

From: Konopacki, Larry
Sent: Wednesday, February 05, 2014 5:52 PM
To: Shovers, Marc; Tradewell, Becky
Cc: Henning, Anna
Subject: RE: Draft review: LRB -4072/P3 Topic: Nonmetallic mining, diminishing asset rule

Hello Marc and Becky,

Would you please make the attached changes to LRB 4072/P3 for a /1 draft for Senator Tiffany as soon as possible? He hopes to introduce the bill tomorrow (Thursday).

Thanks,
Larry

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Wisconsin Legislative Council
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larry.konopacki@legis.wisconsin.gov

From: Tradewell, Becky
Sent: Thursday, February 06, 2014 1:17 PM
To: Konopacki, Larry
Subject: -4072

1. I think that the proposed changes to s. 59.69 (10) (as) (and the parallel provisions) may have a broader effect than is intended.

Current law prohibits a zoning ordinance from prohibiting the continuance of a use of property for which the property is lawfully used when the ordinance is enacted. That is, if a new zoning ordinance prohibits a use or a zoning ordinance is amended to prohibit a previously authorized use in a district, the prohibition does not apply to properties in that district on which that use is already lawfully occurring.

Similarly, under the /P3, if a new zoning ordinance prohibits nonmetallic mining in a district or a zoning ordinance is amended to prohibit previously authorized nonmetallic mining in a district, the prohibition does not apply to properties (defined to include all properties under common ownership or control) in that district on which nonmetallic mining is already occurring.

Under the proposed language, if a new zoning ordinance prohibits nonmetallic mining in a district or a zoning ordinance is amended to prohibit previously authorized nonmetallic mining in a district, the zoning ordinance may not apply to or affect the nonmetallic mining on a property (defined in that way) in that district on which nonmetallic mining is

already occurring. Also, nonmetallic mining may not be regulated under the zoning ordinance in areas of the property that have not previously been mined.

Now, consider the situation in which a county zoning ordinance provides that nonmetallic mining is a conditional use in a category of district (say commercial) and then decides to prohibit mining in that district. In the original ordinance there are conditions on the nonmetallic mining in the district (for which a conditional use permit is granted), for example, a requirement that excavations be set back from the street. Under the new language, the **zoning ordinance** may not apply to or affect the nonmetallic mining on a property in the district on which nonmetallic mining is already occurring and nonmetallic mining may not be regulated under the **zoning ordinance** in areas or the property that have not been previously been mined. The setback requirement (and all other requirements) in the ordinance that applied to the nonmetallic mining under the zoning ordinance before it was changed would not apply to nonmetallic mining on the property after it became a nonconforming use.

Whereas, for all other uses, the zoning ordinance may not prohibit the preexisting legal use, under the proposed language nothing in the county's zoning ordinance may apply to or affect the nonmetallic mining on a nonconforming property.

2. What is "lawfully existing use" intended to mean on page 6, lines 15 and 17?

It looks to me as though proposed s. 66.0416 (2) (a) is intended to apply to all ordinances, including those that are generally applicable and just happen to affect nonmetallic mining. Is that correct?

The proposed language for s. 66.0416 (2) (a) would say (in part) that if a political subdivision amends an ordinance that affects nonmetallic mining, the **ordinance** may not affect the nonmetallic mining at a nonmetallic mining location where mining is occurring on the effective date of the ordinance (I assume this means the effective date of the amendment). This seems to be similar to the discussion in point 1. Is the intent that the changes don't apply but that the un-amended version of the ordinance would still apply?

Even if that is so, what if the political subdivision amends an ordinance in a way that would be favorable to the nonmetallic mining? The language provides that the amendment "may not apply."

From: Konopacki, Larry
Sent: Thursday, February 06, 2014 3:56 PM
To: Tradewell, Becky
Subject: RE: -4072

Hi Becky, thanks for the thoughtful analysis and for waiting for my answers. Please see my comments below.....

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From: Tradewell, Becky
Sent: Thursday, February 06, 2014 1:17 PM
To: Konopacki, Larry
Subject: -4072

1. I think that the proposed changes to s. 59.69 (10) (as) (and the parallel provisions) may have a broader effect than is intended.

Current law prohibits a zoning ordinance from prohibiting the continuance of a use of property for which the property is lawfully used when the ordinance is enacted. That is, if a new zoning ordinance prohibits a use or a zoning ordinance is amended to prohibit a previously authorized use in a district, the prohibition does not apply to properties in that district on which that use is already lawfully occurring.

Similarly, under the /P3, if a new zoning ordinance prohibits nonmetallic mining in a district or a zoning ordinance is amended to prohibit previously authorized nonmetallic mining in a district, the prohibition does not apply to properties (defined to include all properties under common ownership or control) in that district on which nonmetallic mining is already occurring.

Under the proposed language, if a new zoning ordinance prohibits nonmetallic mining in a district or a zoning ordinance is amended to prohibit previously authorized nonmetallic mining in a district, the zoning ordinance may not apply to or affect the nonmetallic mining on a property (defined in that way) in that district on which nonmetallic mining is already occurring. Also, nonmetallic mining may not be regulated under the zoning ordinance in areas of the property that have not previously been mined.

Now, consider the situation in which a county zoning ordinance provides that nonmetallic mining is a conditional use in a category of district (say commercial) and then decides to prohibit mining in that district. In the original ordinance there are

conditions on the nonmetallic mining in the district (for which a conditional use permit is granted), for example, a requirement that excavations be set back from the street. Under the new language, the **zoning ordinance** may not apply to or affect the nonmetallic mining on a property in the district on which nonmetallic mining is already occurring and nonmetallic mining may not be regulated under the **zoning ordinance** in areas or the property that have not been previously been mined. The setback requirement (and all other requirements) in the ordinance that applied to the nonmetallic mining under the zoning ordinance before it was change, would not apply to nonmetallic mining on the property after it became a nonconforming use.

Whereas, for all other uses, the zoning ordinance may not prohibit the preexisting legal use, under the proposed language nothing in the county's zoning ordinance may apply to or affect the nonmetallic mining on a nonconforming property.

Larry's answer → The intent is to prohibit the application of new provisions enacted or created by amendment.

2. What is "lawfully existing use" intended to mean on page 6, lines 15 and 17?

It looks to me as though proposed s. 66.0416 (2) (a) is intended to apply to all ordinances, including those that are generally applicable and just happen to affect nonmetallic mining. Is that correct? Yes, that is the way that I understand the intent, *yes.*

Larry's answer

The proposed language for s. 66.0416 (2) (a) would say (in part) that if a political subdivision amends an ordinance that affects nonmetallic mining, the **ordinance** may not affect the nonmetallic mining at a nonmetallic mining location where mining is occurring on the effective date of the ordinance (I assume this means the effective date of the amendment). This seems to be similar to the discussion in point 1. Is the intent that the changes don't apply but that the un-amended version of the ordinance would still apply? Yes. *← Larry's answer*

Even if that is so, what if the political subdivision amends an ordinance in a way that would be favorable to the nonmetallic mining? The language provides that the amendment "may not apply."

