

1999 SENATE AGRICULTURE

SB 2355

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2355

Senate Agriculture Committee

Conference Committee

Hearing Date 1/28/99

Tape Number	Side A	Side B	Meter #
1		X	215-END
2	X		0-3380
1/29	X		5-1753
2/11	X		2910-END
2/11		X	0-480
2/12	X		3,660-END
2/12		X	0-1920
2/15	X		0-2140
Committee Clerk Signature <i>Tricia Jorgensen</i>			

Minutes:

Senator Wanzek called the meeting to order, roll call was taken all were present.

Senator Wanzek opened the hearing on SB 2355.

Senator Solberg introduced the bill. Basically an industry bill. Basically allows a person who has a farming operation to engage in livestock production. For people who own the land.

Senator Mathern: Are you aware of a situation where this has happened?

Senator Solberg: No I am not.

Senator Kinnoin: We don't want to tie the hands of operators now.

Senator Urlacher: Are you familiar now how other city areas handle this?

Senator Solberg: No, I'm not sure how they handle it.

Representative Brusegaard spoke in support of the bill. Good piece of legislation.

Brian Kramer from the ND Farm Bureau spoke in support of the bill. Value adding to agriculture is very important.

Senator Kinnoin: With the safe guard that we have through the State Health Department just common sense would prevail when it comes to some of these environmental issues?

Brian Kramer: I would agree.

Lee Harsh spoke in support of the bill. Believes that the farmers don't have a voice in the township in the county level. Need the support of the legislation to help protect them.

Francis Schwindt from the Department of Health spoke neutrally for the bill. Concerned that the department will end up in the defacto zoning situation. Decisions should be made at a local level.

Senator Sand: If I had 20 or 40 acres does that mean I couldn't have any livestock because the title of the bill refers to existing farms.

Francis Schwindt: I don't think it precludes you from expanding.

Senator Sand: Suppose I have livestock and the subdivision starts next door, gets to be a church next to me, how will department handle it then?

Francis Schwindt: If local zoning is done properly the situation should not even occur.

Senator Sand: What will your agency do?

Francis Schwindt: We would have to look at the individual and characteristics of the area and the project and then try to determine an appropriate course of action.

Senator Kinnoin: Can those residence petition zoning board to change from agriculture to residential zoning?

Francis Schwindt: I'm not sure I can answer that.

Senator Urlacher: Do you have knowledge how they handle those situations in large areas?

Francis Schwindt: I don't know.

Don Nelson spoke in opposition of the bill. Feels local counties should not have power taken away. Feels bill could come back and harm the farmer.

Senator Wanzek: Do you believe only corporations are expanding, aren't family farms expanding?

Don Nelson: Yes, family farms are expanding.

Richard Schloser spoke against the bill. He handed out policies and local authority which are enclosed.

Senator Urlacher: Has your organization ever discussed requiring zoning?

Richard Schloser: Yes.

Terry Traynor spoke against the bill. Handed out testimony. Feels there has been a loss of county authority in these decisions.

Senator Urlacher: Would your organization support zoning?

Terry Traynor: Never been asked to before, I don't see why not.

Senator Mathern: Could you repeat what you said earlier.

Terry Traynor: There is the ability to zone around new farm but not existing farm.

Todd Leake spoke in opposition to the bill. Testimony enclosed.

Senator Wanzek: Aren't we circumventing local control?

Todd Leake: That's what we've come to.

Senator Urlacher: Would you be more comfortable having mandatory zoning?

Todd Leake: I think that mandatory zoning would be a good idea.

Senator Kinnoin: Assume a county is zoned and subdivision pops up and houses develop, could be 200 voters and they petition that that land be changed from agriculture to residential. Could they force me out of business?

Todd Leake: No it would not.

Deacon Jim West spoke in opposition of SB 2355. Testimony enclosed.

Senator Sand: This bill would protect the protection of food even if someone gets a little whiff of a feedlot we are protecting the production. Could you respond?

Jim West: I have been in that situation.

Senator Wanzek: Aren't we really only grandfathering in the kind of farms that you and I want to see?

Jim West: You have to watch out as to how that can be taken advantage of.

Senator Kinnoin: We have disrupted God's creation more by building cities than what we are talking about here.

Jim West: I don't know if I can judge the magnitude of the situation.

Wade Moser from the NDSA spoke in support of SB 2355. Currently property is zoned. If zoned agriculture it seems you don't know what the guidelines are anymore. Corporate farming is not an issue in this, there is no corporate farming in ND.

Senator Sand: You said within five miles, is that in any direction?

Wade Moser: That was the proposal that was offered to us.

Senator Sand: This bill affirms the right of agriculture to continue in an agriculture area.

Wade Moser: That is correct.

Senator Wanzek: Agriculture today is one of the most regulated industries.

Wade Moser: I would agree with that.

Senator Wanzek: there is no way to pass it on.

Wade Moser: That is our biggest struggle.

Brian Hoime from the ND Township Offices Association spoke in opposition of SB 2355.

Townships would love to zone.

Carmen Miller from the ND Department of Health spoke neutrally just to answer questions.

Senator Wanzek: Can you describe the Iowa case.

Carmen Miller: Last fall the Iowa supreme court declared a similar statute which also provided immunity for farms and farming operations unconstitutional as a taking without compensation.

The reasoning was that if you have two neighbors X who is operating a farm and neighbor Y who is not, this immunity from the nuisance act essentially allows the neighbor to maintain a nuisance on the other neighbors property, essentially amounts to impeasment over the neighbors property. That's about the simplest explanation that I can give. Kind of a zoning type process.

Senator Kroeplin: You can zone for houses, etc. but if you zone for agriculture it's wide open again, it really doesn't do a whole lot. That bothers me.

Carmen Miller: There is a lot of variety in zoning.

Senator Wanzek: Did they look at all at the constitutional rights of the other person? They have taken away the rights for him to provide for his family.

Carmen Miller: No.

Senator Wanzek: Because they are a minority it's easier to rule against them.

Senator Kinnoin: The farmer is a dying breed and people will see that when they have empty bellies.

Senator Urlacher: Is there any uniformity in the procedure that moved the zoning process.

Carmen Miller: I don't know and I don't think so. I was just corrected, there are some uniform requirements for zoning procedures.

Carl Haakenson spoke to answer questions. If you are city or county ND Century Code provides for the procedure that you would have to follow. Generally a public hearing is held.

Senator Urlacher: Does whatever was there get grandfathered in then?

Carl Haakenson: Yes, it is well respected.

Senator Urlacher: The nuisance lawsuit comes into play in that regard.

Brian Kramer: There is a described procedure for it.

Senator Sand: This bill just duplicated that.

Brian Kramer: Yes.

Senator Wanzek: Then there wouldn't any opposition to that.

Senator Wanzek closed the hearing on SB 2355.

January 29, 1999

Senator Wanzek opened the discussion on SB 2355.

Senator Klein: It sounded to me that we were off base on what this bill was doing according to the opposition. People are already there, your not saying lets have this new feedlot come in.

Agriculture is just saying please give us a little breathing room.

Senator Mathern: I would like a legal opinion on whether what we were trying to accomplish here in SB 2355 would over ride the existing statute.

Senator Kroeplin: I think some of the concerns with the people was that if the farm was there and he doesn't have any cattle, the concern is that if they are on the edge of town they wouldn't expand to 500 or whatever.

Senator Urlacher: The health regulations kick in at a certain point to protect the people. May be going in the direction of requiring them to be grandfathered in.

Senator Kinnoin: Nobody is going to argue the fact that if a city or township is zoned that is great, the problem I see and what this bill would do, the way I understand the present zoning law is that anyone can petition a nuisance then those people could petition and bring it up to the local zoning board there is no question that I am outnumbered and they would put me out of business. That is my concern and this bill would not allow that.

Senator Urlacher: Towns are growing and they rezone and I would assume they could rezone agriculture out. I think they are grandfathered in.

Senator Wanzek: The best argument against this bill is local control and zoning authority, but the best argument for the bill is protecting an industry that is quickly becoming a minority.

Senator Urlacher: We do protect other properties.

Senator Mathern: We mean well here I just want to be assured that we aren't going to do something that hurt someone down the road.

Senator Sand moved for a Do Pass.

Senator Mathern seconded.

ROLL CALL: 7 yes, 0 no

CARRIER: Senator Sand

FEBRUARY 11, 1999

SB 2355 was brought back into the committee for reconsideration.

Senator Solberg introduced amendments for the bill. Discussion on the amendments was held.

General discussion was that they wanted to protect the farmer in the future.

Senator Kinnoin made the motion for a Do Pass on the amendments.

Senator Klein seconded.

Terry Traynor was asked to come to the podium, he was asked if he was happy with the amendments. Hesitated to comment until it was run by a commissioner, left it with no position.

Motion to adopt amendments was carried.

Senator Klein made the motion to reconsider the bill.

Senator Urlacher seconded.

Motion carried.

Senator Kinnoin made the motion for a Do Pass on the Amendment.

Senator Klein seconded.

Motion carried.

Senator Klein made the motion for a Do Pass as Amended.

Senator Urlacher seconded.

ROLL CALL: 6 Yes, 1 No

CARRIER: Senator Wanzek

FEBRUARY 12, 1999

Senator Mathern expressed concerns she had with amendments which were passed previous day.

Discussion was held.

Lyle Withim from the Health Department came in and stated they have not taken position on bill.

Senator Sand: I feel we are giving a lot of power to county commissioners with this, and if that is so can county commissioners reverse a decision that was made 5 years ago?

Lyle Withim: Only have zoning authority on larger confined feeding operations, limited just to doing set back. Could probably change their mind only if it expanded.

Discussion was held.

Senator Sand made the motion to reconsider action from previous day.

Senator Kroeplin seconded.

Motion failed.

More discussion was held.

FEBRUARY 15, 1999

Reconsideration of the bill took place.

Discussion was held.

Senator Urlacher made the motion for a Do Pass on the amendments.

Senator Klein seconded.

Senator Klein made the motion for a Do Pass as Amended.

Senator Kinnoin seconded.

ROLL CALL: 5 Yes, 2 No

CARRIER: Senator Wanzek

Date: 1/29/99
Roll Call Vote #: /

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2355

Senate Agriculture Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sand Seconded By Mathern

Senators	Yes	No	Senators	Yes	No
Senator Wanzek	✓				
Senator Klein	✓				
Senator Sand	✓				
Senator Urlacher	✓				
Senator Kinnoin	✓				
Senator Kroeplin	✓				
Senator Mathern	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment Senator Sand

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 29, 1999 1:57 p.m.

Module No: SR-19-1506
Carrier: Sand
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2355: Agriculture Committee (Sen. Wanzek, Chairman) recommends DO PASS
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2355 was placed on the
Eleventh order on the calendar.

Date: 2/11
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2355

Senate Agriculture Committee

Subcommittee on _____
or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Amendments 90708.0101

Motion Made By Kinnoin Seconded By Klein

Senators	Yes	No	Senators	Yes	No
Senator Wanzek	✓				
Senator Klein	✓				
Senator Sand	✓				
Senator Urlacher	✓				
Senator Kinnoin	✓				
Senator Kroeplin	✓				
Senator Mathern	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/11
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2355

Senate Agriculture Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Amendments

Motion Made By Kinnoin Seconded By Klein

Senators	Yes	No	Senators	Yes	No
Senator Wanzek	✓				
Senator Klein	✓				
Senator Sand	✓				
Senator Urlacher	✓				
Senator Kinnoin	✓				
Senator Kroeplin	✓				
Senator Mathern	✓	✗			

Total (Yes) 7 No 0

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/11
Roll Call Vote #: 3

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2355

Senate Agriculture Committee

Subcommittee on _____
or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Klein Seconded By Urlacher

Senators	Yes	No	Senators	Yes	No
Senator Wanzek	✓				
Senator Klein	✓				
Senator Sand	✓				
Senator Urlacher	✓				
Senator Kinnoin	✓				
Senator Kroeplin	✓				
Senator Mathern		✓			

Total (Yes) 6 No 1

Absent _____

Floor Assignment Senator Wanzek

If the vote is on an amendment, briefly indicate intent:

Date: 2/12
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2355

Senate Agriculture Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Reconsideration of Amendments

Motion Made By Sand Seconded By Kroepin

Senators	Yes	No	Senators	Yes	No
Senator Wanzek		✓			
Senator Klein		✓			
Senator Sand	✓				
Senator Urlacher		✓			
Senator Kinnoin		✓			
Senator Kroepin	✓				
Senator Mathern	✓				

Total (Yes) 3 No 4

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/15/99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2355

Senate Agriculture Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Reconsideration

Motion Made By Klein Seconded By Mathern

Senators	Yes	No	Senators	Yes	No
Senator Wanzek	✓				
Senator Klein	✓				
Senator Sand	✓				
Senator Urlacher	✓				
Senator Kinnoin	✓				
Senator Kroeplin	✓				
Senator Mathern	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

PROPOSED AMENDMENTS TO SENATE BILL NO. 2355

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 11-03-02 and 58-03-11 of the North Dakota Century Code, relating to zoning districts and regulations affecting normal incidents of farming and ranching.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

11-33-02. Board of county commissioners to designate districts. For any or all of the purposes designated in section 11-33-01, the board of county commissioners may divide by resolution ~~divide~~ all or any parts of the county, subject to the provisions of section 11-33-20, into districts of such number, shape, and area as may be ~~deemed~~ determined necessary, and ~~may~~ likewise may enact suitable regulations to carry out the purposes of this chapter. These regulations ~~shall~~ must be uniform in each district, but the regulations in one district may differ from those in other districts. ~~No A regulation or restriction, however, shall~~ 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 or livestock products, poultry or poultry products, milk or dairy products, or fruit or horticultural products. 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. The provisions of this This chapter ~~shall~~ does not be construed to include any power relating to the establishment, repair, and maintenance of highways or roads.

SECTION 2. AMENDMENT. Section 58-03-11 of the North Dakota Century Code is amended and reenacted as follows:

58-03-11. Establishment of zoning districts - Limitation - Scope of zoning regulations and restrictions. 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. ~~No A regulation or restriction, however, may not~~ 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 or livestock products, poultry or poultry products, milk or dairy products, or fruit or horticultural products. 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. The provisions of sections Sections 58-03-11 through 58-03-15 ~~may do not be construed to~~ include any power relating to the establishment, repair, and maintenance of highways or roads."

