



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-5679/1
KP:wlj&kjf

2019 ASSEMBLY BILL 894

February 11, 2020 - Introduced by Representatives TRANEL, TAUCHEN, KURTZ, NOVAK, BALLWEG, SUMMERFIELD and TUSLER, cosponsored by Senators MARKLEIN, BERNIER, FEYEN, LEMAHIEU and OLSEN. Referred to Committee on Agriculture.

1 **AN ACT** *to repeal* 93.90 (2) (c), 93.90 (3) (a) (intro.), 93.90 (3) (a) 5., 93.90 (3) (a)
2 6., 93.90 (3) (a) 8., 93.90 (3) (a) 9., 93.90 (3) (ae), 93.90 (3) (am), 93.90 (3) (ar) and
3 93.90 (4); *to renumber* 93.90 (3) (a) 1., 93.90 (3) (a) 3., 93.90 (3) (a) 4. and 93.90
4 (3) (f); *to renumber and amend* 93.90 (3) (a) 2., 93.90 (3) (b), 93.90 (3) (c), 93.90
5 (3) (d) and 93.90 (3) (e); *to amend* 93.90 (1m) (b), 93.90 (2) (a), 93.90 (2) (d), 93.90
6 (2) (e) 2., 93.90 (5) (title), 93.90 (5) (a), 93.90 (5) (b), 93.90 (5) (bm), 93.90 (5) (c),
7 93.90 (5) (d) and 93.90 (5) (f); *to repeal and recreate* 93.90 (3) (title); and *to*
8 **create** 15.135 (2), 93.90 (1m) (bm), 93.90 (1m) (dr), 93.90 (1m) (eg), 93.90 (1m)
9 (er), 93.90 (1m) (g), 93.90 (1m) (h), 93.90 (1m) (i), 93.90 (2) (am), 93.90 (2) (f),
10 93.90 (2m), 93.90 (3) (g), 93.90 (3) (h) (intro.), 93.90 (3) (h) 5., 93.90 (3) (i) 1.,
11 93.90 (3) (i) 2. (intro.), 93.90 (3) (j), 93.90 (3) (L) and 93.90 (6) of the statutes;

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1 **relating to:** livestock facility siting and expansion and granting rule-making
2 authority.

Analysis by the Legislative Reference Bureau

This bill makes changes concerning the siting and expansion of livestock facilities, including the following:

1. The bill requires the Department of Agriculture, Trade and Consumer Protection to receive and review applications for siting or expanding a livestock facility if a city, village, town, or county (political subdivision) requires approval for siting or expanding a livestock facility in the political subdivision. Within two business days of receiving an application, DATCP must provide a copy of the application to the political subdivisions in which the property that is the subject of the application is located. Within 14 days of receiving an application, DATCP must notify the applicant whether the application is complete and, if not, what supplementary information is needed to complete the application. After DATCP determines that an application is complete, DATCP must provide 30 days for receiving public comments on the application and may hold a public hearing during this period.

Generally, DATCP is required to approve or disapprove the application within 10 days after the close of the public comment period. DATCP must approve the application if the applicant complies with DATCP's livestock facility siting rules, except that if a political subdivision enacts a more stringent requirement as allowed under the bill, DATCP must approve the application if the applicant complies with the political subdivision's more stringent requirements and DATCP's livestock facility siting rules that are consistent with the political subdivision's requirements. In approving or disapproving the application, DATCP must make written findings of fact and conclusions of law and a record of its decision making. DATCP also must provide notice of its decision to the political subdivision, the applicant, and any other party that submitted written comments during the public comment period.

Under current law, an application for siting or expanding a livestock facility is submitted to a political subdivision. Within 45 days, the political subdivision must notify the applicant whether the application is complete and, if not, what information is needed to complete the application. Current law also generally requires a political subdivision to approve or disapprove an application within 90 days of determining that an application is complete.

2. The bill requires a political subdivision to notify all landowners adjacent to the proposed livestock facility siting or expansion and to approve or deny an application within 60 days of receiving notice that DATCP approved an application. Under the bill, a political subdivision may disapprove or prohibit the siting or expansion of a livestock facility only for certain reasons, including any of the following: a) the facility would violate a setback requirement established under the bill; b) the site is in a location that is not an agricultural zoning district; and c) the

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proposed facility violates a building, electrical, or plumbing code consistent with the state building, electrical, or plumbing code.

