

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

233 /

2007 SENATE AGRICULTURE

SB 2331

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2331

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 8, 2007

Recorder Job Number: 3211

Committee Clerk Signature

Cassie Krow

Minutes:

Sen. Flakoll opened on the hearing on SB 2331, a bill relating to authority of the state department of health to regulate health and environmental impacts of animal feeding and agricultural operations. Members (6) present, absent (1)-**Sen. Heckaman**.

Sen. Erbele, district 28, testified in favor of the bill.

Sen. Erbele- I am here to introduce this bill, it is a bill that I see as a animal agriculture promotion and also a agriculture protection bill as I view it. The bill is going to clarify what is already in code, what duty would belong to the local government and what duty would belong to the state health department. I believe that we are on the cusp of some very exciting things in ND when it comes to agriculture. The intent of this bill is not to restrict local governments at all in any way, it doesn't take from them what is already in code. Local governments can and should determine the nature scope and location of their Ag enterprises and this does not diminish that in any way. I view this strongly as a Ag promotion and protection bill and I ask for your full consideration.

Sen. Wanzek, district 29, testified in favor of the bill.

Sen. Wanzek- The only thing that I would like to say is that it is my belief that this is only trying to firm what I believe is already law. I am hopeful that it will do just that.

Rep. Heller, district 33, testified in favor of the bill.

Rep. Heller- I realize the importance of having uniform rules governing environmental health regulations regarding animal feeding. This is very important to the future of ND economy.

Rep. Brandenburg, district 28, testified in favor of the bill. See attached newspaper article.

Rep. Brandenburg- I stand in support of this bill, if we are on the threshold now of ethanol and bio diesel plants coming online it is like a 3 legged stool in order for those to survive we need to deal with animal agriculture and the by products that come off those plants.

Lance Brower, NDSU extension center, testified in favor of the bill. See attached testimony.

Pam Brekke, county commissioner from Ramsey county, testified in favor of the bill. See attached testimony.

Paul Ivesdahl, farmer, testified in favor of the bill. See attached testimony.

Wes Klein, livestock producer, testified in favor of the bill. See attached testimony.

Jerry Jeffers, representing himself, testified in favor of the bill. See attached testimony.

Sen. Wanzek- as a zoning board member do you understand that the current state law basically limits the township and counties authority to zone only location based on size?

Jerry Jeffers- I do understand that and I don't feel that in my capacity that I have the authority or the expertise to do anything else so I am glad that that regulation is there.

Sen. Klein- what I am hearing today is that some confusion has come in and with this we can help straighten that out, is that what your hope is with this bill?

Jerry Jeffers- yes, I really hope that this will help us.

Dan Plemel, farmer, testified in favor of the bill.

Dan Plemel- I come to support this bill, it is to easy for a township or county board to get high-jacked by one or two people if the state doesn't take the lead on this. I ask for a do pass.

Sen. Wanzek- it appears that Ramsey county has somewhat gone outside the counties of state law, have you sought any kind of relief through the courts?

Dan Plemel- that is what we are in the process of doing now.

Jim Givens, farmer, testified in favor of the bill.

Jim Givens- Dealing with our farm we are finding that it is extremely difficult to obtain permits and find locations where we can expand our business. We would like to get a permit to expand our nursery sight, we find that it is impossible because of delays as they study environmental issues. I feel that they are not really doing the study that is more or less just a way to put us off. We have developed a working relationship with the health department, we find that they are fair and concise but they are pretty firm in their convictions. I think that we are well regulated and I would ask that you do a do pass on this bill.

Sen. Klein- has technology given you the opportunity to improve the smell problem?

Jim Givens- there is a certain amount of odor with any animal agriculture, I think that there is ways that the odor problem can be made less obvious but they are not going to be totally eliminated.

Sen. Klein- would you say that the odor comes more from the pigs then the cows?

Jim Givens- probably.

Sen. Taylor- how has your experience been as far as your township and county officials in zoning or are you just working under state regulation without any increase regulation on the local level?

Jim Givens- the local level has a comprehensive zoning law now passed. We are in the 2nd 6 months of the environmental issues that they are supposedly studying.

Paul Thomas, farmer, testified in favor of the bill. See attached testimony.

Wade Moser, ND stockmen's association, testified in favor of the bill.

Wade Moser- We do support this bill, we think that as this bill and others that have been introduced are trying to clarify the responsibilities not take any authority or responsibility away from anyone. Keep in mind in our industry we live where we work and we depend on the environment being healthy and safe for our children. I also want to remind the committee that I don't think that there is a legislative district that did not campaign on some type of property tax issues this time around. If you start issuing responsibilities to the health department and then you issue some responsibilities to the counties or townships, if they are going to take that authority they have to take the responsibility to regulate it which would include adding more staff and time. We have yet to see or hear of any examples where the health department has failed to do their job, I think that is important as we go through this that we need to clarify that.

Brian Kramer, representing NDFU, testified in favor of the bill. See attached testimony.

Sen. Klein- I think you highlight the nature and scope of what we are bringing forth here, do want to just kind of give use an example of what you are looking for and why we need to have that clarity?

Brian Kramer- I think there has been some misunderstanding by some of the counties and townships out there as to what scope and nature really mean. Scope is defined as the size of an operation and nature is the type of animal, basically that is what is placed in the bill that you have before you. I think there has been some misconceptions as to what those things are out there and if we can find it very closely like that both the counties and the townships along with the health department will know what those terms mean and therefore will be able to adjust their ordinances accordingly.

Kent Albers, representing Ag Coalition, testified in favor of the bill. See attached testimony.

Testimony was also submitted in favor of the bill by **Scott Nelson**, **Tracton Lewis**, and **Gordon Nelson**, see attached testimony.

Harvey Hope, county commissioner, testified in opposition to the bill. See attached testimony.

Barb Price, organizer for Dakota Resource Council, testified in opposition of the bill. See attached testimony.

Ken Teubner, Towner county commissioner and the current president of the ND association of Counties, testified in opposition of the bill. See attached testimony.

Sen. Erbele- you talk about county official knowing that large animal feeding operations are not properly sited, how do you know when they are not properly sited?

Ken Teubner- if they go out of business or something like that.

Sen. Erbele- but the siteing had nothing to do with them going out of business?

Ken Teubner- no.

Sen. Wanzek- I think that if you would go in the record and read the current law it basically narrows it down to the county and township having some say so on the location, I am trying to understand how this is going beyond what the current law is.

Ken Teubner- the only thing that I could say on that is that we leave a crack in the door for that kind of thing to happen, let the health department have a little bit of territory, pretty soon then the door will go wide open and they will have full control and the local people will not have anything to say about what is going on out there and that is the biggest concern that I am hearing out there from the people out in our area and around the state.

Sen. Klein- how is the county going to provide the kind of information I hear you say that you are going to be doing?

Ken Teubner- we don't want the health department to not have any part of this, we know that we need them to work in the water area we don't have the expertise in that area but NDSU does with the waste and soils and those sort of thing. We just want to make sure the counties and the townships still have the ground floor on this issue.

Sen. Erbele- what do you have at the county level if you want to have something different then geological science and soil surveys, do you have that type of expertise, do you want to hire a staff to do that?

Ken Teubner- at this time we have contacted an individual to do some of that study for us, he was an animal scientist at NDSU. At this time we haven't had to put any of that in place.

Sen. Taylor- do you currently as a county require bonds for any cleanup?

Ken Teubner- the two that we have in the county right now were grandfathered in so we don't have any control of what is going on with them right now.

Sen. Taylor- and you feel that under 23.31 you would be recluded from doing that?

Ken Teubner- it is a possibility that it could happen I think.

Joe Belford, Ramsey county commissioner, testified in opposition of the bill. See attached testimony.

Sen. Klein- do you really think that it needs to be studied and why do they think that it needs to be studied more?

Joe Belford- I think because all areas are different and that it needs different language to protect different areas.

Sen. Klein- even with a 5 year renewal wouldn't that make it very difficult to get financing when you don't know if you are going to be around after the 5 years?

Joe Belford- that was part of a committee of our planning and zoning recommendation of the commission, you are very possibly right.

Sen. Wanzek- I am still trying to figure out how what it says in the century code is different to the bill?

Joe Belford- I work everyday with the health department, they are understaffed with what is happening in the state they need more people.

Ken Yantes, executive secretary of the ND township officers association, testified in opposition to the bill. See attached testimony.

Richard Schlosser, NDFU, testified in opposition to the bill. See attached testimony.

Sen. Wanzek- do you think the local people do not have enough say so even though they have the ability to determine the location?

Richard Schlosser- the question our mind is if you can determine location or what purpose, apparently this bill says they can not site environmental or health reasons in using those particular criteria, that is what a question in our mind.

David Glatt, chief of the Environmental health section for the ND department of Health, testified in opposition to the bill. See attached testimony.

Sen. Erbele- is there nothing in this bill that would restrict the compatible use component of the local governments is there?

David Glatt- I don't see that, we would still have to go to the counties to do the nature, scope and location.

Sen. Wanzek- I am still struggling with where does the county get the resources and if they have the ability to zone location we give them a lot. Do you think that you have the resources to provide expertise to counties or if not maybe we should be funding more money to the health department.

David Glatt- even though we go through our environmental review process the county can come up and say this is not compatible land use and we don't have that expertise and local knowledge of what is going on and that is very critical for that to happen and that has to happen. So that is where we work hand and hand with them. The second issue there is that if it is sited appropriately geologically and it is engineered appropriately the issues regarding environmental contamination are minimized greatly, so the siting is critical in that portion. On

our larger facilities we do annual inspections. If we are going to double the number of facilities we have we may have to see how our resources are being used so that we can make sure that we can still go out and do those inspections.

Sen. Klein- was the operation in Ramsey county that we focusing on, was that permitted by the health department?

David Glatt- we did permit it under our regulations, it wasn't allowed to go forward cause the local zoning was still the critical portion that had to happen.

Sen. Klein- don't you take in every consideration as you are moving this forward?

David Glatt- the health department does have concern regarding the lake, that has not been an easy issue. We do take that into consideration into our rules as it related to the protection of surface and ground water quality. As we get into odors, that is where the set backs came back and that was very important for us to have that set back.

Sen. Taylor- would you instigate monitoring if there was local complaints, would you treat that like you would an odor complaint, what is the process there?

David Glatt- we have required monitoring in those cases and a lot of time the operator is more then happy to do that cause it shows that the operation is working well. Again it goes back to the siteing.

Testimony was also submitted in opposition to the bill by **Gayle Jastrzebski, Ginny Botz-Taylor, and Barbe Botz-Thompson.** See attached testimony.

Sen. Flakoll closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2331

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 8, 2007

Recorder Job Number: 3221

Committee Clerk Signature

Missie Krow

Minutes:

Sen. Flakoll opened discussion on SB 2331.

Sen. Erbele- I have some potential amendments to the bill. (passed out and went over amendments for the committee to review) I also will pass out an unofficial document so that we can kind of see what is going on in the house too that somewhat has something to do with this bill.

Sen. Flakoll- so these are the Erbele amendments then? So the counties and townships can't determine where something is going to be at?

Sen. Erbele- yes they can.

Sen. Klein- that was one of the issues with the townships, the last sentences that seemed to conflict with a different part of the language.

Sen. Erbele- by placing the word solely up at the top would pretty well address the lines 15-17.

Sen. Flakoll- Sen. Erbele you probably have the most knowledge on what is going on in the house with this, what is thinking as far as reconciling these two?

Sen. Erbele- there have been discussions on that, on the onset we thought there would be parts where both bills would need to merge and we would come out with one bill but as we got into the process they are dealing strictly in sections in the code that deal with townships and

county regulation and the other deals with department of health regulations. We just felt that is better to have two separate bills both being very clear in their statements.

Sen. Flakoll- when they introduced them at first were they exactly the same?

Sen. Erbele- they were very similar, they have done some major changes to it which have moved it away from the similarities from this bill.

Sen. Wanzek- I received a note from the attorney generals office that their recollection is exactly in line of what I have been saying. This bill originally started out 8 years ago as a animal agriculture right to farm, and against the sponsors at that time it moved more to the middle where it did allow the townships and counties to have some zoning authority if animal feedlot reached a certain size only in the area of location. The intent was to make sure that counties and townships could not restrict or prohibit the development of confined animal feedlot. We did give them authority to do some zoning based on location. In my opinion we are not taking powers away from them. I think it was a compromise at that time to somehow allow the development of these projects by still giving some control to the local people and determining where they might be located. It wasn't the intent when we drafted it to allow them to throw a whole bunch more stuff in there.

Sen. Klein- I think that once the law and things are put in effect they see how things work or don't work and that is why the changes are being brought up.

Sen. Taylor- I think amendment changes would be good. As you read I wonder if we need the scope and location in 23.01 cause it already says that in 11.33 and 58.03. As far as cleaning this bill up I think that we could lose another sentence there.

Sen. Erbele- it doesn't hurt to leave it there cause when you open the code book then we can say that it says counties and townships and then that is a trigger to go back to the county township section of the code. I think it just helps to tie the two together.

Sen. Taylor- did the legislative council say anything about where it says that the state department is responsible, I think that it is kind of clear that we could say is solely responsible. But is one more clear then the other or do they both say the same thing?

Sen. Erbele- I think that we keep it here to make it more clear.

Sen. Wanzek- certainly I think that we all understand the issue of local control and on the other hand I would sure like to see our state move forward in some type of unified way. I am thinking that when we get into the power to control location that we are giving them above and beyond, the state can even say that environmentally that site is adequate and will work but the county or the township can say wait a minute we have some other interests here that would concern us with that site and if they can lay their case out. I go back and that was the compromise and I think that they misinterpret the law to say more then that.

Sen. Taylor- I think that it is good that 14.20 goes into 11.33 or 58.03 and defines location, I think that is important. In general I think some things that will help animal agriculture is what we want to do. There are going to be parts of the state that are gong to zone in such a way that they are going to be very attractive to these operations and I think that maybe the market would kind of settle it out too.

Sen. Behm- we want to move ahead and create more jobs in the state, especially in agriculture. I don't think that we are taking that much away from either one of them.

Sen. Wanzek- I think that there is incentive on a developers part to want to do this, they don't want to get down the road and face lawsuits and such. I don't believe that anyone is pushing or promoting or trying to force responsible type projects on to anybody. There is a good reason why those developers want to do it right as well.

Sen. Flakoll closed the discussion.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2331

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 9, 2007

Recorder Job Number: 3287

Committee Clerk Signature

Cassu Krow

Minutes:

Sen. Flakoll opened discussion on SB 2331.

Sen. Erbele- after talking with Sen. Taylor, do understand what he was saying. I think there would be better clarification if we took out the lines starting on line 11 starting with the word counties all the way to the end. Then we have a short bill and what we are saying is very clearly stated.

Sen. Behm- what is the reasoning that you are taking this out?

Sen. Erbele- it is already clearly stated in a bill in the house.

Sen. Klein- that should really make it better cause that is a problem that I was hearing concerning the townships and counties.

Sen. Heckaman- when my counties are emailing me and saying do not pass this bill are they going to like what is left here or to not like it.

Sen. Flakoll- it depends on who you talk to in the county.

Sen. Heckaman- what they are concerned about are the clean up costs afterwards, is that an issue in this bill?

Sen. Erbele- I don't see cleanup being addressed anywhere.

Sen. Behm- didn't i hear someone yesterday say that if the hog operation would bust the county could be responsible for cleaning it up?

Sen. Klein- I don't think that it was brought out whose responsibility that was but I think that the whole issue surrounds the fact that the counties have the option of telling them that this isn't a good location, they are still going to have that option. I think the whole discussion is, is the health department in charge of the health regulations in the state of ND. So they in turn will be monitoring these projects to make sure the ground is good or if a liner will be required and such. The bonding side I thought the state was responsible for some of that, but I don't think so.

Sen. Behm- I thought that somebody said that the townships did not want that responsibility, and then this morning all my emails are opposite they said don't take the local authority out of it, so I don't know what I should do.

Sen. Taylor- on the amendment, regardless of where you land on this issue it is good for the bill. The intent of the bill is still there with the language that is left, the amendment should be adopted for the clarity of the bill. On the bonding issue I think that is another point for the bill itself.

Sen. Wanzek- as far as who is responsible, the developer would be responsible. Where we are getting confused with nature and scope is what we wanted to do when we passed this law in 1999, once a feedlot got to a certain size and nature that triggered the ability of the local subdivision to only zone the location. The law clearly states in ND that no subdivision can pass a regulation or law zoning out ranching, feeding etc. but if it reaches a certain size or scope then they can at least zone location.

Sen. Taylor- the section that we are dealing with here is the state health departments section of the code, I think the location nature scope does belong.

Sen. Flakoll- one of my concerns is if it is in the house bill it could get killed on the floor and then we would be back at square one.

Sen. Erbele- if you look at the unofficial from the house that I handed out yesterday on page 2 when it is referencing section 58 and then I draw your attention to the very last line, which is the section of the code that we are dealing with in this bill. Whatever it says in 58 is referencing back to 23 and essentially ties it all together.

Sen. Klein- to get back to the original intent of the bill is to clarify what the counties and townships can or cant do. I think the whole issue and why it came forward is because that the counties saw things out there that they thought they could do that we believe that they never had that opportunity to do and that we never gave them that regulation and that they don't have the expertise in that area. When we are starting to allow the counties to try to figure out what the health issue should be, I was disappointed that they did not think that the health department wasn't doing their job because they are short handed, I thought that was kind of a slap at them. I think in the bill we are just trying to clarify who does what, this doesn't change anything. We are not doing anything different then what the law is it is just more clearly so that everyone knows whose job is what, isn't that what we are doing?

Sen. Erbele- yes.

Sen. Taylor- I haven't followed the lawsuit but isn't the lawsuit pending also going to clarify what is already in code when we talk about reasonable regulations from the county level?

Sen. Wanzek- I know that the intent was only to give them the opportunity to zone or regulate locations once a project reaches certain nature and scope. Somehow that all got twisted around. I would like to put in there that they are limited to location of animal feeding operations based on their nature and scope.

Sen. Flakoll-it seems like we are talking about a lot of things that are out of our league.

Sen. Behm- the purpose for not being able to zone anyone until they reach a certain size is because then they would become a commercial operation right?

Sen. Wanzek- when this was all percentage less and we studied the laws it was at the time it basically being that ND is an agricultural state and farmers sometimes are sacred code it stated that in the law that no local subdivision can zone out any form of agriculture. Now we are faced with these new larger feedlots and we thought at the time that with the nature and scope of these type of feedlots and the size we should at least give some regulatory authority over zoning their location. I think that once we realize what the current law is and what the original intent of it was then we can either move one direction or the other.

Sen. Flakoll closed the discussion.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2331

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 9, 2007

Recorder Job Number: 3288

Committee Clerk Signature



Minutes:

Sen. Flakoll opened discussion on SB 2331.

Sen. Flakoll asked **Anita Thomas** from legislative council to come to the podium to answer questions for the committee.

Sen. Taylor- on this bill we have been discussing the language from halfway into line 11 on down, here we are in 23.01 which is the health department section and we are getting into definitions and responsibilities for counties and townships, which some of this I think is already existing language in either 11.33 or 58.03 our discussion is to remove some of this particularly line 13 on down. My main question is, is it appropriate to have all this county and township language here in 23.01?

Anita Thomas- it makes it somewhat confusing when you start looking at what one agency is suppose to do and vary those directives, so if you are looking at powers and duties of counties and townships it would be much more appropriate to go into that particular area of the law and say this is what a county can and can not do and this is what a township can and can not do.

The same thing if there is something specific that you want to health department to do or not to do. We would be happy to work with you in terms of the content and then find an appropriate placement if you wish to go that route.

Sen. Klein- so striking from after the chapter quotation on line 11 and taking all those lines out would kind of clean this up? Because those are the lines that reference the counties and townships responsibilities but I believe are also listed in some other section of the code.

Anita Thomas- that is correct and likewise in my recollection the chapters that are listed between lines 10 and 11 that is already stated as what the health department is suppose to do.

Sen. Klein- one other question is that there is a lawsuit in Ramsey county and whatever we would do here today doesn't have any varying on what the courts would look at what the law was does it?

Anita Thomas- in a normal situation the facts are by the law as it was at the time, this particular case I don't know how they are looking at that but normally it would be the law that it was on the time.

