



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4762/1
MCP:all

ENGROSSED 2017 ASSEMBLY BILL 499

November 3, 2017 - Printed by direction of SENATE CHIEF CLERK.

1 **AN ACT** *to repeal* 227.42 (4), 293.43 (2), 293.43 (3), 293.43 (4), 293.43 (5) and
2 293.50; *to amend* 20.370 (2) (gh), 70.375 (2) (b), 70.375 (4) (h), 281.35 (5) (e),
3 283.84 (3m), 293.01 (9), 293.01 (18), 293.13 (2) (b) (intro.), 293.13 (2) (b) 4.,
4 293.13 (2) (b) 7., 293.13 (2) (c) (intro.), 293.13 (2) (c) 7., 293.15 (8), 293.31 (title),
5 293.31 (1), 293.31 (2), 293.31 (3), 293.31 (4), 293.43 (1), 293.43 (1m) (b), 293.49
6 (1) (a) (intro.), 293.51 (title), 293.51 (3), 293.55 (1) (c), 293.55 (1) (d), 293.65 (3)
7 (b) and 293.81; *to repeal and recreate* 293.95; and *to create* 293.01 (2m),
8 293.15 (7m), 293.26, 293.31 (4m), 293.32 (4), 293.37 (5), 293.40, 293.43 (2m),
9 293.43 (3m), 293.43 (4m), 293.49 (1) (a) 2m., 293.495, 293.51 (1g), 293.51 (1m),
10 293.51 (1r), 293.51 (5) and 293.66 of the statutes; **relating to:** the regulation
11 of nonferrous metallic mining, prospecting, exploration, and bulk sampling,

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- 1 repealing administrative rules relating to wetlands, granting rule-making
2 authority, and making an appropriation.
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Analysis by the Legislative Reference Bureau***Engrossment information:***

The text of Engrossed 2017 Assembly Bill 499, as passed by the assembly on November 2, 2017, consists of the following documents adopted in the assembly on November 2, 2017: the bill as affected by Assembly Amendments 1, 2, 3, 4, 5, 6, and 9. The text also includes the November 6, 2017, chief clerk's corrections to Assembly Amendments 1, 5, and 6 of 2017 Assembly Bill 499.

Content of Engrossed 2017 Assembly Bill 499:

This bill makes changes in the laws relating to the regulation and permitting of nonferrous metallic mineral prospecting and mining. Nonferrous metallic minerals are metallic minerals other than iron, such as copper or zinc. Under current law, the Department of Natural Resources regulates exploration, prospecting, and mining for nonferrous metallic minerals.

SULPHIDE ORE MORATORIUM

This bill repeals the existing prohibition on issuing sulfide ore mining permits. Current law prohibits DNR from issuing any permits for the purpose of mining a sulfide ore body until DNR determines that 1) there is a mining operation in a potentially acid-generating sulfide ore body in the United States or Canada that has been in operation for at least ten years without resulting in the pollution of groundwater or surface water from acid drainage or from the release of heavy metals; and 2) there is a mining operation that operated in a potentially acid-generating sulfide ore body in the United States or Canada that has been closed for at least ten years without resulting in the pollution of groundwater or surface water from acid drainage or from the release of heavy metals.

POINT OF APPLICATION FOR GROUNDWATER STANDARDS

This bill also makes changes to the locations at which groundwater standards may apply at nonferrous metallic mining and prospecting sites. The bill does not make changes to numerical groundwater standards.

Under current law, DNR establishes enforcement standards for certain substances that contaminate groundwater. When determining whether a groundwater enforcement standard at certain facilities, including mining or prospecting operations, has been met or exceeded, the enforcement standard may apply at any point beyond a three-dimensional design management zone (DMZ) established by DNR by rule. Under DNR's current rules, for a nonferrous metallic mining site the DMZ extends vertically from the land surface through all saturated geological formations.

This bill requires DNR, for each mining or prospecting site, to determine the depth in the Precambrian bedrock below which the groundwater is not reasonably capable of being used for human consumption and is not hydrologically connected to

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other sources of groundwater that are suitable for human consumption. Under the bill, for a nonferrous metallic mining or prospecting site, DNR may not apply groundwater enforcement standards at any point deeper than that identified depth for the site.

WETLANDS

Pursuant to the laws of 1977, DNR promulgated rules designed to ensure that metallic mining activities would result in a minimization of disturbance to wetlands while taking into consideration the fact that, in siting some mining operations, it may be virtually impossible to avoid impacts to wetlands. To help weigh and evaluate these competing considerations when reviewing proposed sites for mining operations, DNR promulgated section NR 132.06 (4) of the Wisconsin Administrative Code. This section was later modified to apply only to nonferrous metallic mining.

After section NR 132.06 (4) was promulgated, this state enacted section 281.36 of the statutes, which requires DNR to issue wetland permits, in a manner consistent with the federal Clean Water Act, for any activity that may affect wetlands, including nonferrous metallic mining operations. This bill repeals section NR 132.06 (4) of the administrative code. As a result, the only provisions that DNR may apply in evaluating a proposed site for a prospecting or mining operation are those contained in s. 281.36 and in rules promulgated under that section and under other provisions under current law.

BULK SAMPLING

This bill creates a separate process for engaging in bulk sampling for nonferrous metallic minerals. Current law regulates activities relating to nonferrous metallic minerals differently depending on whether the activity involves exploration, prospecting, or mining. Under current law, a person who wants to engage in exploration for nonferrous metallic minerals must first obtain a license from DNR. Exploration consists of drilling holes that are less than 18 inches in diameter into the surface of an area to search for nonferrous metallic minerals. Current law also provides that a person may not prospect for nonferrous metallic minerals without a prospecting permit from DNR. Prospecting means examining an area to determine the quality and quantity of nonferrous metallic minerals by means other than drilling, for example by excavating. Under current law, the process for obtaining a prospecting permit is similar to the process for obtaining a mining permit. When a person completes a prospecting operation, the person must conduct reclamation, which means rehabilitation of the site to either its original state or, if that is not feasible, to a state that provides long-term environmental stability.

The bill defines "bulk sampling" as excavating in a potential mining site by removing less than 10,000 tons of material, including overburden and any other material removed from any portion of the excavation site, to assess the quality and quantity of nonferrous metallic mineral deposits and to collect and analyze data to prepare an application for a mining permit or other approval. Under the bill, bulk sampling does not constitute prospecting, and prospecting activities do not include bulk sampling.

The bill requires a person to obtain a bulk sampling license and any other permit, license, or approval required by DNR before engaging in bulk sampling.

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Under the bill, a person who intends to engage in bulk sampling must file a bulk sampling plan with DNR. A person who files a bulk sampling plan must 1) describe the bulk sampling site and the methods to be used for bulk sampling; 2) submit a plan for controlling surface erosion that identifies how adverse impacts to plant and wildlife habitats will be avoided or minimized; 3) submit a plan for revegetation that describes how adverse environmental impacts will be avoided or minimized; 4) provide the estimated time for completing bulk sampling and revegetation of the site; 5) describe any known adverse environmental impacts that are likely to be caused by bulk sampling and how those impacts will be avoided or minimized; and 6) describe any adverse effects that the bulk sampling might have on any historic property or on any scenic or recreational areas and plans to avoid or minimize those adverse effects. The bill also requires a person to submit, with the bulk sampling plan, a \$5,000 bond. DNR may require the amount of the bond to be increased if it is unlikely that the bond will be adequate to fund the state's cost for completing the revegetation plan.

The bill requires DNR, within 14 days of receipt of a bulk sampling plan, to identify in writing any kind of approval that DNR issues that is needed to conduct the proposed bulk sampling, such as a wastewater discharge permit or a permit for a discharge into wetlands, and any waivers, exemptions, or exceptions to those approvals that may be available. The bill also requires a person who has submitted a bulk sampling plan to submit all applications for approvals and all applications for waivers, exemptions, or exceptions to approvals for the bulk sampling at one time.

Under the bill, if there are any significant changes to the information provided in a bulk sampling plan submitted to DNR, the applicant must file a revised bulk sampling plan. DNR must then provide the applicant with updated information regarding any approvals or modifications to existing approvals that DNR requires.

The bill specifies deadlines for DNR to act on approvals needed to conduct bulk sampling. When a person who files a bulk sampling plan applies for an approval or a waiver, exemption, or exception to an approval, the application is considered to be complete on the 30th day after DNR receives the application, unless before that day DNR informs the person that the application is not complete. Once an application is complete, DNR must act within 30 days on an application for a waiver, exemption, or exception to an approval, for a determination that an activity is below the threshold that requires an approval, or for a determination of eligibility for coverage under a general permit or a registration permit. For other approvals, DNR must act within 60 days after the application is complete, except that DNR must act on an approval for an individual permit for which federal law requires an opportunity for public comment or a hearing, such as a wastewater discharge permit, within 180 days. After all of the required approvals are issued, DNR must then issue the applicant a bulk sampling license.

The bill provides that DNR is not required to prepare an environmental impact statement (EIS) for an approval required for bulk sampling or for a bulk sampling license. The bill also requires DNR to act on any required construction site erosion control or storm water management approval required for bulk sampling, even if

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DNR has authorized a local program to issue approvals for construction site erosion control or storm water management.

