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WISCONSIN STATE REPRESENTATIVE

41ST ASSEMBLY DISTRICT

AB 816/SB 632: Nonmetallic Mining
Testimony of State Representative Joan Ballweg
Assembly Committee on Jobs, Economy and Mining
Senate Committee on Workforce Development, Forestry, Mining, and Revenue
March 3, 2014

Thank you to Chairs Williams and Tiffany and members of both committees for scheduling this hearing on Assembly Bill 816 and the companion Senate Bill 632. Since the start of this biennial session, it has been clear that our focus is on creating jobs and moving our economy forward. Wisconsin has an abundant supply of sand, and this industry has made a positive impact for over a century.

Near my home in Green Lake County there are currently 18 nonmetallic mines, including 12 gravel pits, five sand mines and one quarry. Three sand mines, one gravel pit and that quarry are within four miles of the house that I have lived in for the past 36 years; the home where I raised my three children.

This industry's history in my area is one of good jobs and being good neighbors and community partners. The operations in my area have not been the cause for environmental concerns.

The building we are in today boasts of seven types of granite and 36 varieties of marble, some from Wisconsin, others from throughout the United States and Europe as well. All of the various types of stone were cut from a hill. These are resources that we treasure, and we use on a daily basis.

Data compiled as of 2010 showed that nonmetallic mining was a \$2 billion per year industry in Wisconsin. At that time, there were five industrial sand mines and five industrial sand processing plants. In just three years, the numbers have grown to 105 sand mines and 65 processing plants, with further investment and expansion still possible. A recent analysis of just one proposed facility in Wood County found that it would create \$161 million in capital investment, 930 new jobs and \$58.7 million in annual earnings when fully operational.

Our goal with this legislation is to ensure that the businesses that have gone through the rigorous approval process, don't have the rules changed on them after they have made significant investments and commenced operations.

I look forward to listening to the discussion during today's hearing and working toward building a partnership between the sand industry and local government that can positively impact this growing industry in Wisconsin. At this time, I would be happy to take questions from committee members.

MEMORANDUM

TO: Wisconsin State Senate Committee on Workforce Development, Forestry, Mining, and Revenue; and Wisconsin State Assembly Committee on Jobs, Economy and Mining

FROM: Timm P. Speerschneider

DATE: March 3, 2014

RE: Wisconsin Transportation Builders Association Support for SB 632 and AB 816

My name is Timm Speerschneider. I am an attorney at DeWitt Ross & Stevens who specializes in environmental and land use matters. I am counsel to the Environmental Committee of the Wisconsin Transportation Builder's Association. I speak today on behalf of the WTBA. WTBA is a state-wide association of approximately 250 companies that plan, design, construct and maintain all types of transportation facilities. Many of its members own and operate non-metallic mining operations and have done so for many years in all types of localities, including zoned and un-zoned towns.

WTBA supports SB 632/AB 816. It is simply a codification of existing zoning law in Wisconsin which has long recognized the unique nature of non-metallic mining operations through a doctrine known as the diminishing asset doctrine. That doctrine recognizes that you can't mine a non-metallic mining deposit all at once. If you own 40 acres, you don't open up all 40 acres at once. There is no reason that principle should not be applied to non-zoning police power ordinances and that is what this legislation achieves. It is not a local control power grab. It does not prevent localities from enacting non-zoning police power ordinances but simply treats those police power ordinances in a fashion consistent with existing zoning law and statutes. The same principles should apply to a local unit of government's exercise of its police power, regardless of whether it is exercising those police powers through a zoning ordinance or a non-zoning ordinance.

**Testimony Presented to the Senate and Assembly Mining Committees
Senate Bill 632 & Assembly Bill 816
March 3, 2014**

Introduction

Chairman Tiffany and Williams, Senate and Assembly Committee Members, I appreciate the opportunity to comment on SB 632 and AB 816 and appear today on behalf of the Aggregate Producers of Wisconsin (APW) in support of the bill.

My name is Pat Osborne and I am the Executive Director of APW, which is a statewide trade association of over 100 aggregate producing companies and associate member companies who provide goods and services to the aggregate industry in Wisconsin.

Comments on SB 632 & AB 816

APW supports local control with regard to the siting of a nonmetallic mine. However, we strongly believe that that local control should be exercised through zoning.

One of the most important aspects of preserving zoning authority relates to the case law and current state law that surround it. Under zoning, once a business is legally established, future zoning changes may not put an existing operation out of business. Under the zoning framework, when we legally open a mining site we are confident that we have legal nonconforming use rights and can stay in business despite future zoning changes. Under non-zoning police power authority and ordinances we have no such assurance.

The legislation does not preserve zoning as the appropriate local tool to site and regulate a nonmetallic mining operation. What it does do is establish that if non-zoning police power is used to regulate nonmetallic mining — an existing business will at least have the same basic property right protection they have under zoning and can stay in business as a legal nonconforming use.

APW members have been operating sand and gravel and quarry sites in Wisconsin for years and in some cases for decades. The preservation of legal nonconforming use rights for those existing businesses is critical to protect the investment those companies have already made in their local communities and in Wisconsin.

We appreciate your consideration of this important legislation and encourage your support of SB 632 and AB 816.



KATHLEEN VINEHOUT
STATE SENATOR

**Testimony to the Joint Public Hearing of the
Senate Committee on Workforce Development, Forestry, Mining and Revenue
& Assembly Committee on Jobs, Economy and Mining**

March 3, 2014

Opposition to Senate Bill 632 and Assembly Bill 816

Thank you, Mr. Chairman and members for the opportunity to testify on Senate Bill 632 and its companion Assembly Bill 816.

First, I'd like to thank the Chairman for his agreement to not pursue the passage of Senate Bill 349. I oppose this bill and appreciate his wisdom in not moving SB 349 forward.

This bill is not SB 349. There are very few commonalities the two bills share. Comparing the two bills is a mistake. This bill must be evaluated on what it does not what it does not do.

I oppose Senate Bill 632 and urge you to not bring the bill to a committee vote until three onerous provisions are removed.

1) The bill freezes in place the public health, safety and welfare protections for a community as they relate to existing sand mines. If this bill becomes law, the locals will not be able to write and enforce a new ordinance on any mine that has been permitted during the life of that permit – as long as 25 years.

2) In talking with local people who have written ordinances it appears this bill would invalidate nearly all local ordinances. On page 8 lines 22 and 23 an ordinance *that specifically regulates nonmetallic mining may not affect or apply to any activity other than nonmetallic mining*. The passage of this bill will require local communities to rewrite any ordinance that combined sand mine regulation with sand processing and sand transportation.

The combination of freezing in place rules affecting existing sand mines *and* invalidating most ordinances as they now exist will throw sand mine regulation into legal chaos. The bill creates a huge legal gray area on exactly which ordinance the sand mines would have

to follow – the one made invalid by the bill or the new one rewritten to comply with the bill, or none at all.

Does anyone here know?

3) Finally, this bill sets up a back-door process by which mine owners can circumvent new restrictions and open a mine *anywhere as long as they register the mineral deposit with locals.*

Changing a little known part of the statute written when comprehensive planning was put in place, this bill would stop a local community from saying 'no' to any mine owner who registered his mineral deposit. Specifically on page 10, section 17: a community could not *Prevent the extraction of the nonmetallic mineral deposit that is located on land while a registration under this section is in effect for that land.*

In the following section the bill adds language about an ordinance to address concerns expressed in comprehensive plan that was in place for at least year.

