



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1377/P2
RCT&MES:wlj:wj

INSTRUCTIONS

6/3 per Larry Konopacki, make these changes

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Received from
Larry Konopacki - LC
on 6/3
REC

please change to a /1
for Rep. LeMahieu, with
the following revisions

1 AN ACT to repeal 285.11 (3), 285.73 and 285.75; to renumber 295.14 (1); to
2 renumber and amend 59.69 (10) (ab), 60.61 (5) (ab) and 62.23 (7) (ab); to
3 amend 84.06 (12) (b) (intro.), 85.193 (2) (intro.), 86.02 and 349.16 (1) (c); and
4 to create 59.69 (10) (ab) 1., 59.69 (10) (as), 60.61 (5) (ab) 1., 60.61 (5) (as), 62.23
5 (7) (ab) 1., 62.23 (7) (hs), 66.0416, 101.15 (2) (g), 281.125, 285.72, 295.12 (2) (e),
6 295.13 (1) (b), 295.14 (1) (b) and 349.03 (2r) of the statutes; relating to: local
7 regulation of nonmetallic mining; local regulation of air quality; local
8 regulation of water quality; local regulation of the use of explosives in mining,
9 quarrying, and related activities; highway use contracts by local governments;
10 and local regulation of borrow sites and material disposal sites for
11 transportation projects of the Department of Transportation.

Analysis by the Legislative Reference Bureau

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 material disposal sites related to transportation projects of the Department of Transportation (DOT); and local governmental

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

3 SECTION 9. 62.23 (7) (hs) of the statutes is created to read:

4 62.23 (7) (hs) *Nonmetallic mining*. An ordinance enacted under this subsection
5 may not prohibit the continued extraction of a nonmetallic mineral from a
6 nonconforming nonmetallic mining location. Such continued extraction from such
7 a location shall be considered an existing use, may not be considered an expansion
8 of a nonconforming use, and may not be prohibited in areas of the nonconforming
9 nonmetallic mining locations that have not previously been under actual excavation.

10 SECTION 10. 66.0416 of the statutes is created to read:

11 **66.0416 Local regulation of nonmetallic mining.** (1) DEFINITIONS. In this
12 section:

- 13 (a) "Nonmetallic mining" has the meaning given in s. 295.11 (3).
14 (b) "Political subdivision" means a city, village, town, or county.
15 (c) "Zoning ordinance" means an ordinance enacted or amended by a political
16 subdivision under s. 59.69 (4), 60.61 (2), 60.62 (1), 61.35, or 62.23 (7) (am).

****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."

- 17 (2) LIMITATIONS ON REGULATION. (a) Except as provided in par. (b), a political
18 subdivision may not enact or enforce a licensing ordinance, or other ordinance, that
19 imposes a land use requirement or restriction on nonmetallic mining.
20 (b) Paragraph (a) does not apply to the enactment or enforcement of a
21 nonmetallic mining reclamation ordinance as described in ss. 295.13 and 295.14 or
22 to a zoning ordinance.

(Insert A)

political subdivision may enact or enforce any ordinance, resolution, or other requirement,

(c) An ordinance enacted by a political subdivision, other than a zoning ordinance, that 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: 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 on 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.

SECTION 11. 84.06 (12) (b) (intro.) of the statutes is amended to read:

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

SECTION 12. 85.193 (2) (intro.) of the statutes is amended to read:

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

SECTION 13. 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

political subdivision may enact or enforce any ordinance, resolution, or other requirement,

→ This section only applies to damage that was caused willfully or that results from an unlawful act.

1 recovered by the political division chargeable with the maintenance of highway
2 injured, and the amount recovered shall be credited to the highway maintenance
3 fund. This section does not apply to damage caused by a vehicle when the vehicle is
4 being operated under a contract described in s. 349.03 (2r) (c).

5 **SECTION 14.** 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 15.** 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, including permits for discharges to the waters of the state,
14 or any other form of approval related to water quality or quantity.
- 15 (c) Impose any restriction related to water quality or quantity.

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

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

19 (b) A municipality may not use s. 59.03 (2) (a), 59.54 (6), 60.10 (2) (c), 61.34, or
20 62.11 (5) as the basis for taking an action under par. (a).

21 **SECTION 16.** 285.11 (3) of the statutes is repealed.

22 **SECTION 17.** 285.72 of the statutes is created to read:

23 **285.72 Limitation on local authority.** (1) Except as provided in sub. (2) (a),
24 a municipality may not do any of the following:

Insert A

(2) LIMITATIONS ON REGULATION. Except for a nonmetallic mining reclamation ordinance as described in ss. 295.13 and 295.14 or a zoning ordinance, a political subdivision may not enact or enforce an ordinance applicable to nonmetallic mining, including a licensing ordinance, that regulates how a use of land takes place or affects the use of land.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1377/PZ
RCT/MES/wlj:wj

stop

RMNR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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gov

1 AN ACT *to repeal* 285.11 (3), 285.73 and 285.75; *to renumber* 295.14 (1); *to*
2 *renumber and amend* 59.69 (10) (ab), 60.61 (5) (ab) and 62.23 (7) (ab); *to*
3 *amend* 84.06 (12) (b) (intro.), 85.193 (2) (intro.), 86.02 and 349.16 (1) (c); and
4 *to create* 59.69 (10) (ab) 1., 59.69 (10) (as), 60.61 (5) (ab) 1., 60.61 (5) (as), 62.23
5 (7) (ab) 1., 62.23 (7) (hs), 66.0416, 101.15 (2) (g), 281.125, 285.72, 295.12 (2) (e),
6 295.13 (1) (b), 295.14 (1) (b) and 349.03 (2r) of the statutes; **relating to:** local
7 regulation of nonmetallic mining; local regulation of air quality; local
8 regulation of water quality; local regulation of the use of explosives in mining,
9 quarrying, and related activities; highway use contracts by local governments;
10 and local regulation of borrow sites and material disposal sites for
11 transportation projects of the Department of Transportation.

Analysis by the Legislative Reference Bureau

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 material disposal 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.

Local regulation of nonmetallic mining

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 that 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.

