

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3453/P2dn
RCT:cjs:rs

February 3, 2004

This is a second preliminary version of the proposal concerning siting and expansion of livestock facilities. The redraft is based on written instructions from Mark Patronsky, discussions with Mark, and some additional information from Jim Matson. Please review this draft very carefully. I have completed the redraft as quickly as possible and the redraft instructions called for many changes to the draft. It is unlikely that this version has captured the intent of the redraft instructions in every respect.

Please note that it is not necessary to discuss reimbursement or per diem payments for the members of the board unless it is desired to deviate from the provisions of s. 15.07 (5) (intro.).

I added language stating that proposed s. 93.90 is an enactment of statewide concern. This kind of language may be helpful, but it is not binding on a court called upon to determine whether the proposal violates the constitutional home rule authority of cities and villages.

The drafting instructions indicated that the draft needs to address the issue of applicability of standards after livestock facilities are sited or expanded. The draft requires a political subdivision to incorporate state standards into its ordinances in order to apply them to siting or expansion. It seems to me that once the standards are in ordinances they would be enforceable after siting or expansion, just as any other ordinance is enforceable, so it does not seem necessary to add language for that purpose. If I am missing something, please let me know.

Please consider how the limitations on disapproving livestock facilities with fewer than 500 animal units will play out if DATCP changes the state standards in the future. The draft generally allows a political subdivision to deny siting or expansion of such a facility only on the basis of a local requirement that was in effect on July 19, 2003, and that is the same as a state standard. It seems that a preexisting local requirement is most likely to turn out to be the same as a state standard adopted under this proposal if the political subdivision based the local requirement on a requirement in a current state rule that DATCP ends up incorporating into the state standards by cross-reference. If the state requirement is later changed, the local requirement will no longer be the same as the state standard and the political subdivision will not be able to change the local requirement because of the July 19, 2003, provision. If DATCP made the state requirement more stringent, the political subdivision would only be

able to continue to use the local requirement to deny a siting or expansion if the local requirement is a site selection standard that is expressed as an objective numerical standard.

Under this proposal, there could be situations in which some local standards apply to a livestock facility siting or expansion, but no state standards apply. Is the provision concerning political subdivision procedure, in proposed s. 93.90 (4), intended to apply in that situation? As drafted, I think that it would apply.

Please let me know if you have questions or redraft instructions.

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