The effect of this provision is to invalidate the work of the Town of Dover in my home county of Buffalo. The work of the Town was described by a local land owner in a letter to me and I paraphrase: In the last ten months Dover officials held more than a dozen public meetings including a community forum attended by a quarter of the town's population. In July the Town of Dover voted unanimously to recommend the county deny a permit for a 400-acre mine. In October the town adopted Village Powers. In January of 2014 the Town adopted a Comprehensive Land Use Plan. In February of 2014 the Town of Dover adopted an ordinance resembling the ordinance of the Town of Cooks Valley.

While the Town of Dover was doing all this work, the four owners of the mine quietly registered their mineral deposits with the Register of Deeds. The land owner said, *"Senate Bill 632 wipes out the Town of Dover's intended protections, and with it, hours of community discussion and debate and thousands of dollars in local taxpayer money spent guiding the process."*

As another resident wrote to me:

We are urgently appealing to you to vote against the proposed bill SB 632 and AB 816. We are residents of the town of Dover in Buffalo County, Wisconsin.

Under the pressure from mining interests that include threats of lawsuits, bullying, intimidation, misrepresentation and bribery ~ our town board has voted unanimously to recommend that the proposed mine of River Valley Sands be denied...

Our town clearly does not want this mine, and we have done all that we know to prevent this mine from invading our town. Our town has adopted village powers, adopted a non metallic mining ordinance similar to Cooks Valley's ordinance, and our Comprehensive Land Use Plan clearly states that Dover Township does not want any industrial sand

mine over 40 acres...

If Senator Tiffany's bill is passed, it would make all of the work that our town has done to protect itself of no avail. Thousands of dollars have been spent by the town, as well as by landowners, that the voice of the town's people may be heard. Where do you find democracy speaking and being respected in this bill?

Mr. & Mrs. Steve Nelson, S-802 Rud Steinke Road, Mondovi, WI 54755

Let one of my constituents, Bill Mavity, who serves on the Pepin County Board and serves as Vice Chair on the County's Law Enforcement/Zoning and Personnel Committees tell you:

*These bills harm the efforts of elected municipal governments who – acting to protect the health, safety and welfare of their constituents and their families – **approve** some frac sand operations in locations where health and safety issues are minimized, and **deny** other frac sand operations to protect their children from harms such as diesel exhaust and silica particulate matter. These bills stop local elected officials from doing their jobs responsibly and fairly...*

Passing SB 632 and AB 816 usurps local police powers and authority. Passing these bills changes local zoning to favor the frac sand industry. Passing these bills substitutes state government for local government as the guardian of the health, safety and welfare of local citizens with regard to zoning and local land use...

They want to build a large trans loading facility with 600 trucks a day within a ¼ mile of major schools. They want to build processing facilities and large open pit mines that destroy the beauty of the Wisconsin and Mississippi Rivers and the tourism that depend on that beauty. These are the kinds of projects that local governments have turned away. Passing SB 632 and AB 816 gives these frac sand developers a green light, resurrects their rejected projects, gives them a new 'existence'...

The proponents of this bill argue the bill *merely* 'grandfathers' existing mines. This language is very misleading.

Make no mistake: most of these mines are not 'grandfathers'. According to LFB only 5 mines existed four years ago. These mines are 'toddlers'. And like 'toddlers', they make mistakes.

Because most of these mines are 'start-ups' and some of them are 'fly-by-nights' many of them have problems. Note the plethora of environmental problems identified by citizens and the DNR.

According to reporting by the Wisconsin Center for Investigative Journalism 90% of sites visited by DNR were issued letters of noncompliance and nearly a fifth of Wisconsin's active mines were cited for environmental violations.¹

As toddlers grow up we need new rules.

Would you want "teen" sand mines in your backyard following "toddler" rules?

Or would you want the ability to adjust your community's rules on the new mines, as the neighbors understood the effect of the mines on the communities – especially the *cumulative* effects of 100 and maybe 1,000 different mines?

Here is the practical reality of this world of rapidly growing 'toddler' sand mines:

The communities I represent are scrambling to get into place any ordinance. In some cases town residents have spent months writing ordinances (in some cases hiring attorneys at their own expenses) only to see the ordinance completely rewritten by 3 town board members who then approved an ordinance the complete opposite of the intention of their own appointed 'citizens' committee'.

In many cases the elected officials have ties to the sand mine industry. Many of these officials have decided not to run for re-election, or voters have decided they should no longer be elected officials. That is why in counties up and down the Mississippi River county board officials are being challenged as citizens say the elected do not represent their interests.

At the hearing for SB 349, Mr. Chairman, you read a letter from my constituent Mr. Tom Bice. I will remind you what Mr. Bice wrote.

I am the Chair of the Environment and Land Use Committee in Trempealeau County, WI. I am sending this letter on my own behalf and not Trempealeau County's. I have been part of the committee for every Frac Sand (sic) mine in Trempealeau County. I have listened to the testimony of hundreds of people for and against sand mining.

...Many of these people are selfishly promoting their own interest over a neighboring property owner. Unfortunately they are succeeding at turning the public against mining by lies and misinformation.

The hysteria surrounding the negative press has been very successful in making the public think that this vitally needed industry is bad, but it is not! This industry is supplying a benign product that is leading America to an economic bonanza, like this country has not seen in many, many years. This new energy innovation will bring back manufacturing to this country and limit the wars over oil.

¹ <http://www.wisconsinwatch.org/2013/03/03/frac-sand-dnr-violations/>

We need state regulation over the mining industry, because the small committees like I chair are influenced by emotional people with a selfish or naïve agenda. Committees struggle to make rational decisions when approached by people with tears in their eyes. I will add that all of the people that testify against the sand mines DROVE (sic) to the hearings, thereby using oil. Sincerely, Tom Bice

Tom Bice lost his re-election bid in the February 18th primary taking 46 votes. His two opponents Jon Schultz with 61 votes and Daryl Kramer with 55 votes will meet in the General Election April 1st.

Please remember your own constituents. Those who elected you to serve.

I've heard from folks of all political persuasions and walks of life. Having a nice neighborhood is not a partisan issue. Citizens tell me one main message – I spent a lot of time, money and love getting this beautiful place and these mines are destroying my way of life. Many tell me that the location of the mine and the lax rules they follow are now “destroying my business and my local community”.

Mr. Chairman and members, each of us was elected to serve the public's interest and represent our constituents.

All of us serve at the pleasure of the voters. It is our job to represent the people's interests.



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To: Senate Committee on Workforce Development, Forestry, Mining and Revenue
Assembly Committee on Jobs, Economy, and Mining

From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities

Date: March 3, 2014

**Re: SB 632/AB 816, Limiting Municipal Authority to Regulate Nonmetallic Mining;
Preempting Municipal Regulation of Borrow Sites and Disposal Sites Associated
with DOT Projects**

While the League of Wisconsin Municipalities appreciates that SB 632/AB 816 is a compromise that is less problematic for municipalities than its predecessor, SB 349/AB 476, we have concerns about a provision in the bill totally preempting municipal regulation of borrow sites and material disposal sites related to DOT construction projects.

