

2003 ASSEMBLY BILL 868

February 19, 2004 – Introduced by Representatives WARD, OTT, GRONEMUS, VRUWINK, GARD, GUNDERSON, HAHN, TOWNS, WEBER, POWERS, PETTIS, OLSEN, VAN ROY, LOEFFELHOLZ, AINSWORTH, KESTELL, SUDER, HUNDERTMARK and NASS, cosponsored by Senators SCHULTZ, BROWN, M. MEYER, HARSDORF, JAUCH, S. FITZGERALD, KANAVAS and ZIEN. Referred to Committee on Agriculture.

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

Analysis by the Legislative Reference Bureau

Livestock facility siting and expansion

This bill relates to siting and expanding livestock facilities. A livestock facility is a feedlot or other facility where animals used to produce food, fiber, or other animal products are kept, except that pastures and aquaculture facilities are not livestock facilities. Some of the provisions of the bill depend on the size of a new or expanded livestock facility, measured by animal units. An animal unit is a measure related to the amount of waste produced by different kinds of animals. A beef steer is one animal unit, while a sow is 0.4 animal unit, and a turkey is 0.018 animal unit.

Standards for siting and expansion

The bill requires the Department of Agriculture, Trade and Consumer Protection (DATCP) to specify, by rule, standards for siting and expanding livestock facilities. The bill authorizes DATCP to incorporate existing rules related to soil and water conservation, animal waste management, and nonpoint source water pollution control into the new rules. The bill requires DATCP to review the rules at least once every four years and to get the advice of a committee of experts on the initial rules and on the review of the rules.

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The bill prohibits a city, village, town, or county (political subdivision) from disapproving or prohibiting a livestock facility from being sited or expanded unless at least one of the following conditions applies:

1. The site is located in a zoning district that is not agricultural.
2. The site is located in an agricultural zoning district in which the livestock facility is prohibited.
3. The proposed new or expanded livestock facility will have 500 or more animal units and violates a state standard promulgated by DATCP under the bill that is incorporated in the political subdivision's ordinances.
4. The proposed new or expanded livestock facility will have 500 or more animal units and violates a local requirement that is more stringent than a state standard if the political subdivision adopts the requirement by ordinance before the operator asks for approval of the siting or expansion and bases the requirement on scientific findings of fact that show that the requirement is necessary to protect public health or safety.
5. The proposed new or expanded livestock facility will have 500 or more animal units and violates a local setback requirement that is less stringent than a setback requirement in the state standards.
6. The proposed new or expanded livestock facility will have fewer than 500 animal units, but will exceed a size threshold for requiring a special exception or conditional use permit that the political subdivision adopted before July 19, 2003, and violates a state standard promulgated by DATCP under the bill that is incorporated in the political subdivision's ordinances.
7. The proposed new or expanded livestock facility will have fewer than 500 animal units, but will exceed a size threshold for requiring a special exception or conditional use permit that the political subdivision adopted before July 19, 2003, and violates a local requirement that is more stringent than a state standard if the political subdivision adopts the requirement by ordinance before the operator asks for approval of the siting or expansion and bases the requirement on scientific findings of fact that show that the requirement is necessary to protect public health or safety.
8. The proposed new or expanded livestock facility will have fewer than 500 animal units, but will exceed a size threshold for requiring a special exception or conditional use permit that the political subdivision adopted before July 19, 2003, and violates a local setback requirement that is less stringent than a setback requirement in the state standards.
9. The proposed new or expanded livestock facility violates a shoreland, construction site erosion control and stormwater management, or floodplain zoning ordinance.
10. The proposed new or expanded livestock facility violates a state or local building or sanitary code or other generally applicable ordinance.

The bill provides that a political subdivision may not prohibit a type of livestock facility in an agricultural zoning district based on number of animal units if smaller facilities of the same type are allowed in the district, unless the political subdivision also has an agricultural zoning district in which that type of facility is allowed

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without respect to size. The bill also prohibits a political subdivision from enacting or enforcing a zoning ordinance with a category of agricultural district in which livestock facilities are prohibited unless the political subdivision bases the prohibition on findings of fact related to health and safety.

Conditions for conditional use permits

The bill provides generally that if a political subdivision requires a conditional use permit for the siting or expansion of certain livestock facilities it must require compliance with the applicable state standards as a condition of issuing the conditional use permit. The livestock facilities to which this requirement applies are those that will have more than 500 animal units and those that will have fewer than 500 animal units but that will exceed a size threshold for obtaining a conditional use permit that was incorporated into the political subdivision's ordinances before July 19, 2003. A political subdivision may condition the issuance of the permit on a local setback requirement that is less stringent than a setback requirement in the state standards. A political subdivision may apply a more stringent requirement than the state standards if the political subdivision adopts the requirement by ordinance before the operator asks for approval of the siting or expansion and bases the requirement on scientific findings of fact that show that the requirement is necessary to protect public health or safety.