3. The bill authorizes aggrieved persons to challenge DATCP's decision on a livestock facility siting or expansion application. The bill defines an "aggrieved person" as a political subdivision in which a proposed livestock facility would be located, an applicant, or a person who lives or owns land within two miles of a proposed livestock facility. Under the bill, the Livestock Facility Siting Review Board determines whether to reverse DATCP's decision on approving or disapproving an application. An aggrieved person may appeal the decision of the board to circuit court. The bill also specifies that a person may challenge the decision of a political subdivision on an application by bringing an action before the board of appeals or adjustment of the political subdivision or the appropriate circuit court.

Under current law, a challenge to a political subdivision's decision on an application is decided by the Livestock Facility Siting Review Board, and the board's decision may be appealed to circuit court.

4. The bill generally prohibits a political subdivision from enforcing or enacting a requirement for approving livestock facility siting or expansion applications that is more stringent than DATCP's rules. Under the bill, a political subdivision may enact a requirement that is more stringent than DATCP's rules if the requirement is based on reasonable and scientifically defensible findings of fact made by the political subdivision that satisfy certain requirements. Current law allows a political subdivision to enforce a standard that is more stringent than DATCP's rules if the political subdivision enacts an ordinance and bases the standard on reasonable and scientifically defensible findings of fact that satisfy certain requirements.

5. Under the bill, if a political subdivision establishes a setback requirement from public roads for livestock structures or waste storage structures, the setback requirement may not require that the structure be located more than 100 feet from public roads.

6. The bill also provides that a livestock structure or waste storage structure constructed after the bill takes effect may be located closer to a property line of another owner's property than a setback requirement established by DATCP's rules if the owner of the land on which the structure is located and the owner of land within the required setback distance enter into a written agreement and record the agreement with the county register of deeds.

7. The bill creates the Livestock Facility Technical Review Board attached to DATCP, consisting of the following members nominated by the secretary of agriculture, trade and consumer protection and confirmed by the senate for five-year terms: a) one member selected from names submitted by the Wisconsin Towns Association; b) one member selected from names submitted by the Wisconsin Counties Association; c) one member selected names submitted by the Land and Water Conservation Association; d) one member selected from names submitted by statewide, environmental-related organizations specified in the bill; and e) five members selected from names submitted by statewide, agriculture-related organizations specified in the bill. Under the bill, DATCP may promulgate rules specifying standards for siting and expanding livestock facilities only if at least

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two-thirds of the members of the Livestock Facility Technical Review Board recommends that DATCP promulgate the rules. This requirement does not apply to existing rules promulgated by DATCP that specify standards for siting and expanding livestock facilities. Current law requires DATCP to promulgate rules specifying standards for siting and expanding livestock facilities.

8. The bill specifies that rules promulgated by DATCP that establish setback requirements or odor and air emissions standards for waste storage structures do not apply to manure digesters or structures used to collect and store waste under a livestock housing facility.

9. The bill eliminates the requirement under current law that DATCP review every four years its rules specifying standards for siting and expanding livestock facilities.

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:

1 **SECTION 1.** 15.135 (2) of the statutes is created to read:

2 15.135 (2) LIVESTOCK FACILITY TECHNICAL REVIEW BOARD. (a) There is created a
3 livestock facility technical 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 selected from names submitted by the Wisconsin Towns
7 Association.

8 2. A member selected from names submitted by the Wisconsin Counties
9 Association.

10 3. A member selected from names submitted by the Land and Water
11 Conservation Association.

12 4. A member selected from names submitted by Clean Wisconsin, Inc., Midwest
13 Environmental Advocates, the Sierra Club, the Nature Conservancy, Wisconsin
14 Environment, Inc., and other statewide, environmental-related organizations.

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1 5. Five members selected from names submitted by the Wisconsin Farm
2 Bureau Federation, the Wisconsin Farmer's Union, the Dairy Business Association,
3 the Wisconsin Dairy Alliance, the Wisconsin Pork Producers, the Wisconsin
4 Cattlemen's Association, and other statewide, agriculture-related organizations. At
5 least 3 of these members must hold a permit under s. 283.31 from the department
6 of natural resources or be a permittee's designee.

