

2019 SENATE AGRICULTURE

SB 2345

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2345
2/1/2019
31990

- Subcommittee
 Conference Committee

Committee Clerk Signature Dan Johnston II

Explanation or reason for introduction of bill/resolution:

Relating to animal feeding operations and zoning regulations; to provide an effective date; to provide a contingent effective date; and to provide an expiration date.

Minutes:

14 attachments.

Chairman Luick: Opened hearing on SB 2345. All senators are present.

Senator Wanzek: See attachment #1 for testimony in support of SB 2345. He referenced the animal agriculture overview of his testimony.

Senator Hogan: How did you establish the 60-day time frame for the review by the county or township board?

Senator Wanzek: It was suggested by the State Department of Health. I know there is language in there already for other zoning building permits and things like that that already have language similar to this where they have a 60 day period to react.

Senator Hogan: One of the things we've heard from the Department of Health prior is that the application and the materials have to be complete before that clock starts, and that issue of is it a completed petition so all the information is in when the clock starts, does your bill do that?

Senator Wanzek: I think Dave will be able to better answer those questions.

Senator Hogan: It is 60 days and every time you set those time limits then you get into well we didn't have this piece and that piece, so when does the clock start?

Senator Wanzek: I think might defer that to the State Health Department. They are the experts and they deal with this on a regular basis. My interest is as an ag person. A vibrant animal ag industry in North Dakota would help reduce our bases cost, could put more money in my pocket as a feed producer. It presents all kinds of opportunities. I might mention in the bill, it does seem redundant at times, but there is part of the bill, that is basically providing the language and referencing the Department of Health where the other part gives effective

dates in that at the end of the bill. That's because at some point in time in the next biennium if I am not mistaken, there division moves over to the Department of Environmental Quality. So it seems a bit redundant and it seems like a long bill, but it is not quite as long as it appears. The guts of the bill are that 60day time frame and period.

Vice Chair Myrdal: My district borders the Canadian Border so we see this issue all the time. Just right across the border. I didn't realize that value added ag is to keep the crops closer to home. They are just stunned we haven't done that south of the border. They are much more heavy on regulatory nation than what we are generally. So, you're talking about the 60 day, have you had people attempt to set up an operation that keep getting rung through the ringer with local subdivisions and how much time it takes and how much does it take before they give up and go somewhere else?

Senator Wanzek: We don't have any in our district yet. I've heard some talk about some producers looking into expanding their operations and may be considering a hog barn or a dairy barn. None of them have gotten to that point where they have actually applied for a permit, or anything. We've heard of other examples throughout the state where there has been problems and anyway it just seems like there is more problems and you don't see many of them getting built. They are constantly being deflected or stopped. A lot of us in agriculture are getting a little frustrated with it and wondering. Again I need to emphasize over and over, that nobody is promoting irresponsible behavior. We want them done right. But once they are done right and they've complied and they've met the environmental and safety requirements and zoning and setbacks we've got to let them be built.

David Glatt: Section Chief for North Dakota Department of Health Environmental Health Section. See attachment #2 for testimony in support of SB 2345. (16:08-) He explained the specific changes in the bill. A question was asked about the 60 days. It was taken from the building and zoning type language so it is nothing new there.

Senator Hogan: I think in terms of that date, the 60 day starts when all of the required permit notices are in, or at the initial application? Cause I know sometimes there's follow-up and you don't have everything so when does the 60-day period start?

Mr. Glatt: When we get a completed application. A completed application is just kind of the first filling out what is the nature, scope and location. What are you planning to do, what type of animal, how many are you planning to have, and where it is going to be located. Once we get that, then we can move forward. Not to be confused, that's not your completed designing or engineering plans and everything, but it says this location, this big, and this is what we want to do.

Senator Hogan: So then the zoning authority would have to collect all of that data in that 60 days. In another bill you talked about you wanted extended or open time frame to the completed until all the information was in, will the local jurisdictions have that same right?

Mr. Glatt: I am a little confused on the question. Before we would move ahead having a completed application we would have all that information. So the information of nature, scope and location. They wouldn't have to seek additional information. We know how big it is, where it is located, that type of thing. That would be the completed application.

Senator Hogan: Completed application. See that I think was a bid of the time line kind of question.

Mr. Glatt: It's is kind of pre-app and we need that to see how big is it what are you going to be raising, and location.

Senator Hogan: That's what I wanted to clarify. What's the pre-app and what's the full app?

Mr. Glatt: The full app is everything. That would go through a public comment through our process.

Senator Hogan: From the zoning perspective. How many of these have you reviewed over the last 4 or 5 years?

Mr. Glatt: Oh, I will defer that to Carl because he's been more involved in that as far as the number. I've seen those numbers and I can't remember them.

Senator Hogan: I think that is interesting for us to do, to look at what are we talking about in volume and then also how the sizes vary.

Mr. Glatt: Sometimes it's not so much the volume as how much time it takes. We want to do it right. We are really sticklers about how far it relates to nutrient management, and making sure that the waters are protected and everything has been done correctly. So that in itself is the one operation could take a long period of time.

Senator Hogan: We adopted these model zoning standards at least many places, do you have any sense of maybe, or somebody from the county or the townships can answer this, how many counties and townships have adopted them and used them and modified them based on local needs? Sometimes they are modified.

Mr. Glatt: My understanding there is 35 counties that have adopted those directly. I don't know how many townships but we can get that number for you. There is a state law that really those township county zoning ordinances are not affective until put into a repository with our agency. So we keep that so we have map that so we have a map of the state. You can find out which townships have approved model zoning ordinances and what they are.

Senator Klein: Legislation usually comes before us because there has been an issue or concern. As I've been reading the testimony I am trying to get a handle on what we're doing here, but are we trying to set clear parameters so that when an organization comes in and wants to build one of these or do something that we know what the rules are and I think that one of the comments that Senator Wanzek used was increasing the ordinances beyond the parameters set by the state. Now what we are doing here is helping to clearly define that rules you have is the rules we look at and you can't change the rules; in the middle of the game, is that kind of and be a significant help to your group to so you aren't go to have lawsuits that could come about as you change the rules in the middle of the game. So this helps you folks, it helps the companies and everyone should know what the rules are as you go into this.

Mr. Glatt: That's correct. It is not saying how to zone. The state has been very clear to set the boundaries of what the zoning, where you can operate within those boundaries as they are in the county or township. That has already been established. So we are not changing any of that. That stays the same. We have had some instances where that is unclear at the local level. When that is unclear, we have gone through full approval down to public comment and have done that type of work. At the end of the day, we say it's good as long as it is good for the local zoning and local zoning is uncertain. So this is to provide some clarity not only for the producers but also for the land owners in the area. They know what the rules of the game are, and we are all going to play by that.

Senator Klein: So I am hearing you say that we have a lot of issues that we discuss, that we are equal to and in this case the county or township could be greater than but they have to have a minimum standard as set by your agency but this does not limit them from creating an additional step or two?

Mr. Glatt: The way I look at this bill is if an application comes in today. The first thing we have to look at is what do you have on the books today for zoning? That is the rules we're going to play by. That is for certain. Prior to that point, townships they have the model zoning order ordinance they can adopt that as is, but I think state law says they can go 50% higher on the setbacks. No more than 50% higher. That is what is provided. So that doesn't change any of that. It just says we need to know that when application comes in your notified what is on the books at that point. That's what the rules we are going to play with. I want to be clear. This is looking forward; this is not looking backward. So any applications that have been put that we've already had in is historical this doesn't apply to that, will be looking forward as we look at new applications.

Senator O. Larson: I guess I wanted to know what is the goal post that are being changed for example. What's going in my head in our city we had people wanted chickens in their yard or whatever and there was a bunch of man-haters so they didn't want roosters, because they were loud. So you could only have hens in there. Apparently hens aren't loud and roosters are. What are the changes that people are changing the goal posts out on these things?

Mr. Glatt: This doesn't deal with the backyard chickens. This is more the larger operations and so what we are changing, the only thing we are changing here up front. We need to know what the zoning requirements are and if an application comes in and doesn't meet the zoning requirements that are on the books that day, we're not going to waste our time as a producer or as an agency to review all of that, spend all the time when we know that it is not going to be done. So it is basically putting the zoning issue up front, providing certainty and once that certainty is and then we would go to the rest of process.

Senator Myrdahl: Is like a smell, is it like you can have 10 pigs or what is the requirement that they are talking about changing? I don't understand, what is the setback?

Mr. Glatt: That is the issue for the larger operations. What do you setback from? Those are the type of things that are looked at, what do you define as a residence? What do you define as a mile setback from what, and so that is all established currently in the law. So what we're saying is with currently established law, what is your zoning? What have you decided to do? Did you adopt the model zoning ordinance then that is very specific on the setbacks and what

it is setback from? Did you modify the model zoning ordinance to go 50% beyond what that is for setbacks then that's the rules we play by? So that is what is it. It doesn't change any of that. What changes is, that we need to know up front before we start this process. What are the rules of the game? That is the only thing that kind of puts into law.

Senator Myrdahl: I think what we're talking about is the super bowl is coming up. The teams know the rules ahead of time, and it's almost that simplified even though it looks more complicated. So basically what you're saying if I apply and go through the application local subdivisions can't start playing by different rules after that has been approved.

Mr. Glatt: They get an application and the rules are set for that and they can set within the boundaries of the state law, they can change the zoning to address that, they have to follow state law.

(30:13-33:55) **Carl Rockman, Director of Water Quality with the ND Department of Health** and soon to be Department of Environmental Quality. They've got the interesting part of the bill and now I will attempt to walk you through the more boring part of the changes. I have worked with the animal feeding operation through my career at the Department of Health for 15 years. As we look at these specific changes, I do want to point out why there seems to be so much repetition in the bill. There are 3 areas of law being addressed all with very similar language. First for counties, also for townships and then for the state in century code. Due to the transition of them in the Animal Health section through the North Dakota Department of Animal Quality, all three of those sections are being repeated again to reflect the DEQ rules. This transition also the reason for that contingent date in Section 5, that is solely based on the transition from the Department of Health to the Department of Environmental Quality. First off, paragraph 9, which is found in both the county and township sections assures the applicant that the ordinance in effect at the time of the application is valid and requires the decision from the local zoning authority within 60 days. It also allows the applicant 5 years to construct without a change in the citing requirements. Subsection D, which is found in the departments order of authority requires the zoning determination made by local zoning to be part of the initial application providing certainty that the applicant meets local zoning requirements before the department conducts its environmental review. It also restricts the department from requiring any additional setbacks beyond those of that local zoning decision. Subsection E, which is also found in the Department's Order of Authority, is similar to paragraph 9, and again provides certainty for the applicant by clarifying that the zoning in effect at the time of application is valid. It also allows the applicant 5 years to construct without a change in the citing requirements. Senate bill 2345 makes changes to some existing definitions and provides new definitions where it is needed to provide clarity and consistency. The definition of animal feeding operation was changed in the county and township sections that to match what the Department of Health has for a definition. The types of structures the setback applies to have now been defined in the order authority section to provide clarity. In addition, the definition of animal units is now located all in one section for consistency. The county and township sections refer back to that section. The definitions also clarified to show that young animals that have not been weaned are not counted separately and finally the animal units for poultry have been changed to match the model zoning ordinance again to provide that consistency between the model ordinance and the state requirements. The Department also proposes that the attached amendments which are attached on the back of testimony. These amendments are to provide an additional

consistency and certainty and to correct a couple errors in omissions. The proposed amendments provide consistency by consolidating the language on the zoning prohibitions into North Dakota Century Code 23-25 and referencing the common definition of animal feeding operations for the central zoning repository. The proposed amendment provide certainty by removing unclear references to major scope and location and number of spots, and explicitly state the only time new zoning may apply. The proposed amendments also correct one typo and one omission.

Chairman Luick: Carl the amendments that you proposed here is the lead sponsor of this aware of the amendments?

Carl Rockman: I believe so. **Chairman Luick:** They've been talked over with them. **Carl Rockman:** I believe so.

Senator Hogan: Would you go through how many applications going back to the original question that I asked?

Carl Rockman: We were running around somewhere that I recall in past years, maybe 4 or 5 which we would call large operations that would be over 1000 head of beef cattle or equivalent for swine or dairy cattle. Probably double that for small or medium operations and many of those small or mediums are existing operations that are either expanding or coming into compliance with our environmental rules.

Senator Hogan: In terms of the local zoning review, are most of those done within that 60day time frame at this point or do you track that at this point?

Carl Rockman: At this point I don't have any data to track all of the local zoning portion and all I can say is that at every place it varies. Some of them it's very simple its upfront with the application, and then some of them it has extended sometime. As Dave said a lot of it is just unclear. We may not be clear who has zoning authority in some cases.

Senator Hogan: In term of my question about completed application, it is just like a letter of intent that this is what we broadly want to do, but if the zoning authority needs additional information before they make a decision can that really be done in 60 days. That is a pretty short window.

Carl Rockman: Some information required for the local zoning to make their decision. It is certainly simpler than what we require for a full environmental review. The local zoning authorities are limited by state law what they can consider in that zoning review. Typically, we look at as looking at the location obviously, that is very important, also the size of the operation and what type of operation. Is it dairy, feedlot, or a swine operation? That information should be pretty easily obtained. Beyond that I am not sure what else would be required.

Senator Hogan: Do they have public hearings? Local public health hearings and I am aware of the number of hearings and the concerns about smell and water primarily. Then does the local zoning authority have any real authority or is it kind of an automatic referral to you?

Carl Rockman: Yes, the local entity can still adopt their ordinance and if they require a hearing they can include that in their ordinance, the option is still there. That doesn't change, that is not affected by this.

Dave Glatt: I would like to add to that. Under state law, local zoning authority major scope and locates and that is what they look at. Now as it relates to water quality impacts appropriate nutrient management plans that is in the state pro-view under the permitting process. They can provide comment during the state public comment period.

Senator Klein: I think Senator Hogan. I am trying to get this straight. We're not addressing the zoning review, we're concerned about changing the rules when we find out that there is a project coming and here we're asking that we clearly know what the rules are because they still are going to have a zoning review with the rules they have in place. But the concern has been is the rules changing once they get going and then whoever is trying the project is struggling to know where the goal poles have gone? I have one additional question. Carl if you could just kind. We know and we talk about CAFOs (concentrated animal feeding operations) and we talk about AFO's, do you want to give us the kind of explanation of the difference?

Carl Rockman: AFO's is the broader term. So in a sense all CAFO's are AFO's. CAFO's is a smaller subset of AFO's. Typically, the way you become a CAFO is simply by size. We would consider once you hit that 1000 head, that would be considered a CAFO. Anything below that 800-900 head would typically be considered an animal feeding operation, although there is a couple of triggers related to discharges that may trigger them to become a KAFO. But as a smaller medium operation they are not going to want to be a KAFO and they are not going to operate to be a KAFO. That would only be the larger operations. That definition does come from the federal definition that we've incorporated in our rules.

Senator Klein: The rules are considerably different CAFO versus AFO? You are heavily involved in the KAFO whereas the animal feeding operation there is nothing you do with that?

Carl Rockman: No we do have involvement in all sizes of operations but obviously as you get larger the concerns become greater, so the regulations in our involvement in that does become greater once we go to a large CAFO type facility.

Tom Bodine: Deputy Agriculture Commissioner. See attachment #3 for presentation in support of SB 2345 (39:53-44:02)

Senator Hogan: This is an interesting chart when you look at 1930 and 1940's. This is an area of agriculture we've never done much of, historically at least. Is that pretty accurate? Do you have any sense of that old numbers?

Tom Bodine: It is a great question. When you look at North Dakota and it's one of the things that we talked about. I would say in the late 1990's early 2000's we didn't have the crops we do now. We have the cereal grains to finish animals now. Before we didn't have the technology where we were different variety when you look at corn and soybeans. But with those they are stable crops now in the state and we have the ability to finish it.

Tom Bodine: Continued with his testimony. (44:58-50:59)

Senator Hogan: How many KAFO's do you we have in North Dakota today?

Tom Bodine: that would probably be a question to the Health Department. They have a list of those but it's not anything real significant.

Senator Hogan: Perhaps it will be helpful for us to look at the KAPO's and APO's around the state? Do you have a map with those available, that would be helpful?

Emily Bendish: (51:49-57:05) **North Dakota Stockman's Association.** She represented Julie Ellingson who usually testifies for the Stockman's Association who was unavailable today. Emily read her testimony to the committee. See attachment #4 for testimony in support of SB 2345.

Bart Schott: **North Dakota Corn Growers Association.** See attachment # 5 for testimony in support of SB 2345 (58:04-1:01:54).

Randy Melvin: See attachment # 6 for testimony in support of SB 2345. (1:02:29-1:04:08).

Senator O. Larsen: Were you involved in trying to get the hog operation in Buffalo then?

Randy Melvin: My father was the individual selling the property to the individuals who are looking to build and I also served on the Township Board of Supervisors at the time.

Senator O. Larsen: One of the individuals stepped up and was talking about an operation and then there is a fellow up in Berthold that raises pigs. I don't know how many he raises up there, and I don't know if you know about his operation. Can you give me a comparison of that size and what this size was to be, or do you know about that?

Randy Melvin: I am not aware of the Berthold operation so I can't comment on that. I just know the site at Buffalo political proposal is about 5,400 for a fill-in facility.

Senator O. Larsen: I am hearing this change in the goal post thing and could you tell me exactly what these changes are so I can wrap my head around that. What it was when you had the permitting and what the department was that you did, and then these changes that happened?

Randy Melvin: Just to clarify you're looking at the timeline as far as proposal with the buffalo operations, is that what you want me to answer too?

Senator O. Larsen: Yes. **Randy Melvin:** The Operation Buffalo as Mr. Glatt from the Health Department said is the web site of the North Dakota Health Department is where you can click on the counties and townships to see all the current zoning regulations. And really for any application coming into the state, that is the first steps. See where the current locations for that area. For the Operation at Buffalo they submitted their permit in the fall of 2015. December of 2015 is when the Health Department opened up for the 30 public comment period, to get initial approval with the public comment period. In February of 2016 the

township changed their zoning and they did expand out their setbacks to 50% that state law allows them to. So that is the timeline from December of 2015, with the permit, the 30- day comment period and initial approval to when a township change zoning. So the question here really comes down to and that's why I believe this bill help find clarity is which zoning regulation is the site of Buffalo under? Is it under the existing when they submitted with application or is under the new zoning that went into effect the end of February of 2016. So that is really the question. It is to just to help provide clarity. This is not about the buffalo site with this, in my personal opinion. I think it is about just helping clarify for any new operation coming into this state who has an existing operation and wants to expand or a new individual who would like to build in the state. Let's provide the clarity for them so that we know the answer ahead of time.

Emmery Mehlhoff: NDFB supports this bill. (1:07:28-1:07:54) We appreciate the efforts of Senator Wanzek in this bill and all the comments of the people behind me. We think that the growth of animal agriculture in North Dakota is vital to the future of farming in ND, and we just urge a do pass on SB2345.

Opposition

Ron Fraase: See attachment #7 for testimony in opposition of SB 2345. (1:08:40-1:11-38)

Senator Hogan: If you were on a township how long did your permitting process take in this situation?

Ron Fraase: We have not yet received an application for a permit. They gave us a generic one, they didn't communicate with us, so we got a generic one on the day we had our zoning meeting and I said you need a correct one and I will get it to you. We have never received from the applicants an official application that we would considered to be the right one. It was a real lack of communication. So that's why the part about in here I mention to take it to the state permitting. They had nothing to take from us, they went right to the state. They ignored us.

Senator Klein: It is also my understanding that the court suggested that they could go ahead now if they wanted too?

Ron Fraase: I am sorry I don't. I don't understand.

Senator Klein: This project went through the process and I know there was a lot of resistance. I believed the Attorney General or someone declared that this company could move forward because the rules at the time of application changed after their application was submitted. If they wanted to today, and probably wouldn't want too, because of they don't seem welcome, but nevertheless, couldn't they move forward now?

Ron Fraase: I don't know if I am the official one to answer that. But the lawsuits and things that went on were a thoughtful community and we have never been involved in that. So our permit is still in-tact. Our zoning is in-tact. We still haven't received an application for a permit from them. So as far as I am concerned all the legal part was something else not the township which is why I am talking on behalf of the township and local control.

David Keagle: See attachment #8 for testimony in opposition of SB 2345. (1:14:32-1:26:05)

Randal Coon: See attachment #9 for testimony in opposition of SB 2345. (1:26:26-1:32:10)

Roy Thompson: See attachment #10 for testimony in opposition of SB 2345. (1:32:39-1:35:22)

Paul Kasowski: See attachment #11 for testimony in opposition of SB 2345. (1:35:06-1:38:36)

Senator O. Larsen: I was wondering have you ever gone up to the facility up by Berthold and seeing that operation?

Paul Kasowski: They put all these facilities smack in the middle of a section line. There is one road going up to them, because they don't want anybody driving by or seeing them. They don't want anybody close to them. So it is impossible.

Senator O. Larsen: So you haven't gone up to the one at Berthold off to the side of the highway?

Paul Kasowski: All you can see is the drive by. The one by Oakes, that opened here recently they had an open house before it ever opened to let people look at it. But from that day forward they will not let anybody get in there.

Liane Stout: See attachment #12 for testimony in opposition of SB 2345. (1:39:50-1:43:05)

Kayla Pulvermacher: See attachment #13 for testimony in support of SB 2345. (1:43:21-1:44:32)

Liz Anderson: See attachment #14 for testimony in opposition of SB 2345. (1:44:52-1:47:23)

Chairman Luick closes hearing on SB 2345.

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2345
2/7/2019
Job # 32401

- Subcommittee
 Conference Committee

Committee Clerk Signature : Dan Johnson II/ Mary Jo Wocken

Explanation or reason for introduction of bill/resolution:

Relating to animal feeding operations and zoning regulations; to provide an effective date; to provide a contingent effective date; and to provide an expiration date.

Minutes:

Senator Luick: called the Agriculture committee for discussion on SB2345. He asked the committee if they received a copy of the amendment. This has to be finished up today. We've got to move on this one.

Senator Wanzek presented a proposed amendment on SB2345.

Committee Discussion:

Senator Wanzek: I just thought that I would bring the amendments down to you and try to assist you. I know that a couple of bills I introduced are kind of complex. Anyway 2345 is the animal feeding operation bill. In that bill we inadvertently in visiting with Mr. Glatt over struck the language about wintering cow, and the amendment basically puts that exemption in to make sure those situations where they bring the cows home for the winter and feed them in the farm area. We do not want to include them. I know visiting with the Stockman's Association there is some fear that you know there is some existing animal feeding operations now that might be subject to a hearing and that, and as I understand it, there concern is about grandfathering those in. I am not quite grasping what they are saying yet. I did highlight in my Christmas bill the part of the bill that addresses existing animal feeding operations not being subjected to new regulations.

Chairman Luick: Committee that would be on page 3, line 15, subsection #7.

Senator Wanzek: I don't know if that answers it. I have been in touch with Claire Ness of the Council to do some research on that concern and if it's the wishes of us to get this bill up to the floor and out, before crossover, maybe that is something that we can address on the other side. It is not the intent of me as the sponsor to create new hurdles for existing livestock operations that are already there. If you read the guts of the bill, what Claire had

pointed out, it makes reference to if you're going to construct an animal feeding operation. She said that in her mind is talking about new construction of new animal feeding operations. But she is doing some further digging to see and give me a legal opinion or advise on whether we are creating a problem for existing animal feeding operations. That's not what we want to do. I provided you with a Christmas tree version with those amendments. But the Christmas tree version might be more important in 2346 because this amendment is a little more extensive.

Chairman Luick: Senator Wanzek do we have time to move on this one?

I have a motion of a movement on the amendments: Senator Klein
2nd on that motion: Senator O. Larsen
Roll: 6-0-0

Chairman Luick:

Senator Klein: I move SB2345 as amended

2nd Senator Myrdal

Senator Hogan: I have real concerns about the permitting time lines of the county and township levels because that 60-day cutoff period if all the information isn't received it's so black and white that I truly think that it creates problems at the local level. Because it says that action has to be taken even if they don't have the information that they really feel they need. So, I am going to oppose this bill.

Senator Klein: I think this bill got a long way to go. I think there is going be, in fact I've been told that there are different groups with a lot more discussion coming and maybe some of those things need to get addressed that it's just at this point we're about as good as we can get on this side. I know there's going to be some improvements as we see it. I am guessing that Senator Hogan gets to vote against it a couple of times because it will be coming back and forth. I think we've got it the best as we can get it and in this short period now.

Chairman Luick: I to have had those conversations so.

Roll call vote: 5 yea, 1 no, 0 absent
Amended and voted DO PASS 5-1.
Senator Hogan voted no.
Carrier: Chairman Luick

February 5, 2019

SK
181

PROPOSED AMENDMENTS TO SENATE BILL NO. 2345

Page 1, line 15, after "than" insert "normal wintering operations for cattle and"

Page 4, line 26, after "than" insert "normal wintering operations for cattle and"

Page 18, line 1, after "than" insert "normal wintering operations for cattle and"

Renumber accordingly

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2345**

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: 19.1146.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Senator Klein Seconded By Senator Larsen

Senators	Yes	No	Senators	Yes	No
Senator Luick-Chairman	X		Senator Hogan	X	
Senator Myrdal- Vice Chair	X				
Senator Klein	X				
Senator Larsen	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2345**

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: 19.1146.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Senator Klein Seconded By Senator Myrdal

Senators	Yes	No	Senators	Yes	No
Senator Luick-Chairman	X		Senator Hogan		X
Senator Myrdal- Vice Chair	X				
Senator Klein	X				
Senator Larsen	X				
Senator Osland	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment Chairman Luick

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

REPORT OF STANDING COMMITTEE

SB 2345: Agriculture Committee (Sen. Luick, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2345 was placed on the Sixth order on the calendar.

Page 1, line 15, after "than" insert "normal wintering operations for cattle and"

Page 4, line 26, after "than" insert "normal wintering operations for cattle and"

Page 18, line 1, after "than" insert "normal wintering operations for cattle and"

Renumber accordingly

2019 HOUSE AGRICULTURE

SB 2345

2019 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2345
3/21/2019
Job #34123

- Subcommittee
 Conference Committee

Committee Clerk: ReMae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to animal feeding operations and zoning regulations; to provide an effective date; to provide a contingent effective date; and to provide an expiration date.

Minutes:

Attachments #1-17

Senator Wanzek, Co-Sponsor: (Attachment #1)

Iowa has three times the number of farms that North Dakota has on less acres. We fed 147,000 hogs in 2017 according to the USDA census in North Dakota. Iowa feeds 22,800,000 hogs. This presents opportunity for even small operations.

Farmers from Wisconsin farm about 12,000 acres. There were 100,000 dairy cows within a 15-mile radius. They had a local market for their products. Corn can be sold for \$1 over the Chicago Board of Trade price. This industry can be competitive in North Dakota.

People that want to be in compliance and have been there for years would be grandfathered in with the amendment.

Representative Skroch: You have an argument in favor of the impact to the economy. What is the effect of the corporate farming law prohibition?

Senator Wanzek: This is not about corporate structure. It does hinder the ability to raise the capital. We are the only state that has that strict rule in place. We want responsible development.

Representative Skroch: So our corporate farming prohibition isn't impacting these operations?

Senator Wanzek: It would help if we had some exemptions.

Representative Buffalo: You mentioned Iowa. As a public health professional, my concern is air quality. There is a difference between the landscape of Iowa and North Dakota. What is the contingency plan for protecting public health?

Senator Wanzek: There are agencies regulating these industries. Our Department of Health will make those decisions. There is a lot of research that shows you can meet the goals of clean air and water. This would give small towns more economic opportunity.

Representative Brandenburg: I am in support of the bill. Small towns are getting smaller.

David Glatt, Environmental Health Section Chief, North Dakota Department of Health:
(Attachment #2)

Karl Rockeman, Director of Water Quality: (Continues with Attachment #2, page 2)
amendments

(32:03)

Chairman Dennis Johnson: The amendments would be repetitive to change every section.

Karl Rockeman: Correct. It would be the same language for township, county, and state level.

Pete Hanebutt, North Dakota Farm Bureau: In support

John Shockley, Attorney for North Dakota Farm Bureau: (Attachments #3 & 4)

The best way to solve this problem is to add clarification to this bill. It is easier to show the law rather than go through the courts.

The North Dakota Constitutional amendment is in conformance with these amendments.

What we have seen from some counties is a violation of the constitution.

Leave the environmental issues to the agencies that have the scientific knowledge. The correct enforcement is with the Department of Health.

Townships and counties can follow the model ordinance. They just can't create setbacks greater than the ordinance.

Chairman Dennis Johnson: Are you alright with the other amendments from the Health Department?

John Shockley: I think that moving the 5 years to 3 years is appropriate. It is unlikely the financing will continue for 5 years. The grandfathering in existing projects is a valid concern by the producers and we are in support. 90 vs. 60 days is a policy decision. Determining setbacks is easy with a GIS system. 60 days seems more than adequate to review an application. 90 days would also be acceptable.

(45:50)

Julie Ellingson, North Dakota Stockmen's Association: (Attachment #5)
Proposed amendment.

(52:40)

Representative McWilliams: In your testimony you said "grandfathered operations would discourage them from going the extra mile to get the permit and contain the runoff." Have we seen any examples of that?

Julie Ellingson: Yes, we have seen examples. Existing livestock operations that have been in the family for generations are not seeking to change anything other than to add a holding pond. The process can be difficult to work through and have backed away from seeking the permit and have continued to operate as they are. With no holding pond, the runoff is not contained. That is a disadvantage to the producer, the industry, and the state.

Chairman Dennis Johnson: If they are grandfathered in, are they still under the same oversight in law now?

Julie Ellingson: Yes. They need to adhere to the environmental regulations already in place in that community.

(55:10)

Tamara Heins, Executive Director for the North Dakota Pork Council: We support this bill because it will help to make the process more transparent to the local community and provide a process for a livestock applicant to follow. We ask for clarity. We want to know what the laws are. The current law is unclear and results in loose interpretation. The only people making money are engineers and lawyers. Activists have been able to use the ambiguity of our current law as a tactic to delay and deter private landowners from building animal feeding operations. In some cases, permit holders have followed every law and yet are unable to complete their project. The rules apply to all operations.

We have worked with the North Dakota Livestock Alliance to identify livestock friendly townships and counties. We try to use the Model Zoning Ordinance to work with townships and counties. Many townships and counties don't even know what they have for regulations. Then when someone tries to follow what they believe is the law, then we have lawyers in litigation. This bill will help give confidence for people to make the investment.

Representative Buffalo: What is the definition of an activist? It is often used in a negative way.

Tamara Heins: In this instance, it is people who don't want to see these facilities built for whatever their personal reasons are.

Representative Buffalo: A dialogue is what is needed to have a better understanding. Many believe activists are from low incomes who have experienced environmental racism. They are good stewards of the land and want to hold industry accountable. They want clean water, air, soil and want to live a longer life.

Tamara Heins: When someone is attacking your business and way of life, farmers in North Dakota want all the same things that you mentioned.

Paul Becker, Ramsey County Farmer: (Attachment #6)

(1:05:00)

Representative McWilliams: What makes up the basis?

Paul Becker: Basis is the difference between the Minneapolis price or Chicago price and what we get for a cash price. Our basis is high due to freight. If we could use this locally, we could decrease that basis. Now corn is trading at about \$4 per bushel Chicago. We can get \$3.40. So our basis is about 60 cents. If the farm using the corn was close enough, that would change the basis.

Clark Price, Washburn Farmer: (Attachment #7)

(1:08:45)

Bart Schott, District 6 Director, North Dakota Corn Growers Association:
(Attachment #8)

(1:12:40)

Representative McWilliams: If corn was sold locally, would it have an overall impact of raising the market price of corn? It would restrict the volume of corn going to the larger markets?

Bart Schott: It would raise the local price for corn. 55% of corn grown in North Dakota has to get exported. The more we can use locally will lower our basis. Most of the corn in the state goes to the ethanol industry. The amount of corn acres grown over the last few years has greatly increased.

Phil Murphy, North Dakota Soybean Growers: The impact of safe animal feeding would provide an even greater advantage to soybeans than it would to corn. We are in strong support of this bill.

Representative Tveit: (asked of Clark Price) At one time you had a large feedlot. Would this bill help you advance that?

Clark Price: Yes. When you consider our family, there are four separate operations. This would help to expand or add an operation.

Representative Buffalo: Being located by the Missouri River, do you dispose of the waste into the river?

Clark Price: No. We have the lagoons. We follow regulations. All of our manure is managed according to the plan.

Representative Skroch: In reference to the utilization of ponds, the farmers in my area pay to have that manure spread on their land because of the benefit to the soil. They have to bid for it.

Opposition:

(1:18:50)

Liz Anderson, Dakota Resource Council: Profitability is the problem that is keeping young people from expanding. This bill is directly talking about who gets to say what happens in their neighborhoods. The restriction of local control is not a good idea. It threatens the welfare of local citizens. 60 or 90 days is not enough. Most of the local township boards are run by farmers or ranchers. They may not check email.

The changing of the animal unit is a huge concern. Adding the word weaned is not good. A farrowing barn of 500 sows with three litters of 15 piglets is a huge number of animals that die, eat, and defecate.

Five years is too long. The word "petition" was used. Today I have only heard the word "permit." There are several other terms that are ambiguous.

I think this bill is unwelcoming to local governments. When there is flooding, the ponds become part of a wider open area of water. Keep the control at the local level.

Representative Tveit: You said part of the problem with agriculture is because it is not profitable. This would help it to be more profitable.

Liz Anderson: It may not be helpful. Is the corn sold directly or is there a place to process it?

Representative Tveit: The animals process the corn.

Liane Rakow Stout, Concerned Citizens of Buffalo: (Attachment #9) Contains several hundred signatures. Also refers to Dr. John Ikerd website on the bottom of page 2.

(1:28:16)

Representative Skroch: Are you concerned that these livestock operations will fall under the title of corporate farms?

Liane Rakow Stout: It was a corporation that applied for the permit. When they came to North Dakota they applied under an LLP. They changed their application. It was Pipestone Corporation out of Pipestone, Minnesota. They are the third largest pork producer in the United States.

Representative Dobervich: With the proposed hog operation in Buffalo, what were the specific environmental issues that the community was concerned about?

Liane Rakow Stout: We did research before opposing it. We worked with John Hopkins University. Their report was alarming. It has to do with air quality and water pollution.

There are gases that you don't smell but are detrimental to your health. 180,000 piglets were going to be born there in one year. Their holding tank/pit was as big as the Fargo Dome made of concrete and part of it was in the water table. Concrete will eventually leak. We have a very high water table which goes to the Red River. We have done soil research. There would be an over application of phosphorus. That in turn would cause major problems in the water ways.

Representative Tveit: Were the signatures collected specifically for this Senate bill?

Liane Rakow Stout: No they were not. They were in support of responsible agriculture when it comes to Concentrated Animal Feeding Operations.

Representative Skroch: All of the concerns that you raised, were they addressed by the Health Department in viewing the permit for the operation in Buffalo?

Liane Rakow Stout: No. They were required to reply to all of our comments in writing. Many times they were not able to give us an answer. It was out of their reference point.

Representative Skroch: Were you able to respond to address those issues?

Liane Rakow Stout: No. We had a public hearing. Then changes were made to the nutrient management plan. We were never part of that discussion. They worked with Pipestone to help get their permit done. Then a permit was issued without any further comment from us.

Representative Skroch: Do you feel there are properties in this bill that would prevent that from happening in the future?

Liane Rakow Stout: One of the concerns is not counting the piglets. There would be 10,000 baby pigs at any time. They don't want to count anything under 55 pounds. Over the year that has a huge impact on the manure pit and setbacks. The townships need to have their ordinances in place. The problem is there are over 2,400 townships in North Dakota. They have to have their ordinances on file with the Health Department. If it is not on file, the Health Department doesn't have to go to the township first to get approval.

Chairman Dennis Johnson: The lobbyist for the townships is here to take that message back today to their annual meetings.

Liane Rakow Stout: We have been working with the Cass County Commissioners. They are frustrated with getting township boards in compliance. They are local farmers who step up. They have a minimal budget. This hog barn with a capacity of 9,000 would pay \$386 in county taxes because it was just listed as a farm building.

Representative Skroch: The way livestock is counted is spelled out in Century Code.

Liane Rakow Stout: It was in Century Code but it is being changed. It used to be a piglet counted as .1 units. They want to delete that so we don't count the piglets. They didn't follow the code before.

Vice Chair Wayne Trottier: Does Buffalo have a city lagoon?

Liane Rakow Stout: Yes.

Representative Richter: What is the damage that these operations are doing to the land?

Liane Rakow Stout: We were dealing with a large corporation from out of state. They were not going to have a local family farmer living on that land. One of the following speakers will address that.

Representative McWilliams: You are talking about pigs under 50 pounds. That would be a violation of current law.

Liane Rakow Stout: It was in the Century Code listing them as a specific .1 units. This bill is only counting weaned pigs.

Representative McWilliams: If it was in law and it became a problem, why was there not a corrective action?

Liane Rakow Stout: We did go to the Supreme Court. The Supreme Court didn't rule in our favor. We did challenge that.

Representative McWilliams: Taking it out of Century Code and making the changes in this bill would more closely align with the Supreme Court decision?

Liane Rakow Stout: You could say that but I don't know how you don't count 180,000 piglets.

Representative Schreiber-Beck: Could you give me the name of the Supreme Court case?

Liane Rakow Stout: The Concerned Citizens of Buffalo vs. the North Dakota Health Department and Rolling Green Family Farms. The date was August of 2017.

Roy Thompson, Concerned Citizens of Buffalo: (Attachment #10)

(1:43:23)

Representative Skroch: Would there have been as much conflict if there would have been a larger setback?

Roy Thompson: The pit was equal to 3 football fields 10 foot deep. It was under the floor of the facility.

Lee Fraase, Buffalo: (Attachment #11)

(1:47:50)

Randal Coon, Buffalo: (Attachment #12)

(2:16)

Representative Fisher: This bill is to figure a way to have animal feeding operations and zoning regulations that are correct. Can you propose how to fix this bill?

Randal Coon: I don't think Buffalo was the location they should have been.

Representative Fisher: This bill is not about Buffalo.

Randal Coon: But we know this bill is because of Buffalo.

Representative Fisher: I did not know that.

Representative McWilliams: This bill would apply to the entire state. You talk about lack of definitions. Have you provided any of those definitions?

Randal Coon: That is not my job. I don't even know what the amendments are.

Representative McWilliams: You talked about health concerns of the people. But you didn't talk about any prior existing conditions. I am more concerned about the bill and its implications across the state.

Randal Coon: You have to read the reports in its entirety. The John Hopkins report said the gases vented into the air are detrimental to people's conditions.

Representative Tveit: References have been made to the township not having adequate sources. In Cass County do the townships have zoning ordinances.

Randal Coon: Yes. All townships have ordinances.

Madeline Luke, Internal Medicine Physician in Valley City: (Attachment #13)

(2:33:20)

Representative Schreiber-Beck: You spoke about regulation of odors. Do you have any comments related to the bill? Page 7, section 2 is regulation of odors and rules.

Madeline Luke: This goes down to local control. People who live in the community know best what they can live with.

Larry Syverson, Executive Secretary, North Dakota Township Officers Association:
(Attachment #14)
Suggested amendments are on page 2.

Representative McWilliams: If these amendments are adopted, would you be in favor of the bill?

Larry Syverson: It does force people to go through the local before they get to the state. Yes. We would be in support with the amendments.

Additional testimony submitted in opposition:

Leon Pederson, Langdon and Daria Miller, Devils Lake: (Attachment #15)

Ron Fraase, Chair of Howes Township: (Attachment #16)

Randal Coon, Buffalo: 2nd submission

--emailed testimony given during Senate hearing (Attachment #17)

2019 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2345
4/4/2019—Committee Work
Job #34524

- Subcommittee
 Conference Committee

Committee Clerk: ReMae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to animal feeding operations and zoning regulations; to provide an effective date; to provide a contingent effective date; and to provide an expiration date.

Minutes:

Attachments #1-3

Chairman Dennis Johnson: Amendment # .02003 (Attachment #1)

We had four sets of amendments. One each from the Health Department, Farm Bureau, Stockmen's Association, and the Agriculture Department. Each one is here to explain.

Pete Hanebutt, North Dakota Farm Bureau: Introduced John Shockley.

John Schokley, Attorney for North Dakota Farm Bureau: (Attachment #2)

I am also the attorney that litigated the case of Ramsey County Farm Bureau vs. Ramsey County back in 2008. The amendments we are proposing seek to codify that. A copy of the case is attached.

Counties and townships are not following appropriate case law. We have to litigate to challenge an invalid ordinance. That adds to the cost of putting in an operation. This is not taking away local control. It is control that didn't exist in the first place as set forth by the North Dakota Supreme Court. Trying to exceed what the Supreme Court has set in its case law also violates the Constitutional Amendment for the freedom to farm. We also propose a modification to the setback distances regarding that it cannot exceed the setbacks in 23-25-11. As a constitutionally protected activity, in a township there are only 36 sections. A setback of 1.75 miles zones out of existence these types of operations. By law you can't zone these types of operations out of existence as set forth in the constitution.

We are asking for what is codified in the Supreme Court ruling and in the constitution.

Representative Headland: Is it your opinion in the case that had the group that was going to put the hog farm near Buffalo, the courts would have ruled in favor of the operation if they would have decided to sue?

John Shockley: If it did exceed the type and number of animals, and the location, the Supreme Court would have found it invalid. It is very clear that those are three things the counties and townships can regulate. That was also passed by this legislature.

There are ordinances being circulated that regulate nutrient management plans, closure requirements, bonding and security requirements beyond the animals and location. Nutrient management plans have been delegated to the health department. That is where the scientific review is.

Chairman Dennis Johnson: Of all the amendments we have seen, the one with the red flag is the greater distance.

John Schockley: With the constitution protecting the right to farm, in order to regulate the distances there needs to be a compelling governmental interest. There has to be a scientific basis behind that decision. There are other cases dealing with religious freedoms. It is most appropriate to resolve that by stating that it can't be any greater than what is set forth in state law.

Karl Rockeman, Director of Water Quality, Department of Health:

1. Our amendments clarify what should be included in the petition. The petition starts the process at the local level.
2. The amendments identify that the requirements a facility must follow are set for three years after the conclusion of the department's permit process. The original bill had five years from the start of the process. There was concern of how long the permitting process and judicial appeals might take.
3. It sets the process for conditional use permit on the local level requiring it to be completed. We propose 90 days. I don't see that in the draft.
4. It also specifies when new regulations would apply. When you apply, the regulations in force at the time are the ones to follow.
5. It clarifies that the setbacks referred to are odor setbacks and not water quality.
6. We also corrected what was left out of the first bill to provide consistency.

Chairman Dennis Johnson: If it is left at 60 days rather than 90 days, does that create problems in your department?

Karl Rockeman: We will defer to your judgement.

Representative Skroch: On page 4, lines 18-22, definitions of animal feeding operation. If a county approves an application, must they still have approval by the Agriculture Commissioner as described in line 2?

Karl Rockeman: That was not our amendment.

Representative Dobervich: On page 13, the weighting of animals, to determine how much of a unit an animal accounts for. There is concern about piglets not being counted. A sow with a litter is rated higher than one that does not. Is that correct? Is the proposal in line with what the overall environmental impact standard is across the country?

Karl Rockeman: This doesn't affect the design of the waste storage. We have engineering standards that get into detail as far as size, weight, and a sow that is pregnant vs. one that has given birth. This bill doesn't change that. It does clarify how we count for purposes of odor setbacks. Then it does count those piglets that have not been weaned. Once the piglets are separated and weaned they are counted separately. It is consistent with how EPA and the recent Supreme Court interpreted it.

Representative Dobervich: When a piglet is weaned, you said it is counted. What size is it when weaned?

Karl Rockeman: Typically a weaned pig is less than 10 pounds. After that they are sent to another facility and continue their growing.

Chairman Dennis Johnson: How much difference is the count between one nursing and the one dry?

Karl Rockeman: There is an adjustment. The weight will be very similar.

Representative Richter: I can't find the odor setbacks.

Karl Rockeman: That would be on page 12, line 9 of the original bill. Also page 17, line 9. That is the section that says the Department of Health may impose additional setback requirements. We are proposing that clarification because we do provide based on manure application and distance from surface waters which is separate from the odor setbacks.

Vice Chair Wayne Trottier: Does the department do tests on odor?

Karl Rockeman: We test based on a complaint. Our routine inspections do odor monitoring. That is to alert the facility of potential problems before we have complaints.

Vice Chair Wayne Trottier: Do you do the same for city lagoons, etc.?

Karl Rockeman: Yes, based on complaints. It is not as common.

Representative Skroch: How many of these operations are running in North Dakota?

Karl Rockeman: We have almost 100 large CAFOs. That includes all animal types. This bill relates to all the large operations. We have permitted almost 700 small to medium size operations.

Representative Skroch: Of those CAFOs, how many are just hog operations? How many investigations or citations for odor, water, etc.

Karl Rockeman: We do inspections annually at the large facilities. We look at their records. We look at the facility. I don't have specific numbers. Violations are very rare. We have good operators in the state. We have had odor violations. The facility had to take steps to reduce the odors. We no longer have facilities next to residences. That has reduced the number of odor complaints.

Representative Skroch: Would you feel that the half-mile setback will always be adequate to prevent those violations?

Karl Rockeman: We feel the setbacks in state law are sufficient. We also recognize the locals may have areas in their jurisdiction where they feel a larger setback is needed. We defer to them on that decision.

Representative McWilliams: In law there are various setbacks. Is there a setback greater than a half mile?

Karl Rockeman: ½ mile is the shortest. The highest is 1½ mile.

Representative Headland: How many permits have been applied for and been refused for not fitting in area?

Karl Rockeman: I can think of two instances due to problems with local zoning. The most recent was the facility near Buffalo and a dairy. That is over a period of 15 years.

Chairman Dennis Johnson: What are your thoughts on the amendment that refers to the “greater distance than”?

Karl Rockeman: We will leave it to the committee’s judgment.

Julie Ellingson, North Dakota Stockmen’s Association: The colored bill, page 14, we asked for existing operations. Those existing operations seeking an environmental compliance component giving a fast path to continue in the process.

Tom Bodine, Deputy Agriculture Commissioner, North Dakota Agriculture Department: The amendment is to look within government to see if the people stay with what the state allows. Our law is forcing people to go to court to be in an operation. We know there are counties that have gone beyond their authority. The only way the regulations can be looked at, is to go to court. That has happened in Ramsey County. We want to keep people out of court. We are not taking away local control. We are creating a balance.

Representative McWilliams: If something is set on a line of a township or county, does that setback have to be a ½ mile from the edge?

Tom Bodine: If you are on the border, it would be on the county zoning ordinance. When a township goes over the authority of the state model, they are responsible for enforcing those regulations. The state is not. Animal agriculture is underdeveloped. One of the reasons is the zoning ordinance. We zone in miles. Other states zone in feet. When it is so restrictive, you are restricting animal agriculture out of your township.

Chairman Dennis Johnson: The bill says the setbacks provided for in this section are subject to the approval of the Agriculture Commissioner. The calls and emails that I have received are questioning why is the Agriculture Commissioner involved in this process?

This would be for a situation where you need someone to mediate. Does the amendment have the approval of the Agriculture Commissioner?

Tom Bodine: We know there are townships that eliminated large scale operations. The only way is to challenge it in that township. If they go over their authority, there needs to be something besides the court system.

Tom Bodine: If they are over their authority, we can help to keep people out of court. If we regulated the oil industry like animal agriculture, we wouldn't have what we have today.

Representative Tveit: Would this amendment regulate at the county edge also

Tom Bodine: Yes. It is to create a fairness.

Representative Skroch: Page 4, line 1 subject to approval by the Agriculture Commissioner. If a township disagrees, can the township still go to litigation or is the commissioner's decision final?

Tom Bodine: The certification would still rest with the Department of Health. We wouldn't certify CAFOs.

Chairman Dennis Johnson: What are your thoughts on 60 days vs. 90 days?

Tom Bodine: The commissioner would be fine with either.

Troy Coons, NW Landowners Association: (Attachment #3)

Representative Headland: Moved to adopt the amendment #.02003.

Representative Satrom: Seconded the motion

Representative Headland: When we passed these setback distances years ago, I was the chair of the subcommittee that worked with the Department of Health and everyone involved. We went beyond what we thought was right compared to other areas. I don't think this bill takes away authority. We are just cleaning up the statute.

Representative Buffalo: Is there a current plan in place with public health as far as baseline data to ease the public's mind.

Dave Glatt, Environmental Health Section Chief, North Dakota Department of Health: We do not have any studies planned. For the setbacks, we looked at other states.

Representative Skroch: There has been objection to this bill and the amendments from landowners. I would like to know if they are satisfied with the amendments.

Representative Headland: They have had ample opportunity

Chairman Dennis Johnson: If we pass the bill, it will be in conference committee with more opportunity to address those concerns.

Representative McWilliams: It is important to have a baseline health data prior to installation in an area. Does this bill stop the Health Department from doing that?

Dave Glatt: Those studies are labor intensive and take a lot of money.

Representative McWilliams: Could it be a simple survey of water quality and air quality?

Dave Glatt: You get what you pay for. We operate systems that run 365 days so we can get a history of data.

Representative Tveit: I support the amendments. North Dakota is an agriculture state.

Representative Fisher: I will also vote for the amendments. We can't just market soybeans to China and hope they will buy. We can add value with the farmers that want to use it as feed.

A Roll Call vote was taken: Yes 11, No 2, Absent 1.

Amendment is adopted

Representative Headland: Moved Do Pass as amended.

Representative Tveit: Seconded the motion.

A Roll Call vote was taken: Yes 11, No 2, Absent 1.

Do Pass as amended carries.

Representative Richter will carry the bill.

DP 4/9/19
1 of 6

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2345

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

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

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

Page 4, line 1, after "subsection" insert "are subject to approval by the agriculture commissioner and"

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

Page 4, line 2, overstrike "percent from" and insert immediately thereafter "be a greater distance than"

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

Page 4, line 13, after the underscored period insert "If the county allows animal feeding operations as a conditional use, the county shall inform the applicant of the required procedures upon receipt of the petition, and the conditional use regulations in effect at the time the county receives the petition must control the approval process, except the county shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application."

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

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

Page 4, line 17, remove "of the"

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

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

Page 7, line 6, after "subsection" insert "are subject to approval by the agriculture commissioner and"

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

Page 7, line 7, overstrike "percent from" and insert immediately thereafter "be a greater distance than"

DE 4/4/19
2 of 6

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

Page 7, line 18, after the underscored period insert "If the county allows animal feeding operations as a conditional use, the county shall inform the applicant of the required procedures upon receipt of the petition, and the conditional use regulations in effect at the time the county receives the petition must control the approval process, except the county shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application."

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

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

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

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

Page 7, after line 23, insert:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Page 20, line 11, after "subsection" insert "are subject to approval by the agriculture commissioner and"

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

Page 20, line 12, overstrike "percent from" and insert immediately thereafter "be a greater distance than"

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

DE 4/4/19
4 of 6

Page 20, line 23, after the underscored period insert "If the township allows animal feeding operations as a conditional use, the township shall inform the applicant of the required procedures upon receipt of the petition, and the conditional use regulations in effect at the time the township receives the petition must control the approval process, except the township shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application."

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

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

Page 20, line 27, remove "of the"

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

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

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

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

Page 21, overstrike lines 2 through 4

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

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

Page 23, line 9, after "subsection" insert "are subject to approval by the agriculture commissioner and"

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

Page 23, line 10, overstrike "percent from" and insert immediately thereafter "be a greater distance than"

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

Page 23, line 21, after the underscored period insert "If the township allows animal feeding operations as a conditional use, the township shall inform the applicant of the required procedures upon receipt of the petition, and the conditional use regulations in effect at

DP 4/9/13
5 of 6

the time the township receives the petition must control the approval process, except the township shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application."

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

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

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

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

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

Page 23, after line 27, insert:

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

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

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

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

- 1. Any zoning regulation that pertains to a ~~concentrated~~ animal feeding operation and which is promulgated by a township after July 31, 2007, as

DE 9/4/14
6 of 6

~~defined in section 58-03-11.1, is not effective until filed with the department of environmental quality for inclusion in the central repository established under section 23.1-01-10. Any zoning regulation that pertains to a concentrated animal feeding operation and which was promulgated by a county or a township before August 1, 2007, may not be enforced until the regulation is filed with the department of environmental quality for inclusion in the central repository.~~

- 2. ~~For purposes of this section:~~
 - a. ~~"Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.~~
 - b. ~~"Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts."~~

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

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

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

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

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

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

Renumber accordingly

Date: 4/4/2019

Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2345**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: 19.1146.02003

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Headland Seconded By Rep. Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Ruth Buffalo		X
Vice Chairman Wayne Trottier	X		Rep. Gretchen Dobervich		X
Rep. Jake Blum	AB				
Rep. Jay Fisher	X				
Rep. Craig Headland	X				
Rep. Dwight Kiefert	X				
Rep. Aaron McWilliams	X				
Rep. David Richter	X				
Rep. Bernie Satrom	X				
Rep. Cynthia Schreiber Beck	X				
Rep. Kathy Skroch	X				
Rep. Bill Tveit	X				

Total **Yes** 11 **No** 2

Absent 1

Floor Assignment _____

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

Date: 4/4/2019

Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2345**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: 19.1146.02003

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Headland Seconded By Rep. Tveit

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Ruth Buffalo		X
Vice Chairman Wayne Trottier	X		Rep. Gretchen Dobervich		X
Rep. Jake Blum	AB				
Rep. Jay Fisher	X				
Rep. Craig Headland	X				
Rep. Dwight Kiefert	X				
Rep. Aaron McWilliams	X				
Rep. David Richter	X				
Rep. Bernie Satrom	X				
Rep. Cynthia Schreiber Beck	X				
Rep. Kathy Skroch	X				
Rep. Bill Tveit	X				

Total **Yes** 11 **No** 2

Absent 1

Floor Assignment Rep. Richter

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

REPORT OF STANDING COMMITTEE

SB 2345, as engrossed: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2345 was placed on the Sixth order on the calendar.

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

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

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

Page 4, line 1, after "subsection" insert "are subject to approval by the agriculture commissioner and"

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

Page 4, line 2, overstrike "percent from" and insert immediately thereafter "be a greater distance than"

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

Page 4, line 13, after the underscored period insert "If the county allows animal feeding operations as a conditional use, the county shall inform the applicant of the required procedures upon receipt of the petition, and the conditional use regulations in effect at the time the county receives the petition must control the approval process, except the county shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application."

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

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

Page 4, line 17, remove "of the"

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

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

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

Page 7, line 6, after "subsection" insert "are subject to approval by the agriculture commissioner and"

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

Page 7, line 7, overstrike "percent from" and insert immediately thereafter "be a greater distance than"

Page 7, line 16, after the underscored period insert "The petition must contain a description of the nature, scope, and location of the proposed animal feeding operation and a

site map showing road access, the location of any structure, and the distance from each structure to the nearest section line."

Page 7, line 18, after the underscored period insert "If the county allows animal feeding operations as a conditional use, the county shall inform the applicant of the required procedures upon receipt of the petition, and the conditional use regulations in effect at the time the county receives the petition must control the approval process, except the county shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application."

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

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

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

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

Page 7, after line 23, insert:

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

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

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

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

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

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

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

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

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

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

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

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

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

Page 20, line 11, after "subsection" insert "are subject to approval by the agriculture commissioner and"

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

Page 20, line 12, overstrike "percent from" and insert immediately thereafter "be a greater distance than"

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

Page 20, line 23, after the underscored period insert "If the township allows animal feeding operations as a conditional use, the township shall inform the applicant of the required procedures upon receipt of the petition, and the conditional use regulations in effect at the time the township receives the petition must control the approval process, except the township shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application."

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

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

Page 20, line 27, remove "of the"

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

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

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

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

Page 21, overstrike lines 2 through 4

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

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

Page 23, line 9, after "subsection" insert "are subject to approval by the agriculture commissioner and"

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

Page 23, line 10, overstrike "percent from" and insert immediately thereafter "be a greater distance than"

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

Page 23, line 21, after the underscored period insert "If the township allows animal feeding operations as a conditional use, the township shall inform the applicant of the required procedures upon receipt of the petition, and the conditional use regulations in effect at the time the township receives the petition must control the approval process, except the township shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application."

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

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

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

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

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

Page 23, after line 27, insert:

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

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

1. Any zoning regulation that pertains to a ~~concentrated~~ animal feeding operation, as defined in section 58-03-11.1, and which is promulgated by a township after July 31, 2007, is not effective until filed with the state department of health for inclusion in the central repository established under section 23-01-30. Any zoning regulation that pertains to a concentrated animal feeding operation and which was promulgated by a county or a township before August 1, 2007, may not be enforced until the regulation is filed with the state department of health for inclusion in the central repository.
2. For purposes of this section:
 - a. "Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [56.74 square meters]. The term does not include normal wintering operations for cattle.
 - b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.

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

1. Any zoning regulation that pertains to a ~~concentrated~~ animal feeding operation and which is promulgated by a township after July 31, 2007, as defined in section 58-03-11.1, is not effective until filed with the department of environmental quality for inclusion in the central repository established under section 23.1-01-10. Any zoning regulation that pertains to a concentrated animal feeding operation and which was promulgated by a county or a township before August 1, 2007, may not be enforced until the regulation is filed with the department of environmental quality for inclusion in the central repository.
2. For purposes of this section:
 - a. "Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or

~~for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.~~

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

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

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

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

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

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

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

Renumber accordingly

2019 CONFERENCE COMMITTEE

SB 2345

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2345
4/16/2019
JOB # 34776

- Subcommittee
 Conference Committee

Committee Clerk: Florence Mayer

Explanation or reason for introduction of bill/resolution:

Relating to animal feeding operations and zoning regulations; to provide an effective date; to provide a contingent effective date; and to provide an expiration date.

Minutes:

Attachment # 1

Chairman Luick: Opened the hearing on SB 2345. Roll call was taken, all members were present. The conference committee consisted of Senators Luick, Larsen, Hogan and Representatives Dobervich, Johnson and Trotter.

Welcome to everyone. I took it upon myself to have legal counsel look at this stuff and get a jump start on coming up with other language to fix this problem. If you would turn to page 4 of my amendment (Christmas tree version, **Attachment #1**). Let's look at the Christmas tree version or the amendments. One of the problems we've had is the Agriculture Commissioner having the approval process of the location of these feedlots. I don't think we want to have that responsibility on them. My amendment allows the Agriculture Commissioners office to work as a mediator and to work with an ombudsman as necessary to levitate between the parties to rectify the problems before it needs to go to litigation. Line 12-15 on page 4 of the Christmas tree version; you will see the mediation process is there. If that process doesn't work, it can go to a court to litigate. That portion of litigation will always be there. My intentions are to make sure there is oversight of the positioning of these feedlots, the downstream negative impacts are addressed, the local townships and counties have input. I look at this no different from a tiling bill where we have considerations in necessity to look at whose being affected by this. That is how I look at this. There is the need to stay away from the possibility of abusive oversight. Abusive is strong maybe. In some cases there could be advantages taken in a township or county where someone might want to place a feedlot operation and personal issues between the parties' stops that process. There is also the process of the right way to fill out the applications and who is notified properly. There are a lot of different issues with this bill that need to be addressed. With what I have here and a few more tweaks, I think we can walk away from here with something adaptable to not only specific townships with those problems, but going future. The process of how these future establishments and places they want to build go through the process properly. It will avoid a lot of problems we have today.

Representative Johnson: I think that in some of the conversation, the House concerns with the Agriculture commissioner, is when his name was brought forward to be a mediator, it was our understanding he will be this mediator it wasn't our intent that he be in the position of granting permission. He offered his name and I questioned why he would want to get in the middle of something like this. He wants to help all parties involved whether that be the townships, counties, health department, and the producer. To be the mediator to help guide the process through. If they can resolve it at that level, fine. If not it would go on to court. Trying to help everyone involved save money without going to court. I would support this amendment of the Agriculture commissioner being the mediator

Chairman Luick: I have a few extra copies of the amendment and the Christmas tree version for those in the audience.

Senator Hogan: Thank you for doing all the work, most of this I really like. Line 3 is where the Local County or township has compelling objective evidence. I like that standard. We use that standard with drain tiles. The question is, within the 60-day time limit, how long does it take to get object evidence if you have to contract with someone to give you that? How do those 2 things work together?

Chairman Luick: That question is out there yet. It was suggested to me maybe 90 days. My reply to that is that technical evidence gathering for tiling is 60-days. The reason we bumped it back to 60 days is the short construction period we have in ND. There could be some issues where they purposely go to the 90 days. I'm not saying that happens all the time. Where that ends up is, I don't know. I think we will have to discuss it to see if 60 or 90 days is enough.

Senator Hogan: In terms of getting objective evidence, would the township or county be responsible for securing it?

Chairman Luick: Ok, who decides or decipheres that?

Senator Hogan: Just wondering if you had in your head, and idea.

Chairman Luick: No, my head is full.

Senator Hogan: I like the Agriculture mediator.

Chairman Luick: They don't want to be the person to approve or disapprove. They want to be the mediator and provide an ombudsman if needed or to try to figure out the possibilities.

Senator Hogan: I have lots of notes of things I really like. I like the definition of what the petition needs to contain, so we are more clear about that.

Chairman Luick: On the back of this amendment, there are correctional things. Changing that 5-year construction period to a 3-year period, that is just an oversight. The new amendment I had was supposed to be here by now, but they are so busy upstairs. It changes in the back section, there are 2 places it identifies the county as where it should be the township or vice versa. I caught that this morning so that will be changing.

Senator Hogan: On page 9 when you added this section, can you tell us why that was added? Perhaps it is just technical corrections.

Chairman Luick: I didn't do that, Legislative Council did. They must have found something that needs to be inclusive in here.

Senator Hogan: We might want to confirm what that is.

Chairman Luick: I agree we need to do that. I don't know why that is in here. Maybe next meeting Legislative Council can come down and lay that out for us. The extra green reading in the Christmas tree version refers to the language changed on page 4. I took this up to Claire last week, she was hoping it would be done by Friday but it didn't work out. Yesterday morning I met with her again and we fixed a few things on it. On line 14 of page 4, if you start on line 13 between the parties. I was thinking of crossing out, "the person that requested the mitigation may bring a claim against the board of county commissioners in"; to take that out. I think that maybe both parties should be able to bring lawsuits not just the party that requested the mediation. I threw in the language "litigation may continue in a district court of competent jurisdiction". The other part of this is that on line 3, same page, to change the verbiage so that it varies for local control, county by county rather than a blanket across the state; to give the local jurisdiction a little more authority in how they regulate. What I mean by that is this, when I changed the permitting process from the state water commission to the local county water boards in 2011, the purpose of that is the local people have a better idea of the soil types, geography, the people themselves. The state water commission should not be the ones overseeing this. They are in Bismarck and it's too distant and expensive for them to monitor all of these projects. This too I believe, the county should have some sort of flexibility. Their situations may vary as well. If the topography or soil types are different, the control of a setback may not vary as far as odor, but maybe the water containment areas, maybe the injection places may vary. That is my opinion; I want you all to think of that as well. That extra 50% set back in law today, I feel if there is a case where that is being abused that objective evidence will put an end to that. If there is not a need for that extra 50% of setback, maybe they don't get that luxury as well. It won't be a free for all if a township board is being belligerent. We did run across this with some counties in the tiling aspect of this. It's not nice. I am hoping that by the time we get through with this we will have enough ideas to piece this together in a more scientific manner, more logistic manner. So we can all feel good about where we are with this. I appreciate any input, questions, when I run these committees I make sure everyone has a voice in it. We at the table are making the final decisions before it goes to the floor, but if we put everyone's head together, we will have a better product.

Representative Johnson: Page 4 line 23 where we talk about the township and the counties. It is their responsibility on one of these sightings, nature, scope and location. Where does their back finding stop and the health department take over?

Chairman Luick: In some townships, you have very capable individuals; they may even have degrees in biology, animal sciences, etc. I think anything that has to do with technical evidence that the health department should have control of; there has to be a boundary there somewhere that when the health department gets involved with these logistic setback purposes, that would be the dividing line. That would be determined by the health

department, when and where that line is drawn. If there is a question, the health department has to be the agency that says sorry townships, but this is our purview.

Senator Hogan: I am trying to understand this. Let me tell you what I think the answer to Representative Johnson's question is. Essentially the townships will do the sighting type of issues. Page 5 lines 9-15 it says what the townships or counties cannot do. Is that accurate? I think those separations are pretty clear with that addition.

Chairman Luick: It goes back to the scientific evidence that is gathered and the capability of the individuals doing the work. I believe the health department should be the ones looking at anything that has some sort of health degradation of the soils, human health or animal health.

Senator Larsen: As we are going through this process, I remember I don't know if it was last session where we had the issue with the pipeline going over ranchers and farmers property. The holes weren't being filled in and all kinds of frustration between the people that were laying the pipe and the landowners. When the Agriculture department allowed the ombudsman to go in and smooth things out, I know that was very successful. Where we used to farm up by Stanley and Ross, we utilized that individual. It eased the frustration going on. I've been getting emails on this issue with having that person there. There seems to be a little bit of push back, thinking that this is a government entity jumping in and telling us what to do. I don't think at all that is the intention of this Agriculture departments help. I think it is to help make a smoother process and help the situation out. I continue to support that part of it. In this new version, we talked about the tilling in the past and other things. We have to be able to say why we want this moved forward or not moved forward. In New Town, we have an unloading facility and it is right by the lake. It is working, it is happening; there are things in place that will stop things from happening if it does. Even though it may appear that facility is right there in a pristine area, it is pretty safe for the community and everyone else. By having that part in there, I would agree it takes out some of the well it will leech in the ground water. Maybe the soil confirmation makes it so that it really won't. I like those ideas.

Chairman Luick: In my area with the Fargo clays. It is water holding and doesn't leech through that soil type as well as a sandier soil. Depending where these are located, the counties in those jurisdictions should have a little more say on positioning. If you get into a gravel area, water is going to go in and travel underground easily.

Representative Trottier: This isn't in a real world, but on page 3 line 5, of all the problems encountered this far with these units, it says a board of county commissioner may not prohibit or prevent the use of land or building for farming or ranching. It may not prohibit or prevent any of the normal incidences of farming or ranching. That explains itself. Later on, it talks about, section 9 on page 4; a person intending to construct an animal feeding operation may petition the board of county commissioners for a determination whether the animal feeding operation would comply with zoning regulations. If this had been and was done with standard procedure, this would prevent a lot of the problems we have. We have heard that from a lot of people objecting to this, that it wasn't done that way. They skirted the issue, went for the permit, and got through the state that way. I think with the livestock coalition program we have going, they will come early and sit down with the local people, township, county and residents of the community. I think this can get worked out, it's just putting it together on

paper sot that everyone understands both sides. I think both sides have done a good job of putting this together. The townships and counties, they want a voice in deciding this. I think it does give them that opportunity.

