

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 a report to the legislative management; to provide
4 an effective date; to provide a contingent effective 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 may not ~~vary by more than fifty~~
2 ~~percent from~~ exceed those established in subdivision a of subsection 7 of section
3 23-25-11 unless the county can demonstrate compelling, objective evidence
4 specific to the county which requires a greater setback within the county, in which
5 case the setbacks may exceed those established in subdivision a of subsection 7
6 of section 23-25-11 by no more than fifty percent. If a setback under this
7 subsection is greater than the corresponding setback established in subdivision a
8 of subsection 7 of section 23-25-11, a person whose animal feeding operation will
9 be or has been affected by the applicable county ordinance may request the
10 agriculture commissioner review the ordinance. After the review, the agriculture
11 commissioner shall provide a summary of the review to the attorney general and
12 request an opinion from the attorney general regarding whether the ordinance
13 and setback are lawful.

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

17 9. A person intending to construct an animal feeding operation may petition the board of
18 county commissioners for a determination whether the animal feeding operation would
19 comply with zoning regulations adopted under this section and filed with the state
20 department of health under section 11-33-22 before the date the petition was received
21 by the county. The petition must contain a description of the nature, scope, and
22 location of the proposed animal feeding operation and a site map showing road
23 access, the location of any structure, and the distance from each structure to the
24 nearest section line. If the board of county commissioners does not object to the
25 petition within sixty days of receipt, the animal feeding operation is deemed in
26 compliance with the county zoning regulations. If the county allows animal feeding
27 operations as a conditional use, the conditional use regulations must be limited to the
28 board's authority under this section, and the approval process must comply with this
29 section. The county shall make a decision on the application within sixty days of the
30 receipt of a complete conditional use permit application. If the board of county
31 commissioners determines the animal feeding operation would comply with zoning

1 regulations or fails to object under this section, the county may not impose additional
2 zoning regulations relating to the nature, scope, or location of the animal feeding
3 operation later, provided an application is submitted promptly to the state department
4 of health, the department issues a final permit, and construction of the animal feeding
5 operation commences within ~~five~~three years from the date ~~of the board's~~
6 ~~determination or failure to object~~the department issues its final permit and any permit
7 appeals are exhausted. A board of county commissioners may not:

8 a. Regulate or impose zoning restrictions or requirements on animal feeding
9 operations or other agricultural operations except as expressly permitted under
10 this section; or

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

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

15 1. For purposes of this section:

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

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

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

27 b. "Farming or ranching" means cultivating land for the production of agricultural
28 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.
29 The term does not include:

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

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

- 1 m. ~~Any livestock not listed in subdivisions a through l equals 1.0 animal unit per-~~
2 ~~each one thousand pounds [453.59 kilograms] whether single or combined-~~
3 ~~animal weight as provided in subdivision c of subsection 7 of section 23.1-06-15.~~
- 4 3. A board of county commissioners may not prohibit or prevent the use of land or
5 buildings for farming or ranching and may not prohibit or prevent any of the normal
6 incidents of farming or ranching.
- 7 4. A board of county commissioners may not preclude the development of a
8 ~~concentrated~~an animal feeding operation in the county.
- 9 5. A board of county commissioners may not prohibit the reasonable diversification or
10 expansion of a farming or ranching operation.
- 11 6. A board of county commissioners may adopt regulations that establish different
12 standards for the location of ~~concentrated~~animal feeding operations based on the size
13 of the operation and the species and type being fed.
- 14 7. If a regulation would impose a substantial economic burden on a ~~concentrated~~an
15 animal feeding operation in existence before the effective date of the regulation, the
16 board of county commissioners shall declare that the regulation is ineffective with
17 respect to any ~~concentrated~~animal feeding operation in existence before the effective
18 date of the regulation.
- 19 8. a. A board of county commissioners may establish high-density agricultural
20 production districts in which setback distances for ~~concentrated~~animal feeding
21 operations and related agricultural operations are less than those in other
22 districts.
- 23 b. A board of county commissioners may establish, around areas zoned for
24 residential, recreational, or nonagricultural commercial uses, low-density
25 agricultural production districts in which setback distances for
26 ~~concentrated~~animal feeding operations and related agricultural operations are
27 greater than those in other districts; provided, the low-density agricultural
28 production districts may not extend more than one and one-half miles [2.40
29 kilometers] from the edge of the area zoned for residential, recreational, or
30 nonagricultural commercial uses.