Sen. Heckaman- we had gone around about maybe taking out the work agricultural operations on line 3 and line 8, what impact does that have on agricultural operations?

Anita Thomas- I think it goes back to my earlier comment if you already have sections of the law that are titled then you should leave the material in those titles.

Sen. Flakoll closed the discussion.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2331

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 9, 2007

Recorder Job Number: 3290

Committee Clerk Signature

CASSA KROH

Minutes:

Sen. Flakoll opened discussion on SB 2331.

Sen. Flakoll called Lyle an assistant attorney general to the podium to answer questions for the committee.

Lyle- I have been working on these issues for a number of years so if you have questions I will be happy to answer them.

Sen. Wanzek- in my mind before we act on anything we need to establish what the intent was back in 1999 and why we had the bill before us. As I recall the intent was first to make sure that no local subdivision could rule out animal agriculture of any sort. The second issue was, well we accepted that once they reach a certain size in nature and scope that maybe there should be some rights of the local subdivisions to do some zoning but only in determining the location. That is how I remember it. The law before that said that no local subdivision had any authority to zone out any agriculture. We are just trying to clarify that when it comes to these confined animal feed lots we want to make sure that they can not zone them out, they can not deny them from being in that county, however we do recognize that they might need to have some power to determine where the location is because of their nature and scope. Is that how you recall it?

Lyle- yes, that is how I recall it. (handed out papers for the committee and went over them with the committee, see attached)

Sen. Erbele- if the intent of this bill is field preemption then we can go all the way down to line 13 and then from there on we can over strike cause those are just definitions which aren't really compatible with HB1420's attempts at definitions, but we the are saying that the health department does the environmental thing and then we do that disclaimer by restating that the counties cant do nature?

Lyle- I think that if you do mean field preemption because there are some environmental considerations that are part of locations so you have to make sure that you say we are preempting you from that field but we are not saying by doing that that you can not consider those things under that authority that we are giving you whether it is narrow or broad because if you use general language like nature then they are going to say well you can interrupt what nature means if the legislator says nature then the county says that we can exercise the discretion within that narrower scope defined by the legislator. So those are the basic concepts you need to keep in mind when you are drafting, amending and working on this language.

Sen. Taylor- on that same issue the language that you see on the bill that we were starting to cross things out, rather than define or even say nature, scope and location would you just prefer the health department having authority accept what is granted counties and townships in 11.33.02 and 58.03.11, would you actually site that the code rather sits to make it clearer?

Lyle- I would think so but that is up to you. If you don't define nature, scope or location then the issue of whether that language on how broadly that language can be interpreted by counties and townships. But if you don't know if HB1420 is going to pass or not and you want to make clear on that and you want to make that change then you probably need to put that

definition in here until you know what happens to that bill. So when you do find out where you stand on all of those bills you better make sure that at the end you square it up and make sure that everything is consistent otherwise you are creating not regulatory certainty and clarity but more issues about it.

Sen. Wanzek- I can see where even in the county chapter that there is a little confusion. I do believe that the intent at the time was to give them the ability to zone location. Doesn't that give them quite a bit of power, even at saying that they can go above the environmental rules when we say that they can zone location and say that the area wont work because of a number of others.

Lyle- zoning is all about location so what you are trying to do is to get compatible uses where you get you maximum value for everybody out of that property.

Sen. Flakoll- you said the set back was in 23.25.11?

Lyle- there was a set back that was put in there by the last session for any area where a county has not established zoning. So we were having a problem where a lot of areas didn't have set back distances, that wasn't a preemptive law that was something that goes in place in the absence in the action of the county or township, that is a law that only takes effect when the counties or townships have an act that is opposite.

Sen. Flakoll closed the discussion.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2331

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 9, 2007

Recorder Job Number: 3315

Committee Clerk Signature

Cassie Krow

Minutes:

Sen. Flakoll opened discussion on SB 2331.

Sen. Flakoll- I think that it is in your best interest to talk to some people over the weekend, this issue crosses a lot of unique issues. I think that if we took the vote today we would not be out of here in a unanimous fashion. With talking with some people as far as a possible amendment goes here is a diagram example explaining things, time 2:14-3:20(see attached) this would only apply for new siteings, anything that was grandfathered in it would not apply too.

Sen. Wanzek- on the graph are you limiting within 5 miles of the city in a whole circumference only 10,000 heads or will you only allow one site to have more then 10,000 head?

Sen. Flakoll- my thinking that it would be per one individual site.

Sen. Erbele- but you could have 30,000 animals within 5 miles of the city.

Sen. Wanzek- I am curious as to what Minnesota does. How do they do it?

Sen. Taylor- couldn't location within the scope of the bill here, the county could still do this if they have a city of 10,000 and I think they would wouldn't they without us having to do it? I

think any county commission that has a city that size in their county is going to put plenty of space around the city shouldn't they?

Sen. Flakoll- yes, this is all about siteing. But sometimes like in Ramsey county there seems to be differences. If you think there is more appropriate numbers to use on the chart we can talk about it.

Sen. Wanzek- in my mind the only thing that we gave them was the ability to determine a location, a location wont work and I thought the counties would do that. I would think that the city and county would work together on some of that.

Sen. Flakoll- I think a good example would be Burleigh and Morton county, where one might say go ahead and the other may not and they are only across the river from each other.

Sen. Wanzek- so what you are saying is that in the case of confined animal feed lots we want to expand the territorial area that the cities have?

Sen. Flakoll-yes, and those vary by size of city. If HB 1420 is killed this is an in note to open that bill up if it gets killed.

Sen. Wanzek- if HB 1321 gets passed couldn't we put amendments like this on to that?

Sen. Flakoll- we won't get that bill it is a different committee's.

Sen. Flakoll- we will give you an unofficial engrossment to this bill to take with to show people that you would like to talk to about it.(see attached copy)

Sen. Flakoll closed discussion.

Sen. Erbele motioned for a do pass to adopt his amendments and was seconded by **Sen.**

Taylor, roll call vote 1: 7 yea, 0 nay, 0 absent.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2331

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 12, 2007

Recorder Job Number: 3402

Committee Clerk Signature *Cassie Crow*

Minutes:

Sen. Flakoll opened the discussion on SB 2331.

Sen. Heckaman- I have proposed amendments for the bill. After some discussion over the weekend there is a lot of discussion in my district that maybe this would be better to make into a study and look at some of the other things going on within the agencies roll, the commissioners, the township and see if we can come up with something so that we are not so divided on this issue.

Sen. Taylor- was there any consideration on doing a shall study instead of a shall consider? I think that this is one that if it is going to be a study they better study it rather than consider it.

Sen. Heckaman- that is a small change that we can do, when I checked with a few people today they recommended that we said shall.

Sen. Klein- have we not considered studying or have we been studying this issue? I think there is a study.

Sen. Flakoll- does anyone in this room know anything about that?

Sen. Wanzek- I am not aware of anything, we thought that we solved this problem in 1999. I wouldn't object to a study however I will not support a study in replacement of this bill.

Sen. Heckaman- I have one county that has put in a hog operation and if the law is ok the way it is why are we trying to change it, because to me we are penalizing those counties that do not want to do this, and to me if the county wants to do this they have the power to do this right now. So why change any of that and just let this bill go into a study to see how it's working in different areas?

Sen. Taylor- I think the right to farm laws are on the books and I think that the interpretation of those in some counties but it seems to be working in a lot of the examples that I see.

Sen. Heckaman- I think there are some things that kind of turn of these counties with some of the ways that the operations are handled and I am not saying that everyone is going to be the same way.

Sen. Wanzek- these are built on private land, we are going to be taking some degree of responsibility. I think that most people would want to be responsible because the owner is at fault for many things if they screw up. If we could further study some other issues that need to be addressed, still leave the county and townships with the authority to locate, I feel more confident with that the state health department is going to understand the health issues more. If the bill fails the law still protects what I am trying to say. I don't think this issue is gong to be completely settled until the end of the session.

Sen. Flakoll closed the discussion.

Sen. Heckaman motioned to adopt amendments 78341.0103 and was seconded by **Sen.**

Taylor, roll call vote 2: 3 yea, 3 nay, 1 absent.

Sen. Wanzek motioned for a do pass as amended and was seconded by **Sen. Wanzek**, roll call vote 3: 3 yea, 3 nay, 1 absent.

Sen. Taylor motioned for a do not pass and was seconded by **Sen. Heckaman**, roll call vote 4: 3 yea, 3 nay, 1 absent.

Sen. Wanzek motioned to pass amendments without committee recommendation and was seconded by **Sen. Erbele**, roll call vote 5: 6 yea, 0 nay, 1 absent. **Sen. Taylor** was designated to carry the bill to the floor.

PROPOSED AMENDMENTS TO SB NO. 2331

Page 1, line 8, after "is" insert "solely"

Page 1, line 11, after "are" insert "limited to the authority granted to them in sections 11-33-02 and 58-03-11" and remove "responsible for zoning regulations that"

Page 1, remove lines 12 through 17

PROPOSED AMENDMENTS TO SENATE BILL NO. 2331

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study relating to the regulation of concentrated animal feeding operations and agricultural operations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - ANIMAL FEEDING AND AGRICULTURAL OPERATIONS - AUTHORITY TO REGULATE. The legislative council shall consider studying, during the 2007-08 interim, the regulation of concentrated animal feeding operations and agricultural operations. The study should examine the role of state agencies, boards of county commissioners, and boards of township supervisors with respect to the regulation of water, air, solid waste, and any other associated environmental and health impacts. The council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2331: Agriculture Committee (Sen. Flakoll, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2331 was placed on the Sixth order on the calendar.

Page 1, line 8, after "health" insert "solely"

Page 1, line 11, replace "responsible for zoning regulations that" with "limited to the authority granted under sections 11-33-02 and 58-03-11."

Page 1, remove lines 12 through 17

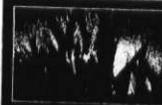
Renumber accordingly

2007 TESTIMONY

SB 2331

Dakota

FARMER



Extra-10-bushel plan for wheat
See Page 16

Time to rethink your insurance
See Page 36



Fight back

By LON TONNESON

WE are standing up and fighting for our right to farm," says Pam Brekke.

She is in the middle of a dispute over ag zoning in North Dakota that may be headed for a showdown in the legislature or the courts.

Brekke farms with her husband, Scot, near Edmore, N.D., and is clerk of the Prospect Township board of supervisors and a member of the Ramsey County commission.

Two years ago, Ramsey County passed a zoning ordinance that opponents say is one of the most restrictive in the state. However, proponents say it provides the best regulation of concentrated animal feeding operations in North Dakota and is necessary to adequately protect Devils Lake, one of the state's largest fisheries and the foundation of the county's multimillion-dollar tourism industry.

The two sides have been fighting over it ever since.

This summer, Prospect Township — located on Ramsey County's northern border, 45 miles from Devils Lake — passed its own zoning law. Then it approved a permit for Viking Pork to build a 5,000-sow farrowing barn in the township.

Chaos coming

"It's going to create chaos," warns Todd Leake, an Emerado, N.D., farmer and member of

Key Points

- Township and county are locked in an ag zoning battle.
- Issue will likely be decided by courts or legislature.
- Outcome will set a precedent for ag zoning statewide.

the Dakota Resource Council, an environmental and farm advocacy group that has worked with counties and townships on zoning. It often opposes large livestock enterprises. "The attorney general needs to look at this closely."

At issue is whether a township can have less restrictive zoning than the county. In most states, that isn't legal. But in North Dakota, township zoning trumps county zoning. Prospect Township's zoning complies with state regulations.

DRC also claims that Prospect Township didn't follow proper hearing notices and failed to adopt important sections of the state's model ordinance.

"Their law isn't legal," Leake says.

Prospect Township pulled a fast one for Viking Pork, Leake says.

"It's happened before in other places — build first and then sort out what's legal. It's just plain wrong."

Line in the sand

Eric Aasmundstad, president, North Dakota Farm Bureau,



ZONING FIGHT: Pam Brekke, standing at the end of her driveway, faces a township vs. county zoning conflict that has major implications for livestock development.

says Ramsey County is the "line in the sand" for livestock development and the right to farm in North Dakota.

How the courts resolve the issue, or how the legislature

reacts, will set a precedent in the state, says Aasmundstad, who lives in Ramsey County and serves on the county planning and zoning committee.

The Ramsey County Farm

Bureau also is suing the county over its zoning ordinance.

"It is going to be a dog fight," Aasmundstad says.

Read more on Pages 6-7.

*****CAR-RT LOT**R-001
18562 12 1240 00000395438
MIKE BRANDENBURG 004
8044 COUNTY ROAD 34
EDGELEY ND 58433-9761



Performance 

AGRICULTURAL HERBICIDES

Around Dakota Ag

Township, county split over zoning

By LONTONNESON

SETBACKS and odor aren't the cause of the clash between Ramsey County and Prospect Township over zoning and livestock development.

At issue are the county's requirements that a person with 1,000 or more animal units in a concentrated feeding operation:

- Resubmit the permit to the county for review every five years.
- Pay a \$4,000 annual fee.
- Agree to pay all reasonable costs in excess of the fee that the county incurs to monitor the site.
- Post a sufficient amount of money, but not less than \$100,000, to be used to clean up the site if the company goes out of business.

What's wrong

These and other measures completely block development of large, modern livestock operations in the county, says Pam Brekke, an Edmore, N.D., farmer and member of both the Ramsey County commission and Prospect Township board.

No one will invest millions in a hog barn or dairy or beef feedlot if the county can shut it down in five years, she says.

No one is willing to turn over his or her operating checkbook

Key Points

- Prospect Township says county went too far with zoning.
- At issue are new requirements for CAFOs.
- The county believes its ordinance is reasonable.



IN DISPUTE: Pam Brekke holds a copy of the Prospect Township zoning ordinance.

to the county. Permit holders have to pay for any monitoring or study a majority of the commissioners decides is reasonable.

Site closure bonds aren't even available to the industry. Asking companies to set aside \$100,000-plus in cash or credit is unreasonable and unnecessary, she says.

Brekke suspects that these provisions were designed to turn away developers without banning livestock feeding outright.

Much of the text of the ordinance apparently comes from an organization called GrassRoots Action Center for the Environment — a fact she learned after the county passed the ordinance, she says.

Among GRACE's many causes is opposition to farms that it defines as factory farms. GRACE helps members block factory-farm projects in their communities.

On its Web site in 2004, GRACE cheered passage of the Ramsey County zoning ordinance and noted that it had provided the text and research for the law, Brekke says. The references have since been removed.

Ramsey County commissioners were told that the county needed a tough law to protect Devils Lake from pollution, Brekke says, but that they could grant variances for applicants who wanted to build in places like Prospect Township, which is 45 miles from Devils Lake.

But when commissioners started talking about a real permit, they learned they could only grant variances on the set-back requirements.

"I was misled," Brekke says.

Lawson: No restrictions on the right to farm

RAMSEY County's ordinance doesn't restrict anyone's right to farm, says Joe Lawson.

Nor does it prevent anyone from building a concentrated animal feeding operation.

The ordinance limits them to appropriate sites and gives the county the power and the money to make sure the operators comply with the regulation, he says.

Lawson, a retired Air Force pilot and retired farmer from Brouck, N.D., serves on the nine-member Ramsey County planning and zoning committee. He took the lead in writing the ordinance.

Lawson says Ramsey County needs stronger enforcement than what the state health department provides. In a written document to the planning commission, he describes those annual inspections as two- to three-hour on-site visits in which officials mostly check nutrient management plan documents.

Having a good plan on paper doesn't mean that it is

being followed, Lawson says.

"We need to verify that the spread areas are not becoming oversaturated with nitrates and phosphates."

Karl Rockeman, an environmental engineer with the state health department, says the department's two inspectors — a third is being hired — visit the state's 60 largest CAFOs an average of four times a year and check the sites and practices thoroughly. "We are not just checking paperwork," he says.

Ramsey County should require that a permit holder clean up a site when it is closed, Lawson continues. Owners of a limited-liability company are personally shielded from liability. At the end of the day, if a company isn't able to provide a performance bond or a standby letter of credit, the applicant probably doesn't have the financial ability to clean up, he says.

Lawson contends that the Ramsey County law is "more than reasonable. It only requires that the county be able

to verify that the permit holder does what he says he will do."

Majority rules

Ramsey County's zoning ordinance was crafted in open, public meetings, Lawson says. People interested in expanding or starting new livestock enterprises participated in the meetings. The nine-member planning committee also received help from livestock and zoning experts.

"Everyone had a place at the table," he says. Some didn't participate, but that was their choice.

The ordinance may have some text that came from the GrassRoots Action Center for the Environment, but Lawson says he looked at 40 different sources of information. The ordinance also has language from the state model ordinance and North Dakota State University recommendations.

The county commission passed the ordinance unanimously, and a majority still supports it today, Lawson points out.

Sierra Club recommends strategy to block CAFOs

By LONTONNESON

THE following is a five-step strategy from the Sierra Club to keep concentrated animal feeding operations from locating near you. The information is reprinted verbatim from the Web site, www.sierraclub.org/factoryfarms/resources/strategies.asp.

1) Use the public comment and review process.

Get on every mailing list possible: Division of Environmental Quality (state environmental agency), USDA/Natural Resources Conservation Service, EPA, Army Corps, county planning and zoning, and any other agency that may have to issue permits or review applications. Scrutinize the public notices and other information sent out on CAFOs — the info may be concealed or listed in such a way that it is not immediately apparent.

Follow up: Provide comments on water quality, air quality, socio-economic issues, whatever. You don't have to be an expert (although soon you will discover that you are becoming one); keep reminding the agencies that they are required not only to listen but to respond to citizens' comments. Get involved in state-level committees and agency working groups that are charged with issues related to water quality, air quality, or CAFOs. Push every button at every level.

Keep commenting and enlist others to join you. Let them know that you are not going away — this falls under the heading of "wearing them down." Sooner or later, you will begin to notice incremental changes in the way things are done, and if enough forces are gathered, the planning and zoning, health departments, and finally the state agencies will begin to respond positively — and may even turn down a permit or make conditions actually protective of the environment (which means that the applicant will likely withdraw).

2) Organize a friendly "letter from the neighbors."

If you learn that a CAFO is moving in or a landowner is about to become a contract grower, one tactic Missouri activists have used successfully is what is now known as the "neighbor letter." Quite simply, all of the adjacent and neighboring landowners send a letter to the company and the potential contract grower telling them that everyone is having their properties appraised; and will have the properties re-appraised nine months after hog production begins. The letter concludes by stating that the neighbors will sue the company and the grower for any loss of property values. The appraisals must be completed and the letter sent prior to the beginning of construction of the facilities.

3) Press for county health ordinances.

Most states won't let counties zone for "agricultural operations." Even though we all know that a CAFO is really an industrial operation, not a farm in any sense, legally these operations are still considered "agricultural." But, all counties have the authority, indeed the duty, to adopt ordinances to protect the public health and welfare, including protection from rank odors and noxious emissions. You and your allies can place pressure upon county commissioners to adopt such ordinances.

4) Use the "threatened or impaired watersheds" process.

Obtain from your state water regulatory agency or the EPA regional offices for your area a copy of the listing of all "impaired water bodies" or the "303(d) list" for your state. Every state has such a list. They can also provide you with a copy of the regulations that govern the impaired water bodies process. No new or expanded CAFOs are allowed to locate in the drainages of impaired water bodies unless very strict standards are met. If you know of such a new or expanding operation in an impaired water body, report this to the state agency, the regional office of EPA, and to the Sierra Club Clean Water Campaign.

5) Sue them.

