

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-07624 ins
RCT:.....
P2 actually
ANK

SA ✓

q-7

1 Insert ~~10-21~~ RCT

2 SECTION 1. 32.02 (12) of the statutes is amended to read:

3 32.02 (12) Any person operating a plant which creates waste material which,
4 if released without treatment would cause stream pollution, for the location of
5 treatment facilities. This subsection does not apply to a person licensed with a
6 permit under ch. 293 or subch. III of ch. 295. ✓

History: 1971 c. 100 s. 23; 1973 c. 243, 305; 1975 c. 68, 311; 1977 c. 29, 203, 438, 440; 1979 c. 34 s. 2102 (52) (b); 1979 c. 122; 1979 c. 175 s. 53; 1981 c. 86, 346, 374; 1983 a. 27; 1985 a. 29 s. 3200 (51); 1985 a. 30 s. 42; 1985 a. 187; 1985 a. 297 s. 76; 1987 a. 27; 1989 a. 31; 1993 a. 246, 263; 1993 a. 491 s. 284; 1995 a. 27 s. 9126 (19); 1995 a. 201; 1997 a. 204; 1999 a. 65; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 30 s. 108; 2005 a. 335; 2007 a. 20, s. 9121 (6) (a); 2009 a. 28, 205; 2011 a. 32.

7 Insert 10-21 RCT

8 SECTION 2. 70.375 (4) (h) of the statutes is amended to read:

9 ³ 70.375 (4) (h) The cost of premiums for bonds required under s. 293.51, 295.45
10 (5) or 295.59. ✓

History: 1977 c. 31, 272; 1979 c. 32 s. 92 (1); 1981 c. 86, 314; 1983 a. 27 ss. 1184b to 1184m, 1803g, 1803r, 2202 (45); 1985 a. 29; 1987 a. 27; 1987 a. 312 ss. 1, 17; 1991 a. 39; 1993 a. 112; 1995 a. 27, 225, 227; 1997 a. 27, 237; 2005 a. 347.

11 Insert 24-25 RCT

12 SECTION 3. 283.84 (3m) of the statutes is amended to read:

13 283.84 (3m) A person engaged in mining, as defined in s. 293.01 (9) or 295.41
14 (26), prospecting, as defined in s. 293.01 (18), bulk sampling, as defined in s. 295.41
15 (7), or nonmetallic mining, as defined in s. 295.11 (3), may not enter into an
16 agreement under sub. (1). ✓

History: 1997 a. 27; 2001 a. 16; 2003 a. 33; 2011 a. 151.

17 Insert 62-8 RCT

18 (b) The department may modify the application for an approval identified
19 under sub. (3) in order to meet the requirements applicable to the approval, and, as
20 modified, approve the application.

21

1

INSERT 63-3 RNK

✓

no ff

2

and shall publish notice on the department's Internet site,

INSERT 63-10-RNK and **INSERT 66-11** <use 3x>
and **INSERT 166-6B**

no ff

3

The date on which the department first publishes the notice on its Internet site

✓

4

shall be considered the date of the publication of the notice required to be published

5

under this paragraph.

INSERT 63-15-RNK ~~and INSERT 166-6B~~

✓

6

no ff

The department's notice to interested persons under this paragraph may be

7

given through an electronic notification system established by the department.

INSERT 66-10 RNK

✓

8

no ff

and shall publish notice on the department's Internet site,

INSERT 66-11-RNK

no ff The department's notice to interested persons under par. (c) 5. may be given through an electronic notification system established by the department.

11

Insert 67-10 RCT

✓

12

no ff

and the U.S. Army Corps of Engineers

13

Insert 68-17 RCT

14

(4) After providing notice to the U.S. Army Corps of Engineers under sub. (1),

15

a person shall make a good faith effort to meet with the U.S. Army Corps of Engineers

16

to discuss the mining project, the environmental impact report, and information

17

related to federal requirements that may be applicable to the mining project.

18

1 **Insert 79-24 RCT**

2 *no ff* or on which the mining operator holds an easement, ✓

INSERT 107-5 RNK

3 *no ff* and shall publish notice on the department's Internet site ✓

**INSERT ~~107-10~~ RNK
107-5B**

4 *no ff* In this subsection, the date on which the department first publishes the notice
5 under sub. (4) (b) on its Internet site shall be considered the date of the publication
6 of the notice required to be published under sub. (4) (b). ✓
← this paragraph

7 **Insert 110-22 RCT**

8 *no ff* in the circuit court for the county in which the majority of the proposed mining
9 site is located

10 **Insert 111-15 RCT**

11 *no ff* for which the department receives an objection from the federal environmental
12 protection agency under s. 285.62 (6)

13 **Insert 133-3 RCT**

14 *no ff* , including a withdrawal or use associated with a system or plant under s.
15 281.41, ✓

16 **Insert 133-7 RCT**

17 *no ff* or if the withdrawal or use is associated with a system or plant under s. 281.41 ✓

INSERT 133-13 RNK

18 *Applicant*
19 (am) Riparian status. 1. A person is not required to be the owner of a piece of
20 riparian property in order to obtain a ^{Permit} to withdraw surface water from that piece of
21 riparian property if any of the following applies:

a. The person leases the piece of riparian property from the owner.