1 c. The setbacks provided for in this subsection may not ~~vary by more than fifty~~
2 ~~percent from~~ exceed those established in subdivision a of subsection 7 of section
3 23.1-06-15 unless the county can demonstrate compelling, objective evidence
4 specific to the county which requires a greater setback within the county, in which
5 case the setbacks may exceed those established in subdivision a of subsection 7
6 of section 23.1-06-15 by no more than fifty percent. If a setback under this
7 subsection is greater than the corresponding setback established in subdivision a
8 of subsection 7 of section 23.1-06-15, a person whose animal feeding operation
9 will be or has been affected by the applicable county ordinance may request the
10 agriculture commissioner review the ordinance. After the review, the agriculture
11 commissioner shall provide a summary of the review to the attorney general and
12 request an opinion from the attorney general regarding whether the ordinance
13 and setback are lawful.

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

17 9. A person intending to construct an animal feeding operation may petition the board of
18 county commissioners for a determination whether the animal feeding operation would
19 comply with zoning regulations adopted under this section and filed with the
20 department of environmental quality under section 11-33-22 before the date the
21 petition was received by the county. The petition must contain a description of the
22 nature, scope, and location of the proposed animal feeding operation and a site map
23 showing road access, the location of any structure, and the distance from each
24 structure to the nearest section line. If the board of county commissioners does not
25 object to the petition within sixty days of receipt, the animal feeding operation is
26 deemed in compliance with the county zoning regulations. If the county allows animal
27 feeding operations as a conditional use, the conditional use regulations must be
28 limited to the board's authority under this section, and the approval process must
29 comply with this section. The county shall make a decision on the application within
30 sixty days of the receipt of a complete conditional use permit application. If the board
31 of county commissioners determines the animal feeding operation would comply with

1 zoning regulations or fails to object under this section, the county may not impose
2 additional zoning regulations relating to the nature, scope, or location of the animal
3 feeding operation later, provided an application is submitted promptly to the
4 department of environmental quality, the department issues a final permit, and
5 construction of the animal feeding operation commences within ~~five~~three years from
6 the date ~~of the board's determination or failure to object~~the department issues its final
7 permit and any permit appeals are exhausted. A board of county commissioners may
8 not:

9 a. Regulate or impose zoning restrictions or requirements on animal feeding
10 operations or other agricultural operations except as expressly permitted under
11 this section; or

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

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

16 **11-33-22. Regulation of ~~concentrated~~ animal feeding operations - Central repository.**

17 ~~1.~~—Any zoning regulation that pertains to ~~a concentrated~~an animal feeding operation, as
18 defined in section 11-33-02.1, and which is promulgated by a county after July 31,
19 2007, is not effective until filed with the state department of health for inclusion in the
20 central repository established under section 23-01-30. Any zoning regulation that
21 pertains to ~~concentrated~~ animal feeding operations and which was promulgated by a
22 county before August 1, 2007, may not be enforced until the regulation is filed with the
23 state department of health for inclusion in the central repository.

24 ~~2.~~—For purposes of this section:

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

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

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

5 1. Any zoning regulation that pertains to ~~a concentrated~~an animal feeding operation ~~and,~~
6 as defined in section 11-33-02.1, is not effective until filed with the department of
7 environmental quality for inclusion in the central repository established under section
8 23.1-01-10.

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

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

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

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

20 **23-25-11. Regulation of odors - Rules. (Contingent repeal - [See note](#))**

21 1. In areas located within a city or the area over which a city has exercised extraterritorial
22 zoning as defined in section 40-47-01.1, a person may not discharge into the ambient
23 air any objectionable odorous air contaminant that measures seven odor concentration
24 units or higher outside the property boundary where the discharge is occurring. If an
25 agricultural operation as defined by section 42-04-01 has been in operation for more
26 than one year, as provided by section 42-04-02, and the business or residence making
27 the odor complaint was built or established after the agricultural operation was
28 established, the measurement for compliance with the seven odor concentration units
29 standard must be taken within one hundred feet [30.48 meters] of the subsequently
30 established residence, church, school, business, or public building making the
31 complaint rather than at the property boundary of the agricultural operation. The

1 measurement may not be taken within five hundred feet [.15 kilometer] of the property
2 boundary of the agricultural operation.

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

8 a. Within one hundred feet [30.48 meters] of any residence, church, school,
9 business, or public building, or within a campground or public park. An odor
10 measurement may not be taken at the residence of the owner or operator of the
11 source of the odor, or at any residence, church, school, business, or public
12 building, or within a campground or public park, that is built or established within
13 one-half mile [.80 kilometer] of the source of the odor after the source of the odor
14 has been built or established;

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

19 c. If a county or township has zoned or established a setback distance for an animal
20 feeding operation which is greater than one-half mile [.80 kilometer] under either
21 section 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is
22 greater than one-half mile [.80 kilometer], measurements for compliance with the
23 seven odor concentration units standard must be taken at the setback distance
24 rather than one-half mile [.80 kilometer] from the facility under subdivision b,
25 except for any residence, church, school, business, public building, park, or
26 campground within the setback distance which was built or established before
27 the animal feeding operation was established, unless the animal feeding
28 operation has obtained an odor easement from the pre-existing facility.

