

COUNTIES

CHAPTER 103

HOUSE BILL NO. 1029

(Legislative Council)

(Finance and Taxation Committee)

SALES TAX TRANSFER TO SCHOOL DISTRICTS

AN ACT to create and enact a new section to chapter 11-09.1 and a new section to chapter 40-05.1 of the North Dakota Century Code, relating to limits on transfers of home rule county and city sales tax revenue to school districts; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 11-09.1 of the North Dakota Century Code is created and enacted as follows:

Sales tax revenue transfer to school districts prohibited.

Notwithstanding the provisions of chapters 54-40 and 54-40.3 or any other provision of law, revenue from sales, use, or other excise taxes levied under this chapter may not be transferred to or for the primary benefit of a school district except for payment of bonded indebtedness incurred before the effective date of this Act or for capital construction and associated costs approved by the electors of the county before the effective date of this Act.

SECTION 2. A new section to chapter 40-05.1 of the North Dakota Century Code is created and enacted as follows:

Sales tax revenue transfer to school districts prohibited.

Notwithstanding the provisions of chapters 54-40 and 54-40.3 or any other provision of law, revenue from sales, use, or other excise taxes levied under this chapter may not be transferred to or for the primary benefit of a school district except for payment of bonded indebtedness incurred before the effective date of this Act or for capital construction and associated costs approved by the electors of the city before the effective date of this Act.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 18, 2007

Filed April 19, 2007

CHAPTER 104**HOUSE BILL NO. 1381**

(Representatives Grande, Brandenburg, Haas, Sukut)
(Senator Dever)

COUNTY OFFICER TERM COMMENCEMENT

AN ACT to amend and reenact sections 11-10-05, 11-13-01, and 11-14-02 of the North Dakota Century Code, relating to term commencement for county officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-10-05 of the North Dakota Century Code is amended and reenacted as follows:

11-10-05. When terms of county officers commence - When officers qualify. Except as otherwise specifically provided by the laws of this state, the regular term of office of each county officer, when the officer is elected for a full term, shall commence on the first ~~Monday in~~ of January next succeeding the officer's election and each such officer shall qualify and enter upon the discharge of the officer's duties on ~~or before the first Monday in~~ of January next succeeding the date of the officer's election ~~or within ten days thereafter~~. If the office to which an officer is elected was vacant at the time of the officer's election or becomes vacant prior to the date fixed for the commencement of the officer's term, the officer may qualify and enter upon the duties of the office forthwith even though the officer was not elected to fill such vacancy. If an officer is elected to fill an unexpired term in an office then held by an appointee, such officer may qualify and enter upon the discharge of the duties of such office at any time after receiving a certificate of election to that office but not later than the first Monday in January next succeeding the date of the officer's election to the unexpired term of office.

SECTION 2. AMENDMENT. Section 11-13-01 of the North Dakota Century Code is amended and reenacted as follows:

11-13-01. When county auditor to qualify and take office. The county auditor shall qualify and enter upon the discharge of the duties of office on ~~or before the first Monday~~ of April next succeeding the auditor's election, ~~or within ten days thereafter~~.

SECTION 3. AMENDMENT. Section 11-14-02 of the North Dakota Century Code is amended and reenacted as follows:

11-14-02. When county treasurer to qualify and take office. The county treasurer shall qualify and enter upon the discharge of the duties of the office on ~~or before the first Monday~~ of May next succeeding the treasurer's election, ~~or within ten days thereafter~~.

