

Sixty-sixth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2345

Introduced by

Senators Wanzek, Dotzenrod, Luick

Representatives Brandenburg, D. Johnson, Pollert

1 A BILL for an Act to amend and reenact sections 11-33-02.1, 11-33-22, 23-25-11, 23.1-06-15,  
2 ~~and 58-03-11.1~~, and 58-03-17 of the North Dakota Century Code, relating to animal feeding  
3 operations and zoning regulations; to provide an effective date; to provide a contingent effective  
4 date; and to provide an expiration date.

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

6 **SECTION 1. AMENDMENT.** Section 11-33-02.1 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **11-33-02.1. Farming and ranching regulations - Requirements - Limitations -**

9 **Definitions.**

10 1. For purposes of this section:

11 a. ~~"Concentrated Animal feeding operation" means any livestock feeding, handling,~~  
12 ~~or holding operation, or feed yard, where animals are concentrated in an area~~  
13 ~~that is not normally used for pasture or for growing crops and in which animal~~  
14 ~~wastes may accumulate. The term does not include normal wintering operations~~  
15 ~~for cattle a lot or facility, other than normal wintering operations for cattle and an~~  
16 ~~aquatic animal production facility, where the following conditions are met:~~

- 17 (1) Animals, other than aquatic animals, have been, are, or will be stabled or  
18 confined and fed or maintained for at least forty-five days in a twelve-month  
19 period; and  
20 (2) Crops, vegetation, forage growth, or postharvest residues are not sustained  
21 in the normal growing season over any portion of the lot or facility.

22 b. "Farming or ranching" means cultivating land for the production of agricultural  
23 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.

24 The term does not include:

- 1                   (1) The production of timber or forest products; or
- 2                   (2) The provision of grain harvesting or other farm services by a processor or
- 3                   distributor of farm products or supplies in accordance with the terms of a
- 4                   contract.
- 5                   c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison,
- 6                   elk, fur animals raised for their pelts, and any other animals that are raised, fed,
- 7                   or produced as a part of farming or ranching activities.
- 8                   d. "Location" means the setback distance between a structure, fence, or other
- 9                   boundary enclosing ~~a concentrated~~ an animal feeding operation, including its
- 10                  animal waste collection system, and the nearest occupied residence, the nearest
- 11                  buildings used for nonfarm or nonranch purposes, or the nearest land zoned for
- 12                  residential, recreational, or commercial purposes. The term does not include the
- 13                  setback distance for the application of manure or for the application of other
- 14                  recycled agricultural material under a nutrient management plan approved by the
- 15                  department of health.
- 16                  2. For purposes of this section, animal units are determined as follows:
- 17                  a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
- 18                  b. ~~One dairy cow, heifer, or bull, other than an animal described in paragraph 1-~~
- 19                  ~~equals 1.0 animal unit;~~
- 20                  c. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal~~
- 21                  ~~unit;~~
- 22                  d. ~~One cow-calf pair equals 1.0 animal unit;~~
- 23                  e. ~~One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4-~~
- 24                  ~~animal unit;~~
- 25                  f. ~~One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1-~~
- 26                  ~~animal unit;~~
- 27                  g. ~~One horse equals 2.0 animal units;~~
- 28                  h. ~~One sheep or lamb equals 0.1 animal unit;~~
- 29                  i. ~~One turkey equals 0.0182 animal unit;~~
- 30                  j. ~~One chicken, other than a laying hen, equals 0.008 animal unit;~~
- 31                  k. ~~One laying hen equals 0.012 animal unit;~~

- 1           l. One duck equals 0.033 animal unit; and
- 2           m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per-
- 3           each one thousand pounds [453.59 kilograms] whether single or combined
- 4           animal weight, provided in subdivision c of subsection 7 of section 23-25-11.
- 5           3. A board of county commissioners may not prohibit or prevent the use of land or
- 6           buildings for farming or ranching and may not prohibit or prevent any of the normal
- 7           incidents of farming or ranching.
- 8           4. A board of county commissioners may not preclude the development of a-
- 9           ~~concentrated~~ animal feeding operation in the county.
- 10          5. A board of county commissioners may not prohibit the reasonable diversification or
- 11          expansion of a farming or ranching operation.
- 12          6. A board of county commissioners may adopt regulations that establish different
- 13          standards for the location of ~~concentrated~~ animal feeding operations based on the size
- 14          of the operation and the species and type being fed.
- 15          7. If a regulation would impose a substantial economic burden on a ~~concentrated~~ an-
- 16          imal feeding operation in existence before the effective date of the regulation, the
- 17          board of county commissioners shall declare that the regulation is ineffective with
- 18          respect to any ~~concentrated~~ animal feeding operation in existence before the effective
- 19          date of the regulation.
- 20          8. a. A board of county commissioners may establish high-density agricultural
- 21             production districts in which setback distances for ~~concentrated~~ animal feeding
- 22             operations and related agricultural operations are less than those in other
- 23             districts.
- 24          b. A board of county commissioners may establish, around areas zoned for
- 25             residential, recreational, or nonagricultural commercial uses, low-density
- 26             agricultural production districts in which setback distances for
- 27             ~~concentrated~~ animal feeding operations and related agricultural operations are
- 28             greater than those in other districts; provided, the low-density agricultural
- 29             production districts may not extend more than one and one-half miles [2.40
- 30             kilometers] from the edge of the area zoned for residential, recreational, or
- 31             nonagricultural commercial uses.

1 c. The setbacks provided for in this subsection are subject to approval by the  
2 agriculture commissioner and may not ~~vary by more than fifty percent from~~ be a  
3 greater distance than those established in subdivision a of subsection 7 of  
4 section 23-25-11.

5 d. For purposes of this subsection, a "related agricultural operation" means a facility  
6 that produces a product or byproduct used by ~~a concentrated~~ an animal feeding  
7 operation.