Renumber accordingly



Date: 7/15/99
 Roll Call Vote #: 7

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2355

Senate Agriculture Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Amendments 90708.0104

Motion Made By Urlacher Seconded By Klein

Senators	Yes	No	Senators	Yes	No
Senator Wanzek	✓				
Senator Klein	✓				
Senator Sand	✓				
Senator Urlacher	✓				
Senator Kinnoin	✓				
Senator Kroeplin		✓			
Senator Mathern		✓			

Total (Yes) 5 No 2

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/15/99
Roll Call Vote #: 3

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2355

Senate Agriculture Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Klein Seconded By Kinnoin

Senators	Yes	No	Senators	Yes	No
Senator Wanzek	✓				
Senator Klein	✓				
Senator Sand	✓				
Senator Urlacher	✓				
Senator Kinnoin	✓				
Senator Kroeplin		✓			
Senator Mathern		✓			

Total (Yes) 5 No 2

Absent _____

Floor Assignment Senator Wanzek

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2355: Agriculture Committee (Sen. Wanzek, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2355 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 11-33-02 and 58-03-11 of the North Dakota Century Code, relating to zoning districts and regulations affecting normal incidents of farming and ranching.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

11-33-02. Board of county commissioners to designate districts. For any or all of the purposes designated in section 11-33-01, the board of county commissioners may ~~divide~~ by resolution ~~divide~~ all or any parts of the county, subject to the provisions of section 11-33-20, into districts of such number, shape, and area as may be ~~deemed~~ determined necessary, and ~~may~~ likewise may enact suitable regulations to carry out the purposes of this chapter. These regulations ~~shall~~ must be uniform in each district, but the regulations in one district may differ from those in other districts. ~~No~~ A regulation or restriction, ~~however, shall~~ 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 or livestock products, poultry or poultry products, milk or dairy products, or fruit or horticultural products. 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. ~~The provisions of this~~ This chapter shall ~~does not be construed to~~ include any power relating to the establishment, repair, and maintenance of highways or roads.

SECTION 2. AMENDMENT. Section 58-03-11 of the North Dakota Century Code is amended and reenacted as follows:

58-03-11. Establishment of zoning districts - Limitation - Scope of zoning regulations and restrictions. 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. ~~No~~ A regulation or restriction, ~~however,~~ 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 or livestock products, poultry or poultry products, milk or dairy products, or fruit or horticultural products. 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. ~~The provisions of sections~~ Sections 58-03-11 through 58-03-15 may do ~~not be construed to~~ include

any power relating to the establishment, repair, and maintenance of highways or roads."

Renumber accordingly

1999 HOUSE AGRICULTURE

SB 2355

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2355

House Agriculture Committee

Conference Committee

Hearing Date 3/15/99

Tape Number	Side A	Side B	Meter #
One SB 2355	x		0.0 to 55.0
		x	0.0 to 18.4
Committee Clerk Signature <i>Arline Hanson</i>			

Minutes:

Summary of bill: Relates to zoning districts and regulations affecting normal incidents of farming and ranching.

Sen Solberg: I was looking for the perfect garb to wear to this hearing. Maybe a white sheet & hood with KKK on the back. Maybe a cross because of Lent. Thought of maybe everything. There is no boggy man in this bill. No factory farming in this bill. Just sets into law what's already in the North Dakota Century Code.

This allows farmers and ranchers to use their property for value-added farming if it be cattle, dairy, hogs, or what. I've been involved in Agriculture all my life. Watched these farms grow and grow and some disappear. If we don't do something to insure they have a chance of staying out there they'll all disappear on us.

Some one from the city drives by a peaceful little valley in the country side and decides that's where they want to build there dream home. They go and buy it then move in and one evening when they are sitting on the porch and a breeze blowing in bring s with it the smell from a farm or feedlot over the hill. All of a sudden he decides you are interfering with his way of life and judge goes along with him and another farmer is out of business.

You are going to hear some wild accusations, some real bogey man stories. I'm going to tell you folks we need to protect what we have left or there will soon be nothing left,

Chm Nicholas: What is the purpose of this bill? Was it the ruling in Grand Forks?

Sen Solberg: Thank you for asking about this bill. No one came forward and asked for this bill, no organizations either. After hearing the Court ruling from Grand Forks, seen what a judge can do, I decided we needed some protection from this kind of govt. If we want to encourage farming & ranching in this state we need something in the law books to protect the small operator. I went along with the changes in the Senate.

Rep Brusegaard: Dist 19. Lots of people here both pro and con. If we want to encourage responsible farming and ranching we need to make this body (the Legislature) the maker of the laws not some judge in the judiciary as to often their ruling is slanted,.

Rep Kempenich: Dist 39. I see this happening all over the nation as the urban sprawl starts to affect us and if we don't do something about it now and pass some laws to protect our small operators or there won't be any left.

Wade Moser: ND Stockmen Assoc. In favor of the bill and feel there is some uncertainty in farming and ranching because of the power some of these national organizations. Line 11 on 1st Engrossment says the County Commissioners may enact suitable regulations to carry out the

purposes of this chapter. Zoning changes usually come at the request of the property owners. All farmers and ranchers want is the same respect as city folks get. When they buy property they know what they can do with it. This bill will give us (ranchers) the same opportunity. Not many operators are going to buy property near a city and plan on building a feed lot there.

Rep Nowatzki: Iowa right to farm Law. This seems like it is in conflict with that law.

Rep Stefonowicz: Under lines 13 to 15 regulations may not prohibit farming or ranching, are feedlots included in that definition of ranching?

Wade Moser: Yes I believe they would be.

Brian Adams: Feedlot, farmer north of Jamestown. I need some stability in the law to know that I can be there and run a feedlot, farm or what ever to raise my family and contribute to the economy in a rural area. This bill does that. I buy my corn from 10 neighbors to keep my feedlot in operation and going. There has never been a corn market before in this area. I buy every calf here in North Dakota.. Roughly for every ND calf I feed it brings roughly \$300 to \$400 more in value added product to the state.

Bob Burke: ND Pork Producers, Need this bill desperately. Brandon, MB opening a Port Processing plant & came down here to keep it operating. They need 4,000,000 hogs per year and as of now they only have 2 million in sight to kill.

Lee Harsche: Feedlot east of Bismarck a ways. Testimony attached)

Enoc Thorsgard: Northwood 30 years ago I sat in this committee, then the chief ordered me to the appropriations committee. I was at a meeting years ago when Mr Yellowtail, national EPA, said you in North Dakota have the most stringent set of rules governing feedlots then in any other State. If you aren't careful there aren't going to be any livestock operation left in North Dakota.

John Boenberg: Farmer in Wells County. I'm chm of Agr Coalition. Has gone through careful process and supports this bill.

Brian Kramer: ND FB supports this bill. Sen Solberg comments on this is already in code is very true.

Lance Gaebee: ND Milk Producers, ND now have more urban dwellers then rural dwellers. The urban people want to live out in the country and see the Holstein in its rural setting but by golly it had better not "stink."

Keith Berndt: County Eng for Cass County. Opposes bill because it takes away local control of local affairs. (Testimony attached)

Rep Brusegaard: Are there any others industries you prevent from operating in Cass County.?

Keith Berndt: We don't intend to prevent feedlots from operating.

Rep Brusegaard: That was your concern with the bill because you could not prevent large feedlots from operating in your backyard.

Keith Berndt: It would allow us to suggest where they would be placed.

Todd Leake: 2300 acres farmer in G/Forks county. (Testimony attached) Urges a do not pass.

Richard Slosser: ND F

Motion by Rep Brusegaard to approve County amendments, second by Rep Johnson

Rep Stefonowicz: If we pass these amendments what happens to the township amendments.

Rep Froelich: Doesn't like any of the amendments. In my county we are trying to promote cattle feeding. Now we are shipping our cattle out of state to be fed. We need more and more feed lots so as to get some value-added gains to our product. Don't need more restrictions.

Chrm Nicholas: We need to encourage more value-added enterprises in our state if we are going to stay viable.

Rep Nowatzki: Need to be cautious changing things so favors the township amendments.

Rep Berg: When I look at a bill I ask what's the problem that we need to fix with this bill.

Motion by Rep Nowatzki for a substitute motion for the Township amendments and substitute 5 for 10. Second by Rep Stefonowicz: After some discussion voice vote was called for and failed to pass on a Yes 6 to No 8. Motion declared lost.

Rep Brusegaard made a motion to pass the County amendments, second by Rep Rennerfeldt this motion prevailed on a Yes 11 No 4 Absent 1.

Rep Berg moved a Do Not Pass on SB 2355, second by Rep Nowatzki,

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2355

House Agriculture Committee

Conference Committee

Hearing Date 4-1-2-99

Tape Number	Side A	Side B	Meter #
One SB 2355	x		0.0 to 55.0
		x	0.0 to 2.0
Committee Clerk Signature			

Minutes:

Summary of bill: Relates to zoning districts and regulations affecting normal incidents of farming and ranching.

Chm Nicholas: We need to get something done on this bill so it can go to the floor and be done with.

Rep Mueller: We really don't know what we are dealing with here. We need to tell these people who are coming into start a livestock operations that they need to take into consideration the concerns of the local people.

Some questions about the amendments put before this group Thursday, I would like for us to take a look at the Mueller amendments #307. There's lots of frustration out there and we need something we can get passed on the floor of the House. I would change some things in my

amendments. Page 3 take the last sentence out of paragraph 3 on both pages. Insurance may be required.

Rep Mueller: Difference in amendments. # 1. The issue that has come to the fore front is the liability factor, who will wind up with the financial responsibility for this operations should there be a closure and the clean up needed.

Brian Hoime: Township Officers .. Opposed to amendments #313. Doesn't think they are protecting the established farmer and feedlots operator.

Rep Brandenburg: Who decides who stays and who goes?

Brian Hoime: Either the Township zoning board or the township board.

Rep Brusegaard: We are trying to focus on keeping existing operators in business and allow them to expand when the need and time comes up. Our amendments gives the power to the counties to be in charge of this expansion.

Rep Nowatzki: Would you explain to us why you felt that sec 2 and 3 of the Mueller amendments are important as far as limited liability goes. Why is this important?

Brian Hoime: When I helped put this bill and amendments together we found there was some inconsistency with the old law, Sec 42-4-01, corrections for this are taken in HB 1045.

Rep Brusegaard:

Mark Johnson: Our only concern is turning these amendments into something we have always been opposed to and that's the take provision.

Rep Rennerfeldt: Mark, on Sec 4 of the Berg amendments to require

Mark Johnson: We think we can work with these amendments for two years and if they don't work we can change them in two years.

Rep Berg: Are there any counties that are trying to shut down any existing business that would fit this category.?

Mark Johnson: I don't know any of the details of the situation in Grand Forks County, Burleigh County has not made an attempt to restrict farming practices but have put a moratorium on any new ones for now. Some concern in Bowman and Adams county.

Maybe Rep Brusegaard referral to the 6 foot high fence around the property is not such a bad idea.

Rep Renner: In your opinion does present statues in anyway restrict the development of livestock feeding operations?

Mark Johnson: We have time tested laws that are adequate. Just some isolated instances that cause a perceived problem.

Rep Berg: Need to focus on keeping old operators in business not worry about the new ones.

Motion by Rep Berg moves the amendments # 313 after we strike on page 1 Sec 2-a

Page 2 Sec 3-a Sec by Rep Berg. voice vote and amendments adopted.

Motion by Rep Berg for a DO PASS as amended second by Rep Brusegaard

Vote total YES 9 NO 4 ABSENT 2 motion carried

Carrier Rep Brusegaard

Norwigain

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2355

Page 1, line 7, after the second period insert:

"1."

Page 1, after line 22, insert:

"2. a. Notwithstanding subsection 1, the board:

(1) May require a setback distance of no more than three-fourths of one mile [1.20 kilometers] from any occupied residence, business, church, school, or public park for any concentrated or confined animal feeding operation having more than one thousand but fewer than five thousand animal units.

(2) May require a setback distance of no more than one and one-quarter miles [2.01 kilometers] from any occupied residence, business, church, school, or public park for any concentrated or confined animal feeding operation having five thousand or more animal units.

(3) May require financial assurance for the clean up upon termination of any concentrated or confined animal feeding operation having five thousand or more animal units. The financial assurance may not exceed five dollars per animal unit.

(4) May require a permit before a person builds or establishes a new residence, business, church, school, or public park within one mile [1.61 kilometers] of any established concentrated or confined animal feeding operation permitted under chapter 61-28.

b. Any person owning property that is closer to the concentrated or confined animal feeding operation than the setback provided under this subsection may waive, in writing, the required setback distance.

c. As used in this section, "public park" means a park established by the federal government, the state, or a political subdivision of the state.

3. This section does not apply to any concentrated or confined animal feeding operation in existence or approved by the state department of health before August 1, 1999."

Renumber accordingly

VK
3/19/99
1082

HOUSE , AMENDMENTS TO ENGROSSED SENATE BILL NO. 2355 AG 3-22-99

Page 1, line 1, after "11-33-02" insert ", 42-04-02,"

Page 1, line 7, after the second period insert:

"1."

Page 1, after line 22, insert:

"2. a. Notwithstanding subsection 1, the board:

(1) May require a setback distance of no more than three-fourths of one mile [1.20 kilometers] from any occupied residence, business, church, school, or public park for any concentrated or confined animal feeding operation having more than one thousand but fewer than five thousand animal units.

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c. As used in this section, "public park" means a park established by the federal government, the state, or a political subdivision of the state.

3. This section does not apply to any concentrated or confined animal feeding operation in existence or approved by the state department of health before August 1, 1999.

SECTION 2. AMENDMENT. Section 42-04-02 of the North Dakota Century Code is amended and reenacted as follows:

42-04-02. Agricultural operation deemed not nuisance. An agricultural operation is not, nor shall it become, a private or public nuisance by any changed conditions in or about the locality of such operation after it has been in operation for more than one year, if such operation was not a nuisance at the time the operation began; except that the provisions of this section shall not apply when a nuisance results

from the negligent or improper operation of any such agricultural operation. Nothing in this chapter allows the maintenance of a nuisance that would result in the taking of another's property without compensation in violation of state or federal law."