29 3. An odor measurement may be taken only with a properly maintained scentometer, by
30 an odor panel, or by another instrument or method approved by the state department
31 of health, and only by inspectors certified by the department who have successfully

1 completed a department-sponsored odor certification course and demonstrated the
2 ability to distinguish various odor samples and concentrations. If a certified inspector
3 measures a violation of this section, the department may send a certified letter of
4 apparent noncompliance to the person causing the apparent violation and may
5 negotiate with the owner or operator for the establishment of an odor management
6 plan and best management practices to address the apparent violation. The
7 department shall give the owner or operator at least fifteen days to implement the odor
8 management plan. If the odor problem persists, the department may proceed with an
9 enforcement action provided at least two certified inspectors at the same time each
10 measure a violation and then confirm the violation by a second odor measurement
11 taken by each certified inspector, at least fifteen minutes, but no more than two hours,
12 after the first measurement.

13 4. A person is exempt from this section while spreading or applying animal manure or
14 other recycled agricultural material to land in accordance with a nutrient management
15 plan approved by the state department of health. A person is exempt from this section
16 while spreading or applying animal manure or other recycled agricultural material to
17 land owned or leased by that person in accordance with rules adopted by the
18 department. An owner or operator of a lagoon or waste storage pond permitted by the
19 department is exempt from this section in the spring from the time when the cover of
20 the permitted lagoon or pond begins to melt until fourteen days after all the ice cover
21 on the lagoon or pond has completely melted. Notwithstanding these exemptions, all
22 persons shall manage their property and systems to minimize the impact of odors on
23 their neighbors.

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

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

- 1 a. "Business" means a commercial building used primarily to carry on a for-profit or
2 nonprofit business which is not residential and not used primarily to manufacture
3 or produce raw materials, products, or agricultural commodities;
- 4 b. "Campground" means a public or private area of land used exclusively for
5 camping and open to the public for a fee on a regular or seasonal basis;
- 6 c. "Church" means a building owned by a religious organization and used primarily
7 for religious purposes;
- 8 d. "Park" means a park established by the federal government, the state, or a
9 political subdivision of the state in the manner prescribed by law;
- 10 e. "Public building" means a building owned by a county, city, township, school
11 district, park district, or other unit of local government; the state; or an agency,
12 industry, institution, board, or department of the state; and
- 13 f. "School" means a public school or nonprofit, private school approved by the
14 superintendent of public instruction.
- 15 7. a. In a county or township that does not regulate the nature, scope, and/or location
16 of an animal feeding operation under section ~~44-33-0211-33-02.1~~ or section
17 58-03-11.1, the department shall require that any new animal feeding operation
18 permitted under chapter 61-28 be set back from any existing residence, church,
19 school, business, public building, park, or campground.
- 20 (1) If there are fewer than three hundred animal units, there is no minimum
21 setback requirement.
- 22 (2) If there are at least three hundred animal units but no more than one
23 thousand animal units, the setback for any animal operation is one-half mile
24 [.80 kilometer].
- 25 (3) If there are at least one thousand one animal units but no more than two
26 thousand animal units, the setback for a hog operation is three-fourths mile
27 [1.20 kilometers] and the setback for any other animal operation is one-half
28 mile [.80 kilometer].
- 29 (4) If there are at least two thousand one animal units but no more than five
30 thousand animal units, the setback for a hog operation is one mile [1.60

- 1 kilometers] and the setback for any other animal operation is three-fourths
2 mile [1.20 kilometers].
- 3 (5) If there are five thousand one or more animal units, the setback for a hog
4 operation is one and one-half miles [2.40 kilometers] and the setback for
5 any other animal operation is one mile [1.60 kilometers].
- 6 b. The setbacks set forth in subdivision a do not apply if the owner or operator
7 applying for the permit obtains an odor easement from the pre-existing use that is
8 closer.
- 9 c. For purposes of this section:
- 10 (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;
11 (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1
12 equals 1.0 animal unit;
13 (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75
14 animal unit;
15 (4) One cow-calf pair equals 1.0 animal unit;
16 (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4
17 animal unit;
18 (6) One weaned swine weighing less than fifty-five pounds [24.948 kilograms]
19 equals 0.1 animal unit;
20 (7) One horse equals 2.0 animal units;
21 (8) One sheep or weaned lamb equals 0.1 animal unit;
22 (9) One turkey equals 0.0182 animal unit;
23 (10) One chicken, ~~other than a laying hen,~~ equals ~~0.0080~~0.01 animal unit;
24 (11) ~~One laying hen equals 0.012 animal unit;~~
25 ~~(12)~~ One duck or goose equals ~~0.0330~~0.2 animal unit; and
26 ~~(13)(12)~~ Any weaned livestock not listed in paragraphs 1 through ~~12~~11 equals 1.0
27 animal unit per each one thousand pounds [453.59 kilograms] whether
28 single or combined animal weight.
- 29 d. In a county or township that regulates the nature, scope, or location of an animal
30 feeding operation under section 11-33-02.1 or section 58-03-11.1, an applicant
31 for an animal feeding operation permit shall submit to the department with the