1 b. The person holds an easement on the piece of riparian property.

2 2. A person is not required to be the owner of a piece of riparian property in
3 order to obtain a permit to withdraw groundwater from that piece of riparian
4 property if any of the following applies:

5 a. The person leases the piece of riparian property from the owner.

6 b. The person holds an easement on the piece of riparian property.

7 c. The person has obtained permission from the owner to withdraw
8 groundwater from that piece of riparian property.

9 **Insert 138-8 RCT**

10 *no ff* using the environmental review process under s. 1.11³

11 **Insert 138-16 RNK**
12 *no ff* and shall publish notice on the department's Internet site,

13 **Insert 138-11 RCT**

14 *no ff* using the environmental review process under s. 1.11³

INSERT 138-16 RNK

15 *no ff* and shall publish notice on the department's Internet site,

16 **Insert 139-5 RCT**

17 *no ff* that it determines to be necessary to ensure compliance with the standards in
18 sub. (4)

19 **Insert 139-6 RCT**

20 *no ff* using the environmental review process under s. 1.11³

21 **Insert 139-9 RCT**

22 *no ff* using the environmental review process under s. 1.11³

1

INSERT 139-14 RNK

2

no ff and shall publish notice on the department's Internet site,

3

Insert 146-15 RCT

4

(2m) Annually, the department shall review the bond or other security under

5

s. 295.59 (1) to ascertain its adequacy. If the department after review determines ✓

6

that the amount of the bond or other security should be changed, it shall notify the

7

permit holder of the necessary changes. If the permit holder does not seek judicial

8

review of a contested case hearing under s. ~~295.59 (2) (2)~~ 295.77(3) within 30 days, the changes are considered to be accepted.

9

Insert 155-18 RCT

10

no ff or on which the applicant holds an easement ✓

11

Insert 155-24 RCT

12

no ff or on which the applicant holds an easement

INSERT 166-6_A RNK

13

no ff and shall publish notice on the department's Internet site ✓

14

15

Insert 169-18 RCT

16

no ff LIMITS ON CONTESTED CASE HEARINGS. (a) *Before initial mining permit decision.*

17

No person is entitled to a contested case hearing on a decision by the department

18

related to a proposed mining operation, including the decision on the environmental

19

impact statement for the proposed mining operation and any decision on an approval

20

associated with the proposed mining operation, before the department issues the

21

decision to approve or deny the application for the mining permit for the proposed

22

mining operation.

1 (b) *Before decision on amended plan.* No person is entitled to a contested case
2 hearing on a decision by the department related to an amended mining plan,
3 reclamation plan, or mining waste site feasibility study and plan of operation
4 required under s. 295.63 (3) or to any amendment to an approval associated with the
5 amended mining plan, reclamation plan, or mining waste site feasibility study and
6 plan of operation before the department issues the decision to approve or deny the
7 amended mining plan, reclamation plan, or mining waste site feasibility study and
8 plan of operation.

9 (2) CONTESTED CASE HEARINGS; AFTER INITIAL MINING PERMIT DECISION OR DECISION
10 ON AMENDED PLAN. (a) *Entitlement.* 1.

11 **Insert 169-19 RCT**

12 *not* related to a mining permit for a proposed mining operation, including a decision
13 related to the environmental impact statement for the proposed mining operation,
14 or on any decision related to an approval associated with the proposed mining
15 operation to which the deadline in s. 295.57 (8) (a) applied,

16 **Insert 169-21 RCT**

17 *not* requests the hearing within 30 days after the department issues the decision
18 to approve or deny the application for the mining permit.

19 **Insert 170-6 RCT**

20 2. A person is entitled to a contested case hearing on a decision by the
21 department related to an amended mining plan, reclamation plan, or mining waste
22 site feasibility study and plan of operation required under s. 295.63 (3) or to any
23 amendment to an approval associated with the amended mining plan, reclamation
24 plan, or mining waste site feasibility study and plan of operation only if the person
25 is entitled to a contested case hearing on the decision under s. 227.42 and the person

1 requests the hearing within 30 days after the department issues the decision to
2 approve or deny the amended mining plan, reclamation plan, or mining waste site
3 feasibility study and plan of operation.

4 3. All issues raised by ^{all} persons requesting a contested case hearing in
5 accordance with subd. 1. or 2. ^{in connection with the same mining operation} shall be considered in one contested case hearing.

6 **Insert 170-7 RCT**

7 (b) *Deadline for decision.* 1.

8 **Insert 170-24-A RCT**

9 ^{not} in the circuit court for the county in which the majority of the proposed mining
10 site is located

11 **Insert 170-24-B RCT**

12 ^{not} service of the decision or, if the hearing examiner does not issue a final decision
13 by the deadline under par. (b) 1., no more than 30 days after that deadline

14 **Insert 170-24-C RCT**

15 (3) CONTESTED CASE HEARINGS IN OTHER SITUATIONS. Except as provided in sub.

