

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0379/P1insRK
RNK:.....

INSERT 25-20

1 **SECTION 1.** 30.025 (1e) (a) of the statutes is amended to read:

2 30.025 (1e) (a) Except as provided in ~~par.~~ par. (b) and (c), this section applies
3 to a proposal to construct a utility facility if the utility facility is required to obtain,
4 or give notification of the wish to proceed under, one or more permits.

5 *History:* 1975 c. 68; 1985 a. 332 s. 251 (1); 1997 a. 204; 2003 a. 89, 118; 2009 a. 378, 379.

5 **SECTION 2.** 30.025 (1e) (c) of the statutes is created to read:

6 30.025 (1e) (c) This section does not apply to a proposal to construct a utility
7 facility for ferrous mineral mining and processing activities governed by subch. III
8 of ch. 295, unless the person proposing to construct the utility facility elects to
9 proceed in the manner provided under this section.

INSERT 38-15

10 **SECTION 3.** 196.491 (3) (a) 3. c. of the statutes is created to read:

11 196.491 (3) (a) 3. c. The 20-day deadline specified in subd. 3. ~~a)~~ ^{b.} for applying for
12 the applicable permits and approvals specified in the listing provided by the
13 department ^{does not} apply to a person proposing to construct a utility facility for
14 ferrous mineral mining and processing activities governed by subch. III of ch. 295.

INSERT 125-2

16 ^{not} At the hearing, the department shall take testimony on all of the following with
17 regard to any proposed withdrawal of groundwater or surface water:

18 (1) ^(a) The public rights in any body of water and the related environment that may
19 be injured by the proposed withdrawal of groundwater or surface water.

- 1 (2) ^{e (b)} The public benefits provided by increased employment, economic activity, and tax revenues from the proposed mining operation.
- 2
- 3 (3) ^{e (c)} The direct and indirect social and economic costs and benefits of the proposed mining operation.
- 4
- 5 (4) ^{e (d)} Whether the proposed withdrawal of groundwater or surface water will consume nonsurplus water.
- 6
- 7 (5) ^{e (e)} The rights of competing users of the groundwater or surface water.
- 8 (6) ^{e (f)} Any other water withdrawal issues identified by the department as relevant to the decision of whether to issue or deny a permit.
- 9

INSERT 127-10

10 3m. That the proposed mining is likely to meet or exceed the standards
 11 established by the department for floodplain management and zoning under ch. NR
 12 116, Wis. Adm. Code.

INSERT 148-9

13 (3) ² "Floodplain zoning ordinance" means a floodplain zoning ordinance or
 14 regulation adopted under s. 87.30.

INSERT 148-23

15 (c) 1. ^{(3)(a)} Except as provided in subd. 2, ^{par. (b)} the department may not prohibit a
 16 development or construction activity to be located in an area that would otherwise
 17 be prohibited under a floodplain zoning ordinance if the development or construction
 18 activity is authorized by the department as part of a mining operation covered by a

1 mining permit under s. 295.58. No floodplain zoning variance is required for a
2 development or construction activity located as provided under this paragraph.

3 ^(b) ~~2.~~ The department may prohibit a development or construction activity
4 described under ~~subd. 1~~ ^{par. (a)} to the extent necessary to enable the county, city, or village
5 in which the activity is conducted to meet the minimum criteria established under
6 44 CFR Part 60 for participation in the National Flood Insurance Program
7 administered by the Federal Insurance and Mitigation Administration of the
8 Federal Emergency Management Agency.



295.60 CM (CM)
SECTION CR, 295.60(1) (CM)

INSERT
134-21

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

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

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

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

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

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

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

the purchase of

including mitigation accomplished through mitigation bank credits and the in-lieu fee swap program

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

IWS
143-13

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

~~293.13 (1) (c) ^{E.I.} Requires that if an iron mining operation is located in whole or in part within the ceded territory, any wetland mitigation that is authorized or required by the department as a result of, or as part of, the mining operation occurs shall occur within the ceded territory.~~

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

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

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

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

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

Insert 175-6

1 **35.** Page 161, line 18: delete that line and substitute "in accordance with s."

2 **36.** Page 161, line 22: delete the material beginning with that line and ending
3 with page 166, line 5.

4 **37.** Page 167, line 5: delete the material beginning with that line and ending
5 with page 169, line 16.

6 **38.** Page 175, line 6: after that line insert:

7 **(6m)** MANDATORY INTERVENTION BOUNDARY FOR MINING WASTE SITE. (a) The
8 horizontal distance to the mandatory intervention boundary for a mining waste site
9 is 150 feet from the outer waste boundary, unless the boundary of the design
10 management zone is within 300 feet of the outer waste boundary, in which case the
11 mandatory intervention boundary is one-half the distance from the outer waste
12 boundary to the boundary of the design management zone.

13 (b) An operator shall monitor groundwater quality at locations approved by the
14 department along the mandatory intervention boundary and within the mandatory
15 intervention boundary.

16 (c) 1. Notwithstanding sub. (5), if a preventive action limit or an enforcement
17 standard has been exceeded beyond the mandatory intervention boundary, the
18 department shall require a response in accordance with s. NR 140.24, Wis. Adm.
19 Code, except that s. NR 140.24 (5), Wis. Adm. Code, does not apply.