Larry's answer → I talked to the Senator's staff, and they would like us to modify this request (and the other similar provisions) to provide that the application of new provisions enacted or created by amendment after a nonmetallic mining use is in existence do not apply to the extent that they are more restrictive or impose new restrictions.

From: Tradewell, Becky
Sent: Thursday, February 06, 2014 4:03 PM
To: Konopacki, Larry
Subject: RE: -4072

Thanks.
But what about this one:

What is "lawfully existing use" intended to mean on page 6, lines 15 and 17?

In other words, what substantive change is intended by using those words?

Becky

From: Konopacki, Larry
Sent: Thursday, February 06, 2014 4:23 PM
To: Tradewell, Becky
Subject: RE: -4072

My understanding is that they intend to avoid a potential argument under the /P3 that if the operator wasn't working in the nonmetallic mining operation on the particular day that an ordinance or ordinance change went into effect, that the operation wasn't "occurring" on that date.

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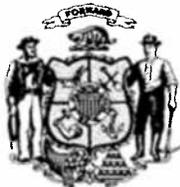
From: Tradewell, Becky
Sent: Thursday, February 06, 2014 4:57 PM
To: Konopacki, Larry
Subject: RE: -4072

So is the idea that we are talking about land on which nonmetallic mining was lawfully conducted at any time during the 12 months before the ordinance was enacted or amended, and contiguous land under common ownership? (It seems that this would be difficult to convey in the definition.) It seems that the language on page 6, line 25, and page 7, line 1, about extraction occurring on the effective date of the ordinance would need to be changed, too.

From: Konopacki, Larry
Sent: Thursday, February 06, 2014 4:59 PM
To: Tradewell, Becky
Subject: RE: -4072

Senator Tiffany does not want to also make those changes to page 6, line 25, and page 7, line 1.

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~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

today

D-note

Regen

1 AN ACT *to renumber and amend* 59.69 (10) (ab), 60.61 (5) (ab), 62.23 (7) (ab)
2 and 295.20 (2) (a); *to amend* 295.20 (1) (a) 2., 295.20 (2) (title), 295.20 (2) (b)
3 and 295.20 (3) (a); and *to create* 59.69 (10) (ab) 1., 59.69 (10) (as), 60.61 (5) (ab)
4 1., 60.61 (5) (as), 62.23 (7) (ab) 1., 62.23 (7) (hs), 66.0416 and 295.20 (2) (a) 2. of
5 the statutes; **relating to:** local regulation of nonmetallic mining and
6 preservation of marketable nonmetallic mineral deposits.

subsub

Zoning Analysis by the Legislative Reference Bureau

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.

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 ~~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), ~~and further limits a political subdivision's or limited town's authority to enact an ordinance that applies to or affects~~

Also under this bill, if a political subdivision enacts an ordinance, other than a zoning ordinance, that applies to or affects nonmetallic mining, the diminishing assets rule applies to such an ordinance in areas where extraction ~~is occurring on the~~ effective date of the local ordinance. In addition, if a political subdivision enacts or amends an ordinance, other than a zoning ordinance, ~~that applies to or affects nonmetallic mining~~, the ordinance may not apply to or affect an existing off-site nonmetallic mineral processing facility or an existing off-site transportation facility that is related to nonmetallic mining, and the ordinance may not affect or apply to

Subsub
Diminishing
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Nonmetallic
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an NMMML
The bill defines
an NMMML

or limited
affects
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at any time during the 365
days before the

Sub sub Registered nonmetallic mineral deposits

an activity other than nonmetallic mining. The bill does not affect a political subdivision's ability to exercise any current law authority to enact any ordinance unrelated to nonmetallic mining ^{to the extent that such an ordinance has no regulative effect on nonmetallic mining}

Current law authorizes a person who owns land that has a marketable nonmetallic mineral deposit to register the land if nonmetallic mining is a permitted or conditional use under any zoning that is in effect on the day on which the person begins the registration process. A registration is valid for ten years and may generally be renewed for ten-year periods. Under current law, a political subdivision, through zoning or rezoning, granting a variance, or other official action or inaction, may generally not do either of the following:

1. Permit the erection of a building on registered land in a manner that would permanently interfere with the extraction of the nonmetallic mineral deposit.
2. Otherwise permit the use of registered land in a manner that would permanently interfere with the extraction of the nonmetallic mineral deposit.

The law authorizes a political subdivision to change the zoning of land that is registered if mining has not begun on any portion of the land and the zoning change is necessary to implement a land use plan that had been in effect for at least one year. The law also does not prohibit a use of land that is permissible under a zoning ordinance in effect before the land is registered.

Under this bill, a political subdivision, through the currently specified means or through enactment of an ordinance that is not a zoning ordinance, may generally not do any of the following:

1. Permit the erection of a building on registered land in a manner that would permanently interfere with the extraction of the nonmetallic mineral deposit.
2. Otherwise permit the use of registered land in a manner that would permanently interfere with the extraction of the nonmetallic mineral deposit.
3. Prevent the extraction of the nonmetallic mineral deposit that is located on registered land.

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

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SECTION 2

that became effective after nonmetallic mineral extraction began at a nonmetallic mining location, which is more restrictive than the requirements of any ordinance in effect at the time nonmetallic mineral extraction began, or that imposes a new restriction,

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

2 59.69 (10) (ab) 1. "Nonconforming nonmetallic mining location" means land on
3 which nonmetallic mining was occurring) ^{at any time during the 365 days before} when nonmetallic mining became a
4 nonconforming use, including land that is contiguous to such land if the contiguous
5 land is under the common ownership or control of the person who owns or controls
6 the land on which the mining was occurring, and includes leasehold interests,
7 without regard to whether ^{public or} private roads or waterways run through the land.

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

9 59.69 (10) (as) An ordinance enacted under this section may not ^{apply to or affect} ~~prohibit~~ the
10 continued extraction of a nonmetallic mineral from a nonconforming nonmetallic
11 mining location. Such continued extraction from such a location shall be considered
12 an existing use ^{and} may not be considered an expansion of a nonconforming use ~~and~~
13 ~~may not be prohibited in areas of the nonconforming nonmetallic mining location~~
14 ~~that have not previously been under actual excavation.~~ (K)

15 SECTION 4. 60.61 (5) (ab) of the statutes is renumbered 60.61 (5) (ab) (intro.)
16 and amended to read:

17 60.61 (5) (ab) (intro.) In this subsection "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 5. 60.61 (5) (ab) 1. of the statutes is created to read:

22 60.61 (5) (ab) 1. "Nonconforming nonmetallic mining location" means land on
23 which nonmetallic mining was occurring) ^{at any time during the 365 days before} 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 ^{public or} private roads or waterways run through the land.

