

**2013 DRAFTING REQUEST**

**Bill**

Received: 9/12/2013 Received By: btradewe  
Wanted: As time permits Same as LRB:  
For: Thomas Tiffany (608) 266-2509 By/Representing: Jennifer Esser  
May Contact: Drafter: btradewe  
Subject: Environment - mining Addl. Drafters: agary  
Local Gov't - zoning mshovers  
Transportation - other  
Extra Copies: EVM

Submit via email: YES  
Requester's email: Sen.Tiffany@legis.wi.gov  
Carbon copy (CC) to: larry.konopacki@legis.wisconsin.gov

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Local regulation of nonmetallic mining, wastewater discharges, and air quality

---

**Instructions:**

See attached (like 13-1377/2, the jacket for which was lost)

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	btradewe 9/12/2013	wjackson 9/13/2013	jmurphy 9/13/2013	_____			
/1				_____	mbarman 9/13/2013	lparisi 10/9/2013	State S&L

FE Sent For:

→ AT  
Intro.

<END>

## 2013 DRAFTING REQUEST

### Bill

Received: **9/12/2013** Received By: **btradewe**  
Wanted: **As time permits** Same as LRB:  
For: **Thomas Tiffany (608) 266-2509** By/Representing: **Jennifer Esser**  
May Contact: Drafter: **btradewe**  
Subject: **Environment - mining** Addl. Drafters: **agary**  
**Local Gov't - zoning** **mshovers**  
**Transportation - other**  
Extra Copies: **EVM**

Submit via email: **YES**  
Requester's email: **Sen.Tiffany@legis.wi.gov**  
Carbon copy (CC) to: **larry.konopacki@legis.wisconsin.gov**

---

### Pre Topic:

No specific pre topic given

---

### Topic:

Local regulation of nonmetallic mining, wastewater discharges, and air quality

---

### Instructions:

See attached (like 13-1377/2, the jacket for which was lost)

---

### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	btradewe 9/12/2013	wjackson 9/13/2013	jmurphy 9/13/2013	_____			
/1				_____	mbarman 9/13/2013		State S&L

FE Sent For:

**<END>**

2013 DRAFTING REQUEST

*New*  
#

**Bill**

Received: 9/12/2013 Received By: btradewe  
Wanted: As time permits Same as LRB:  
For: Thomas Tiffany (608) 266-2509 By/Representing: Jennifer Esser  
May Contact: Drafter: btradewe  
Subject: Environment - mining Addl. Drafters: agary  
Local Gov't - zoning mshovers  
Transportation - other  
Extra Copies: EVM

Submit via email: YES  
Requester's email: Sen.Tiffany@legis.wi.gov  
Carbon copy (CC) to: larry.konopacki@legis.wisconsin.gov

**Pre Topic:**

No specific pre topic given

**Topic:**

Local regulation of nonmetallic mining, wastewater discharges, and air quality

**Instructions:**

See attached (like 13-1377/2, the jacket for which was lost)

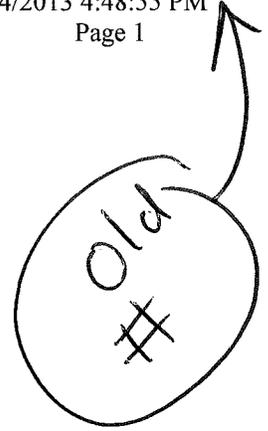
**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	btradewe	1 wlj 9/13	jm 9/13	self			

FE Sent For:

<END>

**2013 DRAFTING REQUEST**



**Bill**

Received: **1/28/2013** Received By: **btradewe**  
Wanted: **As time permits** Same as LRB:  
For: **Daniel LeMahieu (608) 266-9175** By/Representing:  
May Contact: *Sen. Tiffany's office* Drafter: **btradewe**  
Subject: **Environment - mining** Addl. Drafters: **agary**  
**Local Gov't - zoning** **mshovers**  
**Transportation - other**  
Extra Copies: **EVM**

Submit via email: **YES**  
Requester's email: **Rep.LeMahieu@legis.wisconsin.gov**  
Carbon copy (CC) to: **larry.konopacki@legis.wisconsin.gov**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Local regulation of nonmetallic mining, wastewater discharges, and air quality

---

**Instructions:**

See attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	btradewe 3/8/2013			_____			
/P1	btradewe 5/20/2013	wjackson 3/28/2013	jmurphy 3/29/2013	_____	srose 3/29/2013		
/P2	mshovers	wjackson	rschluet	_____	srose		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	6/3/2013	6/3/2013	5/24/2013	_____	5/24/2013		S&L
/1	mshovers 6/4/2013		jmurphy 6/3/2013	_____	mbarman 6/3/2013	mbarman 6/4/2013	State S&L
/2		wjackson 6/4/2013	jmurphy 6/4/2013	_____	srose 6/4/2013	srose 6/4/2013	State S&L

FE Sent For:

**<END>**

**2013 DRAFTING REQUEST**

**Bill**

Received: **1/28/2013** Received By: **btradewe**  
Wanted: **As time permits** Same as LRB:  
For: **Daniel LeMahieu (608) 266-9175** By/Representing:  
May Contact: Drafter: **btradewe**  
Subject: **Environment - mining** Addl. Drafters: **agary**  
**Local Gov't - zoning** **mshovers**  
**Transportation - other**  
Extra Copies: **EVM**

Submit via email: **YES**  
Requester's email: **Rep.LeMahieu@legis.wisconsin.gov**  
Carbon copy (CC) to: **larry.konopacki@legis.wisconsin.gov**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Local regulation of nonmetallic mining, wastewater discharges, and air quality

---

**Instructions:**

See attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	btradewe 3/8/2013			_____			
/P1	btradewe 5/20/2013	wjackson 3/28/2013	jmurphy 3/29/2013	_____	srose 3/29/2013		
/P2	mshovers	wjackson	rschluet	_____	srose		State

*Jim*  
6/4

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	6/3/2013	6/3/2013	5/24/2013	_____	5/24/2013		S&L
/1			jmurphy	_____	mbarman	mbarman	State
			6/3/2013	_____	6/3/2013	6/4/2013	S&L

12 MES 6/4/13  
12 WJ 6/4

FE Sent For:

<END>

**2013 DRAFTING REQUEST**

**Bill**

Received: **1/28/2013** Received By: **btradewe**  
Wanted: **As time permits** Same as LRB:  
For: **Daniel LeMahieu (608) 266-9175** By/Representing:  
May Contact: Drafter: **btradewe**  
Subject: **Environment - mining** Addl. Drafters: **agary**  
**Local Gov't - zoning** **mshovers**  
**Transportation - other**  
Extra Copies: **EVM**

Submit via email: **YES**  
Requester's email: **Rep.LeMahieu@legis.wisconsin.gov**  
Carbon copy (CC) to: **larry.konopacki@legis.wisconsin.gov**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Local regulation of nonmetallic mining, wastewater discharges, and air quality

---

**Instructions:**

See attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	btradewe 3/8/2013			_____			
/P1	btradewe 5/20/2013	wjackson 3/28/2013	jmurphy 3/29/2013	_____	srose 3/29/2013		
/P2	mshovers	wjackson	rschluet	_____	srose		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	6/3/2013	6/3/2013	5/24/2013	_____	5/24/2013		S&L
/1			jmurphy 6/3/2013	_____	mbarman 6/3/2013		State S&L

FE Sent For:

<END>

**2013 DRAFTING REQUEST**

**Bill**

Received: 1/28/2013 Received By: btradewe  
Wanted: As time permits Same as LRB:  
For: Daniel LeMahieu (608) 266-9175 By/Representing:  
May Contact: Drafter: btradewe  
Subject: Environment - mining Addl. Drafters: ~~emmaeller~~ ARG  
Local Gov't - zoning mshovers  
Transportation - other  
Extra Copies: EVM

Submit via email: YES  
Requester's email: Rep.LeMahieu@legis.wisconsin.gov  
Carbon copy (CC) to: larry.konopacki@legis.wisconsin.gov

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Local regulation of nonmetallic mining, wastewater discharges, and air quality

---

**Instructions:**

See attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	btradewe 3/8/2013			_____			
/P1	btradewe 5/20/2013	wjackson 3/28/2013	jmurphy 3/29/2013	_____	srose 3/29/2013		
/P2	mshovers	wjackson	rschluet	_____	srose		State

11 MESBARG 6/3/13 wli 6/3  
sac wis & jm 6/3

Vers. Drafted

Reviewed  
5/24/2013

Typed  
5/24/2013

Proofed  
WJTSAC

Submitted  
5/24/2013

Jacketed

Required  
S&L

FE Sent For:

1/10/13 1/10/13

<END>

**2013 DRAFTING REQUEST**

**Bill**

Received: **1/28/2013** Received By: **btradewe**  
Wanted: **As time permits** Same as LRB:  
For: **Scott Suder (608) 267-0280** By/Representing: **Jim emerson**  
May Contact: Drafter: **btradewe**  
Subject: **Environment - mining** Addl. Drafters: **emueller**  
**Local Gov't - zoning** **mshovers**  
**Transportation - other**  
Extra Copies: **EVM**

Submit via email: **YES**  
Requester's email: **Rep.Suder@legis.wisconsin.gov**  
Carbon copy (CC) to: **larry.konopacki@legis.wisconsin.gov**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Local regulation of nonmetallic mining, wastewater discharges, and air quality

---

**Instructions:**

See attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	btradewe 3/8/2013						
/P1	mshovers 3/21/2013	wjackson 3/28/2013	jmurphy 3/29/2013		srose 3/29/2013		

12 WLJ 5/24

JM  
4/24/13

FE Sent For:

**<END>**

## 2013 DRAFTING REQUEST

### Bill

Received: 1/28/2013 Received By: btradewe  
Wanted: As time permits Same as LRB:  
For: Scott Suder (608) 267-0280 By/Representing: Jim emerson  
May Contact: Drafter: btradewe  
Subject: Environment - mining Addl. Drafters: emueller  
Local Gov't - zoning mshovers  
Transportation - other  
Extra Copies: EVM

Submit via email: YES  
Requester's email: Rep.Suder@legis.wisconsin.gov  
Carbon copy (CC) to:

---

#### Pre Topic:

No specific pre topic given

---

#### Topic:

Local regulation of nonmetallic mining, wastewater discharges, and air quality

---

#### Instructions:

See attached

---

#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	btradewe 3/8/2013			_____			
/P1	mshovers 3/21/2013	wjackson 3/28/2013	jmurphy 3/29/2013	_____	srose 3/29/2013		

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received: 1/28/2013 Received By: btradewe  
 Wanted: As time permits Same as LRB:  
 For: Scott Suder (608) 267-0280 By/Representing: Jim emerson  
 May Contact: Drafter: btradewe  
 Subject: Environment - mining Addl. Drafters: mshovers  
 Local Gov't - zoning

Extra Copies: EUM

Submit via email: YES  
 Requester's email: Rep.Suder@legis.wisconsin.gov  
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Local regulation of nonmetallic mining, wastewater discharges, and air quality

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
-------	---------	----------	-------	---------	-----------	----------	----------

/? btradewe

/PI WJ 3/28

/PI MES 3/21/13

Jim 3/28

sub

FE Sent For:

<END>

## Tradewell, Becky

---

**From:** Emerson, James  
**Sent:** Monday, January 28, 2013 3:14 PM  
**To:** Tradewell, Becky  
**Subject:** suggested language

Becky:

Here is the suggested language we would like turned into a P draft. If you need to hand this off to someone else, that is fine. Just let us know who will be handling it then.

