

**Appendix 10.1**

<b>FISCAL ESTIMATE</b> DOA-2048 (R 10/94) <input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL <input checked="" type="checkbox"/> UPDATED		<b>LRB or Bill No. / Adm. Rule No.</b> Ch. ATCP 10654 <b>Amendment No.</b> (If Applicable)
<b>Subject:</b> Implementing the Livestock Facility Siting Law Price gouging during an emergency.		
<b>Fiscal Effect</b> <b>State:</b> <input type="checkbox"/> No State Fiscal Effect <input checked="" type="checkbox"/> Indeterminate  Check below only if bill makes a direct appropriation or affects a sum sufficient appropriation.  <input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation		<input checked="" type="checkbox"/> Increase Costs –  May be possible to absorb within agency's budget? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  <input type="checkbox"/> Decrease Costs
<b>Local :</b> <input checked="" type="checkbox"/> No local government costs 1. <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 3. <input checked="" type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory		<b>5. Types of Local Gov. Unit Affected:</b> <input checked="" type="checkbox"/> Towns <input type="checkbox"/> Villages <input checked="" type="checkbox"/> Counties <input type="checkbox"/> Cities <input type="checkbox"/> Other <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
<b>Fund Source Affected:</b> <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S		<b>Affected Ch. 20 Appropriations:</b> 20.115(71)(gda)
<b>Assumptions Used in Arriving at Fiscal Estimate</b> <b>Background Summary of Rule</b> <u>This rule implements s. 100.305, Stats. (created by 2005 Wis. Act 450), which prohibits price gouging in sales of consumer goods or services during an emergency declared by the Governor. Section 100.305, Stats., prohibits sellers from selling "consumer goods or services" at wholesale or retail at "unreasonably excessive prices" if the Governor, by executive order, has certified that the state or a part of the state is in a "period of abnormal economic disruption" due to an emergency. An emergency may include, for example, a destructive act of nature, a disruption of energy supplies that poses a serious risk to the public health or welfare, a hostile action, or a strike or civil disorder. The statute requires DATCP to promulgate administrative rules to establish formulas or other standards to be used in determining whether a wholesale or retail price is unreasonably excessive. DATCP is also the agency primarily charged with enforcing this statute.</u>  <u>Under Section 100.305, Stats. and this rule, a seller may not sell a consumer good or service in a declared emergency area during a declared emergency period at a price that is more than 10% above the highest price at which the seller sold like consumer goods or services to like customers in the relevant trade area during the 60-day period immediately preceding the emergency declaration. A seller may charge a higher price, however, if certain circumstances occur. For example, a seller is allowed to raise its price if its cost increases. Under this rule, DATCP may require a seller to submit written, documented answers to DATCP questions related to the seller's compliance with this rule. The livestock siting statute (2003 Wisconsin Act 235) is designed to improve the local regulatory climate for the livestock industry. The proposed rules implement the livestock siting law, s.93.90 Wis. Stats.</u>  <u>Certain aspects of the existing system of local regulation impose barriers to the siting and expansion of livestock facilities. These barriers, including the uncertainty of the local government permitting processes and siting standards that vary by jurisdiction, can hamper the state's competitiveness in attracting and retaining a strong livestock industry. Although the livestock facility siting law is not the only change needed to make Wisconsin's agricultural sector more competitive, improvements in local livestock facility siting regulations can create a more attractive business climate for livestock producers. The proposed rule intends to make local livestock facility siting regulation more predictable, less time consuming and less arbitrary.</u>  <u>Wisconsin's farms and agricultural businesses generate more than \$51.5 billion in economic activity annually and provide jobs for 420,000 people, according to a March 2004 study by University of Wisconsin Extension community development specialist Steve Deller. The dairy and livestock industry generates over half of that total economic impact. Industry trends show that Wisconsin needs to produce more milk to retain processors and jobs in the state. This need for more milk will be met primarily through the growth of dairy operations. However, in order to grow their operations, dairy farmers must be able to plan and site their facilities through a predictable, fact and science-based process. Research suggests that the type and extent of local livestock facility siting regulation currently existing in Wisconsin and other Midwestern states can adversely impact and inhibit business decisions to site or expand livestock facilities.</u>  <u>Measures such as the proposed rule are vital to strengthening our state economy. However, the siting legislation created new</u>		

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responsibilities for both state and local governments, which may impose additional costs on livestock operations, and state and local governments. These costs, outlined below, are minor in comparison to the economic benefits of a more standardized and rational framework for local livestock siting regulation.