Current law prohibits municipalities from applying zoning regulations to borrow sites and material disposal sites for DOT projects. This bill prohibits municipalities from regulating these sites in any manner. We had concerns about the same provision in the first bill. Communities in this state are already frustrated about their inability to respond to citizen concerns raised by the location of DOT project borrow sites and disposal sites near residential areas. This bill would make it impossible for a city or village to regulate the hours of operation, dust, noise, or traffic volume relating to any borrow site or material disposal site associated with a DOT transportation project. The bill fails to recognize a difference between borrow and disposal sites located in rural areas and those located in denser, more populous urbanized areas.

We urge the committee to consider amending the bill to clarify that a city or village may regulate the hours of operation, traffic volume, noise, or dust associated with a borrow site and/or material disposal site.

Thanks for considering our comments and concerns.

**Resolution in Opposition to SB 632 and AB 816
Relating to Regulation of Nonmetallic Mining**

Whereas, for over 100 years Wisconsin has empowered town boards, when duly 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;

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, safety, welfare and convenience of their town;

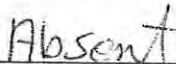
Whereas, SB 632 and AB 816 have been introduced in the Wisconsin State legislature to limit town, village, city and county authority to regulate existing nonmetallic mines, or the expansion thereof, by prohibiting local units of government's ability to exercise zoning ordinances or "police type" licensing ordinances to protect the public health, safety, welfare and convenience of the public;

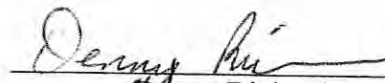
Whereas SB 632 and AB 816 will make any existing zoning ordinance, or police type licensing ordinance to regulate nonmetallic mining invalid if the mining operation was active 365 days before the effective date of the local ordinance;

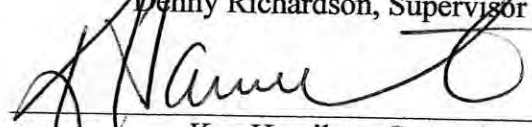
Now Therefore, Be It Resolved by the Town Board of the Town of Frankfort, Pepin County, that the Town Board opposes the passage of SB 632 and AB 816 which would prohibit local governments from regulating existing or expanding nonmetallic mining through the use of zoning or "police power type" ordinances enacted under village powers in an effort to protect the public health, safety, welfare and convenience of town residents and result in other limitations on local control.

Adopted this 1st day of March, 2014.


Bryce Black, Chairman


Donna Juleff, Supervisor


Denny Richardson, Supervisor


Kay Hamilton, Supervisor


Attest: Maureen Manore, Clerk



TO: Members of the Senate Committee on Workforce Development, Forestry, Mining, and Revenue and Assembly Committee on Jobs, Economy, and Mining

FROM: Eric Bott, Director of Energy and Environmental Policy, WMC

DATE: March 3, 2014

RE: Testimony in Support of Senate Bill 632 and Assembly Bill 816

Introduction

Wisconsin is seeing tremendous economic development and job creation across western, northwestern, and central Wisconsin thanks to the rapid expansion of our non-metallic mining industry. The growth in jobs and investment is happening too rapidly to quantify but everywhere across the region it is visible. People who were laid off during the great recession are getting back to work. Local coffers are filling with new revenues. Entire rail lines that have lain largely idle for decades are being rebuilt and put to good use. Natural gas lines are being extended to new communities creating opportunities to attract manufacturers and other employers to their area. Entry point wages, not just in non-metallic mining but across sectors are increasing as the demand for labor skyrockets.

Unfortunately, this tremendous economic activity is under threat in Wisconsin as some local jurisdictions contend that they have the ability to arbitrarily shut down pre-existing and legally operating businesses without due process or just compensation.

Nothing is more fundamental to a healthy and growing economy than the basic assurance that one's investment is secure from capricious government interference. Without that most basic of private property protections, capital and the jobs it helps to create will simply go elsewhere.

Senate Bill (SB) 632 and Assembly Bill (AB) 816 affirm what courts in Wisconsin have held - that if a property is in lawful use prior to the enactment of a restrictive zoning ordinance, and the new zoning ordinance prohibits the use then the property is generally held to have a "grandfathered" or "vested" right to that use.

In other words, government can't change the rules of the game on a lawfully operating business in a way that would destroy its property rights, eliminate its ability to operate, and force it to lay off its employees.

The concepts of vested or legal non-conforming use rights and the diminishing assets rule as codified in SB 632 and AB 816 are longstanding, recognized legal precepts in Wisconsin. They have been consistently applied to zoning.

Now that some local jurisdictions have taken it upon themselves to conduct zoning through police powers ordinances, it is common sense that these same basic protections that have long existed in the zoning context be applied to zoning conducted through police powers.

SB 632 and AB 816 resolve a very concrete and timely problem facing employers across the state. Wisconsin Manufacturers and Commerce, Wisconsin's largest business advocacy organization with member companies representing roughly one quarter of Wisconsin's workforce, thanks Senator Tom Tiffany, Representative Joan Ballweg, Chairperson Williams and the members of both committees for taking up this issue today and encourages your support for SB 632 and AB 816.

Nonmetallic Mining and Wisconsin's Role in the Energy Boom

Nonmetallic mining is a significant player in Wisconsin's economy. In 2010, before the growth in demand for industrial sand really took off, nonmetallic mining contributed \$2 billion to Wisconsin's GDP according to the National Mining Association. There are nearly 2,500 nonmetallic mines licensed and operating in Wisconsin.

Wisconsin's nonmetallic mining tradition runs deep. For more than a century, companies throughout central and western Wisconsin have extracted from the earth high quality silica for use in glass making, iron casting and ceramics. The industrial sand mined and used for these processes since our founding is identical to the sand now used in hydraulic fracturing.

Indeed, Wisconsin's world renowned cast iron industry remains dependent upon a steady supply of industrial sand for use in their molds.

Wisconsin is usually ranked as the second largest foundry state in terms of cast iron output. Foundries are a \$3 billion a year industry. If our single largest foundry company, Waupaca, were its own country, it would be the 8th largest supplier of cast metals in the world. To produce such an output, our foundries require hundreds of thousands of tons of industrial sand each year. The sand is casted into molds and reused as many as 50 times before being recycled into low cost, clean fill for use in state and local road projects.

However, Wisconsin's long familiarity with sand mining has obviously not fully prepared it for the rapid expansion taking place as a result of the boom in domestic energy production in shale deposits throughout much of the country.

Wisconsin sand found here in our St. Peters, Jordan, and Wonewoc formations is globally the best known proppant or solid material used to keep oil or natural gas wells open. It is unique in terms of its compression strength and far more economical than manmade alternatives. Roughly 85% of the material that goes into a given well is proppant and the very best and cost effective proppant is Wisconsin sand.

Wisconsin should be proud of this contribution toward American energy independence. Our state is playing an important part of some truly spectacular activities.

Last year America pushed ahead of Saudi Arabia as the #1 total petroleum producer and ceased to be the top importer of crude for the first time in decades. We're on track to surpass the Saudis in total oil production by 2020 and could be a net exporter by 2030.

The growth of petroleum production means great things for American and Wisconsin industry and families. Its growth has already created 2.1 million jobs nationwide and is on pace to create more than 3 million by 2020. In Wisconsin, it was responsible for the creation of nearly 20,000 jobs as of 2012, a figure that is expected to rise to more than 33,000 by the end of the decade.

The highly respected energy research firm, IHS Global Insight, published a study last year showing that the shale energy boom saved the average American family \$1,200 in energy bills in 2012 and that those savings are likely to increase to \$3,500 by 2025. Wisconsin sand helps that happen.