Chairman Luick: In the conversations I've had in the last week about positioning of feedlots, Johnson said there are very successful applications that have been put in throughout the state for feeding operations. Many of them. If the process is adhered to, it can work very well. I agree that this is something very important. I think the aspect of making sure the process is followed right from the township officers, moving forward to the county, to the state, wherever these application need to go to. That is by far #1, it has to be. In my area, Richland County still doesn't have an application. That project got off the tracks from day one, because of the way it was approached. You just don't go there. You don't tease the process on something that important. I believe these feeding operations are just as important, we have to have them, let's make sure we get it right, get the paperwork processed properly. We need these feedlots here. It is an extra market, fertilizer benefit to everybody. I hope that we can get our heads around this and put it to rest. Some way or another we have to get that word out there that, no matter who it is coming in to set up a feedlot, do it the right way and you'll have a better change of it being successful.

Representative Trottier: On that note, we just heard something about the new one down at Ransom County. A neighbor was driving by there and at a quarter to 8 in the morning, here comes 15 vehicles driving into that facility. He thought about what that is doing for their community. The churches, schools, grocery stores, etc. It brought a tear to his eye because he felt so good they were supporting the community. So thank you.

Senator Hogan: You're waiting for another amendment? (Yes.) Then at the next meeting, I would like major discussion on the 60-90 day issue.

Chairman Luick: I encourage you to talk with whoever you wish; we will bring that up next time. I would support the 60 days. As a contractor myself, in the limited time we have as contractors in this state, we put 60 days into the laws for tiling for the township boards to get back to them on their application approvals. The 60 days simply because we are limited with time in this state.

Senator Hogan: My argument with you on this one is, these are generally bigger production issues. With the 3-year limit on building time, there might be a longer time frame. I totally supported the drain tile change, but this this might be a different type of operation.

Chairman Luick: They aren't doing any scientific evidence gathering; they are locating, and doing the setbacks. I feel that if we want to change it, fine. It is more so how do we get these farmers out of the field to actually sit down and determine how much of a setback there should be and is it possible to even place it here. They are limited to what they can do with nature of scope and the location of that. Then it is in the hands of the health department after that. If they are digging into this technical evidence, maybe they shouldn't be.

Senator Hogan: Except we're requiring they have to have a basis if they are going to ask for a 50%. It is almost logistics, how much time will it take to do those things.

Chairman Luick: That is only for the application, that isn't the determination of whether the project goes ahead or not.

Senator Hogan: The determination is 60 days not the application? So the collecting of evidence would be during?

Chairman Luick: That could go on until the final application I believe.

Senator Hogan: I think we just need to be clear on that. Let's just think it through

Chairman Luick: My brain is full, we will think on that.
We will set up another meeting. I encourage you to do your homework. We will adjourn for now.

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2345
4/18/2019
JOB # 34836

- Subcommittee
 Conference Committee

Committee Clerk: Florence Mayer

Explanation or reason for introduction of bill/resolution:

Relating to animal feeding operations and zoning regulations; to provide an effective date; to provide a contingent effective date; and to provide an expiration date.

Minutes:

Attachments # 1 - 3

Chairman Luick: Opened the conference committee on SB 2345. Roll call was taken, all members were present. The conference committee consists of Senators Luick, Larsen, and Hogan; Representatives Johnson, Dobervich and Trottier.

I will bring you up to date as far as where I'm at and what's been happening. Representative Trottier and myself met with some different groups, trying to get more language to identify setbacks in SB 2345. We are making headway. We have copies of the new 2008 version that we just got 10 minutes ago. (Handed out **Attachment #1**, the .2008 version of the proposed amendments.) I have 2 extra copies if anyone in the audience would like them. Going through the language, I'll let you read through it.

Senator Hogan: In reading the last sentence on page 4, line 3, page 1 on the amendments the Agriculture commissioner could request an opinion from the Attorney General. I think it might be important for the local board to also be able to do that. I was wondering if you had any discussion on that?

Representative Trottier: The discussion was, if there was a problem and the Agriculture commissioner is brought in as a mediator, he would have to take it to the Attorney General's office. If the Counties or township had a problem, they would present it in their discussion with the Agriculture commissioner. The Commissioner would not make a final determination.

Chairman Luick: I think that is inclusive. To get the Attorney General's opinion, any subdivision or anybody has the authority to do that.

Senator Hogan: So both parties can do it (Yes.) as long as we are clear that any place along the way we can do that. We are trying to reduce court intervention. (Correct.) The second

thing I was wondering about, I got a call about thee 50%, has there ever been a situation where more than 50% was asked for? As far as setback from the state?

Chairman Luick: I am not personally aware of that. In conversation upstairs, I had the same questions. I can dream up situations where that could be possible. Yesterday I brought it up in the meeting with Mr. Glatt from the health department. That particular thing, the health department would be the ones deciding if there is an excessive need for going beyond the 50% differences.

Senator Hogan: There might be unique situations.

Chairman Luick: Soil types, topography, future development, and there is not a physical building standing there yet. There are situations where today's law says you go up to this side of the building and you're a distance away, but the infrastructure is maybe in place for the new development area. In those instances, I believe there is some awareness. That type of collaboration between the counties, the township and the developer; that conversation needs to happen as well.

Senator Hogan: What about the 60-day review and the timing framework? I like that you completed the part about conditional use permit, but the whole 60-90 days to get demonstrated compelling objective evidence. Your original example was drain tiling. Water boards have more of that evidence than townships might. Was there any discussion on that?

Chairman Luick: There was. Just thinking about the ease. Let's say the township has the responsibility to figure out the placement of this. It goes to the health department to figure out the intricacies of the health issues or the damaging situations of pollutions. I have the ability on my phone to google in and find where this will be built, and in 10-15 minutes, I can tell you the distances. I don't think going over the 60 days is necessary right now. They asked for a 15 day extra this year, it was denied. That was my amendment, which we killed in this committee. As a contractor, 60 days in a long time. I don't think it is necessary. Let's try it, if there is a problem we can revisit it and look at it latter. At this point, I don't know if it will be that damning. I think if we can get the methods, timing and process of getting these in order, I think we will have a better method and going forward will be easier.

Representative Trottier: The procedure this goes through, the counties and townships will have the first look at it all once the application and permit have been applied for. The first people to make the decision will be the counties and townships. If the setbacks are there, it will be up to the health department and the environmental department to follow up on it.

Chairman Luick: Handed out **Attachment #2**. This is not a legal document; it is not something that will be recorded as perfect. There are variations to this. Some of us got together the other night and we set up a method and ideal of how the process could work for specific townships or counties. Just to give the developers a process of how to do this. I think the ball is dropped on some of these things. It gives you some ideas to how this can happen. It is not by any means an official document that says this is the way the code has to have it.

Senator Larsen: In looking at this, a lot of the conversations I've had with constituents, people are going right to the green rectangle and getting their successful application from the

state. Is there movement now, that when someone comes forward to the state, the state asks if they checked in with the locals?

Chairman Luick: I hope that all of us who are trainable will learn from mistakes and move on. We can't go back and fix what has happened in the past. All sympathy goes to the ones that were harmed or cost money to. We have to look at how do we stop this in moving forward.

Senator Hogan: There are a lot of hallway conversations with this bill right now. Does this ever happen in city limits and are there any city rules. I know we think this is primarily rural, but particularly in extra-territorial city areas. Have you talked about that at all?

Chairman Luick: We didn't. It is not within the city limits, I don't think that is even necessary.

Senator Hogan: Someone had just asked me that question and I didn't know. Just thought we should put it on the record.

Senator Larsen: An issue in our community, we had a pretty huge fire at a recycling facility West of Minot. They were not in the city limits. They had the permitting and availability to continue business. It went into litigation and there was all kinds of stuff about it. They were removed from the property and it was turned into a real situation. Kind of like what we are doing here, now. The property rights of that owner have been trampled by government. That does exist. They changed the perimeters about how he could be there and then changing so they could get rid of him.

Chairman Luick: Handed out **Attachment #3**, the Christmas tree version of SB 2345. Also wanted to bring to your attention, because you will hear about it; there is a proposed amendment to be added onto this bill. It deals with a project happening North East of here, outside of city limits that deals with an auction yard. The permit was issued to build this, now the city is claiming that they have to cease and desist. That is something about moving the goal post. I don't know if we want to attach it or do anything with this particular bill. I guess that is something we will have to talk about. The amendment is being crafted, not by myself, but we will have to decide on that.

Senator Larsen: Referring back to Attachment #2. Another issue that came up in talking to folks, just prior to the local zoning application that was submitted, there was a lot of frustration. People say they did it right. The fact-finding and the buy-in of the local community, I know we can't make a law to make people nice, well maybe we can. That is missing in this diagram. I think the people moving forward with these projects really need to look at the groups that have been successful and do that due diligence first before going to get the application. Going back to the feedlot situation, I used to haul cattle for the livestock companies here. When they talk about how it will be too many animals and stuff. Those are vacant a lot of the time. There are not hooves on the ground 365 days. I know people move out into the country, I myself did, but the railroad tracks are there, the lagoons are there, industry and business is trying to flourish, people are trying to keep jobs. It is very frustrating when a person invests time and energy into a project, they do the right things and then you get a few people that are like, oh wait I'm irritated this is too close to my house. Then they put a kerfuffle, it is very frustrating. I don't know what I would do if I had invest \$1.5 million

into a project just to have a government entity come and say nope you can't do that. It's not North Dakota nice.

Chairman Luick: That will be a new amendment, to be nice. You have the Christmas tree version, we have 10 minutes and then at 11am we have an exciting round of SB 2315. If you want to read through this you can or we can discuss and read through it later. I certainly will not move this right now. I want to make sure you have the opportunity go through this, sort it out, talk with your friends, neighbors, enemies, and whomever you wish. Find out what needs to be added, subtracted, cleaned up, or burnt.

Senator Hogan: We haven't really talked about the effective dates for all those applications and activities that are in process right now. Someone asked me about that. The thing is, we don't want to do an emergency clause because we apply new standards now for the things that are in process.

Chairman Luick: On line 9, page 4 of the .2008 version. One thing I was concerned with, you have townships with ordinances that go far beyond what the state statute says they would be. They really may not be able to do that. Line 9 says that a person who's animal feeding operation will be or has been affected by the setback, may request the Agriculture commissioner review an applicable county. The way I take that is, if you have a project in place already and you're going through the process, this may not apply. Let's say you don't have, I don't think we can get involved in a court case and change the law to move the goal post on something already happening; if they were doing something that was not credible or if the court rules in their favor, there is nothing we can do about that. If a township or county has something put in place in their ordinances that is not correct, this would say they need to change the ordinance to match what we decide in this. Otherwise, everyone will dog-pile onto making sure the ordinances are far beyond what the state could allow.

Senator Hogan: So it becomes a local control issue. They can't control more than we say they can do?

Chairman Luick: Correct, in anything.

Senator Hogan: Not home rule, not anything. Some of those townships or counties may have more strict guidelines on all of those current cases, the effective dates become really important. Which set of rules then apply on all the current applications in the pipeline. I think we need to be very clear on those things. I think that sometimes we forget this works most of the time. This is a problem that is basically functional. We might be created unintended consequences.

Chairman Luick: You pick the industry, the situation, of whatever topic you want. We make the laws for the 5-10% of people in situations across the state.

Senator Hogan: This chart is really helpful.

Chairman Luick: Who put this together was Scott Rising from the Soybean Association; Terry Traynor from the Association of Counties; Larry Severson from the Association of Townships; and myself. This is draft #2, draft #1 we changed a little bit. I want to give the

credit to those guys. They are the ones who brainstormed this. I think it has some legitimate benefits.

Representative Trottier: I think we need to say, through all of these conversations, that it has come about some problems could have been prevented. Part of it is trying to build relationships before the project starts. We do have agencies come forward, are willing to, and are experts at that. So they can help the investor to go to the counties and townships ahead of time to start working on getting the objections out of the way. I think it would save a lot. I think what this bill leans towards this. We have the ND Alliance, the ND Stockman's Association who have specialists. I think if the investors go to those people, they will guide them through this and we will see some success down the road.

Senator Hogan: I think this will be back in 2 years as we figure out what we've done. It is a work in progress.

Chairman Luick: That is fine. I encourage you to do a little more homework. At this point, I don't have anything to add. I will reschedule a new meeting and we will talk again. Conference committee adjourned.

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2345
4/19/2019
JOB # 34866

- Subcommittee
 Conference Committee

Committee Clerk: Florence Mayer

Explanation or reason for introduction of bill/resolution:

Relating to animal feeding operations and zoning regulations; to provide an effective date; to provide a contingent effective date; and to provide an expiration date.

Minutes:

None.

Chairman Luick: Opened the conference committee on SB 2345. Roll call was taken, all members were present. The Conference committee consists of Senators Luick, Larsen and Hogan; Representatives Johnson, Trottier, and Dobervich.

We have amendments in process, Legislative Council is behind, and they apologize. We have had some small changes to language. We found another error in print this morning, the 5 year-3-year deal. Senator Hogan has another idea for an addition. We have good language coming out. I am very anxious that we will have a decent package when we are done with this.

Senator Hogan: I think so much of this is talking about this story or that story. I proposed to Legislative Council that they draft a memo that the department of health shall provide a report on all permit applications, approvals or denials, including the township and county zoning decisions and requirements. If there were issues during the first year of the next biennium, by October 1st. Then we will know what the issues are. We will probably be back in 2 years looking at this. Then we will have a report of what is actually happening. It is almost study language. That is one of the things being drafted. The second issue being drafted with this amendment is a question about whether we need to define "facility". We had a request for that. Ms. Ness was researching the definition sections to see if we have holes in that. The third issue is on page 4 of the .2008 Christmas tree on line 4, it's the question of "the county can demonstrate evidence specific to the county." So many of these issues, township or county, are right on the borders. If one county is making a decision, can they overlap with their neighbors? I am a little uncomfortable with the specific to the counties. Sometimes a setback could be on one township line and could overlap to another one.

Chairman Luick: Does anyone on the committee have any expertise with that? Do the setbacks go beyond county lines?

Senator Larsen: We just had a bill about allowing neighboring counties to correlate together if a big project runs through. There was a lot of pushback that we can't have counties telling the projects what to do. That bill was soundly defeated. That was to give them more leeway opportunity and openness.

Senator Hogan: I believe currently that they can look at related. This is new language. So that is restricting that they can't. Maybe we need legal counsel opinion.

Chairman Luick: Mr. Traynor, do you have any information on this? Or Aaron?

Terry Traynor, Association of Counties: I am not a lawyer so I cannot comment on the legalities. I understand what Senator Hogan is talking about with the specific to the county. If the project were broader than that, does that limit the considerations? I can see that point. I assume it is more prevalent in the other section, where it says specific to the township. Crossing county lines is rare. Is the compelling evidence specific to the project, the county or what? I don't know why the phrase is in there anyway. I do think some interpretation would be helpful.

Chairman Luick: Thank you. No disrespect to you, but if Aaron could come up for legal advice at this time?

Aaron Birst, Legal Counsel Association of Counties: I would be happy to write up anything for the committee or answer any questions.

Chairman Luick: The purpose of the specific language here for the counties or townships is this; we want to see this get back to a little more county control. We have difference elements in difference counties across this state. So to blanket cover everything under one category may or may not be a good idea. That is why it is specified to a particular county or location rather than across the state. I used to do septic system designs for residential and commercial systems in Minnesota. They blanket covered the entire state. The soils in the red-river valley does not justify what we had to deal with versus the gravel ridges around the lakes. That is where this comes from.

Aaron Birst: I understand that. That has always been our position too, if you absolutely define it under state law, you're going to get bad results. I also understand industry needing some stability so they understand. I think we can find that compromise. I think it just a question of wordsmithing a little bit. It is not unreasonable for all of us. I would love to give you some language too.

Chairman Luick: I think a lot of this has to do with the health department and their requirements, designations and ideas about this.

Senator Hogan: Can we say instead of specific to the county, specific to the project involvement? You might have 2-3 townships impacted. I think it is bigger on the townships level than the county. Even at the county level, it could be on the border of one county and involve another.

Aaron Birst: I think that would be easiest to say the specific project. Just from my experience, very seldom do you have multiple jurisdictions involved. When you put the project together, you try to keep your liability to one political subdivision. There is not a lot across. We did have conversations with the cities as well, I don't know how you work in extra territorial zoning, but I think there is a way to do that. I don't know how many feed lots want to go into extra territorial zoning with the city, but it is a possibility. If we make it to the project, I think we should be good. Then the health department standards will be standard too. The Association of Counties didn't object to the bill on the Senate side and we aren't super objecting to most of the bill, there were just a couple variations we can work through. I can get you some language.

Representative Johnson: I see Mr. Glatt is here from the health department, how do they deal with this now?

Dave Glatt, Section Chief Environmental Health Section, ND Department of Health, soon to be the DEQ: I don't know if I can help you out on that. Typically, we don't have multiple jurisdictions. It happened on the Oliver county line where the one county approved a feedlot operation right across the road from a house. I think moving forward, we have made sure there is communication between entities.

Chairman Luick: Does your department have authority over the counties as far as setback on that? You wouldn't have any problem determining if there was an issue.

Dave Glatt: We do not have jurisdiction over that. That is a local zoning issue. We can suggest they communicate and take that into consideration. The zoning authority is with the local entities and we want to keep it that way.

Senator Hogan: There was a question about special use permits and conditional use permits. With this bill, we are just talking about conditional use permits. Are there any special use permits currently?

Dave Glatt: Not from us. Our permits are pretty straightforward on what they are. Other people are more versed in that. The counties or the local jurisdiction may put some special conditions on it, more as it relates to road maintenance and that type of stuff.

Senator Hogan: They are more conditions than special use permits?

Dave Glatt: Correct. If we have a management plan, they can't put conditions on that beyond what the health department does.

Senator Hogan: My view is the things the local jurisdictions are responsible for; Roads are a big issue. Roads, houses and development.

Dave Glatt: Typically, I find out the operation has a vested interest in having access to their facility. When they are asked to maintain the road, they are more than happy to, because they want to get to their facility.

Chairman Luick: Thank you. Any other questions, concerns, or dialog?

Representative Johnson: (Inaudible.)

Senator Hogan: I thought about that.

Chairman Luick: At this moment, if we don't have anything more to discuss at this time, we will reschedule. I was hoping to get the amendments down here, but it doesn't look like that will happen.

Representative Johnson: Are we going to see the new version sometime today to look at it before next meeting?

Chairman Luick: I will push them, and make sure we get those copies today, so we can have access to it over the weekend. If it's not in print, I will email it to you.

Senator Hogan: I wondered if we should talk about if there are any of these types of facilities in cities at this time? The question about extraterritorial zones and if there are any implications for cities at all?

Chairman Luick: Mr. Glatt, are there any in city limits? Feedlots above a chicken house?

Dave Glatt: There are, Kist Livestock just across the river or other small towns. I think it would be difficult to put something in town moving forward. There may be something on the outskirts.

Senator Hogan: I assume they are regulated under city code and zoning. Will this bill impact them in any way?

Dave Glatt: I think you need something with a legal background to answer that.

Senator Hogan: I think it's unintended consequences.

Dave Glatt: I don't think it will cause any problems. Going forward establishing new ones will set a different bar for that.

Senator Hogan: There are a lot of potential unintended consequences. I heard there were city issues and I knew we hadn't really talked about it.

Chairman Luick: We will adjourn.

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2345
4/22/2019
JOB # 34903

Subcommittee
 Conference Committee

Committee Clerk: Florence Mayer

Explanation or reason for introduction of bill/resolution:

Relating to animal feeding operations and zoning regulations; to provide an effective date; to provide a contingent effective date; and to provide an expiration date.

Minutes:

Attachments # 1 - 3

Chairman Luick: Opened the conference committee on SB 2345. Roll call was taken, all members were present. The conference committee consists of Senators Luick, Larsen, and Hogan; Representatives Johnson, Trottier and Dobervich.

Handed out **Attachment #1**, the “.2012” version proposed amendment. I don’t know what version they attached the amendment to, so we will be getting Christmas tree versions shortly.

Senator Hogan: When I looked at this, I thought about the need for framework of what compelling objective evidence might be. We thought about defining things like property values, infrastructure, or other planned development in the books. It isn’t in your version. How do you interpret what is compelling evidence?

Representative Trottier: I have a problem with the property values. It is kind of subjective isn’t it? I was told it is one area where they have come out and done appraisals already. I wish I had asked for the names of those who had done that. It is hard for an appraiser to come out, appraise, and say if you did this, this is the value of your house. I find that a tough one.

Senator Hogan: If there is evidence, then who weighs the evidence? Someone may claim that but I think it is either the townships or eventually the Attorney General if we use this entire process to say how compelling that evidence is. I think that is the checks and balances I see. But if we don’t define it, then what happens. If we left it broad and undefined, then we could get all kinds of things.

Representative Trottier: I thought I saw that some place earlier too.

Chairman Luick: Relating to property values? (Yes.)

Senator Larsen: We talk about assessments and property values. A year ago, we had a CP rail in Harvey decided to pull out their whole maintenance fleet there. We had about 50 families that decided to leave. What about property values then? I think it is what it is. Then we see the oilfield where man camps come up in the middle of nowhere. I know the roads are better now that they had those man camps there. Now that the man camps are all gone, there are infrastructure changes that have been good for that area. I don't want to keep putting more barriers to it. If it's going to be an economic driver, property values will keep going up; if it's something where people don't like the noise, smell or commotion or traffic, then it will be what it is. There are so many variables in the state that fluctuate and change property values. This seems belaboring.

Representative Johnson: Doesn't this need the flexibility, rather than putting it into statute on how these appraisals would be. The people doing this would be the professionals and would have an understanding of how to do this. Things will change for guidelines.

Chairman Luick: Passed out **Attachment #2**, the Christmas tree copy of proposed amendment version .2012.

Senator Hogan: I get the feel this is going nowhere, but I will still bring my ideas up.

Chairman Luick: That is what I'm asking.

Senator Hogan: I have a number of concerns on the role of the Agriculture Commissioner. Whether we should be using the ombudsman, who is supposed to be a neutral negotiator in complex situations. The Agriculture Commissioner is a little more political. Regardless of what party you are in, you may like or not like it at any one point. I wonder if we looked for a neutral mediator on this?

Representative Trottier: He may be called a mediator, but all he does is review it and if he sees a disagreement, then hands it over to the Attorney General. He doesn't get into the mediation at this point.

Senator Larsen: I like this idea actually. Where I used to farm, a pipeline went from Tiago all the way past Standing Rock. I was sitting with those folks and listening to their issues. Some farmers would be working with the business and pipeline people, and they were pulling their hair out trying to get something done. Then people down the road with a different personality would have an issue and it worked for them. There seemed to be a lot of flexibility with it. When the Agriculture Commissioner came in to backfill trenches, it seemed to diffuse the pushback and miscommunication. It seemed like more of a team approach. We have not tried that in this instance. If they have the ability to help move this one and make it better, I still support this idea. No one else came to mind a couple sessions ago when we implemented this. The reason we did that was the communication between the Agriculture department and the farmers and the ranchers and the community. If this was a business or industrial issues, it might not have worked, but the location and the type of people we are talking, I think it is totally appropriate.

Representative Dobervich: I like the idea of the ombudsman; I agree with Senator Hogan, while the commissioner is just reviewing, it is a politically elected position. Depending on which party you are involved in, that could impact it. Hearing from Senator Larsen about using the ombudsman in what is a contentious land issue around pipelines and the success that there was, sounds like it's worth taking a hard look at.

Senator Larsen: Even though the position is political and elected, the boots on the ground and the people in the trenches are really not elected. I know some issues they clean house and then everyone else is rehired that is their friends or family. I don't think that is the case. That is the same with DPI and other state positions. People have continued to work through sessions and terms in the same positions. I am not so worried about the ombudsman that comes to the site.

Chairman Luick: If I may go back to that, do you think we need an ombudsman is needed or is the language we have sufficient?

Senator Larsen: I think the language we have is good, whoever the Agriculture commissioner sends out will be good.

Senator Hogan: I will just go through my list. The other issue is "the Agriculture Commissioner shall provide the summary of the review to the Attorney General and request an opinion on the ordinance". My question was, if you have 2 parties are you only giving the Attorney General one parties side? Legislative Council felt like either the county or the township board could directly supply information to the Attorney General regarding hat. That we didn't need it in code. I thought it was important to put that on the record. There is a final decision and the opinion goes this way; other people can come and provide additional information if they have a different view. Local jurisdictions can do that.

Chairman Luick: Local jurisdictions can do that at any time, they can request their own opinions from the Attorney General's office at any time.

Senator Hogan: That is why we didn't put that in. That was the discussion, do we need both sides to have an opportunity to present information and it is already available, so I didn't do that.

Senator Larsen: I think the unbiased review that is happening will have the information from both sides. Whoever wants to give information to the Attorney General is fine, he will get a full report from this individual too, that will have all the information from both sides.

Chairman Luick: I wish I had a crystal ball to tell you how this would turn out. It would be a whole lot easier to craft this law, if we knew exactly the parameters of how this will all fit together. I don't think any of us in here can figure that out. My efforts are to get this document in a form that is better than what we have today, use today and argue about today. I want to get this in a condition that we will find out what the problems are and the good things moving forward. I'm sure we will be back next session to review and correct this to get it moving forward in a positive manner. I have worked a lot on this trying to hear all sides, conditions and concerns. I know very well that I am not addressing everything that is possible in all of this. I have many questions myself that are not getting answered. We can nickel and dime

this to death. I am hopeful we can come out of here with something that is going to be amenable to get this in a positive nature moving forward for 2 years. Then we will revisit and see how we scored.

Senator Hogan: Passed out **Attachment #3**, a new proposed amendment. I was trying to get a sense of how many problems we have. I've learned all this stuff, but I think the first thing we need to know is some substantive data. I've added, at the very end of the bill, this looks like a hog-house and that wasn't my intent, just to add section 7. That requires that the department of environmental quality provide a report. One of the critical things, is that we know what is exactly really happening.

Chairman Luick: "Exactly" is not going to happen.

Senator Hogan: "Exactly" is never going to happen, but we may have better information than we have at this point in time. When I did the first draft of this, I shared this with Mr. Glatt and he said they do not have the actions of the townships. I added that all local government entities that review animal feeding operation permit applications, have to report to the department of environmental quality. With each permit approval and denial within 30 days of the decision, so they become the central depository of the issues. Then we will have a sense of what is actually going on. Mr. Glatt hasn't seen this yet, but we did talk about it.

Chairman Luick: Would you like to give him a copy, please?

Senator Hogan: I think that would get us to a point where we know what we're talking about. At this point we don't know what we're talking about. It's hypothetical.

Representative Johnson: You're crossing out the top part and making this section 7, you're not hog housing this? (Correct, that was the original intent.)

Chairman Luick: So at the end of this you would be adding a study?

Senator Hogan: Correct, a report. Is this doable? (Mr. Glatt said yes.) Perhaps the townships, counties, and cities would all report so it would be inclusive. Then we would know the issues and what they are, instead of guessing.

Chairman Luick: Committee do you understand what is being asked? We are going to cross out the first sections of that, then down where it says section 1 it will become section 7 on the .2012 version. No, it would have to become section 8. That would have to be changed to section 8.

Senator Hogan: We had discussions on whether there is any value in a "shall consider" legislative study of it. Agriculture all of a sudden has many issues to study. Perhaps this is not the time to do it, but at some point, it needs to be seriously revisited.

Representative Johnson: Is this information available now through the department?

Chairman Luick: I had the same question, Mr. Glatt would you answer that? The question is, whether the information that we are asking for in this report is available today through the DEQ or health department?

Dave Glatt, ND Health Department: The information is provided to us on the permits, what was approved and issues. We do not have the information from the townships or counties. That would be new information provided to us. We would do our best to put that into a report and basically reiterate what they provide us. We don't get that information today.

Senator Hogan: We haven't really looked at that information through the study of this bill.

Chairman Luick: We have not looked at that, but maybe that is for another day. Senator Hogan what do you wish to do?

Senator Hogan: My preliminary view of yours and mine were amazingly similar, other than the things I have referenced. I still have strong feelings that the 50% variance should still be allowed without any undo conditions. I don't think the committee agrees with me on that. I think that is a taking of local control, which worries me. Other than that, I think most of my issues were in yours.

Chairman Luick: I am waiting for anything else to discuss. We can talk about the reporting, if anyone has an appetite for that. Going beyond what is happening today. That will have to be moved.

Representative Johnson: Do you want a motion on your Christmas tree version and further amend as we see fit or how do you want to handle this?

Chairman Luick: I will act on any motion you see fit to bring forward.

Representative Johnson: I would move to adopt your amendment 19.1146.02012.

Senator Larsen: Seconded.

A Roll Call Vote Was Taken: 6 yea, 0 nay, 0 absent.

Motion Carried.

Senator Hogan: Moved the adoption of .02013 with the changes at the top, to add section 8 to the current amendment draft.

Representative Dobervich: Seconded.

A Roll Call Vote Was Taken: 5 yea, 1 nay, 0 absent.

Motion Carried.

Chairman Luick: Now we have attached the .2013 amendment to SB 2345. What do we want to do with the bill?

Representative Dobervich: When I think about page 4, lines 1-13, subsection Committee on page 7, 23, etc. They are duplicative sections. We don't know how many permits are being denied or the reasons for that. When I read this section, I think we are taking away local control. Without knowing if this is a widespread issue, should we be limiting how far the

county can do setbacks? I think it is a taking of local control, and it doesn't sit well with me. I suspect my vote isn't needed for this to go through.

Senator Larsen: I thought we just embraced the amendment to do this report and put section 8 on the bill to find that out?

Chairman Luick: Yes. Representative Dobervich, the situation is we didn't take any authority away. They still have the 50%, we didn't take that away. They just have to prove there is the need for that.

Representative Dobervich: How does that vary from what current code is at?

Chairman Luick: Current code is they can say on a whim they don't like you, so they won't allow you to do anything. They will mandate a setback.

Representative Dobervich: So we are limiting them in a sense.

Chairman Luick: No, all they have to do is prove that they have compelling evidence that says they need the extra 50%.

Representative Dobervich: Which we haven't defined because it will vary from place to place. How you define compelling and objective?

Chairman Luick: The counties and townships want that. There are variances between the townships and counties of what is compelling evidence. Why would we as a state lock them into something definitive and say if you are in this box you're okay and if you're in this box with your evidence, then you don't qualify. I think the variable should be there on both parties to let each party wrestle with that. Then they have the option of the mediator, Agriculture Commissioner or Attorney General to work through the process of whether it is truly compelling or if it does have the ability stop the project.

Senator Larsen: As I look at this issue, I think about the differences with the oilfield and animal Agriculture. We have pumping units 500 feet from a house; we have traffic and activity with that. If we had the restrictions we had on the Agriculture, we wouldn't have the oil industry or wind industry here. I'm trying to wrap my head around, why is it we have a booming oil industry, and they don't have these problems and restrictions. There has to be a method in the madness of it. As I read the bill, it continues to allow the counties and townships to have the setbacks for animal feeding. The intent is to place the burden on the county or township to demonstrate that adjustments to the setbacks are necessary to prevent them from arbitrarily adjusting setbacks for animal feeding operations. I think this is one piece of legislation that will allow the animal Agriculture industry to move forward. We have to move forward on that.

Senator Larsen: Moved the House recede from House amendments and further amend, 19.1146.02014.

Johnson: Seconded.

Roll Call: 4 yea, 2 nays, 0 absent.

Motion Carried.

Senator Luick will carry in the Senate.

Representative D. Johnson will carry in the House.

Chairman Luick: Thank you committee, I appreciate your willingness to come together and think this through. We as a conference committee have improved this further yet from how this came to us. I thank you very sincerely. It is my intention to make things the best we possibly can for the time we have to work on them.

We are adjourned.

April 19, 2019

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2345

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

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

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

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

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

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

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

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

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

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

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

Page 4, line 17, remove "of the"

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

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

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

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

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

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

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

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

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

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

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

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

Page 7, after line 23, insert:

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

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

- 1. Any zoning regulation that pertains to a ~~concentrated~~ animal feeding operation, as defined in section 11-33-02.1, and which is promulgated by a county after July 31, 2007, is not effective until filed with the state department of health for inclusion in the central repository established under section 23-01-30. Any zoning regulation that pertains to

~~concentrated~~ animal feeding operations and which was promulgated by a county before August 1, 2007, may not be enforced until the regulation is filed with the state department of health for inclusion in the central repository.

2. For purposes of this section:

- a. ~~"Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.~~
- b. ~~"Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.~~

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

1. Any zoning regulation that pertains to a ~~concentrated~~ animal feeding operation ~~and, as defined in section 11-33-02.1,~~ is not effective until filed with the department of environmental quality for inclusion in the central repository established under section 23.1-01-10.

2. For purposes of this section:

- a. ~~"Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.~~
- b. ~~"Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts."~~

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

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

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

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

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

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

- Page 17, line 9, after "additional" insert "odor"
- Page 17, line 13, replace "five" with "three"
- Page 19, line 14, replace "23-23-11" with "23-25-11"
- Page 20, line 11, overstrike "vary by more than fifty"
- Page 20, line 12, overstrike "percent from" and insert immediately thereafter "exceed"
- Page 20, line 13, after "23-25-11" insert "unless the township can demonstrate compelling, objective evidence specific to the township which requires a greater setback within the township, in which case the setbacks may exceed those established in subdivision a of subsection 7 of section 23-25-11 by no more than fifty percent. If a setback under this subsection is greater than the corresponding setback established in subdivision a of subsection 7 of section 23-25-11, a person whose animal feeding operation will be or has been affected by the setback may request the agriculture commissioner review the applicable township ordinance. After the review, the agriculture commissioner shall provide a summary of the review to the attorney general and request an opinion from the attorney general regarding whether the ordinance and setback is lawful"
- Page 20, line 21, after the underscored period insert "The petition must contain a description of the nature, scope, and location of the proposed animal feeding operation and a site map showing road access, the location of any structure, and the distance from each structure to the nearest section line."
- Page 20, line 23, after the underscored period insert "If the township allows animal feeding operations as a conditional use, the conditional use regulations must be limited to the board's authority under this section, and the approval process must comply with this section. The township shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application."
- Page 20, line 26, after "provided" insert "an application is submitted promptly to the state department of health, the department issues a final permit, and"
- Page 20, line 27, replace "five" with "three"
- Page 20, line 27, remove "of the"
- Page 20, line 28, replace "board's determination or failure to object" with "the department issues its final permit and any permit appeals are exhausted. A board of township supervisors may not:
- a. Regulate or impose zoning restrictions or requirements on animal feeding operations or other agricultural operations except as expressly permitted under this section; or
 - b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or requirements on animal feeding operations"
- Page 21, line 1, overstrike "Concentrated" and insert immediately thereafter "Animal"
- Page 21, line 1, overstrike "any livestock feeding, handling, or"
- Page 21, overstrike lines 2 through 4
- Page 21, line 5, overstrike "cattle" and insert immediately thereafter "a lot or facility, other than normal wintering operations for cattle and an aquatic animal production facility, where the following conditions are met:

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

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

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

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

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

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

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

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

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

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

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

Page 23, after line 27, insert:

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

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

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

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

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

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

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

April 22, 2019

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2345

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

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a report to the legislative management regarding permit applications for animal feeding operations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 8. REPORT TO THE LEGISLATIVE MANAGEMENT - PERMIT APPLICATION APPROVALS AND DENIALS. On or before October 1, 2020, the department of environmental quality shall provide a report to the legislative management on all animal feeding operation permit applications approved or denied by the department, including the relevant county and township zoning and setback determinations, and related issues during the first full year of the 2019-21 biennium. Through October 1, 2020, all local government entities that review animal feeding operation permit applications shall report to the department of environmental quality each permit approval and denial within thirty days of the decision to approve or deny the application."

Renumber accordingly

April 22, 2019

SK 707
417

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2345

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

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

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

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

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

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

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

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

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

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

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

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

Page 4, line 17, remove "of the"

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

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

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

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

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

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

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

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

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

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

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

Page 7, after line 23, insert:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Page 20, line 27, remove "of the"

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

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

507

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

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

Page 21, overstrike lines 2 through 4

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

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

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

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

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

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

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

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

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

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

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

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

6087

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

Page 23, after line 27, insert:

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

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

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

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

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

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

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

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

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

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

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

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

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

Renumber accordingly

**2019 SENATE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

SENATE BILL 2345 as engrossed

Senate Agriculture Committee

- Action Taken**
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
 - Unable to agree**, recommends that the committee be discharged and a new committee be appointed

adopt Amendment # 19.1146.02012

Motion Made by: D. Johnson Seconded by: Larsen

Senators				Representatives					
		Yes	No			Yes	No		
<i>Luick, chair</i>		✓		<i>D. Johnson, chair</i>		✓			
<i>O. Larsen</i>		✓		<i>Dobervich</i>		✓			
<i>Hogan</i>		✓		<i>Trotter</i>		✓			
Total Senate Vote				3	1	Total Rep. Vote		3	1

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier _____ House Carrier _____

LC Number 19.1146 . .02012 of amendment

LC Number _____ of engrossment

Emergency clause added or deleted
 Statement of purpose of amendment

2019 SENATE CONFERENCE COMMITTEE
 ROLL CALL VOTES

SENATE BILL 2345 as engrossed

Senate Agriculture Committee

- Action Taken
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged and a new committee be appointed

adopt amendment # R.1146.02013 with the changes at the top to add section 8 to the current amendment draft.

Motion Made by: Hogan Seconded by: Doberovich

Senators				Representatives				
	Yes	No		Yes	No		Yes	No
<u>Wilk, chair</u>	✓			<u>D. Johnson, chair</u>			✓	
<u>O. Larsen</u>		✓		<u>Doberovich</u>			✓	
<u>Hogan</u>	✓			<u>Trotter</u>			✓	
Total Senate Vote	2	1		Total Rep. Vote			3	1

Vote Count Yes: 5 No: 1 Absent: 0

Senate Carrier _____ House Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Date: 4/22/19
 Roll Call Vote #: 3

**2019 SENATE CONFERENCE COMMITTEE
 ROLL CALL VOTES**
 2345
 SENATE BILL as engrossed

Senate Agriculture Committee

- Action Taken**
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: O. Larsen Seconded by: D. Johnson

Senators	4/16	4/18	4/19	4/22	Yes	No	Representatives	4/16	4/18	4/19	4/22	Yes	No
Lwick, chair	✓	✓	✓	✓	X		D. Johnson, chair	✓	✓	✓	✓	X	
O. Larsen	✓	✓	✓	✓	X		Deberovich	✓	✓	✓	✓		X
Hogan	✓	✓	✓	✓		X	Trotter	✓	✓	✓	✓	X	
Total Senate Vote					2	1	Total Rep. Vote					2	1

Vote Count Yes: 4 No: 2 Absent: 0

Senate Carrier Lwick House Carrier D. Johnson

LC Number 19.1146 . 02014 of amendment

LC Number .04000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2345, as engrossed: Your conference committee (Sens. Luick, O. Larsen, Hogan and Reps. D. Johnson, Dobervich, Trottier) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 1344-1349, adopt amendments as follows, and place SB 2345 on the Seventh order:

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

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

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

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

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

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

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

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

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

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

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

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

Page 4, line 17, remove "of the"

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

Insert LC: 19.1146.02014
Senate Carrier: Luick
House Carrier: D. Johnson

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

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

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

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

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

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

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

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

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

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

Page 7, after line 23, insert:

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

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

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

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

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

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

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

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

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

Insert LC: 19.1146.02014
Senate Carrier: Luick
House Carrier: D. Johnson

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

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

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

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

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

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

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

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

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

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

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

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

Page 20, line 27, remove "of the"

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

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

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

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

Page 21, overstrike lines 2 through 4

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

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

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

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

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

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

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

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

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

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

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

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

Insert LC: 19.1146.02014
Senate Carrier: Luick
House Carrier: D. Johnson

Page 23, after line 27, insert:

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

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

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

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

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

SECTION 7. REPORT TO THE LEGISLATIVE MANAGEMENT - PERMIT APPLICATION APPROVALS AND DENIALS. On or before October 1, 2020, the

Insert LC: 19.1146.02014
Senate Carrier: Luick
House Carrier: D. Johnson

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

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

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

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

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

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

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

Renumber accordingly

Engrossed SB 2345 was placed on the Seventh order of business on the calendar.

2019 TESTIMONY

SB 2345

SB 2345
2-1-19
#1 Ag

Testimony on SB 2345
Senate Agriculture Committee
Senator Terry Wanzek

Good morning Chairman Luick and Senate Agriculture Committee members. My name is Terry Wanzek, district 29 State Senator. I am here to introduce SB 2345.

Many in Ag are interested in expanding our animal Agriculture industry in ND. We are ranked 34th in animal agriculture receipts in the US. with \$1.2 billion in gross sales value . Compare that to other states. Iowa ranked number 2 in the US at \$13.5 billion of animal ag receipts. Minnesota, #7 in the US with \$7.4 billion of animal ag value. SD is ranked #17 with \$4.1 billion, nearly 3.5 times our animal Ag sales.

There is tremendous potential to expand animal agriculture in ND, given our competitive advantage in land and feed costs and wide open space for a lot of room to grow. Yet we seem to be having difficulty getting animal feeding operations to develop. Many in agriculture are becoming frustrated with the slow pace of development. So in discussions with the Department of Health or soon to be the Department of Environmental Quality we find out projects have gotten permitted from the state only to be held up by local jurisdictions by delaying their response or by increasing the zoning ordinances beyond the parameters set by the state.

SB 2345 is seeking to accomplish 2 things. First, it is attempting to find some fairness in zoning animal feeding operations with counties and townships. This bill does not limit a county or township from adopting their own zoning requirements but when a person is seeking to build a feeding operation they will go be subject to ordinances in place at the date they petition the county or township. In other words they are locked in and the goal post cannot be moved after the fact. The county or township cannot impose additional zoning after the establishing the date of petition by a developer.

The second goal of this bill is to provide more certainty for investors and developers of an animal feeding operation. When a person seeking to construct an animal feeding operation petitions the county or township boards, a time clock starts and the boards have 60 days to object. So if a board determines the animal feeding operation would comply or fails to object the project would be approved to move forward. It is meant to provide the certainty that investors and developers need to build.

Mr. chairman and Senate Ag Committee members, no one in support of this bill is trying to push irresponsible animal agriculture projects. We want these to be done right. We want them to be developed to meet all environmental and zoning and agronomic requirements. But we do want fairness after all these measures are met and have been complied to. We want to send a

SB 2345

2-1-19

#1 p.2

SB 2345

2-1-19

#1 p.2

message that we support animal feeding operations when they are developed responsibly. After all if states like MN, Iowa, SD can have barns of poultry, swine and dairy up and down the interstates in plain view, why can't a traditionally ag based state like ND simply have a fair and reasonable time frame for permitting? Thank you.

SB2345
2-1-19
#1 Pg. 3

2017 STATE AGRICULTURE OVERVIEW

North Dakota

† Survey Data from Quick Stats as of: Feb/01/2019

Farms Operations †

Farm Operations - Area Operated, Measured in Acres / Operation	1,308
Farm Operations - Number of Operations	29,900
Farm Operations - Acres Operated	39,100,000



Livestock Inventory †

Cattle, Cows, Beef - Inventory (First of Jan. 2018)	984,500
Cattle, Cows, Milk - Inventory (First of Jan. 2018)	15,500
Cattle, Incl Calves - Inventory (First of Jan. 2018)	1,860,000
Cattle, On Feed - Inventory (First of Jan. 2018)	58,000
Sheep, Incl Lambs - Inventory (First of Jan. 2018)	70,000
Hogs - Inventory (First of Dec. 2017)	147,000

Milk Production †

Milk - Production, Measured in Lb / Head	21,563
Milk - Production, Measured in \$	60,720,000
Milk - Production, Measured in Lb	345,000,000

Crops - Planted, Harvested, Yield, Production, Price (MYA), Value of Production † Sorted by Value of Production in Dollars

Commodity	Planted All Purpose Acres	Harvested Acres	Yield	Production	Price per Unit	Value of Production in Dollars
SOYBEANS						
SOYBEANS	7,100,000	7,050,000	34.5 BU / ACRE	243,225,000 BU	8.88 \$ / BU	2,133,330,000
WHEAT						
WHEAT	6,680,000	6,260,000	37.9 BU / ACRE	237,133,000 BU	5.74 \$ / BU	1,384,140,000
WHEAT, SPRING, (EXCL DURUM)	5,350,000	5,050,000	41 BU / ACRE	207,050,000 BU	5.72 \$ / BU	1,195,253,000
WHEAT, SPRING, DURUM	1,260,000	1,175,000	24.5 BU / ACRE	28,788,000 BU	6 \$ / BU	183,642,000
WHEAT, WINTER	70,000	35,000	37 BU / ACRE	1,295,000 BU	4.14 \$ / BU	5,245,000
CORN						
CORN, GRAIN		3,230,000	139 BU / ACRE	448,970,000 BU	3.04 \$ / BU	1,302,013,000
CORN, SILAGE		160,000	10 TONS / ACRE	1,600,000 TONS		
CORN	3,420,000					
CANOLA						
CANOLA	1,590,000	1,560,000	1,630 LB / ACRE	2,542,800,000 LB	17.6 \$ / CWT	444,990,000
HAY & HAYLAGE						
HAY & HAYLAGE						326,045,000
HAY & HAYLAGE, ALFALFA	130,000					
HAY						
HAY		2,650,000	1.35 TONS / ACRE	3,580,000 TONS	99.5 \$ / TON	326,045,000
HAY, ALFALFA		1,350,000	1.4 TONS / ACRE	1,890,000 TONS	105 \$ / TON	198,450,000
HAY, (EXCL ALFALFA)		1,300,000	1.3 TONS / ACRE	1,690,000 TONS	77 \$ / TON	127,595,000
BEANS						
BEANS, DRY EDIBLE	705,000	685,000	1,810 LB / ACRE	12,392,000 CWT	24.1 \$ / CWT	301,126,000
POTATOES						
POTATOES	75,000	74,000	330 CWT / ACRE	24,420,000 CWT	9.13 \$ / CWT	222,955,000
POTATOES, FRESH MARKET					9.86 \$ / CWT	
POTATOES, PROCESSING					8.64 \$ / CWT	
SUNFLOWER						
SUNFLOWER	438,000	423,000	1,636 LB / ACRE	692,010,000 LB	17.7 \$ / CWT	127,030,000
BARLEY						
BARLEY	520,000	395,000	63 BU / ACRE	24,885,000 BU	4.31 \$ / BU	105,761,000
PEAS						
PEAS, DRY EDIBLE	425,000	410,000	1,800 LB / ACRE	7,380,000 CWT	12 \$ / CWT	93,726,000
LENTILS						
LENTILS	270,000	250,000	870 LB / ACRE	2,175,000 CWT	23.5 \$ / CWT	57,638,000
FLAXSEED						
FLAXSEED	245,000	229,000	15 BU / ACRE	3,435,000 BU	9.53 \$ / BU	31,774,000
OATS						
OATS	295,000	80,000	58 BU / ACRE	4,640,000 BU	2.55 \$ / BU	13,224,000
SAFFLOWER						
SAFFLOWER	7,100	5,200	930 LB / ACRE	4,836,000 LB	16 \$ / CWT	769,000
SUGARBEETS						
SUGARBEETS	214,000	212,000	30.4 TONS / ACRE	6,445,000 TONS		

(NA) Not Available
(D) Withheld to avoid disclosing data for individual operations
(S) Insufficient number of reports to establish an estimate
(X) Not Applicable
(Z) Less than half the rounding unit

SB 2345
2-1-19
#1 Pg 4

Census State Profile: North_Dakota
Ranked Items Within The U.S., 2012

Item	Quantity	U.S. Rank	Universe ¹
MARKET VALUE OF AGRICULTURAL PRODUCTS SOLD (\$1,000)			
Total value of agricultural products sold	10,950,680	11	50
Value of crops, including nursery and greenhouse	9,664,285	6	50
Value of livestock, poultry, and their products	1,286,395	34	50
VALUE OF SALES BY COMMODITY GROUP (\$1,000)			
Grains, oilseeds, dry beans, and dry peas	8,813,348	5	50
Tobacco	-	-	19
Cotton and cottonseed	-	-	17
Vegetables, melons, potatoes and sweet potatoes	251,033	15	50
Fruit, tree nuts, and berries	247	49	50
Nursery, greenhouse, floriculture and sod	7,271	50	50
Cut Christmas trees and short rotation woody crops	19	45	49
Other crops and hay	592,367	10	50
Poultry and eggs	(D)	40	50
Cattle and calves	1,063,287	15	50
Milk from cows	67,079	35	50
Hogs and pigs	50,366	25	50
Sheep, goats, wool, mohair, and milk	(D)	(D)	50
Horses, ponies, mules, burros, and donkeys	12,462	35	50
Aquaculture	738	49	50
Other animals and other animal products	61,862	5	50
TOP CROP ITEMS (acres)			
Wheat for grain, all	7,767,484	2	49
Spring wheat for grain	5,708,405	1	29
Soybeans for beans	4,729,137	7	45
Corn for grain	3,465,997	9	49
Forage-land used for all hay and haylage, grass silage, and greenchop	2,172,738	9	50
TOP LIVESTOCK INVENTORY ITEMS (number)			
Cattle and calves	1,809,613	16	50
Turkeys	419,319	19	50
Colonies of bees	370,480	2	50
Hogs and pigs	133,653	27	50
Layers	92,754	45	50

Other State Highlights, 2012

Economic Characteristics	Quantity	Operator Characteristics	Quantity
Farm by value of sales		Principal operators by primary occupation	
Less than \$1,000	9,669	Farming	17,509
\$1,000 to \$2,499	778	Other	13,452
\$2,500 to \$4,999	976	Principal operators by sex	
\$5,000 to \$9,999	1,275	Male	27,728
\$10,000 to \$19,999	1,306	Female	3,233
\$20,000 to \$24,999	510	Average age of principal operator	
\$25,000 to \$39,999	1,170	57.0	
\$40,000 to \$49,999	647	All operators by race²	
\$50,000 to \$99,999	2,074	American Indian or Alaska Native	563
\$100,000 to \$249,999	3,304	Asian	29
\$250,000 to \$499,999	3,156	Black or African American	9
\$500,000 or more	6,096	Native Hawaiian or Other Pacific Islander	9
Total farm production expenses (\$1,000)	7,296,140	White	43,670
Average per farm (\$)	235,656	More than one race	97
Net cash farm income of the operations (\$1,000)	4,555,217	All operators of Spanish, Hispanic or Latino Origin ²	
Average per farm (\$)	147,128	184	

explanations, definitions, and methodology.
¹ Universe is number of states in U.S. with item.
² Data were collected for a maximum of three operators per farm.
 (D) Withheld to avoid disclosing data for individual operations.
 - Represents zero.

Note: See "Census of Agriculture, Volume 1, Geographic Area Series" for complete footnotes.

SB2345
2-1-19
#1 Pg 5

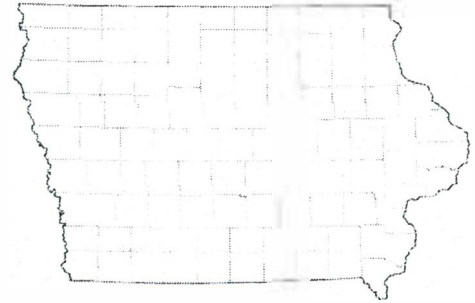
2017 STATE AGRICULTURE OVERVIEW

Iowa

† Survey Data from *Quick Stats* as of: Feb/01/2019

Farms Operations †

Farm Operations - Area Operated, Measured in Acres / Operation 351
 Farm Operations - Number of Operations 86,900
 Farm Operations - Acres Operated 30,500,000



Livestock Inventory †

Cattle, Cows, Beef - Inventory (First of Jan. 2018) 970,000
 Cattle, Cows, Milk - Inventory (First of Jan. 2018) 220,000
 Cattle, Incl Calves - Inventory (First of Jan. 2018) 4,000,000
 Cattle, On Feed - Inventory (First of Jan. 2018) 1,260,000
 Goats, Meat & Other - Inventory (First of Jan. 2018) 35,000
 Goats, Milk - Inventory (First of Jan. 2018) 31,000
 Sheep, Incl Lambs - Inventory (First of Jan. 2018) 165,000
 Hogs - Inventory (First of Dec. 2017) 22,800,000
 Turkeys - Production, Measured in Head 12,000,000

Milk Production †

Milk - Production, Measured in Lb / Head 23,725
 Milk - Production, Measured in \$ 936,132,000
 Milk - Production, Measured in Lb 5,172,000,000

Crops - Planted, Harvested, Yield, Production, Price (MYA), Value of Production † Sorted by Value of Production in Dollars

Commodity	Planted All Purpose Acres	Harvested Acres	Yield	Production	Price per Unit	Value of Production in Dollars
CORN						
CORN, GRAIN		12 900,000	202 BU / ACRE	2 605 800 000 BU	3.31 \$ / BU	8 468 850 000
CORN, SILAGE		330,000	21 TONS / ACRE	6,930,000 TONS		
CORN	13,300,000					
SOYBEANS						
SOYBEANS	10,000,000	9,940,000	57 BU / ACRE	566,580,000 BU	9.25 \$ / BU	5,194,893,000
HAY & HAYLAGE						
HAY & HAYLAGE		1,140,000	3.2 TONS / ACRE, DRY BASIS	3,652,000 TONS, DRY BASIS		393,050,000
HAY & HAYLAGE, (EXCL ALFALFA)		370,000	2.33 TONS / ACRE, DRY BASIS	862,000 TONS, DRY BASIS		
HAY & HAYLAGE, ALFALFA	80,000	770,000	3.62 TONS / ACRE, DRY BASIS	2,790,000 TONS, DRY BASIS		
HAY						
HAY		1,080,000	3.1 TONS / ACRE	3,348,000 TONS	111 \$ / TON	359,316,000
HAY, ALFALFA		720,000	3.5 TONS / ACRE	2,520,000 TONS	117 \$ / TON	287,280,000
HAY (EXCL ALFALFA)		360,000	2.3 TONS / ACRE	828,000 TONS	97 \$ / TON	72,036,000
OATS						
OATS	115,000	42,000	77 BU / ACRE	3,234,000 BU	2.54 \$ / BU	8,570,000
WHEAT						
WHEAT, WINTER	16,000	8,000	68 BU / ACRE	544,000 BU	3.9 \$ / BU	2,067,000
WHEAT	16,000	8,000	68 BU / ACRE	544,000 BU	3.9 \$ / BU	2,067,000
HAYLAGE						
HAYLAGE		85,000	7.24 TONS / ACRE	615,000 TONS		
HAYLAGE, ALFALFA		70,000	7.8 TONS / ACRE	546,000 TONS		
HAYLAGE, (EXCL ALFALFA)		15,000	4.6 TONS / ACRE	69,000 TONS		

(NA) Not Available
 (D) Withheld to avoid disclosing data for individual operations
 (S) Insufficient number of reports to establish an estimate
 (X) Not Applicable
 (Z) Less than half the rounding unit

SB2345

2-1-19

#1 Pg 6

Census State Profile: Iowa
Ranked Items Within The U.S., 2012

Item	Quantity	U.S. Rank	Universe
MARKET VALUE OF AGRICULTURAL PRODUCTS SOLD (\$1,000)			
Total value of agricultural products sold	30,821,532	2	50
Value of crops, including nursery and greenhouse	17,366,814	2	50
Value of livestock, poultry, and their products	13,454,718	2	50
VALUE OF SALES BY COMMODITY GROUP (\$1,000)			
Grains, oilseeds, dry beans, and dry peas	17,146,679	1	50
Tobacco	-	-	19
Cotton and cottonseed	-	-	17
Vegetables, melons, potatoes and sweet potatoes	19,699	42	50
Fruit, tree nuts, and berries	3,668	42	50
Nursery, greenhouse, floriculture and sod	99,218	28	50
Cut Christmas trees and short rotation woody crops	774	32	49
Other crops and hay	96,776	34	50
Poultry and eggs	1,291,808	11	50
Cattle and calves	4,504,373	4	50
Milk from cows	799,467	12	50
Hogs and pigs	6,767,424	1	50
Sheep, goats, wool, mohair, and milk	43,020	6	50
Horses, ponies, mules, burros, and donkeys	14,750	30	50
Aquaculture	7,690	27	50
Other animals and other animal products	26,186	14	50
TOP CROP ITEMS (acres)			
Corn for grain	13,709,408	1	49
Soybeans for beans	9,301,594	1	45
Forage-land used for all hay and haylage, grass silage, and greenchop	996,316	24	50
Corn for silage	392,304	7	49
Oats for grain	57,259	7	48
TOP LIVESTOCK INVENTORY ITEMS (number)			
Layers	52,218,870	1	50
Hogs and pigs	20,455,666	1	50
Pullets for laying flock replacement	12,565,630	1	50
Turkeys	4,383,172	9	50
Cattle and calves	3,893,683	6	50

Other State Highlights, 2012

Economic Characteristics	Quantity	Operator Characteristics	Quantity
Farm by value of sales		Principal operators by primary occupation	
Less than \$1,000	21,843	Farming	47,949
\$1,000 to \$2,499	3,206	Other	40,688
\$2,500 to \$4,999	3,613	Principal operators by sex	
\$5,000 to \$9,999	4,328	Male	81,529
\$10,000 to \$19,999	4,427	Female	7,108
\$20,000 to \$24,999	1,614	Average age of principal operator	
\$25,000 to \$39,999	3,686	57.1	
\$40,000 to \$49,999	2,089	All operators by race ²	
\$50,000 to \$99,999	7,470	American Indian or Alaska Native	97
\$100,000 to \$249,999	10,036	Asian	129
\$250,000 to \$499,999	9,769	Black or African American	45
\$500,000 or more	16,556	Native Hawaiian or Other Pacific Islander	9
Total farm production expenses (\$1,000)	23,711,880	White	129,209
Average per farm (\$)	267,517	More than one race	155
Net cash farm income of the operations (\$1,000)	9,779,193	All operators of Spanish, Hispanic or Latino Origin ²	
Average per farm (\$)	110,329	584	

explanations, definitions, and methodology.
¹ Universe is number of states in U.S. with item.
² Data were collected for a maximum of three operators per farm.
 (D) Withheld to avoid disclosing data for individual operations.
 - Represents zero.

Note: See "Census of Agriculture, Volume 1, Geographic Area Series" for complete footnotes.

SB2345
2-1-19
#1 B 7

2017 STATE AGRICULTURE OVERVIEW

Minnesota

† Survey Data from [Quick Stats](#) as of: Feb/01/2019

Farms Operations †

Farm Operations - Area Operated, Measured in Acres / Operation	354
Farm Operations - Number of Operations	73,200
Farm Operations - Acres Operated	25,900,000

Livestock Inventory †

Cattle, Cows, Beef - Inventory (First of Jan. 2018)	365,000
Cattle, Cows, Milk - Inventory (First of Jan. 2018)	455,000
Cattle, Incl Calves - Inventory (First of Jan. 2018)	2,350,000
Cattle, On Feed - Inventory (First of Jan. 2018)	395,000
Goats, Meat & Other - Inventory (First of Jan. 2018)	24,000
Goats, Milk - Inventory (First of Jan. 2018)	14,000
Sheep, Incl Lambs - Inventory (First of Jan. 2018)	130,000
Hogs - Inventory (First of Dec. 2017)	8,500,000
Chickens, Broilers - Production, Measured in Head	59,700,000
Turkeys - Production, Measured in Head	42,000,000



Milk Production †

Milk - Production, Measured in Lb / Head	21,537
Milk - Production, Measured in \$	1,755,792,000
Milk - Production, Measured in Lb	9,864,000,000

Crops - Planted, Harvested, Yield, Production, Price (MYA), Value of Production †

Sorted by Value of Production in Dollars

Commodity	Planted All Purpose Acres	Harvested Acres	Yield	Production	Price per Unit	Value of Production in Dollars
CORN						
CORN, GRAIN		7,630,000	194 BU / ACRE	1,480,220,000 BU	3.18 \$ / BU	4,514,671,000
CORN, SILAGE		360,000	21.5 TONS / ACRE	7,740,000 TONS		
CORN	8,050,000					
SOYBEANS						
SOYBEANS	8,150,000	8,090,000	47.5 BU / ACRE	384,275,000 BU	9.17 \$ / BU	3,479,105,000
HAY & HAYLAGE						
HAY & HAYLAGE		1,560,000	2.99 TONS / ACRE, DRY BASIS	4,668,000 TONS, DRY BASIS		444,048,000
HAY & HAYLAGE, (EXCL ALFALFA)		520,000	1.93 TONS / ACRE, DRY BASIS	1,003,000 TONS, DRY BASIS		
HAY & HAYLAGE, ALFALFA	160,000	1,040,000	3.52 TONS / ACRE, DRY BASIS	3,665,000 TONS, DRY BASIS		
WHEAT						
WHEAT	1,170,000	1,135,000	66.9 BU / ACRE	75,935,000 BU	5.76 \$ / BU	436,548,000
WHEAT, SPRING, (EXCL DURUM)	1,160,000	1,130,000	67 BU / ACRE	75,710,000 BU	5.77 \$ / BU	435,333,000
WHEAT, WINTER	10,000	5,000	45 BU / ACRE	225,000 BU	5.4 \$ / BU	1,215,000
HAY						
HAY		1,380,000	2.81 TONS / ACRE	3,884,000 TONS	103 \$ / TON	365,160,000
HAY, ALFALFA		870,000	3.35 TONS / ACRE	2,915,000 TONS	113 \$ / TON	297,330,000
HAY (EXCL ALFALFA)		510,000	1.9 TONS / ACRE	969,000 TONS	78 \$ / TON	67,830,000
POTATOES						
POTATOES	46,000	45,500	405 CWT / ACRE	18,428,000 CWT	9.38 \$ / CWT	172,855,000
BEANS						
BEANS, DRY EDIBLE	170,000	163,000	2,190 LB / ACRE	3,567,000 CWT	27.4 \$ / CWT	101,660,000
BEANS, SNAP	5,200	5,100	105 CWT / ACRE	535,500 CWT	6.46 \$ / CWT	3,423,000
BEANS, SNAP, PROCESSING					110 \$ / TON	2,875,000
BEANS, SNAP, FRESH MARKET					73.1 \$ / CWT	548,000
BEANS, SNAP, UTILIZED				530,100 CWT		
SWEET CORN						
SWEET CORN	120,700	112,600	165 CWT / ACRE	18,579,000 CWT	4.3 \$ / CWT	79,361,000
SWEET CORN, PROCESSING					64 \$ / TON	56,956,000
SWEET CORN, FRESH MARKET					33.5 \$ / CWT	22,405,000
SWEET CORN, UTILIZED				18,467,500 CWT		
PEAS						
PEAS, GREEN	49,300	46,000	42 CWT / ACRE	1,932,000 CWT	12.8 \$ / CWT	24,651,000
PEAS, GREEN, PROCESSING					254 \$ / TON	24,512,000
PEAS, GREEN, FRESH MARKET					73.1 \$ / CWT	139,000
PEAS, GREEN, UTILIZED				1,932,000 CWT		
BARLEY						
BARLEY	80,000	68,000	76 BU / ACRE	5,168,000 BU	4.33 \$ / BU	22,481,000
APPLES						

SB2345

2-1-19

#1 Pg 8

Census State Profile: Minnesota
Ranked Items Within The U.S., 2012

Item	Quantity	U.S. Rank	Universe
MARKET VALUE OF AGRICULTURAL PRODUCTS SOLD (\$1,000)			
Total value of agricultural products sold	21,280,184	5	50
Value of crops, including nursery and greenhouse	13,879,211	4	50
Value of livestock, poultry, and their products	7,400,974	7	50
VALUE OF SALES BY COMMODITY GROUP (\$1,000)			
Grains, oilseeds, dry beans, and dry peas	12,304,415	3	50
Tobacco	-	-	19
Cotton and cottonseed	-	-	17
Vegetables, melons, potatoes and sweet potatoes	405,597	12	50
Fruit, tree nuts, and berries	17,974	33	50
Nursery, greenhouse, floriculture and sod	213,335	20	50
Cut Christmas trees and short rotation woody crops	3,043	15	49
Other crops and hay	934,846	5	50
Poultry and eggs	1,230,625	12	50
Cattle and calves	1,639,634	12	50
Milk from cows	1,645,911	7	50
Hogs and pigs	2,783,049	3	50
Sheep, goats, wool, mohair, and milk	25,603	12	50
Horses, ponies, mules, burros, and donkeys	15,204	29	50
Aquaculture	12,678	23	50
Other animals and other animal products	48,271	9	50
TOP CROP ITEMS (acres)			
Corn for grain	8,316,822	4	49
Soybeans for beans	7,005,764	3	45
Forage-land used for all hay and haylage, grass silage, and greenchop	1,499,586	15	50
Wheat for grain, all	1,354,928	9	49
Spring wheat for grain	1,319,274	3	29
TOP LIVESTOCK INVENTORY ITEMS (number)			
Turkeys	19,449,992	1	50
Layers	9,693,648	11	50
Broilers and other meat-type chickens	7,765,172	22	50
Hogs and pigs	7,606,785	3	50
Pullets for laying flock replacement	2,823,994	14	50

Other State Highlights, 2012

Economic Characteristics	Quantity	Operator Characteristics	Quantity
Farm by value of sales		Principal operators by primary occupation	
Less than \$1,000	17,735	Farming	39,423
\$1,000 to \$2,499	3,453	Other	35,119
\$2,500 to \$4,999	4,047	Principal operators by sex	
\$5,000 to \$9,999	4,552	Male	68,172
\$10,000 to \$19,999	4,437	Female	6,370
\$20,000 to \$24,999	1,585	Average age of principal operator	
\$25,000 to \$39,999	3,650	56.6	
\$40,000 to \$49,999	1,980	All operators by race ²	
\$50,000 to \$99,999	8,112	American Indian or Alaska Native	248
\$100,000 to \$249,999	8,185	Asian	471
\$250,000 to \$499,999	6,447	Black or African American	51
\$500,000 or more	10,359	Native Hawaiian or Other Pacific Islander	20
Total farm production expenses (\$1,000)	15,520,275	White	108,307
Average per farm (\$)	208,208	More than one race	252
Net cash farm income of the operations (\$1,000)	7,032,647	All operators of Spanish, Hispanic or Latino Origin ²	
Average per farm (\$)	94,345	562	

explanations, definitions, and methodology.