Approved March 23, 2007
Filed March 23, 2007

CHAPTER 105**SENATE BILL NO. 2149**
(Senators Lindaas, Olafson, Wanzek)
(Representatives Aarsvold, Monson, Vigesaa)**JOB DEVELOPMENT AUTHORITY EQUITY AND
STUDY**

AN ACT to amend and reenact sections 11-11.1-03 and 40-57.4-03 of the North Dakota Century Code, relating to powers of job development authorities to take equity positions; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-11.1-03 of the North Dakota Century Code is amended and reenacted as follows:

11-11.1-03. Powers and duties of job development authorities. The job development authority or joint job development authority shall use its financial and other resources to encourage and assist in the development of employment and promotion of tourism within the county or counties. In fulfilling this objective, the authority may exercise the following powers:

1. To sue and be sued.
2. To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.
3. To hire professional personnel skilled in seeking and promoting new or expanded opportunities within the county or counties.
4. To make, amend, and repeal resolutions consistent with the provisions of this chapter as necessary to carry into effect the powers and purposes of the authority.
5. To acquire by gift, trade, or purchase, and to hold, improve, and dispose of property.
6. To certify a tax levy as provided in section 11-11.1-04 and to expend moneys raised by the tax for the purposes provided in this chapter. A job development authority may accept and expend moneys from any other source.
7. To insure or provide for insurance of any property in which the authority has an insurable interest.
8. To invest any funds held by the authority.
9. To cooperate with political subdivisions in exercising any of the powers granted by this section, including enabling agreements permitted under chapter 54-40.

10. To loan, grant, or convey any funds or other property held by the authority for any purpose necessary or convenient to carry into effect the objective of the authority established by this chapter.
11. To use existing uncommitted funds held by the authority to guarantee loans or make other financial commitments to enhance economic development.
12. To take equity positions in, provide loans to, or use other innovative financing mechanisms to provide capital for new or expanding businesses in this state or for businesses relocating to this state.
13. To exercise any other powers necessary to carry out the purposes and provisions of this chapter.

SECTION 2. AMENDMENT. Section 40-57.4-03 of the North Dakota Century Code is amended and reenacted as follows:

40-57.4-03. Powers and duties of city job development authorities. The city job development authority shall use its financial and other resources to encourage and assist in the development of employment within the city. In fulfilling this objective, the job development authority may exercise the following powers:

1. To sue and be sued.
2. To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.
3. To hire professional personnel skilled in seeking and promoting new or expanded opportunities within the city.
4. To make, amend, and repeal resolutions consistent with the provisions of this chapter as necessary to carry into effect the powers and purposes of the authority.
5. To acquire by gift, trade, or purchase, and to hold, improve, and dispose of real or personal property.
6. To certify a tax levy as provided in section 40-57.4-04 and to expend moneys raised by the tax for the purposes provided in this chapter.
7. To insure or provide for insurance of any real or personal property in which the authority has an insurable interest.
8. To invest any funds held by the authority.
9. To cooperate with political subdivisions in exercising any of the powers granted by this section.
10. To loan, grant, or convey any funds or other real or personal property held by the authority for any purpose necessary or convenient to carry into effect the objective of the authority established by this chapter.
11. To use existing, uncommitted funds held by the authority to guarantee loans or make other financial commitments to enhance economic development.

12. To take an equity position in, provide a loan to, or use any other innovative financing mechanism to provide capital for a new or expanding business in this state or for a business relocating to this state.
13. To exercise any other powers necessary to carry out the purposes and provisions of this chapter.

SECTION 3. LEGISLATIVE COUNCIL STUDY - JOB DEVELOPMENT

AUTHORITIES. The legislative council shall study during the 2007-08 interim job development authorities across the state to determine the economic impact created by the authorities, to examine funding mechanisms used by the authorities when expending resources for economic development purposes, and to determine whether the authorities serve a viable purpose. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved March 12, 2007

Filed March 13, 2007

CHAPTER 106**HOUSE BILL NO. 1157**

(Representative Porter)
(Senator Lyson)

SHERIFF UNIFORM ALLOWANCE

AN ACT to amend and reenact sections 11-15-29 and 11-15-31 of the North Dakota Century Code, relating to uniforms for sheriffs and sheriffs' deputies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-15-29 of the North Dakota Century Code is amended and reenacted as follows:

11-15-29. Uniform allowance for sheriffs and full-time deputy sheriffs sheriffs' deputies. ~~Sheriffs and full-time deputy sheriffs shall be allowed by the~~ The board of county commissioners in each county an amount not to exceed five hundred dollars per person during that person's first year of service and three hundred fifty dollars per person each succeeding year shall provide funding of at least three hundred fifty dollars per individual per year for uniforms for the sheriff and each sheriff's deputy. The sheriff may expend the funds for uniforms as the sheriff deems necessary and is not limited to an annual amount that may be expended for each uniform or for each individual.

