

April 22, 2019

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2345

That the House recede from its amendments as printed on pages 1344-1349 of the Senate Journal and pages 1539-1544 of the House Journal and that Engrossed Senate Bill No. 2345 be amended as follows:

Page 1, line 1, after the first comma insert "11-33-22,"

Page 1, line 1, remove the second "and"

Page 1, line 2, after "58-03-11.1" insert ", and 58-03-17"

Page 1, line 3, after the first semicolon insert "to provide a report to the legislative management;"

Page 4, line 1, overstrike "vary by more than fifty"

Page 4, line 2, overstrike "percent from" and insert immediately thereafter "exceed"

Page 4, line 3, after "23-25-11" insert "unless the county can demonstrate compelling, objective evidence specific to the county which requires a greater setback within the county, in which case the setbacks may exceed those established in subdivision a of subsection 7 of section 23-25-11 by no more than fifty percent. If a setback under this subsection is greater than the corresponding setback established in subdivision a of subsection 7 of section 23-25-11, a person whose animal feeding operation will be or has been affected by the applicable county ordinance may request the agriculture commissioner review the ordinance. After the review, the agriculture commissioner shall provide a summary of the review to the attorney general and request an opinion from the attorney general regarding whether the ordinance and setback are lawful"

Page 4, line 11, after the underscored period insert "The petition must contain a description of the nature, scope, and location of the proposed animal feeding operation and a site map showing road access, the location of any structure, and the distance from each structure to the nearest section line."

Page 4, line 13, after the underscored period insert "If the county allows animal feeding operations as a conditional use, the conditional use regulations must be limited to the board's authority under this section, and the approval process must comply with this section. The county shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application."

Page 4, line 16, after "provided" insert "an application is submitted promptly to the state department of health, the department issues a final permit, and"

Page 4, line 17, replace "five" with "three"

Page 4, line 17, remove "of the"

Page 4, line 18, replace "board's determination or failure to object" with "the department issues its final permit and any permit appeals are exhausted. A board of county commissioners may not:"

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

Page 7, line 6, overstrike "vary by more than fifty"

Page 7, line 7, overstrike "percent from" and insert immediately thereafter "exceed"

Page 7, line 8, after "23.1-06-15" insert "unless the county can demonstrate compelling objective evidence specific to the county which requires a greater setback within the county, in which case the setbacks may exceed those established in subdivision a of subsection 7 of section 23.1-06-15 by no more than fifty percent. If a setback under this subsection is greater than the corresponding setback established in subdivision a of subsection 7 of section 23.1-06-15, a person whose animal feeding operation will be or has been affected by the applicable county ordinance may request the agriculture commissioner review the ordinance. After the review, the agriculture commissioner shall provide a summary of the review to the attorney general and request an opinion from the attorney general regarding whether the ordinance and setback are lawful"

Page 7, line 16, after the underscored period insert "The petition must contain a description of the nature, scope, and location of the proposed animal feeding operation and a site map showing road access, the location of any structure, and the distance from each structure to the nearest section line."

Page 7, line 18, after the underscored period insert "If the county allows animal feeding operations as a conditional use, the conditional use regulations must be limited to the board's authority under this section, and the approval process must comply with this section. The county shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application."

Page 7, line 22, after "provided" insert "an application is submitted promptly to the state department of health, the department issues a final permit, and"

Page 7, line 23, replace "five" with "three"

Page 7, line 23, replace "of the board's determination or failure to object" with "the department issues its final permit and any permit appeals are exhausted. A board of county commissioners may not:

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

Page 7, after line 23, insert:

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

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

4. Any zoning regulation that pertains to a ~~concentrated~~ an animal feeding operation, as defined in section 11-33-02.1, and which is promulgated by a county after July 31, 2007, is not effective until filed with the state department of health for inclusion in the central repository established under section 23-01-30. Any zoning regulation that pertains to ~~concentrated~~ animal feeding operations and which was promulgated by a county before August 1, 2007, may not be enforced until the regulation is filed with the state department of health for inclusion in the central repository.
2. For purposes of this section:
  - a. ~~"Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.~~
  - b. ~~"Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.~~

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

4. Any zoning regulation that pertains to a ~~concentrated~~ an animal feeding operation and, as defined in section 11-33-02.1, is not effective until filed with the department of environmental quality for inclusion in the central repository established under section 23.1-01-10.
2. For purposes of this section:
  - a. ~~"Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.~~
  - b. ~~"Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts."~~

Page 12, line 8, after "58-03-11.1" insert ", unless the animal feeding operation is in existence by January 1, 2019, and there is no change in animals or animal units which would result in an increase in the setbacks provided for in this section"

Page 12, line 9, after "additional" insert "odor"

Page 12, line 13, replace "five" with "three"

Page 12, line 13, replace "application is submitted" with "final permit is issued and any permit appeals are exhausted"

Page 12, line 15, after "operation" insert "or there is a change in animal units which would result in an increase in the setbacks under this section"

Page 17, line 8, after "58-03-11.1" insert ", unless the animal feeding operation is in existence by January 1, 2019, and there is no change in animals or animal units which would result in an increase in the setbacks provided for in this section"