¹ Universe is number of states in U.S. with item.

² Data were collected for a maximum of three operators per farm.

(D) Withheld to avoid disclosing data for individual operations.

- Represents zero.

Note: See "Census of Agriculture, Volume 1, Geographic Area Series" for complete footnotes.

SB2345
2-1-19
#1 Pg. 9

2017 STATE AGRICULTURE OVERVIEW

South Dakota

† Survey Data from Quick Stats as of: Feb/01/2019

Farms Operations†

Farm Operations - Area Operated, Measured in Acres / Operation	1,397
Farm Operations - Number of Operations	31,000
Farm Operations - Acres Operated	43,300,000

Livestock Inventory†

Cattle, Cows, Beef - Inventory (First of Jan. 2018)	1,801,000
Cattle, Cows, Milk - Inventory (First of Jan. 2018)	119,000
Cattle, Incl Calves - Inventory (First of Jan. 2018)	4,000,000
Cattle, On Feed - Inventory (First of Jan. 2018)	430,000
Sheep, Incl Lambs - Inventory (First of Jan. 2018)	260,000
Hogs - Inventory (First of Dec. 2017)	1,560,000
Turkeys - Production, Measured in Head	4,100,000



Milk Production†

Milk - Production, Measured in Lb / Head	22,376
Milk - Production, Measured in \$	492,184,000
Milk - Production, Measured in Lb	2,618,000,000

Crops - Planted, Harvested, Yield, Production, Price (MYA), Value of Production †

Sorted by Value of Production in Dollars

Commodity	Planted All Purpose Acres	Harvested Acres	Yield	Production	Price per Unit	Value of Production in Dollars
CORN						
CORN, GRAIN		5 080,000	145 BU / ACRE	736,600,000 BU	3.09 \$ / BU	2,209,800,000
CORN, SILAGE		520,000	12.5 TONS / ACRE	6,500,000 TONS		
CORN	5,700,000					
SOYBEANS						
SOYBEANS	5,650,000	5,610,000	43 BU / ACRE	241,230,000 BU	8.94 \$ / BU	2,146,947,000
HAY & HAYLAGE						
HAY & HAYLAGE		3,120,000	1.58 TONS / ACRE, DRY BASIS	4,925,000 TONS, DRY BASIS		502,978,000
HAY & HAYLAGE, ALFALFA	125,000	1,500,000	1.79 TONS / ACRE, DRY BASIS	2,682,000 TONS, DRY BASIS		
HAY & HAYLAGE, (EXCL ALFALFA)		1,620,000	1.38 TONS / ACRE, DRY BASIS	2,243,000 TONS, DRY BASIS		
HAY						
HAY		3,100,000	1.54 TONS / ACRE	4,785,000 TONS	108 \$ / TON	489,015,000
HAY, ALFALFA		1,500,000	1.75 TONS / ACRE	2,625,000 TONS	115 \$ / TON	291,375,000
HAY, (EXCL ALFALFA)		1,600,000	1.35 TONS / ACRE	2,160,000 TONS	93 \$ / TON	197,640,000
WHEAT						
WHEAT	1,887,000	1,196,000	34.8 BU / ACRE	41,678,000 BU	5.52 \$ / BU	233,464,000
WHEAT, SPRING, (EXCL DURUM)	970,000	670,000	31 BU / ACRE	20,770,000 BU	6.15 \$ / BU	129,813,000
WHEAT WINTER	910,000	520,000	40 BU / ACRE	20,800,000 BU	5.05 \$ / BU	102,960,000
WHEAT SPRING DURUM	7,000	6,000	18 BU / ACRE	108,000 BU	6.03 \$ / BU	691,000
SUNFLOWER						
SUNFLOWER	622,000	588,000	1,758 LB / ACRE	1,033,600,000 LB	16.6 \$ / CWT	179,485,000
SORGHUM						
SORGHUM, GRAIN		170,000	68 BU / ACRE	11,560,000 BU	5.64 \$ / CWT	34,310,000
SORGHUM	270,000					
SORGHUM SILAGE		37,000	11 TONS / ACRE	407,000 TONS		
OATS						
OATS	290,000	60,000	70 BU / ACRE	4,200,000 BU	2.45 \$ / BU	11,130,000
PEAS						
PEAS, DRY EDIBLE	38,000	35,000	1,500 LB / ACRE	525,000 CWT	11.2 \$ / CWT	5,775,000
MILLET						
MILLET, PROSO	53,000	27,000	39 BU / ACRE	1,053,000 BU	3.87 \$ / BU	3,475,000
SAFFLOWER						
SAFFLOWER	21,900	18,500	790 LB / ACRE	14,615,000 LB	18.9 \$ / CWT	2,762,000
FLAXSEED						
FLAXSEED	6,000	5,000	13 BU / ACRE	65,000 BU	9.5 \$ / BU	575,000
HAYLAGE						
HAYLAGE, ALFALFA		35,000	3.3 TONS / ACRE	116,000 TONS		
HAYLAGE, (EXCL ALFALFA)		35,000	4.8 TONS / ACRE	168,000 TONS		
HAYLAGE		70,000	4.06 TONS / ACRE	284,000 TONS		

(NA) Not Available
(D) Withheld to avoid disclosing data for individual operations
(S) Insufficient number of reports to establish an estimate

SB2345
2-1-19
#1 Pg 10

Census State Profile: South_Dakota
Ranked Items Within The U.S., 2012

Item	Quantity	U.S. Rank	Universe
MARKET VALUE OF AGRICULTURAL PRODUCTS SOLD (\$1,000)			
Total value of agricultural products sold	10,170,227	12	50
Value of crops, including nursery and greenhouse	6,072,922	12	50
Value of livestock, poultry, and their products	4,097,304	17	50
VALUE OF SALES BY COMMODITY GROUP (\$1,000)			
Grains, oilseeds, dry beans, and dry peas	5,809,792	9	50
Tobacco	-	-	19
Cotton and cottonseed	-	-	17
Vegetables, melons, potatoes and sweet potatoes	2,186	50	50
Fruit, tree nuts, and berries	887	47	50
Nursery, greenhouse, floriculture and sod	14,670	47	50
Cut Christmas trees and short rotation woody crops	131	43	49
Other crops and hay	245,257	24	50
Poultry and eggs	182,076	28	50
Cattle and calves	2,968,996	8	50
Milk from cows	374,490	20	50
Hogs and pigs	446,756	13	50
Sheep, goats, wool, mohair, and milk	43,636	5	50
Horses, ponies, mules, burros, and donkeys	23,629	16	50
Aquaculture	2,498	45	50
Other animals and other animal products	55,223	7	50
TOP CROP ITEMS (acres)			
Corn for grain	5,289,110	6	49
Soybeans for beans	4,714,204	8	45
Forage-land used for all hay and haylage, grass silage, and greenchop	2,615,189	4	50
Wheat for grain, all	2,203,785	6	49
Winter wheat for grain	1,208,309	8	48
TOP LIVESTOCK INVENTORY ITEMS (number)			
Cattle and calves	3,893,251	7	50
Layers	2,450,780	29	50
Turkeys	2,449,784	13	50
Hogs and pigs	1,191,162	11	50
Pullets for laying flock replacement	(D)	30	50

Other State Highlights, 2012

Economic Characteristics	Quantity	Operator Characteristics	Quantity
Farm by value of sales		Principal operators by primary occupation	
Less than \$1,000	6,819	Farming	18,844
\$1,000 to \$2,499	1,126	Other	13,145
\$2,500 to \$4,999	1,495	Principal operators by sex	
\$5,000 to \$9,999	1,767	Male	29,656
\$10,000 to \$19,999	1,801	Female	2,333
\$20,000 to \$24,999	726	Average age of principal operator	
\$25,000 to \$39,999	1,459	55.9	
\$40,000 to \$49,999	822	All operators by race ²	
\$50,000 to \$99,999	2,946	American Indian or Alaska Native	1,243
\$100,000 to \$249,999	4,510	Asian	16
\$250,000 to \$499,999	3,708	Black or African American	11
\$500,000 or more	4,810	Native Hawaiian or Other Pacific Islander	5
Total farm production expenses (\$1,000)	8,104,502	White	46,425
Average per farm (\$)	253,353	More than one race	170
Net cash farm income of the operations (\$1,000)	3,289,165	All operators of Spanish, Hispanic or Latino Origin ²	
Average per farm (\$)	102,822	309	

explanations, definitions, and methodology.
¹ Universe is number of states in U.S. with item.
² Data were collected for a maximum of three operators per farm.
 (D) Withheld to avoid disclosing data for individual operations.
 - Represents zero.

Note: See "Census of Agriculture, Volume 1, Geographic Area Series" for complete footnotes.

SD 2345
2-1-19
#2 Jgl

**Testimony
Senate Bill 2345
Senate Agriculture Committee
February 1, 2019, 8:30 AM
North Dakota Department of Health - Environmental Health Section**

Good morning Chairman Luick and members of the Senate Agriculture Committee. My name is David Glatt, and I am section chief for the North Dakota Department of Health's Environmental Health Section, soon to be the North Dakota Department of Environmental Quality.

I am here to testify in support of SB 2345, which seeks to provide certainty and consistency in the permitting process for animal feeding operations (AFOs), while still maintaining local control over land use decisions.

The language addressing zoning authority for counties and townships over animal feeding operations was addressed during the 1999 legislative session. Following that session, a working group of various interests including agriculture, cities, counties, townships, and the Department of Health developed a consensus document—the Model Zoning Ordinance. This Model Ordinance has been adopted by at least 35 counties and many townships, and it still provides the framework for the changes we're discussing. Additional changes were made during the 2005 session to further define the roles of local and state government, and SB 2345 continues that effort.

The department is supporting SB 2345 with the aim that it will provide additional clarity in the permitting process. The permit application process for AFOs and concentrated animal feeding operations (CAFOs) can be time consuming and costly. For example, a producer must provide detailed engineered site plans, nutrient management plans and location information for all land to be used as part of the operation.

For the department's part, we must review and verify all information for compliance with state law and rules, take public comment and, if appropriate, issue a permit. This process can be costly not only for the producer, but also for the state. It is essential that zoning requirements applicable to the proposed facility be determined at the beginning of the process before large amounts of time and money are expended. Without a clear indication of the zoning requirements, producers and the state may be caught designing and reviewing facilities that do

not meet zoning standards. Or they may be stuck in limbo in cases where the local zoning authority is unable or unwilling to make that determination.

In addition to providing clarity in the permitting process, SB 2345 also will help local landowners understand the conditions under which a facility will be zoned. SB 2345 does not usurp local zoning authority, but rather it requires the identification of approved zoning requirements at an identified date.

As we look at the specific changes, I wanted to point out why there seems to be so much repetition in this bill. There are three areas of law being addressed, all with similar language—for counties (NDCC 11-33), townships (NDCC 58-03) and the state (NDCC 23-25). Due to the transition of the Environmental Health Section to the North Dakota Department of Environmental Quality (NDDEQ), all three sections are then repeated to reflect the formation of the NDDEQ. This transition is also the reason for the contingent effective date in Section 5.

Paragraph 9 which is found in both the county and township sections (Page 4, line 7; Page 7, line 12; Page 20, line 17; Page 23, Line 15) assures the applicant that the ordinance in effect at the time of application is valid and requires a decision from the local zoning authority within 60 days. It also allows the applicant five years to construct without a change in the siting requirements.

Subsection d, which is found in the department's odor authority (Page 12, line 4; Page 17, line 4), requires the zoning determination be part of the initial application, providing certainty that the applicant meets local zoning requirements before the department conducts its environmental review. It also restricts the department from requiring additional setbacks.

Subsection e, also found in the department's odor authority (Page 12, line 10; Page 17, line 10), is similar to paragraph 9 and provides certainty for the applicant by clarifying that the zoning in effect at the time of application is valid. It also allows the applicant five years to construct without a change in the siting requirements.

SB 2345 makes changes to some existing definitions and provides new definitions where needed to provide clarity and consistency. The definition of animal feeding operation was changed in the county and township sections (Page 1, line 11; Page 4, line 22, Page 17, line 27). The types of structures that the setback applies to have now been defined in the odor authority section to provide clarity (Page 10, line 7; Page 15, line 6). In addition, the definition of animal units is now located in one section, NDCC 23-25-11, for consistency, and the county and township sections reference back to that section (Page 2, line 16; Page 5, line 21; Page 18, line 26;

SB2345
2-1-19
#2 p. 3

Page 21, line 24). The definitions were also clarified to show that young animals that have not been weaned are not counted separately. Finally, the animal units for poultry have been changed to match the Model Zoning Ordinance for consistency (Page 11, line 15; Page 16, line13).

The department also proposes the attached amendments. These amendments are to provide consistency and certainty, and to correct errors and omissions.

The proposed amendments provide consistency by consolidating the language on the zoning prohibitions in NDCC 23-25 (Page 4, lines 13-18; Page 7, lines 18-23; Page 20, lines 23-28; Page 23, lines 21-27) and referencing the common definition of animal feeding operations for the central zoning repository.

The proposed amendments provide certainty by removing unclear references to “nature, scope and location” (Page 10, line 21; Page 12, line 4; Page 15, line 20; Page 17, line 4) and explicitly state the only time new zoning may apply (Page 12; Page 17).

The proposed amendments also correct one typo and one omission (Page 19, line 14; Page 21, lines 1-5).

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

PROPOSED AMENDMENTS TO SENATE BILL NO. 2345

Page 1, line 1, after "11-33-02.1" insert "11-33-22"

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

Page 4, line 13, remove "If the board of county commissioners determines the"

Page 4, remove lines 14 through 18

Page 7, line 18, remove "If the board of county"

Page 7, remove lines 19 through 23

Page 7, after line 23, insert:

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

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

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

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

1. Any zoning regulation that pertains to a ~~concentrated~~an animal feeding operation, as defined in section 11-33-02.1, ~~and~~ is not effective until filed with the department of environmental quality for inclusion in the central repository established under section 23.1-01-10.

2. For purposes of this section:

- a. ~~“Concentrated animal feeding operation” means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.~~
- b. ~~“Livestock” includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.~~

Page 10, line 21, overstrike “the nature, scope,”

Page 10, line 21, remove “or”

Page 10, line 21, overstrike “location”

Page 10, line 22, overstrike “of”

Page 12, line 4, remove “the nature, scope, or location of”

Page 12, replace lines 14 through 16 with “This exemption no longer applies if an animal feeding operation changes location or there is a change in animal units that would result in an increase in the setbacks provided for in this section. A requirement by the department to submit a revised application does not, in and of itself, impact the effectiveness of this exemption.”

Page 12, after line 22 insert:

“10. If a board of county commissioners or board of township supervisors has previously determined that an animal feeding operation complies with zoning regulations or failed to object under either subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1, neither the county nor the township may impose new or additional zoning regulations on the animal feeding operation, unless:

- a. Construction of a proposed animal feeding operation is not commenced within five years from the date of the board of county

commissioners' or board of township supervisors' determination or failure to object;

- b. The existing or proposed animal feeding operation intends to change location; or
- c. The existing or proposed animal feeding operation intends a change in its animal units if the change would result in an increase in the setback required under the zoning regulations that were the subject of the initial determination or failure to object."

Page 15, line 20, overstrike "the nature, scope,"

Page 15, line 20, remove "or"

Page 15, line 20, overstrike "location"

Page 15, line 21, overstrike "of"

Page 17, line 4, remove "the nature, scope, or location of"

Page 17, replace lines 14 through 16 with "This exemption no longer applies if an animal feeding operation changes location or there is a change in animal units that would result in an increase in the setbacks provided for in this section. A requirement by the department to submit a revised application does not, in and of itself, impact the effectiveness of this exemption. "

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

Page 20, line 23, remove "If the board of township supervisors determines the"

Page 20, remove lines 24 through 28

Page 21, overstrike lines 1 through 5 and insert immediately thereafter:

"a. "Animal feeding operation" means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

- (1) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and

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

Page 23, line 21, remove "If the board of township"

Page 23, remove lines 22 through 27

Page 23, after line 27, insert:

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

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

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

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

1. Any zoning regulation that pertains to a ~~concentrated~~an animal feeding operation, as defined in section 58-03-11.1, and which is promulgated by a township after July 31, 2007, is not effective until filed with the department of environmental quality for inclusion in the central repository established under section 23.1-01-10. Any zoning regulation that pertains to a concentrated

~~animal feeding operation and which was promulgated by a county or a township before August 1, 2007, may not be enforced until the regulation is filed with the department of environmental quality for inclusion in the central repository.~~

2. ~~For purposes of this section:~~

- a. ~~“Concentrated animal feeding operation” means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.~~
- b. ~~“Livestock” includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.~~

Renumber accordingly

COMMISSIONER
DOUG GOEHRING



SB 2345
2-HA #3 Pgl
ndda@nd.gov

www.nd.gov/ndda

**Testimony of Tom Bodine
Deputy Agriculture Commissioner
North Dakota Department of Agriculture
Senate Bill 2345
Senate Agriculture Committee
Roosevelt Park Room
February 1, 2019**

Chairman Luick and members of the Senate Agriculture Committee, I am Tom Bodine, Deputy Agriculture Commissioner, and I am representing Agriculture Commissioner Doug Goehring. I am here today in support of Senate Bill 2345.

Commissioner Goehring applauds the sponsors of this bill as they seek to provide more certainty to those wanting to expand in animal agriculture. This bill attempts to better define what items need to have a setback requirement, and more importantly, this bill also creates a certainty for those applying to the Health Department to permit an animal feeding operation that the zoning rules in place at the time of the permit submission will not be allowed to change once the process has started.

Our Department fully supports this bill but recognize that this may not go far enough to provide our agriculture producers an equal playing field with our neighboring states. Chairman Luick, I'd now like to go through a PowerPoint presentation to show a quick comparison of where North Dakota ranks against our surrounding states.

Chairman Luick and members of the committee, thank you for your time and I'd be happy to answer any questions.

North Dakota Department of Agriculture

Doug Goehring, Agriculture Commissioner

Mission

-Serve, advocate, protect and promote agriculture to benefit everyone-

Vision

-We support agriculture by embracing Diversity, Innovation, Research and Trade-



www.nd.gov/ndda

1-800-242-7535

SB2245
2-1-19
#3 Pg2

North Dakota Plants V.S. Animals

State	Total Crop Market Value Rank in US	Total Livestock Market Value Rank in US
Iowa	2 nd	2 nd
Minnesota	4 th	7 th
Nebraska	5 th	4 th
North Dakota	6 th	34 th
South Dakota	12 th	17 th

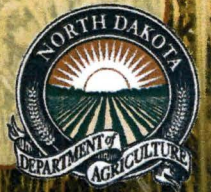
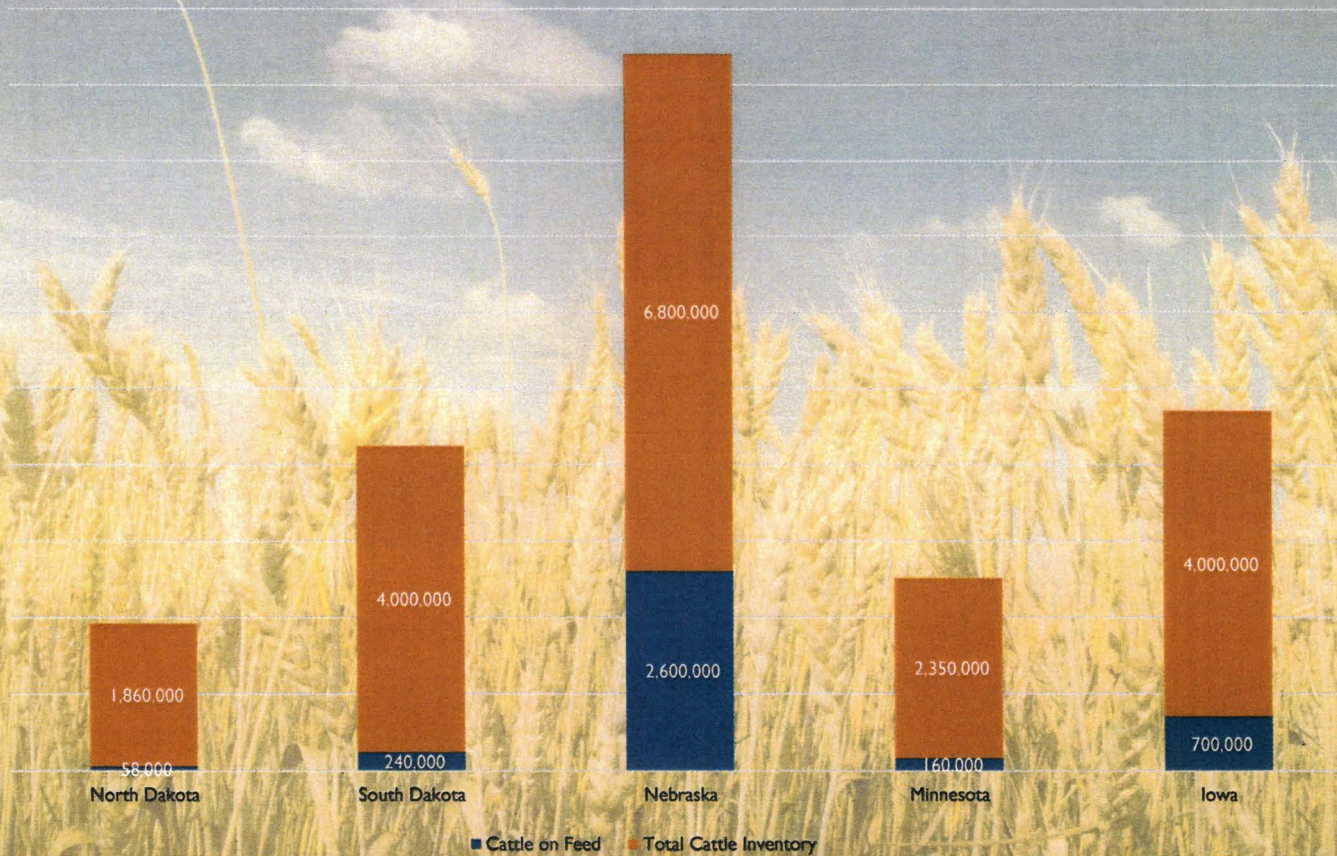
Estimated Costs of Construction and Site:

- 5,000 head feedlot - \$2.5-\$3.0 million
- 5,400 head farrowing unit - \$16-18 million
- 2,400 head hog finishing barn - \$800,000
- 1,600 head dairy - \$7-9.5 million



SB2345
2-1-19
#3 193

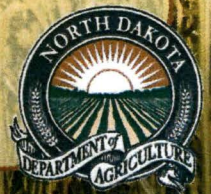
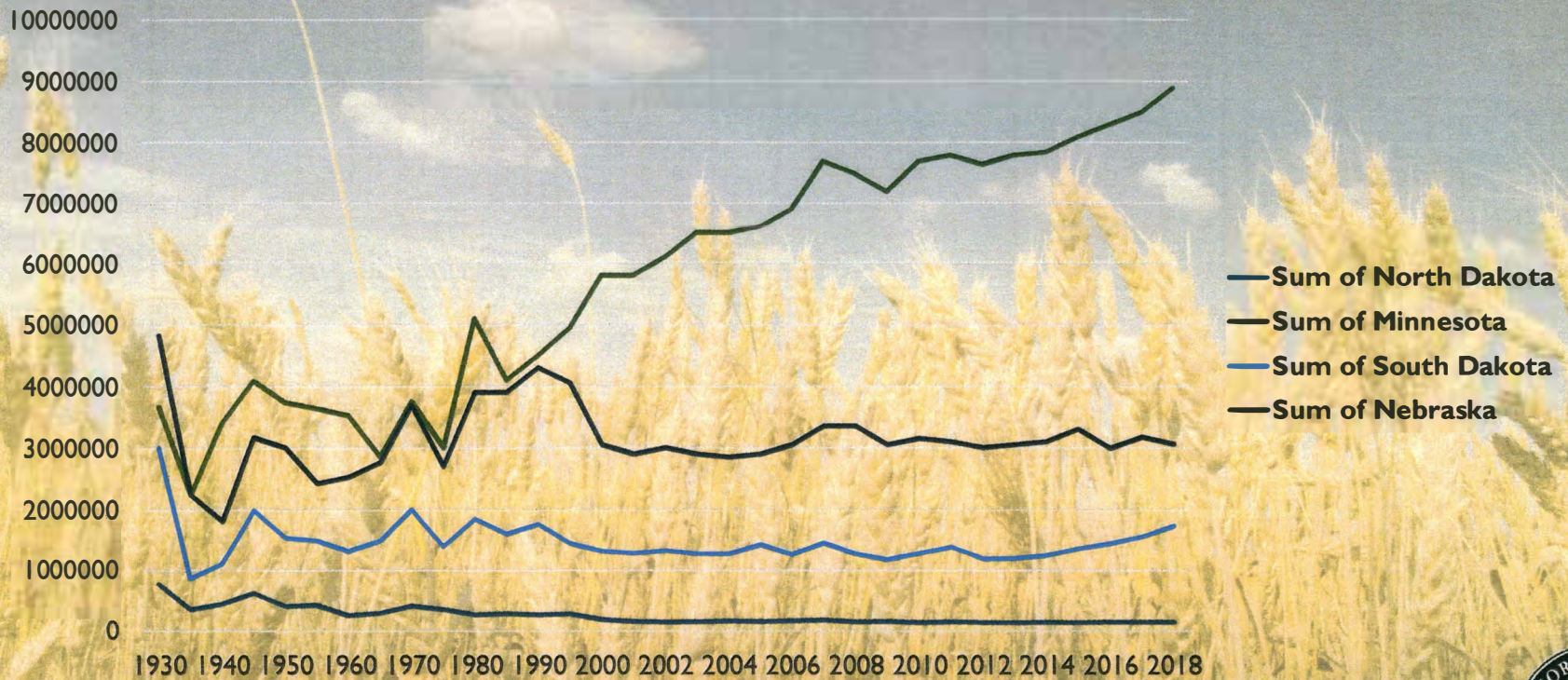
Total Cattle Inventory vs Cattle on Feed



5132345
2-1-19
#3 RyH

Swine Headcount

*Iowa(2018)-23,300,000



SB 2345
2-1-19
#3 Pgs

Benefits for Grain Producers

Feedlot

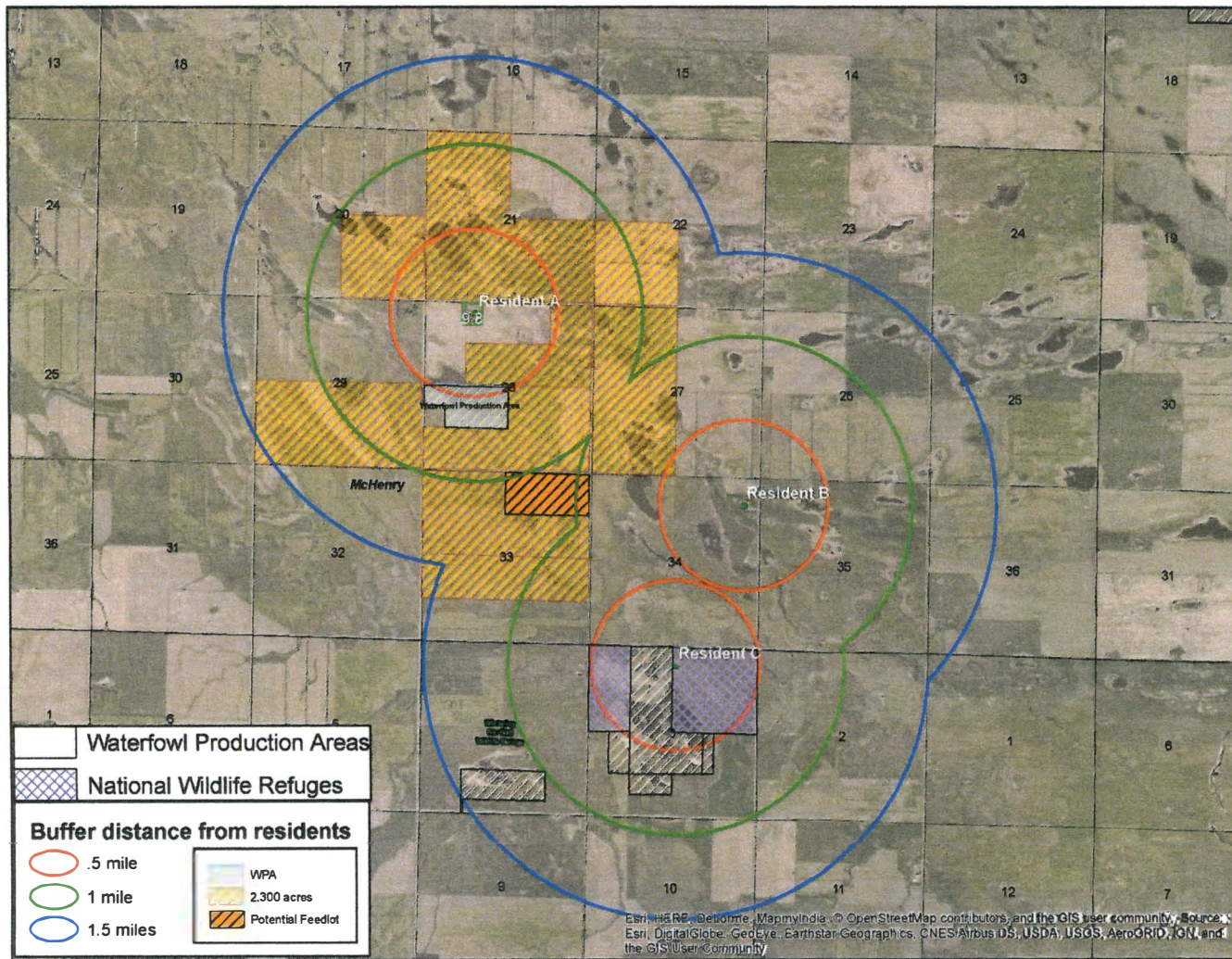
- Annual Feedstuffs used in 5,000 head operation
 - Corn: 3,850 acres
 - Forage: 500 acres

Swine

- Annual Feedstuffs used in 5,400 head farrowing operation
 - Corn: 1,072 acres
 - Soybean Meal: 927 acres
 - 5,400 head farrowing barn (3 litters/year) = 180,000 piglets
 - **180,000 piglets from one farrowing barn will supply 38, 2,400 head, finishing barns**
- Annual Feedstuffs used in one, 2,400 head finishing operation
 - Corn: 343 acres
 - Soybean Meal: 297 acres
- Total corn and soybean acres needed to support one farrowing barn and 38, 2,400 head finishing barns
 - **Corn = 14, 105 acres**
 - **Soybeans = 12,213 acres**



#3 (9) U
2-1-19
SB2345



SB2345
2-1-14
#3 pg 7

SB 2345
2-1-19
#4 pg 1

North Dakota Stockmen's Association
Testimony to the Senate Agriculture Committee on SB 2345
Feb. 1, 2019

Good morning, Chairman Luick and members of the ^{Senate} ~~House~~ Agriculture Committee. For the record, my name is Julie Ellingson and I represent the North Dakota Stockmen's Association, an 89-year-old beef cattle trade organization representing 3,000 cattle-ranching families.

North Dakota has a robust livestock industry, with the beef sector ranking in agriculture's top four enterprises for cash receipts and serving as an economic pillar of our state. Still, with high-quality genetics, plentiful feedstuffs, hardworking people and a climate conducive for efficient gains and combatting disease, we have only scratched the surface on our potential here. That's especially indicative when we look to our neighboring states and what they have been able to accomplish with similar resource bases.

In addition to our membership services and our brand work on behalf of the state, the Stockmen's Association has an Environmental Services Program wherein we assist livestock producers comply with state and federal environmental regulations through technical assistance and cost-share support. Since our program began in 2002, our director has done assessments on nearly 800 operations and has helped install many permitted beef animal feeding operations across North Dakota. This experience has helped us identify things that work well with the permitting process and things that can be improved for the benefit of livestock producers and other stakeholders in the process.

SB 2345 represents some of those ideas, all the while preserving local control and more clearly spelling out expectations for permitting authorities and producers seeking to become permitted.

There are three basic components of this bill. The first essentially orders the steps that have to be taken in order to get an animal feeding operation permitted by requiring a petitioner to obtain a determination from the county or township on zoning before proceeding to the next step – permitting from the Health Department, or DEQ. That makes sense, as there is no need for the Department to start its process until the local zoning component is addressed. The bill clarifies the starting point for those looking to permit a new animal feeding operation, as it is ambiguous in the law now.

One suggestion we have for the committee to consider is regarding existing facilities that want to become permitted. If these existing facilities already meet the zoning requirements, it seems like it may be an unnecessary step to seek a determination from the county or township if they already comply with those rules. We liken it to the speed limit of 65 miles an hour. If someone is going to drive 65 miles an hour, they do not need to ask permission to drive 65, as that is already within the letter of the law. Granted, if they want to drive 66 miles an hour, they would be outside what is allowable and would have to be granted special permission to go beyond the regulations. Similarly, an existing livestock operation that already meets the requirements should not have to seek this determination and go through an unnecessary hearing (or whatever other steps are required) in order to get this determination, unless they are asking for a variance or some type of special-use permit. Instead, we contend that, in these cases, they should be able to self-certify and forego the extra step that too often results in a contentious hearing and public debate that produces a lot of hype and stress, but little, if any, factual information. That being said, if someone is allowed to self-certify, we think it is imperative that the township is still notified so it is not blindsided about the project moving forward.

A second component of the bill gives the local political subdivision a timeline to act upon a permit application. This too has merit, in our view, as it gives the permittee a clear picture of how long this process may take. Two months also gives the township or county ample time to do its due diligence. If the political subdivision fails to act on the application within 60 days, SB 2345 allows the

SB2345
2-1-19
#4 P3

process to continue to move forward, as long as the project meets the terms of the model zoning ordinance. This provision preserves local control, but addresses situations when governing bodies do not act in a timely fashion or, in some cases, do not act at all.

A third component of the bill prevents the goal post from being moved in the middle of the application process. For example, let's say a producer submits his or her application on Jan. 1. The zoning regulations in effect on Jan. 1 are what must be used in consideration of that application. That doesn't mean that the political subdivision cannot decide to make changes to its regulation on Jan. 5, just that the Jan. 1 application cannot be held subject to the newer rules that came into play after the application was submitted.

We support these changes, as we feel they provide a more clearly defined process for all those involved without stripping authority from counties or townships.

We noticed that the exemption for normal wintering operations for cattle have been struck in several places in this bill where animal feeding operation is defined. Unless that exemption is listed in another place, we are opposed to eliminating it, as it explains and assures a very important distinction between wintering operations and AFOs. As such, we ask that the committee remove the overstrike on those references.

Thank you for the opportunity to testify. I would be happy to answer any questions you have.



SB 2345
2-1-19
FFS Pgl

Testimony of Bart Schott
North Dakota Corn Growers Association Board Member
In Support of SB 2345
February 1, 2019

Chairman Luick and members of the committee:

My name is Bart Schott, I am a farmer from Kulm, North Dakota and a director from District 6 on the board of the North Dakota Corn Growers Association. I am honored to have served as the president of the National Corn Growers Association in 2011. I am here today to support SB 2345, which was introduced to provide regulatory certainty and fair permitting mechanisms for livestock enterprises seeking to locate or expand in North Dakota.

The North Dakota Corn Growers Association was organized in 1987, making North Dakota one of the 28 states affiliated with the National Corn Growers Association. This association represents corn farmers and industry stakeholders from across the state.

The NDCGA is the farmer led, membership organization focusing on policy that impacts North Dakota corn producers. The NDCGA consists of 14 growers from seven districts, along with two at-large directors. NDCGA has identified six priorities and developed Action Teams to work on these priorities including: Livestock, Grower Services, Production/Stewardship, Corn Research, Ethanol, and Public Policy.

Our Association's Mission is: "Growing a healthy, profitable business climate for northern corn."

North Dakota corn farmers have three key markets for their bountiful production: livestock producers, ethanol plants and export markets. Livestock feeding is far and away the largest customer for corn. North Dakota is 11th in production of corn among the states but is 34th in its livestock value compared to the rest of the country.

North Dakota's agriculture industry dominates the state's economy, with corn one of major contributors to the ag sector. Corn, wheat, soybeans and livestock are the big four in North Dakota agriculture, your support for livestock development with the passage of Senate Bill 2345 helps three of these four sectors.

North Dakota Corn Growers are committed to grow the livestock sector and to support efforts to expand livestock feeding and milking operations in the state. We will do whatever we can to find markets for the pile of corn that we are fortunate to produce here.

We thank you for your support of the state's agriculture industry and we urge your favorable consideration of SB 2345. I will be happy to respond to any questions.

SB 2345
2-1-19
#6. Pg 1

Senate Bill 2345

Chairman Luick and members of the Senate Agriculture Committee.

My name is Randy Melvin, along with my wife and three children, we farm near Buffalo, North Dakota. I am the fourth generation of my family to farm in North Dakota, and I hope my children will be the next generation.

I appreciate the opportunity to voice my support today of Senate Bill 2345.

The current laws for permitting livestock facilities are cumbersome and unclear. Authority to approve or deny livestock feeding operations rests both with local and state levels. Senate Bill 2345 seeks to simplify some of the permitting process and provide clarity for both the permittee and local regulatory officials. The bill stipulates that local control remains paramount, but that officials need to respond to applications and not try to delay efforts, or worse – change the rules after an application is received.

I am honored to be involved in agriculture in North Dakota. I truly believe that the way for my children to succeed in agriculture is through expansion of the livestock industry. Expansion of livestock feeding in the state is critical to all agricultural sectors. Feeding grain and forage to livestock is the purest, and most basic form of adding value to our crops.

The success of the next generation of farmers and ranchers depends on how we manage and promote livestock development in this State.

My wife and I take great pride in working to promote opportunities for our children to succeed in agriculture. Our family constantly seeks to implement a conservation minded production system that will help ensure that we leave a legacy of a landscape that is in better condition for our next generation.

I ask you for your support of SB 2345.

Thank you for your time today and ask for any questions.
Randy Melvin

SB2345

2-1-19

#7 Pg 1

To: ND Senate Ag Committee members
From: Ron Fraase
Subject: Local control concerns over Senate Bill 2345

My name is Ron Fraase, Chairman of Howes Township. For the past three years, our township has disagreed with a proposed concentrated animal feeding operation (CAFO) near Buffalo, N.D. As an elected official, I represent the people of our township. Many of my constituents are in favor of animal livestock, in fact, it's a significant economic driver for Howes Township. What Howes Township residents do oppose is a process that allows a state to dictate what we live and work for every day, our local control.

It is my belief, and the belief of many of those in townships around the state, that Senate Bill 2345 removes the element of local control that N.D. state laws legally allowed our townships to establish.

I raised hogs for more than 30 years. The pigs saved our family farm during the late 80s; I owe the industry much of what I have today. The issue at hand isn't about CAFOs, it's about local control. None of us like when a higher governing body dictates our daily lives. I'm sure as State Legislators, you've run into similar situations with our Federal government. Those scenarios are frustrating. They cost money, resources and time.

Some of the parts in this bill I will address are in sec 4 #9 on both pages 20 and 23. It says may petition the board for determination and this needs to be different. A permit application would be appropriate at this time and many townships require one because of their comprehensive plan that asks for a conditional use permit to be able to include the residents of the township to be aware of what is proposed. Also leaving this open for 5 years just to commence construction is way too long a period.

Sec 3 #7 d. and e. on page 17 says to submit township or county permit with department application and so they need to start at the township or county to apply to the Department. Once again 5 years is way too long a time period just to commence construction.

It is evident to me that these changes are being made because of the Buffalo CAFO while during the same time the CAFO near Englevale was in process as it was done a different way working with local government and local people. I recently attended the newly formed ND Livestock Alliance 1st forum near Fort Ransom. This is supported by many agricultural groups from ND, our Ag Commissioner, our Governor and many others. What I heard there assures me that how the township used their local control near Buffalo was the right thing to do for its constituents and the local people of ND.

I urge you to reconsider the parts of Senate Bill 2345 that strip townships of our right to govern.

Let's find the right way to encourage growth and expand animal livestock in the state of North Dakota. Please allow local control to remain intact.

SB2345
2-1-19
#8 Pgl

8:30 a.m.

1 February, 2019

Roosevelt Park Room

To: Senate Agriculture Committee

Re: SB 2345

Chairman Luick and Members of the Committee:

I am David Keagle, and some of my practice as an attorney focuses on agricultural and land use issues. I'm here on my own behalf to offer the following testimony. I find numerous areas of this bill problematic and urge a **do not pass** recommendation as it is written.

I think that the idea behind this bill is to outline the process by which a developer of an animal feeding operation receives local government approval and approval from the Health Department and require that local approval be obtained first. This proposal would only make the existing process more complicated by attempting to coordinate two independent activities.

Local governments have traditional zoning powers that derive from the police power and control issues of health, safety, and welfare. These are reflected in the use of setbacks that keep inconsistent land uses separate. Everyone has the right to use their private property as they wish, but only so long as it doesn't unreasonably interfere with their neighbor's use and enjoyment of their own property. Local zoning is one of those governmental powers that effects each person's lives more than any law that's passed in Washington, D.C. or Bismarck because it effects our daily quality of life. Each local entity has the power to make decisions based on the unique current and anticipated needs of their jurisdiction.

The Health Department has a different mission and a different role. Their duty as a state-wide agency is to uniformly apply standards that protect air and water quality. Their mission doesn't involve setting different standards based on location or surrounding land uses—to the Health Department, the standard is the standard.

The Existing Process Recognizes Different Jurisdictions and Different Areas of Expertise

The proposed changes don't really solve any existing problem. As the law currently stands, a developer can seek either approval first or both at the same time. This makes perfect sense, since the approvals are evaluating two different things. There is no reason to fold them together because they address different concerns. The township or county is concerned with whether the proposed facility would be consistent with other existing land uses, and the Department of Health is only concerned with whether the proposed facility would negatively affect air and/or water quality. There is actually only one statute that requires the Health Department to consider local zoning--it applies to odor complaints from **existing facilities** (N.D.C.C. 23-25-11(2)(c)), and this subsection would remain intact under the proposed bill.

SB2345
2-1-19
HS Pg 2

11-22-02.1(9) and 58-03-11.1(9)

A Vague Petition, an Inability to Address Local Issues, and Five Years of Uncertainty

Further, this bill would create problems. First, it would foist a vague process on local governments. Subsection 9 of 11-22-02.1 and 58-03-11.1 mentions that a developer could “petition” the local government for a determination. There is nothing setting out the process for the petition, no mention of what materials would need to be submitted in support of the petition, and no mention of how adjacent owners would be notified. It gives the local government a mere 60 days to evaluate the petition, and if not objected to, it is deemed approved. I can’t think of any other example in our state law that requires an agency or political subdivision to object within a short window of time before it is deemed to have approved something. For example (but without delving into specifics), the Department of Health has 90 days to evaluate AFO permits, but routinely takes much longer to evaluate them. This proposal would run the risk of prejudicing other residents if the county or township neglected to act but the proposal did in fact violate an ordinance, since it would have been “deemed approved” despite a lack of evaluation, general notice, or consideration at a public meeting.

These sections also state that a county (or township) may not regulate the facility after it has been constructed. This language is overly broad and would seem to apply even if it expanded to three times its size or had become a nonconforming use. To the extent that this section is attempting to state that the facility in its current scope and mode of use would be immune from subsequently passed regulations, that’s already settled law. This language would arguably give an operator a free pass from **any** regulation, not just the ones that would affect the current operation.

Finally, these sections would allow a prospective operator five years to begin construction. This is a very long time to hold regulations and exemptions in place. That will be five years of uncertainty for every member of the township or county. During the proposed five-year period, adjacent landowners will be faced with uncertainty as to whether the proposed project will be constructed or the plans significantly revised, or even abandoned. To the extent that a period is warranted, I would suggest that it be limited to one year.

23-25-11(7)(d) and (e) and 23.1-06-15(7) (d) and (e)

Restrictions on Department Powers, Immunity from Local Regulation, and Revised Applications

The proposed amendments in 23-25-11(7) and 23.1-06-15(7) are also problematic. Subsection d would prohibit the Department of Health from requiring any setbacks that aren’t addressed in the zoning code. As I mentioned earlier, their mission is focused on air and water quality. One of the best tools that the Department has at its disposal is requiring water resource setbacks around waters of the state. These are issues that are forbidden to be addressed by local governments. It is important that the Department retain its authority to require setbacks that relate to its mission of protecting air and water quality.

The language in subsection e also has a few issues that are concerning. The most basic issue is the conflict of this subsection with the proposed amendments in 11-33-02.1(9) and 58-03-11.1. The

SB2345
2-1-19
#9 P23

date of the county or township determination would necessarily be different from the date of the Health Department application since that determination would now be an additional application requirement. The language relating to the date at which the local regulations would be frozen gets even more confusing when the amendment references a revised application. There is real confusion as to when the regulatory exemption would begin and end—is it the date of the local government determination, the date of the initial application to the Health Department, the date of the revised application, or the date that the Health Department deems the application to be complete? Additionally, revisions other than location could affect local government approval. For instance, the number of animal units or type of animal could change the nature of the project and the result of the zoning analysis. There is no good reason to require the world be put on hold because a developer revises a project plan or submits an incomplete application.

There is a real potential that a would-be developer could submit a half-baked and incomplete application whose only result would be to cause uncertainty at the local level, delaying planning and investment for five years, all while wasting the agency's resources as it reviewed several iterations of a proposal. Again, to the extent that the Assembly deems it warranted to force local governments and its citizens to be under a cloud of uncertainty, it should be as short as possible so that earnest development will proceed speculative or hypothetical operations will not paralyze local affairs.

23-25-11(7)(c)

Animal Unit Calculations

The last issue I'd like to discuss relating to this bill has to do with the revisions to the animal unit calculations contained in 23-25-11(7)(c). Animal units are used as a base from which the calculations regarding waste volume, which determines lagoon storage capacity and the number of acres required in a nutrient management plan, and odor, which is reflected in a setback distance, are based. To the extent that unweaned animals are not to be counted as separate animals, there should be an additional entry for gestating animals or a sow/litter similar to the existing cow/calf pair figure. This would more accurately reflect the waste and odor that are produced and ensure that manure lagoons are of sufficient size and that the existing setbacks are properly applied.


Conclusion

I urge a **do not pass** recommendation on this bill because it will complicate the existing process, place a vague confusing requirement on local governments, and has the potential to place property owners in long periods of uncertainty. Thank you.


David Keagle

SB 2345

2-1-19

#9 

Testimony Presented in Opposition To Senate Bill 2345

(A Bill for an Act to amend and reenact sections 11-33-02.1, 23-25-11, 23.1-06-15, and 58-03-11.1 of the North Dakota Century Code, relating to animal feeding operations and zoning requirements)

By

Randal Coon

Buffalo, ND

Cell Phone: 701-238-5479

Email: rcoon0267@msn.com

February 1, 2019

SB 2345
2-1-19
#9 Agz

Testimony Presented in Opposition To SB 2345

By

Randal Coon

Good morning Chairman Luick, Vice Chairman Myrdal, Senator Hogan, Senator Klein, Senator Larsen, and Senator Osland. My name is Randy Coon. I am a 4th generation farmer from Buffalo—my Great Grandfather homesteaded in Howes Township in the late 1800s. Today, I would like to present testimony in opposition to SB 2345. I have reviewed SB 2345 and there are many items in this bill that are a concern to me. My testimony contains an analysis of what I feel are the most significant problems with this legislation.

On Page 1, line 10, Item (1.a.): “**Concentrated** feeding operation” was changed to “**Animal** feeding operation” in the first sentence. This new wording changes the dynamics of the entire bill. An Animal Feeding Operation (AFO) and a Concentrated Animal Feeding Operation (CAFO) are by definition very different categories. These categories are based on size (measured in animal units) and are subject to different rules and regulations, and setback requirements. A CAFO requires a North Dakota Pollution Discharge Elimination System permit, while an AFO does not. It becomes difficult to determine if the provisions in this bill apply only to AFOs or if the CAFO category is also included. What the wording literally says may not be the intent of the bill.

The **Definitions** heading on Page 1, line 9 that continues to page 3, line 4 refers the reader to subdivision c of subsection 7 of section 23-25-11. This section continues on page 11, line 15 for animal unit (AU) equivalency factors. Lines 24-25 on page 11 insert the word **weaned** into the definition of swine weighing less than fifty-five pounds: “One **weaned** swine weighing less than fifty-five pounds (24.948 kilograms) equals 0.1 animal unit;”. The concern with this change is that it would effectively eliminate piglets from the animal unit count for a farrowing operation. This change is made without providing an additional multiplier for unweaned swine or the sow-piglet litter that can have as many as 15 piglets. For a farrowing operation whose sole purpose is to produce piglets, the AU count for the facility will be undercounted. For example, the proposed Buffalo, ND farrowing operation was projected to produce 180,000 piglets per year. If an industry average weaning date was used, that places an additional 1,388 AU at the facility on a daily basis. This presents a serious problem because the AU count is the basic number upon which all other calculations for the facility are made. The manure holding pit and composting bins will be under-sized, and land required for waste disposal will be inadequate.

On page 3, lines 15-19, item (7): Like item (6) previously mentioned, this provision declares that the county commissioners have the power to “declare that a regulation is ineffective” if it would “impose substantial economic burden on an animal feeding operation”. This statement is vague and provides no definition of “economic burden” and how it can be quantified.

SB2345
2-1-19
#9 Pg 3

On page 4, lines 7-18, item (9): "A person intending to construct an animal feeding operation may petition the board of county commissioners for a determination whether the animal feeding operation would comply with zoning regulations adopted under this section and filed with the state department of health under section 11-33-22 before the date the petition was received by the county. If the board of county commissioners does not object to the petition within sixty days of receipt, the animal feeding operation is deemed in compliance with the county zoning regulations. If the board of county commissioners determines the animal feeding operation would comply with the zoning regulations or fails to object under this section, the county may not impose additional zoning regulations relating to the nature, scope, or location of the animal feeding operation later, provided construction of the animal feeding operation commences within five years from the date of the board's determination or failure to object." This section is problematic for a number of reasons. It is concerning that a board of county commissioners has only sixty days to object, or the project automatically becomes compliant with the zoning regulations. This imposes a significant burden on the board to review and respond to an unknown number of applications. The department of health has taken as long as a year to respond to permit applications, which indicates the difficulty of the task. Further, it raises due process concerns because it arguably does not comply with basic notice requirements for those living within any applicable setback area that would otherwise make the construction of the AFO noncompliant with zoning regulations. Without sufficient description of the facility, the person intending to construct the AFO could comply with the relevant zoning regulations, then change and expand the operation and leave the board with no ability to impose additional restrictions, or to object. This provision could result in hundreds of "intended" applications with little or no binding information being required. This could create a high level of confusion at the local governmental level.

On pages 7, 8, and 9, Section 2, (23-25-11): This section regarding odor setbacks was lifted from previously withdrawn HB 1403. All of the regulations in this section need to be scrutinized by an environmental engineer before any of this language is approved. Setbacks need to be determined by a qualified scientist before these setbacks become law. It is troubling that all these regulations regarding odor avoid the real issue: the cause of the odor is the methane, hydrogen sulfide, and ammonia being vented from large manure storage pits into the atmosphere for local residents to breathe. These are toxic gases and their effect on human health cannot be taken lightly.

On page 12, lines 4-9, item (d): "In a county or township that regulates the nature, scope, or location of an animal feeding operation under section 11-33-02.1 or section 58-03-11.1, an applicant for an animal feeding operation permit shall submit to the department with the permit application the zoning determination made by the county or township under subsection 9 of section 11-33-02.1 or subsection 9 section 58-03-11.1. The department may not impose additional requirements." This prevents the Department of Environmental Quality from imposing any additional requirements beyond what is required by the township or county zoning regulations. This is concerning given the Department of Environmental Quality's statutorily imposed duty to impose conditions on permit holders that may go beyond the zoning authority of the county or township.

SB 2345

2-1-19

#9 B4

On page 12, lines 10-16, item (e): “An animal feeding operation is not subject to zoning regulations adopted by a county or township after the date of an application for the animal feeding operation is submitted to the department, provided construction of the animal feeding operation commences within five years from the date the application is submitted. Unless there is a change to the location of the proposed animal feeding operation, this exemption remains in effect if the department requires the applicant to submit a revised application.” This section would exempt an AFO from zoning regulations adopted after the date of application to the department of health, not just the township or county. This “exemption” remains effective even if the department requires a revised application, which is even more concerning, because it would invite an applicant to submit a very basic application in order to avoid any proposed zoning restrictions, and then give them a free pass, presumably even if they add thousands of animals or additional waste storage lagoons. I think this is exactly what is happening with the proposed AFO near Devils Lake where a second application had to be filed, but yet the original one is still being kept active.

On page 17, line 17-18, item (8): “A permitted animal feeding operation may expand its permitted capacity by twenty-five percent on one occasion without triggering a higher setback distance.” This is not new language, but still is a major concern. This expansion can happen without any added acres of land for manure disposal, additional composting bins, or increased manure pit storage capacity. When this is coupled with the “non-counting” of the piglets, the number of AUs at the facility will exceed the capacity the site was constructed to handle, with the real possibility of environmental disasters effecting local waterways, air, and land. This does not promote responsible agriculture.

On page 19-20 lines 15-30 and 1-16, items (3-8): These items are trying to rewrite existing laws and dictate how townships govern their jurisdiction. This section will only cause confusion and create chaos for local governmental bodies. These types of declarations undermine the township’s authority which has been in existence for generations. The unforeseen consequences of this type of governmental authority redistribution will harm all levels of government in the state.

The comments and concerns presented for SB 2345 indicate the bill has numerous problems. This bill attempts to undermine current law and to disrupt local government and create confusion about regulation and authority. Efforts to achieve these objectives **should not** be taken lightly. I feel the wording in this bill is contradictory, and often lacks precise language. It refers to “substantial economic burden” without any definition of the situation or any guidelines on how to quantify such a situation. This bill, if passed, would create uncertainty and disorganization at all levels of government in the state with unpredictable consequences. I strongly endorse a **DO NOT PASS** recommendation by this committee. Thank you.

SB2345
2-1-19
#10 ~~By~~

SB 2345 - Relating to animal feeding operations and zoning regulations

I want to thank the members of the Senate Agriculture Committee for allowing me to speak this morning. I am Roy Thompson. My wife and I are retired and live on our hobby farm three miles southeast of Buffalo.

It has been difficult for me to understand why Senate Bill 2345 is necessary, except to relax rules for applications for animal feeding operations, reduce transparency to the public and remove local authority from the townships.

Perhaps this is why we struggle to understand how our state government is serving the citizens of North Dakota. The democratic process seems to be missing and local control disregarded. I rely on the township to follow state laws and regulations, as well as maintain necessary ordinances for local land use issues that impact my family's safety and quality of life.

I feel our social and economic welfare will be ignored if this bill is approved.

I have read studies about the lack of any economic value in the area from animal feeding operations as well as how they can devalue land adjacent to the facility. I am very concerned about my property value, my rights as a property owner and local control if my township is denied authority to regulate local zoning of animal feeding operations.

There will be serious issues with this unfunded mandate for townships to maintain their gravel roads and provide dust control with hundreds of semi trucks hauling liquid waste. Waste applied to land adjacent to my property and my neighbors, along with the noxious gases associated with the manure, are very troubling for my family. Our grandchildren who visit us frequently from Fargo will be adversely affected, especially our grandson with special needs who cannot be in this toxic environment.

N-M-B-Y stands for the phrase "***Not in My Back Yard***" and it could easily change to "***Next it Might Be You***". I do not want Senate Bill 2345 passed.

Roy Thompson
701-261-1581

SB2345
2-1-19
#11 Pg 1

TO: Chairman Luick and members of the Senate Agriculture Committee
RE: SB 2345 - Relating to animal feeding operations and zoning regulations
DATE: February 1, 2019

My name is Paul Kasowski. I have been a farmer my entire life on my family farm near Buffalo, ND. You may recall Buffalo went through a permitting process in 2016 for a Concentrated Animal Feeding Operation for a 9000 swine farrowing facility. I have learned a lot about CAFO's in the last three years. I do not believe they are any type of family farming operation but more like a factory.

I oppose Senate Bill 2345 for many reasons but I am very concerned about the addition of the word "weaned" to describe pigs weighing less than fifty-five pounds. The change in wording eliminates the thousands of piglets born annually in farrowing operations. It does not count the piglets as part of the animal units which is the very basis for all other calculations for an application. The sole purpose of a farrowing hog CAFO is to produce piglets - but it seems the piglets don't exist in this proposed bill 2345.

The calculations needed to determine how many piglets are at a facility at any point in time are relatively easy using the average number of live-born piglets per litter, the number of litters per year, and the average weaning age. Failure to include the piglets in the animal units will result in inaccurate setbacks from neighbors, an undersized manure storage pit, insufficient land for disposal of the manure, and incorrect composting of the many dead pigs. All of these create significant issues and will cause a huge problem for the local residents living in the area and serious difficulties for townships.

I believe the North Dakota Century Code contains the effective laws of North Dakota. Chapter 11-33-02.1 states "animal units are determined as follows (e.) *One swine weighing fifty-five pounds or more equals 0.4 animal units;* and (f.) *one swine weighing LESS than fifty-five pounds equals 0.1 animal units.*" The people of North Dakota have the right to believe that the Century Code is our basis for the laws governing our state and we need to have confidence that our laws are protecting all the people. I want this committee to vote against Senate Bill 2345.

Thank you,
Paul Kasowski
701-793-2834

February 1, 2019

SB 2345
2-1-19
#12 B1

SB 2345 - Relating to animal feeding operations and zoning regulations, to provide an effective date, to provide a contingent effective date, and to provide an expiration date.

Good morning, Mr. Chairman, Senator Luick, Vice Chairman Senator Myrdal, Senator Hogan, Senator Klein, Senator Larsen, and Senator Osland.

I am Liane Rakow Stout, a North Dakota native, a retired accountant, and now an active volunteer in my home town of Buffalo, ND. I would like to speak about my opposition to Senate Bill 2345 which seems to take a huge step in the wrong direction. This bill challenges the very core of our local government which has been viable for decades. I believe your vote against this bill will show your respect for both the people you are entrusted to represent and the constitution you are expected to uphold.

There are a number of concerning elements of this bill. The most concerning is its effort to strip local township and county boards of their ability to protect the welfare of their local citizens and resources with zoning around animal feeding operations. My concerns are not about zoning out animal feeding operations but instead about protecting local control and private property rights which benefit all of North Dakota. I want to be assured that due process is a priority when there are no requirements or opportunities to hear the voice of the people, who are the land owners and residents within a setback area.

I would be interested in knowing the Department of Health's position on this bill, as it seems to remove their critical duties imposed by environmental laws, as well as their requirements for public notices and comments. This bill also seems to offer too much cover and lack of transparency for the applicants of these animal feeding operations and provides inadequate information to the township or the county or the Department of Health. I believe these facilities already have leeway under existing law. We already have restrictions placed on townships and counties with existing law. What is the purpose of providing these developers more protection while stripping local boards of their zoning abilities? North Dakota prides itself on the value it places on property ownership and the self-sufficiency of local government.

Finally, I would like to add a personal note. My mother, who was a strong woman, born and raised in North Dakota, always told me to "do your best". It is my sincere hope that each of you listen to her advice. Please do your best for all the citizens of North Dakota, not just special interest groups, and do not pass Senate Bill 2345. Thank you for your time.

Liane Stout
Cell: 701-412-4485
Email: jolistout@ictc.com



SB2345

2-1-19

#13 B1

Contact:

Kayla Pulvermacher, Lobbyist

kpulvermacher@ndfu.org | 701.952.0104

Mary Jensen, Lobbyist

mjensen@ndfu.org | 701.952.0107

**Testimony of
Kayla Pulvermacher
North Dakota Farmers Union
Before the
Senate Agriculture Committee on SB 2345
February 1, 2019**

Chairman and members of the Committee:

My name is Kayla Pulvermacher and I represent the members of North Dakota Farmers Union (NDFU). Our members are opposed of SB 2345 in its current form.

No one doubts the intentions of the sponsors of the bill. The entire agricultural community, along with our political subdivisions, would like to see a vibrant livestock industry created in a responsible manner. That's why after the 1999 Legislative Session, stakeholders sat down and created the Model Zoning Ordinance that we have now in North Dakota. Our members would like to see the spirit of that model zoning stay in place.

While supporters of SB 2345 creates certainty, we believe that it actually creates uncertainty on the following points:

- The use of the word "petition" throughout the bill. This seems to be adding a new process. The concern is there is no definition for "petition" in the bill, and there's no clear definition of what constitutes a "petition" in order to start the 60-day clock. Clearly defining the use and process for the "petition" would be supported.
- The 60-day window seems unworkable. From our research, the Department of Health has taken about 100 to 110 days to complete its work. For a township who meets just a few times a year and has no staff and little money, they would need to go through the plan to see if it meets requirements on its own. Lengthening this timeframe, or amending this language so that when an application goes to the Department that the local subdivisions must also be notified would bring communication into the process.
- According to the bill, after an operation has been approved they have 5 years to complete and in those 5 years, the political subdivision may not change any regulations. As we all know, a lot can change in 5 years. We would support this timeframe being shortened.

NDFU agrees that once zoning has been set, those rules should not change. That said, the rules should create an even playing field and open communication. There are communities in North Dakota that would like to have these operations, and we can work with those areas to make that happen. That is part of the work that NDFU, along with many other agricultural stakeholders, are working to do with the ND Livestock Alliance.

I can attempt to answer any questions.

1

2

Chairman Luick and members of the committee, my name is Liz Anderson and I am here on behalf of Dakota Resource Council. I stand here today in opposition of SB 2345.

3

4

5

Dakota Resource Council's forty years of existence have taught us that the people of North Dakota, and our members specifically, are the experts of their own lives. Because of this expertise we believe that local control is the foundation of good governance. SB 2345 removes or weakens the people's right to control decisions that will affect their communities. This loss of local control means that decisions are being made on their behalf by people who have little to no knowledge of how their decisions will impact local people.

6

7

8

9

10

11

12

We believe that as stated in Section 1, number 9, county commissioners taking "no action" within sixty days of receipt means that the petition is deemed in compliance with county zoning regulations is unacceptable. First, if no action is taken, we are concerned that the general public, and local bodies including at the township level would not be made aware of the petition as it would not be on an agenda or given a public notification. This inaction could result in the passive approval of an animal feeding operation without any real input by those that would be most affected by it. Second, we believe that if the public did learn of this petition, 60 days is insufficient time for a response from the public. We offer that 90 or even 120 days would be much better.

13

14

15

16

17

18

19

20

21

22

23

Further, taking away the county's "...right to impose additional zoning regulations if construction commences within five years from the date of the board's determination or failure to object" takes away the power of the county commissioners

Testimony of Dakota Resource Council
Senate Bill 2345
February 1, 2019

SB 2345
2-1-19
#14 By 2

24 and the general public. Many things can happen that might change the minds of the
25 people and the commissioners and they should be able to amend their decisions.

26 In addition, it seems clear that this is a response to what happened to the proposed
27 concentrated animal feeding operation in Buffalo and an attempt to create legislation at
28 the behest of one or two families at the expense of the entire community and local
29 control.

30 We also oppose the changes to the animal units as the original language is more
31 inclusive.

32 Because we believe that local control and transparency is essential, we oppose SB
33 2345 and urge a DO NOT PASS vote from the members of this committee.

Testimony on SB 2345
House Agriculture Committee
Senator Terry Wanzek

SB 2345
3.21.19
Attachment |

Good morning Chairman Johnson and House Agriculture Committee members. My name is Terry Wanzek, district 29 State Senator. I am here today to support SB 2345.

Many in Ag are interested in expanding our Animal Agriculture industry in ND. We are ranked 34th in animal agriculture receipts in the US. with \$1.2 billion in gross sales value . Compare that to other states. Iowa ranked number 2 in the US at \$13.5 billion of animal ag receipts. Minnesota, #7 in the US with \$7.4 billion of animal ag value. SD is ranked #17 with \$4.1 billion, nearly 3.5 times our animal Ag sales.

There is tremendous potential to expand animal agriculture in ND, given our competitive advantage in land and feed costs and wide open space for a lot of room to grow. Yet we seem to be having difficulty getting animal feeding operations to develop. Many in agriculture are becoming frustrated with the slow pace of development. In discussions with the Department of Health or soon to be the Department of Environmental Quality we find out projects have gotten permitted from the state only to be held up by local jurisdictions by delaying their response or by increasing the zoning ordinances beyond the parameters set by the state.

SB 2345 is seeking to accomplish 2 things. First, it is attempting to find some fairness in zoning animal feeding operations with counties and townships. This bill does not limit a county or township from adopting their own zoning requirements but when a person is seeking to build a feeding operation they will be subject to ordinances in place at the date they petition the county or township. In other words they are locked in and the goal post cannot be moved after the fact. The county or township cannot impose additional zoning after the establishing the date of petition by a developer.

The second goal of this bill is to provide more certainty for investors and developers of an animal feeding operation. When a person seeking to construct an animal feeding operation petitions the county or township boards, a time clock starts and the boards have 60 days to object. So if a board determines the animal feeding operation would comply or fails to object the project would be approved to move forward. It is meant to provide the certainty that investors and developers need to build.

Mr. chairman and House Ag Committee members, no one in support of this bill is trying to push irresponsible animal agriculture projects. We want these operations to be done right. We want them to be developed to meet all environmental and zoning and agronomic requirements. But we do want fairness. When all requirements and measures are met and have been complied to, we want them to be built. We want to send a message that we support animal feeding operations when they are developed and built responsibly. After all if states like MN, Iowa & SD can have barns of poultry, swine and dairy up and down the interstates in plain view, why can't a traditionally ag based state like ND simply have a fair and reasonable time frame for permitting animal feeding operations and allowing our farmers an opportunity to build them. Thank you. Please support SB 2345.