SECTION 2. AMENDMENT. Section 11-15-31 of the North Dakota Century Code is amended and reenacted as follows:

11-15-31. Uniform surrendered when term of office ends upon termination of employment. ~~The uniforms and parts thereof purchased by the board of county commissioners shall~~ must be returned to the sheriff's office upon termination of employment of each sheriff and ~~full-time~~ sheriff's deputy.

Approved April 11, 2007

Filed April 13, 2007

CHAPTER 107**SENATE BILL NO. 2271**

(Senators Holmberg, Klein, Wardner)
(Representatives Boehning, Carlson, Martinson)

**ZONING APPROVAL AND DISAPPROVAL
STATEMENTS**

AN ACT to amend and reenact sections 11-33-01, 11-33.2-11, 40-47-04, 40-48-21, and 58-03-13 of the North Dakota Century Code, relating to requiring findings or statements upon which zoning requests and subdivision plat requests are disapproved.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-33-01 of the North Dakota Century Code is amended and reenacted as follows:

11-33-01. County power to regulate property. For the purpose of promoting health, safety, morals, public convenience, general prosperity, and public welfare, the board of county commissioners of any county may regulate and restrict within the county, subject to section 11-33-20 and chapter 54-21.3, the location and the use of buildings and structures and the use, condition of use, or occupancy of lands for residence, recreation, and other purposes. The board of county commissioners and a county zoning commission shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the board or commission. The board of county commissioners shall establish zoning requirements for solid waste disposal and incineration facilities before July 1, 1994. The board of county commissioners may impose tipping or other fees on solid waste management and incineration facilities. The board of county commissioners may not impose any fee under this section on an energy conversion facility or coal mining operation that disposes of its waste onsite. The board of county commissioners may establish institutional controls that address environmental concerns with the state department of health as provided in section 23-20.3-03.1.

SECTION 2. AMENDMENT. Section 11-33.2-11 of the North Dakota Century Code is amended and reenacted as follows:

11-33.2-11. Board authorized to may approve plats - Appropriate money. The board of county commissioners ~~is empowered to authorize and provide for the approval of~~ may approve plats as a prerequisite to the subdivision of land subject to the provisions of this chapter and may establish and collect reasonable fees therefor. The fees ~~so~~ collected ~~shall~~ must be credited to the general fund of the county. The board of county commissioners ~~is further empowered to~~ may appropriate, out of the general funds of the county, ~~such~~ moneys as ~~may~~ be necessary for the purposes of this chapter. The board of county commissioners shall state the grounds upon which any request for approval of plats is approved or disapproved, and written findings upon which the decision is based must be included within the records of the board.

SECTION 3. AMENDMENT. Section 40-47-04 of the North Dakota Century Code is amended and reenacted as follows:

40-47-04. Determining and enforcing regulations - Public hearing and notice thereof - Publication of regulations, restrictions, and boundaries.