1 permit application the zoning determination made by the county or township
2 under subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1,
3 unless the animal feeding operation is in existence by January 1, 2019, and there
4 is no change in animals or animal units which would result in an increase in the
5 setbacks provided for in this section. The department may not impose additional
6 odor setback requirements.

7 e. An animal feeding operation is not subject to zoning regulations adopted by a
8 county or township after the date an application for the animal feeding operation
9 is submitted to the department, provided construction of the animal feeding
10 operation commences within ~~five~~three years from the date the ~~application is~~
11 ~~submitted~~final permit is issued and any permit appeals are exhausted. Unless
12 there is a change to the location of the proposed animal feeding operation or
13 there is a change in animal units which would result in an increase in the
14 setbacks under this section, this exemption remains in effect if the department
15 requires the applicant to submit a revised application.

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

18 9. Neither a county nor a township may regulate or through any means impose
19 restrictions or requirements on animal feeding operations or on other agricultural
20 operations except as permitted under sections ~~11-33-02~~11-33-02.1 and
21 ~~58-03-11~~58-03-11.1.

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

24 **23.1-06-15. Regulation of odors - Rules. (Contingent effective date - [See note](#))**

25 1. In areas located within a city or the area over which a city has exercised extraterritorial
26 zoning as defined in section 40-47-01.1, a person may not discharge into the ambient
27 air any objectionable odorous air contaminant that measures seven odor concentration
28 units or higher outside the property boundary where the discharge is occurring. If an
29 agricultural operation as defined by section 42-04-01 has been in operation for more
30 than one year, as provided by section 42-04-02, and the person making the odor
31 complaint was built or established after the agricultural operation was established, the

1 measurement for compliance with the seven odor concentration units standard must
2 be taken within one hundred feet [30.48 meters] of the subsequently established
3 residence, church, school, business, or public building making the complaint rather
4 than at the property boundary of the agricultural operation. The measurement may not
5 be taken within five hundred feet [.15 kilometer] of the property boundary of the
6 agricultural operation.

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

- 12 a. Within one hundred feet [30.48 meters] of any residence, church, school,
13 business, or public building, or within a campground or public park. An odor
14 measurement may not be taken at the residence of the owner or operator of the
15 source of the odor, or at any residence, church, school, business, or public
16 building, or within a campground or public park, that is built or established within
17 one-half mile [.80 kilometer] of the source of the odor after the source of the odor
18 has been built or established;
- 19 b. At any point located beyond one-half mile [.80 kilometer] from the source of the
20 odor, except for property owned by the owner or operator of the source of the
21 odor, or over which the owner or operator of the source of the odor has
22 purchased an odor easement; or
- 23 c. If a county or township has zoned or established a setback distance for an animal
24 feeding operation which is greater than one-half mile [.80 kilometer] under either
25 section 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is
26 greater than one-half mile [.80 kilometer], measurements for compliance with the
27 seven odor concentration units standard must be taken at the setback distance
28 rather than one-half mile [.80 kilometer] from the facility under subdivision b,
29 except for any residence, church, school, business, public building, park, or
30 campground within the setback distance which was built or established before

1 the animal feeding operation was established, unless the animal feeding
2 operation has obtained an odor easement from the pre-existing facility.

3 3. An odor measurement may be taken only with a properly maintained scentometer, by
4 an odor panel, or by another instrument or method approved by the department of
5 environmental quality, and only by inspectors certified by the department who have
6 successfully completed a department-sponsored odor certification course and
7 demonstrated the ability to distinguish various odor samples and concentrations. If a
8 certified inspector measures a violation of this section, the department may send a
9 certified letter of apparent noncompliance to the person causing the apparent violation
10 and may negotiate with the owner or operator for the establishment of an odor
11 management plan and best management practices to address the apparent violation.
12 The department shall give the owner or operator at least fifteen days to implement the
13 odor management plan. If the odor problem persists, the department may proceed
14 with an enforcement action provided at least two certified inspectors at the same time
15 each measure a violation and then confirm the violation by a second odor
16 measurement taken by each certified inspector, at least fifteen minutes, but no more
17 than two hours, after the first measurement.