20 2. If sampling results indicate that an enforcement standard or a preventive
21 action limit has been exceeded within, but not beyond, the mandatory intervention
22 boundary and a comparison of sampling results to the results of modeling indicates
23 that the sampling results are consistent with the design and expected performance
24 of the mining waste site, the operator may recommend a no response action, and the

except for any portion of the mandatory intervention boundary that
is within another mandatory intervention boundary.

1 department may approve a no response action if that is authorized under s. NR
2 140.24 (5), Wis. Adm. Code.”. *end of meet 175-6*

3 **39.** Page 178, line 11: delete the material beginning with that line and ending
4 with page 180, line 2.

5 **40.** Page 183, line 7: delete “, reclamation plan,” and substitute “or
6 reclamation plan”.

7 **41.** Page 183, line 8: delete that line and substitute “at a mining site under”.

8 **42.** Page 183, line 10: delete “plan,” and substitute “plan or”.

9 **43.** Page 183, line 11: delete that line and substitute “reclamation plan
10 within”.

11 **44.** Page 189, line 7: delete “132, and 182” and substitute “and 132”.

12 **45.** Page 189, line 13: delete “132, and 182” and substitute “and 132”.

13 **46.** Page 189, line 16: delete the material beginning with that line and ending
14 with page 190, line 2.

15 **47.** Page 190, line 7: delete “paragraphs (a) and (b)” and substitute
16 “paragraph (a)”.

17

(END)

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs03379/P1ins
RCT:.....

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Insert 31-16 -RT

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

70.395 (2) (hg) The board shall, by rule, establish fiscal guidelines and accounting procedures for the use of payments under pars. (d), (f), (fm) and (g), sub. (3) and s. ss. 293.65 (5) and 295.61 (9).

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

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

70.395 (2) (hr) The board shall, by rule, establish procedures to recoup payments made, and to withhold payments to be made, under pars. (d), (f), (fm) and (g), sub. (3) and s. ss. 293.65 (5) and 295.61 (9) for noncompliance with this section or rules adopted under this section.

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

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

70.395 (2) (hw) A recipient of a discretionary payment under par. (f) or (g), sub. (3) or s. ss. 293.65 (5) and 295.61 (9) or any payment under par. (d) that is restricted to mining-related purposes who uses the payment for attorney fees may do so only for the purposes under par. (g) 6. and for processing mining-related permits or other approvals required by the municipality. The board shall recoup or withhold payments that are used or proposed to be used by the recipient for attorney fees except as authorized under this paragraph. The board may not limit the hourly rate of attorney fees for which the recipient uses the payment to a level below the hourly rate that is commonly charged for similar services.

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

1 **Insert 83-23 -RT**

2 (3) A person who files an application under s. 295.47 for a mining proposal is
3 not required to provide notice under sub. (1) if the person files the application no
4 more than one year after the department denied the person's application for the same
5 mining proposal.

6 **Insert 120-7 -RT**

7 The department shall review an application for a mining permit and, within 30
8 days after the application is submitted, shall determine either that the application
9 is complete or that additional ^{essential} information is needed. If the department determines
10 that the application is complete, the department shall notify the applicant in writing
11 of that fact within the 30-day period and the date on which the department sends
12 the notice is the day on which the application is administratively complete.

13 (b) If the department determines under par. (a) that an application is
14 incomplete, the department shall notify the applicant in writing and may make one
15 request for additional information during the 30-day period specified in par. (a).
16 Within 10 days after receiving all of the requested information from the applicant,
17 the department shall notify the applicant in writing that it has received all of the
18 requested information. The day on which the department sends the 2nd notice under
19 this paragraph is the day on which the application is administratively complete.

20 (c) If the department fails to meet the 30-day time limit under par. (a) or the
21 10-day time limit under par. (b), the application is administratively complete on the
22 last day of the 30-day ^{time limit} or 10-day time limit.

23 **Insert 125-6 -RT**

24 (7) DEADLINE FOR ACTING ON MINING PERMIT APPLICATION. (a) No more than 420
25 days after the day on which the application for a mining permit is administratively

1 complete under sub. (2), the department shall approve the application, and issue a
2 mining permit, or deny the application, in accordance with s. 295.58, unless the
3 department and the applicant agree to extend the deadline. The department and the
4 applicant may agree to not more than one extension and that extension may not
5 exceed 60 days. The department and the applicant may enter into an extension only
6 if one of the following applies:

7 1. An extension is necessary to enable the department and the U.S. Army Corps
8 of Engineers to jointly prepare their environmental impact statements.

9 2. New information or a change to the mining proposal necessitates additional
10 time to review the application.

11 (b) If the department does not comply with the deadline under par. (a),
12 including any extension agreed to by the applicant, the department shall refund the
13 fees under s. 295.73 (3) (a) and (d) that were paid by the applicant.

14 (c) If the department does not comply with the deadline under par. (a),
15 including any extension agreed to by the applicant, the applicant may bring an action
16 for mandamus to compel the department to approve or deny the application.
17 Notwithstanding s. 814.04 (1), in an action under this paragraph the court shall
18 award the applicant its costs, including reasonable attorney fees.

19 **(8) DEADLINE FOR ACTING ON OTHER APPROVALS.** (a) Except as provided in par.
20 (c), if an applicant files an application for an approval other than a mining permit
21 no later than 60 days after the day on which the application for the mining permit
22 is administratively complete under sub. (2), the department shall approve the
23 application, and issue the approval or deny the application no later than the deadline
24 under sub. (7) (a), including any extension agreed to by the applicant.