Finally, the bill provides that DNR may revoke or suspend a bulk sampling license if it determines, after a hearing, that the license holder has failed to comply with any law, DNR rule, or license term, or has failed to increase the amount of any bond required for bulk sampling.

FINANCIAL ASSURANCE REQUIREMENTS

Under current law, an operator of a nonferrous mining or prospecting operation must file a bond, cash, certificates of deposit, or government securities with DNR to ensure that the operator will be able to cover the cost of the reclamation plan for the mining or prospecting site. An operator must also maintain proof of financial responsibility for complying with the long-term care requirements of the mining or prospecting site after the site is closed. Under rules promulgated by DNR, an applicant for a nonferrous metallic mining permit must also create and maintain an irrevocable trust in perpetuity to ensure the availability of funds for preventative and remedial activities, such as responding to a spill of a hazardous substance at the mining site.

This bill limits the forms of proof of financial responsibility for long-term care that DNR may require to a bond, cash, certificates of deposit, government securities, or insurance. The bill provides that DNR may not require an operator to provide a form of financial assurance other than those listed in the statutes.

The bill also requires two additional forms of financial assurance from the operator of a mine. First, before beginning to mine, the operator must file with DNR a bond, cash, certificate of deposit, or government security to cover unforeseen remedial contingencies that are not otherwise covered by the bonds or other security for remediation and long-term care. The bond or other security for remedial contingencies must be 10 percent of the total amount of the bonds or other security for remediation and long-term care, and must be released no later than 40 years after the operator stops extracting material from the mining site.

Second, at the time of closure of the mining waste site, the operator must provide DNR with proof of financial responsibility in an amount equal to the reasonably anticipated costs, for the period running from 40 to 250 years after closure of the mining waste site, to repair or replace any engineered cover systems or tailings water management control systems. The proof of financial responsibility must be in the form of an interest-bearing security or account. At the time that the mining permit is approved, DNR must determine the amount of the proof of financial responsibility to be provided and identify the reasonably anticipated costs that the amount is intended to cover. The operator may use these funds to cover any identified anticipated cost. DNR must release any remaining funds to the operator after all of the identified anticipated costs are incurred or after determining that the identified anticipated costs are no longer applicable.

APPLICATION, REVIEW, AND PERMITTING PROCESS

Under current law, a person who proposes to prospect or mine for nonferrous metallic minerals must obtain a prospecting or mining permit and any other permit, license, certification, or other authorization (approval) that is required under the

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environmental and natural resources laws, for example wastewater discharge permits, high capacity well approvals, and permits for discharges into wetlands.

This bill makes changes to certain parts of the preapplication, application, review, and hearing process for these permits and approvals.

Preapplication process

Under current law, a person who intends to apply for a permit to prospect or mine for nonferrous metallic minerals must notify DNR of that intent, and may not collect data intended to be used to support the application before submitting the notice of intent to apply. DNR is required to provide public notice when it receives a notice of intent to apply for a prospecting or mining permit, and is required to receive and consider public comments within 45 days after giving the public notice. After considering public comments, DNR must tell the person who filed the notice of intent what data DNR believes is needed to support an application for a prospecting or mining permit and the methodologies that must be used to collect that data, along with certain other information relating to groundwater in the area and to other approvals that are required for the proposed prospecting or mining project.

This bill requires a person who intends to apply for a prospecting or mining permit to provide DNR with a notice of intent at least 12 months before filing an application for a prospecting or mining permit. The bill removes the prohibition on collecting data before filing the notice of intent to apply. The bill requires DNR, upon the request of a person who intends to file a notice of intent to apply, to review the person's proposed methodology for collecting data, and to either approve the proposed methodology or provide the methodology that DNR requires to be used. Under the bill, DNR may assess the person a fee to cover DNR's costs in reviewing or providing these methodologies. The bill also provides that, if DNR holds a public informational hearing to solicit the required public comments on a notice of intent to apply, the hearing must be held within the 45-day period for soliciting public comments. In addition, the bill requires DNR to inform the person within 90 days after the 45-day period for soliciting public comments of the required data and methodologies for the application, the information that should be included in the person's environmental impact report, and the information DNR will need to prepare an EIS. Under the bill, DNR must begin the process of entering into a memorandum of understanding with the applicant, the U.S. army corps of engineers, and other relevant federal agencies before informing the person of the required data and methodologies for the application and providing the other required information. The bill provides that such a memorandum of understanding may include an agreement between DNR and the applicant regarding timelines for the permitting process.

Application process — predictive modeling

Currently, under rules promulgated by DNR, a person who wishes to operate a solid waste disposal facility for a nonferrous metallic mineral mining operation must submit information based on predictive modeling to demonstrate that there is a reasonable certainty that the facility will not violate groundwater quality standards. This bill provides that, if DNR requires an applicant for a nonferrous metallic mining permit to conduct modeling to determine whether the proposed mining operation's waste site complies with groundwater or surface water quality

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standards, DNR may not require the applicant to examine a period longer than the proposed operating period of the waste site plus 250 years.

Review timeline

This bill creates a timeline for DNR to review an application for a prospecting or mining permit, request additional information from the applicant, and prepare a draft environmental impact statement, a draft prospecting or mining permit, and other draft approvals.

Under the bill, DNR has 180 days after an applicant submits an application for a prospecting or mining permit, an environmental impact report, and any application for other related approvals, to provide comments and request additional information. If DNR requests additional information, it has 90 days after the applicant submits additional information to again provide comments and request additional information. If DNR requests this additional information, it has 180 days after the applicant submits additional information to prepare a draft environmental impact statement, a draft prospecting or mining permit, and any other related draft approvals. The applicant and DNR may agree to modify all or part of this timeline. DNR may request additional information after these time periods expire, but may not delay the application and review process based on a request for additional information.

If, during the 90-day period described above, the DNR secretary determines that the applicant has made a substantial modification to the mining or prospecting plan that significantly changes the information necessary to prepare the environmental impact statement or adequately review an application, DNR may request additional information from the applicant. When the applicant submits additional information, the timeline described above resets and begins again.

Issuing a mining permit — effects on other waters

Under current law, an applicant must obtain an approval for a high capacity well if the applicant will withdraw groundwater for prospecting or mining or dewater mines and if the capacity and rate of withdrawal or dewatering exceeds 100,000 gallons each day. Current law prohibits DNR from issuing an approval for a high capacity well if the withdrawal of groundwater or the dewatering of mines will result in the unreasonable detriment of public or private water supplies or the unreasonable detriment of public rights in the waters of the state.

Under this bill, if DNR determines that the withdrawal of groundwater or the dewatering of mines will result in the unreasonable detriment of public or private water supplies or the unreasonable detriment of public rights in the waters of the state, DNR must include conditions in the high capacity well approval or in the prospecting or mining permit to ensure that those detriments will not occur. These conditions may include a requirement that the applicant provide a replacement water supply or temporarily augment the quantity of water in, or flowing into or from, the affected body of water.

Hearing process

Under current law, DNR holds a public informational hearing on DNR's draft EIS, after which DNR prepares a final EIS. DNR then conducts a master hearing on the final EIS, the draft mining or prospecting permits that DNR has prepared, and

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all other approvals that are required for the prospecting or mining project, to the extent possible. Under current law, the provisions related to notice, hearing, and comment in the nonferrous metallic mining law apply to any other needed approval, unless the applicant fails to apply for an approval in time for it to be considered at the master hearing. The master hearing includes both a contested case hearing, with testimony under oath and the opportunity for cross-examination, and a public informational hearing. After the master hearing, DNR either denies the application for a prospecting or mining permit or approves the application and issues the permit and related approvals.

This bill requires DNR to hold a public informational hearing on the draft prospecting or mining permit, the draft EIS, and all other approvals that are related to the prospecting or mining project, unless the application for a related approval is filed too late to allow the approval to be considered at the hearing in which case another public informational hearing is held using the same procedure as for the mining or prospecting permit hearing. The hearing does not include a contested case hearing. Before the hearing, DNR must make the applications for the permit and any additional approvals, and the draft EIS, the draft permit, any other draft approvals, available for review in the city, town, or village in which the proposed prospecting or mining site is located. DNR must also publish a notice with the date, time, and location of the public informational hearing, and accept public comments within 45 days after the notice is published. DNR must publish the hearing notice within 30 days of completing the draft EIS and draft mining or prospecting permit under the timeline described above.

Under current law, DNR must issue a mining permit within 90 days after completion of the public hearing record if it makes certain determinations, including that the proposed operation will comply with all applicable air, groundwater, surface water, and solid and hazardous waste management laws and DNR rules and that the proposed mine will not endanger public health, safety, or welfare. Under the bill, DNR must also issue a mining permit during this 90-day timeline if it finds that the technology that will be used at the proposed operation is capable of resulting in compliance with all applicable air, groundwater, surface water, and solid and hazardous waste management law and DNR rules and is reasonably certain to result in compliance with these laws and rules at the proposed mining site.

