of} information DNR will require to enable it to process the application for the mining permit in a timely manner.

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

Insert
7-B



Under current law, a person who wishes to obtain a permit for metallic mining must submit an application to DNR that includes a mining plan, a reclamation plan,

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information about the owners of the mining site, and information related to the failure to reclaim mining sites and to any criminal convictions for violations of environmental laws in the course of mining by persons involved in the proposed mining. The application must also include evidence that the applicant has applied for necessary approvals under applicable zoning ordinances and for any approvals issued by DNR that are necessary to conduct the mining, such as air pollution permits and wastewater discharge permits.

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

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

DNR's ^{current law} ~~current rules~~ require the applicant for a metallic mining permit to show that the mining and reclamation will comply with specified minimum standards.

The bill requires showings by the applicant for an iron mining permit that differ in some ways from ^{current law} DNR's rules. For example, ^{current law} the rules require ^s a demonstration that

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water runoff from the mining site will be managed so as to prevent soil erosion to the extent practicable, flooding, damage to agricultural lands or livestock, damage to wild animals, pollution of ground or surface waters, ^{and} damage to public health, ^{and} threats to public safety. The bill ^{↑ instead} requires a showing that water runoff from an iron mining site will be managed in compliance with any approval that regulates construction site erosion control or storm water management.

PERMITTING PROCESS***Environmental impact statement***

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

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

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

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

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

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

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

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

Mining hearing

Current law requires DNR to hold a ^{public} hearing ^{called a master hearing} on an application for a metallic mining permit. ^{Insert 11-A} The hearing includes both a contested case hearing, with testimony under oath and the opportunity for cross-examination, and a public informational hearing. The law requires that the hearing ^{to} cover the EIS and cover all other approvals issued by DNR that are required for the mining project, to the extent possible. Under current law, the provisions related to notice, hearing, and comment in the metallic mining law apply to any other needed approval, unless the applicant fails to make an application for an approval in time for it to be considered at the ^{master} hearing on the mining permit.

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This bill requires DNR to hold a public informational hearing for a proposed iron mining project. ^{Insert 12-A} The hearing does not include a contested case hearing. The hearing must cover the mining permit, the EIS, and all other approvals issued by DNR that are required for the mining project, unless the application for an approval is filed too late to allow the approval to be considered at the mining hearing. ^{Insert 12-Arr} Under the bill, the provisions related to notice, hearing, and comment in the iron mining law apply to any other needed ^{or required} approval.

Deadlines: automatic approval

^{RI} For acting on permit application

Current law does not specify a time, after the application for a mining permit is filed, within which DNR must act on a metallic mining permit application. It does require the mining ^{or master} hearing to be held between 120 days and 180 days after DNR issues the EIS and requires DNR to act on the permit within 90 days after the completion of the record for the public hearing.

The bill requires DNR to act on an application for an iron mining permit no more than 360 ^{or 420} days after the application is considered to be complete. ^{Insert 12-B} Under the bill, if the applicant submits the application for another approval within 60 days after the application for the mining permit is considered to be complete, DNR must also act on the application for that approval by the 360-day ^{or Insert 12-C} deadline. If the applicant files

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the application for another approval more than 60 days after the application for the mining permit is considered to be complete, the deadline for DNR's action on the approval is extended by the number of days the application is late.

If DNR does not act within the deadline for acting on the application for an iron mining permit, the application is automatically approved. *Insert 13-A*

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

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

SENATE BILL 488**GRANT OR DENIAL OF MINING PERMIT*****Grounds for denial***

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

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

Insert
14-A → Current law requires DNR to deny an application for a mining permit if the mining operation is reasonably expected to cause any of the following: 1) hazards

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resulting in irreparable damage to specified kinds of structures, such as residences, schools, or commercial buildings, to public roads, or to other public property designated by DNR by rule, if the damage cannot be prevented under the mining laws, avoided by removal from the area of hazard, or mitigated by purchase or by

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

The bill requires DNR to deny an application for an iron mining permit if the

mining operation is reasonably expected to cause any of the following: 1) hazards ^{substantial physical} resulting in irreparable ^{the} damage to specified kinds of structures, such as residences,

schools, or commercial buildings, or to public roads, but not to other public property

designated by DNR by rule, if the damage cannot be prevented under the mining

laws, ^{to the extent practicable} avoided by removal from the area of hazard, or ^{offset} mitigated by purchase or by obtaining the consent of the owner, or 2) irreparable ^{substantial} environmental damage to lake

or stream bodies despite adherence to the metallic mining laws, unless DNR has

authorized the activity that causes the damage. (As to the bases described in 3) or 4)

created by the bill

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above the bill requires DNR to deny the application unless the activity or occurrence is authorized by DNR under an applicable approval such as a wetland water quality certification, or a permit for a navigable water activity.