Thank you,  
Jim Emerson  
Rep. Suder's Office  
608-266-2401



## DRAFT STATUTORY LANGUAGE

### **Create Section §59.69(16):**

(16) Any land use restriction on “Non-metallic Mining” as defined in §295.11(3), Stats., may only be accomplished through the Zoning Authority of the County under §59.69, Stats.

### **Create Section §60.61(7):**

(7) Any land use restriction on “Non-metallic Mining” as defined in §295.11(3), Stats., may only be accomplished through the Zoning Authority of the Town Board under §60.61, Stats.

### **Create Section §60.62(5):**

(5) Any land use restriction on “Non-metallic Mining” as defined in §295.11(3), Stats., may only be accomplished through the Zoning Authority of the Town Board under §60.62, Stats.

### **Create Section §61.35(2):**

(2) Any land use restriction on “Non-metallic Mining” as defined in §295.11(3), Stats., may only be accomplished through the Zoning Authority of the Village under §61.35, Stats.

### **Create Section §62.23(19):**

(19) Any land use restriction on “Non-metallic Mining” as defined in §295.11(3), Stats., may only be accomplished through the Zoning Authority of the City under §62.23, Stats.

### **Amend section 84.06(12) (b):**

84.06 Highway construction.

(12) BORROW SITES.

(b) No police power ordinance or zoning ordinance enacted under s. 59.69, 60.61, 60.62, 61.35 or 62.23 may apply to a borrow site if all of the following apply:

### **Amend section 85.193(2)**

85.193 Borrow and material disposal sites for transportation projects.

(2) EXEMPTION FROM POLICE POWER AND LOCAL ZONING. No police power ordinance including a zoning ordinance enacted under s. 59.69, 60.61, 60.62, 61.35, or 62.23 may apply to a borrow site or material disposal site if all of the following apply:

**Create Section 101.15 (g):**

(g) A municipality may not establish or enforce explosives standards applicable to the activities regulated by this

**Create Section 281.12 (1) (a):**

(a) Except as provided in par. (b) , a municipality may not establish or enforce a water quality standard applicable to the waters of the state, regulate or issue permits or any other form of approval or agreement related to water quality or quantity, including monitoring requirements, applicable to the waters of the state.

(b) Except as provided in s. 295.21, a municipality may issue zoning approvals with respect to a shoreland zoning ordinance required under s.59.692, a construction site erosion control and storm water management zoning ordinance authorized under s. 59.693, 60.627, 61.354 or 62.234, or a wetland zoning ordinance required under s. 61.351 or 62.231.

**Create Section 283.11(1) (a):**

(a) Except as provided in par. (b), a municipality may not establish or enforce an effluent limitation or standard of performance for effluent discharges into the waters of the state, or regulate or issue permits or any other form of approval or agreement related to effluent discharges.

(b)A municipality may issue storm water discharge and erosion control approvals consistent with the requirements of ch. NR 216.

**Create Section 285.11(3)(a):**

(a) A municipality may not establish or enforce an ambient air quality standard, new source performance standard or other emission limitation related to air quality. A municipality may not regulate or issue permits or any other form of approval or agreement related to air quality, or impose air quality monitoring requirements.

**Section 285.73 is repealed. (Local air pollution control programs)**

**Section 285.75 is repealed. (County programs)**

**Create section 295.11(3m)**

**295.11 Definitions.**

*odor?*

(3m) A nonmetallic mining operation includes all contiguous property under common ownership or control, including leasehold interests; regardless of roads, water features and political boundaries, upon which nonmetallic mining occurs or is intended to occur.

**Create Section 295.12(2)(am):**

(am) Nothing in this chapter authorizes a county, city, village or town to establish or enforce standards, regulations or monitoring requirements for air quality, water quality or water quantity.

**Amend section 295.20(2)**

295.20 Preservation of marketable nonmetallic mineral deposits.

(2) LIMITATION ON ZONING AND POLICE POWER. (a) A county, city, village or town may not by police power, zoning, rezoning, granting a variance, or other official action or inaction, permit the erection of permanent structures upon, or otherwise permit the use of, any land, while a registration under this section is in effect for that land, in a manner that would permanently interfere with the present or future extraction of the nonmetallic mineral deposit that is located on the land.

(b) 1. A county, city, village or town may enact an ordinance changing the zoning of land that is registered under this section if mining has not begun on any portion of the registered land and the ordinance is necessary to implement a master plan, comprehensive plan or land use plan that was adopted at least one year before the rezoning.

2. A zoning change authorized by subd. 1. does not apply to the registered land during the registration period in effect when the zoning ordinance takes effect or during the 10-year renewal period under sub. (4) (e) or (f) if the land is eligible for that renewal.

3. A zoning change authorized by subd. 1. prevents the registration of the land after the period under subd. 2.

**Create Section 295.21:**

295.21 Diminishing Asset Rule.

(1) This section is an enactment of statewide concern for the purpose of providing uniform regulation of nonmetallic mining operations that existed prior to the adoption of police power ordinances.

(2) A nonmetallic mining operation that existed prior to the enactment of a police power ordinance is not subject to such an ordinance notwithstanding language making the ordinance

applicable to preexisting operations. Acceptance of any permit, license or approval issued pursuant to such an ordinance by a non-metallic mining operation shall not constitute a waiver of the diminishing asset rule in this section.

(3) This section runs with the land and applies to a nonmetallic mining operation regardless of a change in ownership.



Wij - (FMR)

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

O-NOTE

SOON

gm

1 AN ACT ...; **relating to:** local regulation of nonmetallic mining, local regulation  
2 of air quality, local regulation of water quality, and local regulation of the use  
3 of explosives in mining, quarrying, and related activities.

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

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

4 SECTION 1. 66.0416 of the statutes is created to read:  
5 **66.0416 Local regulation of nonmetallic mining.** (1) DEFINITIONS. In this  
6 section:  
7 (a) "Nonmetallic mining" has the meaning given in s. 295.11 (3).  
8 (b) "Political subdivision" means a city, village, town, or county.  
9 (c) "Zoning ordinance" means an ordinance enacted or amended by a political  
10 subdivision under s. 59.69, 60.61, 60.62, 61.35, or 62.23.

**SECTION 1**

1           **(2) LIMITATIONS ON REGULATION.** Except for the enactment of a nonmetallic  
 2 mining reclamation ordinance as described in ss. 295.13 and 295.14, a political  
 3 subdivision may impose a land use restriction on nonmetallic mining only through  
 4 a zoning ordinance.

\*\*\*\*NOTE: Please review sub. (2) to ensure that it meets your intent. I believe that  
 it is consistent with the intent of the language you provided; however, it is very broad and  
 sweeping language. Besides its affect on nonmetallic mining reclamation, which is  
 excepted, I'm not sure what other non-zoning ordinances, which may affect nonmetallic  
 mining, even incidentally or indirectly, could be prohibited under sub. (2). As the (state)  
 Supreme Court noted in *Zwiefelhofer v. Town of Cooks Valley*, 2012 WI 7, 338 Wis. 2d 488,  
 521, "Many non-zoning ordinances affect the use of land." \* that  
 e Wisconsin

5           **SECTION 2.** 101.15 (2) (g) of the statutes is created to read:

6           101.15 (2) (g) No city, village, town, or county may enact or enforce an ordinance  
 7 or other regulation governing the use of explosives in connection with an activity  
 8 regulated by the department under this section.

9           **SECTION 3.** 281.125 of the statutes is created to read:

10           **281.125 Limitation on local authority.** (1) Except as provided in sub. (2),  
 11 a municipality may not do any of the following:

12           (a) Establish or enforce a standard of water quality.

13           (b) Issue permits or any other form of approval related to water quality or  
 14 quantity.

15           (c) Impose any requirement related to monitoring water quality or quantity.

16           **(2)** (a) A municipality may issue approvals under a shoreland zoning ordinance  
 17 required under s. 59.692, a construction site erosion control and storm water  
 18 management zoning ordinance authorized under s. 59.693, 60.627, 61.354, or 62.234,  
 19 or a wetland zoning ordinance required under s. 61.351 or 62.231.

20           (b) A municipality may take actions related to storm water management as  
 21 provided in rules promulgated under s. 283.33.

1 SECTION 4. 283.12 of the statutes is created to read:

2 **283.12 Limitation on local authority.** Except as provided in rules  
3 promulgated under s. 283.33, a municipality may not establish or enforce any  
4 restriction on quantities, rates, or concentrations of chemical, physical, biological, or  
5 other constituents that are discharged from point sources into the waters of this  
6 state.

7 SECTION 5. 285.11 (3) of the statutes is repealed.

8 SECTION 6. 285.72 of the statutes is created to read:

9 **285.72 Limitation on local authority.** A municipality may not do any of the  
10 following:

11 (1) Establish or enforce an ambient air quality standard, standard of  
12 performance for new stationary sources, or other emission limitation related to air  
13 quality.

14 (2) Issue permits or any other form of approval related to air quality.

15 (3) Impose any requirement related to monitoring air quality.

16 SECTION 7. 285.73 of the statutes is repealed.

17 SECTION 8. 285.74 of the statutes is repealed.

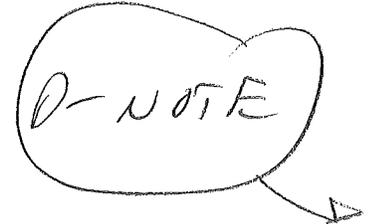
18 SECTION 9. 295.20 (2) (title) and (a) of the statutes are amended to read:

19 295.20 (2) (title) ~~LIMITATION ON ZONING~~ RELATING TO REGISTERED LAND. (a) A  
20 county, city, village or town may not through the exercise of its police power, including  
21 by zoning, rezoning, or granting a variance, or through other official action or  
22 inaction, permit the erection of permanent structures upon, or otherwise permit the  
23 use of, any land, while a registration under this section is in effect for that land, in

1 a manner that would permanently interfere with the present or future extraction of  
2 the nonmetallic mineral deposit that is located on the land.

3 **History:** 1995 a. 227 s. 811; 1997 a. 27, 300.

(END)



D-NOTE

A handwritten note in a speech bubble shape, containing the text "D-NOTE". The bubble has a tail pointing towards the bottom right.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1377/P1dn

RCT./:....

Wlj

Date

Jim Emerson:

This is a preliminary version of the proposal relating to local regulation of nonmetallic mining and other matters, based on proposed statutory language that you provided. I assume that the proposal is designed, at least in part, as a response to the case of *Zwiefelhofer v. Town of Cooks Valley*, 2012 WI 7, 338 Wis. 2d 488, 809 N.W. 2d 362, but in order to complete the draft, I will need more information about the intended legal effect of the proposal and how it should interact with other laws.

1. I am uncertain exactly what proposed s. 281.12 (1) (a) is intended to prohibit. It clearly prohibits a municipality from establishing or enforcing a water quality standard, which current s. 281.15 (1) describes as consisting of designated uses of waters and water quality criteria based on those uses. The proposed language provides that a municipality may not issue permits or other forms of approval related to water quality or quantity. The proposed language also includes the word "regulate" and the word "agreement," but the sentence is complex and I am unsure what regulation the proposed language is intended to prevent or what is intended with regard to "agreements."

