

Tues a.m.

CS

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.
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:

4 SECTION 1. 15.135 (1) of the statutes is created to read:
5 15.135 (1) LIVESTOCK FACILITY SITING REVIEW BOARD. (a) There is created a livestock
6 facility siting review board which is attached to the department of agriculture, trade
7 and consumer protection under s. 15.03. The board consists of ~~6~~ ^{the following} members, appointed
8 ~~for 5-year terms, who have knowledge of environmental considerations in siting~~
9 ~~livestock facilities, of livestock farming, and of other matters that will enable the~~
10 ~~members to objectively and reasonably discharge the duties of the board.~~

Inset
1-16 →

****NOTE: The instructions did not indicate how many members the board should have, what their terms should be, or who should appoint them. If a statute does not specify who appoints the members of a board, they are appointed by the governor. Please let me know what is wanted with respect to the board. We usually include a nonstatutory provision establishing different term lengths for initial members of boards so that their terms do not all end at the same time. I will add that in a later version of the draft unless it is not wanted.

1 SECTION 2. 93.90 of the statutes is created to read: *Insert 2-2*
 2 **93.90 Livestock facility siting and expansion.** (1) *(1) (f) (1m)* DEFINITIONS. In this
 3 section:

4 (a) "Animal unit" has the meaning given in s. NR 243.03 (3), Wis. Adm. Code.

5 (b) "Application for approval" means an application for approval of a ~~covered~~
 6 livestock facility siting or expansion.

Insert 7
 7 (c) "Board" means the livestock facility siting review board.

2-7
 8 (d) "Covered livestock facility siting or expansion" means siting a livestock
 9 facility that will have more than 500 animal units or expanding a livestock facility
 10 so that it has more than 500 animal units.

Insert 2-11
 11 (f) "Livestock facility" means a place at which a person keeps animals that are
 12 used in the production of food, fiber, or other animal products.

***NOTE: ~~Is this what is intended?~~

Insert
 13 (g) "Political subdivision" means a city, village, town, or county.

2-13
 14 (2) DEPARTMENT DUTIES. (a) For the purposes of this section, the department
 15 shall promulgate rules specifying site selection standards, best management
 16 practices, and performance standards for siting and expanding livestock facilities,
 17 ~~including best management practices or performance standards for the management~~
 18 ~~of odor, dust, and manure.~~ In promulgating the rules, the department shall consider
 19 ~~existing site selection standards, best management practices, and performance~~
 20 ~~standards and shall~~, to the extent possible, incorporate *by cross-reference* performance standards,

1 prohibitions, conservation practices, and technical standards contained in rules
 2 promulgated under s. 281.16 (3) ⁵ and requirements applicable to concentrated animal
 3 feeding operations contained in rules promulgated under ch. 283. The department
 4 may not promulgate rules under this paragraph that conflict with performance
 5 standards, prohibitions, conservation practices, and technical standards contained
 6 in rules promulgated under s. 281.16 (3) ⁶ with requirements applicable to
 7 concentrated animal feeding operations contained in rules promulgated under ch.

8 283. ^{Insert 3-8} This would be more clear if it ^{specifically} identified other sources of ^{authority for} existing standards, e.g. s. 92.05(3), (k), 92.16, and 92.17.

****NOTE: I am uncertain whether this conveys the scope of the rules that is intended. Is this description adequate in that respect? (Note that ch. NR 243 refers to "design standards.") It would be good to specify any other statutory sources of existing practices and standards that DATCP is supposed to consider in promulgating the rules. Should the draft prohibit DATCP from making rules that are inconsistent with rules under s. 92.16 or 92.17? If not, those sections should perhaps be added to the list of statutes "notwithstanding" by sub. (3) (a). Should the reference to ch. 283 be modified (e.g. only apply to situations in which the ch. 283 rules already apply [1,000 animal unit operations, generally])?

9 (b) ^{In promulgating rules under par. (a),} The department shall promulgate rules under par. (a) ^{Insert 3-9} that are all of the following: ^{L.C.}

- 11 1. Practical and workable.
- 12 2. Cost-effective.
- 13 3. Objective.
- 14 4. Based on available ^{that has been subjected to} scientific information ^{peer review}.
- 15 5. Designed to promote the long-term viability of animal agriculture in this
- 16 state.
- 17 6. Designed to balance the economic viability of farm operations with
- 18 protecting natural resources and other community interests.
- 19 7. ~~Designed to be~~ usable by officials of political subdivisions.

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

***NOTE: Is this the desired period for review? I think that if one used a range and also said "at least," as in the instructions, that would have the same legal effect as using the longest period in the range.

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 *Insert 4-5 (c).*

33455

Insert 4-8

6 (3) POLITICAL SUBDIVISION AUTHORITY. (a) Notwithstanding ss. 59.03 (2) (a),
7 59.69, ~~59.69(2), 59.69(3)~~, ^{60.10(2)(1), ✓} 60.61, 60.62, ~~60.62(1)~~, 61.34 (1), 61.35, ~~61.35(1), 61.35(2)~~, 62.11 (5),
8 62.23, ~~62.23(1), 62.23(2)~~, ^{66.0415, ✓} 92.07 (2), and 92.11, a political subdivision that regulates the

9 siting or expansion of livestock facilities through zoning or other means shall apply
10 the site selection standards, best management practices, and performance
11 standards promulgated under sub. (2) (a), and no other requirements related to the
12 matters covered by those site selection standards, best management practices, and
13 performance standards, to a proposed covered livestock facility siting or expansion,
14 except as provided in pars. (b) to (f).

***NOTE: In this provision, I am trying to preempt the local requirements that are desired to be preempted but not leave gaps in regulation that could occur if the draft preempted local regulation of matters that DATCP does not cover in its rules. Please see the discussion of this provision in the drafter's note to this draft.

15 (b) Paragraph (a) does not apply to a covered livestock facility siting or
16 expansion if the site is located in a zoning district in which livestock facilities are
17 prohibited or livestock facilities of the size proposed are prohibited, subject to pars.
18 (g) and (h).

19 (c) A political subdivision may apply a requirement to a ~~covered~~ livestock
20 facility siting or expansion that is less stringent than a site selection standard, ~~best~~
21 ~~management practice, or performance standard~~ promulgated under sub. (2) (a) if the

1 site selection standard, ~~best management practice~~, or performance standard is
2 expressed as a numerical value, ~~such as a setback distance~~, and the political
3 subdivision has incorporated the requirement into an ordinance ~~or resolution~~.