Review process

Under current law, any person who is aggrieved by a DNR decision relating to nonferrous metallic exploration, prospecting, or mining may request an administrative contested case hearing, unless the matter was heard at the master hearing.

Under the bill, a person may not request a contested case hearing on a DNR decision relating to exploration or bulk sampling. However, a person may request a contested case hearing on a DNR decision relating to a mining or prospecting permit, including a decision related to the EIS for the proposed prospecting or mining operation or a decision on any approval related to the prospecting or mining permit application. A person seeking such a contested case hearing must request the hearing within 60 days after DNR issues the decision to approve or deny the mining

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or prospecting permit. In addition, the bill requires the hearing examiner in such a contested case hearing to issue a decision within 270 days after DNR approves or denies the mining or prospecting permit. Under the bill, a person seeking judicial review of a decision in such a contested case hearing must bring the action within 30 days of the decision. The bill also allows a person to request a contested case hearing on other DNR decisions relating to prospecting or mining that are issued after DNR's final decision to grant or deny a prospecting or mining permit. Under the bill, a person seeking judicial review of a decision in a contested case hearing or of any DNR decision relating to nonferrous metallic mining, prospecting, exploration, or bulk sampling must bring the action in the court for the county in which the majority of the mining or prospecting site is located or in which the majority of the exploration or bulk sampling will occur.

FEES

This bill exempts nonferrous metallic mining from certain solid waste disposal fees that are required under current law. Under current law, a generator of solid or hazardous waste, including at a nonferrous metallic mining waste site, must generally pay license and review fees; tonnage fees; groundwater and well compensation fees; a solid waste facility siting board fee; a recycling fee; and an environmental repair fee and repair surcharge. This bill exempts nonferrous metallic mining waste sites from the review and license fees, tonnage fees, and recycling fee. Under the bill, the operator of a mining waste site must continue to pay the groundwater fee, the environmental repair fee and surcharge, and the solid waste facility siting board fee.

NET PROCEEDS TAX

Under the bill, for purposes of imposing and collecting the net proceeds tax on mining, the secretary of the Department of Revenue may adjust the allocation of gross revenue, deductions, allowances, or credits between or among organizations owned or controlled by the same interests, if the secretary determines that the adjustment is necessary in order to prevent evasion of the tax or to clearly reflect the income of any such organizations. Under current law, the secretary of DOR may make the same determination and adjustment with regard to the imposition and collection of income and franchise taxes.

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

- 1 **SECTION 1.** 20.370 (2) (gh) of the statutes is amended to read:
- 2 20.370 (2) (gh) *Nonferrous metallic mining regulation and administration.*
- 3 The amounts in the schedule for the administration, regulation, and enforcement of
- 4 nonferrous metallic mining exploration, bulk sampling, prospecting, mining and

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1 mine reclamation activities under ch. 293. All moneys received under ch. 293 shall
2 be credited to this appropriation.

3 **SECTION 1n.** 70.375 (2) (b) of the statutes is amended to read:

4 70.375 (2) (b) The secretary may promulgate any rules necessary to implement
5 the tax under ss. 70.37 to 70.39 and 70.395 (1e). In respect to mines not in operation
6 on November 28, 1981, ss. 71.10 (1), 71.30 (1) and (2), 71.74 (2), (3), (9), (11) and (15),
7 71.77, 71.78, 71.80 (6), 71.83 (1) (a) 1. and 2. and (b) 2. and (2) (a) 3. and (b) 1. and
8 71.85 (2) apply to the administration of this section.

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

10 70.375 (4) (h) The cost of premiums for bonds required under s. 293.26 (9),
11 293.51, 295.45 (5), or 295.59.

12 **SECTION 3.** 227.42 (4) of the statutes is repealed.

13 **SECTION 4.** 281.35 (5) (e) of the statutes is amended to read:

14 281.35 (5) (e) *Right to hearing.* ~~Except as provided in s. 227.42 (4), any~~ Any
15 person who receives notice of a denial or modification requirement under par. (c) is
16 entitled to a contested case hearing under ch. 227 if the person requests the hearing
17 within 30 days after receiving the notice.

18 **SECTION 5.** 283.84 (3m) of the statutes is amended to read:

19 283.84 (3m) A person engaged in mining, as defined in s. 293.01 (9) or 295.41
20 (26), prospecting, as defined in s. 293.01 (18), bulk sampling, as defined in s. 293.01
21 (2m) or 295.41 (7), or nonmetallic mining, as defined in s. 295.11 (3), may not enter
22 into an agreement under sub. (1).

23 **SECTION 6.** 293.01 (2m) of the statutes is created to read:

24 293.01 (2m) "Bulk sampling" means excavating in a potential mining site by
25 removing less than 10,000 tons of material, including overburden and any other

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1 material removed from any portion of the excavation site, for the purposes of
2 obtaining site-specific data to assess the quality and quantity of the nonferrous
3 metallic mineral deposits and of collecting data from and analyzing the excavated
4 materials in order to prepare the application for a mining permit or for any other
5 approval. Bulk sampling does not constitute prospecting within the meaning of sub.
6 (18).

7 **SECTION 7.** 293.01 (9) of the statutes is amended to read:

8 293.01 (9) "Mining" or "mining operation" means all or part of the process
9 involved in the mining of nonferrous metallic minerals, other than for exploration,
10 bulk sampling, or prospecting, including commercial extraction, agglomeration,
11 beneficiation, construction of roads, removal of overburden and the production of
12 refuse.

13 **SECTION 8.** 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 nonferrous metallic minerals,
16 other than for exploration or bulk sampling but including the obtaining of a
17 nonferrous metallic mineral sample, by such physical means as excavating,
18 trenching, construction of shafts, ramps and tunnels and other means, other than for
19 exploration or bulk sampling, which the department, by rule, identifies, and the
20 production of prospecting refuse and other associated activities. "Prospecting" shall
21 not include such activities when the activities are, by themselves, intended for and
22 capable of commercial exploitation of the underlying nonferrous ore body. However,
23 the fact that prospecting activities and construction may have use ultimately in
24 mining, if approved, shall not mean that prospecting activities and construction

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1 constitute mining within the meaning of sub. (9), provided such activities and
2 construction are reasonably related to prospecting requirements.

3 **SECTION 9.** 293.13 (2) (b) (intro.) of the statutes is amended to read:

4 293.13 (2) (b) (intro.) Minimum standards for exploration, bulk sampling,
5 prospecting, and mining shall include the following:

6 **SECTION 10.** 293.13 (2) (b) 4. of the statutes is amended to read:

7 293.13 (2) (b) 4. Adequate diversion and drainage of water from the
8 exploration, bulk sampling, prospecting, or mining site.

9 **SECTION 11.** 293.13 (2) (b) 7. of the statutes is amended to read:

10 293.13 (2) (b) 7. Removal and stockpiling, or other measures to protect topsoils
11 prior to exploration, bulk sampling, prospecting, or mining.

12 **SECTION 12.** 293.13 (2) (c) (intro.) of the statutes is amended to read:

13 293.13 (2) (c) (intro.) Minimum standards for reclamation of exploration and
14 bulk sampling sites, where appropriate, and for prospecting and mining sites shall
15 conform to s. 293.01 (23) and include provision for the following:

16 **SECTION 13.** 293.13 (2) (c) 7. of the statutes is amended to read:

17 293.13 (2) (c) 7. Revegetation to stabilize disturbed soils and prevent air and
18 water pollution, with the objective of reestablishing a variety of populations of plants
19 and animals indigenous to the area immediately prior to exploration, bulk sampling,
20 prospecting, or mining.

21 **SECTION 14.** 293.15 (7m) of the statutes is created to read:

22 293.15 (7m) Issue licenses and approvals necessary for bulk sampling.

23 **SECTION 15.** 293.15 (8) of the statutes is amended to read:

24 293.15 (8) Promulgate rules regulating the production, storage and disposal
25 of radioactive waste from exploration, bulk sampling, prospecting, or mining after

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1 seeking comments from the department of health services. At a minimum, rules
2 promulgated under this subsection shall achieve the margin of safety provided in
3 applicable federal statutes and regulations. If the department promulgates rules
4 under this subsection, the department shall investigate the need for standards more
5 restrictive than the applicable federal statutes and regulations.

6 **SECTION 16.** 293.26 of the statutes is created to read:

7 **293.26 Bulk sampling. (1)** In this section, “approval” means any permit,
8 license, certification, contract, or other authorization that the department issues, or
9 any other action by the department, that is required to engage in bulk sampling.

10 **(1m)** No person may engage in bulk sampling except as provided in a bulk
11 sampling license issued by the department under sub. (4) or (14m) and any approval
12 required by the department to engage in bulk sampling identified under sub. (4) or
13 sub. (4m). A person who intends to engage in bulk sampling shall file a bulk sampling
14 plan with the department. The collection of data under a bulk sampling plan may
15 include sampling and analysis related to geophysical, geochemical, groundwater,
16 and surface water conditions, as well as any other data or studies necessary to
17 prepare an application for a mining permit, including the mining plan, reclamation
18 plan, mining waste site feasibility study and plan of operation, or any other approval
19 required for the proposed mining.