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

4 60.61 (5) (as) An ordinance enacted under this section may not ~~prohibit~~ ^{the} ~~the~~ ^{it apply to} the
5 continued extraction of a nonmetallic mineral from a nonconforming nonmetallic ^{or} affect
6 mining location. Such continued extraction from such a location shall be considered
7 an existing use ^{and} may not be considered an expansion of a nonconforming use ~~and~~
8 ~~may not be prohibited in areas of the nonconforming nonmetallic mining location~~
9 ~~that have not previously been under actual excavation.~~

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

11 and amended to read:

12 62.23 (7) (ab) ~~Definition~~ Definitions. (intro.) In this subsection
13 “nonconforming:

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

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

18 62.23 (7) (ab) 1. “Nonconforming nonmetallic mining location” means land on
19 which nonmetallic mining was occurring ^{at any time during the 365 days before} ~~when~~ nonmetallic mining became a
20 nonconforming use, including land that is contiguous to such land if the contiguous
21 land is under the common ownership or control of the person who owns or controls
22 the land on which the mining was occurring, and includes leasehold interests,
23 without regard to whether ^{public or} private roads or waterways run through the land.

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

INS 2
from p. 4

1 62.23 (7) (hs) *Nonmetallic mining*. An ordinance enacted under this subsection
2 may not ~~prohibit~~ *apply to or affect* the continued extraction of a nonmetallic mineral from a
3 nonconforming nonmetallic mining location. Such continued extraction from such
4 a location shall be considered an existing use *and* may not be considered an expansion
5 of a nonconforming use *and* may not be prohibited in areas of the nonconforming
6 ~~nonmetallic mining locations that have not previously been under actual excavation.~~ ①

7 SECTION 10. 66.0416 of the statutes is created *and related activities* to read:

8 **66.0416 Local regulation of nonmetallic mining.** (1) DEFINITIONS. In this
9 section:

10 (a) "Approval" means a permit, license, or other authorization, from a political
11 subdivision, for building or for any other activity related to the transportation of
12 nonmetallic minerals or the processing of nonmetallic minerals.

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

14 (c) "Nonmetallic mining location" means land on which nonmetallic mining is
15 occurring, including land that is contiguous to such land if the contiguous land is
16 under the common ownership or control of the person who owns or controls the land
17 on which the mining is occurring, and includes leasehold interests, without regard
18 to whether private roads or waterways run through the land.

19 (d) "Political subdivision" means a city, village, town, or county.

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

22 (2) LIMITATIONS ON REGULATION. (a) If a political subdivision enacts *or amends* an
23 ordinance, other than a zoning ordinance, that applies to or affects nonmetallic
24 mining, the ordinance may not ~~prohibit~~ *apply to or affect* the continued extraction of a nonmetallic
25 mineral from a nonmetallic mining location where extraction ~~is~~ *was* occurring ~~at~~ the

at any time during the 365 days before

1 effective date of the political subdivision's ordinance. Such continued extraction
2 from such a location shall be considered an existing use, and may not be ~~prohibited~~
3 ~~in areas of the nonmetallic mining locations that have not previously been under~~
4 ~~actual excavation.~~ *considered an expansion of a nonconforming use*

5 (b) 1. Subject to subd. 2., if a political subdivision enacts or amends an
6 ordinance, other than a zoning ordinance, ~~that applies to or affects nonmetallic~~
7 ~~mining~~, the ordinance may not apply to or affect any of the following:

8 a. An existing off-site nonmetallic mineral processing facility.

9 b. An existing off-site transportation facility that is related to nonmetallic
10 mining.

11 2. For purposes of subd. 1., an existing facility includes a facility for which a
12 person has submitted an application for an approval or, if an approval is not required,
13 a facility for which construction activities have commenced before the effective date
14 of an ordinance which would otherwise apply to the facility.

15 (c) If a political subdivision enacts an ordinance ~~described in paragraph (b)~~
16 specifically regulates nonmetallic mining, that ~~nonmetallic mining~~ ordinance may
17 not affect or apply to any activity other than nonmetallic mining.

18 **SECTION 11.** 295.20 (1) (a) 2. of the statutes is amended to read:

19 295.20 (1) (a) 2. The landowner notifies each county, city, village and town that
20 has authority to zone the land or in which the land is located of his or her intent to
21 register the marketable nonmetallic mineral deposit. The notification shall include
22 the evidence required under subd. 1.

23 **SECTION 12.** 295.20 (2) (title) of the statutes is amended to read:

24 295.20 (2) (title) LIMITATION ON ZONING LOCAL REGULATION.

Insert AG
7-17 A
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7-17 B

1 **SECTION 13.** 295.20 (2) (a) of the statutes is renumbered 295.20 (2) (a) (intro.)
2 and amended to read:

3 295.20 (2) (a) (intro.) A county, city, village or town may not by zoning, rezoning,
4 granting a variance, enacting an ordinance other than a zoning ordinance, or other
5 official action or inaction, ~~permit~~ do any of the following:

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

10 **SECTION 14.** 295.20 (2) (a) 2. of the statutes is created to read:

11 295.20 (2) (a) 2. Prevent the extraction of the nonmetallic mineral deposit that
12 is located on land while a registration under this section is in effect for that land.

13 **SECTION 15.** 295.20 (2) (b) of the statutes is amended to read:

14 295.20 (2) (b) 1. A county, city, village or town may enact an ordinance ~~changing~~
15 ~~the zoning of~~ that would otherwise be prohibited under par. (a) with respect to land
16 that is registered under this section if mining has not begun on any portion of the
17 registered land and the ordinance is necessary to implement a master plan,
18 comprehensive plan or land use plan that was adopted at least one year before the
19 ~~rezoning~~ enactment of the ordinance.

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

24 3. ~~A zoning change~~ An ordinance authorized by subd. 1. prevents the
25 registration of the land after the period under subd. 2.

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4072/lins
MES&RCT:kjf:jm

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that became effective after nonmetallic mineral extraction began at a nonmetallic mining location (NMML), and which is more restrictive than the requirements of any ordinance that ~~s~~^{was} in effect at the time nonmetallic mineral extraction began, or that imposes a new restriction, may not apply to or affect

INS ANL-Y

The bill specifies that such continued extraction from an NMML is considered an existing use and may not be considered an expansion of a nonconforming use.

