

Wisconsin Towns Association

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To Town Chairpersons

From: Rick Stadelman, Executive Director

Re: SB 349 Bill to preempt town authority

to regulate nonmetallic mining using village power ordinances

Date of Memo: October 22, 2013

SB 349 has been introduced in the Wisconsin State Senate and will have a Committee hearing on Thursday, October 24, 2013 in Room 411 South of State Capitol starting at 9:30 a.m.

This bill proposes to prohibit towns, villages, cities, and counties from enacting licensing ordinances to regulate nonmetallic mining operations (which for towns is an exercise of village powers to protect public health and safety). This prohibition includes industrial frac sand mines as well as traditional sand and gravel pits. The only power to regulate these types of operations would be through zoning ordinances.

Our Association Board of Directors on Monday, October 21, voted to oppose this bill as drafted for a number of reasons. This bill will overturn the unanimous Wisconsin Supreme Court decision in Zwiefelhofer v. Town of Cooks Valley, 338 Wis. 2d 288 (2012), which upheld the right of the town to regulate a industrial frac sand mine by a licensing ordinance adopted using village powers.

This bill would prevent towns without town zoning and towns with county, zoning which do not adequately regulate nonmetallic mining, especially industrial frac sand mines, from being able to require the nonmetallic mining owners and operators from obtaining permits and approvals from the town. Towns have used the licensing ordinances to reach agreements with mine owners to address concerns affecting neighboring property owners, such as hours of operation, diminution of property values, private well monitoring, blasting hours, hauls routes and days and times for hauling, and much more. The loss of the licensing power will greatly reduce the ability of towns to protect the public health, safety and welfare of their residents.

SB 349 goes farther than just the preemption of local licensing authority, by giving exclusive control of all water quality, water quantity, and air quality issues to the state, presumably the DNR. Local governments would be precluded in attempting to protect air and water in their town on activities beyond just nonmetallic mining. This exclusive control by the state will be for all activities including large farms, industrial activities, and much more....

SB 349 proposes to require that before a highway contract for reimbursement of damages could be entered by the local government for reimbursement for damage done on the local highways under an agreement authorized under Sec. 349.16 (1) (c) of Wis. Statutes, that an engineering study would have to be prepared at the mutual expense of the local government and the highway user. This provision as written would apply to all highway users, such as farmers, manure haulers, loggers, etc..., not just nonmetallic mining operations.

SB 349 proposes to modify Sec. 86.02 of Wis. Statutes that if damage is alleged to have occurred on a local highway that the local government would have to prove before damages could be recovered there must be proof that the person willfully caused the damage or that the damage results from an unlawful act. This burden of proof would be very difficult to prove in many cases.

The Wisconsin Towns Association Board of Directors voted to oppose SB 349 as written. We ask your town officers to call your state legislators in both the Senate and Assembly as soon as possible to ask them to oppose SB 349 and not to pass it into law. Further we have enclosed a sample town board resolution for your consideration to adopt at the next town board meeting. We suggest you include this topic on your next agenda. If you adopt the resolution opposing SB 349 please send copies to your legislators and Wisconsin Towns Association.

This proposed bill (SB 349) strikes at the very heart of local control. It is being pushed by private industry groups to avoid working with the local governments and providing protections to neighbors that towns and counties have been attempting to provide for their residents. Towns and counties should have the authority to adopt reasonable ordinances to regulate any activity that may threaten public health and safety of their community. Existing ordinances have not stopped industrial frac sand mines or typical sand and gravel pits in our state. In fact over 115 industrial frac sand mines and processing plants are in operation in our state at the present time, with many more permitted to open in the future.

This memo is being sent to all Town Chairpersons in the state, please share it and the enclosed resolution with your fellow town officers, and call your legislators as soon as possible to ask them to oppose SB 349.

Your prompt response to this request is critical to protect local control!