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2355 AG 3-22-99

Page 2, line 2, after the period insert:

"1."

Page 2, line 2, after line 20, insert:

"2. a. Notwithstanding subsection 1, the board:

(1) May require a setback distance of no more than three-fourths of one mile [1.20 kilometers] from any occupied residence, business, church, school, or public park for any concentrated or confined animal feeding operation having more than one thousand but fewer than five thousand animal units.

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b. Any person owning property that is closer to the concentrated or confined animal feeding operation than the setback provided under this subsection may waive, in writing, the required setback distance.

c. As used in this section, "public park" means a park established by the federal government, the state, or a political subdivision of the state.

3. This section does not apply to any concentrated or confined animal feeding operation in existence or approved by the state department of health before August 1, 1999."

Renumber accordingly

Date: 3-18-99
Roll Call Vote #: 2

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2355

House AGRICULTURE Committee

- Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken No Pass as amended

Motion Made By Brusegaard Second By Renner

Representatives	Yes	No	Representatives	Yes	No
Eugene Nicholas, Chaiman	✓		Bob Stefonowicz		✓
Dennis E. Johnson, Vice Chm	✓				
Thomas T. Brusegaard	✓				
Earl Rennerfeldt	✓				
Chet Pollert	✓				
Dennis J. Renner	✓				
Michael D. Brandenburg	✓				
Gil Herbel	✓				
Rick Berg		✓			
Myron Koppang		✓			
John M. Warner	✓				
Rod Froelich	✓				
Robert E. Nowatzki		✓			
Phillip Mueller		✓			

Total (Yes) 10 No 5

Absent _____

Floor Assignment Brusegaard

Final

Date: 3-19-99
Roll Call Vote #:

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2355

House AGRICULTURE Committee

- Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass as amended

Motion Made By Brusegaard Second By Johnson

Representatives	Yes	No	Representatives	Yes	No
Eugene Nicholas, Chaiman	✓		Bob Stefonowicz	✓	
Dennis E. Johnson, Vice Chm	✓				
Thomas T. Brusegaard	✓				
Earl Rennerfeldt	✓				
Chet Pollert					
Dennis J. Renner					
Michael D. Brandenburg	✓				
Gil Herbel	✓				
Rick Berg		✓			
Myron Koppang		✓			
John M. Warner	✓				
Rod Froelich	✓				
Robert E. Nowatzki		✓			
Phillip Mueller	✓				

Total (Yes) 10 No 3

Absent _____

Floor Assignment BRUSEGAARD

Final Final

Date: 4-2-99
 Roll Call Vote #: 3

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2355

House AGRICULTURE Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass as amended

Motion Made By Berg Second By Brusegaard

Representatives	Yes	No	Representatives	Yes	No
Eugene Nicholas, Chaiman	✓		Bob Stefonowicz		
Dennis E. Johnson, Vice Chm	✓				
Thomas T. Brusegaard	✓				
Earl Rennerfeldt	✓				
Chet Pollert	✓				
Dennis J. Renner	✓	✓			
Michael D. Brandenburg	✓				
Gil Herbel	✓				
Rick Berg	✓				
Myron Koppang	✓				
John M. Warner		✓			
Rod Froelich					
Robert E. Nowatzki		✓			
Phillip Mueller		✓			

Total (Yes) 9 No 4

Absent 1

Floor Assignment Brusegaard

*Final-Final
 Final*

REPORT OF STANDING COMMITTEE

SB 2355: Agriculture Committee (Rep. Nicholas, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 3 NAYS, 2 ABSENT AND NOT VOTING). SB 2355 was placed on the Sixth order on the calendar.

Page 1, line 1, after "11-33-02" insert ", 42-04-02,"

Page 1, line 7, after the second period insert:

"1."

Page 1, after line 22, insert:

"2. a. Notwithstanding subsection 1, the board:

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b. Any person owning property that is closer to the concentrated or confined animal feeding operation than the setback provided under this subsection may waive, in writing, the required setback distance.

c. As used in this section, "public park" means a park established by the federal government, the state, or a political subdivision of the state.

3. This section does not apply to any concentrated or confined animal feeding operation in existence or approved by the state department of health before August 1, 1999.

SECTION 2. AMENDMENT. Section 42-04-02 of the North Dakota Century Code is amended and reenacted as follows:

42-04-02. Agricultural operation deemed not nuisance. An agricultural operation is not, nor shall it become, a private or public nuisance by any changed conditions in or about the locality of such operation after it has been in operation for more than one year, if such operation was not a nuisance at the time the operation

began; except that the provisions of this section shall not apply when a nuisance results from the negligent or improper operation of any such agricultural operation. Nothing in this chapter allows the maintenance of a nuisance that would result in the taking of another's property without compensation in violation of state or federal law."

Page 2, line 2, after the period insert:

"1."

Page 2, line 2, after line 20, insert:

"2. a. Notwithstanding subsection 1, the board:

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b. Any person owning property that is closer to the concentrated or confined animal feeding operation than the setback provided under this subsection may waive, in writing, the required setback distance.

c. As used in this section, "public park" means a park established by the federal government, the state, or a political subdivision of the state.

3. This section does not apply to any concentrated or confined animal feeding operation in existence or approved by the state department of health before August 1, 1999."

Renumber accordingly

1999 SENATE AGRICULTURE

SB 2355

CONFERENCE COMMITTEE

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2355

Senate Agriculture Committee

✓ Conference Committee

Hearing Date 4/9/99

Tape Number	Side A	Side B	Meter #
1	X		0-3905
4/12/99 1	X		0-1910
Committee Clerk Signature <i>Maria Arguon</i>			

Minutes:

Senator Wanzek opened the conference committee on SB 2355. All Senators and Representatives were present.

Senator Wanzek: I initially considered concurring, but I think it would have been irresponsible after we further analyzed the bill. I think the intentions of the House amendments are fine it's some of the language that created the problem. There was some lack of uniformity. Anita Thomas had told me that in her legal opinion it would not have been responsible for passing a bill that we had from the House.

Handed out amendments.

The things we tried to do in section 2 that would be somewhat different is mainly the clean up language, we tried to stay consistent with that terminology. In subsection 2A we are consistent in saying livestock feeding operations. Would still do what House had intended I believe.

Subsection 2B states that a regulation may not preclude or prohibit the development of a livestock feeding operation, it does allow for the development of a livestock operation in a county, it allows the county set reasonable standards.

Representative Brusegaard: What we were trying to do is provide a framework with which counties and townships can put their zoning ordinances if they wish to do that. I think your amendments will accomplish that very well.

Senator Wanzek: We provide some, we address somewhat the concern of the original intent of the bill. We also, for the concern of the townships and counties in allowing some latitude and some flexibility in addressing what may be potentially large livestock feeding operation.

If you look at the current language the way it is today, it is somewhat ambiguous as to what kind of authority they have. Many people are looking for some clarity in the law.

Some people would like us to make reference to "animal" instead of "livestock" feeding operation.

Lyle Witham from the Attorney General's office spoke. Handed out packet which is enclosed.

Federal rules 122.23 defines animal feeding operations and concentrated animal feeding operations. An animal feeding operation basically is any confined setting where animals are kept for 45 days or more, a concentrated feeding operation is defined in handout. Think it would be wise to use that same terminology, "animal feeding operation".

Senator Wanzek: On page 1, 2B, what if we were to amend that to say a development of a concentrated animal feeding operation, and can you make a reference to federal law?

Lyle Witham: "Confined" is by state law. It is basically under section B of the state law. There are circumstances under section B.

Senator Wanzek: If we made a reference to a concentrated animal feeding operation in a county would we be in a sense referring to this appendix B.

Lyle Witham: If you referred to 40 CFR 122, that would be sufficient.

Senator Wanzek: My concern would be, in a sense we're allowing the county to set the standards on any size livestock feeding operation. If we say concentrated we would be more clearly defining it. Think we need to make a reference to this federal law otherwise we're going to create some confusion again.

Lyle Witham: Federal rule covers situations by a case by case designation, that's when there is actual pollution going on. I think that would work very well.

Discussion.

Representative Berg: I am interested to hear Anita's comments were. We want the language accurate.

Senator Kinnoin: All we're looking at is changing "livestock" to "concentrated".

Senator Wanzek: We want to make reference to "concentrated" in 2B. If we don't refer to concentrated than we're giving them ability to set standards on any livestock. I think we want to give them ability to set standards only on those concentrated. We are giving them some latitude or authority they currently do not have.

Representative Berg: I think the intention here was to not get real specific but to leave it a little bit open and leave it in the hands of the township. If they are not consistent with what we feel the people of ND want, we can come back and tighten it up more. I think that with the language that's here the people can look at this language and make that decision.

Senator Wanzek: I am saying we are extending their authority, I think the concern is with the concentrated animal feeding operations, not so much with the rancher or any other livestock operations that are out there.

Representative Froelich: The EPA has got the guidelines set, they've never allowed us to go less than what their standards are set, by putting 40 CFR in there that means you're following the federal guidelines.

Senator Wanzek: I agree in most cases the townships may welcome expansion and I don't believe they are going to want to zone out. (Gave example)

Representative Berg: What you're saying is to take this, check on the language, tie the language into animal feeding regulations so it ties in with federal statute and then under the 2B to more further define that for a confined concentrated animal feeding.

Representative Brusegaard: I don't feel real strongly either way. My problem is bringing EPA definitions into the whole thing.

Senator Wanzek: Can we refer in 2B concentrated livestock feeding operation with out creating confusion if we switch to a concentrated situation.

Lyle Witham: The terms are already defined in law in other places so I don't know that you need to refer to the CFR. Explained more about the handout. If you referred to concentrated animal feedings it may be good enough.

Senator Wanzek: What if we just changed it to animal feeding operations. Would you feel comfortable with 2B?

Representative Berg: My only concern is the fish farms.

Representative Froelich: I'm having a problem between livestock and animal here.

Senator Wanzek: Well I think what we're trying to get at is there are poultry feeding operations. Poultry isn't included in livestock.

Representative Berg: I don't see any danger in changing that to animal feeding versus livestock. Committee discussion.

Representative Berg: My only point is that when we try and define this more specifically we only create more problems that we aren't even aware of.

Senator Wanzek: My only concern with just referring to livestock feeding operations than what kind of operations are we allowing them set reasonable standards over.

Representative Berg: We are talking about the development of feeding operation, and so the development of a feeding operation is not an existing operation it's a new operation, I think that if you're looking at developing an animal feeding operation common sense is going to say this is a feedlot facility type thing.

Senator Kinnoin: If we were to put concentrated in there you're defining an area where they are feeding, the way it is here it's pretty general. That's a pretty broad statement.

Senator Wanzek: (Read from century code)

Representative Froelich: We're getting into some really thin lines. We are going to open up a whole can of worms again.

Senator Wanzek: I think we should just leave it livestock, the only change I think we should make is put refer to concentrated feedlot.

Representative Froelich: It does state in law then it determines what a confined livestock feedlot is.

Senator Wanzek: I would prefer in 2B that we refer to the concentrated feedlot as defined here.

Senator Kinnoin: Why can't we refer to that section in here rather than put all that wording in.

Representative Berg: My only concern is we aren't really talking about environmental. My only concern is I don't really want to tie into the federal statute.

Senator Wanzek: I think we are all in agreement with that.

Representative Berg: May be doing the same thing by tying into that section. Don't want to create a situation where people are making decisions based on pollution here.

Senator Wanzek: I don't think this definition will limit them.

Committee discussion.

Senator Kinnoin: It doesn't make a lot of difference.

Bryan Hoime said he had no problem with the changes.

Senator Wanzek agreed to talk to Legislative Council.

Meeting was adjourned.

APRIL 12, 1999

Senator Wanzek called the meeting to order. Amendments were handed out.

Representative Berg: Are we saying the same thing with these?

Senator Wanzek: You're probably right, I felt the concern most people have is with confining animals in one location. I have no problem with that but maybe these amendments more clearly establish what we are talking about.

Representative Berg: The pollution, how is that defined in section 61-20-02?

Senator Wanzek: I could live with either one but I would like to be more specific.

Definition was found and read.

Representative Froelich: I've been down this road before with that and basically what it amounts to is that if my feed lot is going to pollute the state waters they are going to come in and regulate them.

Representative Berg: We have two issues here, zoning and pollution. In here we have really dealt with more of the zoning issues. Maybe this is fine but under the definition of a confined feeding operation we are saying that it doesn't include wintering cattle except if those cattle cause pollution.

Senator Wanzek: What if we overstrike some of the language. Explained what he wanted over struck.

Representative Froelich: There are some places out there feeding bison do you want to include them?

Senator Wanzek: I think at this time this has gotten kicked around so much I don't really foresee and bison feed lots in the near future.

Representative Brusegaard: I have no problem with either sets of amendments. I would prefer the ones we discussed earlier. I don't think the committee can go wrong by adopting any set.

Senator Kinnoin: The ones from Friday didn't specify livestock.

Representative Brusegaard made the motion for the House to recede from their amendments and adopt the proposed amendments 90708.0316.

Representative Berg seconded.

Motion failed.

Discussion was held.

Page 8

Senate Agriculture Committee

Bill/Resolution Number SB 2355 CC

Hearing Date 4/9/99

Representative Froelich made the motion to recede from the House amendments and adopt proposed amendments 90708.0317.

Representative Brusegaard seconded.

Motion carried.

ROLL CALL: 6 YES, 0 NO

VK
4/2/99
1062

HOUSE

AMENDMENTS TO ENGROSSED SENATE BILL NO. 2355 AG 4-5-99

In lieu of the amendments adopted by the House as printed on pages 912 and 913 of the House Journal, Engrossed Senate Bill No. 2355 is amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 11-33-02 and 58-03-11 of the North Dakota Century Code, relating to zoning regarding farming and ranching."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. For any or all of the purposes designated in section 11-33-01, the board of county commissioners may divide by resolution ~~divide~~ all or any parts of the county, subject to the provisions of section 11-33-20, into districts of such number, shape, and area as may be ~~deemed~~ determined necessary, and ~~may~~ likewise may enact suitable regulations to carry out the purposes of this chapter. These regulations ~~shall~~ must be uniform in each district, but the regulations in one district may differ from those in other districts. ~~No~~ A regulation or restriction, ~~however, shall~~ may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming. ~~The provisions of this~~ 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 livestock feeding operations permissible in the county, provided:
 - a. If a regulation would impose a substantial economic burden on an agricultural 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 agricultural operation in existence before the effective date of the regulation.

