

**Sixty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2025**

SENATE BILL NO. 2174
(Senators Thomas, Conley, Lemm, Weston)
(Representatives Beltz, Hauck)

AN ACT to amend and reenact sections 11-33-02.1 and 58-03-11.1 of the North Dakota Century Code, relating to the regulation of odors in an animal feeding operation and zoning authority over animal feeding operations in counties and townships; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. For purposes of this section:
 - a. "Animal feeding operation" means a lot or facility, other than normal wintering operations for cattle and an aquatic animal production facility, where the following conditions are met:
 - (1) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for at least forty-five days in a twelve-month period; and
 - (2) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.
 - 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 an animal feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled agricultural material under a nutrient management plan approved by the department of environmental quality.
2. For purposes of this section, animal units are determined as provided in subdivision c of subsection 7 of section 23.1-06-15.
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~~Except as provided in this section, a board of county commissioners may not preclude the development of an animal 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 animal 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 an animal 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 animal 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 animal 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 animal 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. A board of county commissioners may not adopt or enforce setbacks applicable to animal feeding operations that exceed the setback distances provided in subsection 7 of section 23.1-06-15, except setback distances may be reduced or extended based on the results of the odor footprint tool developed by the agriculture commissioner. A county may not use an odor annoyance free percentage exceeding ninety-four percent.
 - d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by an animal feeding operation.
9.
 - a. A person intending to construct an animal feeding operation may petition the board of county commissioners for a determination whether the animal feeding operation would comply with zoning regulations adopted under this section and filed with the department of environmental quality under section 11-33-22 before the date the petition was received by the county.
 - b. The petition must contain a description of the nature, scope, and location of the proposed animal feeding operation and a site map showing road access, the location of any structure, and the distance from each structure to the nearest section line.
 - c. If the board of county commissioners does not validly object to the petition within sixty days of receipt, the animal feeding operation is deemed in compliance with the county zoning regulations. If the county allows animal feeding operations as a conditional use, the conditional use regulations must be limited to the board's authority under this section, and the approval process must comply with this section. The county shall make a valid determination on the application within sixty days of the receipt of a complete conditional use permit application.
 - d. If the board of county commissioners determines the animal feeding operation would comply with zoning regulations or fails to object under this section, the county may not impose additional zoning regulations relating to the nature, scope, or location of the animal feeding operation later, provided an application is submitted promptly to the

department of environmental equality, the department issues a final permit, and construction of the animal feeding operation commences within three years from the date the department issues its final permit and any permit appeals are exhausted. Any objection or determination that subsequently is reversed, set aside, or invalidated by a court of this state, is not a valid objection or decision for the purpose of calculating a procedural timeline under this section.

- e. A procedural timeline imposed by this section continues to be in effect during the pendency of any appeal of a county action or determination.
 - f. A board of county commissioners may not:
 - a. (1) Regulate or impose zoning restrictions or requirements on animal feeding operations or other agricultural operations except as expressly permitted under this section;
 - b. (2) Impose water quality, closure, site security, lagoon, or nutrient plan regulations or requirements on animal feeding operations;
 - c. (3) Charge fees or expenses of any kind totaling, in the aggregate, more than five hundred dollars in connection with any permit, petition, application, or other request relating to animal feeding operations; or
 - d. (4) Require an existing animal feeding operation to have a permit for improvements or other modifications of an operation that is in current compliance with state and federal regulations or require an existing operation to have a permit for improvements or other modifications that bring the operation into compliance with state or federal regulations, if the modifications or improvements do not cause the operation to exceed animal numbers of the setback requirement.
10. If a party challenges the validity of a county ordinance, determination, decision, or objection related to animal feeding operations, the court shall award the prevailing party actual attorney's fees, costs, and expenses.