2017 STATE AGRICULTURE OVERVIEW

North Dakota

† Survey Data from Quick Stats as of: Feb/01/2019

Farms Operations †

Farm Operations - Area Operated, Measured in Acres / Operation	1,308
Farm Operations - Number of Operations	29,900
Farm Operations - Acres Operated	39,100,000

Livestock Inventory †

Cattle, Cows, Beef - Inventory (First of Jan. 2018)	984,500
Cattle, Cows, Milk - Inventory (First of Jan. 2018)	15,500
Cattle, Incl Calves - Inventory (First of Jan. 2018)	1,860,000
Cattle, On Feed - Inventory (First of Jan. 2018)	58,000
Sheep, Incl Lambs - Inventory (First of Jan. 2018)	70,000
Hogs - Inventory (First of Dec. 2017)	147,000



Milk Production †

Milk - Production, Measured in Lb / Head	21,563
Milk - Production, Measured in \$	60,720,000
Milk - Production, Measured in Lb	345,000,000

Crops - Planted, Harvested, Yield, Production, Price (MYA), Value of Production † Sorted by Value of Production in Dollars

Commodity	Planted All Purpose Acres	Harvested Acres	Yield	Production	Price per Unit	Value of Production in Dollars
SOYBEANS						
SOYBEANS	7,100,000	7,050,000	34.5 BU / ACRE	243,225,000 BU	8.88 \$ / BU	2,133,330,000
WHEAT						
WHEAT	6,680,000	6,260,000	37.9 BU / ACRE	237,133,000 BU	5.74 \$ / BU	1,384,140,000
WHEAT, SPRING, (EXCL DURUM)	5,350,000	5,050,000	41 BU / ACRE	207,050,000 BU	5.72 \$ / BU	1,195,253,000
WHEAT, SPRING, DURUM	1,260,000	1,175,000	24.5 BU / ACRE	28,788,000 BU	6 \$ / BU	183,642,000
WHEAT, WINTER	70,000	35,000	37 BU / ACRE	1,295,000 BU	4.14 \$ / BU	5,245,000
CORN						
CORN, GRAIN		3,230,000	139 BU / ACRE	448,970,000 BU	3.04 \$ / BU	1,302,013,000
CORN, SILAGE		160,000	10 TONS / ACRE	1,600,000 TONS		
CORN	3,420,000					
CANOLA						
CANOLA	1,590,000	1,560,000	1,630 LB / ACRE	2,542,800,000 LB	17.6 \$ / CWT	444,990,000
HAY & HAYLAGE						
HAY & HAYLAGE						326,045,000
HAY & HAYLAGE, ALFALFA	130,000					
HAY						
HAY		2,650,000	1.35 TONS / ACRE	3,580,000 TONS	99.5 \$ / TON	326,045,000
HAY, ALFALFA		1,350,000	1.4 TONS / ACRE	1,890,000 TONS	105 \$ / TON	198,450,000
HAY, (EXCL ALFALFA)		1,300,000	1.3 TONS / ACRE	1,690,000 TONS	77 \$ / TON	127,595,000
BEANS						
BEANS, DRY EDIBLE	705,000	685,000	1,810 LB / ACRE	12,392,000 CWT	24.1 \$ / CWT	301,126,000
POTATOES						
POTATOES	75,000	74,000	330 CWT / ACRE	24,420,000 CWT	9.13 \$ / CWT	222,955,000
POTATOES, FRESH MARKET					9.86 \$ / CWT	
POTATOES, PROCESSING					8.64 \$ / CWT	
SUNFLOWER						
SUNFLOWER	438,000	423,000	1,636 LB / ACRE	692,010,000 LB	17.7 \$ / CWT	127,030,000
BARLEY						
BARLEY	520,000	395,000	63 BU / ACRE	24,885,000 BU	4.31 \$ / BU	105,761,000
PEAS						
PEAS, DRY EDIBLE	425,000	410,000	1,800 LB / ACRE	7,380,000 CWT	12 \$ / CWT	93,726,000
LENTILS						
LENTILS	270,000	250,000	870 LB / ACRE	2,175,000 CWT	23.5 \$ / CWT	57,638,000
FLAXSEED						
FLAXSEED	245,000	229,000	15 BU / ACRE	3,435,000 BU	9.53 \$ / BU	31,774,000
OATS						
OATS	295,000	80,000	58 BU / ACRE	4,640,000 BU	2.55 \$ / BU	13,224,000
SAFFLOWER						
SAFFLOWER	7,100	5,200	930 LB / ACRE	4,836,000 LB	16 \$ / CWT	769,000
SUGARBEETS						
SUGARBEETS	214,000	212,000	30.4 TONS / ACRE	6,445,000 TONS		

(NA) Not Available
(D) Withheld to avoid disclosing data for individual operations
(S) Insufficient number of reports to establish an estimate
(X) Not Applicable
(Z) Less than half the rounding unit

Census State Profile: North_Dakota
 Ranked Items Within The U.S., 2012

SB 2345
 3.21.19
 Attachment I

Item	Quantity	U.S. Rank	Universe ¹
MARKET VALUE OF AGRICULTURAL PRODUCTS SOLD (\$1,000)			
Total value of agricultural products sold	10,950,680	11	50
Value of crops, including nursery and greenhouse	9,664,285	6	50
Value of livestock, poultry, and their products	1,286,395	34	50
VALUE OF SALES BY COMMODITY GROUP (\$1,000)			
Grains, oilseeds, dry beans, and dry peas	8,813,348	5	50
Tobacco	-	19	17
Cotton and cottonseed	-	-	50
Vegetables, melons, potatoes and sweet potatoes	251,033	15	50
Fruit, tree nuts, and berries	247	49	50
Nursery, greenhouse, floriculture and sod	7,271	50	50
Cut Christmas trees and short rotation woody crops	19	45	49
Other crops and hay	592,367	10	50
Poultry and eggs	(D)	40	50
Cattle and calves	1,063,287	15	50
Milk from cows	67,079	35	50
Hogs and pigs	50,366	25	50
Sheep, goats, wool, mohair, and milk	(D)	(D)	50
Horses, ponies, mules, burros, and donkeys	12,462	35	50
Aquaculture	738	49	50
Other animals and other animal products	61,862	5	50
TOP CROP ITEMS (acres)			
Wheat for grain, all	7,767,484	2	49
Spring wheat for grain	5,708,405	1	29
Soybeans for beans	4,729,137	7	45
Corn for grain	3,465,997	9	49
Forage-land used for all hay and haylage, grass silage, and greenchop	2,172,738	9	50
TOP LIVESTOCK INVENTORY ITEMS (number)			
Cattle and calves	1,809,613	16	50
Turkeys	419,319	19	50
Colonies of bees	370,480	2	50
Hogs and pigs	133,653	27	50
Layers	92,754	45	50

Other State Highlights, 2012

Economic Characteristics	Quantity
Farm by value of sales	
Less than \$1,000	9,669
\$1,000 to \$2,499	778
\$2,500 to \$4,999	976
\$5,000 to \$9,999	1,275
\$10,000 to \$19,999	1,306
\$20,000 to \$24,999	510
\$25,000 to \$39,999	1,170
\$40,000 to \$49,999	647
\$50,000 to \$99,999	2,074
\$100,000 to \$249,999	3,304
\$250,000 to \$499,999	3,156
\$500,000 or more	6,096
Total farm production expenses (\$1,000)	7,296,140
Average per farm (\$)	235,656
Net cash farm income of the operations (\$1,000)	4,555,217
Average per farm (\$)	147,128

Operator Characteristics	Quantity
Principal operators by primary occupation	
Farming	17,509
Other	13,452
Principal operators by sex	
Male	27,728
Female	3,233
Average age of principal operator	57.0
All operators by race²	
American Indian or Alaska Native	563
Asian	29
Black or African American	9
Native Hawaiian or Other Pacific Islander	9
White	43,670
More than one race	97
All operators of Spanish, Hispanic or Latino Origin ²	184

explanations, definitions, and methodology.

¹ Universe is number of states in U.S. with item.

² Data were collected for a maximum of three operators per farm

(D) Withheld to avoid disclosing data for individual operations.

- Represents zero.

Note: See "Census of Agriculture, Volume 1, Geographic Area Series" for complete footnotes.

2017 STATE AGRICULTURE OVERVIEW

Iowa

† Survey Data from Quick Stats as of: Feb/01/2019

Farms Operations †

Farm Operations - Area Operated, Measured in Acres / Operation	351
Farm Operations - Number of Operations	86,900
Farm Operations - Acres Operated	30,500,000

Livestock Inventory †

Cattle, Cows, Beef - Inventory (First of Jan. 2018)	970,000
Cattle, Cows, Milk - Inventory (First of Jan. 2018)	220,000
Cattle, Incl Calves - Inventory (First of Jan. 2018)	4,000,000
Cattle, On Feed - Inventory (First of Jan. 2018)	1,260,000
Goats, Meat & Other - Inventory (First of Jan. 2018)	35,000
Goats, Milk - Inventory (First of Jan. 2018)	31,000
Sheep, Incl Lambs - Inventory (First of Jan. 2018)	165,000
Hogs - Inventory (First of Dec. 2017)	22,800,000
Turkeys - Production, Measured in Head	12,000,000



Milk Production †

Milk - Production, Measured in Lb / Head	23,725
Milk - Production, Measured in \$	936,132,000
Milk - Production, Measured in Lb	5,172,000,000

Crops - Planted, Harvested, Yield, Production, Price (MYA), Value of Production † Sorted by Value of Production in Dollars

Commodity	Planted All Purpose Acres	Harvested Acres	Yield	Production	Price per Unit	Value of Production in Dollars
CORN						
CORN, GRAIN		12,900,000	202 BU / ACRE	2,605,800,000 BU	3.31 \$ / BU	8,468,850,000
CORN, SILAGE		330,000	21 TONS / ACRE	6,930,000 TONS		
CORN	13,300,000					
SOYBEANS						
SOYBEANS	10,000,000	9,940,000	57 BU / ACRE	566,580,000 BU	9.25 \$ / BU	5,194,893,000
HAY & HAYLAGE						
HAY & HAYLAGE		1,140,000	3.2 TONS / ACRE, DRY BASIS	3,652,000 TONS, DRY BASIS		393,050,000
HAY & HAYLAGE, (EXCL ALFALFA)		370,000	2.33 TONS / ACRE, DRY BASIS	862,000 TONS, DRY BASIS		
HAY & HAYLAGE, ALFALFA	80,000	770,000	3.62 TONS / ACRE, DRY BASIS	2,790,000 TONS, DRY BASIS		
HAY						
HAY		1,080,000	3.1 TONS / ACRE	3,348,000 TONS	111 \$ / TON	359,316,000
HAY, ALFALFA		720,000	3.5 TONS / ACRE	2,520,000 TONS	117 \$ / TON	287,280,000
HAY (EXCL ALFALFA)		360,000	2.3 TONS / ACRE	828,000 TONS	97 \$ / TON	72,036,000
OATS						
OATS	115,000	42,000	77 BU / ACRE	3,234,000 BU	2.54 \$ / BU	8,570,000
WHEAT						
WHEAT WINTER	16,000	8,000	68 BU / ACRE	544,000 BU	3.9 \$ / BU	2,067,000
WHEAT	16,000	8,000	68 BU / ACRE	544,000 BU	3.9 \$ / BU	2,067,000
HAYLAGE						
HAYLAGE		85,000	7.24 TONS / ACRE	615,000 TONS		
HAYLAGE, ALFALFA		70,000	7.8 TONS / ACRE	546,000 TONS		
HAYLAGE (EXCL ALFALFA)		15,000	4.6 TONS / ACRE	69,000 TONS		

(NA) Not Available
(D) Withheld to avoid disclosing data for individual operations
(S) Insufficient number of reports to establish an estimate
(X) Not Applicable
(Z) Less than half the rounding unit

Census State Profile: Iowa
 Ranked Items Within The U.S., 2012

SB 2345
 3.21.19
 Attachment I

Item	Quantity	U.S. Rank	Universe ¹
MARKET VALUE OF AGRICULTURAL PRODUCTS SOLD (\$1,000)			
Total value of agricultural products sold	30,821,532	2	50
Value of crops, including nursery and greenhouse	17,366,814	2	50
Value of livestock, poultry, and their products	13,454,718	2	50
VALUE OF SALES BY COMMODITY GROUP (\$1,000)			
Grains, oilseeds, dry beans, and dry peas	17,146,679	1	50
Tobacco	-	-	19
Cotton and cottonseed	-	-	17
Vegetables, melons, potatoes and sweet potatoes	19,699	42	50
Fruit, tree nuts, and berries	3,668	42	50
Nursery, greenhouse, floriculture and sod	99,218	28	50
Cut Christmas trees and short rotation woody crops	774	32	49
Other crops and hay	96,776	34	50
Poultry and eggs	1,291,808	11	50
Cattle and calves	4,504,373	4	50
Milk from cows	799,467	12	50
Hogs and pigs	6,767,424	1	50
Sheep, goats, wool, mohair, and milk	43,020	6	50
Horses, ponies, mules, burros, and donkeys	14,750	30	50
Aquaculture	7,690	27	50
Other animals and other animal products	26,186	14	50
TOP CROP ITEMS (acres)			
Corn for grain	13,709,408	1	49
Soybeans for beans	9,301,594	1	45
Forage-land used for all hay and haylage, grass silage, and greenchop	996,316	24	50
Corn for silage	392,304	7	49
Oats for grain	57,259	7	48
TOP LIVESTOCK INVENTORY ITEMS (number)			
Layers	52,218,870	1	50
Hogs and pigs	20,455,666	1	50
Pullets for laying flock replacement	12,565,630	1	50
Turkeys	4,383,172	9	50
Cattle and calves	3,893,683	6	50

Other State Highlights, 2012

Economic Characteristics	Quantity	Operator Characteristics	Quantity
Farm by value of sales			
Less than \$1,000	21,843	Principal operators by primary occupation	
\$1,000 to \$2,499	3,206	Farming	47,949
\$2,500 to \$4,999	3,613	Other	40,688
\$5,000 to \$9,999	4,328	Principal operators by sex	
\$10,000 to \$19,999	4,427	Male	81,529
\$20,000 to \$24,999	1,614	Female	7,108
\$25,000 to \$39,999	3,686	Average age of principal operator	
\$40,000 to \$49,999	2,089		57.1
\$50,000 to \$99,999	7,470	All operators by race²	
\$100,000 to \$249,999	10,036	American Indian or Alaska Native	97
\$250,000 to \$499,999	9,769	Asian	129
\$500,000 or more	16,556	Black or African American	45
Total farm production expenses (\$1,000)	23,711,880	Native Hawaiian or Other Pacific Islander	9
Average per farm (\$)	267,517	White	129,209
Net cash farm income of the operations (\$1,000)	9,779,193	More than one race	155
Average per farm (\$)	110,329	All operators of Spanish, Hispanic or Latino Origin ²	584

Note: See "Census of Agriculture, Volume 1, Geographic Area Series" for complete footnotes.

explanations, definitions, and methodology.

¹ Universe is number of states in U.S. with item.

² Data were collected for a maximum of three operators per farm.

(D) Withheld to avoid disclosing data for individual operations

- Represents zero.

2017 STATE AGRICULTURE OVERVIEW

Minnesota

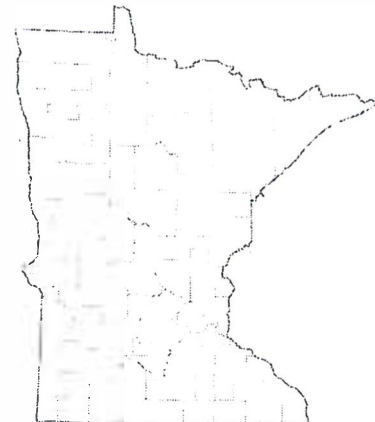
† Survey Data from Quick Stats as of: Feb/01/2019

Farms Operations †

Farm Operations - Area Operated, Measured in Acres / Operation	354
Farm Operations - Number of Operations	73,200
Farm Operations - Acres Operated	25,900,000

Livestock Inventory †

Cattle, Cows, Beef - Inventory (First of Jan. 2018)	365,000
Cattle, Cows, Milk - Inventory (First of Jan. 2018)	455,000
Cattle, Incl Calves - Inventory (First of Jan. 2018)	2,350,000
Cattle, On Feed - Inventory (First of Jan. 2018)	395,000
Goats, Meat & Other - Inventory (First of Jan. 2018)	24,000
Goats, Milk - Inventory (First of Jan. 2018)	14,000
Sheep, Incl Lambs - Inventory (First of Jan. 2018)	130,000
Hogs - Inventory (First of Dec. 2017)	8,500,000
Chickens, Broilers - Production, Measured in Head	59,700,000
Turkeys - Production, Measured in Head	42,000,000



Milk Production †

Milk - Production, Measured in Lb / Head	21,537
Milk - Production, Measured in \$	1,755,792,000
Milk - Production, Measured in Lb	9,864,000,000

Crops - Planted, Harvested, Yield, Production, Price (MYA), Value of Production † Sorted by Value of Production in Dollars

Commodity	Planted All Purpose Acres	Harvested Acres	Yield	Production	Price per Unit	Value of Production in Dollars
CORN						
CORN, GRAIN		7,630,000	194 BU / ACRE	1,480,220,000 BU	3.18 \$ / BU	4,514,671,000
CORN, SILAGE		360,000	21.5 TONS / ACRE	7,740,000 TONS		
CORN	8,050,000					
SOYBEANS						
SOYBEANS	8,150,000	8,090,000	47.5 BU / ACRE	384,275,000 BU	9.17 \$ / BU	3,479,105,000
HAY & HAYLAGE						
HAY & HAYLAGE		1,560,000	2.99 TONS / ACRE, DRY BASIS	4,668,000 TONS, DRY BASIS		444,048,000
HAY & HAYLAGE, (EXCL ALFALFA)		520,000	1.93 TONS / ACRE, DRY BASIS	1,003,000 TONS, DRY BASIS		
HAY & HAYLAGE, ALFALFA	160,000	1,040,000	3.52 TONS / ACRE, DRY BASIS	3,665,000 TONS, DRY BASIS		
WHEAT						
WHEAT	1,170,000	1,135,000	66.9 BU / ACRE	75,935,000 BU	5.76 \$ / BU	436,548,000
WHEAT, SPRING, (EXCL DURUM)	1,160,000	1,130,000	67 BU / ACRE	75,710,000 BU	5.77 \$ / BU	435,333,000
WHEAT, WINTER	10,000	5,000	45 BU / ACRE	225,000 BU	5.4 \$ / BU	1,215,000
HAY						
HAY		1,380,000	2.81 TONS / ACRE	3,884,000 TONS	103 \$ / TON	365,160,000
HAY, ALFALFA		870,000	3.35 TONS / ACRE	2,915,000 TONS	113 \$ / TON	297,330,000
HAY (EXCL ALFALFA)		510,000	1.9 TONS / ACRE	969,000 TONS	78 \$ / TON	67,830,000
POTATOES						
POTATOES	46,000	45,500	405 CWT / ACRE	18,428,000 CWT	9.38 \$ / CWT	172,855,000
BEANS						
BEANS, DRY EDIBLE	170,000	163,000	2,190 LB / ACRE	3,567,000 CWT	27.4 \$ / CWT	101,660,000
BEANS, SNAP	5,200	5,100	105 CWT / ACRE	535,500 CWT	6.46 \$ / CWT	3,423,000
BEANS, SNAP, PROCESSING					110 \$ / TON	2,875,000
BEANS, SNAP, FRESH MARKET					73.1 \$ / CWT	548,000
BEANS, SNAP, UTILIZED				530,100 CWT		
SWEET CORN						
SWEET CORN	120,700	112,600	165 CWT / ACRE	18,579,000 CWT	4.3 \$ / CWT	79,361,000
SWEET CORN, PROCESSING					64 \$ / TON	56,956,000
SWEET CORN, FRESH MARKET					33.5 \$ / CWT	22,405,000
SWEET CORN, UTILIZED				18,467,500 CWT		
PEAS						
PEAS, GREEN	49,300	46,000	42 CWT / ACRE	1,932,000 CWT	12.8 \$ / CWT	24,651,000
PEAS, GREEN, PROCESSING					254 \$ / TON	24,512,000
PEAS, GREEN, FRESH MARKET					73.1 \$ / CWT	139,000
PEAS, GREEN, UTILIZED				1,932,000 CWT		
BARLEY						
BARLEY	80,000	68,000	76 BU / ACRE	5,168,000 BU	4.33 \$ / BU	22,481,000
APPLES						

Census State Profile: Minnesota
 Ranked Items Within The U.S., 2012

SB 2345
 3.21.19
 Attachment I

Item	Quantity	U.S. Rank	Universe ¹
MARKET VALUE OF AGRICULTURAL PRODUCTS SOLD (\$1,000)			
Total value of agricultural products sold	21,280,184	5	50
Value of crops, including nursery and greenhouse	13,879,211	4	50
Value of livestock, poultry, and their products	7,400,974	7	50
VALUE OF SALES BY COMMODITY GROUP (\$1,000)			
Grains, oilseeds, dry beans, and dry peas	12,304,415	3	50
Tobacco	-	19	19
Cotton and cottonseed	-	17	17
Vegetables, melons, potatoes and sweet potatoes	405,597	12	50
Fruit, tree nuts, and berries	17,974	33	50
Nursery, greenhouse, floriculture and sod	213,335	20	50
Cut Christmas trees and short rotation woody crops	3,043	15	49
Other crops and hay	934,846	5	50
Poultry and eggs	1,230,625	12	50
Cattle and calves	1,639,634	12	50
Milk from cows	1,645,911	7	50
Hogs and pigs	2,783,049	3	50
Sheep, goats, wool, mohair, and milk	25,603	12	50
Horses, ponies, mules, burros, and donkeys	15,204	29	50
Aquaculture	12,678	23	50
Other animals and other animal products	48,271	9	50
TOP CROP ITEMS (acres)			
Corn for grain	8,316,822	4	49
Soybeans for beans	7,005,764	3	45
Forage-land used for all hay and haylage, grass silage, and greenchop	1,499,586	15	50
Wheat for grain, all	1,354,928	9	49
Spring wheat for grain	1,319,274	3	29
TOP LIVESTOCK INVENTORY ITEMS (number)			
Turkeys	19,449,992	1	50
Layers	9,693,648	11	50
Broilers and other meat-type chickens	7,765,172	22	50
Hogs and pigs	7,606,785	3	50
Pullets for laying flock replacement	2,823,994	14	50

Other State Highlights, 2012

Economic Characteristics	Quantity
Farm by value of sales	
Less than \$1,000	17,735
\$1,000 to \$2,499	3,453
\$2,500 to \$4,999	4,047
\$5,000 to \$9,999	4,552
\$10,000 to \$19,999	4,437
\$20,000 to \$24,999	1,585
\$25,000 to \$39,999	3,650
\$40,000 to \$49,999	1,980
\$50,000 to \$99,999	8,112
\$100,000 to \$249,999	8,185
\$250,000 to \$499,999	6,447
\$500,000 or more	10,359
Total farm production expenses (\$1,000)	15,520,275
Average per farm (\$)	208,208
Net cash farm income of the operations (\$1,000)	7,032,647
Average per farm (\$)	94,345

Operator Characteristics	Quantity
Principal operators by primary occupation	
Farming	39,423
Other	35,119
Principal operators by sex	
Male	68,172
Female	6,370
Average age of principal operator	56.6
All operators by race²	
American Indian or Alaska Native	248
Asian	471
Black or African American	51
Native Hawaiian or Other Pacific Islander	20
White	108,307
More than one race	252
All operators of Spanish, Hispanic or Latino Origin ²	562

explanations, definitions, and methodology.

¹ Universe is number of states in U.S. with item.

² Data were collected for a maximum of three operators per farm.

(D) Withheld to avoid disclosing data for individual operations.

- Represents zero.

Note: See "Census of Agriculture, Volume 1, Geographic Area Series" for complete footnotes.

2017 STATE AGRICULTURE OVERVIEW

South Dakota

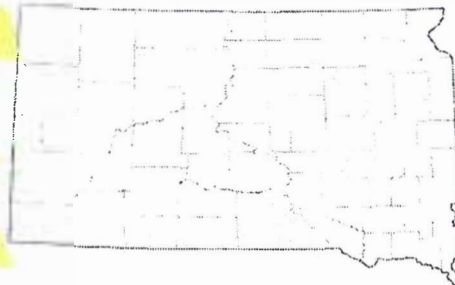
† Survey Data from Quick Stats as of Feb/01/2019

Farms Operations †

Farm Operations - Area Operated, Measured in Acres / Operation	1,397
Farm Operations - Number of Operations	31,000
Farm Operations - Acres Operated	43,300,000

Livestock Inventory †

Cattle, Cows, Beef - Inventory (First of Jan. 2018)	1,801,000
Cattle, Cows, Milk - Inventory (First of Jan. 2018)	119,000
Cattle, Incl Calves - Inventory (First of Jan. 2018)	4,000,000
Cattle, On Feed - Inventory (First of Jan. 2018)	430,000
Sheep, Incl Lambs - Inventory (First of Jan. 2018)	260,000
Hogs - Inventory (First of Dec. 2017)	1,560,000
Turkeys - Production, Measured in Head	4,100,000



Milk Production †

Milk - Production, Measured in Lb / Head	22,376
Milk - Production, Measured in \$	492,184,000
Milk - Production, Measured in Lb	2,618,000,000

Crops - Planted, Harvested, Yield, Production, Price (MYA), Value of Production † Sorted by Value of Production in Dollars

Commodity	Planted All Purpose Acres	Harvested Acres	Yield	Production	Price per Unit	Value of Production in Dollars
CORN						
CORN, GRAIN		5,080,000	145 BU / ACRE	736,600,000 BU	3.09 \$ / BU	2,209,800,000
CORN, SILAGE		520,000	12.5 TONS / ACRE	6,500,000 TONS		
CORN	5,700,000					
SOYBEANS						
SOYBEANS	5,650,000	5,610,000	43 BU / ACRE	241,230,000 BU	8.94 \$ / BU	2,146,947,000
HAY & HAYLAGE						
HAY & HAYLAGE		3,120,000	1.58 TONS / ACRE, DRY BASIS	4,925,000 TONS, DRY BASIS		502,978,000
HAY & HAYLAGE, ALFALFA	125,000	1,500,000	1.79 TONS / ACRE, DRY BASIS	2,682,000 TONS, DRY BASIS		
HAY & HAYLAGE, (EXCL ALFALFA)		1,620,000	1.38 TONS / ACRE, DRY BASIS	2,243,000 TONS, DRY BASIS		
HAY						
HAY		3,100,000	1.54 TONS / ACRE	4,785,000 TONS	108 \$ / TON	489,015,000
HAY, ALFALFA		1,500,000	1.75 TONS / ACRE	2,625,000 TONS	115 \$ / TON	291,375,000
HAY, (EXCL ALFALFA)		1,600,000	1.35 TONS / ACRE	2,160,000 TONS	93 \$ / TON	197,640,000
WHEAT						
WHEAT	1,887,000	1,196,000	34.8 BU / ACRE	41,678,000 BU	5.52 \$ / BU	233,464,000
WHEAT, SPRING, (EXCL DURUM)	970,000	670,000	31 BU / ACRE	20,770,000 BU	6.15 \$ / BU	129,813,000
WHEAT, WINTER	910,000	520,000	40 BU / ACRE	20,800,000 BU	5.05 \$ / BU	102,960,000
WHEAT, SPRING, DURUM	7,000	6,000	18 BU / ACRE	108,000 BU	6.03 \$ / BU	691,000
SUNFLOWER						
SUNFLOWER	622,000	588,000	1,758 LB / ACRE	1,033,600,000 LB	16.6 \$ / CWT	179,485,000
SORGHUM						
SORGHUM, GRAIN		170,000	68 BU / ACRE	11,560,000 BU	5.64 \$ / CWT	34,310,000
SORGHUM	270,000					
SORGHUM, SILAGE		37,000	11 TONS / ACRE	407,000 TONS		
OATS						
OATS	290,000	60,000	70 BU / ACRE	4,200,000 BU	2.45 \$ / BU	11,130,000
PEAS						
PEAS, DRY EDIBLE	38,000	35,000	1,500 LB / ACRE	525,000 CWT	11.2 \$ / CWT	5,775,000
MILLET						
MILLET, PROSO	53,000	27,000	39 BU / ACRE	1,053,000 BU	3.87 \$ / BU	3,475,000
SAFFLOWER						
SAFFLOWER	21,900	18,500	790 LB / ACRE	14,615,000 LB	18.9 \$ / CWT	2,762,000
FLAXSEED						
FLAXSEED	6,000	5,000	13 BU / ACRE	65,000 BU	9.5 \$ / BU	575,000
HAYLAGE						
HAYLAGE, ALFALFA		35,000	3.3 TONS / ACRE	116,000 TONS		
HAYLAGE, (EXCL ALFALFA)		35,000	4.8 TONS / ACRE	168,000 TONS		
HAYLAGE		70,000	4.06 TONS / ACRE	284,000 TONS		

(NA) Not Available
(D) Withheld to avoid disclosing data for individual operations
(S) Insufficient number of reports to establish an estimate

Census State Profile: South_Dakota
 Ranked Items Within The U.S., 2012

SB 2345
 3.21.19
 Attachment 1

Item	Quantity	U.S. Rank	Universe
MARKET VALUE OF AGRICULTURAL PRODUCTS SOLD (\$1,000)			
Total value of agricultural products sold	10,170,227	12	50
Value of crops, including nursery and greenhouse	6,072,922	12	50
Value of livestock, poultry, and their products	4,097,304	17	50
VALUE OF SALES BY COMMODITY GROUP (\$1,000)			
Grains, oilseeds, dry beans, and dry peas	5,809,792	9	50
Tobacco	-	-	19
Cotton and cottonseed	-	-	17
Vegetables, melons, potatoes and sweet potatoes	2,186	50	50
Fruit, tree nuts, and berries	887	47	50
Nursery, greenhouse, floriculture and sod	14,670	47	50
Cut Christmas trees and short rotation woody crops	131	43	49
Other crops and hay	245,257	24	50
Poultry and eggs	182,076	28	50
Cattle and calves	2,968,996	8	50
Milk from cows	374,490	20	50
Hogs and pigs	446,756	13	50
Sheep, goats, wool, mohair, and milk	43,636	5	50
Horses, ponies, mules, burros, and donkeys	23,629	16	50
Aquaculture	2,498	45	50
Other animals and other animal products	55,223	7	50
TOP CROP ITEMS (acres)			
Corn for grain	5,289,110	6	49
Soybeans for beans	4,714,204	8	45
Forage-land used for all hay and haylage, grass silage, and greenchop	2,615,189	4	50
Wheat for grain, all	2,203,785	6	49
Winter wheat for grain	1,208,309	8	48
TOP LIVESTOCK INVENTORY ITEMS (number)			
Cattle and calves	3,893,251	7	50
Layers	2,450,780	29	50
Turkeys	2,449,784	13	50
Hogs and pigs	1,191,162	11	50
Pullets for laying flock replacement	(D)	30	50

Other State Highlights, 2012

Economic Characteristics	Quantity	Operator Characteristics	Quantity
Farm by value of sales		Principal operators by primary occupation	
Less than \$1,000	6,819	Farming	18,844
\$1,000 to \$2,499	1,126	Other	13,145
\$2,500 to \$4,999	1,495	Principal operators by sex	
\$5,000 to \$9,999	1,767	Male	29,656
\$10,000 to \$19,999	1,801	Female	2,333
\$20,000 to \$24,999	726	Average age of principal operator	
\$25,000 to \$39,999	1,459		55.9
\$40,000 to \$49,999	822	All operators by race ²	
\$50,000 to \$99,999	2,946	American Indian or Alaska Native	1,243
\$100,000 to \$249,999	4,510	Asian	16
\$250,000 to \$499,999	3,708	Black or African American	11
\$500,000 or more	4,810	Native Hawaiian or Other Pacific Islander	5
Total farm production expenses (\$1,000)	8,104,502	White	46,425
Average per farm (\$)	253,353	More than one race	170
Net cash farm income of the operations (\$1,000)	3,289,165	All operators of Spanish, Hispanic or Latino Origin ²	309
Average per farm (\$)	102,822		

explanations, definitions, and methodology.
¹ Universe is number of states in U.S. with item
² Data were collected for a maximum of three operators per farm.
 (D) Withheld to avoid disclosing data for individual operations.
 - Represents zero.

Note: See "Census of Agriculture, Volume 1, Geographic Area Series" for complete footnotes,

**Testimony
Senate Bill 2345
House Agriculture Committee
March 21, 2019, 9:45 AM
North Dakota Department of Health - Environmental Health Section**

Good morning Chairman Johnson and members of the House Agriculture Committee. My name is David Glatt, and I am section chief for the North Dakota Department of Health's Environmental Health Section, soon to be the North Dakota Department of Environmental Quality.

I am here to testify in support of SB 2345, which seeks to provide certainty and consistency in the permitting process for animal feeding operations (AFOs), while still maintaining local control over land use decisions.

The language addressing zoning authority for counties and townships over animal feeding operations was addressed during the 1999 legislative session. Following that session, a working group of various interests including agriculture, cities, counties, townships, and the Department of Health developed a consensus document—the Model Zoning Ordinance. This Model Ordinance has been adopted by at least 35 counties and many townships, and it still provides the framework for the changes we're discussing. Additional changes were made during the 2005 session to further define the roles of local and state government, and SB 2345 continues that effort.

The department is supporting SB 2345 with the aim that it will provide additional clarity in the permitting process. The permit application process for AFOs and concentrated animal feeding operations (CAFOs) can be time consuming and costly. For example, a producer must provide detailed engineered site plans, nutrient management plans and location information for all land to be used as part of the operation.

For the department's part, we must review and verify all information for compliance with state law and rules, take public comment and, if appropriate, issue a permit. This process can be costly not only for the producer but also for the state. It is essential that zoning requirements applicable to the proposed facility be determined at the beginning of the process before large amounts of time and money are expended. Without a clear indication of the zoning requirements, producers and the state may be caught designing and reviewing facilities that do

not meet zoning standards. Or they may be stuck in limbo in cases where the local zoning authority is unable or unwilling to make that determination.

In addition to providing clarity in the permitting process, SB 2345 also will help local landowners understand the conditions under which a facility will be zoned. SB 2345 does not usurp local zoning authority, but rather it requires the identification of approved zoning requirements at an identified date.

I will now ask Karl Rockeman, Director of the Division of Water Quality, to go through the details.

As we look at the specific changes, I wanted to point out why there seems to be so much repetition in this bill. There are three areas of law being addressed—all with similar language—for counties (NDCC 11-33), townships (NDCC 58-03) and the state (NDCC 23-25). Due to the transition of the Environmental Health Section to the North Dakota Department of Environmental Quality (NDDEQ), all three sections are then repeated to reflect the formation of the NDDEQ. This transition is also the reason for the contingent effective date in Section 5.

Paragraph 9, which is found in both the county and township sections (Page 4, line 7; Page 7, line 12; Page 20, line 17; Page 23, line 15), assures the applicant that the ordinance in effect at the time of application is valid and requires a decision from the local zoning authority within 60 days. It also allows the applicant five years to construct without a change in the siting requirements.

Subsection d, which is found in the department's odor authority (Page 12, line 4; Page 17, line 4), requires the zoning determination be part of the initial application, providing certainty that the applicant meets local zoning requirements before the department conducts its environmental review. It also restricts the department from requiring additional setbacks.

Subsection e, also found in the department's odor authority (Page 12, line 10; Page 17, line 10), is similar to paragraph 9 and provides certainty for the applicant by clarifying that the zoning in effect at the time of application is valid. It also allows the applicant five years to construct without a change in the siting requirements.

SB 2345 makes changes to some existing definitions and provides new definitions where needed to provide clarity and consistency. The definition of "animal feeding operation" was changed in the county and township sections (Page 1, line 11; Page 4, line 22; Page 17, line 27). The types of structures that the setback applies to have now been defined in the odor authority section to provide clarity (Page 10, line 7;

Page 15, line 6). In addition, the definition of animal units is now located in one section (NDCC 23-25-11) for consistency, and the county and township sections reference that section (Page 2, line 16; Page 5, line 21; Page 18, line 26; Page 21, line 24). The definitions were also clarified to show that young animals not yet weaned are not counted separately. Finally, the animal units for poultry have been changed to match the Model Zoning Ordinance for consistency (Page 11, line 15; Page 16, line 13).

The department also proposes the attached amendments. These amendments are to address concerns brought up during the senate hearing, provide consistency and certainty, and correct errors and omissions.

The proposed amendments provide certainty by:

- Clarifying what should be included in the petition (Page 4, line 11; Page 7, line 16; Page 20, line 21; Page 23, line 19).
- Identifying that the requirements a facility must follow are set for three years after the department's permit process is completed (Page 4, lines 16-18; Page 7, lines 22-23; Page 12, line 13; Page 17, line 13; Page 20, lines 26-28; Page 23, lines 25-27).
- Setting the process for obtaining a conditional use permit and requiring it be completed within 90 days (Page 4, lines 12-13; Page 7, lines 17-18; Page 20, lines 22-23; Page 23, lines 20-21).
- Specifying when new zoning regulations would apply (Page 12, line 15; Page 17, line 15).
- Clarifying that the setbacks referred to are odor setbacks (Page 12, line 9; Page 17, line 9).

The proposed amendments provide consistency by referencing the common definition of animal feeding operations for the central zoning repository (Page 1, lines 1-2; Page 7, line 23, Page 23, line 27).

Finally, and most importantly, the proposed amendments also correct one typo (Page 19, line 14) and one omission (Page 21, lines 1-5).

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

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2345
North Dakota Department of Health

Page 1, line 1, after "11-33-02.1" insert "11-33-22"

Page 1, line 1, after 23.1-06-15, remove "and"

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

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

Page 4, line 12, replace "sixty" with "ninety"

Page 4, line 13, after the period insert "If the county allows animal feeding operations as a conditional use, the county shall inform the applicant of the required procedures upon receipt of the petition, and the conditional use regulations then in effect shall control the approval process, except that the county must make a decision within ninety days of its receipt of a complete conditional use permit application."

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

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

Page 4, line 17, after "date" insert "the department of health issues its final permit and any permit appeals are exhausted."

Page 4, line 17 remove "of the"

Page 4, remove line 18

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

Page 7, line 17, replace "sixty" with "ninety"

Page 7, line 18, after the period insert "If the county allows animal feeding operations as a conditional use, the county shall inform the applicant of the required procedures upon receipt of the petition, and the conditional use regulations then in effect shall control the approval process, except that the county must make a decision within ninety days of its receipt of a complete conditional use permit application."

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

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

Page 7, line 23, after "date" insert "the department of health issues its final permit and any permit appeals are exhausted."

Page 7, line 23, remove "of the board's determination or failure to object"

Page 7, after line 23, insert:

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

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

1. Any zoning regulation that pertains to a ~~concentrated~~an animal feeding operation, as defined in section 11-33-02.1, and which is promulgated by a county after July 31, 2007, is not effective until filed with the state department of health for inclusion in the central repository established under section 23-01-30. Any zoning regulation that pertains to ~~concentrated~~ animal feeding operations and which was promulgated by a county before August 1, 2007, may not be enforced until the regulation is filed with the state department of health for inclusion in the central repository.

2. For purposes of this section:

a. "~~Concentrated animal feeding operation~~" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.

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

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

1. Any zoning regulation that pertains to a ~~concentrated~~an animal feeding operation, as defined in section 11-33-02.1, and is not effective until filed with the department of environmental quality for inclusion in the central repository established under section 23.1-01-10.

2. For purposes of this section:

a. "~~Concentrated animal feeding operation~~" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.

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

Page 12, line 9, after “additional” insert “odor”

Page 12, line 13, replace “five” with “three”

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

Page 12, line 15, before the comma insert “or there is a change in animal units that would result in an increase in the setbacks provided for in this section”

Page 17, line 9, after “additional” insert “odor”

Page 17, line 13, replace “five” with “three”

Page 17, line 13, replace “application is submitted” with “final permit is issued and any permit appeals are exhausted”

Page 17, line 15, before the comma insert “or there is a change in animal units that would result in an increase in the setbacks provided for in this section”

Page 19, line 14, replace “23-23-11” with “23-25-11”

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

Page 20, line 22, replace “sixty” with “ninety”

Page 20, line 23, after the period insert “If the township allows animal feeding operations as a conditional use, the township shall inform the applicant of the required procedures upon receipt of the petition, and the conditional use regulations then in effect shall control the approval process, except that the township must make a decision within ninety days of its receipt of a complete conditional use permit application.”

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

Page 20, line 27, replace “five” with “three”

Page 20, line 27, after “date” insert “the department of health issues its final permit and any permit appeals are exhausted.”

Page 20, line 27, remove “of the”

Page 20, remove line 28

Page 21, overstrike lines 1 through 5 and insert immediately thereafter:

"a. "Animal feeding operation" means a lot or facility, other than normal wintering operations for cattle and an aquatic animal production facility, where the following conditions are met:

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

Page 23, after line 27, insert:

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

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

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

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

1. Any zoning regulation that pertains to ~~a concentrated~~an animal feeding operation, as defined in section 58-03-11.1, and which is promulgated by a township after July 31, 2007, is not effective until filed with the department of environmental quality for inclusion in the central repository established under section 23.1-01-10. Any zoning regulation that pertains to a concentrated animal feeding operation and which was promulgated by a county or a township before August 1, 2007, may not be enforced until the regulation

is filed with the department of environmental quality for inclusion in the central repository.

2. For purposes of this section:

- a. "Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.
- b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts."

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

Page 23, line 20, replace "sixty" with "ninety"

Page 23, line 21, after the period insert "If the township allows animal feeding operations as a conditional use, the township shall inform the applicant of the required procedures upon receipt of the petition, and the conditional use regulations then in effect shall control the approval process, except that the township must make a decision within ninety days of its receipt of a complete conditional use permit application."

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

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

Page 23, line 26, after "date" insert "the department of health issues its final permit and any permit appeals are exhausted."

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

Page 23, remove line 27

Renumber accordingly

March 21, 2019

ND House Agriculture Committee
Representative Dennis Johnson, Chairman

Re: Legislative Testimony of John T. Shockley, Attorney for North Dakota Farm Bureau on Senate Bill No. 2345

Chairman Johnson and Members of the Committee:

Thank you for the opportunity to testify in support of Senate Bill No. 2345. I am John T. Shockley, and I serve as the attorney for North Dakota Farm Bureau (NDFB). As you may be aware, NDFB is comprised of farmers and ranchers in North Dakota who are directly impacted by the provisions of N.D.C.C. §§ 11-33-02.1 and 58-03-11.1, as well as by local county and township ordinances.

Clarification is needed in the statutes on the authority of counties and townships to regulate animal feeding operations and other agricultural operations through local ordinances in light of the failure of counties and townships to follow precedent established by the North Dakota Supreme Court in Ramsey County Farm Bureau v. Ramsey County, 2008 ND 175. In Ramsey County, the County passed zoning ordinances, applicable to animal feeding operations, establishing restrictions and regulations on air, soil, and water pollution; registration requirements; permit conditions; monitoring of the operation; recordkeeping requirements; setback requirements; and enforcement provisions. Farm Bureau challenged these ordinances as outside of the authority of the County, and the North Dakota Supreme Court agreed, finding the County may only regulate the location, type of animals, and size of animal feeding operations because those were the powers granted to it by statute. Additionally, the Legislature had given the authority to adopt environmental regulations for animal feeding operations to the ND Department of Health.

As a result of counties and townships failing to follow Ramsey County, NDFB has been engaging in litigation to protect the rights of its members. Local ordinances adopted outside the scope of the authority granted to counties and townships are serving as barriers to establishing animal feeding operations – operations that comply with state law. Senate Bill No. 2345 will serve as a means to clarify the authority of counties and townships.

Fargo

1101 1st Ave. N. | PO Box 2064, Fargo, ND 58107-2064
Phone: 701-298-2200 | 1-800-367-9668

Bismarck

4900 Ottawa St. | PO Box 2793, Bismarck, ND 58502-2793
Phone: 701-224-0330 | 1-800-932-8869

Moreover, as provided in Ramsey County, the Legislature has authorized the ND Department of Health to oversee environmental aspects of animal feeding operations. This is the prerogative of the Legislature. Environmental review and analysis is incredibly specialized, and many counties and townships, unlike the ND Department of Health, do not have the resources to conduct such review and analysis. As a result, these considerations should not be done at the county or township level, but by the ND Department of Health.

Please support Senate Bill No. 2345. Thank you for your consideration.

Fargo

1101 1st Ave N. | PO Box 2064, Fargo, ND 58107-2064
Phone: 701-298-2200 | 1-800-367-9668

Bismarck

4900 Ottawa St. | PO Box 2793, Bismarck, ND 58502-2793
Phone: 701-224-0330 | 1-800-932-8869

Senate Bill No. 2345

North Dakota Farm Bureau

John T. Shockley

Proposed Addition for Counties

▶ N.D.C.C. § 11-33-02.1(9)

- ▶ The board of county commissioners may not regulate or impose zoning restrictions or requirements on an animal feeding operation or on other agricultural operations, except as expressly permitted under this section.
- ▶ The board of county commissioners may not impose water quality, closure, site security, lagoon, or nutrient plan regulations or requirements on an animal feeding operation or other agricultural operations.
- ▶ The intent of this section is to expressly pre-empt the authority of the board of county commissioners to impose restrictions or requirements on an animal feeding operation or on other agricultural operations, except as expressly permitted under this section.

Proposed Addition for Townships

- ▶ N.D.C.C. § 58-03-11.1(9)
 - ▶ The board of township supervisors may not regulate or impose zoning restrictions or requirements on an animal feeding operation or on other agricultural operations, except as expressly permitted under this section.
 - ▶ The board of township supervisors may not impose water quality, closure, site security, lagoon, or nutrient plan regulations or requirements on an animal feeding operation or other agricultural operations.
 - ▶ The intent of this section is to expressly pre-empt the authority of the board of township supervisors to impose restrictions or requirements on an animal feeding operation or on other agricultural operations, except as expressly permitted under this section.

Rationale for Amendments

- ▶ Ramsey Cnty. Farm Bureau v. Ramsey Cnty., 2008 ND 175
 - ▶ *Facts:* Farm Bureau sued Ramsey County seeking a declaratory judgment that Ramsey County zoning ordinances relating to animal feeding operations were void and unenforceable. The ordinances placed restrictions and regulations on:
 - ▶ Air, soil, and water pollution
 - ▶ Registration requirements
 - ▶ Permit conditions
 - ▶ Monitoring of the operation
 - ▶ Recordkeeping requirements
 - ▶ Setback requirements
 - ▶ Enforcement provisions

Rationale for Amendments

- ▶ Ramsey Cnty. Farm Bureau v. Ramsey Cnty., 2008 ND 175
 - ▶ *Holding:* Ramsey County exceeded its authority in enacting zoning ordinances governing large animal feeding operations to the extent the ordinances regulated more than location of feeding operation, type of animals, and size of operations.
 - ▶ *Reasoning:*
 - ▶ A political subdivision only has the authority granted to it.
 - ▶ N.D.C.C. § 23-25-11(9) provides a county and a township may not impose restrictions or requirements on animal feeding operations or on other agricultural operations except as permitted by statute.
 - ▶ N.D.C.C. chapter 11-33 authorizes a county to regulate only the location, type of animals, and size of animal feeding operations.
 - ▶ Legislature gave the authority to adopt environmental regulations for animal feeding operations to the North Dakota Department of Health.
- ▶ The proposed amendments add clarification to the authority of counties and townships prior to lawsuits.

Rationale for Amendments

- ▶ Right to Farm - N.D. Const. art. XI, § 29
 - ▶ The right of farmers and ranchers to engage in modern farming and ranching practices shall be forever guaranteed in this state. No law shall be enacted which abridges the right of farmers and ranchers to employ agricultural technology, modern livestock production, and ranching practices.
- ▶ The proposed amendments are consistent with the Right to Farm.



North Dakota Stockmen's Association
Testimony to the House Agriculture Committee on SB 2345
March 21, 2019

Good morning, Chairman Johnson and members of the House Agriculture Committee. My name is Julie Ellingson and I represent the North Dakota Stockmen's Association, an 89-year-old beef cattle trade organization representing 3,000 cattle-ranching families.

North Dakota has a robust livestock industry, with the beef sector ranking in agriculture's top four enterprises for cash receipts. Still, with high-quality genetics, plentiful feedstuffs, hardworking people and a climate conducive for efficient gains and combatting disease, we have only scratched the surface on our potential here. That's especially indicative when we look to our neighboring states and what they have been able to accomplish with similar resource bases.

Among our other services, the Stockmen's Association has an Environmental Services Program which helps livestock producers comply with state and federal environmental regulations through technical assistance and cost-share support. Our environmental services director, Scott Ressler, who is here with us today, has done assessments on nearly 800 operations and helped install hundreds of permitted beef animal feeding operations across North Dakota since the program began in 2002. This experience has helped us identify things that work well with the permitting process and things that can be improved for the benefit of livestock producers and other stakeholders in the process.

SB 2345 represents many of those ideas, while preserving local control and more clearly spelling out expectations for permitting authorities and producers seeking to become permitted.

In our view, there are three basic components of this bill. The first essentially

orders the steps that have to be taken in order to get an animal feeding operation permitted by requiring a petitioner to obtain a determination from the county or township on zoning before proceeding to the next step – permitting from the Health Department, which will soon become the DEQ. That makes sense to us, as there is no need for the Department to start its process until the local zoning component is addressed. It puts the local authorities first on the list, clarifying the starting point for those looking to permit a new animal feeding operation, as it is ambiguous in the law now.

A second component of the bill gives the local political subdivision a timeline to act upon a permit application. This too has merit, in our view, as it gives the permittee a clear expectation of how long the process should take and establishes the now-missing certainty that producers need to make good business decisions. Two months, or 90 days if the committee chooses to adopt the Health Department's amendment, also gives the township or county ample time to do its due diligence. If the political subdivision fails to act on the application within the allotted time, SB 2345 allows the process to continue to move forward. This provision preserves local control, but addresses situations when governing bodies do not act in a timely fashion or, in some cases, at all.

A third component of the bill prevents the goal post from being moved in the middle of the application process. For example, let's say a producer submits his or her application on Jan. 1. The zoning regulations in effect on Jan. 1 are what must be used in consideration of that application. That doesn't mean that the political subdivision cannot decide to make changes to its regulations on Jan. 2, just that the Jan. 1 application cannot be held subject to the rules that came into play after the application was already submitted.

We support these changes, because they provide a more clearly defined process for all those involved without stripping authority from counties or townships.

We have also had a chance to review the amendments presented earlier by the North Dakota Department of Health and are comfortable with them if you

choose to adopt them as well.

There is one additional amendment that Sen. Wanzek referenced that we think is also important to include in the bill that relates to existing livestock operations. You see, many of the beef operations seeking to get permitted are existing operations – operations that have been in place for generations. They might be seeking to get permitted in order to qualify for cost-share assistance, because they maybe are doing some other facility upgrades, welcoming a son or daughter to join and diversify the family operation or simply thinking it is the right thing to do for the environment. Their numbers are staying the same or within the range that does not require a conditional use permit. They simply want to control any runoff and obtain an AFO permit. In those situations, it would make sense that these long-standing operations that are doing nothing except voluntarily seeking an environmental permit from the DEQ to be allowed to forego the zoning determination step that is required for new facilities and those changing their nature, scope or location. Subjecting existing, grandfathered operations that are making no changes other than to obtain a permit to extra, unnecessary steps can actually discourage them from going the extra mile to get the permit and contain the runoff, and that's not good for the producer, the community nor the environment. We have provided some suggested language for the amendment on the back page of my testimony that we believe will achieve this objective.

SB 2345 is an important bill for the livestock industry, political subdivisions and other regulatory authorities. We urge your favorable consideration of the bill.

Thank you for the opportunity to testify. I would be happy to answer any questions you have.

Amendment proposal for SB 2345 to address existing livestock operations:

Add the indicated language to page 12, d and page 17, d:

In a county or township that regulates the nature, scope, or location of an animal feeding operation under section 11-33-02.1 or section 58-03-11.1, an applicant for an animal feeding operation permit shall submit to the department with the permit application the zoning determination made by the county or township under subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1 unless the animal feeding operation is in existence by Jan. 1, 2019, and there is no change in animals or animal units that would result in an increase in the setbacks provided for in this section. The department may not impose additional odor setback requirements.

Senate Bill 2345

Good morning chairman Johnson and House Agriculture Committee members.

I am Paul Becker a Ramsey County Farmer, and I support SB2345.

I have been a life long grain farmer and I see the benefits of Animal Agriculture. When I look at my expenses there is a glaring expense not listed in most projections, **basis** is not listed as an expense, it is subtracted on the income side. We need to show this correctly, so our bankers see this hidden expense. In my calculations, wheat is \$36/ac, corn is \$78/ac and soybeans \$41/ac., the total is as high as my seed cost, the highest expense I have. We need to control this cost. I grow a lot of corn and nearly all of it has gone to Canada for more than 12 years.

About 10 years ago North Dakota Sow Center LLLP was formed (two 5,000 head sow farrowing barns) and I bought some shares in an effort to create local demand for the crops we raise. There was a battle at that time in getting uniform zoning regulations for all of North Dakota, I thought it was settled at that time, but I was wrong. The barns were built and are still currently operating without problems.

A few years after ND Sow Center started a group of a dozen local farmers were interested in feeding out some pigs also. About half were members of ND Sow Center, we looked to see where it would be logical to do this. We found out that our best option was in IOWA. We then formed Derrick Feeders LLP and contracted with four barns in Iowa to finish our pigs. This is still ongoing and has also been successful.

We need this investment in North Dakota!! SB2345 would allow **common sense uniform zoning** in North Dakota to allow animal agriculture to grow, and all agriculture to survive.

Where are the resources and available land?

North Dakota.

Thank you, if you have any questions, I would be happy to answer them.

Paul Becker
9250 58th St NE
Crary, ND 58327-9228
pbecker@gondtc.com
701-739-8891

Senate Bill 2345

Chairman Johnson and members of the House Agriculture Committee.

My name is Clark Price, along with my wife and son, we farm near Washburn, North Dakota. I am the fourth generation of my family to farm in North Dakota, and I hope my children will be the next generation.

I appreciate the opportunity to voice my support today of Senate Bill 2345.

The current laws for permitting livestock facilities are cumbersome and unclear. Authority to approve or deny livestock feeding operations rests both with local and state levels. Senate Bill 2345 seeks to simplify some of the permitting process and provide clarity for both the permittee and local regulatory officials. The bill stipulates that local control remains paramount, but that officials need to respond to applications and not try to delay efforts, or worse – change the rules after an application is received.

I am honored to be involved in agriculture in North Dakota. I truly believe that the way for my children to succeed in agriculture is through expansion of the livestock industry. Expansion of livestock feeding in the state is critical to all agricultural sectors. Feeding grain and forage to livestock is the purest, and most basic form of adding value to our crops.

The success of the next generation of farmers and ranchers depends on how we manage and promote livestock development in this State.

My wife and I take great pride in working to promote opportunities for our children to succeed in agriculture. Our family constantly seeks to implement a conservation minded production system that will help ensure that we leave a legacy of a landscape that is in better condition for our next generation.

I ask you for your support of SB 2345.

Thank you for your time today and ask for any questions.
Clark Price



Testimony of Bart Schott
North Dakota Corn Growers Association
In Support of SB 2345
March 21, 2019

Chairman Johnson and House Agriculture Committee members:

My name is Bart Schott, I am a farmer from Kulm, North Dakota and a director from District 6 on the board of the North Dakota Corn Growers Association. I am honored to have served as the president of the National Corn Growers Association in 2011. I am here to support SB 2345, which was introduced to provide regulatory certainty and fair permitting mechanisms for livestock enterprises seeking to locate or expand in North Dakota.

The North Dakota Corn Growers Association was organized in 1987, making North Dakota one of the 28 states affiliated with the National Corn Growers Association. This association represents corn farmers and industry stakeholders from across the state.

The NDCGA is the farmer led, membership organization focusing on policy that impacts North Dakota corn producers. The NDCGA consists of 14 growers from seven districts, along with two at-large directors. NDCGA has identified six priorities and developed Action Teams to work on these priorities including: Livestock, Grower Services, Production/Stewardship, Corn Research, Ethanol, and Public Policy.

Our Association's Mission is: "Growing a healthy, profitable business climate for northern corn."

North Dakota corn farmers have three key markets for their bountiful production: livestock producers, ethanol and sweetener plants and export markets. Livestock feeding is far and away the largest customer for corn. North Dakota is 11th in production of corn among the states but compared to the rest of the country, it is 34th in its livestock value.

North Dakota's agriculture industry dominates the state's economy, with corn one of major contributors to the ag sector. Corn, wheat, soybeans and livestock are the big four in North Dakota agriculture, your support for livestock development with the passage of Senate Bill 2345 helps three of these four sectors.

North Dakota Corn Growers are committed to grow the livestock sector and to support efforts to expand livestock feeding and milking operations in the state. We will do whatever we can to find markets for the pile of corn that we are fortunate to produce here.

We thank you for your support of the state's agriculture industry and we urge your favorable consideration of SB 2345. I will be happy to respond to any questions.

Good morning Chairman Johnson and committee members.

I am Liane Rakow Stout. I am a farmer's daughter, born and raised near Buffalo. I support responsible agriculture and sustainable farming practices, but I am not here today to debate the value of agriculture in North Dakota. I am standing here to say yes, we are North Dakota, and we must always do our best for all the people of our great state.

What does North Dakota value? How do we protect that? Who is listening? Our voices need to be heard by you and all government leaders and elected officials. The state of North Dakota will face serious consequences if our Department of Health and our Department of Agriculture continue to ignore documented evidence showing concentrated animal feeding operations as a critical, long-term threat to our homes, our natural resources, our public health, and our future.

I have been part of the Concerned Citizens of Buffalo since January 2016. We are alarmed by poor regulations, arbitrary rules and changing laws which are taking a huge step in the wrong direction to benefit animal feeding operations. Senate Bill 2345 challenges the very core of our township government, taking away meaningful local participation and the voice of the people.

I have several hundred signatures of voters who believe it is our right and our responsibility to protect the health and welfare of all North Dakota residents by supporting sensible animal agricultural practices and policies that work to preserve our air, land and water, and the rights of all, not the few. We are North Dakota! We're all in this together. The future of our state depends on we the people, the same people who voted to reject corporate farming by 76%.

We will continue to have our voices heard when we exercise our right to vote for our township boards, our county officials, and our state representatives, senators and governor.

Our voice matters and we say no to Senate Bill 2345.

Liane Stout
701-412-4485

We Are North Dakota!

- ***What do we value?***
- ***How do we protect that?***
- ***Who is listening?***

We Are North Dakota! is a grassroots extension of the Concerned Citizens of Buffalo, an active community group fighting the introduction of Concentrated Animal Feeding Operations (CAFOs) into our area. We research and study the negative impact of these factory farms in other communities and states. We strongly support responsible agriculture practices and want to shake the hand of our local farmer who raises our food.

What do we value? The goal of ***We Are North Dakota!*** is to create a state-wide community of people who:

1. share our concerns about the unhealthy and environmentally risky practices of factory farming, and
2. believe it is our right and our responsibility to protect the health and welfare of all North Dakota residents by supporting sensible animal agricultural practices and policies that work to preserve our air, land and water and the rights of all, not the few.

How do we protect that? Our collective voices need to be heard by our government leaders and our elected officials. To make that happen, ***We Are North Dakota!*** needs your support and your help. The future of our state depends on we the people.

Is anybody listening? ***We Are North Dakota!*** is promoting public awareness about the serious consequences our state will face if our Department of Health and our Department of Agriculture continue to ignore documented evidence showing CAFOs as a critical, long-term threat to our homes, our natural resources, our public health, and our future.

Did you know?

- North Dakota is the largest producer in the U.S. of many cereal grains, including barley, durum wheat, hard red spring wheat, oats, and combined wheat of all types.
- North Dakota is the leading producer of many oilseeds in the U.S. including canola, flax seed, sunflower seeds, safflower seeds, and mustard seed.
- North Dakota is the second leading producer of sugar beets and the largest producer of honey, dry edible peas and beans, lentils, and the third-largest producer of potatoes.
- The North Dakota Mill and Elevator is the largest flour mill in the U.S. and is the only state-owned milling facility in the United States.
- Nearly 90% of North Dakota's land area is in farms and ranches. Some 75% of ND voters in 2016 rejected a law that changed decades of family-farming rules by allowing corporations to own and operate dairy and hog farms.
- North Dakota is home to more wildlife refuges than any other state.

We are North Dakota! We're all in this together. One state. One goal. Find out more about the impacts of factory farms at www.sraproject.org or www.johnikerd.com.

We are voters who support responsible agriculture practices. We believe in protecting the health and welfare of all citizens in North Dakota while preserving our air, land and water. We Are North Dakota

SB 2345
3.21.19

	Signature	Zip Code	Please Print Name
1.		58072	Corey Askin
2.		58072	Edie Betting
3.		58072	Richard Betting
4.		58072	Wes Anderson
5.		58072	Ann Kelly
6.		58072	Melanie Garcia-Vasquez
7.		58072	Cooper Sork
8.		58072	Janka Henning
9.		58072	Sarah Klym
10.		58072	Turvyn Justesen
11.		58072	Maya Kjelland
12.		58007	Taylor Werkman
13.		58429	Macey Schuler
14.		58072	Addison Salmirson
15.		58575	Seth Laframboise
16.		58072	Mason Nemitz
17.		ROE 1J1	Aiden Brook
18.		58072	Brian Fire
19.		58072	Amanda Bjork
20.		58072	Alan C. Adams
21.		56442	Cody Huss
22.		58341	Isaac Peble
23.		58401	Harmony Hennings
24.		58757	Charisma Tsusie
25.		58072	Levi Nix
26.		58072	Matt Brandt
27.		58282	Alexis Heitler
28.		58072	Jason Anderson
		58072	Darius Gilbert
		58072	Dakota Zorn

W

We are voters who support responsible agriculture practices. We believe in protecting the health and welfare of all citizens in North Dakota while preserving our air, land and water. We Are North Dakota!

	Signature	Zip Code	Please Print Name Contact Information
1.	<u>Richard Horner</u>	<u>58201</u>	<u>RICHARD HORNER</u>
2.	<u>Lillian Horner</u>	<u>58201</u>	<u>LILLIAN HORNER</u>
3.	<u>JOLETTA BIRD BEAR</u>	<u>58157</u>	<u>JOLETTA BIRD BEAR</u>
4.	<u>Joe Lawrence Sr</u>	<u>58335</u>	<u>Joe Lawrence Sr</u>
5.	<u>THEDDORA BIRD BEAR</u>	<u>58763</u>	<u>THEDDORA BIRD BEAR</u>
6.	<u>Roger Longnecker</u>	<u>58356</u>	<u>Roger Longnecker</u>
7.	<u>Lonna J. Street</u>	<u>58370</u>	<u>Lonna J. Street</u>
8.	<u>Dean Staskiye</u>	<u>58301</u>	<u>Dean Staskiye</u>
9.	<u>Betty Staskiye</u>	<u>58301</u>	<u>Betty Staskiye</u>
10.	<u>Melissa Lalnix</u>	<u>58870</u>	<u>Melissa Lalnix</u>
11.	<u>Gary Conkris</u>	<u>58301</u>	<u>Gary Conkris</u>
12.	<u>Doug Yankton</u>	<u>58335</u>	<u>Doug Yankton</u>
13.	<u>Jeresa Roloff</u>	<u>58755</u>	
14.	<u>Verdian Roloff</u>	<u>58755</u>	
15.	<u>Demus McDonald</u>	<u>58335</u>	<u>Demus McDonald</u>
16.	<u>Art Carron</u>	<u>58370</u>	<u>Arthur Carron</u>
17.	<u>Tammie Putnam</u>	<u>58335</u>	<u>Tammie Putnam</u>
18.	<u>Elaine Robinson</u>	<u>58370</u>	<u>Elaine Robinson</u>
19.	<u>Dawn Sackcon</u>	<u>58320</u>	
20.	<u>Don Lake</u>	<u>58301</u>	<u>Don Lake</u>
21.	<u>Don Lake</u>	<u>58701</u>	<u>Don Lake</u>
22.	<u>Cotton Lyne</u>	<u>58701</u>	<u>Cotton Lyne</u>
23.	<u>Matthew Robertson</u>	<u>58335</u>	<u>Matthew Robertson</u>
24.	<u>Sam Clou</u>		
25.	<u>Collette Brown</u>	<u>58381</u>	<u>Collette Brown</u>
26.	<u>Darwin Three Irons</u>	<u>58335</u>	
27.	<u>Darwin Three Irons</u>	<u>58335</u>	<u>Darwin Three Irons</u>
28.	<u>Lois Kischer</u>	<u>58011</u>	<u>Lois Kischer</u>

We are voters who support responsible agriculture practices. We believe in protecting the health and welfare of all citizens in North Dakota while preserving our air, land and water. We Are North Dakota

SB 2345
3.21.19
House 9

	Signature	Zip Code	Please Print Name
1.	Lois Steinhaus	58301	Lois Steinhaus
2.	Ed Apt Steinhaus	58301	Ed Apt Steinhaus
3.	Karen Alm	58103	Karen Alm
4.	Tim Topitzhofer		Tim Topitzhofer
5.	Quince Hambeck	58301	Quince Hambeck
6.	John Lohnes	58339	John Lohnes
7.	Cory Plummer	58357	Cory Plummer
8.	Reed Fraase	58301	Reed Fraase
9.	Josh Tweeton	58301	Josh Tweeton
10.	JC RAINESALO	58301	JC RAINESALO
11.	Danny Foss	58301	Danny Foss
12.	Karla Heilmann	58301	Karla Heilmann
13.	Duane McBan	58301	1108 4th St, Devil's Lake
14.	Isabel "		Devil's Lake
15.	Bruce Seng	58301	
16.	Shelley Kenner	58301	De Shelley Kenner
17.	Gary D. Larson	58317	GARY D LARSON
18.	Lincoln Larson	58324	Lincoln Larson
19.	Dean Stienkeoway	58301	De Stienkeoway
20.	Jeremy Steinhaus	58301	Jeremy Steinhaus
21.	Sarah Rainesalo	58301	Sarah Rainesalo
22.	Doreen Webster	58362	Doreen Webster
23.	Jack B. Joebel	51022	Jack B. JOEBEL
24.	Carla Halstengard	58301	CARLA HALSTENGARD
25.	Christine Blanchfield	58301	Christine Blanchfield
26.	Gregory L. Blanchfield	58301	Gregory L. Blanchfield
27.	Mark Besser	58008	Mark Besser
28.	David Vandergon	58301	DAVID VANDERGON

We are voters who support responsible agriculture practices. We believe in protecting the health and welfare of all citizens in North Dakota while preserving our air, land and water. We Are North Dakota!