The proposed language seems to conflict with authority related to water quality that is granted to municipalities in statutes other than those listed in proposed s. 281.12 (1) (b). Note that placing this language in ch. 281 does not limit its applicability to actions that a municipality might take under the authority of ch. 281.

I have not identified all of the potentially relevant existing statutes, but just want to give an idea of other laws that may be implicated because they give local governments authority related to water quality. For example, s. 33.455, authorizes the county board of Dane County to adopt ordinances for the environmental control of land surfaces to protect and rehabilitate surface and groundwater quality. There are a number of provisions in ch. 92, which is administered by the Department of Agriculture, Trade and Consumer Protection (DATCP), that relate to local governments and water quality. One, s. 92.11 (1), authorizes local governments to enact ordinances for, among other things, the regulation of pollutant management practices.

Some of these laws contemplate local governments issuing approvals or entering into contracts (a type of agreement) related to water quality. For example, s. 101.1206 authorizes the Department of Safety and Professional Services to delegate its

Dane

to local governments

authority related to erosion control at certain construction sites to local governments and requires plan approval by local governments when that authority is delegated. Section 92.16 authorizes local governments to regulate manure storage facilities, and DATCP's rules require local governments using this authority to require permits for the facilities. The statute for DATCP's soil and water resource management program, s. 92.14, requires a contract between a county and any landowner who receives cost-sharing funds that are provided for purposes that include nonpoint source water pollution abatement. Section 145.20 requires local governments to regulate private wastewater treatment systems, including issuing permits for those systems. Under ss. 59.70 (6) and 280.21 (1), DNR may authorize counties to adopt ordinances to regulate certain wells, which may include permit requirements.

The draft must eliminate any conflicts between new statutory language and existing state laws. Once I have a better understanding of the intended effect of the proposed language, I can refine s. 281.125, created in this draft, and begin to clarify the relationship between s. 281.125 and other statutes.

2. Proposed s. 283.11 (1) would prohibit a municipality from establishing or enforcing effluent limitations or standards of performance for wastewater discharges. The definition of "effluent limitation" in s. 283.01 (6) is limited to restrictions established by DNR. Therefore, using the term "effluent limitation" in a statute prohibiting municipalities from establishing their own restrictions on discharges would not be appropriate. Instead, I drafted s. 283.12 based on the definition of "effluent limitation," but without limiting it to restrictions established by DNR. "Standard of performance" is not defined or really even described in the statutes, but the definition in DNR's rules is very similar to the statutory definition of "effluent limitation," see s. NR 205.03 (37), Wisconsin Administrative Code. Therefore, I believe that s. 283.12, as drafted, would prohibit municipalities from establishing or enforcing both kinds of requirements.

The proposed language for s. 283.11 (1) would also prohibit municipalities from issuing permits and other forms of approval related to effluent discharges. The broad prohibition in proposed s. 281.12 (1) on the issuance of permits and other approvals related to water quality covers permits and other approvals related to effluent discharges, making additional language in ch. 283 redundant. As with the proposed language for s. 281.12, I am uncertain what is intended with respect to regulation and agreements in proposed s. 283.11.

3. Proposed s. 285.11 (3) (a) would prohibit a municipality from establishing or enforcing an ambient air quality standard, standard of performance for new stationary sources, or other emission limitation related to air quality and from imposing air quality monitoring requirements.

Proposed s. 285.11 (3) (a) would also prohibit a municipality from issuing permits or other approvals related to air quality. I don't see as many potentially conflicting statutes regarding municipal authority relating to air quality as to water quality. However, local governments do regulate open burning, including requiring permits. This activity relates both to fire control and air quality. Should the draft allow municipalities to continue to require permits for open burning? Might there be other local approvals that relate to air quality that you do not want the draft to prohibit?

As with proposed ss. 281.12 (1) and 283.11 (1), proposed s. 285.11 (3) (a) includes the words "regulate" and "agreement," but I am uncertain what exactly this intends to prohibit.

4. Proposed s. 295.12 (2) (am) would state that nothing in the nonmetallic mining statutes in ch. 295 authorizes a local government to establish or enforce standards, regulations, or monitoring requirements for air quality, water quality, or water quantity.

Current s. 295.23<sup>e12</sup> requires DNR to establish standards for nonmetallic mining reclamation that are applicable both during nonmetallic mining and after nonmetallic mining ceases. Section 295.11 (4) defines "nonmetallic mining reclamation" to mean the rehabilitation of a nonmetallic mining site to achieve a land use specified in an approved reclamation plan, including, among other things, control of surface water and groundwater and prevention of environmental pollution. The definition of "environmental pollution" is "the contaminating or rendering unclean or impure the air, land or waters of the state ...". See s. 295.11 (2). See also s. 295.12 (2) (d), which refers to control of surface water flow and groundwater withdrawal.

<sup>e Current s.</sup> Section 295.13 (1) requires a county to enact and administer an ordinance that complies with DNR's standards for nonmetallic mining reclamation. <sup>= s.</sup> Section 295.14 (1) authorizes a city, village, or town to enact and administer an ordinance that complies with DNR's standards for nonmetallic mining reclamation. Those sections also allow a local government to maintain and administer a nonmetallic mining reclamation ordinance that existed before the nonmetallic mining reclamation statutes were created if the ordinance is at least as restrictive as DNR's rules. Under current law, a local government with a preexisting ordinance is allowed to maintain any preexisting requirements that are more restrictive than DNR's standards, but is not allowed to change its ordinance to make the ordinance more restrictive than it was in 1993.

Given the provisions in current law, a local government with a nonmetallic mining reclamation ordinance that complies with s. 295.13 or 295.14 seems to be required to establish and enforce regulations (for water quality, for example) that would be prohibited by the language proposed as s. 295.12 (2) (am).

Is the intent of proposed s. 295.12 (2) (am) to state that the nonmetallic mining laws do not authorize a local government to impose any requirements beyond what are provided in DNR's rules and those permitted in preexisting reclamation ordinances?

5. Proposed s. 295.21 states that a nonmetallic mining operation that existed before the enactment of a "police power ordinance" is not subject to the ordinance and that acceptance of a permit or other approval issued under the ordinance does not constitute a waiver. Is this intended to cover only ordinances that are applicable specifically to nonmetallic mining operations? Is this intended to apply to zoning ordinances? The term "police power ordinance" does not have a clear meaning under the statutes, and the court did not define it in the *Zwiefelhofer* case. Is "police power ordinance" intended to mean an ordinance that is not specifically authorized under state law but is instead enacted under s. 59.03 (2) (a), 59.54 (6), 60.10 (2) (c), 61.34, or 62.11 (5)? If there are types of ordinances that should not be considered to be "police power ordinances" it would be helpful to have examples of those.

(b)  
The question of the intended meaning of “police power ordinance” also arises with the proposed changes to ss. 84.06 (12) and 85.193 (2). A possible alternative approach to changing these statutes would be to say that no local ordinances apply to the borrow sites or that only specified kinds of ordinances apply.

Please let me know if you have any questions about the draft or the issues raised in this note.

Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: [becky.tradewell@legis.wisconsin.gov](mailto:becky.tradewell@legis.wisconsin.gov)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1377/P1dn  
RCT:wlj:jm

March 29, 2013

Jim Emerson:

This is a preliminary version of the proposal relating to local regulation of nonmetallic mining and other matters, based on proposed statutory language that you provided. I assume that the proposal is designed, at least in part, as a response to the case of *Zwiefelhofer v. Town of Cooks Valley*, 2012 WI 7, 338 Wis. 2d 488, 809 N.W. 2d 362, but in order to complete the draft, I will need more information about the intended legal effect of the proposal and how it should interact with other laws.

1. I am uncertain exactly what proposed s. 281.12 (1) (a) is intended to prohibit. It clearly prohibits a municipality from establishing or enforcing a water quality standard, which current s. 281.15 (1) describes as consisting of designated uses of waters and water quality criteria based on those uses. The proposed language provides that a municipality may not issue permits or other forms of approval related to water quality or quantity. The proposed language also includes the word "regulate" and the word "agreement," but the sentence is complex and I am unsure what regulation the proposed language is intended to prevent or what is intended with regard to agreements.

The proposed language seems to conflict with authority related to water quality that is granted to municipalities in statutes other than those listed in proposed s. 281.12 (1) (b). Note that placing this language in ch. 281 does not limit its applicability to actions that a municipality might take under the authority of ch. 281.

I have not identified all of the potentially relevant existing statutes, but just want to give an idea of other laws that may be implicated because they give local governments authority related to water quality. For example, s. 33.455, authorizes the Dane County Board to adopt ordinances for the environmental control of land surfaces to protect and rehabilitate surface and groundwater quality. There are a number of provisions in ch. 92, which is administered by the Department of Agriculture, Trade and Consumer Protection (DATCP), that relate to local governments and water quality. One, s. 92.11 (1), authorizes local governments to enact ordinances for, among other things, the regulation of pollutant management practices.

Some of these laws contemplate local governments issuing approvals or entering into contracts (a type of agreement) related to water quality. For example, s. 101.1206 authorizes the Department of Safety and Professional Services to delegate to local

governments its authority related to erosion control at certain construction sites and requires plan approval by local governments when that authority is delegated. Section 92.16 authorizes local governments to regulate manure storage facilities, and DATCP's rules require local governments using this authority to require permits for the facilities. The statute for DATCP's soil and water resource management program, s. 92.14, requires a contract between a county and any landowner who receives cost-sharing funds that are provided for purposes that include nonpoint source water pollution abatement. Section 145.20 requires local governments to regulate private wastewater treatment systems, including issuing permits for those systems. Under ss. 59.70 (6) and 280.21 (1), DNR may authorize counties to adopt ordinances to regulate certain wells, which may include permit requirements.

The draft must eliminate any conflicts between new statutory language and existing state laws. Once I have a better understanding of the intended effect of the proposed language, I can refine s. 281.125, created in this draft, and begin to clarify the relationship between s. 281.125 and other statutes.

2. Proposed s. 283.11 (1) would prohibit a municipality from establishing or enforcing effluent limitations or standards of performance for wastewater discharges. The definition of "effluent limitation" in s. 283.01 (6) is limited to restrictions established by DNR. Therefore, using the term "effluent limitation" in a statute prohibiting municipalities from establishing their own restrictions on discharges would not be appropriate. Instead, I drafted s. 283.12 based on the definition of "effluent limitation," but without limiting it to restrictions established by DNR. "Standard of performance" is not defined or really even described in the statutes, but the definition in DNR's rules is very similar to the statutory definition of "effluent limitation"; see s. NR 205.03 (37), Wisconsin Administrative Code. Therefore, I believe that s. 283.12, as drafted, would prohibit municipalities from establishing or enforcing both kinds of requirements.

The proposed language for s. 283.11 (1) would also prohibit municipalities from issuing permits and other forms of approval related to effluent discharges. The broad prohibition in proposed s. 281.12 (1) on the issuance of permits and other approvals related to water quality covers permits and other approvals related to effluent discharges, making additional language in ch. 283 redundant. As with the proposed language for s. 281.12, I am uncertain what is intended with respect to regulation and agreements in proposed s. 283.11.

