

Sixty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1403

Introduced by

Representatives Devlin, D. Johnson, Pollert, Trottier

Senators Luick, Wanzek

1 A BILL for an Act to create and enact sections 4.1-01-24 and 4.1-01-25 of the North Dakota
2 Century Code, relating to zoning of animal feeding operations and regulation of odors from
3 agricultural operations and animal feeding operations by agriculture commissioner; and to
4 amend and reenact sections 11-33-02.1, 11-33-22, 23-25-11, 23.1-06-15, 44-04-32, 58-03-11.1,
5 and 58-03-17 of the North Dakota Century Code, relating to zoning of animal feeding operations
6 and regulation of odors from agricultural operations and animal feeding operations; to repeal
7 sections 23-01-30 and 23.1-01-10 of the North Dakota Century Code, relating to a central
8 repository for concentrated animal feeding operations zoning regulations; and to provide a
9 contingent repeal.

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

11 **SECTION 1.** Section 4.1-01-24 of the North Dakota Century Code is created and enacted
12 as follows:

13 **4.1-01-24. Zoning regulation of concentrated animal feeding operations - Central**
14 **repository.**

15 The agriculture commissioner shall establish, operate, and maintain an electronically
16 accessible central repository for all county and township zoning regulations that pertain to
17 concentrated animal feeding operations. The county auditor of a county and a township clerk of
18 a township having a zoning regulation that pertains to concentrated animal feeding operations
19 shall file the regulation with the department for inclusion in the central repository.

20 **SECTION 2.** Section 4.1-01-25 of the North Dakota Century Code is created and enacted
21 as follows:

22 **4.1-01-25. Regulation of odors - Animal feeding operations - Rules.**

23 1. In areas located within a city of the area over which a city has exercised extraterritorial
24 zoning under section 40-47-01.1, an agricultural operation, as defined in section

42-04-01, or animal feeding operation may not discharge into the ambient air any objectionable odorous air contaminant that measures seven odor concentration units or higher outside the property boundary where the discharge is occurring. If an agricultural operation has been in operation for more than one year, and the property of the person making the odor complaint was built or established after the agricultural operation was established, the measurement for compliance with the seven odor concentration units standard must be taken within one hundred feet [30.48 meters] of the subsequently established residence, church, school, business, or public building making the complaint rather than at the property boundary of the agricultural operation. The measurement may not be taken within five hundred feet [.15 kilometer] of the property boundary of the agricultural operation.

2. In areas located outside a city or outside the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, an agricultural operation, as defined in section 42-04-01, or an animal feeding operation may not discharge into the ambient air any objectionable odorous air contaminant that causes odors that measure seven odor concentration units or higher as measured at any of the following locations.

- a. Within one hundred feet [30.48 meters] of any residence, church, school, business, or public building, or within a campground or public park. An odor measurement may not be taken at the residence of the owner or operator of the source of the odor, or at any residence, church, school, business, or public building, or within a campground or public park, built or established within one-half mile [.80 kilometer] of the source of the odor after the source of the odor has been built or established;
- b. At any point located beyond one-half mile [.80 kilometer] from the source of the odor, except for property owned by the owner or operator of the source of the odor, or over which the owner or operator of the source of the odor has purchased an odor easement; or
- c. If a county or township has zoned or established a setback distance for an animal feeding operation which is greater than one-half mile [.80 kilometer] under either section 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 3 is

greater than one-half mile [.80 kilometer], measurements for compliance with the seven odor concentration units standard must be taken at the setback distance rather than one-half mile [.80 kilometer] from the facility, except for any residence, church, school, business, public building, park, or campground within the setback distance which was built or established before the animal feeding operation was established, unless the animal feeding operation has obtained an odor easement from the pre-existing facility.

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

4. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land in accordance with a nutrient management plan approved by the agriculture commissioner. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land owned or leased by that person in accordance with rules adopted by the agriculture commissioner. An owner or operator of a lagoon or waste storage pond permitted by the agriculture commissioner is exempt from this section in the spring from the time when the cover of the permitted lagoon or pond begins to melt until fourteen days after all the ice cover on the lagoon or pond has completely melted.