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 Valley was authorized to exercise village powers, its zoning ordinances must be approved by the 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 Valley's ordinance was a valid exercise of its police power, was not a zoning ordinance, and did not require county board approval.

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enact or enforce an ordinance that applies to nonmetallic mining including a

Under the bill

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 that 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. This prohibition on the application of a local ordinance, other than a zoning ordinance, applies to land on 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 on 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. Apps. 1999).

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.

This bill prohibits a county, city, village, or town from enacting or enforcing a nonmetallic mining reclamation 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 DNR approves the program. 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 county, city, village, or town 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.

^(no ☐) 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 a highway user 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, ^{that applies} ~~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.

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

- 1 **SECTION 1.** 59.69 (10) (ab) of the statutes is renumbered 59.69 (10) (ab) (intro.)
- 2 and amended to read:

SECTION 1

1 59.69 (10) (ab) (intro.) In this subsection “~~nonconforming~~:

2 2. “Nonconforming use” means a use of land, a dwelling, or a building that
3 existed lawfully before the current zoning ordinance was enacted or amended, but
4 that does not conform with the use restrictions in the current ordinance.

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

6 59.69 (10) (ab) 1. “Nonconforming nonmetallic mining location” means land on
7 which nonmetallic mining was occurring when nonmetallic mining became a
8 nonconforming use, including land that is contiguous to such land if the contiguous
9 land is under the common ownership or control of the person who owns or controls
10 the land on which the mining was occurring, and includes leasehold interests,
11 without regard to whether private roads or waterways run through the land.

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

13 59.69 (10) (as) An ordinance enacted under this section may not prohibit the
14 continued extraction of a nonmetallic mineral from a nonconforming nonmetallic
15 mining location. Such continued extraction from such a location shall be considered
16 an existing use, may not be considered an expansion of a nonconforming use, and
17 may not be prohibited in areas of the nonconforming nonmetallic mining location
18 that have not previously been under actual excavation.

19 **SECTION 4.** 60.61 (5) (ab) of the statutes is renumbered 60.61 (5) (ab) (intro.)
20 and amended to read:

21 60.61 (5) (ab) (intro.) In this subsection “~~nonconforming~~:

22 2. “Nonconforming use” means a use of land, a dwelling, or a building that
23 existed lawfully before the current zoning ordinance was enacted or amended, but
24 that does not conform with the use restrictions in the current ordinance.

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

1 60.61 (5) (ab) 1. “Nonconforming nonmetallic mining location” means land on
2 which nonmetallic mining was occurring when nonmetallic mining became a
3 nonconforming use, including land that is contiguous to such land if the contiguous
4 land is under the common ownership or control of the person who owns or controls
5 the land on which the mining was occurring, and includes leasehold interests,
6 without regard to whether private roads or waterways run through the land.

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

8 60.61 (5) (as) An ordinance enacted under this section may not prohibit the
9 continued extraction of a nonmetallic mineral from a nonconforming nonmetallic
10 mining location. Such continued extraction from such a location shall be considered
11 an existing use, may not be considered an expansion of a nonconforming use, and
12 may not be prohibited in areas of the nonconforming nonmetallic mining location
13 that have not previously been under actual excavation.

14 **SECTION 7.** 62.23 (7) (ab) of the statutes is renumbered 62.23 (7) (ab) (intro.)
15 and amended to read:

16 62.23 (7) (ab) *Definition Definitions.* (intro.) In this subsection
17 “~~nonconforming~~”:

18 2. “Nonconforming use” means a use of land, a dwelling, or a building that
19 existed lawfully before the current zoning ordinance was enacted or amended, but
20 that does not conform with the use restrictions in the current ordinance.

21 **SECTION 8.** 62.23 (7) (ab) 1. of the statutes is created to read:

22 62.23 (7) (ab) 1. “Nonconforming nonmetallic mining location” means land on
23 which nonmetallic mining was occurring when nonmetallic mining became a
24 nonconforming use, including land that is contiguous to such land if the contiguous
25 land is under the common ownership or control of the person who owns or controls

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

3 SECTION 9. 62.23 (7) (hs) of the statutes is created to read:

4 62.23 (7) (hs) *Nonmetallic mining.* An ordinance enacted under this subsection
5 may not prohibit the continued extraction of a nonmetallic mineral from a
6 nonconforming nonmetallic mining location. Such continued extraction from such
7 a location shall be considered an existing use, may not be considered an expansion
8 of a nonconforming use, and may not be prohibited in areas of the nonconforming
9 nonmetallic mining locations that have not previously been under actual excavation.

10 SECTION 10. 66.0416 of the statutes is created to read:

11 66.0416 **Local regulation of nonmetallic mining.** (1) DEFINITIONS. In this
12 section:

13 (a) "Nonmetallic mining" has the meaning given in s. 295.11 (3).

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

15 (c) "Zoning ordinance" means an ordinance enacted or amended by a political
16 subdivision under s. 59.69 (4), 60.61 (2), 60.62 (1), 61.35, or 62.23 (7) (am).

****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."

17 (2) LIMITATIONS ON REGULATION. (a) Except ^{for a} as provided in par. (b), a political
18 ~~subdivision may not enact or enforce a licensing ordinance, or another ordinance, that~~
19 ~~imposes a land use requirement or restriction on nonmetallic mining.~~

20 (b) Paragraph (a) does not apply to the enactment or enforcement of a
21 nonmetallic mining reclamation ordinance as described in ss. 295.13 and 295.14 or
22 to a zoning ordinance.

go to page 9 line 2

1 (c) An ordinance enacted by a political subdivision, other than a zoning
 2 ordinance, ~~that~~ regulates how a use of land takes place or affects the use of land, may
 3 not be applied to nonmetallic mining operations that are in operation at the time the
 4 local ordinance takes effect.

NOTE: 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"?

