

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2345

Introduced by

Senators Wanzek, Dotzenrod, Luick

Representatives Brandenburg, D. Johnson, Pollert

1 A BILL for an Act to amend and reenact sections 11-33-02.1, 23-25-11, 23.1-06-15, and
2 58-03-11.1 of the North Dakota Century Code, relating to animal feeding operations and zoning
3 regulations; to provide an effective date; to provide a contingent effective date; and to provide
4 an expiration date.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 11-33-02.1 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **11-33-02.1. Farming and ranching regulations - Requirements - Limitations -**

9 **Definitions.**

10 1. For purposes of this section:

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

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

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

24 The term does not include:

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

- 1 l. One duck equals 0.033 animal unit; and
- 2 m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per-
- 3 each one thousand pounds [453.59 kilograms] whether single or combined-
- 4 animal weight, provided in subdivision c of subsection 7 of section 23-25-11.
- 5 3. A board of county commissioners may not prohibit or prevent the use of land or
- 6 buildings for farming or ranching and may not prohibit or prevent any of the normal
- 7 incidents of farming or ranching.
- 8 4. A board of county commissioners may not preclude the development of a-
- 9 ~~concentrated~~ animal feeding operation in the county.
- 10 5. A board of county commissioners may not prohibit the reasonable diversification or
- 11 expansion of a farming or ranching operation.
- 12 6. A board of county commissioners may adopt regulations that establish different
- 13 standards for the location of ~~concentrated~~ animal feeding operations based on the size
- 14 of the operation and the species and type being fed.
- 15 7. If a regulation would impose a substantial economic burden on a ~~concentrated~~ an-
- 16 imal feeding operation in existence before the effective date of the regulation, the
- 17 board of county commissioners shall declare that the regulation is ineffective with
- 18 respect to any ~~concentrated~~ animal feeding operation in existence before the effective
- 19 date of the regulation.
- 20 8. a. A board of county commissioners may establish high-density agricultural
- 21 production districts in which setback distances for ~~concentrated~~ animal feeding
- 22 operations and related agricultural operations are less than those in other
- 23 districts.
- 24 b. A board of county commissioners may establish, around areas zoned for
- 25 residential, recreational, or nonagricultural commercial uses, low-density
- 26 agricultural production districts in which setback distances for
- 27 ~~concentrated~~ animal feeding operations and related agricultural operations are
- 28 greater than those in other districts; provided, the low-density agricultural
- 29 production districts may not extend more than one and one-half miles [2.40
- 30 kilometers] from the edge of the area zoned for residential, recreational, or
- 31 nonagricultural commercial uses.

- 1 c. The setbacks provided for in this subsection may not vary by more than fifty
2 percent from those established in subdivision a of subsection 7 of section
3 23-25-11.
- 4 d. For purposes of this subsection, a "related agricultural operation" means a facility
5 that produces a product or byproduct used by a ~~concentrated~~ an animal feeding
6 operation.
- 7 9. A person intending to construct an animal feeding operation may petition the board of
8 county commissioners for a determination whether the animal feeding operation would
9 comply with zoning regulations adopted under this section and filed with the state
10 department of health under section 11-33-22 before the date the petition was received
11 by the county. If the board of county commissioners does not object to the petition
12 within sixty days of receipt, the animal feeding operation is deemed in compliance with
13 the county zoning regulations. If the board of county commissioners determines the
14 animal feeding operation would comply with zoning regulations or fails to object under
15 this section, the county may not impose additional zoning regulations relating to the
16 nature, scope, or location of the animal feeding operation later, provided construction
17 of the animal feeding operation commences within five years from the date of the
18 board's determination or failure to object.

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

20 **Requirements - Limitations - Definitions.**

- 21 1. For purposes of this section:
- 22 a. "~~Concentrated~~Animal feeding operation" means ~~any livestock feeding, handling,~~
23 ~~or holding operation, or feed yard, where animals are concentrated in an area~~
24 ~~that is not normally used for pasture or for growing crops and in which animal~~
25 ~~wastes may accumulate. The term does not include normal wintering operations~~
26 ~~for cattle~~ lot or facility, other than normal wintering operations for cattle and an
27 aquatic animal production facility, where the following conditions are met:
- 28 (1) Animals, other than aquatic animals, have been, are, or will be stabled or
29 confined and fed or maintained for at least forty-five days in a twelve-month
30 period; and

