

**FIRST ENGROSSMENT
with House Amendments**

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2355

Introduced by

Senators Solberg, Christmann, Kinnoin

Representatives Brusegaard, Kempenich, Solberg

1 A BILL for an Act to amend and reenact sections 11-33-02, 42-04-02, and 58-03-11 of the
2 North Dakota Century Code, relating to zoning districts and regulations affecting normal
3 incidents of farming and ranching.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 11-33-02 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **11-33-02. Board of county commissioners to designate districts.**

8 1. For any or all of the purposes designated in section 11-33-01, the board of county
9 commissioners may divide by resolution ~~divide~~ all or any parts of the county,
10 subject to the provisions of section 11-33-20, into districts of such number, shape,
11 and area as may be ~~deemed~~ determined necessary, and ~~may~~ likewise may enact
12 suitable regulations to carry out the purposes of this chapter. These regulations
13 ~~shall~~ must be uniform in each district, but the regulations in one district may differ
14 from those in other districts. ~~No A regulation or restriction, however, shall~~ may not
15 prohibit or prevent the use of land or buildings for farming or ranching or any of the
16 normal incidents of farming or ranching. For purposes of this section, "farming or
17 ranching" means cultivating land for production of agricultural crops or livestock, or
18 raising, feeding, or producing livestock or livestock products, poultry or poultry
19 products, milk or dairy products, or fruit or horticultural products. The term does
20 not include producing timber or forest products, nor does the term include a
21 contract whereby a processor or distributor of farm products or supplies provides
22 grain, harvesting, or other farm services. ~~The provisions of this~~ This chapter shall
23 does not be construed to include any power relating to the establishment, repair,
24 and maintenance of highways or roads.

- 1 2. a. Notwithstanding subsection 1, the board:
- 2 (1) May require a setback distance of no more than three-fourths of one
- 3 mile [1.20 kilometers] from any occupied residence, business, church,
- 4 school, or public park for any concentrated or confined animal feeding
- 5 operation having more than one thousand but fewer than five thousand
- 6 animal units.
- 7 (2) May require a setback distance of no more than one and one-quarter
- 8 miles [2.01 kilometers] from any occupied residence, business, church,
- 9 school, or public park for any concentrated or confined animal feeding
- 10 operation having five thousand or more animal units.
- 11 (3) May require financial assurance for the clean up upon termination of
- 12 any concentrated or confined animal feeding operation having five
- 13 thousand or more animal units. The financial assurance may not
- 14 exceed five dollars per animal unit.
- 15 (4) May require a permit before a person builds or establishes a new
- 16 residence, business, church, school, or public park within one mile
- 17 [1.61 kilometers] of any established concentrated or confined animal
- 18 feeding operation permitted under chapter 61-28.
- 19 b. Any person owning property that is closer to the concentrated or confined
- 20 animal feeding operation than the setback provided under this subsection
- 21 may waive, in writing, the required setback distance.
- 22 c. As used in this section, "public park" means a park established by the federal
- 23 government, the state, or a political subdivision of the state.
- 24 3. This section does not apply to any concentrated or confined animal feeding
- 25 operation in existence or approved by the state department of health before
- 26 August 1, 1999.

27 **SECTION 2. AMENDMENT.** Section 42-04-02 of the North Dakota Century Code is

28 amended and reenacted as follows:

29 **42-04-02. Agricultural operation deemed not nuisance.** An agricultural operation is

30 not, nor shall it become, a private or public nuisance by any changed conditions in or about the

31 locality of such operation after it has been in operation for more than one year, if such operation

1 was not a nuisance at the time the operation began; except that the provisions of this section
2 shall not apply when a nuisance results from the negligent or improper operation of any such
3 agricultural operation. Nothing in this chapter allows the maintenance of a nuisance that would
4 result in the taking of another's property without compensation in violation of state or federal
5 law.

6 **SECTION 3. AMENDMENT.** Section 58-03-11 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **58-03-11. Establishment of zoning districts - Limitation - Scope of zoning**
9 **regulations and restrictions.**

10 1. For the purpose of promoting the health, safety, morals, or the general welfare, or
11 to secure the orderly development of approaches to municipalities, the board of
12 township supervisors may establish one or more zoning districts and within such
13 districts may, subject to the provisions of chapter 54-21.3, regulate and restrict the
14 erection, construction, reconstruction, alteration, repair, or use of buildings and
15 structures, the height, number of stories, and size of buildings and structures, the
16 percentage of lot that may be occupied, the size of courts, yards, and other open
17 spaces, the density of population, and the location and use of buildings, structures,
18 and land for trade, industry, residence, or other purposes. All such regulations and
19 restrictions must be uniform throughout each district, but the regulations and
20 restrictions in one district may differ from those in other districts. ~~No~~ A regulation
21 or restriction, ~~however,~~ may not prohibit or prevent the use of land or buildings for
22 farming or ranching or any of the normal incidents of farming or ranching. For
23 purposes of this section, "farming or ranching" means cultivating land for
24 production of agricultural crops or livestock, or raising, feeding, or producing
25 livestock or livestock products, poultry or poultry products, milk or dairy products,
26 or fruit or horticultural products. The term does not include producing timber or
27 forest products, nor does the term include a contract whereby a processor or
28 distributor of farm products or supplies provides grain, harvesting, or other farm
29 services. The provisions of sections Sections 58-03-11 through 58-03-15 may do
30 not be construed to include any power relating to the establishment, repair, and
31 maintenance of highways or roads.

- 1 2. a. Notwithstanding subsection 1, the board:
- 2 (1) May require a setback distance of no more than three-fourths of one
- 3 mile [1.20 kilometers] from any occupied residence, business, church,
- 4 school, or public park for any concentrated or confined animal feeding
- 5 operation having more than one thousand but fewer than five thousand
- 6 animal units.
- 7 (2) May require a setback distance of no more than one and one-quarter
- 8 miles [2.01 kilometers] from any occupied residence, business, church,
- 9 school, or public park for any concentrated or confined animal feeding
- 10 operation having five thousand or more animal units.
- 11 (3) May require financial assurance for the clean up upon termination of
- 12 any concentrated or confined animal feeding operation having five
- 13 thousand or more animal units. The financial assurance may not
- 14 exceed five dollars per animal unit.
- 15 (4) May require a permit before a person builds or establishes a new
- 16 residence, business, church, school, or public park within one mile
- 17 [1.61 kilometers] of any established concentrated or confined animal
- 18 feeding operation permitted under chapter 61-28.
- 19 b. Any person owning property that is closer to the concentrated or confined
- 20 animal feeding operation than the setback provided under this subsection
- 21 may waive, in writing, the required setback distance.
- 22 c. As used in this section, "public park" means a park established by the federal
- 23 government, the state, or a political subdivision of the state.
- 24 3. This section does not apply to any concentrated or confined animal feeding
- 25 operation in existence or approved by the state department of health before
- 26 August 1, 1999.