

Loss of Local Control Could Hurt Lakes and Streams

by: Clifford H. Bloom

Traditionally, local municipalities (such as townships, villages and cities) have been able to regulate a wide variety of land uses and activities through zoning and police power ordinances. Frequently, such ordinances can be used to protect lakes, rivers and streams. The ability of government closest to the people—local government—to regulate activities and land uses within the local municipality has been referred to as "local control" or "local autonomy." On occasion, the Michigan Legislature has taken away local control over certain matters. When the Legislature enacts a statute taking away some or all local control in a given area, it is referred to as "preemption." Unfortunately, preemption is increasing.

In the past, state officials have taken away some or all local control over the following areas—mobile home parks, mobile home design, oil and gas wells, gun clubs, foster and group care homes, billboards, wetlands protection, prisons, landfills, pigeon keeping in residential neighborhoods and other areas. There are bills presently pending in the Michigan Legislature which, if enacted, would preclude local control over the following areas—local school calendars, large industrial-type hog farms, municipal residency requirements for police and fire fighters and zoning and other regulations for any type of business or business activity.

Why should riparian property owners worry about preemption? The answer is very simple. Traditionally, state officials have shown little or no interest in protecting inland lakes. There are no state anti-funneling or lake access regulations. Furthermore, state officials have tended to be quite permissive with regards to issuing state permits which allow the filling of wetlands, the creation of intensive marinas and the development of lake properties. Zoning regulations and other innovative laws which protect lakes and other watercourses have come almost exclusively from local municipalities.

To many, it appears that some Michigan legislators are being very hypocritical regarding state preemption. On the one hand, many of these legislators have complained bitterly for years when federal officials attempt to take away authority from the states. They argue that decentralization of power is important, that the government closest to the people governs best and that local control is a sacred principle. Yet, many of those same legislators have no problem with attempting to wipe out 150 years of local control by townships, cities and villages in Michigan. Is it any wonder that so many people are cynical about politicians?

Following are bills presently pending in the Michigan Legislature which could have a devastating impact upon lakes, streams and rivers if such preemption legislation is enacted:

I. House Bill 4777

This bill is one of the most blatant state government power grab attempts of our generation. A handful of Michigan municipalities have enacted so-called "living wage ordinances," which set minimum wages higher than the state or federal minimum wage. It certainly is a debatable point about whether the minimum wage might be one of those rare areas with such significant state-wide impact and no history of local control that a narrowly-tailored state preemption might be appropriate. Unfortunately, the backers of HB 4777 did not draft a narrow

preemption bill to only prohibit municipalities from setting minimum wages higher than the federal and state standards. Rather, they utilized the living wage issue as an excuse to draft legislation which would also effectively preempt literally every zoning ordinance and all other local ordinances which in any way regulate any business or business activity! If enacted, it is highly likely that zoning regulations and other local laws could no longer regulate any business or business activity (including, but not limited to, marinas, adult entertainment facilities, etc.).

I. Senate Bill 232

This is the infamous bill introduced by Senator Beverly Hammerstrom at the urging of backlot owners around the state, particularly those from Higgins Lake. This bill will do two things, both of which would be disastrous for lakes. First, it is a partial preemption bill in that it would limit a municipality's ability to regulate what occurs at road ends at lakes. Second, it purports to turn road ends at lakes into parks where backlot owners could install their own private dockage and boat moorings, as well as engage in other activities such as picnicking, sunbathing, etc.

I. Intensive Livestock Operations

There are several bills pending in the Legislature which would preclude municipalities from regulating so-called intensive livestock operations. In Michigan, these normally take the form of huge hog operations. Such uses are more industrial than agricultural. Due to very little enforcement or oversight activity by state officials, an increasing number of municipalities are regulating these uses by local ordinance. Many such operations produce as much waste as a small to medium size city with virtually no outside oversight. Absent effective regulation, horrendous pollution of the groundwater and watersheds can occur.

I. DNR Public Lake Access Facilities

Recently, the Michigan Supreme Court held that local zoning can regulate new DNR public lake access ramps and sites. See *DNR v Burt Township*, ___ Mich ___ (1999). It is highly likely that the state of Michigan and various groups will attempt to introduce legislation to take away all local control over new DNR lake access facilities. Although no such legislation has yet been introduced, riparians should be diligent and let their legislators know their opinions if and when such legislation is proposed.

It cannot be overstated how important it is for you to contact your Michigan legislator regarding these issues if you want to help preserve local control. Unfortunately, preemption tends to become easier over time. Legislators who would never have dreamed of voting in favor of a preemption bill half a dozen years ago are finding it increasingly easy to do so today. If some or all of the above mentioned bills are enacted, look for other groups to attempt their own preemption bills. For instance, it is not inconceivable that developers would attempt to obtain state legislation prohibiting anti-funneling ordinances or other local ordinances which regulate dockage or marinas.

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