

## 1999 SENATE BILL 139

May 5, 1999 – Introduced by Senators DECKER, CLAUSING and BURKE, cosponsored by Representatives BLACK and BOCK. Referred to Committee on Agriculture, Environmental Resources and Campaign Finance Reform.

1     **AN ACT** *to repeal* 293.41 (2) (f) and 293.49 (2) (d) 3.; *to renumber and amend*  
2           293.49 (8); *to amend* 293.01 (26) (intro.), 293.37 (2) (e) 1. a. to d., 293.41 (1),  
3           293.49 (2) (c) and (d) (intro.) and 1., 293.49 (2) (e) and (f) and 293.49 (3); and *to*  
4           **create** 293.31 (1m), 293.37 (2) (e) 1. e., 293.37 (2) (em), 293.49 (1) (a) 7., 293.49  
5           (2) (g), 293.49 (2) (h), 293.49 (2) (i) and 293.49 (8) (b) to (f) of the statutes;  
6           **relating to:** applications for metallic mining permits, denial of metallic mining  
7           permits, information concerning exploratory drilling, agreements between  
8           local governments and applicants for metallic mining permits and  
9           requirements for mining contractors and subcontractors.

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### *Analysis by the Legislative Reference Bureau*

#### *Information submitted by applicants for mining permits*

Under current law, a person must obtain a mining permit from the department of natural resources (DNR) before beginning to mine for metallic minerals. A person who applies for a mining permit must provide DNR with information concerning specified occurrences that happened within ten years before the application is submitted. The occurrences include the forfeiture in the United States of mining reclamation bonds by the applicant or related persons, felony convictions of the

**SENATE BILL 139**

applicant or a related person for mining-related violations of state or federal environmental protection laws, financial problems of the applicant or related persons that resulted in failure to reclaim a mining site in the United States and revocations of mining permits in the United States because of failure to reclaim a mining site.

This bill changes the provisions concerning information that must be submitted by the applicant for a mining permit. The bill requires the reporting of occurrences in Canada, as well as in the United States. The bill requires the reporting of any criminal conviction for a mining-related violation, rather than only felony convictions. The bill requires an applicant to submit information about forfeitures or other civil penalties imposed on the applicant or a related person within ten years before the application is filed as the result of a mining-related violation of an environmental protection law. The bill also requires an applicant to provide information about any unpaid forfeiture, other civil penalty, fine or civil judgment imposed on or entered against the applicant or a related person as the result of violation of environmental laws or damage to the environment caused by a mining operation in the United States or Canada.

***Denial of mining permits based on prior occurrences***

Under current law, DNR is required to deny a permit to mine for metallic minerals under specified circumstances related to the occurrences required to be reported by the applicant. DNR must generally deny the mining permit if the applicant or a related person has, within ten years before applying, forfeited a mining reclamation bond for a mine in the United States, undergone financial problems that resulted in the failure to reclaim a mining site in the United States or had a mining permit revoked because of failure to reclaim a mining site in the United States. DNR is required to deny a mining permit if the applicant or a related person has, within ten years before applying, been convicted of more than one felony for mining-related violations of state or federal environmental protection laws 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.

This bill changes the provisions concerning the denial of a mining permit because of the occurrences that are required to be reported. The bill requires denial because of occurrences in Canada, as well in the United States. The bill requires DNR to deny a mining permit if the applicant or a related person had a mining permit revoked because of a violation of an environmental law, as well as if the permit was revoked for failure to reclaim a mining site. The bill generally requires DNR to deny a permit if the applicant or a related person has been convicted of any mining-related crime. This bill eliminates the provision that allows an applicant that has committed a mining-related crime to obtain a mining permit upon submission to DNR of a plan to prevent similar occurrences.

The bill requires DNR to deny a mining permit if, within ten years before applying, the applicant or a related person has been required to pay a total of more than \$50,000 in forfeitures or other civil penalties as the result of mining-related violations of environmental laws in the United States or Canada. The bill also

**SENATE BILL 139**

requires DNR to deny a mining permit if the applicant or a related person has not paid a forfeiture, other civil penalty, fine or civil judgment imposed or entered as the result of violations of environmental laws or damage to the environment caused by a mining operation in the United States or Canada.