1 Notwithstanding these exemptions, all persons shall manage their property and
2 systems to minimize the impact of odors on their neighbors.

3 5. This section does not apply to chemical compounds that can be individually measured
4 by instruments, other than a scentometer, which have been designed and proven to
5 measure the individual chemical or chemical compound, such as hydrogen sulfide, to
6 a reasonable degree of scientific certainty, and for which the agriculture commissioner
7 has established a specific limitation by rule.

8 6. For purposes of this section, a public park is a park established by the federal
9 government, state, or a political subdivision of the state in the manner prescribed by
10 law. For purposes of this section, a campground is a public or private area of land
11 used exclusively for camping and open to the public for a fee on a regular or seasonal
12 basis.

13 7. a. In a county that does not regulate the nature, scope, and location of an
14 agricultural operation, as defined in section 42-04-02, or an animal feeding
15 operation under section 11-33-02, the agriculture commissioner shall require that
16 any new agricultural operation or new animal feeding operation permitted under
17 chapter 61-28 be set back from any existing residence, church, school, business,
18 public building, park, or campground.

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

21 (2) If there are at least three hundred animal units but no more than one
22 thousand animal units, the setback for any animal operation is one-half mile
23 [.80 kilometer].

24 (3) If there are at least one thousand one animal units but no more than two
25 thousand animal units, the setback for a hog operation is three-fourths mile
26 [1.20 kilometers] and the setback for any other animal operation is one-half
27 mile [.80 kilometer].

28 (4) If there are at least two thousand one animal units but no more than five
29 thousand animal units, the setback for a hog operation is one mile
30 [1.60 kilometers] and the setback for any other animal operation is three-
31 fourths mile [1.20 kilometers].

(5) If there are five thousand one or more animal units, the setback for a hog operation is one and one-half miles [2.40 kilometers] and the setback for any other animal operation is one mile [1.60 kilometers].

b. The setbacks set forth in subsection 1 do not apply if the owner or operator applying for the permit obtains an odor easement from the pre-existing use that is closer.

c. For purposes of this section:

(1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;

(2) One dairy cow, heifer or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;

(3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;

(4) One cow-calf pair equals 1.0 animal unit;

(5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;

(6) One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;

(7) One horse equals 2.0 animal units;

(8) One sheep or lamb equals 0.1 animal unit;

(9) One turkey equals 0.0182 animal unit;

(10) One chicken, other than a laying hen, equals 0.008 animal unit;

(11) One laying hen equals 0.012 animal unit;

(12) One duck equals 0.033 animal unit; and

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

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

9. 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.

1 **SECTION 3. AMENDMENT.** Section 11-33-02.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **11-33-02.1. Farming and ranching regulations - Requirements - Limitations -**
4 **Definitions.**

5 1. For purposes of this section:

6 a. "Concentrated feeding operation" means any livestock feeding, handling, or
7 holding operation, or feed yard, where animals are concentrated in an area that is
8 not normally used for pasture or for growing crops and in which animal wastes
9 may accumulate. The term does not include normal wintering operations for
10 cattle.

11 b. "Farming or ranching" means cultivating land for the production of agricultural
12 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.
13 The term does not include:

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

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

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

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

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

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

- 1 b. One dairy cow, heifer, or bull, other than an animal described in
2 ~~paragraph 1~~subdivision a equals 1.0 animal unit;
- 3 c. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal
4 unit;
- 5 d. One cow-calf pair equals 1.0 animal unit;
- 6 e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals
7 0.4 animal unit;
- 8 f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals
9 0.1 animal unit;
- 10 g. One horse equals 2.0 animal units;
- 11 h. One sheep or lamb equals 0.1 animal unit;
- 12 i. One turkey equals 0.0182 animal unit;
- 13 j. One chicken, other than a laying hen, equals 0.008 animal unit;
- 14 k. One laying hen equals 0.012 animal unit;
- 15 l. One duck equals 0.033 animal unit; and
- 16 m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per
17 each one thousand pounds [453.59 kilograms] whether single or combined
18 animal weight.
- 19 3. A board of county commissioners may not prohibit or prevent the use of land or
20 buildings for farming or ranching and may not prohibit or prevent any of the normal
21 incidents of farming or ranching.
- 22 4. A board of county commissioners may not preclude the development of a
23 concentrated feeding operation in the county.
- 24 5. A board of county commissioners may not prohibit the reasonable diversification or
25 expansion of a farming or ranching operation.
- 26 6. A board of county commissioners may adopt regulations that establish different
27 standards for the location of concentrated feeding operations based on the size of the
28 operation and the species and type being fed.
- 29 7. If a regulation would impose a substantial economic burden on a concentrated feeding
30 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.
- 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 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.
- c. The setbacks provided for in this subsection may not vary by more than fifty percent from those established in ~~subdivision a of subsection 7 of section 23-25-11~~section 4.1-01-25.
- d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by a concentrated feeding operation.