16 (1) (b), a person is entitled to a contested case hearing on a decision by the department
17 related to a mining operation ^{to which s. 295.57(8)(b) or (c) applies or} that is issued after the department issues the decision
18 to approve the application for the mining permit for the mining operation if the
19 person is entitled to a contested case hearing under s. 227.42 and complies with the
20 requirements for service and filing in s. 227.53 (1) (a)

21 **Insert 176-22 RCT**

22 **SECTION 4.** 706.01 (9) of the statutes is amended to read:

1 706.01 (9) "Mining company" means any person or agent of a person who has
2 a prospecting permit under s. 293.45 or a mining permit under s. ~~293.45~~ or 293.49
3 or 295.58.

History: 1971 c. 41; 1977 c. 253; 1983 a. 189, 455; 1993 a. 486; 1995 a. 227; 1999 a. 85; 2005 a. 41, 421.

Insert 178-11 RCT

~~#~~

4 (a) The department of natural resources shall present the statement of scope
5 of the rules required under paragraphs (a) to (c) to the governor for approval under
6 of the rules required under paragraphs (a) to (c) to the governor for approval under
7 section 227.135 (2) of the statutes no later than the 30th day after the effective date
8 of this paragraph. The department of natural resources shall submit in proposed
9 form the rules required under paragraphs (a) to (c) to the legislative council staff
10 under section 227.15 (1) of the statutes no later than the first day of the 5th month
11 beginning after the governor approves the statement of scope of the rules.

use
a.r. X
from P. 177

use a.r.
Y
from
P. 177

use
a.r. X
from P. 177

use a.r. Y
from P. 177

1 **Insert 3-19**

2 **SECTION 1.** 23.321 (2g) of the statutes is created to read:

3 23.321 [^](2g) SERVICES FOR MINING OPERATIONS. In addition to those persons
4 authorized to request a wetland identification or ~~certification~~ under sub. (2)(c), a
5 holder of an easement may request such ^{an identification} ~~a definition~~ or confirmation if the
6 ~~definition~~ ^{identification} or ~~certification~~ ^{confirmation} is associated with an application for a wetland individual
7 permit or other approval for which a wetland impact evaluation is required and that
8 is subject to s. 295.60.

9 **Insert 24-8**

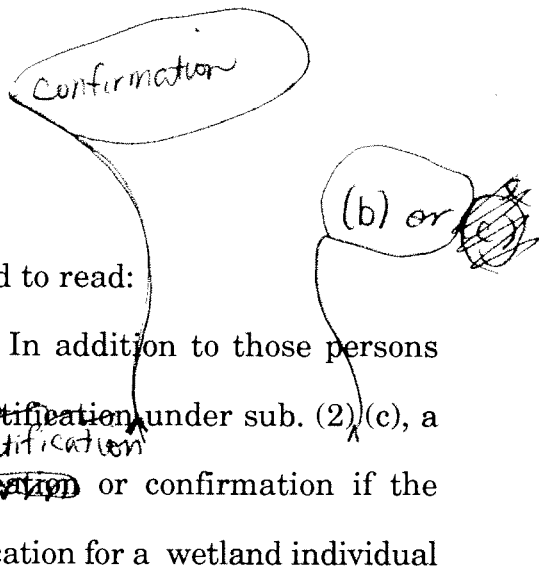
10 **SECTION 2.** 281.36 (3g) (h) 2. of the statutes is amended to read:

11 281.36 (3g) (h) 2. If, within 30 days after an application under subd. 1. is
12 received by the department, the department does not either request additional
13 information or inform the applicant that a wetland individual permit will be required
14 as provided in par. (i), the discharge shall be considered to be authorized under the
15 wetland general permit and the applicant may proceed without further notice,
16 hearing, permit, or approval if the discharge is carried out in compliance with all of
17 the conditions of the general permit, except as provided in s. 295.60 (3) (b).

18 **Insert 120-14**

19 (c) "Federal wetland" means a wetland that is subject to federal jurisdiction
20 under 33 USC 1344.

21 (d) "Fill material" has the meaning given in 33 CFR 323.2 (e), as the meaning
22 exists on July 1, 2012.



1 (e) "Mitigation" means the restoration, enhancement, creation, or preservation
2 of wetlands to compensate for adverse impacts to other wetlands.

3 (f) "Mitigation bank" means a system of accounting for wetland loss and
4 compensation that includes one or more sites where wetlands are restored,
5 enhanced, created, or preserved to provide credits to be subsequently applied or
6 purchased in order to compensate for adverse impacts to other wetlands.

7 **Insert 120-21**

8 (h) "Practicable" means reasonably available and capable of being
9 implemented after taking into consideration cost, site availability, available
10 technology, logistics, and proximity to the proposed project site, in light of the overall
11 purpose and scope of the project.

12 **Insert 121-4**

13 (L) "Wetland impact evaluation" means an evaluation of impacts to a wetland.

14 **Insert 121-7**

15 ^{not} Any owner or lessee of land, or a holder of an easement in land, may request ^{that}
16 that the department provide a wetland determination or wetland boundary
17 delineation for an application for ^a wetland individual permit under this section or for ~~any~~
18 ^{another} approval for which a wetland impact evaluation is required.