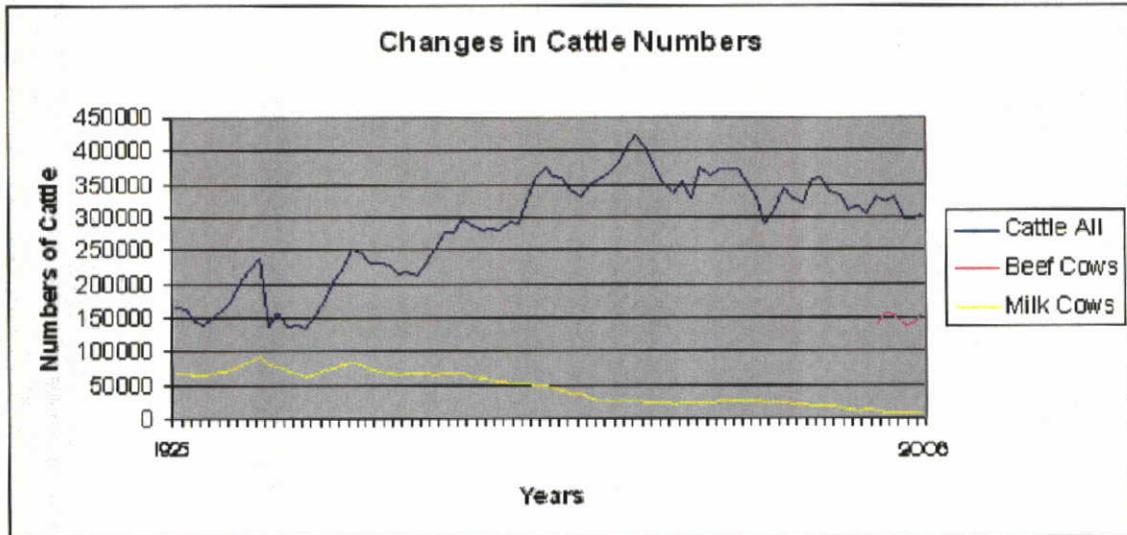
This is not necessarily the last resort. In fact, just filing a lawsuit opens a lot of doors and lets everyone — the agencies, politicians and the CAFO owner or grower — know that you mean business. Suits can be filed under the "citizens suit" provisions of the federal Clean Air Act and Clean Water Act, and legal fees are recoverable (which is how your attorney will get paid). Lawsuits are easier and you are more likely to prevail if a group of plaintiffs files jointly. The problem with a lawsuit is that you may have to show that you have been harmed, which means waiting until after something negative has occurred. Recent cases, however, have prevailed on the basis of a "presumptive nuisance," which means that certain things can be presumed to be a nuisance and there is no need to wait until it happens.

Read more at www.sierraclub.org/factoryfarms/resources/strategies.asp.

Reduction in Livestock Numbers for a Six County Area in North Dakota



Conservative estimates of lost economic effect from the reduction in dairy cows in the Dickey, Emmons, Kidder, LaMoure, Logan, and McIntosh Counties. This report covers the time period of 1934 to 2006. In 1934, there were an estimated 94,000 milk cows in the six counties. Last year there were an estimated 7,300 dairy cows (or less than 8% of the estimated peak number) for the same area. These numbers represent an annual effect.



Lost economic activity from reduction:

Direct	\$ 1,954,465,408
Indirect	\$ 1,211,472,028
Induced	\$ 26,313,450
Total	\$ 3,192,250,793
Direct jobs	11,260
Additional jobs	8,761
Total jobs	20,021

Assumptions:

- Financial projections consider economic leakage, meaning the amount of money that leaves the counties.
- The figures provided account for economic output from the operation of dairies using today's infrastructure with 1934 cow numbers.
- These numbers are very conservative because there is no real dairy infrastructure today that would support these cows in the six counties area.
- Jobs are listed as full time equivalent jobs

Explanation:

- Direct: economic output to industries in which final demand change was made
- Indirect: output from inter-industry purchases in response to new demands of the directly affected industries
- Induced: output attributable to changes in household spending due to direct or indirect changes
- Direct jobs: number of jobs directly attributable to the activity
- Additional jobs: number of jobs attributable indirectly to the activity.

Economic output model constructed by Lance Brower, Logan County NDSU Extension Service—Logan County based on information provided by the National Agriculture Statistical Service.
(http://www.nass.usda.gov/QuickStats/Create_County_Indv.jsp); chart prepared by Brower.

An EEO/Affirmative Action employer, North Dakota State University-Extension provides equal opportunities in employment and programming including Title IX and ADA requirements.

Updated January 29, 2007

Dollars Lost	Direct	Indirect	Induced	Total
Crop Farming	0	438,340,243	286,835	438,627,084
Cattle ranching and farming	1,954,465,408	468,851,328	289,374	2,423,606,016
Other Agriculture, Hunting, Forestry	0	27,335,640	122,449	27,458,089
Mining, Power Generation, Natural Gas	0	31,595,422	1,091,576	32,686,997
Building and other repair and maintenance	0	5,069,440	154,616	5,224,056
Food Manufacturing	0	2,603,938	599,378	3,203,316
Printing and Manufacturing	0	28,016,492	182,803	28,199,295
Wholesale trade	0	53,528,228	1,498,565	55,026,792
Transportation, Shipping and Storage	0	39,754,861	701,281	40,456,142
Retail and Video Rental Publishers and Telecommunications	0	3,194,856	3,228,405	6,423,261
Banking, Security, and Insurance	0	9,967,019	941,795	10,908,814
Real estate	0	21,931,815	2,015,364	23,947,179
Accounting, Legal, Architecture, and Computer Ser.	0	15,054,160	214,984	15,269,144
Science, Photo, and Veterinarian Services	0	3,999,870	299,972	4,299,842
Support Services	0	29,222,451	80,950	29,303,401
Educational Services	0	4,266,246	276,386	4,542,632
Medical	0	13,414	208,310	221,723
Residential, Nursing, and Social Assistance	0	21,937	3,296,121	3,318,057
Amusement and Entertainment	0	60	961,737	961,797
Accommodations, Food and Drinks	0	234,438	320,671	555,109
Auto and Machinery Repair	0	1,269,222	1,458,104	2,727,327
Personal Services	0	15,247,920	780,675	16,028,595
Organizations, Private Households, Gov. Enterprises	0	44,575	246,162	290,737
Owner-occupied dwellings	0	11,908,453	819,724	12,728,178
Total	1,954,465,408	1,211,472,028	26,313,450	3,192,250,793

Employment Lost	Direct	Indirect	Induced	Total
Crop Farming	0.0	1,959.1	2.3	1,961.4
Cattle ranching and farming	11,260.0	2,701.1	1.7	13,962.8
Other Agriculture, Hunting, Forestry	0.0	825.5	1.7	827.2
Mining, Power Generation, Natural Gas	0.0	85.1	2.7	87.8
Building and other repair and maintenance	0.0	64.0	1.8	65.7
Food Manufacturing	0.0	4.2	2.5	6.7
Printing and Manufacturing	0.0	97.2	0.9	98.1
Wholesale trade	0.0	619.4	17.3	636.8
Transporting, Shipping, and Storage	0.0	345.7	8.7	354.4
Retail and Video Rental	0.0	72.4	68.3	140.6
Publishers and Telecommunications	0.0	57.4	5.0	62.4
Banking, Security, and Insurance	0.0	184.4	21.0	205.4
Real estate	0.0	203.7	2.9	206.6
Accounting, Legal, Architecture, and Computer Ser.	0.0	66.9	5.6	72.6
Science, Photo, and Veterinarian Services	0.0	468.3	1.3	469.6
Support Services	0.0	59.2	6.2	65.4
Educational Services	0.0	0.5	6.8	7.3
Medical	0.0	0.3	40.9	41.2
Residential, Nursing, and Social Assistance	0.0	0.0	33.5	33.5
Amusement and Entertainment	0.0	17.9	18.2	36.1
Accommodations, Food and Drinks	0.0	37.5	43.8	81.3
Auto and Machinery Repair	0.0	277.1	15.3	292.4
Personal Services	0.0	1.2	5.9	7.1
Organizations, Private Households, Gov. Enterprises	0.0	271.5	26.7	298.2
Total	11,260.0	8,419.6	340.9	20,020.6

Data Base for IMPLAN

- Annual Survey of Governments
- Annual Survey of Government Finances
- Annual Survey of Manufactures
- Annual Survey of Retail Trade
- Annual Survey of Services
- Bureau of Economic Analysis
 - Consumer Expenditure Study
 - Gross State Product
 - Regional Economic Information System
 - Wealth Data
- Bureau of Labor Statistics Covered Employment and Wages
- Census of Agriculture
- Census of Construction
- ES-202 data
 - US Department of Labor
 - National Agriculture Statistical Service
- Federal Procurement Data
- Survey of Current Business
- US Census
- USDA Forest Service
- US Department of Commerce
- US Department of Census
- USDI Bureau of Mines

Big Box Retail and Dairies in south-central North Dakota



Conservative estimates of the economic effect in Dickey, Logan, Emmons, Kidder, McIntosh County from the annual operation of a big box (Wal-Mart, K-Mart, Etc.), and several dairies. All operations will show 185 employees.

	Economic effect
Big Box:	
Direct	\$8,245,570
Indirect	\$1,064,757
Induced	\$358,782
Total	\$9,669,109
Direct jobs	185
Additional jobs	18.6
Total jobs	203.6
Various Dairies:	
Direct	\$32,111,514
Indirect	\$19,904,266
Induced	\$432,325
Total	\$52,448,105
Direct jobs	185
Additional jobs	142.9
Total jobs	327.9

Explanation:

- Direct, economic effect to industries in which final demand change was made
- Indirect, effect from inter-industry purchases in response to new demands of the directly affected industries
- Induced, effect attributable to changes in household spending due to direct or indirect changes
- Direct jobs, number of jobs directly attributable to the activity
- Additional jobs, number of jobs attributable indirectly to the activity.

Assumptions:

- The amount of money shown is what is projected economically to stay in the counties.
- These businesses hire and spend money within the county like other businesses in the same sectors hire and spend.
- Financial projections consider economic leakage, meaning the amount of money that leaves the counties.
- The figures provided account for economic output from the operation of dairies using today's infrastructure with 1934 cow numbers.

- These numbers are very conservative because there is no real dairy infrastructure today that would support these cows in the six counties area.
- Jobs are listed as full time equivalent jobs.

Economic impact model prepared by Lance Brower, NDSU Extension-Logan County, using IMPLAN Pro 2.0, with 2004 data.

An EEO/Affirmative Action employer, North Dakota State University-Extension provides equal opportunities in employment and programming including Title IX and ADA requirements.

Updated January 29, 2007

Bytec Effect

Conservative estimates of economic effect from the chart of account for the year 2003. These numbers were from data collected and reviewed by Lance Brower, UW-Extension and Michael Byrne, Bytec.

Total Dollars:

Direct	\$2,416,400
Indirect	\$504,900
Induced	\$129,100
Total	\$3,050,400
Direct jobs	32.9
Additional jobs	7.4
Total jobs	41.1

Financial projections based on current economic leakage, meaning the amount of money that leaves the tri-county region. Total county effect projected to be over \$3.0 million with approximately 41.1 full time equivalent jobs created or maintained.

Explanation: Direct: economic effect to industries in which final demand change was made; indirect: effect from inter-industry purchases in response to new demands of the directly affected industries; induced: effect attributable to changes in household spending due to direct or indirect changes; direct jobs: number of jobs directly attributable to the activity; additional jobs: number of jobs attributable indirectly to the activity.

Economic impact model constructed by Lance Brower, Lafayette County UW-Extension using IMPLAN Pro2.0, a standard input/output economic software.

The area that was covered for the study has an estimated 73,300 dairy cows.

An EEO/Affirmative Action employer, University of Wisconsin-Extension provides equal opportunities in employment and programming including Title IX and ADA requirements.

Senate Agriculture Committee

February 8, 2007

Testimony of Pam Brekke

Senate Bill 2331

Ramsey County Commissioner/Farmer

Good Morning Chairman Flakoll and members of the Agriculture Committee. My name is Pam Brekke I am a county commissioner from Ramsey County and farm in the Edmore area. I am submitting this testimony in favor of SB 2331.

Your support of Senate Bill 2331 is crucial for moving agriculture forward in North Dakota. As a County Commissioner in Ramsey County I have been in the middle of a battle that has been going on for 31/2 years. Communities should not be divided over anything concerning their future growth, especially when it involves the largest industry in North Dakota.

Unfortunately there is a small group of people who are supported by a very large check book and they hide behind the names of Dakota Resource Council, Sierra Club, Dakota Rural Action and many other "heart warming" titles. They have one agenda and that is to go back in time with a farm on every section of land, 12 milk cows, 25 hogs, 100 chickens and a white picket fence. Wouldn't we all love this, but the truth is, times have changed and so has farming. If our homesteading great-grand parents could see the advances we have made they would be speechless. The world of technology is not standing still and we in the Ag sector cannot be satisfied with the way things were 100 years ago.

The activists came into Ramsey County very quietly, not letting on that they were activists, and volunteered to be on boards and help "write" an animal feeding ordinance.

We now have an ordinance that is full of environmental regulations that we as County Commissioners cannot enforce. They were very organized and followed a specific strategy to stop any animal feeding operations from being built. We as commissioners were told many lies and one was that it was "our" ordinance and we could grant variances to it upon requests. When a request came to us, Dakota Resource Council was there reading the "fine print" and letting us know that we could not grant variances after all. Their scare tactics worked on enough commissioners that they had a majority in their pocket. As of today I am standing alone on the Ramsey County Commission in full support of North Dakota Agriculture.

I am also standing in support of clean air and water for all of North Dakota. The environmentalists use water and air quality as one of their big issues. They bring numbers to the table that come from mistakes that may have been made 20 years ago, before there were strict regulations in place. We now have overwhelming scientific facts that can prove the industry has become environmentally friendly. I have listened to the NDSU specialists who have all the facts on paper supporting the animal industry and the benefits that can come with it.

The problem we had in Ramsey County was the door was open for these groups to come in and challenge the law. If you have county officials that are not farmer friendly these groups will take control. The law needs to be written in a way that there is no gray area. County and Township Officials need to know what they can and cannot regulate. The State Health Department has been given the authority to regulate environmental issues, let them do their job. It needs to be clear where the jurisdictional lines are. Counties and Townships do not have the means or the dollars it would take to enforce such things. We also need to make this law for all counties across the State to make it equal for all farmers in every county. We have an operation that went up 5 miles from the Ramsey County line and our farmers are sitting here with their hands tied, patiently waiting for 3 1/2 years

and watching the environmentalists control their elected county officials with scare tactics.

I certainly do not think there is any reason to continue studying this issue. Since 1999 this issue has been studied extensively. I have here with me a copy of the North Dakota Planning Handbook, this book was compiled by the North Dakota Planning Association, North Dakota Division of Community Services, North Dakota League of Cities, and the North Dakota Association of Counties. Also I have another study that was completed. The North Dakota Model Zoning Ordinance. This was written by a group comprised of two representatives of the livestock producers associations, three boards of county commissioners, two township officers' association members, two city officers, and the Department of Health. Along with these groups several others participated from time to time including county planners and land use administrators. The third document I have is North Dakota Livestock Program Design Manual. This is a 63-page document that establishes guidelines for use by the North Dakota Department of Health in the review and permitting process for CAFO's as defined by the North Dakota Administrative Code.

It seems obvious to me that the only people that want more studying of this issue are those who have an interest in stopping the development of animal agriculture in this state. How in the world can we even think about stifling the largest industry in North Dakota? The people that worked on all of these documents are experts in their respective fields and we need to listen to experts and rely on sound science when making these types of decisions. It is amazing to me that our officials can be swayed by pseudo-science and scare tactics over the sound science and common sense that should prevail. In my county several experts in engineering, soil science and environmental health were ignored and humiliated by fear mongering radicals.

I respectfully ask that you give Senate Bill 2331 a strong due pass recommendation for the future of North Dakota's largest industry.

**Testimony of Paul Ivesdal
Senate Bill 2331
Senate Agriculture Committee
February 8, 2007**

Good morning Chairman Flakoll and members of the Committee. My name is Paul Ivesdal, I farm near Edmore and I am in the process of expanding my family farm to include a hog operation.

Three and one half years ago I started the process of obtaining the permits and trying to begin construction of my hog farm. Ramsey County placed a moratorium on CAFO's at this time to develop an animal-feeding ordinance. Development of an ordinance seemed to be reasonable and prudent. I was appointed to the subcommittee of the planning commission to develop the groundwork for the ordinance. The subcommittee did not have a vote in the ultimate outcome of the ordinance.

The process was eventually high jacked by one member of the planning and zoning commission. This member is clearly influenced by those who want to stop animal agriculture. An organization known as the Grassroots Action Center for the Environment brags on their website about supplying the text for

this ordinance. If you would like, I can supply you with supporting documents of this fact after the hearing is over.

This process ended up taking over three years when in reality it should not have taken much more than 6 months. I still have not completed construction of my barns though they should have been populated by now. Why do I bring this up? I truly do not want to see another farmer in this state exposed to this kind of harassment and ridicule. In the time that I been struggling with my county, construction costs have increased by at least 30% and interest rates have risen by nearly 3%. I'm not even going to comment on the lost opportunity and income. In Nelson County a farmer who started the same process 3 years after I did in Ramsey County has his barns built and producing. This puts an exclamation point on the fact that we need a uniform set of rules to govern this industry.

North Dakota has a tremendous opportunity to expand the livestock industry. If this state does not have a uniform set of rules for agriculture and a favorable development climate this tremendous opportunity to expand the tax base of North Dakota will end up somewhere else. South Dakota, Minnesota, or some other state will snatch this economic development machine away from us.

I respectfully ask you to give Senate Bill 2331 a "Do Pass" recommendation. Thank you I will attempt to answer any questions.

Senate Agriculture Committee
February 8, 2007
Testimony on Senate Bill 2331
Presented by Wes Klein, Livestock Producer

Good morning Chairman Flakoll and Agriculture Committee members. My name is Wes Klein, I am a livestock producer in Mercer County, I also have 4 of my seven Daughters here with me today since we are headed for Fargo and NDSU's Little I activities.

Folks, my daughters are the future face of livestock production in North Dakota, we have a modest cow calf operation along with the growing flock of ewes my daughters own. My oldest son and daughters train horses.

I was on the forefront of developing a zoning ordinance for Mercer County for the Livestock Industry. In going through that process I came to the following conclusions.

A. The North Dakota livestock industry needs regulatory certainty. By this I mean that there are clear boundaries that lay out who have regulatory authority over the environmental issues pertaining to animal feeding operations. Senate Bill 2331 does that. It further clarifies for local governments how far their regulatory authority goes in relation to "scope and nature" of zoning regulations.

B. If we in North Dakota are ever going to achieve the goal of property tax relief or at least stability in property taxes we need to get the biggest bang for our tax dollar. We work toward this goal by using our tax dollars in the most efficient manner possible. We already pay for the State Health Department's existence as a Governmental agency. It would then clearly follow that County and Township governments would allow the State Health Department to regulate the areas of environment and health since it has the expertise, regulatory rules already in place, the manpower and financial resources to oversee the Livestock industry. This again brings regulatory certainty and clarity to our industry, it also has the effect of relieving county governments of trying to find dollars to duplicate services already being paid for and performed at the state level.

C. Instead of talking about who is in control or who is losing control we need to start talking about how we can enhance livestock production for the next generation of Ranchers. Senate Bill 2331 is a stepping-stone in that direction. Let me explain, instead of having to jump over environmental hurdles in our industry we should be laying environmental stepping stones, that current and future ranchers can use to bridge the gap between the environment and a viable livestock industry.

Chairman Flakoll and Committee Members, My Wife and I are giving our children Livestock Production stepping stones as they are growing up, we need you to provide those environmental stepping stone that will help to keep livestock production our generation and the next. Senate Bill 2331 is one of those stepping stone, I respectfully ask that you give Senate Bill 2331 a do pass recommendation. Thank you

Testimony on Senate Bill 2331

Senate Agriculture Committee

February 8, 2007

Jerry Jeffers, Rhame, North Dakota

Good Morning Mr. Chairman and Committee Members. My name is Jerry Jeffers from Rhame, and I am here to ask for your support of SB2331. I have been a member of the Bowman County Zoning Board now for several years. I come from the part of Bowman County where a lot of the oil impact moneys that help fund this state are produced. We also have one of the first concentrated hog feeding operations in this state in our county, a large cattle feedlot as well as several smaller ones, and as of a few months ago, we granted a zoning variance for a multi-million dollar natural gas purification plant to be built. This is a safe, environment-friendly plant in that it takes that gas from the fires you see AND SMELL and turns that into top quality, useable natural gas—eliminating the fires and the stink.

I tell you all of this because I feel we have a pretty aggressive, forward-thinking zoning board. We have an excellent director who makes sure all the T's are crossed and the I's are dotted in the zoning requests prior to the hearings. Our board is comprised of farmers and ranchers, business people, and folks who work for others. I'm sure that is the make-up of most of the zoning boards across the state.