****NOTE: Please carefully consider what this provision would allow. I am not very well acquainted with the kinds of standards that DATCP would promulgate or which ones would be expressed as a numerical value. But, for example, would this authorize a political subdivision to approve an application that would result in manure spreading on a field with a steeper slope than state standards allow, that would result in erosion at greater than the tolerable soil erosion level, or that would authorize manure storage facilities with a capacity less than would be sufficient to maintain one foot of freeboard storage (see s. NR 151.05 (2) (a))? Performance standards might be likely to be expressed as numerical values yet relate to some kinds of matters about which you might not want to allow political subdivisions to be less stringent than the state standards. Given pars. (d) and (e), should this provision apply to requirements related to water quality? Also, the instructions indicated that requirements under this provision must be adopted through the political subdivision's comprehensive plan. My impression is that not all political subdivisions have yet adopted a comprehensive plan. Note that the requirement in the "Smart Growth" law that actions of local governmental units be consistent with their comprehensive plans does not take effect until January 1, 2010. I am also uncertain whether it would be workable to include all of the kinds of requirements to which this provision might apply into a planning document.

4 (d) A political subdivision may apply, to a ~~covered~~ livestock facility siting or
5 expansion, requirements related to water quality that exceed the site selection
6 standards, best management practices, and performance standards promulgated
7 under sub. (2) (a) if those requirements are consistent with and do not exceed the
8 performance standards, prohibitions, conservation practices and technical
9 standards in rules promulgated under s. 281.16 (3), notwithstanding ss. 92.15 (4)
10 and 281.16 (3) (d).

****NOTE: Might there be problems telling whether a specific requirement relates to water quality?

11 (e) A political subdivision may apply, to a ~~covered~~ livestock facility siting or
12 expansion, requirements related to water quality that exceed the site selection
13 standards, best management practices, and performance standards promulgated
14 under sub. (2) (a) and the performance standards, prohibitions, conservation

1 practices and technical standards in rules promulgated under s. 281.16 (3) if those
2 requirements are approved under s. 92.15 (3) (a), notwithstanding s. 92.15 (4).

3 (f) A political subdivision may apply, to a ~~covered~~ livestock facility siting or
4 expansion, a requirement that exceeds the site selection standards, best
5 management practices, and performance standards promulgated under sub. (2) (a)
6 and that is not related to water quality, if the governing body of the political
7 subdivision makes findings of fact that demonstrate that the requirement is
8 necessary to protect public health or safety and the political subdivision has
9 incorporated the requirement into an ordinance or resolution.

***NOTE: Is this what is intended?

10 ~~(b) (g)~~ Notwithstanding ss. 59.69, 60.61, 60.62, 61.35, and 62.23, ~~a political~~
11 ~~subdivision has a zoning ordinance with only one category of agricultural district and~~
12 ~~the zoning ordinance allows livestock facilities in the agricultural district, the~~
13 ~~political subdivision may not limit the size of livestock facilities that may be located~~
14 ~~in the agricultural district.~~

***NOTE: I'm not sure that this is what is intended.

15 ^c
16 (h) Notwithstanding ss. 59.69, 60.61, 60.62, 61.35, and 62.23, a political
17 subdivision may not enact or enforce a zoning ordinance with a category of
18 agricultural district in which livestock facilities are prohibited unless the political
19 subdivision bases that exclusion on findings of fact related to health and safety made
20 by the governing body of the political subdivision.

21 (i) Notwithstanding ss. 59.03 (2) (a), 59.69, 60.61, 60.62, 61.34 (1), 61.35, 62.11
22 (5), 62.23, and 254.51 (5) (a), a political subdivision may impose, on a ~~covered~~
livestock facility siting or expansion, requirements relating to light, noise, and traffic

Insert
6-1-20

1 only if the requirements are included in an ordinance or regulation and apply
2 uniformly to all types of businesses and industries.

***NOTE: Is this intended to apply more broadly, to more than covered sitings and expansions? I could not think of how to generalize this to other things besides light, noise, and traffic as seems to have been contemplated by the instructions. There was a reference in the materials produced for the committee to regulating with respect to view. Should that be added to this provision? I am not certain that it will work to require the requirements to apply uniformly to all types of businesses and industries. There are probably other statutes giving political subdivisions authority to regulate light, noise, or traffic that should be "notwithstanding" in this provision. Please consider whether s. 348.16, 349.15, or 349.16 fall into that category.

45 ← plain text

3 (4) POLITICAL SUBDIVISION PROCEDURE. (a) No later than ~~77~~ 45 days after a political
4 subdivision receives an application for approval, the political subdivision shall notify
5 the applicant whether the application for approval is complete and, if it is not
6 complete, what information is needed to complete the application for approval. As
7 soon as the applicant has provided all of the required information, the political
8 subdivision shall notify the applicant that the application for approval is complete.

***NOTE: How much time should political subdivisions be given to determine whether an application is complete? Might there be a situation in which siting is regulated but no application is needed (e.g., no conditional use permit is required)? If so, is that a problem?

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

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

15 (b).

16 (d) Except as provided in par. (e), a political subdivision shall approve or
17 disapprove an application for approval no more than ⁹⁰~~180~~ days after the day on which
18 it notifies the applicant that the application for approval is complete.

Insert 7-18
A

****NOTE: Is this the time limit that is wanted? Who makes the decisions on these approvals? Is the board of adjustment (or zoning board of appeals) where one would normally take an appeal of a siting decision? How do those boards fit into this proposal?

1 (e) A political subdivision may extend the time limit in par. (d) if the political
 2 subdivision needs additional information to determine whether to approve or deny
 3 the application for approval, if the applicant makes a material modification to the
 4 application for approval, or ^{for other good cause specified in writing by} ~~in an emergency beyond the control of~~ the political
 5 subdivision.

****NOTE: Are these the situations that are wanted? Should there be some notice or other procedural requirements?

6 (5) REVIEW OF SITING DECISIONS. (a) In this subsection "aggrieved person" means
 7 a person who applied to a political subdivision for approval of a ~~covered~~ livestock
 8 facility siting or expansion, a person who lives in ~~the political subdivision~~ within 2
 9 miles of the site at which ^a ~~the~~ livestock facility is proposed to be sited or expanded,
 10 or a person who owns land in ~~the political subdivision~~ within 2 miles of the site at
 11 which ^a ~~the~~ livestock facility is proposed to be sited or expanded.

****NOTE: Is this what is intended? What about a person who lives very close to a proposed facility, but not within the same political subdivision? Might there be due process or equal protection challenges to the effect that this definition would have?

12 (b) An aggrieved person may request the board to review the decision of a
 13 political subdivision on an application for approval on the grounds that the political
 14 subdivision incorrectly applied the ~~site selection~~ ^{state} standards, ~~best management~~
 15 ~~practices, and performance standards promulgated under sub. (2) (a)~~ that are
 16 applicable to the ~~covered~~ livestock facility siting or expansion. An aggrieved person
 17 is not required to exhaust the political subdivision's administrative remedies before
 18 requesting review by the board. ^{Insert 8-18}

****NOTE: A time limit for requesting review should be added. Are there any statutes that require exhaustion of administrative remedies? If so, this provision should "notwithstanding" them.

