

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

February 26, 2004 – Offered by COMMITTEE ON AGRICULTURE.

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

Analysis by the Legislative Reference Bureau

Livestock facility siting and expansion

This substitute amendment 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 substitute amendment 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 substitute amendment requires the Department of Agriculture, Trade and Consumer Protection (DATCP) to specify, by rule, standards for siting and expanding livestock facilities. The substitute amendment authorizes DATCP to incorporate existing rules related to soil and water conservation, animal waste management, and

nonpoint source water pollution control into the new rules. The substitute amendment 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.

The substitute amendment 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 substitute amendment.
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 reasonable and scientifically defensible findings of fact that clearly show that the requirement is necessary to protect public health or safety.
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 substitute amendment.
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 reasonable and scientifically defensible scientific findings of fact that clearly show that the requirement is necessary to protect public health or safety.
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 building, electrical, or plumbing code that is consistent with a state code.

The substitute amendment 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 substitute amendment 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 reasonable and scientifically

defensible findings of fact that clearly show that the requirement is necessary to protect public health or safety.

Conditions for conditional use permits

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

The substitute amendment also prohibits a political subdivision from enacting a requirement that a person obtain a conditional use permit for the expansion of a livestock facility that exists when the requirement takes effect, except that a political subdivision may enact such a requirement if the requirement applies only when the number of animal units that the livestock facility will have after expansion exceeds by more than 20 percent the number of animal units that the livestock facility has before expansion.

Political subdivision procedure

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

Review of siting decisions

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

applied for approval of a livestock facility siting or expansion, a person who lives within two miles of the proposed livestock facility, or a person who owns land within two miles of the proposed livestock facility.

LFSRB determines whether the challenge is valid based on the evidence in the record made by the political subdivision. LFSRB must make its decision within 60 days of receiving a copy of the record from the political subdivision, although this period may be extended for good cause. An aggrieved person may appeal LFSRB's decision to circuit court and the court also reviews the decision based on the evidence in the record made by the political subdivision. The substitute amendment requires the Department of Justice to represent LFSRB in any appeal.

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

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

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

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

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

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

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

14 5. Three other members.

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

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

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

5 **(1m) DEFINITIONS.** In this section:

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

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

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

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

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

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

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

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

4 1. Protective of public health or safety.

5 1m. Practical and workable.

6 2. Cost-effective.

7 3. Objective.

8 4. Based on available scientific information that has been subjected to peer
9 review.

10 5. Designed to promote the growth and viability of animal agriculture in this
11 state.

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

14 7. Usable by officials of political subdivisions.

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

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

19 (c).

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

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

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

3 **(3) POLITICAL SUBDIVISION AUTHORITY.** (a) Notwithstanding ss. 33.455, 59.03 (2)
4 (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
5 (2), 92.11, and 92.15 (3) (a), a political subdivision may not disapprove or prohibit a
6 livestock facility siting or expansion unless at least one of the following applies:

7 1. The site is located in a zoning district that is not an agricultural zoning
8 district.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (c) Notwithstanding ss. 59.69, 60.61, 60.62, 61.35, and 62.23, a political
23 subdivision may not enact or enforce a zoning ordinance with a category of
24 agricultural district in which livestock facilities are prohibited unless the political
25 subdivision bases that prohibition on reasonable and scientifically defensible

1 findings of fact, adopted by the political subdivision, that clearly show that the
2 prohibition is necessary to protect public health or safety.

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

9 (e) Notwithstanding ss. 59.69, 60.61, 60.62, 61.35, and 62.23, a political
10 subdivision may not enact a requirement that a person obtain a special exception or
11 conditional use permit for the expansion of a livestock facility that exists when the
12 requirement takes effect, except that a political subdivision may enact a requirement
13 that a person obtain a special exception or conditional use permit for the expansion
14 of a livestock facility that exists when the requirement takes effect if the requirement
15 applies only when the number of animal units that the livestock facility will have
16 after expansion will exceed by more than 20 percent the largest number of animal
17 units that were at the livestock facility for at least 90 days in the 12-month period
18 before the requirement takes effect.

19 (f) For the purposes of this subsection, the number of animal units that a
20 livestock facility will have is the largest number of animal units that will be fed,
21 confined, maintained, or stabled at the livestock facility on at least 90 days in any
22 12-month period.

23 **(4) POLITICAL SUBDIVISION PROCEDURE.** (a) No later than 45 days after a political
24 subdivision receives an application for approval, the political subdivision shall notify
25 the applicant whether the application for approval is complete and, if it is not

1 complete, what information is needed to complete the application for approval. As
2 soon as the applicant has provided all of the required information, the political
3 subdivision shall notify the applicant that the application for approval is complete.

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

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

10 (b).

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

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

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

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

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

21 (c) Upon receiving the certified copy of the record under par. (bm), the board
22 shall determine whether the challenge is valid. The board shall make its decision
23 without deference to the decision of the political subdivision and shall base its
24 decision only on the evidence in the record under sub. (4) (b). In a case that involves
25 the application of requirements related to water quality, the board shall consult with

1 the department of agriculture, trade and consumer protection or with the
2 department of natural resources concerning the application of the requirements
3 related to water quality. The board shall make its decision within 60 days after the
4 day on which it receives the certified copy of the record under par. (bm), except that
5 the board may extend this time limit for good cause specified in writing by the board.

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

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

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

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

18 165.25 (4) (as) The department of justice shall furnish legal services to the
19 livestock facility siting review board in defending appeals under s. 93.90 (5) (e) of
20 decisions of the board.

21 **SECTION 4. Nonstatutory provisions.**

22 (1) PROPOSED RULES. The department of agriculture, trade and consumer
23 protection shall submit in proposed form the rules required under section 93.90 (2)
24 (a) and (e) of the statutes, as created by this act, to the legislative council staff under

1 section 227.15 (1) of the statutes no later than the first day of the 12th month
2 beginning after the effective date of this subsection.

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

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

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

11 (c) The member appointed under section 15.135 (1) (a) 3. of the statutes, as
12 created by this act, and one member appointed under section 15.135 (1) (a) 5. of the
13 statutes, as created by this act, for terms expiring on May 1, 2009.

14 (d) The member appointed under section 15.135 (1) (a) 4. of the statutes, as
15 created by this act, and one member appointed under section 15.135 (1) (a) 5. of the
16 statutes, as created by this act, for terms expiring on May 1, 2010.

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

19 **SECTION 5. Initial applicability.**

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

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

