



## 1995 ASSEMBLY BILL 697

November 27, 1995 - Introduced by Representatives ZUKOWSKI, GRONEMUS, OURADA, HASENOHRL, ALBERS, AINSWORTH, BRANDEMUEHL, KREIBICH, GARD, HANDRICK, ZIEGELBAUER, SERATTI, MUSSER, OWENS, COLEMAN, OLSEN, GROTHMAN and SKINDRUD, cosponsored by Senators SCHULTZ, WELCH, FITZGERALD and ZIEN. Referred to Committee on Natural Resources.

1     **AN ACT to repeal** 20.370 (2) (gi), 144.9407 (2) (a) 2. and 2m., 144.9407 (2) (b) 10.,  
2           144.9407 (3) (title), (a) and (b), 144.9407 (4) (b), 144.9407 (4m), 144.9407 (7),  
3           144.9407 (8) and 144.9407 (9); **to renumber and amend** 144.9407 (3) (c); **to**  
4           **amend** 66.038 (7), 91.75 (9) (a) 1., 144.9407 (1) (b), 144.9407 (2) (a) 1., 144.9407  
5           (2) (a) 3., 144.9407 (2) (am) 3., 144.9407 (2) (b) (intro.), 144.9407 (2) (b) 4.,  
6           144.9407 (2) (b) 5. (intro.), 144.9407 (4) (a), 144.9407 (5) (a) and (b), 144.9407  
7           (5) (d) and 144.9407 (5) (e) (intro.); and **to create** 144.9407 (2) (b) 12. and  
8           144.9407 (8m) of the statutes; **relating to:** nonmetallic mining regulation.

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### ***Analysis by the Legislative Reference Bureau***

Current law authorizes a county, city, village or town to enact an ordinance requiring the reclamation of nonmetallic mining sites. This authority ends on December 31, 1996. Nonmetallic mining means the extraction of materials such as gravel, stone and topsoil, and related operations such as grading.

Current law requires the department of natural resources (DNR) to promulgate rules that establish statewide standards for the reclamation of nonmetallic mining sites and that include the text of a nonmetallic mining reclamation ordinance. Under current law, within 6 months after the effective date of DNR's rules, a county generally must enact a nonmetallic mining reclamation ordinance that is in strict conformity with the text of the ordinance promulgated by DNR. A city, village or town may enact a nonmetallic mining reclamation ordinance if the ordinance is in strict conformity with DNR's rules.

Under this bill, DNR promulgates, by rule, a model nonmetallic mining reclamation ordinance that includes standards for the reclamation of nonmetallic

mining sites. Counties, cities, villages and towns are authorized, but not required, to enact nonmetallic mining reclamation ordinances. These ordinances need not conform with the text of DNR's model ordinance.

Under current law, the nonmetallic mining reclamation standards for portions of a nonmetallic mining site that are mined on or after the effective date of an ordinance must require replacement of topsoil. This bill eliminates that requirement. Under current law, the nonmetallic mining standards for portions of a nonmetallic mining site that are mined on or after the effective date of an ordinance must require the restoration of plant, fish and wildlife habitat, if that restoration is practical. This bill eliminates that requirement. Under this bill, DNR's model ordinance must require that the portions of a nonmetallic mining site that are mined on or after the effective date of an ordinance be restored to a valuable use.

Under current law, after adopting an ordinance that conforms with DNR's rules a county, city, village or town is required to collect fees from persons engaging in, or proposing to engage in, nonmetallic mining. A portion of those fees must be forwarded to DNR for DNR's costs of administering the nonmetallic mining reclamation program. This bill eliminates those fee requirements.

This bill provides that DNR's rules that establish statewide standards for nonmetallic mining and that include the text of a nonmetallic mining ordinance may not take effect before January 1, 1997.

Under current law, a landowner may register land with the county in which the land is located if the land has an economically viable nonmetallic mineral deposit. A registration may not be rescinded. After land is registered, a county, city, village or town may not, by zoning or any other official action or inaction, permit the use of the land in a manner that would permanently interfere with the extraction of the nonmetallic mineral deposit. This limitation does not prohibit a use of the land that is permissible immediately before the land is registered.

This bill eliminates the provisions concerning the registration of nonmetallic mineral deposits.

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

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

1           **SECTION 1.** 20.370 (2) (gi) of the statutes is repealed.

2           **SECTION 2.** 66.038 (7) of the statutes is amended to read:

3           66.038 (7) APPLICABILITY. This section does not apply after ~~December 31, 1996~~  
4           June 30, 1997.