3. Proposed s. 285.11 (3) (a) would prohibit a municipality from establishing or enforcing an ambient air quality standard, standard of performance for new stationary sources, or other emission limitation related to air quality and from imposing air quality monitoring requirements.

Proposed s. 285.11 (3) (a) would also prohibit a municipality from issuing permits or other approvals related to air quality. I don't see as many potentially conflicting statutes regarding municipal authority relating to air quality as to water quality. However, local governments do regulate open burning, including requiring permits. This activity relates both to fire control and air quality. Should the draft allow municipalities to continue to require permits for open burning? Might there be other local approvals that relate to air quality that you do not want the draft to prohibit?

As with proposed ss. 281.12 (1) and 283.11 (1), proposed s. 285.11 (3) (a) includes the words “regulate” and “agreement,” but I am uncertain what exactly this intends to prohibit.

4. Proposed s. 295.12 (2) (am) would state that nothing in the nonmetallic mining statutes in ch. 295 authorizes a local government to establish or enforce standards, regulations, or monitoring requirements for air quality, water quality, or water quantity.

Current s. 295.12 requires DNR to establish standards for nonmetallic mining reclamation that are applicable both during nonmetallic mining and after nonmetallic mining ceases. Section 295.11 (4) defines “nonmetallic mining reclamation” to mean the rehabilitation of a nonmetallic mining site to achieve a land use specified in an approved reclamation plan, including, among other things, control of surface water and groundwater and prevention of environmental pollution. The definition of “environmental pollution” is “the contaminating or rendering unclean or impure the air, land or waters of the state ...” See s. 295.11 (2). See also s. 295.12 (2) (d), which refers to control of surface water flow and groundwater withdrawal.

Current s. 295.13 (1) requires a county to enact and administer an ordinance that complies with DNR’s standards for nonmetallic mining reclamation. Current s. 295.14 (1) authorizes a city, village, or town to enact and administer an ordinance that complies with DNR’s standards for nonmetallic mining reclamation. Those sections also allow a local government to maintain and administer a nonmetallic mining reclamation ordinance that existed before the nonmetallic mining reclamation statutes were created if the ordinance is at least as restrictive as DNR’s rules. Under current law, a local government with a preexisting ordinance is allowed to maintain any preexisting requirements that are more restrictive than DNR’s standards, but is not allowed to change its ordinance to make the ordinance more restrictive than it was in 1993.

Given the provisions in current law, a local government with a nonmetallic mining reclamation ordinance that complies with s. 295.13 or 295.14 seems to be required to establish and enforce regulations (for water quality, for example) that would be prohibited by the language proposed as s. 295.12 (2) (am).

Is the intent of proposed s. 295.12 (2) (am) to state that the nonmetallic mining laws do not authorize a local government to impose any requirements beyond what are provided in DNR’s rules and those permitted in preexisting reclamation ordinances?

5. Proposed s. 295.21 states that a nonmetallic mining operation that existed before the enactment of a “police power ordinance” is not subject to the ordinance and that acceptance of a permit or other approval issued under the ordinance does not constitute a waiver. Is this intended to cover only ordinances that are applicable specifically to nonmetallic mining operations? Is this intended to apply to zoning ordinances? The term “police power ordinance” does not have a clear meaning under the statutes, and the court did not define it in the *Zwiefelhofer* case. Is “police power ordinance” intended to mean an ordinance that is not specifically authorized under state law but is instead enacted under s. 59.03 (2) (a), 59.54 (6), 60.10 (2) (c), 61.34, or 62.11 (5)? If there are

types of ordinances that should not be considered to be “police power ordinances” it would be helpful to have examples of those.

The question of the intended meaning of “police power ordinance” also arises with the proposed changes to ss. 84.06 (12) (b) and 85.193 (2). A possible alternative approach to changing these statutes would be to say that no local ordinances apply to the borrow sites or that only specified kinds of ordinances apply.

Please let me know if you have any questions about the draft or the issues raised in this note.

Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: [becky.tradewell@legis.wisconsin.gov](mailto:becky.tradewell@legis.wisconsin.gov)

From Larry Konopacki,  
Legislative Council

1) LRB Analysis

- a) Please include a brief description of *Zwiefelhofer v. Town of Cooks Valley*, 2012 WI 7, in the bill analysis and note that the bill includes provisions overruling that case. In particular, if appropriate, incorporate the court's recognition of the role of the legislature in preempting local ordinances in footnote 11 from that case.
- 
- 2) **66.0416** (In the request, this is numbered ss. 59.69 (16), 60.61 (7), 60.62 (5), 61.35 (2), and 62.23 (19)) (currently in the draft)
    - a) Please revise the definition of "zoning ordinance" to include more specific statutory references to authorities for local governments to adopt zoning ordinances.
    - b) Please revise proposed s. 66.0416 (2) in the bill to read "(2) Limitations on regulation. (a) Except as provided in par. (b), a political subdivision may not enact or enforce any licensing ordinance or other ordinance that imposes a land use requirement or restriction on nonmetallic mining. (b) Paragraph (a) does not apply to the enactment or enforcement of a nonmetallic mining reclamation ordinance as described in ss. 295.13 and 295.14 or a zoning ordinance.
- 
- 3) **84.06** (currently not in the draft)
    - a) Please modify s. 84.06 (12) (b), Stats., to provide that "No local ordinance, including a zoning ordinance enacted under s. 59.69, 60.61, 60.62, 61.35, or 62.23, may apply. . ."
- 
- 4) **85.193** (currently not in the draft)
    - a) Please modify s. 85.193 (2), Stats., as follows: "EXEMPTION FROM LOCAL ORDINANCES ZONING. No local ordinance, including a zoning ordinance enacted under s. 59.69, 60.61, 60.62, 61.35, or 62.23, may apply. . ."
- 
- 5) **281.125** (In the request, this is numbered s. 281.12 (1) (a)) (currently in the draft)
    - a) Please revise proposed s. 281.125 (1) (b) to provide that a municipality may not "impose restrictions or issue permits, including permits for discharges to the waters of the state, or any other form of approval related to water quality or quantity."

9) **295.20 (2)** (currently in the draft)

- a) Please remove this provision.

10) **349.16 (1) (c)** (currently not in the draft)

- a) Other than as provided below, please prohibit a governmental unit (same list of local governments as in s. 349.16 (1) (intro)) from imposing fees or other charges on a highway user of a highway that is under the jurisdiction of the governmental unit under highway use reimbursement contracts referenced in s. 349.16 (1) (c) or required of the highway user by a governmental unit under s. 86.02

A contract between a highway user and a governmental unit under this paragraph may require that a highway user reimburse the governmental unit for the cost of repair to a highway necessitated by actual damage to the highway caused by the highway user, if the contract meets all of the following requirements:

- i. The repairs have been completed on the highway.
- ii. The proportion of damages to the highway caused specifically by the highway user and the cost of repairs attributable to that share of damages are determined by an engineer.
- iii. The engineer making these determinations is chosen by agreement of the governmental unit and the highway user, and the costs of the engineer's services are paid in equal shares by the highway user and the governmental unit.

Allow such a contract to require that a highway user show proof of financial security to enable the highway user to pay the costs of damage to a highway specifically caused by the highway user, subject to all of the following requirements:

- i. The proof of financial security may not be required to be in an amount in excess of the reasonable expected payments for damages to be caused over the three years following the date the amount of the financial security is determined.
- ii. The amount of financial security necessary to meet the above requirement is determined by an engineer, the engineer making these determinations is chosen by agreement of the governmental unit and the highway user, and the costs of the engineer's services are paid in equal shares by the highway user and the governmental unit.
- iii. The contract may not require the recalculation of the amount of financial security more often than once per year, unless the highway user proposes changes to the highway user's proposed use of a highway not anticipated under the calculation of financial security.

**Tradewell, Becky**

---

**Subject:** LRB-1377

5/2/13

Larry,

There are a couple of things that I wonder about with regard to item 8 in the new instructions.

First, about 8) b) ii, might it work to simply say that the ordinance may not require any permit or other form of approval in addition to the nonmetallic mining reclamation permit? (I don't think the nonmetallic mining reclamation law was ever intended to allow locals to impose other permit requirements.) *Larry says "yes."*

Then, about 8) a), does saying that a standard may not be more restrictive than general state law concerning these things, mean that the standard may not cover a matter that is not covered in general state law concerning these things? Another way to get at this (or maybe it's another question) is: Do any of the current standards in NR 135 violate the prohibition in 8) a) and, if so, is that what is wanted? For example, look at the last sentence of NR 135.07, NR 135.08 (1), and NR 135.15. *Larry doesn't think so.*

Also on that provision, "environmental pollution" includes contaminating land or making it deleterious for plant or animal life (and the rest of the stuff in the definition of environmental pollution). So if we include "environmental pollution" there, it seems to mean that a standard relating to land could not be more restrictive than state laws related to water and air. Do you think this could just talk about air and water. *Larry says yes*

## Tradewell, Becky

---

**From:** Tradewell, Becky  
**Sent:** Friday, May 03, 2013 10:50 AM  
**To:** Konopacki, Larry  
**Subject:** LRB-1377



Mockup (1).pdf

Larry,  
Here's my current version of the environmental provisions. Please let me know what you think once you've had a chance to review it.  
Thanks,  
Becky

2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

Provided to  
Larry  
Konopacki  
on 5/3/13

LRB -1377  
.....  
RET

**SECTION 1.** 281.125 of the statutes is created to read:

**281.125 Limitation on local authority.** (1) Except as provided in sub. (2), a municipality may not do any of the following:

(a) Establish or enforce a standard of water quality.

(b) Issue permits, including permits for discharges to the waters of the state, or any other form of approval related to water quality or quantity.

(c) Impose any restriction related to water quality or quantity.

(d) Impose any requirement related to monitoring water quality or quantity.

(2) (a) A municipality may take actions related to water quality or quantity that are specifically required or authorized by another statute.

(b) A municipality may not use s. 59.03 (2) (a), 59.54 (6), 60.10 (2) (c), 61.34, or 62.11 (5) as the basis for taking an action under par. (a).

**SECTION 2.** 285.11 (3) of the statutes is repealed.

**SECTION 3.** 285.72 of the statutes is created to read:

**285.72 Limitation on local authority.** (1) Except as provided in sub. (2) (a), a municipality may not do any of the following:

(a) Establish or enforce an ambient air quality standard, standard of performance for new stationary sources, or other emission limitation related to air quality.

(b) Issue permits or any other form of approval related to air quality.

(c) Impose any restriction related to air quality.

(d) Impose any requirement related to monitoring air quality.

(2) (a) A municipality may do any of the following:

1. Take actions related to air quality that are specifically required or authorized by another statute.

2. Regulate open burning.

(b) A municipality may not use s. 59.03 (2) (a), 59.54 (6), 60.10 (2) (c), 61.34, or 62.11 (5) as the basis for taking an action under par. (a) 1.

**SECTION 4.** 285.73 of the statutes is repealed.

**SECTION 5.** 285.75 of the statutes is repealed.

**SECTION 6.** 295.12 (1) (e) of the statutes is created to read:

295.12 (1) (e) The department may not establish nonmetallic mining reclamation standards under sub. (1) (a) relating to water quality or quantity or air quality that are more restrictive than chs. 160, 280, 281, 283, or 285 or rules promulgated under those chapters.

