

State of Misconsin 2013 - 2014 LEGISLATURE



2013 ASSEMBLY BILL 483

November 1, 2013 - Introduced by Representatives Kooyenga, Loudenbeck, Hutton, Nass and Bernier. Referred to Committee on Urban and Local Affairs.

AN ACT to amend 85.193 (2) (intro.); and to create 85.193 (3) of the statutes;
relating to: local ordinances regulating borrow sites and material disposal
sites for certain transportation projects.

Analysis by the Legislative Reference Bureau

Under current law, a zoning ordinance enacted by a county, city, village, or town (political subdivision) may not apply to a borrow site or material disposal site operated in connection with a transportation project if certain criteria are satisfied. A "transportation project" is a construction or maintenance project directed and supervised by the Department of Transportation (DOT) that affects the waters of this state and is therefore subject to an interdepartmental agreement between DOT and the Department of Natural Resources. A "borrow site" is a site off of transportation project property from which soil, gravel, or similar material used in the construction of earthworks (borrow) is excavated for use in the transportation project. A "material disposal site" is a site off of the transportation project property used to dispose of surplus materials from the project and that is under control of the project contractor or subcontractor, but does not include a general-use landfill. Among the criteria that must be satisfied for a zoning ordinance not to apply to a borrow site or material disposal site are that the site is used solely for the transportation project and that the transportation project contractor is responsible for the operation of the site. When a state law precludes applicability of a local ordinance, this is often referred to as preemption.

This bill creates exceptions to the preemption under current law of local zoning ordinances relating to borrow sites and material disposal sites as discussed above.

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Under the bill, this preemption does not occur with respect to any residential area that has more than 500 residents living within a one–mile radius of a material disposal site. The bill also specifies that a political subdivision is not preempted from exercising any authority to regulate, by ordinance, the hours of operation of, or noise or traffic volume relating to, any borrow site or material disposal site. Finally, the bill specifies that DOT makes the determination as to whether criteria are satisfied that give rise to the preemption of zoning ordinances as applied to borrow sites and material disposal sites.

For further information see the *state* 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:

SECTION 1. 85.193 (2) (intro.) of the statutes is amended to read:

85.193 (2) EXEMPTION FROM LOCAL ZONING. (intro.) No Except as provided in sub. (3), no zoning ordinance enacted under s. 59.69, 60.61, 60.62, 61.35, or 62.23 may apply to a borrow site or material disposal site if, as determined by the department, all of the following apply:

Section 2. 85.193 (3) of the statutes is created to read:

85.193 (3) (a) Subsection (2) does not apply with respect to any residential area that has more than 500 residents living within a one-mile radius of any point of disposal on a material disposal site.

(b) Subsection (2) does not limit any authority of a political subdivision to regulate, by ordinance, the hours of operation of, or noise or traffic volume relating to, any borrow site or material disposal site.

13 (END)