1. The governing body of a city which ~~shall use~~ uses zoning regulations shall provide for the manner in which the regulations and restrictions ~~shall must~~ be established, enforced, or supplemented, and for the manner in which the boundaries of the districts ~~shall must~~ be established and from time to time changed. A copy of each proposed regulation, restriction, or boundary ~~shall must~~ be filed with the city auditor. No regulation, restriction, or boundary ~~shall may~~ become effective until after a public hearing ~~thereon~~ at which parties in interest and citizens shall have an opportunity to be heard. Notice of ~~said the~~ the hearing ~~shall must~~ be published once a week for two successive weeks ~~prior to before~~ the time set for ~~said the~~ the hearing in the official newspaper of the city. ~~Such The~~ The notice ~~shall must~~ contain the following items:
 - 4- a. The time and place of the hearing.
 - 2- b. A description of any property involved in any zoning change, by street address if streets have been platted or designated in the area affected.
 - 3- c. A description of the nature, scope, and purpose of the proposed regulation, restriction, or boundary.
 - 4- d. A statement of the times at which it will be available to the public for inspection and copying at the office of the city auditor.
2. Upon establishment of any regulation, restriction, or boundary hereunder, the governing body of a city shall file a certified copy thereof with the city auditor and shall cause notice of the same to be published in the official newspaper of the city. ~~Said The~~ The notice ~~shall must~~ describe the nature, scope, and purpose of the regulation, restriction, or boundary and ~~shall must~~ state the times at which it will be available to the public for inspection and copying at the office of the city auditor.
3. The governing body of a city, a city zoning commission, and a board of adjustment shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the governing body, commission, or board.

SECTION 4. AMENDMENT. Section 40-48-21 of the North Dakota Century Code is amended and reenacted as follows:

40-48-21. Approval of plats by commission - Hearings - Notice - Effect.

Within thirty days after the submission of a plat, the planning commission shall approve or disapprove ~~it the~~ the plat. If the plat is not approved or disapproved within ~~such that~~ that time, ~~it shall be the plat is~~ the plat is deemed to have been approved, and a certificate to that effect ~~shall must~~ be issued by the commission on demand. The applicant, however, may waive the requirement that the commission ~~shall~~ act within thirty days and may consent to an extension of ~~such the~~ the period. ~~The ground~~ The commission shall state the grounds upon which any plat is approved or disapproved

~~shall be stated upon, and written findings upon which the decision is based must be included within the records of the commission. Any plat submitted to the commission shall must contain the name and address of a person an individual to whom notice of a hearing shall must be sent. No action shall may be taken by the commission upon any plat until # the commission has afforded a hearing thereon. At least five days before the date fixed for such the hearing, a notice of the time and place of such the hearing shall must be sent by registered or certified mail to the address shown on the plat. Public notice of all such hearings also shall must be given. Every plat approved by the commission may be adopted by the commission as an amendment of or addition to the master plan without further hearing.~~

SECTION 5. AMENDMENT. Section 58-03-13 of the North Dakota Century Code is amended and reenacted as follows:

58-03-13. Township zoning commissions - Membership - Reports and recommendations - District boundaries - Hearings - Notice. The board of township supervisors of a township desiring to avail itself of the powers conferred by sections 58-03-11 through 58-03-15 shall establish, by resolution, a township zoning commission to recommend the boundaries of the various township zoning districts and appropriate regulations and restrictions to be established therein. Membership of ~~such the~~ commission must consist of three township supervisors and two members appointed from the municipalities concerned in relation to which ~~such the~~ zoning is contemplated. Where the area to be regulated and restricted is situated in two or more townships, a joint zoning commission may be established. Membership of a joint zoning commission must consist of two township supervisors from each township and two members from the municipality in relation to which ~~such the~~ zoning is contemplated. ~~Each such~~ A zoning commission shall make a preliminary report and hold public hearings ~~thereon~~ before submitting its final report and recommendations to the board or boards of township supervisors. The board or boards of township supervisors may ~~thereupon~~ establish, and from time to time change, the boundaries of township zoning districts and establish, amend, supplement, and enforce regulations and restrictions in ~~such the~~ districts. No regulation, restriction, or boundaries become effective until after a public hearing ~~thereon~~ at which parties in interest and citizens have an opportunity to be heard. At least fifteen days' notice of the time and place of ~~such the~~ hearing must be published in the official newspaper of the county and also in the official newspaper of the municipality in relation to which ~~such the~~ zoning action is taken, if in ~~such the~~ municipality an official newspaper other than the official newspaper of the county is published. The description of any land within any zoning district established by a zoning commission together with any regulations and restrictions established ~~therein~~ must be filed with the governing bodies of the township and municipalities concerned, and ~~in the event~~ if amendments are made to the boundaries of the zoning district or the regulations or restrictions ~~established therein, such the~~ amendments must be filed in the same manner. A zoning commission established under this section and a board of township supervisors shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the commission or board.