19 **Insert 123-8**

20 (3) SCOPE; DISCHARGES; OTHER IMPACTS. (a) *Scope*. Except as otherwise provided
21 under this section, this section applies to wetland individual permits and any other
22 approvals for which wetland impact evaluations are required.

23 (b) *Discharges of dredged or fill material*. No person may discharge dredged
24 material or fill material associated with a mining operation or bulk sampling unless
25 the discharge is authorized under a wetland individual permit issued under this

~~Handwritten scribbles~~

STET

1 section or under a wetland general permit issued under s. 281.36 (3g). The
 2 department may not issue a wetland individual permit ~~or an authorization to~~
 3 ~~proceed under a general permit~~ unless it makes a finding under sub. (6) (a) that the
 4 discharge will comply with all applicable water quality standards. Section 281.36
 5 (3g) and (11), and the rules promulgated under s. 281.36 (3g) and (11), apply to
 6 authorizations to proceed under general permits. Notwithstanding s. 281.36 (3g) (h)
 7 2, a person receiving authorization to proceed under a wetland general permit may
 8 not proceed until a mining permit is issued.

9 (c) *Other impacts.* For an approval which requires a wetland impact evaluation
 10 for an activity other than a discharge of dredged material or fill material, the
 11 approval may not be issued unless the department determines that the activity will
 12 comply with all applicable water quality standards.

When applying for

13 (4) REVIEW BY DEPARTMENT. (a) *Avoidance or minimization of impacts.* For
 14 purposes of issuing an wetland individual permit or for purposes of issuing another
 15 approval for which a wetland impact evaluation is required, an applicant shall
 16 include in the an application for the permit or the approval an analysis of the
 17 practicable alternatives that will avoid and minimize the adverse impacts on
 18 wetland functional values and that will not result in any other significant adverse
 19 environmental consequences.

no I

20 (b) *Practicable alternatives.* The department shall review the analysis of
 21 practicable alternatives included in the application under par. (a). The department
 22 shall limit its review to those practicable alternatives that are located at the site of
 23 the discharge or other activity and that are located adjacent to that site if the
 24 applicant has demonstrated that the proposed project causing the discharge or other
 25 activity will result in a demonstrable economic public benefit.

1 (c) *Assessing impacts.* In its review under this subsection, the department
2 shall consider all of the following factors when it assesses the impacts to wetland
3 functional values;

4 1. The direct impacts of the proposed discharge or other activity to wetland
5 functional values.

6 2. The cumulative impacts attributable to the proposed discharge or ^{other} activity
7 that may occur to wetland functional values based on past impacts or reasonably
8 anticipated impacts caused by similar discharges or activities in the area affected by
9 the discharge or activity.

10 3. Potential secondary impacts of the proposed discharge or ^{other} activity to wetland
11 functional values.

12 4. The impact on functional values resulting from the mitigation program
13 under sub. (8)

14 5. The net positive or negative environmental impact of the mining operation. ✓

15 (d) *Assessing impacts; geographical scope.* In its review under this subsection,
16 the department shall evaluate whether the discharge or other activity will result in
17 a significant adverse impact to wetland functional values by doing all of the
18 following:

19 1. Comparing the functional values of the wetland with other wetlands located
20 within the boundaries of the mining site or within the same water management unit
21 as the mining site and with other waters of the state that are located in the same
22 water management unit.

23 2. Taking into consideration the floristic province in which the mining site is
24 located.

1 (e) *Method for assessing impacts.* In issuing an wetland individual permit
 2 under this section or in conducting a wetland impact evaluation, the department
 3 shall determine the impact of a proposed discharge or other activity upon the
 4 wetland functional values by using wetland ecological evaluation methods that are
 5 jointly accepted by the U.S. Army Corps of Engineers and the department and that
 6 are appropriate to the affected wetland.

7 (f) *General permits.* Paragraph (a) to (e) do not apply to authorizations to
 8 proceed under a general permit issued under s. 281.36 (g). ³

9 (5) WETLAND WATER QUALITY STANDARDS. The following wetland water quality
 10 standards apply to any wetland individual permit issued under this section or to any
 11 wetland impact evaluation.

12 **Insert 125-22**

13 (6) DECISION BY DEPARTMENT. (a) The department shall make a finding that a
 14 a discharge of dredged material or fill material is in compliance with all applicable
 15 water quality standards and shall issue a wetland individual permit if the
 16 department determines that all of the following apply:

17 1. The proposed project of which the discharge is a part represents the least
 18 environmentally damaging practicable alternative taking into consideration
 19 practicable alternatives that avoid impacts to wetland functional values.

20 2. All practicable measures to minimize the adverse impacts to wetland
 21 functional values will be taken.

22 3. The proposed discharge will not result in significant adverse impact to
 23 wetland functional values, subject to par. (b); in significant adverse impact to water
 24 quality; or in other significant adverse environmental consequences.