1 (b) Except as provided in par. (c) if an applicant files an application for an
2 approval other than a mining permit more than 60 days after the day on which the
3 application for the mining permit is administratively complete under sub. (2), the
4 deadline for acting on the application is extended beyond the deadline under sub. (7)
5 (a), including any extension agreed to by the applicant, by the number of days beyond
6 the 60th day after the day on which the application for the mining permit is
7 administratively complete that the applicant files the application for the approval.

8 **Insert 154-16-RT**

9 (b) If the department determines that a high capacity well that would be
10 covered by a water withdrawal permit may impair a privately owned high capacity
11 well, the department shall include in the water withdrawal permit conditions that
12 will ensure that the privately owned high capacity well will not be impaired, unless
13 the private high capacity well owner agrees to the impairment.

14 **Insert 157-7-RT**

15 (8) DAMAGE CLAIMS. (a) As used in this subsection, "person" does not include
16 a city, village, or town.

17 (b) A person claiming damage to the quantity or quality of the person's private
18 water supply caused by bulk sampling or mining may file a complaint with the
19 department and, if there is a need for an immediate alternative source of water, with
20 the city, village, or town where the private water supply is located. The department
21 shall conduct an investigation and if the department concludes that there is reason
22 to believe that the bulk sampling or mining is interrelated to the condition giving rise
23 to the complaint, it shall schedule a hearing.

24 (c) The city, village, or town in which is located the private water supply that
25 is the subject of a complaint under par. (a) shall, upon request, supply necessary

1 amounts of water to replace the water formerly obtained from the damaged private
2 supply. Responsibility to supply water begins at the time the complaint is filed and
3 ends at the time the decision of the department made at the conclusion of the hearing
4 is implemented.

5 (d) If the department concludes after the hearing that bulk sampling or mining
6 is the principal cause of the damage to the private water supply, it shall issue an order
7 to the operator requiring the provision of water to the person found to be damaged
8 in a like quantity and quality to that previously obtained by the person and for a
9 period of time that the water supply, if undamaged, would be expected to provide a
10 beneficial use, requiring reimbursement to the city, village, or town for the cost of
11 supplying water under par. (c), if any, and requiring the payment of compensation
12 for any damages unreasonably inflicted on the person as a result of damage to the
13 person's water supply. The department shall order the payment of full compensatory
14 damages up to \$75,000 per claimant. The department shall issue its written findings
15 and order within 60 days after the close of the hearing. Any judgment awarded in
16 a subsequent action for damages to a private water supply caused by bulk sampling
17 or mining shall be reduced by any award of compensatory damages previously made
18 under this subsection for the same injury and paid by the operator. The department
19 shall change the dollar amount under this paragraph annually according to the
20 method under s. 70.375 (6). Pending the final decision on any appeal from an order
21 issued under this paragraph, the operator shall provide water as ordered by the
22 department. The existence of the relief under this section is not a bar to any other
23 statutory or common law remedy for damages.

24 (e) If the department concludes after the hearing that bulk sampling or mining
25 is not the cause of any damage, reimbursement to the city, village, or town for the

1 costs of supplying water under par. (c), if any, is the responsibility of the person who
2 filed the complaint.

3 (f) Failure of an operator to comply with an order under par. (d) is grounds for
4 suspension or revocation of a mining permit or any approval required for bulk
5 sampling.

6 (9) COSTS REIMBURSED. (a) Costs incurred by a city, village, or town in
7 monitoring the effects of bulk sampling or mining on surface water and groundwater
8 resources, in providing water to persons claiming damage to private water supplies
9 under sub. (8) (c), or in retaining legal counsel or technical consultants to represent
10 and assist the city, village, or town appearing at the hearing under sub. (8) (b) are
11 reimbursable through the investment and local impact fund under s. 15.435.

12 (b) Any costs paid to a city, village, or town through the investment and local
13 impact fund under par. (a) shall be reimbursed to the fund by the city, village, or town
14 if the city, village, or town receives funds from any other source for the costs incurred
15 under par. (a).

16 (c) If an order under sub. (8) (d) requiring the operator to provide water or to
17 reimburse the city, village, or town for the cost of supplying water is appealed and
18 is not upheld, the court shall order the cost incurred by the operator in providing
19 water or in reimbursing the city, village, or town pending the final decision to be
20 reimbursed from the investment and local impact fund under s. 15.435.

21 **Insert 180-24 -RT**

22 , other than costs to perform environmental analysis under s. 1.11,

23 **Insert 182-11 -RT**

24 (d) In addition to the fees under par. (a), if the department contracts under s.
25 ⁵ 29.53 (1) with a consultant to assist in preparation of an environmental impact

- 1 statement and awards the contract on the basis of competitive bids, the applicant
- 2 shall pay the full costs as provided in the contract.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

11s0379/P1dnRK

RNK: *gf*

Date

With regard to the part of this substitute amendment concerning the permit procedure for public utilities under s. 30.025, stats., please note that I retained some of the nonsubstantive changes in Senate Bill 488. SB-488 clarifies that a utility that is required to follow the procedure under s. 30.025 must file a "combined" application for permits. The use of the term "combined" does not make a substantive change to the procedure under s. 30.025 in current law and is intended to make the current law procedure established in that statute more clear. Please let me know if this is not consistent with the intent of the motion.

With regard to the part of this substitute amendment that requires DNR to take testimony at the public informational hearing on the factors listed under s. 293.65 (2) (c), stats., please note that the factors listed in this substitute amendment are worded slightly differently than they are worded in s. 293.65 (2) (c), stats. This was necessary given the context in which these factors are being incorporated into this substitute amendment. Again, please let me know if the language is not consistent with the intent of the motion.