***Local mining agreements***

Current law authorizes a local governmental unit that requires an approval or permit for a proposed metallic mineral mine, or in which any portion of a proposed mining site is located, to enter into an agreement with the operator of the mine. “Mining site” is defined to mean the surface area disturbed by the mining operation, including the surface area covered by refuse. A local mining agreement may specify the applicability or nonapplicability of local ordinances, approvals or resolutions.

This bill provides that a local governmental unit may enter into a local mining agreement only after DNR has prepared the environmental impact statement for the proposed mining operation. The bill authorizes a local governmental unit in which the mined minerals are proposed to be processed to enter into a local mining agreement. The bill requires DNR to deny a mining permit unless each local governmental unit that is authorized to enter into a local mining agreement has either entered into a local mining agreement or waived the opportunity to enter into an agreement. The bill also eliminates the provision that authorizes a local mining agreement to specify the applicability or nonapplicability of local ordinances.

***Other provisions***

Current law prohibits the operator of a metallic mineral mine from engaging a general contractor or affiliate to operate the mine if the general contractor or affiliate has been convicted of more than one felony for mining-related violations. This bill specifies several additional past occurrences that prevent an operator from engaging a general contractor or affiliate to operate a mine and also applies these restrictions to engaging subcontractors to participate in the operation of the mine.

This bill requires a person to provide a record of all exploratory drilling conducted at the proposed mining site with the notice of intent to apply for a mining permit. The bill requires DNR to make that information available to any person.

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

**SENATE BILL 139**

1           **SECTION 2.** 293.31 (1m) of the statutes is created to read:

2           293.31 **(1m)** With the notice of intent to apply for a mining permit under sub.  
3 (1), a person shall submit a record of all exploratory drilling and prospecting  
4 conducted at the proposed mining site. The department shall ensure that the  
5 information submitted under this subsection is readily available to any person.

6           **SECTION 3.** 293.37 (2) (e) 1. a. to d. of the statutes are amended to read:

7           293.37 **(2)** (e) 1. a. A forfeiture by the applicant, principal shareholder of the  
8 applicant or a related person of a mining reclamation bond that was sufficient to  
9 cover all costs of reclamation and was posted in accordance with a permit or other  
10 approval for a mining operation in the United States or Canada, unless the forfeiture  
11 was by agreement with the entity for whose benefit the bond was posted.

12           b. A ~~felony~~ criminal conviction of the applicant, a related person or an officer  
13 or director of the applicant for a violation of a law for the protection of the natural  
14 environment arising out of the operation of a mining site in the United States or  
15 Canada.

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

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

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

**SENATE BILL 139**

1           293.37 **(2)** (e) 1. e. Any forfeiture or other civil penalty imposed by a court or  
2           an administrative agency on the applicant, a related person or an officer or director  
3           of the applicant at the conclusion of a contested judicial or administrative proceeding  
4           or by consent decree or other agreement among the parties as the result of a violation  
5           of a law for the protection of the natural environment arising out of the operation of  
6           a mining site in the United States or Canada.

7           **SECTION 5.** 293.37 (2) (em) of the statutes is created to read:

8           293.37 **(2)** (em) 1. The information specified in subd. 2. concerning any of the  
9           following:

10           a. A forfeiture, other civil penalty or fine that is unpaid at the time of  
11           application and that was imposed on the applicant or a related person as the result  
12           of a violation of a law for the protection of the natural environment arising out of the  
13           operation of a mining site in the United States or Canada.

14           b. A civil judgment that is unpaid at the time of application and that was  
15           entered against the applicant or a related person as the result of environmental  
16           damage caused by the operation of a mining site in the United States or Canada.

17           2. The applicant shall specify the name and address of the person involved in,  
18           and the date and location of, each occurrence that resulted in a forfeiture, other civil  
19           penalty, fine or civil judgment described in subd. 1.