SENATE BILL 349

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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

Department of Transportation

insert ARG
ANAL
A

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:

SENATE BILL 349

SECTION 8

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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SENATE BILL 349

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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:

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

85.193 (2) EXEMPTION FROM LOCAL ZONING REQUIREMENTS. (intro.) No political subdivision may enact or enforce any ordinance, resolution, or other requirement, 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 recovered by the political division chargeable with the maintenance of highway injured, and the amount recovered shall be credited to the highway maintenance fund. This section does not apply to damage caused by a vehicle when the vehicle is being operated under a contract described in s. 349.03 (2r) (c). This section applies only to damage that is caused willfully or that results from an unlawful act.~~

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

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

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

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

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(no P) The bill also requires DOT or its contractor to give notice to each county and municipality in which a borrow site or material disposal site is located that the borrow site or material disposal site has been established.

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SECTION 1. 85.193 (3) of the statutes is created to read:

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85.193 (3) NOTICE TO POLITICAL SUBDIVISIONS. Prior to the commencement of any

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work at a borrow site or material disposal site, the department shall give notice to

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each political subdivision in which the borrow site or material disposal site is located

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that the borrow site or material disposal site has been established. In lieu of giving

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notice directly, the department may require the transportation project contractor for

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the transportation project to give the notice required under this subsection.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4072/1dn
MES&RC:kjf:jm

Date

Senator Tiffany:

Please review this version of the bill very carefully to ensure that it is consistent with your intent. By changing the word "prohibit" in several places to "apply to or affect" (see, for example, created s. 59.69 (1) (as)) the scope of the bill is much broader than the /P3 version in that the bill now limits local action in a greater area. In addition, by removing the phrase "that applies to or affects nonmetallic mining" from created s. 66.0416 (2) (b) 1., it seems that the limitations on political subdivisions may have unintended consequences by broadening the effect of the bill to limit local actions that are not necessarily related to nonmetallic mining.

As drafted in this version of the bill, by removing the phrase "that applies to or affects nonmetallic mining" from created s. 66.0416 (2) (b) 1., this subdivision states that if a political subdivision enacts or amends an ordinance, other than a zoning ordinance, the ordinance may not apply to or affect an existing off-site transportation facility that is related to nonmetallic mining. If such a facility has uses that are both related to nonmetallic mining and completely unrelated to nonmetallic mining, the bill may be interpreted to now provide that a political subdivision may not enact or amend an ordinance that applies to or affects that part of the facility which has no relationship to nonmetallic mining. If this is not your intent, please let me know and the bill may be redrafted.

Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov

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

LRB-4072/1dn
MES:kjf:rs

February 11, 2014

Senator Tiffany:

Please review this version of the bill very carefully to ensure that it is consistent with your intent. By changing the word "prohibit" in several places to "apply to or affect" (see, for example, created s. 59.69 (10) (as)) the scope of the bill is much broader than the /P3 version in that the bill now limits local action in a greater area. In addition, by removing the phrase "that applies to or affects nonmetallic mining" from created s. 66.0416 (2) (b) 1., it seems that the limitations on political subdivisions may have unintended consequences, by broadening the effect of the bill to limit local actions that are not necessarily related to nonmetallic mining.

As drafted in this version of the bill, by removing the phrase "that applies to or affects nonmetallic mining" from created s. 66.0416 (2) (b) 1., this subdivision states that if a political subdivision enacts or amends an ordinance, other than a zoning ordinance, the ordinance may not apply to or affect an existing off-site transportation facility that is related to nonmetallic mining. If such a facility has uses that are both related to nonmetallic mining and completely unrelated to nonmetallic mining, the bill may be interpreted to now provide that a political subdivision may not enact or amend an ordinance that applies to or affects that part of the facility which has no relationship to nonmetallic mining. If this is not your intent, please let me know and the bill may be redrafted.

Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov

Shovers, Marc

From: Esser, Jennifer
Sent: Wednesday, February 12, 2014 5:37 PM
To: Shovers, Marc
Cc: Searing, Eric; Williams, Vincent
Subject: FW: Draft review: LRB -4072/1 Topic: Nonmetallic mining, diminishing asset rule

Hi Marc,

Wanted to follow up on the drafter's note plus add some other changes to the 4072/1. Thanks for all your hard work. Please feel free anytime to call me if you have any questions about the intent or anything else when working on the /2.

With respect to the question posed in the Drafter's Note related to 66.0416 (2) (b) 1.: please keep this as it's drafted

Also, it appears that the changes requested to proposed section 66.0416 (1) (c) did not make it into the draft. Those requested changes include replacing the word "occurring" on page 7, lines 17 and 20, with "a lawfully existing use" and adding the words "public or" before "private on page 7, line 20.

For consistency, the authors want to add language similar to what was added to SECTIONS 3, 6, and 9 to proposed s. 66.0416 (2) (a), namely that the restriction imposed only applies to ordinances "that became effective after nonmetallic mineral extraction began at a nonmetallic mining location, and which is more restrictive than the requirements of any ordinance in effect at the time nonmetallic mineral extraction began, or that imposes a new restriction."

Lastly, it appears that the language used in the revised version of proposed s. 6.0416 (2) (c) does not accomplish the author's intent to apply the restriction of this provision to existing ordinances. The recent request was for this provision to read: "(c) An ordinance of a political subdivision that specifically regulates nonmetallic mining may not affect or apply to any activity other than nonmetallic mining."

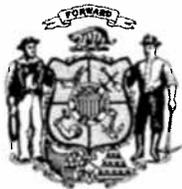
Marc, thanks for all the help on this. We very much appreciate it.

Jen
6-2509

From: LRB.Legal
Sent: Tuesday, February 11, 2014 4:30 PM
To: Esser, Jennifer
Subject: Draft review: LRB -4072/1 Topic: Nonmetallic mining, diminishing asset rule

Draft Requester: Sen. Thomas Tiffany

Following is the PDF version of draft LRB -4072/1 and drafter's note.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-4072/12

MES/RCT/ARG:kjf/wlj:rs

MR

2013 BILL

WANTED:
Fri. a.m.

Today

open

1 AN ACT *to renumber and amend* 59.69 (10) (ab), 60.61 (5) (ab), 62.23 (7) (ab)
2 and 295.20 (2) (a); *to amend* 84.06 (12) (b) (intro.), 85.193 (2) (intro.), 295.20
3 (1) (a) 2., 295.20 (2) (title), 295.20 (2) (b) and 295.20 (3) (a); and *to create* 59.69
4 (10) (ab) 1., 59.69 (10) (as), 60.61 (5) (ab) 1., 60.61 (5) (as), 62.23 (7) (ab) 1., 62.23
5 (7) (hs), 66.0416, 85.193 (3) and 295.20 (2) (a) 2. of the statutes; **relating to:**
6 local regulation of nonmetallic mining and preservation of marketable
7 nonmetallic mineral deposits.

Analysis by the Legislative Reference Bureau

Zoning

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

BILL

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.

