



2003 ASSEMBLY BILL 935

March 8, 2004 - Introduced by Representatives BLACK, SINICKI, HEBL, MILLER, POCAN, BERCEAU and J. LEHMAN, cosponsored by Senators CARPENTER, ROBSON, CHVALA, ERPENBACH and LASSA. Referred to Committee on Natural Resources.

1 **AN ACT** *to repeal* 293.49 (2) (d) 3. and 293.49 (3); *to amend* 293.01 (26) (intro.),
2 293.37 (2) (e) 1., 293.49 (2) (b), 293.49 (2) (c), 293.49 (2) (d) (intro.), 293.49 (2)
3 (e) and 293.49 (2) (f); and *to create* 293.37 (2) (e) 1. e., 293.37 (2) (e) 1. f., 293.37
4 (5), 293.49 (2) (g) and 293.49 (2) (h) of the statutes; **relating to:** information
5 concerning persons who intend to engage in mining and related entities and
6 denial of mining permits.

Analysis by the Legislative Reference Bureau

Under current law, a person must obtain a mining permit from the Department of Natural Resources (DNR) before beginning to mine for metallic minerals. DNR must generally deny a mining permit if it determines any of the following:

1. That the applicant is violating this state's mining laws.
2. That the applicant, a principal shareholder of the applicant, or a related person has, within ten years before the application is submitted, forfeited a mining reclamation bond for a mining operation in the United States. Related persons include parent corporations and certain subsidiaries and affiliates of applicants for mining permits.
3. That the applicant or a related person has, within ten years before the application is submitted, declared bankruptcy resulting in the failure to reclaim a mining site in the United States.

ASSEMBLY BILL 935

4. That, within ten years before the application is submitted, a mining permit or other mining approval issued to the applicant or a related person was revoked because of a failure to reclaim a mining site in the United States.

5. That the applicant or a related person has, within ten years before the application is submitted, been convicted of more than one felony for violations of state or federal environmental protection laws related to a mine in the United States unless the person convicted has been pardoned, the applicant terminates its relationship with the convicted person, or the applicant submits a plan to prevent the occurrence of events similar to those that resulted in the convictions.

DNR may not deny a mining permit if the person who forfeited a reclamation bond, declared bankruptcy, had a permit revoked, or was convicted of felonies is a related person but was not a related person at the time of the forfeiture, bankruptcy, revocation, or convictions.

This bill changes the provisions concerning denial of a mining permit based on the actions of the applicant or related persons. The bill expands the provisions so that they are not limited to mines located in the United States. The bill also specifies that the provisions apply to events that occur while the application is pending with DNR, in addition to those that occurred within ten years before application. Under the bill, DNR must deny a mining permit if a related person is violating this state's mining laws, as well as if the applicant is violating those laws. Under the bill, only one felony conviction is required for denial of a mining permit, and the exception based on the submission of a plan to prevent future violations is eliminated. The bill also eliminates the provision prohibiting DNR from denying a mining permit if the person who forfeited a reclamation bond, declared bankruptcy, had a permit revoked, or was convicted of felonies is a related person but was not a related person at the time of the forfeiture, bankruptcy, revocation, or convictions.

This bill requires DNR to deny a mining permit if environmental pollution from a mine or mining waste facility owned or operated by the applicant, a principal shareholder of the applicant, or a related person necessitated a cleanup that cost more than \$20,000,000 or resulted in more than \$20,000,000 in damages within ten years before the application is filed or while the application is pending. The bill also requires DNR to deny a mining permit if an unauthorized discharge of more than 100,000 tons in the aggregate of contaminants or mining waste occurred, within ten years before the application is filed or while the application is pending, from a mine or mining waste facility owned or operated by the applicant, a principal shareholder of the applicant, or a related person.

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

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

1 **SECTION 1.** 293.01 (26) (intro.) of the statutes is amended to read:

ASSEMBLY BILL 935

1 293.01 **(26)** (intro.) “Related person” means any person that owns or operates
2 a mining site ~~in the United States~~ and that is one of the following when an application
3 for a mining permit is ~~submitted to~~ pending before the department:

4 **SECTION 2.** 293.37 (2) (e) 1. of the statutes is amended to read:

5 293.37 **(2)** (e) 1. The information specified in subd. 2. concerning the occurrence
6 of any of the following ~~within 10 years before~~ at any time beginning on the first day
7 of the 120th month before the month in which the application is submitted:

8 a. A forfeiture by the applicant, principal shareholder of the applicant or a
9 related person of a mining reclamation bond that was sufficient to cover all costs of
10 reclamation and was posted in accordance with a permit or other approval for a
11 mining operation ~~in the United States~~, unless the forfeiture was by agreement with
12 the entity for whose benefit the bond was posted.

13 b. A felony criminal conviction of the applicant, a related person or an officer
14 or director of the applicant for a violation of a law for the protection of the natural
15 environment arising out of the operation of a mining site ~~in the United States~~ if the
16 maximum term of imprisonment for the violation is at least one year.

17 c. The bankruptcy or dissolution of the applicant or a related person that
18 resulted in the failure to reclaim a mining site ~~in the United States~~ in violation of
19 ~~a state or federal~~ law.