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

Requirements - Limitations - Definitions.

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.
 - 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 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 ~~paragraph 1~~ subdivision a equals 1.0 animal unit;

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

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

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

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

g. One horse equals 2.0 animal units;

h. One sheep or lamb equals 0.1 animal unit;

i. One turkey equals 0.0182 animal unit;

j. One chicken, other than a laying hen, equals 0.008 animal unit;

k. One laying hen equals 0.012 animal unit;

l. One duck equals 0.033 animal unit; and

m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight.

3. A board of county commissioners may not prohibit or prevent the use of land or buildings for farming or ranching and may not prohibit or prevent any of the normal incidents of farming or ranching.

4. A board of county commissioners may not preclude the development of a concentrated feeding operation in the county.

5. A board of county commissioners may not prohibit the reasonable diversification or expansion of a farming or ranching operation.

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.

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 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.

c. The setbacks provided for in this subsection may not vary by more than fifty percent from those established in ~~subdivision a of subsection 7 of section 23.1-06-15~~ section 4.1-01-25.

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

SECTION 4. 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 and which is promulgated by a county after July 31, 2007, is not effective until filed with the ~~state department of health~~agriculture commissioner for inclusion in the central repository established under section ~~23-01-304.1-01-24~~. 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~~agriculture commissioner 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 is not effective until filed with the ~~department of environmental quality~~agriculture commissioner for inclusion in the central repository established under section ~~23-1-01-104.1-01-24~~.
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 5. AMENDMENT. Section 23-25-11 of the North Dakota Century Code is amended and reenacted as follows:

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

1. In areas located within a city or the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person, other than an agricultural operation, as defined in section 42-04-01 or an animal feeding operation, may not discharge into the ambient air any objectionable odorous air contaminant that measures seven odor concentration units or higher outside the property boundary where the discharge is occurring. ~~If an agricultural operation as defined by section 42-04-01 has been in operation for more than one year, as provided by section 42-04-02, and the business or residence making the odor complaint was built or established after the agricultural operation was established, the measurement for compliance with the seven odor concentration units standard must be taken within one hundred feet [30.48 meters] of the subsequently established residence, church, school, business, or public building making the complaint rather than at the property boundary of the agricultural operation. The measurement may not be taken within five hundred feet [15 kilometer] of the property boundary of the agricultural operation.~~
2. In areas located outside a city or outside the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person, other than an agricultural operation, as defined in section 42-04-01 or an animal feeding operation, may not discharge into the ambient air any objectionable odorous air contaminant that causes odors that measure seven odor concentration units or higher as measured at any of the following locations:
 - a. Within one hundred feet [30.48 meters] of any residence, church, school, business, or public building, or within a campground or public park. An odor

measurement may not be taken at the residence of the owner or operator of the source of the odor, or at any residence, church, school, business, or public building, or within a campground or public park, that is built or established within one-half mile [.80 kilometer] of the source of the odor after the source of the odor has been built or established; or

b. At any point located beyond one-half mile [.80 kilometer] from the source of the odor, except for property owned by the owner or operator of the source of the odor, or over which the owner or operator of the source of the odor has purchased an odor easement; ~~or~~

~~e. If a county or township has zoned or established a setback distance for an animal feeding operation which is greater than one-half mile [.80 kilometer] under either section 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is greater than one-half mile [.80 kilometer], measurements for compliance with the seven odor concentration units standard must be taken at the setback distance rather than one-half mile [.80 kilometer] from the facility under subdivision b, except for any residence, church, school, business, public building, park, or campground within the setback distance which was built or established before the animal feeding operation was established, unless the animal feeding operation has obtained an odor easement from the pre-existing facility.~~