Having told you that, I think that SB2331 is very important. We as zoning board

members usually don't have the time, nor in most cases, the expertise to set the state health and environmental regulations needed for concentrated animal feeding operations or anything else like this natural gas purification plant that is in our county for that matter. So, in order for us to do our job which I feel is to 1.) enhance the economy in our area and sometimes the state, and 2.) See that the lifestyle of the citizens of the surrounding area isn't adversely effected, and 3.) Create conditions that ALL parties involved can come to an agreement on, a good, sound set of health and environment regulations set forth and enforced by the State Health Department are crucial.

If we as zoning board members and our commissioners can be sure that the State Health Department HAS to take care of the health and environmental issues, then we can concentrate on what we have the ability to do without fear of a suit or outside intervention, because BY LAW they have just taken most of the emotional issues out of the zoning process, leaving the nuts and bolt problems that we DO know something about and have local zoning guidelines for. This bill WILL NOT take that local zoning authority of size, scope, and location away from my board or any other zoning board in the state. But instead it strengthens the setting and regulating of the health and environment regulations by the State Health Department on CAFOs .

So, for these reasons, I ask for you to give a DO PASS on Senate Bill #2331.
Thank You for you kind attention.

Senate Agriculture Committee

February 8, 2007

Testimony on Senate Bill 2331

Paul Thomas, owner, Thomas Grain Farms

Velva, ND 58790

701-338-2515

Good morning Chairman Flakoll and Agriculture Committee members. My name is Paul Thomas. I farm in South Central McHenry County and North East Oliver County. I am here to testify in support of SB 2331.

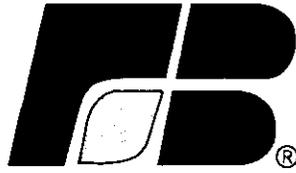
My interest in animal agriculture has increased greatly over the last year as members of the area Velva community and I have been working to locate a 5,000 head hog farrowing operation in southern McHenry County.

McHenry County has adopted zoning regulations for animal feeding operations that very closely mirror those of the state. This is a big plus for us in McHenry County.

As I see it SB 2331 does two things. It clarifies and directs jurisdiction to those entities best qualified to make the needed decisions on animal feeding operations.

1. State Health Department regulates water and air pollution, solid waste, and environmental health impacts. Scientific, technical regulation is left with the state. The individuals most qualified to understand and make decisions based on science that will positively impact our states environment make the decisions they are best qualified to make.
2. Counties and Townships handle nature, scope and location of animal agriculture. The local community is charged with controlling the areas they understand and are best fit to regulate. In this bill control of how many animals, what type of animals and where these animals are located are left to the neighbors in communities that will benefit from the positive location of animal feeding operations. Local authority is maintained with local residents providing their input in the area of their expertise.

Thank you for considering my input on this important issue and I ask for your support of SB 2331.



**North Dakota
Farm Bureau**

Bringing ag home

1101 1st Ave. N., Fargo, ND 58102
P.O. Box 2064, Fargo, ND 58107-2064
Phone: 701-298-2200 • 1-800-367-9668 • Fax: 701-298-2210

4023 State St., Bismarck, ND 58503
P.O. Box 2793, Bismarck, ND 58502-2793
Phone: 701-224-0330 • 1-800-932-8869 • Fax: 701-224-9485

Senate Agriculture Committee

February 8, 2007

North Dakota Farm Bureau

Testimony on Senate Bill 2331

Presented by, Brian Kramer, Public Policy Director

Good morning Chairman Flakoll and Agriculture Committee members. My name is Brian Kramer and I am representing North Dakota Farm Bureau. I am here today to speak in support of Senate Bill 2331.

Senate Bill 2331 does two things, it establishes in code that the North Dakota Department of Health has the authority regarding environmental regulation of animal feeding operations and second, it defines "scope" and "nature". We support these changes to bring clarity to animal agriculture zoning within townships and counties.

It is our belief that the authority for environmental regulation is vested with the North Dakota Department of Health now, under chapters 23-20.3, 23-25, 23-29, and 61-28. However, local zoning boards have placed environmental regulation as part of their zoning ordinances, which exceeds their authority as given them by the legislature to regulate scope, nature and location of animal feeding operations. Senate Bill 2331 codifies what has been previously implied.

Defining "scope" and "nature" also provides clarity to what has been common understanding of those terms. However, some townships and counties have interpreted the terms "nature" and "scope" liberally to include operation activities such as closure requirements for animal feeding operations, water testing requirements, record inspection

and reporting requirements, and the list goes on and on. This explains the need for clear definitions of “scope” and “nature”.

We believe that the State should have preemptive authority with regards to environmental regulation.

“We support a state pre-emption of environmental regulations with regard to local zoning of AFOs/CAFOs”

With this policy statement we are expressing our belief that the environmental rules and regulations governing animal feeding operations should be regulated by the North Dakota Department of Health as the state has the resources to carry out this task. Redundancy of these regulations is not needed at the township and county level of government.

We also have policy that supports consistency in regulation,

“We support reasonable and consistent environmental regulatory standards that balance the interests of producers and other citizens”

With this policy we are recognizing the importance to agriculture and especially animal agriculture of having a consistent set of rules to play by throughout the state. We believe the rules developed by the North Dakota Department of Health, while rigorous, allow agriculture to grow as well as adequately protecting the natural resources of North Dakota.

North Dakota has 53 counties and 1100 townships. It is conceivable North Dakota could have that many different sets of rules for farmers and ranchers to play by if this bill is not passed. Can you imagine the nightmare this could create for a business trying to startup or locate in this state? The reality is they could not and would not. Consistency in the rules is absolutely imperative if we are going to build our livestock sector to the potential it has.

We believe that the future growth of animal agriculture is critical to the future economic health of North Dakota. In North Dakota we have the space, the feed, and the work force that livestock enterprise need to exist. When you look at what is going on

around us it is terribly disheartening to see the lack of activity in North Dakota. Take the hog industry for an example, we need have no worries about an over population of hogs. In Minnesota they average 138 hogs per square mile, South Dakota is at about 28 hogs per square mile and North Dakota is at 3.7 hogs per square mile. I think you could agree we have a ways to go before anyone need get to concerned about too many hogs in this state.

I had earlier mentioned the economic activity of rural North Dakota benefiting the entire state. Dollars generated by animal agriculture have a gross receipts multiplier of 4.49. That represents a turn over of these dollars in the economy greater than tourism and the retail sector combined. By feeding our beef calves here and adding just 300 pounds to them we would generate more than \$200,000,000.00 in the economy of North Dakota not figuring the multiplier effect. Just considering the large animal industries of North Dakota, the economic effect can easily reach \$1 billion per year.

For all of the reasons I have been talking about and more we must give this industry the chance to grow and thrive in this state. The clarity and uniformity of rules that SB 2331 will provide is huge step in the right direction of making this a reality with out sacrificing local control of zoning. I respectfully ask that you give SB 2331 a Do Pass recommendation. Thank you.

Dare to compare



Dairy Cows per square mile:

South Dakota	1
Minnesota	6
New York	14
Wisconsin	23
North Dakota	Less Than .5

Pigs per square mile:

South Dakota	28
1/3 Manitoba	24
1/3 Saskatchewan	23
Minnesota	138
North Dakota	3.7

Beef cows per square mile:

South Dakota	24.9
Minnesota	20.2
Montana	24.4
North Dakota	13.2

Value of livestock sold per state and percent of total ag sales:

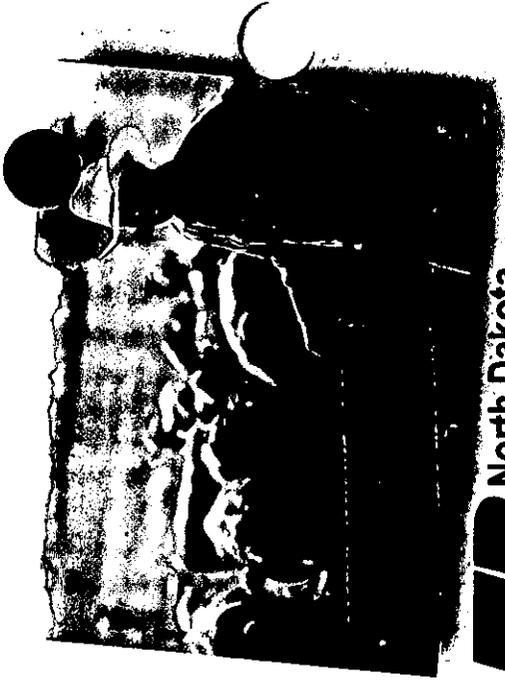
State	Value	% of total ag sales
Minnesota	\$4,012,745,000	46.8
Montana	\$1,148,791,000	61.0
South Dakota	\$2,258,715,000	58.9
North Dakota	\$ 772,994,000	23.9

Brian Kramer

Farmers and ranchers protect the environment:

- ✓ North Dakota farmers use no-till and minimum-till practices, thereby decreasing erosion and protecting streams from run-off.
- ✓ North Dakota ranchers use best management practices to conserve and protect the natural resources on which they depend. They employ rotational grazing and fence riparian areas to keep livestock away from water bodies.
- ✓ More than half of America's agricultural producers intentionally provide habitat for wildlife. Deer, moose, fowl and other species have shown significant population increases in the past several years.

For more information on the benefits of animal agriculture, go to the North Dakota Farm Bureau Web site at www.ndfb.org/news.



 **North Dakota
Farm Bureau**
Bringing ag home



P.O. Box 2599
Bismarck, ND 58502
(701) 355-4458
FAX (701) 223-4645

MEMBERS

- AmeriFlax
- Milk Producers Association of North Dakota, Inc.
- Minn-Dak Farmers Co-op
- North Dakota Ag Aviation Association
- North Dakota Ag Consultants
- North Dakota Agricultural Association
- North Dakota Agri-Women
- North Dakota Association of Soil Conservation Districts
- North Dakota Association of Agricultural Educators
- North Dakota Barley Council
- North Dakota Beef Association
- North Dakota Corn Growers Association
- North Dakota Corn Utilization Council
- North Dakota Crop Improvement and Seed Association
- North Dakota Department of Agriculture
- North Dakota Dry Bean Council
- North Dakota Elk Growers
- North Dakota Farm Bureau
- North Dakota Farm Credit Council
- North Dakota Grain Dealers Association
- North Dakota Grain Growers Association
- North Dakota Lamb and Wool Producers
- North Dakota Oilseed Council
- North Dakota Pork Producers
- North Dakota Soybean Growers Association
- North Dakota State Seed Commission
- North Dakota Wheat Commission
- Northern Canola Growers Association
- North Dakota Plains Potato Growers Association
- Northern Pulse Growers Association
- Red River Valley Sugarbeet Growers

Testimony of Kent Albers

North Dakota Ag Coalition

Senate Bill 2331

February 8, 2007

Mr. Chairman, members of the Senate Agriculture Committee:

I am Kent Albers. I farm and ranch near Center and am here today as the chairman of the North Dakota Ag Coalition. On behalf of the Ag Coalition, I encourage your support of SB 2331.

For more than 20 years, the North Dakota Ag Coalition has provided a unified voice for North Dakota agricultural interests. Today, the Coalition is made up of 30 statewide organizations or associations that represent specific commodities or have a direct interest in agriculture. Through the Ag Coalition, these members seek to enhance the business climate for North Dakota's agricultural producers.

The Ag Coalition takes a position on a limited number of issues that have a significant impact on North Dakota's ag industry. SB 2331 is one of these issues, as it will impact feeding operations statewide and across species.

The Ag Coalition is in support of this bill as it seeks to clarify the intent that the North Dakota Department of Health will have regulation over health and environmental issues surrounding the development of feeding operations by placing it directly under the department's authority in the state's Century Code. The Department of Health has the resources and expertise to set and effectively administer these regulations. The bill will provide a consistent set of guidelines for feedlot operators statewide, while still allowing counties and townships zoning authority, which is their area of expertise.

This bill will help create uniform health and environmental regulations for feeding operations, thus simplifying the development process for North Dakota livestock producers.

Therefore, we encourage your support of SB 2331.

Chairman Flakoll, members of the Senate Agriculture committee, for the record my name is Scott Nelson. I am a grain farmer and livestock producer from Lakota, North Dakota. I would like to submit this testimony in favor of Senate Bill 2331.

The primary reason I support this bill is I do not believe the counties and townships should be held responsible for the enforcement of water pollution, air pollution, and solid waste and associated environmental of health laws, ordinances or regulations for animal feeding or agricultural operations.

I commend the State Department of Health for their regulation of water pollution, air pollution, and solid waste and associated environmental and health impacts from animal feeding and agricultural operations.

Respectfully submitted:

Scott Nelson
4414 109th Ave NE
Lakota, ND 58344
701-247-2619

February 8, 2007

Senate Bill No. 2331

Good morning Chairman Flakoll and members of the Senate Agriculture Committee, my name is Tracton Lewis. I am an active farmer, rancher and township officer from Park River. Senate Bill No. 2331 is important because it will clarify code and benefit the state, county, township, and producer.

Senate Bill 2331 will place the State Department of Health in charge of environmental impacts. This makes sense as this department works with the environment day in and day out. Folks that don't work with environmental issues often miss the meat of the issue and bring in personal issues or beliefs that prevent the growth of North Dakota's economy. By having the State Department of Health in charge of environmental guidelines, a more equal business field would be put into effect.

Another advantage is Senate Bill 2331 maintains the local zoning authority of the county and township. The county and township would not be liable for the expenses of researching, maintaining, overseeing, and enforcing environmental impacts under Senate Bill 2331. Serving as a Township Officer and keeping a close eye on the county, I see first hand the limited amount of capital we have to work with. I feel these funds should be used for operating, constructing and maintaining infa-structure within the said areas. "Robbing" capital from nearly "starving" Local Governments for researching, maintaining, overseeing, and enforcing local environmental regulation takes away service and puts more strain on the people.

It just makes sense to clarify these issues to benefit the state, county, township and producer.

Chairman Flakoll and members of the Senate Agriculture Committee, I urge a "do pass" recommendation on SB 2331.

Thank you for your time,

Tracton Lewis,

13284 69th St NE

Park River, ND 58270

Chairman Flakoll, members of the Senate Agriculture committee, for the record my name is Gordon Nelson. I am a retired grain farmer and livestock producer from Lakota, North Dakota. I would like to submit this testimony in favor of Senate Bill 2331.

I commend the State Department of Health for their regulation of water pollution, air pollution, and solid waste and associated environmental and health impacts from animal feeding and agricultural operations as provided in chapters 23-20.3, 23-25, 23-29, and 61-28.

I support this bill because I do not believe the counties and townships should be held responsible for the enforcement of water pollution, air pollution, and solid waste and associated environmental of health laws, ordinances or regulations for animal feeding or agricultural operations.

Considering the economic benefits from animal agriculture with regards to jobs in rural communities, and the utilization of feedstocks and byproducts developed from ethanol facilities it is essential that we support animal agriculture in North Dakota.

Respectfully submitted:

Gordon Nelson
4424 109th Ave NE
Lakota ND 58344
701-247-2233

S.B. 2331

SENATE AG COMMITTEE FEB 14, 07

HONORABLE SENATOR FLAKOLL (CHAIR)

Presented - Harvey L. Hope
Langdon, N.D.A.K.

- Township Supervisors - zoning OFFICERS - COUNTY Commissioners; because of their occupations are AS A RULE - well educated, well read, understand Chemistry, hydrolics, soil science, Horticulture, Agronomy, Animal science, Profit-loss, size-scope, Construction, Time Frames, Negotiations.

They make sound and well thought out and well planned out decisions for their local PATTERNS and local needs.

on this issue of zoning, we don't need or require AN expanded state government on the expense of that addition to take over local control, especially when what we have at the local grassroot level is working well.

Who knows better than those that live and work locally and are in daily contact with local development and issues.

The best economic development you can have is that that is started at the local level, promoted AT the local level - controlled AT the local level.

Where would the hog operation at Nekoma, N.D. be AT today if prospect township had not had the right and ability to issue the permits on the very grassroot level of our government? Don't weaken or TAKE AWAY THAT THAT WORKS

Please vote NO ON

S.B. 2331

Harvey L. Hope

(1)

S.B. 2331

Harvey L. Hope

Point of example

Is the health dept. over worked now?
The salt spill AT ALEXANDER, N. DAK; what if
the township or county would have had stricter
controls than the state? - holding the company
responsible for regular inspections and reports
to local township or county zoning - would
the spill have lasted as long? The local
counties and townships must be allowed in all cases
of zoning to have not less than the state laws,
ordinances, regulations but may adopt or enact stronger
laws, ordinances or regulations than the state.

SENATE BILL 2331 TAKES AWAY FROM
LOCAL CONTROL AND IS FULL OF AMBIGUOUS
TERMINOLOGY

PLEASE VOTE NO ON S.B. 2331

Thank you
Harvey L. Hope
Feb 8, 07



"Watchdogs of the Prairie"
Organizing North Dakotans Since 1978

Dakota Resource Council • PO Box 1095 • Dickinson, ND 58602
Phone: 1-701-483-2851 • Fax: 1-701-483-2854

BARBS

statement has been made about "Animal Science" - all of DRC's info is referenced
No - information

define AFOS + Sept 999AM
CAFOs → 1000 ft
the main issue is Concentrated Animal Feeding Operations

Testimony on HB 1420 to the House Committee on Agriculture January 25, 2006

Chairman Johnson and committee members my name is Barb Price and I am an organizer for Dakota Resource Council. DRC is an independent membership-based grassroots organization that has been working with North Dakotans since 1978 for the purpose of protecting their interests and rights. About half our members are active farmers and ranchers.

Dakota Resource Council recognizes that livestock production is very important to the economy of North Dakota. We believe that livestock production should be increased in North Dakota but not at the risk to the livelihood of family farmers and ranchers or to the detriment of the environment, health and economic well being of North Dakotans.

It has been explained to our members that this bill is just clarifying that counties and townships have the power to zone for "nature, scope and location" only in land use planning. Counties and townships can determine siting only of Concentrated Animal Feeding Operations (CAFOs) but have no power over the environmental aspects (such as set backs) and public health as it relates to CAFOs.

I want to spend some time looking at ND Century code and the Model Zoning Ordinance for Animal Feeding Operations to see what authority has been given to counties and township pertaining to CAFOs.

In ND Century Code 23-29 Solid Waste Management and Land Protection Definitions #14 "Solid Waste," it states, "The term does not include:

a. Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners;

In addition, ND Century Code 23-29-05. Local government ordinances, it states, "Any political subdivision of the state may enact and enforce a solid waste management ordinance if such ordinance is equal to or more stringent than this chapter and the rules adopted pursuant to this chapter. (See Attachments – page 1 – 3)

If manure from CAFOs is not included in the management of solid waste by the State Department of Health then it needs to be managed by the County Commissioners and/or Township Supervisors. It is clear from 23-29-05 that counties and townships have the authority to develop ordinances that are equal to or more restrictive than the state rules.

In 1999 Governor Schafer issued an Executive Order (1999-03) which directed the Department of Health to "... develop a model zoning regulations [for animal feeding operations] for the subdivisions to implement as they deem appropriate ..." As it turns out I was one of the members of the working group, as was the Executive Director of DRC, Mark Trechock.

The document that resulted from this working group became "A Model Zoning Ordinance for Animal Feeding Operations", March 2000. I am going to go through some of the pages in the above mentioned document to point out that the intent of the executive order and the development State Model Ordinance was specifically to give the counties and townships the power to write ordinances for CAFOs that included the power to plan for environmental and public health and safety issues. Included with this testimony is a copy of the Model Ordinance. (See attachments, pages 4- 25)

In the preamble of this document the purpose of the model ordinance, in part, states:

- Provide a reference, or model, for zoning and ordinances pertaining to concentrate feeding operations for use by the local governments across North Dakota.
- Remind local governments of their roles in protecting public safety and health and in planning the uses, conservation and protection of natural resources, including land for farming and ranching.

As we read this “. . . protecting public safety and health and in planning the uses, conservation and protection of natural resources . . .” all refer to environmental and health issues that can be controlled by the counties and/or townships.

On page 2 of the Model Ordinance, page 5 in the attachments, on the next to last line of the page it states, “. . . Or any of the **normal** incidents of farming or ranching.”

