

**FIRST ENGROSSMENT  
with House Amendments  
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 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  
3           be a 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 three years from the date the department issues its final permit and any permit  
29          appeals are exhausted. A board 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 three years from the date the department issues its final  
20 permit and any permit appeals are exhausted. A board of county commissioners may  
21 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 4. Any zoning regulation that pertains to a ~~concentrated~~ animal feeding operation, as  
31 defined in section 11-33-02.1, and which is promulgated by a county after July 31,



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

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

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

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

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

17          1. Any zoning regulation that pertains to a ~~concentrated~~an animal feeding operation and,  
18          as defined in section 11-33-02.1, is not effective until filed with the department of  
19          environmental quality for inclusion in the central repository established under section  
20          23.1-01-10.

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

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

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

30           **SECTION 3. AMENDMENT.** Section 23-25-11 of the North Dakota Century Code is  
31   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~~0.2 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 three years from the date the final permit is issued  
25 and any permit appeals are exhausted. Unless there is a change to the location  
26 of the proposed animal feeding operation or there is a change in animal units  
27 which would result in an increase in the setbacks under this section, this  
28 exemption remains in effect if the department requires the applicant to submit a  
29 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-~~  
31          ~~animal weight~~ provided under subdivision c of subsection 7 of section 23-25-11.

- 1           3. A board of township supervisors may not prohibit or prevent the use of land or  
2           buildings for farming or ranching or any of the normal incidents of farming or ranching.
- 3           4. A regulation may not preclude the development of a ~~concentrated~~animal feeding  
4           operation in the township.
- 5           5. A board of township supervisors may not prohibit the reasonable diversification or  
6           expansion of a farming or ranching operation.
- 7           6. A board of township supervisors may adopt regulations that establish different  
8           standards for the location of ~~concentrated~~animal feeding operations based on the size  
9           of the operation and the species and type being fed.
- 10          7. If a regulation would impose a substantial economic burden on a ~~concentrated~~an  
11          animal feeding operation in existence before the effective date of the regulation, the  
12          board of township supervisors shall declare that the regulation is ineffective with  
13          respect to any ~~concentrated~~animal feeding operation in existence before the effective  
14          date of the regulation.
- 15          8. a. A board of township supervisors may establish high-density agricultural  
16          production districts in which setback distances for ~~concentrated~~animal feeding  
17          operations and related agricultural operations are less than those in other  
18          districts.
- 19          b. A board of township supervisors may establish, around areas zoned for  
20          residential, recreational, or nonagricultural commercial uses, low-density  
21          agricultural production districts in which setback distances for  
22          ~~concentrated~~animal feeding operations and related agricultural operations are  
23          greater than those in other districts; provided, the low-density agricultural  
24          production districts may not extend more than one-half mile [0.80 kilometer] from  
25          the edge of the area zoned for residential, recreational, or nonagricultural  
26          commercial uses.
- 27          c. The setbacks provided for in this subsection are subject to approval by the  
28          agriculture commissioner and may not vary by more than fifty percent from  
29          a greater distance than those established in subdivision a of subsection 7 of  
30          section 23-25-11.

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

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

26 a. Regulate or impose zoning restrictions or requirements on animal feeding  
27 operations or other agricultural operations except as expressly permitted under  
28 this section; or

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

1           **(Contingent effective date - See note) Farming and ranching regulations -**

2           **Requirements - Limitations - Definitions.**

3           1. 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. The term does not include normal wintering operations~~  
8           ~~for cattle a lot or facility, other than normal wintering operations for cattle and an~~  
9           ~~aquatic animal production facility, where the following conditions are met:~~

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

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

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

17           The term does not include:

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

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

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

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



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

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

1 structure to the nearest section line. If the board of township supervisors does not  
2 object to the petition within sixty days of receipt, the animal feeding operation is  
3 deemed in compliance with the township zoning regulations. If the township allows  
4 animal feeding operations as a conditional use, the township shall inform the applicant  
5 of the required procedures upon receipt of the petition, and the conditional use  
6 regulations in effect at the time the township receives the petition must control the  
7 approval process, except the township shall make a decision on the application within  
8 sixty days of the receipt of a complete conditional use permit application. If the board  
9 of township supervisors determines the animal feeding operation would comply with  
10 zoning regulations or fails to object under this section, the township may not impose  
11 additional zoning regulations relating to the nature, scope, or location of the animal  
12 feeding operation later, provided an application is submitted promptly to the state  
13 department of health, the department issues a final permit, and construction of the  
14 animal feeding operation commences within three years from the date the department  
15 issues its final permit and any permit appeals are exhausted. A board of township  
16 supervisors may not:

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

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

24 **58-03-17. Regulation of ~~concentrated~~ animal feeding operations - Central repository.**

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

1           2. For purposes of this section:

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

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

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

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

20           2. For purposes of this section:

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

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

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

30           The portions of sections 1, 2, 5, and 46 of this Act not subject to an existing contingency  
31           become effective on August 1, 2019, and remain in effect until the legislative council receives

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