	Signature	Zip Code	Please Print Name Contact Information
1.	Mary Kempel	58012	Mary Kempel
2.	Kenneth B. Habinger	" "	Kenneth Habinger
3.	Ron Fraase	58111	Ron Fraase
4.	Paul Matheny Sr.	58301	Paul Matheny Sr.
5.	Herbert Kleinsasser	58301	HERBERT KLEINSASSER
6.	Donna Heisler	58301	Donna Heisler
7.	Jim Kemp	58238	Jim Kemp
8.	Janelle Engstrom	58386	Janelle Engstrom
9.	Bonnie Erickson	58301	Bonnie Erickson
10.	Candace Carlson	58301	Candace Carlson
11.	Colleen R Joy	58301	COLLEEN R JOY
12.	Robert J. Joy	58301	ROBERT J. JOY
13.	Kerwin Pankratz	58301	Kerwin Pankratz
14.	Jeff Fuchs	58301	Jeff Fuchs
15.	Andrew Morin Sr	58370	Andrew Morin Sr
16.	Philip Eli	58325	Philip Eli
17.	Dawn Duffhauer	58335	Dawn Duffhauer
18.	Heidi Varegas	58301	Heidi Varegas
19.	Paige Hook	58301	Paige Hook
20.	Richard Street	58370	Richard Street
21.	Layonne Matthews	58324	LAYONNE MATTHEWS
22.	Jeff Kenner	58301	JEFF KENNER
23.	Sandra Larson	58318	Sandra Larson
24.	Guy Larson	58324	Guy Larson
25.	Coody Schmid	58301	Coody Schmid
26.	Noreir Elshay	58301	NOREIR ELSHAY
27.	Carolyn Burckhard	58301	Carolyn Burckhard
28.	Melissa Kitsch	58382	Melissa Kitsch

We are voters who support responsible agriculture practices. We believe in protecting the health and welfare of all citizens in North Dakota while preserving our air, land and water. We Are North Dakota!

	Signature	Zip Code	Please Print name Contact Information
1.	Sonja Kaye	58104	Sonja Kaye
2.	Jacob Glower	58104	Jacob Glower
3.	Tim Frueh	58011	Tim Frueh
4.	Arnetta Frueh	58011	Arnetta Frueh
5.	Jerry Marches	58011	Jerry Marches
6.	Bill Marches	58011	Bill Marches
7.	Marlene Sheldon	58011	Marlene Sheldon
8.	Laura Biggers	58011	Laura Biggers
9.	Frank Biggers	58011	Frank Biggers
10.	Sheila Thompson	58011	Sheila Thompson
11.	Betty Fraase	58011	Betty Fraase
12.	Mitchell VonBank	58011	Mitchell VonBank
13.	Stephanie Baasch	58011	Stephanie Baasch
14.	David Baasch	58011	David Baasch
15.	Vern Bennett		Vern Bennett
16.	Robert VonBank	58011	Robert VonBank
17.	Lonnie Larson	58011	Lonnie Larson
18.	Marian VonBank	58011	Marian VonBank
19.	Judith VonBank	58011	Judith VonBank
20.	Randy Coon	58011	Randy Coon
21.	Ken Ronning	58011	Ken Ronning
22.	Gwen Fraase	58011	Gwen Fraase
23.	Roy Thompson	11	Roy Thompson
24.	Lee Fraase	58011	Lee Fraase
25.	Mary Schlosser	58433	Mary Schlosser
26.	Matthew Breslin	58072	Matthew Breslin
27.	Lana Rakow	58078	Lana Rakow
28.	Tony Stukel	58078	Tony Stukel

We are voters who support responsible agriculture practices. We believe in protecting the health and welfare of all citizens in North Dakota while preserving our air, land and water. **We Are North Dakota!**

	Signature	Zip Code	Contact Information
1.	Marilyn Beck	58078	
2.	Lorraine Hagelston	58078	
3.	Carl Smith	58078	
4.	LeRoy Smith	58078	
5.	Gleason Stienne	58078	
6.	Lureen Pearson	58078	
7.	Yerna Fischer	58078	
8.	Victoria Beer	58078	
9.	Ronald Jensen	58078	
10.	Wesley	58078	
11.	Carl Zimmerman	58078	
12.	David W. Horton	58078	
13.	Hobbes Bunn	58078	
14.	Brendon Bunn	58078	
15.	Kathy Larson	58078	
16.	Caroline Thomas	58078	
17.	Brae Hancock	58078	
18.	Stephano Orlan	58078	
19.	Ernie Anderson	58078	
20.	Quincy Bremfield	58078	
21.	Reinhold Schmidt	58078	
22.	Dat Anderson	58078	
23.	Jean Vitch	58078	
24.	Janet Maxine	58078	
25.	John Vitch, Jr. District	58078	
26.	Jeffrey Bunn	58054	
27.	Michelle Altman	58027	
28.	Troy Bunn	58054	

We are voters who support responsible agriculture practices. We believe in protecting the health and welfare of all citizens in North Dakota while preserving our air, land and water. We Are North Dakota

SB 2345
3.21.19
Attachment 9

	Signature	Zip Code	Please Print Name
1.	<i>Paula J Foss Mantel</i>	72712	Paula Foss Mantel
2.	<i>Lynn S. Regan</i>	58078	Lynn Ann Regan
3.	<i>Richard Flanders</i>	58323	Richard Flanders
4.	<i>Haron Eshaug</i>	58306	Haron Eshaug
5.	<i>Norman Haisler</i>	58351	Norman Haisler
6.	<i>Melissa Cavazos</i>	58311	Melissa Cavazos
7.	<i>Scott Skako</i>	58501	Scott Skako
8.	<i>David Davidson</i>	58370	David Davidson
9.	<i>Daric R. Miller</i>	58301	Daric R. Miller
10.	<i>Betsy Ellingson</i>	58301	Betsy Ellingson
11.	<i>Ken Chaski</i>	58370	Ken Chaski
12.	<i>Lisa Robertson</i>	58335	Lisa Robertson
13.	<i>Dale Alberts</i>	58325	Dale Alberts
14.	<i>Noreen Littleghost</i>	58301	Noreen Littleghost
15.	<i>Lillian Jensen</i>	58301	Lillian Jensen
16.	<i>Glenn Salisbury</i>	58301	Glenn Salisbury
17.	<i>Mary E. Serger</i>	58370	Mary E Serger
18.	<i>Cheryl Widman</i>	58275	Cheryl Widman
19.	<i>Quince Hambek</i>	58301	Quince Hambek
20.	<i>Renie Hambek</i>	58301	Renie Hambek
21.	<i>Berinda Larson</i>	58324	
22.	<i>Rick Schwab</i>	58301	Rick Schwab
23.	<i>Tad B Schmidt</i>	58301	Tad B Schmidt 58301
24.	<i>Steve Thomason</i>	58301	Steve Thomason
25.	<i>Paul Kitsch</i>	58382	Paul Kitsch
26.	<i>Duainve Bourcy</i>	58301	Duainve Bourcy
27.	<i>Paula Bourcy</i>	58301	-
28.	<i>Noreen Habstusgaard</i>	58386	Noreen Habstusgaard

We are voters who support responsible agriculture practices. We believe in protecting the health and welfare of all citizens in North Dakota while preserving our air, land and water. We Are North Dakota!

	Signature	Zip Code	Contact Information
1.	<i>[Signature]</i>	58072	559-259-3850 Valley City
2.	<i>[Signature]</i>	58072	208-870-1936
3.	<i>[Signature]</i>	58072	859-351-3751 Valley City
4.	<i>[Signature]</i>	58072	701-490-1234 Valley City
5.	<i>[Signature]</i>	58072	701-840-1570
6.	<i>[Signature]</i>	58072	
7.	<i>[Signature]</i>	58072	701-820-0098
8.	<i>[Signature]</i>	58072	701-845-4171
9.	<i>[Signature]</i>	58072	701-490-2923
10.	<i>[Signature]</i>	58072	701-490-2456
11.	<i>[Signature]</i>	58072	701-840-1113
12.	<i>[Signature]</i>	58072	701-845-4905
13.	<i>[Signature]</i>	58072	701-845-4905
14.	<i>[Signature]</i>	58072	701-845-3032
15.	<i>[Signature]</i>	58072	701-845-3032
16.	<i>[Signature]</i>	58072	701-541-2896
17.	<i>[Signature]</i>	58033	701-552-1180
18.	<i>[Signature]</i>	58072	701-845-9725
19.	<i>[Signature]</i>	58072	701-845-1302
20.	<i>[Signature]</i>	58072	701-845-2748
21.	<i>[Signature]</i>	58072	701-490-0748
22.	<i>[Signature]</i>	5807	701-840-8332
23.	<i>[Signature]</i>	58072	701-840-1191
24.	<i>[Signature]</i>	58072	701-840-0902
25.	<i>[Signature]</i>	58401	507-227-9357
26.	<i>[Signature]</i>	58072	701-845-5197
27.			
28.			

We are voters who support responsible agriculture practices. We believe in protecting the health and welfare of all citizens in North Dakota while preserving our air, land and water. We Are North Dakota!

	Signature	Zip Code	Contact Information
1.	<u>Madeline Luke</u>	<u>58072</u>	<u>m2nd@yahoo.com (madeline Luke)</u>
2.	<u>Sharon E Buhn</u>	<u>58072</u>	<u>sharon.e.buhn@gmail.com</u>
3.	<u>James B Buhn</u>	<u>58072</u>	<u>james.b.buhn.md@gmail.com</u>
4.	<u>Carol McFottle</u>	<u>58072</u>	<u>carol.fottle@icloud.com</u>
5.	<u>Ann Prestade</u>	<u>58049</u>	<u>ann.prestade@gmail.com</u>
6.	<u>Deraldine Ness</u>	<u>58062</u>	<u>gjness@hotmail.com</u>
7.	<u>Jerry Ness</u>	<u>" "</u>	<u>" "</u>
8.	<u>Jennifer Jenness</u>	<u>58072</u>	<u>jenniferajenness@gmail.com</u>
9.	<u>Gail Pederson</u>	<u>58072</u>	<u>beevahoolingait@gmail.com</u>
10.	<u>act 2 live now</u>	<u>58072</u>	<u>act2liveNOW@gmail.com</u>
11.	<u>Joli Stout</u>	<u>58072</u>	<u>jolistout@ICTC.com</u>
12.	_____	_____	_____
13.	_____	_____	_____
14.	_____	_____	_____
15.	_____	_____	_____
16.	_____	_____	_____
17.	_____	_____	_____
18.	_____	_____	_____
19.	_____	_____	_____
20.	_____	_____	_____
21.	_____	_____	_____
22.	_____	_____	_____
23.	_____	_____	_____
24.	_____	_____	_____
25.	_____	_____	_____
26.	_____	_____	_____
27.	_____	_____	_____
28.	_____	_____	_____

We are voters who support responsible agriculture practices. We believe in protecting the health and welfare of all citizens in North Dakota while preserving our air, land and water. *We Are North Dakota*

BB 2345

3.21.19

Attachment 9

	Signature	Zip Code	Please Print Name
1.	<i>Leon Martinson</i>	<i>58301</i>	<i>Leon Martinson</i>
2.	<i>Gaulak Charron</i>	<i>58301</i>	<i>Gaulak Charron</i>
3.	<i>Carol J. Vandergon</i>	<i>58301</i>	<i>CAROL J. VANDERGON</i>
4.	<i>Diane Yri</i>	<i>58301</i>	<i>Diane Yri</i>
5.	<i>Nancy Burley</i>	<i>58012</i>	<i>Nancy Burley</i>
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			
21.			
22.			
23.			
24.			
25.			
26.			
27.			
28.			

SB 2345 - Relating to animal feeding operations and zoning regulations

Good Morning. I am Roy Thompson and I am here today to oppose Senate Bill 2345.

My wife and I have been part of the Concerned Citizens of Buffalo since 2016. We are proud of the work and research done by our group during the past three years in opposing the introduction of a Concentrated Animal Feeding Operation into our area. We strongly support the testimony which will be presented by Randy Coon on our behalf.

One of the major problems with this bill is the wording that eliminates a value for the thousands of piglets born annually in a farrowing operation. The sole purpose of a farrowing hog CAFO is to produce piglets - but it seems the piglets don't exist in this proposed bill. It does not count the piglets as part of the animal units which is the very basis for a CAFO application.

The CAFO that was permitted for the Buffalo area was for a farrowing facility with approximately 9,000 hogs or 3,600 animal units. The North Dakota Department of Agriculture was quoted in a presentation on February 1, 2019 that estimated 180,000 piglets would be produced at the CAFO in Buffalo. Piglets are living animals that affect all the necessary calculations for determining safe setbacks from neighbors, adequate manure storage, sufficient land for disposal of the manure, and the important process of composting the dead.

I believe the North Dakota Century Code has been effective in determining how to count animal units and has been working well for decades. Chapter 11-33 states "animal units are determined as follows - one swine weighing fifty-five pounds or more equals 0.4 animal units; and one swine weighing LESS than fifty-five pounds equals 0.1 animal units." This language is absolutely necessary. All pigs must be counted including piglets.

Do not pass Senate Bill 2345.

Roy Thompson
Buffalo, ND

March 21, 2019

SB 2345 - Relating to animal feeding operations and zoning regulations, to provide an effective date, to provide a contingent effective date, and to provide an expiration date.

Good morning Chairman Johnson and Members of the House Agriculture Committee:

I am Lee Fraase. I was raised on my family farm near Buffalo and continue to live just down the road from where I was born. Farming is my life.

In the past three years I have learned a lot about animal feeding operations. I won't take too much of your time today in order to allow an important testimony by Randy Coon on behalf of the Concerned Citizens of Buffalo.

I do have serious issues about SB 2345 and its impact on local township government. The bill contains arbitrary language and imposes unreasonable timing of just 60 days to act on a "petition" and a lengthy five year permit approval. I don't think the North Dakota Department of Health operates with any time limits.

Rural North Dakota people believe in local control. This is the major reason to start the application process at the local level first instead of at the top level of the state. What you believe may be good for the state, is not good for the state without the approval of the local township people.

I encourage each of you to do your homework and to thoroughly understand the implications of SB 2345.

Thank you,
Lee Fraase
Buffalo, ND

Testimony Presented in Opposition To SB 2345

By

Randal Coon

Good morning Chairman Johnson and members of the House Agriculture Committee. My name is Randy Coon and I am from Buffalo, ND. On February 1, 2019, I testified against this bill in front of the Senate Agriculture Committee. For that testimony, I reviewed the bill line by line and presented concerns with each item in the bill that I believed were problematic. Senate Bill 2345 was subsequently passed by that committee. We were rather short of time at that committee hearing, so I did not cover each point in great detail. I still believe that some of the language needs to be addressed because it is ambiguous and unworkable. Today, I will cover a couple of those specific points and make some general observations.

¶ #2 Before I get to my testimony there a couple of points that need to be clarified. At the Senate Hearing people in support of the bill talked about how the state needs more animal agriculture, but no one addressed this bill. Several people speaking in favor of the bill either mentioned the Buffalo hog project in name or by implication. This opened the door for the Buffalo people to present their side of the story. Senator Wanzek, who introduced the SB 2345, implied that we need these pig operations so he has a place to sell his corn. The people seeking a permit for the proposed facility in Buffalo said they would buy their corn from local farmers. However, the building had no facilities for grinding and mixing feed so the feed would likely be shipped from their feed mill in Minnesota. That argument does not justify weakening local government authority, and certainly appears to be a conflict of interest. I assume what Senator Wanzek really wants is a better price for his corn, because I do not know of any elevators in my area that will not buy corn. In reality, it is unlikely these hog CAFOs would pay very much above the market price in the area for their corn. Senator Wanzek also alleged that people “moved the goal posts after the game has started” in reference to township ordinances. The hog farrowing operation in Buffalo was the best kept secret since the Manhattan Project, as it was being planned for years before the Buffalo people were aware of it. If not for someone calling the Mayor of Buffalo just days before the permit was to be granted, the permitting process would have been completed without anyone except involved parties having knowledge of the plan. These accusations do not coincide with the facts. The fact is that Pipestone Systems never applied to the township for a permit. This bill was predicated on false information. Also, this bill is a case of “closing the barn door after the horses are out”. Most townships in Cass County, and maybe North Dakota know about the push to get hog CAFOs into the state and hopefully have updated their ordinances. This is a cost to the townships because they have to hire an attorney to make changes, or risk being sued by a group in the state that wants to be the township ordinance watchdog.

¶ #3 The Agriculture Commissioner’s office presented a nice Power Point testimony. The graphs showed the pork production for several states including North Dakota. It was stated that Iowa produces so many hogs that their numbers would skew the graph relative to the other states. The presenter failed to mention a couple of other facts about Iowa, they also have the worst water quality of any state

in the continental United States and the highest rate of asthma. The 750 impaired waterways in Iowa would also skew the graph. In talking about the Buffalo project, it was correctly documented that 180,000 piglets would be produced, but the permit application shows the number of hogs at the proposed facility to be 9,056. The hog operation was not an isolated project, with 9 additional hog barns planned for the area. The stated goal was to eventually increase the number of hogs in Cass County to 800,000. The Department of Environmental Quality also spoke in support of the bill. This is concerning given the Department of Environmental Quality's statutorily imposed duty to impose conditions on permit holders that may go beyond the zoning authority of the county or township [reference: page 12, lines 4-9, item (d)]. For example, if a body of water, like Lake Alice, became so contaminated that the setbacks needed to be increased, this would become impossible because the Department of Environmental Quality has given up that power.

¶ #4 The North Dakota Century Code [11-33-02.1-2.e-f] defines how swine animal units are to be calculated. This bill inserts the word **weaned** into the definition of how to determine animal units for swine weighing less than 55 pounds. The sentence would read, "One **weaned** swine weighing less than fifty-five pounds (24.948 kilograms) equals 0.1 animal unit." This means that the piglets will not be counted in the animal unit total. All of the piglets would be weaned before they reach fifty-five pounds and transferred to finishing barns. The proposed Buffalo farrowing operation was for the sole purpose of producing piglets, 180,000 annually, but none of these would be counted in the animal unit total. The Agriculture Commissioner's office bemoaned the fact that North Dakota has so few pigs relative to other states, but yet they do not want to count one-third of the animal units at the proposed Buffalo hog farrowing operation. This is hypocrisy at its best. The 2018 Iowa Agricultural Statistics has an inventory of pigs, including a category for pigs under 50 pounds. Counting the 180,000 piglets would add an additional 1,380.8 animal units to the previously determined 3,028.4 animal units, giving the operation 4,409.2 total animal units. This **increases the animal unit total** by 45.5 percent. An animal feeding operation can expand its permitted capacity by twenty-five percent on one occasion without triggering a higher setback distance. This expansion could happen without added acres for manure disposal, additional composting bins, or increased manure pit storage.

¶ #5 The manure storage pit is required to only have 270 days of holding capacity. This Buffalo site would be exceeding its permitted capacity with the potential for catastrophic results. This looming environmental disaster in our community would result in the contamination of the Buffalo Creek, Swan Creek, Maple River, and eventually the Red River. There has been no justification presented for not counting the piglets except "that's the way Minnesota does it". The counting of pigs under 55 pounds as 0.1 animal unit was deemed important when the animal unit count was put into the North Dakota Century Code, so it should not be changed **without** due cause. Counting the animal units for a swine with 12 to 15 piglets the same as another animal at the facility weighing 56 or more pounds is not equitable unless the piglets are counted separately. If piglets are not counted there needs to be an adjustment in the farrowing swine animal unit coefficient. By not including the piglets. The hog operation can avoid larger setbacks and pollution discharge permits. Adding this one word can significantly change the animal unit count, and the resulting problems it may cause should not be understated.

¶ #6 The language in this bill is vague and often lacks description for the terminology used. A couple of examples are "substantial economic burden" [reference: page 3, lines 15-19, item (7)] and "person intending to construct" [reference: page 4, lines 7-8, item (9)]. The "substantial economic burden"

phrase gives no definition of what constitutes an economic burden, how is to be quantified, and who is going to make that determination. This terminology lends itself to misuse and abuse unless all aspects of this language are clearly defined and administered by qualified persons. In my undergraduate and graduate course work I did not come across a definition for “substantial economic burden”. I do not believe the Department of Environmental Quality is qualified to make these types of value judgements. The “person intending” is given substantial new rights within the language of this bill. It is easy to interpret this as someone who has a thought, might be considering, or could possibly want to at some time, is testing the waters, wants to get his name on the list, or is just curious about building this type of facility. The terminology does not require any engineering plans, building plans, financing plans, location of the facility, size of the facility, or nutrient management plan to be eligible for a determination of qualifying with township ordinances. If they are determined to be in compliance with the township ordinances they have five years before they are required to begin construction. There is nothing about this provision that makes any sense. This creates a classic “bait and switch” opportunity. This would be easily abused and cause a high level of confusion for the local governments. Other wordings in the bill also would create uncertainty and confusion for local governments and their residents solely for the purpose of allowing animal feeding operations to get a free pass on zoning ordinance compliance.

¶ #7 This bill also puts undue requirements on local government units. It requires townships to approve within 60 days if a “person intending” to construct an animal feeding operation is compliant with the township ordinances, or if it is not acted upon in 60 days approval is automatically granted. Township governments are all volunteers and do not have a staff working for them. Townships hold an annual meeting and typically do not hold other meetings unless necessary. This would put an undue burden on these volunteer public officials, especially with the applicants only “intending” to go ahead with constructing a facility. Imposing a 60-day time frame for a township to approve a permit is absurd. No governmental agency at any level should be subject to this ridiculously short time-frame. This provision of the bill also raises due process concerns because it arguably does not comply with basic notice requirements for those living within the applicable setback area. A township could be inundated with hundreds of “intended” applications that have virtually no chance of coming to fruition.

¶ #8 In addition to the concerns I have addressed, I also feel this bill is solely intended to give further advantages to hog Concentrated Animal Feeding Operations. Townships and rural residents have very few tools at their disposal to stop the invasion of these facilities into their communities. This bill will further erode their ability to protect their lives and their natural resources. I worked with the Concerned Citizens of Buffalo to stop one of these facilities from locating in our community. We resisted this facility for the right reasons and we all were either involved in farming or from farm families. We were criticized as being anti-agriculture, but nothing could be further from the truth. **ALL OF US ARE DEPENDENT ON AGRICULTURE, BUT WE MUST PRACTICE RESPONSIBLE AGRICULTURE, OR WE ALL WILL SUFFER THE CONSEQUENCES.**

¶ #9 The Concerned Citizens of Buffalo are a unique group of people. Our desire to stop a large hog operation from locating in our community was not without justification. When we started working on this problem in 2016 one of our members shared a study that looked at what people least want to locate in their community: a nuclear waste dump site was the least desired, followed by hog barns. We were contacted by a County Commissioner from South Dakota who told us to do whatever we could to stop that hog barn or we would regret it the rest of our lives. We had people from Minnesota, South

Dakota, Iowa, and Missouri speak to us about what this facility would do to our community. A former North Dakota Agriculture Commissioner visited with our group about the problems with these types of facilities and told us we were about to take on an up-hill battle. People around the United States with first-hand knowledge of hog CAFOs follow the news stories in other areas, even in Buffalo, ND. I personally have been contacted by interested persons from North Dakota, South Dakota, Minnesota, Wisconsin, Iowa, Missouri, Arkansas, California, and New York, who either want to share encouragement or information. Many of these requested that we share our research and information with them. It became clear to the Concerned Citizens of Buffalo that we were not alone in this battle, and we have strong support from local people as well as others across the United States.

¶ #10 The Concerned Citizens of Buffalo were determined to stop the proposed hog operation from coming to their community by using research. This group has completed several copyrighted documents. I was asked to help because of my research background. Topics were identified and people volunteered to research them. My topic was evaluating the nutrient management plan (a fancy way to say how they are going to get rid of all that manure) because I had previously worked on biomass studies that employed somewhat similar methodology. Every topic was researched and the information was presented at the North Dakota Department of Health Public Hearing in Buffalo. People were allowed to present a 3-minute synopsis of their work and the complete report was submitted in written format. Written testimony submitted by the Buffalo people totaled over 1,900 pages.

¶ #11 Information compiled by the Concerned Citizens of Buffalo was research on the critical topics they had identified, and their comprehensive reports were presented professionally. The North Dakota Department of Health was tasked with reading the research and providing comments to the authors. After several months the Department of Health awarded a permit for the concentrated animal feeding operation, despite all the math, science, and research that was provided to them documenting how harmful the facility would be to those living in the Buffalo community. Furthermore, the location of the facility on the shoreline of the prehistoric Lake Agassiz was cause for environmental concern.

¶ #12 An inventory of the medical conditions of persons in the Buffalo community living in a 3-mile radius of the proposed hog operation was conducted. Medical conditions such as asthma, COPD, MRSA, auto-immune disease, allergies, and cardiovascular disease were reported. This information was forwarded to the Johns Hopkins Center for a Livable Future in Baltimore, Maryland. The resulting report concluded that **hydrogen sulfide**, **ammonia**, and **methane gasses** constantly exhausted from the manure pit were deemed to have serious medical consequences for people living in the vicinity of the proposed hog operation. This information was submitted to the Department of Health as part of the written testimony at the Public Hearing in Buffalo.

¶ #13 In addition, several primary care physicians submitted written testimony stating the problems this facility would cause their patients. One physician indicated that he would not allow his patient to live in his current home if the pig operation was built. One family was told that their grandchildren's medical conditions would prevent them from visiting there home if the hog farrowing facility was to be built. Unbeknownst to the Concerned Citizens of Buffalo was that the Johns Hopkins researchers also mailed a copy of their analysis to Dr. Terry Dwelle M.D., who at that time was the head of the North Dakota Department of Health. Freedom of Information requests showed that Dr. Dwelle forwarded the study to the Agriculture Commissioner, with an email saying something to the effect that this was a problem. Apparently the Agriculture Commissioner and the Department of Health did not feel the

medical consequences for the Buffalo residents were as important as getting another factory hog operation in the state. In response to the testimony presented at the Public Hearing in Buffalo, ND, the Department of Health concluded that there were no medical consequences from the hog operation. Prior to this application, I believe Dr. Dwelle had been signing the permits for the hog concentrated animal feeding operations. Dr. Dwelle probably did not sign the Buffalo hog operation permit because of potential consequences of over-ruling primary-care physicians. However, the Freedom of Information request shows a paper trail where he approved the project and directed someone else in the department to sign it. The Buffalo people's health conditions were less important to state officials and the Department of Health than the number of pigs in the state.

¶ #14 Research publications documenting the medical effects that industrial hog farms have on local resident's health are readily available. Recent studies have been published by the Duke University Medical School, University of North Carolina, and the University of Iowa. These locations provided a "data rich" environment. Other prestigious organizations publishing studies on this topic include the Pew Institute and the Johns Hopkins Center for a Livable Future. **These research reports are not popular with the pork industry.** An article published by respected journalists Kate Cox and Claire Brown tells the story of a University of North Carolina epidemiologist looking into the health impacts of industrial-scale hog operations in the state. The state's Pork Council became aware of the study and filed a Freedom of Information request to gain access to the findings. The researcher had acquired confidential medical records and promised the participants in the study that that information would remain private. The researcher was forced to turn over all documents or be charged with theft of state property and possible jail time. A Professor Emeritus and founding Dean of the College of Public Health at the University of Iowa was studying the link between industrial-scale hog farms and the asthma rates in local children. The pork industry feared the research would result in the state legislature regulating emissions, an expensive proposition for the industry, and forced the University to stop the research project. These examples only help reinforce what the Concerned Citizens of Buffalo discovered, that hog CAFOs were more important to the state leaders than their citizen's health.

¶ #15 As previously mentioned, my topic to research was the nutrient management plan submitted with the permit application to the North Dakota Department of Health. The nutrient management plan is simply a plan for how the hog operation was going to get rid of all the manure produced at the hog CAFO. All data for the proposed Buffalo hog facility were available in the public domain. The facility was to house 9,056 animals which amounted to 3,028.4 animal units. The permit application included 3,348.1 acres of land that were secured for manure application. Annual manure production at the facility was estimated to be 11.2 million gallons.

¶ #16 A methodology was developed to determine if the land acres available were adequate for the manure disposal in an environmentally responsible manner. The methodology was based on the corn and soybean/edible bean rotation indicated in the permit application. This allowed manure application on the same field every-other year, which was more frequent than the commonly recommended every third year. Because of time limitations the analysis was based on the totals for the project. The results indicated the project was significantly short of acres to dispose of the liquid waste. At the Public Hearing in Buffalo in March of 2016, Karl Rockman from the Department of Health was asked by someone in the audience what would happen if they did not have enough land to get rid of the manure. He stated that if they did not have enough land they would not get a permit. To be honest, I had one of

those “gottucha moments”. Results of my analysis would show they were woefully short of land to dispose of the amount of manure this facility would produce annually.

¶ #17 To my surprise, The Department of Health did in fact grant a permit in August of 2016. The Department of Health allowed an additional 2,413.0 acres of land to be added to the proposal after the close of the comment period. Senator Wanzek’s complaint about moving the goal posts after the game has started, certainly applied here. In my testimony at the Buffalo Public Hearing I reviewed and heavily referenced studies that stressed the importance of not allowing manure application to exceed nitrogen and phosphorus soil test recommendations. This restriction was included in the final permit approval and is very important for responsible disposal of the liquid hog manure. Liquid hog manure is not a plant nutrient balanced product, i.e., the ratio of nitrogen to phosphorus is such that applying enough nitrogen for crop nutrient requirements will result in excess phosphorus being added to the soil. Every field in the Buffalo area contracted for manure application reached the soil test recommended phosphorus limit before the nitrogen requirement was fulfilled. This situation forces the farmer to apply and incorporate commercial nitrogen to meet the nitrogen needs. This added operation increases fertilizer costs significantly, but this practice must be followed to be in compliance with the terms of the permit. Enterprise budgets were developed to evaluate the cost structure for this situation. In a recent conversation with an Iowa hog producer, he stated that they figure there is 100 pounds of salt in each 1,000 gallons of liquid hog manure. A typical application rate for the fields that were contracted for manure application in the Buffalo area was 4,000 gallons per acre. This would result in 400 pounds of salt being added to each acre, which would be a problem for soils in that area.

¶ #18 A second evaluation of the nutrient management plan was completed after the permit was granted using the additional data reported by the Department of Health. This analysis was done on a field by field basis. This level of detail provided a much more accurate evaluation. This analysis also used the data provided in the public domain by the Department of Health. The same simulation model was used, the same coefficients were used, but data added after the close of the comment period were included, and the analysis was performed on a field by field basis. Crop rotations from the soil test data determined the annual corn or soybean/edible bean acreage. Based on the information provided, fewer acres were available in the first year of the rotation than the second. Results of the analysis indicate that there are 3.3 million gallons of manure that could not be responsibly applied in the first year, and 2.7 million gallons in the second year. The most likely solution for this problem is to over apply the manure to get rid of it. The practice of over-application is not uncommon in Iowa. Two university researchers studied the usage of commercial fertilizer and the manure applied as fertilizer in the state. They determined that nutrient usage far **exceeded plant recommendations**, resulting in nitrate and phosphorus loadings into Iowa waterways. The researchers released their findings on the condition of anonymity for fear of losing their jobs. Clearly, pollution from the proposed Buffalo facility will be a significant environmental problem given its location near the Buffalo Creek, Swan Creek, and the Maple River in Cass County.

¶ #19 The weather this past fall in the Buffalo area provides a good indication of the pollution problems this facility could have caused in Cass County. Rain and snow caused excessively wet fields from mid-September until freeze-up in late November. Many soybean fields were harvested after the ground was frozen. Based on the information provided, the liquid manure was to be applied to the soybean ground for the following year’s corn crop. Almost no fertilizer was fall applied in the area due to the wet soil conditions, so it is likely that liquid manure would not have been applied, either. This

facility was only required to have storage for 270 days' worth of hog manure. The manure production continues everyday despite the weather. **So, what is going to happen to all of this manure?** A likely scenario is that the manure pit will become full and manure will have to be removed, with the liquid manure broadcast on frozen ground. This is possible because the permit that was granted allowed for broadcasting of liquid manure without any restrictions such as time of year, etc. This was a contradiction to what we were told at the Public Hearing in Buffalo, ND, where the Department of Health spokesman stated that all liquid manure would be disposed of by injection into the land. Spreading liquid manure on frozen land with the snow cover we have will result in the manure and all of its nutrients running off the fields and into waterways along with the melting snow. This is currently happening in Iowa where the DNR has issued already issued 110 emergency permits to spread liquid hog manure on snow-covered frozen ground. All of the nitrates and phosphates will eventually end up in bodies of water. Not only are the nutrients being lost but they become pollutants into our precious water supplies. The Fargo Diversion Authority complains that it is farmer's water draining and run-off that causes their flooding, imagine what they will say when that water contains raw hog sewage. This does not sound like responsible agriculture to me.

¶ #20 When the additional animal units from the piglets and the possibility of 25 percent expansion are factored into the equation, the probability of environmental concerns become significant and real. In addition to not having enough land to dispose of the liquid manure, the manure spreading agreements (called easements) with the land owners were made out to a dummy corporation that does not exist. This was confirmed by the Secretary of State's office. Six of the contracts were signed by a representative of Pipestone Systems who was not registered as one of the partners, and was not eligible to conduct business in the state. These manure spreading agreements were cause for concern and should not have been accepted by the Department of Health for purposes of granting the permit.

¶ #21 As previously mentioned, the proposed hog CAFO near Buffalo was going to be located on the shoreline of the prehistoric Lake Agassiz. This is an environmentally sensitive area due to the presence of soil eskers and the soil types that exist in the area. Much of the land in the area is comprised of **Hamerly-Tonka soils** which the National Resources Conservation Service gives the worst possible rating for liquid manure application. These **Hamerly-Tonka soils** comprise 45 percent of the land that had been designated for liquid hog manure disposal. The shortage of land to dispose of the manure is exasperated by the land that is a very poor choice for manure application. If this facility existed, there would be no possible way to dispose of millions of gallons of hog wastes each year responsibly. This poses a serious environmental problem for not only the Buffalo area, but also Cass County and all the way to Canada. As I previously mentioned, the hog farrowing project that you have heard about for Buffalo was not an isolated facility. We were told that an additional nine barns were planned for the area as soon as the first one was completed.

¶ #22 Last winter the Department of Health held a series hearings to solicit comments on changes to the Administrative Code which included changes to the design manual, water quality, discharge permits, and nutrient reduction for concentrated animal feeding operations. These changes were an attempt to further protect the industry. The Concerned Citizens of Buffalo provided written testimony on issues they believed were beneficial to the hog CAFO industry at the expense of the residents of North Dakota. Included were changes such as they no longer had to file nutrient management plans with the Department of Health, but rather keep them on file at the site. This shields these records from freedom of information requests, virtually removing any chance citizens have to evaluate if the manure is being

disposed of responsibly. Other areas of concern were the misuse of the Phosphorus Index for granting permits and terminology such as “may, shall, and could” when referring to rule enforcement. The “Waters of the State” changes included defining the terms “nutrients” and eutrophication” as beneficial to the environment. It was stated that, “eutrophication means the process of enrichment of rivers, streams, lakes, reservoirs, and wetlands with nutrients needed to maintain primary production”. Eutrophication is the primary cause of “algae blooms” or “dead zones” in bodies of water, especially the Gulf of Mexico. Also, nitrogen and phosphorus are the primary causes of water pollution in the Midwest. The Administrative Code sets tolerances for practically every known pollutant, but later it is stated, tolerances could be exceeded if necessary to accommodate important social or economic development in the area in which the waters are located. This language sounds like it is specifically written to allow hog CAFOs to pollute.

¶ #23 The Buffalo people also researched topics such as the antibiotic resistance problem, the loss of property values in the area, and failure to meet industry standards for the concrete manure storage pit. Of all the antibiotics used in the United States, 80 percent are given to healthy animals. The antibiotics get into the meat of the animals. Antibiotics not completely absorbed by the animals go into the manure. The antibiotics in the manure are applied to the soils and can contaminate water supplies and also be taken up by the plants growing on the soils. Humans can be infected by eating the meat of the animals, the foods or vegetables grown on the land where the manure was applied, airborne toxins, and by drinking contaminated water. The World Health Organization has called antibiotic resistance one of the greatest public health threats today. The Concerned Citizens of Buffalo had the design and specifications for the concrete manure storage pit reviewed by a forensic architect. It was determined that there were many problems with the structure including rebar not meeting industry standards and no expansion joints for a facility with the footprint of the FargoDome. These hog factory operations avoid code requirements because they are classified as farms. The concrete structure was also going to be built several feet into the water table. We were never afforded the opportunity to see the actual building plans, whether they were not submitted or just not placed in the public domain. I recently received an email from a retired University of Arkansas geologist. He was concerned about the construction of the manure pits for the proposed Buffalo and Devils Lake hog operations. The engineer who had designed a hog CAFO in his area was the same one designing the manure pits for Buffalo and Devils Lake. He included the quotation from the Devils Lake Public Hearing where the engineer stated that he had organized “hundreds of these farms, and none of them are leaking”. That Arkansas facility is currently leaking into the Buffalo River and has contaminated it so badly that is no longer safe for recreational or human usage.

¶ #24 All of this information the Concerned Citizens of Buffalo had obtained was presented to the Department of Health at the Public Hearing in Buffalo. The research compiled, the science and math employed were used to prove that this facility should not be granted a permit, was essentially ignored by the Department of Health. The people of Buffalo were deemed expendable and the pig CAFO was more important than the lives of the Buffalo people or the environment we all wanted to protect. As you can see, the hog factory-farm industry has more protections than the people of the state. Senate Bill 2345 further enhances the advantages that industry has over the people, and if you pass this legislation **YOU** will be ultimately responsible for the air, water, and land pollution these facilities will bring into our state. If you have any doubt about the extent of pollution these facilities would bring to our state, you need to research what they have done to the environments of southern Minnesota, Iowa,

and North Carolina. These are tragic situations that occurred because someone thought they needed more “animal agriculture”. **Does this not sound like the story you are being told?**

¶ #25 The hog CAFO industry has been promoted and protected by the North Dakota Legislature, the Agriculture Commissioner, and the North Dakota Department of Health. Laws and Administrative Code are being written and revised to facilitate the industrial-sized operations coming into the state. As has clearly been documented, these facilities leave a trail of pollution and health problems for local residents. These facts are undeniable and refusing to recognize their problems is irresponsible. Research has been done that confirms the problems associated with hog CAFOs, despite the industry efforts to suppress the information. How can any industry want to stop research regarding the health of the children in their state? Is this really the type of industry you want to bring in to our state, especially one that is given a free pass to do whatever they want to do? Freedom of Information requests show that the North Dakota Department of Health has never denied a CAFO permit request, and they are very proud of that fact. Is it even possible to get an objective review of the facts and have the Department of Health make an informed decision when permitting these facilities? The information provided by the Concerned Citizens of Buffalo provided overwhelming evidence that the permit for that location **should never have been granted.**

¶ #26 The hog CAFO industry has more than adequate protection to obtain a permit to operate in the state. The rural residents only have the township ordinances to protect their health and natural resources. If you pass SB 2345, you will be giving the hog CAFO industry total control. There will be no checks and balances. For the proposed hog CAFO near Buffalo the state statutes provided for a one mile setback from residences because of the size category it is in. The North Dakota Century Code allows the township to increase the setback by 50 percent, or one-half mile. The only provision available to the township to protect the local residents is that one-half mile setback they can add. The irony of this is that the hog CAFO industry wants a 3-mile distance between hog barns for the health of the pigs. The pigs need a 3-mile barrier but humans only deserve one to one-and-a-half miles for their health. When you vote on SB 2345, please consider all the facts that have been presented. I have presented information regarding the medical issues, the lack of land for manure disposal, and the air, land, and water pollution that is inevitable. Do not let this industry turn our state into another Iowa.

¶ #27 Please do not take away the few little things rural North Dakotans still have available to them to protect themselves and their way of life. I believe in responsible agriculture. We do not want our valuable natural resources of clean air and water needlessly compromised. Please do not let this industry turn our water into the quality that exists in a third world country, like they have done to Iowa. I believe the hog CAFO permitting process is way out of balance in favor of the industry. I would urge each and every one of you to **investigate the process** and strive to change it so these decisions are based on **facts**, science, math, and research. It is time to put an end to the free pass the hog factory farms have enjoyed, and make them meet the environmental standards needed to protect our precious resources. A more transparent and equitable process would benefit everyone. Please give SB 2345 a **DO NOT PASS** recommendation. Thank you for listening to a side of the story that you may not have heard before.

Mackinnon Luke
747 6th St NE
Valley City
701 206 7339
SB 2345
3.21.19
Attachment 13

SB 2345 Testimony

Dear Representatives :

Thank you for allowing me to testify against SB2345 this morning. I have worked as an internal medicine physician in Valley City for almost 35 years. I came from RI and then New York, both crowded and dirty so I appreciated a landscape that while cold, was clean. I have traveled extensively throughout the US and the world and then always come back home to realize how lucky we are to live in a place that has room to breathe, clean air and drinking water and pretty good infrastructure.

1.What is going on in IOWA?

At the Senate hearing earlier this month, backers of the bill testified for about an hour about how ND was lagging behind Minnesota, SD, and Iowa in building CAFO's and reaping their profits. It seems that not all is well in Iowa, at least.

The DES Moines Register reported on 6/22/2018 on a lawsuit by 3 plaintiffs who had all lived in their current homes before the CAFOs were built. They said that

“the smell has prevented them from holding events, barbecuing, opening windows, sitting on their porches, walking on trails or riding ATVs outside, and that they've experienced symptoms including burning in their throats and eyes, diarrhea, lethargy and nausea, depression and embarrassment.”

Air standards must be stricter for communities because of at risk population, constant low level exposure. People in the community have no choice but to be exposed to hydrogen sulfide, ammonia, VOC, aerosolized, bacterial and inflammatory substances.(The Explosion of CAFOs in Iowa and Its Impact on Water Quality and Public Health ,James Merchant David Osterberg , January 2018

Another Register article reported on the suit by the Water Works utility company against 3 water districts for allowing excessive nitrates into the Raccoon River. Water Works had to paid an extra 1.5 million dollars in one year for water treatment and was forced to consider an \$80 million upgrade because of the nitrates.

High nitrate levels in water used in mixing infant formula have been associated with risk for methemoglobinemia (blue-baby syndrome) in infants under 6 months of age Epidemiologic studies of noncancer health outcomes and high nitrate levels in drinking water have reported an increased risk of hyperthyroidism, insulin-dependent diabetes (IDDM; Increased risks for adverse reproductive outcomes, including central nervous system malformations and neural tube defects.([Environ Health Perspect.](#) 2007 Feb; 115(2): 308–312. 2006 Nov

14. doi: [10.1289/ehp.8839](https://doi.org/10.1289/ehp.8839). Impacts of Waste from Concentrated Animal Feeding Operations on Water Quality [JoAnn Burkholder](#),¹ [Bob Libra](#),² [Peter Weyer](#)

The Gazette, October 14, 2017 headline was: Iowa landowners unite against animal confinement [unilateral approach borne of frustration with lawmakers and regulators](#)

43 landowners entered into a pact to refuse to allow manure to be spread on their land in an effort to prevent further CAFO's from opening nearby.

In addition to smelly air, Iowans also can thank CAFO's in large part for closed beaches.

Since 2006, the [DNR has issued 185 beach advisories](#) for high levels of microcystin, a toxin produced by blue-green algae. Because the toxins can cause gastroenteritis, skin irritation and allergic responses, as well as potentially life-threatening liver damage, the DNR advises against swimming at state park beaches when the advisories are issued, and monitors local beaches when the notices are in place.

June 7, 2016 Iowa Public Radio:

Boaters Beware: Iowa DNR Expects Another Record Year of Toxic, Blue Green Algae Bloom

37 Blue Green algae alerts occurred that summer as of Sept 2, 2016

Randy mentioned that "Iowa has the worst water quality in the country. This is ND's abbreviated scorecard for rivers and streams: (North Dakota 2018 Integrated Section 305(b) Water Quality Assessment Report and Section 303(d) List of Waters Needing Total Maximum Daily Loads)

Total river and stream miles: 56,679.64

* Drinking water supply use is classified for 5,164 miles of rivers and streams in the state. 537 miles assessed for this report, 126 miles were assessed as threatened for drinking water supply use.

* Recreation use was assessed on 7,926 miles of rivers and streams in the state. Recreation use was fully supporting: 1,352

threatened: 3,231

not supporting: 3,342

*Aquatic life: 1,551 miles supportive

2,206 miles threatened

1,106 not supportive

Nutrients for all waterbodies: total phosphorus, 23 percent of waterbodies are in good condition
69.3 percent are considered to be poor

total nitrogen estimates reveal that 6.7 percent of waters are good
and 57.3 percent are in poor condition.

North Dakota waters are likely better than Iowa's but how long will this be with the extra burden
of manure from ~~hundreds of thousands~~ ^{millions} of pigs?

2. A bit more on the antibiotic issue.

As a practicing physician, the threat of going back to a time when he had no antibiotics terrifies
me. The drug companies have few if, any, real new classes of drugs available to treat bacteria
that are resistant to many of our present drugs. A CAFO is the perfect breeding ground for a
superbug as there are many animals, all carrying their own mix of bacteria in close proximity.
The animals trade bacteria and the bacteria trade genes. With enough pigs and drugs in one
place, bacteria with immunity to several drugs at once evolve and have the potential for
untreatable human illness.

3. Trust in state governmental agencies

Perhaps there is a safe way to have CAFO's. I am skeptical that safety is a foremost concern
presently. As anyone who has children knows, babies, including baby pigs, produce excrement-
sometimes a lot depending on diet. The exclusion of piglets in the manure calculation makes
sense only to allow the producer to minimize his overhead.

Devils Lake, as we well know, fluctuates greatly in its spring inflows. While the Devils Lake
CAFO sits above the 1459 feet above msl natural overflow, sometimes large spring flows could
either washout a manure pit or prevent manure spreading. Either way, nitrogen, phosphorus, e..
coli, heavy metal, antibiotics, hormones could end up in the Lake and then down the Sheyenne
River, from which Valley City gets its drinking water. For neither the Buffalo and Devils Lake
site is there a contingency plan for manure when it is too wet, too dry or cold to apply to fields.
Are there any plan to monitor and address nutrient leakage into ground or surface water from
the CAFO s.? We know from the Integrated Water report that most ND surface waters are not

well monitored and more are in trouble than in good shape. It is difficult to have confidence that our regulating agencies are acting for safety.

4. Local control

I thought this was the heart of North Dakotans way of life. Tough people dedicated to their families, friends and land. Willing and able to get things done but always careful because you had to live with each other. This bill strips, in a backdoor manner, the ability of communities to make decisions for themselves. **Please consider that taking local control away from individual landowners and local communities lead to harms to people who may have lived and worked there for a generation or two for the benefit of the few who can leave the community or state or may never have been there in the first place.**



North Dakota Township Officers Association

Promoting basic Grassroots Government!

SB 2345
Attachment 14

Larry A Syverson, Executive Secretary
465-150th Ave NE
Mayville ND 58257-9011
(701)430-1735
larry.ndtoa@gmail.com

NDTOA opposes SB 2345

Chairman Johnson and members of the House Agriculture Committee, thank you for this opportunity to express our concern about SB 2345.

I am a farmer; I raise soybeans on my farm in Roseville and Mayville Townships of Traill County, commodity markets are weak; I get that. Freight and the basis are eating us alive; I get that. We need to develop more local use of our commodities; I get that.

My grandfather came to that farm in Roseville Township from Norway as a young man, well over a century ago; he spent the rest of his life working that farm. My father was raised there and spent his entire life working that farm. I have been following in their footsteps living and working on that farm. So when someone says they feel threatened by some development that could render their rural home unlivable, existence there miserable; I get that too.

Townships and counties have the ability to control land use through zoning authority, this protects the established uses of property from nearby incompatible developments. Zoning regulations are not set up to eliminate certain developments but rather to protect the existing ones, to protect the prior investments.

Certain land uses such as the large scale livestock operations have a long history of being particularly bad neighbors and people have an aversion to them. They wish to keep them as far away as possible. Recently we had a speaker from the ND Livestock Alliance at our annual convention and she told us how the modern methods have greatly reduced the odor generation and other objections from neighbors. However, skeptics will remain until it is proven that the promise is the practice.

I understand that some developments have successfully been built under the existing law with few if any problems or complaints. There might have been local problems with certain developers; but we feel the law should not be greatly changed because of these developer issues.

I have seen a proposed amendment which would greatly lessen our objections to SB2345; it addresses the majority of our concerns.

Serving ND Townships since 1966
For information go to: NDTOA.COM

SB 2345
3.21.19
Attachment 14

One: It requires that the application petition contain the description of the nature, scope and location of the proposed animal feeding operation and a site map showing road access, the location of any structure, and the distance from structures to the nearest section line.

Two: It reduces the freeze on the application of regulation changes after a permit is granted from five years to three.

Three: It allows some conditional use regulation to protect roads and other infrastructure.

Four: It increases the allowance for board action from 60 days to 90 days, an improvement, but, where did that original 60 day allowance come from?

Back in 2012 an individual, from Hillsboro, was planning to erect a small building on a lot at Golden Lake which is in Steele County; he applied for a building permit early in the year. Due to some unrecorded issues he did not get that permit in time for construction that year. On his behalf, Senator Murphy from District 20 introduced SB2180 in the 63rd session to require Township Zoning Boards to act on building permits within 60 days. SB2180 was amended in the House Political Subdivisions Committee to require that Township Building permit applications bear the notice that board action is required within 60 days.

While 60 days might be sufficient time for deliberation and notice to the public for a lawn shed, the development of a large scale feeding operation will require careful review. Zoning ordinances normally have a public notice requirement of 15 days or more before for a hearing. Local zoning boards in North Dakota are largely made up of farmers, certain times of the year it is difficult for them to fit another meeting into their day. For these reasons we feel that further amending to allow 120 days would give more adequate time to schedule hearings, allow for public notice, and allow for outside legal and other review of the application.

Our last concern is that unless the zoning authority has an animal feeding ordinance on file in the central repository SB2345 doesn't seem to require any local permit before state consideration. While the local authority may not have ever enacted an animal feeding regulation, permits are still needed for buildings and conditional use to protect the roads and other infrastructure. Those permits need to be in place before the state can accept the application; SB2345 should be amended further to make that clear.

Chairman Johnson and members of the House Agriculture Committee, please consider the other taxpayers of the Township, help them protect their investment in rural homes and lives; please give SB 2345 in its original form a do not pass recommendation or amend it to address our concerns.

Thank you, I will try to answer any questions you or the committee may have.

House Agriculture Committee Chair Dennis Johnson and fellow members. My name is Leon Pederson and I am from Langdon ND. I am here speaking on behalf of concerned citizens in Cavalier and Ramsey County who are in opposition of some of the proposed wording in SB 2345. To be precise the set back standards, the lack of wording protecting recreational water areas, state parks, sustainable drinking waters, and the definitions on page 10 of this proposed bill. First and foremost, let me inform you that no one I am speaking for is in opposition of a CAFO or an AFO provided they are placed in a proper location. We believe a proper location would be somewhere that would not hinder a person's day to day life, their worship, their leisure or would not harm any of ND's waters, beautiful parks or areas used for recreation. These places and waters need to be preserved and maintained for ourselves and especially for our future generations!

I am here to speak out against a proposed deep pit, manure spreading, farrowing and gestation sow AFO. The plans and location for this AFO have been registered in area 10 miles from the City of Devils Lake, less than 1/2 mile from the water's edge of Devils Lake, which is a closed basin lake that feeds international waters, about a 1/4 mile from a recreational cabin, feet away from a cemetery and only 17 feet above the Spirtwood aquifer, which supplies sustainable drinking water to over 200,000 ND residents. Since Devils Lake is a closed basin lake it relies on 2 outlets and evaporation to help manage the lake's level. By adding this AFO, and proposed others, in and around the flood plain areas of Devils Lake increase the risk of contamination to the lake immensely! North Dakotans use Devils Lake every day for recreational purposes which allows the ND to take in 100 million+ in tax revenue every year and Devils Lake is able to boast being the 2nd best place in the US to catch trophy walleye. Devils Lake is also feeding aquifers that supply sustainable drink water to many North Dakotans and with water being in short demand around the US don't you think its it important to protect what we have. The residents of the Devils Lake Basin have battled for years with floods, road closure, loss of land and the inability to access their homes or utilize farm land by normal means. All of these people I am speaking for have done whatever they can to utilize their lands to ensure their families have a future. So, do you think adding AFOs to a flood plain region is a smart move?

Secondly, I would like to address the definitions found on page 10 Section 6 sub b of this proposed bill. I have gone through the NDCC and this is the first place "business, campground, church, park, public building or school" have

been defined. It opens the door to set a precedent that can be used to manipulate the rest of the NDCC. The reason they are left vague in the rest of the NDCC is because it us up to local states attorney to define them. ND Legislatures have preached “local control” for years so, let’s leave it that way! There is no sense in trying to fix something that is not broken. I believe we should remove the added part of section 6 primarily subsection a thru f, which were added for definition purposes, and remove the “word striking” added to this section and return it to the original form in the NDCC section 6 of 23-25-11. Which states “For purposes of this section, a public park is a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law. For purposes of this section, a campground is a public or private area of land used exclusively for camping and open to the public for a fee on a regular or seasonal basis.” In conclusion please consider everything I have talked about today because ND’s natural resources are not only precious to us but are need for our future generations. I have included all my research papers in the packets I have handed you. Thank You for your time and understanding! Are there any questions?

What risk does the wording in this Bill bring to area's with Close Basin Lakes such as Devils Lake?

The Devils Lake Basin relies on 2 outlets and evaporation to help manage (Not Maintain) its lake levels. There is nothing in place in the basin to Maintain a steady and consistent water level. Management via the East End and West End outlets is vital to the region and the only means of human intention on lake levels, beyond that is it Mother Nature and Evaporation.

With the wording in this Bill the Devils Lake Basin is at risk of multiple or unlimited numbers of CAFO's or AFO's being built in a closed basin area where the need to manage the lake waters levels and quality are of urgent importance's every year. I think nearly everyone in this room is familiar with the Devils Lake region and the nearly 30 year battle the residents of the basin have had with uncontrolled inflows of water with only one natural drain which is now Controlled by the Tolna Coulee Controlled Structure.

Allowing CAFO's or AFO's to be built in a region such as Devils Lake with the dangerous issues the region has with lake levels and water quality would be negligent. As I am guessing most in this room know there is a Hog Barn already waiting to be permitted just ½" mile from the shores of Devils Lake with rumors of more behind this one.

A bit of a FYI history lesson on Devils Lake. There is a West End outlet that feeds the fresh water so that it can blend with the waters from the East End outlet which because of Stump Lake have higher levels of Sulfate. That west end outlet is vital to the pumps running to help manage water levels. Waters that are pumped form Devils Lake through these outlets runs south in the Sheyenne River, then into the Red River and from there north into Canada (International Waters) Why would the state run any kind of risk to jeopardize the ability to use these pumps to help manage the Devils Lake water after the State, Federal and local governments have invested over 2 BILLION dollars trying to get a handle on it. With that, this unmanageable beast (Devils Lake) which has ever so slightly become manageable over that past 6 or 7 years because of these outlets is now one of North Dakotas most Treasured Tourism destinations that brings in over 100 million dollars annually. With that in mind why would anyone here today agree to change wording in the ND century code which would allow CAFO'S and AFO'S to be built in a region such as the Devils Lake Basin. It would seem to be dangerous, reckless and irresponsible at best.

Interesting enough there is a barn waiting to be permitted in Pelican Township of Ramsey County. A Township that is made up of roughly 14,000 acres that as of 2011 had lost 77 percent of its land that makes up that township to the waters of Devils Lake and with that it lost as much of its tax base and of its 36 miles of road network it has 6 miles remaining. Any land that is not underwater in that township runs down hill into the waters of Devils Lake.

Certainly, there can be wording put in place in this bill to protect Natural Resources in the State of North Dakota such as Devils Lake to prevent them being negatively impacted because of the Waste that is created by CAFO'S and AFO'S. It seems that the wording that is being requested to be changed with this bill is to personally benefit owners and investors of future CAFO'S and AFO's with little or no regard to the natural resources of the State of North Dakota such as Devils Lake which is now rated the second-Best Walleye fishery in the nation. Voting No on SB 2345 as it is written would be a vote to put the State of North Dakota and its natural resources ahead of Personal Greed.

Bringing their Holy Bibles across the Sea, the settlers congregated and built the Norway Lutheran Church in 1899. Fire and flames swept through June 2, 1940, and a new church was finally dedicated on May 20, 1950, after a long delay due to the onset of World War II.

For the last 25 years of this little country church, St. Olaf Lutheran Church shared their pastor, Rev. E. L. Rude. St. Olaf Lutheran Church eventually extended an invitation to merge, which ended the mission for the Norway Lutheran Congregation on May 5, 1968. The Norway Lutheran Cemetery would be maintained as usual with the utmost care and respect.

On August 25, 1974, the St. Olaf Lutheran Congregation decided to move the Norway Lutheran Church building to Creel Bay in order to preserve the structure. Land was donated by Robert Weed and his mother, Esther Hanson. The St. Olaf Retreat Center was established with love and remains today. The early settlers would be proud.

Still regarding the Norway Lutheran Cemetery as a holy place, Adolf and Merton Bryn began the construction of a Memorial Cairn formed with natural field stone. Before the dedication on July 16, 1980, Jerry Miller donated and planted evergreen trees as a background for the Cairn.

One holy place that is often neglected is a country cemetery, but the Norway Lutheran Cemetery is not. St. Olaf Lutheran Church continues to care for this tranquil, well-groomed cemetery.

It's a humbling experience to walk, sit, reflect and pray in this peaceful country cemetery. Giving reverence to God for all buried there. For the lives well lived and for the children who had more life to live. Many graves are decorated on Memorial Day with flowers or flags for loved ones and others who served our United States for our freedom and peace.

It's a holy place for family genealogists to record dates and names. It's history. It continues to be a burial ground for many. And many will continue to come and quietly mourn in this peaceful, holy place.

I remember years ago when we cared for this Norway Lutheran Cemetery with pride as did others before us. Back in those days, the cattle would graze the hills freely to the west on the Aasmundstad farm. Pretty as a picture. I loved it. But now I'm saddened that our neighbors, the Aasmundstad Grand Prairie Agriculture, LLP would have such disregard for the St. Olaf Lutheran – Norway Cemetery. Building such a large hog CAFO only a few hundred feet from this spiritual cemetery almost seems, sacrilegious. We should emphasize the sacredness of a cemetery, just as we dignify a church building.

So what will future burials be like? When we visit the graves of our loved ones, what will that be like? The quality of the air will be bad. The Hog CAFO will take all the pleasantness away. The peaceful Country Cemetery experience will be gone. It will be sad. Nose plugs will have to be dispersed at the beautiful wrought iron entrance erected long ago. How would the settlers feel?

Thoughts may be directed to:

St. Olaf Lutheran Church ELCA

601 6th Street NE

Devils Lake, ND 58301

Thank you, Daria Miller



What Works for Health

Policies and Programs to Improve Wisconsin's Health

Physical Environment - Air & Water Quality - Reduce agriculture's environmental impacts

CAFO regulations

***Is this program or policy in use in your community?
Tell us about it.***

Description

Animal feeding operations (AFOs) keep and raise animals in a confined area for 45 days or more in any 12-month period and do not sustain vegetation in the normal growing season. Confined animal feeding operations (CAFOs) are AFOs with more than 1,000 animal units (e.g., 700 dairy cows, 2,500 swine, or 125,000 broiler chickens) or AFOs of any size that discharge manure or wastewater into a ditch, stream, or waterway (USDA-NRCS AFOs). CAFOs are regulated by the federal Clean Water Act (CWA) under the National Pollution Discharge Elimination System (NPDES) permitting program (US EPA-NPDES AFOs). State and local governments can establish additional regulations to further limit CAFO location, size, and pollution discharge, and increase monitoring, enforcement, and assessment of pollution prevention practices. State and local regulations can also require certification and review of comprehensive nutrient management plans (CNMPs) or manure management plans and expand CNMP requirements (Centner 2007, UCS-Gurian-Sherman 2008). State and local regulations vary (Koski 2007); some local governments have limited ability to enact regulations due to state preemption legislation (Grassroots Change, ABA-Kaplan 2012).

Health Factors:	Air & Water Quality
Decision Makers:	Local Government State Government Federal Government
Evidence Rating:	Expert Opinion
Population Reach:	20-49% of WI's population
Impact on Disparities:	Likely to decrease disparities

Expected Beneficial Outcomes

- Reduced run-off
- Improved water quality
- Improved air quality
- Improved health outcomes
- Improved quality of life
- Reduced emissions

Evidence of Effectiveness

State or local confined animal feeding operation (CAFO) regulations are a suggested strategy to reduce environmental contamination and improve water quality (NALBOH-Hribar 2010, Koski 2007). Available evidence indicates changes in CAFO management practices (Savage 2013, ERS-Sneeringer 2013) and CAFO siting (Brands 2014) in response to regulations. However, additional evidence is needed to confirm the effects of state and local regulations and management changes on environmental contamination and water quality.

CAFOs have been shown to pollute water with excess nutrient run-off and nitrate contamination (Lockhart 2013, Mallin 2015, West 2011, Whalen 2007), estrogen and steroids (Adeel 2017, Bartelt-Hunt 2011), and bacteria and fecal contamination (West 2011, Gentry-Shields 2015, Heaney 2015, Casanova 2016, Li 2015). In some circumstances, CAFO waste has been shown to increase antibiotic resistant bacteria in surface and groundwater (West 2011, Brooks 2014, Barrett 2005, Li 2015, Bartelt-Hunt 2011, Casanova 2016). CAFO waste can also increase arsenic levels (Makris 2008), hormone concentrations, and algae blooms that can lead to fish kills (Leet 2012, Adeel 2017, Koski 2007, CRS-Copeland 2010). CAFOs emit air pollutants such as ammonia, hydrogen sulfide, particulate matter, volatile organic compounds (VOCs), and nitrous oxide (Heinzen 2015, Rumsey 2014, Rumsey 2014a, Pavilonis 2013, Rumsey 2012, Blunden 2005, Hoff 2002, Wilson 2007, Ogneva-Himmelberger 2015).

Studies show negative health outcomes among CAFO workers including symptoms of pulmonary disease and lung function abnormalities (Von Essen 2005, Greger 2010). Available evidence also suggests negative health effects for those living near CAFOs, such as increased risk of respiratory illnesses (Greger 2010, Sigurdarson 2006), and increased incidence of chest tightness, wheezing, coughing, nausea, fainting, headache, and plugged ears, compared to those further from CAFOs. CAFO neighbors also more commonly report increased anger, depression, fatigue, stress, sore throat, diarrhea, and burning eyes (Greger 2010, Von Essen 2005).

CAFOs appear to negatively affect nearby housing prices, especially for homes within a 3 mile radius (Isakson 2008, Kilpatrick 2015). CAFO odors spur decreases in reported quality of life among neighbors (Von Essen 2005).

Prior to adopting CAFO regulations, legal experts suggest that local municipalities examine state law closely, define "CAFO" to reflect regulatory goals, implement a permitting and siting system, consider potential effects on local agriculture, and require a bond (ABA-Kaplan 2012). Adequate funding for oversight, research, and enforcement are key to implementation (CRS-Copeland 2010). Researchers also suggest that relying on size-based regulations alone may have limited effects on small farms and may encourage large farms to downsize to avoid regulation (Azzam 2015).

Regulations can encourage CAFOs to adopt technology to capture methane emissions for renewable energy, which can help to mitigate climate change effects (Verheul 2011, Murray 2015, Adair 2016, NALBOH-Hribar 2010). Models suggest that CAFO regulations based on downstream emissions are more cost-effective for producers than quantity controls or limits for field manure applications, especially with technology to reduce emissions (Wang 2015).

CAFOs are typically located in rural areas. In several areas of the country, such as North Carolina and Mississippi, CAFOs are also clustered in low income, minority communities, raising environmental justice concerns (Nicole 2013, Carrel 2016).

Implementation

United States

Some state's regulations are broad in scope with detailed definitions and designated enforcement support, while others simply comply with federal requirements. Examples of states with strong CAFO regulations include: Alabama, Arkansas, Colorado, Georgia, Illinois, Indiana, Iowa, Kansas,

Minnesota, Nebraska, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, Vermont, Virginia, and Wisconsin. States with weaker CAFO regulations include: Alaska, Arizona, Connecticut, Massachusetts, Mississippi, Montana, Nevada, New Hampshire, New Mexico, New York, Washington, and West Virginia (Koski 2007).

Thirteen states have preemption legislation that prevents local communities from adopting regulations or zoning restrictions for CAFOs that are more restrictive than state laws (Grassroots Change). In states with preemption legislation, communities and municipalities can shift from deterrence-based efforts to partnerships with industry and voluntary programs that educate producers about practices to minimize pollution discharge and enhance pollution controls (Centner 2011). In all states, local boards of health can increase water and air quality testing in the areas surrounding CAFOs; and in some areas, local boards of health can also pass ordinances or regulations directed at CAFOs (NALBOH-Hribar 2010).

The US Environmental Protection Agency's (EPA's) National Enforcement Initiative monitors CAFOs and promotes technologies to reduce animal waste pollution and excess nutrients (US EPA-NEI animal waste). The US Department of Agriculture's Natural Resource Conservation Service supports voluntary adoption of comprehensive nutrient management plans to reduce nutrient run-off, which have stronger protections for natural resources than other nutrient management plans (USDA-NRCS AFOs).

Wisconsin

In Wisconsin, local government regulations cannot exceed state standards for the siting or expansion of large livestock facilities (Grassroots Change). In general, Wisconsin has strong state level regulations for the siting of CAFOs (Koski 2007).

In 2016, Bayfield, Wisconsin adopted new regulations focusing on the operation and management of CAFOs (WPR-Kaeding 2016).

Implementation Resources

CDC-CAFO links - Centers for Disease Control and Prevention (CDC), Environmental Health Services (EHS). Concentrated animal feeding operations (CAFOs): Links to information from outside CDC. *Accessed on April 20, 2017*

MEA-Legal action guide 2013 - Midwest Environmental Advocates (MEA). Protecting your community from existing and proposed concentrated animal feeding operations (CAFOs): A guide to legal actions. 2013:4-8. *Accessed on April 20, 2017*

NALC-State statutes - National Agricultural Law Center (NALC). States' Right-To-Farm statutes. *Accessed on April 20, 2017*

UCS-Gurian-Sherman 2008 - Gurian-Sherman D. CAFOs uncovered: The untold costs of confined animal feeding operations. Cambridge, MA: Union of Concerned Scientists (UCS); 2008. *Accessed on April 20, 2017*

US EPA-NPDES AFOs - US Environmental Protection Agency (US EPA). National pollutant discharge elimination system (NPDES): Animal feeding operations (AFOs). *Accessed on April 20, 2017*

Citations - Description

ABA-Kaplan 2012 - Kaplan AR. CAFOs: Five essential tools for local regulation. American Bar Association's (ABA) State & Local Law News. 2012;35(4). *Accessed on April 20, 2017*

To: ND House Ag Committee members

From: Ron Fraase

Subject: Changes to Senate Bill 2345

My name is Ron Fraase, Chairman of Howes Township. As an elected official, I represent the people of our township. I attended the Senate Ag Committee hearing concerning this bill and gave a testimony with concerns.