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

10 **SECTION 2.** 93.90 (1m) (b) of the statutes is amended to read:

11 93.90 **(1m)** (b) "Application for approval" means an application submitted to
12 the department for approval of a livestock facility siting or expansion based on
13 compliance with standards promulgated by rule under sub. (2) (a), and, if applicable,
14 more stringent standards enacted by a political subdivision under sub. (3) (i) 1. An
15 "application for approval" includes an application for permit modification.

16 **SECTION 3.** 93.90 (1m) (bm) of the statutes is created to read:

17 93.90 **(1m)** (bm) "Application for permit modification" means an application
18 concerning a livestock facility siting or expansion that was previously approved
19 under sub. (2) (f) 5. or approved before the effective date of this paragraph [LRB
20 inserts date], if any of the following applies:

21 1. The proposed livestock facility involves the construction or alteration of one
22 or more livestock structures without increasing the maximum number of animal
23 units authorized in the most recent approval granted under sub. (2) (f) 5. or granted
24 before the effective date of this subdivision [LRB inserts date].

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1 2. The proposed livestock facility involves increasing the maximum number of
2 animal units held at the livestock facility without the construction or alteration of
3 any livestock structures and all of the following apply:

4 a. The applicant has not previously increased the number of animal units above
5 the maximum number of animal units authorized in the most recent local approval
6 granted under sub. (2) (f) 5. or granted before the effective date of this subd. 2. a.
7 [LRB inserts date].

8 b. The proposed increase in animal units does not exceed 20 percent of the
9 maximum number of animal units authorized in the most recent local approval
10 granted under sub. (2) (f) 5. or granted before the effective date of this subd. 2. b.
11 [LRB inserts date].

12 **SECTION 4.** 93.90 (1m) (dr) of the statutes is created to read:

13 93.90 (1m) (dr) “Highway” has the meaning given in s. 340.01 (22).

14 **SECTION 5.** 93.90 (1m) (eg) of the statutes is created to read:

15 93.90 (1m) (eg) “Livestock structure” means a building or other structure used
16 to house or feed livestock, to confine livestock for milking, to confine livestock for
17 feeding other than grazing, to store livestock feed, or to collect or store waste
18 generated at a livestock facility. “Livestock structure” includes a barn, milking
19 parlor, feed storage facility, feeding facility, animal lot, or waste storage structure.
20 “Livestock structure” does not include a pasture or winter grazing area, a fence
21 surrounding a pasture or winter grazing area, a livestock watering or feeding facility
22 in a pasture or winter grazing area, or a machine shed or like facility that is not used
23 for livestock.

24 **SECTION 6.** 93.90 (1m) (er) of the statutes is created to read:

25 93.90 (1m) (er) “Local approval” has the meaning given in s. ATCP 51.01 (21).

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1 **SECTION 7.** 93.90 (1m) (g) of the statutes is created to read:

2 93.90 (1m) (g) “Property line” means the boundary of a property that is owned
3 by someone other than the owner of the livestock structure for which a setback
4 requirement is being measured.

5 **SECTION 8.** 93.90 (1m) (h) of the statutes is created to read:

6 93.90 (1m) (h) “Waste” means manure, milking center waste, and other organic
7 waste generated by a livestock facility.

8 **SECTION 9.** 93.90 (1m) (i) of the statutes is created to read:

9 93.90 (1m) (i) “Waste storage structure” means a waste storage impoundment
10 made by constructing embankments, excavating a pit or dugout, or fabricating a
11 structure. “Waste storage structure” does not include equipment used to apply waste
12 to land.

13 **SECTION 10.** 93.90 (2) (a) of the statutes is amended to read:

14 93.90 (2) (a) For the purposes of this section, the department shall promulgate
15 rules specifying standards for siting and expanding livestock facilities. In
16 promulgating the rules, the department may incorporate by cross-reference
17 provisions contained in rules promulgated under ss. 92.05 (3) (c) and (k), 92.14 (8),
18 92.16, and 281.16 (3) and ch. 283. The department may not promulgate rules under
19 this paragraph that conflict with rules promulgated under s. 92.05 (3) (c) or (k), 92.14
20 (8), 92.16, or 281.16 (3) or ch. 283. The department may not promulgate rules under
21 this paragraph unless at least two-thirds of the members of the livestock facility
22 technical review board first approves the rules.