20 **(2)** A person shall include all of the following in a bulk sampling plan:

21 (a) A description and map of the bulk sampling site, including the number of
22 acres in the site, the number of acres of land that will be disturbed, if any, associated
23 with each bulk sampling location, and the locations and types of sampling or studies
24 to be conducted at each bulk sampling location.

25 (b) A description of the methods to be used for the bulk sampling.

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1 (c) A site-specific plan for controlling surface erosion that conforms to
2 requirements under ss. 281.33 (3) and 283.33 and that identifies how impacts to
3 plant and wildlife habitats will be avoided or minimized to the extent practicable.

4 (d) A revegetation plan for each area where bulk sampling will be performed
5 that describes how adverse impacts to the environment will be avoided or minimized
6 to the extent practicable and how the site will be revegetated and stabilized and that
7 identifies how adverse impacts to plant and wildlife habitats will be avoided or
8 minimized to the extent practicable.

9 (e) The estimated time for completing the bulk sampling and revegetation of
10 the bulk sampling locations.

11 (f) A description of any known adverse environmental impacts that are likely
12 to be caused by the bulk sampling and how those impacts will be avoided or
13 minimized to the extent practicable.

14 (g) A description of any adverse effects, as defined in s. 44.31 (1), that the bulk
15 sampling might have on any historic property, as defined in s. 44.31 (3), that is a
16 listed property, as defined in s. 44.31 (4), that is on the Wisconsin inventory of historic
17 places, as defined in s. 44.31 (12), or that is on the list of locally designated historic
18 places under s. 44.45; or any scenic or recreational areas; and plans to avoid or
19 minimize those adverse effects to the extent practicable.

20 **(3)** The department shall protect as confidential any information, other than
21 effluent data, contained in a bulk sampling plan and in any application for an
22 approval that is required before the bulk sampling may be implemented, upon a
23 showing that the information is entitled to protection as a trade secret, as defined in
24 s. 134.90 (1) (c), and any information relating to the location, quality, or quantity of
25 a nonferrous metallic mineral deposit, to production or sales figures, or to processes

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1 or production unique to the applicant or that would tend to adversely affect the
2 competitive position of the applicant if made public.

3 (4) Within 14 days of receipt of a complete bulk sampling plan under sub. (2),
4 the department shall identify for the applicant, in writing, all approvals that are
5 required before the bulk sampling may be implemented, any waivers, exemptions,
6 or exceptions to those approvals that are potentially available, and any information
7 that the department needs to issue the approvals or to issue a decision on any waiver,
8 exemption, or exception. If no approvals are required, the department shall notify
9 the applicant that no approvals are required and issue a bulk sampling license to the
10 applicant.

11 (4m) An applicant shall file a revised bulk sampling plan if there are any
12 significant changes to the information provided in the previous bulk sampling plan
13 under sub. (2).

14 (a) If the revised bulk sampling plan is filed before the department approves
15 or denies any waiver, exemption, or exception under sub. (12), issues any approval
16 under sub. (13) or (14), or issues a bulk sampling license under sub. (14m), within
17 14 days of receiving the revised bulk sampling plan, the department shall notify the
18 applicant, in writing, of any changes to the information provided to the applicant
19 under sub. (4).

20 (b) If the revised bulk sampling plan is filed after the department approves or
21 denies any waiver, exemption, or exception under sub. (12), issues any approval
22 under sub. (13) or (14), or issues a bulk sampling license under sub. (14m), within
23 14 days of receiving the revised bulk sampling plan, the department shall identify
24 for the applicant, in writing, any modifications to existing approvals or additional
25 approvals that the department requires.

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1 **(5)** If a storm water discharge permit under s. 283.33 (1) (a) or a water quality
2 certification under rules promulgated under subch. II of ch. 281 to implement 33
3 USC 1341 (a) is required before bulk sampling may be implemented, the person filing
4 the bulk sampling plan may apply for and be issued the permit or certification.

5 **(6)** The department shall act on any required construction site erosion control
6 and storm water management approval, notwithstanding any authorization by the
7 department of a local program to administer construction site erosion control and
8 storm water management requirements.

9 **(7)** An applicant shall submit all of the following at the same time:

10 (a) Applications for individual approvals identified under sub. (4) or (4m) (a).

11 (b) Applications for coverage under general permits or registration permits
12 identified under sub. (4) or (4m) (a).

13 (c) Applications for waivers, exemptions, or exceptions identified under sub. (4)
14 or (4m) (a).

15 (d) A bond, as provided in sub. (9).

16 **(8)** (a) Notwithstanding any provision in ch. 23, 29, 30, 31, 169, 281, 283, 285,
17 289, or 291 or in a rule promulgated under those chapters that is applicable to an
18 approval identified under sub. (4) or (4m), the application for any approval, for a
19 waiver, exemption, or exception to an approval, or for a determination that the
20 proposed bulk sampling activity is below the threshold that requires an approval, is
21 considered to be complete on the 30th day after the department receives the
22 application, unless, before that day, the department provides the applicant with
23 written notification that the application is not complete, stating the reason for the
24 determination and describing the specific information necessary to make the
25 application complete.

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1 (b) If the department provides a notice under par. (a), the applicant shall
2 supplement the application by providing the specified information. The application
3 is complete when the applicant provides the information.

4 (c) If the department determines that the issuance of an approval is contingent
5 upon the issuance of a permit under s. 29.604 (6m), and if the application for the
6 permit under s. 29.604 (6m) is filed with the approval application, the department
7 may not determine that the approval application is incomplete on the basis that the
8 department has not yet issued the permit under s. 29.604 (6m).

9 **(9)** (a) A person who intends to engage in bulk sampling shall submit with the
10 bulk sampling plan a bond in the amount of \$5,000 that is conditioned on faithful
11 performance of the requirements of this section, that is issued by a surety company
12 licensed to do business in this state, and that provides that the bond may not be
13 canceled by the surety, except after not less than 90 days' notice to the department
14 in writing by registered or certified mail.

15 (b) If the surety for a bond submitted under par. (a) issues a cancellation notice,
16 the person who filed the bulk sampling plan shall deliver a replacement bond at least
17 30 days before the expiration of the 90-day notice period. If the person fails to submit
18 a replacement bond, the person may not engage in bulk sampling until the person
19 submits a replacement bond.

20 (c) If the license of the surety company for a bond submitted under par. (a) is
21 revoked or suspended, the person who filed the bulk sampling plan, within 30 days
22 after receiving written notice from the department, shall deliver a replacement bond.
23 If the person fails to submit a replacement bond, the person may not engage in bulk
24 sampling until the person submits a replacement bond.

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1 (d) The department may require that the amount of the bond submitted under
2 this subsection be increased at any time, if the department determines that it is
3 unlikely that the bond would be adequate to fund the cost to this state of completing
4 the revegetation plan.

5 (e) The department shall release a bond submitted under this subsection one
6 year after the time for completing the bulk sampling and the revegetation set forth
7 in the bulk sampling plan if the department determines that the person who engaged
8 in bulk sampling has complied with this section.

9 **(10)** Notwithstanding any provision in ch. 23, 29, 30, 31, 169, 281, 283, 285,
10 289, or 291 or a rule promulgated under those chapters applicable to an approval
11 identified under sub. (4) or (4m), the department shall require the bulk sampling
12 activity for which the approval is issued to be conducted at locations that result in
13 the fewest overall adverse environmental impacts.

14 **(11)** (a) In determining whether to approve or deny an application for an
15 approval identified under sub. (4) or (4m), the department shall consider the
16 site-specific erosion control plan, the revegetation plan, and any wetland mitigation
17 program.

18 (b) The department may modify the application for an approval identified
19 under sub. (4) or (4m) in order to meet the requirements applicable to the approval,
20 and, as modified, approve the application.

21 **(12)** Notwithstanding any inconsistent period in ch. 23, 29, 30, 31, 169, 281,
22 283, 285, 289, or 291 or in a rule promulgated under those chapters that is applicable
23 to an approval identified under sub. (4) or (4m), the department shall approve or deny
24 an application within 30 days after the day on which the application is considered
25 to be complete under sub. (8) if any of the following applies:

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1 (a) The application is for a waiver, exemption, or exception to an approval for
2 a bulk sampling activity or for a determination that the proposed bulk sampling
3 activity is below the threshold that requires an approval.

4 (b) The application is for a determination of eligibility for coverage or
5 authorization to proceed under a general permit or a registration permit.

6 **(13)** (a) Notwithstanding any inconsistent period in ch. 23, 29, 30, 31, 169, 281,
7 283, 285, 289, or 291 or in a rule promulgated under those chapters that is applicable
8 to an approval identified under sub. (4) or (4m), the department shall approve or deny
9 any application for an approval identified under sub. (4) or (4m) to which sub. (12)
10 does not apply within 60 days after the date on which the application is considered
11 to be complete under sub. (8), unless the application is for an individual permit for
12 which federal law requires the opportunity for public comment or the ability to
13 request a public hearing prior to issuance of the approval.

