

SF3624: CREATING CONFLICTS WITH LOCAL AUTHORITY



Section 86B.201 subd. 2-- Local authority to adopt ordinance—provides “(a) This chapter does not limit the authority of a political subdivision of this state to adopt regulations that are **not inconsistent with this chapter** and the rules of the commissioner...”

Whether a local ordinance is “inconsistent” with a state statute is frequently litigated.

In 2020, Graco, Inc. sued the City of Minneapolis claiming Minneapolis’ minimum wage ordinance was inconsistent with the Minnesota Fair Labor Standards Act, which also set minimum wage rates. Graco argued that the Minneapolis ordinance prohibited what state law expressly allowed. The Supreme Court ruled that state law was intended to establish a “floor,” not a “ceiling,” because the law said employers must pay “at least” the minimum wage. *Graco, Inc. v. City of Minneapolis*, 937 N.W.2d 756, 761 (Minn. 2020). **SF3624 does not provide that wake boats must stay “at least” 200 feet from shore.**

In 2019, the Minnesota Supreme Court ruled that a local referendum was not inconsistent with state law authorizing organized collection of waste because the organized collection law established procedures for enacting an ordinance, and did not mandate a particular ordinance be enacted. *Clark v. City of Saint Paul*, 934 N.W.2d 334, 342 (Minn. 2019). **SF3624 is not a procedural statute; it establishes a statewide limit in law.**

In 1993, the Minnesota Court of Appeals determined that local ordinances that required feedlots to obtain local permits and conform to local setbacks were in conflict with a state law under which the Minnesota Pollution Control Agency (MPCA) had already permitted a feedlot because the feedlot could be in compliance with MPCA requirements but prosecuted under a local ordinance. *Bd. of Sup'rs of Crooks Twp., Renville Cty. v. ValAdCo*, 504 N.W.2d 267, 272 (Minn. Ct. App. 1993). **Under SF3624, a boat operator would argue that they are in the same position.**

In 1990, the Minnesota Court of Appeals struck down a local ordinance establishing more stringent setback limits than limits established by the MPCA as “inconsistent.” **Similar to Section 86B.201**, the MPCA statute provided that “[n]o local government unit shall set standards of hazardous waste control which are in conflict or inconsistent with those set by the pollution control agency.” *N. States Power Co. v. City of Granite Falls*, 463 N.W.2d 541, 545 (Minn. Ct. App. 1990). **Under SF3624, wake boat owners will argue that greater setbacks are inconsistent with state law.**

MOST LOCAL GOVERNMENTAL UNITS WILL NOT HAVE THE LEGAL RESOURCES TO DEFEND A MORE STRINGENT WAKE BOAT ORDINANCE.

TO ADDRESS THE PREEMPTION PROBLEM, SF3624 MUST BE AMENDED TO STATE THAT “THIS PROVISION DOES NOT PREVENT A POLITICAL SUBDIVISION FROM ADOPTING A MORE STRINGENT REGULATION.”



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