1 (c) Upon receiving a request under par. (b), the board shall determine whether
 2 the application for approval complies with the ~~site selection~~ ^{state} standards, ~~best~~
 3 ~~management practices, and performance standards promulgated under sub. (2) (a)~~
 4 that are applicable to the ~~covered~~ livestock facility siting or expansion. The board
 5 shall make its decision without deference to the decision of the political subdivision
 6 and shall base its decision ^{only} on the evidence in the record under sub. (4) (b). In a case
 7 that involves the application of requirements related to water quality, the board shall
 8 consult with the department of agriculture, trade and consumer protection or with
 9 the department of natural resources concerning the application of the requirements
 10 related to water quality.

11 (d) If an aggrieved person requests the board to review the decision of a political
 12 subdivision to disapprove an application for approval and the board determines that
 13 the political subdivision incorrectly determined that the application for approval
 14 does not comply with the ~~site selection~~ ^{state} standards, ~~best management practices, and~~
 15 ~~performance standards promulgated under sub. (2) (a)~~ that are applicable to the
 16 ~~covered~~ livestock facility siting or expansion and that this was the basis for denying
 17 the application, the board shall reverse the decision of the political subdivision. If
 18 an aggrieved person requests the board to review the decision of a political
 19 subdivision to approve an application for approval and the board determines that the
 20 political subdivision incorrectly determined that the ~~covered~~ livestock facility siting
 21 or expansion complies with the ~~site selection~~ ^{state} standards, ~~best management practices,~~
 22 ~~and performance standards promulgated under sub. (2) (a)~~ that are applicable to the
 23 ~~covered~~ livestock facility siting or expansion application for approval, the board shall reverse the decision of the political

24 subdivision. *The decision of the board is binding on the political subdivision. If a political subdivision fails to comply with the decision of the board that has not been appealed under par. (e), an aggrieved person may bring an action to enforce the decision.*

subject to par. (e)

***NOTE: Does this need to say what happens if the board agrees with the political subdivision?

(e) An aggrieved person or the political subdivision may appeal the decision of the board to circuit court. An aggrieved person ^{or political subdivision that} appeals a decision of the board that an application for approval complies with the ~~site selection~~ ^{state} standards, ~~best management practices, and performance standards promulgated under sub. (2)(a)~~ shall post a bond. ^{Insert 10-5} The filing of an appeal does not stay the effect of a decision of the board that the application for approval of a ~~covered~~ livestock facility siting or expansion complies with the ~~site selection~~ ^{state} standards, ~~best management practices, and performance standards promulgated under sub. (2)(a)~~

***NOTE: How would the amount of the bond be determined? See, for example, ss. 813.06 and 867.01 (3) (c). Should the political subdivision be able to appeal? If so, would it have to post bond?

(f) A circuit court to which a decision of the board is appealed under par. (e) shall ~~affirm~~ ^{review} the decision of the board ~~unless the court determines that the board's action depends on any finding of fact that is not supported by substantial evidence in the record.~~ ^{based on the} ~~under sub. (4) (b)~~ ^{Insert 10-12}

***NOTE: This is based in part on s. 227.57 (6).

SECTION 3. Nonstatutory provisions.

(1) PROPOSED RULES. The department of agriculture, trade and consumer protection shall submit in proposed form the rules required under section 93.90 (2) (a) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the ¹² ~~7~~th month beginning after the effective date of this subsection.

***NOTE: I do not know whether this is a realistic deadline.

SECTION 4. Initial applicability.

Insert 10-18

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

4 **SECTION 5. Effective dates.** This act takes effect on the day after publication,
5 except as follows:

6 (1) The treatment of section 93.90 of the statutes and SECTION 4 (1) takes effect
7 on ~~2277~~ *first day of the 18th month beginning after publication*

8 *****NOTE: There will need to be a delayed effective date for s. 93.90 to give time for
DATCP to get the rules promulgated, for political subdivisions to adjust to the rules, and
to get the board up and running.*

(END)

DNote

**2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3453/P2ins
RCT:.....

Insert 1-10

1. The secretary of agriculture, trade and consumer protection or his or her designee.
 2. A member representing the interests of towns, selected from a list of names submitted by the Wisconsin Towns Association.
 3. A member representing the interests of counties, selected from a list of names submitted by the Wisconsin Counties Association.
 4. A member representing environmental interests, selected from a list of names submitted by environmental organizations.
 5. A member representing livestock farming interests, selected from a list of names submitted by statewide farm organizations.
- (b) The members under par. (a) 2. to 5. shall be nominated by the secretary of agriculture, trade and consumer protection, and with the advice and consent of the senate appointed, for 5-year terms.

Insert 2-2

not (1) This section is an enactment of statewide concern for the purpose of providing uniform regulation of livestock facilities.

Insert 2-7

(d) "Expansion" means an increase in the number of animals fed, confined, maintained, or stabled.

Insert 2-11

not feedlot or facility, other than a pasture, where animals used in the production of food, fiber, or other animal products are or will be fed, confined, maintained, or

stabled for a total of 45 days or more in any 12-month period. "Livestock facility" does not include an aquaculture facility.

Insert 2-13

(g) "State standards" means site selection standards, best management practices, and performance standards promulgated under sub. (2) (a).

Insert 3-3

noFF, and site selection standards, best management practices, and performance standards in other statutes and rules of this state

Insert 3-8

noFF, or with site selection standards, best management practices, and performance standards in other statutes and rules of this state ✓

Insert 3-9

noFF consider whether the proposed site selection standards, best management practices, and performance standards, other than those incorporated by cross-reference,

Insert 4-5

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

1. Specify the information and documentation that must be provided in an application for approval in order to demonstrate that a livestock facility siting or expansion complies with applicable state standards. ✓

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

Insert 4-8

no 9

may not disapprove or prohibit a livestock facility siting or expansion unless at least one of the following applies:

1. The site is located in a zoning district that is not an agricultural zoning district. ✓
2. The site is located in an agricultural zoning district in which the proposed new or expanded livestock facility is prohibited, subject to pars. (b) and (c). ✓
3. The proposed new or expanded livestock facility violates an ordinance adopted under s. 59.692, 59.693, 60.627, 61.351, 61.354, 62.231, 62.234, or 87.30. ✓
4. The proposed new or expanded livestock facility violates a state or political subdivision building or sanitary code or other generally applicable ordinance.
5. The proposed new or expanded livestock facility violates an ordinance relating to water quality that is approved under s. 92.15 (3) (a), notwithstanding s. 92.15 (4). ✓
6. For siting a livestock facility that will have 500 or more animal units or expanding a livestock facility so that it has 500 or more animal units, the proposed new or expanded livestock facility does not comply with a state standard that is incorporated in the political subdivision's ordinances. ✓
7. For siting a livestock facility that will have 500 or more animal units or expanding a livestock facility so that it has 500 or more animal units, the proposed new or expanded livestock facility does not comply with a requirement that is more stringent than the state standards if the political subdivision makes specific findings of fact showing that the requirement is necessary to protect public health or safety and incorporated the requirement into its ordinances at least 12 months before the application for approval is filed. ✓

8. For siting a livestock facility that will have 500 or more animal units or expanding a livestock facility so that it has 500 or more animal units, the proposed new or expanded livestock facility does not comply with a site selection standard, such as a setback distance, that is incorporated into the political subdivision's ordinances, that is less stringent than a site selection standard promulgated under sub. (2) (a), and that is expressed as an objective numerical standard.