14 (b) The department shall publish a class 1 notice, under ch. 985, and shall
15 publish notice on the department's Internet site, that describes the availability of
16 information concerning the activity for which an approval described in par. (a) is
17 required, its proposed decision, its draft approval, information or summaries related
18 to the approval, the department's analyses and preliminary determinations relating
19 to the approval, any additional information that a law concerning the approval
20 requires to be made available, and the opportunity to submit written comments
21 within 30 days after the date of the publication of the notice. The date on which the
22 department first publishes the notice on its Internet site shall be considered the date
23 of the publication of the notice required to be published under this paragraph.

24 (c) In the notice under par. (b), the department shall also specify the date, time,
25 and location of the public informational hearing under par. (e). The department shall

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1 send the notice to any person to whom the department is required to give notice of
2 any proposed determination, application, or hearing concerning an approval
3 described in par. (a) under the laws relating to the issuance of the approval and to
4 any person who has requested notice. The department's notice to interested persons
5 under this paragraph may be given through an electronic notification system
6 established by the department.

7 (d) If there is more than one approval described in par. (a), the department shall
8 issue one notice and coordinate the public comment period for all of the approvals.
9 If possible, the department shall coordinate the notice and the public comment
10 period for an approval that is an individual permit for which federal law requires the
11 opportunity for public comment or the ability to request a public hearing prior to
12 issuance of the approval with notice and the public comment period for the approvals
13 described in par. (a).

14 (e) The department shall hold a public informational hearing within 30 days
15 after the date of the publication of the notice under par. (b). The department shall
16 hold the public informational hearing in the county where the majority of the
17 proposed bulk sampling site is located. If there is more than one approval described
18 in par. (a), the department shall hold a single public informational hearing covering
19 all of the approvals. If possible, the department shall include consideration of an
20 approval that is an individual permit for which federal law requires the opportunity
21 for public comment or the ability to request a public hearing prior to issuance of the
22 approval in the public informational hearing under this paragraph. The public
23 informational hearing under this paragraph is not a contested case hearing under
24 ch. 227.

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1 **(14)** (a) If it is not possible to coordinate the public comment period and public
2 informational hearing for an approval that is an individual permit for which federal
3 law requires the opportunity for public comment or the ability to request a public
4 hearing prior to issuance of the approval with the public comment period and public
5 informational hearing under sub. (13), the department shall issue a separate public
6 notice and hold a separate public informational hearing for the approval in
7 accordance with the law governing the approval.

8 (b) The department shall approve or deny the application for an approval that
9 is an individual permit for which federal law requires the opportunity for public
10 comment or the ability to request a public hearing prior to issuance of the approval
11 within 180 days after the date on which the application is considered to be complete
12 under sub. (8).

13 **(14m)** Upon issuing all of the approvals required by the department to engage
14 in bulk sampling under subs. (13) and (14), the department shall issue the applicant
15 a bulk sampling license.

16 **(15)** An approval identified under sub. (4) or (4m) or a bulk sampling license
17 is issued upon mailing and is final and effective upon issuance.

18 **(16)** The department is not required to prepare an environmental impact
19 statement or an environmental assessment for a bulk sampling license or for an
20 approval required for bulk sampling.

21 **(17)** The department may revoke or suspend a bulk sampling license issued
22 under this section if it determines, after a hearing, that the license holder has failed
23 to comply with statutes or rules of the department or with the terms of the license,
24 or has failed to increase bond amounts to adequate levels as specified by the
25 department.

ENGROSSED ASSEMBLY BILL 499**SECTION 17**

1 **SECTION 17.** 293.31 (title) of the statutes is amended to read:

2 **293.31 (title) Data Preapplication notification; data collection.**

3 **SECTION 18.** 293.31 (1) of the statutes is amended to read:

4 293.31 (1) ~~Any~~ At least 12 months before filing an application for a prospecting
5 permit under s. 293.35 or a mining permit under s. 293.37, a person proposing to
6 engage in a prospecting or mining project shall notify the department in writing of
7 the intention to apply for a prospecting or mining permit. A person who intends to
8 give notice of intent to apply for a prospecting or mining permit may, prior to
9 obtaining, collecting, or generating environmental data intended to be used to
10 support the permit application, submit to the department the methodology that the
11 person intends to use in obtaining, collecting, or generating the data. The
12 department shall review the proposed methodology and shall either inform the
13 person that the proposed methodology will be accepted by the department or provide
14 the person with the methodology that the department requires to be used. The
15 department may assess the person submitting the proposed methodology a fee equal
16 to the department's costs for reviewing the proposed methodology. If a person
17 intending to submit an application for a prospecting or mining permit shall notify the
18 department prior to the collection of obtains, collects, or generates data or
19 information intended to be used to support the a prospecting or mining permit
20 application. Specific environmental data which would be pertinent to a specific
21 prospecting or mining application, but which was obtained or collected or generated
22 prior to the notice of intent to apply for a prospecting or mining permit, shall be
23 submitted in writing to the department together with any substantiating
24 background information which would assist the department in establishing the
25 validity of the data. The department shall review the data and, if it concludes that

ENGROSSED ASSEMBLY BILL 499**SECTION 18**

1 ~~the benefits of permitting the admission of the data outweigh the policy reasons for~~
2 ~~excluding it, and if the data is otherwise admissible, inform the person giving the~~
3 ~~notice of intent to prospect or mine that the data will be accepted by the department.~~
4 ~~Such exclusion shall not relate to~~ without obtaining department approval of the
5 person's methodology under sub. (4), the department may not exclude any of the data
6 or information that consists of general environmental information such as soil
7 characteristics, hydrologic conditions, and air and water data contained in
8 publications, maps, documents, studies, reports, and similar sources, whether public
9 or private, not prepared by or for the applicant. ~~Such exclusion shall likewise not~~
10 ~~relate to data which is otherwise admissible that is collected prior to notification~~
11 ~~under this subsection for purposes of evaluating another site or sites and which is~~
12 ~~not collected with intent to evade the provisions of this section.~~

13 **SECTION 19.** 293.31 (2) of the statutes is amended to read:

14 293.31 (2) Upon receipt of notification under sub. (1), the department shall give
15 public notice of the notification in the same manner as provided under s. 293.43 (3)
16 (2m) (b).

17 **SECTION 20.** 293.31 (3) of the statutes is amended to read:

18 293.31 (3) The department shall also receive and consider any comments from
19 interested persons received within 45 days after public notice is given under sub. (2)
20 as to the information which they believe should be requested from the person giving
21 notice of intent to apply for a prospecting or mining permit and the information
22 which they believe the department should seek through independent studies. If the
23 department holds a public informational hearing to receive comments from
24 interested persons under this section, the hearing shall be completed within 45 days
25 after public notice is given under sub. (2).

ENGROSSED ASSEMBLY BILL 499**SECTION 21**

1 **SECTION 21.** 293.31 (4) of the statutes is amended to read:

2 293.31 (4) ~~After No later than 90 days after the receipt period for receiving and~~
3 ~~consideration of~~ considering comments from interested persons under sub. (3), the
4 department shall inform the person giving notice of intent to apply for a prospecting
5 or mining permit of the type and quantity of information that it then believes to be
6 needed to support an application, and, where applicable, the methodology to be used
7 in gathering information. The department shall specifically inform the person giving
8 notice of intent to apply for a prospecting or mining permit of the type and quantity
9 of information on the characteristics of groundwater resources in the area in which
10 prospecting or mining is anticipated to occur which the department believes is
11 needed to support an application, including the information that the department
12 believes should be included in the applicant's environmental impact report and the
13 information that the department will need to prepare an environmental impact
14 statement. The department shall also ~~begin informing~~ inform the person giving
15 notice of intent to apply for a prospecting or mining permit ~~as to~~ of the timely
16 application date and other filing requirements for all other approvals, licenses, and
17 permits, ~~so as to facilitate the consideration of all other matters at the hearing on the~~
18 ~~prospecting or mining permit relating to the proposed prospecting or mining project.~~

19 **SECTION 22.** 293.31 (4m) of the statutes is created to read:

20 293.31 (4m) Before providing the information required under sub. (4), the
21 department shall seek to enter into a memorandum of understanding with the
22 applicant, the U.S. army corps of engineers, and any other federal regulatory agency
23 with responsibilities related to the potential prospecting or mining operation to
24 address sampling methodology and any other issue of mutual concern related to
25 processing an application for a prospecting or mining permit. The memorandum

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1 may include an agreement between the department and the applicant relating to
2 timelines, including timelines for the parties to conduct environmental studies and
3 for granting or denying the prospecting or mining permit. The U.S. army corps of
4 engineers, and any other federal agency that is a party to the memorandum, is not
5 required to be a party to any agreement relating to timelines between the
6 department and the applicant.

7 **SECTION 23.** 293.32 (4) of the statutes is created to read:

8 293.32 (4) Subchapter VI of ch. 289 does not apply to mining waste disposed
9 of in a mining waste site covered by a mining permit, except that an operator shall
10 pay the fees specified in ss. 289.63 (4), 289.64 (3), and 289.67 (1) (d).