Page 17, line 9, after "additional" insert "odor"

Page 17, line 13, replace "five" with "three"

Page 19, line 14, replace "23-23-11" with "23-25-11"

Page 20, line 11, overstrike "vary by more than fifty"

Page 20, line 12, overstrike "percent from" and insert immediately thereafter "exceed"

Page 20, line 13, after "23-25-11" insert "unless the township can demonstrate compelling, objective evidence specific to the township which requires a greater setback within the township, in which case the setbacks may exceed those established in subdivision a of subsection 7 of section 23-25-11 by no more than fifty percent. If a setback under this subsection is greater than the corresponding setback established in subdivision a of subsection 7 of section 23-25-11, a person whose animal feeding operation will be or has been affected by the applicable township ordinance may request the agriculture commissioner review the ordinance. After the review, the agriculture commissioner shall provide a summary of the review to the attorney general and request an opinion from the attorney general regarding whether the ordinance and setback are lawful"

Page 20, line 21, after the underscored period insert "The petition must contain a description of the nature, scope, and location of the proposed animal feeding operation and a site map showing road access, the location of any structure, and the distance from each structure to the nearest section line."

Page 20, line 23, after the underscored period insert "If the township allows animal feeding operations as a conditional use, the conditional use regulations must be limited to the board's authority under this section, and the approval process must comply with this section. The township shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application."

Page 20, line 26, after "provided" insert "an application is submitted promptly to the state department of health, the department issues a final permit, and"

Page 20, line 27, replace "five" with "three"

Page 20, line 27, remove "of the"

Page 20, line 28, replace "board's determination or failure to object" with "the department issues its final permit and any permit appeals are exhausted. A board of township supervisors may not:

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

Page 21, line 1, overstrike "Concentrated" and insert immediately thereafter "Animal"

Page 21, line 1, overstrike "any livestock feeding, handling, or"

Page 21, overstrike lines 2 through 4

Page 21, line 5, overstrike "cattle" and insert immediately thereafter "a lot or facility, other than normal wintering operations for cattle and an aquatic animal production facility, where the following conditions are met:

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

Page 23, line 9, overstrike "vary by more than fifty"

Page 23, line 10, overstrike "percent from" and insert immediately thereafter "exceed"

Page 23, line 11, after "23.1-06-15" insert "unless the township can demonstrate compelling, objective evidence specific to the township which requires a greater setback within the township, in which case the setbacks may exceed those established in subdivision a of subsection 7 of section 23.1-06-15 by no more than fifty percent. If a setback under this subsection is greater than the corresponding setback established in subdivision a of subsection 7 of section 23.1-06-15, a person whose animal feeding operation will be or has been affected by the applicable township ordinance may request the agriculture commissioner review the ordinance. After the review, the agriculture commissioner shall provide a summary of the review to the attorney general and request an opinion from the attorney general regarding whether the ordinance and setback are lawful"

Page 23, line 19, after the underscored period insert "The petition must contain a description of the nature, scope, and location of the proposed animal feeding operation and a site map showing road access, the location of any structure, and the distance from each structure to the nearest section line."

Page 23, line 21, after the underscored period insert "If the township allows animal feeding operations as a conditional use, the conditional use regulations must be limited to the board's authority under this section, and the approval process must comply with this section. The township shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application."

Page 23, line 25, after "provided" insert "an application is submitted promptly to the state department of health, the department issues a final permit, and"

Page 23, line 26, replace "five" with "three"

Page 23, line 26, remove "of the board's determination or failure to"

Page 23, line 27, replace "object" with "the department issues its final permit and any permit appeals are exhausted. A board of township supervisors may not:

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

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

Page 23, after line 27, insert:

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

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

- 1. Any zoning regulation that pertains to a ~~concentrated~~an animal feeding operation, ~~as defined in section 58-03-11.1,~~ and which is promulgated by a township after July 31, 2007, is not effective until filed with the state department of health for inclusion in the central repository established under section 23-01-30. Any zoning regulation that pertains to a concentrated animal feeding operation and which was promulgated by a county or a township before August 1, 2007, may not be enforced until the regulation is filed with the state department of health for inclusion in the central repository.
- 2. For purposes of this section:
  - a. ~~"Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.~~
  - b. ~~"Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.~~

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

- 1. Any zoning regulation that pertains to a ~~concentrated~~an animal feeding operation and which is promulgated by a township after July 31, 2007, as defined in section 58-03-11.1, is not effective until filed with the department of environmental quality for inclusion in the central repository established under section 23.1-01-10. Any zoning regulation that pertains to a concentrated animal feeding operation and which was promulgated by a county or a township before August 1, 2007, may not be enforced until the regulation is filed with the department of environmental quality for inclusion in the central repository.
- 2. For purposes of this section:
  - a. ~~"Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.~~

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

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

Page 23, line 29, after "1" insert ", 2, 5,"

Page 23, line 29, replace "4" with "6"

Page 24, line 3, after "1" insert ", 2, 5,"

Page 24, line 3, replace "4" with "6"

Page 24, line 10, after "1" insert ", 2, 5,"

Page 24, line 10, replace "4" with "6"

Renumber accordingly