3. An odor measurement may be taken only with a properly maintained scentometer, by an odor panel, or by another instrument or method approved by the state department of health, and only by inspectors certified by the department who have successfully completed a department-sponsored odor certification course and demonstrated the ability to distinguish various odor samples and concentrations. If a certified inspector measures a violation of this section, the department may send a certified letter of apparent noncompliance to the person causing the apparent violation and may negotiate with the owner or operator for the establishment of an odor management plan and best management practices to address the apparent violation. The department shall give the owner or operator at least fifteen days to implement the odor management plan. If the odor problem persists, the department may proceed with an enforcement action provided at least two certified inspectors at the same time each

measure a violation and then confirm the violation by a second odor measurement taken by each certified inspector, at least fifteen minutes, but no more than two hours, after the first measurement.

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

5. This section does not apply to chemical compounds that can be individually measured by instruments, other than a scentometer, that have been designed and proven to measure the individual chemical or chemical compound, such as hydrogen sulfide, to a reasonable degree of scientific certainty, and for which the state department of health has established a specific limitation by rule.

6. 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.

7. a. In a county that does not regulate the nature, scope, and location of an animal feeding operation under section 11-33-02, the ~~department~~agriculture commissioner shall require ~~that~~ any new animal feeding operation permitted under chapter 61-28 be set back from any existing residence, church, school, business, public building, park, or campground as set forth in section 4.1-01-25.

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

(2) If there are at least three hundred animal units but no more than one thousand animal units, the setback for any animal operation is one-half mile [1.60 kilometers].

(3) If there are at least one thousand one animal units but no more than two thousand animal units, the setback for a hog operation is three-fourths mile [1.20 kilometers] and the setback for any other animal operation is one-half mile [1.60 kilometers].

(4) If there are at least two thousand one animal units but no more than five thousand animal units, the setback for a hog operation is one mile [1.60 kilometers] and the setback for any other animal operation is three-fourths mile [1.20 kilometers].

(5) If there are five thousand one or more animal units, the setback for a hog operation is one and one-half miles [2.40 kilometers] and the setback for any other animal operation is one mile [1.60 kilometers].

b. The setbacks set forth in subdivision a do not apply if the owner or operator applying for the permit obtains an odor easement from the pre-existing use that is closer.

c. For purposes of this section:

(1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;

(2) One dairy cow, heifer or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;

(3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;

(4) One cow-calf pair equals 1.0 animal unit;

(5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;

(6) One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;

(7) One horse equals 2.0 animal units;

(8) One sheep or lamb equals 0.1 animal unit;

(9) One turkey equals 0.0182 animal unit;

- 1 (10) One chicken, other than a laying hen, equals 0.008 animal unit;
2 (11) One laying hen equals 0.012 animal unit;
3 (12) One duck equals 0.033 animal unit; and
4 (13) Any livestock not listed in paragraphs 1 through 12 equals 1.0 animal unit
5 per each one thousand pounds [453.59 kilograms] whether single or
6 combined animal weight.

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

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

12 **SECTION 6. AMENDMENT.** Section 23.1-06-15 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **23.1-06-15. Regulation of odors - Rules. (Contingent effective date - [See note](#))**

- 15 1. In areas located within a city or the area over which a city has exercised extraterritorial
16 zoning as defined in section 40-47-01.1, a person, other than an agricultural operation,
17 as defined in section 42-04-01, or an animal feeding operation, may not discharge into
18 the ambient air any objectionable odorous air contaminant that measures seven odor
19 concentration units or higher outside the property boundary where the discharge is
20 occurring. ~~If an agricultural operation as defined by section 42-04-01 has been in~~
21 ~~operation for more than one year, as provided by section 42-04-02, and the person~~
22 ~~making the odor complaint was built or established after the agricultural operation was~~
23 ~~established, the measurement for compliance with the seven odor concentration units~~
24 ~~standard must be taken within one hundred feet [30.48 meters] of the subsequently~~
25 ~~established residence, church, school, business, or public building making the~~
26 ~~complaint rather than at the property boundary of the agricultural operation. The~~
27 ~~measurement may not be taken within five hundred feet [.15 kilometer] of the property~~
28 ~~boundary of the agricultural operation.~~
29 2. In areas located outside a city or outside the area over which a city has exercised
30 extraterritorial zoning as defined in section 40-47-01.1, a person, other than an
31 agricultural operation, as defined in section 42-04-01, or an animal feeding operation,