5           **SECTION 3.** 91.75 (9) (a) 1. of the statutes is amended to read:

1           91.75 (9) (a) 1. A reclamation plan, submitted as required by a nonmetallic  
2 mining reclamation ordinance adopted under s. 66.038 or 144.9407 (3) (4), that  
3 fulfills reclamation standards established by the ordinance.

4           **SECTION 4.** 144.9407 (1) (b) of the statutes is amended to read:

5           144.9407 (1) (b) “Nonmetallic mining reclamation” means the rehabilitation  
6 of a nonmetallic mining site, including removal or reuse of nonmetallic mining  
7 refuse, grading of the nonmetallic mining site, ~~replacement of topsoil~~, stabilization  
8 of soil conditions, establishment of vegetative cover, control of surface water and  
9 groundwater, prevention of environmental pollution, construction of fences where  
10 necessary and, ~~if practical, restoration of plant, fish and wildlife habitat~~ restoration  
11 of the nonmetallic mining site to a valuable use.

12           **SECTION 5.** 144.9407 (2) (a) 1. of the statutes is amended to read:

13           144.9407 (2) (a) 1. ~~Uniform statewide standards~~ Standards for nonmetallic  
14 mining reclamation for inclusion in the model ordinance under subd. 3.

15           **SECTION 6.** 144.9407 (2) (a) 2. and 2m. of the statutes are repealed.

16           **SECTION 7.** 144.9407 (2) (a) 3. of the statutes is amended to read:

17           144.9407 (2) (a) 3. The text of a model nonmetallic mining reclamation  
18 ordinance that conforms with this section.

19           **SECTION 8.** 144.9407 (2) (am) 3. of the statutes is amended to read:

20           144.9407 (2) (am) 3. Standards for those portions of a nonmetallic mining site  
21 that are mined on or after the effective date of the ordinance shall include  
22 requirements related to the removal or reuse of nonmetallic mining refuse, removal  
23 of roads no longer in use, stabilization of soil conditions, grading the nonmetallic  
24 mining site, ~~replacement of topsoil~~, establishment of vegetative cover, control of  
25 surface water flow and groundwater withdrawal, prevention of environmental

1 pollution, construction of fences where necessary and, ~~if practical, protection or~~  
2 ~~restoration of plant, fish and wildlife habitat~~ restoration of the nonmetallic mining  
3 site to a valuable use.

4 **SECTION 9.** 144.9407 (2) (b) (intro.) of the statutes is amended to read:

5 144.9407 (2) (b) *Text of ordinance.* (intro.) The text of the model nonmetallic  
6 mining reclamation ordinance under par. (a) 3. shall include all of the following:

7 **SECTION 10.** 144.9407 (2) (b) 4. of the statutes is amended to read:

8 144.9407 (2) (b) 4. A requirement for the operator to obtain a nonmetallic  
9 mining permit in order to engage in nonmetallic mining or in nonmetallic mining  
10 reclamation; a requirement for a 5-year permit term unless a shorter permit term  
11 is requested by the applicant; standards for the issuance, ~~renewal,~~ modification,  
12 suspension or revocation of the permit; a requirement for public notice ~~and an~~  
13 ~~opportunity for a public hearing~~ before issuance, ~~renewal,~~ modification, suspension  
14 or revocation of the permit; ~~a requirement to conduct a public hearing on the~~  
15 ~~issuance, renewal or modification of a permit, if requested within 30 days after~~  
16 ~~receipt of the nonmetallic mining operation and reclamation plan;~~ a right for any  
17 person who meets the requirements of s. 227.42 (1) to obtain a contested case hearing  
18 under ch. 68 on the issuance, ~~renewal,~~ modification, suspension or revocation of a  
19 permit; a requirement for cooperative issuance of a single permit if more than one  
20 county or municipality has jurisdiction over the nonmetallic mining site; a  
21 requirement for issuance of a single permit for all nonmetallic mining sites operated  
22 by the same person in a county or municipality, with nonmetallic mining sites to be  
23 added or deleted by permit modification and with separate permit conditions, fees  
24 and financial assurance for each nonmetallic mining site; and a requirement that  
25 action approving, denying or conditionally approving a permit be taken within 90

1 days after receipt of the mining operation and mining reclamation plans or, if a public  
2 hearing is held, within 60 days after the close of the public hearing.

3 **SECTION 11.** 144.9407 (2) (b) 5. (intro.) of the statutes is amended to read:

4 144.9407 (2) (b) 5. (intro.) A provision imposing annual fees as ~~determined by~~  
5 ~~the department for the administration of sub. (7) and imposing annual fees as~~  
6 determined by the county, city, village or town that shall, as closely as possible, equal  
7 the cost of all of the following:

8 **SECTION 12.** 144.9407 (2) (b) 10. of the statutes is repealed.