✓

1 (b) Notwithstanding par. (a) 3., if significant adverse impacts to wetland
2 functional values will remain after the adverse impacts have been avoided and
3 minimized to the extent practicable, the department shall issue the permit if the
4 department determines that the remaining impacts will be compensated for under a
5 mitigation program under sub. (8).

6 (c) The department may not deny an approval for an activity for which a
7 wetland impact evaluation is required, other than a discharge of dredged material
8 or fill material, on the basis of the impacts from the activity on wetlands if the
9 department determines that all of the following apply:

10 1. The proposed ^{project of which the} activity _{is a part} represents the least environmentally damaging
11 practicable alternative taking into consideration practicable alternatives that avoid
12 impacts to wetland functional values.

13 2. All practicable measures to minimize the adverse impacts to wetland
14 functional values will be taken.

15 3. The proposed activity will not result in significant adverse impact to wetland
16 functional values, subject to par. (d); in significant adverse impact to water quality;
17 or in other significant adverse environmental consequences.

18 (d) Notwithstanding par. (c) 3., if significant adverse impacts to wetland
19 functional values will remain after the adverse impacts have been avoided and
20 minimized to the extent practicable, the department may not deny the permit if the
21 department determines that the remaining impacts will be compensated for under a
22 mitigation program under sub. (8).

23 (e) Paragraphs (a) to (d) do not apply to authorizations to proceed under a
24 general permit issued under s. 281.36 (2g).

3

on the basis
of the impacts
from the activity
on wetlands

1 (7) FEDERAL WETLANDS. (a) ~~In issuing~~ ^{For} a wetland individual permit under this
2 section which involves a federal wetland, any mitigation program submitted by the
3 applicant under sub. (8) shall include all the federal mitigation measures proposed
4 by the applicant. The department shall review the federal mitigation measures and
5 shall determine whether it has reasonable assurance that these will compensate for
6 any significant adverse impacts to wetland functional values, any significant
7 adverse impacts to water quality, and any other significant adverse environmental
8 consequences. The department shall recognize all federal compensatory mitigation
9 measures as being eligible for the purpose of making this determination. If the
10 department determines that reasonable assurance exists, the department may not
11 impose any additional conditions on the permit. If the department determines that
12 reasonable assurance does not exist, it may impose conditions on the permit that are
13 in addition to required federal compensatory mitigation measures, but such
14 conditions shall be limited to those that are necessary to compensate for any
15 significant adverse impacts to wetland functional values, any significant adverse
16 impacts to water quality, and any other significant adverse environmental
17 consequences. Any conditions imposed by the department may be satisfied through
18 a mitigation program as provided in sub. (8). In imposing any conditions under this
19 paragraph, the department may not require that the number of acres to be mitigated
20 be greater than the number that is required under federal law.

21 (b) A wetland individual permit issued under this section that authorizes a
22 discharge of dredged or fill material in a federal wetland constitutes water quality
23 certification as required by 33 USC 1341 (a). Any other approval issued by the
24 department for which a wetland impact evaluation is required for a federal wetland

1 constitutes water quality certification under 33 USC 1341 (a) with respect to the
2 discharges or activities affecting the federal wetland.

3 (8) MITIGATION PROGRAM. (a) *Contents.* A mitigation program to compensate
4 for significant adverse impacts to functional values of wetlands shall contain
5 proposed projects for mitigation and a schedule for implementing the projects. The
6 department may not consider mitigation in determining whether to grant
7 authorization to proceed under a general permit under s. 281.36 (3g). These projects
8 may be performed by a person other than the applicant, subject to the department's
9 approval of the projects and schedule.

10 **Insert 128-2**

11 (9) SUBSEQUENT PROTECTION FOR WETLANDS. (a) If a wetland individual permit
12 issued under this section, or other approval that required a wetland impact
13 evaluation, authorizes a mitigation project, the person who is the holder of the permit
14 or approval shall grant a conservation easement under s. 700.40 to the department
15 or shall execute a comparable legal instrument to ensure that a wetland that is being
16 restored, enhanced, created, or preserved will not be destroyed or substantially
17 degraded by any subsequent proprietor of or holder of interest in the property on
18 which the wetland is located. ~~The department shall suspend the mining permit if the~~
19 ~~holder of the wetland individual permit or other approval fails to grant fails to~~
20 ~~take these measures.~~ The department shall suspend the mining permit if the holder
21 of the permit fails to grant the easement or execute this instrument within the time
22 limit set forth in the mining permit. If the holder subsequently grants the
23 conservation easement or executes the instrument, the department shall reinstate
24 the mining permit.

1 (b) Notwithstanding par. (a), the department shall modify or release a
2 conservation easement granted under par. (a) or shall void a comparable legal
3 instrument executed under par. (a) if all of the following apply:

4 1. The department determines that part or all of ^a wetland subject to the
5 mitigation project ceases to be a wetland.

6 2. The person who is required to grant the conservation easement or execute
7 the legal instrument did not contribute to the loss of the wetland specified in subd.
8 1.

9 3. Any subsequent proprietor of or holder of interest in the property on which
10 the wetland specified in subd. 1. is located did not contribute to the loss of the
11 wetland.