18 4. A person is exempt from this section while spreading or applying animal manure or
19 other recycled agricultural material to land in accordance with a nutrient management
20 plan approved by the department of environmental quality. A person is exempt from
21 this section while spreading or applying animal manure or other recycled agricultural
22 material to land owned or leased by that person in accordance with rules adopted by
23 the department. An owner or operator of a lagoon or waste storage pond permitted by
24 the department is exempt from this section in the spring from the time when the cover
25 of the permitted lagoon or pond begins to melt until fourteen days after all the ice
26 cover on the lagoon or pond has completely melted. Notwithstanding these
27 exemptions, all persons shall manage their property and systems to minimize the
28 impact of odors on their neighbors.

29 5. This section does not apply to chemical compounds that can be individually measured
30 by instruments, other than a scentometer, that have been designed and proven to
31 measure the individual chemical or chemical compound, such as hydrogen sulfide, to

1 a reasonable degree of scientific certainty, and for which the department of
2 environmental quality has established a specific limitation by rule.

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

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

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

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

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

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

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

20 7. a. In a county or township that does not regulate the nature, scope, ~~and~~ or location
21 of an animal feeding operation under section ~~44-33-02~~11-33-02.1 or section
22 58-03-11.1, the department shall require that any new animal feeding operation
23 permitted under chapter 61-28 be set back from any existing residence, church,
24 school, business, public building, park, or campground.

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

27 (2) If there are at least three hundred animal units but no more than one
28 thousand animal units, the setback for any animal operation is one-half mile
29 [.80 kilometer].

30 (3) If there are at least one thousand one animal units but no more than two
31 thousand animal units, the setback for a hog operation is three-fourths mile

- 1 [1.20 kilometers], and the setback for any other animal operation is one-half
2 mile [.80 kilometer].
- 3 (4) If there are at least two thousand one animal units but no more than five
4 thousand animal units, the setback for a hog operation is one mile [1.60
5 kilometers], and the setback for any other animal operation is three-fourths
6 mile [1.20 kilometers].
- 7 (5) If there are five thousand one or more animal units, the setback for a hog
8 operation is one and one-half miles [2.40 kilometers], and the setback for
9 any other animal operation is one mile [1.60 kilometers].
- 10 b. The setbacks set forth in subdivision a do not apply if the owner or operator
11 applying for the permit obtains an odor easement from the pre-existing use that is
12 closer.
- 13 c. For purposes of this section:
- 14 (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;
15 (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1
16 equals 1.0 animal unit;
17 (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals
18 0.75 animal unit;
19 (4) One cow-calf pair equals 1.0 animal unit;
20 (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals
21 0.4 animal unit;
22 (6) One weaned swine weighing less than fifty-five pounds [24.948 kilograms]
23 equals 0.1 animal unit;
24 (7) One horse equals 2.0 animal units;
25 (8) One sheep or weaned lamb equals 0.1 animal unit;
26 (9) One turkey equals 0.0182 animal unit;
27 (10) One chicken, ~~other than a laying hen,~~ equals ~~0.0080~~0.01 animal unit;
28 (11) ~~One laying hen equals 0.012 animal unit;~~
29 ~~(12)~~ One duck or goose equals ~~0.0330~~0.2 animal unit; and

1 ~~(13)~~(12) Any weaned livestock not listed in paragraphs 1 through ~~42~~11 equals 1.0
2 animal unit per each one thousand pounds [453.59 kilograms], whether
3 single or combined animal weight.

4 d. In a county or township that regulates the nature, scope, or location of an animal
5 feeding operation under section 11-33-02.1 or section 58-03-11.1, an applicant
6 for an animal feeding operation permit shall submit to the department with the
7 permit application the zoning determination made by the county or township
8 under subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1,
9 unless the animal feeding operation is in existence by January 1, 2019, and there
10 is no change in animals or animal units which would result in an increase in the
11 setbacks provided for in this section. The department may not impose additional
12 odor setback requirements.

13 e. An animal feeding operation is not subject to zoning regulations adopted by a
14 county or township after the date an application for the animal feeding operation
15 is submitted to the department, provided construction of the animal feeding
16 operation commences within ~~five~~three years from the date the application is
17 submitted. Unless there is a change to the location of the proposed animal
18 feeding operation, this exemption remains in effect if the department requires the
19 applicant to submit a revised application.