Industry is feeling the benefits too. What been described as the industrial renaissance is nothing short of amazing. Whereas just a few years ago we were all worried about off-shoring, low cost natural gas is now resulting in onshoring, particularly in the plastics, fertilizer, chemical and other industries that require large quantities of natural gas.

Wisconsin benefits more directly as our manufacturers supply vital components to the petroleum industry. From pumps to piping, Wisconsin is a national leader in the manufacturing of petroleum related technology.

For those concerned with carbon emissions, this is also good news. The Energy Information Administration estimates that American carbon emissions will be 5% less in 2040 than they were in 2005, in no small part because of the availability of low cost natural gas due to hydraulic fracturing. Wisconsin sand is playing a role in that as well.

The Draft Inventory of U.S. Greenhouse Gas (GHG) Emissions and Sinks released just last week by the U.S. Environmental Protection Agency (EPA) confirms this trend. According to EPA, GHGs emissions fell below 1994 levels in 2012. Even more interesting, methane emissions from natural gas distribution fell by 16.9% as compared to 1990 levels even as the system has grown by 35% and field production emissions have plummeted by 40% since just 2006 despite the boom in hydraulic fracturing.

Wisconsin is helping all this happen. WMC supports SB 632 because it will help ensure that Wisconsin's role in contributing to dramatic environmental improvements, low cost energy, and American energy independence continues uninterrupted.

Property Rights Under Threat from Zoning through Police Powers

Our support for the SB 632 also stems from other issues that may be of even more direct significance to Wisconsin's job creators.

As we all know, the growth in petroleum production has not gone on without controversy. Opposition to hydraulic fracturing and the typical growing pains associated with a rapidly expanding industry have

raised concerns throughout Western Wisconsin as to the impacts that the sand mining industry may be having on local communities.

In January a collection of groups, including 29 environmentalist and activist groups from outside Wisconsin, circulated a petition to ban virtually all sand mining in our state.

Local concerns and pressure from outside groups have in turn spawned a new series of regulatory challenges that apply far more broadly than to just industrial sand mining or the nonmetallic mining industry.

At the heart of SB 632 is a response to a February 2012 State Supreme Court Decision in *Zwiefelhofer v. Town of Cooks Valley*.

Zoning has been traditionally viewed as the lawful tool to regulate land uses. Wisconsin Towns have had the option to participate in county zoning or to enact their own zoning ordinance. Many towns opted out of that scheme in favor of no zoning at all. That in its self is a local control decision.

In *Zwiefelhofer*, the Wisconsin Supreme Court ruled that a local township possessed inherent police powers to regulate certain land uses within its borders. Specifically, a nonmetallic mine was opening and the township sought to regulate that use even though it had voluntarily withdrawn from county-wide zoning. The Supreme Court ruled that notwithstanding the lack of zoning power, the Township could regulate land uses through its inherent health and safety powers.

In doing so, the Supreme Court limited the *Zwiefelhofer* case to the facts that were before it and specifically declined to rule that the broad use of police powers could be used in any other circumstances.

Despite this limited ruling, the use of police powers to regulate land use in ways traditionally confined to zoning is spreading rapidly across dozens of jurisdictions.

In addition, the court noted in footnote 12 that the State, through its legislative powers, may standardize the regulation of land uses by creating state-wide standards:

The parties agree that the state legislature, if it so chose, could enact a uniform statewide law regulating nonmetallic mines, which might preempt a Town's Ordinance.

Further, Chief Justice Abrahamson explained in the *Zwiefelhofer* case "[d]espite the similarity and potential overlap between zoning ordinances and non-zoning police power ordinances, the legislature imposes different procedural requirements on these two forms of ordinances. ... The heightened procedural requirements on zoning ordinances **are often justified because zoning runs the risk of unduly infringing on individuals' property rights.**"

We contend that individual property rights are now very much being infringed.

The key procedural requirement in question here is the application of legal nonconforming use rights.

Imagine a factory built out in the country in an area that has been zoned industrial. Over time, development encroaches on the area surrounding the facility and with that development the local jurisdiction changes the zoning for the area.

Under a well-established legal framework for zoning, that factory has legal nonconforming use rights and may continue operating. In the blurry world created through the application of police power ordinances to land use situations, those rights are eviscerated.

Adopting the logic now applied by several local jurisdictions, any given business can be shut down at any time through the retroactive application of police powers ordinances. Consider the chilling effect that has on investment in Wisconsin.

A business considering constructing a new facility or expansion in Wisconsin must now contemplate the fact that their investment could be shut down arbitrarily if they become the target of a particular local faction. From a broad industrial perspective, this is a huge problem for Wisconsin's business community and should be addressed by the legislature.

Solution

SB 632 puts this genie back in the bottle before it wreaks its havoc on other sectors of our economy.

The bill simply codifies basic property rights protections that operated quite well in Wisconsin prior to February 2012.

It does not eliminate local regulation. Rather, it preserves local control even to the point of allowing local governments to set ordinances so restrictive as to block new non-metallic mining altogether.

The need for this bill is very real. We have witnessed real examples of how municipalities can, without due process, utilize police powers to effectively shut down Wisconsin employers. In one case last year, a town board nearly closed a 100-year-old business that employs 100 people. That sort of action has a concrete and significant chilling effect on investment and job creation.

SB 632 is a very limited and targeted response to this problem. It codifies agreements between localities and non-metallic mines, without limiting a local jurisdiction to regulate or impose restrictions on future operations.

Conclusion

We thank you again for the opportunity to speak before you today. While SB 632 does not address all of the challenges local governments are creating for Wisconsin's non-metallic mining industry, it solves a pretty big one. The basic property rights enshrined in this legislation will help employers to continue to create jobs in industrial sand mining and are important to Wisconsin's business community generally. We encourage your support.

TESTIMONY

March 3, 2014

To: Wisconsin State Senate Committee on Workforce Development,
Forestry, Mining, and Revenue; and
Wisconsin State Assembly Committee on Jobs, Economy and Mining

From: Dwight Jelle
Pepin County Supervisor
Town of Frankfort Planning Commission Chair
dkjelle@gmail.com
N4145 County Road D, Arkansaw, WI 54721

Re: Opposing bill SB 632 and AB 816

I am writing in opposition to 2013 Senate Bill 632 and 2013 Assembly Bill 816, which were introduced by Senator Tiffany and Representative Ballweg on February 26, 2014.

I am a civil engineer, by education, and for 20 years I worked for and eventually ran a 200 person consulting firm that specialized in land development issues.

I am on the Board of Supervisors in Pepin County.

I sit on the Land Conservation Committee at Pepin County and one of my roles is to help oversee the administration of reclamation permits for non-metallic mining.

I am the chair of our town's Planning Commission charged with setting up a comprehensive zoning ordinance in our town.

I have considerable experience on land development issues and have spent the last three years directly involved in issues that the frac sand issues have brought forth to Western Wisconsin.

I speak in opposition because I believe that allowing an intense, industrial type development such as frac sand mining to expand over thousands of acres in Wisconsin without any operational controls and with disregard for the town's planning is a mistake.

When we set up our zoning ordinance in Frankfort, we operated on the premise that if a land use impacted others, they needed to talk to us and they needed to operate in a framework that minimizes disturbances to the environment and the community.