 - b. A regulation may not prohibit the reasonable diversification or expansion of an agricultural operation.

 - c. A regulation may not preclude the development of a concentrated or confined animal feeding operation in the county. A regulation addressing the development of a concentrated or confined animal feeding operation in the county may set reasonable standards, based on the size of the operation, to govern its location.

3. ~~This chapter shall~~ does not be construed to include any power relating to the establishment, repair, and maintenance of highways or roads.

SECTION 2. AMENDMENT. Section 58-03-11 of the North Dakota Century Code is amended and reenacted as follows:

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

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.
2. ~~No~~ A regulation or restriction, however, may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming. The provisions of sections or ranching. For purposes of this section, "farming or ranching" means cultivating land for production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include producing timber or forest products, nor does the term include a contract whereby a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services.
3. A board of township supervisors may regulate the nature and scope of livestock feeding agricultural operations permissible in the township, provided:
 - a. If a regulation would impose a substantial economic burden on an agricultural 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 agricultural operation in existence before the effective date of the regulation.
 - b. A regulation may not prohibit the reasonable diversification or expansion of an agricultural operation.
 - c. A regulation may not preclude the development of a concentrated or confined animal feeding operation in the county. A regulation addressing the development of a concentrated or confined animal feeding operation in the county may set standards, based on the size of the operation, to govern its location.
4. Sections 58-03-11 through 58-03-15 may do not be construed to include any power relating to the establishment, repair, and maintenance of highways or roads."

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2355

That the House recede from its amendments as printed on pages 1129 and 1130 of the Senate Journal and pages 1166 and 1167 of the House Journal and that Engrossed Senate Bill No. 2355 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 11-33-02 and 58-03-11 of the North Dakota Century Code, relating to zoning regarding farming and ranching.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. For any or all of the purposes designated in section 11-33-01, the board of county commissioners may ~~divide~~ by resolution ~~divide~~ all or any parts of the county, subject to ~~the provisions of~~ section 11-33-20, into districts of such number, shape, and area as may be ~~deemed~~ determined necessary, and ~~may~~ likewise may enact suitable regulations to carry out the purposes of this chapter. These regulations ~~shall~~ must be uniform in each district, but the regulations in one district may differ from those in other districts. ~~No A regulation or restriction, however, shall~~ may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming. ~~The provisions of this~~ 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 livestock feeding operations permissible in the county, provided:
 - a. If a regulation would impose a substantial economic burden on a livestock 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 livestock feeding operation in existence before the effective date of the regulation.
 - b. A regulation may not preclude the development of a ^{concentrated livestock} livestock feeding operation in the county. A regulation addressing the development of a livestock feeding operation in the county may set reasonable standards, based on the size of the operation, to govern its location.
3. A board of county commissioners may not prohibit, through regulation, the reasonable diversification or expansion of a farming or ranching operation.
4. This chapter ~~shall~~ does not be ~~construed to~~ include any power relating to the establishment, repair, and maintenance of highways or roads.

SECTION 2. AMENDMENT. Section 58-03-11 of the North Dakota Century Code is amended and reenacted as follows:

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

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.
2. ~~No~~ A regulation or restriction, however, may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming. The provisions of sections or ranching. For purposes of this section, "farming or ranching" means cultivating land for production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include producing timber or forest products, nor does the term include a contract whereby a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services.
3. A board of township supervisors may regulate the nature and scope of livestock feeding operations permissible in the township, provided:
 - a. If a regulation would impose a substantial economic burden on a livestock 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 livestock feeding operation in existence before the effective date of the regulation.
 - b. A regulation may not preclude the development of a livestock feeding operation in the township. A regulation addressing the development of a livestock feeding operation in the township may set reasonable standards, based on the size of the operation, to govern its location.
4. A board of township supervisors may not prohibit, through regulation, the reasonable diversification or expansion of a farming or ranching operation.
5. Sections 58-03-11 through 58-03-15 may do not be construed to include any power relating to the establishment, repair, and maintenance of highways or roads."

Renumber accordingly

Please type or use black pen to complete

1997 SENATE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. SE 2355

Senate Agriculture Committee
 Subcommittee on _____ (Identify or
 Conference Committee X (check where
 (appropriate

Legislative Council Amendment Number 90708.0316

Action Taken House recede and adopt proposed amendments

Motion Made By Brusegaard Seconded By Berg

Senators	Yes	No	Representatives	Yes	No
<u>Wunzick</u>	_____	<u>X</u>	<u>Brusegaard</u>	<u>X</u>	_____
<u>Klein</u>	_____	<u>X</u>	<u>Berg</u>	<u>X</u>	_____
<u>Kinnoin</u>	<u>X</u>	_____	<u>Froelich</u>	_____	<u>X</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total 3 3
 (Yes) (No)

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

DO NOT USE HIGHLIGHTER ON ANY FORMS

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2355

That the House recede from its amendments as printed on pages 1129 and 1130 of the Senate Journal and pages 1166 and 1167 of the House Journal and that Engrossed Senate Bill No. 2355 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 11-33-02 and 58-03-11 of the North Dakota Century Code, relating to zoning regarding farming and ranching.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. For any or all of the purposes designated in section 11-33-01, the board of county commissioners may divide by resolution ~~divide~~ all or any parts of the county, subject to ~~the provisions of~~ section 11-33-20, into districts of such number, shape, and area as may be ~~deemed~~ determined necessary, and ~~may~~ likewise may enact suitable regulations to carry out the purposes of this chapter. These regulations ~~shall~~ must be uniform in each district, but the regulations in one district may differ from those in other districts. ~~No~~ A regulation or restriction, ~~however, shall~~ may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming. ~~The provisions of this~~ 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, ~~except when a wintering operation causes, or is likely~~

to cause, pollution as defined in section 61-28-02. 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 shall does not be construed to include any power relating to the establishment, repair, and maintenance of highways or roads.

SECTION 2. AMENDMENT. Section 58-03-11 of the North Dakota Century Code is amended and reenacted as follows:

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

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.
2. No A regulation or restriction, however, may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming. The provisions of sections 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.
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~~to cause, pollution as defined in section 61-28-02. 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 may do not be construed to include any power relating to the establishment, repair, and maintenance of highways or roads."

Renumber accordingly

Date 4/12/99

Roll call vote # 2

Please type or use black pen to complete

1997 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2355

Senate Agriculture Committee

Subcommittee on _____ (Identify or

Conference Committee X (check where appropriate)

Legislative Council Amendment Number 90708.0317

Action Taken House recode and adopt proposed amendments

Motion Made By Froelich Seconded By Brusegaard

DO NOT USE HIGHLIGHTER ON ANY FORMS

Senators	Yes	No	Representatives	Yes	No
<u>Wanzek</u>	<u>X</u>	_____	<u>Brusegaard</u>	<u>X</u>	_____
<u>Klein</u>	<u>X</u>	_____	<u>Berg</u>	<u>X</u>	_____
<u>Kinnou</u>	<u>X</u>	_____	<u>Froelich</u>	<u>X</u>	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total 6 0
(Yes) (No)

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

REPORT OF CONFERENCE COMMITTEE

SB 2355, as engrossed: Your conference committee (Sens. Wanzek, Klein, Kinnoin and Reps. Brusegaard, Berg, Froelich) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 1129-1130, adopt further amendments as follows, and place SB 2355 on the Seventh order:

That the House recede from its amendments as printed on pages 1129 and 1130 of the Senate Journal and pages 1166 and 1167 of the House Journal and that Engrossed Senate Bill No. 2355 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 11-33-02 and 58-03-11 of the North Dakota Century Code, relating to zoning regarding farming and ranching.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. For any or all of the purposes designated in section 11-33-01, the board of county commissioners may ~~divide~~ by resolution ~~divide~~ all or any parts of the county, subject to ~~the provisions of~~ section 11-33-20, into districts of such number, shape, and area as may be ~~deemed~~ determined necessary, and ~~may~~ likewise may enact suitable regulations to carry out the purposes of this chapter. These regulations ~~shall~~ must be uniform in each district, but the regulations in one district may differ from those in other districts. ~~No A regulation or restriction, however, shall~~ may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming. ~~The provisions of this~~ 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.
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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 ~~shall~~ does not be construed to include any power relating to the establishment, repair, and maintenance of highways or roads.

SECTION 2. AMENDMENT. Section 58-03-11 of the North Dakota Century Code is amended and reenacted as follows:

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

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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 may do not be construed to include any power relating to the establishment, repair, and maintenance of highways or roads."

Renumber accordingly


Engrossed SB 2355 was placed on the Seventh order of business on the calendar.

1999 TESTIMONY

SB 2355

MEMORANDUM

TO: Heidi Heitkamp, Attorney General

FROM: Carmen Miller, Assistant Attorney General 

DATE: January 26, 1999

RE: SB 2355

You have asked me to provide you a brief analysis of SB 2355, which proposes to amend N.D.C.C. ch. 42-04 to provide that "[a] political subdivision may not prohibit or prevent, through regulation, ordinance, or resolution, a person operating a farm on the effective date of this Act from engaging in livestock production on that farm. N.D.C.C. ch. 42-04 currently provides that agricultural operations shall not be deemed a nuisance. Specifically, N.D.C.C. § 42-04-02 provides:

42-04-02. Agricultural operation deemed not nuisance.

An agricultural operation is not, nor shall it become, a private or public nuisance by any changed conditions in or about the locality of such operation after it has been in operation for more than one year, if such operation was not a nuisance at the time the operation began; except that the provisions of this section shall not apply when a nuisance results from the negligent or improper operation of any such agricultural operation.

Last fall, the Iowa Supreme Court declared a similar statute, which provided immunity from nuisance suits for farms and farm operations, invalid as an unconstitutional taking without just compensation. In Bormann v. Board of Supervisors in and for Kossuth County, 584 N.W.2d 309, (Iowa 1998), the Bormanns and other landowners sued the Kossuth County Board of Supervisors for approving an agricultural area designation on neighboring land. Bormann, 584 N.W.2d at 311. The Board's approval of the agricultural area triggered the provisions of Iowa Code section 352.11(1)(a), which provides immunity from nuisance suits for farms or farm operations. Iowa Code section 352.11(1)(a) provides, in relevant part:

A farm or farm operation located in an agricultural area shall not be found to be a nuisance regardless of the established date of operation or expansion of the agricultural activities of the farm or farm operation. This paragraph shall apply to a farm operation conducted within an agricultural area for six years following the exclusion of land within an agricultural area . . .

Id. at 314.

The Court determined that the immunity provision created a right to maintain a nuisance over the neighbor's property, which was an easement. Id. at 315-316. The Court held that the nuisance immunity provision in section 352.11(1)(a) created an easement in the property affected by the nuisance in favor of the applicants' land, because the immunity allowed them to do acts on their land which would otherwise constitute a nuisance. Id. The Court concluded that the immunity resulted in the Board's taking of easements in the neighbors' properties for the benefit of the applicants, which amounted to a taking of private property for public use without the payment of just compensation. Id. at 321.

In addition, the Court addressed the validity of section 352.11(1)(a), and stated that "the state cannot regulate property so as to insulate the users from potential private nuisance claims without providing just compensation to persons injured by the nuisance[.]" and that "while the legislature may legalize what otherwise would be a public nuisance, it may not confer immunity from action for a private nuisance of such a character as to amount in effect to a taking." Id. at 319-320. The Court held that in enacting section 352.11(1)(a), the legislature had "exceeded its authority by authorizing the use of property in such a way as to infringe on the rights of others by allowing the creation of a nuisance without the payment of just compensation." Id. at 321. The Court held unconstitutional and invalidated the portion of section 352.11(1)(a) that provided for immunity from nuisance suits.

N.D.C.C. § 42-04-02 currently provides essentially the same protection from nuisance suits for agricultural operations as was provided by Iowa Code section 352.11(1)(a). Accordingly, section 42-04-02 is vulnerable to a constitutional challenge based on Bormann. While the factual context in which such a challenge would arise would likely differ from Bormann, which involved a local entity's designation of an agricultural area which triggered the immunity provision, many of the same arguments could be made to challenge N.D.C.C. § 42-04-02.

By prohibiting political subdivisions from prohibiting or preventing livestock production on farms, SB 2355 eliminates another option for challenging livestock operations. If amended by SB 2355, chapter 42-04 will prohibit neighboring landowners from suing for nuisance, and will also prohibit local authorities from prohibiting livestock production. This type of additional protection for the nuisance, and resulting easement according to the Bormann court, may add to the factors creating an unconstitutional taking.

cc: Bob Harms

1. **4. WETLANDS POLICY**

2. **A. Wetlands of less than one acre should not be under any jurisdiction by**
3. **state or federal agencies.**

4.

5. **B. When dealing with farmland, primary consideration should be given to**
6. **the economic impact on agriculture.**

7.

8. **C. Landowners should be able to move water within the boundaries of**
9. **their property without regulation, interference or easements.**

10.

11. **D. No net gain of wetland acres.**

12.

13. **E. Any policy developed should recognize the function of wetlands as an**
14. **agricultural property.**

15.

16. **F. Water outside the boundary of a wetland should be considered**
17. **sheetwater and not subject, under any circumstances, to jurisdiction**
18. **by state or federal agencies.**

19.

20. **5. LIVESTOCK PRODUCTION RECOMMENDATIONS**

21. **Livestock production is essential to the well-being of North Dakota. North**
22. **Dakota Farmers Union actively promotes the development of livestock**
23. **production in North Dakota as a vital component in maintaining a healthy**
24. **agriculture sector.**

25.

26. **North Dakota Farmers Union recognizes that family farming and good**
27. **stewardship of the land are not incongruous and that sound environmental**

1. practices and family farm agriculture should work together. Our policy
2. encourages a well-balanced, sensible environmental policy that protects
3. the public and the environment without unduly burdening family farmers
4. through excessive regulation or economic hardship.

5.

