

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2003 ASSEMBLY BILL 868**

AN ACT to create 15.135 (1), 93.90 and 165.25 (4) (as) of the statutes; **relating to:** the siting and expansion of certain livestock facilities, local zoning ordinances relating to livestock facilities, creating a Livestock Facility Siting Review Board, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 15.135 (1) of the statutes is created to read:

2 15.135 **(1)** LIVESTOCK FACILITY SITING REVIEW BOARD. (a) There is created a
3 livestock facility siting review board which is attached to the department of
4 agriculture, trade and consumer protection under s. 15.03. The board consists of the
5 following members:

1 1. A member representing the interests of towns, selected from a list of names
2 submitted by the Wisconsin Towns Association.

3 2. A member representing the interests of counties, selected from a list of
4 names submitted by the Wisconsin Counties Association.

5 3. A member representing environmental interests, selected from a list of
6 names submitted by environmental organizations.

7 4. A member representing livestock farming interests, selected from a list of
8 names submitted by statewide agricultural organizations.

9 5. Three other members.

10 (b) The members under par. (a) shall be nominated by the secretary of
11 agriculture, trade and consumer protection, and with the advice and consent of the
12 senate appointed, for 5–year terms.

13 **SECTION 2.** 93.90 of the statutes is created to read:

14 **93.90 Livestock facility siting and expansion.** (1) This section is an
15 enactment of statewide concern for the purpose of providing uniform regulation of
16 livestock facilities.

17 **(1m) DEFINITIONS.** In this section:

18 (a) “Animal unit” has the meaning given in s. NR 243.03 (3), Wis. Adm. Code.

19 (b) “Application for approval” means an application for approval of a livestock
20 facility siting or expansion.

21 (c) “Board” means the livestock facility siting review board.

22 (d) “Expansion” means an increase in the number of animals fed, confined,
23 maintained, or stabled.

24 (e) “Livestock facility” means a feedlot or facility, other than a pasture, where
25 animals used in the production of food, fiber, or other animal products are or will be

1 fed, confined, maintained, or stabled for a total of 45 days or more in any 12-month
2 period. “Livestock facility” does not include an aquaculture facility.

3 (f) “Political subdivision” means a city, village, town, or county.

4 **(2) DEPARTMENT DUTIES.** (a) For the purposes of this section, the department
5 shall promulgate rules specifying standards for siting and expanding livestock
6 facilities. In promulgating the rules, the department may incorporate by
7 cross-reference provisions contained in rules promulgated under ss. 92.05 (3) (c) and
8 (k), 92.14 (8), 92.16, and 281.16 (3) and ch. 283. The department may not promulgate
9 rules under this paragraph that conflict with rules promulgated under s. 92.05 (3)
10 (c) or (k), 92.14 (8), 92.16, or 281.16 (3) or ch. 283.

11 (b) In promulgating rules under par. (a), the department shall consider
12 whether the proposed standards, other than those incorporated by cross-reference,
13 are all of the following:

14 1. Protective of public health or safety.

15 1m. Practical and workable.

16 2. Cost-effective.

17 3. Objective.

18 4. Based on available scientific information that has been subjected to peer
19 review.

20 5. Designed to promote the growth and viability of animal agriculture in this
21 state.

22 6. Designed to balance the economic viability of farm operations with
23 protecting natural resources and other community interests.

24 7. Usable by officials of political subdivisions.

1 (c) The department shall review rules promulgated under par. (a) at least once
2 every 4 years.

3 (d) The secretary shall appoint a committee of experts to advise the department
4 on the promulgation of the rules under par. (a) and on the review of rules under par.
5 (c).

6 (e) In addition to the rules under par. (a), the department shall promulgate
7 rules that do all of the following:

8 1. Specify the information and documentation that must be provided in an
9 application for approval in order to demonstrate that a livestock facility siting or
10 expansion complies with applicable state standards under sub. (2) (a).