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

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

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

27 **58-03-11.1. Farming and ranching regulations - Requirements - Limitations -**

28 **Definitions.**

29 1. For purposes of this section:

30 a. "~~Concentrated~~Animal feeding operation" means any livestock feeding, handling,
31 or holding operation, or feed yard, where animals are concentrated in an area

1 ~~that is not normally used for pasture or for growing crops and in which animal~~
2 ~~wastes may accumulate. The term does not include normal wintering operations~~
3 ~~for cattle a lot or facility, other than normal wintering operations for cattle and an~~
4 ~~aquatic animal production facility, where the following conditions are met:~~

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

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

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

12 The term does not include:

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

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

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

20 d. "Location" means the setback distance between a structure, fence, or other
21 boundary enclosing ~~a concentrated~~ an animal feeding operation, including its
22 animal waste collection system, and the nearest occupied residence, the nearest
23 buildings used for nonfarm or nonranch purposes, or the nearest land zoned for
24 residential, recreational, or commercial purposes. The term does not include the
25 setback distance for the application of manure or for the application of other
26 recycled agricultural material under a nutrient management plan approved by the
27 state department of health.

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

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

30 b. ~~One dairy cow, heifer, or bull, other than an animal described in subdivision a~~
31 ~~equals 1.0 animal unit;~~

Sixty-sixth
Legislative Assembly

- 1 e. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal-
2 unit;
- 3 d. One cow-calf pair equals 1.0 animal unit;
- 4 e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4-
5 animal unit;
- 6 f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1-
7 animal unit;
- 8 g. One horse equals 2.0 animal units;
- 9 h. One sheep or lamb equals 0.1 animal unit;
- 10 i. One turkey equals 0.0182 animal unit;
- 11 j. One chicken, other than a laying hen, equals 0.008 animal unit;
- 12 k. One laying hen equals 0.012 animal unit;
- 13 l. One duck equals 0.033 animal unit; and
- 14 m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per-
15 each one thousand pounds [453.59 kilograms] whether single or combined
16 animal weight provided under subdivision c of subsection 7 of
17 section ~~23-23-11~~23-25-11.
- 18 3. A board of township supervisors may not prohibit or prevent the use of land or
19 buildings for farming or ranching or any of the normal incidents of farming or ranching.
- 20 4. A regulation may not preclude the development of a ~~concentrated~~ animal feeding
21 operation in the township.
- 22 5. A board of township supervisors may not prohibit the reasonable diversification or
23 expansion of a farming or ranching operation.
- 24 6. A board of township supervisors may adopt regulations that establish different
25 standards for the location of ~~concentrated~~ animal feeding operations based on the size
26 of the operation and the species and type being fed.
- 27 7. If a regulation would impose a substantial economic burden on a ~~concentrated~~ an
28 animal feeding operation in existence before the effective date of the regulation, the
29 board of township supervisors shall declare that the regulation is ineffective with
30 respect to any ~~concentrated~~ animal feeding operation in existence before the effective
31 date of the regulation.

- 1 8. a. A board of township supervisors may establish high-density agricultural
2 production districts in which setback distances for ~~concentrated~~animal feeding
3 operations and related agricultural operations are less than those in other
4 districts.
- 5 b. A board of township supervisors may establish, around areas zoned for
6 residential, recreational, or nonagricultural commercial uses, low-density
7 agricultural production districts in which setback distances for
8 ~~concentrated~~animal feeding operations and related agricultural operations are
9 greater than those in other districts; provided, the low-density agricultural
10 production districts may not extend more than one-half mile [0.80 kilometer] from
11 the edge of the area zoned for residential, recreational, or nonagricultural
12 commercial uses.
- 13 c. The setbacks provided for in this subsection may not ~~vary by more than fifty-~~
14 ~~percent from~~exceed those established in subdivision a of subsection 7 of section
15 23-25-11 unless the township can demonstrate compelling, objective evidence
16 specific to the township which requires a greater setback within the township, in
17 which case the setbacks may exceed those established in subdivision a of
18 subsection 7 of section 23-25-11 by no more than fifty percent. If a setback under
19 this subsection is greater than the corresponding setback established in
20 subdivision a of subsection 7 of section 23-25-11, a person whose animal feeding
21 operation will be or has been affected by the applicable township ordinance may
22 request the agriculture commissioner review the ordinance. After the review, the
23 agriculture commissioner shall provide a summary of the review to the attorney
24 general and request an opinion from the attorney general regarding whether the
25 ordinance and setback are lawful.
- 26 d. For purposes of this subsection, a "related agricultural operation" means a facility
27 that produces a product or byproduct used by a ~~concentrated~~an animal feeding
28 operation.
- 29 9. A person intending to construct an animal feeding operation may petition the board of
30 township supervisors for a determination whether the animal feeding operation would
31 comply with zoning regulations adopted under this section and filed with the state

