



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2003 Assembly Bill 868

**Assembly Substitute
Amendment 1**

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Under *current law*, the establishment of a new or the expansion of an existing livestock facility may be subject to regulation by a political subdivision (city, village, town, or county). A livestock facility generally is a place where animals used in the production of food, fiber, or other animal products are confined. A political subdivision may regulate livestock facilities through its zoning ordinance or through other ordinances.

Assembly Bill 868 establishes standards for local decisions regarding the siting and expansion of livestock facilities. These standards will be promulgated as rules by the Department of Agriculture, Trade and Consumer Protection (DATCP) and will consist of existing state standards for livestock facilities that will be incorporated by cross-reference into the state standards, and new standards that DATCP may adopt, after considering whether the standards are practical, cost-effective, objective, and are based on peer-reviewed scientific information. Assembly Bill 868 applies the new state standards to political subdivisions, by providing that a political subdivision may not disapprove or prohibit a livestock facility siting or expansion unless one of the specific conditions enumerated in the bill is found to apply. The key reasons in the bill that allow a political subdivision to disapprove or prohibit a livestock facility siting or expansion are that the site is located in a zoning district that is not an agricultural zoning district, the site is located in an agricultural zoning district in which the proposed new or expanded livestock facility is prohibited (subject to certain conditions), or that a proposed new or expanded livestock facility that will have 500 or more animal units violates one of the newly adopted state standards. The bill contains several other allowable reasons for disapproval or prohibition. The bill creates a livestock facility siting review board to hear appeals of decisions made by political subdivisions regarding livestock facility siting, and provides for judicial review of siting board decisions.

Assembly Substitute Amendment 1 makes the following changes to the bill:

Livestock Facility Siting Review Board Membership

The board created by the bill has five members nominated by the Secretary of Agriculture, Trade and Consumer Protection and confirmed by the Senate. Four of the members represent the Wisconsin Towns Association, the Wisconsin Counties Association, environmental interests, and livestock farming interests. The board includes one “other” member. The amendment increases total membership on the board to seven, by providing for three “other” members.

New Siting Standards

The bill requires the DATCP to consider certain issues in proposing standards for livestock facility siting other than those that are incorporated into the state standards by cross-reference. One of the issues is that the new standards must be “designed to promote the long-term viability of animal agriculture in this state.” The amendment substitutes “growth and” for “long-term.” Also, the amendment adds a consideration for the new standards requiring that the standards be protective of public health or safety.

Compliance With Building Codes

The bill provides that a political subdivision (city, village, town, or county) may not disapprove or prohibit a livestock facility siting or expansion unless one of several conditions applies. In the bill, one of these conditions is that the facility violates a state or local building or sanitary code or other generally applicable ordinance. The amendment deletes the provision regarding “other generally applicable ordinances.” The amendment provides that the political subdivision may base its decision to disapprove or prohibit a livestock facility site or expansion on a building, electrical, or plumbing code that is consistent with the state building, electrical, or plumbing code for that type of facility. (Note--the state plumbing code is uniform. The state building and electrical codes are minimum codes, and the state building code generally exempts agricultural buildings.)

Deletion of Less Stringent Local Setbacks

The bill requires that the state standards be incorporated into a political subdivision’s ordinances. The amendment deletes the requirement for adoption of the state standards by ordinance, and deletes redundant provisions of the bill that allow a political subdivision to require compliance with local setback requirements that are less stringent than state standards. The bill continues to allow the political subdivision to impose less stringent setbacks in a conditional use permit or special exception.

Local Findings of Fact

The bill provides in three provisions that a political subdivision may have ordinances more stringent than the state standards, and in one provision that a political subdivision may have a zoning ordinance with agricultural districts in which livestock facilities are prohibited. In each of these provisions of the bill, the political subdivision must base the requirement on “scientific findings of fact” that show that the requirement is necessary to protect public health or safety. The amendment changes

the terminology of each of these required findings so that the requirement must be based on “reasonable and scientifically defensible findings of fact, adopted by the political subdivision, that clearly show that the prohibition is necessary to protect public health or safety.”

Cost-Sharing Limitation

The bill provides that a political subdivision that requires compliance with state standards is not required to determine that cost-sharing is available to the operator for facilities or practices needed to comply with the standards. The amendment restricts this provision to new or expanded facilities that have 500 or more animal units.

Expansion of Livestock Facilities

The bill refers to new and expanded livestock facilities, and defines the term “expansion” as an increase in the number of animals fed, confined, maintained, or stabled. The amendment provides that for a newly adopted regulation, a political subdivision may only require a special exception or conditional use permit for the expansion of a livestock facility that exists on the effective date of the special exception or conditional use permit, if the expansion involves at least a 20% increase in the largest number of animal units that are at the livestock facility for at least 90 days in the 12-month period before the requirement takes effect.

Calculation of the Number of Animal Units

The bill applies various provisions based on the number of animal units, but does not specify how the number of animal units is calculated. The amendment provides that the number of animal units that are fed, confined, maintained, or stabled at a livestock facility is the largest number of animal units that are at the livestock facility for at least 90 days in any 12-month period.

Appeal to Siting Board

The bill provides that a person who lives within two miles of the site at which a livestock facility is proposed to be sited or expanded, or who owns land within this area, may appeal the decision of a political subdivision regarding a livestock facility to the siting board and may appeal a decision of the siting board to the circuit court. It is not clear in the bill where this distance is measured. The amendment makes it clear that the measurement is from the livestock facility, which is defined in the bill as a feedlot or facility, other than a pasture, where animals are kept.

Time Limits on Appeal to Siting Board

The bill requires a person who wishes to appeal the decision of a political subdivision to the siting board to request review within 30 days after the decision is issued. The amendment adds a provision requiring the political subdivision to certify the written record to the board within 30 days after the board receives the request for an appeal, and requires the board to issue its decision within 60 days after receiving the certified record. The board may extend the 60-day time limit for good cause.

Stay of Decision

The bill provides that if the livestock facility siting review board's decision is appealed to circuit court, the filing of an appeal does not stay the effect of the board's decision (i.e., the decision to approve a livestock facility). The amendment makes it clear that it is only the filing of an appeal that does not stay the effect of a decision of the board, other remedies, such as a temporary injunction issued by a court, continue to be available. The amendment also deletes language from the bill so as to clarify that the provision regarding a stay in the effect of a decision applies to any decision of the siting board.

Legislative History

The Assembly Committee on Agriculture introduced Assembly Substitute Amendment 1 and recommended adoption of the substitute amendment on February 26, 2004, by a vote of Ayes, 15; Noes, 0.

MCP:jal