1 may not discharge into the ambient air any objectionable odorous air contaminant that
2 causes odors that measure seven odor concentration units or higher as measured at
3 any of the following locations:

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

- 25 3. An odor measurement may be taken only with a properly maintained scentometer, by
26 an odor panel, or by another instrument or method approved by the department of
27 environmental quality, and only by inspectors certified by the department who have
28 successfully completed a department-sponsored odor certification course and
29 demonstrated the ability to distinguish various odor samples and concentrations. If a
30 certified inspector measures a violation of this section, the department may send a
31 certified letter of apparent noncompliance to the person causing the apparent violation

1 and may negotiate with the owner or operator for the establishment of an odor
2 management plan and best management practices to address the apparent violation.
3 The department shall give the owner or operator at least fifteen days to implement the
4 odor management plan. If the odor problem persists, the department may proceed
5 with an enforcement action provided at least two certified inspectors at the same time
6 each measure a violation and then confirm the violation by a second odor
7 measurement taken by each certified inspector, at least fifteen minutes, but no more
8 than two hours, after the first measurement.

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

20 5. This section does not apply to chemical compounds that can be individually measured
21 by instruments, other than a scentometer, that have been designed and proven to
22 measure the individual chemical or chemical compound, such as hydrogen sulfide, to
23 a reasonable degree of scientific certainty, and for which the department of
24 environmental quality has established a specific limitation by rule.

25 6. For purposes of this section, a public park is a park established by the federal
26 government, the state, or a political subdivision of the state in the manner prescribed
27 by law. For purposes of this section, a campground is a public or private area of land
28 used exclusively for camping and open to the public for a fee on a regular or seasonal
29 basis.

30 7. a. In a county that does not regulate the nature, scope, and location of an animal
31 feeding operation under section 11-33-02, the ~~department~~agriculture commissioner

shall require that any new animal feeding operation permitted under chapter 61-28 be set back from any existing residence, church, school, business, public building, park, or campground as set forth in section 4.1-01-25.

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

(2) ~~If there are at least three hundred animal units but no more than one thousand animal units, the setback for any animal operation is one-half mile [1.60 kilometers].~~

(3) ~~If there are at least one thousand one animal units but no more than two thousand animal units, the setback for a hog operation is three-fourths mile [1.20 kilometers], and the setback for any other animal operation is one-half mile [1.60 kilometers].~~

(4) ~~If there are at least two thousand one animal units but no more than five thousand animal units, the setback for a hog operation is one mile [1.60 kilometers], and the setback for any other animal operation is three-fourths mile [1.20 kilometers].~~

(5) ~~If there are five thousand one or more animal units, the setback for a hog operation is one and one-half miles [2.40 kilometers], and the setback for any other animal operation is one mile [1.60 kilometers].~~

b. ~~The setbacks set forth in subdivision a do not apply if the owner or operator applying for the permit obtains an odor easement from the pre-existing use that is closer.~~

e. For purposes of this section:

(1) ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~

(2) ~~One dairy cow, heifer or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;~~

(3) ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;~~

(4) ~~One cow-calf pair equals 1.0 animal unit;~~

(5) ~~One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;~~

- 1 (6) One swine weighing less than fifty-five pounds [24.948 kilograms] equals-
2 0.1 animal unit;
3 (7) One horse equals 2.0 animal units;
4 (8) One sheep or 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 0.008 animal unit;
7 (11) One laying hen equals 0.012 animal unit;
8 (12) One duck equals 0.033 animal unit; and
9 (13) Any livestock not listed in paragraphs 1 through 12 equals 1.0 animal unit
10 per each one thousand pounds [453.59 kilograms], whether single or
11 combined animal weight.