6. A. IMPLICATIONS OF SCALE

7. Livestock waste is a valuable resource that provides essential nutri-
8. ents to crop land. However, when livestock waste is concentrated into
9. large volumes, improperly stored, transported, or disposed, it can
10. have a negative effect on the environment. The issue of scale is critical
11. in determining the levels of risk associated with waste management,
12. and therefore paramount in the development of policy. Matching the
13. appropriate regulatory control to the appropriate scale may be key in
14. designing appropriate livestock waste management practices.

15. While stewardship is essential at every level of livestock production,
16. the current megafarm trend in livestock production has consequences
17. that need to be addressed at a different level than small-scale
18. production. The large amount of waste generated by industrial-sized
19. production presents a considerable waste management challenge. In
20. addition to the detrimental effects large quantities of waste can have
21. on land and water, there are also concerns that waste containing
22. bacteria, viruses, and other possibly dangerous organisms being
23. released into the environment in huge volumes could lead to public
24. health issues.

25.

26. However, there is general concern that any additional regulations
27. aimed at industrial sized agriculture would lead to costly and intrusive

1. measures for all producers that could force small to medium size
2. producers out of business.

3.

4. North Dakota Farmers Union supports a tiered system that deter-
5. mines the degree of regulation by the size of the operation. This
6. system should have at least three categories and should be based on
7. animal units.

8.

9. B. FEDERAL REGULATION

10. The Environmental Protection Agency, the Administration and Con-
11. gress are working to establish national standards for large-scale
12. confinement operations or CAFOs (Confined Animal Feeding Opera-
13. tions) that may include regulatory, statutory and/or voluntary (incentive
14. based) measures.

15.

16. Because there is a great variance in environmental conditions from
17. state to state and even within each state, broad national guidelines
18. may not be appropriate for every location.

19.

20. North Dakota Farmers Union supports national minimum guidelines
21. or standards that give primacy for implementation and flexibility in
22. regional planning to the states. A national policy should discourage
23. polluters from "shopping" among the states for the lowest environ-
24. mental standards and encourage states and localities to establish
25. standards beyond the federal minimums.

26.

27.

1. C. STATE REGULATION

2. North Dakota's current guidelines require concentrated feeding or
3. feedlot operations of equal to or over two hundred animal units to meet
4. approval requirements. Any operation, regardless of its number, may
5. also require approval if it is determined that waste from that operation
6. is a pollution threat.

7.
8. North Dakota Farmers Union supports state standards that are NOT
9. size neutral. A graduated system of at least three tiers, small (below
10. 200), medium (200-1,000) and large (over 1,000) should be imple-
11. mented with a sliding scale of standards that address each size
12. operation.

13.
14. North Dakota Farmers Union urges the North Dakota Department of
15. Health to issue rules for livestock operations over 1,000 animal units
16. that prohibit locating over glacial aquifers, require bonding and
17. provide an opportunity for a public vote through the administrative
18. process.

19.
20. North Dakota should safeguard the right of political subdivisions to
21. enact and enforce their own zoning ordinances and we strongly
22. encourage all townships and counties to establish their own stan-
23. dards, so long as minimum state requirements are met.

24.
25. We would support legislation that codifies these specifications.

26.
27.

1. D. NORTH DAKOTA DEFINITION OF ANIMAL UNIT

2. A unit of measure equal to approximately 1,000 pounds of animal.

3.	ANIMAL	AU
4.	1.5 feeder cattle	1
5.	1 mature dairy/beef	1
6.	1 horse	1
7.	4 swine (over 55 lbs)	1
8.	8 sheep	1
9.	30 turkeys	1
10.	80 chickens	1

11.

12. E. SPECIFIC RECOMMENDATIONS FOR LARGE-SCALE FACILITIES:

13. 1) North Dakota Farmers Union SUPPORTS holding animal "own-

14. ers" responsible for spills as it pertains to contract feeding, which

15. shifts the responsibility from the corporate owners to the contract

16. feeder. However, it is important to note that since corporations

17. cannot "own" livestock in ND under NDCC 10-06, this would NOT

18. have the desired effect of holding corporations financially respon-

19. sible for spills or flawed lagoon designs. A more appropriate state

20. policy would be to draw capital investors or lagoon designers into

21. the chain of liability.

22.

23. 2) Because technology exists that reduces environmental impact,

24. enhances the quality of life for neighbors and communities, and

25. encourages increased production, North Dakota Farmers Union

26. SUPPORTS using a higher standard of technology for waste

27. storage than an open air lagoon. New and expanding large scale

1. operations should be required to utilize new technologies.
- 2.
3. 3) North Dakota Farmers Union SUPPORTS setback distances
4. from an existing residence (residence on the facility not appli-
5. cable), business, church, school or public use area.
- 6.
7. 4) Permit applicants must prepare and submit a manure manage-
8. ment plan containing detailed information regarding proposed
9. method of distribution (optimum crop schedule, timing and loca-
10. tion of applications, calculations about how much land is necessary
11. for application, methods to reduce/eliminate potential water pol-
12. lution and odor, and detailed records for 3-5 years following
13. application detailing methods and dates of application.)
14. (a) ND regulations restrict spreading of waste on ice, however,
15. not on frozen ground.
16. (b) Application of waste should be injected or incorporated into
17. the soil. Aerial spraying of liquid waste should be prohibited.
18. (c) No waste should be applied to slopes so high as to be highly
19. erodible.
- 20.
21. 5) Permit applicants for a large scale facility must serve notice to the
22. public describing the type of facility to be constructed, the type of
23. waste to be generated, and the waste handling treatment to be
24. used, a legal description of the property, and notice of a public
25. comment period. Applicants must develop a "baseline" for moni-
26. toring future water/soil quality. In addition, all managers, operators
27. must complete training in waste management and odor control.

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6) Permit holders must disclose the number of animal units within a facility upon request. The Health Department should develop a policy that includes nursing animals in permitted amount of animal units.

7) Annual, unannounced inspections of operations including independent testing of water quality.

8) "Bad Actor" legislation allowing the state to reject permits from producers who have a poor environmental record (habitual environmental damage) or whose permit has been revoked in another state.

9) Facility closing requirements that ensure proper clean-up if they cease operating. This would require total removal of manure and contaminated soils within a specified period after closure and revegetation within three years of closure.

10) Existing operations should be required to comply with new rules within a certain amount of time. NO grandfather clauses.

11) In order to protect taxpayers, permits should require financial assurances including proof of liability insurance to a determined amount, net worth, or adequate bonding.

1. 12) Increase the statute of limitations for the nuisance law.

2.

3. 13) Provide penalties.

4.

5. 6. STATE WATER POLICY

6. Since our state's water belongs to all the people of North Dakota, the North
7. Dakota Water Commission should manage our water resources to the
8. greatest advantage to our citizens, with all areas of the state being given
9. equitable consideration.

10.

11. A. We call for adoption of a comprehensive state water policy which will
12. allow North Dakota to claim its rightful share of water resources.

13. We believe the majority of funding for water projects should come from
14. the federal government due to the long-standing commitment that was
15. made to the people of North Dakota for diversion of Missouri River
16. water.

17.

18. We believe supplemental state funding of water development projects
19. to be in the best interest of North Dakota. These programs should be
20. funded through the state's personal and corporate income taxes.

21.

22. B. To give more family farmers the opportunity to irrigate from groundwa-
23. ter, we suggest that the state legislature allow the State Water
24. Commission to limit water permit acquisition to 320 acres every three
25. years to a maximum acreage of 640 acres per farm.

26.

27. C. The Devils Lake Basin continues to have problems with excess water

TO: Members of the House Political Subdivisions Committee,
Members of the Senate Agriculture Committee, and
Members of the Senate Natural Resources Committee

FROM: *CT* Constance Triplett, Grand Forks County Commissioner and
Member, Grand Forks County Planning
and Zoning Commission

RE: HB 1397, SB 2355, and SB 2366

DATE: January 27, 1999

Please vote no on each of the above-referenced bills. All of these bills appear to be a reaction to the activity of the Grand Forks County Planning and Zoning Commission in the past year and a half.

By way of background, when Bob Bergquist (Enviropork) requested a permit to site a farrowing operation along Highway 2 near Larimore, ND, and very near the Elk Valley aquifer, some of the people involved in decision-making had concerns about the potential for odor problems, groundwater contamination and the location immediately adjacent to a state highway. However, since our zoning ordinance didn't adequately address these issues, we felt we had no choice but to approve the request.

Then, to be better prepared for any further applications by similar facilities, we set about drafting an ordinance regarding concentrated-animal feeding operations (CAFO). We have made this a very public process, much more than is required by state law or our own regulations. The proposed ordinance has been discussed at several meetings of the Planning and Zoning Commission. We have actively sought the advice of area cattle and pork producers as well as input from members of local environmental groups. We have met with staff from the state Health Department and have reviewed many similar ordinances from neighboring states.

We started in September 1997 with the intention to draft a comprehensive ordinance because there appeared to be very little regulation of these facilities by the state. Then, Enviropork was sued by two nearby landowners and District Judge Bruce Bohlman issued an order in September 1998 which included, among other things, a conclusion that Enviropork's waste lagoon should be regulated as a solid waste facility by the state, rather than included in a blanket exemption for farming activities.

In response to Judge Bohlman's ruling, the State Department of Health has issued emergency regulations and, I understand, is working on permanent regulations to deal with many of the

environmental issues associated with concentrated-animal feeding operations.

In response to the Health Department's reaction, the Grand Forks County Planning and Zoning Commission has substantially re-written our proposed CAFO ordinance to eliminate any duplication of regulatory effort. Our proposal is now essentially a siting ordinance (minimum setbacks from other residences, businesses, waterways, highways) and an information-exchange mechanism (copies of plans filed with the state need also to be filed with the County).

I believe that the County's actions have been perfectly appropriate throughout this process. Siting of any major business which may affect the public health and welfare is the traditional function of County planning and zoning boards. This process has been an interesting interplay between private interests, local government, the courts and state agencies. It appears to me that the existing laws are adequate to protect the rights of all parties and to allow the appropriate balance between the rights of landowners and the rights of the public at large. All of the proposed changes, represented by the three bills referenced above, would skew the balance away from the public interest in protecting the environment.

I urge you to vote against all of these bills. Thank you for your consideration.

Dakota Resource Council

P.O. Box 1095, Dickinson, ND 58602-1095
Telephone (701) 227-1851; FAX 225-8315
e-mail: drc@dickinson.ctctel.com

Testimony

SB2355-relating to livestock production on existing farms
Senate Agricultural Committee

Dakota Resource Council wishes to express strong opposition to this bill.

Establishing reasonable and effective regulations for concentrated animal feeding operations (CAFOs) has become a national issue in the last few years. This need for regulation has come about due to changes in the pork industry reflected in giant hog confinement operations, which pose new threats to ground and surface water and air quality in rural areas. The State Department of Health, November 12, initiated statewide discussion among farm organizations and other interested parties to prepare for possible state rulemaking. Dakota Resource Council has actively participated in this process.

One clear conclusion of the November 12 discussion was that in proper CAFO regulation, both the state and political subdivisions have an important role to play. The state must provide a permitting process and basic standards for such matters as construction, setbacks, and bonding. On the other hand, local siting decisions more properly belong to political subdivisions, according to the Health Department.

This bill would thrust all CAFO siting decisions upon the state and deprive subdivisions of their vital role in local land use planning, at least with regard to agricultural lands. Like all other groups with a farm constituency, DRC would like to do whatever is possible to aid farmers during these difficult times. But loss of local control in the community planning process will not aid farmers.

Let's take of one example of the destructive potential of this legislation. Let's say that local citizens, including neighboring farmers, are facing the proposed development of a 5,000-sow farrowing operation with a lagoon the size of two football fields and producing as much waste as the city of Williston. If they are like their counterparts all over the country, they will have some concerns about the siting of such a facility. If this bill passes, those citizens will hear two contradictory messages from the state about their concerns. First, the Health Department will tell them that siting is a local concern. But then the Century Code will tell them they can't adopt any local zoning related to this facility. Where are they to take their concerns?

This is no way to treat citizens. Please vote a "do not pass" on this bill.

My name is Todd Leake. I farm 2300 acres in central Grand Forks County. I serve on my local elevator board and on the Grand Forks County Farm Bureau board of directors. I raise small grains, oilseeds, and dry beans, and have been involved in cattle all my life. I am concerned about the future of agriculture.

I believe in government from the bottom up, not from the top down. I fear that Senate Bill 2355 will strip away a basic part of local government. SB 2355 would prevent counties and townships from enacting ordinances to site or zone future livestock facilities that may be in unacceptable locations. Almost all new livestock operations would, or could, be located on operating farms, making local zoning ineffective. For example, if a livestock operator applies for a livestock operation permit on a site unacceptable to county or township ordinance regulations, Senate Bill 2355 would make the county or township may be unable to prevent that operation from being located there.

In 1997 I was asked by the Grand Forks County Commission to assist in researching an ordinance regarding livestock operations. After reviewing numerous ordinances and after a year and a half of public hearings I have yet to see any livestock ordinance that would prohibit or prevent livestock production.

These ordinances are for the purpose of siting livestock facilities. This authority to site exists to guide the counties and townships, as well as the livestock producers, to avoid degrading important resources such as ground and surface waters and to guarantee the rights of neighbors. Without this authority, counties, townships, and towns would have no ability to influence the siting of livestock facilities next to schools, towns, state parks, churches, and so on. All ordinances allow for variances, and existing facilities are usually unaffected. There exists the very distinct and real possibility however, that this bill, if enacted, could mean that counties, townships, and towns would have no power to refuse a permit to site a livestock operation on a particular location, even if it were located next to a town or a school, or next to a public wellhead.

The North Dakota Department of Health does not assume any zoning authority. Zoning and siting of facilities is the responsibility of the local government. With that responsibility of the state permitting process thrust upon them, counties, townships, and towns have relied on ordinances as the best vehicle to fulfill that obligation. Ordinances, and the regulations they contain, usually in concert with state health department rules, spell out ahead of time for producers what the rules are. They allow, through public hearings, an opportunity for a producer to voice his concerns, and allow supporters of the producer to be heard as well as those who oppose. Zoning and siting setbacks help producers select good sites, avoiding conflicts and costly compliance measures that may be required by the state health department to bring a poor site into compliance with state health department rules. Livestock producers can be allowed variances, but most of all, they would be dealing with local government, with people they know, not with an unknown bureaucrat in a far off city or even in another state.