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

11 SECTION 11. 84.06 (12) (b) (intro.) of the statutes is amended to read:

12 84.06 (12) (b) (intro.) No local ordinance, including a zoning ordinance enacted
 13 under s. 59.69, 60.61, 60.62, 61.35, or 62.23, ~~may apply~~ ^{that applies} to a borrow site if all of the
 14 following apply: _{strike} ^{requirements}

15 SECTION 12. 85.193 (2) (intro.) of the statutes is amended to read:

16 85.193 (2) EXEMPTION FROM LOCAL ZONING ORDINANCES. (intro.) No local
 17 ordinance, including a zoning ordinance enacted under s. 59.69, 60.61, 60.62, 61.35,
 18 or 62.23, ~~may apply~~ ^{that applies} to a borrow site or material disposal site if all of the following
 19 apply:

20 SECTION 13. 86.02 of the statutes is amended to read:

21 86.02 Injury to highway. Any person who shall injure any highway by
 22 obstructing or diverting any creek or watercourse or sluiceway, or by dragging logs
 23 or timber thereon, or by any other act, shall be liable in treble damages, to be

insert 9-12

insert 9-17

1 recovered by the political division chargeable with the maintenance of highway
2 injured, and the amount recovered shall be credited to the highway maintenance
3 fund. This section does not apply to damage caused by a vehicle when the vehicle is
4 being operated under a contract described in s. 349.03 (2r) (c).

5 **SECTION 14.** 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 15.** 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, including permits for discharges to the waters of the state,
14 or any other form of approval related to water quality or quantity.

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

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

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

19 (b) A municipality may not use s. 59.03 (2) (a), 59.54 (6), 60.10 (2) (c), 61.34, or
20 62.11 (5) as the basis for taking an action under par. (a).

21 **SECTION 16.** 285.11 (3) of the statutes is repealed.

22 **SECTION 17.** 285.72 of the statutes is created to read:

23 **285.72 Limitation on local authority.** (1) Except as provided in sub. (2) (a),
24 a municipality may not do any of the following:

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

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

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

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

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

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

10 2. Regulate open burning.

11 (b) A municipality may not use s. 59.03 (2) (a), 59.54 (6), 60.10 (2) (c), 61.34, or
12 62.11 (5) as the basis for taking an action under par. (a) 1.

13 **SECTION 18.** 285.73 of the statutes is repealed.

14 **SECTION 19.** 285.75 of the statutes is repealed.

15 **SECTION 20.** 295.12 (2) (e) of the statutes is created to read:

16 295.12 **(2)** (e) The department may not establish nonmetallic mining
17 reclamation standards under sub. (1) (a) relating to water quality or quantity or air
18 quality that are more restrictive than chs. 160, 280, 281, 283, or 285 or rules
19 promulgated under those chapters.

20 **SECTION 21.** 295.13 (1) (b) of the statutes is created to read:

21 295.13 **(1)** (b) *Restrictions on ordinances.* A county may not enact or enforce
22 provisions in an ordinance under par. (a) that do any of the following:

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

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

1 3. Impose any requirement related to monitoring water quality or quantity or
2 air quality.

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

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

7 **SECTION 22.** 295.14 (1) of the statutes is renumbered 295.14 (1) (a).

8 **SECTION 23.** 295.14 (1) (b) of the statutes is created to read:

9 295.14 (1) (b) A city, village, or town may not enact or enforce provisions in an
10 ordinance under par. (a) that do any of the following:

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

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

14 3. Impose any requirement related to monitoring water quality or quantity or
15 air quality.

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

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

20 **SECTION 24.** 349.03 (2r) of the statutes is created to read:

21 349.03 (2r) (a) In this subsection, “governmental unit” means a county, city,
22 village, or town.

23 (b) Except as provided in pars. (c) to (e), a governmental unit may not impose
24 any fee or other charge on a highway user under the jurisdiction of the governmental
25 unit.

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

5 1. The repairs to the highway are completed before reimbursement is required
6 by the highway user.

7 2. The proportion of damages to the highway caused specifically by the
8 highway user and the cost of repairs attributable to that share of damages is
9 determined by an engineer chosen by agreement of the governmental unit and the
10 highway user.

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

13 (d) 1. Subject to subd. 2., a contract under par. (c) may require that a highway
14 user show proof of financial security sufficient to pay for the cost of repairs to a
15 highway necessitated by actual damage to the highway specifically caused by the
16 highway user.

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

19 a. The proof of financial security may not be required to be in an amount
20 greater than the reasonable expected payments for damages expected to be caused
21 during the 3 years following the date the amount of the financial security is
22 determined.

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

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

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

7 3. Proof of financial security under this paragraph may be provided in any form
8 allowed under s. 295.12 (3) (g) or rules promulgated under that provision.

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

12 (f) A highway user that is a party to a highway use contract with a
13 governmental unit that was executed before, and in effect on, the effective date of this
14 paragraph [LRB inserts date], and that is inconsistent with the requirements of
15 this subsection, may petition the governmental unit to modify the existing highway
16 use contract, or replace it with a new contract, at any point during the remaining
17 term of the existing contract. Upon receiving this petition, the governmental unit
18 shall participate in good faith in modifying the existing contract or negotiating a new
19 replacement contract. Upon execution of a modification of the existing contract, any
20 inconsistent obligations of the governmental unit and the highway user under the
21 existing contract terminate. Upon execution of a new replacement contract, the
22 obligations of the governmental unit and the highway user under the existing
23 contract terminate.

24 **SECTION 25.** 349.16 (1) (c) of the statutes is amended to read:

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

9

(END)

1

2

3

INSERT ANAL-AG -A:

Damage to highways and highway use contracts

Under current law, any person who injures a highway is liable in treble damages to the political division with maintenance jurisdiction over the highway.

This bill limits this liability to damage that is caused willfully or that results from an unlawful act.

4

INSERT ANAL-AG -B:

(no fl) a political subdivision may not enact or enforce any ordinance, resolution, or other requirement

5

6

INSERT 9-12:

7

(no fl) political subdivision may enact or enforce any ordinance, resolution, or other requirement

8

9

INSERT 9-17:

10

(no fl) political subdivision may enact or enforce any ordinance, resolution, or other requirement

11

12

13

INSERT 10-4:

14

(no fl) This section applies only to damage that is caused willfully or that results from an unlawful act.

15

Barman, Mike

From: Grothman, Jeffrey
Sent: Monday, June 03, 2013 5:59 PM
To: LRB.Legal
Subject: Draft Review: LRB -1377/1 Topic: Local regulation of nonmetallic mining, wastewater discharges, and air quality

Please Jacket LRB -1377/1 for the ASSEMBLY.