20           **SECTION 6.** 293.41 (1) of the statutes is amended to read:

21           293.41 **(1)** A county, town, village, city or tribal government that requires an  
22           operator to obtain an approval or permit under a zoning or land use ordinance and  
23           a county, town, village or city in which any portion of a proposed mining site is located  
24           or in which mined minerals are proposed to be processed may, individually or in  
25           conjunction with other counties, towns, villages, cities, or tribal governments, enter

**SENATE BILL 139**

1 into one or more agreements with an operator for the development of a mining  
2 operation. An agreement under this section may not be entered into before the  
3 department prepares the environmental impact statement required by s. 293.39 for  
4 the proposed mining operation.

5 **SECTION 7.** 293.41 (2) (f) of the statutes is repealed.

6 **SECTION 8.** 293.49 (1) (a) 7. of the statutes is created to read:

7 293.49 (1) (a) 7. After the preparation of the environmental impact statement  
8 required by s. 293.39 for the proposed mining operation, the governing body of each  
9 county, town, village, city and tribal government that is authorized to enter into an  
10 agreement under s. 293.41 either has approved an agreement with the operator or  
11 has voted to waive the opportunity to enter into an agreement.

12 **SECTION 9.** 293.49 (2) (c) and (d) (intro.) and 1. of the statutes are amended to  
13 read:

14 293.49 (2) (c) That the applicant, principal shareholder of the applicant or a  
15 related person has within 10 years before the application is submitted forfeited a  
16 mining reclamation bond that was posted in accordance with a permit or other  
17 approval for a mining operation in the United States or Canada, unless the forfeiture  
18 was by agreement with the entity for whose benefit the bond was posted and the  
19 amount of the bond was sufficient to cover all costs of reclamation.

20 (d) (intro.) That the applicant, a related person or an officer or director of the  
21 applicant has, within 10 years before the application is submitted, been convicted of  
22 ~~more than one felony for violations of laws~~ a crime for violating a law for the  
23 protection of the natural environment arising out of the operation of a mining site  
24 in the United States or Canada, unless one of the following applies:

25 1. The person convicted has been pardoned for all of the felonies crimes.

**SENATE BILL 139**

1           **SECTION 10.** 293.49 (2) (d) 3. of the statutes is repealed.

2           **SECTION 11.** 293.49 (2) (e) and (f) of the statutes are amended to read:

3           293.49 **(2)** (e) That the applicant or a related person has, within 10 years before  
4 the application is submitted, declared bankruptcy or undergone dissolution that  
5 resulted in the failure to reclaim a mining site in the United States or Canada in  
6 violation of ~~a state or federal law~~ and that failure has not been remedied and is not  
7 being remedied.

8           (f) That, within 10 years before the application is submitted, a mining permit  
9 or other mining approval issued to the applicant or a related person was permanently  
10 revoked because of a failure to reclaim a mining site in the United States or Canada  
11 in violation of ~~state or federal law and that failure has not been and is not being~~  
12 ~~remedied~~ law or because of any other violation of a law for the protection of the  
13 natural environment.

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

15           293.49 **(2)** (g) That, within 10 years before the application is submitted, the  
16 applicant or a related person has been required to pay a total of more than \$50,000  
17 in forfeitures or other civil penalties as the result of violations of laws for the  
18 protection of the natural environment arising out of the operation of mining sites in  
19 the United States or Canada.

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

21           293.49 **(2)** (h) That the applicant or a related person has not paid a forfeiture,  
22 other civil penalty or fine that was imposed as the result of a violation of a law for  
23 the protection of the natural environment arising out of the operation of a mining site  
24 in the United States or Canada.

25           **SECTION 14.** 293.49 (2) (i) of the statutes is created to read:

**SENATE BILL 139**

1           293.49 (2) (i) That the applicant or a related person has not paid a civil  
2 judgment that was entered as the result of environmental damage caused by the  
3 operation of a mining site in the United States or Canada.

4           **SECTION 15.** 293.49 (3) of the statutes is amended to read:

5           293.49 (3) The department may not deny a mining permit under sub. (2) (c) to  
6 ~~(f) (i)~~ if the person subject to the convictions, forfeiture, permanent revocation,  
7 bankruptcy ~~or~~ dissolution or civil penalties is a related person but the applicant  
8 shows that the person was not the parent corporation of the applicant, a person that  
9 holds more than a 30% ownership in the applicant, or a subsidiary or affiliate of the  
10 applicant in which the applicant holds more than a 30% interest at the time of the  
11 convictions, forfeiture, permanent revocation, bankruptcy ~~or~~ dissolution or civil  
12 penalties.