1 department of health under section 58-03-17 before the date the petition was received
2 by the township. The petition must contain a description of the nature, scope, and
3 location of the proposed animal feeding operation and a site map showing road
4 access, the location of any structure, and the distance from each structure to the
5 nearest section line. If the board of township supervisors does not object to the petition
6 within sixty days of receipt, the animal feeding operation is deemed in compliance with
7 the township zoning regulations. If the township allows animal feeding operations as a
8 conditional use, the conditional use regulations must be limited to the board's authority
9 under this section, and the approval process must comply with this section. The
10 township shall make a decision on the application within sixty days of the receipt of a
11 complete conditional use permit application. If the board of township supervisors
12 determines the animal feeding operation would comply with zoning regulations or fails
13 to object under this section, the township may not impose additional zoning
14 regulations relating to the nature, scope, or location of the animal feeding operation
15 later, provided an application is submitted promptly to the state department of health,
16 the department issues a final permit, and construction of the animal feeding operation
17 commences within ~~five~~three years from the date ~~of the board's determination or failure~~
18 ~~to object~~the department issues its final permit and any permit appeals are exhausted.

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

27 1. For purposes of this section:

- 28 a. ~~"Concentrated~~Animal feeding operation" means ~~any livestock feeding, handling,~~
29 ~~or holding operation, or feed yard, where animals are concentrated in an area~~
30 ~~that is not normally used for pasture or for growing crops and in which animal~~
31 ~~wastes may accumulate. The term does not include normal wintering operations-~~

1 ~~for cattle~~ a lot or facility, other than normal wintering operations for cattle and an
2 aquatic animal production facility, where the following conditions are met:

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

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

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

10 The term does not include:

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

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

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

18 d. "Location" means the setback distance between a structure, fence, or other
19 boundary enclosing ~~a concentrated~~ an animal feeding operation, including its
20 animal waste collection system, and the nearest occupied residence, the nearest
21 buildings used for nonfarm or nonranch purposes, or the nearest land zoned for
22 residential, recreational, or commercial purposes. The term does not include the
23 setback distance for the application of manure or for the application of other
24 recycled agricultural material under a nutrient management plan approved by the
25 department of environmental quality.

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

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

28 b. ~~One dairy cow, heifer, or bull, other than an animal described in subdivision a~~
29 ~~equals 1.0 animal unit;~~

30 e. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal~~
31 ~~unit;~~

Sixty-sixth
Legislative Assembly

- 1 d. One cow-calf pair equals 1.0 animal unit;
- 2 e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4-
- 3 animal unit;
- 4 f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1-
- 5 animal unit;
- 6 g. One horse equals 2.0 animal units;
- 7 h. One sheep or lamb equals 0.1 animal unit;
- 8 i. One turkey equals 0.0182 animal unit;
- 9 j. One chicken, other than a laying hen, equals 0.008 animal unit;
- 10 k. One laying hen equals 0.012 animal unit;
- 11 l. One duck equals 0.033 animal unit; and
- 12 m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per-
- 13 each one thousand pounds [453.59 kilograms] whether single or combined-
- 14 animal weight provided under subdivision c of subsection 7 of section 23.1-06-15.
- 15 3. A board of township supervisors may not prohibit or prevent the use of land or
- 16 buildings for farming or ranching or any of the normal incidents of farming or ranching.
- 17 4. A regulation may not preclude the development of a ~~concentrated~~ animal feeding
- 18 operation in the township.
- 19 5. A board of township supervisors may not prohibit the reasonable diversification or
- 20 expansion of a farming or ranching operation.
- 21 6. A board of township supervisors may adopt regulations that establish different
- 22 standards for the location of ~~concentrated~~ animal feeding operations based on the size
- 23 of the operation and the species and type being fed.
- 24 7. If a regulation would impose a substantial economic burden on a ~~concentrated~~ animal
- 25 animal feeding operation in existence before the effective date of the regulation, the
- 26 board of township supervisors shall declare that the regulation is ineffective with
- 27 respect to any ~~concentrated~~ animal feeding operation in existence before the effective
- 28 date of the regulation.
- 29 8. a. A board of township supervisors may establish high-density agricultural
- 30 production districts in which setback distances for ~~concentrated~~ animal feeding

1 operations and related agricultural operations are less than those in other
2 districts.