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

11s0379/P1dnRK
RNK:kjf:jm

March 5, 2012

With regard to the part of this substitute amendment concerning the permit procedure for public utilities under s. 30.025, stats., please note that I retained some of the nonsubstantive changes in Senate Bill 488. SB-488 clarifies that a utility that is required to follow the procedure under s. 30.025 must file a "combined" application for permits. The use of the term "combined" does not make a substantive change to the procedure under s. 30.025 in current law and is intended to make the current law procedure established in that statute more clear. Please let me know if this is not consistent with the intent of the motion.

With regard to the part of this substitute amendment that requires DNR to take testimony at the public informational hearing on the factors listed under s. 293.65 (2) (c), stats., please note that the factors listed in this substitute amendment are worded slightly differently than they are worded in s. 293.65 (2) (c), stats. This was necessary given the context in which these factors are being incorporated into this substitute amendment. Again, please let me know if the language is not consistent with the intent of the motion.

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

Tradewell, Becky

From: Konopacki, Larry
Sent: Monday, March 05, 2012 10:29 AM
To: Tradewell, Becky
Subject: FW: changes

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

From: Konopacki, Larry
Sent: Monday, March 05, 2012 10:21 AM
To: Hinz, Daryl; Moran, Sean; Reinhardt, Rob
Subject: changes

Changes to omnibus motion:

9. *Determination that a ferrous mining permit application is administratively complete.* Remove the provision prohibiting the DNR from evaluating the quality of the information submitted as part of a ferrous mining permit application when determining whether an application is administratively complete. Instead, authorize the DNR to make one request of the applicant for essential supplemental information prior to the commencement of the 420-day application review timeline, according to the same procedures specified in 2011 Senate Bill 368, as signed by the Governor. In addition, maintain the requirement under the bill allowing the DNR to request additional information from the applicant at any time during the processing of the permit application by the DNR, but that such review or request does not delay the determination of administrative completeness by the DNR.

16. *Groundwater monitoring.* Add a provision in the bill requiring at least a 300-foot mandatory intervention boundary for a ferrous mining waste facility and excavation, similar to the mandatory intervention boundary required for ferrous mining under current law under ch. NR 182, Wis. Adm. Code. Allow the DNR to reduce the mandatory intervention boundary by up to 150 feet if the DNR determines such a reduction is necessary to adequately indentify and respond to potential groundwater quality issues. However, specify that any monitoring well for a waste facility or excavation that would be located within the mandatory intervention boundary of another waste facility or excavation on the project site is not required.

19. *Administrative review.* Modify s. 295.77 [Review] under the bill to require DNR to authorize a contested case hearing on a decision by the DNR under subchapter III of ch. 295, Stats., as created by the bill, only if a petitioner is aggrieved by one of the following decisions of the DNR and if the petitioner is entitled to a contested case hearing under s. 227.42, Stats., with respect to such decision:

- A decision by the DNR under s. 295.58 to grant or deny a ferrous mining permit or related permit or approval.
- A final decision by the DNR on the environmental impact statement for a ferrous mining permit application.
- A decision by the DNR on a permit or approval related to ferrous mining that is issued by the DNR, under s. 295.57 (8) (b), beyond the deadline under s. 295.57 (8) (a).

Provide that a contested case hearing may only be authorized by DNR if requested within the 30 days after the

decision by the DNR under s. 295.58 to grant or deny a ferrous mining permit and related permits or approvals, except for with respect to a decision by the DNR on a permit or approval related to ferrous mining under s. 295.57 (8) (b) that is issued beyond the deadline under s. 295.57 (8) (a), for which a request may be made within 30 days of that decision.

Also require that the final decision of the hearing examiner be issued within 150 days of this decision, and provide that the decision of the DNR with respect to any issue raised in a contested case hearing is affirmed if the hearing examiner does not issue a final decision before this deadline. Also prohibit the issuing of an order preventing activity authorized under the DNR decision while an administrative review process is pending.

Also provide that a petition for judicial review of the decision arising from an administrative hearing must be served and filed as required under s. 227.53 (1) (a).

Also specify that no petition for judicial review may be served and filed later than 30 days after filing of the decision to be appealed.

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

Tradewell, Becky

From: Reinhardt, Rob
Sent: Monday, March 05, 2012 6:30 PM
To: Tradewell, Becky
Cc: Moran, Sean
Subject: RE: Still more mining language

Becky, unless you guys object, I think this should be a continuing, all monies received appropriation, and the \$1 million annual limit, and \$2 million aggregate limit, would appear in the Chapter 70 provisions regarding distribution of the mining tax revenues.

From: Tradewell, Becky
Sent: Monday, March 05, 2012 5:29 PM
To: Konopacki, Larry; Henning, Anna; Hinz, Daryl; Reinhardt, Rob; Moran, Sean
Subject: Still more mining language

This is Gordon's proposed language for the job training provisions.