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

Standards for approval

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

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4) the proposed mine will result in a net positive economic impact in the area expected to be most impacted by the mine; and 5) the proposed mining operation conforms with all applicable zoning ordinances.

Under this bill, the standards for approval of an iron mining permit differ in some respects from the standards under current law. Under the bill, if none of the grounds for denial of the application for an iron mining permit apply, DNR must issue an iron mining permit if it finds the following: 1) the mining plan and reclamation plan are reasonably certain to result in reclamation of the mining site as required by the provisions of this bill; 2) the applicant has committed to conducting the proposed iron mining in compliance with the mining permit and any other approvals issued by DNR; 3) the proposed iron mining is not likely to result in substantial adverse impacts to public health, safety, or welfare; 4) the proposed iron mine will result in a net positive economic impact in the area expected to be most impacted by the mine; 5) the applicant will obtain all applicable zoning approvals;

and 6) the waste site feasibility study and plan of operation comply with the provisions of this bill ^{the} (described below) ⁽⁷⁾

and (the proposed iron mining is likely to meet or exceed regulations that apply to floodplain zoning ordinances)

has applied for

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REVIEW OF DNR DECISIONS

Generally, under current law, [↓]any person aggrieved by a decision of a state agency may obtain a contested case administrative hearing under this state's administrative procedure laws. ^{Insert 18-A}

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

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

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

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WETLANDS

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

SENATE BILL 488***Wetland water quality certification***

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

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

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Under current law, before ACE may issue a federal permit, DNR must issue a water quality certification that certifies that the discharge complies with state water quality standards applicable to wetlands. For a discharge into nonfederal wetlands, DNR must issue a water quality certification that certifies that the discharge complies with these water quality standards. In issuing water quality certification for both federal wetlands and nonfederal wetlands, DNR may impose conditions that must be met as part of the water quality certification.

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

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

The bill requires that an applicant for a wetland water quality certification for a nonfederal wetland submit a siting analysis as to various configurations for the iron mining site to DNR for review. These are limited to configurations associated with the proposed areas of iron deposits to be mined and areas contiguous to these deposits. In reviewing the analysis, DNR must recognize limitations associated with the proposed locations for iron mining, the need for waste sites and processing facilities to be contiguous to the location of the iron deposits, and the presumption that nonfederal wetlands will be impacted. If it is impracticable to avoid an impact

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or use of a nonfederal wetland, the applicant shall identify in the analysis the configurations that would result in impacts to the fewest acres. DNR then determines which configuration will affect the fewest acres and evaluates how that configuration will impact the functional values and water quality of the nonfederal wetland.

Wetland water quality standards

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

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functional values of the wetlands that will be impacted by the mining site with other wetlands and water bodies in the region.

Mitigation and compensation

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

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

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

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

Under current law, mitigation must occur within one-half mile of the impacted wetland (on-site). If DNR determines that it is not practicable or ecologically preferable that the mitigation occur on-site, DNR shall allow mitigation to be performed as near as practicable to the location of the adversely impacted wetland.

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Under the bill, if it is not practicable or ecologically preferable to conduct compensation or mitigation at an on-site location or if there is insufficient wetland acreage on-site, off-site compensation or mitigation may be performed. This may include purchases of credits from a mitigation bank located anywhere in the state. The bill also authorizes other persons to perform compensation or mitigation, subject to DNR approval.

Exemptions

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

Under current law, certain activities in nonfederal wetlands are exempt from the water quality certification requirements for wetlands. These include maintenance of drainage and irrigation ditches, damaged parts of structures that are in bodies of waters, and maintenance of certain temporary mining roads. Under current law, these activities lose their exemption under certain circumstances, such as using a wetland for a use for which it was not previous used, or conducting an

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activity that may impair the flow of a body of water. Under the bill, very similar exemptions apply to iron mining activities. However, the provision regarding losing the exemption does not apply. Instead, the exemptions only apply if the person conducting the activity minimizes the adverse effect to the environment.

Other provisions

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

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