The first industrial-scale hog production facility sited in North Dakota was Enviropork, west of Larimore in Grand Forks County. The facility got its county permit during the 1997 Grand Forks flood. It received its state permit later that year. A law suit was filed by Jim Griffin and Keith Peterson, neighbors to Enviropork, contending that the state Health Department should have required Enviropork to get a solid waste permit for its lagoon, and also alleging numerous violations of the state odor standard and the facility's construction permit. (See page 26 - 27 of the attachments)

Judge Bruce E. Bohlmann ruled in the plaintiffs' favor on one element of the lawsuit in September 1998, saying Enviropork was "**not a farming operation**" but a "**pig factory**" and should be subject to the same laws as any waste facility. However, within a month, the State Health Council passed "emergency rules" exempting all animal waste from the state's solid waste disposal law. The rest of Griffin and Peterson's case was settled out of court.

In early 1999, state legislators passed three bills intended to provided assistance to industrial hog operations:

- SB 2366, which wrote the Health Council's "emergency rules" into Century Code;
- SB 2365, which weakened the state odor standard by preventing issuing an odor violation except at a residence or public area;
- HB 1054, which gave industrial hog facilities the same property tax exemptions as traditional farmers have for farm buildings.

However, the House defeated HB 1397, which would have taken away all county and township zoning authority over any agricultural practices. The primary supporters for all these bills were Farm Bureau of North Dakota, North Dakota Stockmen's Association and the North Dakota Pork Producers Council.

Going on to page 3 of the Model Ordinance, page 7 of the attachments, talks about the 1999 amendments to the law. It is stated that the legislature answered questions pertain whether counties and townships had zoning authority over CAFOs. The legislature **gave authority** to counties and townships to "regulate the nature and scope of CAFOs" and to "**set reasonable standards**, based on the size of the operation" to govern its location. In addition the amendments **gave counties and townships discretion to adopt their own standards** regulating the size, nature and location of feedlots. The amended law is provided in Appendix 1 of the Model Ordinance, pages of the attachments to this testimony.

Further on page 3 of the Model Ordinance under "Function of an Ordinance" the following is stated:

"If conflict in land use is to be constrained by **local governments** so as to protect the right to practice farming or ranching and to foster compatibility with nearby land use, **local government officials** choosing to adopt an ordinance for animal feeding operations **must**:

- Adopt separation distances (aka setbacks or reverse setbacks) that reflect quantifiable odor characteristics and odor dispersal.
- Identify those new land uses that do not conform to the objectives and policies for delineated agricultural areas so as to infringe on the rights of farming or ranching (not included in the model zoning ordinance for animal feeding operations).
- Identify those new and existing animal feeding operations that, due to size (e.g., number of animal units), present safety hazards, affect natural resources, affect surrounding areas or other means of infringing on the rights of others.

This is being accomplished in some of the township is Griggs county after 141 out of approximately 145 the residents from the Sutton and Glenfield communities signed a petition opposing the proposed Willow Grove Sow Farm. (Copies attached to testimony).

We can continue through the whole Model Ordinance and it is clear that counties and townships have the authority to determine environmental protections using setback requirements for odor and water protection and to protect public health and safety in their local jurisdictions.

There is nothing in current county and township zoning CAFO ordinances that circumvents the Department of Health rules and regulations or that would keep the counties or townships from going to the Health Depart for professional help either in setting up ordinances or in enforcing the ordinances that are put in place.

However, it is important to note that the State of North Dakota has not adopted into law any ordinances that pertain to Concentrated Animal Feeding Operations. Ideally, the Department of Health needs legislation directing it to regulate CAFOs land

application of waste even if the operator does not propose to discharge pollutants to the water of the state.

What we need are:

1. Standards for emergency response to a lagoon spill.
2. Operator funded trust fund for clean-up response to a lagoon spill.
3. Operator funded trust funds for clean up of abandoned operations.
4. Permitting of all CAFOs
5. Each permit must include a nutrient management plan prepared by a certified agriculture professional. Public notice and comment on permits, including input on nutrient management plans.
6. Self-Monitoring and record keeping to document compliance with nutrient management plan, with independent verification mechanism.
7. Civil and criminal enforcement remedies, including citizen suits, for violation of permit conditions, including excursions from nutrient management plans.
8. Vertical integrator liability for spills, clean ups, and operator violations.
9. If state takes this on, then counties and townships still need to be able to have zoning authority over siting, density, size, setbacks, and mitigating impacts on local community.
10. These are industrial facilities, therefore they need to be taxed.

DRC would also suggest the following questions be asked of the Department of Health:

1. How many inspectors are on staff? Are they full time or part time staff?
2. How many times a year is each facility inspected? How many are onsite inspections?
3. What specifically does each inspection consist of?

4. Is there a fiscal note to go with this bill? To cover all the time and manpower it will take to do the work of the counties and townships.

To conclude, Dakota Resource Council believes that local control must be preserved. County and township representative from other states that have allowed the state to take over control of CAFO ordinances and waste management have told us that "what ever we do, do not loose local control." Many of these counties and townships are

Does ~~I believe that I have stated~~ *now trying to get back local control. This Bill does propose to take away the rights of local Governments to zone. Yes*

There fore DRC would respectfully request a "Do Not Pass" recommendation from this committee.

Thank you for listening.

CHAPTER 23-29
SOLID WASTE MANAGEMENT AND LAND PROTECTION

23-29-01. Finding of necessity. The legislative assembly of the state finds that:

1. The people of North Dakota have a right to a clean environment, and the costs of maintaining a clean environment through the efficient environmentally acceptable management of solid wastes should be borne by those who use such services.
2. Serious economic, management, and technical problems exist in the management of solid wastes resulting from residential, commercial, industrial, agricultural, and other activities carried on in said jurisdictions.
3. Inefficient and improper methods of managing solid wastes create serious hazards to the public health, result in scenic blights, cause pollution of air and water resources, cause accident hazards, increase rodent and insect disease vectors, have an adverse effect on land values, create public nuisances, and otherwise interfere with community life and development.
4. While the management of solid wastes is the responsibility of each person, problems of solid waste management have become a matter statewide in scope and concern, and necessitate state action through technical assistance and leadership in the application of new improved methods and processes to reduce the amount of solid wastes and unsalvageable materials and to promote environmentally acceptable and economical solid waste management.

23-29-02. Declaration of purpose. It is hereby declared to be the purposes of this chapter to:

1. Plan for and regulate the storage, collection, transportation, resource recovery, and disposal of solid wastes in order to protect the public health, safety, and welfare and to enhance the environment for the people of the state.
2. Establish and maintain a cooperative state program of planning and technical assistance for solid waste management.
3. Provide the authority to and require persons to plan and provide efficient, environmentally acceptable solid waste management.
4. Provide the authority for the review of plans and facilities for solid waste management.
5. Provide the authority to issue permits for the operation of solid waste management activities.
6. Promote the application of resource recovery systems which preserve and enhance the quality of air, water, and land resources.
7. Promote and assist in the development of markets for recovered and recycled materials.
8. Encourage by 1995 at least a ten percent reduction in volume of municipal waste deposited in landfills, by 1997 at least a twenty-five percent reduction, and by 2000 at least a forty percent reduction.

23-29-03. Definitions.

1. "Collection" means the aggregation of solid waste from the places at which the waste was generated.
2. "Department" means the state department of health.
3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water including ground water.
4. "Industrial waste" means solid waste, which is not a hazardous waste regulated under chapter 23-20.3, generated from the combustion or gasification of municipal waste and from industrial and manufacturing processes. The term does not include municipal waste or special waste.
5. "Infectious waste" means solid waste that may contain pathogens with sufficient virulence and in sufficient quantity that exposure of a susceptible human or animal to the solid waste could cause the human or animal to contract an infectious disease.
6. "Landfill" means a publicly or privately owned area of land where solid wastes are permanently disposed.
7. "Litter" means discarded and abandoned solid waste materials.
8. "Major appliance" means an air conditioner, clothes dryer, clothes washer, dishwasher, freezer, microwave oven, oven, refrigerator, stove, furnace, water heater, humidifier, dehumidifier, garbage disposal, trash compactor, or other similar appliance.
9. "Municipal waste" means solid waste that includes garbage, refuse, and trash generated by households, motels, hotels, and recreation facilities; by public and private facilities; and by commercial, wholesale, and private and retail businesses. The term does not include special waste or industrial waste.
10. "Open burning" means the combustion of solid waste without control of combustion air to maintain adequate temperature for efficient combustion, containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and control of the emission of the combustion products.
11. "Person" means any individual, corporation, limited liability company, partnership, firm, association, trust, estate, public or private institution, group, federal agency, political subdivision of this state or any other state or political subdivision thereof, and any legal successor, representative agent, or agency of the foregoing.
12. "Political subdivision" means a city, county, township, or solid waste management authority.
13. "Resource recovery" means the use, reuse, or recycling of materials, substances, energy, or products contained within or derived from municipal waste.
14. "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities. The term does not include:
 - a. Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners; or

- b. Solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended [Pub. L. 92-500; 86 Stat. 816; 33 U.S.C. 1251 et seq.], or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended [68 Stat. 919; 42 U.S.C. 2011 et seq.].
15. "Solid waste management" means the purposeful systematic control of the storage, collection, transport, composting, resource recovery, land treatment, and disposal of solid waste.
16. "Special waste" means solid waste that is not a hazardous waste regulated under chapter 23-20.3 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and ore mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste.
17. "Storage" means the containment and holding of solid waste after generation for a temporary period, at the end of which the solid waste is processed for resource recovery, treated, disposed of, or stored elsewhere.
18. "Transport" means the offsite movement of solid waste.

23-29-04. Powers and duties of the department. The department shall have the responsibility for the administration and enforcement of this chapter. It shall have the power and its duties shall be to:

1. Administer the state solid waste management program pursuant to provisions of this chapter.
2. Provide technical assistance on request to political subdivisions of the state and cooperate with appropriate federal agencies in carrying out the duties under this chapter, and may, on request, provide technical assistance to other persons.
3. Encourage and recommend procedures for the utilization of self-financing solid waste management systems and intermunicipal agencies in accomplishing the desired objective of this chapter.
4. Promote the planning and application of resource recovery facilities and systems which preserve and enhance the quality of air, water, and all resources.
5. Serve as the official state representative for all purposes of the Federal Solid Waste Disposal Act [Pub. L. 89-272; 79 Stat. 997; 42 U.S.C. 3251 et seq.], as amended, and for other state or federal legislation to assist in the management of solid wastes.
6. Survey the solid waste management needs within the state and maintain and upgrade the North Dakota solid waste management plan.
7. Require any person or combinations thereof within the state to submit for review and approval a solid waste management plan to show that solid wastes will be disposed of in accordance with the provisions of this chapter.
8. Adopt and enforce rules governing solid waste management, in order to conserve the air, water, and land resources of the state; protect the public health; prevent environmental pollution and public nuisances; and enable the department to administer this chapter, the adopted solid waste management plan, and delegated federal programs.

9. Establish the procedures for permits governing the design, construction, operation, and closure of solid waste management facilities and systems.
10. Prepare, issue, modify, revoke, and enforce orders, after investigation, inspection, notice, and hearing, prohibiting violation of any of the provisions of this chapter or of any rules and regulations issued pursuant thereto, and requiring the taking of such remedial measures for solid waste management as may be necessary or appropriate to implement or effectuate the provisions and purposes of this chapter.
11. Adopt rules to establish categories and classifications of solid waste and solid waste management facilities based on waste type and quantity, facility operation, or other facility characteristics and to limit, restrict, or prohibit the disposal of solid wastes based on environmental or public health rationale.
12. Adopt rules to establish standards and requirements for each category of solid waste management facility.
13. Adopt rules to establish financial assurance requirements to be met by any person proposing construction or operation of a solid waste management facility sufficient to provide for closure and postclosure activities. Financial assurance requirements must include any or all of the following: insurance, trust funds, surety bonds, letters of credit, personal bonds, certificates of deposit, and financial tests or corporate guarantees.
14. Conduct an environmental compliance background review of any applicant for any permit requested after July 7, 1991. In conducting the review, if the department finds that an applicant for a permit has intentionally misrepresented or concealed any material fact from the department, or has obtained a permit by intentional misrepresentation or concealment of a material fact, has been convicted of a felony or pleaded guilty or nolo contendere to a felony involving the laws of any state or the federal government within three years preceding the application for the permit, or has been adjudicated in contempt of an order of any court enforcing the laws of this state or any other state or the federal government within three years preceding the application for the permit, the department may deny the application. The department shall consider the relevance of the offense to the business to which the permit is issued, the nature and seriousness of the offense, the circumstances under which the offense occurred, the date of the offense, and the ownership and management structure in place at the time of the offense.

23-29-05. Local government ordinances. Any political subdivision of the state may enact and enforce a solid waste management ordinance if such ordinance is equal to or more stringent than this chapter and the rules adopted pursuant to this chapter.

23-29-05.1. Littering and open burning prohibited - Penalty.

1. No person may discard and abandon any litter, furniture, or major appliances upon public property or upon private property not owned by that person, unless the property is designated for the disposal of litter, furniture, or major appliances and that person is authorized to use the property for that purpose.
2. No person may engage in the open burning of solid waste, unless the burning is conducted in accordance with rules adopted by the department.
3. A person violating this section is guilty of an infraction, except if the litter discarded and abandoned amounted to more than one cubic foot [0.0283 cubic meter] in volume or if the litter consisted of furniture or a major appliance, the offense is a class B misdemeanor.

A
MODEL ZONING ORDINANCE
FOR
ANIMAL FEEDING OPERATIONS

Developed by a
ZONING WORK GROUP
for Animal Feeding Operations

Final
March 2000

Facilitated by the



NORTH DAKOTA DEPARTMENT OF HEALTH
Environmental Health Section
P.O. Box 5520
Bismarck, North Dakota 58506-5520

PREAMBLE

Public concern about odors produced by animal feeding operations and agricultural concern for rights to practice farming and ranching emerged within North Dakota during 1998. As remedies for these concerns, the 1999 North Dakota Legislative Assembly approved amendments to law that (1) limited the powers of local governments to prohibit or prevent the use of land or buildings for farming or ranching but allowed local governments to regulate the nature and scope of concentrated feeding operations, and (2) established a state standard for odors. The 1999 legislation was Senate Bills 2355 and 2365.

Subsequent to signing this legislation, Governor Edward T. Schafer issued Executive Order 1999-03, which reads in part:

The Department of Health shall . . . take steps reasonably necessary to protect the environment of the state of North Dakota, according to its responsibilities under law; and,

The Department shall establish a working group with interested political subdivisions, or their associations to develop model zoning regulations for the subdivisions to implement as they deem appropriate; . . .

The Department of Health arranged for and facilitated meetings of the work group and a committee of the work group. The work group was comprised of representatives of two livestock producer associations, three boards of county commissioners, two township officers associations, two city officers and the Department of Health. At times, several other people participated in meetings or assisted the work group, including county planners and land-use administrators.

This document is the product of the work group. It represents the consensus recommendation of the work group for zoning of concentrated feeding operations, sometimes referred to as feedlots or animal feeding operations. Its purpose is to:

- 1. Provide a reference, or model, for zoning and ordinances pertaining to concentrated feeding operations for use by the local governments across North Dakota.
- 2. Remind local governments of their roles in protecting public safety and health and in planning the uses, conservation and protection of natural resources, including land for farming and ranching.
- 3. Foster uniform zoning ordinances for concentrated feeding operations among counties and townships. Since regional differences in population density, climate, and soil and water resources occur across the state, local governments can revise the model as appropriate.
- 4. Avoid duplication among state environmental protection rules and local government zoning ordinances.

INTRODUCTORY COMMENTARY

A summary of the reasons for, and the content of, an ordinance for animal feeding operations.

DEVELOPER AWARENESS

As some counties or townships in North Dakota become increasingly urban, especially those that contain the larger population centers, there is a need to reduce the conflict between farms and ranches and rural property owners. Normal facets of farming and ranching must be recognized by new and potential rural property owners and developers who make these properties available for non-farming or non-ranching uses.

Counties and townships should consider preparing educational materials for potential property developers and buyers; the materials should explain that aspects of some normal activities of farming or ranching can be displeasing to non-farm or non-ranch occupants. For example, informational materials were developed by Spokane County and are available: "Code of the West: Agriculture, Access and Mother Nature." Long Range Planning Department, Public Works Building, 1116 W. Broadway, Spokane, WA.

Normal farming and ranching practices can create these conditions:

- ✓ Animal production can cause odors, flies and noise.
- ✓ Crop production can create road and field dust.
- ✓ Applications of fertilizers and pesticides are common.
- ✓ Slow-moving vehicles and extra-wide equipment are common on roadways.
- ✓ Early morning or late evening truck traffic or chemical applications can occur.

State law places limitations on the ability of people affected by agricultural operations to bring nuisance actions to limit or stop such activities. (See N.D.C.C. chapter 42-04.)

LEGAL AUTHORITY

The North Dakota legislature has given political subdivisions the authority to enact local zoning ordinances for the purpose of promoting health, safety, morals, public convenience, general prosperity and public welfare. (See, for example, N.D.C.C. § 11-33-01, which is the county zoning authority.) In general, however, the law does not allow political subdivisions to enact any regulation or restriction that prohibits or prevents "the use of land or buildings for farming or ranching or any of the normal incidents of farming or ranching." (See, for example, N.D.C.C. § 11-33-02, subsection 1.)

The 1999 amendments to the law addressed an important legal question: whether concentrated feeding operations were "industrial" operations over which counties and townships could exercise their traditional zoning authority, or whether they were "farming" operations over which political subdivisions had no zoning authority? The legislature answered this question. First, it defined farming and ranching to include livestock "feeding"; second, it gave counties and townships authority to "regulate the nature and scope of concentrated feeding operations" permissible within their jurisdictions and to "set reasonable standards, based on the size of the operation" to govern its location. The legislation also forbids counties and townships from banning concentrated feeding operations from their jurisdictions and from prohibiting the reasonable diversification or expansion of farming or ranching operations. The amendments give counties and townships discretion to adopt their own standards regulating the size, nature and location of feedlots subject to the limitations outlined above. The amended law is provided in Appendix I.

FUNCTION OF AN ORDINANCE

There appears to be a misunderstanding among many people in North Dakota as to how zoning functions. Many believe that, because rural areas beyond incorporated cities have historically been agricultural production areas, they are zoned agriculture and are entitled to protection from encroachment of non-agricultural land use. This is not the case. Zoning authorities maintain that farming and ranching areas are not protected from encroachment until they are delineated in comprehensive land-use plans. Comprehensive land-use plans are required by law before adoption of land-use ordinances. Apparently, most rural areas of the state are not covered by comprehensive land-use plans; therefore, there is no protection from encroachment by incompatible land use.

If conflict in land use is to be constrained by local governments so as to protect the right to practice farming or ranching and to foster compatibility with nearby land use, local government officials choosing to adopt an ordinance for animal feeding operations must:

- Adopt comprehensive land-use plans, which delineate land uses and specify land use objectives and policies.
- Adopt separation distances (aka setbacks or reverse setbacks) that reflect quantifiable or quantifiable odor characteristics and odor dispersal. (Compliance with the odor provisions of 1999 SB2365 is not a defense in nuisance litigation, N.D.C.C. chapter 42-01.)
- Identify those new land uses that do not conform to the objectives and policies for delineated agricultural areas so as to infringe on the rights of farming or ranching (not included in the model zoning ordinance for animal feeding operations).
- Identify those new and existing animal feeding operations that, due to size (e.g., number of animal units), present safety hazards, affect natural resources, affect surrounding areas or other means of infringing on the rights of others.

MODEL LAND-USE POLICY

State laws which allow zoning by local governments require comprehensive plans that contain land-use goals, etc. Suggested goals, objectives and policies - for inclusion in a comprehensive land-use plan as deemed appropriate - are provided.

LAND-USE COORDINATION

Development within the zoning jurisdiction of a city shall be determined by that city. Development within the zoning jurisdiction of a county or township that may affect property within a city's zoning limits should be reviewed cooperatively by the board of county commissioners or the township board and the city.

ENVIRONMENT AND PUBLIC SAFETY AND HEALTH

Goal: Develop, adopt and administer zoning ordinances that are consistent with the objectives and policies of this comprehensive land use plan.