BILL

FN instructions for 1/2

1 under s. 59.69, 60.61, 60.62, 61.35, or 62.23 may apply, that applies to a borrow site
2 if all of the following apply:

3 **SECTION 12.** 85.193 (2) (intro.) of the statutes is amended to read:

4 *Hi Becky,* NING REQUIREMENTS. (intro.) No political
5 si *could you make this change* nance, resolution, or other requirement,
6 ir *for a 1/2? This is ~~not~~* ler s. 59.69, 60.61, 60.62, 61.35, or 62.23
7 re *a rush project.* material disposal site if all of the following

8 a
9 *Thanks,* amended to read:
10 *Carry* person who shall injure any highway by
11 *70683* ercourse or sluiceway, or by dragging logs
12 or timber thereon, or by any other act, shall be liable in treble damages, to be
13 recovered by the political division chargeable with the maintenance of highway
14 injured, and the amount recovered shall be credited to the highway maintenance
15 fund. This section does not apply to damage caused by a vehicle when the vehicle is
16 being operated under a contract described in s. 349.03 (2r) (c). This section applies
17 only to damage that is caused willfully or that results from an unlawful act.

18 **SECTION 14.** 101.15 (2) (g) of the statutes is created to read:

19 101.15 (2) (g) No city, village, town, or county may enact or enforce an ordinance
20 or other regulation governing the use of explosives in connection with an activity
21 regulated by the department under this section. ↗

22 **SECTION 15.** 281.125 of the statutes is created to read:

23 **281.125 Limitation on local authority.** (1) Except as provided in sub. (2),
24 a municipality may not do any of the following:

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

This paragraph does not apply to limitations placed on blasting schedules under a conditional use permit issued under a zoning ordinance under s. 59.69, 60.61, 60.62, 61.35, or 62.23



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1377/10
RCT/MES/ARG:wj/wj

stays
RMR

2013 BILL

now

repeal

1 AN ACT *to repeal* 285.11 (3), 285.73 and 285.75; *to renumber* 295.14 (1); *to*
2 *renumber and amend* 59.69 (10) (ab), 60.61 (5) (ab) and 62.23 (7) (ab); *to*
3 *amend* 84.06 (12) (b) (intro.), 85.193 (2) (intro.), 86.02 and 349.16 (1) (c); and
4 *to create* 59.69 (10) (ab) 1., 59.69 (10) (as), 60.61 (5) (ab) 1., 60.61 (5) (as), 62.23
5 (7) (ab) 1., 62.23 (7) (hs), 66.0416, 101.15 (2) (g), 281.125, 285.72, 295.12 (2) (e),
6 295.13 (1) (b), 295.14 (1) (b) and 349.03 (2r) of the statutes; **relating to:** local
7 regulation of nonmetallic mining; local regulation of air quality; local
8 regulation of water quality; local regulation of the use of explosives in mining,
9 quarrying, and related activities; highway use contracts by local governments;
10 and local regulation of borrow sites and material disposal sites for
11 transportation projects of the Department of Transportation.

Analysis by the Legislative Reference Bureau

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 material disposal sites related to transportation projects of the Department of Transportation (DOT); and local governmental

BILL

authority to regulate nonmetallic mining. Nonmetallic mining is extracting nonmetallic materials, such as stone, gravel, clay, and sand.

Local regulation of nonmetallic mining

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 that 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.

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 Valley was authorized to exercise village powers, its zoning ordinances must be approved by the 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 Valley's ordinance was a valid exercise of its police power, was not a zoning ordinance, and did not require county board approval.

BILL

This bill limits the authority of a political subdivision or limited town to regulate nonmetallic mining. Under the bill, a political subdivision or limited town may not, other than through a zoning ordinance or a nonmetallic mining reclamation ordinance, enact or enforce an ordinance that applies to nonmetallic mining, including a licensing ordinance, that regulates how a use of land takes place or affects the use of land.

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 on 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. Apps. 1999).

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.

This bill prohibits a county, city, village, or town from enacting or enforcing a nonmetallic mining reclamation 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

BILL

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 DNR approves the program. 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 ~~county~~ city, village, ~~or~~ town, from regulating the use of explosives in connection with mining, quarrying, and related activities regulated by DSPS, *except that these local governments to regulate blasting schedules by the issuance of a conditional use permit*

Damage to highways and highway use contracts

Under current law, any person who injures a highway is liable in treble damages to the political division with maintenance jurisdiction over the highway.

This bill limits this liability to damage that is caused willfully or that results from an unlawful act.

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. 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 a highway user under the jurisdiction of the municipality or county. Under one exception, a municipality or county may enter into

the bill authorizes

or county

to regulate blasting schedules by the issuance of a conditional use permit

BILL

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, a political subdivision may not enact or enforce any ordinance, resolution, or other requirement, including a zoning ordinance, that applies 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.

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

- 1 **SECTION 1.** 59.69 (10) (ab) of the statutes is renumbered 59.69 (10) (ab) (intro.)
2 and amended to read:
3 59.69 (10) (ab) (intro.) In this subsection "~~noneonforming:~~

BILL**SECTION 1**

1 2. “Nonconforming use” means a use of land, a dwelling, or a building that
2 existed lawfully before the current zoning ordinance was enacted or amended, but
3 that does not conform with the use restrictions in the current ordinance.

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

5 59.69 (10) (ab) 1. “Nonconforming nonmetallic mining location” means land on
6 which nonmetallic mining was occurring when nonmetallic mining became a
7 nonconforming use, including land that is contiguous to such land if the contiguous
8 land is under the common ownership or control of the person who owns or controls
9 the land on which the mining was occurring, and includes leasehold interests,
10 without regard to whether private roads or waterways run through the land.

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

12 59.69 (10) (as) An ordinance enacted under this section may not prohibit the
13 continued extraction of a nonmetallic mineral from a nonconforming nonmetallic
14 mining location. Such continued extraction from such a location shall be considered
15 an existing use, may not be considered an expansion of a nonconforming use, and
16 may not be prohibited in areas of the nonconforming nonmetallic mining location
17 that have not previously been under actual excavation.