<< File: 11s0379/P2insgm >>
Becky

ASSEMBLY BILL 426/SENATE BILL 488

Iron Mining Regulation

Motion:

Move to amend the bill as follows:

1. *In lieu fee payments for wetland mitigation.* Allow an applicant for a ferrous mining permit to make mitigation in lieu fee payments to a DNR in lieu fee program, if DNR establishes such a program under 2011 Act 118 (SB 368).
2. *ASNRI wetlands.* Remove references to ASNRI (areas of special natural resource interest) wetlands, in light of the enactment of 2011 Act 118 [wetlands regulation].
3. *Types of wetland mitigation allowed.* Remove types of wetland mitigation from the bill with are not allowed under general state wetlands law, including riparian restoration projects, protection of upland groundwater recharge areas, shoreline stabilization projects, and riparian restoration projects.
4. *Geographic scope of wetlands.* For wetlands impacts relating to ferrous mines that occur within the Chippewa ceded territory, require mitigation to be conducted within the ceded territory.
5. *Standards for approval or denial of a ferrous mining permit.* Add a condition for approval of a ferrous mining permit requiring the DNR to determine that activities conducted under a ferrous mining project are likely to meet or exceed floodplain regulations applicable to municipalities contained in ch. NR 116, Wis. Admin. Code. [Wisconsin's Floodplain Management Program].
6. *Floodplain zoning.* Remove the references to floodplain zoning ordinances under proposed section 295.607 [shoreland and floodplain zoning] and instead require that a development or construction activity that is located in a floodplain and authorized by DNR as part of a ferrous mining operation covered by a mining permit under the bill not be required to comply with applicable floodplain zoning ordinances under section 87.30, Stats. [floodplain zoning], other than to satisfy any criteria necessary to maintain eligibility for participation in the National Flood Insurance Program.
7. *Ferrous Mining Permit Application Timeline.* Increase the timeline for DNR review of a ferrous mining permit application from 360 days to 420 days. Allow one 60-day extension of the 420-day review period if the DNR and the permit applicant mutually agree to the extension and one of the following applies: 1) an extension is necessary to ensure coordination with the Army Corps of Engineers for preparing an environmental impact

statement; or 2) new information or a change to the mining proposal necessitates additional time for permit review.

8. *Pre-application notification period.* Clarify that a pre-application notice is not required before filing a ferrous mining permit application if the applicant is re-filing a previously denied mining permit application, if the application is filed within a year of the denial, and the application is a request for approval of the same ferrous mining project as was requested under the denied application.

9. *Determination that a ferrous mining permit application is administratively complete.* Remove the provision prohibiting the DNR from evaluating the quality of the information submitted as part of a ferrous mining permit application when determining whether an application is administratively complete. Instead, authorize the DNR to make one request of the applicant for supplemental information prior to the commencement of the 420-day application review timeline, according to the same procedures specified in 2011 Act 118 [generally including providing 30-days to initially review completeness and request additional information, if necessary, and 10 days to review the completeness of a response to such a request], except that, within 10 days after receiving additional requested information from the applicant, regardless of whether the additional information contains all of the information requested, DNR must notify the applicant as to whether the application is complete. In addition, maintain the requirement under the bill allowing the DNR to request additional information from the applicant at any time during the processing of the permit application by DNR, but that such request does not delay the determination of administrative completeness by the DNR.

What if
it is not
clear
matter

10. *Automatic approval of a mining permit application.* Remove the provision regarding automatic approval of a ferrous mining application. Instead, in the event that the DNR fails to approve or deny a mining permit application within the 420-day timeline, including any allowable extension, require DNR to return to the applicant all fees that the applicant paid to the DNR, including for preparation of an environmental impact statement by a third party. Retain the provision under the bill requiring a DNR decision on the application, regardless of whether the fee refund provision is triggered. Add a provision expressly providing opportunity for a ferrous mining permit applicant to seek an action in circuit court to obtain a writ of mandamus ordering the DNR to issue a decision on the mining permit application in the event that the DNR fails to render a decision on the permit application within the 420-day timeline. Specify that the venue provisions under s. 801.50 (3), Stats., apply to the mandamus action, and provide that the DNR shall be responsible for the payment of the applicant's costs, including reasonable attorneys' fees, for such an action.

11. *Ferrous Mining Permit Application Fees.* Remove the \$2 million total cap on an applicant's reimbursement of the DNR's costs for evaluating the mining project. Instead, specify that fees paid by the applicant to DNR for the evaluation of the ferrous mining project are limited to: (a) No more than \$2 million for costs incurred by the DNR other than for preparation of an environmental impact statement (EIS) by a third party; and (b) the full cost for preparation of an EIS, prepared by a private party and awarded under a competitive bidding process. Retain the schedule of payments by the applicant under the bill for costs incurred by the DNR other than for preparation of an EIS, allow DNR to require payment for costs of the EIS as required in the contract with the private party preparing the EIS.

12. *Permit procedure for construction of transmission lines and public utilities.* Limit the application of the changes made to the procedure for the construction of high-voltage transmission lines, large electric generating facilities, or specified facilities or equipment for electric, natural gas, or water utilities to projects relating to ferrous mining.

13. *Claims for damages resulting from mining.* Specify that the programs under ss. 281.75 and 293.65 (4) and (5), Stats., apply to ferrous mining [related to compensation for well contamination and abandonment, claims by persons for damage to their private water supply, and reimbursement of certain costs incurred by a town, village, or city related to the effects of prospecting or mining on surface water and groundwater resources].

14. *Conditions on high-capacity well approvals.* Require the DNR to impose conditions on high capacity well approvals for ferrous mining that ensure that privately owned high capacity wells will not be impaired, unless by agreement with the private high capacity well owner. In addition, retain the provision in the bill directing DNR to require an applicant to offset significant impacts to a public or private water supply if DNR determines that a proposed withdrawal on use of water for a ferrous mining project will result in such impacts.