Frac sand mining can be intense. They can consume hundreds of acres, they can have hundreds of trucks per day, they can blast through rock every day, they can create massive dust issues and impact neighbors with noise, traffic, dust, and other issues that are not covered by existing state or federal regulation.

SB 632 and AB 816 will allow some mining companies to disregard all of the detailed planning by the towns and the counties by expanding into areas or registering areas that may not be appropriate for mining.

It appears that the intent of the bill is to make sure that governing bodies do not add regulation to mines that are currently operating. This bill goes way beyond that to jeopardize private property rights, the environment, and transportation assets for thousands of Wisconsin citizens. I am all in favor with the concept of a deal is a deal. If the mine is operating within a mine site area that is legally described in a reclamation permit, they should be able to continue that operation as planned without the threat of new regulation. By allowing the mine to expand to areas that have not been considered for mining, and may not be suitable for mining, like this bill will do, is not right.

I urge you to let this bill die in committee.

Thank you for your consideration

Testimony for March 3, 2014 Public Hearing on SB 632 and AB 816

TO: Wisconsin State Senate Committee on Workforce Development, Forestry,
Mining and Revenue

Wisconsin State Assembly Committee on Jobs, Economy and Mining

CC: Kathleen Vinehout, 31st Senate District
Warren Petryk, 93rd Assembly District

FROM: Kay M Hamilton

Town Board Supervisor #4, Town of Frankfort, Pepin County, WI
N4145 County Road D, Arkansaw, WI 54721

K33hamilton@gmail.com

RE: Opposition to SB 632 and AB 816

I take my responsibility as a town board supervisor very seriously and want to do what is best for the town's citizens. I stand before 21 elected officials who represent the people in their districts as well as ALL people in the State of Wisconsin after they have become elected and wish to do what's best for the citizens of Wisconsin.

According to the UW Extension factsheet 05 of October 2013, there are 131 nonmetallic frac sand mines/facilities in the State of Wisconsin; 112 permitted, 19 in proposal.

Of these 21 elected officials before me only 5 represent districts that contain frac sand mines. These 5 elected officials districts contain roughly 22 of the above stated 131 frac sand mines in the State of Wisconsin.

I strongly urge you to do further research on the impacts of frac sand mining on the citizens of Wisconsin in the areas in which they exist. I am not urging you to 'get rid' of mining; I only suggest that you realize that there is a place for everything and that the needs of the citizens should come before the needs of the corporate mining companies.

Jobs are very important to the State of Wisconsin and should be created in a safe environment for the individuals who wish the jobs as well as for the individuals who live around where the jobs exist. There needs to be a way to create a mutually beneficial way to protect the rights of both these individuals.

Allowing the towns, villages, cities and counties who are close to their citizens to determine what is mutually beneficial is the right way to go. Giving corporate mining companies full "rights as citizens" is not.

I ask you to vote no on SB 632 and AB 816.

Kay M Hamilton



Testimony of the Wisconsin Breast Cancer Coalition

**IN OPPOSITION TO SENATE BILL 632/ASSEMBLY BILL 816
Before the Senate Committee on Workforce Development, Forestry, Mining and Revenue
and the Assembly Committee on Jobs, Economy and Mining
March 3, 2014**

There is significant research linking breast cancer incidence to modifiable factors including the existence of certain chemicals in the environment. In particular, Endocrine-Disrupting Compounds, commonly found in agricultural and personal care products, have been linked to an increased risk of breast cancer. The proposed bill would restrict local governments' authority to regulate air and water quality. While this may benefit frac sand mining in certain areas of the state, the limitation on local control ignores geographic and geologic variations that make local authority over air and water quality a reasonable and necessary means of regulation. Therefore, the WBCC urges the Committees to oppose SB632/AB816.

Wisconsin state level regulations are not adequate to protect public health from potential serious impacts related to frac sand mining, which has become more and more prevalent in the last few years. Not only does the bill prevent local governments from protecting their constituents where the state has fallen short in regards to frac sand mining, it would apply to any and all regulation of air and water quality. This would have serious consequences for other pollutants and environmental factors of disease, including those linked to breast cancer.

It is believed that approximately 75% of breast cancer cases may be caused by modifiable factors, including exposure to chemicals in the environment. While scientists acknowledge the difficulty of proving direct correlation between a specific chemical and cancer development, research suggests that chemicals commonly found in pesticides, herbicides, products used in the care and feeding of livestock, and personal care and other products have the ability to disrupt hormonal and biological changes and increase risk of breast cancer. A study by the Centers for Disease Control found significant levels of Endocrine-Disrupting Compounds in a representative sample of Americans.

Sufficient evidence of harm exists to warrant avoiding chemicals known to be endocrine disruptors. A 2010 report by the Breast Cancer Fund underscored the strength of aggregate research on environmental exposures and breast cancer and indicated it is "too strong to be ignored." While individuals can choose to educate themselves and use safer products in their own homes, the regulation of air and water quality in public space requires action on the part of policy makers.

This bill would nullify a significant number of regulatory and licensing agreements across the state and have broad, significant impacts on environmental determinants of health in Wisconsin. Due to variance in pollutants and other concerns which are dependent on location, industry and other locally specific factors, it is important for health in Wisconsin that local governments maintain the ability to regulate air and water quality.

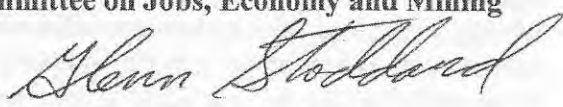
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TO: Wisconsin State Senate Committee on Workforce Development,
Forestry, Mining, and Revenue; and
Wisconsin State Assembly Committee on Jobs, Economy and Mining

FROM: Attorney Glenn M. Stoddard 
(Contact: 715-864-3057)

RE: Opposition to SB 632 & AB 816

DATE: February 27, 2014

I am writing in opposition to 2013 Senate Bill 632 and 2013 Assembly Bill 816 ("SB 632 & AB 816"), which were introduced by Senator Tiffany and Representative Ballweg on February 26, 2014. Please accept this memorandum as my formal testimony in opposition to these two bills.

Since 2008, I have represented the Town of Cooks Valley, in Chippewa County, on nonmetallic mining issues. I have also represented and advised a number of other towns and property owners on issues relating to nonmetallic mining regulation. I drafted the Town of Cooks Valley Nonmetallic Mining Ordinance, which was upheld by the Wisconsin Supreme Court in *Zwiefelhofer v. Town of Cooks Valley*, 2012 WI 7, 338 Wis. 2d 488, 809 N.W.2d 362. As such, I have substantial experience with nonmetallic mining regulation in Wisconsin, and I am very concerned about SB 632 & AB 816.

Unfortunately, if enacted SB 632 & AB 816 would constitute a "give-way" to the frac sand and nonmetallic mining industries at the expense of Wisconsin's citizens, counties, and towns. Contrary to industry propaganda, these bills would place significant new limitations on counties and towns that would greatly reduce their ability to regulate existing and future nonmetallic mining and processing operations in order to reasonably protect public health and safety. These bills would unreasonably confer special rights on frac sand and other nonmetallic mining interests, while significantly preempting reasonable local controls, putting citizens and private property owners at risk.

While these bills are being portrayed by some as more reasonable than Senator Tiffany's earlier SB 349 proposal, they are equally bad for everyone who is concerned about the adverse public health and environmental impacts of unregulated (and under-regulated) frac sand and nonmetallic mining and processing operations in Wisconsin. This is because these bills would "grandfather" existing nonmetallic mining operations, and prohibit counties and towns from imposing any more restrictive regulations on these mining operations if they expand in ways that could cause additional adverse impacts to nearby citizens and private property owners in the future.