8 9. A person intending to construct an animal feeding operation may petition the board of  
9 county commissioners for a determination whether the animal feeding operation would  
10 comply with zoning regulations adopted under this section and filed with the state  
11 department of health under section 11-33-22 before the date the petition was received  
12 by the county. The petition must contain a description of the nature, scope, and  
13 location of the proposed animal feeding operation and a site map showing road  
14 access, the location of any structure, and the distance from each structure to the  
15 nearest section line. If the board of county commissioners does not object to the  
16 petition within sixty days of receipt, the animal feeding operation is deemed in  
17 compliance with the county zoning regulations. If the county allows animal feeding  
18 operations as a conditional use, the county shall inform the applicant of the required  
19 procedures upon receipt of the petition, and the conditional use regulations in effect at  
20 the time the county receives the petition must control the approval process, except the  
21 county shall make a decision on the application within sixty days of the receipt of a  
22 complete conditional use permit application. If the board of county commissioners  
23 determines the animal feeding operation would comply with zoning regulations or fails  
24 to object under this section, the county may not impose additional zoning regulations  
25 relating to the nature, scope, or location of the animal feeding operation later, provided  
26 an application is submitted promptly to the state department of health, the department  
27 issues a final permit, and construction of the animal feeding operation commences  
28 within ~~five~~three years from the date ~~of the board's determination or failure to object.~~  
29 the department issues its final permit and any permit appeals are exhausted. A board  
30 of county commissioners may not:

- 1 a. Regulate or impose zoning restrictions or requirements on animal feeding  
2 operations or other agricultural operations except as expressly permitted under  
3 this section; or  
4 b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or  
5 requirements on animal feeding operations.

6 **(Contingent effective date - See note) Farming and ranching regulations -**  
7 **Requirements - Limitations - Definitions.**

8 1. For purposes of this section:

- 9 a. ~~"Concentrated Animal feeding operation" means any livestock feeding, handling,~~  
10 ~~or holding operation, or feed yard, where animals are concentrated in an area~~  
11 ~~that is not normally used for pasture or for growing crops and in which animal~~  
12 ~~wastes may accumulate. The term does not include normal wintering operations~~  
13 ~~for cattle a lot or facility, other than normal wintering operations for cattle and an~~  
14 ~~aquatic animal production facility, where the following conditions are met:~~  
15 (1) Animals, other than aquatic animals, have been, are, or will be stabled or  
16 confined and fed or maintained for at least forty-five days in a twelve-month  
17 period; and  
18 (2) Crops, vegetation, forage growth, or postharvest residues are not sustained  
19 in the normal growing season over any portion of the lot or facility.  
20 b. "Farming or ranching" means cultivating land for the production of agricultural  
21 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.  
22 The term does not include:  
23 (1) The production of timber or forest products; or  
24 (2) The provision of grain harvesting or other farm services by a processor or  
25 distributor of farm products or supplies in accordance with the terms of a  
26 contract.  
27 c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison,  
28 elk, fur animals raised for their pelts, and any other animals that are raised, fed,  
29 or produced as a part of farming or ranching activities.  
30 d. "Location" means the setback distance between a structure, fence, or other  
31 boundary enclosing ~~a concentrated~~ an animal feeding operation, including its

1 animal waste collection system, and the nearest occupied residence, the nearest  
2 buildings used for nonfarm or nonranch purposes, or the nearest land zoned for  
3 residential, recreational, or commercial purposes. The term does not include the  
4 setback distance for the application of manure or for the application of other  
5 recycled agricultural material under a nutrient management plan approved by the  
6 department of environmental quality.

7 2. For purposes of this section, animal units are determined as follows:

8 a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~

9 b. ~~One dairy cow, heifer, or bull, other than an animal described in paragraph 1-~~  
10 ~~equals 1.0 animal unit;~~

11 c. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal-~~  
12 ~~unit;~~

13 d. ~~One cow-calf pair equals 1.0 animal unit;~~

14 e. ~~One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4-~~  
15 ~~animal unit;~~

16 f. ~~One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1-~~  
17 ~~animal unit;~~

18 g. ~~One horse equals 2.0 animal units;~~

19 h. ~~One sheep or lamb equals 0.1 animal unit;~~

20 i. ~~One turkey equals 0.0182 animal unit;~~

21 j. ~~One chicken, other than a laying hen, equals 0.008 animal unit;~~

22 k. ~~One laying hen equals 0.012 animal unit;~~

23 l. ~~One duck equals 0.033 animal unit; and~~

24 m. ~~Any livestock not listed in subdivisions a through l equals 1.0 animal unit per-~~  
25 ~~each one thousand pounds [453.59 kilograms] whether single or combined-~~  
26 ~~animal weight as provided in subdivision c of subsection 7 of section 23.1-06-15.~~

27 3. A board of county commissioners may not prohibit or prevent the use of land or  
28 buildings for farming or ranching and may not prohibit or prevent any of the normal  
29 incidents of farming or ranching.

30 4. A board of county commissioners may not preclude the development of a  
31 ~~concentrated~~ an animal feeding operation in the county.

- 1           5. A board of county commissioners may not prohibit the reasonable diversification or  
2           expansion of a farming or ranching operation.
- 3           6. A board of county commissioners may adopt regulations that establish different  
4           standards for the location of ~~concentrated~~animal feeding operations based on the size  
5           of the operation and the species and type being fed.
- 6           7. If a regulation would impose a substantial economic burden on a ~~concentrated~~an  
7           animal feeding operation in existence before the effective date of the regulation, the  
8           board of county commissioners shall declare that the regulation is ineffective with  
9           respect to any ~~concentrated~~animal feeding operation in existence before the effective  
10          date of the regulation.
- 11          8. a. A board of county commissioners may establish high-density agricultural  
12          production districts in which setback distances for ~~concentrated~~animal feeding  
13          operations and related agricultural operations are less than those in other  
14          districts.
- 15          b. A board of county commissioners may establish, around areas zoned for  
16          residential, recreational, or nonagricultural commercial uses, low-density  
17          agricultural production districts in which setback distances for  
18          ~~concentrated~~animal feeding operations and related agricultural operations are  
19          greater than those in other districts; provided, the low-density agricultural  
20          production districts may not extend more than one and one-half miles [2.40  
21          kilometers] from the edge of the area zoned for residential, recreational, or  
22          nonagricultural commercial uses.
- 23          c. The setbacks provided for in this subsection are subject to approval by the  
24          agriculture commissioner and may not ~~vary by more than fifty percent from~~ be a  
25          greater distance than those established in subdivision a of subsection 7 of  
26          section 23.1-06-15.
- 27          d. For purposes of this subsection, a "related agricultural operation" means a facility  
28          that produces a product or byproduct used by a ~~concentrated~~an animal feeding  
29          operation.
- 30          9. A person intending to construct an animal feeding operation may petition the board of  
31          county commissioners for a determination whether the animal feeding operation would