3 b. A board of township supervisors may establish, around areas zoned for
4 residential, recreational, or nonagricultural commercial uses, low-density
5 agricultural production districts in which setback distances for
6 ~~concentrated~~animal feeding operations and related agricultural operations are
7 greater than those in other districts; provided, the low-density agricultural
8 production districts may not extend more than one-half mile [0.80 kilometer] from
9 the edge of the area zoned for residential, recreational, or nonagricultural
10 commercial uses.

11 c. The setbacks provided for in this subsection may not ~~vary by more than fifty~~
12 ~~percent from~~exceed those established in subdivision a of subsection 7 of section
13 23.1-06-15 unless the township can demonstrate compelling, objective evidence
14 specific to the township which requires a greater setback within the township, in
15 which case the setbacks may exceed those established in subdivision a of
16 subsection 7 of section 23.1-06-15 by no more than fifty percent. If a setback
17 under this subsection is greater than the corresponding setback established in
18 subdivision a of subsection 7 of section 23.1-06-15, a person whose animal
19 feeding operation will be or has been affected by the applicable township
20 ordinance may request the agriculture commissioner review the ordinance. After
21 the review, the agriculture commissioner shall provide a summary of the review to
22 the attorney general and request an opinion from the attorney general regarding
23 whether the ordinance and setback are lawful.

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

27 9. A person intending to construct an animal feeding operation may petition the board of
28 township supervisors for a determination whether the animal feeding operation would
29 comply with zoning regulations adopted under this section and filed with the
30 department of environmental quality under section 58-03-17 before the date the
31 petition was received by the township. The petition must contain a description of the

1 nature, scope, and location of the proposed animal feeding operation and a site map
2 showing road access, the location of any structure, and the distance from each
3 structure to the nearest section line. If the board of township supervisors does not
4 object to the petition within sixty days of receipt, the animal feeding operation is
5 deemed in compliance with the township zoning regulations. If the township allows
6 animal feeding operations as a conditional use, the conditional use regulations must
7 be limited to the board's authority under this section, and the approval process must
8 comply with this section. The township shall make a decision on the application within
9 sixty days of the receipt of a complete conditional use permit application. If the board
10 of township supervisors determines the animal feeding operation would comply with
11 zoning regulations or fails to object under this section, the township may not impose
12 additional zoning regulations relating to the nature, scope, or location of the animal
13 feeding operation later, provided an application is submitted promptly to the
14 department of environmental quality, the department issues a final permit, and
15 construction of the animal feeding operation commences within ~~five~~three years from
16 the date ~~of the board's determination or failure to object~~the department issues its final
17 permit and any permit appeals are exhausted. A board of township supervisors may
18 not:

- 19 a. Regulate or impose zoning restrictions or requirements on animal feeding
20 operations or other agricultural operations except as expressly permitted under
21 this section; or
22 b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or
23 requirements on animal feeding operations.

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

26 **58-03-17. Regulation of ~~concentrated~~ animal feeding operations - Central repository.**

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

1 county or a township before August 1, 2007, may not be enforced until the regulation
2 is filed with the state department of health for inclusion in the central repository.

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

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

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

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

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

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

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

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

1 | **SECTION 7. REPORT TO THE LEGISLATIVE MANAGEMENT - PERMIT APPLICATION**

2 | **APPROVALS AND DENIALS.** On or before October 1, 2020, the department of environmental
3 | quality shall provide a report to the legislative management on all animal feeding operation
4 | permit applications approved or denied by the department, including the relevant county and
5 | township zoning and setback determinations, and related issues during the first full year of the
6 | 2019-21 biennium. Through October 1, 2020, all local government entities that review animal
7 | feeding operation permit applications shall report to the department of environmental quality
8 | each permit approval and denial within thirty days of the decision to approve or deny the
9 | application.

10 | **SECTION 8. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE - EXPIRATION DATE.**

11 | The portions of sections 1, 2, 5, and 46 of this Act not subject to an existing contingency
12 | become effective on August 1, 2019, and remain in effect until the legislative council receives
13 | certification from the chief of the environmental health section of the state department of health
14 | that all authority, powers, and duties from the environmental health section of the state
15 | department of health have been transferred to the department of environmental quality. The
16 | remainder of sections 1, 2, 5, and 46 become effective on August 1, 2019, if the legislative
17 | council has received certification from the chief of the environmental health section of the state
18 | department of health that all authority, powers, and duties from the environmental health section
19 | of the state department of health have been transferred to the department of environmental
20 | quality. If, by August 1, 2019, the legislative council has not received certification from the chief
21 | of the environmental health section of the state department of health that all authority, powers,
22 | and duties from the environmental health section of the state department of health have been
23 | transferred to the department of environmental quality, the remainder of sections 1, 2, 5, and 46
24 | of this Act become effective on the date certification is received.