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Preserving Local Control over Sand Mining

Photo credit: Jim Tittle, "The Price of Sand"

The industrial sand mining industry in Wisconsin has exploded in the past three years, growing from just a handful of mines in 2011 to over 115 in 2014. Along with this rapid expansion has come heavy truck traffic, noise, fugitive silica dust, loss of farmland, and concerns about diminution of property values.

The impacts of industrial sand mining vary greatly from community to community. Local governments are in the best position to balance the need for jobs and economic growth with the need to protect air, water, quality of life, and investments in public infrastructure. Local governments must likewise balance the private property rights of mine owners with the private property rights of their neighbors.

Senate Bill 632/Assembly Bill 816, introduced by Senator Tiffany and Representative Ballweg last week, deals multiple blows to local control.

The bill invalidates local sand mining ordinances that deal with both mining and transportation/processing. The bill requires that an ordinance regulate *either* sand mining, *or* sand processing or transportation, but not both. This ill-conceived provision will invalidate dozens of thoughtful, well-crafted ordinances that local governments have passed over the past four years. It will cost local governments thousands more in taxpayer

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dollars to re-write ordinances invalidated by this law, and because of the grandfathering provisions described below, will create a legal gray area about whether mining operations can be required to comply with these replacement ordinances.

The bill shields existing sand mining operations from having to comply with any new health, safety, and community well-being ordinances.
The bill contains significant "grandfathering" provisions for existing mines. This is true regardless of whether the new ordinance is specifically related to sand mining or not. If a town wants to enact a general ordinance on air quality or noise or traffic or setbacks, then every other business or industry (including manufacturing, grain milling, and dairy processing) will have to comply with the new ordinance, but existing sand mining operations will be exempt.

Moreover, the bill extends that "grandfathering" protection from new local ordinances to sand processing and transport facilities as well. Every other type of industry has to conform to the law of prior nonconforming uses, which says that your current operation will get grandfathered in under a more restrictive ordinance, but you can't *expand* a nonconforming use that is not in line with the new ordinance. This bill says that in the case of sand mining, as long as you are operating, or even have simply *put in an application* for a processing facility or transportation facility at the time that a new ordinance takes effect, you can continue to build and expand without limitation.

The bill goes far beyond just codifying existing case law on diminishing assets. It creates "double-decker" preferential treatment for sand mining: first, it singles out sand mining as an industry and exempts it from laws that apply to other types of land uses. Second, the bill gives extra-special treatment to existing sand mining operations, while new entrants to the sand mining industry will not benefit from the same grandfathering provisions.

State laws regulating local land use decisions should prioritize consistency, even-handedness, and autonomy to local governments. Senate Bill 632/Assembly Bill 816 does just the opposite.

Ask your legislators: Will you vote NO on SB 632/ AB 816?