1 comply with zoning regulations adopted under this section and filed with the  
2 department of environmental quality under section 11-33-22 before the date the  
3 petition was received by the county. The petition must contain a description of the  
4 nature, scope, and location of the proposed animal feeding operation and a site map  
5 showing road access, the location of any structure, and the distance from each  
6 structure to the nearest section line. If the board of county commissioners does not  
7 object to the petition within sixty days of receipt, the animal feeding operation is  
8 deemed in compliance with the county zoning regulations. If the county allows animal  
9 feeding operations as a conditional use, the county shall inform the applicant of the  
10 required procedures upon receipt of the petition, and the conditional use regulations in  
11 effect at the time the county receives the petition must control the approval process,  
12 except the county shall make a decision on the application within sixty days of the  
13 receipt of a complete conditional use permit application. If the board of county  
14 commissioners determines the animal feeding operation would comply with zoning  
15 regulations or fails to object under this section, the county may not impose additional  
16 zoning regulations relating to the nature, scope, or location of the animal feeding  
17 operation later, provided an application is submitted promptly to the state department  
18 of health, the department issues a final permit, and construction of the animal feeding  
19 operation commences within ~~five~~three years from the date ~~of the board's~~  
20 ~~determination or failure to object~~the department issues its final permit and any permit  
21 appeals are exhausted. A board of county commissioners may not:  
22 a. Regulate or impose zoning restrictions or requirements on animal feeding  
23 operations or other agricultural operations except as expressly permitted under  
24 this section; or  
25 b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or  
26 requirements on animal feeding operations.

27 **SECTION 2. AMENDMENT.** Section 11-33-22 of the North Dakota Century Code is  
28 amended and reenacted as follows:

29 **11-33-22. Regulation of ~~concentrated~~ animal feeding operations - Central repository.**

30 **1.**—Any zoning regulation that pertains to ~~a concentrated~~an animal feeding operation, as  
31 defined in section 11-33-02.1, and which is promulgated by a county after July 31,



2007, is not effective until filed with the state department of health for inclusion in the central repository established under section 23-01-30. Any zoning regulation that pertains to ~~concentrated~~ animal feeding operations and which was promulgated by a county before August 1, 2007, may not be enforced until the regulation is filed with the state department of health for inclusion in the central repository.

~~2.—For purposes of this section:~~

~~a. "Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.~~

~~b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.~~

**(Contingent effective date - See note) Regulation of ~~concentrated~~ animal feeding operations - Central repository.**

1. Any zoning regulation that pertains to ~~a concentrated~~an animal feeding operation ~~and,~~  
as defined in section 11-33-02.1, is not effective until filed with the department of environmental quality for inclusion in the central repository established under section 23.1-01-10.

~~2.—For purposes of this section:~~

~~a. "Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.~~

~~b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.~~

**SECTION 3. AMENDMENT.** Section 23-25-11 of the North Dakota Century Code is amended and reenacted as follows:

1       **23-25-11. Regulation of odors - Rules. (Contingent repeal - [See note](#))**

2       1. In areas located within a city or the area over which a city has exercised extraterritorial  
3       zoning as defined in section 40-47-01.1, a person may not discharge into the ambient  
4       air any objectionable odorous air contaminant that measures seven odor concentration  
5       units or higher outside the property boundary where the discharge is occurring. If an  
6       agricultural operation as defined by section 42-04-01 has been in operation for more  
7       than one year, as provided by section 42-04-02, and the business or residence making  
8       the odor complaint was built or established after the agricultural operation was  
9       established, the measurement for compliance with the seven odor concentration units  
10      standard must be taken within one hundred feet [30.48 meters] of the subsequently  
11      established residence, church, school, business, or public building making the  
12      complaint rather than at the property boundary of the agricultural operation. The  
13      measurement may not be taken within five hundred feet [.15 kilometer] of the property  
14      boundary of the agricultural operation.

15      2. In areas located outside a city or outside the area over which a city has exercised  
16      extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge  
17      into the ambient air any objectionable odorous air contaminant that causes odors that  
18      measure seven odor concentration units or higher as measured at any of the following  
19      locations:

20      a. Within one hundred feet [30.48 meters] of any residence, church, school,  
21      business, or public building, or within a campground or public park. An odor  
22      measurement may not be taken at the residence of the owner or operator of the  
23      source of the odor, or at any residence, church, school, business, or public  
24      building, or within a campground or public park, that is built or established within  
25      one-half mile [.80 kilometer] of the source of the odor after the source of the odor  
26      has been built or established;

27      b. At any point located beyond one-half mile [.80 kilometer] from the source of the  
28      odor, except for property owned by the owner or operator of the source of the  
29      odor, or over which the owner or operator of the source of the odor has  
30      purchased an odor easement; or

- 1           c. If a county or township has zoned or established a setback distance for an animal  
2           feeding operation which is greater than one-half mile [.80 kilometer] under either  
3           section 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is  
4           greater than one-half mile [.80 kilometer], measurements for compliance with the  
5           seven odor concentration units standard must be taken at the setback distance  
6           rather than one-half mile [.80 kilometer] from the facility under subdivision b,  
7           except for any residence, church, school, business, public building, park, or  
8           campground within the setback distance which was built or established before  
9           the animal feeding operation was established, unless the animal feeding  
10          operation has obtained an odor easement from the pre-existing facility.
- 11        3. An odor measurement may be taken only with a properly maintained scentometer, by  
12        an odor panel, or by another instrument or method approved by the state department  
13        of health, and only by inspectors certified by the department who have successfully  
14        completed a department-sponsored odor certification course and demonstrated the  
15        ability to distinguish various odor samples and concentrations. If a certified inspector  
16        measures a violation of this section, the department may send a certified letter of  
17        apparent noncompliance to the person causing the apparent violation and may  
18        negotiate with the owner or operator for the establishment of an odor management  
19        plan and best management practices to address the apparent violation. The  
20        department shall give the owner or operator at least fifteen days to implement the odor  
21        management plan. If the odor problem persists, the department may proceed with an  
22        enforcement action provided at least two certified inspectors at the same time each  
23        measure a violation and then confirm the violation by a second odor measurement  
24        taken by each certified inspector, at least fifteen minutes, but no more than two hours,  
25        after the first measurement.
- 26        4. A person is exempt from this section while spreading or applying animal manure or  
27        other recycled agricultural material to land in accordance with a nutrient management  
28        plan approved by the state department of health. A person is exempt from this section  
29        while spreading or applying animal manure or other recycled agricultural material to  
30        land owned or leased by that person in accordance with rules adopted by the  
31        department. An owner or operator of a lagoon or waste storage pond permitted by the

1 department is exempt from this section in the spring from the time when the cover of  
2 the permitted lagoon or pond begins to melt until fourteen days after all the ice cover  
3 on the lagoon or pond has completely melted. Notwithstanding these exemptions, all  
4 persons shall manage their property and systems to minimize the impact of odors on  
5 their neighbors.