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

14 9. A county or township may not regulate or impose restrictions or requirements on-
15 animal feeding operations or other agricultural operations except as permitted under
16 sections 11-33-02 and 58-03-11.

17 **SECTION 7. AMENDMENT.** Section 44-04-32 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **44-04-32. Animal feeding operation record requests.**

20 The ~~state department of health~~agriculture commissioner shall keep a written record of each
21 individual who requests information and the type of information requested regarding an animal
22 feeding operation permit. Within seven business days of receiving the request, the
23 ~~department~~agriculture commissioner shall provide written notice to the owner and operator of
24 the animal feeding operation describing the type of information that has been requested and the
25 name and address of the requester. If an individual makes inquiries on more than three files in
26 any one request, the ~~department~~agriculture commissioner shall charge the individual a fee
27 sufficient to cover the cost of mailing the notice to the owners and operators whose files are
28 being examined and a fee for copying the records as allowed under section 44-04-18.

29 **(Contingent effective date - See note) Animal feeding operation record requests.** The
30 ~~department of environmental quality~~agriculture commissioner shall keep a written record of
31 each individual who requests information and the type of information requested regarding an

1 animal feeding operation permit. Within seven business days of receiving the request, the
2 ~~department~~ agriculture commissioner shall provide written notice to the owner and operator of
3 the animal feeding operation describing the type of information that has been requested and the
4 name and address of the requester. If an individual makes inquiries on more than three files in
5 any one request, the ~~department~~ agriculture commissioner shall charge the individual a fee
6 sufficient to cover the cost of mailing the notice to the owners and operators whose files are
7 being examined and a fee for copying the records as allowed under section 44-04-18.

8 **SECTION 8. 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 feeding operation" means any livestock feeding, handling, or
14 holding operation, or feed yard, where animals are concentrated in an area that is
15 not normally used for pasture or for growing crops and in which animal wastes
16 may accumulate. The term does not include normal wintering operations for
17 cattle.

18 b. "Farming or ranching" means cultivating land for the production of agricultural
19 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.
20 The term does not include:

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

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

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

28 d. "Location" means the setback distance between a structure, fence, or other
29 boundary enclosing a concentrated feeding operation, including its animal waste
30 collection system, and the nearest occupied residence, the nearest buildings
31 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 state department of health.

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;
- c. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
- d. One cow-calf pair equals 1.0 animal unit;
- e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
- f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
- g. One horse equals 2.0 animal units;
- h. One sheep or lamb equals 0.1 animal unit;
- i. One turkey equals 0.0182 animal unit;
- j. One chicken, other than a laying hen, equals 0.008 animal unit;
- k. One laying hen equals 0.012 animal unit;
- l. One duck equals 0.033 animal unit; and
- m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight.

3. A board of township supervisors may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming or ranching.

4. A regulation may not preclude the development of a concentrated feeding operation in the township.

5. A board of township supervisors may not prohibit the reasonable diversification or 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 concentrated feeding operations based on the size of the
- 3 operation and the species and type being fed.
- 4 7. If a regulation would impose a substantial economic burden on a concentrated feeding
- 5 operation in existence before the effective date of the regulation, the board of township
- 6 supervisors shall declare that the regulation is ineffective with respect to any
- 7 concentrated feeding operation in existence before the effective date of the regulation.
- 8 8. a. A board of township supervisors may establish high-density agricultural
- 9 production districts in which setback distances for concentrated feeding
- 10 operations and related agricultural operations are less than those in other
- 11 districts.
- 12 b. A board of township supervisors may establish, around areas zoned for
- 13 residential, recreational, or nonagricultural commercial uses, low-density
- 14 agricultural production districts in which setback distances for concentrated
- 15 feeding operations and related agricultural operations are greater than those in
- 16 other districts; provided, the low-density agricultural production districts may not
- 17 extend more than one-half mile [0.80 kilometer] from the edge of the area zoned
- 18 for residential, recreational, or nonagricultural commercial uses.
- 19 c. The setbacks provided for in this subsection may not vary by more than fifty
- 20 percent from those established in ~~subdivision a of subsection 7 of section~~
- 21 ~~23-25-11~~section 4.1-01-25.
- 22 d. For purposes of this subsection, a "related agricultural operation" means a facility
- 23 that produces a product or byproduct used by a concentrated feeding operation.