18 **SECTION 4.** 60.61 (5) (ab) of the statutes is renumbered 60.61 (5) (ab) (intro.)
19 and amended to read:

20 60.61 (5) (ab) (intro.) In this subsection ~~“nonconforming:~~

21 2. “Nonconforming use” means a use of land, a dwelling, or a building that
22 existed lawfully before the current zoning ordinance was enacted or amended, but
23 that does not conform with the use restrictions in the current ordinance.

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

BILL

1 60.61 (5) (ab) 1. “Nonconforming nonmetallic mining location” means land on
2 which nonmetallic mining was occurring when nonmetallic mining became a
3 nonconforming use, including land that is contiguous to such land if the contiguous
4 land is under the common ownership or control of the person who owns or controls
5 the land on which the mining was occurring, and includes leasehold interests,
6 without regard to whether private roads or waterways run through the land.

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

8 60.61 (5) (as) An ordinance enacted under this section may not prohibit the
9 continued extraction of a nonmetallic mineral from a nonconforming nonmetallic
10 mining location. Such continued extraction from such a location shall be considered
11 an existing use, may not be considered an expansion of a nonconforming use, and
12 may not be prohibited in areas of the nonconforming nonmetallic mining location
13 that have not previously been under actual excavation.

14 **SECTION 7.** 62.23 (7) (ab) of the statutes is renumbered 62.23 (7) (ab) (intro.)
15 and amended to read:

16 62.23 (7) (ab) *Definition Definitions.* (intro.) In this subsection
17 “nonconforming:

18 2. “Nonconforming use” means a use of land, a dwelling, or a building that
19 existed lawfully before the current zoning ordinance was enacted or amended, but
20 that does not conform with the use restrictions in the current ordinance.

21 **SECTION 8.** 62.23 (7) (ab) 1. of the statutes is created to read:

22 62.23 (7) (ab) 1. “Nonconforming nonmetallic mining location” means land on
23 which nonmetallic mining was occurring when nonmetallic mining became a
24 nonconforming use, including land that is contiguous to such land if the contiguous
25 land is under the common ownership or control of the person who owns or controls

BILL

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

3 **SECTION 9.** 62.23 (7) (hs) of the statutes is created to read:

4 62.23 (7) (hs) *Nonmetallic mining.* An ordinance enacted under this subsection
5 may not prohibit the continued extraction of a nonmetallic mineral from a
6 nonconforming nonmetallic mining location. Such continued extraction from such
7 a location shall be considered an existing use, may not be considered an expansion
8 of a nonconforming use, and may not be prohibited in areas of the nonconforming
9 nonmetallic mining locations that have not previously been under actual excavation.

10 **SECTION 10.** 66.0416 of the statutes is created to read:

11 **66.0416 Local regulation of nonmetallic mining. (1) DEFINITIONS.** In this
12 section:

- 13 (a) "Nonmetallic mining" has the meaning given in s. 295.11 (3).
- 14 (b) "Political subdivision" means a city, village, town, or county.
- 15 (c) "Zoning ordinance" means an ordinance enacted or amended by a political
16 subdivision under s. 59.69 (4), 60.61 (2), 60.62 (1), 61.35, or 62.23 (7) (am).

17 **(2) LIMITATIONS ON REGULATION.** Except for a nonmetallic mining reclamation
18 ordinance as described in ss. 295.13 and 295.14 or a zoning ordinance, a political
19 subdivision may not enact or enforce an ordinance applicable to nonmetallic mining,
20 including a licensing ordinance, that regulates how a use of land takes place or
21 affects the use of land.

22 **SECTION 11.** 84.06 (12) (b) (intro.) of the statutes is amended to read:

23 84.06 (12) (b) (intro.) No political subdivision may enact or enforce any
24 ordinance, resolution, or other requirement, including a zoning ordinance enacted

BILL

1 under s. 59.69, 60.61, 60.62, 61.35, or 62.23 ~~may apply, that applies~~ to a borrow site
2 if all of the following apply:

3 **SECTION 12.** 85.193 (2) (intro.) of the statutes is amended to read:

4 85.193 (2) EXEMPTION FROM LOCAL ZONING REQUIREMENTS. (intro.) No political
5 subdivision may enact or enforce any ordinance, resolution, or other requirement,
6 including a zoning ordinance enacted under s. 59.69, 60.61, 60.62, 61.35, or 62.23
7 may apply, that applies to a borrow site or material disposal site if all of the following
8 apply:

9 **SECTION 13.** 86.02 of the statutes is amended to read:

10 **86.02 Injury to highway.** Any person who shall injure any highway by
11 obstructing or diverting any creek or watercourse or sluiceway, or by dragging logs
12 or timber thereon, or by any other act, shall be liable in treble damages, to be
13 recovered by the political division chargeable with the maintenance of highway
14 injured, and the amount recovered shall be credited to the highway maintenance
15 fund. This section does not apply to damage caused by a vehicle when the vehicle is
16 being operated under a contract described in s. 349.03 (2r) (c). This section applies
17 only to damage that is caused willfully or that results from an unlawful act.

18 **SECTION 14.** 101.15 (2) (g) of the statutes is created to read:

19 101.15 (2) (g) ^{1. Except as provided in subd. 2,} No city, village, town, or county may enact or enforce an ordinance
20 or other regulation governing the use of explosives in connection with an activity
21 regulated by the department under this section. ¹

22 **SECTION 15.** 281.125 of the statutes is created to read:

23 **281.125 Limitation on local authority.** (1) Except as provided in sub. (2),
24 a municipality may not do any of the following:

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

→ ²⁰ ~~1~~ A city, village, town, or county may regulate blasting schedules by the issuance of a conditional use permit.

BILL**SECTION 15**

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

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

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

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

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

9 **SECTION 16.** 285.11 (3) of the statutes is repealed.

10 **SECTION 17.** 285.72 of the statutes is created to read:

11 **285.72 Limitation on local authority.** (1) Except as provided in sub. (2) (a),
12 a municipality may not do any of the following:

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

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

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

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

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

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

22 2. Regulate open burning.

23 (b) A municipality may not use s. 59.03 (2) (a), 59.54 (6), 60.10 (2) (c), 61.34, or
24 62.11 (5) as the basis for taking an action under par. (a) 1.