9 **SECTION 13.** 144.9407 (2) (b) 12. of the statutes is created to read:

10 144.9407 (2) (b) 12. Provisions to encourage the resumption of nonmetallic  
11 mining at sites where nonmetallic mining operations have ceased before the effective  
12 date of the ordinance, including the waiver of fees under subd. 5. and financial  
13 assurance under subd. 6. associated with those sites and the application of the  
14 nonmetallic mining reclamation standards under par. (am) 2. for portions of a  
15 nonmetallic mining site mined before the effective date of the ordinance to the entire  
16 area of those sites.

17 **SECTION 14.** 144.9407 (3) (title), (a) and (b) of the statutes are repealed.

18 **SECTION 15.** 144.9407 (3) (c) of the statutes is renumbered 144.9407 (4) (c) and  
19 amended to read:

20 144.9407 (4) (c) *Applicability of county ordinance.* The An ordinance adopted  
21 by a county under par. (a) ~~or (b)~~ applies to the entire area of the county, except for  
22 cities, villages and towns that enact and administer a nonmetallic mining  
23 reclamation ordinance under ~~sub. (4)~~ par. (a).

24 **SECTION 16.** 144.9407 (4) (a) of the statutes is amended to read:

1           144.9407 (4) (a) *Authority to enact and administer ordinance.* A county, city,  
2 village or town may enact and administer a nonmetallic mining reclamation  
3 ordinance, ~~the text of which is in strict conformity~~ which need not conform with the  
4 text of the model ordinance under sub. (2) (a) 3. ~~Except as provided in par. (b), a city,~~  
5 ~~village or town may not administer a nonmetallic mining reclamation ordinance, the~~  
6 ~~text of which is not in strict conformity with the text of the ordinance under sub. (2)~~  
7 ~~(a) 3.~~

8           **SECTION 17.** 144.9407 (4) (b) of the statutes is repealed.

9           **SECTION 18.** 144.9407 (4m) of the statutes is repealed.

10          **SECTION 19.** 144.9407 (5) (a) and (b) of the statutes are amended to read:

11           144.9407 (5) (a) *Existing nonmetallic mining.* A nonmetallic mining  
12 reclamation ordinance ~~and the standards established under sub. (2) (a) 1.~~ may apply  
13 to all portions of a nonmetallic mining site, including unreclaimed portions of a  
14 nonmetallic mining site that relate to nonmetallic mining that occurred before the  
15 effective date of the ordinance.

16           (b) *Nonmetallic mining in or near navigable waterways.* A nonmetallic mining  
17 reclamation ordinance ~~and the standards established under sub. (2) (a) 1.~~ do does not  
18 apply to any nonmetallic mining site or portion of a nonmetallic mining site that is  
19 subject to permit and reclamation requirements of the department under ss. 30.19,  
20 30.195, 30.20, 30.30 and 30.31.

21          **SECTION 20.** 144.9407 (5) (d) of the statutes is amended to read:

22           144.9407 (5) (d) *Public nonmetallic mining.* 1. ~~The standards established~~  
23 ~~under sub. (2) (a) 1. and, except~~ Except as provided in subd. 2., a nonmetallic mining  
24 reclamation ordinance shall apply to nonmetallic mining conducted by or on behalf  
25 of the state or a municipality. Notwithstanding s. 13.48 (13), nonmetallic mining

1 operated for the benefit or use of the state or any state agency, board, commission or  
2 department shall comply with the permit requirements and nonmetallic mining  
3 reclamation standards of any applicable nonmetallic mining reclamation ordinance.

4 2. The Any financial assurance requirements of a nonmetallic mining  
5 reclamation ordinance do not apply to nonmetallic mining conducted by the state or  
6 a municipality.

7 **SECTION 21.** 144.9407 (5) (e) (intro.) of the statutes is amended to read:

8 144.9407 (5) (e) *Exempt activities.* (intro.) A nonmetallic mining reclamation  
9 ordinance ~~and the standards established under sub. (2) (a) 1. do~~ does not apply to the  
10 following activities:

11 **SECTION 22.** 144.9407 (7) of the statutes is repealed.

12 **SECTION 23.** 144.9407 (8) of the statutes is repealed.

13 **SECTION 24.** 144.9407 (8m) of the statutes is created to read:

14 144.9407 (8m) APPLICABILITY. (a) Rules promulgated under sub. (2) may not  
15 take effect before January 1, 1997.

16 (b) Subsections (4) to (6) do not apply before January 1, 1997.

17 **SECTION 25.** 144.9407 (9) of the statutes is repealed.

18 (END)