23 **SECTION 11.** 93.90 (2) (am) of the statutes is created to read:

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1 93.90 (2) (am) Any rules promulgated by the department under par. (a) that
2 establish setback requirements or odor and air emissions standards for waste
3 storage structures do not apply to any of the following:

- 4 1. A structure used to collect and store waste under a livestock housing facility.
- 5 2. A manure digester consisting of a sealed structure in which manure is
6 subjected to managed biological decomposition.

7 **SECTION 12.** 93.90 (2) (c) of the statutes is repealed.

8 **SECTION 13.** 93.90 (2) (d) of the statutes is amended to read:

9 93.90 (2) (d) ~~The secretary shall appoint a committee of experts to livestock~~
10 facility technical review board shall advise the department on the promulgation of
11 the rules under par. (a) ~~and on the review of rules under par. (e).~~

12 **SECTION 14.** 93.90 (2) (e) 2. of the statutes is amended to read:

13 93.90 (2) (e) 2. Specify the information and documentation that must be
14 included in a record of decision making, written findings, and conclusions under sub-
15 ~~(4) (b).~~ par. (f) 7.

16 **SECTION 15.** 93.90 (2) (f) of the statutes is created to read:

17 93.90 (2) (f) 1. If a local approval under sub. (3) (g) is required for a new or
18 expanded livestock facility, the operator of the facility shall submit an application for
19 approval to the department. The department may establish a fee not exceeding \$750
20 for reviewing applications under this paragraph.

21 2. No later than 2 business days after the department receives an application
22 for approval, the department shall provide notification and a copy of the application
23 for approval to the political subdivisions in which the property that is the subject of
24 the application for approval is located.

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1 3. No later than 14 days after the department receives an application for
2 approval, the department shall notify the applicant whether the application for
3 approval is complete and, if it is not complete, what supplementary information is
4 needed to complete the application for approval. Upon receipt of any supplementary
5 information from the applicant, the department shall have 7 days to review the
6 information and notify the applicant whether the application for approval is
7 complete and, if it is not complete, what additional supplementary information is
8 needed to complete the application for approval. As soon as the department deems
9 the application for approval complete, the department shall notify the applicant and
10 the political subdivisions in which the property that is the subject of the application
11 is located.

12 4. Beginning on the first day after the department deems an application for
13 approval complete, the department shall provide 30 days for receiving public
14 comments on the application for approval. The department may hold a public
15 hearing during the public comment period.

16 5. a. The department shall approve or disapprove an application for approval
17 no more than 10 days after the close of the public comment period under subd. 4.

18 b. Except as provided in subd. 5. c., the department shall approve an
19 application for approval if the proposed livestock facility siting or expansion satisfies
20 the standards promulgated by rule under sub. (2) (a).

21 c. If an application for approval involves a proposed livestock facility siting or
22 expansion located in a political subdivision that enacts a requirement under sub. (3)
23 (i) 1., the department shall approve the facility's application for approval if the
24 facility satisfies the requirements enacted under sub. (3) (i) 1. and standards

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1 promulgated by rule under sub. (2) (a) that are consistent with the requirements
2 enacted under sub. (3) (i) 1.

3 6. Notwithstanding subd. 5. a., if the department of natural resources notifies
4 the department of agriculture, trade and consumer protection that the facility that
5 is proposed for expansion by the applicant has been the subject of 2 or more notices
6 of violation within the preceding 18 months that allege violations concerning actual
7 discharges of manure or process wastewaters from the facility in violation of ch. 283,
8 any rule promulgated under ch. 283, or any permit issued under ch. 283, the
9 department of agriculture, trade and consumer protection is not required to approve
10 or disapprove the application for approval within 10 days of the close of the public
11 comment period under subd. 4., unless the department of agriculture, trade and
12 consumer protection concludes that the application is consistent with resolving the
13 notices of violation. The department of agriculture, trade and consumer protection
14 shall consult with the department of natural resources after receiving notification
15 under this subdivision. The department of natural resources shall make a written
16 determination of whether the facility remains in significant noncompliance as
17 alleged in the notices of violation and shall provide a copy of the written
18 determination to the department of agriculture, trade and consumer protection and
19 the applicant within 30 days of the close of the public comment period under subd.

