

Concerns over local control sink livestock siting bill

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The demise of legislation to overhaul siting rules for large livestock operations came down to a matter of using an “or” rather than an “and.”

Senate Majority Leader Scott Fitzgerald, R-Juneau, pulled the bill from Wednesday’s calendar, later telling reporters there were concerns on how much control local governments would retain over siting decisions.

A more complete picture of what happened has developed since then.

In a Friday communication to members, the Dairy Business Association pointed the finger at the Wisconsin Dairy Alliance for the deal falling apart, saying the group “changed its position after the agreement was made.” The DBA, a nonprofit organization of farmers, milk processors and business partners, charged the alliance also began actively trying to undermine the deal by trying to “amend the bill without telling any of the other stakeholders.”

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The alliance, meanwhile, acknowledged supporting the bill when it came out of committee. But the group, which only represents large animal operations known as CAFOs, said it continued to wrestle with the use of “or” rather than “and” in one section and decided it couldn’t support final passage.

“This one-word change was exposed for what it was — a very clear way to stop farms from expanding via local zoning without requiring any finding that state standards are inadequate,” the group said.

Regulations for siting or expanding large animal operations have become a contentious topic, and efforts by the Department of Agriculture, Trade and

Consumer Protection to revise them played a role in the Senate's fall vote to reject Gov. Tony Evers' appointment of Brad Pfaff as DATCP secretary. Earlier this month, Sen. Howard Marklein, R-Spring Green, and Rep. Travis Tranel, R-Cuba City, introduced SB 808/AB 894 to revamp the rules process for permitting livestock operations.

The bill also would create a Livestock Facility Technical Review Board under DATCP with members on the nine-member body suggested by local governments, conservation organizations and ag groups. Going forward, DATCP could've promulgated rules for siting and expanding livestock facilities only if two-thirds of the board's members approve.

The disputed provision in the bill is a section that refers to two provisions in other state statutes.

One references municipalities being able to limit the size of farms in one area under their jurisdiction so long as another section allows them.

The second requires municipalities to show a public health and safety justification for exceeding state standards. Under current law, municipalities aren't required to regulate zoning for ag operations. But if they adopt rules, they must abide by state standards on things such as setbacks.

The rub was replacing the conjunction "and" between the mention of the two sections with an "or."

The "and" exists in the current regulations, and to the alliance, that change would give local governments two avenues to restrict the citing of a livestock operation. The group wants the word "and" used and a more restrictive standard requiring both benchmarks to be met before local governments could exceed state requirements.

Bill proponents, however, argue that local governments already can use either standard. Using "or" would've just clarified that.

Mike Koles, executive director of the Wisconsin Towns Association, acknowledged it's somewhat of a gray area. That has resulted in municipalities feeling pressured just to ban livestock operations, period, in areas where they conflict, for example, with housing developments.

The bill would've provided certainty, he argued.

"Lack of clarity leads you down the road of, 'We're going to zone this out altogether,'" Koles said.

Marklein said local governments had already agreed to compromises in the bill in order to reach a deal with ag groups and others. For example, they agreed to a provision that would've prohibited municipalities from requiring bonding requirements for farms under their jurisdiction.

The debate over "and" and "or," he said, could've resulted in a restriction on existing powers of local governments.

"I'm not going to support something that there's a loss of local control," Marklein said.

See the DBA communication to members [here](#). See the alliance statement [here](#).