Diminishing asset rule

Under the bill, a zoning ordinance enacted by a political subdivision or limited town that became effective after nonmetallic mineral extraction began at a nonmetallic mining location (NMML), and which is more restrictive than the requirements of any ordinance that was in effect at the time nonmetallic mineral extraction began, or that imposes a new restriction, may not apply to or affect the continued extraction of a nonmetallic mineral from an NMML. The bill defines an NMML 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. The bill specifies that such continued extraction from an NMML is considered an existing use and may not be considered an expansion of a nonconforming use. This provision codifies the diminishing asset rule, which has been adopted in a number of decisions of the

BILL

Wisconsin Court of Appeals, including the case of *Schroeder v. Dane County Board of Adjustment*, 228 Wis. 2d 324 (Ct. Apps. 1999), and further limits a political subdivision's or limited town's authority to enact an ordinance that applies to or affects nonmetallic mining.

Nonmetallic mineral mining

Also under this bill, if a political subdivision enacts an ordinance, other than a zoning ordinance, that applies to or affects nonmetallic mining, the diminishing assets rule applies to such an ordinance in areas where extraction was occurring at any time during the 365 days before the effective date of the local ordinance. In addition, if a political subdivision enacts or amends an ordinance, other than a zoning ordinance, the ordinance may not apply to or affect an existing off-site nonmetallic mineral processing facility or an existing off-site transportation facility that is related to nonmetallic mining, and the ordinance may not affect or apply to an activity other than nonmetallic mining. The bill does not affect a political subdivision's ability to exercise any current law authority to enact any ordinance unrelated to nonmetallic mining to the extent that such an ordinance has no regulative effect on nonmetallic mining.

Registered nonmetallic mineral deposits

Current law authorizes a person who owns land that has a marketable nonmetallic mineral deposit to register the land if nonmetallic mining is a permitted or conditional use under any zoning that is in effect on the day on which the person begins the registration process. A registration is valid for ten years and may generally be renewed for ten-year periods. Under current law, a political subdivision, through zoning or rezoning, granting a variance, or other official action or inaction, may generally not do either of the following:

1. Permit the erection of a building on registered land in a manner that would permanently interfere with the extraction of the nonmetallic mineral deposit.
2. Otherwise permit the use of registered land in a manner that would permanently interfere with the extraction of the nonmetallic mineral deposit.

The law authorizes a political subdivision to change the zoning of land that is registered if mining has not begun on any portion of the land and the zoning change is necessary to implement a land use plan that had been in effect for at least one year. The law also does not prohibit a use of land that is permissible under a zoning ordinance in effect before the land is registered.

Under this bill, a political subdivision, through the currently specified means or through enactment of an ordinance that is not a zoning ordinance, may generally not do any of the following:

1. Permit the erection of a building on registered land in a manner that would permanently interfere with the extraction of the nonmetallic mineral deposit.
2. Otherwise permit the use of registered land in a manner that would permanently interfere with the extraction of the nonmetallic mineral deposit.
3. Prevent the extraction of the nonmetallic mineral deposit that is located on registered land.

BILL***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 Department of Transportation (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. The bill also requires DOT or its contractor to give notice to each county and municipality in which a borrow site or material disposal site is located that the borrow site or material disposal site has been established.

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~~”:

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

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

8 59.69 (10) (ab) 1. “Nonconforming nonmetallic mining location” means land on
9 which nonmetallic mining was occurring at any time during the 365 days before
10 nonmetallic mining became a nonconforming use, including land that is contiguous
11 to such land if the contiguous land is under the common ownership or control of the
12 person who owns or controls the land on which the mining was occurring, and

BILL

1 includes leasehold interests, without regard to whether public or private roads or
2 waterways run through the land.

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

4 59.69 (10) (as) An ordinance enacted under this section, that became effective
5 after nonmetallic mineral extraction began at a nonmetallic mining location, and
6 which is more restrictive than the requirements of any ordinance in effect at the time
7 nonmetallic mineral extraction began, or that imposes a new restriction, may not
8 apply to or affect the continued extraction of a nonmetallic mineral from a
9 nonconforming nonmetallic mining location. Such continued extraction from such
10 a location shall be considered an existing use and may not be considered an
11 expansion of a nonconforming use.

12 **SECTION 4.** 60.61 (5) (ab) of the statutes is renumbered 60.61 (5) (ab) (intro.)

13 and amended to read:

14 60.61 (5) (ab) (intro.) In this subsection “~~nonconforming~~”:

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

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

19 60.61 (5) (ab) 1. “Nonconforming nonmetallic mining location” means land on
20 which nonmetallic mining was occurring at any time during the 365 days before
21 nonmetallic mining became a nonconforming use, including land that is contiguous
22 to such land if the contiguous land is under the common ownership or control of the
23 person who owns or controls the land on which the mining was occurring, and
24 includes leasehold interests, without regard to whether public or private roads or
25 waterways run through the land.

BILL**SECTION 6**

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

2 60.61 (5) (as) An ordinance enacted under this section, that became effective
3 after nonmetallic mineral extraction began at a nonmetallic mining location, and
4 which is more restrictive than the requirements of any ordinance in effect at the time
5 nonmetallic mineral extraction began, or that imposes a new restriction, may not
6 apply to or affect the continued extraction of a nonmetallic mineral from a
7 nonconforming nonmetallic mining location. Such continued extraction from such
8 a location shall be considered an existing use and may not be considered an
9 expansion of a nonconforming use.

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

12 62.23 (7) (ab) *Definition Definitions.* (intro.) In this subsection
13 ~~“nonconforming:~~

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

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

18 62.23 (7) (ab) 1. “Nonconforming nonmetallic mining location” means land on
19 which nonmetallic mining was occurring at any time during the 365 days before
20 nonmetallic mining became a nonconforming use, including land that is contiguous
21 to such land if the contiguous land is under the common ownership or control of the
22 person who owns or controls the land on which the mining was occurring, and
23 includes leasehold interests, without regard to whether public or private roads or
24 waterways run through the land.

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

BILL

1 62.23 (7) (hs) *Nonmetallic mining.* An ordinance enacted under this
2 subsection, that became effective after nonmetallic mineral extraction began at a
3 nonmetallic mining location, and which is more restrictive than the requirements of
4 any ordinance in effect at the time nonmetallic mineral extraction began, or that
5 imposes a new restriction, may not apply to or affect the continued extraction of a
6 nonmetallic mineral from a nonconforming nonmetallic mining location. Such
7 continued extraction from such a location shall be considered an existing use and
8 may not be considered an expansion of a nonconforming use.

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

10 **66.0416 Local regulation of nonmetallic mining and related activities.**

11 (1) DEFINITIONS. In this section:

12 (a) “Approval” means a permit, license, or other authorization, from a political
13 subdivision, for building or for any other activity related to the transportation of
14 nonmetallic minerals or the processing of nonmetallic minerals.