11 2. Specify the information and documentation that must be included in a record
12 of decision making under sub. (4) (b).

13 **(3) POLITICAL SUBDIVISION AUTHORITY.** (a) Notwithstanding ss. 33.455, 59.03 (2)
14 (a), 59.69, 60.10 (2) (i), 60.61, 60.62, 61.34 (1), 61.35, 62.11 (5), 62.23, 66.0415, 92.07
15 (2), 92.11, and 92.15 (3) (a), a political subdivision may not disapprove or prohibit a
16 livestock facility siting or expansion unless at least one of the following applies:

17 1. The site is located in a zoning district that is not an agricultural zoning
18 district.

19 2. The site is located in an agricultural zoning district in which the proposed
20 new or expanded livestock facility is prohibited, subject to pars. (b) and (c).

21 3. The proposed new or expanded livestock facility violates an ordinance
22 adopted under s. 59.692, 59.693, 60.627, 61.351, 61.354, 62.231, 62.234, or 87.30.

23 4. The proposed new or expanded livestock facility violates a building,
24 electrical, or plumbing code that is consistent with the state building, electrical, or
25 plumbing code for that type of facility.

1 5. The proposed new or expanded livestock facility will have 500 or more animal
2 units and violates a state standard under sub. (2) (a).

3 6. The proposed new or expanded livestock facility will have 500 or more animal
4 units and violates a requirement that is more stringent than the state standards
5 under sub. (2) (a) if the political subdivision does all of the following:

6 a. Adopts the requirement by ordinance before the applicant files the
7 application for approval.

8 b. Bases the requirement on reasonable and scientifically defensible findings
9 of fact, adopted by the political subdivision, that clearly show that the requirement
10 is necessary to protect public health or safety.

11 8. The proposed new or expanded livestock facility will have fewer than 500
12 animal units but will exceed a size threshold for requiring a special exception or
13 conditional use permit that was incorporated into the political subdivision's
14 ordinances before July 19, 2003, and the proposed new or expanded livestock facility
15 violates a state standard under sub. (2) (a).

16 9. The proposed new or expanded livestock facility will have fewer than 500
17 animal units but will exceed a size threshold for requiring a special exception or
18 conditional use permit that was incorporated into the political subdivision's
19 ordinances before July 19, 2003, and the proposed new or expanded livestock facility
20 violates a requirement that is more stringent than the state standards under sub.
21 (2) (a) if the political subdivision does all of the following:

22 a. Adopts the requirement by ordinance before the applicant files the
23 application for approval.

1 b. Bases the requirement on reasonable and scientifically defensible findings
2 of fact, adopted by the political subdivision, that clearly show that the requirement
3 is necessary to protect public health or safety.

4 (ae) A political subdivision that requires a special exception or conditional use
5 permit for the siting or expansion of any of the following livestock facilities shall
6 require compliance with the applicable state standards under sub. (2) (a) as a
7 condition of issuing the special exception or conditional use permit:

8 1. A new or expanded livestock facility that will have 500 or more animal units.

9 2. A new or expanded livestock facility that will have fewer than 500 animal
10 units but that will exceed a size threshold for requiring a special exception or
11 conditional use permit that was incorporated into the political subdivision's
12 ordinances before July 19, 2003.

13 (am) Notwithstanding par. (ae), a political subdivision may apply to a new or
14 expanded livestock facility described in par. (ae) 1. or 2., as a condition of issuing a
15 special exception or conditional use permit, a setback requirement that is less
16 stringent than a setback requirement under sub. (2) (a) if the setback requirement
17 is incorporated in the political subdivision's ordinances as a numerical standard.

18 (ar) Notwithstanding par. (ae) a political subdivision may apply to a new or
19 expanded livestock facility described in par. (ae) 1. or 2., as a condition of issuing a
20 special exception or conditional use permit, a requirement that is more stringent
21 than the state standards under sub. (2) (a) if the political subdivision does all of the
22 following:

23 1. Adopts the requirement by ordinance before the applicant files the
24 application for approval.