**SECTION 7.** 295.13 (1) (b) of the statutes is created to read:

295.13 (1) (b) *Restrictions on ordinances.* A county may not enact or enforce provisions in an ordinance under par. (a) that do any of the following:

1. Specify a standard of water quality or air quality.
2. Require an operator to obtain a permit or other form of approval in addition to a nonmetallic mining reclamation permit.
3. Impose any requirement related to monitoring water quality or quantity or air quality.
4. With respect to water quality or quantity or air quality, are more restrictive than the standards under s. 295.12 (1) (a) or than chs. 160, 280, 281, 283, or 285 and rules promulgated under those chapters.

**SECTION 8.** 295.14 (1) of the statutes is renumbered 295.14 (1) (a).

**SECTION 9.** 295.14 (1) (b) of the statutes is created to read:

295.14 (1) (b) A city, village, or town may not enact or enforce provisions in an ordinance under par. (a) that do any of the following:

1. Specify a standard of water quality or air quality.
2. Require an operator to obtain a permit or other form of approval in addition to a nonmetallic mining reclamation permit.
3. Impose any requirement related to monitoring water quality or quantity or air quality.
4. With respect to water quality or quantity or air quality, are more restrictive than the standards under s. 295.12 (1) (a) or than chs. 160, 280, 281, 283, or 285 or rules promulgated under those chapters.

## Tradewell, Becky

---

**From:** Konopacki, Larry  
**Sent:** Monday, May 06, 2013 2:38 PM  
**To:** Tradewell, Becky  
**Subject:** RE: Revised mockup

Hi Becky,

Again, this looks good. One change – could you separate the following into two distinct prohibitions, one against being more restrictive than the DNR standards, and one against being more restrictive than the listed environmental chapters, in the two places in the draft that it is used?

“ With respect to water quality or quantity or air quality, are more restrictive than the standards under s. 295.12 (1) (a) or than chs. 160, 280, 281, 283, or 285 and rules promulgated under those chapters.”

Thanks,  
Larry

---

Larry A. Konopacki  
Wisconsin Legislative Council  
(608) 267-0683  
[larry.konopacki@legis.wisconsin.gov](mailto:larry.konopacki@legis.wisconsin.gov)

---

**From:** Tradewell, Becky  
**Sent:** Friday, May 03, 2013 2:55 PM  
**To:** Konopacki, Larry  
**Subject:** Revised mockup

<< File: Mockup2.pdf >>

Sorry about the delay – I had more trouble taking the note out and making the PDF than was reasonable.

**Gary, Aaron**

---

**To:** Konopacki, Larry  
**Subject:** RE: LRB-1377 changes - transportation

**From:** Konopacki, Larry  
**Sent:** Monday, May 06, 2013 12:41 PM  
**To:** Gary, Aaron  
**Subject:** RE: LRB-1377 changes - transportation

Hi Aaron, please provide that s. 86.02 does not apply to damage caused by a vehicle when the vehicle was being operated pursuant to a contract which provides that the governmental unit will be reimbursed for any damage done to the highway, similar to the way that the local authority to order a vehicle to stop using a roadway under s. 349.16 (1) (c) does not apply to use under such contracts.

Thanks,  
Larry

---

Larry A. Konopacki  
Wisconsin Legislative Council  
(608) 267-0683  
[larry.konopacki@legis.wisconsin.gov](mailto:larry.konopacki@legis.wisconsin.gov)

**From:** Gary, Aaron  
**Sent:** Monday, May 06, 2013 11:24 AM  
**To:** Konopacki, Larry  
**Subject:** RE: LRB-1377 changes - transportation

Larry,  
I'm unclear how you want s. 86.02 dealt with.  
Under current law, if there is no highway use agreement, if the local govt. can prove the damage, it can sue and obtain an award of 3x the damage amount. Was it your intent that, if there is a highway use agreement, it would override s. 86.02? Or that you basically want to get rid of s. 86.02 for counties, cities, villages, and towns for all purposes? (Given s. 86.02, I don't know why a local govt. would ever choose to enter into a highway use agreement under the terms of this bill when it would seem to fare better relying on s. 86.02 instead.)

Please let me know how you intended this bill to affect s. 86.02.

Thanks. Aaron

Aaron R. Gary  
*Attorney, Legislative Reference Bureau*  
608.261.6926 (voice)  
608.264.6948 (fax)  
[aaron.gary@legis.state.wi.us](mailto:aaron.gary@legis.state.wi.us)

5/9/2013 – LRB 1377-P1 - Diminishing Assets Rule - Addition

Please revise ss. 59.69(10), 60.61 (5), and 62.23 (7) (and (7a)?) to codify the diminishing asset rule with respect to nonmetallic mining, as follows:

- Define “nonconforming nonmetallic mining location” as property upon which nonmetallic mining was occurring when nonmetallic mining became a nonconforming use. Specify that it includes all contiguous property under common ownership or control, including leasehold interests, regardless of whether public or private roads or waterways run through the property.
- Provide that for nonconforming uses for which a nonmetallic mineral is extracted, the continued extraction of the nonmetallic mineral from any area within the nonconforming nonmetallic mining location shall be considered an existing use, may not be considered an expansion of a nonconforming use, and may not be prohibited, notwithstanding whether the area has previously been under actual excavation.

(See, *Sturgis v. Winnebago County*, 141 Wis. 2d 149 (Ct. App. 1987); *Smart v. Dane County*, 177 Wis. 2d 445 (1993); *Schroeder v. Dane County Board of Adjustment*, 228 Wis. 2d 324 (1999))

In addition to the previous request relating to proposed s. 66.0416 in the draft, please add a provision to this proposed section that does the following:

- Prohibits the application of a local non-zoning ordinance that “regulates how a use of land takes place or effects the use of land” to nonmetallic mining operations in operation at the time the local ordinance takes effect.
- Provide that, for purposes of the bullet point above, the prohibition on the application of such a local ordinance applies to the property upon which nonmetallic mining was occurring when the local non-zoning ordinance was passed, and includes all contiguous property under common ownership or control, including leasehold interests, regardless of whether public or private roads or waterways run through the property.



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-1377/Pt 2  
RCT&MES:wlj:jm

SOON (in 5/20)  
Today, please

stays ↑ rmc

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

D-Note

please regenerate  
↓

1 AN ACT *to repeal* 285.11 (3), 285.73 and 285.75; *to amend* 295.20 (2) (title) and  
2 (a); and *to create* 66.0416, 101.15 (2) (g), 281.125, 283.12 and 285.72 of the  
3 statutes; **relating to:** local regulation of nonmetallic mining, local regulation  
4 of air quality, local regulation of water quality, and local regulation of the use  
5 of explosives in mining, quarrying, and related activities

insert 1-5 ac

Analysis  
Insert

**Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

FMS  
1-6 MES

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

6 SECTION 1. 66.0416 of the statutes is created to read:  
7 **66.0416 Local regulation of nonmetallic mining.** (1) DEFINITIONS. In this  
8 section:  
9 (a) "Nonmetallic mining" has the meaning given in s. 295.11 (3).

SECTION 1

a political subdivision may not enact or enforce a licensing ordinance, or other ordinance, that imposes a land use requirement or restriction on nonmetallic mining, ~~if~~ (b) Paragraph (a) does not apply to

1 (b) "Political subdivision" means a city, village, town, or county.

2 (c) "Zoning ordinance" means an ordinance enacted or amended by a political

3 subdivision under s. 59.69, 60.61, 60.62, 61.35, or 62.23, <sup>(4) (2) (1) (7) (am)</sup> as provided in par. (b), or

INS  
2-3/4

(2) LIMITATIONS ON REGULATION. Except for the enactment of a nonmetallic

5 mining reclamation ordinance as described in ss. 295.13 and 295.14, a political

6 subdivision may impose a land use restriction on nonmetallic mining only through

INS  
2-7 MES

7 or to a zoning ordinance.

\*\*\*NOTE: Please review sub. (2) to ensure that it meets your intent. I believe that it is consistent with the intent of the language you provided; however, it is very broad and sweeping language. Besides its affect on nonmetallic mining reclamation, which is excepted, I'm not sure what other non-zoning ordinances that may affect nonmetallic mining, even incidentally or indirectly, could be prohibited under sub. (2). As the Wisconsin Supreme Court noted in *Zwiefelhofer v. Town of Cooks Valley*, 2012 WI 7, 338 Wis. 2d 488, 521, "many non-zoning ordinances affect the use of land."

Insert  
2-8 AG

8 SECTION 2. 101.15 (2) (g) of the statutes is created to read:

9 101.15 (2) (g) No city, village, town, or county may enact or enforce an ordinance  
10 or other regulation governing the use of explosives in connection with an activity  
11 regulated by the department under this section.

12 SECTION 3. 281.125 of the statutes is created to read:

13 281.125 Limitation on local authority. (1) Except as provided in sub. (2),  
14 a municipality may not do any of the following:

15 (a) Establish or enforce a standard of water quality.

16 (b) Issue permits <sup>Insert 2-16</sup> or any other form of approval related to water quality or  
17 quantity.

Insert  
2-17

18 (c) Impose any requirement related to monitoring water quality or quantity.

STEF

19 (2) (a) A municipality may <sup>Insert 2-19</sup> issue approvals under a shoreland zoning ordinance  
20 required under s. 59.692, a construction site erosion control and storm water

1 management zoning ordinance authorized under s. 59.693, 60.627, 61.354, or 62.234,  
2 or a wetland zoning ordinance required under s. 61.351 or 62.231.

3 (b) A municipality may take actions related to storm water management as  
4 provided in rules promulgated under s. 283.33.

5 SECTION 4. 283.12 of the statutes is created to read:

6 **283.12 Limitation on local authority.** Except as provided in rules  
7 promulgated under s. 283.33, a municipality may not establish or enforce any  
8 restriction on quantities, rates, or concentrations of chemical, physical, biological, or  
9 other constituents that are discharged from point sources into the waters of this  
10 state.

11 SECTION 5. 285.11 (3) of the statutes is repealed.

12 SECTION 6. 285.72 of the statutes is created to read:

13 **285.72 Limitation on local authority.** <sup>(c) Except as provided in sub. (a) (a),</sup> A municipality may not do any of the  
14 following:

15 <sup>(a)</sup> (1) Establish or enforce an ambient air quality standard, standard of  
16 performance for new stationary sources, or other emission limitation related to air  
17 quality.

18 <sup>(b)</sup> (2) Issue permits or any other form of approval related to air quality.

19 <sup>(d)</sup> (3) Impose any requirement related to monitoring air quality.