20 d. The permanent revocation of a mining permit or other mining approval
21 issued to the applicant or a related person if the permit or other mining approval was
22 revoked because of a failure to reclaim a mining site ~~in the United States~~ in violation
23 of ~~state or federal~~ law.

24 **SECTION 3.** 293.37 (2) (e) 1. e. of the statutes is created to read:

ASSEMBLY BILL 935**SECTION 3**

1 293.37 (2) (e) 1. e. An environmental response costing more than \$20,000,000
2 in the aggregate necessitated by, or damages of more than \$20,000,000 in the
3 aggregate resulting from, pollution from any mine or mining waste facility owned or
4 operated by the applicant, a principal shareholder of the applicant, or a related
5 person.

6 **SECTION 4.** 293.37 (2) (e) 1. f. of the statutes is created to read:

7 293.37 (2) (e) 1. f. The unauthorized discharge of more than 100,000 tons in the
8 aggregate of contaminants or mining waste from any mine or mining waste facility
9 owned or operated by the applicant, a principal shareholder of the applicant, or a
10 related person.

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

12 293.37 (5) An applicant shall notify the department of any changes or
13 corrections in the information required under this section of which the applicant
14 becomes aware while the application is pending before the department.

15 **SECTION 6.** 293.49 (2) (b) of the statutes is amended to read:

16 293.49 (2) (b) That the applicant or a related person has violated and continues
17 to fail to comply with this chapter or any rule adopted under this chapter.

18 **SECTION 7.** 293.49 (2) (c) of the statutes is amended to read:

19 293.49 (2) (c) That the applicant, a principal shareholder of the applicant, or
20 a related person has ~~within 10 years before~~ at any time beginning on the first day
21 of the 120th month before the month in which the application is submitted forfeited
22 a mining reclamation bond that was posted in accordance with a permit or other
23 approval for a mining operation ~~in the United States,~~ unless the forfeiture was by
24 agreement with the entity for whose benefit the bond was posted and the amount of
25 the bond was sufficient to cover all costs of reclamation.

ASSEMBLY BILL 935

1 **SECTION 8.** 293.49 (2) (d) (intro.) of the statutes is amended to read:

2 293.49 **(2)** (d) (intro.) That the applicant, a related person or an officer or
3 director of the applicant has, ~~within 10 years before~~ at any time beginning on the first
4 day of the 120th month before the month in which the application is submitted, been
5 convicted of ~~more than one felony for violations of laws~~ a crime for violating a law for
6 the protection of the natural environment arising out of the operation of a mining site
7 ~~in the United States, if the maximum term of imprisonment for the violation is at~~
8 least one year, unless one of the following applies:

9 **SECTION 9.** 293.49 (2) (d) 3. of the statutes is repealed.

10 **SECTION 10.** 293.49 (2) (e) of the statutes is amended to read:

11 293.49 **(2)** (e) That the applicant or a related person has, ~~within 10 years before~~
12 at any time beginning on the first day of the 120th month before the month in which
13 the application is submitted, declared bankruptcy or undergone dissolution that
14 resulted in the failure to reclaim a mining site ~~in the United States~~ in violation of a
15 ~~state or federal law~~ and that failure has not been remedied and is not being remedied.

16 **SECTION 11.** 293.49 (2) (f) of the statutes is amended to read:

17 293.49 **(2)** (f) That, ~~within 10 years before~~ at any time beginning on the first
18 day of the 120th month before the month in which the application is submitted, a
19 mining permit or other mining approval issued to the applicant or a related person
20 was permanently revoked because of a failure to reclaim a mining site ~~in the United~~
21 ~~States~~ in violation of ~~state or federal law~~ and that failure has not been and is not
22 being remedied.

23 **SECTION 12.** 293.49 (2) (g) of the statutes is created to read:

24 293.49 **(2)** (g) That, at any time beginning on the first day of the 120th month
25 before the month in which the application is submitted, environmental pollution

ASSEMBLY BILL 935**SECTION 12**

1 from any mine or mining waste facility owned or operated by the applicant, a
2 principal shareholder of the applicant, or a related person necessitated an
3 environmental response that cost more than \$20,000,000 in the aggregate or
4 resulted in more than \$20,000,000 in the aggregate in damages.

5 **SECTION 13.** 293.49 (2) (h) of the statutes is created to read:

6 293.49 (2) (h) That, at any time beginning on the first day of the 120th month
7 before the month in which the application is submitted, an unauthorized discharge
8 of more than 100,000 tons in the aggregate of contaminants or mining waste occurred
9 from any mine or mining waste facility owned or operated by the applicant, a
10 principal shareholder of the applicant, or a related person.

11 **SECTION 14.** 293.49 (3) of the statutes is repealed.

12 **SECTION 15. Nonstatutory provisions.**

13 (1) If a person has applied for a mining permit under section 293.37 of the
14 statutes before the effective date of this subsection, and the department of natural
15 resources has not approved or denied the application before the effective date of this
16 subsection, the person shall submit the additional information required by section
17 293.37 (2) (e) 1. of the statutes, as affected by this act, no later than the first day of
18 the 3rd month beginning after the effective date of this subsection. The department
19 of natural resources may not approve the application before the person submits the
20 additional information required by section 293.37 (2) (e) 1. of the statutes, as affected
21 by this act.

22 **SECTION 16. Initial applicability.**