Without counties having full and complete zoning authority, whether through ordinances or conditional use permits, the North Dakota Department of Health would be unable to proceed with its permitting process because it has not, and will not, have zoning authority, part of the prescribed permitting process.

According to Federal law, [40 CFR Ch. 1 (7-1-98 edition) Subpart B, Section 256 paragraph (a) parts 1, 2, and 3, and paragraph (e)] the State Waste Management Plan shall provide for

Paragraph (a):

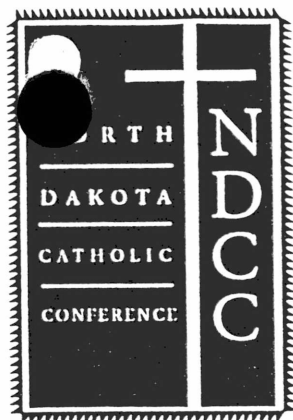
- 1) "The identification of the responsibilities of State and Substate (regional, local, and interstate) authorities in the development and implementation of the State plan;
- 2) The means of distribution of Federal funds to the authorities responsible for development and implementation of the State plan; and
- 3) The means of coordinating substate planning and implementation"

Paragraph (e): State, substate, and private sector responsibilities shall be identified for the planning and implementation of solid and hazardous waste management facilities and services.

According to Federal and State law, solid waste includes waste from agricultural operations.

By refusing counties, townships, and towns the power to deny permits for unacceptable operations at unacceptable sites, substate governments cannot fulfill their responsibilities under the State Waste Management Plan, which may very well put the State Plan out of compliance with Federal regulations and State Primacy (control) may be sacrificed, along with Federal funds.

I don't think North Dakota livestock producers want direct regulation by the Environmental Protection Agency. William Yellowtail (EPA Region 8 Administrator) said just that in a June 1st, 1998, meeting in this very building. Let's not make it so the EPA has no choice. I ask you to oppose Senate Bill 2355 and to keep government local, from the bottom up, not from the top down.



*Representing the Diocese of Fargo
and the Diocese of Bismarck*

Christopher T. Dodson
Executive Director

To: Senate Agriculture Committee
From: Deacon Jim West, Rural Life Director, Diocese of Fargo
Subject: Senate Bill No. 2355 (Relating to Livestock Production on Existing Farms)
Date: January 28, 1999

Chairman Wanzek, members of the committee, my name is Deacon Jim West and I am the Rural Life Director of the Roman Catholic Diocese of Fargo. I appear today on behalf of the North Dakota Catholic Conference in opposition to this bill.

By profession, I am an environmental engineer, but much of my life has been in farming, including livestock production. As the Rural Life Director of the Fargo Diocese, I want to help families stay in farming, including livestock production. However, this bill fails to further that purpose for several reasons.

First, the bill rests on the false assumption that all livestock operations are the same. That simply is not true and we need only to look at the environmental and social problems in other states to realize that some livestock operations operate in a manner contrary to the common good and good stewardship of creation.

Second, communities have a role and duty to ensure that agricultural operations are consistent with the common good and do not threaten creation. This bill, however, would strip communities of that rightful role. This is contrary to what we call in Catholic teaching "subsidiarity." The principle of subsidiarity demands that a higher order should not interfere with or strip away the ability of a local community to govern its affairs. This bill would do that with regards to livestock operations.

Third, the bill is contrary to a proper relationship between the right of private property and the common good. Property rights are important, but they are not absolute. All property is held in what the Pope has called a "social mortgage." That means that no one, including farmers engaging in livestock operations, has a right to do whatever they want with their property. All exercise over property is subject to the common good, stewardship of creation, and respect for human life and dignity.

227 W. Broadway, Suite 2
Bismarck, ND 58501
(701) 223-2519
Fax # (701) 223-6075

Finally, experience gives us concern about this bill. State Catholic conferences and dioceses around the nation, as well as the National Catholic Rural Life Conference, are very concerned about the growth of large concentrated animal feeding operations. These operations have threatened God's creation, disrupted communities, and threatened family farms. Senate Bill 2355 is precisely the type of bill causing concern in other states. Rather than placing livestock operations in a community context consistent with the principles of subsidiarity, the common good, and the integrity of creation, it exempts them and amounts to an invitation to develop large-scale concentrated animal feeding operations without concern for these prevailing principles. This is why the bishops of North Dakota, in their recent statement on rural issues stated that we should "strengthen rural communities by helping them shape their own environment and allowing them to enact land use ordinances consistent with the principles of subsidiarity and the common good." Rather than helping rural communities shape their own environment, this removes some of their ability to do so. We don't need this in North Dakota.

We urge a **Do Not Pass** recommendation on SB 2355.

1/28/99

We talked to Chairman Wanzek & offered our assistance as a resource for zoning questions.

We would be happy to serve as a neutral resource for SB 2355.

Please call us if you would like any assistance.

Thanks -

Carl Hokenstad

Bill Wicken

Call Attention to the Crisis in Rural Life

We call on agencies within the Church and all persons to convey the problems facing rural communities and the Church's concern for rural life. We must share the struggles facing rural communities and the Church's concerns with urban communities and those residing in other states.

Education and Catechesis on Rural Issues

We call on our teachers and catechists to incorporate concern for rural issues, with a view to Catholic social teaching, into their work.

Prayer and Worship Opportunities

Our worship and prayer life should reflect our love and respect for farming and rural life. We call on all persons of faith to offer thanksgiving for the blessing of farm and ranch families and rural life.

Charitable Services

Whenever our farm and ranch communities face economic difficulties, other problems may follow such as domestic violence, abortion, substance abuse, suicide, divorce, and loss of health care coverage. The Church, through parishes, charitable organizations, and health care institutions must reach out and help those in need. In doing so, the Church's response should provide a sense of hope rooted in the resurrection of Christ.

Place of Community

In many of our rural communities, churches serve a civic function. Parishes can take advantage of their role in the community by offering space and even leadership to those seeking to address community needs.

While the Church is especially called to take on these tasks, we call on other faith organizations, charitable entities, government agencies, and all

people of good will to help those affected by our current rural crisis. In doing so, we must remember that such service, while necessary, should not distract us from the task of working for a just agriculture system.

Solidarity with Urban Communities

We make a special appeal to those not engaged in agriculture or who may live in urban settings. By focusing this statement on the matters concerning farmers and rural communities we do not intend to convey that farming and rural communities are better than those that live in urban areas or engage in other vocations. Rather, we wish to call attention to one of God's blessed vocations and ask the rest of our society give it due respect and attention.

Moreover, we ask our brothers and sisters in urban communities to take a special interest in the well-being of those that produce their food and steward God's creation. To a large extent, the health of our urban communities is related to the health of our rural communities. The virtue of solidarity joins us together in the struggle to preserve family farms and rural communities.

A Time to Give Thanks Through Action

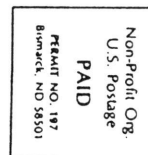
God has blessed us with gifts of creation and persons who apply their labor to God's creation so that we may have food, clothing, and other essentials for life and dignity. Farmers and ranchers, their families, and the rural communities in which they live, work, and worship are blessings for all of us, no matter where we live. We have reason to give thanks. Let us show our thanks through concrete actions addressing the crisis in rural life.

James S. Sullivan, Bishop of Fargo
Paul A. Zipfel, Bishop of Bismarck

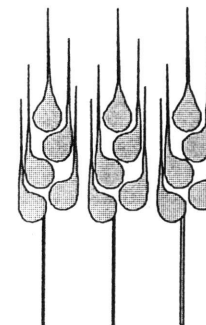
For more information, contact the North Dakota Catholic Conference 701-223-2519 <http://ndcatholic.org>



North Dakota
Catholic Conference
227 West Broadway, Suite 2, Bismarck, ND 58501-3737
RETURN SERVICE REQUESTED



Giving Thanks Through Action



A Statement by the Roman Catholic Bishops of North Dakota on the Crisis in Rural Life

*Blessed are you, Lord, God of all Creation.
Through your goodness we have this bread to offer, which earth has given and human hands have made.*

Liturgy of the Eucharist

The Breadbasket in Crisis

North Dakota truly is part of the world's breadbasket. The state's farm and ranch families produce an abundance of food and other agricultural products while contributing to a rural life enriched by values that come from working and living close to the land and to each other. Sadly, the families and communities that create that breadbasket are in crisis.

Record low prices for some crops and livestock, combined with disease, floods, and blizzards have created an economic and social strain in our rural communities. These events worsen an already disturbing trend in the declining number of family farms and ranches, a loss of rural residents, and concentration of ownership in land and markets. Meanwhile, greater pressures are put on church ministries, public and nonpublic schools, the delivery of government services, the provision of health care, rural businesses, mental health services, and eventually the urban economy.

This crisis gives reason to reflect on what the Church can offer to matters concerning rural life. In doing so, the Church calls upon a social teaching based on the primacy of the human person in every economic and social activity, including agriculture, and the Church's experience as pastors, teachers, and ministers to the very people most affected by this crisis in rural life.

Principles for a Just Agricultural System

The present crisis in rural life must move all persons, in a spirit of cooperation, to work for a just agricultural system situated within an ethical framework rooted in principles of social justice found in Sacred Scripture and the Church's social teaching.

The Need to Respect the Life and Dignity of the Human Person

Ultimately, the test of any agriculture policy is a moral one -- does it make concern for human life and

dignity the guiding norm? Public and social policies must put the human person first. Society cannot consider farmers and ranchers expendable in the name of "progress" or "efficiency."

Respecting human dignity means we must respect the vocation of farmers and ranchers. By applying their labor to God's creation and providing essentials, such as food and clothing, for life and dignity, farmers and ranchers exercise a stewardship that puts them in unique communication with God. Society, through government, economic, and business policies, must respect the rancher and farmer by providing just compensation for labor and by supporting rural communities.

The Common Good

Life and dignity are best respected and protected in community. We must work to preserve family farms and ranches precisely because they provide one of the best guarantees of a healthy community.

The Integrity of Creation

By virtue of their vocation, ranchers and farmers should exercise responsible stewardship of creation. Agriculture and economic policies must support them in the exercise of this responsibility and not promote exhaustion of the earth's resources.

The Universal Destination of Goods

The goods of creation are meant for all, throughout generations. Excess profits in agribusiness, especially at the expense of the laborer, violate principles of justice. Policies should foster wide distribution of ownership in agriculture rather than concentration, whether in land, animals, technology, seed, genetic make-up, processing, or production. Moreover, social and economic policies must provide just compensation to ranchers and farmers for their labor.

Subsidiarity

Human dignity requires that persons and communities should possess the ability to exercise responsible self-governance. Subsidiarity means that while larger governments and businesses have a duty and sometimes a duty to involve themselves in local affairs, they should give deference and due respect to local communities and families.

Option for the Poor

We should judge policies concerning rural life according to how they affect the least among us -- those with less power and influence, the most vulnerable, and the marginalized. A strong case exists that the "poor" today includes rural communities; not because they are among the economic poor -- although this is increasingly true -- but because they are among the least powerful and their way of life is marginalized, ignored, or forgotten.

A Framework for Action

These ideas provide not merely abstract principles, but a framework for action. Therefore, we urge citizens, local, state, and federal government, and all persons of good will to:

- Foster opportunities, such as cooperative associations, which give producers and communities more economic return and greater participation in the production process;
- Support the spirit and intent of North Dakota's Corporate Farming Law to preserve and maintain farm ownership and control in the hands of family farmers;
- Seriously examine and, if necessary, restrict the operation of large-scale animal confinement operations, looking not only at ownership and environmental questions, but also how such operations affect the common good of the community;
- Assure all persons in agriculture a just wage or

price for their labor, including compensation through production contracts, and take action to ensure just contractual arrangements;

- Foster widespread ownership of land and other agriculture property and assist first-time farmers; Strengthen rural communities by helping them shape their own environment and allowing them to enact land use ordinances consistent with the principles of subsidiarity and the common good;
- Support research, education, and markets for sustainable farm and ranch practices;
- Provide rural communities with a support structure, including the provision of health care and education.

Some may dismiss such actions and concerns as contrary to notions of "progress" and "efficiency." To them, the loss of family farms and vertical integration is inevitable. The economy, however, is a human-made institution and not an inevitable force. Moreover, in his encyclical, *The Gospel of Life*, Pope John Paul II reminds us that when cultural, economic and political currents encourage an idea of society excessively concerned with efficiency, a "conspiracy against life" is unleashed and a "culture of death" is promoted. We cannot embrace such a culture in the name of progress.

To address these issues, we call on persons to set aside partisan and ideological differences. We commend the spirit of cooperation that guided the North Dakota Commission on the Future of Agriculture and urge all persons and organizations to reach out in Christian charity, listen respectfully to each other, and work for the common good.

A Challenge for the Church

The challenges facing our rural communities are also challenges for the Church. The Church's ministry compels us to hear and respond to the needs of those in crisis. Reflecting on these challenges, we draw largely from the *Fargo Diocesan Response to the Rural Life Crisis*.

§ 122.23

40 CFR Ch. I (7-1-93 Edition)

requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under § 122.22(a)(1)(ii) rather than to specific individuals.

(2) *For a partnership or sole proprietorship.* By a general partner or the proprietor, respectively; or

(3) *For a municipality, State, Federal, or other public agency.* By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

(b) All reports required by permits, and other information requested by the Director shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in paragraph (a) of this section;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and.

(3) The written authorization is submitted to the Director.

(c) *Changes to authorization.* If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) *Certification.* Any person signing a document under paragraph (a) or (b) of this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(Clean Water Act (33 U.S.C. 1251 *et seq.*), Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*))

[48 FR 14153, Apr. 1, 1983, as amended at 48 FR 39619, Sept. 1, 1983; 49 FR 38047, Sept. 29, 1984; 50 FR 6941, Feb. 19, 1985; 55 FR 48063, Nov. 16, 1990]

§ 122.23 Concentrated animal feeding operations (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* Concentrated animal feeding operations are point sources subject to the NPDES permit program.

(b) *Definitions.* (1) *Animal feeding operation* means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

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

(2) Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(3) *Concentrated animal feeding operation* means an "animal feeding operation" which meets the criteria in appendix B of this part, or which the Di-

Environmental Protection Agency

§ 122.25

rector designates under paragraph (c) of this section.