12 (10) EXEMPTIONS. (a) *Artificial wetlands.* All of the following artificial
13 wetlands that are associated with a mining operation or bulk sampling are exempt
14 from the wetland individual permit and mitigation requirements under this section
15 and from any requirement for any other approval that the department conducts a
16 wetland impact evaluation: ^{for which} is required

17 **Insert 128-15**

18 (b) *Other exempted activities.* All of the following activities that are associated
19 with a mining operation or bulk sampling are exempt from the wetland individual
20 permit and mitigation requirements under this section and from any requirement
21 for any other approval ^{for which} that the department conduct a wetland impact evaluation ^{is required} if
22 the applicant minimizes any adverse effect on the environment as a result of any of
23 these activities:

24 **Insert 128-21**

25 4. Maintenance of drainage ditches.

1 (c) An exemption under par. (a) or (b) does not apply to a federal wetland if the
2 exemption conflicts with 33 U.S.C. 1344.

close up


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4

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0762/P2in2RK
RNK:.....

INSERT 67-3; 108-13

1 *no ch* The department's notice under this subdivision may be given through an
2 electronic notification system established by the department.

INSERT 138-25

3 *no ch* The department's notice to interested persons under this subd. 3. b. may be
4 given through an electronic notification system established by the department. The
5 date on which the department first publishes notice on its Internet site shall be
6 considered the date of the publication of the notice required to be published under
7 this subd. 3. b.

INSERT 139-23

8 *no ch* The department's notice to interested persons under this subdivision may be
9 given through an electronic notification system established by the department. The
10 date on which the department first publishes notice on its Internet site shall be
11 considered the date of the publication of the notice required to be published under
12 this subdivision.

SECTION 15f. 70.375 (1) (bm) of the statutes is amended to read:

70.375 (1) (bm) "Mining-related purposes" means activities which are directly in response to the application for a mining permit under s. 293.37 or 295.47; directly in response to construction, operation, curtailment of operation or cessation of operation of a metalliferous mine site; or directly in response to conditions at a metalliferous mine site which is not in operation. "Mining-related purposes" also includes activities which anticipate the economic and social consequences of the cessation of mining. "Mining-related purposes" also includes the purposes under s. 70.395 (2) (g).

SECTION 15h. 70.38 (2) of the statutes is amended to read:

70.38 (2) COMBINED REPORTING. If the same person extracts metalliferous minerals from different sites in this state, the net proceeds for each site for which a permit has been issued under s. 293.49 or 295.58 shall be reported separately for the purposes of computing the amount of the tax under s. 70.375 (5).

SECTION 16. 70.395 (1e) of the statutes is amended to read:

70.395 (1e) DISTRIBUTION. Fifteen days after the collection of the tax under ss. 70.38 to 70.39, the department of administration, upon certification of the department of revenue, shall transfer the amount collected in respect to mines not in operation on November 28, 1981, to the investment and local impact fund, except that the department of administration shall transfer 60 percent of the amount collected from each person extracting ferrous metallic minerals to the investment and local impact fund and the department of revenue shall deposit 40 percent of the amount collected from any such person into the general fund.

INTENT 12-15

SECTION 16d. 70.395 (2) (dc) 1. of the statutes is amended to read:

Insert
12-15

economic development

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

LRB-0762/P2dn

RNK:.....

g's

- date -

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Please note that I have used the term "approval" throughout s. 295.605, as created in this draft, instead of the terms "permit/or/contract". The proposed language in the drafting instructions for this provision used the term "approval" in only certain places but I have used the term throughout this section for the purposes of consistency. Also, I have not included language that specifies that s. 295.605 applies only to approvals associated with bulk sampling or mining. As you know, "approval" is a defined term (see s. 295.41 (3)) and the term already incorporates that concept.

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

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

LRB-0762/P2dn
RNK:cjs:rs

January 8, 2013

Please note that I have used the term "approval" throughout s. 295.605, as created in this draft, instead of the terms "permit" or "contract". The proposed language in the drafting instructions for this provision used the term "approval" in only certain places but I have used the term throughout this section for the purposes of consistency. Also, I have not included language that specifies that s. 295.605 applies only to approvals associated with bulk sampling or mining. As you know, "approval" is a defined term (see s. 295.41 (3)) and the term already incorporates that concept.

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

Tradewell, Becky

From: Konopacki, Larry
Sent: Wednesday, January 09, 2013 1:31 PM
To: Tradewell, Becky
Cc: Henning, Anna
Subject: RE: Draft review: LRB -0762/P2 Topic: Iron mining regulation

Thanks!

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

From: Tradewell, Becky
Sent: Wednesday, January 09, 2013 9:29 AM
To: Konopacki, Larry
Cc: Henning, Anna
Subject: RE: Draft review: LRB -0762/P2 Topic: Iron mining regulation

Larry,

About the first item, we did discuss the issue of adding completeness. It seems to me that there is nothing in s. 295.58 (5) or (6) or 299.57 about completeness. The only provision in s. 295.57 about completeness concerns the completeness of the mining permit application. There is nothing in any other chapter of the statutes that relates to completeness of an iron mining permit application. Therefore, I conclude that it is not appropriate to add "completeness" to s. 295.57 (9).