Make no mistake: These bills are NOT about protecting private property rights. Instead, they would allow frac sand and other nonmetallic mining companies to run roughshod over their neighbors' private property rights without requiring any compensation and without allowing for any added local regulation. Consequently, these bills favor only one use of private property: Nonmetallic mining (which is now mainly frac sand mining in Wisconsin). They subsidize and enhance the private property rights of the frac sand and nonmetallic mining industries by allowing them to trample on and destroy the private property rights of their neighbors. They do not establish a balanced equation or a level playing field by any means. If enacted these bills would be a mere subsidy to the frac sand and nonmetallic mining industries that would come at the direct expense of neighboring private property owners and the general public in the communities where the mines and processing operations are located.

Furthermore, these bills would unreasonably limit the authority of counties and towns to prevent extraction of nonmetallic minerals from any land that is registered by the owner of the land, even if mining has not begun—unless a county or town ordinance is necessary to implement a master plan, comprehensive plan or land use plan that was adopted at least one year before enactment of the ordinance. This goes well beyond “grandfathering” existing mining operations. It is a “back-door” way to prevent effective local controls on nonmetallic mining operations in the future. It is basically SB 349 in a new dress. This provision would allow any nonmetallic mining company to contract with a property owner to register his or her land and the nonmetallic minerals under the land in a type of legalized “land and power grab,” and thus be insulated thereafter from any meaningful local regulation for ten years and potentially much longer. This could be referred to as the “Town of Dover Provision,” as it was apparently written to undermine recent efforts by the Town of Dover in Buffalo County to address public health and safety threats from a proposed 400-acre frac sand mine and processing operation. There citizens and local public officials discussed the merits of frac sand mining in open meetings and recently enacted reasonable protections that would be eliminated by these bills. Again, these bills are SB 349 in a new dress.

No one should be fooled by these bills or the propaganda being put out in their support. They are very BAD BILLS for Wisconsin's citizens. They would greatly limit local control over nonmetallic mining operations and give the frac sand and nonmetallic mining industry huge advantages over neighboring property owners, and counties and towns seeking to protect public health and safety through reasonable ordinances.

Enactment of these bills would also arguably violate Art. XI § 3(1) of the Wisconsin Constitution—referred to as the Home Rule Amendment—guaranteeing cities, villages, and towns exercising village powers the right to control their own local affairs.

Finally, I urge you to vigorously oppose SB 632 & AB 816 and do everything you can to stop them from being passed by the Wisconsin Legislature.

Thank you for your consideration.

cc: Interested persons

From: Jorg Pierach <japierach@gmail.com>

Date: Thursday, February 27, 2014 9:33 PM

To: Jorg Pierach <japierach@gmail.com>, "glennstoddard@gmail.com" <glennstoddard@gmail.com>

Subject: Attorney Stoddard Weighs in on Tiffany Frac Sand Bill, Cites Buffalo County township of Dover

If you are looking for an example of how devastating Tom Tiffany's recently proposed Senate Bill 632 could be to the ability of counties and towns to reasonably protect public health and safety, attorney Glenn Stoddard suggests you look no further than the tiny township of Dover, population 450 or so, in Buffalo County, Wisconsin.

Confronted last April with a proposed 400 acre silica sand mine and processing facility, the residents and landowners of Dover began a lengthy and very public discussion of the implications. Over the past 10 months, they held more than a dozen public hearings and organized a Community Forum featuring a 90-minute Q&A with silica sand experts and mining representatives. A quarter of the Town's population showed up that September evening to dine on hot dogs and potato salad and to hear directly from those who could help them make up their own minds about what was best for their community.

With public opinion running very strongly against the proposed mine, the Dover Town Board began to take steps that would give them some control over the impact of the project proposed by River Valley Sands. In July of 2013, Dover Board sent a unanimous **recommendation for denial** to Buffalo County. In October, after further public discussion, the Board **authorized a public vote on Village Powers**, and after it passed on the strength of public resistance to silica sand mining, **began to consider a licensing ordinance** that would provide health and safety protections the people of Dover sought. Meanwhile, during the last few months of 2013, a committee of Dover residents wrote and recommended to the Board a Comprehensive Land Use Plan **designed in part to guide a future free of a major industrial site in the township**. The CLUP was **passed unanimously** in January 2014 by the Dover Town Board after two packed public hearings. On **February 19**, after two more public hearings totaling more than three hours of civil community discussion and input, the Dover Board **voted to pass the same licensing ordinance adopted in the Town of Cooks Valley** and upheld by the Wisconsin Supreme Court. In the coming weeks, the **Board of Adjustment in Buffalo County** will rule on the application, and if they go against the Town of Dover's recommended denial, the **new ordinance offers a last line of defense for the people of Dover**.

That is until a little discussed provision in Tom Tiffany's new Senate Bill 632 wipes out the Town of Dover's intended protections, and with it hours of community discussion and debate and thousands of dollars in local taxpayer money spent guiding the process. Stoddard calls Tiffany's loophole "The Town of Dover Provision." Here's how it works. While the people of Dover were slowly taking steps to protect themselves, the four landowners making up River Valley Sands quietly registered their mineral deposits with the Registrar of Deeds in Buffalo County, as outlined by the DNR here <http://dnr.wi.gov/topic/mines/deposit.html>

It was this seemingly innocuous filing, and all other such future landowner "mineral deposit" filings, that would allow Tiffany's friends in the silica sand industry to take local efforts to deny a permit to mine off the table. That's because, as Stoddard puts it, "enactment of SB 632 & AB 816 would unreasonably limit the authority of counties and towns to prevent the extraction of nonmetallic minerals from any land that is registered by the owner of the land, even if mining has not begun—unless a county or town ordinance is necessary to implement

a master plan, comprehensive plan or land use plan that was adopted at least one year before enactment of the ordinance." The bill's sponsors say it "merely reinforces existing agreements and keeps the rules in place." Based on the Town of Dover's experience, however, that could not be farther from the truth. If Tiffany's bill passes, the people of Dover, and any other local townships taking similar preemptive steps, will have wasted their time and money.


Attorney Glenn Stoddard has spelled all of this out in the attached memo he sent today to the Wisconsin State Senate Committee on Workforce Development, Forestry, Mining and Revenue and the Wisconsin State Assembly Committee on Jobs, Economy and Mining. Stoddard is the attorney who drafted the Town of Cooks Valley's Non Metallic Mining Ordinance and successfully defended it before the Wisconsin Supreme Court in *Zwiefelhofer v. Town of Cooks Valley*. It was the Town of Cooks Valley's ordinance that originally prompted Senator Tiffany's efforts to curtail these sorts of local controls over silica sand in Wisconsin. Stoddard is also the attorney representing a group of residents and landowners, including me, in the Town of Dover.

A hearing on Tiffany's SB 632 (attached) is set for Monday, March 3 at noon in Madison. **Stoddard is available for interviews and can be reached at 715/852-0345.** Please let me know if you have any additional questions.