Approved March 12, 2007
Filed March 13, 2007

CHAPTER 108**HOUSE BILL NO. 1420**

(Representatives Brandenburg, Aarsvold, Froelich)
(Senator Erbele)

COUNTY AND TOWNSHIP FEEDLOT ZONING

AN ACT to create and enact section 11-33-02.1, a new section to chapter 11-33, section 58-03-11.1, and a new section to chapter 58-03 of the North Dakota Century Code, relating to regulations by a board of county commissioners and by a board of township supervisors; and to amend and reenact section 11-33-02, subdivision c of subsection 2 of section 23-25-11, and section 58-03-11 of the North Dakota Century Code, relating to the designation of districts by a board of county commissioners and to the establishment of districts by a board of township supervisors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

4. For any or all of the purposes designated in section 11-33-01, the board of county commissioners may divide by resolution all or any parts of the county, subject to ~~section~~ sections 11-33-02.1 and 11-33-20, into districts of such number, shape, and area as may be determined necessary, and likewise may enact suitable regulations to carry out the purposes of this chapter. These regulations must be uniform in each district, but the regulations in one district may differ from those in other districts. ~~A regulation or restriction may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming or ranching. For purposes of this section, "farming or ranching" means cultivating land for production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include producing timber or forest products, nor does the term include a contract whereby a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services.~~
2. ~~A board of county commissioners may regulate the nature and scope of concentrated feeding operations permissible in the county; however, if a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of county commissioners shall declare that the regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.~~
3. ~~A regulation may not preclude the development of a concentrated feeding operation in the county. A regulation addressing the development of a concentrated feeding operation in the county may set~~

reasonable standards, based on the size of the operation, to govern its location.

4. For purposes of this section, "concentrated feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle. For purposes of this section, "livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.
5. A board of county commissioners may not prohibit, through regulation, the reasonable diversification or expansion of a farming or ranching operation.
6. This chapter does not include any power relating to the establishment, repair, and maintenance of highways or roads.

SECTION 2. Section 11-33-02.1 of the North Dakota Century Code is created and enacted as follows:

11-33-02.1. Farming and ranching regulations - Requirements - Limitations - Definitions.

1. For purposes of this section:
 - a. "Concentrated feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate. The term does not include normal wintering operations for cattle.
 - b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:
 - (1) The production of timber or forest products; or
 - (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.
 - c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.
 - d. "Location" means the setback distance between a structure, fence, or other boundary enclosing a concentrated feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the

application of other recycled agricultural material under a nutrient management plan approved by the department of health.

2. For purposes of this section, animal units are determined as follows:
 - a. One mature dairy cow, whether milking or dry, equals 1.33 animal units;
 - b. One dairy cow, heifer, or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;
 - c. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
 - d. One cow-calf pair equals 1.0 animal unit;
 - e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
 - f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
 - g. One horse equals 2.0 animal units;
 - h. One sheep or lamb equals 0.1 animal unit;
 - i. One turkey equals 0.0182 animal unit;
 - j. One chicken, other than a laying hen, equals 0.008 animal unit;
 - k. One laying hen equals 0.012 animal unit;
 - l. One duck equals 0.033 animal unit; and
 - m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight.
3. A board of county commissioners may not prohibit or prevent the use of land or buildings for farming or ranching and may not prohibit or prevent any of the normal incidents of farming or ranching.
4. A board of county commissioners may not preclude the development of a concentrated feeding operation in the county.
5. A board of county commissioners may not prohibit the reasonable diversification or expansion of a farming or ranching operation.
6. A board of county commissioners may adopt regulations that establish different standards for the location of concentrated feeding operations based on the size of the operation and the species and type being fed.
7. If a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of county commissioners shall declare that the

regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.