25 **SECTION 18.** 285.73 of the statutes is repealed.

BILL

1 **SECTION 19.** 285.75 of the statutes is repealed.

2 **SECTION 20.** 295.12 (2) (e) of the statutes is created to read:

3 295.12 (2) (e) The department may not establish nonmetallic mining
4 reclamation standards under sub. (1) (a) relating to water quality or quantity or air
5 quality that are more restrictive than chs. 160, 280, 281, 283, or 285 or rules
6 promulgated under those chapters.

7 **SECTION 21.** 295.13 (1) (b) of the statutes is created to read:

8 295.13 (1) (b) *Restrictions on ordinances.* A county may not enact or enforce
9 provisions in an ordinance under par. (a) that do any of the following:

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

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

13 3. Impose any requirement related to monitoring water quality or quantity or
14 air quality.

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

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

19 **SECTION 22.** 295.14 (1) of the statutes is renumbered 295.14 (1) (a).

20 **SECTION 23.** 295.14 (1) (b) of the statutes is created to read:

21 295.14 (1) (b) A city, village, or town may not enact or enforce provisions in an
22 ordinance under par. (a) that do any of the following:

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

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

BILL**SECTION 23**

1 3. Impose any requirement related to monitoring water quality or quantity or
2 air quality.

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

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

7 **SECTION 24.** 349.03 (2r) of the statutes is created to read:

8 349.03 (2r) (a) In this subsection, “governmental unit” means a county, city,
9 village, or town.

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

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

17 1. The repairs to the highway are completed before reimbursement is required
18 by the highway user.

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

23 3. The costs of the engineer’s services under subd. 2. are paid in equal shares
24 by the highway user and the governmental unit.

BILL

1 (d) 1. Subject to subd. 2., a contract under par. (c) may require that a highway
2 user show proof of financial security sufficient to pay for the cost of repairs to a
3 highway necessitated by actual damage to the highway specifically caused by the
4 highway user.

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

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

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

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

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

20 3. Proof of financial security under this paragraph may be provided in any form
21 allowed under s. 295.12 (3) (g) or rules promulgated under that provision.

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

BILL**SECTION 24**

1 (f) A highway user that is a party to a highway use contract with a
2 governmental unit that was executed before, and in effect on, the effective date of this
3 paragraph [LRB inserts date], and that is inconsistent with the requirements of
4 this subsection, may petition the governmental unit to modify the existing highway
5 use contract, or replace it with a new contract, at any point during the remaining
6 term of the existing contract. Upon receiving this petition, the governmental unit
7 shall participate in good faith in modifying the existing contract or negotiating a new
8 replacement contract. Upon execution of a modification of the existing contract, any
9 inconsistent obligations of the governmental unit and the highway user under the
10 existing contract terminate. Upon execution of a new replacement contract, the
11 obligations of the governmental unit and the highway user under the existing
12 contract terminate.

13 **SECTION 25.** 349.16 (1) (c) of the statutes is amended to read:

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

22 (END)

8/19/13 Per Jeff Grothman (Rep. LeMahieu's office) -
We should provide access to this draft to Sen.
Tiffany's office.

RET

Sen. Tiffany is nice the requester.



State of Wisconsin
2013 - 2014 LEGISLATURE

Mon (9/16)

3149/1
LRB-1377/2
RCT/MES/ARG:wlj:wj
stays

2013 BILL

only change on
p. 10

please
repeal

1 AN ACT *to repeal* 285.11 (3), 285.73 and 285.75; *to renumber* 295.14 (1); *to*
2 *renumber and amend* 59.69 (10) (ab), 60.61 (5) (ab) and 62.23 (7) (ab); *to*
3 *amend* 84.06 (12) (b) (intro.), 85.193 (2) (intro.), 86.02 and 349.16 (1) (c); and
4 *to create* 59.69 (10) (ab) 1., 59.69 (10) (as), 60.61 (5) (ab) 1., 60.61 (5) (as), 62.23
5 (7) (ab) 1., 62.23 (7) (hs), 66.0416, 101.15 (2) (g), 281.125, 285.72, 295.12 (2) (e),
6 295.13 (1) (b), 295.14 (1) (b) and 349.03 (2r) of the statutes; **relating to:** local
7 regulation of nonmetallic mining; local regulation of air quality; local
8 regulation of water quality; local regulation of the use of explosives in mining,
9 quarrying, and related activities; highway use contracts by local governments;
10 and local regulation of borrow sites and material disposal sites for
11 transportation projects of the Department of Transportation.

Analysis by the Legislative Reference Bureau

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 material disposal sites related to transportation projects of the Department of Transportation (DOT); and local governmental

BILL

authority to regulate nonmetallic mining. Nonmetallic mining is extracting nonmetallic materials, such as stone, gravel, clay, and sand.

Local regulation of nonmetallic mining

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 that 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.

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 Valley was authorized to exercise village powers, its zoning ordinances must be approved by the 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 Valley's ordinance was a valid exercise of its police power, was not a zoning ordinance, and did not require county board approval.

BILL

This bill limits the authority of a political subdivision or limited town to regulate nonmetallic mining. Under the bill, a political subdivision or limited town may not, other than through a zoning ordinance or a nonmetallic mining reclamation ordinance, enact or enforce an ordinance that applies to nonmetallic mining, including a licensing ordinance, that regulates how a use of land takes place or affects the use of land.

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 on 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. Apps. 1999).

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.

This bill prohibits a county, city, village, or town from enacting or enforcing a nonmetallic mining reclamation 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

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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 DNR approves the program. 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, except that the bill authorizes these local governments to regulate blasting schedules by the issuance of a conditional use permit.

Damage to highways and highway use contracts

Under current law, any person who injures a highway is liable in treble damages to the political division with maintenance jurisdiction over the highway.

This bill limits this liability to damage that is caused willfully or that results from an unlawful act.

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. 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 a highway user under the jurisdiction of the

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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, a political subdivision may not enact or enforce any ordinance, resolution, or other requirement, including a zoning ordinance, that applies 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.