This bill has been changed to clarify as to what the process is for zoning relating to animal feeding operations. I can support many of the changes but still have a concern about one main issue.

If an AFO agreement is not filed in the Central Repository, or if the township does not have an AFO agreement, the applicant should be required to petition the township as to the site and location of the proposed AFO before the applicant would apply to the ND department of environmental quality. Townships may still require a conditional use permit to maintain control of public roads and ditches and setbacks from the roads.

These statements may be the intent of this bill but I do not believe that the bill states it clearly.

I will be unable to attend your hearing because I am busy with calving. Thank you for considering these changes and I am also available through my cell, 701-261-6308 if you have any questions or comments.

Ron Fraase

I am attaching the testimony I presented at the Senate Agriculture Committee hearing. Liz Anderson from Dakota Resource Council requested that I email the testimony to you for presentation to all of the House Agriculture Committee members. Thank you.

SB 2345
3.21.19
Attachment 1

Sincerely,
Randy Coon

Testimony Presented in Opposition To Senate Bill 2345

(A Bill for an Act to amend and reenact sections 11-33-02.1, 23-25-11, 23.1-06-15, and 58-03-11.1 of the North Dakota Century Code, relating to animal feeding operations and zoning requirements)

By

Randal Coon

Buffalo, ND

Cell Phone: 701-238-5479

Email: rcoon0267@msn.com

February 1, 2019

Testimony Presented in Opposition To SB 2345

By

Randal Coon

Good morning Chairman Luick, Vice Chairman Myrdal, Senator Hogan, Senator Klein, Senator Larsen, and Senator Osland. My name is Randy Coon. I am a 4th generation farmer from Buffalo—my Great Grandfather homesteaded in Howes Township in the late 1800s. Today, I would like to present testimony in opposition to SB 2345. I have reviewed SB 2345 and there are many items in this bill that are a concern to me. My testimony contains an analysis of what I feel are the most significant problems with this legislation.

On Page 1, line 10, Item (1.a.): “**Concentrated** feeding operation” was changed to “**Animal** feeding operation” in the first sentence. This new wording changes the dynamics of the entire bill. An Animal Feeding Operation (AFO) and a Concentrated Animal Feeding Operation (CAFO) are by definition very different categories. These categories are based on size (measured in animal units) and are subject to different rules and regulations, and setback requirements. A CAFO requires a North Dakota Pollution Discharge Elimination System permit, while an AFO does not. It becomes difficult to determine if the provisions in this bill apply only to AFOs or if the CAFO category is also included. What the wording literally says may not be the intent of the bill.

The **Definitions** heading on Page 1, line 9 that continues to page 3, line 4 refers the reader to subdivision c of subsection 7 of section 23-25-11. This section continues on page 11, line 15 for animal unit (AU) equivalency factors. Lines 24-25 on page 11 insert the word **weaned** into the definition of swine weighing less than fifty-five pounds: “One **weaned** swine weighing less than fifty-five pounds (24.948 kilograms) equals 0.1 animal unit;”. The concern with this change is that it would effectively eliminate piglets from the animal unit count for a farrowing operation. This change is made without providing an additional multiplier for unweaned swine or the sow-piglet litter that can have as many as 15 piglets. For a farrowing operation whose sole purpose is to produce piglets, the AU count for the facility will be undercounted. For example, the proposed Buffalo, ND farrowing operation was projected to produce 180,000 piglets per year. If an industry average weaning date was used, that places an additional 1,388 AU at the facility on a daily basis. This presents a serious problem because the AU count is the basic number upon which all other calculations for the facility are made. The manure holding pit and composting bins will be under-sized, and land required for waste disposal will be inadequate.

On page 3, lines 15-19, item (7): Like item (6) previously mentioned, this provision declares that the county commissioners have the power to “declare that a regulation is ineffective” if it would “impose substantial economic burden on an animal feeding operation”. This statement is vague and provides no definition of “economic burden” and how it can be quantified.

On page 4, lines 7-18, item (9): "A person intending to construct an animal feeding operation may petition the board of county commissioners for a determination whether the animal feeding operation would comply with zoning regulations adopted under this section and filed with the state department of health under section 11-33-22 before the date the petition was received by the county. If the board of county commissioners does not object to the petition within sixty days of receipt, the animal feeding operation is deemed in compliance with the county zoning regulations. If the board of county commissioners determines the animal feeding operation would comply with the zoning regulations or fails to object under this section, the county may not impose additional zoning regulations relating to the nature, scope, or location of the animal feeding operation later, provided construction of the animal feeding operation commences within five years from the date of the board's determination or failure to object." This section is problematic for a number of reasons. It is concerning that a board of county commissioners has only sixty days to object, or the project automatically becomes compliant with the zoning regulations. This imposes a significant burden on the board to review and respond to an unknown number of applications. The department of health has taken as long as a year to respond to permit applications, which indicates the difficulty of the task. Further, it raises due process concerns because it arguably does not comply with basic notice requirements for those living within any applicable setback area that would otherwise make the construction of the AFO noncompliant with zoning regulations. Without sufficient description of the facility, the person intending to construct the AFO could comply with the relevant zoning regulations, then change and expand the operation and leave the board with no ability to impose additional restrictions, or to object. This provision could result in hundreds of "intended" applications with little or no binding information being required. This could create a high level of confusion at the local governmental level.

On pages 7, 8, and 9, Section 2, (23-25-11): This section regarding odor setbacks was lifted from previously withdrawn HB 1403. All of the regulations in this section need to be scrutinized by an environmental engineer before any of this language is approved. Setbacks need to be determined by a qualified scientist before these setbacks become law. It is troubling that all these regulations regarding odor avoid the real issue: the cause of the odor is the methane, hydrogen sulfide, and ammonia being vented from large manure storage pits into the atmosphere for local residents to breathe. These are toxic gases and their effect on human health cannot be taken lightly.

On page 12, lines 4-9, item (d): "In a county or township that regulates the nature, scope, or location of an animal feeding operation under section 11-33-02.1 or section 58-03-11.1, an applicant for an animal feeding operation permit shall submit to the department with the permit application the zoning determination made by the county or township under subsection 9 of section 11-33-02.1 or subsection 9 section 58-03-11.1. The department may not impose additional requirements." This prevents the Department of Environmental Quality from imposing any additional requirements beyond what is required by the township or county zoning regulations. This is concerning given the Department of Environmental Quality's statutorily imposed duty to impose conditions on permit holders that may go beyond the zoning authority of the county or township.

On page 12, lines 10-16, item (e): “An animal feeding operation is not subject to zoning regulations adopted by a county or township after the date of an application for the animal feeding operation is submitted to the department, provided construction of the animal feeding operation commences within five years from the date the application is submitted. Unless there is a change to the location of the proposed animal feeding operation, this exemption remains in effect if the department requires the applicant to submit a revised application.” This section would exempt an AFO from zoning regulations adopted after the date of application to the department of health, not just the township or county. This “exemption” remains effective even if the department requires a revised application, which is even more concerning, because it would invite an applicant to submit a very basic application in order to avoid any proposed zoning restrictions, and then give them a free pass, presumably even if they add thousands of animals or additional waste storage lagoons. I think this is exactly what is happening with the proposed AFO near Devils Lake where a second application had to be filed, but yet the original one is still being kept active.

On page 17, line 17-18, item (8): “A permitted animal feeding operation may expand its permitted capacity by twenty-five percent on one occasion without triggering a higher setback distance.” This is not new language, but still is a major concern. This expansion can happen without any added acres of land for manure disposal, additional composting bins, or increased manure pit storage capacity. When this is coupled with the “non-counting” of the piglets, the number of AUs at the facility will exceed the capacity the site was constructed to handle, with the real possibility of environmental disasters effecting local waterways, air, and land. This does not promote responsible agriculture.

On page 19-20 lines 15-30 and 1-16, items (3-8): These items are trying to rewrite existing laws and dictate how townships govern their jurisdiction. This section will only cause confusion and create chaos for local governmental bodies. These types of declarations undermine the township’s authority which has been in existence for generations. The unforeseen consequences of this type of governmental authority redistribution will harm all levels of government in the state.

The comments and concerns presented for SB 2345 indicate the bill has numerous problems. This bill attempts to undermine current law and to disrupt local government and create confusion about regulation and authority. Efforts to achieve these objectives **should not** be taken lightly. I feel the wording in this bill is contradictory, and often lacks precise language. It refers to “substantial economic burden” without any definition of the situation or any guidelines on how to quantify such a situation. This bill, if passed, would create uncertainty and disorganization at all levels of government in the state with unpredictable consequences. I strongly endorse a **DO NOT PASS** recommendation by this committee. Thank you.

#1
4/4/19

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2345

Introduced by

Senators Wanzek, Dotzenrod, Luick

Representatives Brandenburg, D. Johnson, Pollert

1 A BILL for an Act to amend and reenact sections 11-33-02.1, 11-33-22, 23-25-11, 23.1-06-15,
2 ~~and 58-03-11.1, and 58-03-17~~ of the North Dakota Century Code, relating to animal feeding
3 operations and zoning regulations; to provide an effective date; to provide a contingent effective
4 date; and to provide an expiration date.

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

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

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

10 1. For purposes of this section:

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

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

22 b. "Farming or ranching" means cultivating land for the production of agricultural
23 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.
24 The term does not include:

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

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

- 1 c. The setbacks provided for in this subsection are subject to approval by the
2 agriculture commissioner and may not ~~vary by more than fifty percent from~~ be a
3 greater distance than those established in subdivision a of subsection 7 of
4 section 23-25-11.
- 5 d. For purposes of this subsection, a "related agricultural operation" means a facility
6 that produces a product or byproduct used by ~~a concentrated~~ an animal feeding
7 operation.
- 8 9. A person intending to construct an animal feeding operation may petition the board of
9 county commissioners for a determination whether the animal feeding operation would
10 comply with zoning regulations adopted under this section and filed with the state
11 department of health under section 11-33-22 before the date the petition was received
12 by the county. The petition must contain a description of the nature, scope, and
13 location of the proposed animal feeding operation and a site map showing road
14 access, the location of any structure, and the distance from each structure to the
15 nearest section line. If the board of county commissioners does not object to the
16 petition within sixty days of receipt, the animal feeding operation is deemed in
17 compliance with the county zoning regulations. If the county allows animal feeding
18 operations as a conditional use, the county shall inform the applicant of the required
19 procedures upon receipt of the petition, and the conditional use regulations in effect at
20 the time the county receives the petition must control the approval process, except the
21 county shall make a decision on the application within sixty days of the receipt of a
22 complete conditional use permit application. If the board of county commissioners
23 determines the animal feeding operation would comply with zoning regulations or fails
24 to object under this section, the county may not impose additional zoning regulations
25 relating to the nature, scope, or location of the animal feeding operation later, provided
26 an application is submitted promptly to the state department of health, the department
27 issues a final permit, and construction of the animal feeding operation commences
28 within ~~five~~ three years from the date ~~of the board's determination or failure to object,~~
29 the department issues its final permit and any permit appeals are exhausted. A board
30 of county commissioners may not:

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

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

8 1. For purposes of this section:

- 9 a. ~~"Concentrated Animal feeding operation"~~ means any livestock feeding, handling,
10 or holding operation, or feed yard, where animals are concentrated in an area
11 that is not normally used for pasture or for growing crops and in which animal
12 wastes may accumulate. ~~The term does not include normal wintering operations~~
13 ~~for cattle a lot or facility, other than normal wintering operations for cattle and an~~
14 ~~aquatic animal production facility, where the following conditions are met:~~
15 (1) Animals, other than aquatic animals, have been, are, or will be stabled or
16 confined and fed or maintained for at least forty-five days in a twelve-month
17 period; and
18 (2) Crops, vegetation, forage growth, or postharvest residues are not sustained
19 in the normal growing season over any portion of the lot or facility.
20 b. "Farming or ranching" means cultivating land for the production of agricultural
21 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.
22 The term does not include:
23 (1) The production of timber or forest products; or
24 (2) The provision of grain harvesting or other farm services by a processor or
25 distributor of farm products or supplies in accordance with the terms of a
26 contract.
27 c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison,
28 elk, fur animals raised for their pelts, and any other animals that are raised, fed,
29 or produced as a part of farming or ranching activities.
30 d. "Location" means the setback distance between a structure, fence, or other
31 boundary enclosing a ~~concentrated~~ an animal feeding operation, including its

1 animal waste collection system, and the nearest occupied residence, the nearest
2 buildings used for nonfarm or nonranch purposes, or the nearest land zoned for
3 residential, recreational, or commercial purposes. The term does not include the
4 setback distance for the application of manure or for the application of other
5 recycled agricultural material under a nutrient management plan approved by the
6 department of environmental quality.

- 7 2. For purposes of this section, animal units are determined as follows:
- 8 a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
 - 9 b. ~~One dairy cow, heifer, or bull, other than an animal described in paragraph 1~~
10 ~~equals 1.0 animal unit;~~
 - 11 c. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal~~
12 ~~unit;~~
 - 13 d. ~~One cow-calf pair equals 1.0 animal unit;~~
 - 14 e. ~~One swine weighing fifty five pounds [24.948 kilograms] or more equals 0.4~~
15 ~~animal unit;~~
 - 16 f. ~~One swine weighing less than fifty five pounds [24.948 kilograms] equals 0.1~~
17 ~~animal unit;~~
 - 18 g. ~~One horse equals 2.0 animal units;~~
 - 19 h. ~~One sheep or lamb equals 0.1 animal unit;~~
 - 20 i. ~~One turkey equals 0.0182 animal unit;~~
 - 21 j. ~~One chicken, other than a laying hen, equals 0.008 animal unit;~~
 - 22 k. ~~One laying hen equals 0.012 animal unit;~~
 - 23 l. ~~One duck equals 0.033 animal unit; and~~
 - 24 m. ~~Any livestock not listed in subdivisions a through l equals 1.0 animal unit per~~
25 ~~each one thousand pounds [453.59 kilograms] whether single or combined~~
26 ~~animal weights as provided in subdivision c of subsection 7 of section 23.1-06-15.~~

27 3. A board of county commissioners may not prohibit or prevent the use of land or
28 buildings for farming or ranching and may not prohibit or prevent any of the normal
29 incidents of farming or ranching.

30 4. A board of county commissioners may not preclude the development of a
31 concentrated animal feeding operation in the county.

- 1 5. A board of county commissioners may not prohibit the reasonable diversification or
2 expansion of a farming or ranching operation.
- 3 6. A board of county commissioners may adopt regulations that establish different
4 standards for the location of ~~concentrated~~animal feeding operations based on the size
5 of the operation and the species and type being fed.
- 6 7. If a regulation would impose a substantial economic burden on a ~~concentrated~~an
7 animal feeding operation in existence before the effective date of the regulation, the
8 board of county commissioners shall declare that the regulation is ineffective with
9 respect to any ~~concentrated~~animal feeding operation in existence before the effective
10 date of the regulation.
- 11 8. a. A board of county commissioners may establish high-density agricultural
12 production districts in which setback distances for ~~concentrated~~animal feeding
13 operations and related agricultural operations are less than those in other
14 districts.
- 15 b. A board of county commissioners may establish, around areas zoned for
16 residential, recreational, or nonagricultural commercial uses, low-density
17 agricultural production districts in which setback distances for
18 ~~concentrated~~animal feeding operations and related agricultural operations are
19 greater than those in other districts; provided, the low-density agricultural
20 production districts may not extend more than one and one-half miles [2.40
21 kilometers] from the edge of the area zoned for residential, recreational, or
22 nonagricultural commercial uses.
- 23 c. The setbacks provided for in this subsection are subject to approval by the
24 agriculture commissioner and may not ~~vary by more than fifty percent from~~ be a
25 greater distance than those established in subdivision a of subsection 7 of
26 section 23.1-06-15.
- 27 d. For purposes of this subsection, a "related agricultural operation" means a facility
28 that produces a product or byproduct used by a ~~concentrated~~an animal feeding
29 operation.
- 30 9. A person intending to construct an animal feeding operation may petition the board of
31 county commissioners for a determination whether the animal feeding operation would

1 comply with zoning regulations adopted under this section and filed with the
2 department of environmental quality under section 11-33-22 before the date the
3 petition was received by the county. The petition must contain a description of the
4 nature, scope, and location of the proposed animal feeding operation and a site map
5 showing road access, the location of any structure, and the distance from each
6 structure to the nearest section line. If the board of county commissioners does not
7 object to the petition within sixty days of receipt, the animal feeding operation is
8 deemed in compliance with the county zoning regulations. If the county allows animal
9 feeding operations as a conditional use, the county shall inform the applicant of the
10 required procedures upon receipt of the petition, and the conditional use regulations in
11 effect at the time the county receives the petition must control the approval process,
12 except the county shall make a decision on the application within sixty days of the
13 receipt of a complete conditional use permit application. If the board of county
14 commissioners determines the animal feeding operation would comply with zoning
15 regulations or fails to object under this section, the county may not impose additional
16 zoning regulations relating to the nature, scope, or location of the animal feeding
17 operation later, provided an application is submitted promptly to the state department
18 of health, the department issues a final permit, and construction of the animal feeding
19 operation commences within ~~five~~three years from the date ~~of the board's~~
20 ~~determination or failure to object~~the department issues its final permit and any permit
21 appeals are exhausted. A board of county commissioners may not:

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

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

29 **11-33-22. Regulation of ~~concentrated~~ animal feeding operations - Central repository.**

30 ~~1.~~ — Any zoning regulation that pertains to ~~a concentrated~~an animal feeding operation, as
31 defined in section 11-33-02.1, and which is promulgated by a county after July 31,

1 2007, is not effective until filed with the state department of health for inclusion in the
2 central repository established under section 23-01-30. Any zoning regulation that
3 pertains to ~~concentrated~~ animal feeding operations and which was promulgated by a
4 county before August 1, 2007, may not be enforced until the regulation is filed with the
5 state department of health for inclusion in the central repository.

6 ~~2. For purposes of this section:~~

7 ~~a. "Concentrated animal feeding operation" means any livestock feeding, handling,~~
8 ~~or holding operation, or feed yard, where animals are concentrated in an area~~
9 ~~that is not normally used for pasture or for growing crops and in which animal~~
10 ~~wastes may accumulate, or in an area where the space per animal unit is less~~
11 ~~than six hundred square feet [55.74 square meters]. The term does not include~~
12 ~~normal wintering operations for cattle.~~

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

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

17 ~~1. Any zoning regulation that pertains to a concentrated an animal feeding operation and,~~
18 ~~as defined in section 11-33-02.1, is not effective until filed with the department of~~
19 ~~environmental quality for inclusion in the central repository established under section~~
20 ~~23.1-01-10.~~

21 ~~2. For purposes of this section:~~

22 ~~a. "Concentrated animal feeding operation" means any livestock feeding, handling,~~
23 ~~or holding operation, or feed yard, where animals are concentrated in an area~~
24 ~~that is not normally used for pasture or for growing crops and in which animal~~
25 ~~wastes may accumulate, or in an area where the space per animal unit is less~~
26 ~~than six hundred square feet [55.74 square meters]. The term does not include~~
27 ~~normal wintering operations for cattle.~~

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

30 **SECTION 3. AMENDMENT.** Section 23-25-11 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **23-25-11. Regulation of odors - Rules. (Contingent repeal - [See note](#))**

2 1. In areas located within a city or the area over which a city has exercised extraterritorial
3 zoning as defined in section 40-47-01.1, a person may not discharge into the ambient
4 air any objectionable odorous air contaminant that measures seven odor concentration
5 units or higher outside the property boundary where the discharge is occurring. If an
6 agricultural operation as defined by section 42-04-01 has been in operation for more
7 than one year, as provided by section 42-04-02, and the business or residence making
8 the odor complaint was built or established after the agricultural operation was
9 established, the measurement for compliance with the seven odor concentration units
10 standard must be taken within one hundred feet [30.48 meters] of the subsequently
11 established residence, church, school, business, or public building making the
12 complaint rather than at the property boundary of the agricultural operation. The
13 measurement may not be taken within five hundred feet [.15 kilometer] of the property
14 boundary of the agricultural operation.

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

20 a. Within one hundred feet [30.48 meters] of any residence, church, school,
21 business, or public building, or within a campground or public park. An odor
22 measurement may not be taken at the residence of the owner or operator of the
23 source of the odor, or at any residence, church, school, business, or public
24 building, or within a campground or public park, that is built or established within
25 one-half mile [.80 kilometer] of the source of the odor after the source of the odor
26 has been built or established;

27 b. At any point located beyond one-half mile [.80 kilometer] from the source of the
28 odor, except for property owned by the owner or operator of the source of the
29 odor, or over which the owner or operator of the source of the odor has
30 purchased an odor easement; or

- 1 c. If a county or township has zoned or established a setback distance for an animal
2 feeding operation which is greater than one-half mile [.80 kilometer] under either
3 section 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is
4 greater than one-half mile [.80 kilometer], measurements for compliance with the
5 seven odor concentration units standard must be taken at the setback distance
6 rather than one-half mile [.80 kilometer] from the facility under subdivision b,
7 except for any residence, church, school, business, public building, park, or
8 campground within the setback distance which was built or established before
9 the animal feeding operation was established, unless the animal feeding
10 operation has obtained an odor easement from the pre-existing facility.
- 11 3. An odor measurement may be taken only with a properly maintained scentometer, by
12 an odor panel, or by another instrument or method approved by the state department
13 of health, and only by inspectors certified by the department who have successfully
14 completed a department-sponsored odor certification course and demonstrated the
15 ability to distinguish various odor samples and concentrations. If a certified inspector
16 measures a violation of this section, the department may send a certified letter of
17 apparent noncompliance to the person causing the apparent violation and may
18 negotiate with the owner or operator for the establishment of an odor management
19 plan and best management practices to address the apparent violation. The
20 department shall give the owner or operator at least fifteen days to implement the odor
21 management plan. If the odor problem persists, the department may proceed with an
22 enforcement action provided at least two certified inspectors at the same time each
23 measure a violation and then confirm the violation by a second odor measurement
24 taken by each certified inspector, at least fifteen minutes, but no more than two hours,
25 after the first measurement.
- 26 4. A person is exempt from this section while spreading or applying animal manure or
27 other recycled agricultural material to land in accordance with a nutrient management
28 plan approved by the state department of health. A person is exempt from this section
29 while spreading or applying animal manure or other recycled agricultural material to
30 land owned or leased by that person in accordance with rules adopted by the
31 department. An owner or operator of a lagoon or waste storage pond permitted by the

- 1 department is exempt from this section in the spring from the time when the cover of
2 the permitted lagoon or pond begins to melt until fourteen days after all the ice cover
3 on the lagoon or pond has completely melted. Notwithstanding these exemptions, all
4 persons shall manage their property and systems to minimize the impact of odors on
5 their neighbors.
- 6 5. This section does not apply to chemical compounds that can be individually measured
7 by instruments, other than a scentometer, that have been designed and proven to
8 measure the individual chemical or chemical compound, such as hydrogen sulfide, to
9 a reasonable degree of scientific certainty, and for which the state department of
10 health has established a specific limitation by rule.
- 11 6. For purposes of this section, ~~a public park is a park established by the federal~~
12 ~~government, the state, or a political subdivision of the state in the manner prescribed~~
13 ~~by law. For purposes of this section, a campground is:~~
- 14 a. "Business" means a commercial building used primarily to carry on a for-profit or
15 nonprofit business which is not residential and not used primarily to manufacture
16 or produce raw materials, products, or agricultural commodities;
- 17 b. "Campground" means a public or private area of land used exclusively for
18 camping and open to the public for a fee on a regular or seasonal basis;
- 19 c. "Church" means a building owned by a religious organization and used primarily
20 for religious purposes;
- 21 d. "Park" means a park established by the federal government, the state, or a
22 political subdivision of the state in the manner prescribed by law;
- 23 e. "Public building" means a building owned by a county, city, township, school
24 district, park district, or other unit of local government; the state; or an agency,
25 industry, institution, board, or department of the state; and
- 26 f. "School" means a public school or nonprofit, private school approved by the
27 superintendent of public instruction.
- 28 7. a. In a county or township that does not regulate the nature, scope, ~~and~~ location
29 of an animal feeding operation under section ~~11-33-0211-33-02.1~~ or section
30 58-03-11.1, the department shall require that any new animal feeding operation

- 1 permitted under chapter 61-28 be set back from any existing residence, church,
2 school, business, public building, park, or campground.
- 3 (1) If there are fewer than three hundred animal units, there is no minimum
4 setback requirement.
- 5 (2) If there are at least three hundred animal units but no more than one
6 thousand animal units, the setback for any animal operation is one-half mile
7 [.80 kilometer].
- 8 (3) If there are at least one thousand one animal units but no more than two
9 thousand animal units, the setback for a hog operation is three-fourths mile
10 [1.20 kilometers] and the setback for any other animal operation is one-half
11 mile [.80 kilometer].
- 12 (4) If there are at least two thousand one animal units but no more than five
13 thousand animal units, the setback for a hog operation is one mile [1.60
14 kilometers] and the setback for any other animal operation is three-fourths
15 mile [1.20 kilometers].
- 16 (5) If there are five thousand one or more animal units, the setback for a hog
17 operation is one and one-half miles [2.40 kilometers] and the setback for
18 any other animal operation is one mile [1.60 kilometers].
- 19 b. The setbacks set forth in subdivision a do not apply if the owner or operator
20 applying for the permit obtains an odor easement from the pre-existing use that is
21 closer.
- 22 c. For purposes of this section:
- 23 (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;
24 (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1
25 equals 1.0 animal unit;
26 (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75
27 animal unit;
28 (4) One cow-calf pair equals 1.0 animal unit;
29 (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4
30 animal unit;

- 1 (6) One weaned swine weighing less than fifty-five pounds [24.948 kilograms]
2 equals 0.1 animal unit;
- 3 (7) One horse equals 2.0 animal units;
- 4 (8) One sheep or weaned lamb equals 0.1 animal unit;
- 5 (9) One turkey equals 0.0182 animal unit;
- 6 (10) One chicken, ~~other than a laying hen~~, equals ~~0.0080~~ 0.01 animal unit;
- 7 (11) ~~One laying hen~~ equals ~~0.012~~ animal unit;
- 8 ~~(12)~~ One duck or goose equals ~~0.0330~~ 0.2 animal unit; and
- 9 ~~(13)~~ (12) Any weaned livestock not listed in paragraphs 1 through ~~12~~ 11 equals 1.0
10 animal unit per each one thousand pounds [453.59 kilograms] whether
11 single or combined animal weight.
- 12 d. In a county or township that regulates the nature, scope, or location of an animal
13 feeding operation under section 11-33-02.1 or section 58-03-11.1, an applicant
14 for an animal feeding operation permit shall submit to the department with the
15 permit application the zoning determination made by the county or township
16 under subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1,
17 unless the animal feeding operation is in existence by January 1, 2019, and there
18 is no change in animals or animal units which would result in an increase in the
19 setbacks provided for in this section. The department may not impose additional
20 odor setback requirements.
- 21 e. An animal feeding operation is not subject to zoning regulations adopted by a
22 county or township after the date an application for the animal feeding operation
23 is submitted to the department, provided construction of the animal feeding
24 operation commences within ~~five~~ three years from the date the ~~application is~~
25 ~~submitted~~ final permit is issued and any permit appeals are exhausted. Unless
26 there is a change to the location of the proposed animal feeding operation ~~or~~
27 ~~there is a change in animal units which would result in an increase in the~~
28 ~~setbacks under this section,~~ this exemption remains in effect if the department
29 requires the applicant to submit a revised application.
- 30 8. A permitted animal feeding operation may expand its permitted capacity by twenty-five
31 percent on one occasion without triggering a higher setback distance.

1 9. Neither a county nor a township may regulate or through any means impose
2 restrictions or requirements on animal feeding operations or on other agricultural
3 operations except as permitted under sections ~~11-33-0211-33-02.1~~ and
4 ~~58-03-1158-03-11.1~~.

5 **SECTION 4. AMENDMENT.** Section 23.1-06-15 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **23.1-06-15. Regulation of odors - Rules. (Contingent effective date - [See note](#))**

8 1. In areas located within a city or the area over which a city has exercised extraterritorial
9 zoning as defined in section 40-47-01.1, a person may not discharge into the ambient
10 air any objectionable odorous air contaminant that measures seven odor concentration
11 units or higher outside the property boundary where the discharge is occurring. If an
12 agricultural operation as defined by section 42-04-01 has been in operation for more
13 than one year, as provided by section 42-04-02, and the person making the odor
14 complaint was built or established after the agricultural operation was established, the
15 measurement for compliance with the seven odor concentration units standard must
16 be taken within one hundred feet [30.48 meters] of the subsequently established
17 residence, church, school, business, or public building making the complaint rather
18 than at the property boundary of the agricultural operation. The measurement may not
19 be taken within five hundred feet [.15 kilometer] of the property boundary of the
20 agricultural operation.

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

26 a. Within one hundred feet [30.48 meters] of any residence, church, school,
27 business, or public building, or within a campground or public park. An odor
28 measurement may not be taken at the residence of the owner or operator of the
29 source of the odor, or at any residence, church, school, business, or public
30 building, or within a campground or public park, that is built or established within

- 1 one-half mile [.80 kilometer] of the source of the odor after the source of the odor
2 has been built or established;
- 3 b. At any point located beyond one-half mile [.80 kilometer] from the source of the
4 odor, except for property owned by the owner or operator of the source of the
5 odor, or over which the owner or operator of the source of the odor has
6 purchased an odor easement; or
- 7 c. If a county or township has zoned or established a setback distance for an animal
8 feeding operation which is greater than one-half mile [.80 kilometer] under either
9 section 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is
10 greater than one-half mile [.80 kilometer], measurements for compliance with the
11 seven odor concentration units standard must be taken at the setback distance
12 rather than one-half mile [.80 kilometer] from the facility under subdivision b,
13 except for any residence, church, school, business, public building, park, or
14 campground within the setback distance which was built or established before
15 the animal feeding operation was established, unless the animal feeding
16 operation has obtained an odor easement from the pre-existing facility.
- 17 3. An odor measurement may be taken only with a properly maintained scentometer, by
18 an odor panel, or by another instrument or method approved by the department of
19 environmental quality, and only by inspectors certified by the department who have
20 successfully completed a department-sponsored odor certification course and
21 demonstrated the ability to distinguish various odor samples and concentrations. If a
22 certified inspector measures a violation of this section, the department may send a
23 certified letter of apparent noncompliance to the person causing the apparent violation
24 and may negotiate with the owner or operator for the establishment of an odor
25 management plan and best management practices to address the apparent violation.
26 The department shall give the owner or operator at least fifteen days to implement the
27 odor management plan. If the odor problem persists, the department may proceed
28 with an enforcement action provided at least two certified inspectors at the same time
29 each measure a violation and then confirm the violation by a second odor
30 measurement taken by each certified inspector, at least fifteen minutes, but no more
31 than two hours, after the first measurement.

- 1 4. A person is exempt from this section while spreading or applying animal manure or
2 other recycled agricultural material to land in accordance with a nutrient management
3 plan approved by the department of environmental quality. A person is exempt from
4 this section while spreading or applying animal manure or other recycled agricultural
5 material to land owned or leased by that person in accordance with rules adopted by
6 the department. An owner or operator of a lagoon or waste storage pond permitted by
7 the department is exempt from this section in the spring from the time when the cover
8 of the permitted lagoon or pond begins to melt until fourteen days after all the ice
9 cover on the lagoon or pond has completely melted. Notwithstanding these
10 exemptions, all persons shall manage their property and systems to minimize the
11 impact of odors on their neighbors.
- 12 5. This section does not apply to chemical compounds that can be individually measured
13 by instruments, other than a scentometer, that have been designed and proven to
14 measure the individual chemical or chemical compound, such as hydrogen sulfide, to
15 a reasonable degree of scientific certainty, and for which the department of
16 environmental quality has established a specific limitation by rule.
- 17 6. For purposes of this section, ~~a public park is a park established by the federal~~
18 ~~government, the state, or a political subdivision of the state in the manner prescribed~~
19 ~~by law. For purposes of this section, a campground is:~~
- 20 a. "Business" means a commercial building used primarily to carry on a for-profit or
21 nonprofit business which is not residential and not used primarily to manufacture
22 or produce raw materials, products, or agricultural commodities;
- 23 b. "Campground" means a public or private area of land used exclusively for
24 camping and open to the public for a fee on a regular or seasonal basis;
- 25 c. "Church" means a building owned by a religious organization and used primarily
26 for religious purposes;
- 27 d. "Park" means a park established by the federal government, the state, or a
28 political subdivision of the state in the manner prescribed by law;
- 29 e. "Public building" means a building owned by a county, city, township, school
30 district, park district, or other unit of local government; the state; or an agency,
31 industry, institution, board, or department of the state; and

#1
SB 2345
4/4/19

- 1 f. "School" means a public school or nonprofit, private school approved by the
2 superintendent of public instruction.
- 3 7. a. In a county or township that does not regulate the nature, scope, ~~and~~ or location
4 of an animal feeding operation under section ~~11-33-02~~11-33-02.1 or section
5 58-03-11.1, the department shall require that any new animal feeding operation
6 permitted under chapter 61-28 be set back from any existing residence, church,
7 school, business, public building, park, or campground.
- 8 (1) If there are fewer than three hundred animal units, there is no minimum
9 setback requirement.
- 10 (2) If there are at least three hundred animal units but no more than one
11 thousand animal units, the setback for any animal operation is one-half mile
12 [.80 kilometer].
- 13 (3) If there are at least one thousand one animal units but no more than two
14 thousand animal units, the setback for a hog operation is three-fourths mile
15 [1.20 kilometers], and the setback for any other animal operation is one-half
16 mile [.80 kilometer].
- 17 (4) If there are at least two thousand one animal units but no more than five
18 thousand animal units, the setback for a hog operation is one mile [1.60
19 kilometers], and the setback for any other animal operation is three-fourths
20 mile [1.20 kilometers].
- 21 (5) If there are five thousand one or more animal units, the setback for a hog
22 operation is one and one-half miles [2.40 kilometers], and the setback for
23 any other animal operation is one mile [1.60 kilometers].
- 24 b. The setbacks set forth in subdivision a do not apply if the owner or operator
25 applying for the permit obtains an odor easement from the pre-existing use that is
26 closer.
- 27 c. For purposes of this section:
- 28 (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;
29 (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1
30 equals 1.0 animal unit;

#1
SB 2345
4/4/19

- 1 (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals
- 2 0.75 animal unit;
- 3 (4) One cow-calf pair equals 1.0 animal unit;
- 4 (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals
- 5 0.4 animal unit;
- 6 (6) One weaned swine weighing less than fifty-five pounds [24.948 kilograms]
- 7 equals 0.1 animal unit;
- 8 (7) One horse equals 2.0 animal units;
- 9 (8) One sheep or weaned lamb equals 0.1 animal unit;
- 10 (9) One turkey equals 0.0182 animal unit;
- 11 (10) One chicken, ~~other than a laying hen~~, equals ~~0.0080~~ 0.01 animal unit;
- 12 (11) ~~One laying hen equals 0.012 animal unit;~~
- 13 ~~(12)~~ One duck or goose equals ~~0.0330~~ 0.2 animal unit; and
- 14 ~~(13)~~ (12) Any weaned livestock not listed in paragraphs 1 through ~~12~~ 11 equals 1.0
- 15 animal unit per each one thousand pounds [453.59 kilograms], whether
- 16 single or combined animal weight.
- 17 d. In a county or township that regulates the nature, scope, or location of an animal
- 18 feeding operation under section 11-33-02.1 or section 58-03-11.1, an applicant
- 19 for an animal feeding operation permit shall submit to the department with the
- 20 permit application the zoning determination made by the county or township
- 21 under subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1,
- 22 unless the animal feeding operation is in existence by January 1, 2019, and there
- 23 is no change in animals or animal units which would result in an increase in the
- 24 setbacks provided for in this section. The department may not impose additional
- 25 odor setback requirements.
- 26 e. An animal feeding operation is not subject to zoning regulations adopted by a
- 27 county or township after the date an application for the animal feeding operation
- 28 is submitted to the department, provided construction of the animal feeding
- 29 operation commences within five years from the date the application is submitted.
- 30 Unless there is a change to the location of the proposed animal feeding

1 operation, this exemption remains in effect if the department requires the
2 applicant to submit a revised application.

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

5 9. A county or township may not regulate or impose restrictions or requirements on
6 animal feeding operations or other agricultural operations except as permitted under
7 sections 11-33-0211-33-02.1 and 58-03-1158-03-11.1.

8 **SECTION 5. AMENDMENT.** Section 58-03-11.1 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **58-03-11.1. Farming and ranching regulations - Requirements - Limitations -**
11 **Definitions.**

12 1. For purposes of this section:

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

19 (1) Animals, other than aquatic animals, have been, are, or will be stabled or
20 confined and fed or maintained for at least forty-five days in a twelve-month
21 period; and

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

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

26 The term does not include:

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

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

- 1 c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison,
2 elk, fur animals raised for their pelts, and any other animals that are raised, fed,
3 or produced as a part of farming or ranching activities.
- 4 d. "Location" means the setback distance between a structure, fence, or other
5 boundary enclosing a ~~concentrated~~ an animal feeding operation, including its
6 animal waste collection system, and the nearest occupied residence, the nearest
7 buildings used for nonfarm or nonranch purposes, or the nearest land zoned for
8 residential, recreational, or commercial purposes. The term does not include the
9 setback distance for the application of manure or for the application of other
10 recycled agricultural material under a nutrient management plan approved by the
11 state department of health.
- 12 2. For purposes of this section, animal units are determined as follows:
- 13 a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
14 b. ~~One dairy cow, heifer, or bull, other than an animal described in subdivision a~~
15 ~~equals 1.0 animal unit;~~
16 e. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal~~
17 ~~unit;~~
18 d. ~~One cow-calf pair equals 1.0 animal unit;~~
19 e. ~~One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4~~
20 ~~animal unit;~~
21 f. ~~One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1~~
22 ~~animal unit;~~
23 g. ~~One horse equals 2.0 animal units;~~
24 h. ~~One sheep or lamb equals 0.1 animal unit;~~
25 i. ~~One turkey equals 0.0182 animal unit;~~
26 j. ~~One chicken, other than a laying hen, equals 0.008 animal unit;~~
27 k. ~~One laying hen equals 0.012 animal unit;~~
28 l. ~~One duck equals 0.033 animal unit; and~~
29 m. ~~Any livestock not listed in subdivisions a through l equals 1.0 animal unit per~~
30 ~~each one thousand pounds [453.59 kilograms] whether single or combined~~

- 1 animal weight provided under subdivision c of subsection 7 of
- 2 section ~~23-23-11~~23-25-11.
- 3 3. A board of township supervisors may not prohibit or prevent the use of land or
- 4 buildings for farming or ranching or any of the normal incidents of farming or ranching.
- 5 4. A regulation may not preclude the development of a ~~concentrated~~ animal feeding
- 6 operation in the township.
- 7 5. A board of township supervisors may not prohibit the reasonable diversification or
- 8 expansion of a farming or ranching operation.
- 9 6. A board of township supervisors may adopt regulations that establish different
- 10 standards for the location of ~~concentrated~~ animal feeding operations based on the size
- 11 of the operation and the species and type being fed.
- 12 7. If a regulation would impose a substantial economic burden on a ~~concentrated~~ animal
- 13 animal feeding operation in existence before the effective date of the regulation, the
- 14 board of township supervisors shall declare that the regulation is ineffective with
- 15 respect to any ~~concentrated~~ animal feeding operation in existence before the effective
- 16 date of the regulation.
- 17 8. a. A board of township supervisors may establish high-density agricultural
- 18 production districts in which setback distances for ~~concentrated~~ animal feeding
- 19 operations and related agricultural operations are less than those in other
- 20 districts.
- 21 b. A board of township supervisors may establish, around areas zoned for
- 22 residential, recreational, or nonagricultural commercial uses, low-density
- 23 agricultural production districts in which setback distances for
- 24 ~~concentrated~~ animal feeding operations and related agricultural operations are
- 25 greater than those in other districts; provided, the low-density agricultural
- 26 production districts may not extend more than one-half mile [0.80 kilometer] from
- 27 the edge of the area zoned for residential, recreational, or nonagricultural
- 28 commercial uses.
- 29 c. The setbacks provided for in this subsection are subject to approval by the
- 30 agriculture commissioner and may not ~~vary by more than fifty percent from~~ be a

1 greater distance than those established in subdivision a of subsection 7 of
2 section 23-25-11.

3 d. For purposes of this subsection, a "related agricultural operation" means a facility
4 that produces a product or byproduct used by a ~~concentrated~~an animal feeding
5 operation.

6 9. A person intending to construct an animal feeding operation may petition the board of
7 township supervisors for a determination whether the animal feeding operation would
8 comply with zoning regulations adopted under this section and filed with the state
9 department of health under section 58-03-17 before the date the petition was received
10 by the township. The petition must contain a description of the nature, scope, and
11 location of the proposed animal feeding operation and a site map showing road
12 access, the location of any structure, and the distance from each structure to the
13 nearest section line. If the board of township supervisors does not object to the petition
14 within sixty days of receipt, the animal feeding operation is deemed in compliance with
15 the township zoning regulations. If the township allows animal feeding operations as a
16 conditional use, the township shall inform the applicant of the required procedures
17 upon receipt of the petition, and the conditional use regulations in effect at the time the
18 township receives the petition must control the approval process, except the township
19 shall make a decision on the application within sixty days of the receipt of a complete
20 conditional use permit application. If the board of township supervisors determines the
21 animal feeding operation would comply with zoning regulations or fails to object under
22 this section, the township may not impose additional zoning regulations relating to the
23 nature, scope, or location of the animal feeding operation later, provided an application
24 is submitted promptly to the state department of health, the department issues a final
25 permit, and construction of the animal feeding operation commences within ~~five~~three
26 years from the date ~~of the board's determination or failure to object~~the department
27 issues its final permit and any permit appeals are exhausted. A board of township
28 supervisors may not:

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

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

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

5 1. For purposes of this section:

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

12 (1) Animals, other than aquatic animals, have been, are, or will be stabled or
13 confined and fed or maintained for a total of forty-five days or more in any
14 twelve-month period; and

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

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

19 The term does not include:

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

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

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

27 d. "Location" means the setback distance between a structure, fence, or other
28 boundary enclosing ~~a concentrated~~ an animal feeding operation, including its
29 animal waste collection system, and the nearest occupied residence, the nearest
30 buildings used for nonfarm or nonranch purposes, or the nearest land zoned for
31 residential, recreational, or commercial purposes. The term does not include the

- 1 setback distance for the application of manure or for the application of other
2 recycled agricultural material under a nutrient management plan approved by the
3 department of environmental quality.
- 4 2. For purposes of this section, animal units are determined as follows:
- 5 a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
6 b. ~~One dairy cow, heifer, or bull, other than an animal described in subdivision a~~
7 ~~equals 1.0 animal unit;~~
8 c. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal~~
9 ~~unit;~~
10 d. ~~One cow calf pair equals 1.0 animal unit;~~
11 e. ~~One swine weighing fifty five pounds [24.948 kilograms] or more equals 0.4~~
12 ~~animal unit;~~
13 f. ~~One swine weighing less than fifty five pounds [24.948 kilograms] equals 0.1~~
14 ~~animal unit;~~
15 g. ~~One horse equals 2.0 animal units;~~
16 h. ~~One sheep or lamb equals 0.1 animal unit;~~
17 i. ~~One turkey equals 0.0182 animal unit;~~
18 j. ~~One chicken, other than a laying hen, equals 0.008 animal unit;~~
19 k. ~~One laying hen equals 0.012 animal unit;~~
20 l. ~~One duck equals 0.033 animal unit; and~~
21 m. ~~Any livestock not listed in subdivisions a through l equals 1.0 animal unit per~~
22 ~~each one thousand pounds [453.59 kilograms] whether single or combined~~
23 ~~animal weight provided under subdivision c of subsection 7 of section 23.1-06-15.~~
- 24 3. A board of township supervisors may not prohibit or prevent the use of land or
25 buildings for farming or ranching or any of the normal incidents of farming or ranching.
- 26 4. A regulation may not preclude the development of a ~~concentrated~~ animal feeding
27 operation in the township.
- 28 5. A board of township supervisors may not prohibit the reasonable diversification or
29 expansion of a farming or ranching operation.

- 1 6. A board of township supervisors may adopt regulations that establish different
2 standards for the location of ~~e~~concentrated animal feeding operations based on the size
3 of the operation and the species and type being fed.
- 4 7. If a regulation would impose a substantial economic burden on a ~~e~~concentrated an
5 animal feeding operation in existence before the effective date of the regulation, the
6 board of township supervisors shall declare that the regulation is ineffective with
7 respect to any ~~e~~concentrated animal feeding operation in existence before the effective
8 date of the regulation.
- 9 8. a. A board of township supervisors may establish high-density agricultural
10 production districts in which setback distances for ~~e~~concentrated animal feeding
11 operations and related agricultural operations are less than those in other
12 districts.
- 13 b. A board of township supervisors may establish, around areas zoned for
14 residential, recreational, or nonagricultural commercial uses, low-density
15 agricultural production districts in which setback distances for
16 ~~e~~concentrated animal feeding operations and related agricultural operations are
17 greater than those in other districts; provided, the low-density agricultural
18 production districts may not extend more than one-half mile [0.80 kilometer] from
19 the edge of the area zoned for residential, recreational, or nonagricultural
20 commercial uses.
- 21 c. The setbacks provided for in this subsection are subject to approval by the
22 agriculture commissioner and may not ~~vary by more than fifty percent from~~ be a
23 greater distance than those established in subdivision a of subsection 7 of
24 section 23.1-06-15.
- 25 d. For purposes of this subsection, a "related agricultural operation" means a facility
26 that produces a product or byproduct used by a ~~e~~concentrated animal feeding
27 operation.
- 28 9. A person intending to construct an animal feeding operation may petition the board of
29 township supervisors for a determination whether the animal feeding operation would
30 comply with zoning regulations adopted under this section and filed with the
31 department of environmental quality under section 58-03-17 before the date the

1 petition was received by the township. The petition must contain a description of the
2 nature, scope, and location of the proposed animal feeding operation and a site map
3 showing road access, the location of any structure, and the distance from each
4 structure to the nearest section line. If the board of township supervisors does not
5 object to the petition within sixty days of receipt, the animal feeding operation is
6 deemed in compliance with the township zoning regulations. If the township allows
7 animal feeding operations as a conditional use, the township shall inform the applicant
8 of the required procedures upon receipt of the petition, and the conditional use
9 regulations in effect at the time the township receives the petition must control the
10 approval process, except the township shall make a decision on the application within
11 sixty days of the receipt of a complete conditional use permit application. If the board
12 of township supervisors determines the animal feeding operation would comply with
13 zoning regulations or fails to object under this section, the township may not impose
14 additional zoning regulations relating to the nature, scope, or location of the animal
15 feeding operation later, provided an application is submitted promptly to the state
16 department of health, the department issues a final permit, and construction of the
17 animal feeding operation commences within ~~five~~three years from the date of the
18 ~~board's determination or failure to object~~the department issues its final permit and any
19 permit appeals are exhausted. A board of township supervisors may not:

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

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

27 **58-03-17. Regulation of ~~concentrated~~ animal feeding operations - Central repository.**

28 ~~1.~~—Any zoning regulation that pertains to ~~a concentrated~~an animal feeding operation, as
29 defined in section 58-03-11.1, and which is promulgated by a township after July 31,
30 2007, is not effective until filed with the state department of health for inclusion in the
31 central repository established under section 23-01-30. Any zoning regulation that

1 pertains to a concentrated animal feeding operation and which was promulgated by a
2 county or a township before August 1, 2007, may not be enforced until the regulation
3 is filed with the state department of health for inclusion in the central repository.

4 2. For purposes of this section:

5 a. ~~"Concentrated animal feeding operation" means any livestock feeding, handling,~~
6 ~~or holding operation, or feed yard, where animals are concentrated in an area~~
7 ~~that is not normally used for pasture or for growing crops and in which animal~~
8 ~~wastes may accumulate, or in an area where the space per animal unit is less~~
9 ~~than six hundred square feet [55.74 square meters]. The term does not include~~
10 ~~normal wintering operations for cattle.~~

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

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

15 1. Any zoning regulation that pertains to ~~a concentrated~~ animal feeding operation ~~and~~
16 ~~which is promulgated by a township after July 31, 2007, as defined in~~
17 ~~section 58-03-11.1,~~ is not effective until filed with the department of environmental
18 quality for inclusion in the central repository established under section 23.1-01-10. ~~Any~~
19 ~~zoning regulation that pertains to a concentrated animal feeding operation and which~~
20 ~~was promulgated by a county or a township before August 1, 2007, may not be~~
21 ~~enforced until the regulation is filed with the department of environmental quality for~~
22 ~~inclusion in the central repository.~~

23 2. For purposes of this section:

24 a. ~~"Concentrated animal feeding operation" means any livestock feeding, handling,~~
25 ~~or holding operation, or feed yard, where animals are concentrated in an area~~
26 ~~that is not normally used for pasture or for growing crops and in which animal~~
27 ~~wastes may accumulate, or in an area where the space per animal unit is less~~
28 ~~than six hundred square feet [55.74 square meters]. The term does not include~~
29 ~~normal wintering operations for cattle.~~

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

1 **SECTION 7. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE - EXPIRATION DATE.**

2 The portions of sections 1, 2, 5 and 46 of this Act not subject to an existing contingency
3 become effective on August 1, 2019, and remain in effect until the legislative council receives
4 certification from the chief of the environmental health section of the state department of health
5 that all authority, powers, and duties from the environmental health section of the state
6 department of health have been transferred to the department of environmental quality. The
7 remainder of sections 1, 2, 5 and 46 become effective on August 1, 2019, if the legislative
8 council has received certification from the chief of the environmental health section of the state
9 department of health that all authority, powers, and duties from the environmental health section
10 of the state department of health have been transferred to the department of environmental
11 quality. If, by August 1, 2019, the legislative council has not received certification from the chief
12 of the environmental health section of the state department of health that all authority, powers,
13 and duties from the environmental health section of the state department of health have been
14 transferred to the department of environmental quality, the remainder of sections 1, 2, 5 and 46
15 of this Act become effective on the date certification is received.



#2
SB 2345
4/4/19

April 4, 2019

ND House Agriculture Committee
Representative Dennis Johnson, Chairman

Re: Legislative Testimony of John T. Shockley, Attorney for North Dakota Farm Bureau on Senate Bill No. 2345

Chairman Johnson and Members of the Committee:

Thank you for the opportunity to testify in support of Senate Bill No. 2345. I am John T. Shockley, and I serve as the attorney for North Dakota Farm Bureau (NDFB). Proposed changes to N.D.C.C. §§ 11-33-02.1(9) and 58-03-11.1(9), as included in Senate Bill No. 2345, codify limitations on the authority of counties and townships to enact environmental regulations on animal feeding operations and other agricultural operations that have already been pronounced by the North Dakota Supreme Court in Ramsey County Farm Bureau v. Ramsey County, 2008 ND 175.

In Ramsey County, the County passed zoning ordinances, applicable to animal feeding operations, establishing restrictions and regulations on air, soil, and water pollution; registration requirements; permit conditions; monitoring of the operation; recordkeeping requirements; setback requirements; and enforcement provisions. Farm Bureau challenged these ordinances as outside of the authority of the County. Supra, 2008 ND 175 at ¶¶ 17, 18.

The Supreme Court concluded “Ramsey County exceeded its authority in enacting Amendment #2 because the ordinance regulates more than the location of a feeding operation, the type of animals, and size of the operation.” Ramsey Cnty., 2008 ND 175 at ¶¶ 26-27. Finding that N.D.C.C. §§ 11-33-02 and 11-33-02.1 only authorized the County “to regulate the location of animal feeding operations, the type of animals a feeding operation may contain and the size of the operation,” the Supreme Court declared that “[a] county may not enact environmental regulations for animal feeding operations as part of its zoning ordinances. The Legislature gave the authority to adopt environmental regulations for animal feeding operations to the North Dakota Department of Health,” as provided in “N.D.C.C. ch. 23-25 (air pollution control); N.D.C.C. ch. 61-28 (control, prevention, and abatement of pollution of surface waters); and N.D. Admin. Code ch. 33-16-03.1 (Department of Health regulations to control pollution from animal feeding operations).” Ramsey Cnty., 2008 ND 175 at ¶ 26.

Fargo

1101 1st Ave. N. | PO Box 2064, Fargo, ND 58107-2064
Phone: 701-298-2200 | 1-800-367-9668

Bismarck

4900 Ottawa St. | PO Box 2793, Bismarck, ND 58502-2793
Phone: 701-224-0330 | 1-800-932-8869

/

#2
SB 2345
4/4/19



The proposed changes to N.D.C.C. §§ 11-33-02.1(9) and 58-03-11.1(9) incorporate the holding of Ramsey County into the North Dakota Century Code by expressly limiting the authority of counties and townships to that provided by the Legislature and leaving environmental considerations to the North Dakota Department of Health. I have attached a copy of the Ramsey County decision to my testimony for reference.

Please support Senate Bill No. 2345. Thank you for your consideration.

Fargo

1101 1st Ave. N. | PO Box 2064, Fargo, ND 58107-2064
Phone: 701-298-2200 | 1-800-367-9668

Bismarck

4900 Ottawa St. | PO Box 2793, Bismarck, ND 58502-2793
Phone: 701-224-0330 | 1-800-932-8869

#2
SB2345
4/4/19

755 N.W.2d 920

Supreme Court of North Dakota.

RAMSEY COUNTY FARM BUREAU and
Dan Plemel, Plaintiffs and Appellants

v.

RAMSEY COUNTY, a political subdivision
of the State of North Dakota, and Board of
County Commissioners of Ramsey County,
North Dakota, Defendants and Appellees.

No. 20080054.

Sept. 23, 2008.

Synopsis

Background: Farm bureau and other individual brought action against county seeking declaratory judgment that zoning ordinances relating to animal feeding operations were void and unenforceable. The District Court, Ramsey County, Northeast Judicial District, Lee A. Christofferson, J., entered summary judgment in county's favor, and plaintiffs appealed.

Holdings: The Supreme Court, Crothers, J., held that:

[1] county substantially complied with notice requirements for publication of adopted ordinance;

[2] trial court should have examined ordinance under law in effect at time of hearing, not under repealed law in effect at time suit was commenced; and

[3] county exceeded its authority in enacting zoning ordinance governing large animal feeding operations to extent ordinance regulated more than location of feeding operation, type of animals, and size of operation.

Affirmed in part; reversed in part; remanded.

West Headnotes (11)

[1] **Zoning and Planning**

⇌ Filing, publication, and posting; minutes and findings

Publication of amended zoning ordinance governing animal feeding operations nine months after ordinance was adopted substantially complied with statutory requirement that notice of adopted ordinance be published in official county newspaper "[i]mmediately" after adoption. NDCC 11-33-09.

Cases that cite this headnote

[2] **Statutes**

⇌ Mandatory or directory statutes

Use of the word "shall" in a statute ordinarily creates a mandatory duty.

1 Cases that cite this headnote

[3] **Statutes**

⇌ Mandatory or directory statutes

Statutory provisions concerning the performance of duties by public officers within a specified time are generally construed to be directory so that the interests of private parties and the public will not be injured because of the delay.

1 Cases that cite this headnote

[4] **Municipal Corporations**

⇌ Publication

The immediate publication requirement for an ordinance is intended to ensure order and promptness, and without a showing of prejudice, noncompliance with that requirement alone will not invalidate an ordinance.

2 Cases that cite this headnote

[5] **Zoning and Planning**

⇌ Concurrent or Conflicting Regulations; Preemption

#2
SB 2345
4/4/19

A county cannot validly enact a zoning ordinance that contravenes federal or state law.

Cases that cite this headnote

1 Cases that cite this headnote

[6] **Declaratory Judgment**

↔ Necessity

In an action for declaratory judgment, there must be a justiciable controversy, ripe for a judicial determination. NDCC 32-23-06.

3 Cases that cite this headnote

[7] **Declaratory Judgment**

↔ Advisory opinions

Uniform Declaratory Judgments Act does not give a court the power to render advisory opinions or determine questions not essential to the decision of an actual controversy. NDCC 32-23-06.

3 Cases that cite this headnote

[8] **Counties**

↔ Legislative control of acts, rights, and liabilities

A valid statute repeals an earlier ordinance that conflicts with the statute because a county only has the authority granted to it, and that authority may be modified or taken away at the will of the Legislature.

Cases that cite this headnote

[9] **Declaratory Judgment**

↔ Constitutional and Statutory Provisions

Declaratory Judgment

↔ Zoning ordinances

In action for declaratory judgment to determine validity of zoning ordinance governing large animal feeding operations, trial court should have examined ordinance under law in effect at time of hearing, not under repealed law in effect at time suit was commenced.

[10] **Zoning and Planning**

↔ Agriculture, farming, and rural uses

County exceeded its authority in enacting zoning ordinance governing large animal feeding operations to extent ordinance regulated more than location of feeding operation, type of animals, and size of operation, insofar as authority to adopt environmental regulations for animal feeding operations had been granted to Department of Health. NDCC 11-33-02, 11-33-02.1, 23-25-11(9).

Cases that cite this headnote

[11] **Zoning and Planning**

↔ Agriculture, farming, and rural uses

A county may not enact environmental regulations for animal feeding operations as part of its zoning ordinances.

Cases that cite this headnote

Attorneys and Law Firms

*921 John T. Shockley (argued) and Michael D. Nelson (on brief), Ohnstad Twichell, P.C., West Fargo, ND, for plaintiffs and appellants.

Daniel L. Gaustad (argued) and Ronald F. Fischer (on brief), Pearson Christensen & Clapp, PLLP, Grafton, ND, for defendants and appellees.

Opinion

CROTHERS, Justice.

[¶ 1] Ramsey County Farm Bureau and Dan Plemel (“plaintiffs”) appeal from a summary judgment dismissing their declaratory judgment action against Ramsey County and the Ramsey County Board of County Commissioners (“Ramsey County”). The plaintiffs argue the Ramsey County zoning ordinance regulating animal feeding operations is invalid because Ramsey County did not comply with post-enactment statutory

#2
SB2345
4/4/19

publication requirements, the ordinance regulates matters preempted by state law, the ordinance is not a zoning ordinance and Ramsey County did not have authority to enact the ordinance. We conclude Ramsey County substantially complied with post-enactment *922 statutory publication requirements. We further conclude, however, the district court erred in declaring the validity of the ordinance under the repealed version of N.D.C.C. ch. 11–33, and we conclude Ramsey County exceeded its authority under the current law in enacting the ordinance. We affirm in part, reverse in part, and remand.

I

[¶ 2] In 2004, the Ramsey County Commission adopted an ordinance, Amendment # 1 to the Ramsey County Zoning Ordinance for Animal Feeding Operations, to regulate animal feeding operations within the county. In May 2006, the Ramsey County Commission contemplated changes to the ordinance and had the first reading of Amendment # 2 to the Ramsey County Ordinances for Large Animal Feeding Operations. On June 20, 2006, the Ramsey County Commission voted to adopt Amendment # 2; however, notice of the adopted ordinance was not published in the official county newspaper until March 23 and 30, 2007.

[¶ 3] On June 7, 2006, the plaintiffs brought a declaratory judgment action against Ramsey County seeking a declaration that Amendment # 1 is invalid and later amending the complaint to include a claim that Amendment # 2 is also invalid. The plaintiffs argued the ordinances are invalid because Ramsey County exceeded its authority under state law, the ordinances conflict with and are preempted by state law and Ramsey County did not satisfy post-enactment statutory publication requirements. Both parties moved for summary judgment.

[¶ 4] The district court granted Ramsey County's motion for summary judgment and dismissed the case. The court concluded Amendment # 1 was stricken in its entirety when Amendment # 2 was enacted; Ramsey County substantially complied with the statutory publication requirements and the plaintiffs were not prejudiced by the publication delay; Ramsey County did not exceed its zoning authority when it enacted Amendment # 2; and state laws and regulations do not expressly or impliedly

preempt the ability of Ramsey County to enact the zoning ordinance.

II

[¶ 5] On appeal, declaratory judgment actions are reviewed under the same standards as other cases. N.D.C.C. § 32–23–07; *Nationwide Mut. Ins. Cos. v. Lagodinski*, 2004 ND 147, ¶ 7, 683 N.W.2d 903.

[¶ 6] The standard of review for summary judgment is well-established, and this Court has explained:

“Summary judgment is a procedural device for promptly disposing of a lawsuit without a trial if there are no genuine issues of material fact or inferences which can reasonably be drawn from undisputed facts, or if the only issues to be resolved are questions of law. ‘Whether summary judgment was properly granted is “a question of law which we review de novo on the entire record.’ ” On appeal, this Court decides if the information available to the trial court precluded the existence of a genuine issue of material fact and entitled the moving party to summary judgment as a matter of law.”

Peoples State Bank of Truman, Inc. v. Molstad Excavating, Inc., 2006 ND 183, ¶ 17, 721 N.W.2d 43 (quoting *Zuger v. State*, 2004 ND 16, ¶ 7, 673 N.W.2d 615).

III

[1] [¶ 7] The plaintiffs argue Amendment # 2 is invalid because Ramsey County failed to comply with mandatory statutory publication requirements for enacting *923 county zoning ordinances, which require a county to immediately publish notice of the adopted ordinance in the official county newspaper. The plaintiffs contend notice of the ordinance was not published until approximately nine months after it was adopted and that the ordinance is therefore invalid.

[¶ 8] After adopting a zoning ordinance, N.D.C.C. § 11–33–09 requires a county to publish notice of the adopted ordinance in the official county newspaper:

#2
SB2345
4/4/19

“Upon adoption of any resolution or any amendment thereto, the county auditor shall file a certified copy thereof with the recorder. Immediately after the adoption of any such resolution or any amendment thereto, the county auditor shall cause notice of the same to be published for two successive weeks in the official newspaper of the county and in such other newspapers published in the county as the board of county commissioners may deem necessary. Said notice shall describe the nature, scope, and purpose of the adopted resolution, and shall state the times at which it will be available to the public for inspection and copying at the office of the recorder. Proof of such publication shall be filed in the office of the county auditor. If no petition for a separate hearing is filed pursuant to section 11–33–10, the resolution or amendment thereto shall take effect upon the expiration of the time for filing said petition.”

[¶ 9] Ramsey County admits it did not strictly comply with N.D.C.C. § 11–33–09 because notice of the adoption of Amendment # 2 was not published until March 2007. Ramsey County argues, however, it substantially complied with the post-enactment procedures, the plaintiffs had notice the ordinance had been approved and the plaintiffs have not claimed they were prejudiced by the failure to strictly comply with the statutory requirements.

[¶ 10] In *Homer Twp. v. Zimney*, 490 N.W.2d 256, 257 (N.D.1992), the township failed to comply with a statutory pre-enactment notice requirement because it did not publish notice of a meeting at which it passed an ordinance. This Court held the ordinance was invalid because the statutory pre-enactment notice requirement was mandatory and the township did not either strictly or substantially comply with the notice requirement. *Id.* at 259–60.

[¶ 11] In *Pulkrabek v. Morton County*, 389 N.W.2d 609, 611 (N.D.1986), the Pulkrabeks argued county ordinances were invalid because the county did not strictly comply with the county auditor's statutory general filing duty, requiring the auditor to index documents in a reception book to establish proof of publication. This Court concluded the county ordinances were effective even though the county did not strictly comply with the county auditor's statutory duties because the county satisfied the procedural requirements for zoning by filing proof of publication in a storage vault in the courthouse basement, which was sufficient to meet the requirement that proof be filed with the county auditor's office. *Id.* at 612.

[¶ 12] Thus this Court has considered whether an ordinance is invalid when statutory requirements have not been met, and we have held a county does not have to strictly comply with all post-enactment statutory procedures for enacting a valid zoning ordinance. This Court has said, “Procedural requirements contained in state zoning enabling statutes ‘are [generally] regarded as mandatory, and a *substantial failure to comply* will render an ordinance invalid.’ ” *Homer Twp.*, 490 N.W.2d at 258 (emphasis added).

[2] [3] [4] [¶ 13] Section 11–33–09, N.D.C.C., states, “[T]he county auditor *924 shall cause notice of the same to be published for two successive weeks in the official newspaper of the county...” Use of “[t]he word ‘shall’ in a statute ordinarily creates a mandatory duty.” *Homer Twp.*, 490 N.W.2d at 259. Under the terms of N.D.C.C. § 11–33–09, a county has a mandatory duty to publish notice of an adopted ordinance, and the ordinance does not become effective until after the county has complied with that requirement. However, “[s]tatutory provisions concerning the performance of duties by public officers within a specified time are generally construed to be directory so that the interests of private parties and the public will not be injured because of the delay.” *Solen Pub. Sch. Dist. No. 3 v. Heisler*, 381 N.W.2d 201, 204 (N.D.1986). If mandatory construction is required, harsh, unfair, or absurd consequences may result. *Id.* The immediacy requirement is intended to ensure order and promptness, and without a showing of prejudice, non-compliance with the immediacy requirement alone will not invalidate the ordinance. *Cf. id.* (fifteen-day time period was intended to ensure order and promptness, and without a showing of prejudice, failure to strictly comply

#2
SB2345
4/4/19

20 ..., the location and the use of buildings and structures and the use, condition of use, or occupancy of lands for residence, recreation, and other purposes.”

Section 11–33–02, N.D.C.C., limited a county's authority to enact zoning ordinances regulating concentrated feeding operations:

“2. A board of county commissioners may regulate the nature and scope of concentrated feeding operations permissible in the county....

“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.”

Section 23–25–11(9), N.D.C.C., explicitly limited a county's authority to regulate animal feeding operations: “Neither a county nor a township may regulate or through any means impose restrictions or requirements on animal feeding operations or on other agricultural operations except as permitted under sections 11–33–02 and 58–03–11.”

[¶ 21] The district court applied the statutes in effect at the time the suit was commenced, concluded Ramsey County had the authority to enact Amendment # 2 and the ordinance was not pre-empted by state law, and granted Ramsey County's motion for summary judgment. The court concluded the county did not exceed its authority because Amendment # 2 regulates the nature, scope and location of animal feeding operations, which is permitted under N.D.C.C. ch. 11–33. The court also concluded the ordinance did not conflict with state law, rather it is more comprehensive *926 than state law and addresses several issues state law ignores.

