

**FIRST ENGROSSMENT  
with Conference Committee Amendments  
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 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 a report to the legislative management; to provide  
4 an effective date; to provide a contingent effective 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~~ an-
- 16          imal feeding operation in existence before the effective date of the regulation, the
- 17          board of county commissioners shall declare that the regulation is ineffective with
- 18          respect to any ~~concentrated~~ animal feeding operation in existence before the effective
- 19          date of the regulation.
- 20          8. a. A board of county commissioners may establish high-density agricultural
- 21             production districts in which setback distances for ~~concentrated~~ animal feeding
- 22             operations and related agricultural operations are less than those in other
- 23             districts.
- 24             b. A board of county commissioners may establish, around areas zoned for
- 25             residential, recreational, or nonagricultural commercial uses, low-density
- 26             agricultural production districts in which setback distances for
- 27             ~~concentrated~~ animal feeding operations and related agricultural operations are
- 28             greater than those in other districts; provided, the low-density agricultural
- 29             production districts may not extend more than one and one-half miles [2.40
- 30             kilometers] from the edge of the area zoned for residential, recreational, or
- 31             nonagricultural commercial uses.

1           c. The setbacks provided for in this subsection may not vary by more than fifty-  
2           percent ~~from~~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 three years from the date the department issues its final  
6 permit and any permit appeals are exhausted. A board of county commissioners may  
7 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

- 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~~

- 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~~an 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.

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~~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  
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 three years from the date the department  
6           issues its final permit and any permit appeals are exhausted. A board of county  
7           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.~~

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

3           4. 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.

- 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

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:~~

- 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 ~~44-33-0211-33-02.1~~ 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

- 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 three years from the date the final permit is issued  
11           and any permit appeals are exhausted. Unless there is a change to the location  
12           of the proposed animal feeding operation or there is a change in animal units  
13           which would result in an increase in the setbacks under this section, this  
14           exemption remains in effect if the department requires the applicant to submit a  
15           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 ~~44-33-02~~11-33-02.1 or section  
22 58-03-11.1, the department shall require that any new animal feeding operation  
23 permitted under chapter 61-28 be set back from any existing residence, church,  
24 school, business, public building, park, or campground.

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

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

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

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

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

4           d. In a county or township that regulates the nature, scope, or location of an animal  
5           feeding operation under section 11-33-02.1 or section 58-03-11.1, an applicant  
6           for an animal feeding operation permit shall submit to the department with the  
7           permit application the zoning determination made by the county or township  
8           under subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1,  
9           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 three years from the date the application is  
17           submitted. Unless there is a change to the location of the proposed animal  
18           feeding operation, this exemption remains in effect if the department requires the  
19           applicant to submit a revised application.

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

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

25           **SECTION 5. AMENDMENT.** Section 58-03-11.1 of the North Dakota Century Code is  
26           amended and reenacted as follows:

27           **58-03-11.1. Farming and ranching regulations - Requirements - Limitations -**  
28           **Definitions.**

29           1. 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. 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;~~

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- 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 23-25-11.
- 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.

- 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~~an 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 three years from the date the department issues its final permit and  
18 any permit appeals are exhausted. A board of township supervisors may not:  
19 a. Regulate or impose zoning restrictions or requirements on animal feeding  
20 operations or other agricultural operations except as expressly permitted under  
21 this section; or  
22 b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or  
23 requirements on animal feeding operations.

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

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



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

3 (1) Animals, other than aquatic animals, have been, are, or will be stabled or  
4 confined and fed or maintained for a total of forty-five days or more in any  
5 twelve-month period; and

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

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

10 The term does not include:

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

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

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

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

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

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

28 b. ~~One dairy cow, heifer, or bull, other than an animal described in subdivision a~~  
29 ~~equals 1.0 animal unit;~~

30 e. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal~~  
31 ~~unit;~~

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- 1           d. One cow-calf pair equals 1.0 animal unit;
- 2           e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4-
- 3           animal unit;
- 4           f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1-
- 5           animal unit;
- 6           g. One horse equals 2.0 animal units;
- 7           h. One sheep or lamb equals 0.1 animal unit;
- 8           i. One turkey equals 0.0182 animal unit;
- 9           j. One chicken, other than a laying hen, equals 0.008 animal unit;
- 10          k. One laying hen equals 0.012 animal unit;
- 11          l. One duck equals 0.033 animal unit; and
- 12          m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per-
- 13          each one thousand pounds [453.59 kilograms] whether single or combined-
- 14          animal weight provided under subdivision c of subsection 7 of section 23.1-06-15.
- 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          animal feeding operation in existence before the effective date of the regulation, the
- 26          board of township supervisors shall declare that the regulation is ineffective with
- 27          respect to any ~~concentrated~~ animal feeding operation in existence before the effective
- 28          date of the regulation.
- 29          8. a. A board of township supervisors may establish high-density agricultural
- 30          production districts in which setback distances for ~~concentrated~~ animal feeding

- 1 operations and related agricultural operations are less than those in other  
2 districts.
- 3 b. A board of township supervisors may establish, around areas zoned for  
4 residential, recreational, or nonagricultural commercial uses, low-density  
5 agricultural production districts in which setback distances for  
6 ~~concentrated~~animal feeding operations and related agricultural operations are  
7 greater than those in other districts; provided, the low-density agricultural  
8 production districts may not extend more than one-half mile [0.80 kilometer] from  
9 the edge of the area zoned for residential, recreational, or nonagricultural  
10 commercial uses.
- 11 c. The setbacks provided for in this subsection may not ~~vary by more than fifty-~~  
12 ~~percent from~~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

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 three years from the date the department  
16 issues its final permit and any permit appeals are exhausted. A board of township  
17 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 4. Any zoning regulation that pertains to a ~~concentrated~~an 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.~~

1       **SECTION 7. REPORT TO THE LEGISLATIVE MANAGEMENT - PERMIT APPLICATION**

2       **APPROVALS AND DENIALS.** On or before October 1, 2020, the department of environmental  
3       quality shall provide a report to the legislative management on all animal feeding operation  
4       permit applications approved or denied by the department, including the relevant county and  
5       township zoning and setback determinations, and related issues during the first full year of the  
6       2019-21 biennium. Through October 1, 2020, all local government entities that review animal  
7       feeding operation permit applications shall report to the department of environmental quality  
8       each permit approval and denial within thirty days of the decision to approve or deny the  
9       application.

10       **SECTION 8. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE - EXPIRATION DATE.**

11       The portions of sections 1, 2, 5, and 6 of this Act not subject to an existing contingency become  
12       effective on August 1, 2019, and remain in effect until the legislative council receives  
13       certification from the chief of the environmental health section of the state department of health  
14       that all authority, powers, and duties from the environmental health section of the state  
15       department of health have been transferred to the department of environmental quality. The  
16       remainder of sections 1, 2, 5, and 6 become effective on August 1, 2019, if the legislative  
17       council has received certification from the chief of the environmental health section of the state  
18       department of health that all authority, powers, and duties from the environmental health section  
19       of the state department of health have been transferred to the department of environmental  
20       quality. If, by August 1, 2019, the legislative council has not received certification from the chief  
21       of the environmental health section of the state department of health that all authority, powers,  
22       and duties from the environmental health section of the state department of health have been  
23       transferred to the department of environmental quality, the remainder of sections 1, 2, 5, and 6  
24       of this Act become effective on the date certification is received.