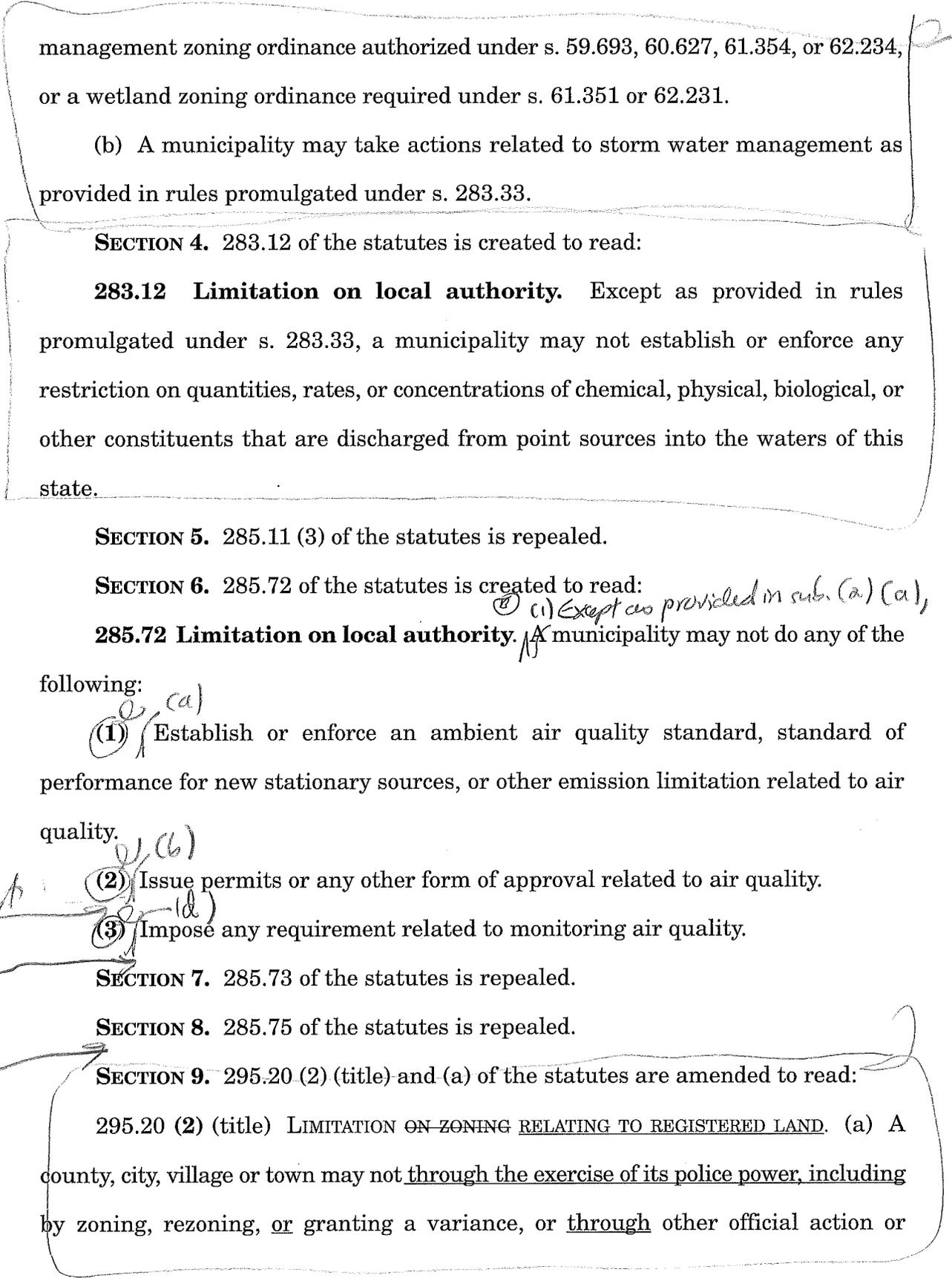
20 SECTION 7. 285.73 of the statutes is repealed.

21 SECTION 8. 285.75 of the statutes is repealed.

22 SECTION 9. 295.20 (2) (title) and (a) of the statutes are amended to read:

23 295.20 (2) (title) LIMITATION ON ZONING RELATING TO REGISTERED LAND. (a) A  
24 county, city, village or town may not through the exercise of its police power, including  
25 by zoning, rezoning, or granting a variance, or through other official action or

*Insert 3-18*  
*Insert 3-19*  
*Insert 3-21*



**SECTION 9**

1 inaction, permit the erection of permanent structures upon, or otherwise permit the  
2 use of, any land, while a registration under this section is in effect for that land, in  
3 a manner that would permanently interfere with the present or future extraction of  
4 the nonmetallic mineral deposit that is located on the land.

5

(END)

Insert

4-4 AG

D-note

2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-13777?insMES

.....

INS ANL-MES

~~Sub-sub~~  
Under current law, a political subdivision (a city, village, town that is authorized to exercise village powers, or county) is authorized to enact zoning ordinances that regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards and other open spaces, the density of population, the location and use of buildings, structures, and land for various purposes, and the areas in which agriculture, industry, mining, and other activities may be conducted. If a county has a county zoning ordinance, current law requires that before a town which is authorized to exercise village powers may enact or amend a zoning ordinance, the town must obtain county board approval. Similar authority to zone may be exercised by towns that are not authorized to exercise village powers (limited towns) if certain conditions are met, including a situation under which the town is located in a county that does not have a county zoning ordinance and the county fails to enact such an ordinance after the town petitions the county to do so. <sup>that</sup>

Also under current law, a zoning ordinance enacted by a political subdivision or limited town may not prohibit the continued lawful use of any building, premises, structure, or fixture for any trade or industry for which the building, premises, structure, or fixture is used when the ordinance takes effect, although in limited towns such an ordinance may prohibit the alteration of, or addition to, any existing building, premises, structure, or fixture that is used to carry on an otherwise prohibited trade or industry within the area that is subject to the ordinance (district).

In political subdivisions, the alteration of, addition to, or repair in excess of 50 percent of the assessed value of any existing building, premises, structure, or fixture to carry on any prohibited trade or industry within the district may be prohibited. Generally, if such a nonconforming use of a building, premises, structure, or fixture is discontinued for 12 months, any future use of the building, premises, structure, or fixture must conform to the political subdivision's zoning ordinance. Under county law, the continued use of a nonconforming temporary structure may be prohibited.

Under a current decision of the Wisconsin Supreme Court, *Zwiefelhofer v. Town of Cooks Valley*, 338 Wis. 2d 488 (2012), the Court held that a town ordinance enacted under its police power, which regulated nonmetallic mining in the town, did not require county board approval because the ordinance enacted by the town was not a zoning ordinance. Because the Town of Cooks <sup>Valley</sup> was authorized to exercise village powers, its zoning ordinances must be approved by <sup>the</sup> county board. The Court stated that although the exercise of zoning authority is carried out under the town's police power, not all ordinances enacted under the police power are zoning ordinances. The Court further held that although the town's nonmetallic mining ordinance had some similarities to a zoning ordinance, many traditional characteristics of a zoning ordinance were not present. Therefore, according to the Court, the Town of Cooks' ordinance was a valid exercise of its police power, was not a zoning ordinance, and did not require county board approval.

Valley's

This bill limits the authority of a political subdivision or limited town to regulate nonmetallic mining other than through a zoning ordinance or a nonmetallic mining reclamation ordinance. Under the bill a local ordinance, other than a zoning ordinance, enacted by a political subdivision or limited town which regulates how a use of land takes place or effects the use of land, may not be applied to nonmetallic mining operations that are in operation at the time the local ordinance takes effect. This prohibition on the application of a local ordinance, other than a zoning ordinance, applies to land upon which nonmetallic mining was occurring when the local ordinance was enacted and includes land that is contiguous to such land if the contiguous land is under the common ownership or control of the person who owns or controls the land on which the mining was occurring.

Also under the bill, a zoning ordinance enacted by a political subdivision or limited town may not prohibit the continued extraction of a nonmetallic mineral from a nonconforming nonmetallic mining location, which is defined as land upon which nonmetallic mining was occurring when 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 person who owns or controls the land on which the mining was occurring. This provision codifies the diminishing asset rule, which has been adopted in a number of decisions of the Wisconsin Court of Appeals, including the case of *Schroeder v. Dane County Board of Adjustment*, 228 Wis. 2d 324 (Ct. App. 1999).

INS 1-6

SECTION 1. 59.69 (10) (ab) of the statutes is renumbered 59.69 (10) (ab) (intro.)

and amended to read:

**59.69(ab)** In this subsection "~~nonconforming use~~" means a use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with the use restrictions in the current ordinance.

*Handwritten notes:*  
 - "No B" in a circle pointing to "59.69(ab)"  
 - "plain" in a circle pointing to "dwelling, or a building..."  
 - "(10)" in a circle above "In this subsection"  
 - "(intro.)" in a circle below "In this subsection"  
 - "2. 'Nonconforming'" in a circle above "nonconforming use"  
 - A bracket under "nonconforming use" with a line pointing to the circled "2."

**History:** 1971 c. 40 s. 93; 1971 c. 86, 224; 1973 c. 274; 1977 c. 205; 1979 c. 233 ss. 2 to 5, 7 and 8; 1979 c. 323; 1981 c. 341, 354, 374; 1983 a. 192 s. 303 (1); 1983 a. 410; 1983 a. 532 s. 36; 1985 a. 29, 136, 196, 281, 316; 1987 a. 161, 395; 1989 a. 80, 201; 1991 a. 255, 269, 316; 1993 a. 16, 27, 246, 327, 400, 446, 491; 1995 a. 27 ss. 9130 (4), 9126 (19); 1995 a. 201 s. 475; Stats. 1995 s. 59.69; 1995 a. 225 s. 174; 1995 a. 227; 1997 a. 3, 35; 1999 a. 9, 148, 185; 2001 a. 16, 30, 50, 105; 2003 a. 214; 2005 a. 26, 79, 81, 112, 171, 208; 2007 a. 11; 2007 a. 20 ss. 1852 to 1857, 9121 (6) (a); 2009 a. 28, 209, 351, 372, 405; 2011 a. 32, 170; s. 35.17 correction in (10) (e) 1.

SECTION 2. 59.69 (10) (ab) 1. of the statutes is created to read:

59.69 (10) (ab) 1. "Nonconforming nonmetallic mining location" means land upon which nonmetallic mining was occurring when 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 person who owns or controls

the land on which the mining was occurring, and includes leasehold interests, without regard to whether private roads or waterways run through the land.

**SECTION 3.** 59.69 (10) (ab) 2. of the statutes is created to read:

59.69 (10) (ab) 2. "Nonconforming use" means a use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with the use restrictions in the current ordinance.

**SECTION 4.** 59.69 (10) (as) of the statutes is created to read:

59.69 (10) (as) An ordinance enacted under this section may not prohibit the continued extraction of a nonmetallic mineral from a nonconforming nonmetallic mining location. Such continued extraction from such a location shall be considered an existing use, may not be considered an expansion of a nonconforming use, and may not be prohibited in areas of the nonconforming nonmetallic mining location that have not previously been under actual excavation.

**SECTION 5.** 60.61 (5) (ab) of the statutes is renumbered 60.61 (5) (ab) (intro.) and amended to read:

60.61 (5) (ab) In this subsection "nonconforming use" means a use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with the use restrictions in the current ordinance.

History: 1983 a. 532, 538; 1985 a. 136, 316; 1991 a. 255; 1993 a. 246, 301, 400, 414, 491; 1995 a. 27 s. 9130 (4); 1995 a. 201; 1997 a. 3.; 2001 a. 50; 2005 a. 26, 79, 81, 112, 171, 208; 2007 a. 97; 2009 a. 351; 2011 a. 170.

**SECTION 6.** 60.61 (5) (ab) 1. of the statutes is created to read:

60.61 (5) (ab) 1. "Nonconforming nonmetallic mining location" means land upon which nonmetallic mining was occurring when 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 person who owns or controls the land on which the mining was occurring, and includes leasehold interests, without regard to whether private roads or waterways run through the land.