Political subdivision procedure

The bill requires that, within 45 days after a person applies to site or expand a livestock facility, the political subdivision notify the applicant whether the application is complete and, if not, what additional information is needed to complete the application. A political subdivision is required to make a record of its decision making on an application, including a recording of any hearing held on the application. The bill requires the political subdivision to base its decision on an application to site or expand a livestock facility on written findings of fact and to make its decision within 90 days after the application is complete, although this period may be extended for good cause.

Review of siting decisions

The bill creates a livestock facility siting review board (LFSRB) with members appointed by the secretary of agriculture, trade and consumer protection, with the advice and consent of the state senate. An aggrieved person may challenge the decision of a political subdivision on an application for approval of a livestock facility siting or expansion on the grounds that the political subdivision incorrectly applied the state standards promulgated by DATCP that are applicable to the siting or expansion or that the political subdivision violated the provisions described above related to siting and expansion of livestock facilities, by requesting LFSRB to review the decision. An aggrieved person is a person who applied for approval of a livestock facility siting or expansion, a person who lives within two miles of the proposed livestock facility site, or a person who owns land within two miles of the site.

LFSRB determines whether the challenge is valid based on the evidence in the record made by the political subdivision. An aggrieved person may appeal LFSRB's decision to circuit court and the court also reviews the decision based on the evidence

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in the record made by the political subdivision. The bill requires the Department of Justice to represent LFSRB in any appeal.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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:

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

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

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

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

14 5. One other member.

15 (b) The members under par. (a) shall be nominated by the secretary of
16 agriculture, trade and consumer protection, and with the advice and consent of the
17 senate appointed, for 5-year terms.

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

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

4 **(1m) DEFINITIONS.** In this section:

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

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

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

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

11 (e) “Livestock facility” means a feedlot or facility, other than a pasture, where
12 animals used in the production of food, fiber, or other animal products are or will be
13 fed, confined, maintained, or stabled for a total of 45 days or more in any 12-month
14 period. “Livestock facility” does not include an aquaculture facility.

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

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

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

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- 1 1. Practical and workable.
- 2 2. Cost-effective.
- 3 3. Objective.
- 4 4. Based on available scientific information that has been subjected to peer
- 5 review.
- 6 5. Designed to promote the long-term viability of animal agriculture in this
- 7 state.
- 8 6. Designed to balance the economic viability of farm operations with
- 9 protecting natural resources and other community interests.
- 10 7. Usable by officials of political subdivisions.
- 11 (c) The department shall review rules promulgated under par. (a) at least once
- 12 every 4 years.
- 13 (d) The secretary shall appoint a committee of experts to advise the department
- 14 on the promulgation of the rules under par. (a) and on the review of rules under par.
- 15 (c).
- 16 (e) In addition to the rules under par. (a), the department shall promulgate
- 17 rules that do all of the following:
- 18 1. Specify the information and documentation that must be provided in an
- 19 application for approval in order to demonstrate that a livestock facility siting or
- 20 expansion complies with applicable state standards under sub. (2) (a).
- 21 2. Specify the information and documentation that must be included in a record
- 22 of decision making under sub. (4) (b).
- 23 **(3) POLITICAL SUBDIVISION AUTHORITY.** (a) Notwithstanding ss. 33.455, 59.03 (2)
- 24 (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

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1 (2), 92.11, and 92.15 (3) (a), a political subdivision may not disapprove or prohibit a
2 livestock facility siting or expansion unless at least one of the following applies:

3 1. The site is located in a zoning district that is not an agricultural zoning
4 district.

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

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

9 4. The proposed new or expanded livestock facility violates a state or political
10 subdivision building or sanitary code or other generally applicable ordinance.

11 5. The proposed new or expanded livestock facility will have 500 or more animal
12 units and violates a state standard under sub. (2) (a) that is incorporated in the
13 political subdivision's ordinances.

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

17 a. Adopts the requirement by ordinance before the applicant files the
18 application for approval.

19 b. Bases the requirement on scientific findings of fact, adopted by the political
20 subdivision, that show that the requirement is necessary to protect public health or
21 safety.

22 7. The proposed new or expanded livestock facility will have 500 or more animal
23 units and violates a setback requirement that is less stringent than a setback
24 requirement under sub. (2) (a) if the setback requirement is incorporated in the
25 political subdivision's ordinances as a numerical standard.

ASSEMBLY BILL 868**SECTION 2**

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

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

13 a. Adopts the requirement by ordinance before the applicant files the
14 application for approval.

15 b. Bases the requirement on scientific findings of fact, adopted by the political
16 subdivision, that show that the requirement is necessary to protect public health or
17 safety.

18 10. The proposed new or expanded livestock facility will have fewer than 500
19 animal units but will exceed a size threshold for requiring a special exception or
20 conditional use permit that was incorporated into the political subdivision's
21 ordinances before July 19, 2003, and the proposed new or expanded livestock facility
22 violates a setback requirement that is less stringent than a setback requirement
23 under sub. (2) (a), if the setback requirement is incorporated in the political
24 subdivision's ordinances as a numerical standard.

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

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

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

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

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

20 1. Adopts the requirement by ordinance before the applicant files the
21 application for approval.