15. *Water withdrawals.* Replace s. 295.61 (4) (d) under the bill with a requirement that the DNR accept testimony at the public informational hearing on the permit application on the factors listed under s. 293.65 (2) (c), Stats. [specifies several factors, including certain public rights and benefits, social and economic costs, competing users, and any other issues identified as relevant by DNR].

16. *Groundwater monitoring.* Add a provision in the bill requiring at least a 300-foot mandatory intervention boundary for a ferrous mining waste facility and excavation. Allow DNR to reduce the mandatory intervention boundary by up to 150 feet if the DNR determines such a reduction is necessary to adequately identify and respond to potential groundwater quality issues. However, specify that any monitoring well for a waste facility or excavation that would be located within the mandatory intervention boundary of another waste facility or excavation on the project site is not required.

17. *Historic preservation.* Remove s. 295.45 (6) from the bill, relating to modifications of the application of historic preservation laws to ferrous bulk sampling.

18. *Frivolous claims.* Modify s. 227.483 (3) Stats., to add the following to the list of types of findings that constitute a frivolous action in an administrative proceeding relating to ferrous mining: that the petition, claim, or defense was commenced, used or continued primarily for the purpose of causing delay to an activity authorized under a permit, license, or other approval that is the subject of the hearing.

19. *Administrative review.* Modify s. 295.77 [Review] under the bill to require DNR to authorize a contested case hearing on a decision by the DNR under subchapter III of ch. 295, Stats. [ferrous mining], as created by the bill, only if a petitioner is aggrieved by one of the following decisions of the DNR and if the petitioner is entitled to a contested case hearing under s. 227.42, Stats., with respect to such decision:

- A decision by the DNR under s. 295.58 to grant or deny a ferrous mining permit or related permit or approval.
- A final decision by the DNR on the environmental impact statement for a ferrous mining permit application.
- A decision by the DNR on a permit or approval related to ferrous mining that is issued by the DNR, under s. 295.57(8)(b), beyond the deadline under s. 295.57(8)(a).

Provide that a contested case hearing may only be authorized by DNR if requested within the 30 days after the decision by the DNR under s. 295.58 to grant or deny a ferrous mining permit and related permits or approvals, except for with respect to a decision by the DNR on a permit or approval related to ferrous mining under s. 295.57(8)(b) that is issued beyond the deadline under s. 295.57(8)(a), for which a request may be made within 30 days of that decision.

Also require that the final decision of the hearing examiner be issued within 150 days of the final DNR decision, and provide that the decision of the DNR with respect to any issue raised in a contested case hearing is affirmed if the hearing examiner does not issue a final decision before this deadline. Also prohibit the issuing of an order preventing activity authorized under the DNR decision while an administrative review process is pending. Further, provide that a petition for judicial review of the decision arising from an administrative hearing must be served and filed as required under s. 227.53(1)(a). In addition, specify that no petition for judicial review may be served and filed later than 30 days after filing of the decision to be appealed.

20. *Notice of intent (NOI) fee.* For each person that notifies the Department of Natural Resources of their intent to submit an application for a mining permit, increase each of the three NOI fees that must be paid to the Department of Revenue for deposit in the Investment and Local Impact Fund (ILIF) from \$50,000 to \$75,000.

21. *Net proceeds tax.* Create the following provisions under laws governing the net proceeds occupation tax on mining of ferrous metallic minerals.

Require a minimum tax, beginning with the month in which the mining permit was issued and for the following 60 months regardless of whether ore is being extracted from the mine. Specify that the amount of the tax imposed on that person is the greater of the net proceeds tax, as computed under current law for the year in which extraction occurs, or an amount equal to \$83,333 for the first 60 months after issuance of the mining permit (\$1 million annually). Specify that the current law credit provided as an offset to net proceeds tax liability for construction fee payments may not be used to reduce tax liability below the minimum tax that must be paid during the first 24 months after issuance of the mining permit.

Create a nonrefundable credit for a person that would have paid less tax under current law than under the minimum tax described above. Specify that a person subject to the minimum tax may claim the credit against the net proceeds occupational tax in an amount equal to the difference between the actual amount paid in that year and the amount that would have been paid if the person were subject to the current law computation of the net proceeds tax. Specify that the credit may be carried forward for future tax years and, for each year in which the credit is carried forward, the

amount of the credit would be indexed to reflect the annual change in the gross national product deflator for June of the current year as compared to June of the previous year, as determined by the U.S. Department of Commerce as of December 30 of the year for which taxes are due, except that no annual increase may be more than 10%. Specify that a person may not claim a credit amount that would result in a lower tax payment than as computed under the minimum tax liability described above.

22. *Distribution of net proceeds tax revenue.* Require that, for the first two years after which the mining permit was issued, the first \$83,333 per month, not to exceed a total of \$2 million, must be appropriated in the following manner: (a) \$500,000, annually, to establish, fund, and facilitate cross-training partnership programs between the Cooperative Education Services Agency (CESA) #1 and an established recipient organization with an economic and workforce development center in Southeastern Wisconsin for the purpose of establishing classroom curriculum and hands on job training programs to provide an opportunity to receive instruction related to performing manufacturing jobs in Southeastern Wisconsin facilities involved in producing equipment and products related to the mining industry; and (b) \$500,000, annually, to establish, fund, and facilitate cross-training partnership programs between CESA #12 and an organization operating a skills improvement and apprenticeship fund authorized to administer the operating engineers certification program and provide heavy equipment training for jobs related to mining or the construction of a mine. Specify that the revenues would be appropriated to the Department of Workforce Development (DWD) and these grants must be jointly distributed by DWD and the Wisconsin Economic Development Corporation.