[6] [7] [¶ 22] The purpose of the Declaratory Judgment Act is “to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and it is to be construed and administered liberally.” N.D.C.C. § 32–23–12. In a declaratory judgment action “[t]he court may refuse to render or enter a declaratory judgment or decree where

such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.” N.D.C.C. § 32–23–06. There must be a justiciable controversy, ripe for a judicial determination. *See Saefke v. Stenehjem*, 2003 ND 202, ¶ 12, 673 N.W.2d 41. “ ‘The Uniform Declaratory Judgments Act does not give a court the power to render advisory opinions or determine questions not essential to the decision of an actual controversy.’ ” *Richland County Water Res. Bd. v. Pribbernow*, 442 N.W.2d 916, 918 (N.D.1989) (quoting *Davis v. Dairyland County Mut. Ins. Co. of Texas*, 582 S.W.2d 591, 593 (Tex.Civ.App.1979)).

[8] [¶ 23] Chapter 11–33, N.D.C.C., which gives counties authority to enact zoning ordinances and places limits on those ordinances, was amended in 2007, and the amendments became effective August 1, 2007. However, the district court did not consider whether the ordinance is valid under this current version of the law. A valid statute repeals an earlier ordinance that conflicts with the statute because a county only has the authority granted to it, and that authority may be modified or taken away at the will of the Legislature. *State ex rel. City of Minot v. Gronna*, 79 N.D. 673, 59 N.W.2d 514, 530 (1953). Generally, in an enforcement action the validity of the ordinance at the time the action commences or when the cause of action accrues is important to resolving the case. *See Homer Twp.*, 490 N.W.2d at 258 (a party may challenge the validity of a zoning ordinance as a defense in an enforcement action). *Cf.*, *White v. Altru Health Sys.*, 2008 ND 48, ¶ 11, 746 N.W.2d 173 (the date the cause of action accrued should be used to determine which version of a statute applies, because statutes generally do not apply retroactively). However, this is a declaratory judgment action to determine if Ramsey County's animal feeding operation ordinance is currently valid, and the current law must be used. Otherwise, our decision and that of the district court are theoretical and advisory statements about what the repealed law might have done. *Cf. Jones v. Temmer*, 57 F.3d 921, 922–23 (10th Cir.1995) (plaintiffs sought declaration of whether state statute was constitutional, while appeal was pending, the prior law was amended rendering complaint moot); *Taxpayers For the Animas–La Plata Referendum v. Animas–La Plata Water Conservancy Dist.*, 739 F.2d 1472, 1478–79 (10th Cir.1984) (statute that validated water conservancy districts after a suit commenced challenging the formation of a district, mooted plaintiffs claims relating to the formation of the district).

#2
SB2345
4/4/19

[9] [¶ 24] The district court's declaration regarding the validity of Amendment # 2 was based on the version of the statutes in effect at the time the action commenced, N.D.C.C. ch. 11-33 (2005). However, at the time of the court's decision, those provisions had been repealed by N.D.C.C. ch. 11-33 (2007); therefore, the question the court answered was moot. But the issue for which the plaintiffs sought review was not moot because the declaration could have and should have been made under the successor and current version of the law, N.D.C.C. ch. 11-33 (2007).

*927 [10] [¶ 25] The 2007 amendments to N.D.C.C. ch. 11-33 clarify a county's authority to regulate concentrated feeding operations. Counties are statutorily granted the general authority to enact zoning ordinances under N.D.C.C. § 11-33-01, which provides:

“For the purpose of promoting health, safety, morals, public convenience, general prosperity, and public welfare, the board of county commissioners of any county may regulate and restrict within the county, subject to section 11-33-20 and chapter 54-21.3, the location and the use of buildings and structures and the use, condition or use, or occupancy of the lands for residence, recreation, and other purposes.”

However, “a [county] cannot validly enact a zoning ordinance that contravenes federal or state law.” *Mountrail County v. Hoffman*, 2000 ND 49, ¶ 7, 607 N.W.2d 901. Section 11-33-02, N.D.C.C., authorizes a county to divide the county into districts and to enact suitable regulations to carry out N.D.C.C. § 11-33-01, subject to the limits placed on the county in N.D.C.C. § 11-33-02.1. Section 11-33-02.1, N.D.C.C., limits a county's regulations regarding farming and ranching:

“1. For purposes of this section:

a. “Concentrated feeding operation” means any livestock feeding, handling, or holding operation,

or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate. The term does not include normal wintering operations for cattle.

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

“4. A board of county commissioners may not preclude the development of a concentrated feeding operation in the county.

“6. A board of county commissioners may adopt regulations that establish different standards for the location of concentrated feeding operations based on the size of the operation and the species and type being fed.

“7. If a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of county commissioners shall declare that the regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.

“8. a. A board of county commissioners may establish high-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are less than those in other districts.

#2
SB 2345
4/4/19

did not preclude action). We conclude N.D.C.C. § 11-33-09 creates a mandatory duty to publish the enacted ordinance before the ordinance becomes effective. See *O'Hare v. Town of Park River*, 1 N.D. 279, 280, 47 N.W. 380, 381 (1890) (proposed by-law did not become effective because it was never published). However, the immediate publication requirement is not mandatory and only necessitates substantial compliance.

[¶ 14] While Ramsey County did not immediately publish notice of the adopted ordinance in the official county newspaper, it did publish notice on its website and in the official county newspaper in March 2007. We conclude Ramsey County substantially complied with the notice requirements of N.D.C.C. § 11-33-09. Therefore, the ordinance became effective after both the notice was published in the official county newspaper and the time had expired for filing a petition for a separate hearing under N.D.C.C. § 11-33-10.

[¶ 15] Furthermore, we note that this is a declaratory judgment case and not an enforcement action and the plaintiffs have not demonstrated they were prejudiced by the delay. The plaintiffs do not dispute that Ramsey County complied with the pre-enactment statutory requirements, giving notice of the potential ordinance and of any meetings to discuss its enactment. The plaintiffs had actual notice of the ordinance and amended their complaint to include claims about Amendment #2 shortly after the county commission adopted the ordinance. Additionally, the ordinance did not become effective and could not be enforced until notice was published and the county substantially complied with N.D.C.C. § 11-33-09.

[¶ 16] We conclude Ramsey County substantially complied with N.D.C.C. § 11-33-09 and the ordinance is not invalid for failure to strictly comply with the statutory publication requirement.

IV

[¶ 17] The plaintiffs argue Amendment # 2 is invalid because it conflicts with and regulates matters pre-empted by state law; Ramsey County did not have the authority to enact the ordinance; and the amendment is not a zoning ordinance but is instead a set of comprehensive regulations to license, permit, and monitor the health and

potential air and water pollution aspects of animal feeding operations.

[¶ 18] Amendment # 2 is a comprehensive zoning ordinance for animal feeding operations. The purpose of the ordinance *925 is to protect Ramsey County from pollutants generated by animal feeding operations and to promote the health, safety and welfare of the citizens of Ramsey County. Amendment # 2 includes restrictions on air, soil and water pollution; registration requirements; permit conditions, including requirements for site assessment with soil borings or soil evaluations, an operation and maintenance plan, a nutrient utilization plan, closure requirements and closure plan, and fee requirements and financial assurances; requirements for monitoring the operation; record keeping requirements; setback requirements; and enforcement provisions. Although many of the requirements in the ordinance are similar to State Health Department regulations for controlling pollution from animal feeding operations, see N.D. Admin. Code ch. 33-16-03.1, Amendment # 2 provides additional regulations.

[5] [¶ 19] A county has the authority and powers granted to it by law. N.D. Const. art. VII, § 2 (“Each political subdivision shall have and exercise such powers as provided by law.”); *City of Fargo v. Cass County*, 286 N.W.2d 494, 500 (N.D.1979). See also *Burlington Northern and Santa Fe Ry. Co. v. Benson County Water Res. Dist.*, 2000 ND 182, ¶ 7, 618 N.W.2d 155 (“A political subdivision’s ‘rights and powers are determined and defined by law.’ ”); *Hart v. Bye*, 76 N.W.2d 139, 144 (N.D.1956) (counties are political subdivisions). “[A] [county] cannot validly enact a zoning ordinance that contravenes federal or state law.” *Mountrail County v. Hoffman*, 2000 ND 49, ¶ 7, 607 N.W.2d 901.

[¶ 20] When this suit was commenced in 2006, N.D.C.C. § 11-33-01 gave counties authority to enact zoning ordinances:

“For the purpose of promoting health, safety, morals, public convenience, general prosperity, and public welfare, the board of county commissioners of any county may regulate and restrict within the county, subject to section 11-33-

#2
SB 2345
4/4/19

b. A board of county commissioners may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for concentrated *928 feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one and one-half miles [2.40 kilometers] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.”

Section 23–25–11(9), N.D.C.C., states, “Neither a county nor a township may regulate or through any means impose restrictions or requirements on animal feeding operations or on other agricultural operations except as permitted under sections 11–33–02 and 58–03–11.”

[11] [¶ 26] A county only has the authority granted to it. N.D. Const. art. VII, § 2 (“Each political subdivision shall have and exercise such powers as provided by law.”); *City of Fargo v. Cass County*, 286 N.W.2d 494, 500 (N.D.1979). Sections 11–33–02 and 11–33–02.1, N.D.C.C., give a county authority to regulate the location of animal feeding operations, the type of animals a feeding operation may contain and the size of the operation. Section 23–25–11(9), N.D.C.C., explicitly limits a county's authority to regulate animal feeding operations and states that a county may do no more than regulate the location of the operation, size of operation and type of animal. A county may not enact environmental regulations for animal feeding operations as part of its zoning ordinances. The Legislature gave the authority to adopt environmental regulations for animal feeding operations to the North Dakota Department of Health. See N.D.C.C. ch. 23–25 (air pollution control); N.D.C.C. ch. 61–28 (control, prevention, and abatement of pollution of surface waters), N.D. Admin. Code ch.

33–16–03.1 (Department of Health regulations to control pollution from animal feeding operations).

[¶ 27] We conclude Ramsey County exceeded its authority in enacting Amendment # 2 because the ordinance regulates more than the location of a feeding operation, the type of animals and size of the operation. Therefore Amendment # 2 is invalid to the extent that it regulates more than N.D.C.C. ch. 11–33 (2007) authorizes. However, Amendment # 2 provides, “If any paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this ordinance.” We reverse the district court's decision and remand for further proceedings to determine whether portions of the ordinance are still valid.

V

[¶ 28] We conclude Ramsey County substantially complied with post-enactment statutory publication requirements, but the district court erred by declaring the validity of Amendment # 2 under the repealed version of N.D.C.C. ch. 11–33. We further conclude Ramsey County exceeded its authority in enacting Amendment # 2 under the current law. We affirm in part, reverse in part, and remand for proceedings consistent with this opinion.

[¶ 29] GERALD W. VANDE WALLE, C.J., MARY MUEHLEN MARING, CAROL RONNING KAPSNER and DALE V. SANDSTROM, JJ., concur.

All Citations

755 N.W.2d 920, 2008 ND 175

#3
SB 2345
4/4/19

Troy Coons
Northwest Landowners Association
House Agriculture Committee
Testimony for SB 2345
April 4, 2019



Good morning, Chairman Johnson and members of the committee, thank you for taking my testimony into consideration today.

My name is Troy Coons, and I am the Chairman of the Northwest Landowners Association. Northwest Landowners Association represents over 525 farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist.

Northwest Landowners Association is in opposition to proposed amendments to SB 2345. On pages 4, 7, 22-23, and 26 of SB 2345, the language below is amended as indicated.

Page 4, line 1, after “subsection”insert”are subject to approval by the agriculture commissioner and”

Page 4, line 1, overstrike “vary by more than fifty”

Page 4, line 2, overstrike “perCent from” and insert immediately thereafter “be a greater distance than”

Northwest Landowners Association is opposed to this proposed amendment because it eliminates local control and the ability of local government to regulate issues directly impacting its citizens. Decisions on local zoning issues and setbacks, such as those at issue here, should be made by the local zoning authorities (townships and counties) and it does not make sense to assign this responsibility to a state agency.

Northwest Landowners Association has always supported local control and local governments, and therefore requests that the House Agriculture Committee reject these particular amendments which remove this local control.

Thank you for taking the time to consider our comments.

Sincerely,

Troy Coons, Chairman

SB 2345
4-16-19
AH #1

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2345

Introduced by

Senators Wanzek, Dotzenrod, Luick

Representatives Brandenburg, D. Johnson, Pollert

1 A BILL for an Act to amend and reenact sections 11-33-02.1, 11-33-22, 23-25-11, 23.1-06-15,
2 ~~and 58-03-11.1, and 58-03-17~~ of the North Dakota Century Code, relating to animal feeding
3 operations and zoning regulations; to provide an effective date; to provide a contingent effective
4 date; and to provide an expiration date.

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

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

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

10 1. For purposes of this section:

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

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

22 b. "Farming or ranching" means cultivating land for the production of agricultural
23 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.
24 The term does not include:

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

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

1 c. The setbacks provided for in this subsection may not vary by more than fifty
2 percent from exceed those established in subdivision a of subsection 7 of section
3 23-25-11 unless the county has compelling, objective evidence a greater setback
4 is necessary, in which case the setbacks may exceed those established in
5 subdivision a of subsection 7 of section 23-25-11 by no more than fifty percent. If
6 a setback under this subsection is greater than the corresponding setback
7 established in subdivision a of subsection 7 of section 23-25-11, a person whose
8 animal feeding operation will be affected by the setback may request the
9 department of agriculture mediate any disagreement between the person and the
10 board of county commissioners regarding the length of the setback. The
11 department of agriculture then shall provide mediation services that may include
12 the assistance of an ombudsman. If mediation does not result in agreement
13 between the parties, the person that requested the mediation may bring a claim
14 against the board of county commissioners in a district court of competent
15 jurisdiction.

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

19 9. A person intending to construct an animal feeding operation may petition the board of
20 county commissioners for a determination whether the animal feeding operation would
21 comply with zoning regulations adopted under this section and filed with the state
22 department of health under section 11-33-22 before the date the petition was received
23 by the county. The petition must contain a description of the nature, scope, and
24 location of the proposed animal feeding operation and a site map showing road
25 access, the location of any structure, and the distance from each structure to the
26 nearest section line. If the board of county commissioners does not object to the
27 petition within sixty days of receipt, the animal feeding operation is deemed in
28 compliance with the county zoning regulations. If the county allows animal feeding
29 operations as a conditional use, the county shall inform the applicant of the required
30 procedures upon receipt of the petition, and the conditional use regulations in effect at
31 the time the county receives the petition must control the approval process, except the

1 county shall make a decision on the application within sixty days of the receipt of a
2 complete conditional use permit application. If the board of county commissioners
3 determines the animal feeding operation would comply with zoning regulations or fails
4 to object under this section, the county may not impose additional zoning regulations
5 relating to the nature, scope, or location of the animal feeding operation later, provided
6 an application is submitted promptly to the state department of health, the department
7 issues a final permit, and construction of the animal feeding operation commences
8 within ~~five~~three years from the date of the board's determination or failure to object,
9 the department issues its final permit and any permit appeals are exhausted. A board
10 of county commissioners may not:

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

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

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

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

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

1 production districts may not extend more than one and one-half miles [2.40
2 kilometers] from the edge of the area zoned for residential, recreational, or
3 nonagricultural commercial uses.

4 c. The setbacks provided for in this subsection may not ~~vary by more than fifty~~
5 ~~percent from~~exceed those established in subdivision a of subsection 7 of section
6 23.1-06-15 unless the county has compelling, objective evidence a greater
7 setback is necessary, in which case the setbacks may exceed those established
8 in subdivision a of subsection 7 of section 23.1-06-15 by no more than fifty
9 percent. If a setback under this subsection is greater than the corresponding
10 setback established in subdivision a of subsection 7 of section 23.1-06-15, a
11 person whose animal feeding operation will be affected by the setback may
12 request the department of agriculture mediate any disagreement between the
13 person and the board of county commissioners regarding the length of the
14 setback. The department of agriculture then shall provide mediation services that
15 may include the assistance of an ombudsman. If mediation does not result in
16 agreement between the parties, the person that requested the mediation may
17 bring a claim against the board of county commissioners in a district court of
18 competent jurisdiction.

19 d. For purposes of this subsection, a "related agricultural operation" means a facility
20 that produces a product or byproduct used by a ~~concentrated~~an animal feeding
21 operation.

22 9. A person intending to construct an animal feeding operation may petition the board of
23 county commissioners for a determination whether the animal feeding operation would
24 comply with zoning regulations adopted under this section and filed with the
25 department of environmental quality under section 11-33-22 before the date the
26 petition was received by the county. The petition must contain a description of the
27 nature, scope, and location of the proposed animal feeding operation and a site map
28 showing road access, the location of any structure, and the distance from each
29 structure to the nearest section line. If the board of county commissioners does not
30 object to the petition within sixty days of receipt, the animal feeding operation is
31 deemed in compliance with the county zoning regulations. If the county allows animal

1 feeding operations as a conditional use, the county shall inform the applicant of the
2 required procedures upon receipt of the petition, and the conditional use regulations in
3 effect at the time the county receives the petition must control the approval process,
4 except the county shall make a decision on the application within sixty days of the
5 receipt of a complete conditional use permit application. If the board of county
6 commissioners determines the animal feeding operation would comply with zoning
7 regulations or fails to object under this section, the county may not impose additional
8 zoning regulations relating to the nature, scope, or location of the animal feeding
9 operation later, provided an application is submitted promptly to the state department
10 of health, the department issues a final permit, and construction of the animal feeding
11 operation commences within ~~five~~three years from the date of the board's
12 ~~determination or failure to object~~the department issues its final permit and any permit
13 appeals are exhausted. A board of county commissioners may not:

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

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

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

21 **11-33-22. Regulation of ~~concentrated~~ animal feeding operations - Central repository.**

22 4.—Any zoning regulation that pertains to ~~a concentrated~~an animal feeding operation, as
23 defined in section 11-33-02.1, and which is promulgated by a county after July 31,
24 2007, is not effective until filed with the state department of health for inclusion in the
25 central repository established under section 23-01-30. Any zoning regulation that
26 pertains to ~~concentrated~~ animal feeding operations and which was promulgated by a
27 county before August 1, 2007, may not be enforced until the regulation is filed with the
28 state department of health for inclusion in the central repository.

29 2.—For purposes of this section:

30 a. "Concentrated animal feeding operation" means any livestock feeding, handling,
31 or holding operation, or feed yard, where animals are concentrated in an area

1 that is not normally used for pasture or for growing crops and in which animal
2 wastes may accumulate, or in an area where the space per animal unit is less
3 than six hundred square feet [55.74 square meters]. The term does not include
4 normal wintering operations for cattle.

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

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

9 1. Any zoning regulation that pertains to a ~~concentrated~~ an animal feeding operation ~~and~~
10 as defined in section 11-33-02.1, is not effective until filed with the department of
11 environmental quality for inclusion in the central repository established under section
12 23.1-01-10.

13 2. For purposes of this section:

14 a. "Concentrated animal feeding operation" means any livestock feeding, handling,
15 or holding operation, or feed yard, where animals are concentrated in an area
16 that is not normally used for pasture or for growing crops and in which animal
17 wastes may accumulate, or in an area where the space per animal unit is less
18 than six hundred square feet [55.74 square meters]. The term does not include
19 normal wintering operations for cattle.

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

22 **SECTION 3. AMENDMENT.** Section 23-25-11 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **23-25-11. Regulation of odors - Rules. (Contingent repeal - See note)**

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

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

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

12 a. Within one hundred feet [30.48 meters] of any residence, church, school,
13 business, or public building, or within a campground or public park. An odor
14 measurement may not be taken at the residence of the owner or operator of the
15 source of the odor, or at any residence, church, school, business, or public
16 building, or within a campground or public park, that is built or established within
17 one-half mile [.80 kilometer] of the source of the odor after the source of the odor
18 has been built or established;

19 b. At any point located beyond one-half mile [.80 kilometer] from the source of the
20 odor, except for property owned by the owner or operator of the source of the
21 odor, or over which the owner or operator of the source of the odor has
22 purchased an odor easement; or

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

- 1 the animal feeding operation was established, unless the animal feeding
2 operation has obtained an odor easement from the pre-existing facility.
- 3 3. An odor measurement may be taken only with a properly maintained scentometer, by
4 an odor panel, or by another instrument or method approved by the state department
5 of health, and only by inspectors certified by the department who have successfully
6 completed a department-sponsored odor certification course and demonstrated the
7 ability to distinguish various odor samples and concentrations. If a certified inspector
8 measures a violation of this section, the department may send a certified letter of
9 apparent noncompliance to the person causing the apparent violation and may
10 negotiate with the owner or operator for the establishment of an odor management
11 plan and best management practices to address the apparent violation. The
12 department shall give the owner or operator at least fifteen days to implement the odor
13 management plan. If the odor problem persists, the department may proceed with an
14 enforcement action provided at least two certified inspectors at the same time each
15 measure a violation and then confirm the violation by a second odor measurement
16 taken by each certified inspector, at least fifteen minutes, but no more than two hours,
17 after the first measurement.
- 18 4. A person is exempt from this section while spreading or applying animal manure or
19 other recycled agricultural material to land in accordance with a nutrient management
20 plan approved by the state department of health. A person is exempt from this section
21 while spreading or applying animal manure or other recycled agricultural material to
22 land owned or leased by that person in accordance with rules adopted by the
23 department. An owner or operator of a lagoon or waste storage pond permitted by the
24 department is exempt from this section in the spring from the time when the cover of
25 the permitted lagoon or pond begins to melt until fourteen days after all the ice cover
26 on the lagoon or pond has completely melted. Notwithstanding these exemptions, all
27 persons shall manage their property and systems to minimize the impact of odors on
28 their neighbors.
- 29 5. This section does not apply to chemical compounds that can be individually measured
30 by instruments, other than a scentometer, that have been designed and proven to
31 measure the individual chemical or chemical compound, such as hydrogen sulfide, to

- 1 a reasonable degree of scientific certainty, and for which the state department of
2 health has established a specific limitation by rule.
- 3 6. For purposes of this section, ~~a public park is a park established by the federal~~
4 ~~government, the state, or a political subdivision of the state in the manner prescribed~~
5 ~~by law. For purposes of this section, a campground is:~~
- 6 a. "Business" means a commercial building used primarily to carry on a for-profit or
7 nonprofit business which is not residential and not used primarily to manufacture
8 or produce raw materials, products, or agricultural commodities;
- 9 b. "Campground" means a public or private area of land used exclusively for
10 camping and open to the public for a fee on a regular or seasonal basis;
- 11 c. "Church" means a building owned by a religious organization and used primarily
12 for religious purposes;
- 13 d. "Park" means a park established by the federal government, the state, or a
14 political subdivision of the state in the manner prescribed by law;
- 15 e. "Public building" means a building owned by a county, city, township, school
16 district, park district, or other unit of local government; the state; or an agency,
17 industry, institution, board, or department of the state; and
- 18 f. "School" means a public school or nonprofit, private school approved by the
19 superintendent of public instruction.
- 20 7. a. In a county or township that does not regulate the nature, scope, ~~and~~ location
21 of an animal feeding operation under section ~~44-33-02~~11-33-02.1 or section
22 58-03-11.1, the department shall require that any new animal feeding operation
23 permitted under chapter 61-28 be set back from any existing residence, church,
24 school, business, public building, park, or campground.
- 25 (1) If there are fewer than three hundred animal units, there is no minimum
26 setback requirement.
- 27 (2) If there are at least three hundred animal units but no more than one
28 thousand animal units, the setback for any animal operation is one-half mile
29 [.80 kilometer].
- 30 (3) If there are at least one thousand one animal units but no more than two
31 thousand animal units, the setback for a hog operation is three-fourths mile

SB 2345
4-16-19
#1

Sixty-sixth
Legislative Assembly

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

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

4 d. In a county or township that regulates the nature, scope, or location of an animal
5 feeding operation under section 11-33-02.1 or section 58-03-11.1, an applicant
6 for an animal feeding operation permit shall submit to the department with the
7 permit application the zoning determination made by the county or township
8 under subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1,
9 unless the animal feeding operation is in existence by January 1, 2019, and there
10 is no change in animals or animal units which would result in an increase in the
11 setbacks provided for in this section. The department may not impose additional
12 odor setback requirements.

13 e. An animal feeding operation is not subject to zoning regulations adopted by a
14 county or township after the date an application for the animal feeding operation
15 is submitted to the department, provided construction of the animal feeding
16 operation commences within ~~five~~three years from the date the ~~application is~~
17 ~~submitted~~ final permit is issued and any permit appeals are exhausted. Unless
18 there is a change to the location of the proposed animal feeding operation or
19 there is a change in animal units which would result in an increase in the
20 setbacks under this section, this exemption remains in effect if the department
21 requires the applicant to submit a revised application.

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

24 9. Neither a county nor a township may regulate or through any means impose
25 restrictions or requirements on animal feeding operations or on other agricultural
26 operations except as permitted under sections ~~11-33-02~~11-33-02.1 and
27 ~~58-03-11~~58-03-11.1.

28 **SECTION 4. AMENDMENT.** Section 23.1-06-15 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **23.1-06-15. Regulation of odors - Rules. (Contingent effective date - [See note](#))**

2 1. In areas located within a city or the area over which a city has exercised extraterritorial
3 zoning as defined in section 40-47-01.1, a person may not discharge into the ambient
4 air any objectionable odorous air contaminant that measures seven odor concentration
5 units or higher outside the property boundary where the discharge is occurring. If an
6 agricultural operation as defined by section 42-04-01 has been in operation for more
7 than one year, as provided by section 42-04-02, and the person making the odor
8 complaint was built or established after the agricultural operation was established, the
9 measurement for compliance with the seven odor concentration units standard must
10 be taken within one hundred feet [30.48 meters] of the subsequently established
11 residence, church, school, business, or public building making the complaint rather
12 than at the property boundary of the agricultural operation. The measurement may not
13 be taken within five hundred feet [.15 kilometer] of the property boundary of the
14 agricultural operation.

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

20 a. Within one hundred feet [30.48 meters] of any residence, church, school,
21 business, or public building, or within a campground or public park. An odor
22 measurement may not be taken at the residence of the owner or operator of the
23 source of the odor, or at any residence, church, school, business, or public
24 building, or within a campground or public park, that is built or established within
25 one-half mile [.80 kilometer] of the source of the odor after the source of the odor
26 has been built or established;

27 b. At any point located beyond one-half mile [.80 kilometer] from the source of the
28 odor, except for property owned by the owner or operator of the source of the
29 odor, or over which the owner or operator of the source of the odor has
30 purchased an odor easement; or

- 1 c. If a county or township has zoned or established a setback distance for an animal
2 feeding operation which is greater than one-half mile [.80 kilometer] under either
3 section 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is
4 greater than one-half mile [.80 kilometer], measurements for compliance with the
5 seven odor concentration units standard must be taken at the setback distance
6 rather than one-half mile [.80 kilometer] from the facility under subdivision b,
7 except for any residence, church, school, business, public building, park, or
8 campground within the setback distance which was built or established before
9 the animal feeding operation was established, unless the animal feeding
10 operation has obtained an odor easement from the pre-existing facility.
- 11 3. An odor measurement may be taken only with a properly maintained scentometer, by
12 an odor panel, or by another instrument or method approved by the department of
13 environmental quality, and only by inspectors certified by the department who have
14 successfully completed a department-sponsored odor certification course and
15 demonstrated the ability to distinguish various odor samples and concentrations. If a
16 certified inspector measures a violation of this section, the department may send a
17 certified letter of apparent noncompliance to the person causing the apparent violation
18 and may negotiate with the owner or operator for the establishment of an odor
19 management plan and best management practices to address the apparent violation.
20 The department shall give the owner or operator at least fifteen days to implement the
21 odor management plan. If the odor problem persists, the department may proceed
22 with an enforcement action provided at least two certified inspectors at the same time
23 each measure a violation and then confirm the violation by a second odor
24 measurement taken by each certified inspector, at least fifteen minutes, but no more
25 than two hours, after the first measurement.
- 26 4. A person is exempt from this section while spreading or applying animal manure or
27 other recycled agricultural material to land in accordance with a nutrient management
28 plan approved by the department of environmental quality. A person is exempt from
29 this section while spreading or applying animal manure or other recycled agricultural
30 material to land owned or leased by that person in accordance with rules adopted by
31 the department. An owner or operator of a lagoon or waste storage pond permitted by

- 1 the department is exempt from this section in the spring from the time when the cover
2 of the permitted lagoon or pond begins to melt until fourteen days after all the ice
3 cover on the lagoon or pond has completely melted. Notwithstanding these
4 exemptions, all persons shall manage their property and systems to minimize the
5 impact of odors on their neighbors.
- 6 5. This section does not apply to chemical compounds that can be individually measured
7 by instruments, other than a scentometer, that have been designed and proven to
8 measure the individual chemical or chemical compound, such as hydrogen sulfide, to
9 a reasonable degree of scientific certainty, and for which the department of
10 environmental quality has established a specific limitation by rule.
- 11 6. For purposes of this section, ~~a public park is a park established by the federal~~
12 ~~government, the state, or a political subdivision of the state in the manner prescribed~~
13 ~~by law. For purposes of this section, a campground is:~~
- 14 a. "Business" means a commercial building used primarily to carry on a for-profit or
15 nonprofit business which is not residential and not used primarily to manufacture
16 or produce raw materials, products, or agricultural commodities;
- 17 b. "Campground" means a public or private area of land used exclusively for
18 camping and open to the public for a fee on a regular or seasonal basis;
- 19 c. "Church" means a building owned by a religious organization and used primarily
20 for religious purposes;
- 21 d. "Park" means a park established by the federal government, the state, or a
22 political subdivision of the state in the manner prescribed by law;
- 23 e. "Public building" means a building owned by a county, city, township, school
24 district, park district, or other unit of local government; the state; or an agency,
25 industry, institution, board, or department of the state; and
- 26 f. "School" means a public school or nonprofit, private school approved by the
27 superintendent of public instruction.
- 28 7. a. In a county or township that does not regulate the nature, scope, and/or location
29 of an animal feeding operation under section ~~41-33-0211-33-02.1~~ or section
30 ~~58-03-11.1~~, the department shall require that any new animal feeding operation

- 1 permitted under chapter 61-28 be set back from any existing residence, church,
2 school, business, public building, park, or campground.
- 3 (1) If there are fewer than three hundred animal units, there is no minimum
4 setback requirement.
- 5 (2) If there are at least three hundred animal units but no more than one
6 thousand animal units, the setback for any animal operation is one-half mile
7 [.80 kilometer].
- 8 (3) If there are at least one thousand one animal units but no more than two
9 thousand animal units, the setback for a hog operation is three-fourths mile
10 [1.20 kilometers], and the setback for any other animal operation is one-half
11 mile [.80 kilometer].
- 12 (4) If there are at least two thousand one animal units but no more than five
13 thousand animal units, the setback for a hog operation is one mile [1.60
14 kilometers], and the setback for any other animal operation is three-fourths
15 mile [1.20 kilometers].
- 16 (5) If there are five thousand one or more animal units, the setback for a hog
17 operation is one and one-half miles [2.40 kilometers], and the setback for
18 any other animal operation is one mile [1.60 kilometers].
- 19 b. The setbacks set forth in subdivision a do not apply if the owner or operator
20 applying for the permit obtains an odor easement from the pre-existing use that is
21 closer.
- 22 c. For purposes of this section:
- 23 (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;
24 (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1
25 equals 1.0 animal unit;
- 26 (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals
27 0.75 animal unit;
- 28 (4) One cow-calf pair equals 1.0 animal unit;
- 29 (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals
30 0.4 animal unit;

- 1 (6) One weaned swine weighing less than fifty-five pounds [24.948 kilograms]
2 equals 0.1 animal unit;
3 (7) One horse equals 2.0 animal units;
4 (8) One sheep or weaned lamb equals 0.1 animal unit;
5 (9) One turkey equals 0.0182 animal unit;
6 (10) One chicken, ~~other than a laying hen~~, equals ~~0.0080~~0.01 animal unit;
7 (11) ~~One laying hen equals 0.012 animal unit;~~
8 ~~(12)~~ One duck or goose equals ~~0.0330~~0.2 animal unit; and
9 ~~(13)~~(12) Any weaned livestock not listed in paragraphs 1 through ~~42~~11 equals 1.0
10 animal unit per each one thousand pounds [453.59 kilograms], whether
11 single or combined animal weight.
- 12 d. In a county or township that regulates the nature, scope, or location of an animal
13 feeding operation under section 11-33-02.1 or section 58-03-11.1, an applicant
14 for an animal feeding operation permit shall submit to the department with the
15 permit application the zoning determination made by the county or township
16 under subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1,
17 unless the animal feeding operation is in existence by January 1, 2019, and there
18 is no change in animals or animal units which would result in an increase in the
19 setbacks provided for in this section. The department may not impose additional
20 odor setback requirements.
- 21 e. An animal feeding operation is not subject to zoning regulations adopted by a
22 county or township after the date an application for the animal feeding operation
23 is submitted to the department, provided construction of the animal feeding
24 operation commences within five years from the date the application is submitted.
25 Unless there is a change to the location of the proposed animal feeding
26 operation, this exemption remains in effect if the department requires the
27 applicant to submit a revised application.
- 28 8. A permitted animal feeding operation may expand its permitted capacity by twenty-five
29 percent on one occasion without triggering a higher setback distance.

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

4 **SECTION 5. AMENDMENT.** Section 58-03-11.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **58-03-11.1. Farming and ranching regulations - Requirements - Limitations -**
7 **Definitions.**

8 1. For purposes of this section:

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

15 (1) ~~Animals, other than aquatic animals, have been, are, or will be stabled or~~
16 ~~confined and fed or maintained for at least forty-five days in a twelve-month~~
17 ~~period; and~~

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

20 b. "Farming or ranching" means cultivating land for the production of agricultural
21 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.
22 The term does not include:

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

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

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

30 d. "Location" means the setback distance between a structure, fence, or other
31 boundary enclosing a ~~concentrated~~an animal feeding operation, including its

1 animal waste collection system, and the nearest occupied residence, the nearest
2 buildings used for nonfarm or nonranch purposes, or the nearest land zoned for
3 residential, recreational, or commercial purposes. The term does not include the
4 setback distance for the application of manure or for the application of other
5 recycled agricultural material under a nutrient management plan approved by the
6 state department of health.

- 7 2. For purposes of this section, animal units are determined as follows:
- 8 a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
 - 9 b. ~~One dairy cow, heifer, or bull, other than an animal described in subdivision a~~
10 ~~equals 1.0 animal unit;~~
 - 11 e. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal~~
12 ~~unit;~~
 - 13 d. ~~One cow-calf pair equals 1.0 animal unit;~~
 - 14 e. ~~One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4~~
15 ~~animal unit;~~
 - 16 f. ~~One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1~~
17 ~~animal unit;~~
 - 18 g. ~~One horse equals 2.0 animal units;~~
 - 19 h. ~~One sheep or lamb equals 0.1 animal unit;~~
 - 20 i. ~~One turkey equals 0.0182 animal unit;~~
 - 21 j. ~~One chicken, other than a laying hen, equals 0.008 animal unit;~~
 - 22 k. ~~One laying hen equals 0.012 animal unit;~~
 - 23 l. ~~One duck equals 0.033 animal unit; and~~
 - 24 m. ~~Any livestock not listed in subdivisions a through l equals 1.0 animal unit per~~
25 ~~each one thousand pounds [453.59 kilograms] whether single or combined~~
26 ~~animal weight provided under subdivision c of subsection 7 of~~
27 ~~section 23-23-1123-25-11.~~
- 28 3. A board of township supervisors may not prohibit or prevent the use of land or
29 buildings for farming or ranching or any of the normal incidents of farming or ranching.
- 30 4. A regulation may not preclude the development of a concentrated animal feeding
31 operation in the township.

- 1 5. A board of township supervisors may not prohibit the reasonable diversification or
2 expansion of a farming or ranching operation.
- 3 6. A board of township supervisors may adopt regulations that establish different
4 standards for the location of ~~concentrated~~animal feeding operations based on the size
5 of the operation and the species and type being fed.
- 6 7. If a regulation would impose a substantial economic burden on a ~~concentrated~~an
7 animal feeding operation in existence before the effective date of the regulation, the
8 board of township supervisors shall declare that the regulation is ineffective with
9 respect to any ~~concentrated~~animal feeding operation in existence before the effective
10 date of the regulation.
- 11 8. a. A board of township supervisors may establish high-density agricultural
12 production districts in which setback distances for ~~concentrated~~animal feeding
13 operations and related agricultural operations are less than those in other
14 districts.
- 15 b. A board of township supervisors may establish, around areas zoned for
16 residential, recreational, or nonagricultural commercial uses, low-density
17 agricultural production districts in which setback distances for
18 ~~concentrated~~animal feeding operations and related agricultural operations are
19 greater than those in other districts; provided, the low-density agricultural
20 production districts may not extend more than one-half mile [0.80 kilometer] from
21 the edge of the area zoned for residential, recreational, or nonagricultural
22 commercial uses.
- 23 c. The setbacks provided for in this subsection may not ~~vary by more than fifty~~
24 ~~percent from~~exceed those established in subdivision a of subsection 7 of section
25 23-25-11 unless the county has compelling, objective evidence a greater setback
26 is necessary, in which case the setbacks may exceed those established in
27 subdivision a of subsection 7 of section 23-25-11 by no more than fifty percent. If
28 a setback under this subsection is greater than the corresponding setback
29 established in subdivision a of subsection 7 of section 23-25-11, a person whose
30 animal feeding operation will be affected by the setback may request the
31 department of agriculture mediate any disagreement between the person and the

SB 2345
4-16-19
#1

1 board of township supervisors regarding the length of the setback. The
2 department of agriculture then shall provide mediation services that may include
3 the assistance of an ombudsman. If mediation does not result in agreement
4 between the parties, the person that requested the mediation may bring a claim
5 against the board of township supervisors in a district court of competent
6 jurisdiction.

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

10 9. A person intending to construct an animal feeding operation may petition the board of
11 township supervisors for a determination whether the animal feeding operation would
12 comply with zoning regulations adopted under this section and filed with the state
13 department of health under section 58-03-17 before the date the petition was received
14 by the township. The petition must contain a description of the nature, scope, and
15 location of the proposed animal feeding operation and a site map showing road
16 access, the location of any structure, and the distance from each structure to the
17 nearest section line. If the board of township supervisors does not object to the petition
18 within sixty days of receipt, the animal feeding operation is deemed in compliance with
19 the township zoning regulations. If the township allows animal feeding operations as a
20 conditional use, the township shall inform the applicant of the required procedures
21 upon receipt of the petition, and the conditional use regulations in effect at the time the
22 township receives the petition must control the approval process, except the township
23 shall make a decision on the application within sixty days of the receipt of a complete
24 conditional use permit application. If the board of township supervisors determines the
25 animal feeding operation would comply with zoning regulations or fails to object under
26 this section, the township may not impose additional zoning regulations relating to the
27 nature, scope, or location of the animal feeding operation later, provided an application
28 is submitted promptly to the state department of health, the department issues a final
29 permit, and construction of the animal feeding operation commences within ~~five~~ three
30 years from the date of the board's determination or failure to object the department

1 issues its final permit and any permit appeals are exhausted. A board of township
2 supervisors may not:

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

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

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

9 **Requirements - Limitations - Definitions.**

10 1. For purposes of this section:

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

17 (1) Animals, other than aquatic animals, have been, are, or will be stabled or
18 confined and fed or maintained for a total of forty-five days or more in any
19 twelve-month period; and

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

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

24 The term does not include:

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

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

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

- 1 d. "Location" means the setback distance between a structure, fence, or other
2 boundary enclosing a ~~concentrated~~ an animal feeding operation, including its
3 animal waste collection system, and the nearest occupied residence, the nearest
4 buildings used for nonfarm or nonranch purposes, or the nearest land zoned for
5 residential, recreational, or commercial purposes. The term does not include the
6 setback distance for the application of manure or for the application of other
7 recycled agricultural material under a nutrient management plan approved by the
8 department of environmental quality.
- 9 2. For purposes of this section, animal units are determined as follows:
- 10 a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
11 b. ~~One dairy cow, heifer, or bull, other than an animal described in subdivision a~~
12 ~~equals 1.0 animal unit;~~
13 c. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal~~
14 ~~unit;~~
15 d. ~~One cow-calf pair equals 1.0 animal unit;~~
16 e. ~~One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4~~
17 ~~animal unit;~~
18 f. ~~One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1~~
19 ~~animal unit;~~
20 g. ~~One horse equals 2.0 animal units;~~
21 h. ~~One sheep or lamb equals 0.1 animal unit;~~
22 i. ~~One turkey equals 0.0182 animal unit;~~
23 j. ~~One chicken, other than a laying hen, equals 0.008 animal unit;~~
24 k. ~~One laying hen equals 0.012 animal unit;~~
25 l. ~~One duck equals 0.033 animal unit; and~~
26 m. ~~Any livestock not listed in subdivisions a through l equals 1.0 animal unit per~~
27 ~~each one thousand pounds [453.59 kilograms] whether single or combined~~
28 ~~animal weight~~ provided under subdivision c of subsection 7 of section 23.1-06-15.
- 29 3. A board of township supervisors may not prohibit or prevent the use of land or
30 buildings for farming or ranching or any of the normal incidents of farming or ranching.

- 1 4. A regulation may not preclude the development of a ~~concentrated~~an animal feeding
2 operation in the township.
- 3 5. A board of township supervisors may not prohibit the reasonable diversification or
4 expansion of a farming or ranching operation.
- 5 6. A board of township supervisors may adopt regulations that establish different
6 standards for the location of ~~concentrated~~animal feeding operations based on the size
7 of the operation and the species and type being fed.
- 8 7. If a regulation would impose a substantial economic burden on a ~~concentrated~~an
9 animal feeding operation in existence before the effective date of the regulation, the
10 board of township supervisors shall declare that the regulation is ineffective with
11 respect to any ~~concentrated~~animal feeding operation in existence before the effective
12 date of the regulation.
- 13 8. a. A board of township supervisors may establish high-density agricultural
14 production districts in which setback distances for ~~concentrated~~animal feeding
15 operations and related agricultural operations are less than those in other
16 districts.
- 17 b. A board of township supervisors may establish, around areas zoned for
18 residential, recreational, or nonagricultural commercial uses, low-density
19 agricultural production districts in which setback distances for
20 ~~concentrated~~animal feeding operations and related agricultural operations are
21 greater than those in other districts; provided, the low-density agricultural
22 production districts may not extend more than one-half mile [0.80 kilometer] from
23 the edge of the area zoned for residential, recreational, or nonagricultural
24 commercial uses.
- 25 c. The setbacks provided for in this subsection may not ~~vary by more than fifty~~
26 ~~percent from~~exceed those established in subdivision a of subsection 7 of section
27 23.1-06-15 unless the county has compelling, objective evidence a greater
28 setback is necessary, in which case the setbacks may exceed those established
29 in subdivision a of subsection 7 of section 23.1-06-15 by no more than fifty
30 percent. If a setback under this subsection is greater than the corresponding
31 setback established in subdivision a of subsection 7 of section 23.1-06-15, a

1 person whose animal feeding operation will be affected by the setback may
2 request the department of agriculture mediate any disagreement between the
3 person and the board of township supervisors regarding the length of the
4 setback. The department of agriculture then shall provide mediation services that
5 may include the assistance of an ombudsman. If mediation does not result in
6 agreement between the parties, the person that requested the mediation may
7 bring a claim against the board of township supervisors in a district court of
8 competent jurisdiction.

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

12 9. A person intending to construct an animal feeding operation may petition the board of
13 township supervisors for a determination whether the animal feeding operation would
14 comply with zoning regulations adopted under this section and filed with the
15 department of environmental quality under section 58-03-17 before the date the
16 petition was received by the township. The petition must contain a description of the
17 nature, scope, and location of the proposed animal feeding operation and a site map
18 showing road access, the location of any structure, and the distance from each
19 structure to the nearest section line. If the board of township supervisors does not
20 object to the petition within sixty days of receipt, the animal feeding operation is
21 deemed in compliance with the township zoning regulations. If the township allows
22 animal feeding operations as a conditional use, the township shall inform the applicant
23 of the required procedures upon receipt of the petition, and the conditional use
24 regulations in effect at the time the township receives the petition must control the
25 approval process, except the township shall make a decision on the application within
26 sixty days of the receipt of a complete conditional use permit application. If the board
27 of township supervisors determines the animal feeding operation would comply with
28 zoning regulations or fails to object under this section, the township may not impose
29 additional zoning regulations relating to the nature, scope, or location of the animal
30 feeding operation later, provided an application is submitted promptly to the state
31 department of health, the department issues a final permit, and construction of the

1 ~~animal feeding operation commences within five~~ three years from the date of the
2 ~~board's determination or failure to object~~ the department issues its final permit and any
3 permit appeals are exhausted. A board of township supervisors may not:

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

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

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

11 **58-03-17. Regulation of ~~concentrated~~ animal feeding operations - Central repository.**

12 ~~1.~~ 1. Any zoning regulation that pertains to ~~a concentrated~~ an animal feeding operation, as
13 defined in section 58-03-11.1, and which is promulgated by a township after July 31,
14 2007, is not effective until filed with the state department of health for inclusion in the
15 central repository established under section 23-01-30. Any zoning regulation that
16 pertains to a concentrated animal feeding operation and which was promulgated by a
17 county or a township before August 1, 2007, may not be enforced until the regulation
18 is filed with the state department of health for inclusion in the central repository.

19 ~~2.~~ 2. For purposes of this section:

20 ~~a.~~ a. "Concentrated animal feeding operation" means ~~any livestock feeding, handling,~~
21 ~~or holding operation, or feed yard, where animals are concentrated in an area~~
22 ~~that is not normally used for pasture or for growing crops and in which animal~~
23 ~~wastes may accumulate, or in an area where the space per animal unit is less~~
24 ~~than six hundred square feet [55.74 square meters]. The term does not include~~
25 ~~normal wintering operations for cattle.~~

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

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

30 ~~1.~~ 1. Any zoning regulation that pertains to ~~a concentrated~~ animal feeding operation ~~and~~
31 ~~which is promulgated by a township after July 31, 2007,~~ as defined in

1 section 58-03-11.1, is not effective until filed with the department of environmental
2 quality for inclusion in the central repository established under section 23.1-01-10. ~~Any~~
3 ~~zoning regulation that pertains to a concentrated animal feeding operation and which~~
4 ~~was promulgated by a county or a township before August 1, 2007, may not be~~
5 ~~enforced until the regulation is filed with the department of environmental quality for~~
6 ~~inclusion in the central repository.~~

7 ~~2. For purposes of this section:~~

8 ~~a. "Concentrated animal feeding operation" means any livestock feeding, handling,~~
9 ~~or holding operation, or feed yard, where animals are concentrated in an area~~
10 ~~that is not normally used for pasture or for growing crops and in which animal~~
11 ~~wastes may accumulate, or in an area where the space per animal unit is less~~
12 ~~than six hundred square feet [55.74 square meters]. The term does not include~~
13 ~~normal wintering operations for cattle.~~

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

16 **SECTION 7. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE - EXPIRATION DATE.**

17 The portions of sections 1, 2, 5, and 46 of this Act not subject to an existing contingency
18 become effective on August 1, 2019, and remain in effect until the legislative council receives
19 certification from the chief of the environmental health section of the state department of health
20 that all authority, powers, and duties from the environmental health section of the state
21 department of health have been transferred to the department of environmental quality. The
22 remainder of sections 1, 2, 5, and 46 become effective on August 1, 2019, if the legislative
23 council has received certification from the chief of the environmental health section of the state
24 department of health that all authority, powers, and duties from the environmental health section
25 of the state department of health have been transferred to the department of environmental
26 quality. If, by August 1, 2019, the legislative council has not received certification from the chief
27 of the environmental health section of the state department of health that all authority, powers,
28 and duties from the environmental health section of the state department of health have been
29 transferred to the department of environmental quality, the remainder of sections 1, 2, 5, and 46
30 of this Act become effective on the date certification is received.

April 18, 2019

SB 2345
4-18-19
#1 pg.1

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2345

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

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

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

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

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

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

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

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

Page 4, line 13, after the underscored period insert "If the county allows animal feeding operations as a conditional use, the county shall inform the applicant of the required procedures upon receipt of the petition, and the conditional use regulations in effect at the time the county receives the petition must control the approval process, except the county shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application."

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

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

Page 4, line 17, remove "of the"

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

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

SB 2345
4-18-19
1 pg. 2

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

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

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

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

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

Page 7, line 18, after the underscored period insert "If the county allows animal feeding operations as a conditional use, the county shall inform the applicant of the required procedures upon receipt of the petition, and the conditional use regulations in effect at the time the county receives the petition must control the approval process, except the county shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application."

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

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

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

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

Page 7, after line 23, insert:

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

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

- 4. Any zoning regulation that pertains to a ~~concentrated~~ animal feeding operation, as defined in section 11-33-02.1, and which is promulgated by a county after July 31, 2007, is not effective until filed with the state

department of health for inclusion in the central repository established under section 23-01-30. Any zoning regulation that pertains to concentrated animal feeding operations and which was promulgated by a county before August 1, 2007, may not be enforced until the regulation is filed with the state department of health for inclusion in the central repository.

2. For purposes of this section:
 - a. "Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.
 - b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.

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

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

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

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

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

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

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

SB 2345

4-18-19

#1 pg. 4

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

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

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

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

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

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

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

Page 20, line 23, after the underscored period insert "If the township allows animal feeding operations as a conditional use, the township shall inform the applicant of the required procedures upon receipt of the petition, and the conditional use regulations in effect at the time the township receives the petition must control the approval process, except the township shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application."

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

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

Page 20, line 27, remove "of the"

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

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

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

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

Page 21, overstrike lines 2 through 4

SD 2345
4-18-19
1 p. 5

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

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

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

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

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

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

Page 23, line 21, after the underscored period insert "If the township allows animal feeding operations as a conditional use, the township shall inform the applicant of the required procedures upon receipt of the petition, and the conditional use regulations in effect at the time the township receives the petition must control the approval process, except the township shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application."

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

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

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

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

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

Page 23, after line 27, insert:

SB 2345
4-18-19
1 pg. 6

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

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

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

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

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

SB 2345
4-18-19
#1 pg. 7

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

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

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

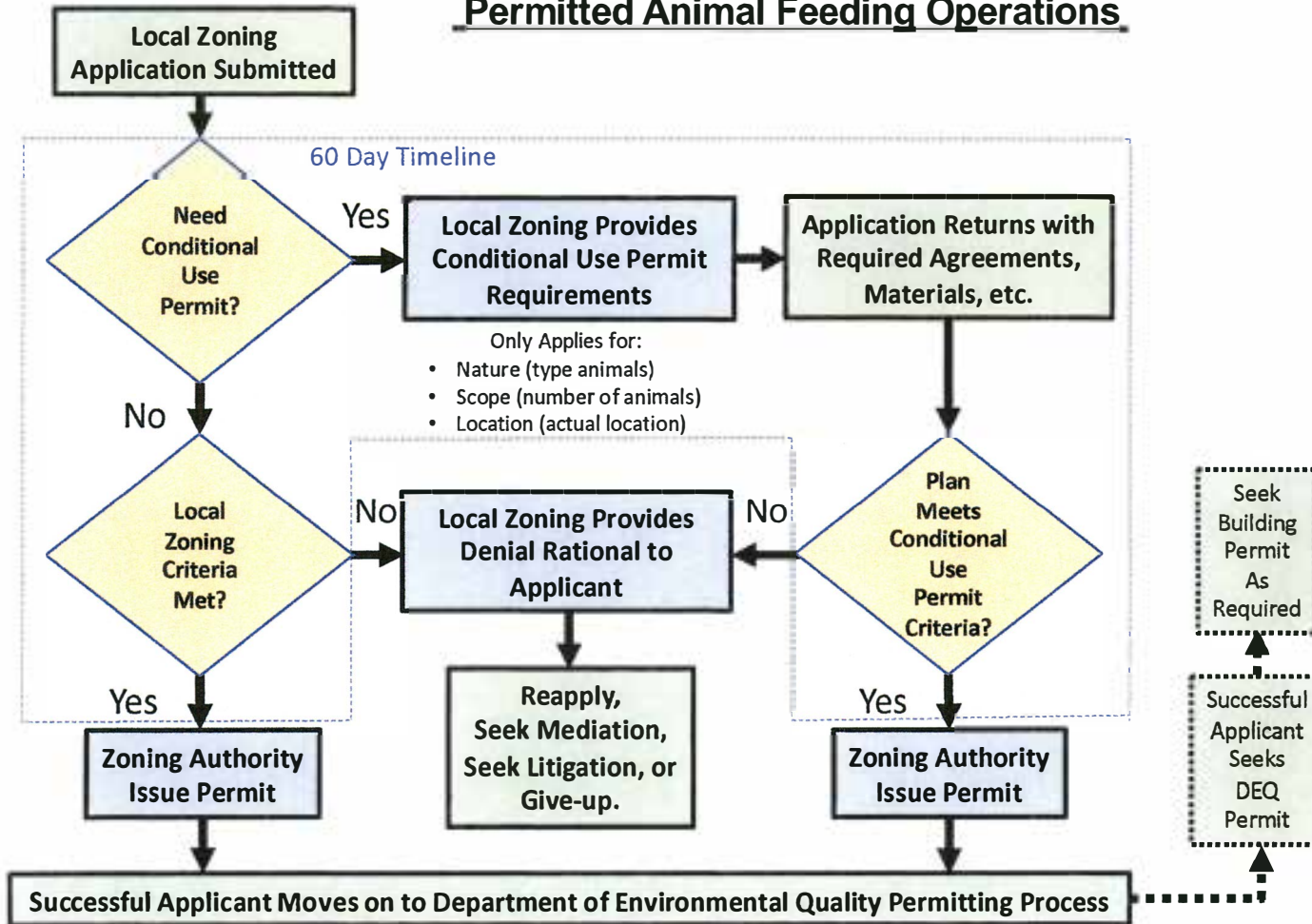
Page 24, line 10, after "1" insert ", 2, 5,"

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

Renumber accordingly

SB 2345
4-18-19
#2 Pg. 11

Local Zoning Authority Process for Permitted Animal Feeding Operations



SB 2345
4-18-19
3 pg. 1

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2345

Introduced by

Senators Wanzek, Dotzenrod, Luick

Representatives Brandenburg, D. Johnson, Pollert

1 A BILL for an Act to amend and reenact sections 11-33-02.1, 11-33-22, 23-25-11, 23.1-06-15,
2 ~~and 58-03-11.1, and 58-03-17~~ of the North Dakota Century Code, relating to animal feeding
3 operations and zoning regulations; to provide an effective date; to provide a contingent effective
4 date; and to provide an expiration date.

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

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

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

10 1. For purposes of this section:

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

17 (1) ~~Animals, other than aquatic animals, have been, are, or will be stabled or~~
18 ~~confined and fed or maintained for at least forty-five days in a twelve-month~~
19 ~~period; and~~

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

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

24 The term does not include:

SB 2345
4-18-19
#3

Sixty-sixth
Legislative Assembly

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

Sixty-sixth
Legislative Assembly

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

SB 2345
4-18-19
#3

Sixty-sixth
Legislative Assembly

- 1 c. The setbacks provided for in this subsection may not ~~vary by more than fifty~~
2 ~~percent from~~ exceed those established in subdivision a of subsection 7 of section
3 23-25-11 unless the county can demonstrate compelling, objective evidence
4 specific to the county where the operation would be located which requires a
5 greater setback within the county, in which case the setbacks may exceed those
6 established in subdivision a of subsection 7 of section 23-25-11 by no more than
7 fifty percent. If a setback under this subsection is greater than the corresponding
8 setback established in subdivision a of subsection 7 of section 23-25-11, a
9 person whose animal feeding operation will be or has been affected by the
10 setback may request the agriculture commissioner review the applicable county
11 ordinance. After the review, the agriculture commissioner shall provide a
12 summary of the review to the attorney general and request an opinion from the
13 attorney general regarding whether the ordinance is lawful.
- 14 d. For purposes of this subsection, a "related agricultural operation" means a facility
15 that produces a product or byproduct used by a ~~concentrated~~ an animal feeding
16 operation.
- 17 9. A person intending to construct an animal feeding operation may petition the board of
18 county commissioners for a determination whether the animal feeding operation would
19 comply with zoning regulations adopted under this section and filed with the state
20 department of health under section 11-33-22 before the date the petition was received
21 by the county. The petition must contain a description of the nature, scope, and
22 location of the proposed animal feeding operation and a site map showing road
23 access, the location of any structure, and the distance from each structure to the
24 nearest section line. If the board of county commissioners does not object to the
25 petition within sixty days of receipt, the animal feeding operation is deemed in
26 compliance with the county zoning regulations. If the county allows animal feeding
27 operations as a conditional use, the county shall inform the applicant of the required
28 procedures upon receipt of the petition, and the conditional use regulations in effect at
29 the time the county receives the petition must control the approval process, except the
30 county shall make a decision on the application within sixty days of the receipt of a
31 complete conditional use permit application. If the board of county commissioners

1 determines the animal feeding operation would comply with zoning regulations or fails
2 to object under this section, the county may not impose additional zoning regulations
3 relating to the nature, scope, or location of the animal feeding operation later, provided
4 an application is submitted promptly to the state department of health, the department
5 issues a final permit, and construction of the animal feeding operation commences
6 within ~~five~~three years from the date ~~of the board's determination or failure to object,~~
7 the department issues its final permit and any permit appeals are exhausted. A board
8 of county commissioners may not:

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

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

- 16 1. For purposes of this section:
- 17 a. ~~"Concentrated Animal feeding operation"~~ means any livestock feeding, handling,
18 or holding operation, or feed yard, where animals are concentrated in an area
19 that is not normally used for pasture or for growing crops and in which animal
20 wastes may accumulate. ~~The term does not include normal wintering operations~~
21 ~~for cattle~~ lot or facility, other than normal wintering operations for cattle and an
22 aquatic animal production facility, where the following conditions are met:
- 23 (1) Animals, other than aquatic animals, have been, are, or will be stabled or
24 confined and fed or maintained for at least forty-five days in a twelve-month
25 period; and
- 26 (2) Crops, vegetation, forage growth, or postharvest residues are not sustained
27 in the normal growing season over any portion of the lot or facility.
- 28 b. "Farming or ranching" means cultivating land for the production of agricultural
29 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.
30 The term does not include:
- 31 (1) The production of timber or forest products; or

- 1 (2) The provision of grain harvesting or other farm services by a processor or
2 distributor of farm products or supplies in accordance with the terms of a
3 contract.
- 4 c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison,
5 elk, fur animals raised for their pelts, and any other animals that are raised, fed,
6 or produced as a part of farming or ranching activities.
- 7 d. "Location" means the setback distance between a structure, fence, or other
8 boundary enclosing a ~~concentrated~~ animal feeding operation, including its
9 animal waste collection system, and the nearest occupied residence, the nearest
10 buildings used for nonfarm or nonranch purposes, or the nearest land zoned for
11 residential, recreational, or commercial purposes. The term does not include the
12 setback distance for the application of manure or for the application of other
13 recycled agricultural material under a nutrient management plan approved by the
14 department of environmental quality.
- 15 2. For purposes of this section, animal units are determined as follows:
- 16 a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
- 17 b. ~~One dairy cow, heifer, or bull, other than an animal described in paragraph 1-~~
18 ~~equals 1.0 animal unit;~~
- 19 c. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal~~
20 ~~unit;~~
- 21 d. ~~One cow-calf pair equals 1.0 animal unit;~~
- 22 e. ~~One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4~~
23 ~~animal unit;~~
- 24 f. ~~One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1~~
25 ~~animal unit;~~
- 26 g. ~~One horse equals 2.0 animal units;~~
- 27 h. ~~One sheep or lamb equals 0.1 animal unit;~~
- 28 i. ~~One turkey equals 0.0182 animal unit;~~
- 29 j. ~~One chicken, other than a laying hen, equals 0.008 animal unit;~~
- 30 k. ~~One laying hen equals 0.012 animal unit;~~
- 31 l. ~~One duck equals 0.033 animal unit; and~~

SB 2345
4-18-19
#3

Sixty-sixth
Legislative Assembly

- 1 m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per
2 each one thousand pounds [453.59 kilograms] whether single or combined
3 animal weight as provided in subdivision c of subsection 7 of section 23.1-06-15.
- 4 3. A board of county commissioners may not prohibit or prevent the use of land or
5 buildings for farming or ranching and may not prohibit or prevent any of the normal
6 incidents of farming or ranching.
- 7 4. A board of county commissioners may not preclude the development of a
8 ~~concentrated~~ animal feeding operation in the county.
- 9 5. A board of county commissioners may not prohibit the reasonable diversification or
10 expansion of a farming or ranching operation.
- 11 6. A board of county commissioners may adopt regulations that establish different
12 standards for the location of ~~concentrated~~ animal feeding operations based on the size
13 of the operation and the species and type being fed.
- 14 7. If a regulation would impose a substantial economic burden on a ~~concentrated~~ an
15 animal feeding operation in existence before the effective date of the regulation, the
16 board of county commissioners shall declare that the regulation is ineffective with
17 respect to any ~~concentrated~~ animal feeding operation in existence before the effective
18 date of the regulation.
- 19 8. a. A board of county commissioners may establish high-density agricultural
20 production districts in which setback distances for ~~concentrated~~ animal feeding
21 operations and related agricultural operations are less than those in other
22 districts.
- 23 b. A board of county commissioners may establish, around areas zoned for
24 residential, recreational, or nonagricultural commercial uses, low-density
25 agricultural production districts in which setback distances for
26 ~~concentrated~~ animal feeding operations and related agricultural operations are
27 greater than those in other districts; provided, the low-density agricultural
28 production districts may not extend more than one and one-half miles [2.40
29 kilometers] from the edge of the area zoned for residential, recreational, or
30 nonagricultural commercial uses.

SB 2345
4-18-19
#3

Sixty-sixth
Legislative Assembly

- 1 c. The setbacks provided for in this subsection may not vary by more than fifty
2 percent from exceed those established in subdivision a of subsection 7 of section
3 23.1-06-15 unless the county can demonstrate compelling, objective evidence
4 specific to the county where the operation would be located which requires a
5 greater setback within the county, in which case the setbacks may exceed those
6 established in subdivision a of subsection 7 of section 23.1-06-15 by no more
7 than fifty percent. If a setback under this subsection is greater than the
8 corresponding setback established in subdivision a of subsection 7 of
9 section 23.1-06-15, a person whose animal feeding operation will be or has been
10 affected by the setback may request the agriculture commissioner review the
11 applicable county ordinance. After the review, the agriculture commissioner shall
12 provide a summary of the review to the attorney general and request an opinion
13 from the attorney general regarding whether the ordinance is lawful.
- 14 d. For purposes of this subsection, a "related agricultural operation" means a facility
15 that produces a product or byproduct used by a concentrated animal feeding
16 operation.
- 17 9. A person intending to construct an animal feeding operation may petition the board of
18 county commissioners for a determination whether the animal feeding operation would
19 comply with zoning regulations adopted under this section and filed with the
20 department of environmental quality under section 11-33-22 before the date the
21 petition was received by the county. The petition must contain a description of the
22 nature, scope, and location of the proposed animal feeding operation and a site map
23 showing road access, the location of any structure, and the distance from each
24 structure to the nearest section line. If the board of county commissioners does not
25 object to the petition within sixty days of receipt, the animal feeding operation is
26 deemed in compliance with the county zoning regulations. If the county allows animal
27 feeding operations as a conditional use, the county shall inform the applicant of the
28 required procedures upon receipt of the petition, and the conditional use regulations in
29 effect at the time the county receives the petition must control the approval process,
30 except the county shall make a decision on the application within sixty days of the
31 receipt of a complete conditional use permit application. If the board of county

1 commissioners determines the animal feeding operation would comply with zoning
2 regulations or fails to object under this section, the county may not impose additional
3 zoning regulations relating to the nature, scope, or location of the animal feeding
4 operation later, provided an application is submitted promptly to the state department
5 of health, the department issues a final permit, and construction of the animal feeding
6 operation commences within ~~five~~three years from the date ~~of the board's~~
7 ~~determination or failure to object~~the department issues its final permit and any permit
8 appeals are exhausted. A board of county commissioners may not:
9 a. Regulate or impose zoning restrictions or requirements on animal feeding
10 operations or other agricultural operations except as expressly permitted under
11 this section; or
12 b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or
13 requirements on animal feeding operations.

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

16 **11-33-22. Regulation of ~~concentrated~~ animal feeding operations - Central repository.**

17 ~~1.~~— Any zoning regulation that pertains to ~~a concentrated~~an animal feeding operation, as
18 defined in section 11-33-02.1, and which is promulgated by a county after July 31,
19 2007, is not effective until filed with the state department of health for inclusion in the
20 central repository established under section 23-01-30. Any zoning regulation that
21 pertains to ~~concentrated~~ animal feeding operations and which was promulgated by a
22 county before August 1, 2007, may not be enforced until the regulation is filed with the
23 state department of health for inclusion in the central repository.

24 ~~2.~~— For purposes of this section:

25 a. ~~"Concentrated animal feeding operation" means any livestock feeding, handling,~~
26 ~~or holding operation, or feed yard, where animals are concentrated in an area~~
27 ~~that is not normally used for pasture or for growing crops and in which animal~~
28 ~~wastes may accumulate, or in an area where the space per animal unit is less~~
29 ~~than six hundred square feet [55.74 square meters]. The term does not include~~
30 ~~normal wintering operations for cattle.~~

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

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

5 1. Any zoning regulation that pertains to ~~a concentrated~~an animal feeding operation ~~and,~~
6 ~~as defined in section 11-33-02.1,~~ is not effective until filed with the department of
7 environmental quality for inclusion in the central repository established under section
8 23.1-01-10.