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

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

5 The term does not include:

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

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

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

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

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

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

23 b. ~~One dairy cow, heifer, or bull, other than an animal described in paragraph 1-~~
24 ~~equals 1.0 animal unit;~~

25 c. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal-~~
26 ~~unit;~~

27 d. ~~One cow-calf pair equals 1.0 animal unit;~~

28 e. ~~One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4-~~
29 ~~animal unit;~~

30 f. ~~One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1-~~
31 ~~animal unit;~~

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

1 concentrated animal feeding operations and related agricultural operations are
2 greater than those in other districts; provided, the low-density agricultural
3 production districts may not extend more than one and one-half miles [2.40
4 kilometers] from the edge of the area zoned for residential, recreational, or
5 nonagricultural commercial uses.

6 c. The setbacks provided for in this subsection may not vary by more than fifty
7 percent from those established in subdivision a of subsection 7 of section
8 23.1-06-15.

9 d. For purposes of this subsection, a "related agricultural operation" means a facility
10 that produces a product or byproduct used by a concentrated animal feeding
11 operation.

12 9. A person intending to construct an animal feeding operation may petition the board of
13 county commissioners for a determination whether the animal feeding operation would
14 comply with zoning regulations adopted under this section and filed with the
15 department of environmental quality under section 11-33-22 before the date the
16 petition was received by the county. If the board of county commissioners does not
17 object to the petition within sixty days of receipt, the animal feeding operation is
18 deemed in compliance with the county zoning regulations. If the board of county
19 commissioners determines the animal feeding operation would comply with zoning
20 regulations or fails to object under this section, the county may not impose additional
21 zoning regulations relating to the nature, scope, or location of the animal feeding
22 operation later, provided construction of the animal feeding operation commences
23 within five years from the date of the board's determination or failure to object.

24 **SECTION 2. AMENDMENT.** Section 23-25-11 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **23-25-11. Regulation of odors - Rules. (Contingent repeal - [See note](#))**

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

1 than one year, as provided by section 42-04-02, and the business or residence making
2 the odor complaint was built or established after the agricultural operation was
3 established, the measurement for compliance with the seven odor concentration units
4 standard must be taken within one hundred feet [30.48 meters] of the subsequently
5 established residence, church, school, business, or public building making the
6 complaint rather than at the property boundary of the agricultural operation. The
7 measurement may not be taken within five hundred feet [.15 kilometer] of the property
8 boundary of the agricultural operation.

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

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

1 campground within the setback distance which was built or established before
2 the animal feeding operation was established, unless the animal feeding
3 operation has obtained an odor easement from the pre-existing facility.

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

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

30 5. This section does not apply to chemical compounds that can be individually measured
31 by instruments, other than a scentometer, that have been designed and proven to

1 measure the individual chemical or chemical compound, such as hydrogen sulfide, to
2 a reasonable degree of scientific certainty, and for which the state department of
3 health has established a specific limitation by rule.

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

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

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

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

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

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

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

21 7. a. In a county or township that does not regulate the nature, scope, ~~and~~ or location
22 of an animal feeding operation under section ~~41-33-02~~11-33-02.1 or section
23 58-03-11.1, the department shall require that any new animal feeding operation
24 permitted under chapter 61-28 be set back from any existing residence, church,
25 school, business, public building, park, or campground.

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

28 (2) If there are at least three hundred animal units but no more than one
29 thousand animal units, the setback for any animal operation is one-half mile
30 [.80 kilometer].

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

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

4 d. In a county or township that regulates the nature, scope, or location of an animal
5 feeding operation under section 11-33-02.1 or section 58-03-11.1, an applicant
6 for an animal feeding operation permit shall submit to the department with the
7 permit application the zoning determination made by the county or township
8 under subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1.
9 The department may not impose additional setback requirements.

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

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

19 9. Neither a county nor a township may regulate or through any means impose
20 restrictions or requirements on animal feeding operations or on other agricultural
21 operations except as permitted under sections ~~41-33-02~~11-33-02.1 and
22 ~~58-03-11~~58-03-11.1.

23 **SECTION 3. AMENDMENT.** Section 23.1-06-15 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **23.1-06-15. Regulation of odors - Rules. (Contingent effective date - [See note](#))**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 d. In a county or township that regulates the nature, scope, or location of an animal
5 feeding operation under section 11-33-02.1 or section 58-03-11.1, an applicant
6 for an animal feeding operation permit shall submit to the department with the
7 permit application the zoning determination made by the county or township
8 under subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1.
9 The department may not impose additional setback requirements.

