



131 W. Wilson St., Suite 505
Madison, Wisconsin 53703
phone (608) 267-2380; (800) 991-5502
fax: (608) 267-0645
league@lwm-info.org; www.lwm-info.org

To: Senate Committee on Insurance, Housing, and Trade
From: Curt Witynski, J.D., Deputy Executive Director, League of Wisconsin Municipalities
Date: December 13, 2017
Re: **SB 640, Limiting municipal regulatory authority and ability to impose impact fees; New reporting mandates.**

The League of Wisconsin Municipalities opposes SB 640 as introduced. While we appreciate the authors' willingness to meet with us and to make changes to earlier versions of this bill that we recommended, we continue to have significant concerns about many provisions in the bill.

Our top nine concerns are:

1. Section 61 – **Deleting Sec. 281.33(6), Prohibiting municipalities from enacting storm water regulations stricter than statewide standards.** This provision repeals a compromise provision inserted into state law three years ago allowing communities to exceed state standards if necessary to control storm water quantity (i.e., flooding) or to comply with federally approved and state imposed total maximum daily load (TMDL) water quality standards. The increased intensity of storm events has elevated not diminished the need to manage stormwater quantity. State stormwater standards in NR 151 may be adequate to address erosion control and normal stormwater quality concerns; but they were not designed to be comprehensive stormwater quantity controls. Many communities have stormwater quantity standards that have been in effect for more than 10 years. Eliminating these options will only increase damage to developed areas.

Regarding TMDL standards, currently state stormwater standards in NR 151 only require a 20% reduction of pollutants in redeveloped areas. If municipalities are limited to 20% in redeveloped areas they will not be able to comply with state imposed and federally approved TMDL limits. Communities in the Rock and Fox watersheds, for example, are required under their municipal stormwater permits to comply with TDML waste load allocations requiring in some cases sediment load reductions in excess of 70%. Since new development is already at 80%, reaching compliance necessarily requires increased controls in redeveloped areas along with other more stringent requirements.

2. Section 59 – **Requiring that park fees imposed as a condition of subdivision approval comply with impact fee law standards and requirements.** State law has always distinguished between park fees imposed as a condition of subdivision approval under Ch. 236 and impact fees imposed on new development under sec. 66.0617. Impact fees are used to help cover the capital costs of public facilities necessary to serve new development. Park fees under ch. 236 are used to acquire land for parks necessary to serve the new development. The park fee enabling legislation is longstanding and was treated outside of and separate from impact fees when the impact fee enabling legislation was enacted. There is no need at this time to apply the impact fee law standards to park fees imposed as a condition of subdivision approval.
3. Section 21 – **Prohibiting new and additional charges for services rendered by a storm water system against properties retaining at least 90% of storm water.** This is inconsistent with prior PSC decisions on this issue. Most storm water fee ordinances give properties that retain and treat 90 percent of their water a credit against their fee. All properties benefit from municipal storm water systems when streets don't flood regardless if they retain even 100

percent of the water that falls on them. Moreover, it will be very problematic to prove which properties are actually retaining 90% of the water on site (and if designed to do it, continue in the future after the site is developed). Second, even though a property may retain 90% of the water on site, the municipality still incurs costs associated with the property due to MS4 permit compliance requirements. For example, the municipality must monitor the site yearly and ensure on-site facilities are being inspected and maintained by the property owner. If the inspections aren't being done, the City will have to perform the inspections. Other costs associated with storm water utilities extending beyond just a single site include funding of leaf collection throughout the city.

4. Section 11 and Section 14 – **Allowing developers to pay impact fees by bond or a letter of credit; and making impact fees payable 6 months before costs to construct public facilities are incurred.** We don't understand how a bond could work in lieu of fees paid at the time a building permit is issued. Also, regarding the time of payment, it's typically not possible to know precisely when a public facility for which the impact fees are collected will be constructed let alone six months prior to construction. This provision makes an easy to understand and apply provision confusing and impractical.
5. Section 50 – **Prohibiting municipalities from limiting weekend private construction work.** Whether and when to allow construction noises to occur on weekends is a quintessential issue of local determination. We researched municipal ordinances regulating construction noise on weekends. We found that communities are all over the map with regard to prohibiting construction noises on the weekend. Some limit the times construction work can occur. Some allow on Saturday, but not Sunday. Many don't regulate it all. That is the genius of local control. The level of regulation reflects the desires and character of the community. One possible compromise approach, is to require that municipalities prohibiting weekend or Sunday work must provide for a process by which a builder may request a special exception under extraordinary circumstances for doing work on weekends in those communities.
6. Section 1 and 2 – **Determining the value of property for purposes of condemnation.** While we understand and acknowledge that the methods for determining the value of property for purposes of condemnation should be consistent with professionally accepted appraisal practices and methods used by assessors for determining the value of property for property tax purposes, we don't think the proposed changes accomplish that goal. At a minimum the word "shall" should be replaced with the word "may", since some appraisal methods might not be feasible in all situations. We think these provisions should more closely mirror state law governing the valuation of property for property tax purposes. We also think these changes might be better placed in the dark store legislation.
7. Section 3 – **Definition of "Reasonable Project Costs."** This new definition, which is over a page long, is too broad and will significantly increase the cost to local governments of exercising eminent domain.
8. Section 20 – **Triggering the 60 day statute of limitations on appealing the reasonableness of a municipal fee.** The bill triggers the 60 day limit at the time a fee is paid. We recommend changing this to when a fee is charged or assessed.
9. Sections 22 and Section 23 – **Mandating municipalities prepare an annual "housing affordability report" and an annual "development fee report."** While we appreciate

changes the authors made to earlier versions of these new reporting requirements, including applying them only to municipalities exceeding 10,000 in population, they still represent unfunded mandates. Complying with the annual reporting mandates will require planning and other staff to devote time and resources better spent on economic development efforts or efficiently serving builders, developers, and citizens seeking permits.

While this bill contains a few items we support, such as enabling workforce housing TIF districts and limiting the signers of zoning change protest petitions to city or village residents, over all it significantly limits municipal powers and the ability of municipalities to recover costs.

The League urges you to vote against recommending passage of SB 640. Thanks for considering our comments.