

Sixtieth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1420

Introduced by

Representatives Brandenburg, Aarsvold, Froelich

Senator Erbele

1 A BILL for an Act to create and enact section 11-33-02.1, a new section to chapter 11-33,  
2 section 58-03-11.1, and a new section to chapter 58-03 of the North Dakota Century Code,  
3 relating to regulations by a board of county commissioners and by a board of township  
4 supervisors; and to amend and reenact section 11-33-02, subdivision c of subsection 2 of  
5 section 23-25-11, and section 58-03-11 of the North Dakota Century Code, relating to the  
6 designation of districts by a board of county commissioners and to the establishment of districts  
7 by a board of township supervisors.

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

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

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

12 ~~4.~~ For any or all of the purposes designated in section 11-33-01, the board of county  
13 commissioners may divide by resolution all or any parts of the county, subject to  
14 section 11-33-20, into districts of such number, shape, and area as may be  
15 determined necessary, and likewise may enact suitable regulations to carry out the  
16 purposes of this chapter. These regulations must be uniform in each district, but  
17 the regulations in one district may differ from those in other districts. ~~A regulation~~  
18 ~~or restriction may not prohibit or prevent the use of land or buildings for farming or~~  
19 ~~ranching or any of the normal incidents of farming or ranching. For purposes of~~  
20 ~~this section, "farming or ranching" means cultivating land for production of~~  
21 ~~agricultural crops or livestock, or raising, feeding, or producing livestock, poultry,~~  
22 ~~milk, or fruit. The term does not include producing timber or forest products, nor~~  
23 ~~does the term include a contract whereby a processor or distributor of farm~~  
24 ~~products or supplies provides grain, harvesting, or other farm services.~~

- 1           2. ~~A board of county commissioners may regulate the nature and scope of~~  
2           concentrated feeding operations permissible in the county; however, if a regulation  
3           would impose a substantial economic burden on a concentrated feeding operation  
4           in existence before the effective date of the regulation, the board of county  
5           commissioners shall declare that the regulation is ineffective with respect to any  
6           concentrated feeding operation in existence before the effective date of the  
7           regulation.
- 8           3. ~~A regulation may not preclude the development of a concentrated feeding~~  
9           operation in the county. ~~A regulation addressing the development of a~~  
10          concentrated feeding operation in the county may set reasonable standards, based  
11          on the size of the operation, to govern its location.
- 12          4. ~~For purposes of this section, "concentrated feeding operation" means any livestock~~  
13          feeding, handling, or holding operation, or feed yard, where animals are  
14          concentrated in an area that is not normally used for pasture or for growing crops  
15          and in which animal wastes may accumulate, or in an area where the space per  
16          animal unit is less than six hundred square feet [55.74 square meters]. ~~The term~~  
17          does not include normal wintering operations for cattle. ~~For purposes of this~~  
18          section, "livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses,  
19          and fur animals raised for their pelts.
- 20          5. ~~A board of county commissioners may not prohibit, through regulation, the~~  
21          reasonable diversification or expansion of a farming or ranching operation.
- 22          6. ~~This chapter does not include any power relating to the establishment, repair, and~~  
23          maintenance of highways or roads.

24           **SECTION 2.** Section 11-33-02.1 of the North Dakota Century Code is created and  
25 enacted as follows:

26           **11-33-02.1. Farming and ranching regulations - Requirements - Limitations -**  
27 **Definitions.**

- 28           1. For purposes of this section:
- 29           a. "Concentrated feeding operation" means any livestock feeding, handling, or  
30           holding operation, or feed yard, where animals are concentrated in an area  
31           that is not normally used for pasture or for growing crops and in which animal

- 1                    wastes may accumulate. The term does not include normal wintering  
2                    operations for cattle.
- 3                    b. "Farming or ranching" means cultivating land for the production of agricultural  
4                    crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or  
5                    fruit. The term does not include:
- 6                    (1) The production of timber or forest products; or  
7                    (2) The provision of grain, harvesting, or other farm services by a  
8                    processor or distributor of farm products or supplies in accordance with  
9                    the terms of a contract.
- 10                   c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses,  
11                   bison, elk, fur animals raised for their pelts, and any other animals that are  
12                   raised, fed, or produced as a part of farming or ranching activities.
- 13                   d. "Location" means the setback distance between a structure, fence, or other  
14                   boundary enclosing a concentrated feeding operation, including its animal  
15                   waste collection system, and the nearest occupied residence, the nearest  
16                   buildings used for nonfarm or nonranch purposes, or the nearest land zoned  
17                   for residential, recreational, or commercial purposes. The term does not  
18                   include the setback distance for the application of manure or for the  
19                   application of other recycled agricultural material under a nutrient  
20                   management plan approved by the department of health.
- 21                   2. For purposes of this section, animal units are determined as follows:
- 22                   a. One mature dairy cow, whether milking or dry, equals 1.33 animal units;  
23                   b. One dairy cow, heifer, or bull, other than an animal described in paragraph 1  
24                   equals 1.0 animal unit;
- 25                   c. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75  
26                   animal unit;
- 27                   d. One cow-calf pair equals 1.0 animal unit;
- 28                   e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4  
29                   animal unit;
- 30                   f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1  
31                   animal unit;