9. For siting a livestock facility that will have fewer than 500 animal units or expanding a livestock facility that will have fewer than 500 animal units, the proposed new or expanded livestock facility does not comply with a state standard that was incorporated in the political subdivision's ordinances before July 19, 2003, and that was applicable before July 19, 2003, to livestock facilities with the number of animal units proposed for the new or expanded livestock facility.

10. For siting a livestock facility that will have fewer than 500 animal units or expanding a livestock facility that will have fewer than 500 animal units, the proposed new or expanded livestock facility does not comply with a requirement that is more stringent than the state standards ^{call of the following apply: A a.} if the political subdivision makes specific findings of fact showing that the requirement is necessary to protect public health or safety, ^{A b. The political subdivision} and incorporated the requirement into its ordinances before July 19, 2003, ^(A c.) ~~and~~ the requirement was applicable before July 19, 2003, to livestock facilities with the number of animal units proposed for the new or expanded livestock facility.

11. For siting a livestock facility that will have fewer than 500 animal units or expanding a livestock facility that will have fewer than 500 animal units, the proposed new or expanded livestock facility does not comply with a site selection standard, such as a setback distance, that was incorporated into the political subdivision's ordinances before July 19, 2003, that was applicable before July 19,

2003, to livestock facilities with the number of animal units proposed for the new or expanded livestock facility, that is less stringent than a site selection standard promulgated under sub. (2) (a), and that is expressed as an objective numerical standard.

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

Insert 6-19

(d) A performance standard, prohibition, conservation practice, or technical standard contained in rules promulgated under s. 281.16 (3) that is incorporated by reference under sub. (2) (a) may be applied to the expansion of a livestock facility that exists on October 14, 1997, if par. (a) 6. or ~~7.~~ applies, notwithstanding ss. 92.15 (4) and 281.16 (3) (d). ^e

*

Insert 7-18

(w 9)

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

Insert 8-18

NOFF

An aggrieved person shall request a review under this paragraph within 30 days after the political subdivision ^{approves or disapproves} ~~makes its decision on~~ the application for approval or, if the aggrieved person chooses to exhaust the political subdivision's administrative remedies, within 30 days after the final decision in the political subdivision's administrative review process.

NOFF

Insert 10-5

in an amount determined by the court to be equal to the estimated court costs, attorney fees, and expert witness fees that will be incurred by the applicant for approval of a livestock facility siting or expansion.

Insert 10-12

NOFF

Notwithstanding s. 814.04, the court shall award court costs, reasonable attorney fees, and expert witness fees to an applicant for approval of a livestock facility siting or expansion who prevails in an appeal under par. (e).

Insert 10-18

auto number

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

(a) The member appointed under section 15.135 (1) (a) 2, for a term expiring on May 1, 2007.

(b) The member appointed under section 15.135 (1) (a) 3, for a term expiring on May 1, 2008.

(c) The member appointed under section 15.135 (1) (a) 4, for a term expiring on May 1, 2009.

of the statutes, as created by this act, created

NON STAT

of the statute, as created by this act,

(d) The member appointed under section 15.135 (1) (a) 5, for a term expiring on May 1, 2010.



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3453/P2dn

RCT:/:....

CS

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. ✓

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

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.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

Tradewell, Becky

From: Matson, James K DATCP
Sent: Friday, February 06, 2004 1:40 PM
To: Moore, Kevin
Cc: Tradewell, Becky
Subject: Livestock Siting

Please forward the attached to Char Rodriguez (Office of Rep. David Ward) and John O'Brien (Office of Sen. Dale



Comments on LRB
Draft (2-6-04)...

Schultz).

Revised Comments on LRB-3453/P2

Livestock Facility Siting Review Board

Page 1, lines 9-10 – Modify as follows:

1. The A member appointed at large by the secretary of agriculture, trade and consumer protection ~~or his or her designee.~~

[NOTE: Under the current draft, the DATCP Secretary would sit on the livestock siting review board and would also appoint the remaining members of the Board. This seems awkward. We would suggest that the Secretary not sit on the Board, but appoint a member at large instead.]

Page 2, lines 7-8 – Modify as follows:

2. A member representing livestock farming interests, selected from a list of names submitted by statewide ~~farm~~ agricultural organizations.

Definitions

Page 3, lines 4-5 -- Delete.

*[NOTE: See related changes to DEPARTMENT DUTIES below. The draft could simply refer, throughout, to the standards **under sub. (2)(a)**. That would avoid confusion for readers who might miss the definition, and assume a broader meaning of the term “state standards.”]*

Department Duties

Page 3, lines 6-20 -- Modify as follows:

(2) DEPARTMENT DUTIES. (a) For the purposes of this section, the department shall promulgate rules specifying ~~the site selection standards, best management practices, and performance standards for siting and expanding livestock facilities. In promulgating the rules the department shall, to the extent possible, The department may incorporate by cross-reference performance standards, prohibitions, conservation practices and technical standards contained in rules promulgated under s. 92.05(3)(c) or (k), 92.14(8), 92.16, 281.16(3), requirements applicable to concentrated animal feeding operations under and ch. 283, and site selection standards, best management practices, and performance standards in other statutes and rules of this state. The department may not promulgate rules under this paragraph that conflict with the performance standards, prohibitions, conservation practices and technical standards contained in rules promulgated under s.~~

~~92.05(3)(c) or (k), 92.14(8), 92.16 or 281.16(3), with requirements applicable to concentrated animal feeding operations contained in rules promulgated or under ch. 283, or with site selection standards, best management practices, and performance standards in other statutes and rules of the state.~~

Page 4, lines 20-22 – Modify as follows:

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

Political Subdivision Authority

Page 5, lines 13-15 – Delete.

[NOTE: A local government may enforce such an ordinance (for example, by forfeitures), but may not use the ordinance to prohibit a livestock facility siting or expansion altogether, unless DATCP has adopted the same standard under sub. (2)(a).]

Page 5, line 16 to Page 6, line 2: Substitute the following:

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

7. The proposed new or expanded livestock facility will have 500 or more animal units and violates an ordinance provision that is more stringent than the state standards under sub. (2)(a), provided that the political subdivision does all of the following:

a. Adopts the ordinance provision before the livestock facility operator files the application for approval.

b. Bases the ordinance provision on scientific findings of fact, adopted by the political subdivision, which show that the provision is necessary to protect public health or safety.

Page 6, lines 3 to 8 – Delete.

