



2005 SENATE BILL 504

January 13, 2006 - Introduced by Senators KAPANKE and BROWN, cosponsored by Representatives OTT, WARD, PETROWSKI, MUSSER, NERISON, AINSWORTH and TOWNS. Referred to Committee on Agriculture and Insurance.

1 **AN ACT** *to amend* 93.90 (3) (a) 5., 93.90 (3) (a) 6. (intro.), 93.90 (3) (a) 8., 93.90
2 (3) (a) 9. (intro.), 93.90 (3) (ae) 1., 93.90 (3) (ae) 2., 93.90 (3) (d), 93.90 (3) (e) and
3 93.90 (3) (f); *to repeal and recreate* 93.90 (1m) (a); and *to create* 93.90 (2) (e)
4 3. and 283.11 (4m) of the statutes; **relating to:** determining the size of a
5 livestock operation for the applicability of the livestock facility siting law, water
6 quality regulation of livestock operations, granting rule-making authority, and
7 providing an exemption from emergency rule procedures.

Analysis by the Legislative Reference Bureau

Livestock facility siting

Current law requires the Department of Agriculture, Trade and Consumer Protection (DATCP) to set standards for siting and expanding livestock facilities. The law limits the grounds on which a city, village, town, or county (political subdivision) may prohibit the siting or expansion of a livestock facility. The grounds depend, in some cases, on the size of the livestock facility, measured in animal units. Generally, a political subdivision may not prohibit the siting or expansion of a livestock facility that would have fewer than 500 animal units unless the facility is in a zoning district in which agriculture is prohibited. A political subdivision may prohibit the siting or expansion of a livestock facility that would have 500 or more animal units, even in a district that is zoned for agriculture, if the livestock facility would violate one of the standards set by DATCP.

SENATE BILL 504

Under current law, the number of animal units is determined according to rules of the Department of Natural Resources (DNR) related to regulation of water pollution from livestock operations. Under these rules, for example, a mature dairy cow equals 1.4 animal units, a dairy calf equals 0.2 animal unit, a beef steer equals 1 animal unit, a pig weighing 55 pounds or more equals 0.4 animal unit, a pig weighing less than 55 pounds equals 0.1 animal unit, and a turkey equals 0.018 animal unit. Under current law, if a livestock facility would have more than one type of animal (large and small pigs, for example), the number of animal units that would be present at a livestock facility is determined by adding together the number of animal units of each type of animal.

Under this bill, different kinds of animals may not be added together in determining the number of animal units at a livestock facility for the applicability of the livestock facility siting law. Thus, a political subdivision may generally prohibit the siting or expansion of a livestock facility on the grounds that the facility would violate a state standard only if the facility would have at least 500 animal units of a single type of animal. The bill also makes some changes in the number of animal units assigned to different types of animals.

Water quality regulation

The Federal Water Pollution Control Act requires the issuance of water pollution discharge permits for point sources of pollution by the Environmental Protection Agency (EPA) or by states, including Wisconsin, to which EPA has delegated permit granting authority. A point source is a discrete conveyance, such as a pipe, and includes a concentrated animal feeding operation (CAFO). The determination of whether a livestock operation is a CAFO depends in part on the size of the livestock facility, measured by animal units. Under its current rules, DNR determines the number of animal units at a facility by adding together the number of animal units for each type of animal. DNR has proposed to change its rule for determining animal units. Under the proposed rule, DNR would continue to add together the number of animal units of each type of animal, but would make some changes in the number of animal units assigned to different types of animals.

This bill requires DNR to use EPA's methodology for measuring the size of a livestock operation to determine whether the livestock operation is a CAFO and, thus, whether the livestock operation is required to obtain a water pollution discharge permit. EPA's methodology does not add together the number of animals of different types. EPA's methodology also uses somewhat different thresholds for the number of animals used in determining whether a livestock operation is a CAFO than in either the current or proposed DNR rule.

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:

SENATE BILL 504

1 **SECTION 1.** 93.90 (1m) (a) of the statutes, as created by 2003 Wisconsin Act 235,
2 is repealed and recreated to read:

3 **93.90 (1m)** (a) “Animal unit” means a measure of the number of animals that
4 a livestock facility will have, as determined under sub. (2) (e) 3.

5 **SECTION 2.** 93.90 (2) (e) 3. of the statutes is created to read:

6 **93.90 (2)** (e) 3. Specify the method for determining numbers of animal units for
7 each type of animal based on the principle that the threshold number of animals of
8 each type of animal in the definition of “large concentrated animal feeding operation”
9 in 40 CFR 122.23 (b) (4) equals 1,000 animal units.