20 4. If the written determination of the department of natural resources is that the
21 facility remains in significant noncompliance, not later than every 30 days thereafter
22 the department of natural resources shall make and submit to the department of
23 agriculture, trade and consumer protection an additional written determination of
24 whether the facility remains in significant noncompliance until the department of
25 natural resources makes and submits a written determination that the facility is no

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1 longer in significant noncompliance. Notwithstanding subd. 5. a., if this subdivision
2 applies, the department of agriculture, trade and consumer protection shall approve
3 or disapprove an application for approval no more than 10 days after the department
4 of natural resources provides the department of agriculture, trade and consumer
5 protection with its written determination that the facility does not remain in
6 significant noncompliance as alleged in the notices of violation. This subdivision
7 does not apply to an application for approval if the department of natural resources
8 determines that the applicant will address all actual or alleged violations.

9 7. The department shall make written findings of fact and conclusions of law
10 in support of its decision on an application for approval and shall make a record of
11 its decision making on an application for approval, including a recording of any
12 public hearing, copies of documents submitted at any public hearing or during the
13 public comment period under subd. 4., and copies of any other documents provided
14 to the department in connection with the application for approval.

15 8. The department shall provide notice of its decision to the applicant, the
16 political subdivisions in which the property that is the subject of the application for
17 approval is located, and any other party that submitted written comments during the
18 public comment period under subd. 4.

19 **SECTION 16.** 93.90 (2m) of the statutes is created to read:

20 **93.90 (2m) RESTRICTION ON SETBACKS FOR LIVESTOCK STRUCTURES AND WASTE**
21 **STORAGE STRUCTURES.** (a) If a political subdivision establishes a setback requirement
22 measured from the nearest point of a highway right-of-way that applies to a
23 livestock structure, the setback requirement may not require that the livestock
24 structure be located more than 100 feet from the nearest point of any highway
25 right-of-way.

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1 (b) A livestock structure constructed on or after the effective date of this
2 paragraph [LRB inserts date], may be located closer to a property line than any
3 setback requirement established by rule by the department or by a political
4 subdivision if all of the following apply:

5 1. The owner of the land on which the livestock structure is located and the
6 owner of land with a property line within the required setback distance enter into
7 a written agreement and record the agreement with the office of the register of deeds
8 for the county in which the land is located.

9 2. The setback requirement is satisfied with respect to all land, other than the
10 land subject to the agreement described in subd. 1., with a property line within the
11 required setback distance.

12 **SECTION 17.** 93.90 (3) (title) of the statutes is repealed and recreated to read:
13 93.90 (3) (title) LOCAL APPROVALS.

14 **SECTION 18.** 93.90 (3) (a) (intro.) of the statutes is repealed.

15 **SECTION 19.** 93.90 (3) (a) 1. of the statutes is renumbered 93.90 (3) (h) 1.

16 **SECTION 20.** 93.90 (3) (a) 2. of the statutes is renumbered 93.90 (3) (h) 2. and
17 amended to read:

18 93.90 (3) (h) 2. The site is located in an agricultural zoning district in which
19 the proposed new or expanded livestock facility is prohibited, subject to ~~pars. (b) and~~
20 ~~(e).~~ par. (i) 2. a. or b.

21 **SECTION 21.** 93.90 (3) (a) 3. of the statutes is renumbered 93.90 (3) (h) 3.

22 **SECTION 22.** 93.90 (3) (a) 4. of the statutes is renumbered 93.90 (3) (h) 4.

23 **SECTION 23.** 93.90 (3) (a) 5. of the statutes is repealed.

24 **SECTION 24.** 93.90 (3) (a) 6. of the statutes is repealed.

25 **SECTION 25.** 93.90 (3) (a) 8. of the statutes is repealed.

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1 **SECTION 26.** 93.90 (3) (a) 9. of the statutes is repealed.

2 **SECTION 27.** 93.90 (3) (ae) of the statutes is repealed.

3 **SECTION 28.** 93.90 (3) (am) of the statutes is repealed.

4 **SECTION 29.** 93.90 (3) (ar) of the statutes is repealed.