6 5. This section does not apply to chemical compounds that can be individually measured  
7 by instruments, other than a scentometer, that have been designed and proven to  
8 measure the individual chemical or chemical compound, such as hydrogen sulfide, to  
9 a reasonable degree of scientific certainty, and for which the state department of  
10 health has established a specific limitation by rule.

11 6. For purposes of this section, ~~a public park is a park established by the federal~~  
12 ~~government, the state, or a political subdivision of the state in the manner prescribed~~  
13 ~~by law. For purposes of this section, a campground is:~~

14 a. "Business" means a commercial building used primarily to carry on a for-profit or  
15 nonprofit business which is not residential and not used primarily to manufacture  
16 or produce raw materials, products, or agricultural commodities;

17 b. "Campground" means a public or private area of land used exclusively for  
18 camping and open to the public for a fee on a regular or seasonal basis;

19 c. "Church" means a building owned by a religious organization and used primarily  
20 for religious purposes;

21 d. "Park" means a park established by the federal government, the state, or a  
22 political subdivision of the state in the manner prescribed by law;

23 e. "Public building" means a building owned by a county, city, township, school  
24 district, park district, or other unit of local government; the state; or an agency,  
25 industry, institution, board, or department of the state; and

26 f. "School" means a public school or nonprofit, private school approved by the  
27 superintendent of public instruction.

28 7. a. In a county or township that does not regulate the nature, scope, ~~and~~ location  
29 of an animal feeding operation under section ~~44-33-0211-33-02.1~~ or section  
30 58-03-11.1, the department shall require that any new animal feeding operation

1 permitted under chapter 61-28 be set back from any existing residence, church,  
2 school, business, public building, park, or campground.

3 (1) If there are fewer than three hundred animal units, there is no minimum  
4 setback requirement.

5 (2) If there are at least three hundred animal units but no more than one  
6 thousand animal units, the setback for any animal operation is one-half mile  
7 [.80 kilometer].

8 (3) If there are at least one thousand one animal units but no more than two  
9 thousand animal units, the setback for a hog operation is three-fourths mile  
10 [1.20 kilometers] and the setback for any other animal operation is one-half  
11 mile [.80 kilometer].

12 (4) If there are at least two thousand one animal units but no more than five  
13 thousand animal units, the setback for a hog operation is one mile [1.60  
14 kilometers] and the setback for any other animal operation is three-fourths  
15 mile [1.20 kilometers].

16 (5) If there are five thousand one or more animal units, the setback for a hog  
17 operation is one and one-half miles [2.40 kilometers] and the setback for  
18 any other animal operation is one mile [1.60 kilometers].

19 b. The setbacks set forth in subdivision a do not apply if the owner or operator  
20 applying for the permit obtains an odor easement from the pre-existing use that is  
21 closer.

22 c. For purposes of this section:

23 (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;

24 (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1  
25 equals 1.0 animal unit;

26 (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75  
27 animal unit;

28 (4) One cow-calf pair equals 1.0 animal unit;

29 (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4  
30 animal unit;

- 1 (6) One weaned swine weighing less than fifty-five pounds [24.948 kilograms]
- 2 equals 0.1 animal unit;
- 3 (7) One horse equals 2.0 animal units;
- 4 (8) One sheep or weaned lamb equals 0.1 animal unit;
- 5 (9) One turkey equals 0.0182 animal unit;
- 6 (10) One chicken, ~~other than a laying hen~~, equals ~~0.0080~~0.01 animal unit;
- 7 (11) ~~One laying hen equals 0.012 animal unit;~~
- 8 ~~(12) One duck or goose equals 0.0330.2 animal unit; and~~
- 9 ~~(13)~~(12) Any weaned livestock not listed in paragraphs 1 through ~~12~~11 equals 1.0
- 10 animal unit per each one thousand pounds [453.59 kilograms] whether
- 11 single or combined animal weight.

12 d. In a county or township that regulates the nature, scope, or location of an animal

13 feeding operation under section 11-33-02.1 or section 58-03-11.1, an applicant

14 for an animal feeding operation permit shall submit to the department with the

15 permit application the zoning determination made by the county or township

16 under subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1,

17 unless the animal feeding operation is in existence by January 1, 2019, and there

18 is no change in animals or animal units which would result in an increase in the

19 setbacks provided for in this section. The department may not impose additional

20 odor setback requirements.

21 e. An animal feeding operation is not subject to zoning regulations adopted by a

22 county or township after the date an application for the animal feeding operation

23 is submitted to the department, provided construction of the animal feeding

24 operation commences within ~~five~~three years from the date the ~~application is~~

25 ~~submitted~~final permit is issued and any permit appeals are exhausted. Unless

26 there is a change to the location of the proposed animal feeding operation or

27 there is a change in animal units which would result in an increase in the

28 setbacks under this section, this exemption remains in effect if the department

29 requires the applicant to submit a revised application.

30 8. A permitted animal feeding operation may expand its permitted capacity by twenty-five

31 percent on one occasion without triggering a higher setback distance.

1           9. Neither a county nor a township may regulate or through any means impose  
2           restrictions or requirements on animal feeding operations or on other agricultural  
3           operations except as permitted under sections ~~11-33-02~~11-33-02.1 and  
4           ~~58-03-11~~58-03-11.1.

5           **SECTION 4. AMENDMENT.** Section 23.1-06-15 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7           **23.1-06-15. Regulation of odors - Rules. (Contingent effective date - [See note](#))**

8           1. In areas located within a city or the area over which a city has exercised extraterritorial  
9           zoning as defined in section 40-47-01.1, a person may not discharge into the ambient  
10          air any objectionable odorous air contaminant that measures seven odor concentration  
11          units or higher outside the property boundary where the discharge is occurring. If an  
12          agricultural operation as defined by section 42-04-01 has been in operation for more  
13          than one year, as provided by section 42-04-02, and the person making the odor  
14          complaint was built or established after the agricultural operation was established, the  
15          measurement for compliance with the seven odor concentration units standard must  
16          be taken within one hundred feet [30.48 meters] of the subsequently established  
17          residence, church, school, business, or public building making the complaint rather  
18          than at the property boundary of the agricultural operation. The measurement may not  
19          be taken within five hundred feet [.15 kilometer] of the property boundary of the  
20          agricultural operation.