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

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

19 9. A county or township may not regulate or impose restrictions or requirements on
20 animal feeding operations or other agricultural operations except as permitted under
21 sections ~~41-33-02~~11-33-02.1 and ~~58-03-11~~58-03-11.1.

22 **SECTION 4. AMENDMENT.** Section 58-03-11.1 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **58-03-11.1. Farming and ranching regulations - Requirements - Limitations -**
25 **Definitions.**

26 1. For purposes of this section:

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

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

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

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

10 The term does not include:

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

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

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

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

- 27 a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
28 b. ~~One dairy cow, heifer, or bull, other than an animal described in subdivision a~~
29 ~~equals 1.0 animal unit;~~
30 e. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal~~
31 ~~unit;~~

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

- 1 operations and related agricultural operations are less than those in other
2 districts.
- 3 b. A board of township supervisors may establish, around areas zoned for
4 residential, recreational, or nonagricultural commercial uses, low-density
5 agricultural production districts in which setback distances for
6 ~~concentrated~~animal feeding operations and related agricultural operations are
7 greater than those in other districts; provided, the low-density agricultural
8 production districts may not extend more than one-half mile [0.80 kilometer] from
9 the edge of the area zoned for residential, recreational, or nonagricultural
10 commercial uses.
- 11 c. The setbacks provided for in this subsection may not vary by more than fifty
12 percent from those established in subdivision a of subsection 7 of section
13 23-25-11.
- 14 d. For purposes of this subsection, a "related agricultural operation" means a facility
15 that produces a product or byproduct used by a ~~concentrated~~an animal feeding
16 operation.
- 17 9. A person intending to construct an animal feeding operation may petition the board of
18 township supervisors for a determination whether the animal feeding operation would
19 comply with zoning regulations adopted under this section and filed with the state
20 department of health under section 58-03-17 before the date the petition was received
21 by the township. If the board of township supervisors does not object to the petition
22 within sixty days of receipt, the animal feeding operation is deemed in compliance with
23 the township zoning regulations. If the board of township supervisors determines the
24 animal feeding operation would comply with zoning regulations or fails to object under
25 this section, the township may not impose additional zoning regulations relating to the
26 nature, scope, or location of the animal feeding operation later, provided construction
27 of the animal feeding operation commences within five years from the date of the
28 board's determination or failure to object.

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

- 31 1. For purposes of this section:

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

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

- 1 b. A board of township supervisors may establish, around areas zoned for
2 residential, recreational, or nonagricultural commercial uses, low-density
3 agricultural production districts in which setback distances for
4 ~~concentrated~~animal feeding operations and related agricultural operations are
5 greater than those in other districts; provided, the low-density agricultural
6 production districts may not extend more than one-half mile [0.80 kilometer] from
7 the edge of the area zoned for residential, recreational, or nonagricultural
8 commercial uses.
- 9 c. The setbacks provided for in this subsection may not vary by more than fifty
10 percent from those established in subdivision a of subsection 7 of section
11 23.1-06-15.
- 12 d. For purposes of this subsection, a "related agricultural operation" means a facility
13 that produces a product or byproduct used by a ~~concentrated~~an animal feeding
14 operation.

15 9. A person intending to construct an animal feeding operation may petition the board of
16 township supervisors for a determination whether the animal feeding operation would
17 comply with zoning regulations adopted under this section and filed with the
18 department of environmental quality under section 58-03-17 before the date the
19 petition was received by the township. If the board of township supervisors does not
20 object to the petition within sixty days of receipt, the animal feeding operation is
21 deemed in compliance with the township zoning regulations. If the board of township
22 supervisors determines the animal feeding operation would comply with zoning
23 regulations or fails to object under this section, the township may not impose
24 additional zoning regulations relating to the nature, scope, or location of the animal
25 feeding operation later, provided construction of the animal feeding operation
26 commences within five years from the date of the board's determination or failure to
27 object.

28 **SECTION 5. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE - EXPIRATION DATE.**

29 The portions of sections 1 and 4 of this Act not subject to an existing contingency become
30 effective on August 1, 2019, and remain in effect until the legislative council receives
31 certification from the chief of the environmental health section of the state department of health

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