1 2. Bases the requirement on reasonable and scientifically defensible findings
2 of fact, adopted by the political subdivision, that clearly show that the requirement
3 is necessary to protect public health or safety.

4 (b) Notwithstanding ss. 59.69, 60.61, 60.62, 61.35, and 62.23, a political
5 subdivision may not prohibit a type of livestock facility in an agricultural zoning
6 district based on number of animal units if livestock facilities of that type with fewer
7 animal units are allowed in that zoning district, unless the political subdivision also
8 has an agricultural zoning district in which livestock facilities of that type are
9 permitted or conditional uses without respect to number of animal units.

10 (c) Notwithstanding ss. 59.69, 60.61, 60.62, 61.35, and 62.23, a political
11 subdivision may not enact or enforce a zoning ordinance with a category of
12 agricultural district in which livestock facilities are prohibited unless the political
13 subdivision bases that prohibition on reasonable and scientifically defensible
14 findings of fact, adopted by the political subdivision, that clearly show that the
15 prohibition is necessary to protect public health or safety.

16 (d) Notwithstanding ss. 92.15 (4) and 281.16 (3) (e), a political subdivision that
17 requires compliance with state standards under sub. (2) (a) as a condition of issuing
18 a special exception or conditional use permit for an expanded livestock facility is not
19 required to determine that cost-sharing is available to the operator of the livestock
20 facility for facilities or practices needed to comply with those standards if the
21 livestock facility will have 500 or more animal units.

22 (e) Notwithstanding ss. 59.69, 60.61, 60.62, 61.35, and 62.23, a political
23 subdivision may not enact a requirement that a person obtain a special exception or
24 conditional use permit for the expansion of a livestock facility that exists when the
25 requirement takes effect, except that a political subdivision may enact a requirement

1 that a person obtain a special exception or conditional use permit for the expansion
2 of a livestock facility that exists when the requirement takes effect if the requirement
3 applies only when the number of animal units that the livestock facility will have
4 after expansion will exceed by more than 20 percent the largest number of animal
5 units that were at the livestock facility for at least 90 days in the 12-month period
6 before the requirement takes effect.

7 (f) For the purposes of this subsection, the number of animal units that a
8 livestock facility will have is the largest number of animal units that will be fed,
9 confined, maintained, or stabled at the livestock facility on at least 90 days in any
10 12-month period.

11 **(4) POLITICAL SUBDIVISION PROCEDURE.** (a) No later than 45 days after a political
12 subdivision receives an application for approval, the political subdivision shall notify
13 the applicant whether the application for approval is complete and, if it is not
14 complete, what information is needed to complete the application for approval. As
15 soon as the applicant has provided all of the required information, the political
16 subdivision shall notify the applicant that the application for approval is complete.

17 (b) A political subdivision shall make a record of its decision making on an
18 application for approval, including a recording of any public hearing, copies of
19 documents submitted at any public hearing, and copies of any other documents
20 provided to the political subdivision in connection with the application for approval.

21 (c) A political subdivision shall base its decision on an application for approval
22 on written findings of fact that are supported by the evidence in the record under par.

23 (b).

24 (d) Except as provided in par. (e), a political subdivision shall approve or
25 disapprove an application for approval no more than 90 days after the day on which

1 it notifies the applicant that the application for approval is complete. If an applicant
2 complies with the rules promulgated under sub. (2) (e) 1. and the information and
3 documentation provided by the applicant is sufficient to establish, without
4 considering any other information or documentation, that the application complies
5 with applicable requirements for approval, the political subdivision shall approve
6 the application unless the political subdivision finds, based on other clear and
7 convincing information or documentation in the record, that the application does not
8 comply with applicable requirements.