For any net proceeds tax revenues that may accrue in excess of the required expenditures for job training programs described above, or for revenues that accrue after the first 24 months following issuance of the mining permit, distribute revenues in the following manner: (a) 60% to the ILIF; and (b) 40% to the economic development fund for purposes of providing grants and loans to businesses located in this state, with preference for grants and loans to businesses located in an area affected by ferrous metallic mining.

ASSEMBLY BILL 426/SENATE BILL 488

*Shows differences
between motion
12 + motion 15
which passed*

Iron Mining Regulation
Amendment to Motion #12

(REVISED)

Motion:

Move to amend Motion #12 as follows:

1. Amend Item #9 after the bracketed text, insert ", except that, within 10 days after receiving additional requested information from the applicant, regardless of whether the additional information contains all of the information requested, DNR must notify the applicant as to whether the application is complete".

2. Amend Item #12 to delete "eclectic" and insert "electric".

3. Amend Item #13 to delete "resoruces" and insert "resources".

4. Amend Item #14, to add the following: "In addition, retain the provision in the bill directing DNR to require an applicant to offset significant impacts to a public or private water supply if DNR determines that a proposed withdrawal on use of water for a ferrous mining project will result in such impacts."

5. Amend Item #18 to limit the provision to apply to ferrous mining only.

6. Modify Item #21 to specify that the minimum tax would first apply in the month in which the mining permit was issued, and for the following 60 months, regardless of whether ore is being extracted at the mine.

7. Modify Item #22 to do the following:

a. Specify that funding for the two training programs would be provided during the first 24 months after a mining permit was issued rather than the first 24 months during which ore was being extracted from the mine.

b. In the training program in CESA #1, delete the reference to high school students so that the training program could be made available to other individuals.

c. Delete the description of the training program in CESA #12. Instead, specify that \$500,000, annually, must be used to establish, fund, and facilitate cross-training partnership programs between CESA #12 and an organization operating a skills improvement and apprenticeship fund authorized to administer operating engineer certification programs and heavy equipment training.

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PROVIDE

Tradewell, Becky

From: Konopacki, Larry
Sent: Monday, March 05, 2012 11:26 PM
To: Tradewell, Becky
Cc: Henning, Anna; Hinz, Daryl; Moran, Sean; Reinhardt, Rob
Subject: RE: Compare document

Hi Becky, See my notes on the non-fiscal items in the /P1 draft below. I realize that you already know that the changes in motion 14/15 need to be added to the P1, but I added comments on those changes as placeholders for myself for reviewing the P2.

- ✓ s. 295.61 (8) should refer to a cap on payments that is equal to \$75,000 per claimant plus adjustments since the enactment of this provision in s. 293.65 (4). This is because the intent was to "restore" this program as it applies under current law.
- ✓ s. 295.57 (2) should be amended to remove the word "essential" from par (a) (they changed their minds on this) and to reflect the language change in Motions 14 and 15.
- ✓ In s. 295.57 (7) (c), please add the following underlined language: "Notwithstanding s. 814.04 (1), in an action under this paragraph the court shall award the applicant its costs, including
- reasonable attorney fees, if it determines that the department did not comply with the deadline under par. (a).
- ✓ In s. 295.60 (8) (e), brackets are needed around the "e"
- The changes to s. 295.607 (3) (a) and (b) do not capture the intent of the motion, which is to prohibit municipalities from imposing floodplain zoning requirements on an activity that is authorized under a DNR ferrous mining permit or related approval other than to satisfy any criteria necessary for the municipality to maintain eligibility for participation in the National Flood Insurance Program.
- The motion also seeks the addition of an additional standard for approval of a mining permit that would require the DNR to determine that activities conducted under a ferrous mining project are likely to meet or exceed floodplain regulations applicable to municipalities contained in NR 116, Wis. Adm. Code. I recognize that we want to avoid a reference to "NR 116" in the statutes, so this reference can be replaced with "contained in the uniform rules for preparation and implementation of municipal floodplain regulations promulgated by the DNR."
- ✓ s. 295.645 (6m) (a) to reflect the changes made prior to the JOCK meeting this morning that set the mandatory intervention boundary at 300 feet, and allow DNR to reduce the mandatory intervention boundary by up to 150 feet if the DNR determines such a reduction is necessary to adequately identify and respond to potential groundwater quality issues.
- ? Revise s. 295.645 (6m) (b) to remove "and within the mandatory intervention boundary."
- ? Is the language in s. 295.645 (6m) (c) 1. and 2. with respect to s. NR 140.24 (5) conflicting?
- ✓ Add the administrative review portion of the motion.
- ✓ Add the frivolous claims portion of the motion.

Thanks!

Larry

Larry A. Konopacki
Wisconsin Legislative Council
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From: Tradewell, Becky
Sent: Monday, March 05, 2012 6:30 PM
To: Konopacki, Larry; Henning, Anna; Hinz, Daryl; Reinhardt, Rob; Malaise, Gordon
Subject: Compare document

<< File: 11-4045/1_dif >>

This is the output from our compare program showing the differences between SB 488 and LRBs0379/P1, the

first preliminary version of the JCF sub. The output is clunky to try to read (deleted material is shown in bold subscript and added material is shown in bold italics) but the lines in the left margin should show where all of the changes are.