11 **SECTION 24.** 293.37 (5) of the statutes is created to read:

12 293.37 (5) If the department requires an applicant for a mining permit to
13 conduct engineering and hydrologic modeling to assess a mining waste site's
14 performance relative to compliance with applicable groundwater quality standards
15 and surface water quality standards, the department may not require the applicant
16 to examine a period longer than the period in which the mining waste site is proposed
17 to operate plus 250 years after closure of the mining waste site.

18 **SECTION 25.** 293.40 of the statutes is created to read:

19 **293.40 Timeline for review. (1)** Subject to subs. (4) and (5), within 180 days
20 after an applicant submits an application for a prospecting or mining permit, an
21 environmental impact report, if required, and any applications for other approvals,
22 licenses, or permits relating to the prospecting or mining operation the department
23 shall review the information submitted and, if necessary, provide comments to the
24 applicant and request additional information from the applicant relating to the
25 proposed prospecting or mining project.

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1 **(2)** Subject to subs. (4) and (5), if the department requests additional
2 information from an applicant under sub. (1), within 90 days after the applicant
3 provides additional information the department shall review the information
4 submitted and, if necessary, provide comments to the applicant and request
5 additional information from the applicant relating to the proposed prospecting or
6 mining project.

7 **(3)** Subject to sub. (5), if the department requests additional information from
8 an applicant under sub. (2), within 180 days after the applicant provides additional
9 information the department shall prepare a draft environmental impact statement,
10 a draft prospecting or mining permit, and draft approvals, licenses, or permits
11 relating to the prospecting or mining operation. If the department requests
12 additional information from an applicant under sub. (1) but not under sub. (2), the
13 department shall prepare these draft documents within 180 days after the expiration
14 of the 90-day period under sub. (2). If the department does not request additional
15 information from an applicant under sub. (1) or sub. (2), the department shall
16 prepare these draft documents within 180 days after the expiration of the 180-day
17 period under sub. (1).

18 **(4)** Subject to sub. (5), if before the expiration of the 90-day period under sub.
19 (2) the secretary of the department determines that the applicant has made a
20 substantial modification to the mining or prospecting plan that significantly changes
21 the information necessary to prepare an environmental impact statement or
22 adequately review an application, the department shall notify the applicant of the
23 secretary's determination and request additional information from the applicant.
24 Upon the applicant's submission of additional information, the timeline under this
25 section shall begin again, starting with the period described in sub. (1). A

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1 determination by the secretary under this subsection is not subject to administrative
2 or judicial review and may be made only once during an applicant's permitting
3 process.

4 (5) The department and the applicant may agree to modify all or part of the
5 timeline under this section.

6 (6) The department may request additional information needed to process a
7 prospecting or mining permit application or any other application for an approval,
8 license, or permit related to the prospecting or mining operation after making
9 requests for additional information under this section, but the department may not
10 delay the application and review process based on another request for additional
11 information.

12 **SECTION 26.** 293.43 (1) of the statutes is amended to read:

13 293.43 (1) APPLICABILITY. This section, ~~and ch. 227 where it is not inconsistent,~~
14 shall govern all hearings on applications for prospecting or mining permits.

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

16 293.43 (1m) (b) Except as provided in this ~~paragraph~~ section, for all
17 department issued approvals, licenses, and permits relating to prospecting or
18 mining, including solid waste feasibility report approvals and permits related to air
19 and water, to be issued after April 30, 1980, the notice, hearing, and comment
20 ~~provisions, if any,~~ process and the time for issuance of decisions, shall be controlled
21 by this section and ss. 293.45 and 293.49. ~~If an applicant fails to make application~~
22 ~~for an approval, license or permit for an activity incidental to prospecting or mining~~
23 ~~in time for notice under this section to be provided, the notice and comment~~
24 ~~requirements, if any, shall be controlled by the specific statutory provisions with~~
25 ~~respect to that application. If notice under those specific statutory notice~~

ENGROSSED ASSEMBLY BILL 499**SECTION 27**

1 ~~requirements can be given for consideration of the approval, license or permit at the~~
2 ~~hearing under this section, the application shall be considered at that hearing;~~
3 ~~otherwise, the specific statutory hearing provisions, if any, with respect to that~~
4 ~~application shall control.~~ The substantive requirements for the issuance of any
5 approval, permit, or license incidental to prospecting or mining are not affected by
6 the fact that a hearing on the approval, permit, or license is conducted as part of a
7 hearing under this section.

8 **SECTION 28.** 293.43 (2) of the statutes is repealed.

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

10 **293.43 (2m) PUBLIC INFORMATION AND NOTICE.** (a) The department shall make
11 available for review in the city, village, or town in which the proposed prospecting or
12 mining site is located, information concerning the proposed prospecting or mining
13 site, including all of the following:

14 1. The application for the prospecting or mining permit, including the mining
15 plan, reclamation plan, and mining waste site feasibility study and plan of operation.

16 2. All of the following relating to an approval other than the prospecting or
17 mining permit:

18 a. The application.

19 b. A draft approval.

20 c. Information or summaries relating to the draft approval.

21 3. The draft environmental impact statement, the environmental impact
22 report, and any additional supporting information used in the department's
23 evaluation of the proposed prospecting or mining.

24 4. The draft prospecting or mining permit.

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1 5. The department's analyses and preliminary determinations relating to any
2 approval.

3 (b) Within 30 days after the expiration of the applicable time period under s.
4 293.40 (3), the department shall distribute a notice that describes the availability of
5 the information under par. (a); the opportunity for written public comment, including
6 an invitation for the submission of written comments by any person within 45 days
7 after the date of the publication of the notice; and the date, time, and location of the
8 public informational hearing and that includes any additional information that a law
9 concerning any approval requires to be provided. The department shall publish the
10 notice as a class 1 notice under ch. 985 and shall publish notice on the department's
11 Internet site. The date on which the department first publishes the notice on its
12 Internet site shall be considered the date of the publication of the notice required to
13 be published under this paragraph. The department shall also send the notice to all
14 of the following:

15 1. The clerk of any city, village, town, or county with zoning jurisdiction over
16 the proposed prospecting or mining site.

17 2. The clerk of any city, village, town, or county within whose boundaries any
18 portion of the proposed prospecting or mining site is located.

19 3. The clerk of any city, village, or town, contiguous to any city, village, or town
20 within whose boundaries any portion of the proposed prospecting or mining site is
21 located.

22 4. The main public library of each city, village, town, or county with zoning
23 jurisdiction over the proposed mining site or within whose boundaries any portion
24 of the proposed prospecting or mining site is located.

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1 5. Any regional planning commission for the area within which the proposed
2 prospecting or mining site lies.

3 6. Any state agency that the department knows is required to grant a permit
4 or other authorization necessary for the construction or operation of the proposed
5 prospecting or mining project.

6 7. The federal environmental protection agency, U.S. army corps of engineers,
7 and states potentially affected by the proposed discharge if a water discharge permit
8 under ch. 283 or a wetland permit that constitutes a water quality certification as
9 required by 33 USC 1341 (a) is to be considered at the public informational hearing.

10 8. The federal environmental protection agency and appropriate agencies in
11 other states that may be affected if an air pollution control permit under ch. 285 is
12 to be considered at the public informational hearing.

13 9. If a water withdrawal permit under s. 293.65 for a withdrawal of surface
14 water is to be considered at the public informational hearing, the persons specified
15 in s. 30.18 (4) (a).

16 10. If an individual permit under s. 30.12 for a structure through which water
17 transferred from the Great Lakes basin would be returned to the source watershed
18 through a stream tributary to one of the Great Lakes is to be considered at the public
19 informational hearing, the governing body of each city, village, and town through
20 which the stream flows or that is adjacent to the stream downstream from the point
21 at which the water would enter the stream.

22 11. Any person upon request. The department's notice under this subdivision
23 may be given through an electronic notification system established by the
24 department.

25 12. The applicant.

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1 13. Any other person to whom the department is required to give notice of any
2 proposed determination, application, or hearing concerning an approval under the
3 laws relating to the issuance of any approval or under s. 1.11.

4 (c) The department shall coordinate the public comment period for the
5 prospecting or mining permit with the public comment period for any other approval
6 for the prospecting or mining operation, except that if an application for an approval
7 is filed too late to allow public comment within the public comment period for the
8 prospecting or mining permit, the department shall issue separate notice, as
9 described in par. (b), for the approval after the application is filed.

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

11 **SECTION 31.** 293.43 (3m) of the statutes is created to read:

12 293.43 **(3m)** INFORMATIONAL HEARING. The department shall hold a public
13 informational hearing before it approves or denies an application for a prospecting
14 or mining permit and not less than 30 days after the date of the publication of the
15 notice under sub. (2m) (b). The department shall hold the public informational
16 hearing in the county where the majority of the proposed prospecting or mining site
17 is located. The department shall hold a single public informational hearing covering
18 the draft prospecting or mining permit, all other draft approvals, and the draft
19 environmental impact statement, except that if an application for an approval is filed
20 too late to allow the application to be considered at the public informational hearing
21 for the prospecting or mining permit, the department shall hold a separate public
22 informational hearing on the draft approval in the county where the majority of the
23 proposed prospecting or mining site is located not less than 30 days after the date of
24 the publication of a separate notice under sub. (2m) (b) for the approval. The
25 department shall publish the separate notice for the approval on its Internet site not

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1 more than 10 days after the application is considered to be complete, which is the
2 30th day after the department receives the application unless, before that day, the
3 department requests additional information, in which case the application is
4 considered to be complete when the applicant provides the information. A public
5 informational hearing under this subsection is not a contested case hearing under
6 ch. 227.