9 2. For purposes of this section:

10 ~~a. "Concentrated animal feeding operation" means any livestock feeding, handling,~~
11 ~~or holding operation, or feed yard, where animals are concentrated in an area~~
12 ~~that is not normally used for pasture or for growing crops and in which animal~~
13 ~~wastes may accumulate, or in an area where the space per animal unit is less~~
14 ~~than six hundred square feet [55.74 square meters]. The term does not include~~
15 ~~normal wintering operations for cattle.~~

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

18 SECTION 3. AMENDMENT. Section 23-25-11 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 23-25-11. Regulation of odors - Rules. (Contingent repeal - See note)

21 1. In areas located within a city or the area over which a city has exercised extraterritorial
22 zoning as defined in section 40-47-01.1, a person may not discharge into the ambient
23 air any objectionable odorous air contaminant that measures seven odor concentration
24 units or higher outside the property boundary where the discharge is occurring. If an
25 agricultural operation as defined by section 42-04-01 has been in operation for more
26 than one year, as provided by section 42-04-02, and the business or residence making
27 the odor complaint was built or established after the agricultural operation was
28 established, the measurement for compliance with the seven odor concentration units
29 standard must be taken within one hundred feet [30.48 meters] of the subsequently
30 established residence, church, school, business, or public building making the
31 complaint rather than at the property boundary of the agricultural operation. The

- 1 measurement may not be taken within five hundred feet [.15 kilometer] of the property
2 boundary of the agricultural operation.
- 3 2. In areas located outside a city or outside the area over which a city has exercised
4 extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge
5 into the ambient air any objectionable odorous air contaminant that causes odors that
6 measure seven odor concentration units or higher as measured at any of the following
7 locations:
- 8 a. Within one hundred feet [30.48 meters] of any residence, church, school,
9 business, or public building, or within a campground or public park. An odor
10 measurement may not be taken at the residence of the owner or operator of the
11 source of the odor, or at any residence, church, school, business, or public
12 building, or within a campground or public park, that is built or established within
13 one-half mile [.80 kilometer] of the source of the odor after the source of the odor
14 has been built or established;
- 15 b. At any point located beyond one-half mile [.80 kilometer] from the source of the
16 odor, except for property owned by the owner or operator of the source of the
17 odor, or over which the owner or operator of the source of the odor has
18 purchased an odor easement; or
- 19 c. If a county or township has zoned or established a setback distance for an animal
20 feeding operation which is greater than one-half mile [.80 kilometer] under either
21 section 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is
22 greater than one-half mile [.80 kilometer], measurements for compliance with the
23 seven odor concentration units standard must be taken at the setback distance
24 rather than one-half mile [.80 kilometer] from the facility under subdivision b,
25 except for any residence, church, school, business, public building, park, or
26 campground within the setback distance which was built or established before
27 the animal feeding operation was established, unless the animal feeding
28 operation has obtained an odor easement from the pre-existing facility.
- 29 3. An odor measurement may be taken only with a properly maintained scentometer, by
30 an odor panel, or by another instrument or method approved by the state department
31 of health, and only by inspectors certified by the department who have successfully

1 completed a department-sponsored odor certification course and demonstrated the
2 ability to distinguish various odor samples and concentrations. If a certified inspector
3 measures a violation of this section, the department may send a certified letter of
4 apparent noncompliance to the person causing the apparent violation and may
5 negotiate with the owner or operator for the establishment of an odor management
6 plan and best management practices to address the apparent violation. The
7 department shall give the owner or operator at least fifteen days to implement the odor
8 management plan. If the odor problem persists, the department may proceed with an
9 enforcement action provided at least two certified inspectors at the same time each
10 measure a violation and then confirm the violation by a second odor measurement
11 taken by each certified inspector, at least fifteen minutes, but no more than two hours,
12 after the first measurement.

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

24 5. This section does not apply to chemical compounds that can be individually measured
25 by instruments, other than a scentometer, that have been designed and proven to
26 measure the individual chemical or chemical compound, such as hydrogen sulfide, to
27 a reasonable degree of scientific certainty, and for which the state department of
28 health has established a specific limitation by rule.

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

- 1 a. "Business" means a commercial building used primarily to carry on a for-profit or
2 nonprofit business which is not residential and not used primarily to manufacture
3 or produce raw materials, products, or agricultural commodities;
- 4 b. "Campground" means a public or private area of land used exclusively for
5 camping and open to the public for a fee on a regular or seasonal basis;
- 6 c. "Church" means a building owned by a religious organization and used primarily
7 for religious purposes;
- 8 d. "Park" means a park established by the federal government, the state, or a
9 political subdivision of the state in the manner prescribed by law;
- 10 e. "Public building" means a building owned by a county, city, township, school
11 district, park district, or other unit of local government; the state; or an agency,
12 industry, institution, board, or department of the state; and
- 13 f. "School" means a public school or nonprofit, private school approved by the
14 superintendent of public instruction.
- 15 7. a. In a county or township that does not regulate the nature, scope, and/or location
16 of an animal feeding operation under section ~~11-33-02~~11-33-02.1 or section
17 58-03-11.1, the department shall require that any new animal feeding operation
18 permitted under chapter 61-28 be set back from any existing residence, church,
19 school, business, public building, park, or campground.
- 20 (1) If there are fewer than three hundred animal units, there is no minimum
21 setback requirement.
- 22 (2) If there are at least three hundred animal units but no more than one
23 thousand animal units, the setback for any animal operation is one-half mile
24 [.80 kilometer].
- 25 (3) If there are at least one thousand one animal units but no more than two
26 thousand animal units, the setback for a hog operation is three-fourths mile
27 [1.20 kilometers] and the setback for any other animal operation is one-half
28 mile [.80 kilometer].
- 29 (4) If there are at least two thousand one animal units but no more than five
30 thousand animal units, the setback for a hog operation is one mile [1.60

1 kilometers] and the setback for any other animal operation is three-fourths
2 mile [1.20 kilometers].

3 (5) If there are five thousand one or more animal units, the setback for a hog
4 operation is one and one-half miles [2.40 kilometers] and the setback for
5 any other animal operation is one mile [1.60 kilometers].

6 b. The setbacks set forth in subdivision a do not apply if the owner or operator
7 applying for the permit obtains an odor easement from the pre-existing use that is
8 closer.

9 c. For purposes of this section:

10 (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;

11 (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1
12 equals 1.0 animal unit;

13 (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75
14 animal unit;

15 (4) One cow-calf pair equals 1.0 animal unit;

16 (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4
17 animal unit;

18 (6) One weaned swine weighing less than fifty-five pounds [24.948 kilograms]
19 equals 0.1 animal unit;

20 (7) One horse equals 2.0 animal units;

21 (8) One sheep or weaned lamb equals 0.1 animal unit;

22 (9) One turkey equals 0.0182 animal unit;

23 (10) One chicken, ~~other than a laying hen,~~ equals ~~0.0080~~ 0.01 animal unit;

24 (11) One ~~laying hen~~ equals ~~0.012~~ animal unit;

25 ~~(12)~~ One duck or goose equals ~~0.0330~~ 0.2 animal unit; and

26 ~~(13)~~ ~~(12)~~ Any weaned livestock not listed in paragraphs 1 through ~~12~~ 11 equals 1.0
27 animal unit per each one thousand pounds [453.59 kilograms] whether
28 single or combined animal weight.

29 d. In a county or township that regulates the nature, scope, or location of an animal
30 feeding operation under section 11-33-02.1 or section 58-03-11.1, an applicant
31 for an animal feeding operation permit shall submit to the department with the

- 1 permit application the zoning determination made by the county or township
2 under subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1,
3 unless the animal feeding operation is in existence by January 1, 2019, and there
4 is no change in animals or animal units which would result in an increase in the
5 setbacks provided for in this section. The department may not impose additional
6 odor setback requirements.
- 7 e. An animal feeding operation is not subject to zoning regulations adopted by a
8 county or township after the date an application for the animal feeding operation
9 is submitted to the department, provided construction of the animal feeding
10 operation commences within ~~five~~three years from the date the ~~application is~~
11 ~~submitted~~final permit is issued and any permit appeals are exhausted. Unless
12 there is a change to the location of the proposed animal feeding operation or
13 there is a change in animal units which would result in an increase in the
14 setbacks under this section, this exemption remains in effect if the department
15 requires the applicant to submit a revised application.
- 16 8. A permitted animal feeding operation may expand its permitted capacity by twenty-five
17 percent on one occasion without triggering a higher setback distance.
- 18 9. Neither a county nor a township may regulate or through any means impose
19 restrictions or requirements on animal feeding operations or on other agricultural
20 operations except as permitted under sections ~~11-33-02~~11-33-02.1 and
21 ~~58-03-11~~58-03-11.1.

22 **SECTION 4. AMENDMENT.** Section 23.1-06-15 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **23.1-06-15. Regulation of odors - Rules. (Contingent effective date - [See note](#))**

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

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

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

12 a. Within one hundred feet [30.48 meters] of any residence, church, school,
13 business, or public building, or within a campground or public park. An odor
14 measurement may not be taken at the residence of the owner or operator of the
15 source of the odor, or at any residence, church, school, business, or public
16 building, or within a campground or public park, that is built or established within
17 one-half mile [.80 kilometer] of the source of the odor after the source of the odor
18 has been built or established;

19 b. At any point located beyond one-half mile [.80 kilometer] from the source of the
20 odor, except for property owned by the owner or operator of the source of the
21 odor, or over which the owner or operator of the source of the odor has
22 purchased an odor easement; or

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

- 1 the animal feeding operation was established, unless the animal feeding
2 operation has obtained an odor easement from the pre-existing facility.
- 3 3. An odor measurement may be taken only with a properly maintained scentometer, by
4 an odor panel, or by another instrument or method approved by the department of
5 environmental quality, and only by inspectors certified by the department who have
6 successfully completed a department-sponsored odor certification course and
7 demonstrated the ability to distinguish various odor samples and concentrations. If a
8 certified inspector measures a violation of this section, the department may send a
9 certified letter of apparent noncompliance to the person causing the apparent violation
10 and may negotiate with the owner or operator for the establishment of an odor
11 management plan and best management practices to address the apparent violation.
12 The department shall give the owner or operator at least fifteen days to implement the
13 odor management plan. If the odor problem persists, the department may proceed
14 with an enforcement action provided at least two certified inspectors at the same time
15 each measure a violation and then confirm the violation by a second odor
16 measurement taken by each certified inspector, at least fifteen minutes, but no more
17 than two hours, after the first measurement.
- 18 4. A person is exempt from this section while spreading or applying animal manure or
19 other recycled agricultural material to land in accordance with a nutrient management
20 plan approved by the department of environmental quality. A person is exempt from
21 this section while spreading or applying animal manure or other recycled agricultural
22 material to land owned or leased by that person in accordance with rules adopted by
23 the department. An owner or operator of a lagoon or waste storage pond permitted by
24 the department is exempt from this section in the spring from the time when the cover
25 of the permitted lagoon or pond begins to melt until fourteen days after all the ice
26 cover on the lagoon or pond has completely melted. Notwithstanding these
27 exemptions, all persons shall manage their property and systems to minimize the
28 impact of odors on their neighbors.
- 29 5. This section does not apply to chemical compounds that can be individually measured
30 by instruments, other than a scentometer, that have been designed and proven to
31 measure the individual chemical or chemical compound, such as hydrogen sulfide, to

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

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

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

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

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

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

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

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

20 7. a. In a county or township that does not regulate the nature, scope, ~~and~~ or location
21 of an animal feeding operation under section ~~44-33-0211-33-02.1~~ or section
22 58-03-11.1, the department shall require that any new animal feeding operation
23 permitted under chapter 61-28 be set back from any existing residence, church,
24 school, business, public building, park, or campground.

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

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

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

SB 2345
4-18-19
#3

Sixty-sixth
Legislative Assembly

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

- 1 that is not normally used for pasture or for growing crops and in which animal
2 wastes may accumulate. The term does not include normal wintering operations
3 for cattle a lot or facility, other than normal wintering operations for cattle and an
4 aquatic animal production facility, where the following conditions are met:
- 5 (1) Animals, other than aquatic animals, have been, are, or will be stabled or
6 confined and fed or maintained for at least forty-five days in a twelve-month
7 period; and
- 8 (2) Crops, vegetation, forage growth, or postharvest residues are not sustained
9 in the normal growing season over any portion of the lot or facility.
- 10 b. "Farming or ranching" means cultivating land for the production of agricultural
11 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.
12 The term does not include:
- 13 (1) The production of timber or forest products; or
14 (2) The provision of grain harvesting or other farm services by a processor or
15 distributor of farm products or supplies in accordance with the terms of a
16 contract.
- 17 c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison,
18 elk, fur animals raised for their pelts, and any other animals that are raised, fed,
19 or produced as a part of farming or ranching activities.
- 20 d. "Location" means the setback distance between a structure, fence, or other
21 boundary enclosing a ~~concentrated~~ an animal feeding operation, including its
22 animal waste collection system, and the nearest occupied residence, the nearest
23 buildings used for nonfarm or nonranch purposes, or the nearest land zoned for
24 residential, recreational, or commercial purposes. The term does not include the
25 setback distance for the application of manure or for the application of other
26 recycled agricultural material under a nutrient management plan approved by the
27 state department of health.
- 28 2. For purposes of this section, animal units are determined as follows:
- 29 a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
30 b. ~~One dairy cow, heifer, or bull, other than an animal described in subdivision a~~
31 ~~equals 1.0 animal unit;~~

- 1 e. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal
- 2 unit;
- 3 d. One cow-calf pair equals 1.0 animal unit;
- 4 e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4
- 5 animal unit;
- 6 f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1
- 7 animal unit;
- 8 g. One horse equals 2.0 animal units;
- 9 h. One sheep or lamb equals 0.1 animal unit;
- 10 i. One turkey equals 0.0182 animal unit;
- 11 j. One chicken, other than a laying hen, equals 0.008 animal unit;
- 12 k. One laying hen equals 0.012 animal unit;
- 13 l. One duck equals 0.033 animal unit; and
- 14 m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per
- 15 each one thousand pounds [453.59 kilograms] whether single or combined
- 16 animal weight provided under subdivision c of subsection 7 of
- 17 section ~~23-23-11~~ 23-25-11.
- 18 3. A board of township supervisors may not prohibit or prevent the use of land or
- 19 buildings for farming or ranching or any of the normal incidents of farming or ranching.
- 20 4. A regulation may not preclude the development of a concentrated animal feeding
- 21 operation in the township.
- 22 5. A board of township supervisors may not prohibit the reasonable diversification or
- 23 expansion of a farming or ranching operation.
- 24 6. A board of township supervisors may adopt regulations that establish different
- 25 standards for the location of concentrated animal feeding operations based on the size
- 26 of the operation and the species and type being fed.
- 27 7. If a regulation would impose a substantial economic burden on a concentrated animal
- 28 feeding operation in existence before the effective date of the regulation, the
- 29 board of township supervisors shall declare that the regulation is ineffective with
- 30 respect to any concentrated animal feeding operation in existence before the effective
- 31 date of the regulation.

1 department of health under section 58-03-17 before the date the petition was received
 2 by the township. The petition must contain a description of the nature, scope, and
 3 location of the proposed animal feeding operation and a site map showing road
 4 access, the location of any structure, and the distance from each structure to the
 5 nearest section line. If the board of township supervisors does not object to the petition
 6 within sixty days of receipt, the animal feeding operation is deemed in compliance with
 7 the township zoning regulations. If the township allows animal feeding operations as a
 8 conditional use, the township shall inform the applicant of the required procedures
 9 upon receipt of the petition, and the conditional use regulations in effect at the time the
 10 township receives the petition must control the approval process, except the township
 11 shall make a decision on the application within sixty days of the receipt of a complete
 12 conditional use permit application. If the board of township supervisors determines the
 13 animal feeding operation would comply with zoning regulations or fails to object under
 14 this section, the township may not impose additional zoning regulations relating to the
 15 nature, scope, or location of the animal feeding operation later, provided an application
 16 is submitted promptly to the state department of health, the department issues a final
 17 permit, and construction of the animal feeding operation commences within ~~five~~three
 18 years from the date ~~of the board's determination or failure to object~~the department
 19 issues its final permit and any permit appeals are exhausted. A board of township
 20 supervisors may not:

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

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

Requirements - Limitations - Definitions.

- 28 1. For purposes of this section:
- 29 a. ~~"Concentrated Animal~~ feeding operation" means ~~any livestock feeding, handling,~~
- 30 ~~or holding operation, or feed yard, where animals are concentrated in an area~~
- 31 ~~that is not normally used for pasture or for growing crops and in which animal~~

- 1 ~~wastes may accumulate. The term does not include normal wintering operations~~
2 ~~for cattle~~ a lot or facility, other than normal wintering operations for cattle and an
3 aquatic animal production facility, where the following conditions are met:
4 (1) Animals, other than aquatic animals, have been, are, or will be stabled or
5 confined and fed or maintained for a total of forty-five days or more in any
6 twelve-month period; and
7 (2) Crops, vegetation, forage growth, or post-harvest residues are not sustained
8 in the normal growing season over any portion of the lot or facility.
- 9 b. "Farming or ranching" means cultivating land for the production of agricultural
10 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.
11 The term does not include:
12 (1) The production of timber or forest products; or
13 (2) The provision of grain harvesting or other farm services by a processor or
14 distributor of farm products or supplies in accordance with the terms of a
15 contract.
- 16 c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison,
17 elk, fur animals raised for their pelts, and any other animals that are raised, fed,
18 or produced as a part of farming or ranching activities.
- 19 d. "Location" means the setback distance between a structure, fence, or other
20 boundary enclosing a ~~concentrated~~ animal feeding operation, including its
21 animal waste collection system, and the nearest occupied residence, the nearest
22 buildings used for nonfarm or nonranch purposes, or the nearest land zoned for
23 residential, recreational, or commercial purposes. The term does not include the
24 setback distance for the application of manure or for the application of other
25 recycled agricultural material under a nutrient management plan approved by the
26 department of environmental quality.
- 27 2. For purposes of this section, animal units are determined as follows:
28 a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
29 b. ~~One dairy cow, heifer, or bull, other than an animal described in subdivision a~~
30 ~~equals 1.0 animal unit;~~

- 1 e. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal
- 2 unit;
- 3 d. One cow-calf pair equals 1.0 animal unit;
- 4 e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4
- 5 animal unit;
- 6 f. One swine weighing less than fifty five pounds [24.948 kilograms] equals 0.1
- 7 animal unit;
- 8 g. One horse equals 2.0 animal units;
- 9 h. One sheep or lamb equals 0.1 animal unit;
- 10 i. One turkey equals 0.0182 animal unit;
- 11 j. One chicken, other than a laying hen, equals 0.008 animal unit;
- 12 k. One laying hen equals 0.012 animal unit;
- 13 l. One duck equals 0.033 animal unit; and
- 14 m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per
- 15 each one thousand pounds [453.59 kilograms] whether single or combined
- 16 animal weight provided under subdivision c of subsection 7 of section 23.1-06-15.
- 17 3. A board of township supervisors may not prohibit or prevent the use of land or
- 18 buildings for farming or ranching or any of the normal incidents of farming or ranching.
- 19 4. A regulation may not preclude the development of a ~~concentrated~~ animal feeding
- 20 operation in the township.
- 21 5. A board of township supervisors may not prohibit the reasonable diversification or
- 22 expansion of a farming or ranching operation.
- 23 6. A board of township supervisors may adopt regulations that establish different
- 24 standards for the location of ~~concentrated~~ animal feeding operations based on the size
- 25 of the operation and the species and type being fed.
- 26 7. If a regulation would impose a substantial economic burden on a ~~concentrated~~ an
- 27 animal feeding operation in existence before the effective date of the regulation, the
- 28 board of township supervisors shall declare that the regulation is ineffective with
- 29 respect to any ~~concentrated~~ animal feeding operation in existence before the effective
- 30 date of the regulation.

Sixty-sixth
Legislative Assembly

- 1 8. a. A board of township supervisors may establish high-density agricultural
2 production districts in which setback distances for ~~concentrated~~ animal feeding
3 operations and related agricultural operations are less than those in other
4 districts.
- 5 b. A board of township supervisors may establish, around areas zoned for
6 residential, recreational, or nonagricultural commercial uses, low-density
7 agricultural production districts in which setback distances for
8 ~~concentrated~~ animal feeding operations and related agricultural operations are
9 greater than those in other districts; provided, the low-density agricultural
10 production districts may not extend more than one-half mile [0.80 kilometer] from
11 the edge of the area zoned for residential, recreational, or nonagricultural
12 commercial uses.
- 13 c. The setbacks provided for in this subsection may not ~~vary by more than fifty~~
14 ~~percent from~~ exceed those established in subdivision a of subsection 7 of section
15 23.1-06-15 unless the township can demonstrate compelling, objective evidence
16 specific to the township where the operation would be located which requires a
17 greater setback within the township, in which case the setbacks may exceed
18 those established in subdivision a of subsection 7 of section 23.1-06-15 by no
19 more than fifty percent. If a setback under this subsection is greater than the
20 corresponding setback established in subdivision a of subsection 7 of
21 section 23.1-06-15, a person whose animal feeding operation will be or has been
22 affected by the setback may request the agriculture commissioner review the
23 applicable township ordinance. After the review, the agriculture commissioner
24 shall provide a summary of the review to the attorney general and request an
25 opinion from the attorney general regarding whether the ordinance is lawful.
- 26 d. For purposes of this subsection, a "related agricultural operation" means a facility
27 that produces a product or byproduct used by a ~~concentrated~~ animal feeding
28 operation.
- 29 9. A person intending to construct an animal feeding operation may petition the board of
30 township supervisors for a determination whether the animal feeding operation would
31 comply with zoning regulations adopted under this section and filed with the

SB 2345
4-18-19
#3

Sixty-sixth
Legislative Assembly

1 department of environmental quality under section 58-03-17 before the date the
2 petition was received by the township. The petition must contain a description of the
3 nature, scope, and location of the proposed animal feeding operation and a site map
4 showing road access, the location of any structure, and the distance from each
5 structure to the nearest section line. If the board of township supervisors does not
6 object to the petition within sixty days of receipt, the animal feeding operation is
7 deemed in compliance with the township zoning regulations. If the township allows
8 animal feeding operations as a conditional use, the township shall inform the applicant
9 of the required procedures upon receipt of the petition, and the conditional use
10 regulations in effect at the time the township receives the petition must control the
11 approval process, except the township shall make a decision on the application within
12 sixty days of the receipt of a complete conditional use permit application. If the board
13 of township supervisors determines the animal feeding operation would comply with
14 zoning regulations or fails to object under this section, the township may not impose
15 additional zoning regulations relating to the nature, scope, or location of the animal
16 feeding operation later, provided an application is submitted promptly to the state
17 department of health, the department issues a final permit, and construction of the
18 animal feeding operation commences within ~~five~~three years from the date ~~of the~~
19 ~~board's determination or failure to object~~the department issues its final permit and any
20 permit appeals are exhausted. A board of township supervisors may not:
21 a. Regulate or impose zoning restrictions or requirements on animal feeding
22 operations or other agricultural operations except as expressly permitted under
23 this section; or
24 b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or
25 requirements on animal feeding operations.

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

28 **58-03-17. Regulation of ~~concentrated~~ animal feeding operations - Central repository.**

29 ~~1.~~— Any zoning regulation that pertains to ~~a concentrated~~an animal feeding operation, as
30 defined in section 58-03-11.1, and which is promulgated by a township after July 31,
31 2007, is not effective until filed with the state department of health for inclusion in the

1 central repository established under section 23-01-30. Any zoning regulation that
2 pertains to a concentrated animal feeding operation and which was promulgated by a
3 county or a township before August 1, 2007, may not be enforced until the regulation
4 is filed with the state department of health for inclusion in the central repository.

5 ~~2. For purposes of this section:~~

6 ~~a. "Concentrated animal feeding operation" means any livestock feeding, handling,~~
7 ~~or holding operation, or feed yard, where animals are concentrated in an area~~
8 ~~that is not normally used for pasture or for growing crops and in which animal~~
9 ~~wastes may accumulate, or in an area where the space per animal unit is less~~
10 ~~than six hundred square feet [55.74 square meters]. The term does not include~~
11 ~~normal wintering operations for cattle.~~

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

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

16 ~~4. Any zoning regulation that pertains to a concentrated animal feeding operation and~~
17 ~~which is promulgated by a township after July 31, 2007, as defined in~~
18 ~~section 58-03-11.1, is not effective until filed with the department of environmental~~
19 ~~quality for inclusion in the central repository established under section 23.1-01-10. Any~~
20 ~~zoning regulation that pertains to a concentrated animal feeding operation and which~~
21 ~~was promulgated by a county or a township before August 1, 2007, may not be~~
22 ~~enforced until the regulation is filed with the department of environmental quality for~~
23 ~~inclusion in the central repository.~~

24 ~~2. For purposes of this section:~~

25 ~~a. "Concentrated animal feeding operation" means any livestock feeding, handling,~~
26 ~~or holding operation, or feed yard, where animals are concentrated in an area~~
27 ~~that is not normally used for pasture or for growing crops and in which animal~~
28 ~~wastes may accumulate, or in an area where the space per animal unit is less~~
29 ~~than six hundred square feet [55.74 square meters]. The term does not include~~
30 ~~normal wintering operations for cattle.~~

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

3 **SECTION 7. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE - EXPIRATION DATE.**

4 The portions of sections 1, 2, 5, and 46 of this Act not subject to an existing contingency
5 become effective on August 1, 2019, and remain in effect until the legislative council receives
6 certification from the chief of the environmental health section of the state department of health
7 that all authority, powers, and duties from the environmental health section of the state
8 department of health have been transferred to the department of environmental quality. The
9 remainder of sections 1, 2, 5, and 46 become effective on August 1, 2019, if the legislative
10 council has received certification from the chief of the environmental health section of the state
11 department of health that all authority, powers, and duties from the environmental health section
12 of the state department of health have been transferred to the department of environmental
13 quality. If, by August 1, 2019, the legislative council has not received certification from the chief
14 of the environmental health section of the state department of health that all authority, powers,
15 and duties from the environmental health section of the state department of health have been
16 transferred to the department of environmental quality, the remainder of sections 1, 2, 5, and 46
17 of this Act become effective on the date certification is received.

April 19, 2019

SB 2345
4-22-19
1 pg.1

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2345

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

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

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

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

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

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

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

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

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

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

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

Page 4, line 17, remove "of the"

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

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

SB 2345

4-22-19

1 p. 2

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

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

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

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

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

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

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

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

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

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

Page 7, after line 23, insert:

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

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

4. Any zoning regulation that pertains to a ~~concentrated~~an animal feeding operation, as defined in section 11-33-02.1, and which is promulgated by a county after July 31, 2007, is not effective until filed with the state department of health for inclusion in the central repository established under section 23-01-30. Any zoning regulation that pertains to

SB 2345
4-22-19
#1 pg. 3

~~concentrated~~ animal feeding operations and which was promulgated by a county before August 1, 2007, may not be enforced until the regulation is filed with the state department of health for inclusion in the central repository.

~~2-~~ For purposes of this section:

- a. ~~"Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.~~
- b. ~~"Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.~~

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

~~1-~~ Any zoning regulation that pertains to a ~~concentrated~~ animal feeding operation ~~and~~, as defined in section 11-33-02.1, is not effective until filed with the department of environmental quality for inclusion in the central repository established under section 23.1-01-10.

~~2-~~ For purposes of this section:

- a. ~~"Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.~~
- b. ~~"Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts."~~

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

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

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

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

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

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

SB. 2345
4-22-19
#1 pg. 4

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

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

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

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

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

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

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

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

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

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

Page 20, line 27, remove "of the"

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

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

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

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

Page 21, overstrike lines 2 through 4

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

SB 2345
4-22-19
#1 pg. 5

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

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

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

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

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

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

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

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

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

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

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

Page 23, after line 27, insert:

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

SB 2345
4-22-19
#1 pg. 6

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

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

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

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

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

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

SB 2345
4-22-19
#2 pg. 1

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2345

Introduced by

Senators Wanzek, Dotzenrod, Luick

Representatives Brandenburg, D. Johnson, Pollert

1 A BILL for an Act to amend and reenact sections 11-33-02.1, 11-33-22, 23-25-11, 23.1-06-15,
2 ~~and 58-03-11.1, and 58-03-17~~ of the North Dakota Century Code, relating to animal feeding
3 operations and zoning regulations; to provide an effective date; to provide a contingent effective
4 date; and to provide an expiration date.

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

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

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

10 1. For purposes of this section:

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

17 (1) Animals, other than aquatic animals, have been, are, or will be stabled or
18 confined and fed or maintained for at least forty-five days in a twelve-month
19 period; and

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

22 b. "Farming or ranching" means cultivating land for the production of agricultural
23 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.
24 The term does not include:

SB2345
4/22/19
#2

Sixty-sixth
Legislative Assembly

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

Sixty-sixth
Legislative Assembly

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

SB2345
4/22/19
#2

Sixty-sixth
Legislative Assembly

- 1 c. The setbacks provided for in this subsection may not ~~vary by more than fifty~~
2 ~~percent from exceed~~ those established in subdivision a of subsection 7 of section
3 23-25-11 unless the county can demonstrate compelling, objective evidence
4 specific to the county which requires a greater setback within the county, in which
5 case the setbacks may exceed those established in subdivision a of subsection 7
6 of section 23-25-11 by no more than fifty percent. If a setback under this
7 subsection is greater than the corresponding setback established in subdivision a
8 of subsection 7 of section 23-25-11, a person whose animal feeding operation will
9 be or has been affected by the applicable county ordinance may request the
10 agriculture commissioner review the ordinance. After the review, the agriculture
11 commissioner shall provide a summary of the review to the attorney general and
12 request an opinion from the attorney general regarding whether the ordinance
13 and setback are lawful.
- 14 d. For purposes of this subsection, a "related agricultural operation" means a facility
15 that produces a product or byproduct used by a ~~concentrated~~ an animal feeding
16 operation.
- 17 9. A person intending to construct an animal feeding operation may petition the board of
18 county commissioners for a determination whether the animal feeding operation would
19 comply with zoning regulations adopted under this section and filed with the state
20 department of health under section 11-33-22 before the date the petition was received
21 by the county. The petition must contain a description of the nature, scope, and
22 location of the proposed animal feeding operation and a site map showing road
23 access, the location of any structure, and the distance from each structure to the
24 nearest section line. If the board of county commissioners does not object to the
25 petition within sixty days of receipt, the animal feeding operation is deemed in
26 compliance with the county zoning regulations. If the county allows animal feeding
27 operations as a conditional use, the conditional use regulations must be limited to the
28 board's authority under this section, and the approval process must comply with this
29 section. The county shall make a decision on the application within sixty days of the
30 receipt of a complete conditional use permit application. If the board of county
31 commissioners determines the animal feeding operation would comply with zoning

1 regulations or fails to object under this section, the county may not impose additional
2 zoning regulations relating to the nature, scope, or location of the animal feeding
3 operation later, provided an application is submitted promptly to the state department
4 of health, the department issues a final permit, and construction of the animal feeding
5 operation commences within ~~five~~three years from the date of the board's
6 ~~determination or failure to object~~the department issues its final permit and any permit
7 appeals are exhausted. A board of county commissioners may not:

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

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

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

15 1. For purposes of this section:

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

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

27 b. "Farming or ranching" means cultivating land for the production of agricultural
28 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.
29 The term does not include:

- 30 (1) The production of timber or forest products; or

SB 2345
4/22/19
#2

Sixty-sixth
Legislative Assembly

- 1 (2) The provision of grain harvesting or other farm services by a processor or
2 distributor of farm products or supplies in accordance with the terms of a
3 contract.
- 4 c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison,
5 elk, fur animals raised for their pelts, and any other animals that are raised, fed,
6 or produced as a part of farming or ranching activities.
- 7 d. "Location" means the setback distance between a structure, fence, or other
8 boundary enclosing a ~~concentrated~~ an animal feeding operation, including its
9 animal waste collection system, and the nearest occupied residence, the nearest
10 buildings used for nonfarm or nonranch purposes, or the nearest land zoned for
11 residential, recreational, or commercial purposes. The term does not include the
12 setback distance for the application of manure or for the application of other
13 recycled agricultural material under a nutrient management plan approved by the
14 department of environmental quality.
- 15 2. For purposes of this section, animal units are determined as follows:
- 16 a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
- 17 b. ~~One dairy cow, heifer, or bull, other than an animal described in paragraph 1~~
18 ~~equals 1.0 animal unit;~~
- 19 c. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal~~
20 ~~unit;~~
- 21 d. ~~One cow-calf pair equals 1.0 animal unit;~~
- 22 e. ~~One swine weighing fifty five pounds [24.948 kilograms] or more equals 0.4~~
23 ~~animal unit;~~
- 24 f. ~~One swine weighing less than fifty five pounds [24.948 kilograms] equals 0.1~~
25 ~~animal unit;~~
- 26 g. ~~One horse equals 2.0 animal units;~~
- 27 h. ~~One sheep or lamb equals 0.1 animal unit;~~
- 28 i. ~~One turkey equals 0.0182 animal unit;~~
- 29 j. ~~One chicken, other than a laying hen, equals 0.008 animal unit;~~
- 30 k. ~~One laying hen equals 0.012 animal unit;~~
- 31 l. ~~One duck equals 0.033 animal unit; and~~

Sixty-sixth
Legislative Assembly

- 1 m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per
2 each one thousand pounds [453.59 kilograms] whether single or combined
3 animal weights as provided in subdivision c of subsection 7 of section 23.1-06-15.
- 4 3. A board of county commissioners may not prohibit or prevent the use of land or
5 buildings for farming or ranching and may not prohibit or prevent any of the normal
6 incidents of farming or ranching.
- 7 4. A board of county commissioners may not preclude the development of a
8 ~~concentrated~~animal feeding operation in the county.
- 9 5. A board of county commissioners may not prohibit the reasonable diversification or
10 expansion of a farming or ranching operation.
- 11 6. A board of county commissioners may adopt regulations that establish different
12 standards for the location of ~~concentrated~~animal feeding operations based on the size
13 of the operation and the species and type being fed.
- 14 7. If a regulation would impose a substantial economic burden on a ~~concentrated~~animal
15 feeding operation in existence before the effective date of the regulation, the
16 board of county commissioners shall declare that the regulation is ineffective with
17 respect to any ~~concentrated~~animal feeding operation in existence before the effective
18 date of the regulation.
- 19 8. a. A board of county commissioners may establish high-density agricultural
20 production districts in which setback distances for ~~concentrated~~animal feeding
21 operations and related agricultural operations are less than those in other
22 districts.
- 23 b. A board of county commissioners may establish, around areas zoned for
24 residential, recreational, or nonagricultural commercial uses, low-density
25 agricultural production districts in which setback distances for
26 ~~concentrated~~animal feeding operations and related agricultural operations are
27 greater than those in other districts; provided, the low-density agricultural
28 production districts may not extend more than one and one-half miles [2.40
29 kilometers] from the edge of the area zoned for residential, recreational, or
30 nonagricultural commercial uses.

SB2345
4/22/19
#2

Sixty-sixth
Legislative Assembly

- 1 c. The setbacks provided for in this subsection may not vary by more than fifty
2 percent from exceed those established in subdivision a of subsection 7 of section
3 23.1-06-15 unless the county can demonstrate compelling, objective evidence
4 specific to the county which requires a greater setback within the county, in which
5 case the setbacks may exceed those established in subdivision a of subsection 7
6 of section 23.1-06-15 by no more than fifty percent. If a setback under this
7 subsection is greater than the corresponding setback established in subdivision a
8 of subsection 7 of section 23.1-06-15, a person whose animal feeding operation
9 will be or has been affected by the applicable county ordinance may request the
10 agriculture commissioner review the ordinance. After the review, the agriculture
11 commissioner shall provide a summary of the review to the attorney general and
12 request an opinion from the attorney general regarding whether the ordinance
13 and setback are lawful.
- 14 d. For purposes of this subsection, a "related agricultural operation" means a facility
15 that produces a product or byproduct used by a concentrated animal feeding
16 operation.
- 17 9. A person intending to construct an animal feeding operation may petition the board of
18 county commissioners for a determination whether the animal feeding operation would
19 comply with zoning regulations adopted under this section and filed with the
20 department of environmental quality under section 11-33-22 before the date the
21 petition was received by the county. The petition must contain a description of the
22 nature, scope, and location of the proposed animal feeding operation and a site map
23 showing road access, the location of any structure, and the distance from each
24 structure to the nearest section line. If the board of county commissioners does not
25 object to the petition within sixty days of receipt, the animal feeding operation is
26 deemed in compliance with the county zoning regulations. If the county allows animal
27 feeding operations as a conditional use, the conditional use regulations must be
28 limited to the board's authority under this section, and the approval process must
29 comply with this section. The county shall make a decision on the application within
30 sixty days of the receipt of a complete conditional use permit application. If the board
31 of county commissioners determines the animal feeding operation would comply with

1 zoning regulations or fails to object under this section, the county may not impose
2 additional zoning regulations relating to the nature, scope, or location of the animal
3 feeding operation later, provided an application is submitted promptly to the state
4 department of health, the department issues a final permit, and construction of the
5 animal feeding operation commences within ~~five~~three years from the date of the
6 board's determination or failure to objectthe department issues its final permit and any
7 permit appeals are exhausted. A board of county commissioners may not:
8 a. Regulate or impose zoning restrictions or requirements on animal feeding
9 operations or other agricultural operations except as expressly permitted under
10 this section; or
11 b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or
12 requirements on animal feeding operations.

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

15 **11-33-22. Regulation of ~~concentrated~~ animal feeding operations - Central repository.**

16 ~~1.~~ Any zoning regulation that pertains to ~~a concentrated~~an animal feeding operation, as
17 defined in section 11-33-02.1, and which is promulgated by a county after July 31,
18 2007, is not effective until filed with the state department of health for inclusion in the
19 central repository established under section 23-01-30. Any zoning regulation that
20 pertains to ~~concentrated~~ animal feeding operations and which was promulgated by a
21 county before August 1, 2007, may not be enforced until the regulation is filed with the
22 state department of health for inclusion in the central repository.

23 ~~2.~~ For purposes of this section:

24 a. ~~"Concentrated animal feeding operation" means any livestock feeding, handling,~~
25 ~~or holding operation, or feed yard, where animals are concentrated in an area~~
26 ~~that is not normally used for pasture or for growing crops and in which animal~~
27 ~~wastes may accumulate, or in an area where the space per animal unit is less~~
28 ~~than six hundred square feet [55.74 square meters]. The term does not include~~
29 ~~normal wintering operations for cattle.~~

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

SB2345
412219
#2

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

3 ~~1.~~ Any zoning regulation that pertains to ~~a concentrated~~an animal feeding operation ~~and~~
4 as defined in section 11-33-02 1, is not effective until filed with the department of
5 environmental quality for inclusion in the central repository established under section
6 23.1-01-10.

7 ~~2.~~ For purposes of this section:

8 ~~a.~~ "Concentrated animal feeding operation" means any livestock feeding, handling,
9 or holding operation, or feed yard, where animals are concentrated in an area
10 that is not normally used for pasture or for growing crops and in which animal
11 wastes may accumulate, or in an area where the space per animal unit is less
12 than six hundred square feet [55.74 square meters]. The term does not include
13 normal wintering operations for cattle.

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

16 **SECTION 3. AMENDMENT.** Section 23-25-11 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **23-25-11. Regulation of odors - Rules. (Contingent repeal - [See note](#))**

19 1. In areas located within a city or the area over which a city has exercised extraterritorial
20 zoning as defined in section 40-47-01.1, a person may not discharge into the ambient
21 air any objectionable odorous air contaminant that measures seven odor concentration
22 units or higher outside the property boundary where the discharge is occurring. If an
23 agricultural operation as defined by section 42-04-01 has been in operation for more
24 than one year, as provided by section 42-04-02, and the business or residence making
25 the odor complaint was built or established after the agricultural operation was
26 established, the measurement for compliance with the seven odor concentration units
27 standard must be taken within one hundred feet [30.48 meters] of the subsequently
28 established residence, church, school, business, or public building making the
29 complaint rather than at the property boundary of the agricultural operation. The
30 measurement may not be taken within five hundred feet [.15 kilometer] of the property
31 boundary of the agricultural operation.

Sixty-sixth
Legislative Assembly

- 1 2. In areas located outside a city or outside the area over which a city has exercised
2 extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge
3 into the ambient air any objectionable odorous air contaminant that causes odors that
4 measure seven odor concentration units or higher as measured at any of the following
5 locations:
- 6 a. Within one hundred feet [30.48 meters] of any residence, church, school,
7 business, or public building, or within a campground or public park. An odor
8 measurement may not be taken at the residence of the owner or operator of the
9 source of the odor, or at any residence, church, school, business, or public
10 building, or within a campground or public park, that is built or established within
11 one-half mile [.80 kilometer] of the source of the odor after the source of the odor
12 has been built or established;
- 13 b. At any point located beyond one-half mile [.80 kilometer] from the source of the
14 odor, except for property owned by the owner or operator of the source of the
15 odor, or over which the owner or operator of the source of the odor has
16 purchased an odor easement; or
- 17 c. If a county or township has zoned or established a setback distance for an animal
18 feeding operation which is greater than one-half mile [.80 kilometer] under either
19 section 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is
20 greater than one-half mile [.80 kilometer], measurements for compliance with the
21 seven odor concentration units standard must be taken at the setback distance
22 rather than one-half mile [.80 kilometer] from the facility under subdivision b,
23 except for any residence, church, school, business, public building, park, or
24 campground within the setback distance which was built or established before
25 the animal feeding operation was established, unless the animal feeding
26 operation has obtained an odor easement from the pre-existing facility.
- 27 3. An odor measurement may be taken only with a properly maintained scentometer, by
28 an odor panel, or by another instrument or method approved by the state department
29 of health, and only by inspectors certified by the department who have successfully
30 completed a department-sponsored odor certification course and demonstrated the
31 ability to distinguish various odor samples and concentrations. If a certified inspector

SB 2345
4/22/19
#2

Sixty-sixth
Legislative Assembly

- 1 measures a violation of this section, the department may send a certified letter of
2 apparent noncompliance to the person causing the apparent violation and may
3 negotiate with the owner or operator for the establishment of an odor management
4 plan and best management practices to address the apparent violation. The
5 department shall give the owner or operator at least fifteen days to implement the odor
6 management plan. If the odor problem persists, the department may proceed with an
7 enforcement action provided at least two certified inspectors at the same time each
8 measure a violation and then confirm the violation by a second odor measurement
9 taken by each certified inspector, at least fifteen minutes, but no more than two hours,
10 after the first measurement.
- 11 4. A person is exempt from this section while spreading or applying animal manure or
12 other recycled agricultural material to land in accordance with a nutrient management
13 plan approved by the state department of health. A person is exempt from this section
14 while spreading or applying animal manure or other recycled agricultural material to
15 land owned or leased by that person in accordance with rules adopted by the
16 department. An owner or operator of a lagoon or waste storage pond permitted by the
17 department is exempt from this section in the spring from the time when the cover of
18 the permitted lagoon or pond begins to melt until fourteen days after all the ice cover
19 on the lagoon or pond has completely melted. Notwithstanding these exemptions, all
20 persons shall manage their property and systems to minimize the impact of odors on
21 their neighbors.
- 22 5. This section does not apply to chemical compounds that can be individually measured
23 by instruments, other than a scentometer, that have been designed and proven to
24 measure the individual chemical or chemical compound, such as hydrogen sulfide, to
25 a reasonable degree of scientific certainty, and for which the state department of
26 health has established a specific limitation by rule.
- 27 6. For purposes of this section, ~~a public park is a park established by the federal~~
28 ~~government, the state, or a political subdivision of the state in the manner prescribed~~
29 ~~by law. For purposes of this section, a campground is:~~

Sixty-sixth
Legislative Assembly

- 1 a. "Business" means a commercial building used primarily to carry on a for-profit or
2 nonprofit business which is not residential and not used primarily to manufacture
3 or produce raw materials, products, or agricultural commodities;
4 b. "Campground" means a public or private area of land used exclusively for
5 camping and open to the public for a fee on a regular or seasonal basis;
6 c. "Church" means a building owned by a religious organization and used primarily
7 for religious purposes;
8 d. "Park" means a park established by the federal government, the state, or a
9 political subdivision of the state in the manner prescribed by law;
10 e. "Public building" means a building owned by a county, city, township, school
11 district, park district, or other unit of local government; the state; or an agency,
12 industry, institution, board, or department of the state; and
13 f. "School" means a public school or nonprofit, private school approved by the
14 superintendent of public instruction.
15 7. a. In a county or township that does not regulate the nature, scope, and/or location
16 of an animal feeding operation under section ~~11-33~~ 0211-33-02.1 or section
17 58-03-11.1, the department shall require that any new animal feeding operation
18 permitted under chapter 61-28 be set back from any existing residence, church,
19 school, business, public building, park, or campground.
20 (1) If there are fewer than three hundred animal units, there is no minimum
21 setback requirement.
22 (2) If there are at least three hundred animal units but no more than one
23 thousand animal units, the setback for any animal operation is one-half mile
24 [.80 kilometer].
25 (3) If there are at least one thousand one animal units but no more than two
26 thousand animal units, the setback for a hog operation is three-fourths mile
27 [1.20 kilometers] and the setback for any other animal operation is one-half
28 mile [.80 kilometer].
29 (4) If there are at least two thousand one animal units but no more than five
30 thousand animal units, the setback for a hog operation is one mile [1.60

582345
4/22/19
#2

Sixty-sixth
Legislative Assembly

- 1 kilometers] and the setback for any other animal operation is three-fourths
2 mile [1.20 kilometers].
- 3 (5) If there are five thousand one or more animal units, the setback for a hog
4 operation is one and one-half miles [2.40 kilometers] and the setback for
5 any other animal operation is one mile [1.60 kilometers].
- 6 b. The setbacks set forth in subdivision a do not apply if the owner or operator
7 applying for the permit obtains an odor easement from the pre-existing use that is
8 closer.
- 9 c. For purposes of this section:
- 10 (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;
11 (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1
12 equals 1.0 animal unit;
13 (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75
14 animal unit;
15 (4) One cow-calf pair equals 1.0 animal unit;
16 (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4
17 animal unit;
18 (6) One weaned swine weighing less than fifty-five pounds [24.948 kilograms]
19 equals 0.1 animal unit;
20 (7) One horse equals 2.0 animal units;
21 (8) One sheep or weaned lamb equals 0.1 animal unit;
22 (9) One turkey equals 0.0182 animal unit;
23 (10) One chicken, ~~other than a laying hen,~~ equals ~~0.0080~~0.01 animal unit;
24 (11) ~~One laying hen equals 0.012 animal unit;~~
25 ~~(12)~~ One duck or goose equals ~~0.0330~~0.2 animal unit; and
26 ~~(13)~~(12) Any weaned livestock not listed in paragraphs 1 through ~~12~~11 equals 1.0
27 animal unit per each one thousand pounds [453.59 kilograms] whether
28 single or combined animal weight.
- 29 d. In a county or township that regulates the nature, scope, or location of an animal
30 feeding operation under section 11-33-02.1 or section 58-03-11.1, an applicant
31 for an animal feeding operation permit shall submit to the department with the

1 permit application the zoning determination made by the county or township
2 under subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1,
3 unless the animal feeding operation is in existence by January 1, 2019, and there
4 is no change in animals or animal units which would result in an increase in the
5 setbacks provided for in this section. The department may not impose additional
6 odor setback requirements.

7 e. An animal feeding operation is not subject to zoning regulations adopted by a
8 county or township after the date an application for the animal feeding operation
9 is submitted to the department, provided construction of the animal feeding
10 operation commences within ~~five~~three years from the date the ~~application is~~
11 submittedfinal permit is issued and any permit appeals are exhausted. Unless
12 there is a change to the location of the proposed animal feeding operation or
13 there is a change in animal units which would result in an increase in the
14 setbacks under this section, this exemption remains in effect if the department
15 requires the applicant to submit a revised application.

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

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

22 **SECTION 4. AMENDMENT.** Section 23.1-06-15 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **23.1-06-15. Regulation of odors - Rules. (Contingent effective date - [See note](#))**

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

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

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

12 a. Within one hundred feet [30.48 meters] of any residence, church, school,
13 business, or public building, or within a campground or public park. An odor
14 measurement may not be taken at the residence of the owner or operator of the
15 source of the odor, or at any residence, church, school, business, or public
16 building, or within a campground or public park, that is built or established within
17 one-half mile [.80 kilometer] of the source of the odor after the source of the odor
18 has been built or established;

19 b. At any point located beyond one-half mile [.80 kilometer] from the source of the
20 odor, except for property owned by the owner or operator of the source of the
21 odor, or over which the owner or operator of the source of the odor has
22 purchased an odor easement; or

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

SB 2345
4/22/19
#2

Sixty-sixth
Legislative Assembly

- 1 the animal feeding operation was established, unless the animal feeding
2 operation has obtained an odor easement from the pre-existing facility.
- 3 3. An odor measurement may be taken only with a properly maintained scentometer, by
4 an odor panel, or by another instrument or method approved by the department of
5 environmental quality, and only by inspectors certified by the department who have
6 successfully completed a department-sponsored odor certification course and
7 demonstrated the ability to distinguish various odor samples and concentrations. If a
8 certified inspector measures a violation of this section, the department may send a
9 certified letter of apparent noncompliance to the person causing the apparent violation
10 and may negotiate with the owner or operator for the establishment of an odor
11 management plan and best management practices to address the apparent violation.
12 The department shall give the owner or operator at least fifteen days to implement the
13 odor management plan. If the odor problem persists, the department may proceed
14 with an enforcement action provided at least two certified inspectors at the same time
15 each measure a violation and then confirm the violation by a second odor
16 measurement taken by each certified inspector, at least fifteen minutes, but no more
17 than two hours, after the first measurement.
- 18 4. A person is exempt from this section while spreading or applying animal manure or
19 other recycled agricultural material to land in accordance with a nutrient management
20 plan approved by the department of environmental quality. A person is exempt from
21 this section while spreading or applying animal manure or other recycled agricultural
22 material to land owned or leased by that person in accordance with rules adopted by
23 the department. An owner or operator of a lagoon or waste storage pond permitted by
24 the department is exempt from this section in the spring from the time when the cover
25 of the permitted lagoon or pond begins to melt until fourteen days after all the ice
26 cover on the lagoon or pond has completely melted. Notwithstanding these
27 exemptions, all persons shall manage their property and systems to minimize the
28 impact of odors on their neighbors.
- 29 5. This section does not apply to chemical compounds that can be individually measured
30 by instruments, other than a scentometer, that have been designed and proven to
31 measure the individual chemical or chemical compound, such as hydrogen sulfide, to

SB 2345
412219
#2

Sixty-sixth
Legislative Assembly

- 1 a reasonable degree of scientific certainty, and for which the department of
2 environmental quality has established a specific limitation by rule.
- 3 6. For purposes of this section, ~~a public park is a park established by the federal~~
4 ~~government, the state, or a political subdivision of the state in the manner prescribed~~
5 ~~by law. For purposes of this section, a campground is:~~
- 6 a. "Business" means a commercial building used primarily to carry on a for-profit or
7 nonprofit business which is not residential and not used primarily to manufacture
8 or produce raw materials, products, or agricultural commodities;
- 9 b. "Campground" means a public or private area of land used exclusively for
10 camping and open to the public for a fee on a regular or seasonal basis;
- 11 c. "Church" means a building owned by a religious organization and used primarily
12 for religious purposes;
- 13 d. "Park" means a park established by the federal government, the state, or a
14 political subdivision of the state in the manner prescribed by law;
- 15 e. "Public building" means a building owned by a county, city, township, school
16 district, park district, or other unit of local government; the state; or an agency,
17 industry, institution, board, or department of the state; and
- 18 f. "School" means a public school or nonprofit, private school approved by the
19 superintendent of public instruction.
- 20 7. a. In a county or township that does not regulate the nature, scope, ~~and~~ location
21 of an animal feeding operation under section ~~11-33-0211-33-02.1~~ or section
22 58-03-11.1, the department shall require that any new animal feeding operation
23 permitted under chapter 61-28 be set back from any existing residence, church,
24 school, business, public building, park, or campground.
- 25 (1) If there are fewer than three hundred animal units, there is no minimum
26 setback requirement.
- 27 (2) If there are at least three hundred animal units but no more than one
28 thousand animal units, the setback for any animal operation is one-half mile
29 [.80 kilometer].
- 30 (3) If there are at least one thousand one animal units but no more than two
31 thousand animal units, the setback for a hog operation is three-fourths mile

Sixty-sixth
Legislative Assembly

- 1 [1.20 kilometers], and the setback for any other animal operation is one-half
- 2 mile [.80 kilometer].
- 3 (4) If there are at least two thousand one animal units but no more than five
- 4 thousand animal units, the setback for a hog operation is one mile [1.60
- 5 kilometers], and the setback for any other animal operation is three-fourths
- 6 mile [1.20 kilometers].
- 7 (5) If there are five thousand one or more animal units, the setback for a hog
- 8 operation is one and one-half miles [2.40 kilometers], and the setback for
- 9 any other animal operation is one mile [1.60 kilometers].
- 10 b. The setbacks set forth in subdivision a do not apply if the owner or operator
- 11 applying for the permit obtains an odor easement from the pre-existing use that is
- 12 closer.
- 13 c. For purposes of this section:
- 14 (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;
- 15 (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1
- 16 equals 1.0 animal unit;
- 17 (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals
- 18 0.75 animal unit;
- 19 (4) One cow-calf pair equals 1.0 animal unit;
- 20 (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals
- 21 0.4 animal unit;
- 22 (6) One weaned swine weighing less than fifty-five pounds [24.948 kilograms]
- 23 equals 0.1 animal unit;
- 24 (7) One horse equals 2.0 animal units;
- 25 (8) One sheep or weaned lamb equals 0.1 animal unit;
- 26 (9) One turkey equals 0.0182 animal unit;
- 27 (10) One chicken, ~~other than a laying hen,~~ equals ~~0.008~~0.01 animal unit;
- 28 (11) ~~One laying hen equals 0.012 animal unit;~~
- 29 ~~(12)~~ One duck or goose equals ~~0.033~~0.2 animal unit; and

Sixty-sixth
Legislative Assembly

- 1 that is ~~not normally used for pasture or for growing crops and in which animal~~
2 ~~wastes may accumulate. The term does not include normal wintering operations~~
3 ~~for cattle~~ lot or facility, other than normal wintering operations for cattle and an
4 aquatic animal production facility, where the following conditions are met:
- 5 (1) Animals, other than aquatic animals, have been, are, or will be stabled or
6 confined and fed or maintained for at least forty-five days in a twelve-month
7 period; and
- 8 (2) Crops, vegetation, forage growth, or postharvest residues are not sustained
9 in the normal growing season over any portion of the lot or facility.
- 10 b. "Farming or ranching" means cultivating land for the production of agricultural
11 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.
12 The term does not include:
- 13 (1) The production of timber or forest products; or
14 (2) The provision of grain harvesting or other farm services by a processor or
15 distributor of farm products or supplies in accordance with the terms of a
16 contract.
- 17 c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison,
18 elk, fur animals raised for their pelts, and any other animals that are raised, fed,
19 or produced as a part of farming or ranching activities.
- 20 d. "Location" means the setback distance between a structure, fence, or other
21 boundary enclosing ~~a concentrated~~ an animal feeding operation, including its
22 animal waste collection system, and the nearest occupied residence, the nearest
23 buildings used for nonfarm or nonranch purposes, or the nearest land zoned for
24 residential, recreational, or commercial purposes. The term does not include the
25 setback distance for the application of manure or for the application of other
26 recycled agricultural material under a nutrient management plan approved by the
27 state department of health.
- 28 2. For purposes of this section, animal units are determined as ~~follows:~~
- 29 a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
- 30 b. ~~One dairy cow, heifer, or bull, other than an animal described in subdivision a~~
31 ~~equals 1.0 animal unit;~~

SB 2345
4/22/19
#2

Sixty-sixth
Legislative Assembly

- 1 e. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal
2 unit;
- 3 d. One cow-calf pair equals 1.0 animal unit;
- 4 e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4
5 animal unit;
- 6 f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1
7 animal unit;
- 8 g. One horse equals 2.0 animal units;
- 9 h. One sheep or lamb equals 0.1 animal unit;
- 10 i. One turkey equals 0.0182 animal unit;
- 11 j. One chicken, other than a laying hen, equals 0.008 animal unit;
- 12 k. One laying hen equals 0.012 animal unit;
- 13 l. One duck equals 0.033 animal unit; and
- 14 m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per
15 each one thousand pounds [453.59 kilograms] whether single or combined
16 animal weight provided under subdivision c of subsection 7 of
17 section ~~23-23-11~~23-25-11.
- 18 3. A board of township supervisors may not prohibit or prevent the use of land or
19 buildings for farming or ranching or any of the normal incidents of farming or ranching.
- 20 4. A regulation may not preclude the development of a concentrated animal feeding
21 operation in the township.
- 22 5. A board of township supervisors may not prohibit the reasonable diversification or
23 expansion of a farming or ranching operation.
- 24 6. A board of township supervisors may adopt regulations that establish different
25 standards for the location of concentrated animal feeding operations based on the size
26 of the operation and the species and type being fed.
- 27 7. If a regulation would impose a substantial economic burden on a concentrated animal
28 animal feeding operation in existence before the effective date of the regulation, the
29 board of township supervisors shall declare that the regulation is ineffective with
30 respect to any concentrated animal feeding operation in existence before the effective
31 date of the regulation.

Sixty-sixth
Legislative Assembly

- 1 8. a. A board of township supervisors may establish high-density agricultural
2 production districts in which setback distances for ~~concentrated~~ animal feeding
3 operations and related agricultural operations are less than those in other
4 districts.
- 5 b. A board of township supervisors may establish, around areas zoned for
6 residential, recreational, or nonagricultural commercial uses, low-density
7 agricultural production districts in which setback distances for
8 ~~concentrated~~ animal feeding operations and related agricultural operations are
9 greater than those in other districts; provided, the low-density agricultural
10 production districts may not extend more than one-half mile [0.80 kilometer] from
11 the edge of the area zoned for residential, recreational, or nonagricultural
12 commercial uses.
- 13 c. The setbacks provided for in this subsection may not vary by more than fifty
14 percent from exceed those established in subdivision a of subsection 7 of section
15 23-25-11 unless the township can demonstrate compelling, objective evidence
16 specific to the township which requires a greater setback within the township, in
17 which case the setbacks may exceed those established in subdivision a of
18 subsection 7 of section 23-25-11 by no more than fifty percent. If a setback under
19 this subsection is greater than the corresponding setback established in
20 subdivision a of subsection 7 of section 23-25-11, a person whose animal feeding
21 operation will be or has been affected by the applicable township ordinance may
22 request the agriculture commissioner review the ordinance. After the review, the
23 agriculture commissioner shall provide a summary of the review to the attorney
24 general and request an opinion from the attorney general regarding whether the
25 ordinance and setback are lawful.
- 26 d. For purposes of this subsection, a "related agricultural operation" means a facility
27 that produces a product or byproduct used by a ~~concentrated~~ animal feeding
28 operation.
- 29 9. A person intending to construct an animal feeding operation may petition the board of
30 township supervisors for a determination whether the animal feeding operation would
31 comply with zoning regulations adopted under this section and filed with the state

1 department of health under section 58-03-17 before the date the petition was received
 2 by the township. The petition must contain a description of the nature, scope, and
 3 location of the proposed animal feeding operation and a site map showing road
 4 access, the location of any structure, and the distance from each structure to the
 5 nearest section line. If the board of township supervisors does not object to the petition
 6 within sixty days of receipt, the animal feeding operation is deemed in compliance with
 7 the township zoning regulations. If the township allows animal feeding operations as a
 8 conditional use, the conditional use regulations must be limited to the board's authority
 9 under this section, and the approval process must comply with this section. The
 10 township shall make a decision on the application within sixty days of the receipt of a
 11 complete conditional use permit application. If the board of township supervisors
 12 determines the animal feeding operation would comply with zoning regulations or fails
 13 to object under this section, the township may not impose additional zoning
 14 regulations relating to the nature, scope, or location of the animal feeding operation
 15 later, provided an application is submitted promptly to the state department of health,
 16 the department issues a final permit, and construction of the animal feeding operation
 17 commences within ~~five~~three years from the date ~~of the board's determination or failure~~
 18 ~~to object~~the department issues its final permit and any permit appeals are exhausted.

- 19 A board of township supervisors may not:
- 20 a. Regulate or impose zoning restrictions or requirements on animal feeding
 - 21 operations or other agricultural operations except as expressly permitted under
 - 22 this section; or
 - 23 b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or
 - 24 requirements on animal feeding operations.

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

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

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

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

The term does not include:

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

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

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

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

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

Sixty-sixth
Legislative Assembly

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

- 1 operations and related agricultural operations are less than those in other
2 districts.
- 3 b. A board of township supervisors may establish, around areas zoned for
4 residential, recreational, or nonagricultural commercial uses, low-density
5 agricultural production districts in which setback distances for
6 ~~concentrated~~ animal feeding operations and related agricultural operations are
7 greater than those in other districts; provided, the low-density agricultural
8 production districts may not extend more than one-half mile [0.80 kilometer] from
9 the edge of the area zoned for residential, recreational, or nonagricultural
10 commercial uses.
- 11 c. The setbacks provided for in this subsection may not ~~vary by more than fifty~~
12 ~~percent from~~ exceed those established in subdivision a of subsection 7 of section
13 23.1-06-15 unless the township can demonstrate compelling, objective evidence
14 specific to the township which requires a greater setback within the township, in
15 which case the setbacks may exceed those established in subdivision a of
16 subsection 7 of section 23.1-06-15 by no more than fifty percent. If a setback
17 under this subsection is greater than the corresponding setback established in
18 subdivision a of subsection 7 of section 23.1-06-15, a person whose animal
19 feeding operation will be or has been affected by the applicable township
20 ordinance may request the agriculture commissioner review the ordinance. After
21 the review, the agriculture commissioner shall provide a summary of the review to
22 the attorney general and request an opinion from the attorney general regarding
23 whether the ordinance and setback are lawful.
- 24 d. For purposes of this subsection, a "related agricultural operation" means a facility
25 that produces a product or byproduct used by a ~~concentrated~~ an animal feeding
26 operation.
- 27 9. A person intending to construct an animal feeding operation may petition the board of
28 township supervisors for a determination whether the animal feeding operation would
29 comply with zoning regulations adopted under this section and filed with the
30 department of environmental quality under section 58-03-17 before the date the
31 petition was received by the township. The petition must contain a description of the

SB 2345
4/22/19
#2

1 nature, scope, and location of the proposed animal feeding operation and a site map
2 showing road access, the location of any structure, and the distance from each
3 structure to the nearest section line. If the board of township supervisors does not
4 object to the petition within sixty days of receipt, the animal feeding operation is
5 deemed in compliance with the township zoning regulations. If the township allows
6 animal feeding operations as a conditional use, the conditional use regulations must
7 be limited to the board's authority under this section, and the approval process must
8 comply with this section. The township shall make a decision on the application within
9 sixty days of the receipt of a complete conditional use permit application. If the board
10 of township supervisors determines the animal feeding operation would comply with
11 zoning regulations or fails to object under this section, the township may not impose
12 additional zoning regulations relating to the nature, scope, or location of the animal
13 feeding operation later, provided an application is submitted promptly to the state
14 department of health, the department issues a final permit, and construction of the
15 animal feeding operation commences within ~~five~~three years from the date of the
16 ~~board's determination or failure to object~~the department issues its final permit and any
17 permit appeals are exhausted. A board of township supervisors may not:
18 a. Regulate or impose zoning restrictions or requirements on animal feeding
19 operations or other agricultural operations except as expressly permitted under
20 this section; or
21 b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or
22 requirements on animal feeding operations.

23 **SECTION 6. AMENDMENT.** Section 58-03-17 of the North Dakota Century Code is
24 amended and reenacted as follows:
25 **58-03-17. Regulation of ~~concentrated~~ animal feeding operations - Central repository.**
26 ~~1.~~ Any zoning regulation that pertains to a ~~concentrated~~an animal feeding operation ~~as~~
27 defined in section 58-03-11 1, and which is promulgated by a township after July 31,
28 2007, is not effective until filed with the state department of health for inclusion in the
29 central repository established under section 23-01-30. Any zoning regulation that
30 pertains to a concentrated animal feeding operation and which was promulgated by a

1 county or a township before August 1, 2007, may not be enforced until the regulation
2 is filed with the state department of health for inclusion in the central repository.

3 ~~2. For purposes of this section:~~

4 ~~a. "Concentrated animal feeding operation" means any livestock feeding, handling,~~
5 ~~or holding operation, or feed yard, where animals are concentrated in an area~~
6 ~~that is not normally used for pasture or for growing crops and in which animal~~
7 ~~wastes may accumulate, or in an area where the space per animal unit is less~~
8 ~~than six hundred square feet [55.74 square meters]. The term does not include~~
9 ~~normal wintering operations for cattle.~~

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

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

14 ~~1. Any zoning regulation that pertains to a concentrated animal feeding operation and~~
15 ~~which is promulgated by a township after July 31, 2007, as defined in~~
16 ~~section 58-03-11.1, is not effective until filed with the department of environmental~~
17 ~~quality for inclusion in the central repository established under section 23.1-01-10. Any~~
18 ~~zoning regulation that pertains to a concentrated animal feeding operation and which~~
19 ~~was promulgated by a county or a township before August 1, 2007, may not be~~
20 ~~enforced until the regulation is filed with the department of environmental quality for~~
21 ~~inclusion in the central repository.~~

22 ~~2. For purposes of this section:~~

23 ~~a. "Concentrated animal feeding operation" means any livestock feeding, handling,~~
24 ~~or holding operation, or feed yard, where animals are concentrated in an area~~
25 ~~that is not normally used for pasture or for growing crops and in which animal~~
26 ~~wastes may accumulate, or in an area where the space per animal unit is less~~
27 ~~than six hundred square feet [55.74 square meters]. The term does not include~~
28 ~~normal wintering operations for cattle.~~

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

SB2345
4/22/19
#2

Sixty-sixth
Legislative Assembly

1 **SECTION 7. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE - EXPIRATION DATE.**

2 The portions of sections 1, 2, 5, and 46 of this Act not subject to an existing contingency
3 become effective on August 1, 2019, and remain in effect until the legislative council receives
4 certification from the chief of the environmental health section of the state department of health
5 that all authority, powers, and duties from the environmental health section of the state
6 department of health have been transferred to the department of environmental quality. The
7 remainder of sections 1, 2, 5, and 46 become effective on August 1, 2019, if the legislative
8 council has received certification from the chief of the environmental health section of the state
9 department of health that all authority, powers, and duties from the environmental health section
10 of the state department of health have been transferred to the department of environmental
11 quality. If, by August 1, 2019, the legislative council has not received certification from the chief
12 of the environmental health section of the state department of health that all authority, powers,
13 and duties from the environmental health section of the state department of health have been
14 transferred to the department of environmental quality, the remainder of sections 1, 2, 5, and 46
15 of this Act become effective on the date certification is received.

April 22, 2019

SB 2345
4-22-19
#3 pg. 1/1

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2345

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

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a report to the legislative management regarding permit applications for animal feeding operations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Renumber accordingly