5 **SECTION 30.** 93.90 (3) (b) of the statutes is renumbered 93.90 (3) (i) 2. a. and
6 amended to read:

7 93.90 (3) (i) 2. a. ~~Notwithstanding ss. 59.69, 60.61, 60.62, 61.35, and 62.23, a~~
8 ~~political subdivision may not prohibit~~ Prohibit a type of livestock facility in an
9 agricultural zoning district based on number of animal units if livestock facilities of
10 that type with fewer animal units are allowed in that zoning district, unless the
11 political subdivision also has an agricultural zoning district in which livestock
12 facilities of that type are permitted or conditional uses without respect to number of
13 animal units.

14 **SECTION 31.** 93.90 (3) (c) of the statutes is renumbered 93.90 (3) (i) 2. b. and
15 amended to read:

16 93.90 (3) (i) 2. b. ~~Notwithstanding ss. 59.69, 60.61, 60.62, 61.35, and 62.23, a~~
17 ~~political subdivision may not enact~~ Enact or enforce a zoning ordinance with a
18 category of agricultural district in which livestock facilities are prohibited unless the
19 political subdivision bases that prohibition on reasonable and scientifically
20 defensible findings of fact, adopted by the political subdivision, that are based on
21 specific, but not necessarily unique, circumstances in that political subdivision that
22 clearly show that the prohibition is necessary to protect public health or safety in
23 that political subdivision.

24 **SECTION 32.** 93.90 (3) (d) of the statutes is renumbered 93.90 (3) (i) 3. and
25 amended to read:

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1 93.90 (3) (i) 3. Notwithstanding ss. 92.15 (4) and 281.16 (3) (e), a political
2 subdivision that requires compliance with state standards under sub. (2) (a) as a
3 condition of issuing ~~a special exception or conditional use permit~~ granting a local
4 approval for an expanded livestock facility is not required to determine that
5 cost-sharing is available to the operator of the livestock facility for facilities or
6 practices needed to comply with those standards if the livestock facility will have 500
7 or more animal units.

8 **SECTION 33.** 93.90 (3) (e) of the statutes is renumbered 93.90 (3) (i) 2. c. and
9 amended to read:

10 93.90 (3) (i) 2. c. Notwithstanding ss. ~~59.69, 60.61, 60.62, 61.35, and 62.23,~~ a
11 ~~political subdivision may not enact a requirement~~ Require that a person obtain ~~a~~
12 ~~special exception or conditional use permit~~ local approval for the expansion of a
13 livestock facility that exists when the requirement takes effect, except that a political
14 subdivision may enact a requirement that a person obtain ~~a special exception or~~
15 ~~conditional use permit~~ local approval for the expansion of a livestock facility that
16 exists when the requirement takes effect if the requirement applies only when the
17 number of animal units that the livestock facility will have after expansion will
18 exceed by more than 20 percent the largest number of animal units that were at the
19 livestock facility for at least 90 days in the 12-month period before the requirement
20 takes effect.

21 **SECTION 34.** 93.90 (3) (f) of the statutes is renumbered 93.90 (3) (k).

22 **SECTION 35.** 93.90 (3) (g) of the statutes is created to read:

23 93.90 (3) (g) Subject to par. (i) 2. c., a political subdivision may require a local
24 approval for a livestock facility siting or expansion if any of the following applies:

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1 1. The proposed new or expanded livestock facility will have 500 or more animal
2 units.

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

7 **SECTION 36.** 93.90 (3) (h) (intro.) of the statutes is created to read:

8 93.90 (3) (h) (intro.) Subject to par. (i) 2., a political subdivision may not prohibit
9 or disapprove a livestock facility siting or expansion unless at least one of the
10 following applies:

11 **SECTION 37.** 93.90 (3) (h) 5. of the statutes is created to read:

12 93.90 (3) (h) 5. The department disapproves the application for approval for the
13 livestock facility siting or expansion under sub. (2) (f) 5.

14 **SECTION 38.** 93.90 (3) (i) 1. of the statutes is created to read:

15 93.90 (3) (i) 1. If a political subdivision requires a local approval for a new or
16 expanded livestock facility, the political subdivision may do any of the following:

17 a. Enact a requirement that is more stringent than the state standards under
18 sub. (2) (a) if the requirement is based on reasonable and scientifically defensible
19 findings of fact, adopted by the political subdivision, that are based on specific, but
20 not necessarily unique, circumstances in that political subdivision and that clearly
21 show that the requirement is necessary to protect public health or safety in that
22 political subdivision.

