



1995 ASSEMBLY BILL 919

February 21, 1996 - Introduced by Representatives SERATTI, OURADA, POWERS and REYNOLDS, cosponsored by Senator COWLES. Referred to Committee on Environment and Utilities.

1 **AN ACT to amend** 144.441 (2) (b) 1.; and **to create** 144.441 (2) (b) 2m. and 144.441
2 (2) (g) of the statutes; **relating to:** the duration of the requirement to maintain
3 proof of financial responsibility for long-term care of a mining waste facility.

Analysis by the Legislative Reference Bureau

Current law requires the owner of a mining waste disposal facility to provide proof of financial responsibility ensuring the availability of adequate funds for the costs of closing the facility and for long-term care of the facility following its closure, such as monitoring groundwater. The owner must maintain proof of financial responsibility for a period of 40 years after the facility is closed, but the period may be extended if the department of natural resources (DNR) determines that additional long-term care is necessary to protect human health or the environment.

Under this bill, an owner's obligation to maintain proof of financial responsibility for long-term care does not terminate automatically. Instead, after the facility has been closed at least 40 years, if the owner proves to DNR by a preponderance of the evidence that long-term care of the facility is no longer necessary to protect human health or the environment, the obligation is terminated.

For further information see the *state and local* 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:

4 **SECTION 1.** 144.441 (2) (b) 1. of the statutes is amended to read:
5 144.441 (2) (b) 1. Except as provided in subd. 2. or 2m., the owner of an
6 approved facility shall maintain proof of financial responsibility as provided in s.

1 144.443 during the operation of the approved facility and for 40 years after the
2 closing of the approved facility unless the obligation is extended under par. (f).

3 **SECTION 2.** 144.441 (2) (b) 2m. of the statutes is created to read:

4 144.441 (2) (b) 2m. The owner of an approved mining facility that commences
5 operation after the effective date of this subdivision [revisor inserts date], shall
6 maintain proof of financial responsibility as provided in s. 144.443 during the
7 operation of the approved mining facility and after the closing of the approved
8 mining facility. The owner's obligation to maintain proof of financial responsibility
9 terminates only as provided in par. (g).

10 **SECTION 3.** 144.441 (2) (g) of the statutes is created to read:

11 144.441 (2) (g) *Proof of financial responsibility for approved mining facility;*
12 *termination.* 1. The owner of an approved mining facility may apply, at any time at
13 least 40 years after the closing of the facility, to the department for termination of
14 the owner's obligation to maintain proof of financial responsibility for long-term care
15 of the facility. Upon receipt of an application under this subdivision, the department
16 shall publish a class 1 notice under ch. 985 in the official newspaper designated
17 under s. 985.04 or 985.05 or, if none exists, in a newspaper likely to give notice in the
18 area of the facility. The notice shall include a statement that the owner has applied
19 to terminate the owner's obligation to maintain proof of financial responsibility for
20 the long-term care of the facility. The notice shall invite the submission of written
21 comments by any person within 30 days after the notice is published. The notice
22 shall describe the methods by which a hearing may be requested under subds. 2. and
23 3. The department shall distribute a copy of the notice to the owner of the facility.
24 In any hearing on the matter, the burden is on the owner to prove by a preponderance
25 of the evidence that additional long-term care is not necessary for adequate

1 protection of human health or the environment. Within 120 days after the
2 publication of the notice or within 60 days after any hearing is adjourned, whichever
3 is later, the department shall determine either that long-term care of the facility is
4 no longer required or that additional long-term care of the facility as specified in the
5 plan of operation is required. A determination that long-term care is no longer
6 required terminates the owner's obligation to maintain proof of financial
7 responsibility for long-term care. If additional long-term care is required, the owner
8 may not submit another application under this subdivision until at least 5 years after
9 submitting the previous application.

10 2. Within 30 days after the notice under subd. 1. is published, any county, city,
11 village or town, the applicant or any 6 or more persons may file a written request for
12 an informational hearing on the matter with the department. The request shall
13 indicate the interests of the municipality or persons who file the request and state
14 the reasons why the hearing is requested.

15 3. Within 30 days after the notice under subd. 1. is published, any county, city,
16 village or town, the applicant or any 6 or more persons may file a written request that
17 the hearing under subd. 2. be treated as a contested case, as provided under s. 227.42.
18 A county, city, village or town, the applicant or any 6 or more persons have a right
19 to have the hearing treated as a contested case only if all of the following apply:

20 a. A substantial interest of the person requesting the treatment of the hearing
21 as a contested case is injured in fact or threatened with injury by the department's
22 action or inaction on the matter.

23 b. The injury to the person requesting the treatment of the hearing as a
24 contested case is different in kind or degree from injury to the general public caused
25 by the department's action or inaction on the matter.