22 2. Bases the requirement on scientific findings of fact, adopted by the political
23 subdivision, that show that the requirement is necessary to protect public health or
24 safety.

ASSEMBLY BILL 868**SECTION 2**

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

7 (c) Notwithstanding ss. 59.69, 60.61, 60.62, 61.35, and 62.23, a political
8 subdivision may not enact or enforce a zoning ordinance with a category of
9 agricultural district in which livestock facilities are prohibited unless the political
10 subdivision bases that prohibition on findings of fact related to health and safety
11 adopted by the governing body of the political subdivision.

12 (d) Notwithstanding ss. 92.15 (4) and 281.16 (3) (e), a political subdivision that
13 requires compliance with state standards under sub. (2) (a) as a condition of issuing
14 a special exception or conditional use permit for an expanded livestock facility is not
15 required to determine that cost-sharing is available to the operator of the livestock
16 facility for facilities or practices needed to comply with those standards.

17 **(4) POLITICAL SUBDIVISION PROCEDURE.** (a) No later than 45 days after a political
18 subdivision receives an application for approval, the political subdivision shall notify
19 the applicant whether the application for approval is complete and, if it is not
20 complete, what information is needed to complete the application for approval. As
21 soon as the applicant has provided all of the required information, the political
22 subdivision shall notify the applicant that the application for approval is complete.

23 (b) A political subdivision shall make a record of its decision making on an
24 application for approval, including a recording of any public hearing, copies of

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1 documents submitted at any public hearing, and copies of any other documents
2 provided to the political subdivision in connection with the application for approval.

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

6 (d) Except as provided in par. (e), a political subdivision shall approve or
7 disapprove an application for approval no more than 90 days after the day on which
8 it notifies the applicant that the application for approval is complete. If an applicant
9 complies with the rules promulgated under sub. (2) (e) 1. and the information and
10 documentation provided by the applicant is sufficient to establish, without
11 considering any other information or documentation, that the application complies
12 with applicable requirements for approval, the political subdivision shall approve
13 the application unless the political subdivision finds, based on other clear and
14 convincing information or documentation in the record, that the application does not
15 comply with applicable requirements.

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

21 **(5) REVIEW OF SITING DECISIONS.** (a) In this subsection “aggrieved person” means
22 a person who applied to a political subdivision for approval of a livestock facility
23 siting or expansion, a person who lives within 2 miles of the site at which a livestock
24 facility is proposed to be sited or expanded, or a person who owns land within 2 miles
25 of the site at which a livestock facility is proposed to be sited or expanded.

ASSEMBLY BILL 868**SECTION 2**

1 (b) An aggrieved person may challenge the decision of a political subdivision
2 on an application for approval on the grounds that the political subdivision
3 incorrectly applied the state standards under sub. (2) (a) that are applicable to the
4 livestock facility siting or expansion or violated sub. (3), by requesting the board to
5 review the decision. An aggrieved person is not required to exhaust the political
6 subdivision's administrative remedies before requesting review by the board. An
7 aggrieved person shall request a review under this paragraph within 30 days after
8 the political subdivision approves or disapproves the application for approval or, if
9 the aggrieved person chooses to exhaust the political subdivision's administrative
10 remedies, within 30 days after the final decision in the political subdivision's
11 administrative review process.

12 (c) Upon receiving a request under par. (b), the board shall determine whether
13 the challenge is valid. The board shall make its decision without deference to the
14 decision of the political subdivision and shall base its decision only on the evidence
15 in the record under sub. (4) (b). In a case that involves the application of
16 requirements related to water quality, the board shall consult with the department
17 of agriculture, trade and consumer protection or with the department of natural
18 resources concerning the application of the requirements related to water quality.

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.

24 (e) An aggrieved person or the political subdivision may appeal the decision of
25 the board to circuit court. The filing of an appeal does not stay the effect of a decision

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1 of the board that the application for approval of a livestock facility siting or expansion
2 complies with the state standards under sub. (2) (a).

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

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

7 165.25 (4) (as) The department of justice shall furnish legal services to the
8 livestock facility siting review board in defending appeals under s. 93.90 (5) (e) of
9 decisions of the board.

10 **SECTION 4. Nonstatutory provisions.**

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

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

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

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

24 (c) The member appointed under section 15.135 (1) (a) 3. of the statutes, as
25 created by this act, for a term expiring on May 1, 2009.

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1 (d) The member appointed under section 15.135 (1) (a) 4. of the statutes, as
2 created by this act, for a term expiring on May 1, 2010.

3 (e) The member appointed under section 15.135 (1) (a) 5. of the statutes, as
4 created by this act, for a term expiring on May 1, 2011.

5 **SECTION 5. Initial applicability.**

6 (1) The treatment of section 93.90 of the statutes first applies to applications
7 for approval of livestock facility siting or expansion that are received on the effective
8 date of this subsection.

9 **SECTION 6. Effective dates.** This act takes effect on the day after publication,
10 except as follows:

11 (1) The treatment of section 93.90 of the statutes and SECTION 5 (1) takes effect
12 on the first day of the 18th month beginning after publication.

13 (END)