- 1           g. One horse equals 2.0 animal units;  
2           h. One sheep or lamb equals 0.1 animal unit;  
3           i. One turkey equals 0.0182 animal unit;  
4           j. One chicken, other than a laying hen, equals 0.008 animal unit;  
5           k. One laying hen equals 0.012 animal unit;  
6           l. One duck equals 0.033 animal unit; and  
7           m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per  
8           each one thousand pounds [453.59 kilograms] whether single or combined  
9           animal weight.
- 10          3. A board of county commissioners may not prohibit or prevent the use of land or  
11          buildings for farming or ranching and may not prohibit or prevent any of the normal  
12          incidents of farming or ranching.
- 13          4. A board of county commissioners may regulate the type and species of livestock in  
14          a concentrated feeding operation, the size of the concentrated feeding operation in  
15          animal units, and the location of the concentrated livestock feeding operation.  
16          However, if a regulation would impose a substantial economic burden on a  
17          concentrated feeding operation in existence before the effective date of the  
18          regulation, the board of county commissioners shall declare that the regulation is  
19          ineffective with respect to any concentrated feeding operation in existence before  
20          the effective date of the regulation.
- 21          5. A board of county commissioners may not preclude the development of a  
22          concentrated feeding operation in the county.
- 23          6. A board of county commissioners may not prohibit the reasonable diversification or  
24          expansion of a farming or ranching operation.
- 25          7. a. A board of county commissioners may establish high-density agricultural  
26          production districts in which setback distances for concentrated feeding  
27          operations and related agricultural operations are less than those in other  
28          districts.
- 29          b. A board of county commissioners may establish, around areas zoned for  
30          residential, recreational, or nonagricultural commercial uses, low-density  
31          agricultural production districts in which setback distances for concentrated

1           feeding operations and related agricultural operations are greater than those  
2           in other districts; provided, the low-density agricultural production districts  
3           may not extend more than one and one-half miles [2.40 kilometers] from the  
4           edge of the area zoned for residential, recreational, or nonagricultural  
5           commercial uses.

6           c. The setbacks provided for in this subsection may not vary by more than fifty  
7           percent from those established in subdivision a of subsection 7 of section  
8           23-25-11.

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

12           **SECTION 3.** A new section to chapter 11-33 of the North Dakota Century Code is  
13 created and enacted as follows:

14           **Highways - Roads.** This chapter does not include any power relating to the role of the  
15 board of county commissioners in the establishment, repair, or maintenance of highways or  
16 roads.

17           **SECTION 4. AMENDMENT.** Subdivision c of subsection 2 of section 23-25-11 of the  
18 North Dakota Century Code is amended and reenacted as follows:

19           c. If a county or township has zoned or established a setback distance for an  
20 animal feeding operation which is greater than one-half mile [.80 kilometer]  
21 under either section ~~11-33-02 or 58-03-11~~ 11-33-02.1 or 58-03-11.1, or if the  
22 setback distance under subsection 7 is greater than one-half mile [.80  
23 kilometer], measurements for compliance with the seven odor concentration  
24 units standard must be taken at the setback distance rather than one-half mile  
25 [.80 kilometer] from the facility under subdivision b, except for any residence,  
26 church, school, business, public building, park, or campground within the  
27 setback distance which was built or established before the animal feeding  
28 operation was established, unless the animal feeding operation has obtained  
29 an odor easement from the preexisting facility.

30           **SECTION 5. AMENDMENT.** Section 58-03-11 of the North Dakota Century Code is  
31 amended and reenacted as follows:

1           **58-03-11. Establishment of zoning districts - ~~Limitation~~—Scope of zoning**  
2 **regulations and restrictions Uniformity.**

3           ~~1.~~ For the purpose of promoting the health, safety, morals, or the general welfare, or  
4 to secure the orderly development of approaches to municipalities, the board of  
5 township supervisors may establish one or more zoning districts and within such  
6 districts may, subject to the provisions of chapter 54-21.3, regulate and restrict the  
7 erection, construction, reconstruction, alteration, repair, or use of buildings and  
8 structures, the height, number of stories, and size of buildings and structures, the  
9 percentage of lot that may be occupied, the size of courts, yards, and other open  
10 spaces, the density of population, and the location and use of buildings, structures,  
11 and land for trade, industry, residence, or other purposes. All such regulations and  
12 restrictions must be uniform throughout each district, but the regulations and  
13 restrictions in one district may differ from those in other districts. The board of  
14 township supervisors may establish institutional controls that address  
15 environmental concerns with the state department of health as provided in section  
16 23-20.3-03.1.

17           ~~2.~~ A regulation or restriction may not prohibit or prevent the use of land or buildings  
18 for farming or ranching or any of the normal incidents of farming or ranching. For  
19 purposes of this section, "farming or ranching" means cultivating land for  
20 production of agricultural crops or livestock, or raising, feeding, or producing  
21 livestock, poultry, milk, or fruit. The term does not include producing timber or  
22 forest products, nor does the term include a contract whereby a processor or  
23 distributor of farm products or supplies provides grain, harvesting, or other farm  
24 services.