23 b. Enact a setback requirement that is less stringent than a setback
24 requirement under sub. (2) (a) if the setback requirement is incorporated in the
25 political subdivision's ordinance as a numerical standard.

ASSEMBLY BILL 894**SECTION 39**

1 **SECTION 39.** 93.90 (3) (i) 2. (intro.) of the statutes is created to read:

2 93.90 (3) (i) 2. (intro.) Notwithstanding ss. 59.69, 60.61, 60.62, 61.35, and 62.23,
3 a political subdivision may not do any of the following:

4 **SECTION 40.** 93.90 (3) (j) of the statutes is created to read:

5 93.90 (3) (j) A political subdivision shall prohibit a livestock facility siting or
6 expansion if the department disapproves the application for approval for the
7 livestock facility siting or expansion under sub. (2) (f) 5.

8 **SECTION 41.** 93.90 (3) (L) of the statutes is created to read:

9 93.90 (3) (L) 1. Except as provided in subd. 2., no political subdivision may
10 require a person to pay a fee or post bond or security with the political subdivision
11 in connection with making a decision under sub. (3) (h) concerning a livestock facility
12 siting or expansion proposed by the person.

13 2. a. A political subdivision may enact an ordinance that establishes a fee of not
14 more than \$1,000 for processing and reviewing an application concerning a proposed
15 livestock facility siting or expansion under sub. (3) (h) and not more than \$500 for
16 processing an application for permit modification.

17 b. For calendar years beginning after December 31, 2020, the dollar amounts
18 for the fee limits under subd. 2. a. shall be adjusted each year by a percentage equal
19 to the percentage change between the U.S. consumer price index for all urban
20 consumers, U.S. city average, for the month of August of the previous year and the
21 U.S. consumer price index for all urban consumers, U.S. city average, for the month
22 of August 2019, as determined by the federal department of labor.

23 **SECTION 42.** 93.90 (4) of the statutes is repealed.

24 **SECTION 43.** 93.90 (5) (title) of the statutes is amended to read:

25 93.90 (5) (title) **REVIEW OF DEPARTMENT SITING DECISIONS.**

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1 **SECTION 44.** 93.90 (5) (a) of the statutes is amended to read:

2 93.90 (5) (a) In this subsection “aggrieved person” means a political subdivision
3 in which a proposed new or expanded livestock facility would be located, a person
4 who applied to ~~a political subdivision~~ the department for approval of a livestock
5 facility siting or expansion, a person who lives within 2 miles of a livestock facility
6 that is proposed to be sited or expanded, or a person who owns land within 2 miles
7 of a livestock facility that is proposed to be sited or expanded.

8 **SECTION 45.** 93.90 (5) (b) of the statutes is amended to read:

9 93.90 (5) (b) An aggrieved person may challenge the decision of ~~a political~~
10 ~~subdivision~~ the department on an application for approval on the grounds that the
11 ~~political subdivision~~ department incorrectly applied the state standards under sub.
12 (2) (a) or requirements under sub. (3) (i) 1. that are applicable to the livestock facility
13 siting or expansion ~~or violated sub. (3)~~, by requesting the board to review the
14 decision. An aggrieved person is not required to exhaust the ~~political subdivision’s~~
15 department’s administrative remedies before requesting review by the board. An
16 aggrieved person shall request a review under this paragraph within 30 days after
17 the ~~political subdivision~~ department approves or disapproves the application for
18 approval ~~or, if the aggrieved person chooses to exhaust the political subdivision’s~~
19 ~~administrative remedies, within 30 days after the final decision in the political~~
20 ~~subdivision’s administrative review process.~~

21 **SECTION 46.** 93.90 (5) (bm) of the statutes is amended to read:

22 93.90 (5) (bm) Upon receiving a request under par. (b), the board shall notify
23 the ~~political subdivision~~ department of the request. The ~~political subdivision~~
24 department shall provide a certified copy of the record and its written findings and

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1 conclusions under sub. (4) (2) (f) 7. to the board within 30 days after the day on which
2 it receives the notice.