### **Impact of the Proposed Rule on State Government**

This rule is relevant only during periods when the Governor has declared that the state or part of the state is in a period of abnormal economic disruption due to an emergency. Therefore, any fiscal effect of enforcing this rule is limited to times when the declaration is in effect.

We are unable to estimate an actual dollar amount because of the sporadic nature of the rule and the unpredictability of the size and scope of the emergency that would trigger action under the rule.

While we believe it is likely that the rule will be used at some time, it is impossible to estimate how often the Governor might make a declaration, or for how long a given declaration might remain in effect. Obviously, if the rule goes into effect more often and / or remains in effect for longer periods, the fiscal impact will be higher.

In addition, this rule and the underlying statute could conceivably require DATCP to actively regulate every business in the state that sells consumer products at either retail or wholesale. If this happened, the fiscal impact would be very high. However, we believe a more likely scenario would be an abnormal economic disruption in a certain sector or specific product, or a disruption in a localized area of the state. Obviously, this would result in a much smaller fiscal impact on the department. Due to the extremely wide variation in possible scenarios that would trigger action under this rule, and the inability to predict how often those scenarios would occur, it is not possible to realistically predict the state fiscal impact of this rule.

The proposed rule creates new responsibilities at the state level to oversee local permit decisions. The most significant of these new responsibilities are administering the state livestock siting standards and the proposed livestock facility siting review board (LFSRB). The board's primary authority is to determine if local governments properly followed state siting standards in making their permitting decisions.

The annual costs associated with the LFSRB depends on the number of appeals filed with the board, which in turn depends on the number of permits or licenses issued by local governments. DATCP has estimated the number of

new and expanded facilities subject to the proposed rule by focusing on dairy expansions and the area of greatest growth in the livestock industry. In its *2004 Dairy Producer Opinion Survey*, the Wisconsin Agricultural Statistics Service (WASS) projected that the number of cows in Wisconsin will increase modestly from 1,240,000 to 1,260,000 in a five-year period from 2004 to 2009. WASS data indicates that significant growth will occur in herds subject to possible regulation under the livestock facility siting law, with declines in cows coming from exiting farms. From 2004 to 2009, the number of herds with 200–499 animal units is expected to increase by 27% (from 700 to 890 operations). During this same period, herd sizes over 500 animal units are expected to increase by 65% (from 200 to 330 operations). If growth were evenly distributed across the five years, Wisconsin would experience about 64 dairy expansions per year. Using different data, Bruce Jones, a University of Wisconsin-Madison agricultural economist, predicted that dairy farms with 100 or more cows would expand production roughly nine percent per year (*The Changing Dairy Industry*). Taking into account greater efficiency in milk production, an increase of nine percent per year suggests a growth rate of up to 90 new or expanded dairy facilities per year. In making this projection, it is assumed that gains in milk production will be realized by state's largest dairy operations (5–8% of the total dairy operations). To achieve a nine percent gain in 2,226 million pounds produced in 2003, for example, the state would need to produce a total of 2,470 million pounds of milk. If this increase came entirely from the 1000 largest dairies, we need 90 new or expanded dairies.

Facility expansions will not always require a farmer to apply for a local permit or license. There are some counties and other local governments that do not regulate the siting of livestock operations. In these jurisdictions, livestock facilities may be built or expanded without a permit and without meeting new state livestock facility siting standards. Given the existing local livestock facility siting regulations, DATCP assumes that 75% of the projected dairy expansions will be regulated locally. In addition, there will be a small number of permit applications from new and expanding livestock facilities other than dairy expansions. Using the above assumptions, DATCP estimates that between 50 and 70 new and expanding livestock facilities will generate local facility siting permit applications annually.

Records from other state-level siting appeals boards show that appeals to the LFSRB likely will be more frequent in the initial years of the proposed rule's implementation, and then taper off as the process becomes more institutionalized and understood. DATCP estimates that between ten and twenty percent of local permit decisions will result in appeals to the LFSRB in the first two years. This means that the siting review board will be expected to process between five and fourteen appeals annually within the 60-day statutory deadline for reviewing local decisions. Assuming the number of appeals fall within this range, DATCP estimated its needs as follows: 1) \$52,000 (salary, fringe, and supplies and services) to hire a program assistant to coordinate the LFSRB meetings, and 2) \$15,000 for an operating budget to cover copying, mailing, travel, meetings, meals, training, and other necessary expenses. These cost estimates for the LFSRB are based on the department's actual costs to coordinate and administer the Land and Water Conservation Board. In addition, DATCP staff is needed to develop and maintain livestock facility siting standards, and provide technical and educational assistance to the agricultural industry and local governments. The estimated cost for this staff is \$88,000, which includes \$10,000 in program support.