(c) *Case-by-case designation of concentrated animal feeding operations.* (1) The Director may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to the waters of the United States. In making this designation the Director shall consider the following factors:

(i) The size of the animal feeding operation and the amount of wastes reaching waters of the United States;

(ii) The location of the animal feeding operation relative to waters of the United States;

(iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;

(iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into waters of the United States; and

(v) Other relevant factors.

(2) No animal feeding operation with less than the numbers of animals set forth in appendix B of this part shall be designated as a concentrated animal feeding operation unless:

(i) Pollutants are discharged into waters of the United States through a manmade ditch, flushing system, or other similar manmade device; or

(ii) Pollutants are discharged directly into waters of the United States which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(3) A permit application shall not be required from a concentrated animal feeding operation designated under this paragraph until the Director has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

§ 122.24 Concentrated aquatic animal production facilities (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* Concentrated aquatic animal production facilities, as defined in this section, are point

sources subject to the NPDES permit program.

(b) *Definition.* *Concentrated aquatic animal production facility* means a hatchery, fish farm, or other facility which meets the criteria in appendix C of this part, or which the Director designates under paragraph (c) of this section.

(c) *Case-by-case designation of concentrated aquatic animal production facilities.* (1) The Director may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to waters of the United States. In making this designation the Director shall consider the following factors:

(i) The location and quality of the receiving waters of the United States;

(ii) The holding, feeding, and production capacities of the facility;

(iii) The quantity and nature of the pollutants reaching waters of the United States; and

(iv) Other relevant factors.

(2) A permit application shall not be required from a concentrated aquatic animal production facility designated under this paragraph until the Director has conducted on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program.

§ 122.25 Aquaculture projects (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* Discharges into aquaculture projects, as defined in this section, are subject to the NPDES permit program through section 318 of CWA, and in accordance with 40 CFR part 125, subpart B.

(b) *Definitions.* (1) *Aquaculture project* means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

(2) *Designated project area* means the portions of the waters of the United States within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including, but not

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ment reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).

(b) The Director shall follow the applicable procedures in part 124 or State procedures in terminating any NPDES permit under this section.

[48 FR 14153, Apr. 1, 1983; 50 FR 6940, Feb. 19, 1985, as amended at 54 FR 18784, May 2, 1989]

APPENDIX A TO PART 122—NPDES
PRIMARY INDUSTRY CATEGORIES

Any permit issued after June 30, 1981 to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of section 301(b)(2)(A), (C), (D), (E) and (F) of CWA, whether or not applicable effluent limitations guidelines have been promulgated. See §§122.44 and 122.46.

Industry Category

Adhesives and sealants
Aluminum forming
Auto and other laundries
Battery manufacturing
Coal mining
Coil coating
Copper forming
Electrical and electronic components
Electroplating
Explosives manufacturing
Foundries
Gum and wood chemicals
Inorganic chemicals manufacturing
Iron and steel manufacturing
Leather tanning and finishing
Mechanical products manufacturing
Nonferrous metals manufacturing
Ore mining
Organic chemicals manufacturing
Paint and ink formulation
Pesticides
Petroleum refining
Pharmaceutical preparations
Photographic equipment and supplies
Plastics processing
Plastic and synthetic materials manufacturing
Porcelain enameling
Printing and publishing
Pulp and paper mills
Rubber processing
Soap and detergent manufacturing
Steam electric power plants
Textile mills
Timber products processing

40 CFR Ch. I (7-1-93 Edition)

APPENDIX B TO PART 122—CRITERIA FOR
DETERMINING A CONCENTRATED ANIMAL
FEEDING OPERATION (§122.23)

An animal feeding operation is a concentrated animal feeding operation for purposes of §122.23 if either of the following criteria are met.

(a) More than the numbers of animals specified in any of the following categories are confined:

- (1) 1,000 slaughter and feeder cattle,
- (2) 700 mature dairy cattle (whether milked or dry cows),
- (3) 2,500 swine each weighing over 25 kilograms (approximately 55 pounds),
- (4) 500 horses,
- (5) 10,000 sheep or lambs,
- (6) 55,000 turkeys,
- (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering),
- (8) 30,000 laying hens or broilers (if the facility has a liquid manure system),
- (9) 5,000 ducks, or
- (10) 1,000 animal units; or

(b) More than the following number and types of animals are confined:

- (1) 300 slaughter or feeder cattle,
- (2) 200 mature dairy cattle (whether milked or dry cows),
- (3) 750 swine each weighing over 25 kilograms (approximately 55 pounds),
- (4) 150 horses,
- (5) 3,000 sheep or lambs,
- (6) 16,500 turkeys,
- (7) 30,000 laying hens or broilers (if the facility has continuous overflow watering),
- (8) 9,000 laying hens or broilers (if the facility has a liquid manure handling system),
- (9) 1,500 ducks, or
- (10) 300 animal units;

and either one of the following conditions are met: pollutants are discharged into navigable waters through a manmade ditch, flushing system or other similar man-made device; or pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24-hour storm event.

The term *animal unit* means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

Environmental Protection Agency

pp. D

The term *manmade* means constructed by man and used for the purpose of transporting wastes.

APPENDIX C TO PART 122—CRITERIA FOR DETERMINING A CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITY (§ 122.24)

A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of § 122.24 if it contains, grows, or holds aquatic animals in either of the following categories:

(a) Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include:

(1) Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

(2) Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

(b) Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year, but does not include:

(1) Closed ponds which discharge only during periods of excess runoff; or

(2) Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

"Cold water aquatic animals" include, but are not limited to, the *Salmonidae* family of fish; e.g., trout and salmon.

"Warm water aquatic animals" include, but are not limited to, the *Ameiuride*, *Centrarchidae* and *Cyprinidae* families of fish; e.g., respectively, catfish, sunfish and minnows.

APPENDIX D TO PART 122—NPDES PERMIT APPLICATION TESTING REQUIREMENTS (§ 122.21)

TABLE I—TESTING REQUIREMENTS FOR ORGANIC TOXIC POLLUTANTS BY INDUSTRIAL CATEGORY FOR EXISTING DISCHARGERS

Industrial category	GC/MS Fraction ¹			
	Volatile	Acid	Base/neutral	Pesticide
Adhesives and Sealants	2	2	2	
Aluminum Forming	2	2	2	
Auto and Other Laundries	2	2	2	2
Battery Manufacturing	2		2	
Coal Mining	2	2	2	2
Coating	2	2	2	
Copper Forming	2	2	2	

Industrial category	Volatile	Acid	Base/neutral	Pesticide
Electric and Electronic Components	2	2	2	2
Electroplating	2	2	2	
Explosives Manufacturing		2	2	
Foundries	2	2	2	
Gum and Wood Chemicals	2	2	2	2
Inorganic Chemicals Manufacturing	2	2	2	
Iron and Steel Manufacturing	2	2	2	
Leather Tanning and Finishing	2	2	2	2
Mechanical Products Manufacturing	2	2	2	
Nonferrous Metals Manufacturing	2	2	2	2
Ore Mining	2	2	2	2
Organic Chemicals Manufacturing	2	2	2	2
Paint and Ink Formulation	2	2	2	2
Pesticides	2	2	2	2
Petroleum Refining ..	2	2	2	2
Pharmaceutical Preparations	2	2	2	
Photographic Equipment and Supplies	2	2	2	2
Plastic and Synthetic Materials Manufacturing	2	2	2	2
Plastic Processing	2			
Porcelain Enameling	2		2	
Printing and Publishing	2	2	2	2
Pulp and Paper Mills	2	2	2	2
Rubber Processing ..	2	2	2	
Soap and Detergent Manufacturing	2	2	2	
Steam Electric Power Plants	2	2	2	
Textile Mills	2	2	2	2
Timber Products Processing	2	2	2	2

¹ The toxic pollutants in each fraction are listed in Table II.
² Testing required.

TABLE II—ORGANIC TOXIC POLLUTANTS IN EACH OF FOUR FRACTIONS IN ANALYSIS BY GAS CHROMATOGRAPHY/MASS SPECTROSCOPY (GS/MS)

Volatiles

1V acrolein
2V acrylonitrile
3V benzene
5V bromoform
6V carbon tetrachloride
7V chlorobenzene
8V chlorodibromomethane
9V chloroethane
10V 2-chloroethylvinyl ether
11V chloroform
12V dichlorobromomethane
14V 1,1-dichloroethane
15V 1,2-dichloroethane
16V 1,1-dichloroethylene

My name is Todd Leake. I farm 2300 acres in central Grand Forks County. I raise small grains, oilseeds, and dry beans, and have been involved in cattle all my life. I am concerned about the future of agriculture in North Dakota.

In 1997 I was asked by the Grand Forks County Commission to assist in researching an ordinance regarding livestock operations. After reviewing numerous ordinances and after a year and a half of public hearings I have yet to see any livestock ordinance that would prohibit or prevent livestock production. Each county or township has the right to tailor ordinances to its particular situation, and in many cases ordinances and zoning districts may be structured to protect agriculture. Authority to site exists to guide the counties and townships, as well as the livestock producers, to avoid degrading important resources such as ground and surface waters and to guarantee the rights of neighboring producers and residents. Without this authority, counties and townships would have no ability to influence the siting of livestock facilities near schools, towns, state parks, churches, and so on. All ordinances allow for variances, and existing facilities are usually unaffected. There exists the very distinct and real possibility however, that this bill, if enacted, could mean that counties and townships would have no power to refuse a permit to site a livestock operation on a particular location, even if it were located next to a town or a school, or next to a public wellhead.

The North Dakota Department of Health does not assume any zoning authority. Zoning and siting of facilities is the responsibility of the local government. With that responsibility of the state permitting process thrust upon them, counties, townships, and towns have relied on ordinances as the best vehicle to fulfill that obligation. Ordinances, and the regulations they contain, are usually in concert with state health department rules. They allow, through public hearings, an opportunity for a producer to voice his concerns, and allow supporters of the producer to be heard as well as those who oppose. Zoning and siting setbacks help producers select good sites, avoiding conflicts and costly compliance measures that may be required by the state health department to bring a poor site into compliance with state health department rules. Livestock producers can obtain variances, but most of all, they would be dealing with local government, with people they know, not with an unknown bureaucrat in a far off city or even in another state.

Both North Dakota Century Code 11-33-02 and 58-03-11 contain the phrase "No regulation or restriction, however shall prohibit or prevent the use of land or buildings for the normal incidents of farming". This phrase, carefully constructed in the Century Code, strikes a balance between the rights of producers to use their property for farming and the responsibility of local government to safeguard water resources, and to balance the property rights of neighboring farmers, ranchers and rural residents. I believe that the addition of the strict definitions proposed in the amendment to the bill would tie the hands of local government, removing the discretion county commissioners and township supervisors must have to reach consensus and responsible compromise when permitting confined animal feeding operations.

Consider the situations that county commissioners may find themselves in without the discretion or authority to affect the scale and size, location, and density of CAFO's. How can they fulfill their responsibilities to the rest of the citizens of the county? How will they provide the local input to regulatory agencies such as the Department of Health, Water Commission, or EPA for permitting purposes?

Just recently Bell Farms of Wahpeton was granted approval for an 850,000 hog facility on the Rosebud Indian Reservation in South Dakota. The facility will create hundreds of millions of gallons of waste. If this bill were law, and Bell Farms had chosen to locate in a North Dakota county, how then would the commissioners be able to balance the rights of county citizens? How would the commissioners protect our valuable ground water resources for today and for the future? They would have no ability to influence the location of the facility.

Some are trying to say that this is a rural versus urban issue. I think that this is untrue. I farm 14 miles from Grand Forks and 8 miles from the Grand Forks Air Force Base. I have seen the non-farming population steadily increase with no sign of conflict between residents and livestock producers. It is changes in livestock technology, especially the introduction of large-scale liquid manure handling systems, that necessitates that our counties and townships retain that balance of discretion, not to prohibit or prevent, but to mitigate, compromise, and balance the rights of livestock producers with the rights of the rest of their citizens.

I don't think that North Dakota is in the position that farmers and ranchers need to be protected and shielded from our county commissioners and township supervisors, especially at the expense of our local governments. I believe permitting and siting of livestock facilities should remain local, not dictated by the State, now or in the future. I urge this committee not to recommend passage of Senate Bill 2355 and to keep our sound current law as it exists today, in force.

Good Morning Mr. Chairman and members of this committee:

I am Lee Harsche and I am here to testify in favor of senate bill 2355.

I ranch and have a small feedlot east of Bismarck. I am greatly concerned because of all of the power that is given to nonfarmer and nonranchers in both the counties and the townships that have or are close to larger cities.

Burleigh county has recently passed a feedlot moratorium that effectively eliminates any future building of feedlots in Burleigh County. It is ridiculous that they have the right to limit ranchers on what they can do on their own property as long as they abide by the many rules and regulations we as farmers and ranchers already have imposed on us. They say the moratorium is not intended to stop normal expansion or operations and yet they are worded so that their future interpretation can only be to shut another branch of agriculture down and if interpreted strictly by the extremely low number of animal units allowed, 200 animal units, would shut down most ranches now in operation as they pass on to future generations. They say it is their policy not to interfere with previous operations, but policies can and do change very quickly. Even in zoning changes they don't have to send me a letter of notification on any proposed changes on my land.

The township I live in has a policy that says that my wife and I can not make more than \$40,000 off farm income and have to make more than we make off of the farm "Net" on the farm to be considered farmers or Ranchers and if we don't meet their standards we loose our classification for three years. We can't win for loosing. If you have a bad year your taxes go up about ten fold.

As to the odors from farms and ranches, it is no worse than the sewage that the city of Bismarck dumps around the city limits or the lagoon the city of Lincoln has.

I am the type of person that believes in less government but we need the protection of this bill in the rural sector. We have become minorities on our own land. It seems like everyone who has no fiscal interest in our property controls its use, much like the moratorium of ripraping by private citizens along the Missouri River lobbied for by groups of fiscally non-affected landowners. They just keep chipping away at our rights. If these and other infridgments of our rights are allowed to continue what will the end result be? No Agriculture in North Dakota?