Jorg Pierach, Town of Dover landowner

MEMORANDUM

TO: Honorable Members of the Senate Committee on Workforce Development, Forestry, Mining and Revenue and the Assembly Committee on Jobs, Economy and Mining

FROM: Daniel Bahr, Government Affairs Associate 

DATE: March 3, 2014

SUBJECT: Senate Bill 632/Assembly Bill 816

The Wisconsin Counties Association (WCA) thanks the committee members for the opportunity to discuss Senate Bill 632/Assembly Bill 816 relating to local regulation of nonmetallic mining and preservation of marketable nonmetallic mineral deposits. At this time, the Wisconsin Counties Association is testifying for informational purposes only. Over the past several months, WCA has been engaged in discussions with Sen. Tom Tiffany, Rep. Joan Ballweg and many stakeholders regarding the issue of nonmetallic mining. Last fall, Senate Bill 349 was introduced as a starting point for discussions pertaining to nonmetallic mining.

Subsequent to the introduction of SB 349, discussions occurred and several changes were made addressing our concerns and incorporating our input. It has always been our Association's mission to preserve local control whenever possible. SB 632/AB 816 incorporates suggestions made by local units of government to preserve local control and eliminates policy in SB 349 that WCA's membership found problematic.

WCA's objective in this process has been to work with the bill authors and industry stakeholders in order to produce the best public policy possible. The current legislation preserves the ability to use police powers in the regulation of nonmetallic mining for townships and counties with no zoning or comprehensive plan in place. The bill further codifies current case law regarding the diminishing assets rule, contiguous land and already existing non-metallic mines.

Per WCA's request of the bill authors, SB 632/AB 816 also includes a provision for local notification regarding the Department of Transportation establishment of a borrow site. SB 632/AB 816 is a product of consensus building and compromise. WCA wishes to thank Sen. Tom Tiffany, Rep. Joan Ballweg and each of their staff members for working with us throughout the process.

Please contact WCA with any further questions.



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John Muir Chapter

**Sierra Club comments on SB 632/AB 816, Joint Committee Hearing
Assembly Jobs, Mining and Economy and Senate Committee on Workforce Development,
Forestry, Mining, and Revenue, March 3, 2014**

Thank you for the opportunity to submit comments on this proposed legislation on behalf of the Sierra Club and our more than 15,000 members statewide.

The Sierra Club is opposed to SB 632/AB 816 because it is poor public policy that significantly erodes local authority over the booming frac sand industry at the same time that many local governments are struggling to deal with the many impacts from these operations. We believe that the legislature should be doing everything in its power to strengthen local community's authority to protect public health and safety; not give a booming industry more favors. We note that this industry has grown from a just a handful of operations 3 years ago to at least 115 active mines today. The frac sand industry is hardly in need of special treatment yet this bill tips the scales significantly for an industry that already has overwhelming financial and other resources that local communities and property owners don't have.

The Sierra Club opposes the bill because it has been introduced with little notice to the public and with little time for interested parties such as local governments to consider the impacts on their authority.

The Sierra Club opposes SB 632 because it prohibits local governments from making new rules to protect public health and safety for operating frac sand mines if they're found to be "non-conforming." Local governments need the flexibility adjust their ordinances if needed to keep up with emerging issues or to adjust permitting requirements under changing conditions for a mining operation, but are prohibited from doing so in this bill. It's a free pass for mining companies from ever having to deal with rule changes during their operating lifetime even if public health and safety are threatened by the mining operation.

The Sierra Club opposes SB 632 because it establishes an unnecessarily broad and vague expansion of mining company lands that are "grandfathered" by designating them as an existing use so that changes in local ordinances cannot apply to them. By grossly inflating the word contiguous to include lands divided by roads or waterways, the bill bars local governments from applying new or updated ordinances to future expansions. The word contiguous is tortured in the bill to mean lands separated by any road up to and including Interstate highways and any navigable water including lakes, rivers and streams. Under SB 632, local governments cannot apply different standards or rules to the "contiguous" lands – despite parcels being physically separated by significant distances. Requiring one-size-fits-all

restrictions on these so-called contiguous lands defies common sense, sound natural resource science and irresponsibly ties the hands of local governments.

The Sierra Club opposes SB 632 because it establishes that local governments are prohibited from doing anything that might potentially halt unsafe development of a frac sand mining operation on lands registered as having a sand deposit – an extraordinary boon to owners of sand deposits. The current law that already limits local governments' powers to approve buildings on registered land and to enact land use ordinance changes is sufficient to protect sand deposit owners. The bill preempts local authority with an illogical and unscientific presumption that any registered land with a sand deposit it is required to be allowed to be developed.

The Sierra Club opposes SB 632 because it directly attacks the 2012 Wisconsin Supreme Court decision upholding the right of local governments to use village powers to legally regulate frac sand mine proposals.

The Sierra Club sees no evidence that regulation has harmed sand mine development and in fact, there is growing evidence that the lack of regulation is causing harm to local air and water resources. At least 20 notices of permit violations have been issued by the DNR and 6 cases of violations have been referred to the state Department of Justice for prosecution. Three cases have resulted in \$360,000 in settlements so far.

We urge the legislature to reject SB 632/AB 816 and its unfair limits on local authority over damaging sand mining operations and to work instead to strengthen and protect the rights of our towns, villages, cities and counties to protect public safety, air, water and health.

Respectfully submitted by Dave Blouin, Mining Committee Chair, Sierra Club – John Muir Chapter

Founded in 1892 by John Muir, the Sierra Club is America's oldest, largest and most influential grassroots environmental organization. The Sierra Club's mission is to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out those objectives. The Sierra Club – John Muir Chapter is made up of 15,000 members and supporters working to promote clean energy and protect water resources in Wisconsin.

I'm speaking today as a citizen of Crawford County to express my opposition to these bills. I'm affronted that we have had no time to thoroughly review before the public hearing. The only thing clear is that these bills give the frac sand mining industry advantage over other industries, local government regulation and citizens.

In my own township, we are working on basic zoning that supports our Comprehensive Land Use Plan. Our citizen survey and Plan supports our rural character, protecting and conserving the land, water, and natural resource beauty of the township. In our zoning draft, we are zoning agricultural/residential and would require all industrial size operations of all kinds to apply for a rezone to industrial. How will this bill affect our draft ordinance as we move forward? This bill looks like it would not only require us to allow industrial frac sand mining, it would limit our ability to address expansions and other issues that come up down the road.

To allow mines to expand to a "same owner property" with no regard for neighbors and local regulation is giving advantage to the industry. It is not usually difficult to get people who want out to sell to a neighbor who is getting rich off their now dire situation, so he can sell to the sand mining companies. It is a blatant back door give away to the industry. Are we now required to VIOLATE our Comprehensive Plan and allow nonmetallic operations to expand indefinitely on same owner land without regulation? No other industry is given the free reign to expand without regulation that this bill gives to frac sand mining.

Further, looks like this bill will not allow local government to go back and change their regulations. What other industry is allowed to operate so unaccountably? We'd still be running coal plants with decade old rules if government wasn't allowed to require cleaner air standards. Given the health impacts already reported from the silica dust by neighbors, we can fully expect future studies to verify that there are indeed serious respiratory problems associated with exposure to fine particles of airborne silica. Does this law say that we will not be able to protect our own health if we don't get it in an ordinance first time around?

Local governments have spent valuable time and resources on their nonmetallic mining ordinances. Would their ordinances that address the entire industry, the mines, transportation, and processing now be void? Would local government ordinances no longer be able to regulate more than mining? How does requirement of compensation for local road repair fit into this bill?