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

- 1 **SECTION 1.** 59.69 (10) (ab) of the statutes is renumbered 59.69 (10) (ab) (intro.)
- 2 and amended to read:
- 3 **59.69 (10) (ab) (intro.)** In this subsection "~~nonconforming~~:"

BILL

1 2. “Nonconforming use” means a use of land, a dwelling, or a building that
2 existed lawfully before the current zoning ordinance was enacted or amended, but
3 that does not conform with the use restrictions in the current ordinance.

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

5 59.69 (10) (ab) 1. “Nonconforming nonmetallic mining location” means land on
6 which nonmetallic mining was occurring when nonmetallic mining became a
7 nonconforming use, including land that is contiguous to such land if the contiguous
8 land is under the common ownership or control of the person who owns or controls
9 the land on which the mining was occurring, and includes leasehold interests,
10 without regard to whether private roads or waterways run through the land.

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

12 59.69 (10) (as) An ordinance enacted under this section may not prohibit the
13 continued extraction of a nonmetallic mineral from a nonconforming nonmetallic
14 mining location. Such continued extraction from such a location shall be considered
15 an existing use, may not be considered an expansion of a nonconforming use, and
16 may not be prohibited in areas of the nonconforming nonmetallic mining location
17 that have not previously been under actual excavation.

18 **SECTION 4.** 60.61 (5) (ab) of the statutes is renumbered 60.61 (5) (ab) (intro.)
19 and amended to read:

20 60.61 (5) (ab) (intro.) In this subsection ~~“nonconforming:~~

21 2. “Nonconforming use” means a use of land, a dwelling, or a building that
22 existed lawfully before the current zoning ordinance was enacted or amended, but
23 that does not conform with the use restrictions in the current ordinance.

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

BILL

1 60.61 (5) (ab) 1. “Nonconforming nonmetallic mining location” means land on
2 which nonmetallic mining was occurring when nonmetallic mining became a
3 nonconforming use, including land that is contiguous to such land if the contiguous
4 land is under the common ownership or control of the person who owns or controls
5 the land on which the mining was occurring, and includes leasehold interests,
6 without regard to whether private roads or waterways run through the land.

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

8 60.61 (5) (as) An ordinance enacted under this section may not prohibit the
9 continued extraction of a nonmetallic mineral from a nonconforming nonmetallic
10 mining location. Such continued extraction from such a location shall be considered
11 an existing use, may not be considered an expansion of a nonconforming use, and
12 may not be prohibited in areas of the nonconforming nonmetallic mining location
13 that have not previously been under actual excavation.

14 **SECTION 7.** 62.23 (7) (ab) of the statutes is renumbered 62.23 (7) (ab) (intro.)
15 and amended to read:

16 62.23 (7) (ab) *Definition Definitions.* (intro.) In this subsection
17 “~~nonconforming~~;

18 2. “Nonconforming use” means a use of land, a dwelling, or a building that
19 existed lawfully before the current zoning ordinance was enacted or amended, but
20 that does not conform with the use restrictions in the current ordinance.

21 **SECTION 8.** 62.23 (7) (ab) 1. of the statutes is created to read:

22 62.23 (7) (ab) 1. “Nonconforming nonmetallic mining location” means land on
23 which nonmetallic mining was occurring when nonmetallic mining became a
24 nonconforming use, including land that is contiguous to such land if the contiguous
25 land is under the common ownership or control of the person who owns or controls

BILL

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

3 **SECTION 9.** 62.23 (7) (hs) of the statutes is created to read:

4 62.23 (7) (hs) *Nonmetallic mining.* An ordinance enacted under this subsection
5 may not prohibit the continued extraction of a nonmetallic mineral from a
6 nonconforming nonmetallic mining location. Such continued extraction from such
7 a location shall be considered an existing use, may not be considered an expansion
8 of a nonconforming use, and may not be prohibited in areas of the nonconforming
9 nonmetallic mining locations that have not previously been under actual excavation.

10 **SECTION 10.** 66.0416 of the statutes is created to read:

11 **66.0416 Local regulation of nonmetallic mining. (1) DEFINITIONS.** In this
12 section:

13 (a) “Nonmetallic mining” has the meaning given in s. 295.11 (3).

14 (b) “Political subdivision” means a city, village, town, or county.

15 (c) “Zoning ordinance” means an ordinance enacted or amended by a political
16 subdivision under s. 59.69 (4), 60.61 (2), 60.62 (1), 61.35, or 62.23 (7) (am).

17 **(2) LIMITATIONS ON REGULATION.** Except for a nonmetallic mining reclamation
18 ordinance as described in ss. 295.13 and 295.14 or a zoning ordinance, a political
19 subdivision may not enact or enforce an ordinance applicable to nonmetallic mining,
20 including a licensing ordinance, that regulates how a use of land takes place or
21 affects the use of land.

22 **SECTION 11.** 84.06 (12) (b) (intro.) of the statutes is amended to read:

23 84.06 (12) (b) (intro.) No political subdivision may enact or enforce any
24 ordinance, resolution, or other requirement, including a zoning ordinance enacted

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1 under s. 59.69, 60.61, 60.62, 61.35, or 62.23 ~~may apply, that applies~~ to a borrow site
2 if all of the following apply:

3 **SECTION 12.** 85.193 (2) (intro.) of the statutes is amended to read:

4 85.193 (2) EXEMPTION FROM LOCAL ZONING REQUIREMENTS. (intro.) No political
5 subdivision may enact or enforce any ordinance, resolution, or other requirement,
6 including a zoning ordinance enacted under s. 59.69, 60.61, 60.62, 61.35, or 62.23
7 may apply, that applies to a borrow site or material disposal site if all of the following
8 apply:

9 **SECTION 13.** 86.02 of the statutes is amended to read:

10 **86.02 Injury to highway.** Any person who shall injure any highway by
11 obstructing or diverting any creek or watercourse or sluiceway, or by dragging logs
12 or timber thereon, or by any other act, shall be liable in treble damages, to be
13 recovered by the political division chargeable with the maintenance of highway
14 injured, and the amount recovered shall be credited to the highway maintenance
15 fund. This section does not apply to damage caused by a vehicle when the vehicle is
16 being operated under a contract described in s. 349.03 (2r) (c). This section applies
17 only to damage that is caused willfully or that results from an unlawful act.