21          2. In areas located outside a city or outside the area over which a city has exercised  
22          extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge  
23          into the ambient air any objectionable odorous air contaminant that causes odors that  
24          measure seven odor concentration units or higher as measured at any of the following  
25          locations:

26          a. Within one hundred feet [30.48 meters] of any residence, church, school,  
27          business, or public building, or within a campground or public park. An odor  
28          measurement may not be taken at the residence of the owner or operator of the  
29          source of the odor, or at any residence, church, school, business, or public  
30          building, or within a campground or public park, that is built or established within

- 1                   one-half mile [.80 kilometer] of the source of the odor after the source of the odor  
2                   has been built or established;
- 3           b.   At any point located beyond one-half mile [.80 kilometer] from the source of the  
4                   odor, except for property owned by the owner or operator of the source of the  
5                   odor, or over which the owner or operator of the source of the odor has  
6                   purchased an odor easement; or
- 7           c.   If a county or township has zoned or established a setback distance for an animal  
8                   feeding operation which is greater than one-half mile [.80 kilometer] under either  
9                   section 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is  
10                  greater than one-half mile [.80 kilometer], measurements for compliance with the  
11                  seven odor concentration units standard must be taken at the setback distance  
12                  rather than one-half mile [.80 kilometer] from the facility under subdivision b,  
13                  except for any residence, church, school, business, public building, park, or  
14                  campground within the setback distance which was built or established before  
15                  the animal feeding operation was established, unless the animal feeding  
16                  operation has obtained an odor easement from the pre-existing facility.
- 17       3.   An odor measurement may be taken only with a properly maintained scentometer, by  
18                  an odor panel, or by another instrument or method approved by the department of  
19                  environmental quality, and only by inspectors certified by the department who have  
20                  successfully completed a department-sponsored odor certification course and  
21                  demonstrated the ability to distinguish various odor samples and concentrations. If a  
22                  certified inspector measures a violation of this section, the department may send a  
23                  certified letter of apparent noncompliance to the person causing the apparent violation  
24                  and may negotiate with the owner or operator for the establishment of an odor  
25                  management plan and best management practices to address the apparent violation.  
26                  The department shall give the owner or operator at least fifteen days to implement the  
27                  odor management plan. If the odor problem persists, the department may proceed  
28                  with an enforcement action provided at least two certified inspectors at the same time  
29                  each measure a violation and then confirm the violation by a second odor  
30                  measurement taken by each certified inspector, at least fifteen minutes, but no more  
31                  than two hours, after the first measurement.



- 1           4. A person is exempt from this section while spreading or applying animal manure or  
2           other recycled agricultural material to land in accordance with a nutrient management  
3           plan approved by the department of environmental quality. A person is exempt from  
4           this section while spreading or applying animal manure or other recycled agricultural  
5           material to land owned or leased by that person in accordance with rules adopted by  
6           the department. An owner or operator of a lagoon or waste storage pond permitted by  
7           the department is exempt from this section in the spring from the time when the cover  
8           of the permitted lagoon or pond begins to melt until fourteen days after all the ice  
9           cover on the lagoon or pond has completely melted. Notwithstanding these  
10          exemptions, all persons shall manage their property and systems to minimize the  
11          impact of odors on their neighbors.
- 12          5. This section does not apply to chemical compounds that can be individually measured  
13          by instruments, other than a scentometer, that have been designed and proven to  
14          measure the individual chemical or chemical compound, such as hydrogen sulfide, to  
15          a reasonable degree of scientific certainty, and for which the department of  
16          environmental quality has established a specific limitation by rule.
- 17          6. For purposes of this section, ~~a public park is a park established by the federal~~  
18          ~~government, the state, or a political subdivision of the state in the manner prescribed~~  
19          ~~by law. For purposes of this section, a campground is:~~
- 20          a. "Business" means a commercial building used primarily to carry on a for-profit or  
21          nonprofit business which is not residential and not used primarily to manufacture  
22          or produce raw materials, products, or agricultural commodities;
- 23          b. "Campground" means a public or private area of land used exclusively for  
24          camping and open to the public for a fee on a regular or seasonal basis;
- 25          c. "Church" means a building owned by a religious organization and used primarily  
26          for religious purposes;
- 27          d. "Park" means a park established by the federal government, the state, or a  
28          political subdivision of the state in the manner prescribed by law;
- 29          e. "Public building" means a building owned by a county, city, township, school  
30          district, park district, or other unit of local government; the state; or an agency,  
31          industry, institution, board, or department of the state; and

- 1           f. "School" means a public school or nonprofit, private school approved by the  
2           superintendent of public instruction.
- 3           7. a. In a county or township that does not regulate the nature, scope, ~~and~~or location  
4           of an animal feeding operation under section ~~41-33-02~~11-33-02.1 or section  
5           58-03-11.1, the department shall require that any new animal feeding operation  
6           permitted under chapter 61-28 be set back from any existing residence, church,  
7           school, business, public building, park, or campground.
- 8           (1) If there are fewer than three hundred animal units, there is no minimum  
9           setback requirement.
- 10          (2) If there are at least three hundred animal units but no more than one  
11          thousand animal units, the setback for any animal operation is one-half mile  
12          [.80 kilometer].
- 13          (3) If there are at least one thousand one animal units but no more than two  
14          thousand animal units, the setback for a hog operation is three-fourths mile  
15          [1.20 kilometers], and the setback for any other animal operation is one-half  
16          mile [.80 kilometer].
- 17          (4) If there are at least two thousand one animal units but no more than five  
18          thousand animal units, the setback for a hog operation is one mile [1.60  
19          kilometers], and the setback for any other animal operation is three-fourths  
20          mile [1.20 kilometers].
- 21          (5) If there are five thousand one or more animal units, the setback for a hog  
22          operation is one and one-half miles [2.40 kilometers], and the setback for  
23          any other animal operation is one mile [1.60 kilometers].
- 24          b. The setbacks set forth in subdivision a do not apply if the owner or operator  
25          applying for the permit obtains an odor easement from the pre-existing use that is  
26          closer.
- 27          c. For purposes of this section:
- 28          (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;  
29          (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1  
30          equals 1.0 animal unit;