15 (b) “Nonmetallic mining” has the meaning given in s. 295.11 (3).

16 (c) “Nonmetallic mining location” means land on which nonmetallic mining is
17 ~~occurring~~ ^{a lawful existing use} including land that is contiguous to such land if the contiguous land is
18 under the common ownership or control of the person who owns or controls the land
19 on which the mining is occurring, and includes leasehold interests, without regard
20 to whether ^{public or} private roads or waterways run through the land.

21 (d) “Political subdivision” means a city, village, town, or county.

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

24 (2) LIMITATIONS ON REGULATION. (a) If a political subdivision enacts or amends
25 an ordinance, other than a zoning ordinance, that applies to or affects nonmetallic

BILL
INS 8-1

1 mining, the ordinance may not apply to or affect the continued extraction of a
2 nonmetallic mineral from a nonmetallic mining location where extraction was
3 occurring at any time during the 365 days before the effective date of the political
4 subdivision's ordinance. Such continued extraction from such a location shall be
5 considered an existing use, and may not be considered an expansion of a
6 nonconforming use.

7 (b) 1. Subject to subd. 2., if a political subdivision enacts or amends an
8 ordinance, other than a zoning ordinance, the ordinance may not apply to or affect
9 any of the following:

10 a. An existing off-site nonmetallic mineral processing facility.

11 b. An existing off-site transportation facility that is related to nonmetallic
12 mining.

13 2. For purposes of subd. 1., an existing facility includes a facility for which a
14 person has submitted an application for an approval or, if an approval is not required,
15 a facility for which construction activities have commenced before the effective date
16 of an ordinance which would otherwise apply to the facility.

17 (c) ~~If~~ a political subdivision ^{'s} ~~enacts an~~ ordinance that specifically regulates
18 nonmetallic mining, that ordinance may not affect or apply to any activity other than
19 nonmetallic mining.

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

21 84.06 (12) (b) (intro.) No political subdivision may enact or enforce any
22 ordinance, resolution, or other requirement, including a zoning ordinance enacted
23 under s. 59.69, 60.61, 60.62, 61.35, or 62.23 may apply, that applies to a borrow site
24 if all of the following apply:

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

BILL

1 85.193 (2) EXEMPTION FROM LOCAL ZONING REQUIREMENTS. (intro.) No political
2 subdivision may enact or enforce any ordinance, resolution, or other requirement,
3 including a zoning ordinance enacted under s. 59.69, 60.61, 60.62, 61.35, or 62.23
4 may apply, that applies to a borrow site or material disposal site if all of the following
5 apply:

6 **SECTION 13.** 85.193 (3) of the statutes is created to read:

7 85.193 (3) NOTICE TO POLITICAL SUBDIVISIONS. Prior to the commencement of any
8 work at a borrow site or material disposal site, the department shall give notice to
9 each political subdivision in which the borrow site or material disposal site is located
10 that the borrow site or material disposal site has been established. In lieu of giving
11 notice directly, the department may require the transportation project contractor for
12 the transportation project to give the notice required under this subsection.

13 **SECTION 14.** 295.20 (1) (a) 2. of the statutes is amended to read:

14 295.20 (1) (a) 2. The landowner notifies each county, city, village and town that
15 has authority to zone the land or in which the land is located of his or her intent to
16 register the marketable nonmetallic mineral deposit. The notification shall include
17 the evidence required under subd. 1.

18 **SECTION 15.** 295.20 (2) (title) of the statutes is amended to read:

19 295.20 (2) (title) LIMITATION ON ZONING LOCAL REGULATION.

20 **SECTION 16.** 295.20 (2) (a) of the statutes is renumbered 295.20 (2) (a) (intro.)
21 and amended to read:

22 295.20 (2) (a) (intro.) A county, city, village or town may not by zoning, rezoning,
23 granting a variance, enacting an ordinance other than a zoning ordinance, or other
24 official action or inaction, permit do any of the following:

BILL**SECTION 16**

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

5 **SECTION 17.** 295.20 (2) (a) 2. of the statutes is created to read:

6 295.20 (2) (a) 2. Prevent the extraction of the nonmetallic mineral deposit that
7 is located on land while a registration under this section is in effect for that land.

8 **SECTION 18.** 295.20 (2) (b) of the statutes is amended to read:

9 295.20 (2) (b) 1. A county, city, village or town may enact an ordinance ~~changing~~
10 ~~the zoning of~~ that would otherwise be prohibited under par. (a) with respect to land
11 that is registered under this section if mining has not begun on any portion of the
12 registered land and the ordinance is necessary to implement a master plan,
13 comprehensive plan or land use plan that was adopted at least one year before the
14 ~~rezoning~~ enactment of the ordinance.

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

19 3. ~~A zoning change~~ An ordinance authorized by subd. 1. prevents the
20 registration of the land after the period under subd. 2.

21 **SECTION 19.** 295.20 (3) (a) of the statutes is amended to read:

22 295.20 (3) (a) A use of land permissible under ~~a zoning~~ an ordinance in effect
23 on the day before a mineral deposit is registered under sub. (1).

24 **SECTION 20. Initial applicability.**

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4072/2ins
MES/RCT/ARG:kjf/wlj:rs

INS 8-1

and that became effective after nonmetallic mineral extraction began at a nonmetallic mining location, and which is more restrictive than the requirements of any ordinance in effect at the time nonmetallic mineral extraction began, or that imposes a new restriction,

Shovers, Marc

From: Esser, Jennifer
Sent: Friday, February 14, 2014 2:48 PM
To: Shovers, Marc
Subject: FW: Draft review: LRB -4072/1 Topic: Nonmetallic mining, diminishing asset rule

Hi Marc,

Looks like one modest change...other than that, all looks great. Many thanks to you.

The second instance of the word "occurring" (on page 7, line 19 of the /2) was not changed to "a lawfully existing use" as you requested below.

Best and thanks,

Jen

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

From: Esser, Jennifer
Sent: Wednesday, February 12, 2014 5:37 PM
To: Shovers, Marc
Cc: Searing, Eric; Williams, Vincent
Subject: FW: Draft review: LRB -4072/1 Topic: Nonmetallic mining, diminishing asset rule

Hi Marc,

Wanted to follow up on the drafter's note plus add some other changes to the 4072/1. Thanks for all your hard work. Please feel free anytime to call me if you have any questions about the intent or anything else when working on the /2.

With respect to the question posed in the Drafter's Note related to 66.0416 (2) (b) 1.: please keep this as it's drafted

Also, it appears that the changes requested to proposed section 66.0416 (1) (c) did not make it into the draft. Those requested changes include replacing the word "occurring" on page 7, lines 17 and 20, with "a lawfully existing use" and adding the words "public or" before "private on page 7, line 20.