SECTION 2. AMENDMENT. Section 58-03-11.1 of the North Dakota Century Code is amended and reenacted as follows:

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

- 1. For purposes of this section:
 - a. "Animal feeding operation" means a lot or facility, other than normal wintering operations for cattle and an aquatic animal production facility, where the following conditions are met:
 - (1) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and
 - (2) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.
 - b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:
 - (1) The production of timber or forest products; or

- (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.
- c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.
 - d. "Location" means the setback distance between a structure, fence, or other boundary enclosing an animal feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned as a residential, recreational, or commercial zoning district. 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 provided under subdivision c of subsection 7 of section 23.1-06-15.
 - 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. AExcept as provided in this section, a regulation may not preclude the development of an animal 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.
 - 6. A board of township supervisors may adopt regulations that establish different standards for the location of animal 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 an animal feeding operation in existence before the effective date of the regulation, the board of township supervisors shall declare that the regulation is ineffective with respect to any animal feeding operation in existence before the effective date of the regulation.
 - 8.
 - a. A board of township supervisors may establish high-density agricultural production districts in which setback distances for animal feeding operations and related agricultural operations are less than those in other districts.
 - b. A board of township supervisors may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for animal 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-half mile [0.80 kilometer] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.
 - c. A board of township supervisors may not adopt or enforce setbacks applicable to animal feeding operations that exceed the setback distances provided in subsection 7 of section 23.1-06-15, except setback distances may be reduced or extended based on the results of the odor footprint tool developed by the agriculture commissioner. A township may not use an odor annoyance free percentage exceeding ninety-four percent.
 - d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by an animal feeding operation.
 - 9. a. A person intending to construct an animal feeding operation may petition the board of township supervisors for a determination whether the animal feeding operation would

comply with zoning regulations adopted under this section and filed with the department of environmental quality under section 58-03-17 before the date the petition was received by the township.

- b. The petition must contain a description of the nature, scope, and location of the proposed animal feeding operation and a site map showing road access, the location of any structure, and the distance from each structure to the nearest section line.
 - c. If the board of township supervisors does not validly object to the petition within sixty days of receipt, the animal feeding operation is deemed in compliance with the township zoning regulations. If the township allows animal feeding operations as a conditional use, the conditional use regulations must be limited to the board's authority under this section, and the approval process must comply with this section. The township shall make a valid determination on the application within sixty days of the receipt of a complete conditional use permit application.
 - d. If the board of township supervisors determines the animal feeding operation would comply with zoning regulations or fails to object under this section, the township may not impose additional zoning regulations relating to the nature, scope, or location of the animal feeding operation later, provided an application is submitted promptly to the department of environmental quality, the department issues a final permit, and construction of the animal feeding operation commences within three years from the date the department issues its final permit and any permit appeals are exhausted. Any objection or determination that subsequently is reversed, set aside, or invalidated by a court of this state, is not a valid objection or decision for the purpose of calculating a procedural timeline under this section.
 - e. A procedural timeline imposed by this section continues to be in effect during the pendency of any appeal of a township action or determination.
 - f. A board of township supervisors may not:
 - a. (1) Regulate or impose zoning restrictions or requirements on animal feeding operations or other agricultural operations except as expressly permitted under this section;
 - b. (2) Impose water quality, closure, site security, lagoon, or nutrient plan regulations or requirements on animal feeding operations;
 - c. (3) Charge fees or expenses of any kind totaling, in the aggregate, more than five hundred dollars in connection with any permit, petition, application, or other request relating to animal feeding operations; or
 - d. (4) Require an existing animal feeding operation to have a permit for improvements or other modifications of an operation that is in current compliance with state and federal regulations or require an existing operation to have a permit for improvements or other modifications that bring the operation into compliance with state or federal regulations, if the modifications or improvements do not cause the operation to exceed animal numbers of the setback requirement.
10. If a party challenges the validity of a township ordinance, determination, decision, or objection related to animal feeding operations, the court shall award the prevailing party actual attorney's fees, costs, and expenses.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on August 1, 2026.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2174.

Senate Vote: Yeas 42 Nays 5 Absent 0

House Vote: Yeas 66 Nays 25 Absent 3

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2025.

Approved at _____ M. on _____, 2025.

Governor

Filed in this office this _____ day of _____, 2025,

at _____ o'clock _____ M.

Secretary of State