*[NOTE: This issue is addressed below, under proposed pars. (am) and (ar). This provision is redundant in par. (a), because if a livestock facility violates a setback requirement that is **less stringent** than the state standard, it will perforce violate the state standard. The local government may therefore deny the application under subd. 6.]*

Page 6, lines 9 to 24 – Substitute the following:

9. The proposed new or expanded livestock facility will exceed a size threshold incorporated in the political subdivision's ordinances before July 19, 2003, and the proposed facility does not comply with a state standard under sub. (2)(a) that is incorporated in the political subdivision's ordinances.

10. The proposed new or expanded livestock facility will exceed a size threshold incorporated in the political subdivision's ordinances before July 19, 2003, and the proposed facility does not comply with an ordinance requirement that is more stringent than a state standard under sub. (2)(a), provided that the political subdivision does all of the following:

a. Adopts the ordinance provision before the livestock facility operator files the application for approval.

b. Bases the ordinance provision on scientific findings of fact, adopted by the political subdivision, which show that the provision is necessary to protect public health or safety.

Page 7, lines 1 to 9 – Delete.

[NOTE: This issue is addressed below, under proposed pars. (am) and (ar). This provision is redundant in par. (a), because if a livestock facility violates a setback requirement that is less stringent than the state standard, it will perforce violate the state standard. The local government may therefore deny the application under revised subd. 9. See above.]

Page 7, after line 9 – Insert the following:

(am) A political subdivision that requires a livestock facility operator to obtain a permit or approval for the siting or expansion of any of the following livestock facilities shall require that facility to comply with applicable state standards under sub. (2)(a) as a condition to the issuance of that permit or approval:

1. A new or expanded livestock facility that will have 500 or more animal units.
2. A new or expanded livestock facility that will exceed a size threshold incorporated in the political subdivision's ordinances before July 19, 2003.

(ar) Notwithstanding par. (am), a political subdivision may apply a livestock facility setback requirement, for purposes of a permit or approval under par. (am), that is less stringent than a setback requirement specified under sub. (2)(a) if the political subdivision has incorporated that setback requirement in its ordinances as a numerical standard.

Page 7, lines 21 to 25 – Substitute the following:

(d) Notwithstanding ss. 92.15(4) and 281.16(3)(e), a political subdivision that requires the operator of a new or expanded livestock facility identified under par. (am) to comply with state standards under sub. (2)(a) as a condition to issuing a permit or approval for that new or expanded facility is not required to offer cost-sharing for facilities or practices needed to comply with those standards. This paragraph does not prevent a political subdivision from making a cost-share offer, or limit the amount of cost-sharing offered.

Review of Siting Decisions

Page 9, line 9, through Page 10:

[NOTE: Under sub. (5) of the LRB draft, the Board is only authorized to review whether the local government correctly applied state standards under sub. (2)(a). The Board should probably have jurisdiction to review the local government's compliance with sub. (3), not just the application of state standards under sub. (2)(a). Might it also be possible to combine, for the sake of brevity, the first 2 sentences of sub. (5)(d)?]

Page 10, line 7 -- Modify as follows:

...siting or expansion ~~and that this was the basis for denying the application~~, the board...

[NOTE: The deleted phrase is not necessary, in light of the language on page 9, lines 9-13.]

Page 10, line 18-22: Delete sentence related to bond filing requirement.

[NOTE: The current draft requires a person appealing a board decision in favor of an applicant to post a bond to cover the estimated costs, attorneys fees and expert witness fees that the applicant will incur [to defend the appeal?]. But the board, not the applicant, will normally be the defendant in the appeal. The Department of Justice (with DATCP assistance) would normally represent the Board in the appeal, as it does for other agencies whose "contested case" decisions are appealed to circuit court. And since the court will normally decide the appeal based on the administrative record (the court will not take new testimony), the applicant will incur no expert witness fees in connection with the appeal. So the bond requirement, at least as currently formulated, does not seem to make sense.]

Page 11, lines 3-5: Delete.

[NOTE: This provision is not needed because the Livestock Facility Siting Review Board, not the applicant, will be the defendant in an appeal of the board's decision.]

Page 11, after line 5, insert the following:

SECTION 2m: 165.25(4)(as) of the statutes is created to read:

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

Tradewell, Becky

From: Tradewell, Becky
Sent: Monday, February 09, 2004 11:53 AM
To: Matson, James K DATCP
Cc: Patronsky, Mark
Subject: Redraft instructions

Jim,

I am working my way through the redraft instructions for the livestock facility siting draft. Ultimately, I think it may be helpful for us to meet to discuss the draft, but for now I have a couple of preliminary questions and observations.

The redraft instructions propose, in several places in s. 93.90 (3) (a), substituting the language "the proposed new or expanded livestock facility will have 500 or more animal units" for "siting a livestock facility that will have more than 500 animal units or expanding a livestock facility so that it has 500 or more animal units." The reason that I used the language that I did was that I thought that the intent behind the draft was that it was to apply to siting a new facility that would have 500 or more animal units or expanding a facility from fewer than 500 animal units to more than 500 animal units, but not to an expansion from 600 to 700 animal units, say. If I have been misunderstanding the intent, this seems like a good change. *They do want it to apply in that case.*

The redraft instructions indicate that the material in LRB-3453/P2 at page 6, lines 2 to 8, and at page 7, lines 1 to 9, should be eliminated as redundant because if the local setback standard is less stringent than a state setback standard, a facility that violated the local standard would necessarily violate the state standard. That is true, but for proposed subd. 6. or 9. to apply, the political subdivision must have adopted the state standard into its ordinances. If the political subdivision has a less stringent setback standard, it could not have adopted the state standard into its ordinance and subd. 6. or 9. would not apply. Am I missing something here?

Becky Tradewell
266-7290

He agrees with me.

Tradewell, Becky

To: Matson, James K DATCP
Cc: Patronsky, Mark
Subject: Facility siting redraft

Jim,

I think that I pretty much understand all of the redraft instructions for livestock facility siting except for two things: The language proposed to replace the text beginning on page 6, line 9, relating to disapproving smaller livestock facilities, and the language proposed to be added on page 7, after line 9, which we discussed a little bit yesterday.

The intent of the language relating to smaller facilities seems to be that a political subdivision may disapprove a facility on the basis of a state standard (or a stricter local standard if the extra conditions are met), which may be incorporated into its ordinances after July 19, 2003, as long as the political subdivision had a size threshold in its ordinances before that date and the facility would exceed that size threshold. And I believe that "size" refers to number of animal units. Am I on the right track so far?