For consistency, the authors want to add language similar to what was added to SECTIONS 3, 6, and 9 to proposed s. 66.0416 (2) (a), namely that the restriction imposed only applies to ordinances "that became effective after nonmetallic mineral extraction began at a nonmetallic mining location, and which is more restrictive than the requirements of any ordinance in effect at the time nonmetallic mineral extraction began, or that imposes a new restriction."

Lastly, it appears that the language used in the revised version of proposed s. 6.0416 (2) (c) does not accomplish the author's intent to apply the restriction of this provision to existing ordinances. The recent request was for this

provision to read: "(c) An ordinance of a political subdivision that specifically regulates nonmetallic mining may not affect or apply to any activity other than nonmetallic mining."

Marc, thanks for all the help on this. We very much appreciate it.

Jen
6-2509

From: LRB.Legal
Sent: Tuesday, February 11, 2014 4:30 PM
To: Esser, Jennifer
Subject: Draft review: LRB -4072/1 Topic: Nonmetallic mining, diminishing asset rule

Draft Requester: Sen. Thomas Tiffany

Following is the PDF version of draft LRB -4072/1 and drafter's note.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-4072/2

MES/RCT/ARG:kjf&wlj:rs

RMR

2013 BILL

today

rejm

1 **AN ACT** *to renumber and amend* 59.69 (10) (ab), 60.61 (5) (ab), 62.23 (7) (ab)
2 and 295.20 (2) (a); *to amend* 84.06 (12) (b) (intro.), 85.193 (2) (intro.), 295.20
3 (1) (a) 2., 295.20 (2) (title), 295.20 (2) (b) and 295.20 (3) (a); and *to create* 59.69
4 (10) (ab) 1., 59.69 (10) (as), 60.61 (5) (ab) 1., 60.61 (5) (as), 62.23 (7) (ab) 1., 62.23
5 (7) (hs), 66.0416, 85.193 (3) and 295.20 (2) (a) 2. of the statutes; **relating to:**
6 local regulation of nonmetallic mining and preservation of marketable
7 nonmetallic mineral deposits.

Analysis by the Legislative Reference Bureau

Zoning

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

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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.

Diminishing asset rule

Under the bill, a zoning ordinance enacted by a political subdivision or limited town that became effective after nonmetallic mineral extraction began at a nonmetallic mining location (NMML), and which is more restrictive than the requirements of any ordinance that was in effect at the time nonmetallic mineral extraction began, or that imposes a new restriction, may not apply to or affect the continued extraction of a nonmetallic mineral from an NMML. The bill defines an NMML 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. The bill specifies that such continued extraction from an NMML is considered an existing use and may not be considered an expansion of a nonconforming use. This provision codifies the diminishing asset rule, which has been adopted in a number of decisions of the

BILL

Wisconsin Court of Appeals, including the case of *Schroeder v. Dane County Board of Adjustment*, 228 Wis. 2d 324 (Ct. Apps. 1999), and further limits a political subdivision's or limited town's authority to enact an ordinance that applies to or affects nonmetallic mining.

Nonmetallic mineral mining

Also under this bill, if a political subdivision enacts an ordinance, other than a zoning ordinance, that applies to or affects nonmetallic mining, the diminishing assets rule applies to such an ordinance in areas where extraction was occurring at any time during the 365 days before the effective date of the local ordinance. In addition, if a political subdivision enacts or amends an ordinance, other than a zoning ordinance, the ordinance may not apply to or affect an existing off-site nonmetallic mineral processing facility or an existing off-site transportation facility that is related to nonmetallic mining, and the ordinance may not affect or apply to an activity other than nonmetallic mining. The bill does not affect a political subdivision's ability to exercise any current law authority to enact any ordinance unrelated to nonmetallic mining to the extent that such an ordinance has no regulative effect on nonmetallic mining.

Registered nonmetallic mineral deposits

Current law authorizes a person who owns land that has a marketable nonmetallic mineral deposit to register the land if nonmetallic mining is a permitted or conditional use under any zoning that is in effect on the day on which the person begins the registration process. A registration is valid for ten years and may generally be renewed for ten-year periods. Under current law, a political subdivision, through zoning or rezoning, granting a variance, or other official action or inaction, may generally not do either of the following:

1. Permit the erection of a building on registered land in a manner that would permanently interfere with the extraction of the nonmetallic mineral deposit.
2. Otherwise permit the use of registered land in a manner that would permanently interfere with the extraction of the nonmetallic mineral deposit.

The law authorizes a political subdivision to change the zoning of land that is registered if mining has not begun on any portion of the land and the zoning change is necessary to implement a land use plan that had been in effect for at least one year. The law also does not prohibit a use of land that is permissible under a zoning ordinance in effect before the land is registered.

Under this bill, a political subdivision, through the currently specified means or through enactment of an ordinance that is not a zoning ordinance, may generally not do any of the following:

1. Permit the erection of a building on registered land in a manner that would permanently interfere with the extraction of the nonmetallic mineral deposit.
2. Otherwise permit the use of registered land in a manner that would permanently interfere with the extraction of the nonmetallic mineral deposit.
3. Prevent the extraction of the nonmetallic mineral deposit that is located on registered land.

BILL***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 Department of Transportation (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. The bill also requires DOT or its contractor to give notice to each county and municipality in which a borrow site or material disposal site is located that the borrow site or material disposal site has been established.

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~~”:

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

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

8 59.69 (10) (ab) 1. “Nonconforming nonmetallic mining location” means land on
9 which nonmetallic mining was occurring at any time during the 365 days before
10 nonmetallic mining became a nonconforming use, including land that is contiguous
11 to such land if the contiguous land is under the common ownership or control of the
12 person who owns or controls the land on which the mining was occurring, and

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1 includes leasehold interests, without regard to whether public or private roads or
2 waterways run through the land.

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

4 59.69 (10) (as) An ordinance enacted under this section, that became effective
5 after nonmetallic mineral extraction began at a nonmetallic mining location, and
6 which is more restrictive than the requirements of any ordinance in effect at the time
7 nonmetallic mineral extraction began, or that imposes a new restriction, may not
8 apply to or affect the continued extraction of a nonmetallic mineral from a
9 nonconforming nonmetallic mining location. Such continued extraction from such
10 a location shall be considered an existing use and may not be considered an
11 expansion of a nonconforming use.

12 **SECTION 4.** 60.61 (5) (ab) of the statutes is renumbered 60.61 (5) (ab) (intro.)

13 and amended to read:

14 60.61 (5) (ab) (intro.) In this subsection ~~“nonconforming:~~

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

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

19 60.61 (5) (ab) 1. “Nonconforming nonmetallic mining location” means land on
20 which nonmetallic mining was occurring at any time during the 365 days before
21 nonmetallic mining became a nonconforming use, including land that is contiguous
22 to such land if the contiguous land is under the common ownership or control of the
23 person who owns or controls the land on which the mining was occurring, and
24 includes leasehold interests, without regard to whether public or private roads or
25 waterways run through the land.