Also, just to put "credit" where it is due, I am the one responsible for item 7 and will fix it.

Becky

From: Konopacki, Larry
Sent: Tuesday, January 08, 2013 8:58 PM
To: Kite, Robin; Tradewell, Becky; Gibson-Glass, Mary
Cc: Henning, Anna
Subject: RE: Draft review: LRB -0762/P2 Topic: Iron mining regulation

Becky, Mary and Robin, thanks for getting this draft to us so quickly. It really looks fantastic. You have done an exceptional job adding clarity to the provisions that were addressed in this round of changes.

Below are our comments/questions:

1. We may have already discussed this, but I can't recall – it was suggested that we add "completeness" (originally it was requested that we add "administrative completeness") to the list of aspects of a permitting process superseded under s. 295.57 (9). Can that be added?
2. In s. 295.45 (7), "to the extent practicable" should be removed from the end of that provision.
3. On page 79, lines 13 and 14 (s. 295.51 (3) (d)), please change "significant environmental damage" to "significant adverse environmental impact."

4. Mary, can we mirror the first approval determination factor under s. 281.36 (3n) (c) 1. in s. 295.60 (6) (a) 1. and (c) 1.? What you have is very close. Can you replace “that avoid impacts to wetland functional values” at the end of these subdivisions with “that avoid wetland impacts?”
5. Mary, in the “federal wetlands” section under s. 295.60 (7), I think we still need to specify that the additional conditions that may be imposed by the DNR if “reasonable assurance” does not exist apply only to effects of the proposal not compensated for by the federal mitigation requirements.
6. Mary, in s. 295.60 (8) the word “significant” should be removed from the first sentence.
7. Robin, I think that the second sentence of s. 295.61 (2) needs to be changed so that the reference to s. 281.41 precedes the reference to 100,000 gallons. In other words, the current draft requires a water withdrawal permit for groundwater associated with s. 281.41 regardless of the total amount of groundwater withdrawn, but should only require a permit if that 100,000 gallon threshold is met.

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

From: LRB.Legal
Sent: Tue 1/8/2013 8:43 AM
To: Konopacki, Larry
Subject: Draft review: LRB -0762/P2 Topic: Iron mining regulation

Following is the PDF version of draft LRB -0762/P2 and drafter's note.

Gibson-Glass, Mary

From: Konopacki, Larry
Sent: Tuesday, January 08, 2013 8:03 PM
To: Gibson-Glass, Mary
Cc: Henning, Anna
Subject: RE: definition of on site location

Hi Mary, I thought about this for a long time in an earlier life, too. I came to the conclusion that the definition works, because a location on the site is also within a boundary line that is established by measuring $\frac{1}{2}$ mile from the boundary of the mine site. Maybe that is a better way to say it. Or, we could say "on the site or within $\frac{1}{2}$ mile of the outer boundary of the site" Either way, I think that it is OK

LK

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

From: Gibson-Glass, Mary
Sent: Tuesday, January 08, 2013 12:54 PM
To: Konopacki, Larry
Subject: definition of on site location

Larry,

I wrote a d note regarding the definition of one site location in an earlier life, but I don't think this definition works. If on site is limited to "a means a location that is within one-half mile of an outer boundary of a mining site", it means that any location that is within the boundaries of a mining site but more than $\frac{1}{2}$ mile from the boundary would not be considered an on site location, and the mitigation could be performed at any off site location instead of within the boundaries. I am not that good at logic, but this does not make any sense to me.

Let me know your thoughts,

Mary
267 3215

Tradewell, Becky

From: Konopacki, Larry
Sent: Wednesday, January 09, 2013 1:34 PM
To: Tradewell, Becky; Henning, Anna
Subject: RE: Proposed revised language

Anna and I both reviewed this and think that it works well. I particularly think that this approach is much simpler and easier to follow.

Thanks!

Larry

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

From: Tradewell, Becky
Sent: Wednesday, January 09, 2013 9:50 AM
To: Konopacki, Larry; Henning, Anna
Subject: FW: Proposed revised language

Larry and Anna,
This is the only other outstanding issue that I am aware of on LRB-0762.
Becky

From: Tradewell, Becky
Sent: Tuesday, January 08, 2013 11:13 AM
To: Henning, Anna; Konopacki, Larry
Subject: Proposed revised language

This is a proposed revised version of s. 293.77 for LRB-0762. I think it is more clear and works better than the version in the /P3. I would be glad to discuss my thoughts on this.
Becky

<< File: Contestedcase-0762,1,8 >>

Tradewell, Becky

From: Konopacki, Larry
Sent: Wednesday, January 09, 2013 1:44 PM
To: Tradewell, Becky; Gibson-Glass, Mary; Kite, Robin
Cc: Henning, Anna
Subject: GOP bill author

Hi Becky, please designate Senator Tiffany as the author/requestor of the mining draft.