- 1 (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals  
2 0.75 animal unit;
- 3 (4) One cow-calf pair equals 1.0 animal unit;
- 4 (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals  
5 0.4 animal unit;
- 6 (6) One weaned swine weighing less than fifty-five pounds [24.948 kilograms]  
7 equals 0.1 animal unit;
- 8 (7) One horse equals 2.0 animal units;
- 9 (8) One sheep or weaned lamb equals 0.1 animal unit;
- 10 (9) One turkey equals 0.0182 animal unit;
- 11 (10) One chicken, ~~other than a laying hen~~, equals ~~0.0080~~0.01 animal unit;
- 12 (11) ~~One laying hen equals 0.012 animal unit;~~
- 13 ~~(12)~~ One duck or goose equals ~~0.0330~~0.2 animal unit; and
- 14 ~~(13)~~(12) Any weaned livestock not listed in paragraphs 1 through ~~12~~11 equals 1.0  
15 animal unit per each one thousand pounds [453.59 kilograms], whether  
16 single or combined animal weight.
- 17 d. In a county or township that regulates the nature, scope, or location of an animal  
18 feeding operation under section 11-33-02.1 or section 58-03-11.1, an applicant  
19 for an animal feeding operation permit shall submit to the department with the  
20 permit application the zoning determination made by the county or township  
21 under subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1,  
22 unless the animal feeding operation is in existence by January 1, 2019, and there  
23 is no change in animals or animal units which would result in an increase in the  
24 setbacks provided for in this section. The department may not impose additional  
25 odor setback requirements.
- 26 e. An animal feeding operation is not subject to zoning regulations adopted by a  
27 county or township after the date an application for the animal feeding operation  
28 is submitted to the department, provided construction of the animal feeding  
29 operation commences within five years from the date the application is submitted.  
30 Unless there is a change to the location of the proposed animal feeding

1                   operation, this exemption remains in effect if the department requires the  
2                   applicant to submit a revised application.

3           8.    A permitted animal feeding operation may expand its permitted capacity by twenty-five  
4           percent on one occasion without triggering a higher setback distance.

5           9.    A county or township may not regulate or impose restrictions or requirements on  
6           animal feeding operations or other agricultural operations except as permitted under  
7           sections ~~11-33-02~~11-33-02.1 and ~~58-03-11~~58-03-11.1.

8           **SECTION 5. AMENDMENT.** Section 58-03-11.1 of the North Dakota Century Code is  
9           amended and reenacted as follows:

10           **58-03-11.1. Farming and ranching regulations - Requirements - Limitations -**

11           **Definitions.**

12           1.    For purposes of this section:

13           a.    "~~Concentrated~~Animal feeding operation" means ~~any livestock feeding, handling,~~  
14           ~~or holding operation, or feed yard, where animals are concentrated in an area~~  
15           ~~that is not normally used for pasture or for growing crops and in which animal~~  
16           ~~wastes may accumulate. The term does not include normal wintering operations~~  
17           ~~for cattle a lot or facility, other than normal wintering operations for cattle and an~~  
18           aquatic animal production facility, where the following conditions are met:

19           (1) Animals, other than aquatic animals, have been, are, or will be stabled or  
20           confined and fed or maintained for at least forty-five days in a twelve-month  
21           period; and

22           (2) Crops, vegetation, forage growth, or postharvest residues are not sustained  
23           in the normal growing season over any portion of the lot or facility.

24           b.    "Farming or ranching" means cultivating land for the production of agricultural  
25           crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.

26           The term does not include:

27           (1)    The production of timber or forest products; or

28           (2)    The provision of grain harvesting or other farm services by a processor or  
29           distributor of farm products or supplies in accordance with the terms of a  
30           contract.

- 1           c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison,  
2           elk, fur animals raised for their pelts, and any other animals that are raised, fed,  
3           or produced as a part of farming or ranching activities.
- 4           d. "Location" means the setback distance between a structure, fence, or other  
5           boundary enclosing ~~a concentrated~~ an animal feeding operation, including its  
6           animal waste collection system, and the nearest occupied residence, the nearest  
7           buildings used for nonfarm or nonranch purposes, or the nearest land zoned for  
8           residential, recreational, or commercial purposes. The term does not include the  
9           setback distance for the application of manure or for the application of other  
10          recycled agricultural material under a nutrient management plan approved by the  
11          state department of health.
- 12          2. For purposes of this section, animal units are determined as follows:
- 13          a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~  
14          b. ~~One dairy cow, heifer, or bull, other than an animal described in subdivision a,~~  
15          ~~equals 1.0 animal unit;~~  
16          c. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal~~  
17          ~~unit;~~  
18          d. ~~One cow-calf pair equals 1.0 animal unit;~~  
19          e. ~~One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4-~~  
20          ~~animal unit;~~  
21          f. ~~One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1-~~  
22          ~~animal unit;~~  
23          g. ~~One horse equals 2.0 animal units;~~  
24          h. ~~One sheep or lamb equals 0.1 animal unit;~~  
25          i. ~~One turkey equals 0.0182 animal unit;~~  
26          j. ~~One chicken, other than a laying hen, equals 0.008 animal unit;~~  
27          k. ~~One laying hen equals 0.012 animal unit;~~  
28          l. ~~One duck equals 0.033 animal unit; and~~  
29          m. ~~Any livestock not listed in subdivisions a through l equals 1.0 animal unit per-~~  
30          ~~each one thousand pounds [453.59 kilograms] whether single or combined-~~

1                    ~~animal weight~~ provided under subdivision c of subsection 7 of

2                    section ~~23-23-11~~23-25-11.

3            3. A board of township supervisors may not prohibit or prevent the use of land or  
4            buildings for farming or ranching or any of the normal incidents of farming or ranching.

5            4. A regulation may not preclude the development of a ~~concentrated~~ animal feeding  
6            operation in the township.

7            5. A board of township supervisors may not prohibit the reasonable diversification or  
8            expansion of a farming or ranching operation.

9            6. A board of township supervisors may adopt regulations that establish different  
10           standards for the location of ~~concentrated~~ animal feeding operations based on the size  
11           of the operation and the species and type being fed.

12           7. If a regulation would impose a substantial economic burden on a ~~concentrated~~ an  
13           animal feeding operation in existence before the effective date of the regulation, the  
14           board of township supervisors shall declare that the regulation is ineffective with  
15           respect to any ~~concentrated~~ animal feeding operation in existence before the effective  
16           date of the regulation.

17           8. a. A board of township supervisors may establish high-density agricultural  
18           production districts in which setback distances for ~~concentrated~~ animal feeding  
19           operations and related agricultural operations are less than those in other  
20           districts.

21           b. A board of township supervisors may establish, around areas zoned for  
22           residential, recreational, or nonagricultural commercial uses, low-density  
23           agricultural production districts in which setback distances for  
24           ~~concentrated~~ animal feeding operations and related agricultural operations are  
25           greater than those in other districts; provided, the low-density agricultural  
26           production districts may not extend more than one-half mile [0.80 kilometer] from  
27           the edge of the area zoned for residential, recreational, or nonagricultural  
28           commercial uses.