BILL**SECTION 6**

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

2 60.61 (5) (as) An ordinance enacted under this section, that became effective
3 after nonmetallic mineral extraction began at a nonmetallic mining location, and
4 which is more restrictive than the requirements of any ordinance in effect at the time
5 nonmetallic mineral extraction began, or that imposes a new restriction, may not
6 apply to or affect the continued extraction of a nonmetallic mineral from a
7 nonconforming nonmetallic mining location. Such continued extraction from such
8 a location shall be considered an existing use and may not be considered an
9 expansion of a nonconforming use.

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

12 62.23 (7) (ab) *Definition Definitions.* (intro.) In this subsection
13 ~~“nonconforming:~~

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

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

18 62.23 (7) (ab) 1. “Nonconforming nonmetallic mining location” means land on
19 which nonmetallic mining was occurring at any time during the 365 days before
20 nonmetallic mining became a nonconforming use, including land that is contiguous
21 to such land if the contiguous land is under the common ownership or control of the
22 person who owns or controls the land on which the mining was occurring, and
23 includes leasehold interests, without regard to whether public or private roads or
24 waterways run through the land.

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

BILL

1 62.23 (7) (hs) *Nonmetallic mining.* An ordinance enacted under this
2 subsection, that became effective after nonmetallic mineral extraction began at a
3 nonmetallic mining location, and which is more restrictive than the requirements of
4 any ordinance in effect at the time nonmetallic mineral extraction began, or that
5 imposes a new restriction, may not apply to or affect the continued extraction of a
6 nonmetallic mineral from a nonconforming nonmetallic mining location. Such
7 continued extraction from such a location shall be considered an existing use and
8 may not be considered an expansion of a nonconforming use.

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

10 **66.0416 Local regulation of nonmetallic mining and related activities.**

11 **(1) DEFINITIONS.** In this section:

12 (a) "Approval" means a permit, license, or other authorization, from a political
13 subdivision, for building or for any other activity related to the transportation of
14 nonmetallic minerals or the processing of nonmetallic minerals.

15 (b) "Nonmetallic mining" has the meaning given in s. 295.11 (3).

16 (c) "Nonmetallic mining location" means land on which nonmetallic mining is
17 a lawful existing use, including land that is contiguous to such land if the contiguous
18 land is under the common ownership or control of the person who owns or controls
19 the land on which the mining is ~~occurring~~ *a lawful existing use* and includes leasehold interests, without
20 regard to whether public or private roads or waterways run through the land.

21 (d) "Political subdivision" means a city, village, town, or county.

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

24 **(2) LIMITATIONS ON REGULATION.** (a) If a political subdivision enacts or amends
25 an ordinance, other than a zoning ordinance, that applies to or affects nonmetallic

BILL**SECTION 10**

1 mining, and that became effective after nonmetallic mineral extraction began at a
2 nonmetallic mining location, and which is more restrictive than the requirements of
3 any ordinance in effect at the time nonmetallic mineral extraction began, or that
4 imposes a new restriction, the ordinance may not apply to or affect the continued
5 extraction of a nonmetallic mineral from a nonmetallic mining location where
6 extraction was occurring at any time during the 365 days before the effective date
7 of the political subdivision's ordinance. Such continued extraction from such a
8 location shall be considered an existing use, and may not be considered an expansion
9 of a nonconforming use.

10 (b) 1. Subject to subd. 2., if a political subdivision enacts or amends an
11 ordinance, other than a zoning ordinance, the ordinance may not apply to or affect
12 any of the following:

13 a. An existing off-site nonmetallic mineral processing facility.

14 b. An existing off-site transportation facility that is related to nonmetallic
15 mining.

16 2. For purposes of subd. 1., an existing facility includes a facility for which a
17 person has submitted an application for an approval or, if an approval is not required,
18 a facility for which construction activities have commenced before the effective date
19 of an ordinance which would otherwise apply to the facility.

20 (c) A political subdivision's ordinance that specifically regulates nonmetallic
21 mining may not affect or apply to any activity other than nonmetallic mining.

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.** 85.193 (3) of the statutes is created to read:

10 85.193 (3) NOTICE TO POLITICAL SUBDIVISIONS. Prior to the commencement of any
11 work at a borrow site or material disposal site, the department shall give notice to
12 each political subdivision in which the borrow site or material disposal site is located
13 that the borrow site or material disposal site has been established. In lieu of giving
14 notice directly, the department may require the transportation project contractor for
15 the transportation project to give the notice required under this subsection.

16 **SECTION 14.** 295.20 (1) (a) 2. of the statutes is amended to read:

17 295.20 (1) (a) 2. The landowner notifies each county, city, village and town that
18 has authority to zone the land or in which the land is located of his or her intent to
19 register the marketable nonmetallic mineral deposit. The notification shall include
20 the evidence required under subd. 1.

21 **SECTION 15.** 295.20 (2) (title) of the statutes is amended to read:

22 295.20 (2) (title) LIMITATION ON ZONING LOCAL REGULATION.

23 **SECTION 16.** 295.20 (2) (a) of the statutes is renumbered 295.20 (2) (a) (intro.)
24 and amended to read:

BILL**SECTION 16**

1 295.20 (2) (a) (intro.) A county, city, village or town may not by zoning, rezoning,
2 granting a variance, enacting an ordinance other than a zoning ordinance, or other
3 official action or inaction, ~~permit~~ do any of the following:

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

8 **SECTION 17.** 295.20 (2) (a) 2. of the statutes is created to read:

9 295.20 (2) (a) 2. Prevent the extraction of the nonmetallic mineral deposit that
10 is located on land while a registration under this section is in effect for that land.

11 **SECTION 18.** 295.20 (2) (b) of the statutes is amended to read:

12 295.20 (2) (b) 1. A county, city, village or town may enact an ordinance ~~changing~~
13 ~~the zoning of~~ that would otherwise be prohibited under par. (a) with respect to land
14 that is registered under this section if mining has not begun on any portion of the
15 registered land and the ordinance is necessary to implement a master plan,
16 comprehensive plan or land use plan that was adopted at least one year before the
17 ~~rezoning~~ enactment of the ordinance.

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

22 3. ~~A zoning change~~ An ordinance authorized by subd. 1. prevents the
23 registration of the land after the period under subd. 2.

24 **SECTION 19.** 295.20 (3) (a) of the statutes is amended to read:

Parisi, Lori

From: Esser, Jennifer
Sent: Monday, February 17, 2014 2:41 PM
To: LRB.Legal
Subject: Draft Review: LRB -4072/3 Topic: Nonmetallic mining, diminishing asset rule

Please Jacket LRB -4072/3 for the SENATE.