Thanks,
Larry

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

Gibson-Glass, Mary

From: Konopacki, Larry
Sent: Monday, January 07, 2013 9:51 AM
To: Gibson-Glass, Mary
Cc: Tradewell, Becky; Henning, Anna; Esser, Jennifer
Subject: GOP Mining Bill - Wetlands - Subsequent protection

Hi Mary, can you please remove the restriction in the subsequent protection provision in the GOP mining bill that limits its applicability to only on-site mitigation? In other words, the subsequent protection provision should apply to mitigation conducted on or off site.

Thanks,
Larry

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

Gibson-Glass, Mary

From: Konopacki, Larry
Sent: Saturday, January 05, 2013 6:05 PM
To: Gibson-Glass, Mary
Cc: Tradewell, Becky; Henning, Anna
Subject: GOP mining bill - Wetlands

Hi Mary, the wetlands section looks fantastic. Great job! The reorganization took me a while to sort through, but it was unquestionably worthwhile. I have a couple of questions/comments for our discussion tomorrow morning:

- In the insert in s. 281.36 (3g) (h) 2. (page 1, line 17), the reference to s. 295.60 (2) (b) should be to (3) (b).
- Should the “scope” provision be more developed? It seems to me that the section should apply to “a wetland individual permit under this section and any other approval associated with a mining operation or bulk sampling for which a wetland impact evaluation is required.” (since I wrote this a couple hours ago, I’ve changed my mind, but I still want to see what you are thinking about this.)
- In your new s. 295.60 (4) (b) (page 3, line 24 of the insert), I think that we need to include “the proposed project causing the discharge or other activity”
- Should the definition of “wetland impact evaluation” include “an evaluation of impacts to wetlands associated with a mining operation or bulk sampling”?
- **Don’t we have to tie the three approval findings to applications for “other” approvals, too?
- I think that the use of the word “project” instead of “discharge” in the approval findings should be considered, unless you accept the following suggestion:
- **I also think that we have to put par. (4) (c) back in, albeit in a more appropriate place than it was in previous versions of the bill. Probably at the end of the new sub. (6). This would also allow us to remove some of the references to mitigation that you added to the three approval factors.
- Remove par. (b) from page 6, line 3 of insert?
- On page 6, line 20 of the insert, I think that we need to specify that this only applies to consequences that the department determines are not already compensated for by the federal mitigation measures.
- It looks like you left out the language added to (4) (b) on page 4 of the wetlands markup – can you help me to understand what was requested here?
- Can some of the changes to Insert 125-8 in the wetlands markup, p. 8, be added?
- Even if we don’t use the suggested language in the wetlands markup, can we come up with a better way to state what is in (8) (d) 1.?
- Under former versions of sub. (9), the requirement for subsequent protection only appears to apply to wetlands “at an on-site location.” This is not included in the new language. What is the significance of this phrase in the former versions?
- Let’s make the changes to the exemptions on the top of the wetlands markup page 12, since they match current law.

Thanks, and again, great work!

Larry

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

From: Gibson-Glass, Mary
Sent: Friday, January 04, 2013 4:31 PM
To: Konopacki, Larry
Subject:

Here it is, there is only one insert

Mary Gibson-Glass
Senior Legislative Attorney
Legislative Reference Bureau
608 267 3215

<< File: 13-0762/P2insMG >>

Gibson-Glass, Mary

From: Konopacki, Larry
Sent: Friday, January 04, 2013 11:46 AM
To: Gibson-Glass, Mary
Cc: Henning, Anna
Subject: RE: Mitigation

Hi Mary, I agree that the word "required" doesn't work here. I would recommend replacing the end of this clause with "resulting from a the mitigation program ~~required~~ under sub. (9)"

Thanks,
Larry

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

From: Gibson-Glass, Mary
Sent: Friday, January 04, 2013 11:00 AM
To: Konopacki, Larry
Subject: RE: Mitigation

The language I am talking about is below. It is about 2/3rds down page 4 of her markup on wetlands.

In its review under (d) 1., the department shall consider all of the following factors when it assesses the impacts to wetland functional values: the direct impacts of the proposed project to wetland functional values; the cumulative impacts attributable to the proposed project that may occur to wetland functional values based on past impacts or reasonably anticipated impacts caused by similar projects in the area affected by the project; potential secondary impacts of the proposed project to wetland functional values; the impact on wetland functional values resulting from the mitigation program required under sub. (9); and the net positive or negative environmental impact of the proposed project..

From: Konopacki, Larry
Sent: Friday, January 04, 2013 10:46 AM
To: Gibson-Glass, Mary
Subject: RE: Mitigation

Hi Mary, I couldn't find this in their markup. I must be missing something.

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

From: Gibson-Glass, Mary
Sent: Thursday, January 03, 2013 3:16 PM
To: Konopacki, Larry
Subject: Mitigation

Under Wisconsin Act 118, mitigation is required. See 281.36 (3n) (d). Jennifer, in her draft language, has cut and pasted part of s. 281.36 (3n) (b) 4. , which refers to mitigation being required. See mid page of page 4 of her draft language.

So my question is: Is the intent that mitigation be required? My guess is no, but let me know.
Mary