The Constitution of the United States is a tremendous document, but few people realize its full power. It doesn't protect the majority, as they can vote anything they want. It protects the minoritys, which we in the Ag sector have become in many Counties and Townships. I asked for your support of this Bill to protect our rights.

Thank You;
L.J. Harsche

TESTIMONY FOR SENATE BILL 23⁵45

KEITH BERNDT

CASS COUNTY ENGINEER
(ALSO DEPARTMENT HEAD FOR COUNTY PLANNING)

MARCH 11, 1999

Cass County Government opposes Senate Bill 23⁵45:

The bill takes away local control of local affairs

While taking away local control alone is a fatal flaw in this legislation, there exist even more compelling reasons that it should not be passed. Passage of Senate Bill 23⁵45 removes the ability for local County and Township officials to prevent large livestock production facilities near towns, residential subdivisions, or non-compatible established business operations.

The people of North Dakota have already determined that property rights should be protected through the adoption of the State Constitution as well as provisions within the North Dakota Century Code. Sections 11-33 and 58-03 recognize the need for counties and townships to be granted police powers to regulate the development of lands for the general health and welfare of the people living in these areas. Governments, businesses, and residential property owners have all come to depend upon land use regulations to protect their investments as have agricultural interests.

Small communities throughout the State of North Dakota struggling to maintain their population base don't need large livestock production facilities at their city boundary lines to drive away their remaining residents. Local officials should be allowed to guide the development of these facilities where they can provide needed rural jobs and bolster the shrinking rural tax base without destroying the livability of North Dakota Communities.

In Cass County, as in many North Dakota Counties, the County Government exercises very limited zoning authority. Instead local township officials maintain control through their township zoning ordinances. The County Government's planning organization is available to assist and be a resource, but does not take away township control. This bill paralyzes the ability for township officials to protect the investments and property rights of their citizens.

We believe that this bill is clearly not in the best interest of the citizens of North Dakota and we ask for your support by recommending do not pass.

Dakota Resource Council

P.O. Box 1095, Dickinson, ND 58602-1095

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e-mail: drc@dickinson.ctctel.com

SB2355

Testimony

House Agriculture Committee

March 11, 1999

Chairman Nicholas and Members of the Committee,

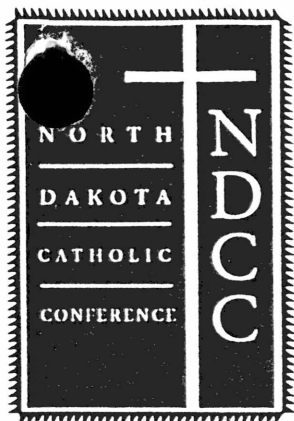
Dakota Resource Council asks that you take great care in considering Senate Bill 2355.

We are opposed to this bill because it seeks to take local zoning authority away from townships and counties. We think that communities should be able to use this tool to reduce possible conflicts of interest within the community.

Dakota Resource Council, along with other groups and individuals, are familiar with similar legislation in other states . We are also familiar with the problems that are occurring in states that have passed this type of legislation.

North Dakota is currently in a pivotal position concerning legislation affecting livestock production. If large scale animal production is inevitable, (although there are those of us who would dispute this), we need to *learn* from the experiences of other states rather than *repeat* them.

Mary R. Christensen



*Representing the Diocese of Fargo
and the Diocese of Bismarck*

Christopher T. Dodson
Executive Director and
General Counsel

To: House Agriculture Committee
From: Christopher T. Dodson, Executive Director
Subject: Senate Bill 2355 (Zoning Districts and Regulations Affecting Farming and Ranching)
Date: March 11, 1999

Mr. Chairman, members of the committee, I am Christopher Dodson, the executive director of the North Dakota Catholic Conference.

The North Dakota Catholic Conference is concerned about the future of farming and rural communities in North Dakota. This is why last November the North Dakota Catholic bishops issued a joint statement on the rural crisis. In that statement, the bishops drew upon fundamental principles in Catholic social teaching and called for policies consistent with the principles of subsidiarity and the common good.

The first principle, subsidiarity, recognizes that human dignity requires that communities possess the ability to exercise responsible self-governance.

Subsidiarity means that while larger governments have a role and sometimes a duty to involve themselves in local affairs, they should give deference and due respect to local communities. It is the option for local control.

The second principle, the common good, recognizes that the life and dignity of the human person is best respected and protected in community. This is what keeps the preference for local control from deteriorating into individualism.

Specifically applying these principles to rural issues, the bishops called for strengthening "rural communities by helping them shape their own environment and allowing them to enact land use ordinances consistent with the principles of subsidiarity and the common good." Senate Bill 2355 violates that principle by stripping communities (counties and townships) of their rightful position to enact ordinances for the common good.

Senate Bill 2355 is flawed for several other reasons. For example, it embraces a mistaken view of property. Property rights are important, but they are not absolute. All property is held in what the Pope John Paul II has called a "social mortgage."

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That means that no one, including a farmer or rancher, has a right to do whatever he wants with his property. All exercise over property is subject to the common good, the need to respect human life and dignity, and the proper stewardship of creation. Civil authorities, especially local authorities, have a duty to regulate the use of property for the common good and all citizens have a moral obligation to comply with proper regulations. Stripping local communities of their ability to even pass regulations upsets the proper relationship between property rights and the common good.

We realize that sometimes regulations have gone too far and have not duly respected a farmer or rancher's proper role as the primary steward of his property. However, forever punishing all counties and townships because of the bad acts of some is extreme.

Another problem is that, while intended to help rural communities, Senate Bill 2355 actually disrespects rural communities and treats rural residents as second class citizens. The common good preserved and fostered by the regulations and restrictions curtailed or prohibited by SB 2355 is the common good of the local community. Every local community should have the right to determine their own environment through the use of local regulations. Senate Bill 2355, however, says that urban communities (cities) can have that right, but rural communities (counties and townships) cannot. Certainly, this is a problem with the existing law, but Senate Bill 2355 would exacerbate this unequal treatment.

Finally, Senate Bill 2355 reflects a flawed approach to the current farm crisis. The North Dakota Catholic Conference believes that much of the current farm crisis has resulted from a lack of understanding and respect among non-farm and urban communities about rural life and farm practices. I think the supporters of this bill would agree with the bishops in that assessment. However, the answer to that problem is not to further remove farmers and ranchers from the community by exempting them from the rules and restrictions applicable to everyone else. That can only lead to a greater lack of understanding, disrespect, and a possible backlash against farmers and ranchers.

We urge a **Do Not Pass** recommendation.

Proposed Amendments to Engrossed Senate Bill No. 2355 (Draft No. 2)
NDTOA

Page 1, line 1, after “to” insert “create and enact one new subsection to section 61-28-04 of the North Dakota Century Code, relating to financial assurance for environmental cleanup;”

Page 1, line 3, after “ranching” insert “; to amend and reenact sections 42-04-01 and 42-04-02 of the North Dakota Century Code, relating to agricultural operations as nuisances

Page 1, after line 4, insert:

SECTION 1. A new subsection to section 61-28-04 of the North Dakota Century Code is created and enacted as follows:

To require financial assurance for environmental cleanup of any disposal system or point source that, if abandoned, threatens to pollute the waters of the state. Financial assurance requirements may include any of the following: personal bonds, surety bonds, trust funds, letters of credit, letters of commitment, certificates of deposit, financial tests, personal or corporate guarantees, insurance, or other equivalent financial mechanisms. The department may waive financial assurance requirements for any concentrated or confined animal feeding operation that is owned solely by a single individual, by a family partnership, or by a family farming or ranching corporation organized under section 10-06.1-12, provided it is located on land contiguous to land farmed or ranched by the individual, family partnership, or family corporation. Financial assurance for a concentrated or confined animal feeding operation owned by a cooperative under section 10-06.1-08 may be provided by individual cooperative members through letters of commitment or other forms of financial assurance. Financial assurance for any concentrated or confined animal feeding operation may not exceed ten dollars per animal unit. Financial assurance must be waived when proof, in writing, exists that financial assurance has been secured for environmental cleanup by any banking and financial institution found in chapter 6-01 and by the Bank of North Dakota. Any banking and financial institution found in chapter 6-01, any operator of a concentrated or confined animal feeding operation, and the Bank of North Dakota shall notify the department on any change or the cessation of any financial assurance which has been required for environmental cleanup.

Page 1, line 7, after the second period insert “1.”

Page 1, after line 22, insert:

2. Notwithstanding subsection 1, the board of county commissioners may establish odor set-back distances of no greater than two miles [3.21 kilometers] for concentrated or confined animal feeding operations from any occupied residence.

- business, church, school, or public park. The board of county commissioners may take into account “animal units” as defined by rule under chapter 61-28 when establishing odor set-backs. Operators of concentrated or confined animal feeding operations may purchase odor easements or secure waivers, in writing, from adjacent property owners to meet the established odor set-back requirements.
3. A building permit may be required by the board of county commissioners before any person may build or establish any new residence, business, church, school, or public park within two miles [3.21 kilometers] of any established concentrated or confined animal feeding operation permitted under chapter 61-28.
 4. A building permit may be required by the board of county commissioners before any operator builds or establishes a concentrated or confined animal feeding operation permitted under chapter 61-28, within two miles [3.21 kilometers] of any established residence, business, church, school, or public park.
 5. For purposes of sections 2, 3, and 4, a “public park” is a park established by the federal government, the state, or a political subdivision of this state in the manner prescribed by law.

Page 2, replace the remainder of the bill with:

58-03-11. Establishment of zoning districts - Limitations - 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 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.
2. ~~No~~ A regulation or restriction, however, 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 or livestock products, poultry or poultry products, milk or dairy products, or fruit or horticultural products. 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 of supplies provides grain, harvesting, or other farm services.

3. Notwithstanding subsection 2, the board of township supervisors may establish odor set-back distances of no greater than two miles [3.21 kilometers] for concentrated or confined animal feeding operations from any occupied residence, business, church, school, or public park. The board of township supervisors may take into account “animal units” as defined by rule under chapter 61-28 when establishing odor set-backs. Operators of existing or new concentrated or confined animal feeding operations may purchase odor easements or secure waivers, in writing, from adjacent property owners to meet the established odor set-back requirements. Notwithstanding other sections of law, a township board of supervisors exercising this provision of law shall take precedence.
4. A building permit may be required by the board of township supervisors before a person may build or establish any new residence, business, church, school, or public park within two miles [3.21 kilometers] of any established concentrated or confined animal feeding operation permitted under chapter 61-28.
5. A building permit may be required by the board of township supervisors before any operator builds or establishes a concentrated or confined animal feeding operation permitted under chapter 61-28, within two miles [3.21 kilometers] of any established residence, business, church, school, or public park.
6. For purposes of sections 3, 4, and 5, a “public park” is a park established by the federal government, the state, or a political subdivision of this state in a manner prescribed by law.
7. The provisions of sections Sections 58-03-11 through 58-03-15 may do not be construed to include any power relating to the establishment, repair, and maintenance of highways or roads.

SECTION 3. AMENDMENT. Section 42-04-01 of the North Dakota Century Code is amended and reenacted as follows:

42-04-01. “Agricultural operation” defined. As used in this chapter, “agricultural operation” means the science and art of production of plants and animals useful to man, by a corporation or limited liability company as provided in chapter ~~10-06~~ 10-06.1, ~~or any other limited liability company~~, a partnership, or a proprietorship, and including, to a variable extent, the preparation of these products for man’s use and their disposal by marketing or otherwise, and includes horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products, and farm production.

SECTION 4. AMENDMENT. Section 42-04-02 of the North Dakota Century Code is amended and reenacted as follows:

42-04-02. Agricultural operations deemed not nuisance. An agricultural operation is not, nor shall it become, a private or public nuisance by any changed conditions in or about the locality of such operation after it has been in operation for more than one year, if such operation was not a nuisance at the time the operation began; except that the provisions of this section shall

not apply when a nuisance results from the negligent or improper operation of any such agricultural operation. Nothing in this chapter shall allow the maintenance of a nuisance that would result in the taking of another's property without compensation in violation of the United States Constitution or North Dakota Constitution.

Renumber Accordingly

NORTH DAKOTA CENTURY CODE
TITLE 58. TOWNSHIPS
CHAPTER 58-03. POWERS OF TOWNSHIP AND OF ELECTORS OF THE TOWNSHIP

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Current through End of 1997 Reg. Sess.

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

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,

TEXT

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. No regulation or restriction, however, may prohibit or prevent the use of land or buildings for farming or any of the normal incidents of farming. The provisions of sections 58-03-11 through 58-03-15 may not be construed to include any power relating to the establishment, repair, and maintenance of highways or roads.

NDCC, 42-04-01

TEXT
 NORTH DAKOTA CENTURY CODE
 TITLE 42. NUISANCES
 CHAPTER 42-04. AGRICULTURAL OPERATIONS AS NUISANCES
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42-04-01 "Agricultural operation" defined.

As used in this chapter, "agricultural operation" means the science and art of production of plants and animals useful to man, by a corporation as provided in chapter 10-06, a limited liability company, a partnership, or a proprietorship, and including, to a variable extent, the preparation of these products for man's use and their disposal by marketing or otherwise, and includes horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products, and farm production.

CREDIT

Source: S.L. 1981, ch. 434, § 1; 1993, ch. 54, § 106.

NOTES, REFERENCES, AND ANNOTATIONS
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Note.

Chapter 10-06, referred to in this section, was repealed by S.L. 1993, ch. 54, § 107. For present provisions, see chapter 10-06.1.

Preparation and Marketing of Agricultural Products.

The preparation and marketing of agricultural products fall within the definition of "agricultural operation" only insofar as they are encompassed within "the science and art of production of plants and animals" by a proprietorship, a partnership, or a corporation which meets the requirements of former chapter 10-06. Thus, a corporation which did not qualify under former chapter 10-06 was not entitled to invoke the protections of section 42-04-02. Knoff v. American Crystal Sugar Co., 380 N.W.2d 313 (N.D. 1986).

It was not the intent of the legislature, when it created protections for "agricultural operations", to encompass the remote preparation and marketing of such products by large national corporations. Knoff v. American Crystal Sugar Co., 380 N.W.2d 313 (N.D. 1986).

Collateral References.

NOTES, REFERENCES, AND ANNOTATIONS

Windmill as nuisance, 36 A.L.R.4th 1159.

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