The total cost to state government to implement the proposed rules is estimated to be \$155,000 annually. DATCP received \$30,000 to administer the LFSRB, but no additional funds to administer the program. DATCP reassigned 1.4 FTE to administer the livestock facility siting program because no new staff was approved to administer this program.

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**Impact of the Proposed Rule on Local Government**

This rule is not expected to have any impact on local governments.

Local governments that elect to regulate livestock facility siting already incur the costs associated with implementing their local regulations. They must process permit applications according to specific timelines, conduct hearings as required, develop and maintain files for each application, deny and or approve permits based on locally-determined standards, and monitor compliance with permits. The proposed rule does not require that local governments regulate livestock facility siting, and local governments that want to avoid these basic costs can do so by not regulating.

Local governments that voluntarily choose to enact a local livestock siting regulation may encounter some minor new incremental costs to implement the state standards and procedures required under the proposed rules. The required application and worksheets may involve more paperwork than applications previously used by local governments. Local governments may incur new costs processing this paperwork in order to meet the deadlines required under the new law. Some local governments may choose to hire technical experts to review the application worksheets. They may also need to prepare more elaborate written decisions to deny or approve each permit. In addition, should they choose to do so, they may face costs to modify their ordinances to incorporate new state standards and procedures, particularly if they plan to include unique local standards that must be supported by findings of fact establishing a public health and safety justification. Any additional costs incurred under these

circumstances are permissive in nature. The proposed rule itself does not mandate new costs for local government.

Any increased workload will depend on each affected local government's interest in adopting the state standards and existing capacity and expertise. In general, counties will be better equipped to absorb new responsibilities and costs with existing staff and resources than towns and villages. For example, a county may choose to have its Land Conservation Department review the permit paperwork, while towns and villages may want to utilize outside technical expertise to provide this service. While most local governments will have no additional costs in any given year due to the small number of anticipated permit applications, some local governments in areas with substantial livestock expansion activity may see an increase in their existing costs.

Local governments may realize some cost savings as a result of the new law. While the paperwork under the proposed siting law is more extensive, local governments may save time and money by having the applications arrive in a uniform manner. In addition, because the new law limits local governments to considering state standards when making their permit decision, local governments should spend less time and resources in gathering and evaluating evidence necessary to make their decision. For example, local governments will no longer be forced to hold extra public hearings and deliberations to address issues outside the scope of the state standards. Local governments will consequently save the costs of publicly noticing and staffing these meetings (average of \$30 per hour), as well as the per diem costs (average of \$35 per member per meeting) of local officials sitting on the decision-making boards. Eliminating one unneeded public hearing potentially could save a local government several hundred dollars. Since the operations under 500 animal units are exempt from meeting key siting standards, some local governments may raise their threshold for regulation to 500 animal units. By doing this, they will avoid the costs of issuing local approvals to smaller facilities. Also, local governments will save money on permit decisions that are appealed, as they will no longer be responsible for appeal proceedings. Under the proposed rules, permit decisions will now be appealed to the LFSRB. For local governments in areas where livestock facility siting is particularly controversial, the cost savings generated through a more predictable permitting process will likely offset the incremental costs associated with the process. Savings will vary between political subdivisions.

Given the range of existing capacity, DATCP estimates a wide range in the incremental costs to local governments to implement the rule. While the new law will help a number of local governments reduce costs related to local approval, there will be local governments that need about 10 hours of staff and expert assistance per permit application. Local governments may use existing staff or outside assistance to meet this need. At an average cost of \$50 to \$100 per hour, this would result in a range of \$500 to \$1000 per permit application. In addition, record keeping costs, including preparation of the record for possible appeals, would add another \$100-\$500 per permit application. The proposed rule allows local governments to recoup up to \$1000 from applicants to help cover these additional costs. Therefore, DATCP estimates the net incremental cost to local governments to implement the proposed rule to be \$500 or less per permit application. Given the estimate of 50 to 70 local approvals per year, DATCP estimates net aggregate local government costs (statewide costs for all political subdivisions) would range from \$5000 to \$35,000. However, this does not fully account for cost savings that local governments are likely to realize as a result of the streamlined approval process created by the new law.

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