8. a. A board of county commissioners may establish high-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are less than those in other districts.
- b. A board of county commissioners may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one and one-half miles [2.40 kilometers] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.
- c. The setbacks provided for in this subsection may not vary by more than fifty percent from those established in subdivision a of subsection 7 of section 23-25-11.
- d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by a concentrated feeding operation.

SECTION 3. A new section to chapter 11-33 of the North Dakota Century Code is created and enacted as follows:

Highways - Roads. This chapter does not include any power relating to the role of the board of county commissioners in the establishment, repair, or maintenance of highways or roads.

SECTION 4. AMENDMENT. Subdivision c of subsection 2 of section 23-25-11 of the North Dakota Century Code is amended and reenacted as follows:

- c. If a county or township has zoned or established a setback distance for an animal feeding operation which is greater than one-half mile [.80 kilometer] under either section ~~44-33-02~~ or ~~58-03-11~~ 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is greater than one-half mile [.80 kilometer], measurements for compliance with the seven odor concentration units standard must be taken at the setback distance rather than one-half mile [.80 kilometer] from the facility under subdivision b, except for any residence, church, school, business, public building, park, or campground within the setback distance which was built or established before the animal feeding operation was established, unless the animal feeding operation has obtained an odor easement from the preexisting facility.

SECTION 5. AMENDMENT. Section 58-03-11 of the North Dakota Century Code is amended and reenacted as follows:

58-03-11. Establishment of zoning districts - Limitation - Scope of zoning regulations and restrictions Uniformity.

4. For the purpose of promoting the health, safety, morals, or the general welfare, or to secure the orderly development of approaches to municipalities, the board of township supervisors may establish one or more zoning districts and within such districts may, subject to the provisions of chapter 54-21.3 and section 58-03-11.1, regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, the height, number of stories, and size of buildings and structures, the percentage of lot that may be occupied, the size of courts, yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. All such regulations and restrictions must be uniform throughout each district, but the regulations and restrictions in one district may differ from those in other districts. The board of township supervisors may establish institutional controls that address environmental concerns with the state department of health as provided in section 23-20.3-03.1.
2. A regulation or restriction may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming or ranching. For purposes of this section, "farming or ranching" means cultivating land for production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include producing timber or forest products, nor does the term include a contract whereby a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services.
3. A board of township supervisors may regulate the nature and scope of concentrated feeding operations permissible in the township; however, if a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of township supervisors shall declare that the regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.
4. A regulation may not preclude the development of a concentrated feeding operation in the township. A regulation addressing the development of a concentrated feeding operation in the township may set reasonable standards, based on the size of the operation, to govern its location.
5. For purposes of this section, "concentrated feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle. For purposes of this section, "livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.

6. ~~A board of township supervisors may not prohibit, through regulation, the reasonable diversification or expansion of a farming or ranching operation.~~
7. ~~Sections 58-03-11 through 58-03-15 do not include any power relating to the establishment, repair, and maintenance of highways or roads.~~

SECTION 6. Section 58-03-11.1 of the North Dakota Century Code is created and enacted as follows:

58-03-11.1. Farming and ranching regulations - Requirements - Limitations - Definitions.