Resolution 2013-18

Opposition to SB 349 Relating to Regulation of Nonmetallic Mining

Whereas, town boards have been authorized by vote of the town electors at a town meeting of the electors to exercise village powers to regulate various activities for the public health, safety, welfare and convenience of the public for over 100 years;

Whereas, the Wisconsin Supreme Court in February, 2012 in the case of Zwiefelhofer v. Town of Cooks Valley, 338 Wis. 2d 488, upheld the right of the town to adopt regulatory requirements to regulate nonmetallic mining by means of a town ordinance enacted under village powers;

Whereas, some towns have enacted regulatory ordinances as an exercise of “police powers” under the village powers authority in the past two years to regulate nonmetallic mines, in particular industrial frac sand mines and processing plants, to protect the public health and safety of their town;

Whereas, SB 349 have been introduced in the Wisconsin State legislature to limit town, village, city, and county authority to regulate nonmetallic mining operations, including industrial frac sand operations, to zoning authority only, by prohibiting local units of governments to exercise police type ordinances, which for towns would be enacted by means of village powers, over nonmetallic mining operations;

Whereas, limiting towns who do not have town zoning or are under county zoning would dramatically limit town board authority to protect the public health and safety in the town by taking away their authority to adopt industrial frac sand regulatory ordinances using village powers;

Whereas, SB 349 would vest exclusive jurisdiction over air quality, water quality and quantity issues with the State on all types of activities, not just nonmetallic mining;

Whereas, SB 349 would require all highway contracts for reimbursement of highway damage caused by heavy vehicles under Sec. 349.16 (1)(c) of Wis. Statutes to follow new statutory requirements including an engineering study for all such highway contracts;

Now Therefore, Be It Resolved by the Town Board of the Town of Washington, Door County opposes the passage of SB 349 which would prohibit local governments from regulating nonmetallic mining through the use of “police power type” ordinances enacted under village powers in an effort to protect the public health and safety of town residents and result in other limitations on local control.

Adopted this 4th day of November, 2013.

Joel Gunnlaugsson, Chairperman

Liz Holmes, Supervisor

Randy Sorenson, Supervisor

Kirby Foss, Supervisor

John Rader, Supervisor

Valerie Carpenter, Clerk / Treasurer

{Copies should be sent to your state legislators & Wisconsin Towns Association}

Town of Washington

Ordinance 2013-06

Discharge of Rifled Firearms

Whereas, Section 66.0409(3)(b) of the Wisconsin Statutes permits Towns that have been authorized to exercise Village Powers under section 60.22(3) of the Wisconsin Statutes to enact ordinances restricting the discharge of firearms; and,

Whereas, Section 29.038(3) of the Wisconsin Statutes permits local governmental units to enact an ordinance, adopt a regulation, resolution, or other restriction that has an incidental effect on hunting, fishing, or trapping, but only if the primary purpose is to further public safety; and,

Whereas, the Town of Washington is authorized to enact ordinances in order to protect the public health, safety and welfare by sections 60.22(1), 60.22(3), 61.32 and 61.34 of the Wisconsin Statutes; and,

Whereas, the Town of Washington has determined that it is reasonable and necessary to prohibit the use of rifles within the Town in order to protect the public health and safety;

Now, Therefore, the Town Board of the Town of Washington, Door County, Wisconsin, does ordain as follows:

Chapter 205 of Town Ordinances

- Insert: G.
1. It shall be unlawful for any person to discharge a rim fire rifle larger then .22 caliber or any center-fire rifle .22 caliber or larger within the boundaries of the Town during the allotted calendar dates of white tail deer season as identified by the Wisconsin DNR regulations on an annual basis. The 3 seasons in particular are Youth Hunt, Regular Hunting Season and T-Zone.
 2. Exempt weapons from the Ordinance are Muzzle Loaders and Hand Guns (Pistols). They may be used for hunting.
 3. Any Rifle shall be allowed in a protected range facility or on private property as long as shooting is for recreational purposes only.
 4. Any person who violates this ordinance shall, upon conviction thereof, be subject to a forfeiture of an amount established by the State of Wisconsin, Bond Book [941.20 (1)(a-c)] of \$ 500.00 plus statutory costs.

5. Unless otherwise indicated, the prohibitions of this section shall not apply to:
 - a. Any peace officer(s) in the lawful performance of their duties
 - b. Any member of the US Armed Forces or the National Guard in the lawful performance of their duties.
4. This Ordinance shall be effective on the day after it's enactment and publication of this ordinance or an appropriate notice thereof as provided by law.

Adopted this 4th day of November by the Town Board of Supervisors, Town of Washington, Door County, Wisconsin, 2013

Joel Gunnlaugsson, Chairman

Liz Holmes, Supervisor

Randy Sorenson, Supervisor

Kirby Foss, Supervisor

John Rader, Supervisor

Valerie Carpenter, Clerk / Treasurer

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