I hope this is helpful.

I am assuming that we will produce a /P2 in the morning for your review that will include the things left out of the /P1 (as described in an email from me earlier today), changes from motion 15 as compared to motion 12, and changes that you identify in any review of the /P1 that you are able to make. Once you sign off on the /P2, it should not take long to produce a /1 of s0379 and an identical Senate sub. to AB 426.

Let me know if this doesn't sound good or you have other ideas about how this process should work

Becky

Tradewell, Becky

From: Konopacki, Larry
Sent: Monday, March 05, 2012 11:34 PM
To: Tradewell, Becky
Cc: Henning, Anna; Hinz, Daryl; Moran, Sean; Reinhardt, Rob
Subject: RE: more mining language

Hi Becky, below are my comments on this language:

- ✓• Under s. 227.485 (3) (c), is the word "license" sufficient to cover the range of approval types listed in the motion?
- ✓• The mandatory intervention boundary change requires an expansion of the default boundary to 300 feet.
- ✓• The review provisions look good!

Thanks,

Larry

Larry A. Konopacki
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(608) 267-0683
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From: Tradewell, Becky
Sent: Monday, March 05, 2012 5:05 PM
To: Konopacki, Larry; Henning, Anna; Hinz, Daryl
Subject: more mining language

This is what I have drafted for frivolous claims, the new mandatory intervention boundary provisions (this will also involve some changes to that you will see in s0379/P1, which I think should be sent out soon), and administrative review.

<< File: 11s0379/P2insRTcopy >>

We're not sure about what is wanted for the 40 % of the net proceeds tax that goes into the economic development fund. Is this intended to be just like what is in the Jauch/Schultz sub (excluding the catastrophe stuff) or is something different intended?

I will be here for some time -- I was thinking at least till JCF is done. I won't leave without letting you know.

Thanks,
Becky
6-7290

Tradewell, Becky

From: Hinz, Daryl
Sent: Tuesday, March 06, 2012 9:10 AM
To: Konopacki, Larry; Tradewell, Becky
Cc: Henning, Anna; Bonderud, Kendra
Subject: Mining language - Fee cap

Becky, on Pg 163, Line 5 of the /P1 the sub should allow DNR to charge for EIS costs other than those under a competitively bid contract. Repr Richards asked me at the meeting if the motion prohibited DNR from doing an EIS internally. Although the motion may not be altogether clear on the point ('DNR costs other than prep of an EIS by a 3d party'), I told him it would not expressly prohibit it, but they could not be reimbursed for costs beyond the \$2mn. So, unless it were a fairly modest mining proposal (like Flambeau/Ladysmith) there was a major financial incentive for DNR to contract for as much of the EIS as possible. However, even with a contract there would be some DNR costs, for example contract management or document review, and any such costs should fall under the \$2mn cap. I think (d) on Pg 164, line 18 looks good. Thanks, Daryl

Tradewell, Becky

From: Henning, Anna
Sent: Tuesday, March 06, 2012 11:08 AM
To: Tradewell, Becky
Subject: FW: Compare document

Hi Becky, Larry asked me to respond on the mandatory intervention boundary question. You're right that we need to leave the "within" language. But – is there some way to add clarifying language – e.g., "When approving locations for monitoring, the department shall ensure that duplicative monitoring is not required within overlapping mandatory intervention boundaries." ?

Anna Henning
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From: Tradewell, Becky
Sent: Tuesday, March 06, 2012 7:23 AM
To: Konopacki, Larry
Cc: Henning, Anna; Hinz, Daryl
Subject: RE: Compare document

Larry,

On your 4th last bullet point -- this is in the rules. Are you sure it shouldn't be included? It is in the DNR rules and relates to your next point: (c) 1. relates to outside of the boundary and 2. relates to inside of the boundary. This is all based on DNR's rules and is similar to the monitoring that happens with DMZs. If you eliminate "within the boundary", then I guess 2. would need to be eliminated.

Becky

From: Konopacki, Larry
Sent: Monday, March 05, 2012 11:26 PM
To: Tradewell, Becky
Cc: Henning, Anna; Hinz, Daryl; Moran, Sean; Reinhardt, Rob
Subject: RE: Compare document

Hi Becky, See my notes on the non-fiscal items in the /P1 draft below. I realize that you already know that the changes in motion 14/15 need to be added to the P1, but I added comments on those changes as placeholders for myself for reviewing the P2.

- s. 295.61 (8) should refer to a cap on payments that is equal to \$75,000 per claimant plus adjustments since the enactment of this provision in s. 293.65 (4). This is because the intent was to "restore" this program as it applies under current law.
- s. 295.57 (2) should be amended to remove the word "essential" from par (a) (they changed their minds on this) and to reflect the language change in Motions 14 and 15.
- In s. 295.57 (7) (c), please add the following underlined language: "Notwithstanding s. 814.04 (1), in an action under this paragraph the court shall award the applicant its costs, including
- reasonable attorney fees, if it determines that the department did not comply with the deadline under par. (a).
- In s. 295.60 (8) (e), brackets are needed around the "e"
- The changes to s. 295.607 (3) (a) and (b) do not capture the intent of the motion, which is to prohibit municipalities from imposing floodplain zoning requirements on an activity that is authorized under a DNR ferrous mining permit or related approval other than to satisfy any criteria necessary for the municipality to maintain eligibility for participation in