**SECTION 7.** 60.61 (5) (ab) 2. of the statutes is created to read:

60.61 (5) (ab) 2. "Nonconforming use" means a use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with the use restrictions in the current ordinance.

**SECTION 8.** 60.61 (5) (as) of the statutes is created to read:

60.61 (5) (as) An ordinance enacted under this section may not prohibit the continued extraction of a nonmetallic mineral from a nonconforming nonmetallic mining location. Such continued extraction from such a location shall be considered an existing use, may not be considered an expansion of a nonconforming use, and may not be prohibited in areas of the nonconforming nonmetallic mining location that have not previously been under actual excavation.

**SECTION 9.** 62.23 (7) (ab) of the statutes is renumbered 62.23 (7) (ab) (intro.)

and amended to read:

62.23 (7) (ab) ~~Definition Definitions.~~ <sup>(intro.)</sup> In this subsection, <sup>plain space</sup> ~~"nonconforming use"~~ <sup>2. La Non conforming</sup> means a use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with the use <sup>plain</sup> ~~restrictions in the current ordinance.~~

**History:** 1973 c. 60; 1975 c. 281; 1977 c. 205; 1979 c. 221, 355; 1981 c. 289, 341, 354, 374; 1983 a. 49, 410; 1985 a. 136 ss. 7 to 9, 10; 1985 a. 187, 225, 281, 316; 1987 a. 161, 395; 1989 a. 201; 1991 a. 255, 316; 1993 a. 27, 184, 301, 327, 400, 446, 471, 490, 491; 1995 a. 27 ss. 9126 (19), 9130 (4); 1995 a. 225; 1997 a. 3, 35, 246; 1999 a. 9, 148; 1999 a. 150 s. 672; 2001 a. 30 ss. 16, 17, 108; 2001 a. 50; 2005 a. 26, 34, 79, 81, 112, 171, 208; 2007 a. 20 ss. 1868 to 1873, 9121 (6) (a); 2007 a. 72; 2009 a. 28, 209, 276, 351, 372, 405; 2011 a. 32, 135, 170.

**SECTION 10.** 62.23 (7) (ab) 1. of the statutes is created to read:

62.23 (7) (ab) 1. "Nonconforming nonmetallic mining location" means land upon which nonmetallic mining was occurring when 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 person who owns or controls the land on which the mining was occurring, and includes leasehold interests, without regard to whether private roads or waterways run through the land.

**SECTION 11.** 62.23 (7) (ab) 2. of the statutes is created to read:

62.23 (7) (ab) 2. "Nonconforming use" means a use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with the use restrictions in the current ordinance.

**SECTION 12.** 62.23 (7) (hs) of the statutes is created to read:

62.23 (7) (hs) *Nonmetallic mining.* An ordinance enacted under this subsection may not prohibit the continued extraction of a nonmetallic mineral from a nonconforming nonmetallic mining location. Such continued extraction from such a location shall be considered an existing use, may not be considered an expansion of a nonconforming use, and may not be prohibited in areas of the nonconforming nonmetallic mining location that have not previously been under actual excavation.

INS 2-3

\*\*\*\*NOTE: As you requested, this version of the draft contains more precise references, i.e. ss. 59.69 (4), 60.61 (2), 60.62 (1), and 62.23 (7) (am) but, as a practical matter, it doesn't seem to make any difference because all of those more precise references refer to the broad zoning authority that a political subdivision may exercise under "this section" or "this subsection."

INS 2-7

(c) An ordinance enacted by a political subdivision, other than a zoning ordinance, which regulates how a use of land takes place or affects the use of land,

may not be applied to nonmetallic mining operations that are in operation at the time the local ordinance takes effect.

\*\*\*NOTE: Your instructions were to use the following phrase precisely as written: "regulates how a use of land takes place or effects the use of land". I think you mean to say "**affects** the use of land", instead of "**effects** the use of land", and I'm not sure what the phrase "regulates how a use of land takes place" means. How does a "use of land" "take place"? Do you mean "regulates land use"?

(d) The prohibition on the application of an ordinance as described in par. (c) applies to land upon which nonmetallic mining was occurring when the ordinance takes effect, including land that is contiguous to such land if the contiguous land is under the common ownership or control of the person who owns or controls the land on which the mining was occurring, and includes leasehold interests, without regard to whether private roads or waterways run through the land.

1  
2  
3  
4  
5  
6

**INSERT 1-5 AG:**

(no fl) highway use contracts by local governments, and local regulation of borrow sites and material disposal sites for transportation projects of the Department of Transportation

**INSERT 2-8 AG:**

7  
8  
9  
10

**SECTION 1.** 84.06 (12) (b) (intro.) of the statutes is amended to read:

84.06 (12) (b) (intro.) No local ordinance, including a zoning ordinance enacted under s. 59.69, 60.61, 60.62, 61.35, or 62.23, may apply to a borrow site if all of the following apply:

History: 1971 c. 125; 1977 c. 29 ss. 932, 1654 (8) (a); 1977 c. 196 s. 131; 1977 c. 273; 1979 c. 32 s. 92 (9); 1979 c. 34, 314; 1983 a. 27; 1983 a. 524 ss. 31, 50; 1985 a. 225 s. 100; 1985 a. 300, 332; 1987 a. 98, 399; 1989 a. 31, 345; 1993 a. 496; 1995 a. 27; 1997 a. 237; 2001 a. 16; 2005 a. 410; 2009 a. 28.

11  
12

**SECTION 2.** 85.193 (2) (intro.) of the statutes is amended to read:

85.193 (2) ~~EXEMPTION FROM LOCAL ZONING.~~ (intro.) No local ordinance, including a zoning ordinance enacted under s. 59.69, 60.61, 60.62, 61.35, or 62.23, may apply to a borrow site or material disposal site if all of the following apply:

History: 2011 a. 32.

15  
16  
17  
18  
19  
20

**SECTION 3.** 86.02 of the statutes is amended to read:

**86.02 Injury to highway.** Any person who shall injure any highway by obstructing or diverting any creek or watercourse or sluiceway, or by dragging logs or timber thereon, or by any other act, shall be liable in treble damages, to be recovered by the political division chargeable with the maintenance of highway injured, and the amount recovered shall be credited to the highway maintenance

1 fund. This section does not apply to damage caused by a vehicle (when the vehicle  
2 is being operated under a contract described in s. 349.03 (2r) (c).

3  
4 **INSERT 4-4 AG:**

5 **SECTION 4.** 349.03 (2r) of the statutes is created to read:

6 349.03 (2r) (a) In this subsection, "governmental unit" means a county, city,  
7 village, or town.

8 (b) Except as provided in pars. (c) to (e), a governmental unit may not impose  
9 any fee or other charge on the user of a highway <sup>user</sup> under the jurisdiction of the  
10 governmental unit.

11 (c) A governmental unit may enter into a contract with a highway user that  
12 requires the highway user to reimburse the governmental unit for the cost of repairs  
13 to a highway necessitated by actual damage to the highway caused by the highway  
14 user if the contract includes all of the following requirements:

15 1. The repairs to the highway are completed before reimbursement is required  
16 by the highway user.

17 2. The proportion of damages to the highway caused specifically by the  
18 highway user and the cost of repairs attributable to that share of damages is  
19 determined by an engineer chosen by agreement of the governmental unit and the  
20 highway user.

21 3. The costs of the engineer's services under subd. 2. are paid in equal shares  
22 by the highway user and the governmental unit.

23 (d) 1. Subject to subd. 2., a contract under par. (c) may require that a highway  
24 user show proof of financial security sufficient to pay for the cost of repairs to a

1 highway necessitated by actual damage to the highway specifically caused by the  
2 highway user.

3 2. The proof of financial security under subd. 1. is subject to all of the following  
4 requirements:

5 a. The proof of financial security may not be required to be in an amount  
6 greater than the reasonable expected payments for damages expected to be caused  
7 during the 3 years following the date the amount of the financial security is  
8 determined.

9 b. The amount of financial security necessary to meet the requirement under  
10 subd. 2. a. shall be determined by an engineer chosen by agreement of the  
11 governmental unit and the highway user.

12 c. The costs of the engineer's services under subd. 2. b. are paid in equal shares  
13 by the highway user and the governmental unit.

14 d. The amount of financial security may not be required to be recalculated more  
15 often than once per year, unless the highway user proposes changes to the highway  
16 user's proposed highway use that was not anticipated in the last calculation of  
17 financial security.

18 3. An assurance<sup>Proof</sup> of financial security under this paragraph may be provided in  
19 any form allowed under s. 295.12 (3) (g) or rules promulgated under that provision.

20 (e) This subsection does not prohibit a governmental unit from imposing a fee  
21 in connection with the issuance of a permit authorized under ch. 348 or from  
22 imposing a fee for parking on any portion of a highway reserved for parking.

23 (f) A highway user that is a party to a highway use contract with a  
24 governmental unit which<sup>that</sup> was executed before, and in effect on, the effective date of  
25 this paragraph ... [LRB inserts date], and which<sup>that</sup> is inconsistent with the

1 requirements of this subsection, may petition the governmental unit to modify the  
2 existing highway use contract, or replace it with a new contract, at any point during  
3 the remaining term of the existing contract. Upon receiving this petition, the  
4 governmental unit shall participate in good faith in modifying the existing contract  
5 or negotiating a new replacement contract. Upon execution of a modification of the  
6 existing contract, any inconsistent obligations of the governmental unit and the  
7 highway user under the existing contract terminate. Upon execution of a new  
8 replacement contract, the obligations of the governmental unit and the highway user  
9 under the existing contract terminate.

10  
11 **SECTION 5.** 349.16 (1) (c) of the statutes is amended to read:

12 349.16 (1) (c) Order the owner or operator of any vehicle being operated on a  
13 highway to suspend operation if in its judgment such vehicle is causing or likely to  
14 cause injury to such highway or is visibly injuring the permanence thereof or the  
15 public investment therein, except when s. 84.20 is applicable or when the vehicle is  
16 being operated pursuant to a contract which provides that the governmental unit  
17 will be reimbursed for any damage done to the highway described in s. 349.03 (2r)  
18 (c). Traffic officers also may order suspension of operation under the circumstances  
19 and subject to the limitations stated in this paragraph.

20 **History:** 1975 c. 141; 1977 c. 29 s. 1654 (8) (a); 1977 c. 435; 1983 a. 307; 1999 a. 46.

21

1

## Analysis insert

This bill concerns local governmental authority to regulate air quality, water quality and quantity, and the use of explosives; local government highway use contracts and local regulation of materials sites related to transportation projects of the Department of Transportation (DOT); and local governmental authority to regulate nonmetallic mining. Nonmetallic mining is extracting nonmetallic materials, such as stone, gravel, clay, and sand. *disposal*

### **Local regulation of nonmetallic mining**

*Insert*  
*Mh-MES* → [Marc's part]

*(sub-sub) Nonmetallic mining reclamation*  
Current law requires the department of natural resources (DNR) to promulgate rules containing uniform statewide standards for the reclamation of nonmetallic mining sites. Reclamation consists of rehabilitating a nonmetallic mining site to achieve a land use specified in a reclamation plan, including removal or reuse of refuse; removal, storage, and replacement of topsoil; reestablishment of vegetation; control of surface water and groundwater; and prevention of environmental pollution. The standards impose requirements that apply during nonmetallic mining as well as after the mining ends.