9 (e) A political subdivision may extend the time limit in par. (d) if the political
10 subdivision needs additional information to determine whether to approve or deny
11 the application for approval, if the applicant makes a material modification to the
12 application for approval, or for other good cause specified in writing by the political
13 subdivision.

14 **(5) REVIEW OF SITING DECISIONS.** (a) In this subsection “aggrieved person” means
15 a person who applied to a political subdivision for approval of a livestock facility
16 siting or expansion, a person who lives within 2 miles of a livestock facility that is
17 proposed to be sited or expanded, or a person who owns land within 2 miles of a
18 livestock facility that is proposed to be sited or expanded.

19 (b) An aggrieved person may challenge the decision of a political subdivision
20 on an application for approval on the grounds that the political subdivision
21 incorrectly applied the state standards under sub. (2) (a) that are applicable to the
22 livestock facility siting or expansion or violated sub. (3), by requesting the board to
23 review the decision. An aggrieved person is not required to exhaust the political
24 subdivision’s administrative remedies before requesting review by the board. An
25 aggrieved person shall request a review under this paragraph within 30 days after

1 the political subdivision approves or disapproves the application for approval or, if
2 the aggrieved person chooses to exhaust the political subdivision's administrative
3 remedies, within 30 days after the final decision in the political subdivision's
4 administrative review process.

5 (bm) Upon receiving a request under par. (b), the board shall notify the political
6 subdivision of the request. The political subdivision shall provide a certified copy of
7 the record under sub. (4) to the board within 30 days after the day on which it receives
8 the notice.

9 (c) Upon receiving the certified copy of the record under par. (bm), the board
10 shall determine whether the challenge is valid. The board shall make its decision
11 without deference to the decision of the political subdivision and shall base its
12 decision only on the evidence in the record under sub. (4) (b). In a case that involves
13 the application of requirements related to water quality, the board shall consult with
14 the department of agriculture, trade and consumer protection or with the
15 department of natural resources concerning the application of the requirements
16 related to water quality. The board shall make its decision within 60 days after the
17 day on which it receives the certified copy of the record under par. (bm), except that
18 the board may extend this time limit for good cause specified in writing by the board.

19 (d) If the board determines that a challenge is valid, the board shall reverse the
20 decision of the political subdivision. The decision of the board is binding on the
21 political subdivision, subject to par. (e). If a political subdivision fails to comply with
22 a decision of the board that has not been appealed under par. (e), an aggrieved person
23 may bring an action to enforce the decision.

1 (e) An aggrieved person or the political subdivision may appeal the decision of
2 the board to circuit court. The filing of an appeal does not in itself stay the effect of
3 a decision of the board.

4 (f) A circuit court to which a decision of the board is appealed under par. (e) shall
5 review the decision of the board based on the evidence in the record under sub. (4)
6 (b).

7 **SECTION 3.** 165.25 (4) (as) of the statutes is created to read:

8 165.25 (4) (as) The department of justice shall furnish legal services to the
9 livestock facility siting review board in defending appeals under s. 93.90 (5) (e) of
10 decisions of the board.

11 **SECTION 4. Nonstatutory provisions.**

12 (1) PROPOSED RULES. The department of agriculture, trade and consumer
13 protection shall submit in proposed form the rules required under section 93.90 (2)
14 (a) and (e) of the statutes, as created by this act, to the legislative council staff under
15 section 227.15 (1) of the statutes no later than the first day of the 12th month
16 beginning after the effective date of this subsection.

17 (2) TERMS OF INITIAL BOARD MEMBERS. Notwithstanding the length of the terms
18 specified for members of the livestock facility siting review board in section 15.135
19 (1) (b) of the statutes, as created by this act, the initial members shall be appointed
20 for the following terms:

21 (a) The member appointed under section 15.135 (1) (a) 1. of the statutes, as
22 created by this act, for a term expiring on May 1, 2007.

23 (b) The member appointed under section 15.135 (1) (a) 2. of the statutes, as
24 created by this act, for a term expiring on May 1, 2008.