10 **SECTION 3.** 93.90 (3) (a) 5. of the statutes, as created by 2003 Wisconsin Act 235,
11 is amended to read:

12 **93.90 (3)** (a) 5. The proposed new or expanded livestock facility will have 500
13 or more animal units of one type of animal and violates a state standard under sub.
14 (2) (a).

15 **SECTION 4.** 93.90 (3) (a) 6. (intro.) of the statutes, as created by 2003 Wisconsin
16 Act 235, is amended to read:

17 **93.90 (3)** (a) 6. (intro.) The proposed new or expanded livestock facility will
18 have 500 or more animal units of one type of animal and violates a requirement that
19 is more stringent than the state standards under sub. (2) (a) if the political
20 subdivision does all of the following:

21 **SECTION 5.** 93.90 (3) (a) 8. of the statutes, as created by 2003 Wisconsin Act 235,
22 is amended to read:

23 **93.90 (3)** (a) 8. The proposed new or expanded livestock facility will have fewer
24 than 500 animal units of each type of animal but will exceed a size threshold for
25 requiring a special exception or conditional use permit that was incorporated into the

SENATE BILL 504

1 political subdivision's ordinances before July 19, 2003, and the proposed new or
2 expanded livestock facility violates a state standard under sub. (2) (a).

3 **SECTION 6.** 93.90 (3) (a) 9. (intro.) of the statutes, as created by 2003 Wisconsin
4 Act 235, is amended to read:

5 93.90 (3) (a) 9. (intro.) The proposed new or expanded livestock facility will
6 have fewer than 500 animal units of each type of animal but will exceed a size
7 threshold for requiring a special exception or conditional use permit that was
8 incorporated into the political subdivision's ordinances before July 19, 2003, and the
9 proposed new or expanded livestock facility violates a requirement that is more
10 stringent than the state standards under sub. (2) (a) if the political subdivision does
11 all of the following:

12 **SECTION 7.** 93.90 (3) (ae) 1. of the statutes, as created by 2003 Wisconsin Act
13 235, is amended to read:

14 93.90 (3) (ae) 1. A new or expanded livestock facility that will have 500 or more
15 animal units of one type of animal.

16 **SECTION 8.** 93.90 (3) (ae) 2. of the statutes, as created by 2003 Wisconsin Act
17 235, is amended to read:

18 93.90 (3) (ae) 2. A new or expanded livestock facility that will have fewer than
19 500 animal units of each type of animal but that will exceed a size threshold for
20 requiring a special exception or conditional use permit that was incorporated into the
21 political subdivision's ordinances before July 19, 2003.

22 **SECTION 9.** 93.90 (3) (d) of the statutes, as created by 2003 Wisconsin Act 235,
23 is amended to read:

24 93.90 (3) (d) Notwithstanding ss. 92.15 (4) and 281.16 (3) (e), a political
25 subdivision that requires compliance with state standards under sub. (2) (a) as a

SENATE BILL 504

1 condition of issuing a special exception or conditional use permit for an expanded
2 livestock facility is not required to determine that cost-sharing is available to the
3 operator of the livestock facility for facilities or practices needed to comply with those
4 standards if the livestock facility will have 500 or more animal units of one type of
5 animal.

6 **SECTION 10.** 93.90 (3) (e) of the statutes, as created by 2003 Wisconsin Act 235,
7 is amended to read:

8 93.90 (3) (e) Notwithstanding ss. 59.69, 60.61, 60.62, 61.35, and 62.23, a
9 political subdivision may not enact a requirement that a person obtain a special
10 exception or conditional use permit for the expansion of a livestock facility that exists
11 when the requirement takes effect, except that a political subdivision may enact a
12 requirement that a person obtain a special exception or conditional use permit for
13 the expansion of a livestock facility that exists when the requirement takes effect if
14 the requirement applies only when the number of animal units of one type of animal
15 that the livestock facility will have after expansion will exceed by more than 20
16 percent the largest number of animal units of that type of animal that were at the
17 livestock facility for at least 90 days in the 12-month period before the requirement
18 takes effect.

19 **SECTION 11.** 93.90 (3) (f) of the statutes, as created by 2003 Wisconsin Act 235,
20 is amended to read:

21 93.90 (3) (f) For the purposes of this subsection, the number of animal units of
22 one type of animal that a livestock facility will have is the largest number of animal
23 units of that type of animal that will be fed, confined, maintained, or stabled at the
24 livestock facility on at least 90 days in any 12-month period.

25 **SECTION 12.** 283.11 (4m) of the statutes is created to read:

