Concerned with livestock industry, states scrutinize zoning laws

by Tim Anderson

Several years ago, food-processing giant Tyson Foods introduced plans to bring a large hog operation to a county in central South Dakota.

Some local residents turned up their noses at the idea. Concerned about the facility’s effects on the area economy, environment and other quality-of-life issues, residents thwarted the proposal by coming up with one of their own. They placed on the local ballot an ordinance requiring 4-mile setbacks between large hog operations and neighboring properties. When Hyde County voters approved the new zoning measure, Tyson had little choice but to look elsewhere.

“The people thought that development would overrun the town,” says Sen. Frank Kloucek, a Democrat from Scotland. “They didn’t want it, and they had the right to determine their own happiness and the future of their county.”

Not every South Dakota lawmaker believes the effects of these kinds of direct democracy results are positive. Instead, some view them as an impediment to the economically vital livestock industry.

This year, lawmakers passed a bill that would limit voters’ say on the siting of animal feeding operations. Local residents could still hold elections on zoning rules, but they would not be able to vote down the construction of an individual livestock facility. Only a county board could make such a decision, and it would be based on the zoning policies in place.

Supporters argue that the legislation adds fairness to the local zoning process and, perhaps more importantly, eliminates an obstacle to state economic growth. Knowing the rules going in, and that their project will move forward if zoning requirements are met, livestock operators will be more apt to choose a location in South Dakota.

Some, though, say an increased presence of large livestock feeding operations should not be welcome.

“Let them go, then other states can have the mess those operations create,” Kloucek contends. “In the long-term, these factory farms don’t help a community’s economy, and they cause real pollution problems and health complications.”

Soon after Republican Gov. Mike Rounds signed the 2003 bill into law, signatures began being collected to refer the measure to a vote of the people. Ironically, a direct vote by South Dakotans may ultimately determine whether the new restrictions on local ballot initiatives stand.

This year’s conflict continues what has been an enduring policy battle over the regulation of large-scale animal feeding operations. South Dakota has been a key battleground state on this issue, as have other Midwestern states where the livestock industry plays such a critical part in local communities and state economies.

Market-related issues related to price and competition explain some of the unease regarding large-scale animal feeding operations, but there are others. Some rural residents don’t want the facilities as neighbors for environmental, health or aesthetic reasons. In response, local zoning boards in parts of the Midwest have implemented strict zoning standards. Or, as in certain cases in South Dakota, voters themselves have stopped the development.

But are these local zoning decisions causing some states to gradually lose their livestock industry to others?

“In Nebraska, we’ve gotten a reputation around the United States that if you want to open up a livestock facility, don’t come here,” says state Sen. Carroll Burling of Kenesaw. “We need to try and change that if we can.

“Nebraska is a good place to raise livestock. But over the last few years, the livestock numbers have decreased. From an economic development standpoint, we can’t have that continue.”

Closer look at local zoning

This year, Burling and other Nebraska lawmakers have been pushing a legislative package that would allow counties to be designated “livestock friendly.” The measure also intends to make local zoning boards more accountable for the decisions they make on proposed facilities.

Opponents of the legislation say it misidentifies the problems with the state’s livestock industry. Agricultural market conditions, not local zoning decisions, are the root causes, they argue.

But even policymakers concerned about the effects of agricultural consolidation and large animal feeding operations say the state cannot continue to let livestock production in Nebraska slip. Burling says this year’s bill in the Unicameral Legislature resulted from a realistic assessment of what was causing a downward trend in production.

“Like it or not, the livestock industry is changing,” he says. “We’re not going back to the way it was done 40 years ago. We better change with it, or we’re going to be left behind as a state.”

The idea behind the creation of “livestock-friendly” counties is for the state to become more active in matching animal feedlot operators with areas of the state that would likely welcome them. The state’s Department of Agriculture would develop the criteria for determining how counties would receive the designation.

A similar initiative was launched in Minnesota last year. That state’s livestock-friendly criteria include evidence of support from county commissioners, certification that a county’s land-use laws are “conducive to a viable animal agricultural sector,” and the absence of disqualifying factors such as moratoriums on the construction of new facilities.

The other key component of the Nebraska livestock bill addresses some of the same zoning issues that led to passage of the South Dakota legislation earlier this year. The two states’ measures, though, take different approaches to what supporters of both bills see as a current lack of fairness at the local decision-making level. The Nebraska legislation does not target voters’ decisions on individual livestock operations. Instead, it would more closely scrutinize county boards.

For example, if local commissioners were to deny the permit request of a livestock developer, they would be required to provide a “statement of factual findings” on why the request was denied. Also, county boards would be more obligated to the original decisions they make on permit requests.

“The bill still leaves zoning to the counties, but I believe it will eliminate some of the frivolous reasons for not granting permits,” Burling says.

Environmental, economic worries

Mutual concerns about the current condition of the agricultural economy — and its future prospects — often result in very different ideas on proper legislative remedies. And economic worries are only part of the issue. The environmental effects of livestock feeding operations have become an increasingly contentious issue in the Midwest as well.

As just a few examples from this year alone, Iowa lawmakers debated proposed new emissions rules for hog confinements, and the Minnesota Legislature considered legislation that would exempt certain livestock feedlots (1,000 or fewer animal units) from the environmental review process.

In Indiana, legislation was proposed to make the federal Environmental Protection Agency the sole permitting authority for large confined feeding operations. Environmentalists roundly criticized the bill for eliminating the state’s ability to approve construction of such facilities. The author of the bill, Republican Sen. Robert Jackman of Milroy, says his goal was to “eliminate the demanding paperwork and let producers focus on the actual production methods needed to meet the [environmental] requirements.”