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**Wisconsin Supreme Court Hears Redistricting Case**

On November 21, the Wisconsin Supreme Court heard oral arguments on a case that challenges the constitutionality of the current legislative maps for state assembly and state senate in Wisconsin. The main argument against the maps states that they are unconstitutional because several districts contain “municipal islands” which they say violates the Wisconsin Constitution because they are not contiguous.

Court watchers expect that the court will eventually agree with the parties that filed the lawsuit and will then ask for those involved with the case (parties for and against the arguments presented) would have the opportunity to submit new maps with specific guidance from the court to be considered.

The court has recognized the time constraints of having new maps introduced so close to when candidates would need to take out nominations papers to run in 2024 and have pledged to act quickly if that is the direction they decide to take.

**Efforts to Reform Setback Areas on State Highways Continue**

**Reforming the DOT rule regarding subdivisions that abut a state highway (TRANS 233) is a provision on our advocacy agenda and an issue that we have been working on for a number of years. Bills to address this issue have been introduced by State Senator Cory Tomczyk (R-Mosinee) and State Representative Dave Murphy (R-Greenville) as Assembly Bill 422 (AB 422) and Seante Bill 413 (SB 413).**

**The major provisions of AB 422 and SB 413 are:**

1. *Setback Reduction:* The Proposed Legislation modifies the setback area from 100 feet to 50 feet. The 50-foot setback is more reasonable than 100 feet to protect property owners’ interests in free use of property. WisDOT still maintains the ability to condemn additional property if needed for future transportation needs.
2. *Definition of “Structure” in Setback Area:* The Proposed Legislation clarifies that a “structure” matches a common understanding: items that are “portable,” i.e., movable. Examples include swing sets and bike paths. Non-movable items are prohibited in the setback area unless a variance is granted. The amended definition allows WisDOT to focus on safety of keeping a setback area free of non-movable objects, yet allows WisDOT to use its future planning tools to make decisions in order to avoid absurd results. The Proposed Legislation also recognizes WisDOT’s obligation and privilege to determine what structures may create an “adverse effect” on public safety or a structure that will create adverse effects.
3. *Using “Substantial Evidence” for Decisions:* The Proposed Legislation requires WisDOT to make decisions based on “substantial evidence.” This requirement allows WisDOT to focus on public safety based on data, reports and scientific standards, and future transportation plans, but reduces decisions based on opinions of what should be allowed in a setback area without any data to support that decision.
4. *Variance Process.* The Proposed Legislation sets forth a specific statutory variance process (the “Variance Process”) to correct the confusion created by the various court cases and conflicting Wisconsin Administrative Rules. The Variance Process accomplishes the following:
   1. WisDOT may still utilize its future plans, applicable data, and planning tools when considering a variance request.
   2. By requiring “substantial evidence” to justify its decision, WisDOT will focus on actual plans and data to justify its decision, not just personal opinions.
   3. The Variance Process allows for statewide policy standards yet allows WisDOT flexibility in unique circumstances in which it makes sense to allow a structure within the setback area. The language presents a statutory solution for avoiding absurd results.
   4. WisDOT’s future plans and facility improvements are a priority in determining whether to grant a variance. WisDOT may require a property owner to waive future compensation for removal of the property within the setback area if WisDOT needs the area for its transportation facilities. This accomplishes the use of one’s property while still protecting the public and taxpayers for future transportation facilities or required improvements.
   5. Sets forth a review process, which is key because denial of a variance raises questions of due process in light of the loss of use of one’s property without compensation.
   6. The focus remains on public safety as the top priority. WisDOT may deny a variance if the use described in an owner’s variance application poses a danger to public safety.
5. *Correction of Public-Facing Information:* The Proposed Legislation directs WisDOT to correct the errors currently set forth in its policies and website. While this type of information is not usually included in legislation, WisDOT’s failure to fix the inaccurate and confusing information that it stated as current policy.

Over the past few months, WBA has had multiple productive meetings with officials from the Wisconsin Department of Transportation (DOT) on slight improvements to AB 422 and SB 413. We believe we are very close to having an agreed upon list of changes to the bills that will be offered as an amendment in both houses of the legislature. Once we have agreement on an amendment, we will be working with the bill authors, the DOT, and WBA members to hold a public hearing and executive session to move both bills to a floor vote, hopefully in January or early February of 2024.