29           c. The setbacks provided for in this subsection are subject to approval by the  
30           agriculture commissioner and may not ~~vary by more than fifty percent from~~ be a

1                    greater distance than those established in subdivision a of subsection 7 of  
2                    section 23-25-11.

3                    d. For purposes of this subsection, a "related agricultural operation" means a facility  
4                    that produces a product or byproduct used by a ~~concentrated~~ an animal feeding  
5                    operation.

6                    9. A person intending to construct an animal feeding operation may petition the board of  
7                    township supervisors for a determination whether the animal feeding operation would  
8                    comply with zoning regulations adopted under this section and filed with the state  
9                    department of health under section 58-03-17 before the date the petition was received  
10                    by the township. The petition must contain a description of the nature, scope, and  
11                    location of the proposed animal feeding operation and a site map showing road  
12                    access, the location of any structure, and the distance from each structure to the  
13                    nearest section line. If the board of township supervisors does not object to the petition  
14                    within sixty days of receipt, the animal feeding operation is deemed in compliance with  
15                    the township zoning regulations. If the township allows animal feeding operations as a  
16                    conditional use, the township shall inform the applicant of the required procedures  
17                    upon receipt of the petition, and the conditional use regulations in effect at the time the  
18                    township receives the petition must control the approval process, except the township  
19                    shall make a decision on the application within sixty days of the receipt of a complete  
20                    conditional use permit application. If the board of township supervisors determines the  
21                    animal feeding operation would comply with zoning regulations or fails to object under  
22                    this section, the township may not impose additional zoning regulations relating to the  
23                    nature, scope, or location of the animal feeding operation later, provided an application  
24                    is submitted promptly to the state department of health, the department issues a final  
25                    permit, and construction of the animal feeding operation commences within ~~five~~ three  
26                    years from the date ~~of the board's determination or failure to object~~ the department  
27                    issues its final permit and any permit appeals are exhausted. A board of township  
28                    supervisors may not:

29                    a. Regulate or impose zoning restrictions or requirements on animal feeding  
30                    operations or other agricultural operations except as expressly permitted under  
31                    this section; or

1 b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or  
2 requirements on animal feeding operations.

3 **(Contingent effective date - See note) Farming and ranching regulations -**  
4 **Requirements - Limitations - Definitions.**

5 1. For purposes of this section:

6 a. ~~"Concentrated Animal~~ Animal feeding operation" means ~~any livestock feeding, handling,~~  
7 ~~or holding operation, or feed yard, where animals are concentrated in an area~~  
8 ~~that is not normally used for pasture or for growing crops and in which animal~~  
9 ~~wastes may accumulate. The term does not include normal wintering operations~~  
10 ~~for cattle~~ a lot or facility, other than normal wintering operations for cattle and an  
11 aquatic animal production facility, where the following conditions are met:

12 (1) Animals, other than aquatic animals, have been, are, or will be stabled or  
13 confined and fed or maintained for a total of forty-five days or more in any  
14 twelve-month period; and

15 (2) Crops, vegetation, forage growth, or post-harvest residues are not sustained  
16 in the normal growing season over any portion of the lot or facility.

17 b. "Farming or ranching" means cultivating land for the production of agricultural  
18 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.

19 The term does not include:

20 (1) The production of timber or forest products; or

21 (2) The provision of grain harvesting or other farm services by a processor or  
22 distributor of farm products or supplies in accordance with the terms of a  
23 contract.

24 c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison,  
25 elk, fur animals raised for their pelts, and any other animals that are raised, fed,  
26 or produced as a part of farming or ranching activities.

27 d. "Location" means the setback distance between a structure, fence, or other  
28 boundary enclosing ~~a concentrated~~ an animal feeding operation, including its  
29 animal waste collection system, and the nearest occupied residence, the nearest  
30 buildings used for nonfarm or nonranch purposes, or the nearest land zoned for  
31 residential, recreational, or commercial purposes. The term does not include the



- 1                    setback distance for the application of manure or for the application of other  
2                    recycled agricultural material under a nutrient management plan approved by the  
3                    department of environmental quality.
- 4            2. For purposes of this section, animal units are determined as follows:
- 5            a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~  
6            b. ~~One dairy cow, heifer, or bull, other than an animal described in subdivision a~~  
7            ~~equals 1.0 animal unit;~~  
8            c. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal~~  
9            ~~unit;~~  
10           d. ~~One cow-calf pair equals 1.0 animal unit;~~  
11           e. ~~One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4~~  
12           ~~animal unit;~~  
13           f. ~~One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1~~  
14           ~~animal unit;~~  
15           g. ~~One horse equals 2.0 animal units;~~  
16           h. ~~One sheep or lamb equals 0.1 animal unit;~~  
17           i. ~~One turkey equals 0.0182 animal unit;~~  
18           j. ~~One chicken, other than a laying hen, equals 0.008 animal unit;~~  
19           k. ~~One laying hen equals 0.012 animal unit;~~  
20           l. ~~One duck equals 0.033 animal unit; and~~  
21           m. ~~Any livestock not listed in subdivisions a through l equals 1.0 animal unit per~~  
22           ~~each one thousand pounds [453.59 kilograms] whether single or combined~~  
23           ~~animal weight provided under subdivision c of subsection 7 of section 23.1-06-15.~~
- 24           3. A board of township supervisors may not prohibit or prevent the use of land or  
25           buildings for farming or ranching or any of the normal incidents of farming or ranching.
- 26           4. A regulation may not preclude the development of a ~~concentrated~~ animal feeding  
27           operation in the township.
- 28           5. A board of township supervisors may not prohibit the reasonable diversification or  
29           expansion of a farming or ranching operation.