25           ~~3.~~ A board of township supervisors may regulate the nature and scope of  
26 concentrated feeding operations permissible in the township; however, if a  
27 regulation would impose a substantial economic burden on a concentrated feeding  
28 operation in existence before the effective date of the regulation, the board of  
29 township supervisors shall declare that the regulation is ineffective with respect to  
30 any concentrated feeding operation in existence before the effective date of the  
31 regulation.

- 1           4. ~~A regulation may not preclude the development of a concentrated feeding~~  
2           ~~operation in the township. A regulation addressing the development of a~~  
3           ~~concentrated feeding operation in the township may set reasonable standards,~~  
4           ~~based on the size of the operation, to govern its location.~~
- 5           5. ~~For purposes of this section, "concentrated feeding operation" means any livestock~~  
6           ~~feeding, handling, or holding operation, or feed yard, where animals are~~  
7           ~~concentrated in an area that is not normally used for pasture or for growing crops~~  
8           ~~and in which animal wastes may accumulate, or in an area where the space per~~  
9           ~~animal unit is less than six hundred square feet [55.74 square meters]. The term~~  
10           ~~does not include normal wintering operations for cattle. For purposes of this~~  
11           ~~section, "livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses,~~  
12           ~~and fur animals raised for their pelts.~~
- 13           6. ~~A board of township supervisors may not prohibit, through regulation, the~~  
14           ~~reasonable diversification or expansion of a farming or ranching operation.~~
- 15           7. ~~Sections 58-03-11 through 58-03-15 do not include any power relating to the~~  
16           ~~establishment, repair, and maintenance of highways or roads.~~

17           **SECTION 6.** Section 58-03-11.1 of the North Dakota Century Code is created and  
18 enacted as follows:

19           **58-03-11.1. Farming and ranching regulations - Requirements - Limitations -**  
20 **Definitions.**

- 21           1. For purposes of this section:
- 22           a. "Concentrated feeding operation" means any livestock feeding, handling, or  
23           holding operation, or feed yard, where animals are concentrated in an area  
24           that is not normally used for pasture or for growing crops and in which animal  
25           wastes may accumulate. The term does not include normal wintering  
26           operations for cattle.
- 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  
29           fruit. 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  
2                                 processor or distributor of farm products or supplies in accordance with  
3                                 the terms of a contract.
- 4                   c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses,  
5                                 bison, elk, fur animals raised for their pelts, and any other animals that are  
6                                 raised, fed, 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 feeding operation, including its animal  
9                                 waste collection system, and the nearest occupied residence, the nearest  
10                                buildings used for nonfarm or nonranch purposes, or the nearest land zoned  
11                                for residential, recreational, or commercial purposes. The term does not  
12                                include the setback distance for the application of manure or for the  
13                                application of other recycled agricultural material under a nutrient  
14                                management plan approved by the department of health.
- 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  
20                                 animal 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.
- 4           3. A board of township supervisors may not prohibit or prevent the use of land or  
5           buildings for farming or ranching or any of the normal incidents of farming or  
6           ranching.
- 7           4. A board of township supervisors may regulate the type and species of livestock in  
8           a concentrated feeding operation, the size of the concentrated feeding operation in  
9           animal units, and the location of the concentrated livestock feeding operation.  
10          However, if a regulation would impose a substantial economic burden on a  
11          concentrated feeding operation in existence before the effective date of the  
12          regulation, the board of township supervisors shall declare that the regulation is  
13          ineffective with respect to any concentrated feeding operation in existence before  
14          the effective date of the regulation.
- 15          5. A regulation may not preclude the development of a concentrated feeding  
16          operation in the township.
- 17          6. A board of township supervisors may not prohibit the reasonable diversification or  
18          expansion of a farming or ranching operation.
- 19          7. a. A board of township supervisors may establish high-density agricultural  
20          production districts in which setback distances for concentrated feeding  
21          operations and related agricultural operations are less than those in other  
22          districts.
- 23          b. A board of township supervisors may establish, around areas zoned for  
24          residential, recreational, or nonagricultural commercial uses, low-density  
25          agricultural production districts in which setback distances for concentrated  
26          feeding operations and related agricultural operations are greater than those  
27          in other districts; provided, the low-density agricultural production districts  
28          may not extend more than one and one-half miles [2.40 kilometers] from the  
29          edge of the area zoned for residential, recreational, or nonagricultural  
30          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                   23-25-11.
- 4           d. For purposes of this subsection, a "related agricultural operation" means a  
5                   facility that produces a product or byproduct used by a concentrated feeding  
6                   operation.

7           **SECTION 7.** A new section to chapter 58-03 of the North Dakota Century Code is  
8 created and enacted as follows:

9           **Highways - Roads.** Sections 58-03-11 through 58-03-15 do not include any power  
10 relating to the role of the board of township supervisors in the establishment, repair, or  
11 maintenance of highways or roads.