If so, I would like to focus on the concept of a size threshold. I do not think that the proposed language is clear enough that a person looking at a particular political subdivision's ordinances would be able to tell whether there is a size threshold and what it is. Here are some of the questions that come to mind:

- Might such a threshold be found in a zoning ordinance? If so, would it necessarily be a size threshold that kicks-in a conditional use permit (or special exception) requirement? If all livestock facilities in a particular agriculture zoning district must obtain a conditional use permit, is the threshold zero? Might there be ordinances that require conditional use permits for livestock facilities over a certain size in some agricultural districts but not all? If so, is there a threshold? Might there be ordinances with different size requirements for different zoning districts? If so, which size is the threshold? Or is there a different threshold for different districts? What if there is a conditional use permit requirement for certain kinds of livestock facilities (such as swine or poultry farms) over a specified size but not for other kinds (such as dairies)? What kinds of provisions in a zoning ordinance other than a conditional use permit requirement could provide a threshold?
- If the threshold must come from something other than a zoning ordinance or could come from a zoning ordinance but also from some other kind of ordinance, what other kind of ordinance could it come from? Political subdivisions have a great deal of discretion in how they structure their ordinances and what they call them, so it seems that it will be difficult to describe or limit the ordinances that may be considered. What if there is a different threshold in a zoning ordinance and in another ordinance? What if there are different thresholds in different nonzoning ordinances? Do differing setback distances for different size facilities create thresholds?

Here are some things that I found in ordinances that I have looked at:

- Chapter 15 of the Trempealeau County ordinances is titled: Trempealeau County Feedlot Performance Standards. "Feedlot" is defined pretty much like "livestock facility" in the draft. Many of the requirements in the ordinance appear to apply to feedlots with 10 or more animal units. Smaller feedlots are covered if a notice of discharge is issued under NR 243. Feedlots with 300 or more animal units must get conditional use permits. Feedlot permits are required for new feedlots (of 10 or more animal units, I think) and for expansions in which an increase of more than 20% in animal units at an unpermitted facility or an expansion by 2,000 square feet or more or that increases the potential pollution hazard (which is a defined term). Manure management plans are required under the ordinance. Feedlot designs must be approved by the Land Conservation Department.
- Polk County has a "Manure and Water Quality Management Ordinance." It applies to some new and existing feedlots. I find it difficult to interpret so here is the text: "Permits are required for feedlots if, after

an evaluation by the department, it is determined that the operation directly drains to a water management area to include: new feedlots or existing feedlots within Water Quality Management Areas that are 150 animal units or greater and that expand their total animal units by 20% or more." The ordinance also requires permits for animal waste storage facilities. Certificates are required for livestock operations of greater than 300 animal units. Under Polk County's zoning ordinance, poultry raising operations in excess of 10,000 birds are special exception uses in the Exclusive Agricultural District (A-2) as are feedlots "when 100 or more animals are involved and when the feedlot is within 500 feet and drains toward a navigable water body or within 500 feet of the residence of someone other than the feedlot owner." The same limitations do not appear to apply in the A-1 district.

- In Jefferson County, feedlots with more than 150 livestock units and poultry farms housing more than 10,000 birds are conditional uses in the exclusive agricultural zoning district.
- I am not certain, but it appears to me that in Evansville both low intensity animal land uses (less than one animal unit per acre) and intensive agricultural land uses (equal to or exceeding one animal unit per acre) are conditional uses in all agricultural districts.
- In Walworth County, commercial feedlots (500 or more animal units) and commercial egg production require conditional use permits.
- In Racine County, "Commercial raising, propagation, boarding or butchering of animals, such as dogs, mink, rabbits, foxes, goats and pigs; the commercial production of eggs; and the hatching, raising, fattening or butchering of fowl" are conditional uses as are "commercial feedlots" (more than 1,000 animal units).

I can get copies of or links to these ordinances if you want to look at them.

At the moment, the easy solution that I see to clarifying this part of the draft is to require DATCP to promulgate rules explaining how to tell when there is a threshold of fewer than 500 animal units and what that threshold is.

As far as the other issue is concerned, I still don't quite understand the language proposed to be added on page 7, after line 9. I do not see why the language about stricter standards that applies in par. (a) would not be necessary here. I can fairly easily limit this to conditional use permits (and possibly special exceptions), but if it is to be broader than that, there is the problem we discussed yesterday of describing the kinds of permits or approvals that this applies to (given that every new building or expansion of a building in at least some places is required to have a zoning approval).

Sorry to go on for so long. I would be glad to discuss this over the phone or in person.

Becky

2/11/04 Per Jim Matson - Key the thresholds to conditional
use permits and limit (3)(am) in their instructions to conditional
use permits. RCT

Thursday

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stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

ONote

SAV

regenerate

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

Analysis insert

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version. 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:

- 4 SECTION 1. 15.135 (1) of the statutes is created to read:
- 5 15.135 (1) LIVESTOCK FACILITY SITING REVIEW BOARD. (a) There is created a
- 6 livestock facility siting review board which is attached to the department of
- 7 agriculture, trade and consumer protection under s. 15.03. The board consists of the
- 8 following members:
- 9 1. The secretary of agriculture, trade and consumer protection or his or her
- 10 designee.

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

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

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

4. A member representing livestock farming interests, selected from a list of names submitted by statewide ~~farm~~ ^{agricultural} organizations.

5. *one other member.*
(b) The members under par. (a) ~~2. to 5.~~ shall be nominated by the secretary of agriculture, trade and consumer protection, and with the advice and consent of the senate appointed, for 5-year terms.

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

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

(1m) DEFINITIONS. In this section:

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

(b) "Application for approval" means an application for approval of a livestock facility siting or expansion.

(c) "Board" means the livestock facility siting review board.

(d) "Expansion" means an increase in the number of animals fed, confined, maintained, or stabled.

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

92.05(3)(c) and (k), 92.14(8),
92.16, and ✓

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 (g) "State standards" means site selection standards, best management
5 practices, and performance standards promulgated under sub. (2) (a).

6 (2) DEPARTMENT DUTIES. (a) For the purposes of this section, the department
7 shall promulgate rules specifying ~~site selection standards, best management~~
8 ~~practices, and performance standards~~ for siting and expanding livestock facilities.

9 In promulgating the rules, the department shall, ^{max} to the extent possible, incorporate
10 by cross-reference ^{provisions} ~~performance standards, prohibitions, conservation practices, and~~

11 ~~technical standards~~ contained in rules promulgated under ~~ss. 281.16 (3)~~ ^{and}
12 ~~requirements applicable to concentrated animal feeding operations contained in~~
13 ~~rules promulgated under ch. 283, and site selection standards, best management~~
14 ~~practices, and performance standards in other statutes and rules of this state.~~ The

15 department may not promulgate rules under this paragraph that conflict with
16 ~~performance standards, prohibitions, conservation practices, and technical~~
17 ~~standards contained in rules promulgated under s. 281.16 (3), with requirements~~ ^{92.05(3)(c) or (k), 92.14(8), 92.16, or}
18 ~~applicable to concentrated animal feeding operations contained in rules~~

19 ~~promulgated under ch. 283, or with site selection standards, best management~~
20 ~~practices, and performance standards in other statutes and rules of this state.~~

***NOTE: This would be more clear if it specifically identified other sources of authority for existing standards, e.g., ss. 92.05 (3) (k), 92.16, and 92.17.