7 **SECTION 32.** 293.43 (4) of the statutes is repealed.

8 **SECTION 33.** 293.43 (4m) of the statutes is created to read:

9 293.43 (4m) SUMMARY. After considering the comments received under subs.
10 (2m) and (3m) and before acting on the application for the mining permit, the
11 department shall prepare a summary of the comments and the department's
12 response to the comments.

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

14 **SECTION 35.** 293.49 (1) (a) (intro.) of the statutes is amended to read:

15 293.49 (1) (a) (intro.) Except as provided in sub. (2) and ~~s. 293.50~~ and except
16 with respect to property specified in s. 41.41 (11), within 90 days of the completion
17 of the public hearing record, the department shall issue the mining permit if it finds:

18 **SECTION 35m.** 293.49 (1) (a) 2m. of the statutes is created to read:

19 293.49 (1) (a) 2m. The technology that will be used at the proposed operation
20 is capable of resulting in compliance with all applicable air, groundwater, surface
21 water, and solid and hazardous waste management laws and rules of the department
22 and is reasonably certain to result in compliance with these laws and rules at the
23 proposed mining site.

24 **SECTION 36.** 293.495 of the statutes is created to read:

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1 **293.495 Subsequently filed applications for other approvals. (1) (a) 1.**

2 For purposes of this subsection, an application for an approval other than a mining
3 or prospecting permit is considered to be complete on the 30th day after the
4 department receives the application unless, before that day, the department
5 requests additional information, in which case the application is considered to be
6 complete when the applicant provides the information.

7 2. For purposes of this subsection, an application for a mining or prospecting
8 permit is considered to be complete on the 30th day after the department receives the
9 application unless the department requests additional information under s. 293.40
10 (2) or (3), in which case the application is considered to be complete when the
11 applicant provides the information.

12 (b) Except as provided in par. (d), if an applicant files an application for an
13 approval other than a mining or prospecting permit no later than 60 days after the
14 day on which the application for the mining or prospecting permit is complete under
15 par. (a) 2., or more than 60 days after that day but in time to allow the application
16 to be considered at the public informational hearing for the mining or prospecting
17 permit under s. 293.43 (3m), the department shall approve the application and issue
18 the approval, or deny the application, no later than the deadline under s. 293.45 (1)
19 or (2) or 293.49 (1) or (2).

20 (c) 1. Except as provided in subd. 2., if an applicant files an application for an
21 approval other than a mining or prospecting permit too late to allow the application
22 to be considered at the public informational hearing for the mining or prospecting
23 permit under s. 293.43 (3m) but before the department issues the decision to grant
24 or deny the application for the mining or prospecting permit, the department shall
25 approve the application and issue the approval, or deny the application, after the

ENGROSSED ASSEMBLY BILL 499**SECTION 36**

1 separate public informational hearing for the approval required under s. 293.43 (3m)
2 and no later than 75 days after the application for the approval is complete under par.
3 (a) 1.

4 2. Except as provided in par. (d), the department shall approve or deny the
5 application for an approval described in subd. 1. that is an individual permit for
6 which federal law requires the opportunity for public comment or the ability to
7 request a public hearing prior to issuance of the approval after the separate public
8 informational hearing required for the approval under s. 293.43 (3m) and no later
9 than 180 days after the application is complete under par. (a) 1.

10 (d) The deadlines in pars. (b) and (c) do not apply to an application for an air
11 pollution control permit under s. 285.62 for which the department receives an
12 objection from the federal environmental protection agency under s. 285.62 (6).

13 (e) The department shall incorporate any approval other than a mining or
14 prospecting permit into a single document with the mining or prospecting permit,
15 unless the application for the approval was filed more than 60 days after the day on
16 which the application for the mining or prospecting permit is complete under par. (a)
17 2.

18 **(2)** The provisions of this chapter concerning public notice, comment, and
19 hearing; issuance of department decisions; effective date of department decisions;
20 review of department decisions; and the duration of approvals apply to any approval,
21 regardless of whether the application is filed before or after the department issues
22 the decision to grant or deny the application for the mining or prospecting permit,
23 notwithstanding any provisions related to those matters in s. 44.40 or 169.25, subch.
24 I or VI of ch. 77, ch. 23, 29, 30, 31, 169, 281, 283, 285, 289, or 291, or rules promulgated
25 under those provisions, except as provided in s. 281.343 (7r) and except that if a

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1 withdrawal of surface water or groundwater is subject to regional review or council
2 approval under s. 281.346, the applicable provisions related to regional review or
3 council approval apply.

4 **SECTION 37.** 293.50 of the statutes is repealed.

5 **SECTION 38.** 293.51 (title) of the statutes is amended to read:

6 **293.51 (title) Bonds and other security.**

7 **SECTION 39.** 293.51 (1g) of the statutes is created to read:

8 293.51 (1g) An operator shall maintain proof of financial responsibility
9 ensuring the availability of funds for compliance with the long-term care
10 requirements specified in the waste site feasibility study and plan of operation
11 consistent with the requirements under s. 289.41 except that, notwithstanding s.
12 289.41 (3), the operator shall furnish the proof of financial responsibility in the form
13 of a bond, cash, certificates of deposit, government securities, or insurance.

14 **SECTION 39k.** 293.51 (1m) of the statutes is created to read:

15 293.51 (1m) Upon notification that an application for a mining permit has been
16 approved by the department but prior to commencing mining, the operator shall file
17 with the department a bond issued by a surety company licensed to do business in
18 this state, cash, certificates of deposit, or government security, to cover unforeseen
19 remedial contingencies not otherwise covered by the bonds or other security required
20 under sub. (1) or (1g), including for the provision of a replacement water supply if
21 required under s. 293.65 (4) (d). The amount of the bond or other security required
22 shall be 10 percent of the total amount of the bonds or other security required under
23 subs. (1) and (1g). The operator shall increase, and may decrease, the amount of the
24 bond under this subsection according to any increase or decrease in the amount of
25 the bonds or other security required under subs. (1) or (1g) until the operator ceases

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1 to extract material from the mining site, at which point the amount of the bond under
2 this subsection shall remain the same until released by the department. The bond
3 or other security under this subsection shall be released no later than 40 years after
4 the operator ceases to extract material from the mining site.

5 **SECTION 39m.** 293.51 (1r) of the statutes is created to read:

6 293.51 (1r) At the time of closure of the mining waste site, the operator shall
7 provide proof of financial responsibility to the department in an amount equal to the
8 reasonably anticipated costs during the period between 40 and 250 years after
9 closure of the mining waste site to repair or replace any engineered cover systems
10 or tailings water management control systems used at the mining site or mining
11 waste site to avoid adverse environmental consequences. At the time that the
12 application for a mining permit is approved, the department shall determine the
13 amount to be paid at the time of closure based on the net present value discounted
14 at a rate of at least 5 percent per year, and identify the reasonably anticipated costs
15 that the amount is intended to cover. The operator shall provide the proof of financial
16 responsibility in the form of a cash deposit, which the department shall segregate
17 and invest in an interest-bearing account; certificates of deposit, government
18 securities, or other interest-bearing forms of security; or proof of establishment of
19 an interest-bearing account, including an escrow account or trust account. The
20 operator or any successor in interest may use the funds or request the department
21 release the funds to cover any reasonably anticipated costs that were identified by
22 the department. The department shall release any remaining funds to the operator
23 or the operator's successor in interest after all of the reasonably anticipated costs
24 that were identified by the department have been incurred, or upon determining that
25 the reasonably anticipated costs are no longer applicable.

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1 **SECTION 40.** 293.51 (3) of the statutes is amended to read:

2 293.51 (3) Upon approval of the operator's bond or other security under subs.
3 (1), (1g), (1m), and (1r), mining application, and certificate of insurance, the
4 department shall issue written authorization to commence mining at the permitted
5 mining site in accordance with the approved mining and reclamation plans.

6 **SECTION 41.** 293.51 (5) of the statutes is created to read:

7 293.51 (5) The department may not require an operator to provide a type or
8 form of financial assurance other than those specified in this section.

9 **SECTION 42.** 293.55 (1) (c) of the statutes is amended to read:

10 293.55 (1) (c) *Substantial changes.* The department shall determine if any
11 change in the mining or reclamation plans is substantial and provide notice of its
12 determination in the same manner as specified under s. 293.43 (3) (2m) (b) ~~1. to 3.~~

13 **SECTION 43.** 293.55 (1) (d) of the statutes is amended to read:

14 293.55 (1) (d) *Notice.* The department shall provide notice of any modification
15 which involves an increase or decrease in the area of a mining site or a substantial
16 change in the mining or reclamation plan in the same manner as an original
17 application for a mining permit under s. 293.43 (3) (2m). If 5 or more interested
18 persons do not request a hearing in writing within 30 days of notice, no hearing is
19 required on the modification. The notice shall include a statement to this effect.