Objective A: Manage new development.

Policy A1: Encourage rural residential development, as needed, to locate areas that are in non-productive for farming or ranching.

Policy A2: Protect farming or ranching from non-agricultural development of land uses that would hinder the operations or productivity of farming or ranching. A proposed change in land use should not cause conflict with existing farming or ranching.

Objective B: Promote conservation of natural resources. 

Policy B1: Encourage development in ways that conserve natural and agricultural resources. Developments or land use should not pose unacceptable exploitation of natural and agricultural resources or unacceptable risk of polluting air, land or water.

Policy B2: Encourage programs and activities that reduce and control soil erosion and that prevent the growth and spread of weeds.

Objective C: Promote public safety and health.

Policy C1: Encourage programs and activities that discourage siting of development in a flood way or flood plain and that reduce and prevent air, soil or water pollution.

MODEL AFO ZONING ORDINANCE

A suggested zoning ordinance pertaining to animal feeding operations is provided for use by local governments as deemed appropriate. A summary of the work group's discussions that governed substance of this model ordinance is included in a subsequent chapter of this document.

This land-use ordinance for animal feeding operations includes the following sections.

1. General Provisions
 - 1.1 Definitions
 - 1.2 Equivalent Animal Numbers
 - 1.3 Environmental Provisions
 - 1.4 Enforcement
 - 1.5 Severability
2. Setback Requirements
 - 2.1 Water Resource Setbacks
 - 2.2 Odor Setbacks
3. Conditional Uses
 - 3.1 Permit Procedures
 - 3.2 Ownership Change
 - 3.3 Operational Change

1. GENERAL PROVISIONS

1.1 DEFINITIONS

Terms used in this ordinance have the same meaning as given by the laws and rules of the state of North Dakota, specifically chapter 33-16-03 of the North Dakota Administrative Code. The definitions for these terms and for additional terms (bold print) are:

“Animal feeding operation” means a place where: livestock have been, are, or will be confined, concentrated and fed for 45 or more days in any 12 month period; pasture, crops, or other vegetation are not normally managed or sustained for grazing during the normal growing season; and, animal waste or *manure* accumulates. This term does not include an *animal wintering operation*. Adjoining animal feeding operations under common ownership are considered to be one animal feeding operation, if they use common areas or systems for *manure* handling.

“Animal wintering operation” means the confinement of cattle or sheep used or kept for breeding purposes in a feedlot or sheltered area at any time between October 15 and May 15 of each production cycle under circumstances in which these animals do not obtain a majority of their feed and nutrients from grazing. The term includes the

weaned offspring of cattle and sheep, but it does not include (1) breeding operations of more than 1,000 animal units or (2) weaned offspring which are kept longer than 120 days and that are not retained for breeding purposes.

“**Due process**” involves two essential elements; (1) notice and (2) an opportunity for a hearing. The notice must adequately describe the potential action that might affect the person(s) being notified and it must provide the person(s) a reasonable time to respond. If the person(s) request(s) a hearing, the hearing must be fair and allow the person(s) to present relevant evidence and arguments.

“Existing” means in place and operating on the date this ordinance is effective.

“Livestock” means any animal raised for food, raw materials or pleasure, including, but not limited to, beef and dairy cattle, bison, sheep, swine, poultry and horses. Livestock also includes fur animals raised for pelts.

“Manure” means fecal material and urine from livestock, as well as animal-housing wash water, bedding material, rainwater or snow melt that comes in contact with fecal material or urine.

“Operator” means an individual or group of individuals, a partnership, a corporation, a joint venture, or any other entity owning or controlling one or more *animal feeding operations* or *animal wintering operations*.

“Shall” means that the requirement is mandatory, rather than optional.

“Surface water” means *waters of the state* located on the ground surface such as lakes, reservoirs, rivers and creeks.

“Waters of the state” means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, and all other bodies or accumulations of water on or under the surface of the earth, natural or artificial, public or private, situated wholly or partly within or bordering upon the state, except those private waters that do not combine or effect a junction with natural surface or underground waters just defined.

1.2 EQUIVALENT ANIMAL NUMBERS

An “animal unit equivalent” is a unitless number developed from the nutrient and volume characteristics of *manure* for a specific *livestock* type. The term “animal units” is used to normalize the number of animals (e.g., head) for each specific *livestock* type which produce comparable bulk quantities of *manure*. The animal unit equivalents for types of *livestock* and the numbers of *livestock* for facility size thresholds of 300 animal units (a.u.), and so forth, are listed in the following table.

Livestock Type	Animal Unit Equivalent	Equivalent Numbers of the Livestock (hd) for Four Sizes (a.u.) of Animal Feeding Operations			
		300 a.u.	1,000 a.u.	2,000 a.u.	5,000 a.u.
1 horse	2.0	150 hd	500 hd	1,000 hd	2,500 hd
1 dairy cow	1.33	225	750	1,500	3,750
1 mature beef	1.0	300	1,000	2,000	5,000
1 beef feeder - finishing	1.0	300	1,000	2,000	5,000
1 beef feeder - backgrounding	0.75	400	1,333	2,667	6,667
1 mature bison	1.0	300	1,000	2,000	5,000
1 bison feeder	1.0	300	1,000	2,000	5,000
1 swine, > 55 lbs	0.4	750	2,500	5,000	12,500
1 goose or duck	0.2	1,500	5,000	10,000	25,000
1 sheep	0.1	3,000	10,000	20,000	50,000
1 swine, nursery	0.1	3,000	10,000	20,000	50,000
1 turkey	0.0182	16,500	55,000	110,000	275,000
1 chicken	0.01	30,000	100,000	200,000	500,000

1.3 ENVIRONMENTAL PROTECTION

The *operator* of a new facility for animal feeding is expected to locate, construct, operate and maintain the facility so as to minimize, reduce or abate effects of pollution on environmental resources and on public safety and health. The *operator* of an existing facility is expected to operate and maintain the facility so as to minimize, reduce or abate effects of pollution on environmental resources and on public safety and health. Each *operator* shall comply with applicable state laws and rules, including the laws and rules administered by the North Dakota Department of Health and with any permits granted by that department.

1.4 ENFORCEMENT

In the event of a violation of this ordinance or a judgement on a civil action by the North Dakota Department of Health, the local unit of government, after due process, can order cessation of a facility for animal feeding within a reasonable period of time and until such time as the *operator* corrects or abates the cause(s) of the violation. If the cause(s) of the

violation are not remedied within a reasonable period of time as set by the local unit of government, the permit may be revoked.

1.5 SEVERABILITY

If any paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this ordinance .

2. SETBACK REQUIREMENTS

2.1 WATER RESOURCE SETBACKS

The *operator* of a new *animal feeding operation* that has more than 1,000 animal units shall not locate or establish that operation:

- A. Within a delineated source water protection area for a public water system. The source water protection areas for water supply wells include the entire wellhead protection area. For the *surface-water* intakes of public water systems, source water protection areas include all or portions of the surface water that supplies the water for the public water system, including all or portions of the surface-water's shoreline.
- B. *(The following provision is optional. Within 1,200 feet (365.6 meters) of a private ground water well which is not owned by the operator or within 1,500 feet (457.1 meters) of a public ground water well which does not have a delineated source water protection area.)*
- C. *(The following provision is optional. Within 1,000 feet (304.7 meters) of surface water which is not included in a source water protection area.)*

2.2 ODOR SETBACKS

The *operator* of a new facility for an *animal feeding operation* shall not locate that operation within the extra territorial zoning jurisdiction of an incorporated city.

An owner of property shall locate and establish a residence, business, church, school, public park or zone for residential use so as to provide a separation distance from any *existing animal feeding operation*. The separation distances, or setbacks, are listed in the following table. An owner of property who is an *operator* may locate the owner's residence or business within the setbacks.

Setback Distances for <i>Animal Feeding Operations</i>		
Number of Animal Units	Hog Operations	Other Animal Operations
fewer than 300	none	none
300 - 1000	0.50 mi (0.805 km)	0.50 mi (0.805 km)
1001 or more	0.75 mi (1.207 km)	0.50 mi (0.805 km)
2001 or more	1.00 mi (1.609 km)	0.75 mi (1.207 km)
5001 or more	1.50 mi (2.414 km)	1.00 mi (1.609 km)

The *operator* of a new *animal feeding operation* shall locate the site of that operation from existing residences, businesses, churches, schools, public parks and areas of property that are zoned residential so as to exceed the corresponding listed setback from these places.

If notified in writing by an *operator* of a planned future expansion of an *animal feeding operation*, the local unit of government may implement the corresponding odor setback for a temporary time period not to exceed two years, after which time the setback will remain in effect only if the expansion was completed.

A local unit of government may, upon recommendation of the zoning commission or land use administrator, increase or decrease a setback distance for a new *animal feeding operation* after consideration of the proposed operation's plans, if it determines that a greater or lesser setback distance is necessary or acceptable, respectively, based upon site conditions or demonstrable safety, health, environmental or public welfare concerns.

3. CONDITIONAL USES

3.1 PERMIT PROCEDURES

3.1.A. Applicability.

The *operator* of a new *livestock facility* or an *existing livestock facility*, which meets the definition of an *animal feeding operation* and which is a conditional (or special) use of land as listed below, shall apply for and obtain a conditional (or special) use permit.

1. A new *animal feeding operation* that would be capable of handling, or that expands to handle, more than 1,000 animal units is a conditional (or special) use of land.
2. An *existing animal feeding operation* that expands to handle more than 1,000 animal units is a conditional (or special) use of land.

Whenever the capacity of an *animal feeding operation* is expanded to handle more than 2,000 or 5,000 animal units, the *operator* shall apply for a new conditional (or special) use permit.

3.1.B. Procedure.

The local unit of government may practice any or all of the provisions in the following subparagraphs in harmony with the permitting process of its general zoning regulations.

1. Application for a conditional use (or special use) permit shall be submitted to the local unit of government for tentative approval. The local unit of government shall notify the Department of Health that it has received such application.
2. The local unit of government shall notify by certified mail all property owners having property within the corresponding odor setback distance of a proposed new *animal feeding operation*. This notification must occur within 21 days of receiving the application. The approval process utilized by the local unit of government may include at least one advertised public hearing.
3. Following tentative approval or denial of the application by the local unit of government, the applicant shall be notified by letter of the decision, including conditions imposed, if any.
4. The applicant shall then forward its application for a conditional (or special) use permit, together with the tentative approval by the local government, to the North Dakota Department of Health.
5. Following a review by the Department of Health of the operator's application for a state permit, the Department of Health will notify the local unit of government of its decision.
6. The conditional (or special) use permit will become final following the granting of a permit by the Department of Health.
7. A conditional (or special) use permit granted to the operator of a new animal feeding operation shall be put into use within twenty-four (24) months, or the permit shall lapse and the operator may re-apply.

3.1.C. Application Requirements.

The application for a conditional use (or special use) permit to operate a facility for an *animal feeding operation* shall include a scaled site plan. If the facility will handle more than 1,000 animal units, the scaled site plan shall be prepared by a registered land surveyor, a civil engineer or other person having comparable experience or qualifications. The local unit of government may require any or all of the following elements, or require additional elements.

in its site plan review process when needed to determine the nature and scope of the animal feeding operation.

1. Proposed number of animal units.
2. Total acreage of the site of the facility.
3. Existing and proposed roads and access ways within and adjacent to the site of the facility.
4. Surrounding land uses and ownership, if the operation will have the capacity to handle more than 1,000 animal units.
5. A copy of the permit application submitted by the applicant to the Department of Health.

3.2 OWNERSHIP CHANGE

An *operator* of a facility that includes an *animal feeding operation* having a permit granted by this ordinance shall notify the local unit of government of the sale, or the transfer of the ownership of that operation.

3.3 OPERATING CHANGE

An *operator* of a facility that includes an *animal feeding operation* having a permit granted by this ordinance shall notify the local unit of government of intent to include an alternate *livestock* type. The notice shall be given at least 120 days prior to the anticipated date of the change.

STATUTORY AUTHORITY FOR JOINT POWERS AGREEMENTS

Cooperative or Joint Administration by Counties and Townships of Authority to Regulate Concentrated Feeding Operations

N.D.C.C. § 54-40.3-01 allows counties, townships or other political subdivisions to enter into agreements with other political subdivisions for the cooperative or joint administration of any power or function authorized by law or assigned to one or more of them. Counties and townships may use this authority to pool resources, cut red tape, and make their services and functions more cost effective, timely, efficient and responsive.

The 1999 Legislature amended N.D.C.C. § 11-33-02 and N.D.C.C. § 58-03-11 to clarify the power and function of counties and townships to regulate animal feeding operations. Counties and townships may wish to explore the possibility of cooperative or joint regulation of concentrated feeding operations to avoid unnecessary duplication of these regulations and to satisfy the purpose and intent of N.D.C.C. § 11-33-02 and N.D.C.C. § 58-03-11.

1. Factors Relevant Under Amended Law.

The 1999 Legislature amended N.D.C.C. § 11-33-02 and N.D.C.C. § 58-03-11 to clarify that counties and townships may "regulate the nature and scope of concentrated [animal] feeding operations." These amendments are given under the "INTRODUCTORY COMMENTARY" of this document.

In implementation of the amended laws, counties and townships may find it easier to ensure there are places for the development of animal feeding operations within their jurisdictions and to ensure there are reasonable and consistent regulations governing the nature and scope of operations, if they adopt one regulation for both counties and townships. One way of doing this would be for townships to relinquish their zoning authority over concentrated feeding operations to counties. Another way would be to enter into an agreement for cooperative or joint administration.

2. Decision Choices for a Cooperative or Joint Administration Agreement.

Counties and townships can structure agreements for joint or cooperative regulation of animal feeding operations in several ways. The factors, which are relevant to determining whether a county or township should enter into a cooperative or joint administration agreement with other counties or townships, are listed in Appendix II. One factor is cost. Another is representation. A third is working out the details of such an agreement. There are almost endless ways of structuring such agreements. state agencies and county and township organizations may be willing to help if interest is shown.

CLOSING COMMENTARY

A summary of the prevailing work group discussion that governed the substance of the model zoning ordinance for animal feeding operations.

The work group acknowledges that many counties and townships within the state have constraints on the resources needed for effective administration of zoning and zoning ordinances. The work group also acknowledges that compliance with detailed requirements of zoning and zoning ordinances by many people who practice farming and ranching could be a significant burden. Thus, the work group endeavored to achieve a practical and functional model ordinance supported with a model land use policy (required by law).

A report titled "History of the Development of a Model Zoning Ordinance for Animal Feeding Operations" provides information about the work group and its meetings.

The work group recognizes that the model zoning ordinance likely does not accommodate all existing zoning preferences and provisions of local units of government across the state. Thus, the model ordinance may be amended by a local unit of government as deemed appropriate. A **summary** of the prevailing discussion governing the substance of the model ordinance is provided below.

ROLE OF THE ND DEPARTMENT OF HEALTH (DoH)

- ▶ Local units of government, as well as the livestock producers, prefer that the Department of Health shoulder responsibility for protection of natural resources from pollution via its rules for animal feeding operations, including land application of manure, without additional detail in a local ordinance for animal feeding operations.
- ▶ An ordinance for animal feeding operations should be consistent in choice and use of terms as applied or defined in state laws and rules.

PUBLIC WATER SYSTEM SOURCE WATER SETBACKS

- ▶ New animal feeding operations should avoid locating in areas which have been delineated for the protection of waters of the state, including both surface water and ground water, which are used as drinking water. The federal Safe Drinking Water Act requires EPA-approved state plans for the delineation of those waters-of-the-state used as water resources for public water systems. While the state plan for North Dakota does not prohibit location of new animal feeding operations within delineated areas, the best interests of the owners/operators of animal feeding operations and the owners of the public water systems are not served by siting these operations within delineated source water protection areas.

- ▶ Maps of delineated source water protection areas for public water systems are available on the World Wide Web.
- ▶ The model ordinance does not propose setbacks from those portions of flood plains that are not within delineated source water protection areas of Public Water Systems. Local governments should include a provision concerning land uses in flood plain areas.

ODOR SETBACKS

- ▶ The choices for separation distances (setbacks) for animal feeding operations were balanced with the state odor standard (1999 SB 2365, N.D.C.C. chapter 23-25). The state odor standard makes an odor concentration of seven or more odor concentration units a violation of the standard at distances greater than one-half mile. This standard applies to all animal feeding operations, regardless of the type of livestock or the number confined and fed by the operation.
- ▶ Reported information indicates that amount of odors produced by confined swine feeding operations are greater than amounts of odors produced by other livestock types. After odors are released from animal-housing or manure-storage structures, the atmosphere governs the downwind transport and dispersion of the odors.
- ▶ The strength of odors released into ambient air and transported from animal feeding operations depends upon the construction of the animal housing and manure storage units and the topography of the site, as well as the type and number of animals. There is no apparent threshold based solely on the numbers of animals at which the downwind odor possibly could become a troublesome issue.
- ▶ General zoning provisions usually establish setbacks for buildings and structures from roadways; thus, no specific roadway setback for animal feeding operations is necessary.
- ▶ A framework for odor easements should be developed by the local unit of government when deemed appropriate. state law indicates that odor easements can be obtained by the owners/operators of animal feeding operations from owners of other property located beyond one-half mile (subparagraph b of paragraph 2 of section 11 of N.D.C.C. chapter 23-25).

CONDITIONAL-USE SIZE THRESHOLD

- ▶ The state laws which allow zoning indicate that a local unit of government "... can not prohibit through regulation, the reasonable diversification or expansion of a farming or ranching operation." The interpretation of the words "prohibit" and

“reasonable” intertwine with selection of the appropriate regulatory (in the model ordinance) size threshold for animal feeding operations.

- ▶ The number of animal feeding operations that have been issued permits by the Department of Health is about 440. (The Department presently requires any livestock feeding operation with more than 200 animal units to obtain a permit, and it anticipates a rule change adjusting this threshold to 300 animal units so as to be consistent with federal regulation.) Currently, there are: about 80 operations with 300 or more animal units; nearly 60 operations with more than 500 animal units; and nearly 30 operations with more than 1,000 animal units. Based upon a recent survey, other livestock feeding operations may not have permits because the operators are unaware of the rule permit requirements. The total number of animal feeding operations is unknown.
- ▶ While a local permit requirement for animal feeding operations with less than 1,000 animal units would involve some paperwork, public hearings, etc., on the part of owners/operators, matters of public safety, health, and general public welfare should not be overlooked.
- ▶ Additional summary details of the work group’s discussion of this issue are provided in Appendix I of the report titled “History of the Development of a Model Zoning Ordinance for Animal Feeding Operations.”

BIBLIOGRAPHY

National strategy.

Chapter 33-16-01 of the North Dakota Administrative Code, which provides the criteria for National Pollutant Discharge Elimination System permits.

U.S. Department of Agriculture and U.S. Environmental Protection Agency, March 9, 1999. Unified National Strategy for Animal Feeding Operations.

Local government roles.

Chapter 58-03 of the North Dakota Century Code, which includes provisions granting certain powers to townships for zoning.

Chapter 11-33 of the North Dakota Century Code, which pertains to land use districts and zoning by boards of county commissioners.

National Association of Counties, 1999. Leadership in Watershed Management: The County Role. (Prepared by Dr. James E. Kundell, The University of Georgia, Athens, GA 30602).

National Association of Counties, 1999. Animal Feeding Operations: The Role of Counties. (Prepared by Dr. James E. Kundell, The University of Georgia, Athens, GA 30602).

Producer industry principals.

National Environmental Dialogue on Pork Production, December 1997. Comprehensive Environmental Framework for Pork Production Operations. National Pork Producers Council.

Odor emissions.

Section 11 of Chapter 23-25 of the North Dakota Century Code, which provides an odor standard for the state.

Jacobson, Larry D., July 1999. Odor and Gas Emissions from Animal Manure Storage Units and Buildings. ASAE paper no. 994004. ASAE, 2950 Niles Road., St. Joseph, MI 49085-9659.

Schock, Martin R., September 1999. The Impact of the State's Odor Standard on the Management of Odors from Animal Feeding Operations. North Dakota Department of Health, PO Box 5520, Bismarck, ND 58506-5520.