21 (b) In promulgating rules under par. (a), the department shall consider
22 whether the proposed ~~site selection standards, best management practices, and~~

1 performance standards, other than those incorporated by cross-reference, are all of
2 the following:

3 1. Practical and workable.

4 2. Cost-effective.

5 3. Objective.

6 4. Based on available scientific information that has been subjected to peer
7 review.

8 5. Designed to promote the long-term viability of animal agriculture in this
9 state.

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

12 7. Usable by officials of political subdivisions.

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

15 (d) The secretary shall appoint a committee of experts to advise the department
16 on the promulgation of the rules under par. (a) and on the review of rules under

17 (c).

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

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

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

1 (3) POLITICAL SUBDIVISION AUTHORITY. (a) Notwithstanding ss. 33.455, 59.03 (2)
2 (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
3 (2), ~~and~~ ^{and 92.15 (3) (a)} 92.11, a political subdivision may not disapprove or prohibit a livestock
4 facility siting or expansion unless at least one of the following applies:

5 1. The site is located in a zoning district that is not an agricultural zoning
6 district.

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

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

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

13 5. The proposed new or expanded livestock facility violates an ordinance
14 relating to water quality that is approved under s. 92.15 (3) (a), notwithstanding s.
15 92.15 (4).

16 5. ~~For siting a livestock facility that~~ ^{The proposed new or expanded} will have 500 or more animal units or
17 ~~expanding a livestock facility so that it has 500 or more animal units, the proposed~~
18 ~~new or expanded livestock facility does not comply with a state standard that is~~ ^{and violates} ^{under sub. (2)(a)} that is
19 incorporated in the political subdivision's ordinances. ✓

20 6. ~~For siting a livestock facility that~~ ^{The proposed new or expanded} will have 500 or more animal units or
21 ~~expanding a livestock facility so that it has 500 or more animal units, the proposed~~
22 ~~new or expanded livestock facility does not comply with a requirement that is more~~ ^{and violates}
23 ~~stringent than the state standards~~ ^{under sub. (2)(a)} if the political subdivision ^{does all of the following:} ^{Insert} ⁵⁻²³ makes specific findings

24 of fact showing that the requirement is necessary to protect public health or safety
, adopted by the political subdivisions that show

At b. Bases the requirement on scientific

1 and incorporated the requirement into its ordinances at least 12 months before the
2 application for approval is filed.

3 ⁷ For siting ^{The proposed new or expanded} a livestock facility ~~that~~ will have 500 or more animal units ~~or~~
4 ~~expanding a livestock facility so that it has 500 or more animal units, the proposed~~
5 ~~new or expanded livestock facility does not comply with a site selection standard,~~
6 ~~such as a setback distance, that is incorporated into the political subdivision's~~
7 ~~ordinances, that is less stringent than a site selection standard promulgated under~~
8 sub. (2) (a), ^{and that is expressed as an objective numerical standard.} ~~and that is expressed as an objective numerical standard.~~

9 ^{The proposed} ~~For siting a~~ livestock facility ^{incorporated in the the political subdivision's ordinances} ~~that~~ will have fewer than 500 animal units ~~or~~
10 ~~expanding a livestock facility that will have fewer than 500 animal units,~~ ^{Insert 6-10} the
11 ~~proposed new or expanded livestock facility does not comply with a state standard~~ ^{violates}
12 ~~that was incorporated in the political subdivision's ordinances before July 19, 2003,~~ ^{is} ~~and that was applicable before July 19, 2003,~~ ^{under sub.(2)(a)}
13 ~~to livestock facilities with the number~~
14 ~~of animal units proposed for the new or expanded livestock facility.~~

15 ⁹ For siting ^{The proposed new or expanded} a livestock facility ~~that~~ will have fewer than 500 animal units ~~or~~
16 ~~expanding a livestock facility that will have fewer than 500 animal units,~~ ^{Insert 6-16} the
17 ~~proposed new or expanded livestock facility does not comply with a requirement that~~ ^{violates}
18 ~~is more stringent than the state standards, if all of the following apply:~~ ^{under sub.(2)(a) - the political subdivision does}

19 ^{Insert 6-18} ~~(b.)~~ ^{Based on the requirement on scientific} The political subdivision makes specific findings of fact ^{adopted by the political subdivision} ~~showing~~ that the ^{that show}
20 requirement is necessary to protect public health or safety.

21 b. The political subdivision incorporated the requirement into its ordinances
22 before July 19, 2003.

23 c. The requirement was applicable before July 19, 2003, to livestock facilities
24 with the number of animal units proposed for the new or expanded livestock facility.

Insert 2.1

The proposed new or expanded

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10 ~~For siting a~~ livestock facility ~~that~~ will have fewer than 500 animal units ~~or~~
~~expanding a livestock facility that will have fewer than 500 animal units,~~ the
proposed new or expanded livestock facility ^{violates} does not comply with ^{requirement} a site selection
standard, such as a setback ^{distance} that was incorporated into the political
subdivision's ordinances before July 19, 2003, that was applicable before July 19,
2003, to livestock facilities with the number of animal units proposed for the new or
expanded livestock facility, that is less stringent than a site selection standard
promulgated under sub. (2) (a), ^{setback requirement} if ^{the setback requirement} that is expressed ^a as an objective numerical
standard.

Insert 7-9

keep incorporated in the political subdivision's ordinances

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

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

Insert 7-20

(d) A performance standard, prohibition, conservation practice, or technical
standard contained in rules promulgated under s. 281.16 (3) that is incorporated by
reference under sub. (2) (a) may be applied to the expansion of a livestock facility that
exists on October 14, 1997, if par. (a) 6. or 9. applies, notwithstanding ss. 92.15 (4)
and 281.16 (3) (e).

1 (4) POLITICAL SUBDIVISION PROCEDURE. (a) No later than 45 days after a political
2 subdivision receives an application for approval, the political subdivision shall notify
3 the applicant whether the application for approval is complete and, if it is not
4 complete, what information is needed to complete the application for approval. As
5 soon as the applicant has provided all of the required information, the political
6 subdivision shall notify the applicant that the application for approval is complete.

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

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

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

24 (e) A political subdivision may extend the time limit in par. (d) if the political
25 subdivision needs additional information to determine whether to approve or deny

1 the application for approval, if the applicant makes a material modification to the
2 application for approval, or for other good cause specified in writing by the political
3 subdivision.

4 (5) REVIEW OF SITING DECISIONS. (a) In this subsection "aggrieved person" means
5 a person who applied to a political subdivision for approval of a livestock facility
6 siting or expansion, a person who lives within 2 miles of the site at which a livestock
7 facility is proposed to be sited or expanded, or a person who owns land within 2 miles
8 of the site at which a livestock facility is proposed to be sited or expanded.