20 **SECTION 44.** 293.65 (3) (b) of the statutes is amended to read:

21 293.65 (3) (b) The department may not issue an approval under s. 281.34 if the
22 withdrawal of groundwater for prospecting or mining purposes or the dewatering of
23 mines will result in the unreasonable detriment of public or private water supplies
24 or the unreasonable detriment of public rights in the waters of the state. No
25 withdrawal of groundwater for prospecting or mining purposes or the dewatering of

ENGROSSED ASSEMBLY BILL 499**SECTION 44**

1 mines may be made to the unreasonable detriment of public or private water supplies
2 or the unreasonable detriment of public rights in the waters of the state.
3 Notwithstanding any limitation on approval conditions in s. 281.34, if the
4 department determines that a proposed withdrawal of groundwater or dewatering
5 of mines will result in the unreasonable detriment of public or private water supplies
6 or the unreasonable detriment of public rights in the waters of the state the
7 department shall include conditions in the mining or prospecting permit or in an
8 approval issued under s. 281.34 to ensure that the withdrawal or dewatering will not
9 result in the unreasonable detriment of public or private water supplies or the
10 unreasonable detriment of public rights in the waters of the state. These conditions
11 may include a requirement that the applicant for the mining or prospecting permit
12 or approval under s. 281.34 provide a replacement water supply of similar quality,
13 provide an increased amount of water to the water supply, or temporarily augment
14 the quantity of water in, or flowing into or from, the affected waters of the state that
15 is of substantially similar quality and that has substantially similar characteristics
16 to the water that was in the affected waters of the state before any proposed mining
17 or prospecting activity began.

18 **SECTION 45.** 293.66 of the statutes is created to read:

19 **293.66 Groundwater quality. (1)** For the site of any activity that will take
20 place under a mining or prospecting permit or under another approval related to a
21 mining or prospecting operation, the department shall determine the depth in the
22 Precambrian bedrock below which the groundwater is not reasonably capable of
23 being used or made suitable for human consumption and is not hydrologically
24 connected to other sources of groundwater that are suitable for human consumption.

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1 The department shall notify the applicant of its determination before the
2 department issues a draft environmental impact statement.

3 (2) For an activity regulated under a mining or prospecting permit or another
4 approval related to the mining or prospecting operation, the department may not
5 apply a groundwater enforcement standard at any point that is deeper than the
6 depth identified under sub. (1).

7 **SECTION 46.** 293.81 of the statutes is amended to read:

8 **293.81 Exploring, bulk sampling, prospecting, and mining without**
9 **authorization.** Any person who engages in exploration without a license or bulk
10 sampling without the necessary license or approvals shall forfeit not less than \$100
11 nor more than \$1,000 for each parcel as defined under s. 293.21 (1) (b) on which
12 unlicensed exploration or bulk sampling without the necessary license or approvals
13 took place. Any person who authorizes or engages in prospecting without a
14 prospecting permit or any operator who authorizes or engages in mining without a
15 mining permit and written authorization to mine under s. 293.51 (3) shall forfeit all
16 profits obtained from such illegal activities and not more than \$10,000 for each day
17 during which the mine was in operation. The operator shall be liable to the
18 department for the full cost of reclaiming the affected area of land and any damages
19 caused by the mining operation. Each day's violation of this section shall be deemed
20 a separate offense. If the violator is a corporation, limited liability company,
21 partnership or association, any officer, director, member, manager or partner who
22 knowingly authorizes, supervises or contracts for exploration, bulk sampling,
23 prospecting, or mining shall also be subject to the penalties of this section.

24 **SECTION 47.** 293.95 of the statutes is repealed and recreated to read:

ENGROSSED ASSEMBLY BILL 499**SECTION 47**

1 **293.95 Review. (1) LIMITS ON CONTESTED CASE HEARINGS.** No person is entitled
2 to a contested case hearing on a decision by the department on an exploration license
3 or relating to bulk sampling. No person is entitled to a contested case hearing on a
4 decision by the department on a mining or prospecting permit application or any
5 other approval, except as provided in subs. (2) and (3).

6 **(2) CONTESTED CASE HEARINGS; AFTER INITIAL MINING OR PROSPECTING PERMIT**
7 **DECISION OR DECISION ON AMENDED PLAN. (a) Entitlement.** 1. A person is entitled to
8 a contested case hearing on a decision by the department related to a mining or
9 prospecting permit for a proposed mining operation, including a decision related to
10 the environmental impact statement for the proposed mining or prospecting
11 operation, or on any decision that is related to an approval associated with the
12 proposed mining or prospecting operation and that is issued no later than the day
13 on which the department issues its decision on the application for the mining or
14 prospecting permit, only if the person is entitled to a contested case hearing on the
15 decision under s. 227.42 and the person requests the hearing within 30 days after the
16 department issues the decision to approve or deny the application for the mining or
17 prospecting permit.

18 2. A person is entitled to a contested case hearing on a decision by the
19 department related to an amended mining plan, reclamation plan, or mining waste
20 site feasibility study and plan of operation or to any amendment to an approval
21 associated with the amended mining plan, reclamation plan, or mining waste site
22 feasibility study and plan of operation only if the person is entitled to a contested case
23 hearing on the decision under s. 227.42 and the person requests the hearing within
24 60 days after the department issues the decision to approve or deny the amended

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1 mining plan, reclamation plan, or mining waste site feasibility study and plan of
2 operation.

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

6 (b) *Deadline for decision.* The hearing examiner presiding over a contested case
7 hearing under this subsection shall issue a final decision on the case no more than
8 270 days after the department issues the decision to grant or deny the mining or
9 prospecting permit or to approve or deny the amended mining plan, reclamation
10 plan, or mining waste site feasibility study and plan of operation.

11 (d) *Judicial review.* A person seeking judicial review of the decision in a
12 contested case hearing under this subsection shall comply with the requirements for
13 service and filing in s. 227.53 (1) (a) and shall commence the action, in the circuit
14 court for the county in which the majority of the proposed mining or prospecting site
15 is located, no more than 30 days after service of the decision or, if the hearing
16 examiner does not issue a final decision by the deadline under par. (b), no more than
17 30 days after that deadline.

18 **(3) CONTESTED CASE HEARINGS ON OTHER DECISIONS.** A person is entitled to a
19 contested case hearing on a decision by the department related to a mining or
20 prospecting operation that is issued after the department issues the decision to
21 approve the application for the mining or prospecting permit for the mining or
22 prospecting operation, other than a decision described in sub. (2) (a) 2., if the person
23 is entitled to a contested case hearing under s. 227.42 and complies with the
24 requirements for service and filing in s. 227.53 (1) (a).

ENGROSSED ASSEMBLY BILL 499**SECTION 47**

1 **(4) VENUE.** Notwithstanding s. 227.53 (1) (a) 3., any person seeking judicial
2 review of the decision on a contested case under sub. (2) or (3) or of any decision of
3 the department related to an exploration, bulk sampling, mining, or prospecting
4 operation shall bring the action in the circuit court for the county in which the
5 majority of the mining or prospecting site is located or in which the majority of the
6 exploration or bulk sampling will occur.

7 **SECTION 48.** NR 132.06 (4) of the administrative code is repealed.

8 **SECTION 49.** NR 132.17 (13) of the administrative code is amended to read:

9 NR 132.17 **(13)** Tailings transport systems, if not buried, should be designed
10 to provide for emergency tailings conveyance or storage should a pipeline break,
11 plug, freeze or require repairs and be made accessible for inspection, emergency
12 repair and maintenance. Location of emergency spill areas must be consistent with
13 the prevention of environmental pollution of surface waters and with the standards
14 of ss. ~~NR 182.07 (2), 132.06 (4) and s. 132.19~~. In the event of a power failure, tailing
15 pipelines should be self draining to the tailings area or to an emergency spill area or
16 standby pumps and pipelines or standby power should be provided. In some cases
17 (e.g., a long pipeline over rough country), several spill areas may have to be provided.

18 **SECTION 50.** NR 132.18 (1) (f) of the administrative code is amended to read:

19 NR 132.18 **(1)** (f) Within wetlands, except pursuant to the ~~criteria established~~
20 ~~in s. NR 132.06 (4)~~ provisions under s. 281.36.

21 **SECTION 51.** NR 182.07 (1) of the administrative code is renumbered NR
22 182.07.

23 **SECTION 52.** NR 182.07 (2) of the administrative code is repealed.

24 **SECTION 53.** NR 182.08 (2) (d) 8. e. of the administrative code is amended to
25 read:

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1 NR 182.08 (2) (d) 8. e. A table shall be provided showing existing water quality
2 of all potentially affected surface waters. The table shall include those surface
3 waters identified under s. NR 182.07 (1). Important aquatic habitat, such as class
4 II trout stream or state scenic river, shall be indicated.

5 **SECTION 54. Effective date.**

6 (1) Notwithstanding section 227.265 of the statutes, this act takes effect on the
7 first day of the 7th month beginning after publication.

8 (END)