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

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

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 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;

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

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

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

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

g. One horse equals 2.0 animal units;

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 weight.
- 8 3. A board of township supervisors may not prohibit or prevent the use of land or
- 9 buildings for farming or ranching or any of the normal incidents of farming or ranching.
- 10 4. A regulation may not preclude the development of a concentrated feeding operation in
- 11 the township.
- 12 5. A board of township supervisors may not prohibit the reasonable diversification or
- 13 expansion of a farming or ranching operation.
- 14 6. A board of township supervisors may adopt regulations that establish different
- 15 standards for the location of concentrated feeding operations based on the size of the
- 16 operation and the species and type being fed.
- 17 7. If a regulation would impose a substantial economic burden on a concentrated feeding
- 18 operation in existence before the effective date of the regulation, the board of township
- 19 supervisors shall declare that the regulation is ineffective with respect to any
- 20 concentrated feeding operation in existence before the effective date of the regulation.
- 21 8. a. A board of township supervisors may establish high-density agricultural
- 22 production districts in which setback distances for concentrated feeding
- 23 operations and related agricultural operations are less than those in other
- 24 districts.
- 25 b. A board of township supervisors may establish, around areas zoned for
- 26 residential, recreational, or nonagricultural commercial uses, low-density
- 27 agricultural production districts in which setback distances for concentrated
- 28 feeding operations and related agricultural operations are greater than those in
- 29 other districts; provided, the low-density agricultural production districts may not
- 30 extend more than one-half mile [0.80 kilometer] from the edge of the area zoned
- 31 for residential, recreational, or nonagricultural commercial uses.

1 c. The setbacks provided for in this subsection may not vary by more than fifty
2 percent from those established in ~~subdivision a of subsection 7 of section~~
3 ~~23-1-06-15~~section 4.1-01-25.

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

6 **SECTION 9. AMENDMENT.** Section 58-03-17 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **58-03-17. Regulation of concentrated animal feeding operations - Central repository.**

9 1. Any zoning regulation that pertains to a concentrated animal feeding operation and
10 which is promulgated by a township after July 31, 2007, is not effective until filed with
11 the ~~state department of health~~agriculture commissioner for inclusion in the central
12 repository established under section ~~23-01-304.1-01-24~~. Any zoning regulation that
13 pertains to a concentrated animal feeding operation and which was promulgated by a
14 county or a township before August 1, 2007, may not be enforced until the regulation
15 is filed with the ~~state department of health~~agriculture commissioner for inclusion in the
16 central repository.

17 2. For purposes of this section:

18 a. "Concentrated animal feeding operation" means any livestock feeding, handling,
19 or holding operation, or feed yard, where animals are concentrated in an area
20 that is not normally used for pasture or for growing crops and in which animal
21 wastes may accumulate, or in an area where the space per animal unit is less
22 than six hundred square feet [55.74 square meters]. The term does not include
23 normal wintering operations for cattle.

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

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

28 1. Any zoning regulation that pertains to a concentrated animal feeding operation and
29 which is promulgated by a township after July 31, 2007, is not effective until filed with
30 the ~~department of environmental quality~~agriculture commissioner for inclusion in the
31 central repository established under section ~~23-1-01-104.1-01-24~~. Any zoning

1 regulation that pertains to a concentrated animal feeding operation and which was
2 promulgated by a county or a township before August 1, 2007, may not be enforced
3 until the regulation is filed with the ~~department of environmental quality~~agriculture
4 commissioner 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 **SECTION 10. REPEAL.** Sections 23-01-30 and 23.1-01-10 of the North Dakota Century
15 Code are repealed.

16 **SECTION 11. CONTINGENT REPEAL.** If the legislative council has not received
17 certification from the chief of the environmental health section of the state department of health
18 that all authority, powers, and duties from the environmental health section of the state
19 department of health have been transferred to the department of environmental quality by
20 August 1, 2019, section 23.1-01-10 is repealed as of the date on which the certification is
21 received.