This bill prohibits DNR from establishing nonmetallic mining reclamation standards relating to water quality or quantity or air quality that are more restrictive than this state's laws that relate specifically to water quality and quantity and air quality.

Current law requires a county to administer a nonmetallic mining reclamation program by enacting an ordinance that complies with the DNR standards and that includes a requirement to obtain a nonmetallic mining permit, requirements for fees, requirements for reclamation plans, and requirements for proof of financial responsibility for reclaiming nonmetallic mining sites. Current law authorizes a city, village or town to administer a nonmetallic mining reclamation program by enacting such an ordinance.

*reclamation* → This bill prohibits a county, city, village, or town from enacting or enforcing a nonmetallic mining ordinance that requires an operator to obtain a permit other than a reclamation permit; includes a standard of air quality or water quality; requires monitoring water quality or quantity or air quality; or is more restrictive than DNR's nonmetallic mining reclamation standards or this state's laws that relate specifically to water quality and quantity and air quality.

### **Local regulation of water quality and quantity and air quality**

This bill generally prohibits a county, city, village, town, county utility district, town sanitary district, public inland lake protection and rehabilitation district, or metropolitan sewage district (local governmental unit) from establishing or enforcing a standard of water quality; issuing permits related to water quality or quantity; imposing restrictions related to water quality or quantity; or requiring monitoring of water quality or quantity. The bill authorizes a local governmental

unit to take actions related to water quality or quantity that are specifically required or authorized by this state's statutes.

Current law authorizes a county to administer an air pollution control program with requirements that are consistent with or stricter than those in state laws related to air quality if the program is approved by DNR. This bill eliminates that authority.

This bill generally prohibits a local governmental unit from establishing or enforcing a standard of air quality; issuing permits related to air quality; imposing restrictions related to air quality; or requiring monitoring of air quality. The bill authorizes a local governmental unit to regulate open burning and to take other actions related to air quality that are specifically required or authorized by this state's statutes.

### ***Local regulation of the use of explosives***

Current law requires the department of safety and professional services (DSPS) to promulgate rules to ensure the safety of mines, explosives, quarries, and related activities. The rules must provide uniform limits on the results of blasting, to reasonably ensure that blasting does not cause injury, damage, or unreasonable annoyance to any person or property outside a controlled blasting site.

This bill prohibits a city, village, town, or county from regulating the use of explosives in connection with mining, quarrying, and related activities regulated by DSPS.

### ***Highway use contracts***

Current law generally prohibits a local authority from enacting or enforcing any traffic regulation excluding or prohibiting any motor vehicle from the free use of all highways. Also under current law, any person who injures a highway is liable in treble damages to the political division with maintenance jurisdiction over the highway.

Current law also allows a city, village, or town (municipality) or county, with respect to highways maintained by the municipality or county, to post special weight limits on highways that are weakened due to deterioration, climatic conditions, or other special or temporary conditions and that would likely be seriously damaged or destroyed in the absence of these special weight limits. A municipality, county, or traffic officer may also order the owner or operator of a vehicle to suspend operation on a highway if the vehicle is causing or likely to cause injury to the highway, unless the highway is being used as a detour by DOT or the vehicle is being operated under a contract that provides that the municipality or county will be reimbursed for any damage done to the highway.

This bill prohibits, with limited exceptions, a municipality or county from imposing any fee or other charge on the user of a highway under the jurisdiction of the municipality or county. Under one exception, a municipality or county may enter into a contract with a highway user that requires the highway user to reimburse the municipality or county for the cost of repairs to a highway necessitated by actual damage to the highway caused by the highway user if the contract includes all of the following requirements: 1) the repairs to the highway are completed before

reimbursement is required by the highway user; 2) the proportion of damages to the highway caused specifically by the highway user and the cost of repairs attributable to that share of damages is determined by an engineer chosen by agreement of the highway user and the municipality or county; and 3) the costs of the engineer's services are paid in equal shares by the highway user and the municipality or county. The contract may require that the highway user show proof of financial security sufficient to pay for the cost of highway repairs if the proof of financial security meets certain requirements. If a highway use contract is entered into, the provision of current law providing treble damages against a person who injures a highway does not apply to damage caused by a vehicle operated under the contract. The bill also specifies a procedure for a highway user that is a party to a highway use contract that pre-dates the bill's effective date to seek modification of the existing highway use contract or replacement of this contract with a new contract.

***Borrow sites and material disposal sites for DOT projects***

Under current law, a "borrow site" is a site off of project property from which borrow is excavated for use in a DOT transportation project. "Borrow" is soil or a mixture of soil, stone, gravel, or similar material for use as part of a DOT transportation project. A "material disposal site" is a site off of project property used for the lawful disposal of surplus materials from a DOT transportation project and that is controlled by the project contractor or subcontractor. If specified requirements are met, a local zoning ordinance may not apply to a borrow site or a material disposal site.

Under this bill, no local ordinance, including a zoning ordinance, may apply to a borrow site or a material disposal site.

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

1  
2  
3  
4  
5  
6  
7  
8  
9

**Insert 2-16**

NO  
H

, including permits for discharges to the waters of the state,

**Insert 2-17**

(c) Impose any restriction related to water quality or quantity.

**Insert 2-19**

NO  
H

take actions related to water quality or quantity that are specifically required or authorized by another statute.

(b) A municipality may not use s. 59.03 (2) (a), 59.54 (6), 60.10 (2) (c), 61.34, or 62.11 (5) as the basis for taking an action under par. (a).

1           **Insert 3-18**

2           (c) Impose any restriction related to air quality.

3           **Insert 3-19**

4           **(2)** (a) A municipality may do any of the following:

5           1. Take actions related to air quality that are specifically required or authorized  
6 by another statute.

7           2. Regulate open burning.

8           (b) A municipality may not use s. 59.03 (2) (a), 59.54 (6), 60.10 (2) (c), 61.34, or  
9 62.11 (5) as the basis for taking an action under par. (a) 1.

10          **Insert 3-21**

11          **SECTION 1.** 295.12 (1) (e) of the statutes is created to read:

12          295.12 (1) (e) The department may not establish nonmetallic mining  
13 reclamation standards under sub. (1) (a) relating to water quality or quantity or air  
14 quality that are more restrictive than chs. 160, 280, 281, 283, or 285 or rules  
15 promulgated under those chapters.

16          **SECTION 2.** 295.13 (1) (b) of the statutes is created to read:

17          295.13 (1) (b) *Restrictions on ordinances.* A county may not enact or enforce  
18 provisions in an ordinance under par. (a) that do any of the following:

19           1. Specify a standard of water quality or air quality.

20           2. Require an operator to obtain a permit or other form of approval in addition  
21 to a nonmetallic mining reclamation permit.

22           3. Impose any requirement related to monitoring water quality or quantity or  
23 air quality.

24           4. With respect to water quality or quantity or air quality, are more restrictive  
25 than the standards under s. 295.12 (1) (a).

1           5. With respect to water quality or quantity or air quality, are more restrictive  
2 than chs. 160, 280, 281, 283, or 285 and rules promulgated under those chapters.

3           **SECTION 3.** 295.14 (1) of the statutes is renumbered 295.14 (1) (a).

4           **SECTION 4.** 295.14 (1) (b) of the statutes is created to read:

5           295.14 (1) (b) A city, village, or town may not enact or enforce provisions in an  
6 ordinance under par. (a) that do any of the following:

7           1. Specify a standard of water quality or air quality.

8           2. Require an operator to obtain a permit or other form of approval in addition  
9 to a nonmetallic mining reclamation permit.

10          3. Impose any requirement related to monitoring water quality or quantity or  
11 air quality.

12          4. With respect to water quality or quantity or air quality, are more restrictive  
13 than the standards under s. 295.12 (1) (a).

14          5. With respect to water quality or quantity or air quality, are more restrictive  
15 than chs. 160, 280, 281, 283, or 285 and rules promulgated under those chapters.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1377/P2dnAG

ARG:.....

WJ

Date

I believe that current law does not authorize a local government to impose a "use fee" on a highway user operating lawfully, without the highway user's consent. See s. 349.03 (2). I therefore do not understand why a highway user would enter into a contract to pay such a use fee unless there is a question as to the legality of the vehicle operation. In addition, under current law, a local government is entitled to recover *triple* the actual damages against a person who damages a highway. See s. 86.02. Yet, to my understanding, it is very difficult, often impossible, to prove that specific highway damage was caused by a specific vehicle. Given this background of current law, I have difficulty understanding why a lawfully operating highway user or a local government would enter into a highway use contract as described in this draft. It seems that both would be better off without the contract, under the provisions of current law.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: aaron.gary@legis.wisconsin.gov

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1377/P2dn  
ARG:wlj:wj

May 24, 2013

I believe that current law does not authorize a local government to impose a “use fee” on a highway user operating lawfully, without the highway user’s consent. See s. 349.03 (2). I therefore do not understand why a highway user would enter into a contract to pay such a use fee unless there is a question as to the legality of the vehicle operation. In addition, under current law, a local government is entitled to recover *triple* the actual damages against a person who damages a highway. See s. 86.02. Yet, to my understanding, it is very difficult, often impossible, to prove that specific highway damage was caused by a specific vehicle. Given this background of current law, I have difficulty understanding why a lawfully operating highway user or a local government would enter into a highway use contract as described in this draft. It seems that both would be better off without the contract, under the provisions of current law.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: [aaron.gary@legis.wisconsin.gov](mailto:aaron.gary@legis.wisconsin.gov)

## Gary, Aaron

---

**From:** Emerson, James  
**Sent:** Monday, June 03, 2013 3:19 PM  
**To:** Gary, Aaron  
**Cc:** Grothman, Jeffrey; Konopacki, Larry; Rep.LeMahieu; Tradewell, Becky; Shovers, Marc  
**Subject:** RE: Release of LRB 1377

Aaron:  
Please make Rep. LeMahieu officially the "requester" on the draft.  
Thank you,  
Jim Emerson

---

**From:** Gary, Aaron  
**Sent:** Monday, June 03, 2013 1:29 PM  
**To:** Emerson, James  
**Cc:** Grothman, Jeffrey; Konopacki, Larry; Rep.LeMahieu; Tradewell, Becky; Shovers, Marc  
**Subject:** RE: Release of LRB 1377

Jim,  
Thanks for the email. Did you want to simply allow Rep. LeMahieu's office to provide instructions for changes? Or do you want me to transfer the file so that Rep. LeMahieu is now officially the "requester" on the draft? (The "requester" has ultimate decision-making authority over the drafting and directly receives the copies of the draft when they come out).

Thanks. Aaron

Aaron R. Gary  
*Attorney, Legislative Reference Bureau*  
608.261.6926 (voice)  
608.264.6948 (fax)  
[aaron.gary@legis.state.wi.us](mailto:aaron.gary@legis.state.wi.us)

---

**From:** Emerson, James  
**Sent:** Friday, May 31, 2013 12:08 PM  
**To:** Gary, Aaron  
**Cc:** Grothman, Jeffrey; Konopacki, Larry; Rep.LeMahieu  
**Subject:** Release of LRB 1377

Aaron:

Rep. Suder's office would like to release/allow access of LRB 1377/P2dn to Rep. LeMahieu and his office. If you have any questions, or need anything else, please let me know.

Sincerely,  
Jim Emerson  
Chief of Staff  
Rep. Suder's Office  
266-2401