Odor Control Task Force, Sept. 1998. Control of Odor Emissions from Animal Operations. North Carolina Agricultural Research Service, College of Agriculture and Life Sciences, North Carolina State University.

Water resource protection.

Chapter 61-28 of the North Dakota Century Code, which provides for the protection of the quality of the waters of the state.

Chapter 33-16-03 of the North Dakota Administrative Code, which provides performance criteria and permit requirements for certain sizes and aspects of livestock enterprises.

North Dakota Department of Health, 1999. North Dakota Source Water Assessment Program. North Dakota Department of Health, PO Box 5520, Bismarck, ND 58506-5520.

Wellhead Protection Program Maps (ND), World Wide Web,
<http://www.health.state.nd.us/ndhd/environ/wq/wellhead/maps/front.htm>

Example Setbacks.

First District Association of Local Governments, September 1996. Model County Zoning Regulations for Concentrated Animal Feeding Operations. PO Box 1207, Watertown, SD 57201.

Concentrated feeding operations - permits (Wyoming, SF0057), World Wide Web,
<http://legisweb.state.wy.us/97sessin/ENGROSS/senate/SF0057.htm>

HB611 (Missouri), World Wide Web,
<http://www.house.state.mo.us/bills99/bills99/hb611.htm>

Other Web Sites.

Local Government Environmental Assistance Network, World Wide Web,
<http://www.lgean.org/html/hottopics2.cfm>

Confined Feeding (Indiana), World Wide Web,
<http://www.state.in.us/idem/oshwm/confined.html>

Preventing Livestock Pollution in North Dakota, World Wide Web,
<http://www.health.state.nd.us/ndhd/environ/wq/feedlot/feedbrt.htm>

APPENDIX I

Legislative Revisions of Local Zoning Law

ROLE OF LOCAL GOVERNMENTS

Although the North Dakota's constitution (Article VII, section 6) and law (NDCC chapter 11-09.1) grant home rule authority to counties, the model language proposed herein assumes that local governments in the state have only those powers expressly granted, or reasonably implied in, the law.

The 1999 North Dakota Legislative Assembly increased protection of farming and ranching in the state by amending laws that allow a county and/or a township to divide, or zone, all or any parts of the county or township into districts. Section 11-33-02 of the North Dakota Century Code, which grants zoning authority to counties, now states:

1. 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 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.

COUNTY POWERS

First. state law allows, but does not require, boards of county commissioners to take action to promote safety, health and public welfare. Section 11-33-01 of the North Dakota Century Code states, in part:

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.

However, section 11-33-02, as quoted under the "Role of Local Governments" above, defines the scope of zoning regulations that pertain to farming or ranching and concentrated feeding operations.

Second. Zoning divides land into districts so as to enable compatible and adjoining land uses to co-exist in each district and to separate incompatible land uses from each other. Thus, a zoning ordinance consists of: (1) a map that divides the jurisdiction (county or township) into districts for classes of use, which typically are residential, recreational, commercial, industrial, agricultural and other; and (2) written conditions that establish criteria under which the land may be developed and used for the particular land use class. Section 11-33-02, as quoted earlier in this chapter, grants authority to county commissions to divide the county and to set reasonable standards, based upon size, to govern locations of concentrated feeding operations.

Third. A prerequisite for adopting a zoning ordinance is a comprehensive land use plan for the jurisdiction. Section 11-33-03 of the North Dakota Century Code states, in part:

These regulations shall be made in accordance with a comprehensive plan and designed for any or all of the following purposes:

1. To protect and guide the development of non-urban areas.
2. To secure safety from fire, flood, and other dangers.
5. To conserve and develop natural resources.

These regulations shall be made with a reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses. The comprehensive plan shall be a statement in documented text setting forth explicit goals, objectives, policies and standards of the jurisdiction to guide public and private development within its control.

TOWNSHIP POWERS

Sections 58-03-11, 58-03-12 and 58-03-13 of the North Dakota Century Code contain similar requirements, as described above, for townships that choose to establish zoning districts and regulate development.

APPENDIX II

Elements of a Cooperative or Joint Administration Agreement

N.D.C.C. § 54-40.3-01 provides:

- I. Any county, city, township, city park district, school district or other political subdivision of this state, upon approval of its respective governing body, may enter into an agreement with any other political subdivision of this state for the cooperative or joint administration of any power or function that is authorized by law or assigned to one or more of them. Any political subdivision of this state may enter into a joint powers agreement with a political subdivision of another state or political subdivision of a Canadian province if the power or function to be jointly administered is a power or function authorized by the laws of this state for a political subdivision of this state and is authorized by the laws of the other state or province. A joint powers agreement may provide for:
 - a. The purpose of the agreement or the power or function to be exercised or carried out.
 - b. The duration of the agreement and the permissible method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of any property upon the partial or complete termination.
 - c. The precise organization, composition, and nature of any separate administrative or legal entity, including an administrator or a joint board, committee, or joint service council or network, responsible for administering the cooperative or joint undertaking. Two or more political subdivisions which enter into a number of joint powers agreements may provide a master administrative structure for the joint administration of any number of those agreements, rather than creating separate administrative structures for each agreement. However, no essential legislative powers, taxing authority, or eminent domain power may be delegated by an agreement to a separate administrative or legal entity.
 - d. The manner in which the parties to the agreement will finance the cooperative or joint undertaking and establish and maintain a budget for that undertaking. The parties to the agreement may expend funds pursuant to the agreement, use unexpended balances of their respective current funds, enter into a lease-option to buy and contract for deed agreements between themselves and with private parties, accumulate funds from year to year for the provision of services and facilities, and otherwise share or contribute property in accordance with the agreement in cooperatively or jointly exercising or carrying out the power or function. The agreement may include the provision of personnel, equipment, or property of one or more of the parties to the agreement that may be used instead of other financial support.
 - e. The manner of acquiring, holding, or disposing of real and personal property used in the cooperative or joint undertaking.

- f. The acceptance of gifts, grants, or other assistance and the manner in which those gifts, grants, or assistance may be used for the purposes set forth in the agreement.
 - g. The process to apply for federal or state aid, or funds from other public and private sources, to the parties for furthering the purposes of the agreement.
 - h. The manner of responding for any liability that might be incurred through performance of the agreement and insuring against that liability.
 - i. Any other necessary and proper matters agreed upon by the parties to the agreement.
2. Any county, city, township, city park district, school district, or other political subdivision of this state may enter into an agreement in the manner provided in subsection 1 with any agency, board, or institution of the state for the undertaking of any power or function which any of the parties is permitted by law to undertake. Before an agreement entered into pursuant to this subsection is effective, the respective governing body or officer of the state agency, board, or institution must approve the agreement and the attorney general must determine that the agreement is legally sufficient.
 3. An agreement made pursuant to this chapter does not relieve any political subdivision or the state of any obligation or responsibility imposed by law except to the extent of actual and timely performance by a separate administrative or legal entity created by the agreement. This actual and timely performance satisfies the obligation or responsibility of the political subdivision.

Thus, as defined by N.D.C.C. § 54-40.3-01, a cooperative or joint administration agreement relating to regulating concentrated animal feeding operations may contain the following elements:

1. The purpose of the agreement;
2. The duration of the agreement and procedure for termination;
3. The organization, composition and nature of its administering board;
4. Budget and financing;
5. Location and who will own or lease the property, if needed;
6. How to handle gifts, grants or other assistance, if needed or relevant;
7. The process to apply for federal or state aid, or other funds, if relevant;
8. Liability and insurance; and
9. Any other necessary and proper matters agreed upon by the parties to the agreement.

ENVIROPORK AND ITS IMPACT ON ND STATE LAW

The first industrial-scale hog production facility sited in North Dakota was Enviropork, west of Larimore in Grand Forks County. The facility got its county permit during the 1997 Grand Forks flood. It received its state permit later that year.

Enviropork was essentially a Purina Mills operation. The land on which it is located belonged to a private citizen, Bob Bergquist (who has subsequently gone bankrupt and left the state). However, the hogs were to be owned by North Dakota Pigs Cooperative, made up largely of Purina Mills seed dealers from Minnesota. Dakota Facilities LLC owned the buildings and borrowed the money to put them up from Purina Ag Credit. The cooperative signed a contract with Swine Management Services, a Purina Mills subsidiary, to run the operation.

Attorney General Heidi Heitkamp ruled in October 1997 that Enviropork was an illegal corporate farm, based on the contract. However, when the contract was amended superficially, she changed her mind and said she would have to see it in operation before she could determine its legality. She left office before ever making a ruling.

Meanwhile, two DRC members who owned property adjacent to Enviropork, Jim Griffin and Keith Peterson, filed suit, contending that the state Health Department should have required Enviropork to get a solid waste permit for its lagoon, and also alleging numerous violations of the state odor standard and the facility's construction permit. (At one point, the state argued in court that provisions of the permit were not enforceable law but "regulatory dialogue.")

Judge Bruce E. Bohlmann ruled in the plaintiffs' favor on one element of the lawsuit in September 1998, saying Enviropork was "not a farming operation" but a "pig factory" and should be subject to the same laws as any waste facility. However, within a month, the State Health Council passed "emergency rules" exempting all animal waste from the state's solid waste disposal law. The rest of Griffin and Peterson's case was settled out of court.

In early 1999, state legislators passed three bills intended to provided assistance to industrial hog operations:

- SB 2366, which wrote the Health Council's "emergency rules" into Century Code;
- SB 2365, which weakened the state odor standard by preventing issuing an odor violation except at a residence or public area;
- HB 1054, which gave industrial hog facilities the same property tax exemptions as traditional farmers have for farm buildings.

However, the House defeated HB 1397, which would have taken away all county and township zoning authority over any agricultural practices. The primary supporters for all these bills were Farm Bureau of North Dakota, North Dakota Stockmen's Association and the North Dakota Pork Producers Council.

After the legislature adjourned, the State Health Department convened an advisory panel on county and township zoning related to concentrated animal feeding operations. DRC participated. The end result was a model zoning ordinance for counties and townships. The model ordinance neither required political subdivisions to adopt it nor forbade them from adopting more stringent zoning regulations, such as those promoted by DRC.

Samples
of a number
of petitions
turned in

WE THE FOLLOWING RESIDENTS OF THE SUTTON & GLENFIELD
COMMUNITIES OPPOSE THE WILLOW GROVE SOW FARM FOR THE
FOLLOWING REASONS:

1. HEALTH ISSUES
2. ODOR
3. POSSIBLE WATER CONTAMINATION

PRINT NAME	ADDRESS/PHONE NUMBER	SIGNATURE
Judith Bartlett	Glenfield 785-2376	Judith Bartlett
Keith Bartlett	Glenfield 785-2376	Keith Bartlett ^{BJB}
Paul Miller	Glenfield 785-2202	Paul Miller
Becky Alley	Glenfield 785-2282	Becky Alley
Edward Rodriguez	Glenfield 785-2585	Edward Rodriguez
Marc Johnson	Sutton - 764-2630	Marc Johnson
Rheda Johnson	Glenfield 785-2438	Rheda Johnson
Shirley Buznes	Glenfield 785-2654	Shirley Buznes
Roger Kelpin	Glenfield 785-2149	Roger Kelpin
Donald Klevon	Glenfield 785-26-36	Donald Klevon
Elaine Walton	Glenfield 785-2134	Elaine Walton
Irene A. Johnson	Glenfield 785-2247	Irene A. Johnson
JESSE M BUSSERT	GLENFIELD (785) 2229	Jessie M. Bussert

WE THE FOLLOWING RESIDENTS OF THE SUTTON & GLENFIELD COMMUNITIES OPPOSE THE WILLOW GROVE SOW FARM FOR THE FOLLOWING REASONS:

1. HEALTH ISSUES
2. ODOR
3. POSSIBLE WATER CONTAMINATION

DATE	PRINT NAME	ADDRESS/PHONE NUMBER	SIGNATURE
8-13-06	Deanne Hoffman	^{769-2139 58484} 9680 2 nd ST Sutton ND	<u>Deanne Hoffman</u>
8-13-06	Mark Hoffman	9680 2 nd Sutton ND	<u>Mark Hoffman</u>
8-13-06	ALDEN L. WALEN	⁷⁰¹⁻²⁸⁵⁻²²⁹⁰ 9471 Main St Sutton ⁷⁶⁹⁻²⁴⁵⁵	<u>Alden L. Walen</u>
8-14-06	Bob Bailey	325 96 AVE S.E. Sutton	<u>Bob Bailey</u>
8-14-06	Erin Hoffman	⁷⁶⁹⁻²¹³⁹ 9680 2 nd SE Sutton 58484	<u>Erin Hoffman</u>
8-14-06	Leroy Erickson	9580 - Highway 200 - Glenfield	<u>Leroy Erickson</u>
8-14-06	MAE ERICKSON	9580 - Highway 200 Glenfield	<u>Mae Erickson</u>
8-14-06	Dan Simonsen	9210 4th St. NE Glenfield	<u>Dan Simonsen</u>
8-14-06	Peta Westeraussen	9535 2 nd St. NE Glenfield, ND 58443 ⁷⁶⁹⁻²³³⁹	<u>Peta Westeraussen</u>
8-14-06	ALLEN WESTERHAUSEN	9535 2 nd St. NE Glenfield, ND 58443 ⁷⁶⁹⁻²³³⁹	<u>Allen Westeraussen</u>
8-14-06	Leonard J. Simonsen	9650 4th St NE Glenfield ND 58443	<u>Leonard J. Simonsen</u>
8-14-06	JoAnn Simonsen	9650 4th St NE Glenfield ND 58443/769-2339	<u>JoAnn Simonsen</u>
8-14-06	Anne Simonsen	9650 4th St. NE Glenfield, ND 58443	<u>Anne Simonsen</u>
8-14-06	Marlette Weber	9850 Main St. Sutton ND 58444	<u>Marlette Weber</u>
8-14-06	Tim Weber	9850 Main St Sutton, ND ⁷⁶⁹⁻²³⁴³	<u>Tim Weber</u>
8-15-06	Teri Anderson	121 98 th Ave NE, Sutton, ND ^{769-2343 58484}	<u>Teri Anderson</u>
8-15-06	Nancy Anderson	121 98 th Ave NE, Sutton, ND ^{769-2343 58484}	<u>Nancy Anderson</u>
8-15-06	KENT ANDERSON	191-97 th AVE N.E. SUTTON, N.D. ND ^{769-2343 58484}	<u>Kent Anderson</u>

**Testimony To The
THE SENATE AGRICULTURE COMMITTEE
Prepared February 8, 2007 by
Ken Teubner, NDACo President
Towner County Commissioner**

REGARDING SENATE BILL NO. 2331

Chairman Flakoll and committee members, I am Ken Teubner, a Towner County Commissioner and the current President of the North Dakota Association of Counties. I thank you for the opportunity to address SB2331 on behalf of county government. County commissioners from across the State have reviewed this bill and directed me to indicate their strong opposition.

County commissioners are convinced that their county residents desire to have land use decisions made locally, not in Bismarck – made by locally elected leaders that they can hold accountable. We believe that this law could be interpreted in a manner that would shift land use decision-making away from the citizens and toward a system over which they have little control.

The Legislature has limited the Health Department in the types of tools that they can use to ensure compliance with their rules – tools such as performance bonds. This bill proposes to relieve local government of their authority to do the same.

It must be remembered that county officials desire these developments – they can be very good for a county. They must however, be sited in the best possible location after all factors are considered. Elected county officials know that when large animal feeding operations are not properly sited; it can result in tax-forfeited property with clean-up costs funded by the neighboring tax payers.

If this committee believes our current laws are not working, we urge a focused study by those state, county, township, and industry stakeholders. Please give SB2331 a Do Not Pass recommendation, and let local government work to encourage development in a thoughtful and reasonable manner.

RAMSEY COUNTY, NORTH DAKOTA

OFFICE OF THE AUDITOR

Auditor

Elizabeth V. Fischer

Deputy Auditor

Kandy K. Christopherson

Deputy Clerk II

Beverly Schuler

Deputy Clerk I

Jacqueline Fuller

524 4th Avenue NE Unit 6
Devils Lake, North Dakota 58301-2487
Phone (701)662-7007
Fax (701)662-7049

County Commission

Joe Belford

Pamela Brekke

Bill Mertens

Barry Gage

Scott Diseth

February 6, 2007

North Dakota Senate Agricultural Committee

The Ramsey County Commission in session, Tuesday, February 6, 2007 made the motion and seconded and voted to do not pass SB 2331 and include HB1420 to be forwarded to intern study committee composed of varies agencies and officials to work together to come up with a bill draft that works for all concerned.

Sincerely,



Bill Mertens,
Ramsey County Commission

Attest:


Elizabeth V. Fischer
Ramsey County Auditor

SB2331

Testimony to Senate Agriculture Committee by Kenneth Yantes for NDTOA

Mr. Chairman and members of the Senate Agriculture Committee:

My name is Ken Yantes and I am the Executive Secretary of the North Dakota Township Officers Association. We have over 6000 members that are locally elected grassroots government leaders from 1141 organized townships.

I have come here today to oppose the passage of SB2331 as introduced.

We **staunchly** oppose the wording found beginning on line 15 and

Continuing on line 16 and ending with line 17 which says:

“ Counties and Townships may not adopt or enact any water pollution, air pollution, solid waste, or any associated environmental or health laws, ordinances or regulations for animal feeding or agricultural operations”.

Although we do not advocate zoning stricter than the state health department standards,

We feel that it is our **right** to be able to defend our township residents if the need arises. Passage of this bill as introduced will remove our authority.

Please vote **Do not pass on SB2331.**

There are township officers here today, that have come a long distance and I would step aside so you might hear from them.

North Dakota Farmers Union

PO Box 2136 • 1415 12th Ave SE • Jamestown ND 58401

701-252-2340 • 800-366-NDFU

FAX: 701-252-6584

WEBSITE: www.ndfu.org

E-MAIL: ndfu@ndfu.org



Senate Bill 2331
Senate Agriculture Committee

Chairman Flakoll and Members of the Senate Agriculture Committee,

My name is Richard Schlosser; I am here representing the members of North Dakota Farmers Union. I am here to testify in opposition of Senate Bill 2331.

North Dakota Farmers Union believes that livestock production is essential to the economic well being of North Dakota. Our organization recognizes that sound environmental practices and family agriculture should work together for responsible development of livestock production that is vital to maintaining healthy agriculture.

Livestock waste is a resource that can provide essential nutrients for crops. However, large feeding operations that have concentrated volumes of waste can negatively impact our natural resources, public health, and neighboring livestock operations. Presently, North Dakota Century Code speaks to the powers of regulating concentrated feeding operations by counties and townships. These sections state that each political subdivision "...may regulate with respect to nature (type of livestock) and scope (size)." SB 2331 states that "counties and townships may not adopt or enact any water pollution, air pollution, solid waste, or any associated environmental or health laws, ordinances, or regulations for animal feeding or agricultural operations." That begs the question, how will local entities establish ordinances dealing with scope and nature without referencing environment or health? SB 2331 negates the right of local governments to regulate these facilities by limiting their ability to evaluate the health and environmental impact on the natural resources and citizens.

North Dakota Farmers Union supports a Department of Health permitting process that addresses size, concern for surface and ground water contamination and allows for public comment. With that said, North Dakota should safeguard the right of political subdivisions to enact and enforce their own ordinances.

In closing, North Dakota Farmers Union believes that responsible livestock development can include the joint efforts of local zoning and the permitting process of the North Dakota Department of Health. We urge a do not pass on Senate Bill 2331. Thank you.

Testimony

Senate Bill 2331

Senate Agriculture Committee

Thursday, February 8, 2007; 9 a.m.

North Dakota Department of Health

Good morning, Chairman Flakoll and members of the Senate Agriculture Committee. My name is David Glatt, and I am chief of the Environmental Health Section for the North Dakota Department of Health. I am here today to provide information regarding the environmental regulation of confined animal feeding operations (CAFOs).

First, I want to make it clear that the department has historically supported local zoning and will do so in the future as authorized in state law.