18 **SECTION 14.** 101.15 (2) (g) of the statutes is created to read:

19 101.15 (2) (g) 1. Except as provided in subd. 2., no city, village, town, or county
20 may enact or enforce an ordinance or other regulation governing the use of explosives
21 in connection with an activity regulated by the department under this section.

22 2. A city, village, town, or county may regulate blasting schedules by the
23 issuance of a conditional use permit.

24 **SECTION 15.** 281.125 of the statutes is created to read:

BILL

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

- 3 (a) Establish or enforce a standard of water quality.
- 4 (b) Issue permits, including permits for discharges to the waters of the state,
- 5 or any other form of approval related to water quality or quantity.
- 6 (c) Impose any restriction related to water quality or quantity.
- 7 (d) Impose any requirement related to monitoring water quality or quantity.

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

10 (b) A municipality may not use s. 59.03 (2) (a), 59.54 (6), 60.10 (2) (c), 61.34, or
11 62.11 (5) as the basis for taking an action under par. (a).

12 **SECTION 16.** 285.11 (3) of the statutes is repealed.

13 **SECTION 17.** 285.72 of the statutes is created to read:

14 **285.72 Limitation on local authority.** (1) Except as provided in sub. (2) (a),
15 a municipality may not do any of the following:

- 16 (a) Establish or enforce an ambient air quality standard, standard of
- 17 performance for new stationary sources, or other emission limitation related to air
- 18 quality.
- 19 (b) Issue permits or any other form of approval related to air quality.
- 20 (c) Impose any restriction related to air quality.
- 21 (d) Impose any requirement related to monitoring air quality.

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

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

25 2. Regulate open burning.

BILL

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

3 **SECTION 18.** 285.73 of the statutes is repealed.

4 **SECTION 19.** 285.75 of the statutes is repealed.

5 **SECTION 20.** 295.12 (2) (e) of the statutes is created to read:

6 295.12 (2) (e) The department may not establish nonmetallic mining
7 reclamation standards under sub. (1) (a) relating to water quality or quantity or air
8 quality that are more restrictive than chs. 160, 280, 281, 283, or 285 or rules
9 promulgated under those chapters.

10 **SECTION 21.** 295.13 (1) (b) of the statutes is created to read:

11 295.13 (1) (b) *Restrictions on ordinances.* A county may not enact or enforce
12 provisions in an ordinance under par. (a) that do any of the following:

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

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

16 3. Impose any requirement related to monitoring water quality or quantity or
17 air quality.

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

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

22 **SECTION 22.** 295.14 (1) of the statutes is renumbered 295.14 (1) (a).

23 **SECTION 23.** 295.14 (1) (b) of the statutes is created to read:

24 295.14 (1) (b) A city, village, or town may not enact or enforce provisions in an
25 ordinance under par. (a) that do any of the following:

BILL

- 1 1. Specify a standard of water quality or air quality.
- 2 2. Require an operator to obtain a permit or other form of approval in addition
- 3 to a nonmetallic mining reclamation permit.
- 4 3. Impose any requirement related to monitoring water quality or quantity or
- 5 air quality.
- 6 4. With respect to water quality or quantity or air quality, are more restrictive
- 7 than the standards under s. 295.12 (1) (a).
- 8 5. With respect to water quality or quantity or air quality, are more restrictive
- 9 than chs. 160, 280, 281, 283, or 285 and rules promulgated under those chapters.
- 10 **SECTION 24.** 349.03 (2r) of the statutes is created to read:
- 11 349.03 (2r) (a) In this subsection, “governmental unit” means a county, city,
- 12 village, or town.
- 13 (b) Except as provided in pars. (c) to (e), a governmental unit may not impose
- 14 any fee or other charge on a highway user under the jurisdiction of the governmental
- 15 unit.
- 16 (c) A governmental unit may enter into a contract with a highway user that
- 17 requires the highway user to reimburse the governmental unit for the cost of repairs
- 18 to a highway necessitated by actual damage to the highway caused by the highway
- 19 user if the contract includes all of the following requirements:
- 20 1. The repairs to the highway are completed before reimbursement is required
- 21 by the highway user.
- 22 2. The proportion of damages to the highway caused specifically by the
- 23 highway user and the cost of repairs attributable to that share of damages is
- 24 determined by an engineer chosen by agreement of the governmental unit and the
- 25 highway user.

BILL

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

3 (d) 1. Subject to subd. 2., a contract under par. (c) may require that a highway
4 user show proof of financial security sufficient to pay for the cost of repairs to a
5 highway necessitated by actual damage to the highway specifically caused by the
6 highway user.

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

9 a. The proof of financial security may not be required to be in an amount
10 greater than the reasonable expected payments for damages expected to be caused
11 during the 3 years following the date the amount of the financial security is
12 determined.

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

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

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

22 3. Proof of financial security under this paragraph may be provided in any form
23 allowed under s. 295.12 (3) (g) or rules promulgated under that provision.

BILL

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

4 (f) A highway user that is a party to a highway use contract with a
5 governmental unit that was executed before, and in effect on, the effective date of this
6 paragraph ... [LRB inserts date], and that is inconsistent with the requirements of
7 this subsection, may petition the governmental unit to modify the existing highway
8 use contract, or replace it with a new contract, at any point during the remaining
9 term of the existing contract. Upon receiving this petition, the governmental unit
10 shall participate in good faith in modifying the existing contract or negotiating a new
11 replacement contract. Upon execution of a modification of the existing contract, any
12 inconsistent obligations of the governmental unit and the highway user under the
13 existing contract terminate. Upon execution of a new replacement contract, the
14 obligations of the governmental unit and the highway user under the existing
15 contract terminate.

16 **SECTION 25.** 349.16 (1) (c) of the statutes is amended to read:

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

25 (END)

Parisi, Lori

From: Esser, Jennifer
Sent: Wednesday, October 09, 2013 3:33 PM
To: LRB.Legal
Subject: Draft Review: LRB -3146/1 Topic: Local regulation of nonmetallic mining, wastewater discharges, and air quality

Please Jacket LRB -3146/1 for the SENATE.