Does the "registered land" part mean that local government, regardless of their Comprehensive Land Use Plan, zoning ordinances, ordinance, or neighbors, have to allow frac sand mining on that land, even if that violates their regulations?

Could frac sand mines challenge any ordinance under this law if they felt it would "prevent" them from extracting frac sand? There are numerous other aspects of this bill that could have consequences, all of them in favor of the frac sand mining industry at local government and citizen expense and consequences.

I am deeply disappointed that the Counties and Towns Associations abandoned local government, from what I've read, and signed off on this bill. The more I read it over, the more I ponder and read the assessments from others, the more I realize how devastating it is. I am also distressed at the pace of this bill. How do local governments and citizens read and assess a bill of this magnitude of effect in 3 days? This is not a democratic process.

Edie Ehlert, 15981 Moldrem Rd, Ferryville, WI (Crawford County)

Contact: Forest Jahnke, Crawford
Stewardship Project
forestjahnke@gmail.com, 608-632-2183

March 3, 2014

Senate Committee on Workforce Development, Forestry, Mining, and Revenue

Assembly Committee on Jobs, Economy and Mining

RE: SB 632 and AB 816

We are disappointed to find ourselves back so soon to, once again, defend our rights to implement common-sense ordinances to protect the safety, health, and well-being of communities from the worst impacts of industrial silica sand operations. Crawford Stewardship Project has spent the last couple years helping our county understand and proactively deal with this new and booming industry in ways that everyone can live and work with. We fail to understand the need for the State to intervene in this slow and neighborly process as we as a community decide what the best way to move forward will be.

Crawford County spent much time, energy, and money to draft a model ordinance. The majority of our Townships adapted and adopted this ordinance. A few townships (some of which have no zoning) are still working to implement their versions of the ordinance or zoning. We have serious concerns that these ordinances will be nullified, whole or in part, by SB 632/ AB 816 and those townships currently working on or without zoning or a licensing ordinance will be left with no ability to regulate a mine that may come to town before they can put adequate protections in place.

It appears that this bill makes it possible for a small local use quarry to become a full-scale industrial silica sand mine with no additional oversight. Also, if the conditions of a sand mining operation change such as the size, intensity etc. SB 632/AB 816 effectively takes away the ability of local governments to respond with additional restrictions or regulations addressing any adverse impacts to the community.

This "grandfathering in" of existing quarries exempting them from any new regulation despite changes in their nature in conjunction with their unfettered ability to expand on contiguous land is an extremely harmful combination for communities who must live with these operations. No other industry is allowed to operate in this way, so despite assertions that local communities, "cannot discriminate against any particular business", the State seems to clearly be playing favorites here. To quote the bill itself, "This 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." Why does the frac sand mining industry require protections above and beyond those of all other businesses? Why are local governments not allowed to implement health and safety protections for the communities they serve when it comes to frac sand mining?

Suspensions easily arise when an industry demands to be exempted from all future regulations. Is it perhaps that the industry does not like communities taking steps to mitigate the damage caused by the industry? What exactly is the reasoning behind this new legislation? It is difficult to believe that an industry that has grown so exponentially in just a handful of years (both in numbers and in profits) would have legitimate complaints that they are being overwhelmed with regulations by townships and

counties. Are there statistics to back up this need or that local control is causing the industry irreparable harm or the inability to operate in a profitable manner?

Given the fast pace of this bill's progression, there has been inadequate time for citizens and their local governments to fully examine and analyze this bill or seek thorough legal review. It appears as though transport and processing of frac sand will no longer be under the authority of local municipalities to regulate. Is this the case? If so, what is the reasoning and who will take on the mantle of regulation?

We suspect that this bill would allow sand mines to challenge ordinances that they claim prevent them from extracting sand. On what basis could this be done? What would be the legitimate reasons for the industry to eliminate basic protections for the health and welfare of the surrounding community?

An industry may not be appropriate for a community if it cannot profitably extract resources while respecting the rights of the citizens to the basic needs of clean air, potable water, and time off from disruptive loud noises, blasting, truck traffic or roaring diesel engines, and bright lights, *and* they cannot come to reasonable agreements with empowered local governments. The solution this bill proposes seems to be to simply dis-empower the local units of government. We question the legality and constitutionality of this, considering the 2012 Wisconsin Supreme Court decision (*Zwiefelhofer v. Town of Cooks Valley*) upholding the rights of local governments to regulate a frac sand mine through their police powers.

The people of Wisconsin, who have been struggling to grasp and deal with the impacts of a booming new mining industry, have not been given adequate time to read and understand these sudden proposed changes in the rules that will affect their daily lives, their children and their communities for decades to come. The process, as well as the nature of this bill, is disturbingly anti-democratic. After public outcry over SB 349, it seems this new attempt to remove local control of frac sand mines is purposefully being pushed forward at incredible speeds to avoid public comment and input.

All in all, it seems as though a specific industry is being targeted here for special and unmerited privileges at the expense of the surrounding communities. The need for these exemptions has not been demonstrated, the effects on communities have not been fully considered, and finally, the pace at which this bill is being pushed forward is irrational and irresponsible. Crawford Stewardship Project sincerely hopes the representatives of the State of Wisconsin will listen to the people who they represent and protect the rights of local governments who are doing all they can to protect the safety, health, and welfare of their citizens.

Respectfully Submitted,
Forest Jahnke,
Co-coordinator
Crawford Stewardship Project

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Crawford Stewardship Project is grateful for the generous support of Wisconsin Community Fund and RESIST, Inc.

Comments on SB 632/AB 816

“Cease being intimidated by the argument that a right action is impossible because it does not yield maximum profits, or that a wrong action is to be condoned because it pays.”

— Aldo Leopold, *A Sand County Almanac*

SB 632 is another piece of legislation devoted to private interests at the expense of public interests in health, safety and local control. A piece of property becomes immune to regulation, or sanction for violations of regulations, when it has been used for non-metallic mining or is “registered” as a non-metallic mining site.

If a piece of property has been used for non-metallic mining, it becomes immune from new regulations for 25 years, and adjacent property can also be used for non-metallic mining without complying with regulations that need to be enacted to regulate air and water emissions from non-metallic mining and processing.

Minnesota recently enacted regulations to monitor and control ultra fine silica sand emissions, joining five other states with similar regulations. Wisconsin will now not be able to apply similar rules to existing or expanding or registered sand mining operations. Why should Wisconsin remain a free fire zone for out of state sand mining corporations? Is the public interest of so little concern to the legislature? Must we ignore developing science in order to guarantee cheap and potentially dangerous operating practices for sand mining companies?

Wisconsin has a history of stewardship of its natural resources and of local governments using ordinances and local agreements to ensure responsible use and management of public resources and minimize adverse effects to neighboring residents. The exploitation of sand used for hydraulic fracturing is so profitable that companies have agreed to compensate for lost property values, road damage and other damages caused by their operations. SB 632 absolves current operators and many potential operators who are either expanding operations or simply register a potential non-metallic mine site from entering into such agreements in the future.

We refuse to let half of our state, our clean air and water and productive land be sacrificed to maximum profits for the oil and gas industry that operates frac sand mines to enable the destruction of water in other states where hydraulic fracking for oil and gas is occurring. Human health and the right to a continued sustainable life in our sand counties is more important, more sacred than the pursuit of short term profits by companies that will be long gone before the damage they cause may be repaired, if it ever can be.

Let local communities protect themselves.

Patricia K. Hammel
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