



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2013 Senate Bill 632

Senate Amendment 1

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2013 Senate Bill 632 codifies existing limits and creates new limits on the ability of counties, cities, villages, and towns to apply new or more restrictive ordinances to existing nonmetallic mining operations and property with registered nonmetallic mineral deposits and preempts the ability of these local units of government to regulate borrow sites and material disposal sites.

Zoning and NonZoning Ordinances

Under the bill, a nonmetallic mining location is land on which nonmetallic mining was occurring at any time during the 365 days before nonmetallic mining became a nonconforming use, including land that is contiguous to such land, if the contiguous land is under the common ownership or control of the operator.

A zoning ordinance or other ordinance enacted by a local unit of government that became effective after nonmetallic mineral extraction began at a nonmetallic mining location, and which is more restrictive than the ordinances in effect at the time the extraction began, or that imposes a new restriction, may not apply to or affect the continued extraction of a nonmetallic mineral from the location.

This means that extraction of the nonmetallic mineral resource may continue on the nonmetallic mining location to the extent it was permissible when extraction began, notwithstanding subsequent, more restrictive, or new enactments by the local unit of government.

Because of the definition of “nonmetallic mining location,” as previously described, this local preemption applies in areas of the nonmetallic mining location where excavation had not previously occurred. Under the bill, this type of expansion of the excavation site is not considered an expansion of the nonconforming use that can be regulated by a local unit of

government. With respect to local zoning authority, this is a codification of the “diminishing assets rule” that has been adopted by the Wisconsin Supreme Court. This bill also extends this diminishing assets rule to apply to other nonzoning police power ordinances that may be enacted by local units of government.

In addition, the bill specifies that a nonzoning ordinance enacted or amended by a local unit of government may not apply to or affect an existing off-site nonmetallic mineral processing facility or an existing off-site transportation facility that is related to nonmetallic mining. The bill also prohibits a local ordinance that specifically regulates nonmetallic mining from affecting or applying to activities other than nonmetallic mining activities, as defined under the state nonmetallic mining laws.

Registered Nonmetallic Mineral Deposits

Current law authorizes a landowner that has a marketable nonmetallic mineral deposit to register the land if nonmetallic mining is a permitted or conditional use under the zoning that is in effect at that time. A registration is valid for 10 years and may generally be renewed for 10-year periods.

Such a registration generally prohibits a local government from taking certain actions that would permit the erection of a building on or permit the use of registered land in a manner that would permanently interfere with the extraction of the nonmetallic mineral deposit.

If a zoning change is necessary to implement a land use plan that had been in effect for at least one year, the local unit of government may change the zoning of registered land if mining has not begun on any portion of the land. Such a zoning change does not apply on the registered land for the 10-year registration period in effect at the time of the zoning change and a subsequent 10-year renewal period, if applicable.

This bill also prohibits a local unit of government from enacting a nonzoning ordinance that permits the erection of a building on or permits the use of registered land in a manner that would permanently interfere with or that prevents the extraction of the nonmetallic mineral deposit.

Borrow Sites and Material Disposal Sites for DOT Projects

Under current law, a “borrow site” is a site off of the property of a Department of Transportation (DOT) project from which soil or a mixture of soil, stone, gravel, or similar material is excavated for use in the project. A “material disposal site” is a site off of a DOT transportation project property used for disposal of surplus materials from the project. If specified requirements are met, a local zoning ordinance may not apply to these types of sites.

The bill prohibits a local government from enacting or enforcing any other type of ordinance, resolution, or other requirement that applies to a borrow site or a material disposal site. Under the bill, DOT or its contractor is required to give notice of the establishment of a

borrow site or material disposal site to each county and municipality in which the site is located.

Senate Amendment 1

Senate Amendment 1 requires the transportation project contractor on a DOT project, rather than the DOT or its contractor, to inform each county and municipality in which the site is located of the establishment of a borrow site or material disposal site.

Bill History

Senate Amendment 1 was offered by Senator Tiffany. On March 5, 2014, the Senate Committee on Workforce Development, Forestry, Mining, and Revenue recommended adoption of the amendment by a vote of Ayes, 5; Noes, 0; and passage of the bill as amended by a vote of Ayes, 3; Noes, 2.

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