3 **SECTION 47.** 93.90 (5) (c) of the statutes is amended to read:

4 93.90 (5) (c) Upon receiving the certified copy of the record under par. (bm), the
5 board shall determine whether the challenge is valid. The board shall make its
6 decision without deference to the decision of the ~~political subdivision~~ department
7 and shall base its decision only on the evidence in the record and its written findings
8 and conclusions under sub. (4) (b) (2) (f) 7. In a case that involves the application of
9 requirements related to water quality, the board shall consult with the department
10 of agriculture, trade and consumer protection or with the department of natural
11 resources concerning the application of the requirements related to water quality.
12 The board shall make its decision within 60 days after the day on which it receives
13 the certified copy of the record under par. (bm), except that the board may extend this
14 time limit for good cause specified in writing by the board.

15 **SECTION 48.** 93.90 (5) (d) of the statutes is amended to read:

16 93.90 (5) (d) If the board determines that a challenge is valid, the board shall
17 reverse the decision of the ~~political subdivision~~ department. The decision of the
18 board is binding on the ~~political subdivision~~ department, subject to par. (e). If ~~a~~
19 ~~political subdivision~~ the department fails to comply with a decision of the board that
20 has not been appealed under par. (e), an aggrieved person may bring an action to
21 enforce the decision.

22 **SECTION 49.** 93.90 (5) (f) of the statutes is amended to read:

23 93.90 (5) (f) A circuit court to which a decision of the board is appealed under
24 par. (e) shall review the decision of the board based on the evidence in the record and
25 written findings and conclusions under sub. (4) (b) (2) (f) 7.

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1 **SECTION 50.** 93.90 (6) of the statutes is created to read:

2 **93.90 (6) POLITICAL SUBDIVISION PROCEDURE.** (a) After receiving notice under
3 sub. (2) (f) 2. of an application for approval, a political subdivision shall provide notice
4 of the proposed livestock facility siting or expansion to all landowners adjacent to the
5 property that is the subject of the application for approval.

6 (b) No later than 60 days after receiving notification under sub. (2) (f) 8. that
7 the department has approved an application for approval, a political subdivision
8 shall approve or disapprove under sub. (3) (h) the proposed livestock facility siting
9 or expansion that is the subject of the application for approval.

10 (c) A person may challenge the decision of a political subdivision under par. (b)
11 by bringing an action within 30 days of the political subdivision's decision before the
12 board of appeals or board of adjustment of the political subdivision, or by review by
13 certiorari in the circuit court for the county in which the property that is the subject
14 of the application for approval is located.

15 **SECTION 51. Nonstatutory provisions.**

16 (1) **LIVESTOCK FACILITY TECHNICAL REVIEW BOARD; STAGGERING OF TERMS.**
17 Notwithstanding the length of terms specified for members of the livestock facility
18 technical review board under s. 15.135 (2) (b), two of the initial members shall be
19 appointed for a term expiring on July 1, 2021; two of the initial members shall be
20 appointed for a term expiring on July 1, 2022; two of the initial members shall be
21 appointed for a term expiring on July 1, 2023; two of the initial members shall be
22 appointed for a term expiring on July 1, 2024; and the remaining member shall be
23 appointed for a term expiring on July 1, 2025.

24 **SECTION 52. Initial applicability.**

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1 (1) APPLICATIONS. The treatment of s. 93.90 (2) (e) 2. and (f), (2m), (3) (title) and
2 (a) (intro.), 1., 2., 3., 4., 5., 6., 8., and 9., (ae), (am), (ar), (b), (c), (d), (e), (f), (g), (h)
3 (intro.) and 5., (i) 1. and 2. (intro.), (j), and (L), (4), (5) (title), (a), (b), (bm), (c), (d), and
4 (f), and (6) first applies to an application for approval, as defined in s. 93.90 (1m) (b),
5 received by the department of agriculture, trade and consumer protection on the
6 effective date of this subsection.

7 (2) EXISTING RULES. The treatment of s. 93.90 (2) (a) first applies to rules
8 promulgated by the department of agriculture, trade and consumer protection under
9 s. 93.90 (2) (a) on the effective date of this subsection.

10

(END)