9 (b) An aggrieved person may ^{challenge} ~~request the board to review~~ the decision of a
10 political subdivision on an application for approval on the grounds that the political
11 subdivision, ^{under sub. (2)(a) ✓} incorrectly applied the state standards ^{that are applicable to the}
12 livestock facility siting or expansion. ^{or violated sub. (3) by requesting the board to review the decision} An aggrieved person is not required to exhaust
13 the political subdivision's administrative remedies before requesting review by the
14 board. An aggrieved person shall request a review under this paragraph within 30
15 days after the political subdivision approves or disapproves the application for
16 approval or, if the aggrieved person chooses to exhaust the political subdivision's
17 administrative remedies, within 30 days after the final decision in the political
18 subdivision's administrative review process.

19 (c) Upon receiving a request under par. (b), the board shall determine whether
20 ^{the challenge is valid} ~~the application for approval complies with the state standards that are applicable to~~
21 ~~the livestock facility siting or expansion.~~ The board shall make its decision without
22 deference to the decision of the political subdivision and shall base its decision only
23 on the evidence in the record under sub. (4) (b). In a case that involves the application
24 of requirements related to water quality, the board shall consult with the department

the board determines that a challenge is valid

1 of agriculture, trade and consumer protection or with the department of natural
2 resources concerning the application of the requirements related to water quality.

3 (d) If an aggrieved person requests the board to review the decision of a political
4 subdivision to disapprove an application for approval and the board determines that
5 the political subdivision incorrectly determined that the application for approval
6 does not comply with the state standards that are applicable to the livestock facility
7 siting or expansion and that this was the basis for denying the application, the board
8 shall reverse the decision of the political subdivision. If an aggrieved person requests
9 the board to review the decision of a political subdivision to approve an application
10 for approval and the board determines that the political subdivision incorrectly
11 determined that the livestock facility siting or expansion complies with the state
12 ~~standards that are applicable to the livestock facility siting or expansion,~~ the board
13 shall reverse the decision of the political subdivision. The decision of the board is
14 binding on the political subdivision, subject to par. (e). If a political subdivision fails
15 to comply with a decision of the board that has not been appealed under par. (e), an
16 aggrieved person may bring an action to enforce the decision.

17 (e) An aggrieved person or the political subdivision may appeal the decision of
18 the board to circuit court. An aggrieved person or political subdivision that appeals
19 a decision of the board that an application for approval complies with the state
20 standards shall post a bond in an amount determined by the court to be equal to the
21 estimated court costs, attorney fees, and expert witness fees that will be incurred by
22 the applicant for approval of a livestock facility siting or expansion. The filing of an
23 appeal does not stay the effect of a decision of the board that the application for
24 approval of a livestock facility siting or expansion complies with the state standards.

under sub. (2)(a)

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

3 (b) Notwithstanding s. 814.04, the court shall award court costs, reasonable
4 attorney fees, and expert witness fees to an applicant for approval of a livestock
5 facility siting or expansion who prevails in an appeal under par. (e).

Insert
11-5

6 **SECTION 3. Nonstatutory provisions.**

7 (1) PROPOSED RULES. The department of agriculture, trade and consumer
8 protection shall submit in proposed form the rules required under section 93.90 (2)
9 (a) ^{and (e)} of the statutes, as created by this act, to the legislative council staff under section
10 227.15 (1) of the statutes no later than the first day of the 12th month beginning after
11 the effective date of this subsection.

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

16 (a) The member appointed under section 15.135 (1) (a) ^{1 ✓} of the statutes, as
17 created by this act, for a term expiring on May 1, 2007.

18 (b) The member appointed under section 15.135 (1) (a) ^{2 ✓} of the statutes, as
19 created by this act, for a term expiring on May 1, 2008.

20 (c) The member appointed under section 15.135 (1) (a) ^{3 ✓} of the statutes, as
21 created by this act, for a term expiring on May 1, 2009.

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

24 [→] (e) The member appointed under section 15.135 (1) (a) 5. of the statutes,
SECTION 4. Initial applicability.

as created by this act, for a term
expiring on May 1, 2011. ✓

Non
Stat

nonpoint source
and nonpoint source
water pollution control

subsub → **Analysis Insert**
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 and animal waste management 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.

^
J

advice

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 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

requirement

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 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 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 record of its decision making, 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

(a)

on an application

than the state standards

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 or 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 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 reviews the decision also based on the evidence in the record made by the political subdivision.

Insert 5-23

Ⓟ

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

Insert 6-10

not

but will exceed a size threshold for requiring a special exception or conditional use permit that was incorporated into the political subdivision's ordinances before July 19, 2003, and

Insert 6-16

not

but will exceed a size threshold for requiring a special exception or conditional use permit that was incorporated into the political subdivision's ordinances before July 19, 2003, and

Insert 6-18

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

Insert 7-1

The bill requires the Department of Justice to represent LFSRB in any appeal.

and

proposed

Not

but will exceed a size threshold for requiring a special exception or conditional use permit that was incorporated into the political subdivision's ordinances before July 19, 2003, and

Insert 7-9

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

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

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

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

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

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

Insert 7-20

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

Insert 11-5

SECTION 1. 165.25 (4) (as) of the statutes is created to read:

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3453/1dn

RCT.:.....

gjs

This redraft is based on instructions from Jim Matson and on some additional discussions with Jim. Please review the draft carefully. There are numerous changes from the previous version and I have not had the time to review it as carefully as I would like.

As requested, this draft requires the findings of fact on which a political subdivision bases a standard that is more stringent than a state standard to be "scientific." It is not very clear to me what this means. I looked at dictionary definitions, but did not find that helpful. I suppose that at least this would mean that a political subdivision may not base a more strict standard on social or economic concerns. If someone challenged a siting decision on the grounds that the findings of fact for the local standard on which the decision is based are not scientific, it seems that the Livestock Facility Siting Review Board, and then any reviewing court, would decide what it means for findings of fact to be scientific. The outcome of such a review might be more likely to comply with the intent of the draft if the draft more clearly addressed this issue.

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

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3453/1dn
RCT:cjs:rs

February 12, 2004

This redraft is based on instructions from Jim Matson and on some additional discussions with Jim. Please review the draft carefully. There are numerous changes from the previous version and I have not had the time to review it as carefully as I would like.

As requested, this draft requires the findings of fact on which a political subdivision bases a standard that is more stringent than a state standard to be "scientific." It is not very clear to me what this means. I looked at dictionary definitions, but did not find that helpful. I suppose that at least this would mean that a political subdivision may not base a more strict standard on social or economic concerns. If someone challenged a siting decision on the grounds that the findings of fact for the local standard on which the decision is based are not scientific, it seems that the Livestock Facility Siting Review Board, and then any reviewing court, would decide what it means for findings of fact to be scientific. The outcome of such a review might be more likely to comply with the intent of the draft if the draft more clearly addressed this issue.

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

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

Northrop, Lori

From: Rodriguez, Charlene
Sent: Friday, February 20, 2004 9:43 AM
To: LRB.Legal
Subject: Draft review: LRB 03-3453/1 Topic: Siting livestock facilities

It has been requested by <Rodriguez, Charlene> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-3453/1 Topic: Siting livestock facilities