- 1           6. A board of township supervisors may adopt regulations that establish different  
2           standards for the location of ~~e~~concentrated~~a~~animal feeding operations based on the size  
3           of the operation and the species and type being fed.
- 4           7. If a regulation would impose a substantial economic burden on a ~~c~~concentrated~~a~~n  
5           animal feeding operation in existence before the effective date of the regulation, the  
6           board of township supervisors shall declare that the regulation is ineffective with  
7           respect to any ~~e~~concentrated~~a~~nanimal feeding operation in existence before the effective  
8           date of the regulation.
- 9           8. a. A board of township supervisors may establish high-density agricultural  
10           production districts in which setback distances for ~~e~~concentrated~~a~~animal feeding  
11           operations and related agricultural operations are less than those in other  
12           districts.
- 13           b. A board of township supervisors may establish, around areas zoned for  
14           residential, recreational, or nonagricultural commercial uses, low-density  
15           agricultural production districts in which setback distances for  
16           ~~e~~concentrated~~a~~nanimal feeding operations and related agricultural operations are  
17           greater than those in other districts; provided, the low-density agricultural  
18           production districts may not extend more than one-half mile [0.80 kilometer] from  
19           the edge of the area zoned for residential, recreational, or nonagricultural  
20           commercial uses.
- 21           c. The setbacks provided for in this subsection are subject to approval by the  
22           agriculture commissioner and may not ~~vary by more than fifty percent from~~ be a  
23           greater distance than those established in subdivision a of subsection 7 of  
24           section 23.1-06-15.
- 25           d. For purposes of this subsection, a "related agricultural operation" means a facility  
26           that produces a product or byproduct used by a ~~e~~concentrated~~a~~nanimal feeding  
27           operation.
- 28           9. A person intending to construct an animal feeding operation may petition the board of  
29           township supervisors for a determination whether the animal feeding operation would  
30           comply with zoning regulations adopted under this section and filed with the  
31           department of environmental quality under section 58-03-17 before the date the

1           petition was received by the township. The petition must contain a description of the  
2           nature, scope, and location of the proposed animal feeding operation and a site map  
3           showing road access, the location of any structure, and the distance from each  
4           structure to the nearest section line. If the board of township supervisors does not  
5           object to the petition within sixty days of receipt, the animal feeding operation is  
6           deemed in compliance with the township zoning regulations. If the township allows  
7           animal feeding operations as a conditional use, the township shall inform the applicant  
8           of the required procedures upon receipt of the petition, and the conditional use  
9           regulations in effect at the time the township receives the petition must control the  
10          approval process, except the township shall make a decision on the application within  
11          sixty days of the receipt of a complete conditional use permit application. If the board  
12          of township supervisors determines the animal feeding operation would comply with  
13          zoning regulations or fails to object under this section, the township may not impose  
14          additional zoning regulations relating to the nature, scope, or location of the animal  
15          feeding operation later, provided an application is submitted promptly to the state  
16          department of health, the department issues a final permit, and construction of the  
17          animal feeding operation commences within ~~five~~three years from the date ~~of the~~  
18          ~~board's determination or failure to object~~the department issues its final permit and any  
19          permit appeals are exhausted. A board of township supervisors may not:  
20          a. Regulate or impose zoning restrictions or requirements on animal feeding  
21                  operations or other agricultural operations except as expressly permitted under  
22                  this section; or  
23          b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or  
24                  requirements on animal feeding operations.

25          **SECTION 6. AMENDMENT.** Section 58-03-17 of the North Dakota Century Code is  
26          amended and reenacted as follows:

27          **58-03-17. Regulation of ~~concentrated~~ animal feeding operations - Central repository.**

28          1.—Any zoning regulation that pertains to ~~a concentrated~~an animal feeding operation, as  
29          defined in section 58-03-11.1, and which is promulgated by a township after July 31,  
30          2007, is not effective until filed with the state department of health for inclusion in the  
31          central repository established under section 23-01-30. Any zoning regulation that

1           pertains to a concentrated animal feeding operation and which was promulgated by a  
2           county or a township before August 1, 2007, may not be enforced until the regulation  
3           is filed with the state department of health for inclusion in the central repository.

4           ~~2. For purposes of this section:~~

5           ~~a. "Concentrated animal feeding operation" means any livestock feeding, handling,~~  
6           ~~or holding operation, or feed yard, where animals are concentrated in an area~~  
7           ~~that is not normally used for pasture or for growing crops and in which animal~~  
8           ~~wastes may accumulate, or in an area where the space per animal unit is less~~  
9           ~~than six hundred square feet [55.74 square meters]. The term does not include~~  
10           ~~normal wintering operations for cattle.~~

11           ~~b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and~~  
12           ~~fur animals raised for their pelts.~~

13           **(Contingent effective date - See note) Regulation of ~~concentrated~~ animal feeding**  
14           **operations - Central repository.**

15           ~~1. Any zoning regulation that pertains to a ~~concentrated~~ animal feeding operation ~~and~~~~  
16           ~~which is promulgated by a township after July 31, 2007, as defined in~~  
17           ~~section 58-03-11.1, is not effective until filed with the department of environmental~~  
18           ~~quality for inclusion in the central repository established under section 23.1-01-10. ~~Any~~~~  
19           ~~zoning regulation that pertains to a concentrated animal feeding operation and which~~  
20           ~~was promulgated by a county or a township before August 1, 2007, may not be~~  
21           ~~enforced until the regulation is filed with the department of environmental quality for~~  
22           ~~inclusion in the central repository.~~

23           ~~2. For purposes of this section:~~

24           ~~a. "Concentrated animal feeding operation" means any livestock feeding, handling,~~  
25           ~~or holding operation, or feed yard, where animals are concentrated in an area~~  
26           ~~that is not normally used for pasture or for growing crops and in which animal~~  
27           ~~wastes may accumulate, or in an area where the space per animal unit is less~~  
28           ~~than six hundred square feet [55.74 square meters]. The term does not include~~  
29           ~~normal wintering operations for cattle.~~

30           ~~b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and~~  
31           ~~fur animals raised for their pelts.~~

1           **SECTION 7. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE - EXPIRATION DATE.**

2 | The portions of sections 1, 2, 5, and 46 of this Act not subject to an existing contingency  
3 | become effective on August 1, 2019, and remain in effect until the legislative council receives  
4 | certification from the chief of the environmental health section of the state department of health  
5 | that all authority, powers, and duties from the environmental health section of the state  
6 | department of health have been transferred to the department of environmental quality. The  
7 | remainder of sections 1, 2, 5, and 46 become effective on August 1, 2019, if the legislative  
8 | council has received certification from the chief of the environmental health section of the state  
9 | department of health that all authority, powers, and duties from the environmental health section  
10 | of the state department of health have been transferred to the department of environmental  
11 | quality. If, by August 1, 2019, the legislative council has not received certification from the chief  
12 | of the environmental health section of the state department of health that all authority, powers,  
13 | and duties from the environmental health section of the state department of health have been  
14 | transferred to the department of environmental quality, the remainder of sections 1, 2, 5, and 46  
15 | of this Act become effective on the date certification is received.