The intent of my testimony today is to provide the committee with background information as it relates to the regulation of CAFOs in North Dakota. It is important to note the following:

- Animal feeding operations have been regulated by the North Dakota Department of Health since 1967. The decision to regulate animal feeding operations in the state was made long before the United States Environmental Protection Agency (EPA) acknowledged the potential impact feedlots could have on water quality. In part, because of the state's proactive approach, we have not seen the large-scale pollution problems observed in some other states.
- The North Dakota Department of Health CAFO regulation is based upon the requirements of the federal Clean Water Act as adopted by Congress to protect the nation's surface waters from contamination. In addition, the North Dakota CAFO regulations have been developed utilizing the expertise of the North Dakota Department of Health, Natural Resource Conservation Service (NRCS), North Dakota State University Agricultural Extension Service and the United States Environmental Protection Agency. Prior to adoption of the regulation, the department also provided opportunity for review and comment by the State Health Council, Environmental Protection Agency and the public.
- The department continues to evaluate the environmental impact of CAFOs and has collected evidence that livestock facilities complying with state regulations can operate with minimal impact on the environment. As an example, groundwater monitoring conducted at several facilities in response to public

concern did not indicate widespread or gross contamination of the near-surface aquifer as feared by some in the public.

To give you a brief synopsis of the complexity of the permitting process, the following is provided:

1. Each proposed new CAFO facility must be evaluated for appropriate site characteristics. For example, site-specific geology, location in relation to shallow groundwater and established residences, and proximity to surface water drainage must be evaluated. Proposed site locations that do not meet the appropriate siting criteria are rejected.
2. Each proposed facility must meet specific design standards that include requirements for manure/wastewater storage capacity and liner compaction. Liner compaction requirements for CAFOs meet or exceed those required of municipal wastewater stabilization lagoons constructed in the state. In some cases, the installation of groundwater monitoring wells may be required.
3. Each new CAFO facility must develop nutrient management plans for review and approval by the department. Nutrient management plans must identify how manure will be put to beneficial use meeting approved application methods. Plans must also include how dead animals are properly handled and disposed.
4. After the department determines that a proposed CAFO facility meets the criteria established in rule, each draft permit is made available to the public for review and comment. State law also provides appropriate opportunity to challenge any determination made by the department.
5. If a permit is approved, the department conducts inspection of construction activities and, in fact, has required the removal and recompaction of manure storage pond liners that do not meet established specifications. Upon completion of construction activities, the department conducts annual inspections of the larger facilities for compliance with the appropriate environmental protection regulations.

It has been our experience, supported by field data, that the North Dakota Department of Health CAFO regulations are protective of the environment. They work to protect the environment because they have been developed through an open public review process, are based upon science and the law, and have been objectively applied throughout the state.

This concludes my testimony. I am happy to answer any questions you may have.

**AUDITOR'S OFFICE
DIVIDE COUNTY, NORTH DAKOTA
P.O. BOX 49
CROSBY, ND 58730
GAYLE JASTRZEBSKI, AUDITOR
Phone (701) 965-6351**

TO : ND Legislative Session

**ATTN: District #2 House of Representatives &
District #2 Senator
House Ag Committee
Senate Ag Committee**

FAX : 701-328-1997

DATE: February 7, 2007

FROM : Divide County Commissioners

FAX : 701-965-4370

COMMENTS: Attached find the do not pass resolution on HB 1420 & SB2331

RESOLUTION Divide County Commissioners request a **DO NOT** Pass for SB 2331

WHEREAS, Divide County Planning and Zoning Commission and County Commissioners developed said ordinance using the power and authority granted to them by the NDCC 11-33-02.2; and

WHEREAS, ND Century Code 23-29 states that the term "Solid Waste" does not include:

- a. Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners; and

WHEREAS, manure from CAFOs is not included in the management of solid waste by the State Department of Health then it needs to be managed by the County Commissioners and/or Township Supervisors.

WHEREAS, Divide County Planning and Zoning Commission and County Commissioners may/did develop an ordinance equal to or more stringent than State rules as allowed by NDCC 23-29-05; and

WHEREAS, Divide County Planning and Zoning Commission and County Commissioners did/may develop said ordinance following the "A Model Zoning Ordinance for Animal Feeding Operations", March 2000 which was developed under the direction by the 1999 Executive Order (1999-03) Governor Schafer issued an which directed the Department of Health to develop said Model ordinance; and

WHEREAS, part of zoning rules are to regulate odor and water setbacks of large concentrated animal feeding operations to protect the environment and health of said county stated in above stated NDCC and State Model Ordinance;

NOW, THEREFORE, BE IT RESOLVED that the North Dakota State House of Representatives vote "DO NOT PASS" on SB 2331.

Dated at Crosby, ND this 2 day of Feb, 2007 by Divide County Commissioners

Print Name

Address/Phone number

Signature

Gerald Brady	11160 106 th ST NW Crosby, ND 58730	<i>[Signature]</i>
Doug Grange	P O Box 237, Crosby, ND 58730	<i>[Signature]</i>
Tim Selle	9875 137 th Ave NW Fortuna ND 58849	<i>[Signature]</i>

Letter of Testimony
Ginny Botz-Taylor
7187 70th Street NE
Cando, ND 58324

February 7, 2007

Re: Senate Bill 2331

Although I reside in Arizona, as a landowner of a productive family farm located in both Coolin and Maza Townships, I request "on record" for a "DO NOT PASS" recommendation on Senate Bill 2331 for the following reasons:

- SB 2331 limits the ability of counties and townships to pass local health ordinances that protect their citizens.
- Government must be accessible to the people it serves, and any attempt to weaken local control is a threat to local democracy.
- Counties and townships have the ability to site schools and other economic developments. They should be allowed to site concentrated animal feeding operations, (CAFOs) which is falsely touted as "economic development."
- Local governing rights should not be stripped away by state legislators who are swayed by multi-national agriculture corporations. Counties and townships deserve the right to regulate mega-farms, which have the potential to impact our environment, health, and land values.

The Botz Family Farm submitted comments to The State Livestock Design Manual in July of 2004. I know for a fact that the State Design Manual is used as a "guideline" in the permitting process for CAFOs. An overall state guideline can NOT address what is in the best interest for individual communities, all with distinctive and unique circumstances. Moreover, the State Livestock Design Manual lacks the following and enforcement of:

- Monitoring of surface water pollution – NONE!
- Monitoring of water quality around the waste lagoons – NONE!
- Monitoring of air pollution – NONE!
- Closure plan in the state requirements – NONE!
- Financial responsibility for cleanup in the state plan – NONE!
- Public participation in the decision making process?? – NONE!

With all due respect, I question the ability of our North Dakota State Department of Health to effectively monitor CAFOs. One example: *The Department of Health did not visit the Dakota Country Swine operation in Towner County until July 15, 2005 after a violent storm destroyed two barns, damaging two more, of the 10-barn complex that was home to 20,000 feeder pigs on July 7, 2005, even after an Environmental Incident Report was filed.*

It does not make sense for rural citizens to be kept in the dark when an industrial operation that can have serious health, environmental and economic impacts is being proposed in our communities. Please! DO NOT PASS SB 2331!

We do not inherit the earth from our ancestors. We borrow it from our children.
~Native American Proverb

Letter of Testimony
Barbe R. Botz-Thompson
7187 70th Street NE
Cando, ND 58324

February 7, 2007

Re: Senate Bill 2331

My sisters and I own a 4th generation family farm in Towner County. I respectfully request "on record" for a "**DO NOT PASS**" recommendation on Senate Bill 2331.

- SB 2331 takes away the rights of Counties and Townships to pass local environmental and health ordinances to protect their community.
- Many Counties and Townships already have zoning ordinances in place to safeguard their area; for example, the Devils Lake Basin. These rights should not be taken away. Government should serve the people -- NOT weaken local control!
- Local governing rights should not be stripped away by state legislators who are swayed by multi-national agriculture corporations. Counties and Townships deserve the right to regulate these operations.

Changes in the agricultural industry have resulted in the unchecked growth of Concentrated Animal Feeding Operations (CAFOs). One CAFO eliminates ~10 family farms or forces the remaining small farmers to enter into corporate contracts. (1) Besides the economic impacts, there are environmental problems associated with CAFOs. These problems can include water contamination from manure runoff (2), noxious fumes containing ammonia, dust, and hydrogen sulfide (3), and property value depreciation. (4)

In the absence of effective federal and state regulations, Counties and Townships have begun to try to protect their communities from the effects of CAFOs. Many have zoning ordinances to provide protection. Counties and Townships should have the authority to enact regulations to protect their citizens and land from the effects of CAFOs. Now, it seems, that instead of empowering our local governments, state lawmakers are bowing to pressure from agricultural lobbyists, who insist that the industry should not be subject to stringent regulations. Agricultural groups and lobbyists look negatively at the notion of local control because it could hurt "profit margins." Counties and Townships should not be stripped of their power to regulate these operations, including the ability to enact pollution regulations stricter than the state, and the control of CAFOs where they may be located.

It is important to recognize that federal, state, and local governments all have different, but important, roles in protecting citizens and the environment from the effects of CAFOs. (5) Citizens must not only encourage the federal government to enact stronger regulations, but have the ability to **LOCALLY** regulate these operations for the well-being of the community.

Furthermore, SB 2331 states:

"The state department of health is responsible for regulating Counties and Townships may not adopt or enact any water pollution, air pollution, solid waste, or any associated environmental or health laws, ordinances, or regulations for animal feeding or agricultural as provided in chapters 23-20.3, 23-25, 23-29, and 61-28. ... Counties and Townships may not adopt or enact any water pollution, air pollution, solid waste, or any associated environmental or health laws, ordinances, or regulations for animal feeding or agricultural operations."

I respectfully submit that placing the responsibility to regulate any water pollution, air pollution, solid waste, or any associated environmental or health laws, ordinances, or regulations for animal feeding or agricultural in the hands of the state department of health is inappropriate. The department appears to lack the resources necessary to ensure adequate regulation and

monitoring of environmental issues. For example, after a violent summer storm damaged a swine facility in Towner County (July 7, 2005), I filed an Environmental Incident Report with the North Dakota State Department of Health. *The Department of Health did not visit the operation until July 15, 2005!*

All citizens need to have a voice when an industrial operation with the potential for serious health, environmental, and economic impacts is being proposed in our communities.

Please DO NOT PASS SB 2331!

Sources:

- (1) "Clean Water and Factory Farms: Frequently Asked Questions." Sierra Club. 1 April 2004 <http://www.sierraclub.org/factoryfarms/faq.asp> .
- (2) Marks, Robbin. "Cesspools of Shame: How Factory Farm Lagoons and Sprayfields Threaten Environmental and Public Health." Natural Resources Defense Council and the Clean Water Network. July 2001. 1 April 2004 <http://www.nrdc.org/water/pollution/cesspools/cesspools.pdf> .
- (3) Ad Hoc Committee on Air Emissions from Animal Feeding Operations, Committee on Animal Nutrition, Board on Agriculture and Natural Resources, Board on Environmental Studies and Toxicology, Division on Earth and Life Studies, National Research Council. "Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs." Washington, D.C.: The National Academies Press, 2003. 1 April 2004 <http://www.nap.edu/books/0309087058/html/> .
- (4) Hamed, Mubarak, Thomas G. Johnson, and Kathleen K. Miller. "The Impacts of Animal Feeding Operations on Rural Land Values." Columbia, Missouri: University of Missouri-Columbia, Community Policy Analysis Center, May 1999. 1 April 2004 <http://www.cpac.missouri.edu/library/reports/landvalue-saline/landvalues.pdf> .
- (5) Kundell, James E. "Animal Feeding Operations: The Role of Counties." 1999. Grace Factory Farm Project. 1 April 2004 <http://www.factoryfarm.org/docs/cafo.pdf> .

Sen. Flakoll

SB 2331
Discussion, Feb 9th

10,000+

	H	C
+1m	2,000	1,000
2m	4,000	2,000
3m	6,000	3,000
4m	8,000	4,000
5m	10,000	5,000

Cap at 5m

78341.0100

Sixtieth

UNOFFICIAL ENGROSSMENT
SENATE BILL NO. 2331

Legislative Assembly of North Dakota
Introduced by
Senators Erbele, Olafson, Wanzek
Representatives Belter, Heller, Onstad

A BILL for an Act to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to authority of the state department of health to regulate health and environmental impacts of animal feeding and agricultural operations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

State department of health - Regulation of environmental and health impacts of animal feeding and agricultural operations. The state department of health is solely responsible for regulating water pollution, air pollution, solid waste, and any associated environmental and health impacts from animal feeding and agricultural operations as provided in chapters 23-20.3, 23-25, 23-29, and 61-28. Counties and townships are limited to the authority granted to them in sections 11-33-02 and 58-03-11.

PROPOSED AMENDMENTS TO SB NO. 2322

Page 1, line 8, after "is" insert "solely"

Page 1, line 13, remove "for purposes of this section, "scope" means the number of animal units"

Page 1, remove lines 14 through 17

Lyle

General Rules of Statutory Construction that Apply to Judicial Review of Authority Exercised by a Municipality or Political Subdivision

Cities, counties, and townships have only those powers given to them by the legislature:

“Cities are creatures of statute and possess only those powers and authorities granted by statute or necessarily implied from an express statutory grant. In defining municipal powers, the rule of strict construction applies. However, the manner and means of exercising those powers, unless prescribed by the legislature, are within the discretion of the City.”

Ebach v. Ralston

469 N.W.2d 801, 804

N.D., 1991.

(Citations omitted.)

But within the authority given by the legislature, a court will recognize that cities, counties, and townships have broad discretion to exercise the powers delegated to them by state law:

“Our review of a municipality's adoption, interpretation and application of its own ordinances is strictly limited by the doctrine of separation of powers. A municipality has broad discretion to determine the manner and means of exercising the powers delegated to it by state law.

....

“In defining municipal powers, the rule of strict construction applies. Once a municipality's powers have been determined, however, ‘the rule of strict construction no longer applies, and the manner and means of exercising those powers where not prescribed by the Legislature are left to the discretion of the municipal authorities.’ Leaving the manner and

means of exercising municipal powers to the discretion of municipal authorities implies a range of reasonableness within which a municipality's exercise of discretion will not be interfered with or upset by the judiciary.”

GO Committee ex rel. Hale v. City of Minot
701 N.W.2d 865
2001 ND 136 ¶ 8
(Citations omitted.)

NDCC 1-02-02 Words to be understood in their ordinary sense.

Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but any words explained in this code are to be understood as thus explained.

NDCC 1-02-03 Language - How construed.

Words and phrases must be construed according to the context and the rules of grammar and the approved usage of the language. Technical words and phrases and such others as have acquired a peculiar and appropriate meaning in law, or as are defined by statute, must be construed according to such peculiar and appropriate meaning or definition.

Lyle

HB 1420 Amendments

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

1. 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 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.

2. Definitions.

- a. 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.
- b. 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. The term does not include normal wintering operations for cattle.
- c. For purposes of this section, "livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, or other animals raised, fed, or produced as part of farming or ranching activities.
- d. For purposes of this section, "nature" means the type or species of livestock.
- e. For purposes of this section, "scope" means the size of the concentrated feeding operation as defined by the number of animal units.
- f. For purposes of this section, "animal units" has the same meaning as defined by subdivision c of subsection 7 of section 23-25-11.
- g. For purposes of this section, "location" means the set-back distance from the structure, fence, or other boundary enclosing a concentrated feeding operation, including any animal waste collection system, to the nearest occupied residence, to the nearest buildings used for non-farming or non-ranching purposes as defined or established in the regulations, or to the nearest land zoned for residential, recreational, or commercial purposes; but it does not include set-back distances for application of manure or other recycled agricultural material that is applied under a nutrient management plan approved by the department of health. Regulations may establish districts in a county for high-density agricultural production where set-back distances for concentrated feeding operations and related agricultural operations are less than other districts in the county. Regulations may establish districts around areas zoned for residential, recreational, or non-agricultural commercial uses for low-density agricultural production where set-back distances for concentrated feeding operations

and related agricultural operations are greater than other districts in the county. Set-back distances may not be more than fifty percent greater or less than the set-back distances provided in subdivision a of subsection 7 of section 23-25-11, and low-density agricultural production areas may not be more than one and one-half miles [2.4 kilometers] from the edge of the area zoned for residential, recreational, or non-agricultural commercial uses.

- h. For purposes of this section, "related agricultural operations" means an agricultural operation or agricultural processing facility that produces a product or by-product that may be used by a concentrated feeding operation.
- i. For purposes of this section, "standards" means regulations relating to nature, scope, and location.

~~2.~~ 3. 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.~~ 4. 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.

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

1. 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, 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.

3. Definitions.

- a. 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.
- b. 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. The term does not include normal wintering operations for cattle.
- c. For purposes of this section, "livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, or other animals raised, fed, or produced as part of farming or ranching activities.
- d. For purposes of this section, "nature" means the type or species of livestock.
- e. For purposes of this section, "scope" means the size of the concentrated feeding operation as defined by the number of animal units.
- f. For purposes of this section, "animal units" has the same meaning as defined by subdivision c of subsection 7 of section 23-25-11.
- g. For purposes of this section, "location" means the set-back distance from the structure, fence, or other boundary enclosing a concentrated feeding operation, including any animal waste collection system, to the nearest occupied residence, to the nearest buildings used for non-farming or non-ranching purposes as defined or established in the regulations, or to the nearest land zoned for residential, recreational, or commercial purposes; but it does not include set-back distances for application of manure or other recycled agricultural material that is applied under a nutrient management plan approved by the department of health. Regulations may establish districts in a township for high-density agricultural production where set-back distances for concentrated feeding operations and related agricultural operations are less than other areas in the township. Regulations may establish districts around areas zoned for residential, recreational, or non-agricultural commercial uses for low-density agricultural production where set-back distances for concentrated feeding operations and related agricultural operations are greater than other areas in the township. Set-

back distances may not be more than fifty percent greater or less than the set-back distances provided in subdivision a of subsection 7 of section 23-25-11, and low-density agricultural production areas may not be more than one-half mile [.8 kilometers] from the edge of the area zoned for residential, recreational, or non-agricultural commercial uses.

- h. For purposes of this section, "related agricultural operations" means an agricultural operation or agricultural processing facility that produces a product or by-product that may be used by a concentrated feeding operation.
- i. For purposes of this section, "standards" means regulations relating to nature, scope, and location.

~~3.4.~~ 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.

~~4.5.~~ 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.



"Watchdogs of the Prairie"
Organizing North Dakotans Since 1978

Dakota Resource Council • PO Box 1095 • Dickinson, ND 58602
Phone: 1-701-483-2851 • Fax: 1-701-483-2854

Bismarck Office

103½ 3rd St, Suite 8 • Bismarck, ND 58502
Phone: 701-224-8587 • Fax: 701-224-0198

Testimony on SB 2331 to the Senate Committee on Agriculture

February 8, 2007

Chairman Flakoll and committee members my name is Barb Price and I am an organizer for Dakota Resource Council. DRC is an independent membership-based grassroots organization that has been working with North Dakotans since 1978. About half our members are active farmers and ranchers.

Dakota Resource Council recognizes that livestock production is very important to the economy of North Dakota. We believe that livestock production should be increased in North Dakota but not at the risk to the livelihood of family farmers and ranchers or to the detriment of the environment, health and economic well being of North Dakotans.

DRC is asking for a DO NOT PASS vote on SB 2331 for the following reasons:

1. It is important to preserve the authority for local governmental entities, county and township, to control what happens in their communities.
 - It is wrong to use State legislation to tell counties and townships that they do not have the right control what goes on in their community.

2. This bill will allow the State Health Dept. to make all determinations as far as environment and health issues related to Concentrated Animal Feeding Operations (CAFOs) rather than the people that live around proposed CAFOs.

3. ND CC 23-29 In the definition for "Solid Waste," does not include:

"Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners;"

If manure from CAFOs is not included in the management of solid waste by the State Department of Health then it needs to be managed by the County Commissioners and/or Township Supervisors.

4. ND State Livestock Program Design Manual doesn't cover:

- The State Design Manual is used only as guidelines in the review and permitting process for CAFOs.
- These guidelines are explanatory in nature **and do not have the force and effect of law.**
- The State is focused on the Application of a would-be CAFO operator.
- All of the numbers in the application are determined and supplied by the operator.
- A workable plan on paper satisfies the state requirements.
- No monitoring of water quality around the waste lagoons.
- No monitoring of surface water pollution.
- No monitoring of air pollution.
- No monitoring of subsurface water contamination.
- No closure plan in the state requirements.
- No financial responsibility requirements for cleanup in the state plan.
- No public participation in the decision making process with the state.