13           **SECTION 16.** 293.49 (8) of the statutes is renumbered 293.49 (8) (intro.) and  
14 amended to read:

15           293.49 (8) (intro.) No operator may engage a general contractor or affiliate to  
16 operate a mining site or a subcontractor to participate in the operation of the mining  
17 site if the any of the following applies:

18           (a) ~~The general contractor or~~ affiliate or subcontractor has been convicted of  
19 ~~more than one felony for violation of a crime for violating~~ a law for the protection of  
20 the natural environment arising out of the operation of a mining site in the United  
21 States or Canada within 10 years before the issuance of the operator's permit, unless  
22 ~~the general contractor or~~ affiliate receives the department's approval of a plan to  
23 ~~prevent the occurrence in this state of events similar to the events that directly~~  
24 ~~resulted in the convictions~~ operator proposes to engage the general contractor,  
25 affiliate or subcontractor.



**SENATE BILL 139**

1           **SECTION 17.** 293.49 (8) (b) to (f) of the statutes are created to read:

2           293.49 **(8)** (b) The general contractor, affiliate or subcontractor has violated  
3 and continues to fail to comply with this chapter or any rule adopted under this  
4 chapter.

5           (c) The general contractor, affiliate or subcontractor has, within 10 years before  
6 the operator proposes to engage the general contractor, affiliate or subcontractor,  
7 forfeited a mining reclamation bond that was posted in accordance with a permit or  
8 other approval for a mining operation in the United States or Canada, unless the  
9 forfeiture was by agreement with the entity for whose benefit the bond was posted  
10 and the amount of the bond was sufficient to cover all costs of reclamation.

11           (d) The general contractor, affiliate or subcontractor has, within 10 years before  
12 the operator proposes to engage the general contractor, affiliate or subcontractor,  
13 declared bankruptcy or undergone dissolution that resulted in the failure to reclaim  
14 a mining site in the United States or Canada in violation of law and that failure has  
15 not been remedied and is not being remedied.

16           (e) Within 10 years before the operator proposes to engage the general  
17 contractor, affiliate or subcontractor, a mining permit or other mining approval  
18 issued to the general contractor, affiliate or subcontractor was permanently revoked  
19 because of a failure to reclaim a mining site in the United States or Canada in  
20 violation of law or because of any other violation of a law for the protection of the  
21 natural environment.

22           (f) Within 10 years before the operator proposes to engage the general  
23 contractor, affiliate or subcontractor, the general contractor, affiliate or  
24 subcontractor has been required to pay a total of more than \$50,000 in forfeitures or  
25 other civil penalties as the result of violations of laws for the protection of the natural

**SENATE BILL 139**

1 environment arising out of the operation of a mining site in the United States or  
2 Canada.

3 **SECTION 18. Nonstatutory provisions.**

4 (1) If a person has applied for a mining permit under section 293.37 of the  
5 statutes before the effective date of this subsection and the department of natural  
6 resources has not approved or denied the application before the effective date of this  
7 subsection, the person shall submit the information required by section 293.37 (2)  
8 (e) 1. e. and (em) of the statutes, as created by this act, and the additional information  
9 required under section 293.37 (2) (e) 1. a. to d. of the statutes, as affected by this act,  
10 no later than the first day of the 3rd month beginning after the effective date of this  
11 subsection and the department may not approve the application before the person  
12 submits the information.

13 **SECTION 19. Initial applicability.**

14 (1) The treatment of sections 293.37 (2) (e) 1. a. to d. and e. and (em) and 293.49  
15 (2) (c) and (d) (intro.), 1. and 3., (e), (f), (g), (h) and (i) and (3) of the statutes first  
16 applies to an application for a mining permit that the department of natural  
17 resources approves or denies on the effective date of this subsection.

18 (END)