1. For purposes of this section:
 - a. "Concentrated feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate. The term does not include normal wintering operations for cattle.
 - b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:
 - (1) The production of timber or forest products; or
 - (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.
 - c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.
 - d. "Location" means the setback distance between a structure, fence, or other boundary enclosing a concentrated feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled agricultural material under a nutrient management plan approved by the department of health.
2. For purposes of this section, animal units are determined as follows:
 - a. One mature dairy cow, whether milking or dry, equals 1.33 animal units;
 - b. One dairy cow, heifer, or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;
 - c. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;

- d. One cow-calf pair equals 1.0 animal unit;
 - e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
 - f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
 - g. One horse equals 2.0 animal units;
 - h. One sheep or lamb equals 0.1 animal unit;
 - i. One turkey equals 0.0182 animal unit;
 - j. One chicken, other than a laying hen, equals 0.008 animal unit;
 - k. One laying hen equals 0.012 animal unit;
 - l. One duck equals 0.033 animal unit; and
 - m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight.
3. A board of township supervisors may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming or ranching.
4. A regulation may not preclude the development of a concentrated feeding operation in the township.
5. A board of township supervisors may not prohibit the reasonable diversification or expansion of a farming or ranching operation.
6. A board of township supervisors may adopt regulations that establish different standards for the location of concentrated feeding operations based on the size of the operation and the species and type being fed.
7. If a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of township supervisors shall declare that the regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.
8. a. A board of township supervisors may establish high-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are less than those in other districts.
- b. A board of township supervisors may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one-half mile [0.80 kilometer] from the edge of

the area zoned for residential, recreational, or nonagricultural commercial uses.

- c. The setbacks provided for in this subsection may not vary by more than fifty percent from those established in subdivision a of subsection 7 of section 23-25-11.
- d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by a concentrated feeding operation.

SECTION 7. A new section to chapter 58-03 of the North Dakota Century Code is created and enacted as follows:

Highways - Roads. Sections 58-03-11 through 58-03-15 do not include any power relating to the role of the board of township supervisors in the establishment, repair, or maintenance of highways or roads.

Approved April 17, 2007
Filed April 18, 2007

CHAPTER 109**SENATE BILL NO. 2278**

(Senators Wanzek, Heitkamp, Klein)
(Representatives Belter, Boe, D. Johnson)

**CONCENTRATED ANIMAL FEEDING OPERATION
ZONING**

AN ACT to create and enact a new section to chapter 11-33, a new section to chapter 23-01, and a new section to chapter 58-03 of the North Dakota Century Code, relating to county and township zoning regulation of concentrated animal feeding operations and a repository for zoning regulations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 11-33 of the North Dakota Century Code is created and enacted as follows:

Regulation of concentrated animal feeding operations - Central repository.

1. Any zoning regulation that pertains to a concentrated animal feeding operation and which is promulgated by a county after July 31, 2007, is not effective until filed with the state department of health for inclusion in the central repository established under section 2 of the Act. Any zoning regulation that pertains to concentrated animal feeding operations and which was promulgated by a county before August 1, 2007, may not be enforced until the regulation is filed with the state department of health for inclusion in the central repository.
2. For purposes of this section:
 - a. "Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.
 - b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.

SECTION 2. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Zoning regulation of concentrated animal feeding operations - Central repository. The state department of health shall establish, operate, and maintain an electronically accessible central repository for all county and township zoning regulations that pertain to concentrated animal feeding operations. The county auditor of a county and the township clerk of a township having a zoning regulation

that pertains to concentrated animal feeding operations shall file the regulation with the department of health for inclusion in the central repository.

SECTION 3. A new section to chapter 58-03 of the North Dakota Century Code is created and enacted as follows:

Regulation of concentrated animal feeding operations - Central repository.

1. Any zoning regulation that pertains to a concentrated animal feeding operation and which is promulgated by a township after July 31, 2007, is not effective until filed with the state department of health for inclusion in the central repository established under section 2 of this Act. Any zoning regulation that pertains to a concentrated animal feeding operation and which was promulgated by a county or a township before August 1, 2007, may not be enforced until the regulation is filed with the state department of health for inclusion in the central repository.
2. For purposes of this section:
 - a. "Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.
 - b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.

Approved April 26, 2007

Filed April 27, 2007